Bouvier's Law Dictionary

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A

A, the first letter of the English and most other alphabets, is frequently used as an abbreviation, (q. v.) and also in the marks of schedules or papers, as schedule A, B, C, &c. Among the Romans this letter was used in criminal trials. The judges were furnished with small tables covered with wax, and each one inscribed on it the initial letter of his vote; A, when he voted to absolve the party on trial; C, when he was for condemnation; and N L, (non liquet) when the matter did not appear clearly, and be desired a new argument.

A MENSA ET THORO, from bed and board. A divorce a mensa et thoro, is rather a separation of the parties by act of law, than a dissolution of the marriage. It may be granted for the causes of extreme cruelty or desertion of the wife by the hushand. 2 Eccl. Rep. 208. This kind of divorce does not affect the legitimacy of children, nor authorize a second marriage. V. A vinculo matrimonii; Cruelty Divorce.

A PRENDRE, French, to take, to seize, in contracts, as profits a prendre. Ham. N. P. 184; or a right to take something out of the soil. 5 Ad. & Ell. 764; 1 N. & P. 172 it differs from a right of way, which is simply an easement or interest which confers no interest in the land. 5 B. & C. 221.

A QUO, A Latin phrases which signifies from which; example, in the computation of time, the day a quo is not to be counted, but the day ad quem is always included. 13 Toull. n. 52 ; 2 Duv. n. 22. A court a quo, the court from which an appeal has been taken; a judge a quo is a judge of a court below. 6 Mart. Lo. R. 520; 1 Har. Cond. L. R. 501. See Ad quem.

A RENDRE, French, to render, to yield, contracts. Profits a rendre; under this term are comprehended rents and services. Ham N. P. 192.

A VINCULO MATRIMONII, from the bond of marriage. A marriage may be dissolved a vinculo, in many states, as in Pennsylvania, on the ground of canonical disabilities before marriage, as that one of the parties was legally married to a person who was then living; impotence, (q. v.,) and the like adultery cruelty and malicious desertion for two years or more. In New York a sentence of imprisonment for life is also a ground for a divorce a vinculo. When the marriage is dissolved a vinculo, the parties may marry again but when the cause is adultery, the guilty party cannot marry his or her paramour.

AB INITIO, from the beginning.

2. When a man enters upon lands or into the house of another by authority of law, and afterwards abuses that authority, he becomes a trespasser ab initio. Bac. Ab. Trespass, B.; 8 Coke, 146 2 Bl. Rep. 1218 Clayt. 44. And if an officer neglect to remove goods attached within a reasonable time and continue in possession, his entry becomes a trespass ab initio. 2 Bl. Rep. 1218. See also as to other cases, 2 Stra. 717 1 H. Bl. 13 11 East, 395 2 Camp. 115 2 Johns. 191; 10 Johns. 253; ibid. 369.

3. But in case of an authority in fact, to enter, an abuse of such authority will not, in general, subject the party to an action of trespass, Lane, 90 ; Bae. Ab. Trespass, B ; 2 T. It. 166. See generally 1 Chit. PI. 146. 169. 180.

AB INTESTAT. An heir, ab intestat, is one on whom the law casts the inheritance or estate of a person who dies intestate.

AB IRATO, civil law. A Latin phrase, which signifies by a man in anger. It is applied to bequests or gifts, which a man makes adverse to the interest of his heir, in consequence of anger or hatred against him. Thus a devise made under these circumstances is called a testament ab irato. And the suit which the heirs institute to annul this will is called an action ab irato. Merlin, Repert. mots Ab irato.

ABANDONMENT, contracts. In the French law, the act by which a debtor surrenders his property for the benefit of his creditors. Merl. Rep. mot Abandonment.

ABANDONMENT, contracts. In insurances the act by which the insured relinquishes to the assurer all the property to the thing insured.

2. – No particular form is required for an abandonment, nor need it be in writing; but it must be explicit and absolute, and must set forth the reasons upon which it is founded.

3. – It must also be made in reasonable time after the loss.

4. – It is not in every case of loss that the insured can abandon. In the following cases an abandonment may be made: when there is a total loss; when the voyage is lost or not worth pursuing, by reason of a peril insured against or if the cargo be so damaged as to be of little or no value; or where the salvage is very high, and further expense be necessary, and the insurer will not engage to bear it or if what is saved is of less value than the freight; or where the damage exceeds one half of the value of the goods insured or where the property is captured, or even detained by an indefinite embargo ; and in cases of a like nature.

5. – The abandonment, when legally made transfers from the insured to the insurer the property in the thing insured, and obliges him to pay to the insured what he promised him by the contract of insurance. 3 Kent, Com. 265; 2 Marsh. Ins. 559 Pard. Dr. Coin. n. 836 et seq. Boulay Paty, Dr. Com. Maritime, tit. 11, tom. 4, p. 215.

ABANDONMENT. In maritime contracts in the civil law, principals are generally held indefinitely responsible for the obligations which their agents have contracted relative to the concern of their commission but with regard to ship owners there is remarkable peculiarity; they are bound by the contract of the master only to the amount of their interest in the ship, and can be discharged from their responsibility by abandoning the ship and freight. Poth. Chartes part. s. 2, art. 3, 51; Ord. de la Mar. des proprietaires, art. 2; Code de Com. 1. 2, t. 2, art. 216.

ABANDONMENT, lights. The relinquishment of a right; the giving up of something to which we are entitled.

2. – Legal rights, when once vested, must be divested according to law, but equitable rights may be abandoned. 2 Wash. R. 106. See 1 H. & M. 429; a mill site, once occupied, may be abandoned. 17 Mass. 297; an application for land, which is an inception of title, 5 S. & R. 215; 2 S. & R. 378; 1 Yeates, 193, 289; 2 Yeates, 81, 88, 318; an improvement, 1 Yeates, 515 ; 2 Yeates, 476; 5 Binn. 73; 3 S. & R. 319; Jones' Syllabus of Land Office Titles in Pennsylvania, chap. xx; and a trust fund, 3 Yerg. 258 may be abandoned.

3. – The abandonment must be made by the owner without being pressed by any duty, necessity or utility to himself, but simply because he wishes no longer to possess the thing; and further it must be made without any desire that any other person shall acquire the same; for if it were made for a consideration, it would be a sale or barter, and if without consideration, but with an intention that some other person should become the possessor, it would be a gift: and it would still be a gift though the owner might be indifferent as to whom the right should be transferred; for example, he threw money among a crowd with intent that some one should acquire the title to it.

ABANDONMENT for torts, a term used in the civil law. By the Roman law, when the master was sued for the tort of his slave, or the owner for a trespass committed by his animal, he might abandon them to the person injured, and thereby save himself from further responsibility.

2. – Similar provisions have been adopted in Louisiana. It is enacted by the civil code that the master shall be answerable for all the damages occasioned by an offence or quasi offence committed by his slave. He may, however, discharge himself from such responsibility by abandoning the slave to the person injured; in which case such

person shall sell such slave at public auction in the usual form; to obtain payment of the damages and costs; and the balance, if any, shall be returned to the master of the slave, who shall be completely discharged, although the price of the slave should not be sufficient to pay the whole amount of the damages and costs; provided that the master shall make abandonment within three days after the judgment awarding such damages, shall have been rendered; provided also that it shall not be proved that the crime or offence was committed by his order, for in such cases the master shall be answerable for all damages resulting therefrom, whatever be the amount, without being admitted to the benefit of abandonment. Art. 180, 181.

3. – The owner of an animal is answerable for the damages he has caused; but if the animal had been lost, or had strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury, except where the master has turned loose a dangerous or noxious animal, for then he must pay for all the harm he has done, without being allowed, to make the abandonment. Ib. art. 2301.

ABANDONMENT, malicious. The act of a hushand or wife, who leaves his or her consort wilfully, and with an intention of causing perpetual separation.

2. – Such abandonment, when it has continued the length of time required by the local statutes, is sufficient cause for a divorce. Vide 1 Hoff. R. 47; Divorce.

ABATEMENT, chancery practice, is a suspension of all proceedings in a suit, from the want of proper parties capable of proceeding therein. It differs from an abatement at law in this, that in the latter the action is in general entirely dead, and cannot be revived, 3 Bl. Com. 168 but in the former, the right to proceed is merely suspended, and may be revived by a bill of revivor. Mitf. Eq. Pl. by Jeremy, 57; Story, Eq. PI. 354.

ABATEMENT, contracts, is a reduction made by the creditor, for the prompt payment of a debt due by the payor or debtor. Wesk. on Ins. 7.

ABATEMENT, merc. law. By this term is understood the deduction sometimes made at the custom-house from the duties chargeable upon goods when they are damaged See Act of Congress, March 2, 1799, s. 52, 1 Story L. U. S. 617.

ABATEMENT, pleading, is the overthrow of an action in consequence of some error committed in bringing or conducting it when the plaintiff is not forever barred from bringing another action. 1 Chit. Pl. 434. Abatement is by plea. There can be no demurrer in abatement. Willes' Rep. 479; Salk. 220.

2. Pleas in abatement will be considered as relating, 1, to the jurisdiction of the court; 2, to the person of the plaintiff; 3, to that of the defendant; 4, to the writ; 5, to the qualities. of such pleas ; 6, to the form of such pleas; 7, to the affidavit of the truth of pleas in abatement.

3. – 1. As to pleas relating to the jurisdiction of the court, see article Jurisdiction, and Arch. Civ. Pl. 290; 1 Chit. PI. Index. tit, Jurisdiction. There is only one case in which the jurisdiction of the court may be inquired of under the general issue, and that is where no court of the country has jurisdiction of the cause, for in that case no action can be maintained by the law of the land. 3 Mass. Rep. Rea v. Hayden, 1 Dougl. 450; 3 Johns. Rep. 113; 2 Penn. Law Journal 64, Meredith v. Pierie.

4. – 2. Relating to the person of the plaintiff. 1. The defendant may plead to the person of the plaintiff that there never was any such person in rerum natura. Bro. Brief, 25 ; 19 Johns. 308 Com. Dig. Abatement, E 16. And if one of several plaintiffs be a fictitious person, it abates the writ. Com. Dig. Abatement, E 16; 1 Chit. Pl. 435; Arch. Civ. Pl. 304. But a nominal plaintiff in ejectment may sustain an action. 5 Verm. 93; 19 John. 308. As to the rule in Pennsylvania, see 5 Watts, 423.

5. – 2. The defendant. may plead that the plaintiff is a feme covert. Co. Lit. 132, b.; or that she is his own wife. 1 Brown. Ent. 63; and see 3 T. R. 631; 6 T. R. 265; Com. Dig. Abatement, E 6; 1 Chit. Pl. 437; Arch. Civ. Pl. 302. Coverture occurring after suit brought is a plea in abatement which cannot be pleaded after a plea in bar, unless the matter arose after the plea in bar; but in that case the defendant must not suffer a continuance to intervene between the happening of this new matter, or its coming to his knowledge, and pleading it. 4 S & R. 238; Bac. Abr. Abatement, G; 4 Mass. 659; 4 S. & R. 238; 1 Bailey, 369; 4 Vern. 545; 2 Wheat. 111; 14 Mass. 295 ; 1 Blackf. 288 ; 2 Bailey, 349. See 10 S. & R. 208; 7 Verm. 508; 1 Yeates, 185; 2 Dall. 184; 3 Bibb, 246.

6. – 3. That the plaintiff (unless he sue with others as executor) is an infant and has declared by attorney. 1 Chit. Pl. 436; Arch. Civ. Pi. 301; Arch. Pr. B. R. 142 ; 2 Saund. 212, a, n. 5; 1 Went. 58, 62; 7 John. R. 373; 3 N. H. Rep. 345; 8 Pick. 552; and see 7 Mass. 241; 4 Halst. 381 2 N. H. Rep. 487.

7. – 4. A suit brought by a lunatic under guardianship, shall abate. Brayt. 18.

8. – 5. Death of plaintiff before the purchase of the original writ, may be pleaded in abatement. 1 Arch. Civ. PI. 304, 5; Com. Dig. Abatement, E 17. Death of plaintiff pending the writ might have been pleaded since the last continuance, Com. Dig. Abatement, H 32; 4 Hen. & Munf. 410; 3 Mass. 296 ; Cam. & Nor. 72; 4 Hawks, 433; 2 Root, 57; 9 Mass. 422; 4 H. & M. 410; Gilmer, 145; 2 Rand. 454; 2 Greenl. 127.

But in some states, as in Pennsylvania, the, death of the plaintiff does not abate the writ; in such case the executor or administrator is substituted. The rule of the common law is, that whenever the death of any party happens, pending the writ, and yet the plea is in the same condition, as if such party were living, then such death makes no alteration; and on this rule all the diversities turn. Gilb. Com. Pleas 242.

9. – 6. Alienage, or that the plaintiff is an alien enemy. Bac. Abr. h.t.; 6 Binn. 241 ; 10 Johns. 183; 9 Mass. 363 ; Id. 377 ; 11 Mass. 119 ; 12 Mass. 8 ; 3 31. & S. 533; 2 John. Ch. R. 508; 15 East, 260; Com. Dig. Abatement, E 4; Id. Alien, C 5; 1 S. & R. 310; 1 Ch. PI. 435; Arch. Civ. PI. 3, 301.

10. – 7. Misnomer of plaintiff may also be pleaded in abatement. Arch. Civ. Pi. 305; 1 Chitty's Pleading, Index, tit. Misnomer. Com. Dig. Abatement, E 19, E 20, E 21, E 22; l Mass. 75; Bac. Abr. h. t.

11. – 8. If one of several joint tenants, sue in action ex contractu, Co. Lit. 180, b; Bac. Abr. Joint-tenants, K; 1 B. & P. 73; one of several joint contractors, Arch. Civ. PI. 48-51, 53 ; one of several partners, Gow on Part. 150; one of. several joint executors who have proved the will, or even if they have not proved the will, 1 Chit. PI. 12, 13; one of several joint administrators, Ibid. 13; the defendant may plead the non-joinder in abatement. Arch. Civ. Pl. 304; see Com. Dig. Abatement, E 9, E 12, E 13, E 14.

12. – 9. If persons join as plaintiffs in an action who should not, the defendant may plead the misjoinder in abatement. Arch. Civ. PI. 304; Com. Dig. Abatement, E 15.

13. – 10. When the plaintiff is an alleged corporation, and it is intended to contest its existence, the defendant must plead in abatement. Wright, 12; 3 Pick. 236; 1 Mass 485; 1 Pet. 450; 4 Pet. 501; 5 Pet. 231. To a suit brought in the name of the "judges of the county court," after such court has been abolished, the defendant may plead in abatement that there are no such judges. Judges, &c. v. Phillips; 2 Bay, 519.

14. – 3. Relating to the person of the defendant. 1. In an action against two or more, one may plead in abatement that there never was such a person in rerum natura as A, who is named as defendant with him. Arch. Civ. PI. 312.

15. – 2. If the defendant be a married woman, she may in general plead her coverture in abateraent, 8 T. R. 545 ; Com. Dig. Abatement, F 2. The exceptions to this rule arise when the coverture is suspended. Com. Dig. Abatement, F 2, 3; Co. Lit. 132, b; 2 Bl. R. 1197; Co. B. L. 43.

16. – 3. The death of the defendant abates the writ at common law, and in some cases it does still abate the action, see Com. Dig. Abatement, H 34; 1 Hayw. 500; 2 Binn. l.;

1 Gilm. 145; 1 Const. Rep. 83; 4 McCord, 160; 7 Wheat. 530; 1 Watts, 229; 4 Mass. 480; 8 Greenl. 128; In general where the cause of action dies with the person, the suit abates by the death of the defendant before judgment. Vide Actio Personalis moritur cum persona.

17. – 4. The misnomer of the defendant may be pleaded in abatement, but one defendant cannot plead the misnomer of another. Com. Dig. Abatement, F 18 ; Lutw. 36; 1 Chit. PI. 440; Arch. Civ. PI. 312. See form of a plea in abatement for a misnomer of the defendant in 3 Saund. 209, b., and see further, 1 Show. 394; Carth. 307 ; Comb. 188 ; 1 Lutw. 10 ; 5 T. R. 487.

18. – 5. When one joint tenant, Com. Dig. Abatement, F 5, or one tenant in common, in cases, where they ought to be joined, Ibid. F 6, is sued alone – he may plead in abatement. And in actions upon contracts if the plaintiff do not sue all the contractors, the defendant may plead the non-joinder in abatement. Ibid. F 8, a; 1 Wash. 9; 18 Johns. 459; 2 Johns. Cas. 382 ; 3 Caines's Rep. 99 ; Arch.. Civ. PI. 309; 1 Chit. PI. 441. When hushand and wife should be sued jointly, and one is sued alone, the non-joinder may be pleaded in abatement. Arch. Civ. PI. 309. The non-joinder of all the executors, who have proved the will; and the non-joinder of all the administrators of the deceased, may be pleaded in abatement. Com. Dig. Abatement, F 10.

19. – 6. In a real action if brought against several persons, they may plead several tenancy, that is, that they hold in severalty and not jointly, Com. Dig. Abatement, F 12; or one of them may take the entire tenancy on himself, and pray judgment of the writ. Id. F 13. But mis-joinder of defendant in a personal action is not the subject of a plea in abatement. Arch. Civ. PI. 68, 310.

20. – 7. In cases where the defendant may plead non-tenure, see Arch. Civ. PI. 310; Cro. El. 559.

21. – 8. Where he may plead a disclaimer, see Arch. Civ. PI. 311; Com. Dig. Abatement, F 15.

22. – 9. A defendant may plead his privilege of not being sued, in abatement. Bac. Ab. Abridgment C ; see this Dict. tit. Privilege.

23. – 4. Plea in, abatement of the writ. 1. Pleas in abatement of the writ or a bill are so termed rather from their effect, than from their being strictly such pleas, for as oyer of the writ can no longer be craved, no objection can be taken to matter which is merely contained in the writ, 3 B. & P. 399; 1 B. & P. 645-648; but if a mistake in the writ be carried into the declaration, or rather if the declaration, which is resumed to correspond with the writ or till, be incorrect in respect of some extrinsic matter, it is

then open to the defendant to plead in abatement to the writ or bill, 1 B. & P. 648; 10 Mod. 210; and there is no plea to the declaration alone but in bar; 10 Mod. 210 ; 2 Saund. 209, d.

24. – 2. Pleas in abatement. of the writ or bill and to the form or to the action. Com. Dig. Abatement, H.1, 17.

25. – 3. Those of the first description were formerly either matter apparent on the face of the ;Writ, Com. Dig. Abatement, H l, or matters dehors. Id. H 17.

26. – 4. Formerly very trifling errors were pleadable in abatement, 1 Lutw. 25; Lilly's Ent. 6 ; 2 Rich. C. P. 5, 8 ; 1 Stra. 556; Ld. Raym. 1541 ; 2 Inst. 668; 2 B. & P. 395.. But as oyer of the writ can no longer be had, an omission in the defendant's declaration of the defendant's addition, which is not necessary to be stated in a declaration, can in no case be pleaded in abatement. 1 Saund. 318, n. 3; 3 B. & B. 395; 7 East, 882.

27. – 5. Pleas in abatement to the form of the writ, are therefore now principally for matters dehors, Com. Dig. Abatement,H 17; Glib. C. P., 51 , existing at the time of suing out the writ, or arising afterwards, such as misnomer of the plaintiff or defendant in Christian or surname.

28. – 6. Pleas in abatement to the action of the writ, and that the action is misconceived, as that it is in case where it ought to have, been in trespass, Com. Dig. Abatement, G 5 ; or that it was prematurely brought, Ibid. Abatement, G 6, and tit. Action E ; but as these matters are grounds of demurrer or nonsuit, it is now very unusual to plead them in abatement. It may also be pleaded that there ii another action pending. See tit. Autre action pendant. Com. Dig. Abatement, H. 24; Bac. Ab. Abatement, M; 1 Chitty's Pi. 443.

29. – 6. Qualities of pleas in abatement. 1. A writ is divisible, and may be abated in part, and remain good for the residue; and the defendant may plead in abatement to part, and demur or plead in bar to the residue of the declaration. 1 Chit. PI. 444; 2 Saund. 210, n. The general rule is, that whatever proves the writ false at the time of suing it out, shall abate the writ entirely Gilb. C. P. 247 1 Saund. Rep. 286, (n) 7; 2 do. 72, (i) sub fin.

30. – 2. As these pleas delay the trial of the merits of the action, the greatest accuracy and precision are required in framing them; they should be certain to every intent, and be pleaded without any repugnancy. 3 T. R. 186; Willes, 42 ; 2 Bl. R. 1096 2 Saund. 298, b, n. 1 ; Com. Dig. 1, 11 Co. Lit. 392; Cro. Jac. 82; and must in general give the plaintiff a better writ. This is the true criterion to distinguish a plea in abatement from

a plea in bar. 8 T. IR. 615; Bromal. 139; 1 Saund. 274, n. 4 ; 284 n. 4; 2 B. & P. 125 ; 4 T. R. 227 ; 6 East) 600 ; Com. Dig. Abatement, J 1, 2; 1 Day, 28; 3 Mass. 24; 2 Mass. 362; 1 Hayw. 501; 2 Ld. Raym. 1178; 1 East, 634. Great accuracy is also necessary in the form of the plea as to the commencement and conclusion, which is said to make the plea. Latch. 178 ; 2 Saund. 209, c. d; 3 T. R. 186.

31. – 6. Form of pleas in abatement .1 As to the form of pleas in abatement, see 1 Chit. PI. 447; Com. Dig. Abatement, 1 19; 2 Saund. 1, n. 2.

32. – 7. Of the affidavit of truth. 1. All pleas in abatement must be sworn to be true, 4 Ann. c. 16, s. 11. The affidavit may be made by the defendant or a third person, Barnes, 344, and must be positive as to the truth of every fact contained in the plea, and should leave nothing to be collected by inference; Sayer's Rep. 293; it should be stated that the plea is true in substance and fact, and not merely that the plea is a true plea. 3 Str. 705, Litt. Ent. 1; 2 Chitt. Pl. 412, 417; 1 Browne's Rep. 77 ; see. 2 Dall. 184; 1 Yeates, 185.

See further on the subject of abatement of actions, Vin. Ab. tit. Abatement; Bac. Abr. tit. Abatement; Nelson's Abr. tit. Abatement; American Dig. tit. Abatement; Story's Pl. 1 to 70; 1 Chit. Pl. 425 to 458; Whart. Dig. tit. Pleading, F. (b.) Penna. Pract. Index, h. t.; Tidd's Pr. Index, h. t.; Arch. Civ. Pl. Index, h. t.; Arch. Pract. Index, h. t. Death; Parties to actions; Plaintiff; Puis darrein continuance.

ABATEMENT OF A FREEHOLD. The entry of a stranger after the death of the ancestor, and before the heir or devisee takes possession, by which the rightful possession of the heir or devisee is defeated. 3 Bl. 1 Com. 167; Co. Lit. 277, a; Finch's Law, 1 195; Arch. Civ. Pl. 11.

2. By the ancient laws of Normandy, this term was used to signify the act of one who, having an apparent right of possession to an estate, took possession of it immediately after the death of the actual possessor, before the heir entered. Howard, Anciennes Lois des Frangais, tome 1, p. 539.

ABATEMENT OF LEGACIES, is the reduction of legacies for the purpose of paying the testator's debts.

2. When the estate is short of paying the debts and legacies, and there are general legacies and specific legacies, the rule is that the general legatees must abate proportionably in order to pay the debts; a specific legacy is not abated unless the general legacies cannot pay all the debts; in that case what remains to be paid must be paid by the specific legatees, who must, where there are several, abate their legacies,

proportionably. 2 Bl. Com. 513; 2 Vessen. 561 to 564; 1 P. Wms. 680; 2 P. Wms. 283. See 2 Bro. C. C. 19; Bac. Abr. Legacies, H; Rop. on Leg. 253, 284.

ABATEMENT OF NUISANCES is the prostration or removal of a nuisance. 3 Bl.

2. – 1. Who may abate a nuisance; 2, the manner of abating it. 1. Who may abate a nuisance. 1. Any person may abate a public nuisance. 2 Salk. 458; 9 Co. 454.

3. – 2. The injured party may abate a private nuisance, which is created by an act of commission, without notice to the person who has committed it; but there is no case which sanctions the abatement by an individual of nuisances from omission, except that of cutting branches of trees which overhang a public road, or the private property of the person who cuts them.

4. – 2. The manner of abating it. 1. A public nuisance may be abated without notice, 2 Salk. 458; and so may a private nuisance which arises by an act of commission. And, when the security of lives or property may require so speedy a remedy as not to allow time to call on the person on whose property the mischief has arisen to remedy it, an individual would be justified in abating a nuisance from omission without notice. 2 Barn. & Cres. 311; 3 Dowl. & R. 556.

5. – 2. In the abatement of a public nuisance, the abator need not observe particular care in abating it, so as to prevent injury to the materials. And though a gate illegally fastened, might have been opened without cutting it down, yet the cutting would be lawful. However, it is a general rule that the abatement must be limited by its necessity, and no wanton or unnecessary injury must be committed. 2 Salk. 458.

6. – 3. As to private nuisances, it has been held, that if a man in his own soil erect a thing which is a nuisance to another, as by stopping a rivulet, and so diminishing the water used by the latter for his cattle, the party injured may enter on the soil of the other, and abate the nuisance and justify the trespass; and this right of abatement is not confined merely to a house, mill, or land. 2 Smith's Rep. 9; 2 Roll. Abr. 565; 2 Leon. 202; Com. Dig. Pleader, 3 M. 42; 3 Lev. 92; 1 Brownl. 212; Vin. Ab. Nuisance; 12 Mass. 420; 9 Mass. 316; 4 Conn. 418; 5 Conn. 210; 1 Esp. 679; 3 Taunt. 99; 6 Bing. 379.

7. – 4. The abator of a private nuisance cannot remove the materials further than is necessary, nor convert them to his own use. Dalt. o. 50. And so much only of the thing as causes the nuisance should be removed; as if a house be built too high, so much. only as is too high should be pulled down. 9 Co. 53; God. 221; Str. 686.

8. – 5. If the nuisance can be removed without destruction and delivered to a magistrate, it is advisable to do so; as in the case of a libellous print or paper affecting an individual, but still it may be destroyed 5 Co. 125, b.; 2 Campb. 511. See as to cutting down trees, Roll. Rep. 394; 3 Buls 198; Vin. Ab. tit. Trees, E, and Nuisance W.

ABATOR is, 1st, he who abates or prostrates a nuisance; 2, he who having no right of entry, gets possession of the freehold to the prejudiae of an heir or devisee, after the time when the ancestor died, and before the heir or devisee enters. See article Abatement. Litt. 897; Perk. 383; 1 Inst. 271; 2 Prest. Abst. 296. 300. As to the consequences of an abator dying in possession, See Adams' Eject. 43.

ABATUDA, obsolete. Any thing diminished; as, moneta abatuda, which is money clipped or diminished in value. Cowell, h. t.

ABAVUS, civil law, is the great grandfather, or fourth male ascendant. Abavia, is the great grandmother, or fourth female ascendant.

ABBEY, abbatia, is a society of religious persons, having an abbot or abbess to preside over them. Formerly some of the most considerable abbots and priors in England had seats and votes in the house of lords. The prior of St. John's of Jerusalem, was styied the first baron of England, in respect to the lay barons, but he was the last of the spiritual barons.

ABBREVIATION, practice. – The omission of some words or letters in writing; as when fieri facias is written fi. fa.

2. In writing contracts it is the better practice to make no abbreviations; but in recognizances, and many other contracts, they are used; as John Doe tent to prosecute, &c. Richard Roe tent to appear, &c. when the recognizances are used, they are drawn out in extenso. See 4 Ca. & P. 61; S.C.19E.C.L.R.268; 9 Co.48.

ABBREVIATIONS and abbreviated references. The following list, though necessarily incomplete, may be useful to some readers. A, a, the first letter of the alphabet, is sometimes used in the ancient law books to denote that the paging is the first of that number in the book. As an abbreviation, A is used for anonymous.

A. & A. on Corp. Angell & Ames on Corporations. Sometimes cited Ang. on Corp.
A. B. Anonymous Reports, printed at the end of Bendloe's Reports.
A. D. Anno\ Domini, in the year of our Lord
A. & E. Adolphus and Ellis' Reports.
A. & E. N. S. Adolphus & Ellis' Queen's Bench Reports, New Series, commonly cited Q.

A. & F. on Fixt. Amos & Ferard on Fixtures.
A. K. Marsh. A. K. Marshall's (Kty.) Reports.
Ab. or Abr. Abridgement.
Abr. Ca. Eq.
Abridgement of cases in Equity.
Abs. Absolute.
Ab. Sh. Abbott on Shipping.
Acc. Accord or Agrees.
Act. Acton's Reports.
Act. Reg. Acta Regia.
Ad. Eject. Adams on Ejectment.
Ad. & Ell. Adolphus & Ellis' Reports.
Ad. finn. Ad finem. At or near the ond.
Ads. Ad sectum, vide
Ats.
Addam's R. Addam's Ecclesiastical Reports. In E. Eccl. Rep.
Addis on Contr. Addison on the Law of Contracts and on Parties to actions ex contractu.
Addis. R. Addison's Reports.
Admr. Administrator.
Ady. C. M.
Adye on Courts Martial.
Aik. R. Aiken's Reports.
Al. Aleyn's Cases.
Al. Alinea. Al et. Et alii, and others.
Al.& N. Alcock & Napier's Reports.
Ala. R. Alabama Report.
Alc. Reg. G. Alcock's Registration Case.
Ald. Van Hoes. Dig. A Digest of the Laws of Mississippi, by T. J. Fox Alden and J. A. Yan Hoesen.
Aldr. Hilt. Aldridge's History of the Court of Law.
Alis. Prin.
Alison's Principles of the Criminal Law of Scotland.
All. Mor. Tr. Allen and Morris' Trial.
Alley. L. D. of Mar. Alleyne's Legal Degrees of Marriage considered.
Alln. Part. Allnat on Partition.
Am. America, American, or Americana.
Amb. Ambler's Reports.
Am. Fer. on. Fixt. Amos & Ferard on Fixtures.
Amer. America, American, or Americana.
Amer. Dig. American Digest.
Amer. Jur. American Jurist.
An. Anonymous.
And . Anderson's Reports.
Ander. Ch. War. Anderdon on Church Warden.
Andr. Andrew's Report.
Ang. on Adv. Enj. Angell's Inquiry into the rule of law which creates a right to an
incorporeal hereditament, by an adverse enjoyment of twenty years.
Ang. on Ass. Angell's Practical Summary of the Law of Assignment in trust for creditors.
Ang. on B. T. Angell on Bank Tax.
Ang. on Corp. Angell on the Law of Private Corporations.
Ang. on Limit. Angell's Treatise on the Limitation of Actions at Law, and Suits in Equity.
Ang. on Tide Wat. Angell on the right of property in Tide Waters.

Ang. on Water Courses. Angell on the Common Law in relation to Water Courses.
Ann.
Anne; as 1 Ann. c. 7.
Anna. Annaly's Reports. This book is usually cited Cas. Temp. Hardw.
Annesl. on Ins. Annesley on Insurance.
Anstr.
Anstruther's Reports.
Anth. Shep. Anthon's editon's of Sheppard's Touchstone.
Ap. Justin. Apud Justinianum, or Justinian's Institutes.
App.
Apposition.
Appx. Appendix.
Arch Archbold. Arch. Civ. Pl. Archbold's Civil Pleadings. Arch. Cr. Pl. Archbold's
    Criminal Pleadins. Arch. Pr. Archbold's Practice.
Arch. B. L. Archbold's Bankrupt law. Arch. L. & T.
Archbold on the Law of Landlord and Tenant. Arch. N. P. Archbold's Law of nisi Prius.
Arg. Argumento, by an argument drawn from such a law. it also signifies arguendo.
Arg. Inst. Institution au Droit Francais, par M. Argou.
Ark. Rep. Arkansas Reports. See Pike's Rep.
Ark. Rev. Stat.
Arkansas Revised Statutes.
Art. Article
Ashm. R. Ashmead's Reports
Aso & Man. Inst. Aso and Manuel's institutes of the Laws of Spain.
Ass. or Lib.
Ass. Liber Assissarium, or Pleas of the Crown.
Ast. Ent. Aston's Entries.
Atherl. on Mar. Atherley on the Law of Marriage and other Family Settlements.
Atk. Atkyn's Reports.
Atk. P. T. Atkyn's Parliamentary Tracts.
Atk. on Con. Atkinson on Conveyancing.
Atk. on Tit. Atkinson on Marketable Titles.
Ats. in practice, is an abbreviation for the words "at suit of," and is used when the
    defendant files any pleadings; for example: when the defendant enters a plea he puts
    his name before that of the plaintiff, reversing the order in which they are on the
    record. C.D.(the defendant,) ats A.B. (the plaintiff.)
Aust. on Jur. The Province of Jurisprudence determind, by John Austin
Auth. Authentica, in the
Authentic; that is, the Summary of some of the Novels of the Civil Law inserted in the code
    under such a title.
Ay. Ayliff'es Pandect.
Ayl.
Parerg. Ayliffe's Parergon juris canonici Anglicani.
Azun. Mar. Law.
Azuni's Maritime Law of Europe.

B, b, is used to point out that a number, used at the head of a page to denote the folio, is
    the second number of the same volume.
B. B. Bail Bond.

B. or Bk. Book.
B. & A. Barnewall & Alderson's Reports.
B. & B. Ball & Beatty's Reports.
B. C. R. Brown's Chancery Reports.
B. Eccl. L. Burn's Ecclesiatical Law.
B. Just. Burn's Justice.
B. N. C. Brooke's New Cases.
B. P. C. or Bro. Parl. CaJ. Brown's Parliamentry Cases.
B. & P. or Bos. & Pull. Bosanquet & Puller's Reports.
B. R. or K. B. King's Bench.
B. Tr. Bishop's Trial.
Bab. on Auct.
Babington on the Law of Auctions.
Bab. Set off. Babington on Set off and mutual credit.
Bac. Abr. Bacon's Abridgement.
Bac. Comp. Arb. Bacon's (M.) Complete Arbitrator.
Bac. El. Bacon's Elements of the Common Law.
Bac. Gov.
Bacon on Government.
Bac. Law Tr. Bacon's Law Tracts
Bac. Leas. Bacon (M.) on Leases and Term of Years.
Bac. Lib Reg. Bacon's John) Liber Regis, vel Thesaurus Rerum Eccleslasticarum.
Bac. Uses Bacon's Reading on the Statute of Uses. This is printed in his Law Tracts.
Bach. Man. Bache's Manual of a Pennsylvania Justice of the Peace
Bail. R. Bailey's Report.
Bain. on M.&M. Bainbridge on Mines and Minerals.
Baldwin. R. Baldwin's Circuit Court Reports.
Ball & Beat. Ball and Beatty's Reports.
Ballan. Lim. Ballantine on Limitations.
Banc. Sup. Upper Bench.
Barb. Eq. Dig. Barbour's Equity Digest.
Barb. Cr. Pl. Barbour's Criminal Pleadings.
Bar~b. Pract. in Ch.
Barbour's Treatise on the Practice of the Court of Chancery.
Barb. R.
Barbour's Chancery Reports.
Barb. Grot. Grotius on War and Peace, with notes by Barbeyrac.
Barb. Puff. Puffendorf's Law of Nature and Nations, with notes by M. Barbeyrac.
Barb. on Set off. Barbour on the Law of Set off, with an appendix of Precedents.
Barn. C. Barnardiston's Chancery Reports.
Barn. Barnardiston's K. B. Reports.
Barn. & Ald. Barnewall & Alderon'~s Reports.
Barn. & Adolph. Barnewall & Adolphu's Reports.
Barn. & Cress. Barnewull & Cresswell's Reports.
Barn. Sher. Barnes' Sheriff.
Barnu.
Barne' Notes of Practice.
Barr. Obs. Stat. Barrington's Observations on the more ancient statutes.
Barr. Ten. Barry's Tenure.
Bart. El. Conv. Barton's Element of Conveyancing. Bart. Prec. Conv. Barton's Precedent of Conveyancing. Bart. S. Eq. Barton's Suit in Equity.
Batty's R. Batty's Reports of Cases determined in the K. B. Ireland.
Bay's R. Bay's Reprts.

Bayl. Bills. Bayley on Bills.
Bayl. Ch. Pr. Bayley's Chamber Practice.
Beam. Ne Exeat. Brief view of the writ of Ne Exeat Regno, as a equiable process, by J. Beams.
Beam.. Eq. Beames on Equity Pleading.
Beam. Ord. Chan. Beames' General Orders of the High Court of Chancery, from 1600 to 1815.
Beat. R. Beatty's Reports determined in the High Court of Chancery In Ireland.
Beav. R. Beavan's Chancery Reports.
Beawes. Beawe's Lex Mercatoria.
Beck's Med. Jur. Beck's Medical Jurisprudence.
Bee's R. Bee's Reports.
Bell's Com. Bell's Commentaries on the Laws of Scotland, and on the Principles of Mercantile Jurisprudence.
Bell. Del. U. L. Beller's Delineation of Universal Law.
Bell's Dict. Dictionary of the Law of Scotland By Robert Bell
Bell's Med. Jur Bell's Medical Jurisprudence.
Bell. Bellewe's Cases in the time of K. Richard II. Bellewe's Cases in the time of Henry VIII, Edw VI., and Q. Mary, collected out of Brooke's Abridgment, and arranged under years, with a table, are cited as Brooke's New Cases.
Bellingh. Tr. Bellingham's Trial.
Belt's Sup. Belt's Supplement. Supplement to the Reports in Chancery of Francis Vesey, Senior, Esq, during the time of Lord Ch J. Hardwicke.
Belt's Ves. sen. Belt's editon of Vesey senior's Reports.
Benl.
Benloe & Dalison's Reports. See New Benl.
Ben. on Av. Benecke on Average.
Benn. Diss. Bennet's Short Dissertation on the nature and various proceedings in the Master's Office, in the Court of Chancery. Sometimes this book is called Benn. Pract.
Benn. Pract. See Benn. Diss.
Benth. Ev.
Bentham's Treatise on Judicial Evidence.
Best on Prc. Best's Treatise on Presumption of Law and Fact.
Bett's Adm. Pr. Bett's Admiralty Practice.
Bev. on Hom. Bevil on Homicide.
Bill. on Aw. Billing on the Law of Awards.
Bing. Bingham Bin. Inf; Bingham on Infancy. Bing on Judg.
Bingham on Judgments and Executions. Bing L.& T. Bingham on the Law of Landlord and Tenant
Bing. R. Bing Bingham's Reports. Bin. N. C.
Bingham's New Cases.
Binn. Reports Of Cases adjudged in the Supreme Court. of Pennsylvania By Horace Binney
Bird on Conv. Bird on Conveyancing Bird L.& T. Bird on the Laws respecting Landlords, Tenants and Lodgers. Bird's Sol. Pr Bird's Solution of Precedents of Settlement.
Biret, De l'Abs. Traite de l'Absence et de ses effects, par M. Biret

Bis. on Est. or Buss. on Life Est. Bissett on the Law of Estates for Life.
Biss. on Parn.
Bissett on Partnership.
Bl. Blounts Law Dictionary and Glossary
Bl. Comm.or Comm. Commentaries on the Laws of England by Sir Wlliam Blackstone.
Bl. Rep. Sir William Blackstone's Reports.
Bl. H. Henry
Blackstone's Report, sometimes cited H. Bl.
Black. L. T. Blackstone's Law Tracts
Blackb on Sales. Blackburn on the Effect of the Contract of Sales.
Blacb. on Sales. Blacburn on the Law of Sales.
Blackf. R.
Blackford's Reports.
Blak. Ch. Pr. Blake's Practice of the Court of Chancery of the State of New York.
Blan. on Ann. Blaney on Life Annuities
Bland's Ch. R. Bland's Chancery Reports.
Blansh. Lim. Blanshard on Limitations.
Bligh. R. Bligh's Reports of Cases decided in the House of Lords.
Blount. Blount's Law Dictionary and Glossary.
Bo. R. Act. Booth on Real Actions.
Boh. Dec. Bohun's Declaration. Boh. Eng. L. Bohun's English Lawyer. Boh. Priv. Ion. Bohun's Privilegia Londini.
Boote. Boote's Ch. Pr. Boote's Chanccry Practice. Boote's S. L. Boote's Suit at Law.
Booth's R. A. Booth on Real Action.
Borth. L. L. Borthwick on the Law of Libel.
Bos. & Pull. Bosanquet and Puller's Reports. Vide B.& P.
Bosc. on Con. Boscowen on Convictions.
Bott. Bott's Poor Law.
Bouch Inst. Dr. Mar.
Boucher, Institution au Droit Maritime.
Boulay Paty Dr. Com. Cours de Droit Commercial Maritime, par P. S Boulay Paty.
Bousq. Dict. de Dr. Bousquet, Dictionnaire de Droit.
Bouv. L. D. Bouvier's Law Dictionary.
Bouv. Inst. Institutiones Theologicae Auctore J. Bouvier.
Bouv. Inst. Am. Law.
Bouvier's Institutes of American Law.
Bowl. on Lib. Bowles on Libels.
Br. or Brownl. Brownlow's Reports.
Br. or Br. Ab. Brooke's Abridgment.
Bra.
Brady's History of the Succession of the Crown of England, &c.;Brac.
Bracton's Treatise on the Law and Customs of England.
Bra. Princ. Branche's Principia Legis et Aequitatis.
Brack. L. Misc. Brackenridge's Law Miscellany.
bradb. Bradby on Distresses.
Bradl. P. B. Bradley's Point Book.
Bran. Prin. or Bran. Max. Branch's Principia Legis Aequitatis, being an alphabetical collection of maxims, &c.
Brayt. R. Brayton's Rport.
Breese's R. Breese's Report

Brev. Sel. Brevia Selecta, or Choice Writs.
Brid. Bridgman's Reports Reports from 12 to 19 K James. By Sir John Bridgman.
Brid. Dig. Ind. Bridgman's Digested Index.
Brid. Leg. Bib.
Bridgman's Legal Bibliography.
Brid. Conv. Bridgman's Precedents of Conveyancing.
Brid. Refl. Bridgman's Reflections on the Study of the Law.
Brid. Synth. Bridgeman's Synthesis.
Brid. Thes. Jur. Bridgman's Thesaurus Juridic.
Bridg. O. Orlando Bridgmen's Reports.
Bridg. The. Jru. Bridgman's Thesaurus Juridicus.
Britton. Treatise on the Ancient Pleas of the Crown.
Bro. or Brownl. Brownlow's Reports. Also, Reports by Richard Brownlow and John
Goldeshorough. Cited 1 Bro. 2 Bro.
Bro. Ab. Brooke's Abridgement.
Bro. A. & C. L. Brown's Admiralty and Civil Law.
Bro. C. C. Brown's Chancery Cases.
Bro. Off. Not. A Treatise on the Office and Practice of a Notary in England, as connected
with Mercantile Instruments, &c. By Richard Brooke.
Bro. P. C. Brown's Parliamentary Cases.
Bro. Read. Brooke's Reading on the Statute of Limitations.
Bro. on Sales. Brown on Sales
Bro. V.M.
Brown's Vade Mecum.
Brock. R. Brockenbrough's Reports of Chief Justice Marshall's Decisions.
Brod. & Bing. Broderip & Bingham's Reports.
Broom on Part. Broom on Parties to Actions.
Brownl. Rediv. or Brownl. Ent. Brownlow Redivivus.
Bruce M. L. Bruce's Military Law.
Buck's Ca. Buck's Cases. Cases in Bankruptcy in 1817, 1818, by J.W. Buck.
Bull. Bull. N.P. Buller's Nisi Prius.
Bulst. Bulstrode's Reports.
Bunb. Bunbury's Reports.
Burge Col. Law.
Burge's Colonial Law.
Burge Confl. of Law. Burge on the Conflict of Laws.
Burge on Sur. Burge's Commentaries on the Law of Suretyship. &c.;Burge For. Law. Burge on Foreign Law.
Burlam. Burlamaqui's Natural and Political Law.
Burn's L.D. Burn's Law Dictionary.
Burn's Just. Burn's Justice of the Peace.
Burn's Eccl. Law or Burn's E.L. Burn's Ecclesiastical Law.
Burn. C.L. Burnett's Treatise on the Criminal Law of Scotland.
Burn. Com. Burnett's Commentaries on the Criminal Law of Scotland.
Burr. Burrow's Reports.
Burr. Sett. Cas. Burrow's Settlement Cases.
Burr's Tr. Burr's Trial.
Burt. Man. Burton's Manual of the Law of Scotland. The work is in two parts, one
relating to "public law," and the other to the law of "private rights and obligations."
The former is cited Burt. Man. P.L.; the latter, Burt. Man. Pr. Burt. on Real Prop.

Burton on Real Property. Butl. Hor. Jur. Butler's Horae Juridicae Subsecivae.

C. Codes, the Code of Justinian. C. Code. C. Chancellor.
C.& A. Cooke and Alcock's Reports.
C.B. Communi Banco, or Common Bench.
C.C. Circuit Court.
C.C. Cepi Corpus.
C.C.& B.B. Cepi Corpus and Bail Bond.
C.C. or Ch. Cas. Cases in Chancery in three parts.
C.C.C. or Cr. Cir. Com. Crown Circuit Companion.
C.C.& C. Cepi corpus et committitur. See Capias ad satisfaciendum, in the body of the work.
C.C.E. or Cain. Cas. Caines' Cases in Error.
C.D. or Com. Dig. Comyn's Digest.
C.& D. C. C. Crawford and Dix's Criminal Cases.
C.& D. Ab. C. Crawford and Dix's Abridged Cases.
C.& F. Clark & Findley's Reports.
C.& F. Clarke & Finelly's Reports.
C. J. Chief Justice.
C.& J. Crompton & Jervis' Exchequer Reports.
C.J.C.P. Chief Justice of the Common Pleas.
C.J.K.B. Chief Justice of the King's Bench.
C.J.Q.B. Chief Justice of the Queen's Bench.
C.J.U.B. Chief Justice of the Upper Bench. During the time of the common-wealth, the English Court of the King's Bench was called the Upper Bench.
C.& K. Carrington & Kirwan's Reports.
C.& M. Crompton & Meeson's Reports.
C.& M. Carrington & Marshman's Reports.
C.M.& R. Crompton, Meeson & Roscoe's Exchequer Reports.
C.N.P.C. Campbell's Nisi Prius Cases.
C. P. Common Pleas.
C.P. Coop. C.P. Cooper's Reports.
C.& P. or Car.& Payn. Carrington & Payne's Reports.
C.& P. Craig & Phillips' Reports.
C.R. or Ch. Rep. Chancery Reports.
C.& R. Cockburn & Rowe's Reports.
C.W. Dudl. Eq. C.W. Dudley'sEquity Reports.
C. Theod. Codice Theodosiano, in the Theodosian code.
Ca. Case or placitum.
Ca. T.K. Select Cases tempore King.
Ca. T. Talb. Cases tempore Talbot.
Ca. res. Capias ad respondendum.
Ca. sa., in practice, is the abbreviation of capias ad satisfaciendum.
Caines' R. Caines' Term Reports.
Caines' Cas. Caines' Cases, in error.
Caines' Pr. Caines' Practice.
Cald. R. Caldecott's Reports.
Cald. S.C. Caldecott's Settlement Cases; sometimes cited Cald. R.
Caldw. Arbit. Caldwell on Arbitration.
Call. on Sew. Callis on the Law relating to Sewers.

Call's R.
Call's REports.
Calth. R. Calthorp's Reports of Special Cases touching several customs and liberties of the City of London.
Calv. on Part.
Calvert on Parties to Suits in Equity.
Cam.& Norw. Cameron & Norwood's Reports.
Campb. Campbell's Reports.
Can. Canon.
Cap. Capitulo,
chapter.
Car. Carolus: as 13 Car. 2, st. 2, c.1.
Carr. Cr. L. Carrington's
Criminal Law.
Carr.& Kirw. Carrington & Kriwan's Reports. See C.& K.
Carr.& Marsh. Carrington & Marshman's Reports.
Carr.& Oliv. R. and C.C. Carrow & Oliver's Railway and Canal Cases.
Cart. Carter's Reports. Reports in C.P. in 16, 17, 18, and 19, Charles II.
Cara de For. Carta de Foresta.
Carth.
Carthew's Reports.
Cary. Cary's Reports.
Cary on Partn. Cary on the Law of Partnership.
Cas. of App. Cases of Appeals to the House of Lords.
Cas. L. Eq. Cases and Opinions in Law, Equity, and Conveyancing.
Cas. of Pr. Cases of Practice in the Court of the King's Bench, from the reign of Eliz. to
the 14 Geo. 3.
Cas. of Sett. Cases of Settlement.
Cas. Temp. Hardw. Cases during the time of Lord Hardwicke.
Cas. Temp. Talb. Cases during the time of Lord Talbot.
Ch. Chancellor.
Ch. CAs. Cases in Chancery.
Ch. Pr. Precedents in Chancery.
Ch. R. REports in Chancery.
Ch. Rep. Vide Ch.
Cases.
Chamb. on Jur. of Chan. Chambers on the Jurisdiction of the High Court of Chancery, over the Persons and Property of Infants.
Chamb. L.& T. Chambers on the Law of Landlord and Tenant.
Char. Merc. Charta mercatoria. See Bac. Ab. Smuggling, C.
Charlt. Charlton. T.U.P. Charl.
T.U.P. Charlton's Reports. R.M. Charlton's Reports.
Chase's Tr. Chase's Trial.
Cher. Cas. Cherokee Case.
Chev. C.C. Cheves' Chancery Cases.
Chipm. R. Chipman's Reports. D. Chipm. D. Chipman's Reports.
Chipm. Contr. Essay on the Law of Contracts for the payment of Specific Articles. By Daniel
Chipman.
Ch. Contr. A Practical Treatise on the Law of Contracts. By Joseph Chitty, Jr.
Chitty. on App. Chitty's Practical Treatise on the Law relating to Apprentices and
Journeymen.
Chit. on Bills. Chitty on Bills.
Chit. Jr. on Bills. Chitty, junior, on Bills.

Chit. Com. L. Chitty's Treatise on Commerical Law.
Chit. Cr. L. Chitty's Criminal Law.
Chit. on Des. Chitty on the Law of Descents.
Chit. F. Chitt's Forms and Practical Proceedings.
Chit. Med. Jur. Chitty on Medical Jurisprudence.
Chit.
Chitty's Reports.
Chit. Pl. A Practical Treatise on Pleading, by Joseph
Chitty.
Chit. Pr. Chitty's General Practice.
Chit. Prerog. Chitty on the Law of the Prerogatives of the Crown.
Chris. B.L. Christian's Bankrupt Laws.
Christ. Med. Jur. Christison's Treatise on Poisons, relating to Medical Jurisprudence,
Physiology, and the Practice of Physic.
Civ.
Civil.
Civ. Code Lo. Civil Code of Louisiana.
Cl. The Clementines.
Cl. Ass.
Clerk's Assistant.
Clan. H.& W. Clancy on the Rights, Duties, and Liabilities of Husband and Wife.
Clark on Leas. Clark's Enquiry into the Nature of Leases.
Clarke, R. Clarke's Reports.
Clark & Fin. Clark & Finelly's Reports.
Clark. Adm. Pr. Clarke's Practice in the Admiralty.
Clark. Prax. Clarke's Praxis, being the manner of proceeding in the Ecclesiastical Courts.
Clay. Clayton's Reports.
Cleir. Us et Const.
Cleirac, Us et Coustumes ae la Mer.
Clerke's Rud. Clerke's Rudiments of American Law and Practice.
Clift. Clift's Entries.
Co. A particle used before other words to imply that the person spoken of possesses the
same character as other persons whose character is mentioned, as co-executor, and
executor with other; co-heir, an heir with others; co-partner, a partner with others,
etc. - Co. is also an abbreviation for "company" as John Smith & Co. When so
abbreviated is also represents "county."
Co.
Coke's Reports.
Co. or Co. Rep. Coke's Reports.
Co. Ent. Coke's Entries.
Co. B. L. Cooke's Bankrupt Law.
Co. on Courts. Coke on Courts; 4th Institute. See Inst.
Co. Litt. Coke on Littleton. See Inst.
Co. M. C.
Coke's Magna Charta; 2d Institute. See. Inst.
Co. P. C. Coke's Pleas of the
Crown. See Inst.
Cock & Rowe. Cockburn & Rowe's Reports.
Code Civ. Code
Civil, or Civil Code of France. This work is usually cited by the article.

Code Nap. Code Napoleaon. The same as Code Civil.
Code Com. Code de Commerce.
Code Pen. Code Penal.
Code Pro. Code de Procedure.
Col.
Column, in the first or second column of the book quoted.
Col.& Cai. CAs.
Coleman & Caines' Cases.
Cole on Inf. Cole on Criminal Informations, and Informations in the Nature of Quo
Warranto.
Coll. on Pat. Collier on the Law of Patents.
Coll. on Idiots. Collinson on the Law concerning Idiots, &c.;Coll. Rep.
Colle's Reports.
Coll. Collation.
Colly. Rep. Collyer's Reports.
Com. Communes, or Extravagantes Communes.
Com. or Com. Rep.
Comyn's Reports.
Com. Contr. Comyn on Contract.
Com. on Us. Comyn on Usury.
Com. Dig. Comyn's Digest.
Com. L.& T. Comyn on the Law of Landlord and Tenant.
Com. Law. Commerical Law.
Com. Law. Rep. Common Law Reports, edited by Sergeant and Lowher.
Comb. Comberbach's Reports.
Comm. Blackstone's Commentaries.
Con. & Law. Connor & Lawson's Reports.
Cond.
Condensed.
Cond. Ch. R. Condensed Chancery Reports.
Cond. Ex. R. CondensedExchequer Reports.
Conf. Chart. Confirmatio Chartorum.
Cong.
Congress.
Conkl. Pr. Conkling's Practice of the Courts of the United States.
Conn. R. Connecticut Reports.
Conr. Cust. R. Contoy's Custodiam Reports.
Cons. del Mar. Consolato del Mare.
Cons. Ct. R. Constitutional
Court REports.
Cont. Contra.
Cooke on Defam. Cooke on Defamation.
Coop. Eq. R. Cooper's Equity Reports.
Coop. Cas. Cases in the High Court of Chancery. By George Cooper.
Coop. on Lib. Cooper on the Law of Libels.
Coop. Eq. Pl.
Cooper's Equity Pleading.
Coop. Just. Cooper's Justinian's Institutes.
Coop. Med. Jur. Cooper's Medical Jurisprudence.
Coop. t. Brough. Cooper's Cases in the time of Brougham.
Coop. P.P. Cooper's Points of Practice.
Cote. Mrtg. Coote on Mortgages.
Corb. & Dan. Corbet & Daniel's Election Cases.
Corn. on Uses. Cornish on Uses.
Corn. on REm. Cornish on Remainders.
Corp. Jur. Civ. Corpus Juris Civilus.

Corp. Jur. Can. Corpus Juris Canonicus.
Corvin. Corvinus. See Bac. Ab. Mortgage A, where this author is cited.
Cot. Abr. Cotton's Abridgement of Records.
Cov. on Conv. Evi. Coventry on Conveyancers' Evidence.
Cow. Int. Cowel's Law Dictionary, or the Interpreter of words and terms, used either in
the common or statute laws of Great Britain.
Cowp. Cowper's Reports.
Cow. R. Cowen's Reports, N.Y.
Cox's Cas. Cox's Cases.
Coxe's R. Coxe's Reports.
Crabb's
C.L. Crabb's Common Law. A History of English Law. By George Crabb.
Crabb, R. P. Crabb on the Law of REal Property.
Craig & Phil. Craig & Phillip'sReports.
Cranch, R. Cranch's Reports.
Cressw. R. Cresswell's Reports of
Cases decided in the Court for the Relief of Insolvent Debtors.
Crim.
Con. Criminal Conversation: adultery.
Cro. Croke's Reports.
Cro. Eliz.
Croke's Reports, during the time of Queen Elizabeth, also cited as 1 Cro.
Cro. jac. Croke's Reports during the time of King James I., also cited as 2 Cro.
Cro. Car. Croke's Reports, during the time of Charles I., also cited as 3 Cro.
Crompt. Ex. Rep. Crompton's Exchequer Reports.
Crompt. J.C. Crompton's Jurisdiction of Courts.
Crompt. & Mees.
Crompton & Meeson's Exchequer Reports.
Crompt. Mees. & Rosc. Crompton, Meeson, and Roscoe's Exchequer Reports.
Cross on Liens. Cross' Treatise on\ the Law of Liens and Stoppage in Transitu.
Cru. Dig. or Cruise's Dig.
Cruise's Digest of the Law of Real Property.
Cul. Culpablilis, guilty; non
cul. not guilty; a plea entered in actions of trespass.
Cul. prit., commonly written culprit; cul., as above mentioned, means
culpabilis, or culpable; and prit, which is a corruption of pret, signifie ready. 1
Chitty Cr. Law. 416.
Cull. Bankr. L. Cullen's Principles ofhte Bankrupt Law.
Cun. Cunningham's Reports.
Cunn. Dict. Cunningham's Dictionary.
Cur. adv. vult. Curia advisare vult. Vide Ampliation.
Cur. Scacc. Cursus Scaccarii, the Court of the Star Chamber.
Cur. Phil. Curia Philipica.
Curs.
Can. Cursus Cancellariae.
Curt. R. Curteis' Ecclesiastical Reports.
Curt. Am. Sea. Curtis on American Seamen.
Curt. on Copyr. Curtis on
Copyrights.
Cush. Trust. Pr. Cushing on Trustee Process, or Foreign Attachment, of the Laws of
Massachusetts and Maine.

Cust. de Norm.
Custome de Normandie.

D. dialogue; as, Dr. and Stud. D. 2, c. 24, or Doctor and Student, dialogue 2, chapter 24.
D. dictum; D. Digest of Justinian.
D. The Digest or Pandects of the Civil Law, is sometimes cited thus, D.6.1.5.
D. C. District Court; District of Columbia.
D. C. L. Doctor of the Civil Law.
D. Chipm. R. D. Chipman's Reports.
D. S. B. Debit sans breve.
D. S. Deputy Sheriff.
D.& C. Dow and Clark's Reports.
D.& C. Deacon & Chitty's Reports.
D.& E. Durnford & East's Reports. This book is also cited as Term Reports, abbreviated
as T.R.
D.& L. Danson & Lloyd's Mercantile Cases.
D.& M. Davidson's & Merivale's Reports.
D.& R. Dowling and Ryland's Reports.
D.& R. N. P. C. Dowling and Ryland's Reports of Cases decided at Nisis Prius.
D.& S. Doctor and Student.
D.& W. Drury & Walsh's Reports.
D;Aguesseau, Oeuvres. Oeuvres completes du Chancellier D'Aguesseau.
Dat. Cr. L. Dagge's Criminal Law.
Dal. Dalison's Reports. See Benl.
Dall. Dallas' Reports.
Dall. Dallas' Laws of Pennsylvania.
Dalloz,
Dict. Dictionaire General et raisonne de legilation, de Doctrine, et de Jurisprudence, en
matiere civile, commerciale, criminelle, administrative, et de Droit Public. Par Armand Dalloz, jeune.
Dalr. Feud. Pr.
Dalrymple's Essay, or History of Feudal Property in Great Britain. Sometimes cited Dalr.
F.L.
Dalr. on Ent. Dalrymple on the Polity of Entails.
Dalr. F. L. Dalrymple's Feudal law.
Dalt. Just. Dalton's Justice.
Dalt. Sh. Dalton's Sheriff.
D'Anv. D'Anvers' Abridgement.
Dan. Ch. Pr. Caniell's Chancery Practice.
Dan. Ord. Danish Ordinances.
Dan. Rep.
Daniell's Reports.
Dan.& Ll. Danson & Lloyd's Reports.
Dana's R. Dana's Reports.
Dane's Ab. Dane's Abridgment of American Law.
Dav. Davies' Reports.
Dav. on Pat. Davies' Collection of Cases respecting patents.
Daw. Land. Pr. Dawe's Epitome of the Law of Landed Property.
Daw. Real Pr.
Dawe's Introduction to the Knowledge of the Law on Real Estates.
Daw. on Arr. Dawe's Commentaries on the Law of Arrest in Civil Cases.

Daws. Or. Leg. Dawson's Origo Legum.
Deac. R. Deacon's Reports. Deac.& Chit. Deacon & Chitty's Reports.
Deb. on Jud. Debates on the Judiciary.
Dec. temp. H.& M.
Decisions in Admiralty duringthe time of Hay & Marriott.
Deft.
Defendant.
De Gex & SM. R. De Gex & Smale's Reports.
Den. Cr. Cas.
Denison's Crown Cases.
Den. Rep. Denio's New York Reports.
Desaus. R.
Desaussure's Chancery Reports.
Dev. R. Devereux's Reports.
Dev. Ch. R.
Devereux's Chancery Reports.
Dev.& Bat. Devereux & Battle's Reports.
Di. or
Dy. Dyer's Reports.
Dial. de Scac. Dialogus de Scaccario.
Dick. Just.
Dickinson's Justice.
Dick. Pr. Dickinson's Practice of the Quarter of and other Sessions.
Dick. Dicken's Reports.
Dict. Dictionary.
Dict. Dr. Can.
Dictionnaire de Driot Canonique.
Dict. de' Jur. Dictionnaire de Jurisprudence.
Dig. Digest of writs. Dig. The Pandects or Digest of the Civil Law, cited as
Dig. 1,2,5,6,
    for Digest, book 1, 2, law 5, sections 6.
Disn. on Gam. Disney's Law of Gaming.
Doct. & Stud. Doctor and Student.
Doct. Pl. Doctrina Placitandi.
Doder. Eng. Law. Doderidge's English Lawyer.
Dods. R. Dodson's Reports.
Dom. Domat, Lois Civilles.
Dom.
Proc. Domo Procerum. In the House of Lords.
Domat. Lois Civilles dans leur ordre naturel. Par M. Domat.
Dougl. Douglas' Reports.
Doug. El. Cas.
Dougls' Election Cases.
Dougl. (Mich.) R. Dougls' Michigan Reports.
Dow. or
Dow. P.C. Dow's Parliamentary Cases.
Dow & Clarke, Dow and Clarke's Reports of Cases in the House of Lords.
Dowl. P. C. Dowling's Practical Cases.
Dow.& R. N. P. Dowling and Ryan's Nisi Prius Cases.
Dow.& Ry. M.C.
Dowling & Ryan's Cases for Magistrates.
Dow.& Ry. Dowling and Ryland's Reports.
Dr.& St. Doctor and Student.
Drew. on Inj. Drewry on Injunctions.
Dru.& Wal. Drury and Walsh's Reports.
Dru.& War. Drury &Warren's Reports.
Dub. Dubitatur.

Dudl. R. Dudley's Law and Equity Reports.
Dug. S. or Dugd. Sum. Dugdale's Summons.
Dugd. Orig. Dugdale's Origines.
Dug. Sum. Dugdale's Summonses
Duke. or Duke's Ch. Uses. Duke's Law of Charitable Uses.
Dunl. Pr. Dunlap's Practice.
Dunl. Admr. Pr.
Dunlap's Admiralty Practice.
Duponc. on Jur. Duponceau on Jurisdictions.
Duponc. Const. Duponceau on the Constitution.
Dur. Dr. FR.
Duranton, Droit Francais.
Durnf.& East. Durnford & East's Reports, also cited D.& E. or T.R.
Duv. Dr. Civ. Fr. Duvergier, Droit Civil Francais. This is a continuation of Touiller's Droit
Civil Francais. The first volume of Duvergier is the sixteenth volume of the
continuation. The work is sometimes cited 16 Toull. or 16 Toullier, instead of being
cited 1
Duv. or 1 Duvergier, etc.
Dwar. on Stat. Dwarris on Statutes.
Dy. Dyer's Reports.

E. Easter Term.
E. Edward; as 9 E. 3, c. 9.
E. of Cov. Earl of Coventry's Case.
E.C.L.R. English Common Law Reports, sometimes cited Eng. Com. Law Rep. (q.v.)
E.g., usually written e.g., exempli gratia; for the sake of an instance or example.
E.P.C. or East, P.C. East's Pleas of the Crown.
East, P.C. East's Pleas of the Crown.
Eccl. Ecclesiastical.
Eccl. Law. Ecclesiastical Law.
Eccl. Rep. Ecclesiastical Reports. Vide Eng. Eccl. Rep.
Ed. or Edit. Edition.
Ed. Edward; as, 3 Ed. 1, c. 9.
Ed. Inj. Eden on Injunction.
Ed. Eq. Reps. Eden's Equity Reports.
Ed. Prin. Pen. Law. Eden's Principles of Penal Law.
Edm. Exch. Pr. Edmund's Exchequer Practice.
Edw. Ad. Rep. Edward's Admiralty Reports.
Edw. Lead. Dec. Edward's Leading Decisions.
Edw. on Part. Edward's on Parties to Bills in Chancery.
Edw. on Rec. Edwards on Receivers in Chancery.
Eliz. Elizabeth; as, 13 Eliz. c.15.
Ellis on D. and Cr. Ellis on the Law relating to Debtor and Creditor.
Elm on Dil. Elmes on Ecclesiastical and Civil Dilapidations.
Elsyn on Parl. Elsynge on Parliaments.
Encycl. Encycloaedia, or Encyclopedie.
Eng. English.
Eng. Ch. R. English Chancery Reports. Vide Cond. Ch. R. (See App. A.)
Eng. Com. Law Rep. English Common Law Reports.
Eng. Ecc. R. English Ecclisiastical Reports.
Eng. Plead. English Pleader.
Engl. Rep. English's Arkansas Reports.

Eod. Eodem, under the same title.
Eod. tit. In the same title.
Eq. Ca. Ab. Equity Cases Abridged.
Eq. Draft. Equity Draftsman.
Ersk. Inst. Erskin'e Institute of the Law of Scotland.
Ersk. Prin. of Laws of Scotl. Erskine's Principles of the Laws of Scotland.
Esp. N.P. Espinasse's Nisi Prius.
Esp. N. P. R. Espinasse's Nisi Prius Reports.
Esp. on Ev. Espinasse on Evidence.
Esp. on Pen. Ev.
Espinasse on Penal Evidence.
Esq. Esquire.
Et. al. Et alii, and others.
Eunom. Eunomus.
Ev. Col. Stat. Evan's Collection of Statutes.
Ev. on Pl. Evans on Pleading.
Ev. Tr. Evans' Trial.
Ex. or Exor. Executor.
Execx. Executrix.
Exch. Rep. Exchequer Reports. Vide Cond. Exch. REp.
Exec. Execution. Exp. Expired.
Exton's Mar. Divaeo. Exton's Maritime Dicaeologie.
Extrav. Extravagants.

F. Finalis, the last or latter part.
F.
Fitzherbert's Abridgment.
F.& F. Falconer & Fitzherbert's Reports.
F. R.
Forum Romanum.
F.& S. Fox & Smith's Reports.
F. N. B. Fitzherbert's Natura Brevium.
Fairf. R. Fairfield's Reports.
Fac. Coll. Faculty Collection; the name of a set of Scotch Reports.
Falc. & Fitzh. Falconer & Fitzherbert's Election Cases.
Far. Farresly, (7 Mod. REp.) is sometimes so cited.
Farr's Med. Jur. Farr's Elements of Medical Jurisprudence.
Fearn. on Rem. Fearne on Remainders.
Fell. on Mer. Guar. Fell on Mercantile Guaranties.
Ferg. on M.& D. Ferfusson on Marriage and Divorce.
Ferg. R. Fergusson's Reports of the Consistorial Court of Scotland.
Ff. or ff. Pandects of Justinian: a careless way of writing the Greek ì.
Ferr. Hist. Civ. L. Ferriere's History of the Civil Law.
Ferr. Mod. Ferriere Moderne, on Nouveau Dictionnaire des Termes de Droit et de
Pratique.
Fess. on Pat. Fessenden on Patents.
Fi.
fa. Fieri Facias.
Field's Com. Law. Field on the Common Law of England.
Field. on Penl Laws. Fielding on Penal Laws.
Finch. Finch's Law; or a Discourse thereof, in five books.
Finch's Pr. Finch's Precedents inChancery.
Finl. L. C. Finlayson's Leading Cases on Pleading.
Fish. Copyh.
Fisher on Copyholds.
Fitz. C. Fitzgibbon's Cases.

Fitzh. Fitzherbert's Abridgment
Fitzh. Nat. Bre. Fitzherbert's Natura Brevium.
Fl. or Fleta. ACommentary on the English Law, written by an anonymous author, in the
time of Edward I., while a prisoner in the Fleet.
Fletch. on Trusts.
Fletcher on the Estates of Trustees.
Floy. Proct. Pr. Floyer's Proctor's
Practice.
Fol. Foley's Poor Laws.
Fol. Folio.
Fonb. Fonblanque on Equity.
Fonb. Med. Jur. Fonblanque on Medical Jurisprudence.
Forr. Forrester's
Cases during the time of Lord Talbot, commonly cited Cas. Temp.Talb.
For. Pla. Brown's Formulae Placitandi.
Forb. on Bills. Forbes on
Bills of Exchange.
Forb. Inst. Forbes' Institutes of the Law of Scotland.
Forr. Exch. Rep. Forrest's Exchequer Reports.
Fors. on Comp.
Forsyth on the Law relating to Composition with Creditors.
Fortesc.
Fortescue, De Laudibus Legum Angliae.
Fortesc. R. Fortescue's Reports, temp. Wm. and Anne.
Fost. or Fost. C.L. Foster's Crown Law.
Fox.& Sm. Fox & Smith's Reports.
Fr. Fragmentum.
Fra. or Fra. Max. Francis' Maxims.
Fr. Ord. French Ordinance. Sometimes cited Ord. de la Mar.
Fras. Elect. Cas.
Fraser's Election Cases.
Fred. Co. Frederician Code.
Freem. Freeman's Reports.
Freem. C. C. Freeman's Cases in Chancery.
Freem. (Mis.) R.
Freeman's Reports of Cases decided by the Superior Court of Chancery of Mississippi.

G. George; as, 13 G. 1, c. 29.
G. & J. Glyn & Jameson's Reports.
G. & J. Gill & Johnson's Reports.
G. M. Dudl. Repo. G. M. Dudley's Reports.
Gale & Dav. Gale & Davidson's Reports.
Gale's Stat. Gale's Statutes of Illinois.
Gall. or Gall. Rep. Gallison's Reports.
Garde on Ev.
Garde's Practical Treatise onthe General Principles and Elementary Rules of the Law of
Evidence.
Geo. George; as, 13 Geo. 1, c. 29.
Geo. Dec.
Georgia Decisions.
Geo. Lib. George on the Offence of Libel.
Gib. on D.& N.
Gibbons on the Law of Dilapidations and Nuisances.
Gibs. Codex. Gibson's Codex Juris Civilis.

Gilb. R. Gilbert's Reports.
Gilb. Ev. Gilbert's Evidence.
Gilb. U. & T. Gilbert on Uses and Trusts.
Gilb. Ten. Gilbert on Tenures.
Gilb. on Rents. Gilbert on Rents.
Gilb. on Rep. Gilbert on Replevin.
Gilb. Ex. Gilbert on Executions.
Gilb. Exch. Gilbert's Exchequer.
Gilb. For. Rom. Gilbert's Forum Romanum.
Gilb. K. B. Gilbert's King's Bench.
Gilb. Rem. Gilbert on REmainders.
Gilb. on Dev. Gilbert on Devises.
Gilb. Lex. praet. Gilbert's Lex Praetoria.
Gill & John. Gill & Johnson's Reports.
Gill's R. Gill's Reports.
Gilm. R. Gilmer's Reports.
Gilp. R. Gilpin's Circuit Court Reports.
Gl. Glossa, the
Gloss.
Glanv. Glanville's Treatise of the Laws and Customs of England.
Glassff. Ev. Glassford on Evidence.
Glov. Mun. Corp. Glover on Municipal Corporations, or Glov. on Corp. Glover on the
Law of Municipal Corporations.
Glyn. & Jam. Glyn & Jameson's Reports of Cases in Bankruptcy.
Godb. Godbolt's Reports.
Godolph. Ad. Jr. Godolphin's View of the Admiralty Jurisdiction.
Godolph. Rep. Can. Godolphin's Repertorium Canonicum.
Godolph. Godolphin's Orphan's Legacy.
Gods. on Pat. Godson's Treatise on the Law of Patents.
Goldesh. Goldeshorought's Reports.
Golds.
Goldshorough's Reports.
Gord. on Dec. Gordon on the Law of Decedents in Pennsylvania.
Gould on Pl. Gould on the Principles of Pleading in Civil Actions.
Gow on Part. Gow on Partnership.
Grah. Pr. Graham's Practice.
Grah. N.T. Graham on New Trials.
Grand. Cout. Grand Coutumier de Normandie, (q.v.)
Grady on Fixt. Grady on the law of Fixtures.
Grant on New. Tr. Grant on New Trials.
Grant's Ch. Pr. Grant's Chancery Practice.
Gratt. R. Grattan's Virginia Reports.
Green's B.L. Green's Bankrupt Laws.
Green's R. Green's Reports.
Greenl. on Ev. Greenleaf's
Treatise on the Law of Evidence.
Greenl. Ov. Cas. Greenleaf's Overruled Cases.
Greenl. R. Greenleaf's Reports.
Greenw on Courts. Greenwood on Courts.
Gres. Eq. Ev. Gresley's Equity Evidence.
Grif. REg. Griffith's Law Register.
Grimk. on Ex. Grimke on the Duty of Executors and Administrators.
Grisw. Rep. Griswold's Reports.
Grot. Grotius de Jure Belli.
Gude's Pr. Gude's Practice on the Crown side of King's Bench, &c.;Gwill. Gwillim's Tithe Cases.

H. Henry; as, 18 H. 7, c. 15.
H. Hilary Term.
H.A. Hoc Anno
H.v. commonly written in small letters h.v. hoc verbo.
H. of L. House of Lords.
H. of R. House of Representatives.
H.& B.
Hudson & Brooke's Reports.
H.& G. Harris & Gill's Reports.
H.& J. Harris & Johnson's Reports.
H. Bl. Henry Blackston'es Reports.
H. H. C. L. Hale's
History ofthe Common Law.
H.& M. Henning and munford's Reports.
H.& M'H. or
Harr. & M'Hen. Harris & M'Henry's Reports.
Hab. fa. seis. Habere facias seisinam.
H. P. C. Hales' Pleas of the Crown.
H.t. usually put in small letters, h.t. hoc titulo.
Hab. Corp. Habeas Corpus.
Hab. fa. pos. Habere facias possessionem.
Hagg. Ad. R. Haggard's Admiralty Reports.
Hagg. Ecc. R. Haggard's Ecclesiastical Reports.
Hagg. C. R. Haggard's Reports in the Consistory Court of London.
Hale, P.C. Hale's Pleas of the Crown.
Hale's Sum. Hale's Summary of Pleas.
Hale's Jur. J. L. Hale's Jursidiction of the
House of Lords.
Hale's Hist. C.L. Hale's History of the Common Law.
Halif. Civ. Law. Halifax's Analysis ofthe Civil Law.
Hall's R. Hall's Reports of Cases decided in the Superior Court of the city of New York.
Halk. dig.
Halkerton's digest of the Law of Scotland relating ot Marriage.
Hall's Adm. Pr. Hall's Admiralty Practice.
Halst. R. Halstead's Reports.
Hamm. N. P.
Hammond's Nisi Prius.
Ham. R. Hammond's (Ohio) Reports.
Hamm. on Part.
Hammond on Parties to Actions.
Hamm. Pl. Hammond's Analysis of the
Principles of Pleading.
Hamm. on F. II. Hammond on Fire Insurance.
Han.
Hansard's Entries.
Hand's ch. Pr. Hand's Chancery Practice.
Hand on Fines.
Hand on Fines and Recoveries.
hand's Cr. Pr. hand's Corwn Practice.
hand on Pat. hand on Patents. Hans. Parl. Bed. hansard's Parliamentary Debates.
hard. Hardress' Reports.
Hardin's R. Hardin's Reports.
Hare R.
Hare's Reports.

Hare & Wall. Sel. Dec. Hare & Wallace's Select Decisions of American Cases, with
Notes.
Hare on Disc. Hare on the Discovery of Evidence by Bill and Answer in Equity.
Harg. Coll. Hargrave's Juridical Arguments and collection.
Harg. St. Tr. Hargrave's State Trials.
Harg.Exer. Hargrave's Exercitations.
Harg. Law Tr. Hargrave's Law Tracts.
Harp. L. R. Harper's Law Reports.
Harp. Eq. R. Harper's Equity Reports.
Harr. Ch.
Harrison's Chancery Practice.
Harr. Cond. Lo. R. Harrison's condensed Report of Cases in Superior Court of the
Territory of Orleans, and in the Supreme Court of Louisiana.
Harr. Dig. Harrison's Digest.
harr. Ent.
Harris' Entries.
Harr. (Mich.) R. harrington's Reports of Cases in the Supreme Court of Michigan.
Harr. & Gill. Harris & Gill's Reports.
harr.
& John. Harris & Johnso's Reports.
Harr. & M'H. Harris & M'Henry's Reports.
Harringt. R. Harrington's Reports.
Hasl. Med. Jur. Haslam's
Medical Jurisprudence.
Hawk. P.C. Hawkins' Pleas of the Crown.
Hawk's R.
Hawk's Reports.
Hay on Est. An Elementary View of the Common Law of uses, Devises, and Trusts, with
reference to the Creation and Conveyance of Estates, by William Hayes.
Hay. on Lim. Hayes on Limitations.
Hay. Exch. R.
Hayes' Exchequer Reports.
Hays on R. P. Hays on REal Property.
Heath's Max.
Heath's Maxim's.
Hein. Elem. Juris. civ. Heineccii, Elementa juris Civilis,secundum ordinem Institutionum.
Hein. Elem. Juris. Nat. Heineccii, Elementa juris Naturae et gentium.
Hen on For. Law. Henry on Foreign Law.
Hen. J. P. Henning's Virginia Justice of the Peace.
hen. & Munf.
Henning & Munford's Reports.
Herne's Ch. Uses. Herne's law of Charitable Uses.
Herne's Plead. Herne's Pleader.
het. Hetley's Reports.
Heyw. on El.
Heywood on Elections.
Heyw. *N.C.) R. Heywood's North Carolina Reports.
Heyw. (Tenn.) R. Heywood's Tennessee Reports.
High. Highmore.
High on Bail. Highmore on Bail.
High. on Lun. Highmore on Lunacy.
High. on Mortm. Highmore on Mortmain.

Hill. Ab. Hilliard's Abridgment of the Law of Real Property.
Hill's R. Hill's Reports.
Hill's Ch. R. Hill's Chancery Reports.
Hill on Trust. A Practical Treatise on the Law relating to Trustees, &c.;Hind's Pr. Hind's Practice.
Hob. Hobart's Reports.
Hodg. R.
Hodge's Reports.
Hodges on Railw. Hodges on the Law of Railways.
Hoffm. Outl. Hoffman's Outlines of Legal Studies.
Hoffm. Leg. St. Hoffman's Legal Studies.
Hoffm. Ch. Pr. Hoffman's Chancery Practice.
Hoffm. Mas. Ch.
Hoffman's master in Chancery.
Hoffm. R. Hoffman's Reports.
Hog. R. Hogan's Reports.
Hog. St. Tr. Hogan's State Trials.
Holt on Lib. Holt on the Law of Libels.
Holt on Nav. Holt on Navigation.
Holt. R. Holt's Reports.
Holt on Sh. Holt on the Law of Shipping.
Hopk. R. Hopkins' Chancery Reports.
Hopk. Adm. Dec. Hopkinson's Admiralty Decisions.
Houard's Ang. Sax. Laws. Houard's Anglo Saxon laws and Ancient Laws of the French.
Houard's dict. Houard's Dictionary of the Customs of normandy.
Hough C. M. Hough on Courts Martial.
Hov. Fr. Hovenden on Frauds.
Hov. Supp. Hovenden's Supplement to Vesey Junior's Reports.
How. St. Tr. Howell's State Trials.
Howe's Pr. Howe's Practice in Civil Actions and Proceedings at Law in Massachusetts.
How. Pr. R. Howard's Practice Reports.
Hub. on Suc. Hubback on Successions.
Huds. & Bro. Hudson & Brooke's Reports.
Hugh. Ab. Hughes' Abridgment.
Hugh. Entr. Hughes' Entries.
Hugh. on Wills. Hughes on Wills.
Hugh. R. Hughes' Reports.
Hugh. Or. Writs. Hughes' Comments upon Original Writs.
Hugh. Ins. Hughes on Insurance.
Hugh. on Wills. Hughes' Practical Directions for Taking Instructions for Drawing Wills.
Hull. on Costs. Hullock on the Law of Costs.
Hult. on Conv. Hulton on Convictions.
Humph. R. Humphrey's Reports.
Hume's com. Hume's Commentaries on the Criminal Law of Scotland. Hut. Hutton's
Reports.

I. The Institutes of Justinian (q.v.) are sometimes cited, I.1, 3, 4.
I. Infra, beneath or below.
Ib. Ibidem.
Ictus.
Jurisconsultus. This abbreviation is usually written with an I, though it would be more
proper to write it with a J, the first letter of the word

Jurisconsultus; c is the initial letter of the third syllable, and tus is the end of the word.
Id. Idem.
Il Cons. del Mar. Il Consolato del Mare. See Consolato del Mare, in the body of the work.
Imp. Pr. C. P. Impey's Practice in the common Pleas.
Imp. Pr. K. B. Impey's Practice in the King's Bench.
Imp. Pl. Impey's Modern Pleader.
Imp. Sh. Impey's Office of Sheriff.
In f. In fine, at the end of the title, law, or paragraph quoted.
In pr. In principio, in the beginning and before the first paragraph of a law.
In princ. In principio. In the beginning .
In sum.
Insumma, in the summary.
Ind. Index.
Inf. Infra, beneath or below.
Ing. Dig. Ingersoll's Digest of the laws of the United States.
Ing. Roc.
Ingersoll's Roccus.
Ingr. on Insolv. Ingraham on Insolvency.
Inj.
Injunction.
Ins. Insurance.
Inst. Coke on Littleton, is cited Co. Lit. or 1 Inst., for First Institute. Coke's magna
Charta, is cited Co. M.C. or 2 Inst., for Second Institute. Co. P. C. Coke's Pleas of
the Crown, is cited 3 Inst., for Third Institute. Co. on Courts. Coke on Courts, is
cited 4 Inst., for Fourth Institute.
Inst. Institutes. When the Institutes of Justinian are cited, the citation is made thus; Inst. 4,
2, 1; or
Inst. lib. 4, tit. 2, l. 1; to signify In stutues, book 4, tit. 2, law 1. Coke's Institutes are
cited, the first, either Col Lit. or 1 Inst., and the others 2 Inst., 3 Inst., and 4 Inst.
Inst. Cl. or Inst. Cler.
Instructor Clericalis.
Inst. Jur. Angl. Institutiones Juris Anglicani, by Doctor Cowell.
Introd. Introduction.
Ir. Eq. R. Irish Equity Reports.
Ir. T. R. Irish Term Reports. Sometimes cited Ridg. Irish. T. R. (q.v.)

J.
Justice.
J. institutes of Justinian.
J. C. Juris Consultus.
J. C. P.
Justice ofthe common Pleas.
J. Glo. Juncta Glossa, the Gloss joined to the text quoted.
J. J. Justices.
J. J. Marsh. J.J. Marsha''s (Kentucky) Reports.
J. K. B. Justice of the King's Bench.
J. P. Justice of the Peace.
J. Q. B. Justice ofthe Queen's Bench.

J. U. B. Justice of the Upper Bench. During the Commonwealth of the English Court of
the King's Bench was called the Upper Bench.
Jac. Jacobus, James; as, 4 Jac. 1, c. 1.
Jac. Introd. Jacob's Introduction to the Comm, Civil, and Canon Law.
Jac. L. D.
Jacob's law Dictionary.
jac. L. G. Jacob's law Grammar.
Jac. Lex. Mer.
jacob's Lex Mercatoria, or the Merchant's Companion.
Jac. R. Jacob's Chancery Reports.
Jac. & Walk. Jacob & Walker's Chancery Reports.
Jack. Pl. Jackson on Pleading.
Jarm. on Wills. Jarman on the Law of Wills.
Jarm. Pow. Dev. Powell on Devises, with Notes by Jarman.
Jebb's Ir. Cr. Cas.
Jebb's Irish Criminal Cases.
Jeff. Man. Jefferson's Manual.
Jeff. R. Thomas
Jefferson's Reports.
Jenk. Jenkins' Eight Centuries of Reports; or Eight Hundred Cases solemnly adjudged in
the Exchequer Chamber, or upon Writs of Error, from K. Henry III, to 21 K. James
I.
Jer. Jeremy.
Jer. on Carr.
Jeremy's Law of Carriers.
Jer. Eq. Jur. Jeremy on the Equity Jurisdiction
of the High Court of Chancery.
Jer. on Cor. Jervis on Coroners.
John. Cas. Johnson's Cases.
John. R. Johnson's Reports.
John. Ch. R. Johnson's Chancery Reports.
John. Eccl. Law. Johnson's Ecclesiastical Law.
Johns. Civ. L. of Sp. Johnson's Civil Law of Spain.
Johns. on Bills. The Law of Bills of Exchange, Promissory Notes, Checks, &c., by
Cuthbert W.
Johnson.
Jon. Sir Wm. Jones' Reports.
Jon. & Car. Jones and Carey's Reports.
Jon. on Lib. Jones, De Libellis Famosis, or the Law of Libels.
Jon. Inst. HInd. L. Jones' Institutes of Hindoo Laws.
Jon. (1) Sir W. Jones' Reports.
Jon. (2) Sir T. Jones' Reports.
Jon. T. Thomas Jones' Reports.
Jon. on Bailm Jones' Law of Bailments.
Jones' Intr. Jones' Introduction to Legal Science.
Joy on Ev. Acc. Joy on the Evidence of Accomplices.
Joy on Chal. Joy on Challenge to Jurors.
Joy Leg. Ed. Joy on Legal Education.
Jud. Chr. Judicial Chronicle.
Jud. Repos. Judicial Repository.
Judg. Judgments.
Jr. Eccl. Jura Ecclesiastica, or a Treatise of the Ecclesiastical Law and Courts, interspersed

with various cases of Law and Equity.
Jr. Mar. Molloy's Jure Maritimo. Sometimes cited Molloy.
Jus. Nav. Thod. Jus Navale Thodiorum.
Just. Inst. Justinian's Institutes.

K. B. King's Bench.
K. C. R. Reports in the time of Chancellor
King.
K.& O. Knapp & Omber's Election Cases.
Kames on Eq. Kames' Principles of Equity.
Kames' Ess. Kames' Essays.
Kames' Hist. L. T. Kames' Historical Law Tracts.
Keat. Fam. Settl. Keating on Family Settlements.
Keb. Keble's Reports.
Keb. Stat. Keble's English Statutes.
Keen's R. Keen's Reports.
Keil or Keilw. Keilways' Reports.
Kel. Sir John Kelyng's Reports.
Kel. 1,2, or W. Kel. William Kelyng's Reports, two parts.
Kelh.
Norm L. D. Kelham's Norman French Law Dictionary.
Kell. R. Kelly's Reports.
Ken. on Jur. Kennedy on Juries.
Kent. Com. Kent's Commentaries on American Law.
Keny. Kenyon's Reports of the Court of King's Bench.
Kit. or
Kitch. Kitchen on Courts.
Kna.& Omb. Knapp & Omber's Election Cases.
Knapp's A. C. Knapp's Appeal Cases.
Knapp's R. Knapp's Privy Council Reports.
Kyd on Aw. Kyd on the Law of Awards.
Kyd on Bills. Kyd on the Law relating to Bills of Exchange.
Kyd on Corp. Kyd on the Law of Corporations.
L, in citation means law, as L. 1, 33. Furtum, ff de Furtis, i.e. law 1,
section or paragraph
beginning with the word Furtum; ff, signifies the Digest, and the words
de Furtis
denote the title. L. signifies also liber, book.
L.& G. Lloyd's & Goold's Reports.
L.& W.
Lloyd & welshy's Mercantile Cases.
LL. Laws, as LL. Gul. 1, c. 42. Laws of William I. chapter 42; LL. of U.S.,
Laws of the
United States.
L.S. Locus sigili.
L.R. Louisiana Reports.
La. Lane's REports.
Lalaure, des Ser.
Traite des Servitudes reelles, par M. laalaure.
Lamb. Archai. Lambard's Archaionomia.
Lamb. Eiren. Lambard's Eirenarcha.
Lamb. on Dow. Lambert on Dower.
Lat. Latch's Reprts.
Laus. on Eq. laussat's Essay on Equity Practice in Pennsylvania.
Law. on Chart. part. Lawes on the Law of Charter Parties.
Law. Lib. Law Library.
Law Rep. Law Reporter.

Laws Eccl. Law.
Laws' Ecclesiastical Law.
Law Intel. Law Intelligencer.
Law Fr. & latin Dict. Law French and Latin Dictionary.
Law. Pl. lawes' Elementary Treatise on Pleading in Civil Actions.
Law. Pl. in Ass. Lawes' Treatise on Pleading in Assumpsit.
Laws of Wom. Laws of Women.
Lawy. Mag. lawyer's magazine.
Le.
Ley's Reports.
Leach. Leach's Cases in Crown Law.
Lec. Elm. Lecons Elementaire du Driot Civil Romain.
Lee Abst. Tit. Lee on the Evidence of Abstracts of Title to Real Property.
Lee on Capt. Lee's Treatise of Captures in War.
Lee's Dict. Lee's Dictionary of Practice.
Lee's Eccl. R.
Lee's Ecclesiastical Reports.
Leg. Bibl. Legal Bibliography, by J.G. Marvin.
Leg. Legibus.
Leg. Obs. Legal Observer.
Leb. Oler. The Laws of Oleron.
Leg. on Outl. Legge on Outlawry.
Leg. Rhod. The Laws of Thodes.
Leg. ult. The Last Law.
Leg. Wish. Lawas of Wishury.
Leigh & Dal. on Conv. Leigh & Dalzell on Conversion of Property.
Leigh's R. Leigh's Reports.
Leigh's N.P. Leigh's Nisi Prius.
Leo. or Leon. Leonard's Reports.
Lev. Levinz' Reports.
Lev. Ent. Levinz's Entries.
Lew. C. C.
Lewin's Crown Cases.
Lew. Cr. Law. An Abridgment of the Criminal Law of the United States, by Ellis Lewis.
Lew. on Tr. Lewin on Trusts.
Lew. on Perp.
Lewin on the Law of Perpetuities.
Lex Man. Lex maneriorum.
Lex Mer. Lex Mercatoria.
Lex Mer. Am. Lex Mercatoria Americana.
Lex Parl. Lex Parliamentaria.
Ley. Ley's Reports.
Lib. Liber, book.
Libb. Ass. Liber Assisarum.
Lib. Ent. Old Book of Entries.
Lib. Feud. Liber Feudorum.
Lib. Intr. Liber Intrationum; or Old Book of Entries.
Lib. Nig. Liber Niger.
Lib. Pl. Liber Placitandi.
Lib. Reg. Register Books.
Lib. Rub. Liber Ruber.
Lib. Ten. Liberum Tenementum.
Lid. Jud. Adv. Liddel's Detail of the Duties of a Deputy Judge Advocate.
Lill. Entr. Lilly's Entries.
Lill. Reg.
Lilly's Register.

Lill. Rep. Lilly's Reports.
Lill. Conv. Lilly's conveyancer.
Lind. Lindewooode's Provinciale; or Provincial Constitutions of England, with the
Legantine Constitutions of Otho and Othobond.
Litt. s. Littleton, section.
Litt. R. Littell's Reports.
Litt. Rittleton's
Reports.
Litt. Sel. Cas. Littell's Select Cases.
Litt. Ten. Littleton's Tenures.
Liv. Livre, book.
Liv. on Ag. Livermore on the Law of Principal and Agent.
Liv. Syst. Livingston's System of Penal Law for the State of
Louisiana. This work is sometimes cited Livingston's Report on the Plan of a Penal Code.
Liverm. Diss. Livermore's dissertations on the Contrariety of Laws.
Llo.& Go. Lloyd & Goold's Reports.
Llo.& Go. t. Sudg. Lloyd &
Goold's Reports, during the time of Sugden.
Llo.& Go. t. Plunk. Lloud &
Goold during the time of Plunkett.
Llo.& Welsh. Lloyd & Welshy's Reports of Cases relating to Commerce, Manufactures,
&c., determined in the Courts of Common Law.
Loc. cit. Loco citato, the place cited.
Log. Comp. Compendium of the Law of England, Scotland, and Ancient Rome, by James
Logan.
Lofft. Lofft's Reports.
Lois des Batim. Lois des Batimens.
Lom. Dig.
Lomax's Digest of the Law of Real Property in the United States.
Lom. Ex.
Lomax on Executors.
Long. Quint. Year Book, part 10 Vide Year Book.
Louis Code. Civil Code of Louisiana.
Louis. R. Louisiana Reports.
Lovel. on Wills. Lovelass on Wills.
Lown. Leg. Lowndes on the Law of Legacies.
Lube, Pl. Eq. An Analysis of the Principles of Equity Pleading, by D. G.

Lube.
Luder's elec. Cas. Luder's Election Cases.
Luml. Ann. Lumley on Annuities.
Luml Parl. Pr. Lumley's Parliamentary Practice.
Luml on Settl.
Lumley on Settlements and Removal.
Lut. Ent. Lutwyche's entries.
Lutw.
Lutwyches' Reports.

M. Michaelmas Term.
M. Maxim, or Maxims.
M. Jary; as 4
Mary st.3, c.1.
M.& A. Montagu & Ayrton's Reports of Cases of Bankruptcy.

M.& B. Montagu and bligh's Cases in Bankruptcy.
M.& C. Mylne &Craig's Reports.
M.& C. Montagu & Chittys' Reports.
M.& G. Manning & Granger's Reports.
M.& G. Maddock & Geldart's Reports.
M.G.& S. Manning, Granger & Scott's Reports.
M.& K. Mylne & Keen's chancery Reports.
M.& M. or Mo.& Malk. Rep. Moody & Malkin's Nisi Prius Reports.
M. P. Exch. Modern Practice Exchequer.
M.& P. Moore & Payne's Reports.
M.R. Master ofthe Rolls.
M. R. Martin's Reports of the Supreme Court of the State of Louisiana.
M.& R. Manning & Ryland's Reports.
M.& S. Moore & Scott's Reports.
M.& S. Maule & Selwyn's Reports.
M.& Y. or Mart. & Yerg. Martin & Yerger's Reports.
M.& W. Meeson & Welshy's Reports.
M. D.& G. Montagu, Daecon & Gex's Reports of Cases in Bankruptcy.
M'Arth. C. M. M'Arthur on Courts Martial.
M'Cl & Yo. M'Clelland & Younge's Exchequer Reports.
M'Clel. E. R. M'Clelland's Exchequer Reports.
M'Cord's Ch. R. M'Cord's Chancery Reports.
M'Cord's R. M'Cord's Reports
M'Kin. Phil. Ev. M'Kinnon's Philosophy of Evidence.
M'Naght. C. M. M'Naghton on Courts Martial.
McLean & Rob. McLean & Robinson's Reports.
M'Lean R. M'Lean's Reports.
Macn. on Null. Macnamara on Nullities and Irregularities in the Practice of the Law.
macnal. Ev. Macnally's Rules of Evidence on Pleas of the Crown.
Macph. on Inf. Macpherson on Infants.
Macq. on H.& W. Macqueen on Hushand and Wife.
Mad. Exhc. Madox's History ofthe Exchequer.
Mad. Form. Madox's Formulare Anglicanum.
Madd.& Geld. Maddock's & Geldart's Reports.
Madd.,
Madd. R. Maddock's chancery REports.
Madd. Pr. or Madd. Ch. Maddock's Chancery Practice.
Mag. Ins. Magens on Insurance.
Mal. Malyne's Lex
Mercatoria.
Man. Manuscript.
Man.& Gra. Manning & Granger's Reports.
man. Gr.& Sc. Manning, Granger & Scott's Reports.
Man.& Ry. Manning & Ryland's Reports.
Manb. on Fines. Manby on Fines.
Man. Comm. Manning's Commentaries of the Law of Nations.
Mann. Exch. Pr. Manning's Exchequer Practice.
mans. on Dem. Mansel on Demurrers.
Mans. on Lim. Mansel of the Law of Limitations.
Manw. Manwood's Forest Laws.
mar. Maritime.
mar. N.C. March's New Cases.
Mar. R. march's Reports.
Marg. margin.
Marr. Adm. Dec.
Marriott's Admiralty Decisions.

Marr. Form. Inst. marriott's Formulare Instrumentorum; or a Formulary of Authentic
Instruments, Writs, and Standing orders used in the Court of Admiralty of Great
Britain, of Prize and Instance.
Marsh. Marshall's Reports in the Court of Common Pleas. A. Marsh. Marshall's (Kty.)
Reports. J. J. Marsh. J. J. Marshall's Reports. Marsh. Ins.
Marshall on the Law of Insurance.
Marsh. Decis. Brockenbrought's Reports of Chief JUstice marshall's Decisions.
Mart. law Nat. Martin's Law of Nations.
Mart. (N.C.) R. Martin's North Carolina Reports.
Mart. (Lo.) R. Martin's Louisiana Reports.
Marv. Leg. Bibl.
Marvin's Legal Bibliography.
Mart.& Yerg. Martin & Yerger's Reports.
Mart. N. S. Martin's Louisiana Reports, new series. Sason R. mason's circuit Court Reports.
Mass. R. Massachusetts Reports.
Math. on Pres. Mathew on the Doctrine of Presumption and Presumptive Evidence.
Matth. on Prt. Matthews on Portion.
Matth. on Ex. Matthews on Executors. maugh. Lit. Pr. Maughan on Literary Property.
Maule & Selw. Maule & Selwyn's Reports.
Max.
Maxims.
Maxw. L. D. Maxwell's Dictionary of the Law of Bills of Exchange, & c.
Maxw. on Mar. L. Laxwell's Spirit of the Marine Laws.
Mayn. Maynard's Reports. See Year Books in the body of the work. The first part of the
Y. B. is sometimes so cited.
Med. Jr. Medical Jurisprudence.
Mees. & Wels.
Meeson & Welshy's Reports.
Meigs, R. Meigs' Tennessee Reports.
Mer. R.
Merivale's Reports.
Merch. Dict. Merchant's Dictionary.
Merl. Quest.
Merlin, Questions de Driot.
Merl. Repert. Merlin, Repertoire.
Merrif. Law of Att. Merrifield's Law of Attorneys.
Merrif. on Costs. Merrifield's Law of costs.
Metc. R. Metcalf's Reports.
Metc. & Perk. Dig. Digest of the Decisions of the Courts of Common Law and Admiralty in the United States. By Theron Metcalf and Jonathan C. Perkins.
Mich. Michaelmas.
Mich. Rev. St. Michigan Revised Statutes.
Miles' R. Miles' Reports.
Mill. Civ. Law. Miller's civil Law.
Mill. Ins. Millar's Elements of the Law relating to Insurances. Sometimes this work is cited Mill. El.
Mill. on Eq. Mort.
Miller on Equitable Mortgages.
Minor's Rep. Minor's Alabama Reports,sometimes cited Ala. Rep.
Mirch. onAdv. Mirehead on Advowsons.

Mirr.
Mirroir des Justices.
Misso. R. Missourti Reports.
Mitf. Pl. Mitford's Pleadings in Equity. Also cited Redead. Pl. Redesdale's Pleadings. MO. Sir Francis Moore's Reports in the reign of K. Henry VIII., Q. Elizabeth, and K.
James.
Mo.& Malk. Moody & Malkin's Reports.
Mo. C. C. Moody's CrownCases.
Mo. Cas. Moody's Nisi Prius and Crown Cases.
Mod. or Mod. R. ModernReports.
Mod. Cas. Modern Cases.
Mod. C. L.& E. Modern Cases in Law and Equity. The 8 & 9 Modern Reports are sometimes so cited; the 8th cited as the 1st, and the 9th as the 2d.
Mod. Entr. Modern entries.
Mod. Int.
Modus Intrandi.
Mol. Molloy, De jure Miartimo.
Moll. R. Molloy's chancery Reports.
Monr. R. Monroe's Reports.
Mont. & Ayrt. Montagu & Ayrton's Reports.
Mont. B. C. Montagu's Bankrupt Cases.
Mont. & Bligh. Montagu & Bligh's Cases in Bankruptcy.
Mont. & Chit. Montagu & Chitty's Reports.
Mont. onComp. Montagu on the Law of Composition.
Mont. B. L. Montagu on the Bankrupt Laws.
Mont. on Set-off. Montagu on Set-off.
Mont. Deac. & Gex.
Montagu, Deacon & Gex's Reports of Cases in Bankruptcy, argued and determined in the
Court of Review, and on Appeals to the Lord Chancellor.
Mont. Dig. Montagu's digest of Pleadings in EQuity.
Mont. Eq. Pl. Montagu's Equity Pleading.
Mont. & Mac. Montagu & MacArthur's Reports.
Mont. Sp. of Laws. Montesquieu's Spirit of Laws.
Montesq.
Montesquieu, Esprit des Lois.
Moo. & Malk. Moody & Malkin's Reports.
Moo. & Rob. Moody & Robinson's Reports.
Moore, R. J. B. Moore's Reports of Cases decided in the Court of Common Pleas.
Moore's A. C. Moore's Appeal Cases.
Moore & Payne. Moore & Payne's Reports of Cases in C. P.
Moore & Scott. Moore & Scott's Reports of Cases in C. P.
Mort. on Vend. Morton's law of Vendors and Purchasers of Chattels Personal.
Mos. Mosely'sReports.
MSS> Manuscripts; as, Lord Colchester's MSS>
Much. D.& S.
Muchall's Doctor and Student.
Mun. Municipal.
Munf. R. Munford'sReports.
Murph. R. Murphy's Reports.
My. & Keen. Mylne & Keen's ChanceryReports.
Myl.& Cr. Mylne & Craig's Reports.

N. Number.
N. or Nov. Novellae: the Novels.

N. A. Non allocatur.
N. B. Nulla bona.
N. Benl. New Benloe.
N.C. Cas. North Carolina Cases.
N. C. Law Rep. North Carolina Law Repository.
N. C. Term R. North Carolina Term Reports. This volume is sometimes cited 2 Tayl.
N. Chipm. R. N. Chipman's Reports.
N. E. I. Non est Inventus.
N. H. Rep. New Hampshire Reports.
N. H. & G. Nicholl, Hare & Garrow's Reports.
N. L. Nelson's editon of Lutwyche's Reports.
N. L. Nonliquet. Vide Ampliation.
N.& M. Neville & Manning's Repors.
N.& P. Neville & Perry's Reports.
N. P. Nisi Prius.
N.& M'C. Nott & M'Cord's Reports.
N.R. or New R. New Reports; the new series, or 4 & 5 Bos. & Pull. Reports, are usually
cited N. R.
N. S. New Series of the Reports of the Supreme Court of Louisiana.
N. Y. R. S. New York Revised Statutes.
Nar. Conv. Nares on Convictions.
Neal's F.& F. Neal's Feasts and Fasts; an Essay on the Rise, Progress and Present State
of the Laws relating to Sundays and other Holidays, and other days of fasting.
Nels. Ab. Nelson's Abridgment.
Nels. Lex Maner. Nelson's Lex Maneriorum.
Nels. R. Nelson's Reports.
nem. con. Nemine contradicente, (q.v.)
Nem. Dis. nemine dissentiente.
Nev. & Mann. Neville & Manning's Reports.
nev. & Per. Neville & Perry's Reports.
New Benl. Benloe's Reports. Reports in the Reign of Henry VIII., Edw. VI.,' Phil. and
Mary, and Elizabeth, and other Cases in the times of Charles. By William Benloe.
See Benl.
New Rep. new Reports.A continuation of Bosanquet & Puller's Reports. See B.& P.
Newf. Rep.
Newfoundland Reports.
newl. Contr. Newland's Treatise on Contracts.
Newl. Ch. Pr. Newland's Chancery Practice.
Newn. Conv. Newnam on Conveyancing.
Ni. Pri. Nisi Pirus.
Nich. Adult. Bast. Nicholas on Adulterine Bastardy.
Nich. Har. & Gar. Nicholl, Hare & Garrow's Reports.
Nient Cul. Nient Culpable, old French, not guilty.
Nol. P. L.
Nolan's Poor Laws.
Nol. R. Nolan's Reports of Cases relative to the Duty and Office of Justice of the Peace.
Non Cul. Non culpabilis, not guilty.
North. Northington's Reports.
Nott.& M'cord. Nott & M'Cord's reports.

Nov. Novellae, the Novels.
Nov. REc. Novisimi Recopilacion de las
Leyes de Espana.
Noy's Max. Nou's Maxims.
Noy's R. Noy's Reports.

O. Benl.
Old Benloe.
O. Bridg. Orlando Bridgman's Reports.
O. C. Old Code: so is
denominated the Civil Code of Louisiana, 1808.
O. N. B. Old Natura Brevium.Vide Vet. N. B., in the abbreviations, and "Old Natura
Brevium," in the body of the work.
O. Ni. These letters, which are an abbreviation for overatur nisis habent sufficientem
exonerationem, are, according to the practice of the English Exchequer, marked upon
each head of a Sheriff's account for issues, amerciaments and mean profits. 4 Inst.
116.
Oblig.
Obligations.
Observ. Observations.
Off. Office.
Off. Br. Officina Brevium.
Off. Ex. Wentworth's Office of Executors.
Ohio R. Ohio Reports.
Oldn. Oldnall's Welsh Practice.
Onsl. N. P. Onslow's Nisi Prius.
Ord. Anst. Ordinance of Amsterdam.
Ord. Antw. Ordinance of Antwerp.
Ord. Bilb. Ordinance of Bilboa.
Ord. Ch. Orders in Chancery.
Ord. Cla. Lord Clarendon's Orders. Ord. Copenh. Ordinance of Copenhagen.
Ord. Cor. Orders of Court.
Ord. Flor. Ordinances of Florence.
Ord. Gen. Ordinance of Genoa.
Ord. Hamb. Ordinance of Hamburgh.
Ord. Konigs. Ordinance of Konigsherg.
Ord. Leg. Ordinances of Leghorn.
Ord. de la Mar. Ordonnance de la marine, de Louis XIV.
Ord. Prot.
Ordinances of Portugal.
Ord. Prus. Ordinances of Prussia.
Ord. Rott.
Ordinances of Rotterdam.
Ord. Swed. Ordinances of Sweden.
Ord. on Us.
Ordinances on the Law of Usury.
Orfil. Med. Jur. Orfila's Medical Jurisprudence.
Orig. Original.
Oought. Oughton's Ordo Judiciorum.
Overt. R.
Overton's Reports.
Ow. owen's Reports.

Owen, Bankr. Owen on Bankruptcy.

P.
Page or part. Pp. Pages.
P. Pachalis, Easter term.
P.C. Pleas of the Crown.
P.& D. Perry & Davison's Reports.
P.& K. Perry & Knapp's Election Cases.
P.& M. PHilip and mary; as, 1 & 2 P.& M. c. 4.
P.N P. Peake's Nisi Prius.
P. P. Propria persona; in his own person.
Pa. R. Pennsylvania Reports.
P. R. or P. R. C. P. Practical REgister in the Common Pleas.
P. Wms. Peere Williams' Reports.
Paige's R. Paige's Chancery Reports.
Paine's
R. Paine's Reports.
Pal. Palmer's Reports.
Pal. AG. Paley on the Law of
Principal and Agent.
Pal. Conv. Paley on Convictions.
Palm. Pr. Lords.
Palmer's Practice in the House of Lords.
Pand. Pandects. Vide Dig.
Par.
Paragraph; as, 29 Eliz. cap. 5, par. 21.
Par.& Fonb. M. J. Paris &
Fonblanque on Medical Jurisprudence.
Pardess. Pardessus, Cours de Driot Commercial. In this work Pardessus is cited in several
ways, namely:
Pardes. Dr. Com Part 3, tit. 1, c. 2, s. 4, n. 286; or 2 Pardes. n. 286, which is the same reference.
Park on Dow. Park on Dower.
Park, Ins. Park on Insurance.
Park. R. Sir Thomas Parker's Reports of Cases concerning the Revenue, in the Exchequer.
Park. on Ship. Parker on Shipping nad Insurance.
Parl. Hist. Parliamentary History.
Patch. on Mortg. Patch's Treatise on the Law of Mortgages.
Paul's Par. Off. Paul's Parish Officer.
Pay. Mun. Rights. Payne's Municipal Rights.
Peak. Add. Cas.
Peake's Additional Cases.
Peak. C. N. P. Peake's Cases determined at Nisi
Prius, and in the K. B.
Peake, Ev. Peake on the Law of Evidence.
Peck. R.
Peck's Reports.
Peck's Tr. Peck's Trial.
Peckw. E. C. Peckwell's Election Cases.
Penn. Bl. Pennsylvania Blackstone, by John Read, Esq.
Penn. law Jo.
Pennsylvania Law JOurnal.
Penn. R. Pennington's Reports. The Pennsylvania Reports are sometimes cited Penn. R.,
but more properly, for the sake of distinction, Penna. R.

Penn. St. R. Pennsylvania State Reports.
Penna. Pr.
Pennsylvania Practice; also cited Tro. & Hal. Pr., Troubat & Haly's Practice.
Penna. R. Pennsylvania Reports.
Pennsylv. Pennsylvania Reports.
Penr. Anal. Penruddocke's Analysis ofthe Criminal Law.
Penult. The last but one.
Per.& Dav. Perry & Davison's Reports.
Per.& Knapp. Perry & Knapp's Election Cases.
Perk. Perkins on conveyancing.
Perk. Prof. B.
Perkins' Profitable Book.
Perpip. on Pat. Perpigna on Patents. The full title of this work is, "The French Law and Practice of Patents for Inventions, Improvements, and Importations. by A. Perpigna, A.M.L.B., Barrister in the Royal Court ofParis, Member of the Society for the Encouragement of ARts, &c." The work is well written in the English language. The author is a French lawyer, and has written another work on the same subject in French.
Pet. Ab. Petersdorff's Abridgment.
Pet. Adm. Dec. Peters' Admiralty Decisions.
Pet. on Bail, or Petersd. on Bail.
Petersdorff on the Law of Bail.
Pet. R. Peters' Supreme Court Reports.
Pet. C. C. R. Peters' Circuit Court Reports.
Petting. on Jur. Pettingal on Juries.
Phil. Ev. Phillips' Evidence.
Phil. Ins. PHillips on Insurance.
Phil. St. Tr. Phillips' State Trials.
Phill. Civ. and Can. Laws.
Phillimore on the Study of the Civil and Canon Law, considered in relation to the state, the church, and the universities, and in connexion with the college of advocates.
Phill. on Dom. Phillimore on the Law of Domicil.
Phillim. or Phillim E. R. Phillimore' Ecclesiastical Reports.
Pick. R. Pickering's Reports.
Pig. Pigot on Recoveries.
Pike's Rep. Reports of Cases argued and determined in the Supreme Court of Law and Equity of the State of Arkansas. By Albert Pike. These Reports are cited Ark. Rep.
Pitm. Prin. and Sur. Pitman on Principal and Surety.
Pl.
Placitum or plea.
Pl. or Plow. or Pl. Com. Plowden's Commentaries, or Reports.
Plff. Plaintiff.
Platt on Cov. Platt on Law of Covenants.
Platt on Lea. Platt on Leases.
Pol. Pollexfen's Reports.

Poph. Popham's Reports. The cases at the end of Pophams' Reports are cited 2 Poph.
Port. R. Porter's Reports.
Poth. Pothier. The numerous works of Pothier are cited by abbreviating his name Poth.
and then adding the name of the treatise; the figures generally refer to the number,
as Poth. Ob. n. 100, which signifies Pothier's Treatise on the Law of Obligations,
number 100. Poth. du Mar. Pothier du Mariage.
Poth. Vente. Pothier Traite de Vente, & c. His
Pandects, in 24 vols. are cited Poth. Pand. with the book, title, law, & c.
Pott's L. D. Pott's Law Dictionary.
Pow. Powell.
Pow. Contr. Powell on Contracts.
Pow. Dev. Powell on Devises.
Pow. Mortg. Powell on Mortgages.
Pow. Powers. Powell on Powers.
Poyn. on M. and D. Poynter on the Law of Marriage and Divorce.
Pr. Principio. In pr. In principio; in the beginning.
Pr. Ex. Rep. or Price's E. R. Prices' Exchequer Reports.
Pr.
Reg. Cha. Practical Register in Chancery.
Pr. St. Private Statute.
Pr. Stat. Private Statute.
Pract. Reg. C. P. Practical Register of the Common
Pleas.
Pract. Reg. in Ch. Practical Register in Chancery.
Prat. on H.& W.
Prater on the Law of Hushand and Wife.
Pref. Preface.
Prel.
Preliminaire.
Prest. Preston.
Prest. on Est. Preston on Estates.
Prest. Abs. Tit. Preston's Essay on Abstracts of Title.
Prest. on Conv. Preston's Treatise on Conveyancing.
Prest. on Leg. Preston on Legacies.
Pri. Price's\ Reports.
Price's Ex. Rep. Price's Exchequer Reports.
Price's Gen Pr.
Price's General Practice.
Prin. Principium, the beginning of a title or law.
Prin. Dec. Printed Decisions.
Priv. Lond. Customs or Privileges of London.
Pro. L. Province Laws.
Pro quer. Pro querentum, for the plaintiff.
Proct. Pr. Proctor's Practice.
Puff. Puffendorff's law of nature.

Q. Quaestione, in such a Question.
Q. B. Queen's Bench.
Q. B. R.
Queen's Bench Reports, by Adolphus & Ellis. New series.
Q.t. Qui tam.
Qu.
Quere.

Q. Van Weyt. Q. Van Weytsen on Average.
Q. Warr. Quo Warranto;
(q.v.) The letters (q.v.) quod vide, which see, refer to the article mentioned immediately
before them.
Qu. Quaestione, in such a
Question.
Quest. Questions.
Quinti Quinto. Year-book, 5 Henry V.
Quon. Attach. Quoniam Attachiamenta. See Dalr. F.L. 47.

R. Resolved, ruled, or repealed.
R. Richard; as, 2 R. 2, c. 1.
Rich. Rep. Richardson's (S.C.)
Reports.
RC. Rescriptum.
R.& M. Russell and Milne's Reports.
R.& M. C. C.
Ryan and Moody's Crown Cases.
R.& M. N. P. Ryan & Moody's Nisi Prius Cases.
R.& R. Russell & Ryans' Criwn Cases.
R. M. Charlt. R. M. Charlton's
Reports.
RS. Responsum.
R. S. L. Reading on Statute Law.
Ram on Judgm. Ram on the LAw relating to Legal Judgments
Rand. Perp. Randall on the Law of Perpetuities.
Rand. R. Randolph's Reports.
Rast. Rastall's Entries.
Rawle's
R. Rawle's Reports.
Rawle, Const. Rawle on the Constitution.
Ray's Med. Jur. Ray's Medical Jurisprudence on Insanityh.
Raym. or, more usually, Ld.
Raym. lrod Raymond's Reports. T. Raym. Sir Thomas Raymond's Reports.
Re. Fa. lo. Recordari facias loquelam. Vide Refalo in the body of the work.
Rec. Recopilation.
Rec. Recorder; as, City Hall Rec.
Redd. on Mar. Com. Reddie's Historical View of hte Law of Maritime Commerce.
Redesd. Pl.
Redesdale's Equity Pleading. This work is also and must usually cited Mitf. Pl.
Reeves' H. E. L. Reeves' History of the English Law.
Reeves on Ship. Reeves on the Law of Shipping and Navigation.
Reeves onDes. Reeves on Descents.
Reg. Regula, rule.
Reg. Register.
Reg. Brev. Registrum
Brevium, or Register of Writs.
Reg. Gen. Regulae Generales.
Reg. Jud.
Registrum Judiciale.
Reg. Mag. Regiam Magestatem.
Reg. Pl. Regula
Placitandi.
Renouard, des Brev. d'Inv. Traite des Brevets d'Invention, de Perfectionement, et d'Importation, par Augustin Charles Renouard.

Rep. The
Reports of Lord Coke are frequently cited 1 Rep., 2 Rep., &c. and sometimes they are
cited Co.
Rep. Repertoire.
Rep. Eq. Gilbert's Reports in Equity.
Rep. Q. A. Reports of Cases during the time of Queen Anne.
Rep. T. Finch. Reports tempore Finch.
Rep. T. Hard. Reports during the time of Lord Hardwicke.
Rep. T. Holt. Reports tempore Holt.
Rep. T. Talb. Reports of Cases decided during the time of Lord Talbot.
Res. Resolution. The cases reported in Coke's Reports, are divided into resolutions on the different points of the case, and are cited 1 Res. &c.;Ret. Brev. Retorna Brevium.
Rev. St. or REv. Stat. REvised Statutes.
Rey, des Inst. del'Anglet. Des Institutions Judiciaries de l'Angleterre comparees avec
celles de la France. Par Joseph Rey.
Reyn. Inst. Institutions du Droit des Gens, &c. par Gerard de Reyneval.
Ric. Richard; as, 12 Ric. 2, c. 15.
Rice's Rep. Reports of Cases in Chancery argued and determined in the Court of Appeals
and Court of Error of South Carolina. By William Rice, State Reporter.
Rich. Pr. C. P. Richardson's Practice in the Common Pleas.
Rich. Pr. K. B. Richardson's Practice in the King's Bench.
Rich Eq.
R. Richardson's Equity Reports.
Rich. on Wills. Richardson on Wills.
Ridg. Irish. T. R. Ridgeway, Lapp & Schoales' Term Reports in the K.B., Dublin.
Sometimes this is cited Ridg. L.& S.
Ridg. P. C. Ridgeway's Cases in Parliament.
Ridg. Rep. Ridgeway's Reports of Cases in K. B. and Chancery.
Ridg. St. Tr. Ridgeway's Reports of State Trials in Ireland.
Ril. Ch. Cas. Riley's chancery Cases.
Rob. Adm. REp. Robinson's Admiralty
Reports.
Rob. Cas. Robertson's Cases in Parliament, from Scotland.
Rob. Dig. Robert's Digest of the English Statutes in force in Pennsylvania.
Rob. Entr. Robinson's Entries.
Rob. on Fr. Roberts on Frauds.
Rob. on Fraud. Conv. Roberts on Fraudulent Conveyances.
Rob. on Gavelk. Robinson on Gavelkind.
Rob. Lo. Rep. Robinson's Louisiana Reports.
Rob. Just.
Robinson's Justice of the Peace.
Rob. Pr. Robinson's Practice in Suits at Law, in Virginia.
Rob. V. Rep. Robinson's (Virginia) Reports.
Rob. on Wills. Robert's Treatise on the Law of Wills and Codicils.
Roc. Ins. Roccus on Insurance. Vide Ing. Roc.
Rog. Eccl. Law. Rogers' Ecclesiastical law.
Rog. Rec. Roger's City Hall Recorder.
Roll. Rolle's Abridgment.
Roll.
R. Rolle's Reports.
Rom. Cr. Law. Romilly's Observations on the Criminal Law of England, as it relates to

capital punishment.
Rop. on H.& W. A Treatise on the Law of Property, arising from the relation between
Hushand and Wife. By R. S. Donnison Roper.
Rop. Leg. Roper on Legacies.
Rop. on Revoc. Roper on Revocations.
Rosc. Roscoe.
Rosc. on Act.
Roscoe on Actions relating to Real Property.
Rosc. Civ. Ev. Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi
Prius.
Rosc. Cr. Ev. Roscoe on Criminal Evidence.
Rosc. on Bills. Roscoe's Treatise on the Law relating to Bills of Exchange, Promissory Notes, Banker's Checks, &c.;Rose's R. Rose's Reports of Cases in Bankruptcy.
Ross on V.& P. Ross on the Law of Vendors and Purchasers.
Rot. Parl. Rotulae Parliamentariae.
Rowe's Sci. Jur. Rowe's Scintilla Juris.
Rub. or Rubr.
Rubric, (q.v.)
Ruffh. Ruffhead's Statutes at Large.
Runn. Ej. Runnington on Ejectments.
Runn. Stat. Runnington's Statutes at Large.
Rus.& Myl. Russell & Mylne's Chancery Reports.
Rush. Rushworth's Collections.
Russ. Cr.
Russell on Crimes and Misdemeanors.
Rus.& Myl. Russell & Mylne's Reports of Cases in Chancery.
Russ. on Fact. Russell on the Laws relating to Factors and Brokers.
Russ. R. Russell's Reports of Cases in Chancery.
Russ.& Ry.
Russell & Ryan's Crown Cases.
Rutherf. Inst. Rutherford's Institutes of Natural Law.
Ry. F. Rymer's Foedera.
Ry.& Mo. Ryan & Moody's Nisi Prius
Reports.
Ry.& Mo. C. C. Ryan & Moody's Crown Cases.
Ry. MEd. Jur. Ryan on Medical Jurisprudence.

S. , section.
S. B. Upper Bench.
S.& B. Smith &Batty's Reports.
S. C. Same Case.
S. C. C. Select Cases in Chancery.
S. C. Rep. South Carolina Reports.
S.& L. Schoales & Lefroy's Reports.
S.& M.
Shaw & Maclean's Reports.
S.& M. Ch. R. Smedes & Marshall's Reports of Cases decided by the Superior Court of
Chancery of Mississippi.
S.& M. Err. & App. Smedes & Marshall's Reports of Cases in the High Court of Errors
and Appeals of Mississippi.
S. P. Same Point.
S.& R. Sergeant &

Rawle's Reports.
S.& S. Sausse & Scully's Reports.
S.& S. Simon & Stuart's Chancery Reports.
Sa.& Scul. Sausse & Scully's Reports.
Samdl. St. Pap.
Sandler's State Papers.
Salk. Salkeld's Reports.
Sandf. Rep. Reports of
Cases argued and determined in the Court of Chancery of the State of New York, before
the Hon. Lewis H. Sandford, Assistant vice Chancellor of the First Circuit.
Sand. U.& T. Sanders on Uses and Trusts.
Sanf. on Ent.
Sanford on Entails.
Sant. de Assoc. Santerna, de Asecurationibus.
Saund.
Saunders' Reports.
Saund. Pl. & ev. Saunders' Treatise on the Law of Pleading and Evidence.
Sav. Saville's Reports.
Sav. Dr. Rom. Savigny, Driot Romain.
Sav. Dr. Rom. M. A. Savigny, Driot Romain au Moyen Age.
Sav. Hist.Rom. Law. Savigny's History of the Roman Law during the Middle,
Ages.Translated from the German of Carl Von Savigny, by E. Cathcart.
Say. Costs.
Sayer's Law of Costs.
Say. Sayer's Reports.
SC. Senatus consultum.
Scac. de Cam. Scaddia de Cambiis.
Scam. Rep. Scammon's Reports of Cases argued and determined in the Supreme Court of Illinois.
Scan. Mag. Scandalum Magnatum.
Sch.& Lef. Schoales & Lefroy's Reports.
Scheiff. Pr. Scheiffer's Practice.
Schul. Aq. R. Schultes on Aquatic Rights.
Sci. Fa. Scire Facias.
Sci. fa. ad. dis. deb. Scire facias ad disprobandum debitum, (q.v.)
Scil. Scilicet, i.e. scire licet, that is to say.
Sco. N.R. Scott's new Reports.
Scott's R. Scott's Reports.
Scriv. Copyh. Scriven's Copyholds.
Seat. F. Ch. Seaton's Forms in Chancery.
Sec. Section.
Sec. Leg.
Secundum legem; according to law.
Sec. Reg. Secundum regulam; according to rule.
Sedgw. on Dam. Sedgwick on Damages.
Sel. Ca. Chan. Select Cases in Chancery. Vide S. C. C.
Seld. mar. Cla. Selden's Mare Clausum.
Self. Tr.
Selfridge's Trial.
Sell. Pr. Sellon's Practice in K. B. and C. P.
Selw. N. P. Selwyn's Nisi Prius.
Selw. R. Selwyn's Reports. These Reports are
usually cited M.& S. Maule & Selwyn's Reports.
Sem. or Semb. Semble, it seems.
Sen. Senate.

Seq. Sequentia.
Serg. on Att. Sergeant on the Law of Attachment.
Serg. Const. Law. Sergeant on constitutional Law.
Serg. on Land L. Sergeant on the Land Laws of Pennsylvania.
Serg.& Loub. Sergeant & Lowher's edition of the English Common Law Reports; more
usually cited Eng. Com. Law Rep.
Serg.& Rawle. or S.R. Reports of Cases adjudged in the
Supreme Court of Pennsylvania. By Thomas Sergeant and William Rawle,Jun.
Sess. Ca. Sessions Cases in K. B., chiefly touching Settlements.
Set. on Dec. Seton on Decrees.
Shaw & Macl. Shaw & Maclean's Reports.
Shelf. Lun. Shelford on Lunacy.
Shelf. on Mort. Shelford on the Law of Mortmain.
Shelf. on Railw. Shelford on Railways.
Shelf. on R. Pr. Shelford on Real Property.
Shep. To. Sheppard's Touchstone.
Shepl. R. Shepley's Reports.
Sher. Sheriff.
Show. P. C. Shower's Parliamentary Cases.
Show. R.
Shower's Reports in the Court of King's Bench.
Shub. Jur. Lit. Shuback de Jure Littoris.
Sid. Siderfin's Reports.
Sim. Simon's Chancery Reports. In Con. C.R.
Sim.& Stu. Simon & Stuart's Chancery Reports.
Skene, Ver. Sign.
Skene de VerborumSignificatione; an explanation of terms, difficult words, &c.;Skin. Skinner's Reports.
Skirr. Und.Sher. Skirrow's Complete Practical Under Sheriff.
Slade's Rep. Slade's Reports. More usually cited Vermont Reports.
Smed & Marsh. Ch. R. Smedes & Marshall's Reports of Cases decided by the High Court
of Errors and Appeals of Mississippi.
Smith & Batty. Smith & Batty's Reports.
Smith's Ch. RPr. Smith's Chancery Practice.
Shith's For. Med. Smith's Forensic Medicine.
Smith's Hints. Smith's Hints for the Examination of Medical Witnesses.
Smith on M. L. Smith on Mercantile Law.
Sm. on Pat. Smith on the Law of Patents.
Smith's R. Smith's Reports in K. B., together with Cases in the Court of Chancery.
Sol.
Solutio, the answer to an objection.
South. Car. R. South Carolina Reports.
South. R. Southard's Reports.
Sp. of Laws. Spirit of Laws, by Montesquieu.
Spelm. Feuds. Spelman on Feuds.
Spel. Gl. Spelman's Glossary.
Spence on Eq. Jur. of Ch. Spence on the Equitable Jurisdiction of Chancery.
Spenc. R. Spencer's Reports.
Speers' Eq. Cas. Equity Cases argued and determined in the Court of Appeals of South Carolina. By R. H.
Speers.
Speers' Rep. Speers' Reports.
Ss. usually put in small letters, ss.
Scilicet, that is to say.

St. or Stat. Statute.
St. Armand. Hist. Ess. St.
Armand's Historical Essay on the Legislative Power of England.
Stant. R.
Stanton's Reports.
Stath. Ab. Statham's Abridgment.
St. Cas.
Stillingfleet's Cases.
St. Tr. State Trials.
Stair's Inst. Stair's Inst.
Stair's Institutions of the Law of Scotland.
Stallm. on Elec. & Sat.
Stallman on Election and Satisfaction.
Stark. Starkie's Ev. Starkie on the Law of Evidence.
Stark. Cr. Pl. Starkie's Criminal Pleadings.
Stark. R.
Starkie's Reports.
Stark. on Sl. Starkie on Slander and Libel.
Stat.
Statutes.
Stat. Wes. Statute of Westminster.
Staunf or Staunf. P. C.
Staunford's Pleas of the Crown.
Stearn. on R. A. Stearne on Real Actions.
Steph. Comm. Stephen's New Commentaries on the Law of England.
Steph. Cr. Law. Stephen on Criminal Law.
Steph. Pl. Stephen on Pleading.
Steph. Proc. Stephen on Procurations.
Steph. on Slav. Stephens on
Slavery.
Stev. on Av. Stevens on Average.
Stev.& B. on Av. Stevens & Beneke on Average.
Stew. Adm. Rep. Stewart's Reports of Cases argued and determined in the Court of Vice
Admiralty at Halifax.
Stew. R. Stewart's Reports.
Stew.& Port's. Stewart & Porter's Reports.
Story on Bail. Story's Commentaries on the Law of Bailments.
Story on Const. Story on the Constitution of the United States.
Story on Eq. Story's Commentaries on Equity Jurisprudence.
Story's L. U. S. Story's edition of the Laws of the United States, in 3 vols. The 4th and
5th volumes are a continuation of the same work by George Sharswood, Esq.
Story on Partn. Story on Partnership.
Story on Pl. Story on Pleading.
Story, R. Story's Reports.
Str. Strange's Reports.
Stracc. de Mer. Straccha de Mercatura, Navibus Assecurationibus.
Strah. Dom. Straham's Translation of Domat's Civil Law.
Strob. R. Strobhart's Reports.
Stroud's Dig. Stroud's Digest of the Laws of Pennsylvania.
Stuart's (L.C.) R. Reports of Caes in the Court of King's bench in the Provincial Court of
Appeals of Lower Canada, and Appeals before the Lords of the Privy Council. By
George O'Kill Stuart, Esq.

Sty. Style's Reports.
Sugd. Lett. Sugden's Letters.
Sugd., Sugd. Pow.
Sugden on Powers.
Sugd. Vend. Sugden on Vendors.
Sull. Lect. Sullivan's Lectures on the Feudal Law, and the Constitution and Laws of
England.
Sull. on Land Tit. Sullivan's History of Land Titles in Massachusetts.
Sum. Summa, the Summary of a law.
Sumn. R. Sumner's Circuit Court Reports.
Supers. Supersedeas.
Supp. Supplement.
Supp. to Ves. Jr.
Supplement to Vesey Junior's Reports.
Swan on Eccl. Cts. Swan on the Jurisdiction of Eccleciastical Courts.
Swanst. Swanston's Reports.
Sweet on Wills. Sweet's Popular Treatise on Wills.
Swift's Dig. Swift's Digest of
the Laws of Connecticut.
Swift's Ev. Swift's Evidence.
Swift's Sys. Swift's
System of the Laws of Connecticut.
Swinb. Swinburn on the Law of Wills andTestaments. This work is generally cited by
refernce to the part, book, chapter, &c.;Swinb. on Desc. Swinburne on the Law of Descents.
Swinb.\on Mar. Swinburne on Marriage.
Swinb. on Spo. Swinburne on Spousals.
Sw.
Swinburne on Wills.
Syst. Plead. System of Pleading.

T. Title.
T.& G.
Tyrwhitt & Granger's Reports.
T.& P. Turner & PHillips' Reports.
T. Jo. Sir
Thomas Jones' Reports.
T. L. Termes de la Ley, or Terms of the Law.
T. R.
Term Reports. Ridgeway's Reports are sometimes cited Irish Tr.
T. R. TesteRege.
T.& R. Turner & Russell's Chancery Reports.
T.& R. Turner & Russell'sReports.
T. R. E. or T. E. R. Tempore Regis Edwardi. This abbreviation is
frequently used in Domesday Book, and in the more ancient Law writers. See
Tyrrel's Hist. Eng., introd. viii. p. 49. See also Co. Inst. 86, a,where in a quotation
from Domesday Book, this abbreviation is interpreted Terra Regis Edwardi; but in
Cowell's Dict. verb. Reveland, it is said to be wrong.
T. Raym. Sir Thomas Taymond's Reports.
T. U. P. Chalt. T. U. P. Charlton's Reports.
Tait on Ev. Tait on Evidence.

Taml. on Ev. Tamlyn on Evidence, principally with reference to the Practice of the Court
of Chancery, and in the Master's office.
Taml. R. Tamlyn's Reports of Cases decided in Chancery.
Taml. T. Y. Tamlyn on Terms for Years.
Tapia. Jur. Mer. Tratade de Jurisprudentia Mercantil.
Taunt. Taunto's Reports.
Tayl. on Ev. Taylor on Evidence.
Tayl Cir. L. Taylor's Civil Law.
Tayl. Law glo. Taylor's Law Glossary.
Tayl. L.& T. Taylor's Treatise on the American Law of Landlord and Tenant.
Tech. Dict. Crabb's Technological Dictionary.
Thach. Crim. Cas. Thacher's Criminal Cases.
Th. Br. Thesaurus brevium.
Th. Dig. Theloall's Digest.
Theo. of Pres. Pro. Theory of Presumptive Proof.
Theo. Pres. Pro. Theory of Presumptive Proof, or an Inquiry into the Nature of
Circumstantial Evidence.
Tho. co. Litt. Coke upon Littleton' newly arranged on the plan of Sir Matthew Hale's Analysis. By J. H. Thomas, Esq.
Thomp. on Bills. Thompson on Bills.
Tho. U.J. Thomas on Universal Jurisprudence.
Tidd's Pr. Tidd's Practice.
tit.
Title.
Toll. Ex. Toller's Executors.
Toml. L. D. Tomlin's Law dictionary.
Toth. Tothill's reports.
Touchs. Sheppard's Touchstone.
Toull.Le Droit civil Francais suivant Pordre du Code; ouvrage dans lequel on a tache de
reunir la eorie a la practique. Par M. C. B. M. Toullier. This work is sometimes cited
Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 6; at other times, 3 Toull. n. 86, which latter
signifies vol. 3 of Toullier's work, No. 86.
Tr. Eq. Treatise of Equity; the same as Fonblanque on Equity.
Traill, Med. Jur. Outlines of a Course of Lectures on Medical Jurisprudence. By Thomas
Stewart Traill, M.D.
Treb. Jur. de la Med.Jurisprudence de la Medecine, de la Chirurgie, et de la Pharmacie. Par
Adolphe Trebuchet.
Trem. Termaine's Pleas of the Crown.
Tri. of 7 Bish.
Trial of the Seven Bishops.
Tri. per Pais. Trials per Pais.
Trin. Trinity
Term.
Tuck. Bl. Com. Blackstone's Commentaries, edited by Judge
Tucker.
Turn. R. Turner's Reports of Cases determined in Chancery.
Turn.& Russ. Turner & Russell's Chancery Reports.
Tuck. Com. Tucker'sCommentaries.
Turn.& Phil Turner & PHillips' Reports.
Tyl. R. Tyler's Reports.

Tyrw. Tyrwhitt's Exchequer Reports.
Tyrw.& Gra. Tyrwhitt & Granger's Reports. Tyt. Mil. Law. Tytler's Essay on Military
Law and the Practice of Military Courts Martial.

U.S. United States of America.
U.S. Dig. United States Digest. See Metc.& Perk. Dig.
Ult. Ultimo, ultima, last, usually applied to last title, paragraph or law.
Umfrev. Off of Cor.
Umfreville's Office of Coroner.
Under Sher. Under Sheriff, containing the office and duty of High Sheriff, Under Sheriffs
and Bailiffs.
Ux. et. Et uxor, et uxorem, and wife.

V. Versus, against; as AB. v. CD.
V. Versiculo, in such a verse.
V. Vide, see.
V. or v. Voce; as Spelm Gloss. v. Cancelarious.
V.& B. Vesey & Beames' Reports.
V. C. Vice Chancellor.
Vac.
Voce, or Vocem.
V.& S. Vernon & Scriven's Reports.
Val. Com. Valin's Commentaries.
Van. Heyth. Mar. Ev. Van Heythuysen's Essay upon marine Evidence, in Courts of Law
and Equity.
Vand. Jud. Pr. Vanderlinden's Judicial Practice.
Vat. or Vattel. Battle's Law of Nations.
Vang. vaugnan's Reports.
Vend. Ex. Venditioni Exponas.
Ventr. Ventris' Reports.
Verm. R.
Vermont Judges' Reports.
Vern. Vernon's Reports.
Vern.& Scriv. Vernon & Scriven's Reports of Cases in the King's Courts, Dublin.
Verpl. Contr.
Verplanck on Contracts.
Verpl. Ev. Verplanck on Evidence.
Ves. Vesey Senior's Reports.
Ves. Jr. Vesey Junior's Reports.
Ves.& Bea. Vesey & Beames' Reports.
Vet. N. B. Old Natura Brevium.
Vid. Vidian's Entries.
Vin. Ab. Viner's Abridgment.
Vin. Supp. Supplement ot Viner'sAbridgment.
Vinn. Vinnius.
Viz. Videlicet, that is to say.
Vs. Versus.

W.
1, W. 2. Statutes of Westminster, 1 and2.
W. C. C. R. Washington's Circuit Court Reports.
W.& C. Wilson & Courtenay's Reports.
W. Jo. Sir William Jones' Reports.

W. Kel. William Kelynge's Reports.
W.& M. William and Mary.
W.& M. Rep. Woodbury & Minot's Reports.
W.& S. Wilson & Shaw's Reports of Cases decided in the House of Lords.
Wigr. on Disc. Wigram on Discovery.
Walf. on Part. Walford's Treatise on the Law respecting Parties to Actions.
Walk. Ch. Ca. Walker's Chancery Cases.
Walk. Am. R. or Walk. Introd. Walker's Introduction to American Law.
Walk. R. Walker's Reports.
Wall. R. Wallace's Circuit Court Reports.
Ward, on Leg. Ward on Legacies.
Ware's R. Reports of Cases argued and determined in the District Court of the United
States, for the District of Maine.
Warr. L. S.
Warren's Law Studies.
Wash. C. C. Washington's Circuit Court Reports.
Washb. R. Washburn's Vermont Reports.
Wat. Cop. Watkin's Copyhold.
Watk. Conv. Watking's Principles of conveyancing.
Wats. Cler. Law. Watson's Clergyman's Law.
Wats. on Arb. Watson on the Law of Arbitrations and Awards.
Wats. on Partn. Watson on the Law of Partnership.
Wats. on Sher. Watson on the Law relating to the office and duty of Sheriff.
Watt's R. Watt's Reports.
Watts & Serg. Watts & Sergeant's Reports.
Welf. on Eq. Plead. Welford on Equity Pleading.
Wellw. Ab.
Wellwood's Abridgment of Sea Laws.
Wend. R. Wendell's Reports.
Wentw.
Wentworth.
Wentw. Off. Ex. Wentworth's Office of Executor.
Wentw. Pl.
Wentworth's System of Pleading.
Wesk. Ins. Weskett on the Law of Insurance.
West's Parl. Rep. West's parliamentary Reports.
West's Rep.
West's Reports of Lord Chancellor Hardwicke.
West's Symb. West's Symboliography, or a description of instruments and precedents, 2 \
parts.
Westm. Westminister;
Westm. I. Westminister primer.
Weyt. on Av.
Quintin Van Weytsen on Average.
Whart. Cr. Law. Wharton on the Criminal Law of the United States.
Whart. Dig. Wharton's Digest.
Whart. Law Lex.
Wharton's Law Lexicon, or Dictionary of Jurisprudence.
Whart. R. Wharton's Reports.
Wheat. Wheaton.
Wheat. R. Wheatons' Reports.
Wheat. on Capt.
Wheaton's Digest of the Law of Maritime Captures and Prizes.
Wheat. Hist. of L. of N. Wheaton's History of the Law of Nations in Europe and America.

Wheel. Ab. Wheeler's Abridgments.
Wheel Cr. Cas. Wheeler's Criminal Cases.
Wheel on Slav. Wheeler on Slavery.
Whish. L. D. Whishaw's Law Dictionary.
Whit. on Liens. Whitaker on the Law of Liens.
Whit. on
Trans. Whitaker on Stoppage in Transitu.
White's New Coll. A New Collections of the Laws, Charters, and Local
Ordinances of the
Governments of Great Britain, France, Spain, &c.;Whitm. B. L.
Whitmarsh's Bankrupt Law.
Wicq. L'Ambassadeur et ses fonctions, par de
Wicquefort.
Wightw. Wightwich's Reports in the Exchequer.
Wilc. on Mun. Cor. Wilcock on Municipal Corporations.
Wilc. R. Wilcox's Reports.
Wilk Leg. Ang. Sax. Wilkin's leges Anglo-Saxionicae.
Wilk. on Lim. Wilkinson on Limitations.
Wilk on Publ. Funds. Wilkinson on the Law relating to the Public Funds,
including the
Practice of Distringas, &c.;Wilk. on Repl.
Wilkinson on the Law of Replevin.
Will. Auct. Williams on the Law of Auctions.
Will. on Eq. Pl. Willis' Treatise on Equity Pleadings.
Will. on Inter. Willis on Interrogatories.
Will. L. D. Williams' Law Dictionary.
Will. Per. Pr. Williams' Principles of the Law of Personal Property.
Will. (P.) Rep. Peere Williams' Reports.
Willc. Off. of Const.
Willcock on the Office of Constable.
Willes' R. Willes' Reports.
Wills on Cir. Ev. Wills on Circumstantial Evidence.
Wils. on uses. Wilson on Springing Uses.
Wilm on Mortg. Wilmot on Mortgages.
Wilm. Judg. Wilmot's Notes of Opinions and Judgments.
Wils. on Arb. Wilson on Arbitration.
Wils. Ch. R. Wilson's Chancery Reports.
Wils.& Co. Wilson & courtenay's Reports.
Wils. Ex. R. Wilson's Exchequer Reports.
Wils.& Sh. Wilson & Shaw's Reports decided by the House of Lords.
Wils. R. Wilson's Reports.
Win. Winch's Entries.
Win. R. Winch's Reports.
Wing. Max. Wingate's Maxims.
Wins. JUst. Williams' Justice.
Wms. R., more usually, P. Wms. Peere
Williams' Reports.
Wolff. Inst. Wolffius Institutiones Juris Naturae.
Wood's Inst., or Wood's Inst. Com.. L. Wood's Institutes of the Common Law of
England.
Wood's Inst. Civ. Law. Wood's Institutes of the Civil Law.
Wood & Min. Rep. Woodbury and Minot's Reports.
Woodes.
Wooddesson.
Woodes. El Jur. Woodesson's Elements of Jurisprudence.
Woodes.
Lect. Wooddesson's Vinerian Lectures.

Woodf. L. and T. Woodfall on the Law of Landlord and Tenant.
Woodm. R. Woodman's Reports of Criminal Cases tried in the Municipal Court of the City of Boston.
Wool. Com. L. Woolrych's commercial Law.
Wool. L. W. Woolrych's law of Waters.
Woolr. on Com. Law.
Woolrych's Treatise on the Commercial and Mercantile Law of England.
Wool. on Ways. Woolrych on Ways.
Worth. on Jur. Worthington's
Inquiry into the Power of Juries to decide
incidentally on Questions of
Law.
Worth. Pre. Wills. Worthington's GeneralPrecedents for Wills, with practical notes.
Wright's R. Wright's Reports.
Wright, Fr. Soc. Wright on Friendly Societies.
Wright, Ten. Sir Martin Wright's Law of Tenures.
Wy. Pr. Reg. Wyatt's Practical Register.

X. The decretals of Gregory the ninth are denoted by the letter X, thus, X.
Y. B. Year Books, (q.v.)
Y.& C.
Younge & Collyer's Exchequer Reports.
Y.& C. N. C. Younge & Collyer's New Cases.
Y.& J. Younge & Jervis' Exchequer Reports.
Yeates, R. Yeates' Reports.
Yearb. Year Book.
Yelv. Yelverton's Reports.
Yerg. R. Yerger's Reports.
Yo.& Col. Younge & Collyer's Exchequer Reports.
Yo.& Col. N. C.
Younge and Collyer's New Cases.
Yo. Rep. Younge's Reports.
Yo.& Jer. Younge & Jervis' Reports.
Zouch's Adm. Zouch's Jurisdiction of the Admiralty of England, asserted.

ABBREVIATORS, eccl. law. Officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions into proper form, to be converted into Papal Bulls. Vide Bulls.

ABBROCHMENT, obsolete. The forestalling of a market or fair.

ABDICATION, government. 1. A simple renunciation of an office, generally understood of a supreme office. James II. of England; Charles V. of Germany; and Christiana, Queen of Sweden, are said to have abdicated. When James III of England left the kingdom, the Commons voted that he had abdicated the government, and that thereby the throne had become vacant. The House of Lords preferred the word deserted, but the Commons thought it not comprehensive enough, for then, the king might have the liberty of returning. 2. When inferior magistrates decline or surrender their offices, they are said to make a resignation. (q.v.)

ABDUCTION, crim. law. The carrying away of any person by force or fraud. This is a misdemeanor punishable by indictment. 1 East, P.C. 458; 1 Russell, 569. The civil remedies are recaption, (q.v.) 3 Inst. 134; Hal. Anal. 46; 3 Bl. Com 4; by writ of habeas corpus; and an action of trespass, Fitz. N. B. 89; 3 Bl. Com 139, n. 27; Roscoe, Cr. Ev. 193.

ABEARANCE. Behaviour; as, a recognizance to be of good abearance, signifies to be of good behaviour. 4 Bl. Com.,251, 256.

ABEREMURDER, obsolete. An apparent, plain, or downright murder. It was used to distinguish a wilful murder, from a chance-medley, or manslaughter. Spelman; Cowell; Blount.

TO ABET, crim. law. To encourage or set another on to commit a crime. This word is always taken in a bad sense. To abet another to commit a murder, is to command, procure, or counsel him to commit it. Old Nat. Brev 21; Col Litt. 475.

ABETTOR, crim. law. One who encourages or incites, persuades or sets another on to commit a crime . Such a person is either a principal or, an accessory to the crime. When present, aiding, where a felony is committed, he is guilty as principal in the second degree ; when absent, "he is merelyan accessory. 1. Russell, 21; 1 Leach 66; Foster 428.

ABEYANCE, estates, from the French aboyer, which in figurative sense means to expect, to look for, to desire. When there is no person in esse in whom the freehold is vested, it is said to be in abeyance, that is, in expectation, remembrance and contemplation.

– 2. The law requires, however, that the freehold should never, if possible, be in abeyance. Where there is a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance. 9 Serg. & R.. 367; 8 Plowd. 29 a. b 35 a.

– 3. Thus, if sn estate be limited to A for life, remainder to the right heirs of B, the fee simple is in abeyance during the life of B, because it is a maxim of law, that nemo est hoeres viventis. 2 Bl. Com. 107; 1 Cruise, 67-70; 1 Inst. 842, Merlin, Repertoire, mot Abeyance; 1 Com. Dig. 176; 1 Vin. Abr. 101.

– 4. Another example may be given in the case of a corporation. When a charter is given, and the charter grants franchises or property to a corporation which is to be brought into existence by some future acts of the corporators, such franchises or property are in abeyance until such acts shall be done, and when the corporation is

thereby brought into life, the franchises instantaneously attach. 4 Wheat. 691. See, generally, 2 Mass. 500; 7 Mass. 445; 10 Mass. 93; 15 Mass. 464; 9 Cranch, 47. 293; 5 Mass. 555.

ABIDING BY PLEA. English law. A defendant who pleads a frivolous plea, or a plea merely for the purpose of delaying the suit; or who for the same purpose, shall file a similar demurrer, may be compelled by rule in term time, or by a Judge's order in vacation, either to abide by that plea, or by that demurrer, or to plead peremptorily on the morrow; or if near the end of the term, and in order to afford time for notice of trial, the motion may be made in court for rule to abide or plead instanter; that is, within twenty-four hours after rule served, Imp. B.R. 340, provided that the regular time for pleading be expired. If the defendant when ruled, do not abide, he can only plead the general issue; 1 T.R. 693; but he may add notice of set-off. Ib. 694, n. See 1 Chit. Rep. 565, n.

ABIGEAT, civ. law, A particular kind of larceny, which is committed not by taking and carrying away the property from one place to another, but by driving a living thing away with an intention of feloniously appropriating the same. Vide Taking.

ABIGEI, civil law. Stealers of cattle, who were punished with more severity than other thieves. Dig. 47, 14; 4 Bl. Com. 239.

ABJURATION – A renunciation of allegiance to a country by oath.

2. – 1. The act of Congress of the 14th of April, 1802, 2 Story's Laws, U.S. 850, requires that when an alien shall apply to be admitted a citizen of the United States, he shall declare on oath or affirmation before the court where the application shall be made, inter alia, that he doth absolutely and entirely renounce and abjure all allegiance and fidelity which he owes to any foreign prince, &c., and particularly, by name, the prince, &c., whereof he was before a citizen or subject. Rawle on the Const. 98.

3. – 2. In England t he oath of abjuration is an oath by which an Englishman binds himself not to acknowledge any right in the Pretender to the throne of England.

4. – 3 it signifies also, according to 25 Car. H., an oath abjuring to certain doctrines of the church of Rome.

5. – 4. In the ancient English law it was a renunciation of one's country and taking an oath of perpetual banishment. A man who had committed a felony, and for safety flee to a sanctuary might within forty days' confess the fact, and take the oath of abjuration

and perpetual banishment; he was then transported. This was abolished by Stat. 1 Jac. 1, c. 25. Ayl. Parerg. 14.

ABLEGATI, diplomacy. Papal ambassadors of the second rank, who are sent with a less extensive commission to a court where there are no nuncios. This title is equivalent to envoy (q. v.).

ABNEPOS, civil law. The grandson of a grandson or grand-daughter, or fourth descendant. Abneptis, is the grand-daughter of a grandson or grand-daughter. These terms are used in making genealogical tables.

ABOLITION. An act by which a thing is extinguished, abrogated or annihilated. Merl. Repert, h. t., as, the abolition of slavery is the destruction of slavery.

2 . In the civil and French law abolition is used nearly synonymously with pardon, remission, grace. Dig. 39, 4, 3, 3. There is, however, this difference; grace is the generic term; pardon, according to those laws, is the clemency which the prince extends to a man who has participated in a crime, without being a principal or accomplice; remission is made in cases of involuntary homicides, and self-defence. Abolition is different: it is used when the crime cannot be remitted. The prince then may by letters of abolition remit the punishment, but the infamy remains, unless letters of abolition have been obtained before sentence. Encycl. de d'Alembert, h. t.

3. The term abolition is used in the German law in the same sense as in the French law. Encycl. Amer. h. t. The term abolition is derived from the civil law, in which it is sometimes used synonymously with absolution. Dig. 39, 4, 3, 3.

ABORTION, med jur. and criminal law. The expulsion of the foetus before the seventh mouth of utero-gestation, or before it is viable. q. v.

2. The causes of this accident are referable either to the mother, or to the foetus and its dependencies. The causes in the mother may be: extreme nervous susceptibility, great debility, plethora, faulty conformation, and the like; and it is frequently induced immediately by intense mental emotion. The causes seated in the foetus are its death, rupture of the membranes, &c.

3. It most frequently occurs between the 8th and 12th weeks of gestation. When abortion is produced with a malicious design, it becomes a misdemeanor, at common law, 1 Russell, 553; and the party causing it may be indicted and punished.

4. The crimjnal means resorted to for the purpose of destroying the foetus, may be divided into general and local. To the first belong venesection, emetics, cathartics

diuretics, emmenagogues &c. The second embraces all kinds of violence directly applied.

5. When, in consequence of the means used to produce abortion, the death of the woman ensues, the crime is murder.

6. By statute a distinction is made between a woman quick with child, (q. v.) and one who, though pregnant, is not so, 1 Bl. Com. 129. Physiologists, perhaps with reason, think that the child is a living being from the moment of conception. 1 Beck. Med. Jur. 291. General References. 1 Beck, 288 to 331; and 429 to 435; where will be found an abstract of the laws of different countries, and some of the states punishing criminal abortion; Roscoe, Cr. Ev. 190; 1 Russ. 553; vilanova y Manes, Materia Criminal Forense, Obs. 11, c. 7 n. 15-18. See also 1 Briand, Med. Leg. 1 ere partie, c. 4, where the question is considered, how far abortion is justifiable, and is neither a crime nor a misdemeanor. See Alis. Cr. L. of Scot. 628.

ABORTUS. The fruit of an abortion; the child born before its time, incapable of life. See Abortion; Birth; Breath; Dead bord; Gestation; Life. ABOVE. Literally higher in place: But in law this word is sometimes used to designate the superior court, or one which may revise proceedings of an inferior court error, from such inferior jurisdiction. The court of error is called the court above; the court whose proceedings are to be examined is called the court below.

2. By bail above, is understood bail to the action entered with the prothonotary or clerk, which is an appearance. See Bail above. The bail given to the Sheriff, in civil cases, when the defendant is arrested on bailable process, is called bail below; (q.v.) vide Below.

TO ABRIDGE, practice. To make shorter in words, so as to retain the sense or substance. In law it signifies particularly the making of a declaration or count shorter, by taking or severing away some of the substance from it. Brook, tit. Abridgment ment; Com. Dig. Abridgment; 1 Vin. Ab. 109.

2. Abridgment of the Plaint is allowed even after verdict and before judgment (Booth on R. A.) in an cases of real actions where the writ is de lib. ten. generally, as in assize, dower; &c.; because, after the abridgment the writ is still true, it being liberum tenementum still. But it is not allowed in a proecipe quod reddat, demanding a certain number of acres; for this would falsify the writ. See 2 Saund. 44, (n.) 4 ; Bro. Abr. Tit. Abr.; 12 Levin's Ent. 76; 2 Saund. 330; Gilb. C. P. 249-253; Thel. Dig. 76, c. 28, pl. 15, lib. 8.

AN ABRIDGMENT. An epitome or compendium of another and larger work, wherein the principal ideas of the larger work are summarily contained. When fairly made, it may justly be deemed, within the meaning of the law, a new work, the publication of which will not infringe the copyright of the work abridged. An injunction, however, will be granted against a mere colorable abridgment. 2 Atk. 143; 1 Bro. C. C. 451; 5 Ves. 709; Lofft's R. 775; Ambl. 403; 5 Ves. 709.; 1 Story, R. 11. See Quotation.

2. Abridgments of the Law or Digests of Adjudged Cases, serve the very useful purpose of an index to the cases abridged, 5 Co. Rep. 25. Lord Coke says they are most profitable to those who make them. Co. Lit. in preface to the table – at the end of the work. With few exceptions, they are not entitled to be considered authoritative. 2 Wils. R. 1, 2; 1 Burr. Rep. 364; 1 Bl. Rep. 101; 3 T. R. 64, 241. See North American Review, July, 1826, pp. 8, 13, for an account of the principal abridgments.

ABROGATION, in the civil law, legislation. The destruction or annulling of a former law, by an act of the legislative power, or by usage. A law may be abrogated or only derogated from; it is abrogated when it is totally annulled; it is derogated from when only a part is abrogated: derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur. Dig lib.. 50, t. 17, 1, 102. Lex rogatur dum fertur; abrogatur dum tollitur; derogatur eidem dum quoddam ejus caput aboletuer; subrogatur dum aliquid ei adjicitur; abrogatur denique, quoties aliquid in ea mutatur. Dupin, Proleg. Juris, Art. iv.

2. Abrogation is express or implied; it is express when it, is literally pronounced by the new law, either in general terms, as when a final clause abrogates or repeals all laws contrary to the provisions of the new one, or in particular terms, as when it abrogates certain preceding laws which are named.

3. Abrogation is implied when the new law contains provisions which are positively, contrary to the former laws, without expressly abrogating such laws: for it is a posteriora derogant prioribus. 3 N. S. 190; 10 M. R. 172. 560. It is also implied when the order of things for which the law had been made no longer exists, and hence the motives which had caused its enactment have ceased to operate; ratione legis omnino cessante cessat lex. Toullier, Droit Civil Francais, tit. prel. 11, n. 151. Merlin, mot Abrogation.

ABSCOND. To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed in order to avoid their process.

ABSENTEE. One who is away from his domicil, or usual place of residence.

2. After an absence of seven years without being heard from, the presumption of death arises. 2 Campb. R. 113; Hardin's R. 479; 18 Johns. R. 141 15 Mass. R. 805; Peake's Ev. c. 14, s. 1; 2 Stark. Ev. 457 8; 4 Barn. & A. 422; 1 Stark. C. 121 Park on Ins. 433; 1 Bl. R. 404; Burr v. Simm, 4 Wh. 150; Bradley v. Bradley, 4 Wh. 173.

3. In Louisiana, when a person possessed of either movable or immovable property within the state, leaves it, without having appointed somebody to take care of his estate; or when the person thus appointed dies, or is either unable or unwilling to continue to administer that estate, then and in that case, the judge of the place where the estate is situated, shall appoint a curator to administer the same. Civ. Code of Lo. art. 50.. In the appointment of this curator the judge shall prefer the wife of the absentee to his presumptive heirs, the presumptive heirs to other relations; the relations to strangers, and creditors to those who are not otherwise interested, provided, however, that such persons be possessed of the necessary qualifications. Ib. art. 51. For the French law on this subject, vide Biret, de l'Absende; Code Civil, liv. l tit.. 4. Fouss. lib. 13 tit. 4, n. 379-487; Merl. Rep. h. t.; and see also Ayl. Pand. 269; Dig. 50, 16, 198; Ib. 50, 16, 173; Ib. 3, 3,,6; Code, 7 32 12.

ABSOLUTE. Without any condition or encumbrance, as an "absolute bond," simplex obligatio, in distinction from a conditional bond; an absolute estate, one that is free from all manner of condition or incumbrance. A rule is said to be absolute, when, on the hearing, it is confirmed. As to the effect of an absolute conveyance, see 1 Pow. Mortg. 125; in relation to absolute rights, 1 Chitty, PI. 364; 1 Chitty, Pr. 32.

ABSOLUTION. A definite sentence whereby a man accused of any crime is acquitted.

ABSQUE HOC, pleading. When the pleadings were in Latin these words were employed in a traverse. Without this, that, (q. v.) are now used for the same purpose.

ABSQUE IMPETITIONE VASTI. Without impeachment of waste. (q. v.) Without any right to prevent waste.

ABSQUE TALI CAUSA. This phrase is used in a traverse de injuria, by which the plaintiff affirms that without the cause in his plea alleged he did commit the said trespasses, &c. Gould on PI. c. 7, part 2, 9.

ABSTENTION, French law. This is the tacit renunciation by an heir of a succession Merl. Rep. h.t.

ABSTRACT OF TITLE. A brief account of all the deeds upon which the title to an estate rests. See Brief of Title.

ABUSE. Every thing which is contrary to good order established by usage. Merl. Rep. h. t. Among the civilians, abuse has another signification; which is the destruction of the substance of a thing in using it. For example, the borrower of wine or grain, abuses the article lent by using it, because he cannot enjoy it without consuming it. Leg ; El. Dr. Rom. 414. 416.

ABUTTALS. The buttings and boundings of land, showing on what other lands, rivers, highways, or other places it does abut. More properly, it is said, the sides of land, are adjoining and the ends abutting to the thing contiguous. Vide Boundaries, and Cro. Jac. 184.

AC ETIAM, Eng. law. In order to give jurisdiction to a court, a cause of action over which the court has jurisdiction is alleged, and also,, (ac etiam) another cause of action over which, without being joined with the first, the court would have no jurisdiction; for example, to the usual complaint of breaking the plaintiff's close, over which the court has jurisdiction, a clause is added containing the real cause of action. This juridical contrivance grew out of the Statute 13 Charles H. Stat. 2, c. 2. The clause was added by Lord North, Ch. J. of the C. P. to the clausum fregit writs of that court upon which writs of capias might issue. He balanced awhile whether he should not use the words nec non instead of ac etiam. The matter is fully explained in Burgess on Insolvency, 149. 155. 156. 157.

ACCEDAS AD CURIAM, Eng. law. That you go to court. An original writ, issuing out of chancery, now of coarse, returnable in K. B. or C. P. for the removaI of a replevin sued by plaint in court of any lord, other than the county before the sheriff See F. N. B. 18; Dyer, 169.

ACCEDAS AD VICECOMITEM, Eng. law. The name of a writ directed to the coroner, commanding him to deliver a writ to the sheriff, who having a pone delivered to him, suppresses it.

ACCEPTANCE, contracts. An agreement to receive somethinng which has been offered.

2. To complete the contract, the acceptance must be absolute and past recall, 10 Pick. 826; 1 Pick. 278; and communicated to the party making the offer at the time and place appointed. 4. Wheat. R. 225; 6 Wend. 103.

3. In many cases acceptance of a thing waives the right which the party receiving before had; as, for example, the acceptance of rent after notice to quit, in general waives. the notice. See Co. Litt. 211, b; Id. 215, a.; and Notice to quit.

4. The acceptance may be express, as when it is openly declared by the party to be bound by it; or implied, as where the party acts as if he had accepted. The offer, and acceptance must be in some medium understood by, both parties; it may be language, symbolical, oral or written. For example, persons deaf and dumb may contract by symbolical or written language. At auction sales, the contract, generally symbolical; a nod, a wink, or some other sign by one party, imports that he makes an offer, and knocking down a hammer by the other, that he agrees to it. 3 D. & E. 148. This subject is further considered under the articles Assent and Offer, (q v.)

5. Acceptance of a bill of exchange the act by which the drawee or other person evinces his assent or intention to comply with and be bound by, the request contained in a bill of exchange to pay the same; or in other words, it is an engagement to pay the bill when due. 4 East, 72, It will be proper to consider, 1, by whom the acceptance ought to be made; 2, the time when it is to be made; 3, the form of the acceptance; 4, its extent or effect.

6. – 1. The acceptance must be made by the drawee himself, or by one authorized by him. On the presentment of a bill, the holder has a right to insist upon such an acceptance by the drawee as will subject him at all events to the payment of the bill, according to its tenor; consequently such drawee must have capacity to contract, and to bind himself to pay the amount of the bill, or it, may be treated as dishonored. Marius, 22. See 2 Ad. & EH. N. S. 16, 17.

7. – 2. As to the time when, a bill ought to be accepted, it may be before the bill is drawn; in this case it must be in writing; 3 Mass. 1; or it may be after it is drawn; when the bill is presented, the drawee must accept the bill within twenty-four hours after presentment, or it should be treated as dishonored. Chit. Bills, 212. 217. On the refusal to accept, even within the twenty-four hours, it should be protested. Chit. Bills, 217. The acceptance may be made after the bill is drawn, and before it becomes due or after the time appointed for payment 1 H. Bl. 313; 2 Green, R. 339 ; and even after refusal to accept so as to bind the acceptor.

8. The acceptance may also be made supra protest, which is the acceptance of the bill, after protest for non-acceptance by the drawee, for the honor of the drawer, or a particular endorser. When a bill has been accepted supra protest for the honor of one party to the bill, it may be accepted supra protest, by another individual, for the honor of another. Beawes, tit. Bills of Exchange, pl. 52; 5 Campb. R. 447.

9. – 3. As to the form of the acceptance, it is clearly established it may be in writing on the bill itself, or on another paper, 4 East, 91; or it may be verbal, 4 East, 67; 10 John. 207; 3 Mass. 1; or it may be expressed or implied.

10. An express acceptance is an agreement in direct and express terms to pay a bill of exchange, either by the party on whom it is drawn, or by some other person, for the honor of some of the parties. It is Usually in the words accepted or accepts, but other express words showing an engagement to pay the bill will be equally binding.

11. An implied acceptance is an agreement to pay a bill, not by direct and express terms, but by any acts of the party from which an express agreement may be fairly inferred. For example, if the drawee writes "seen," "presented," or any, other thing upon it, (as the day on which it becomes due,) this, unless explained by other circumstances, will constitute an acceptance.

12. – 4. An acceptance in regard to its extent and effect, may be either absolute, conditional, or partial.

13. An absolute acceptance is a positive engagement to pay the bill according to its tenor, and is usually made by writing on the bill "accepted," and subscribing the drawee's name; or by merely writing his name either at the bottom or across the bill. Comb. 401; Vin. Ab. Bills of Exchange, L 4; Bayl. 77; Chit. Bills, 226 to 228. But in order to bind another than the drawee, it is requisite his name should appear. Bayl. 78.

14. A conditional acceptance is one which will subject the drawee or acceptor to the payment of the money on a contingency, Bayl. 83, 4, 5; Chit. Bills, 234; Holt's C. N. P. 182; 5 Taunt, 344; 1 Marsh. 186. The holder is not bound to receive such an acceptance, but if he do receive it he must observe its terms. 4 M.& S. 466; 2 W. C. C. R. 485; 1 Campb. 425.

15. A partial acceptance varies from the tenor of the bill, as where it is made to pay part of the sum for which the bill is drawn, 1 Stra. 214; 2 Wash. C. C. R. 485; or to pay at a different time, Molloy, b. 2, c. 10, s. 20; or place, 4. M.& S. 462.

ACCEPTILATION, contracts. In the civil law, is a release made by a creditor to his debtor of his debt, without receiving any consideration. Ayl. Pand. tit. 26, p. 570. It is a species of donation, but not subject to the forms of the latter, and is valid, unless in fraud of creditors. Merlin, Repert. de Jurisp. h. t. Acceptilation may be defined verborum conceptio qua creditor debitori, quod debet, acceptum fert; or, a certain arrangement of words by which on the question of the debtor, the creditor, wishing to dissolve the obligation, answers that he admits as received, what in fact, he has not received. The acceptilation is an imaginary payment. Dig. 46, 4, 1 and 19; Dig. 2, 14, 27, 9; Inst. 3, 30, 1.

ACCEPTOR, contracts. The person who agrees to pay a bill of exchange drawn upon him. There cannot be two separate acceptors of a bill of exchange, e. g. an acceptance

by the drawee, and another for the honor of some party to the bill. Jackson v. Hudson, 2 Campb. N. P. C. 447.

2. The acceptor of a bill is the principal debtor, and the drawer the surety. He is bound, though he accepted without consideration, and for the sole accommodation of the drawer. By his acceptance he admits the drawer's handwriting, for, before acceptance it was incumbent upon him to inquire into the genuineness of the drawer's handwriting. 3 Burr. 1354; 1 Bla. Rep. 390, S. C.; 4 Dall. 234; 1 Binn. 27, S. C. When once made, the obligation of the acceptor is irrevocable. As to what amounts to an acceptance, see ante, Acceptance; Chitty on Bills, 242, et. seq.; 3 Kent, Com. 55, 6; Pothier, Traite du Contrat de Change, premiere part. n. 44.

3. The liability of the acceptor cannot in general be released or discharged, otherwise than by payment, or by express release or waiver, or by the act of limitations. Dougl. R. 247. What amounts to a waiver and discharge of the acceptor's liability, must depend on the circumstances of each particular case. Dougl. 236, 248; Bayl. on Bills, 90; Chitty on Bills, 249.

ACCEPTOR SUPRA PROTEST, in contracts, is a third person, who, after protest for non-acceptance by the drawee, accepts the bill for the honor of the drawer, or of the particular endorser.

2. By this acceptance he subjects himself to the same obligations as if the bill had been directed to him. An acceptor supra protest has his remedy against the person for whose honor he accepted, and against all persons who stand prior to that person. If he takes up the bill for the honor of the endorser, he stands in the light of an endorsee paying full value for the bill, and has the same remedies to which an endorsee would be entitled against all prior parties, and he can, of course, sue the drawer and endorser., 1 Ld. Raym. 574; 1 Esp. N. P. Rep. 112; Bayly on Bills, 209; 3 Kent. Com. 57; Chitty on Bills, 312. The acceptor supra protest is required to give thesame notice, in order to charge a party, which is necessary to be given by other holders. 8 Pick. 1. 79; 1 Pet. R. 262. Such acceptor is not liable, unless demand of payment is made on the drawee, and notice of his refusal given. 3 Wend. 491.

ACCESS, persons. Approach, or the means or power of approaching. Sometimes by access is understood sexual intercourse; at other times the opportunity of communicating together so that sexual intercourse may have taken place, is also called access. 1 Turn. & R. 141.

2. In this sense a man who can readily be in company with his wife, is said to have access to her; and in that case, her issue are presumed to be his issue. But this

presumption may be rebutted by positive evidence that no sexual intercourse took place. lb.

3. Parents are not allowed to prove non-access, for the purpose of bastardizing the issue of the wife; nor will their declarations be received after their deaths, to prove the want of access, with a like intent. 1 P. A. Bro. R. App. xlviii.; Rep. tem. Hard. 79; Bull. N. P. 113; Cowp. R. 592; 8 East, R. 203; 11 East, R. 133. 2 Munf. R. 242; 3 Munf. R. 599; 7 N. S. 553; 4 Hayw R. 221, 3 Hawks, R 623 1 Ashm. R. 269; 6 Binn. R. 283; 3 Paige's R. 129; 7 N. S. 548. See Shelf. on Mar. & Div. 711; and Paternity.

ACCESSARY, criminal law. He who is not the chief actor in the perpetration of the offence, nor present at its performance, but is some way concerned therein, either before or after the fact committed.

2. An accessary before the fact, is one who being absent at the time of, the crime committed, yet procures, counsels, or commands another to commit it. 1 Hale, P. C. 615. It is, proper to observe that when the act is committed through the agency of a person who has no legal discretion nor a will, as in the case of a child or an insane person, the incitor, though absent when the crime was committed, will be considered, not an accessary, for none can be accessary to the acts of a madman, but a principal in the first degree. Fost. 340; 1 P. C. 118.

3. An accessary after the fact, is one who knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. 4 Bl. Com. 37.

4. No one who is a principal (q. v.) can be an accessary.

5. In certain crimes, there can be no accessaries; all who are concerned are principals, whether they were present or absent at the time of their commission. These are treason, and all offences below the degree of felony. 1 Russ. 21, et seq.; 4 Bl. Com. 35 to 40; 1 Hale, P. C. 615; 1 Vin. Abr. 113; Hawk. P. C. b. 2, c. 29, s. 16; such is the English Law. But whether it is law in the United States appears not to be determined as regards the cases of persons assisting traitors. Serg. Const. Law, 382; 4 Cranch, R. 472, 501; United States v. Fries, Parnphl. 199.

6. It is evident there can be no accessary when there is no principal; if a principal in a transaction be not liable under our laws, no one can be charged as a more accessary to him. 1 W.& M. 221.

7. By the rules of the common law, accessaries cannot be tried without their consent, before the principals. Foster, 360. The evils resulting from this rule, are stated at length in the 8th vol. of Todd's Spencer, pp. 329, 330.

ACCESSION, property. The ownership of a thing, whether it be real or personal, movable or immovable, carries with it the right to all that the thing produces, and to all that becomes united to it, either naturally or artificially; this is called the right of accession.

2. – 1. The doctrine of property arising from accession, is grounded on the right of occupancy.

3. – 2. The original owner of any thing which receives an accession by natural or artificial means, as by the growth of vegetables, the pregnancy of animals; Louis. Code, art. 491; the embroidering of cloth, or the conversion of wood or metal into vessels or utensils, is entitled to his right of possession to the property of it, under such its state of improvement; 5 H. 7, 15; 12 H. 8, 10; Bro. Ab. Propertie, 23; Moor, 20; Poph. 88. But the owner must be able to prove the identity of the original materials; for if wine, oil, or bread, be made out of another man's grapes, olives, or wheat, they belong to the new operator, who is bound to make satisfaction to the former proprietor for the materials which he has so converted. 2 Bl. Com. 404; 5 Johns. Rep. 348; Betts v. Lee, 6 Johns. Rep. 169; Curtiss v. Groat, 10 Johns. 288; Babcock v. Gill, 9 Johns. Rep. 363; Chandler v. Edson, 5 H. 7, 15; 12 H. 8, 10; Fits. Abr. Bar. 144; Bro. Abr. Property, 23; Doddridge Eng. Lawyer, 125, 126, 132, 134. See Adjunction; Confusion of Goods. See Generally, Louis. Code, tit. 2, c. 2 and 3.

ACCESSION, international law, is the absolute or conditional acceptance by one or several states, of a treaty already concluded between one or several states, of a traty already concluded between other sovereignties. Merl. Rep. mot Accession.

ACCESSORY, property. Everything which is joined to another thing, as an ornament, or to render it more perfect, is an accessory, and belongs to the principal thing. For example, the halter of a horse, the frame of a picture, the keys of a house, and the like; but a bequest of a house would not carry the furniture in it, as accessory to it. Domat, Lois Civ. Part. 2, liv. 4, tit. 2, s. 4, n. 1. Accesiorium non ducit, sed sequitur principale. Co. Litt. 152, a. Co. Litt. 121, b. note (6). Vide Accession; Adjunction; Appendant; Appurtenances; Appurtenant; Incident.

ACCESSORY CONTRACT. one made for assuring the performance of a prior contract, either by the same parties, or by others; such as suretyship, mortgages, and pledges.

2. It is a general rule, that payment of the debt due, or the performance of a thing required to be performed by the first or principal contract, is a full discharge of such accessory obligation. Poth. Ob. part. 1, c. 1, s. 1, art. 2, n. 14. Id. n. 182, 186. See 8 Mass. 551; 15 Mass. 233; 17 Mass. 419; 4 Pick. 11; 8 Pick. 522.

3. An accessory agreement to guaranty an original contract, which is void, has no binding effect. 6 Humph. 261. ACCIDENT. The happening of an event without the concurrence of the will of the person by whose agency it was caused or the happening of an event without any human agency; the burning of a house in consequence of a fire being made for the ordinary purpose of cooking or warming the house, which is an accident of the first kind; the burning of the same house by lightning would have been an accident of the second kind. 1 Fonb. Eq. 374, 5, note.

2. It frequently happens that a lessee covenants to repair, in which case he is bound to do so, although the premises be burned down without his fault. 1 Hill. Ab. c. 15, s. 76. But if a penalty be annexed to the covenant, inevitable accident will excuse the former, though not the latter. 1 Dyer, 33, a. Neither the landlord nor the tenant is bound to rebuild a house burned down, unless it has been so expressly agreed. Amb. 619; 1 T. R. 708; 4 – Paige, R. 355; 6 Mass. R. 67; 4 M'Cord, R. 431; 3 Kent, Com. 373.

3. In New Jersey, by statute, no action lies against any person on the ground that a fire began in a house or room occupied by him, if accidental. But this does not affect any covenant. 1 N. J. Rev. C. 216.

ACCIDENT, practice. This term in chancery jurisprudence, signifies such unforeseen events, misfortunes, losses, acts or omissions, as are not the result of any negligence or misconduct in the party. Francis' Max. M. 120, p. 87; 1 Story on Eq. 78. Jeremy defines it as used in courts of equity, to be " an occurrence in relation to a contract, which was not anticipated by the parties, when the same was entered into, and which gives an undue advantage to one of them over the other in a court of law." Jer. on Eq. 358. This definition is objected to, because as accident may arise in relation to other things besides contracts, it is inaccurate in confining accidents to contracts; besides, it does not exclude cases of unanticipated occurrences, resulting from the negligence or misconduct of the party seeking relief. 1 Story on Eq. 78, note 1.

2. In general, courts of equity will relieve a party who cannot obtain justice in consequence of an accident, which will justify the interposition of a court of equity. The jurisdiction being concurrent, will be maintained only, first, when a court of law cannot grant suitable relief; and, secondly, when the party has a conscientious title to relief.

3. Many accidents are redressed in a court of law; as loss of deeds, mistakes in receipts and accounts, wrong payments, death, which makes it impossible to perform a condition literally, and a multitude of other contingencies; and many cannot be redressed even in a court of equity; is if by accident a recovery is ill suffered, a contingent remainder destroyed, or a power of leasing omitted in a family settlement.

3 Bl. Comm. 431. Vide, generally, Com. Dig. Chancery, 3 F 8; 1 Fonb. Eq. B. 1, c. 3, s. 7; Coop. Eq. PI. 129; 1 Chit. Pr. 408; Harr. Ch. Index, h. t.; Dane's Ab. h. t.; Wheat. Dig. 48; Mitf. Pl. Index, h. t.; 1 Madd. Ch. Pr. 23; 10 Mod. R. 1, 3; 3 Chit. Bl. Com. 426, n.

ACCOMENDA, mar. law. In Italy, is a contract which takes place when an individual entrusts personal property with the master of a vessel, to be sold for their joint account. In such case, two contracts take place; first, the contract called mandatum, by which the owner of the property gives the master power to dispose of it, and the contract of partnership, in virtue of which, the profits are to be divided between them. One party runs the risk of losing his capital, the other his labor. If the sale produces no more than first cost, the owner takes all the proceeds; it is only the profits which are to be divided. Emer. on Mar. Loans, B. 5.

ACCOMODATION, com. law. That which is done by one merchant or other person for the convenience of some other, by accepting or endorsing his paper, or by lending him his notes or bills.

2. In general the parties who have drawn, endorsed or accepted bills or other commercial paper for the accommodation, of others, are, while in the hands of a holder who received them before they became due, other than the person for whom the accomodation was given, responsible as if they had received full value. Chit. Bills, 90; 91. See 4 Cranch, 141; 1 Ham. 413; 7 John. 361; 15 John. 355, 17 John. 176; 9 Wend. 170; 2 Whart. 344; 5 Wend. 566; 8 Wend. 437; 2 Hill, S. C. 362; 10 Conn. 308; 6 Munfd. 381.

ACCOMMODATION, contracts. An amicable agreement or composition between two contending parties. It differs from accord and satisfaction, which may take place without any difference having existed between the parties.

ACCOMPLICE, crim. law. This term includes in its meaning, all persons who have been concerned in the commission of a crime, all particepes crimitis, whether they are considered in strict legal propriety, as principals iu the first or second degree, or merely as accessaries before or after the fact. Foster, 341; 1 Russell, 21; 4 Bl. Com. 331; 1 Phil. Ev. 28; Merlin, Repertoire, mot Complice. U. S. Dig. h. t.

2. But in another sense, by the word accomplice is meant, one who not being a principal, is yet in some way concerned in the commission of a crime. It has been questioned, whether one who was an accomplice to a suicide can be punishhed as such. A case occurred in Prussia where a soldier, at the request of his comrade, had cut the latter in pieces; for this he was tried capitally. In the year 1817, a young woman named Leruth received a recompense for aiding a man to kill himself. He put

the point of a bistouri on his naked breast, and used the hand of the young woman to plunge it with greater force into his bosom; hearing some noise he ordered her away. The man receiving effectual aid was soon cured of the wound which had been inflicted; and she was tried and convicted of having inflicted the wound, and punished by ten years' imprisonment. Lepage, Science du Driot,c h. 2 art. 3, 5. The case of Saul, the king of Israel, and his armor bearer, (1 Sam. xxxi. 4,) and of David and the Amelekite, (2 Sam. i. 2-16,) will doubtless occur to the reader.

ACCORD, in contracts. A satisfaction agreed upon between the party injuring and the party injured, which when performed is a bar to all actions upon this account. 3 Bl. Com. 15; Bac. Abr, Accord.

2. In order to make a good accord it is essential: 1. That the accord be legal. An agreement to drop a criminal prosecution as a satisfaction for an assault and imprisonment, is void. 5 East, 294. See 2 Wils. 341 Cro. Eliz. 541.

3. – 2. It must be advantageous to the contracting party; hence restoring to the plaintiff his chattels, or his land, of which the defendant has wrongfully dispossessed him, will not be any consideration to support a promise by the plaintiff not to sue him for those injuries. Bac. Abr. Accord, &c. A; Perk. s. 749; Dyer, 75; 5 East, R. 230; 1 Str. R. 426; 2 T. R. 24; 11 East, R. 390; 3 Hawks, R. 580; 2 Litt. R. 49; 1 Stew. R. 476; 5 Day, R. 360; 1 Root, R. 426; 3 Wend. R. 66; 1 Wend, R. 164; 14 Wend. R. 116; 3 J. J. Marsh. R. 497.

4. – 3. It must be certain; hence an agreement that the defendant shall relinquish the possession of a house in satisfaction, &c., is not valid, unless it is also agreed at what time it shall be relinquished. Yelv. 125. See 4 Mod. 88; 2 Johns. 342; 3 Lev. 189.

5. – 4. The defendant must be privy to the contract. If therefore the consideration for the promise not to sue proceeds from another, the defendant is a stranger to the agreement, and the circumstance that the promise has been made to him will be of no avail. Str. 592; 6, John. R. 37; 3 Monr. R. 302 but in such case equity will grant relief by injunction. 3 Monr. R. 302; 5 East, R. 294; 1 Smith's R. 615; Cro. Eliz. 641; 9 Co. 79, b; 3 Taunt. R. 117; 5 Co. 117, b.

6. – 5. The accord must be executed. 5 Johns. R. 386; 3 Johns. Cas. 243; 16 Johns. R. 86; 2 Wash. C. C. R. 180; 6 Wend. R. 390; 5 N. H. Rep. 136; Com. Dig. Accord, B 4.

7. Accord with satisfaction when completed has two effects; it is a payment of the debt; and it is a species of sale of the thing given by the debtor to the creditor, in satisfaction; but it differs from it in this, that it is not valid until the delivery of the article, and there is no warranty of the thing thus sold, except perhaps the title; for in

regard to this, it cannot be doubted, that if the debtor gave on an accord and satisfaction the goods of another, there would be no satisfaction. See Dation, en paiement.

See in general Com. Dig. h. t.; Bac. Ab. h. t.; Com. Dig. Pleader, 2 V 8; 5 East, R. 230; 4 Mod. 88 ; 1 Taunt. R. 428; 7 East, R. 150; 1 J. B. Moore, 358, 460; 2 Wils. R. 86; 6 Co. 43, b; 3 Chit. Com. Law, 687 to 698; Harr. Dig. h. t.; 1 W. Bl. 388; 2 T. R. 24; 2 Taunt. 141; 3 Taunt. 117; 5 B.& A. 886; 2 Chit. R. 303 324; 11 East, 890; 7 Price, 604; 2 Greenl. Ev. 28; 1 Bouv. Inst. n. 805; 3 Bouv. Inst. n. 2478-79-80-81. Vide Discharge of Obligations.

ACCOUCHEMENT. The act of giving birth to a child. It is frequently important to prove the filiation of an individual; this may be done in several ways. The fact of the accouchement may be proved by the direct testimony of one who was present, as a physician, a midwife, or other person. 1 Bouv. Inst. u. 314.

ACCOUNT, remedies. This is the name of a writ or action more properly called account render.

2. It is applicable to the, case of an unliquidated demand, against a person who is chargeable as bailiff or receiver. The use of it, is where the plaintiff wants an account and cannot give evidence of his right without it. 5 Taunt. 431 It is necessary. where the receipt was directed to a merchandising which makes all uncertainty of the nett remain, till the account is finished; or where a man is charged as bailiff, whereupon the certainty of his receipt appears not till account. Hob. 209.; See also 8 Cowen, R. 304; 9 Conn. R. 556; 2 Day, R. 28; Kirby, 164; 3 Gill & John. 388; 3 Verm. 485; 4 Watts, 420; 8 Cowen, 220. It is also the proper remedy by one partner against another. 15 S. & R. 153 3 Binn. 317; 10 S. & R. 220; 2 Conn. 425; 4 Verm. 137; 1 Dall. 340; 2 Watts 86.

3. The interlocutory judgment in this action is (quod computet) that the defendant render an account upon which judgment auditors are assigned to him to hear and report his account. (See I Lutwych, 47; 3 Leon. 149, for precedents) As the principal object of the action is to compel a settlement of the account in the first instance, special bail cannot be demanded, (2 Roll. Rep. 53; 2 Keble, 404,) nor are damagos awarded upon the first judgment, nor given except ratione interplacitationis, (Cro. Eliz. 83; 5 Binn. 664; 24 Ed. 3. 16; 18 Ed. 3. 55; Reg. Brev. 136 b,) although it is usual to conclude the count with a demand of damages. (Lib. Int. fo. 16. fo. 20; 1 Lutw. 51. 58; 2 H. 7. 13.) The reason assigned for this rule, is, that it may be the defendant will not be found in arrears after he has accounted, and the court cannot know until the settlement of the account whether the plaintiff has been endamaged or not. 7 H. 6. 38.

4. This action combines the properties of a legal and equitable action. The proceedings up to the judgment quod computet, and subsequent to the account reported by the auditors are conducted upon the principles of the common law. But the account is to be adjusted upon the most liberal principles of equity and, good faith. (Per Herle, Ch. J. 3 Ed. 3. 10.) The court it is said are judges of the action – the auditors of the account, Bro. Ab. Ace. 48, and both are judges of record, 4 H. 6. 17; Stat. West. 2. c. 11. This action has received extension in Pennsylvania. 1 Dall. 339, 340.

5. The fist judgment (quod computet) is enforeed by a capias ad computandum where defendant refuses to appear before the auditors, upon which he may be held to bail, or in default of bail be made to account in prison. The final judgment quod recuperet is enforeed by fi. fa. or such other process as the law allows for the recovery of debts.

6. If the defendant charged as bailiff is found in surplusage, no judgment oan be entered thereon to recover the amount so found in his favor against the plaintiff, but as the auditors are judges of record, he may bring an action of debt, or by some authorities a sci. fac. against the plaintiff, whereon he may have judgment and execution against the plaintiff. See Palm. 512; 2 Bulst. 277-8; 1 Leon. 219; 3 Keble Rep. 362; 1 Roll. Ab. 599, pl. 11; Bro. Ab. Acc. 62; 1 Roll. Rep. 87. See Bailiff, in account render.

7. In those states where they have courts of chancery, this action is nearly superseded by the better remedy which is given by a bill in equity, by which the complainant can elicit a discovery of the acts from the defendant under his oath, instead of relying merely on the evidence he may be able to produce. 9 John. R. 470; 1 Paige, R. 41; 2 Caines' Cas. Err. 38, 62; 1 J. J. Marsh. R. 82; Cooke, R. 420; 1 Yerg. R. 360; 2 John. Ch. R. 424; 10 John. R. 587; 2 Rand. R. 449; 1 Hen. & M9; 2 M'Cord's Ch. R. 469; 2 Leigh's R. 6.

8. Courts of equity have concurrent jurisdiction in matters of account with courts of law, and sometimes exclusive jurisdiction at least in some respects: For example; if a plaintiff be entitled to an account, a court of equity will restrain the defendant from proceeding in a claim, the correctness of which cannot be ascertained until the account be taken; but not where the subject is a matter of set-off. 1 Sch. & Lef. 309; Eden on Injunct. 23, 24.

9. When an account has voluntarily been stated between parties, an action of assumpsit may be maintained thereon. 3 Bl. Com. 162; 8 Com. Dig. 7; 1 Com. Dig. 180; 2 Ib. 468; 1 Vin. Ab. 135; Bac. Ab. h. t.; Doct. Pl. 26; Yelv. 202; 1 Supp. to Ves. Jr, 117; 2 Ib. 48, 136. Vide 1 Binn. R. 191; 4 Dall. R. 434; Whart. Dig. h. t. ; 3 Wils.

73, 94; 8 D.& R. 596; Bull. N. P. 128; 5 Taunt. 431; U. S. Dig. h. t.; 2 Greenl. Ev. 34-39.

ACCOUNT, practice. A statement of the receipts and payments of an executor, administrator, or other trustee, of the estate confided to him.

2. Every one who administers the affairs of another is required at the end of his administration to render an account of his management of the same. Trustees of every description can, in general, be compelled by courts of chancery to settle accounts, or otherwise fully execute their trusts. Where there are no courts of chancery, the courts of common law are usually invested with power for the same purposes by acts of legislation. When a party has had the property of another as his agent, he may be compelled at common law to account by an action of account render.

3. An account is also the statement of two merchants or others who have dealt together, showing the debits and credits between them.

ACCOUNT-BOOK. A book kept by a merchant, trader, mechanic, or other person, in which are entered from time to time the transactions of his trade or business. Vide Books; Entry; Original entry.

ACCOUNT CURRENT. A running or open account between two persons.

ACCOUNT IN BANK, com. law. 1: A fund which merchants, traders and others have deposited into the common cash of some bank, to be drawn out by checks from time to time as the owner or depositor may require. 2. The statement of the amount deposited and drawn, which is kept in duplicate, one in the depositor's bank book, and the other in the books of the bank.

ACCOUNT STATED. The settlement of an account between the parties, by which a balance is struck in favor of one of them, is called an account stated.

2. An acknowledgnaent of a single item of debt due from the defendant to the plaintiff is sufficient to support a count on an account stated. 13 East, 249; 5 M.& S. 65.

3. It is proposed to consider, 1st, by whom an account may, be stated; 2d, the manner of stating the account; 3d, the declaration upon such, an account; 4th, the evidence.

4. 1. An account may be stated by a man and his wife of the one part, and a third person; and unless there is an express promise to pay by the hushand, Foster v. Allanson, 2 T. R. 483, the action must be brought against hushand and wife. Drue v. Thorne, Aleyn, 72. A plaintiff cannot recover against a defendant upon an account

stated by him, partly as administrator and partly in his own private capacity. Herrenden v. Palmer, Hob. 88. Persons wanting a legal capacity to make a contract cannot, in general, state an account; as infants, Truman v. Hurst, 1 T. R. 40; and persons non compos mentis.

5. A plaintiff may recover on an account stated with the defendant, including debts due from the defendant alone, and from the defendant and a deceased partner jointly. Riebards v. Heather, 1 B.& A. 29, and see Peake's Ev. 257. A settlement between partners, and striking a balance, will enable a plaintiff to maintain an action on such stated account for the balance due him, Ozeas v. Johnson, 4 Dall. 434; S. C. 1 Binn. 191; S. P. Andrews v. Allen, 9 S. & R. 241; and see Lamelere v Caze, 1 W. C.C.R. 435.

6. – 2. It is sufficient, although the account be stated of that which is due to the plaintiff only without making any deduction for any counter-claim for the defendant, Styart v. Rowland, 1 Show. 215. It is not essential that there should be cross demands between the parties or that the defendant's acknowledgment that a certain sum was due from him to the plaintiff, should relate to more than a single debt, or transaction. 6 Maule & Selw. 65; Knowles et al. 13 East, 249. The acknowledgment by the defendant that a certain sum is due, creates an implied promise to pay the amount. Milward v. Ingraham, 2 Mod. 44; Foster v. Allanson, 2 T. R. 480.

7. – 3. A count on an account stated is almost invariably inserted in declarations in assumpsit for the recovery of a pecuniary demand. See form, 1 Chit. PI. 336. It is advisable, generally, to insert such a count, Milward, v. Ingraham, 2 Mod. 44; Trueman v. Hurst, 1 T. R. 42; unless the action be against persons who are incapable in law to state an account. It is not necessary to set forth the subject-matter of the original debt, Milward v. Ingraham, 2 Mod. 44; nor is the sum alleged to be due material. Rolls v. Barnes, 1 Bla. Rep. 65; S. C. 1 Burr. 9.

8. – 4. The count upon an account stated, is supported by evidence of an acknowledgment on the part of the defendant of money due to the plaintiff, upon an account between them. But the sum must have been stated between the parties; it is not sufficient that the balance may be deduced from partnership books. Andrews v. Allen, 9 S.&. R. 241. It is unnecessary to prove the items of which the account consists; it is sufficient to prove some existing antecedent debt or demand between the parties respecting which an account was stated, 5 Moore, 105; 4 B.& C. 235, 242; 6 D.& R. 306; and that a balance was struck and agreed upon; Bartlet v. Emery, 1 T. R. 42, n; for the stating of the account is the consideration of the promise. Bull. N. P. 129. An account stated does not alter the original debt; Aleyn, 72; and it seemsnot to be conclusive against the party admitting the balance against him. 1 T. R. 42. He would probably be allowed to show a gross error or mistake iu the account, if he could

adduce clear evidence to that effect. See 1 Esp. R. 159. And see generally tit. Partner's; Chit. Contr. 197; Stark. Ev. 123; 1 Chit. Pl. 343.

9. In courts of equity when a bill for an account has been filed, it is a good defence that the parties have already in writing stated and adjusted the items of the account, and struck a balance; for then an action lies it law, and there is no ground for the interference of a court of equity. 1 Atk. 1; 2 Freem. 62; 4 Cranch, 306; 11 Wheat. 237; 9 Ves. 265; 2 Bro. Ch. R. 310; 3 Bro. Ch. R. 266; 1 Cox, 435.

10. But if there has been any mistake, ommision, fraud, or undue advantage, by which the account stated is in fact vitiated, and the balance incorrectly fixed, a court of equity will open it, and allow it to be re-examined; and where there has been gross fraud it will direct the whole account to be opened, and examined de novo. Fonbl. Eq. b. 1, c. 1 3, note (f); 1 John. Ch. R. 550.

11. Sometimes the court will allow the account to stand, with liberty to the plaintiff to surcharge and falsify it; the effect of this is, to leave the account in full force and vigor, as a stated account, except so far as it can be impugned by the opposing party. 2 Ves. 565; 11 Wheat. 237. See Falsification; Surcharge.

ACCOUNT OF SALES. comm. law. An account delivered by one merchant or tradesman to another, or by a factor to his principal, of the disposal, charges, commissions and net proceeds of certain merchandise consigned to such merchant, tradesman or factor, to be sold.

ACCOUNTANT. This word has several significations: 1. One who is versed in accounts; 2. A person or officer appointed to keep the accounts of a public company; 3. He who renders to another or to a court a just and detailed statement of the administration of property which he holds as trustee, executor, admnistrator or guardian. Vide 16 Vin. Ab. 155.

ACCOUPLE. To accouple is to marry. See Ne unquas accouple.

TO ACCREDIT, international law. The act by which a diplomatic agent is acknowledged by the government near which he is sent. This at once makes his public character known, and becomes his protection.

ACCRETION. The increase of land by the washing of the seas or rivers. Hale, De Jure Maris, 14. Vide Alluvion; Avulsion.

TO ACCRUE. Literally to grow to; as the interest accrues on the principal. Accruing costs are those which become due and are created after judgment of an execution.

2. – To accrue means also to arise, to happen, to come to pass; as the statute of limitations does not commence running until the cause of action has accrued. 1 Bouv. Inst. n. 861; 2 Rawle, 277; 10 Watts, 363; Bac. Abr. Limitation of Actions, D 3.

ACCUMULATIVE JUDGMENT. A second or additional judgment given against one, who has been convicted, the execution or effect of which is to commence after the first has expired; as, where a man is sentenced to an imprisonment for six months on conviction of larceny, and, afterwards he is convicted of burglary, he may be sentenced to undergo an imprisonment for the latter crime, to commence after the expiration of the first imprisonment; this is called an accumulative jufgment.

ACCUSED. One who is charged with a crime or misdemeanor.

ACCUSATION, crim. law. A charge made to a competent officer against one who has committed a crime or misdemeanor, so that he may be brought to justice and punishment.

2. A neglect to accuse may in some cases be consicleied a misdemeanor, or misprision. (q. v.) 1 Bro. Civ. Law, 247; 2 Id. 389; Inst. lib. 4, tit. 18.

3. It is a rule that no man is bound to accuse himself, or to testify against himself in a criminal case. Accusare nemo se debet nisi coram Deo. Vide Evidence; Interest; Witness.

ACCUSER. One who makes an accusation.

ACHAT. This French word signifies a purchase. It is used in some of our law books, as well as achetor, a purchaser, which in some ancient statutes means purveyor. Stat. 36 Edw. III.

ACHERSET, obsolete. An ancient English measure of grain, supposed to be the same with their quarter or eight bushels.

ACKNOWLEDGMENT, conveyancing. The act of the grantor going before a competent officer, and declaring the instrument to be his act or deed, and desiring the same to be recorded as such. The certificate of the officer on the instrument, that such a declaration has been made to him, is also called an acknowledgment. The acknowledgment or due proof of the instrument by witnesses, must be made before it can be put upon record.

2. Below will be found the law of the several states relating to the officer before whom the acknowledgment must be made. Justice requires that credit should be here

givem for the valuable information which has been derived on this subject from Mr. Hilliard's Abridgment of the American Law of Real Property, and from. Griffith's Register. Much valuable information has also been received on this subject from the correspondents of the author.

3. Alabama. Before one of the judges of the superior court, or any one of the justices of the county court; Act of March 3, 1803; or before any one of the superior judges or justices of the quorum of the territory (state); Act of Dec. 12, 1812; or before the clerks of the circuit and county courts, within their respective counties; Act of Nov. 21, 1818; or any two justices of the peace; Act of Dee. 17, 1819; or clerks of the circuit. courts, for deeds conveying lands anywhere in the state; Act of January 6, 1831; or before any notary public, Id, sec. 2; or before one justice of the peace; Act of January 5, 1836; or before the clerks of the county courts; Act of Feb. 1, 1839; See Aiken's Dig. 88, 89, 90, 91, 616; Meek's Suppl. 86.

4. When the acknowledgment is out of the state, in one of the United States or territories thereof, it may be made before the chief justice or any associate judge of the supreme court of the United States, or any judge or or justice of the superior court of any state, or territory in the Union. Aiken's Dig. 89.

5. When it is made out of the United States, it may be made before and certified by any court of law, mayor or other chief magistrate of any city, borough or corporation of the kingdom, state, nation, or colony, where it is made. Act of March 3,1803.

6. When a feme covert is a grantor, the officer must certify that she was examined "separately and apart from her said hushand and that on such private examination, she acknowledged that she signed, sealed and delivered the deed as her voluntary act and deed, freely and without any threat, fear, or compulsion, of her said hushand."

7. Arkansas. The proof or acknowledgment of every deed or instrument of writing for the conveyance of real estate, shall be taken by some one of the following courts or officers: 1. When acknowledged or proven within this state, before the supreme court, the circuit court, or either of the judges thereof, or of the clerk of either of the said courts, or before the county court, or the judge thereof, or before an justice of the peace or notary public.

8. – 2. When acknowledged or proven without this state, and within the United States or their territories, before any court of the United States, or of any state or territory having a seal, or the clerk of any such court, or before the mayor of any city or town, or the chief officer of any city or town having a seal of office.

9. – 3.When acknowledged or proven without the United States, before any court of any state, kingdom or empire having a seal, or any mayor or chief officer of any city. or town having an official seal, or before any, officer of any foreign country, who by the laws of such country, is authorized to take probate of the conveyance of real estate of his own country, if such officer has by law an official seal.

10. The conveyance of any real estate by any married woman, or the relinquishment of her dower in any of her hushand's real estate, shall be authenticated, and the title passed, by such married woman voluntarily appearing before the proper court or officer, and, in the absence of her hushand, declaring that she had of her own free will executed the deed or instrument in question, or that she had signed and sealed the relinquishment of dower for the purposes therein contained and set forth, without any compulsion or undue influence of her hushand. Act of Nov. 30, 1837, s. 13, 21; Rev. Stat. 190, 191.

11. In cases of ackkowledgment or proof of deeds or conveyances of real estate taken within the United States or territories thereof, when taken before a court or officer, having a seal of office, such deed or conveyance shall be attested under such seal of office; and if such officer have no seal of office, then under the official signature of such officer, Idem, s. 14; Rev. Stat. 190.

12. In all cases of deeds, and conveyances proven or acknowledged without the United States or their territories, such acknowledgment or proof must be attested under the official seal of the court or officer before whom such probate is had. Idem, s. 15.

13. Every court or officer that shall take the proof or acknowledgment of any deed or conveyance of real estate, or the relinquishment of dower of any married woman in any conveyance of the estate of her hushand, shall grant a certificate thereof, and cause such certificate to be endorsed on the said deed, instrument, conveyance or relinquishment of dower, which certificate shall be signed by the clerk of the court where the probate is taken in court, or by the officer before whom the same is taken and sealed, if he have a seal of office. Idem, s. 16.

14. Connecticut. In this state, deeds must be acknowledged before a judge of the supreme or district court of the United States, or the supreme or superior court, or court of common pleas or county court of this state, or a notary public.

15. When the acknowledgment is made in another state or territory of the United States, it must be before some officer or commisioner having power to take acknowledgments there.

16. When made out of the United States before a resident American consul, a justice of the peace, or notary public, no different form is used, and no different examination of a feme covert from others. See Act of 1828; Act of 1833; 1 Hill. Ab. c. 34, s. 82.

17. Delaware. Before the supreme court, or the court of common pleas of any county, or a judge of either court, or the chancellor, or two justices of the peace of the same county.

18. The certificate of an acknowledgment in court must be under the seal of the court.

19. A feme covert may also make her acknowledgment before the same officers, who are to examine her separately from her hushand.

20. An acknowledgment out of the state, may be made before a judge of any court of the United States, the chancellor or judge of a court of record, of the said court itself, or the chief officer of a city or borough, the certificate to be under the official seal; if by a judge, the seal to be affixed to his certificate, or to that of the clerk or keeper of the seal. Commissioners appointed in other states may also take acknowledgments. 2 Hill. Ab. 441 ; Griff. Reg. h. t.

21. Florida. Deeds and mortgages must be acknowledged within the state before the officer authorized by law to record the same, or before some judicial officers of this state. Out of the state, but within some other state or territory of the United States, before a commissioner of Florida, appointed under the act passed January 24, 1831; and where there is no commissioner, or heis unable to attend) before the chief justice, judge, presiding judge, or president of any court of record of the United States or of any state or territory thereof having a seal and a clerk or prothonotary. The certificate must show, first, that the acknowledgment was taken within the territorial jurisdiction of the officer; secondly, the court of which he is such officer. And it must be accompanied by the certificate of the clerk or prothonotary of the court of which he is judge, justice or president, under the seal of said court that he is duly appointed and authorized as such. Out of the United States. If in Europe, or in North or South America, before. any minister plenipotentiary, or minister extraordinary, or any cbarge d'affaires, or consul of the United States, resident or accredited there. If in any part of Great Britain and Ireland, or the dominions thereeunto belonging, before the consul of the United States, resident or accredited therein, or before the mayor or other chief magistrate of London, Bristol, Liverpool, Dublin or Edinburgh, the certificate to be under the hand and seal of the officer.In any other place out of the United States, where there is no public minister, consul or vice consul, commercial agent or vice commercial agent of the United States, before two subscribing witnesses and officers of such place, and the identity of such civil officer and credibility, shall

be certified by a consul or vice consulof the United States, of the government of which such place is a part.

22. The certificate of acknowledgmeut of a married, woman must state that she was examined apart from her hushand, that she executed such deeds, &c., freely and without any fear or compulsion of her hushand.

23. Georgia. Deeds of conveyance of land in the state must be executed in the preseace of two witnesses, and proved before a justice of the peace, a justice of the inferior court, or one of the judges of the superior courts.If executed in the presence of one witness and a magistrate, no probate is required. Prince's Dig. 162; 1 Laws of Geo. 115.

24. When out of the state, but in the United States, they may be proved by affidavit of one or more of the witnesses thereto, before any governor, chief justice, mayor, or other justice, of either of the United States, and certified accordingly, and transmitted under the common or public seal of the state, court, city or place, where the same is taken. The affidavit must express the place of the affidant's abode. Idem.

25. There is no state law, directing how the acknowledgment shall be made when it is made out of the United States.

26. By an act of the legislature passed in 1826, the widow is barred, of her dower in all lands of her deceased hushand, that he aliens or conveys away during the coverture, except such lands as he acquired by his intermarriage with his wife; So that no relinquishment of dower by the wife is necessary, unless the lands came to her hushand by her. Prince's Dig.249; 4 Laws of Geo. 217. The magistrate should certify that the wife did declare that freely, and without compulsion, she signed, sealed and delivered the instrument of writing between the parties, naming them and that she did renounce all title or claim to dower that she might claim or be entitled to after death of her hushand, (naming him.) 1 Laws of. Geo. 112; Prince's Dig. 160.

27. Indiana. Before the recorder of the county in which the lands may, be situate, or one of the judges of the supreme court of this state, or before one of the judges of the circuitcourt, or some justice of the peace of the county within which the estate may be situate, before notaries public, or before probate judges. Ind. Rev. Stat. c. 44, s. 7; Id. eh. 74; Act of Feb. 24, 1840.

28. All deeds and conveyances made and executed by any person without this state and brought within it to be recorded, the acknowledgment having been lawfully made before any judge or justice of the peace of the proper county in which such deed may have been made and executed, and certified under the seal of such county by the

proper officer, shall be valid and effectual in law. Rev. Code, c. 44, s. 11 App. Jan. 24, 1831.

29. When ackkowledged by a feme covert, it must be certified that she was examined separate and apart from her hushand; that the full contents of the deed were made known to her; that she did then and there declare that she had, as her own voluntary act and deed, signed, sealed and executed the said deed of her own free will and accord, without any fear or compulsion from her said hushand.

30. Illinois. Before a judge or justice of the supreme or districtcourts of the United States, a commissioner authorized to take acknowledgments, a judge or justice of the supreme, superior or district court of any of the United States or territories, a justice of the peace, the clerk of a court of record, mayor of a city, or notary public; the last three shall give a certificate under their official seal.

31. The certificate must state that the party is known to the officer, or that his identity has been proved by a credible witness, naming him. When the acknowledgment is taken by a justice of the peace of the state, residing in the county where the lands lie, no other certificate is required than his own; when heresides in another county, there shall be a certificate of the clerk of the county commissioners court of the proper county, under seal, to his official capacity.

32. When the justice of the peace taking the acknowledgment resides out of the state, there shall be added to the deed a certificate of the proper clerk, that the person officiating is a justice of the peace.

33. The deed of a feme covert is acknowledged before the same officers. The certificate must state that she is known to the officer, or that. her identity has been proved by a witness who must be named; that the officer informed her of the contents of the deed; that she was separately examined; that she acknowledged the execution and release to be made freely, voluntarily, and without the compulsion of her hushand.

34. When the hushand and wife reside in the state, and the latter is over eighteen years of age, she may convey her lands, with formalities substanially the same as those used in a release of dower; she acknowledges the instrument to be her act and deed, and that she does not wish to retract.

35. When she resides out of the state, if over eighteen, she may join her hushand in any writing relating to lands in the state, in which case her acknowledgmeut is the same as if she were a feme sole. Ill. Rev. L. 135-8; 2 Hill Ab. 455, 6.

36. Kentucky. Acknowledgments taken in the State must be before the clerk of a county court, clerk of the general court, or clerk of the court of appeals. 4 Litt. L. of K. 165 ; or before two justices of the peace, 1 Litt. L. of K. 152.; or before the mayor of the city of Louisville. Acts of 1828, p. 219, s. 12.

37. When in another state or territory of the United States, before two justices of the peace, 1 Litt. L. of K. 152; or before any court of law, mayor, or other chief magistrate of any city, town or corporation of the county where the grantorsdwell, Id. 567; or before any justice or judge of a superior or inferior court of law. Acts of 1831, p. 128.

38. When made out of the United States, before a mayor of a city, or consul of the U. S. residing there' or, before the chief, magistrate of such state or country, to be authenticated in the usual manner such officers authenticate the official act's. Acts of 1831, p. 128, s. 5.

39. When a feme covert acknowledges the deed, the certificate must state that she was examined by the officer separate and apart from her hushand, that she declared that she did freely and willingly seal and deliver the said writing, and wishes not to retract it, and acknowledged the said writing again shown and explained to her, to be her act and deed, and consents that the same may be recorded.

40. Maine. Before a justice of the peace in this state, or any justice of the peace, magistrate, or notary public, within the United States, or any commissioner appointed for that purpose by the governor of this state, or before any minister or cousul of the United States, or notary public in any foreign country. Rev. St. t. 7, c. 91, 7; 6 Pick. 86.

41. No peculiar form for the certificate of acknowledgment is prescribed; it is required that the hushand join in the deed. "The joint deed of hushand and wife shall be effectual to convey her real estate, but not to bind her to any covenant or estoppel therein." Rev. St. t. 7, c. 91, 5.

42. Maryland. Before two justices of the peace of the county where the lands lie, or where the grantor lives, or before a judge of the county court of the former county, or the mayor of Annapolis for Anne Arundel county. When the acknowledgment is made in another county than that in which the lands are situated, an in which the party Eves, the clerk of the court must certify under the court seal, the official capacity of the acting justices or judge.

43. When the grantor resides out of the state, a commission issues on, application of the purchaser, and with the written consent of the grantor, from the clerk of the county

court where the landlies, to two or more commissioners at the grantee's residence; any two of whom may take the acknowledgment, and shall certify it under seal and return the commission to be recorded with the deed; or the grantor may empower an attorney in the state to acknowledge for him, the power to be incorporated in the deed, or annexed to it, and proved by a subscribing witness before the county court, or two justices of the peace where the land lies, or a district judge, or the governor or a mayor, notary public, court or judge thereof, of the place where it is. executed; in each case the certificate to be under an official seal. By the acts of 1825, c. 58, and 1830, c. 164 the acknowledgment in another state may be before a judge of the U. S. or a judge of a court of record of the state. and county where the grantor may be the clerk to certify under seal, the official character of the magristrate.

44. By the act of 1837, c. 97, commissioners may be appointed by authority of the state, who shall reside in the other states or territories of the United States who shall be authorized to take acknowledgment of deeds. The act of 1831, c. 205, requires that the officer shall certify knowledge of the parties.

45. The acknowledgment of a feme covert must be made separate and apart from her hushand. 2 Hill. Ab. 442; Griff. Reg. h. t. See also, 7 Gill & J. 480; 2 Gill. & J. 173 6 Harr. & J. 336; 3 Harr. & J.371 ; 1 Harr. & J. 178; 4 Harr. & M'H. 222.

46. Massachusetts. Before a justice of the peace or magistrate out of the state. It has been held that an American consul at a foreign port, is a magistrate. 13 Pick. R. 523. An acknowledgment by one of two grantors has been held, sufficient to authorize the registration of a deed; and a wife need not, therefore, acknowledge the conveyance when she joins with her hushand. 2 Hill. Ab. c. 34, s. 45.

47. Michigan. Before a judge of a court of record, notary public, justice of the peace, or master in chan cery; and in case of the death of the grantor, or his departure from the state, it may be proved by one of the subscribing witnesses before any court of record in the state. Rev. St. 208 Laws of 1840, p. 166.

48. When, the deed is acknowledged out of the state of Michigan, but in the United States, or an of the territories of the U. S., it is to be acknowledged according to the laws of such state or territory, with a certificate of the proper county clerk, under his seal of office, that such deed is executed according to the laws of such state or territory, attached thereto.

49. When acknowledged in a foreign country, it may be executed according to the laws of such foreign country, but, it must in such. case, be acknowledged before a minister plenipotentiary , consul, or charge d'affaires of the United States and the

acknowledgment must be certified by the officer before whom the same was taken. Laws of 1840, p. 166, sec. 2 and 3.

50. When the acknowledgment is made by a feme covert, the certificate must state that on a private examination of such feme' covert, separate and apart from her hushand, she acknowledged that she executed the deed without fear or compulsion from any one. Laws of 1840, p. 167, sec. 4.

51. Mississippi. When in the state, deeds may be acknowledged, or proved by one or more of the subscribing witnesses to them, before any judge of the high court of errors and appeals, or a judge of the circuit courts, or judge of probate, and certified by such judge; or before any notary public, or clerk of any court of record. in this state, and certified by such notary or clerk under the seal of his office; How. & Hutch. c. 34, s. 99, p. 868, Law of .1833 ; or before any justice of that county, where the land, or any part thereof, is situated; Ib. p. 343, s. 1 , Law of 1822; or before any, member of the board of police, in his respective county. Ib. p. 445, c. 38, s. 50, Law of 1838.

52. When in another state or territory of the United States, such deeds must be acknowledged, or proved as aforesaid, before a judge of the supreme court or of the district courts of the United States, or before any judge of the supreme or superior court of any state or territory in the Union; How. & Hutch. 846) c. 34, s. 13, Law of 1832; or before and certified by any judge of any inferior or county court of record, or before any justice of the peace of the state or territory and county, wherein such person or witness or witnesses may then be or reside, and authenticated by the certificate of the clerk or register of the superior county or circuit court of such county, with a seal of his office thereto affixed; or if taken before or certified by a justice of the peace, shall be authenticated by the certificate of either the clerk of the Said inferior or county court of record of such county, with the seal of his office thereto affixed. Laws of Mississippi, Jan. 27, 1841, p. 132.

53. When out of the United States, such acknowledgment, or proof as, afore said, must be made before an court of law, or mayor, or other chief magistrate of any city, borough or corporation of such foreign kingdom, state, nation, or colony, in which the said parties or witnesses reside; certified by the court, mayor, or chief magistrate, in a manner such acts are usually authenticated by him. How. & Hutch, 346, c. 34, s. 14, Law of 1822.

54. When made by a feme covert, the certificate must state that she made previous acknowledgment, on a private examination, apart from her hushand before the proper officer, that she sealed and delivered the same as her act and deed, freely, without any fear, threat or compulsion of her hushand. How. & Hutch. 347, c. 34, s. 19, Law of 1822.

55. Missouri. In the state, before some court having a seal, or some judge, justice or clerk thereof, or a justice of the peace in the county where the land lies. Rev. Code, 1835, 8, p. 120.

56. Out of the state, but in the United States, before any court of the United States, or of any state or territory, having a seal, or the clerk thereof. Id. cl. 2.

57. Out of the United States, before any court of any state, kingdom or empire having a seal, or the mayor of any city having an official seal.

58. Every court or officer taking the acknowledgment of such instrument or relinquishment of dower or the deed of the wife of the hushand's land, shall endorse a certificate thereof upon the instrument; when made before a court, the certificate shall beunder its seal; if by a clerk, under his band and the seal of the court; when before an officer having an official seal, under his hand and seal; when by an officer having no seal, under his hand. The certificate must state thatthe party was personally known to the judge or other officer as the signer, or proved to be such by two credible witnesses. Misso. St. 120-122 ; 2 Hill. Ab. 453; Griff. h. t.

59. When the acknowledgment is made by a feme covert, releasing her dower, the certificate must statethat she is personally known to a judge of the court, or the officer before whom the deed is acknowledged, or that, her identity was proved by two credible witnesses; it must also state that she was informed of the contents of the deed; that it was acknowledged separate and apart from her hushand; that she releases her dower freely without compulsion or undue conveyance of her own lands, the acknowledgment may be made before any court authorized to take acknowledgments. It must be done as in the cases of release of dower, and have a similar certificate. Ib.

60. New Hampshire. Before a justice of the peace or a notary public; and the acknowledgment of a deed before a notary public in another state is good. 2 N. H. Rep. 420 2 Hill. Ab. c. 34, s. 61.

61. New Jersey. In the state, before the chancellor, a justice of the supreme court of this state, a master in chancery, or a judge of any inferior court of common pleas, whether in the same or a different county; Rev. Laws, 458, Act of June 7, 1799 ; or before a commissioner for taking the acknowledgments or proofs of deeds, two of whom are appointed by the legislature in each township, who are authorized to take acknowledgments or proofs of deeds in any part of the state. Rev. Laws, 748, Act of June 5, 1820.

62. In another state or territory of the United States, before a judge of the supreme court of the United States, or a district judge of the United States, or any judge or

justice of the supreme or superior court of any state in the Union; Rev. Laws, 459, Act of June 7, 1799; or before a mayor or other chief magistrate of any city in any other state or territory of the U. S., and duly certified under the seal of such city; or before a judge of any, superior court, or court of common pleas of any state or territory; when, taken before a judge of a court of common pleas, it must be accompanied by a certificate under the great seal of the state, or the seal of the county court in which it is made, that he is such officer; Rev. Laws, 747, Act of June 5, 1820; or before a commissioner appointed by the overnor, who resides in such state; Harr. Comp. 158, Act of December 27, 1826; two of whom may be appointed for each of the States of New York and Pennsylvania. Elmer's Dig. Act of Nov. 3, 1836.

63. When made out of the United States, the acknowledgment may be before any court of law, or mayor, – or other magistrate, of any city, borough or corporation of a foreign kingdom, state, nation or colony, in which the party or hiswitnesses reside, certified by the said court, mayor, or chief magistrate, in the manner in which such acts are usually authenticated by him. Rev. Laws, 459, Act of June 7, 1799. The certificate. in all cases must state that the officer who makes it, first made known the contents of the deed to the person making the acknowledgment, and that he was satisfied such person was the grantor mentioned in the deed.Rev. Laws, 749, Act of June 5, 1820.

64. When the acknowledgment is made by a feme covert, the certificate must state that on a private examination, apart from her hushand, before a proper officer, (ut supra,) she acknowledged that she signed, sealed, and delivered the deed, as her voluntary act and deed, freely, without any fear, threats or compulsion of her hushand. Rev. Laws, 459, Act of June 7, 1799..

65. New York. Before the chancellor or justice of the supreme court, circuit judge, supreme court commissioner, judge of the county court, mayor or recorder of a city, or, commissioner of deeds; a couuty judge or commissioner of deeds for a city or county, not to act out of the same.

66. When the party resides in another state, before a judge of the United States, or a judge or justice of the supreme, superior or circuit court of any state or territory of the United States, Within his own jurisdiction. By a statute passed in 1840, chap. 290, the governor is authorized to appoint commissioners in other states, to take the acknowledgment and proof of deeds and other instruments.

67. When the party is in Europe or other parts of America, before a resident minister or charge d'affaires of the United States; in France, before the United States consul at Paris; in Russia, before the same officer at St. Petershurg; in the British dominions, before the Lord Mayor of London, the chief magistrate of Dublin, Edinburgh, or

Liverpool, or the United States consul at London. The certificate to be uuder the hand and official seal of such officer. It may also be made before any person specially authorized by the court of chancery of this state.

68. The officer must in all cases be satisfied of the identity of the party, either from his own knowledge or from the oath or affirmation of a witness, who is to be named in the certificate.

69. A feme covert must be privately examined; but if out of the state this is unnecessary. 2 Hill. Ab. 434; Griff. Reg. h. t.

70. By the act passed April 7, 1848, it is provided, that: 1. The proof or acknowledgment of auy deed or other written, instrument required to be proved or acknowledged, inorder to entitle the same to be recorded or read in evidence, when made by any person residing out of this state and within any other state or territory of the United States, may be made before any officer of such state or territory, authorized by the laws thereof to take the proof and acknowdgment of deeds and when so taken and certified as by the act is provided, shall be entitled to be recorded in any county in this state, and may be read in evidence in any court iu this state, in the sae manner and with like effect, as proofs and acknowledgments taken before auy of the officers now authorized by law to take such proofs and acknowledgments: Provided that no such acknowledgment shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in, and who executed the deed or instrument.

71. – 2. To entitle any conveyance or other written instrument acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined to the certificate of proof or acknowledgment, signed by such officer, a certificate under the name and official seal of the clerk or register of the county in which such officer resides, specifying that such officer was at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such clerk or register is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof and acknowledgment, is genuine.

72. North Carolina. The acknowledgment or proof of deeds for the conveyance of lands, when taken or made in the state, must be before one of the judges of the supreme court, or superior court, or in the court of the county where the land lieth. 1 ltev. Stat. c. 37, s.. 1.

73. When in another state or territory of the United States, or the District of Columbia, the deed must be acknowledged, or proved, before some one of the judges of the superior courts of law, orcircuit courts of law of superior jurisdiction, within the said

state, &c., with a certificate of the governor of the said state or territory, or of the secretary of state of the United States, when in the District of Columbia, of the official character of the judge; or before a commissioner appointed by the governor of this state according to law. 1 Rev. Stat. c. 37, s. 5.

74. When out of the United States, the deeds must be acknowledged, or proved, before the chief magistrate of some city, town, or corporation of the countries where the said deeds were executed; or before some ambassador, publio minister, consul, or commercial agent, with proper certificate under their official seals; 1 Rev. Stat. c. 37 s. 6. and 7; or before a commissioner in such foreign country, under a commission from the county court where the land lieth. See. 8.

75. When acknowledged by a feme covert, the certificate must state that she was privily examined by the proper officer, that she acknowledged the due execution of the deed, and declared that she executed the same freely, voluntarily, and without the fear or compulsion of her hushand, or any other person, and, that she then assented thereto. When she is resident of another county, or so infirm that she cannot travel to the judge, or county court, the deed may be acknowledged by the hushand, or proved by witnesses, and a commission in a prescribed form may be issued for taking the examination of the wife. 1 Rev. Stat. c. 37, s. 6, 8, 9, 10, 11, 13, and 14.

76. Ohio. In the state, deeds and other instruments affecting lands must be acknowledged before a judge of the supreme court, a judge of the court of common pleas, a justice of the peace, notary public, mayor, or other presiding officer of an incorporated town or city. Ohio Stat. vol. 29, p. 346, Act of February 22, 1831, which went in force June 1, 1831 Swan's Coll. L. 266, s. 1.

77. When made out of the state, whether in another state or territory, or out of the U. S., they must be acknowledged, or proved, according to the laws of the state, territory or country, where they are executed, or according to the laws of the state of Ohio. Swan's Coll. L. 265, 8. 5.

78. When made by a feme covert, the certificate must state that she was examined by the officer, separate and apart from her hushand, and the contents of the deed were fully made known to her; that she did declare upon such separate examination, that she voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

79. Pennsylvania. Before a judge of the supreme court, or of the courts of common pleas, the district courts, or before any mayor or alderman, or justice of the peace of the commonwealth, or before the recorder of the city of PhLiladelphia.

80. When made out of the state, and within the United States, the acknowledgment may be before one of the judges of the supreme or district courts of the United States, or before an one of the judges or justices of the supreme or superior courts, or courts of common pleas of any state or territory within the United States; and so certified under the hand of the said judge, and the seal of the court. Conmmissioners appointed by the governor, residing in either of the United States or of the District of Columbia, are also authorized to take acknowledgment of deeds.

81. When made out of the United States, the acknowledgment may, be made before any consul or vice-consul of the United States, duly appointed for and exercising consular functions in the state, kingdom, country or place where such an acknowledgment may be made, and certified under the public or official seal of such consul or vice-consul of the United States. Act of January 16, 1827. By the act May 27th, 1715, s. 4, deeds made out of the province [state] may be proved by the oath or solemn affirmation of one or more of the witnesses thereunto, before one or more of the justices of the peace of this province [state], or before any mayor or chief magistrate or officer of the cities, towns or places, where such deed or conveyances are so proved. The proof must be certified by the officer under the common or public seal of the cities, towns, or places where such conveyances are so proved. But by construction it is now established that a deed acknowledged before such officer is valid, although the act declares it shall be proved. 1 Pet. R. 433.

82. The certificate of the acknowledgment of a feme covert must state, 1, that she is of full age; 2, that the contents of the instrument have been made known to her; 3, that she has been examined separate and apart from her hushand; and, 4, that she executed the deed of her own free will and accord, without any coercion or compulsion of her hushand. It is the constant practice of making the certificate, under seal, though if it be merely under the hand of the officer, it will be sufficient. Act of Feb. 19, 1835.

83. By the act of the 16th day of April, 1840, entitled. "An act incorporating the Ebenezer Methodist Episcopal congregation for the borough of Reading, and for other purposes," Pamph. Laws, 357, 361, it is provided by 15, "That any and every grant, bargain and sale, release, or other deed of conveyance or assurance of any lands, tenements, or hereditaments in this commonwealth, heretofore bona fide made, executed and delivered by hushand and wife within any other of the United States, where the acknowledgmentof the execution thereof has been taken, and certified by any officer or officers in any of the states where made and executed, who, was, or were authorized by the laws of such state to take and certify the acknowledgment of deeds of conveyance of lands therein, shall be deemed and adjudged to be as good, valid and effectual in law for transferring, passing and conveying the estate, right, title and interest of such hushand and wife of, in, and to the lands; tenements and hereditaments therein mentioned, and be in like manner entitled to be recorded, as if

the acknowledgment of the execution of the same deed had been in the same and like way, manner and form taken and certified by any judge, alderman, or justice of the peace, of and within this commonwealth. 16. That no grant, bargain and sale, feoffment, deed of conveyance, lease, release, assignment, or other assurance of any lands, tenements and hereditaments whatsoever, heretofore bona fide made and executed by hushand and wife, and acknowledged by them before some judge, justice of the peace, alderman, or other officer authorized by law, within this state, or an officer in one of the United States, to take such acknowledgment, or which may be so made, executed and acknowledged as aforesaid, before the first day of January next, shall be deemed, held or adjudged, invalid or, defective, or insufficient in law, or avoided or prejudiced, by reason of any informality or omissiou in setting forth the particulars of the acknowledgment made before such officer, as aforesaid, in the certificate thereof, but all and every such grant, bargain and sale, feoffment, deed of conveyance, lease, release, assigument or other assurance so made, executed and acknowledged as aforesaid, shall be as good, valid and effectual in law for transferring, passing and conveying the estate, right, title and interest of such hushand and wife of, in, and to the lands, tenements and hereditaments mentioned in the same, as if all the requisites and particulars of such acknowledgment mentioned in the act, entitle an act for the better confirmation of the estates of persons holding or claiming under feme coverts, and for establishing a mode by which hushand and wife may hereafter convey their estates, passed the twenty-fourth day of February, one thousand seven hundred and seventy, were particularly set forth in the certificate thereof, or appeared upon the face of the same."

84. By the act of the 3d day of April, 1840, Pamph. L. 233, it is enacted, "That where any deed, conveyance, or other instrument of writing has been or shall be made and executed, either within or out of this state, and the acknowledgment or proof thereof, duly certified, by any officer under seal, according to the existing laws of this commmonwealth, for the purpose of being recorded therein, such certificate shall be deemed prima facie evidence of such execution and acknowledgment, or proof, without requiring proof of the said seal, as fully, to all intents and purposes, and with the same effect only, as if the same had been so acknowledged or proved before any judge, justice of the peace, or alderman within this commonwealth."

85. The act relating to executions and for other purposes, passed 16th April, 1840, Pamph. L. 412, enacts, 7, " That the recorders of deeds shall have authority to take the acknowledgment and proof of the execution of any deed, mortgage, or other conveyance of any lands, tenements, or hereditaments lying or being in the county, for which they are respectively appointed as recorders of deeds, or within every city, district, or part thereof, or for any contract, letter of attorney, or any other writing, under seal, to be used or recorded within their respective counties and such

acknowledgment or proof, taken or made in the manner directed by the laws of this state, and certified by the said recorder, under his hand and seal of office; which certificate shall be endorsed or annexed to said deed or instrument aforesaid, shall have the same force and effect, and be as good and available in law, for all purposes, as if the same had been made or taken before any judge of the supreme court, or president or associate judge of any of the courts of common pleas within this commonwealth."

86. Rhode Island. Before any senator, judge, justice of the peace, or town clerk. When the acknowledgment is made in another state or country, it must be before a judge, justice, mayor or, notary public therein, and certifiedunder his hand and seal.

87. A wife releasing dower need not acknowledge the deed; but to a conveyance an acknowledgment and private examination are necessary. 2 Hill. Ab. c. 34, s. 94.

88. South Carolina. Before a judge of the supreme court. A feme covert may release her dower or convey her own estate, by joining with her hushand in a deed, and being privately examined, in the latter case, seven days afterwards, before a judge of law or equity, or a justice of the quorum; she may also release dower by a separate deed.

89. The certificate of the officer is under seal and signed by the woman. Deeds may be proved upon the oath of one witness before a magistrate, and this is said to be the general practice.

90. When the deed is to be executed out of the state, the justices of the county where the land lies, or a judge of the court of common pleas, may by dedimus empower two or more justices of the county where the grantor resides, to tale his acknowledgment upon the oath of two witnesses to the execution. 2 Hill. Ab. 448, 9; Griff. Reg. b. t.

91.Tennessee. A deed or power of attorney to convey land must be acknowledged or proved by two subscribing witnesses, in the court of the county, or the court of the district where the land lies. The certificate of acknowledgment must be endorsed upon the deed by the clerk of the court.

93. The ackiaowledgment of a feme covert is made. before a court of record in the state, or, if the parties live out of it, before a court of record iu another state or territory; and if the wife is unable to attend court, the acknowledgment may be before commissioners empowered by the court of the county in which the hushand acknowledges the commission to be returned certified with the court seal, and recorded.

94. In all these cases the certificate must state that the wife has been privately examined. The seal of the court is to be annexed when the deed is to be used out of the state, when made in it, and vice. versa; in which case there is to be a seal and a certificate of the presiding judge or justice to the official station, of the clerk, and the due formality of the attestation. By the statute of 1820, the acknowledgment in other states may be conformable to the laws of the state, in which the grantor resides.

95. By the act of 1831, c, 90, s. 9, it is provided, that all deeds or conveyances for land made without the limits of this state, shall be proved as heretofore, or before a notary public under his seal of office. Caruthers & Nicholson's Compilation of the Stat. of Tenn. 593.

96. The officer must certify that he is acquainted with the grantor, and that he is an inhabitant of the state. There must also be a certificate of the governor or secretary under the great seal, or a judge of the superior court that the acknowledgment is in due form.Griff. Reg. h. t. ; 2 Hill. Ab. 458.

97. By an act passed during the session of 1839-1840, chap. 26, it is enacted, 1. "That deeds of every description may be proved by two subscribing witnesses, or acknowledged and recorded, and may then be read in, evidence. 2. That deeds executed beyond the limits of the United States may be proved or acknowledged before a notary public, or before any consul, minister, or ambassador of the United States, or before a commissioner of the state. 3. That the govornor may appoint commissioners in other states and in foreign countries for the proof, &c. of deeds. 4. Affidavits taken as above, as to pedigree or heirship, may be received as evidence, by executors or administrators, or in regard to the partition and distribution of property or estates." See 2 Yerg. 91, 108, 238, 400, 520; 3 Yerg. 81; Cooke, 431.

98. Vermont. 1. All deeds and other conveyances of lands, or any estate or interest therein, shall be signed and sealed by the party granting the same, and signed by two or more witnesses, and acknowledged by the grantor, before a justice of the peace. Rev. Stat. tit. 14, c. 6, s. 4.

99. Every deed by the hushand and wife shall contain an acknowledgment by the wife, made apart from her hushand, before a judge of the supreme court, a judge of the county court, or some justice of the peace, that she executed such conveyance freely, and without any fear or compulsion of her hushand; a certificate of which acknowledgment, so taken, shall be endorsed on the deed by the, authority taking the same. Id. s. 7.

100. – 2. All deeds and other conveyances, and powers of attorney for the conveyance of lands, the acknowledgment or proof of which shall have been, or hereafter shall be

taken without this state, if certified agreeably to the laws of the state, province, or kingdom in which it was taken, shall be as valid as though the same were taken before some proper officer or court, within this state; and the proof of the same may be taken, and the same acknowledged with like effect, before any justice of the peace, magistrate, or notary public, within the United States, or in any foreign country, or before any commissioner appointed for that purpose by the governor of this state, or before any minister,cbarge d'affaires, or consul of the United States in any foreign countryand the acknowledgment of a deed a feme in the form required by covert, by this chapter may be taken by either of the said persons Id. 9.

101. Virginia. Before the general court, or the court of the district, county, city, or corporation where some part of the land lies; when the party lives out of the state or of the district or county where the land lies, the acknowledgment may be before any court of law, or the chief magistrate of any city, town, or corporation of the country where the party resides, and certified by him in the usual form.

102. When a married woman executes the deed, she appears in court and is examined privately by one of the judges, as to her freely signing the instrument, and continuing satisfied with it, the deed being shown and explained to her. She acknowledges the deed before the court, or else before two justices of the county where she dwells, or the magistrate of a corporate town, if she lives within the United States; these officers being empowered by a commission from the clerk of the court where the deed, is to be recorded, to examine her and to take her acknowledgment. If she is out of the United States, the commission authorizes two judges or justices of any court of law, or the, chief magistrate of any city, town, or corporation, in her county, and is executed as by two justices in the United States.

103. The certificate is to be authenticated in the usual form. 2 Hill. Ab. 444, 5; Griff. Reg. h. t.; 2 Leigh's R, 186; 2 Call. R. 103 ; 1 Wash. R. 319.

ACQUETS, estates in the civil law. Property which has been acquired by purchase, gift or otherwise than by succession. Merlin Rep. h. t., confines acquets to immovable property.

2. In Louisiana they embrace the profits of all the effects, of which the hushand has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both hushand and wife, and of the estates which they may acquire during the marriage, either by donations, made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two, and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. Civ. Code, art. 2371.

3. This applies to all marriages contracted in that state, or out of it, when the parties afterward go there to live, as to acquets afterward made there.Ib. art. 2370.

4. The acquets are divided into two equal portions between the hushand and wife, or between their heirs at the dissolution of their marriage. Ib. art. 2375.

5. "The Parties may, however, lawfully stipulate there shall be no community of profits or gains. Ib. art. 2369.

6. But the parties have no right to agree that they shall be governed by the laws of another country.' 3 Martin's Rep. 581. Vide 17 Martin's Rep. 571 2 Kent's Com. 153, note.

ACQUIESCENCE, contracts. The consent which is impliedly given by one or both parties, to a proposition, a clause, a condition, a judgment, or to any act whatever.

2. When a party is bound to elect between a paramount right and a testamentary disposition, his acquiescence in a state of things which indicates an election, when he was aware of his rights will be prima facie evidence of such election. Vide 2 Ves. Jr. 371; 12 Ves. 136 1 Ves. Jr. 335; 3 P. Wms. 315. 2 Rop. Leg. 439.

3. The acts of acquiescence which constitute an implied election, must be decided rather by the circumstances of each case than by any general principle. 1 Swanst. R. 382, note, and the numerous cases there cited.

4. Acquiescence in the acts of an agent, or one who has assumed that character, will, be equivalent to an express authority. 2 Bouv. Inst. n. 1309; Kent, Com. 478; Story on Eq. 255; 4 W. C. C. R. 559; 6 Miss. R. 193; 1 John. Cas. 110; 2 John. Cas. 424 Liv. on Ag. 45; Paley on, Ag. by Lloyd, 41 Pet. R. 69, 81; 12 John. R. 300; 3 Cowen's R. 281; 3 Pick. R. 495, 505; 4 Mason's R. 296. Acquiescence differs from assent. (q. v.)

ACQUIETANDIS PLEGIIS, obsolete. A writ of justices, lying, for the surety against a creditor, who refuses to acquit him after the debt has been satisfied. Reg. of Writs, 158; Cowell; Blount.

TO ACQUIRE, descents, contracts. To make property one's own.

2. Title to property is acquired in two ways, by descent, (q. v.) and by purchase, (q. v.) Acquisition by purchase, is either by, 1. Escheat. 2. Occupancy. 3. Prescription. 4. Forfeiture. 5. Alienation, which is either by deed or by matter of record. Things which cannot be sold, cannot be acquired.

ACQUISITION, property, contracts, descent. The act by which the person procures the property of a thing.

2. An acquisition, may be temporary or Perpetual, and be procured either for a valuable consideration, for example, by buying the same; or without consideration, as by gift or descent.

3. Acquisition may be divided into original and derivative. Original acquisition is procured by occupancy, 1 Bouv. Inst. n. 490; 2 Kent. Com. 289; Menstr. Leg. du Dr. Civ. Rom. 344 ; by accession, 1 Bouv. Inst. n. 499; 2 Kent., Com. 293; by intellectual labor, namely, for inventions, which are secured by patent rights and for the authorship of books, maps, and charts, which is protected by copyrights. 1. Bouv. Inst. n. 508.

4. Derivative acquisitions are those which are procured. from others, either by act of law, or by act of the parties. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy. And by act of the parties, by gift or sale. Property may be acquired by a man himself, or by those who are in his power, for him; as by his children while minors; 1 N. Hamps. R. 28; 1 United States Law Journ. 513 ; by his apprentices or his slaves. Vide Ruth. Inst. ch. 6 & 7; Dig. 41, 1, 53; Inst. 2,9; Ib. 2,9,3.

ACQUITTAL, contracts. A release or discharge from an obligation or eng agement. According to Lord Coke there are three kinds of acquittal, namely; 1, By deed, when the party releases the obligation; 2, By prescription; 3, By tenure.Co. Lit. 100, a.

ACQUITTAL, crim. law practice. The absolution of a party charged with a crime or misdemeanor.

2. Technically speaking, acquittal is – the absolution of a party accused on a trial before a traverse jury. 1 N. & M. 36; 3 M'Cord, 461.

3. Acquittals are of two kinds, in fact and in law. The former takes place when the jury upon trial finds a verdict of not guilty; the latter when a man is charged merely as an accessary, and the principal has been acquitted. 2 Inst. 384. An acquittal is a bar to any future prosecution for the offence alleged in the first indictment.

ACQUITTANCE, contracts. An agreement in writing to discharge a party from an engagement to pay a sum of money. it is evidence of payment. It differs from a release in this, that the latter must be under seal, while an acquittance need not be under seal. Poth. Oblig. n. 781. In Pennsylvania, a receipt, (q. v.) though not under seal, has

nearly the same effect as a release. 1 Rawle, R. 391. Vide 3 Salk. 298, pl. 2; Off. of Ex. 217 ; Co. Litt. 212 a, 273 a.

ACRE, measures. A quantity of land containing in length forty perches, and four in breadth, or one hundred and sixty square perches, of whatever shape may be the land. Serg. Land Laws of Penn., 185. See Cro. Eliz. 476, 665; 6 Co. 67; Poph. 55; Co. Litt. 5, b, and note 22.

ACREDULITARE, obsolete. To purge one's self of an offence by oath. It frequently happens that when a person has been arrested for a contempt, he comes into court and purges himself, on oath, of having intended any contempt. Blount, Leges. Inac. c. 36.

ACT, civil law, contracts. A writing which states in a legal form that a thing has been said, done, or agreed. In Latin, Instrumentum. Merl. Rep.

ACT. In the legal sense, this word may be used to signify the result of a public deliberation, the decision of a prince, of a legislative body, of a council, court of justice, or a magistrate. Also, a decree, edict, law, judgment, resolve, award, determination. Also, an instrument in writing to verify facts, as act of assembly, act of congress, act of parliament, act and deed. See Webster's Dict. Acts are civil or criminal, lawful or unlawful, public or private.

2. Public acts, usually denominated authentic, are those which have a public authority, and which have been made before public officers, are authorized by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records.

3. Acts under private signature are those which have been made by private individuals, under their hands. An act of this kind does not acquire the force of an authentic act, by being registered in the office of a notary. 5 N. S. 693; 8 N. S. 568 ; 3 L. R. 419 ; 8 N. S. 396 ; 11 M. R. 243; unless it hasheen properly acknowledged before the officer, bythe parties to it. 5 N. S. 196.

4. Private acts are those made by private persons, as registers in relation to their receipts and expenditures, schedules, acquittances, and the like. Nov. 73, c. 2 ; Code, lib. 7, tit. 32, 1. 6; lib. 4, t. 21; Dig. lib. 22, tit.. 4; Civ. Code of Louis. art. 2231 to 2254; Toull. Dr. Civ. Francais, tom. 8, p. 94.

ACT, evidence. The act of one of several conspirators, performed in pursuance of the common design, is evidence against all of them. An overt act of treason must be proved by two witnesses. See Overt.

2. The terra. acts, includes written correspondence, and other papers relative to the design of the parties, but whether it includes unpublished writings upon abstract questions, though of a kindred nature, has been doubted, Foster's Rep. 198 ; 2 Stark. R. 116, 141.

3. In cases of partnership it is a rule that the act or declaration of either partner, in furtherance of the common object of the association, is the act of all. 1 Pet. R. 371 5 B. & Ald. 267.

4. And the acts. of an agent, in pursuance of his authority, will be binding on his principal. Greenl. Ev. 113. ACT, legislation. A statute or law made by a legislative body; as an act of congress is a law by the congress of the United States; an act of assembly is a law made by a legislative assembly. If an act of assembly expire or be repealed while a proceeding under it is in fieri or pending, the proceeding becomes abortive; as a prosecution for an offence, 7 Wheat. 552; or a proceeding under insolvent laws. 1 Bl. R. 451; Burr. 1456 ; 6 Cranch, 208 ; 9 Serg. & Rawle, 283.

2. Acts are general or special; public or private. A general or public act is a universal rule which binds the whole community; of which the courts are bound to take notice ex officio.

3. Explanatory acts should not be enlarged by equity Blood's case, Comb. 410; although such acts may be allowed to have a retrospective operation. Dupin, Notions de Droit, 145. 9.

4. Private or special acts are rather exceptions, than rules; being those which operate only upon particular persons and private concerns; of these the courts are not bound to take notice, unless they are pleaded. Com. 85, 6; 1 Bouv. Inst. n. 105.

ACT IN PAIS. An act performed out of court, and not a matter of record. Pais, in law French, signifies country. A deed or an assurance transacted between two or more private persons in the country is matter in pais. 2 Bl. Com. 294.

ACT OF BANKRUPTCY. An act which subjects a person to be proceeded against as a bankrupt. The acts of bankruptcy enumerated in the late act of congress, of 19th Aug. 1841, s. 1, are the following: 1. Departure from the state, district, or territory of which a person, subject to the operation of the bankrupt laws, is an inhabitant, with intent to defraud his creditors. See, as to what will be considered a departure, 1 Campb. R. 279; Dea. & Chit. 4511 Rose, R. 387 9 Moore, R. 217 2 V. & B. 177; 5 T. R. 512; 1 C. & P. 77; 2 Bini,. R. 99; 2 Taunt. 176; Holt, R. 175.

2. Concealment to avoid being arrested. 1 M. & S. 676 ; 2 Rose, R. 137; 15 Ves. 4476 Taunt. R. 540; 14 Ves. 86 Taunt. 176;1 Rose, R. 362; 5 T. R. 512; 1 Esp. 334.

3. Willingly or fraudulently procuring himself to be arrested, or his goods and chattels, lands, or tenements to be attached, distrained, sequestered, or taken in execution.

4. Removal of his goods, chattels and effects, or concealment of them to prevent their being levied upon, or taken in execution, or by other process.

5. Making any fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods, or chattels, credits, or evidences of debt. 15 Wend. R. 588; 5 Cowen, R. 67; 1 Burr. 467, 471, 481; 4 C. & P. 315; 18 Wend. R. 375; 19 Wend. R. 414; 1 Dougl. 295; 7 East, 137 16 Ves. 149; 17 – Ves. 193; 1 Smith R. 33; Rose, R. 213.

ACT OF GOD, in contracts. This phrase denotes those accidents which arise from physical causes, and which cannot be prevented.

2. Where the law casts a duty on a party, the performance shall be excused, if it be rendered impossible by the act of God; but where the party, byhis own contract, engages to do an act, it is deemed to be his own fault and folly that he did not thereby provide against contingencies, and exempt himself from responsibilities in certain events and in such case, (that is, in the instance of an absolute general contract the performance is not excused by an inevitable accident, or other contingency, although not foreseen by, nor within the control of the party. Chitty on Contr. 272, 8; Aleyn, 27, cited by Lawrence; J. in 8 T. R. 267; Com. Dig. Action upon the Case upon Assumpsit, G; 6 T. R. 650 ; 8 T. R. 259; 3 M. & S. 267 ; 7 Mass. 325; 13 Mass. 94; Co. Litt. 206; Com. Dig. Condition, D 1, L 13; 2 Bl. Com. 340; 1 T. R. 33; Jones on Bailm 104, 5 ; 1 Bouv. Inst. n. 1024.

3. Special bail are discharged when the defendant dies, Tidd, 243 ; actus Dei nemini facit injuriam being a maxim of law, applicable in such case; but if the defendant die after the return of the case and before it is filed, the bail are fixed. 6 T. R. 284; 6 Binn. 332, 338. It is, however, no ground for an exoneratur, that the defendant has become deranged since the suit was brought, and is confined in a hospital. 2 Wash. C. C. R. 464, 6 T. It. 133 Bos. & Pull. 362 Tidd, 184. Vide 8 Mass. Rep. 264; 3 Yeates, 37; 2 Dall. 317; 16 Mass. Rep. 218; Stra. 128; 1 Leigh's N, P. 508; 11 Pick. R. 41; 2 Verm. R. 92; 2 Watt's Rep. 443. See generally, Fortuitous Event; Perils of the Sea.

ACT OF GRACE, Scotch law. The name by which the statute which provides for the aliment of prisoners confined for civil debts, is usually known.

2. This statute provides that where a prisoner for debt declares upon oath, before the magis trate of the jurisdiction, that he has not wherewith to maintain himself, the magistrate may set him it liberty, if the creditor, in consequence of whose diligence he was imprisoned, does not aliment him within ten days after intimation for that purpose. 1695, c. 32; Ersk. Pr. L. Scot. 4, 3, 14. This is somewhat similar to a provision in the insolvent act of Pennsylvania.

ACT 0F LAW. An event which occurs in consequence of some principle of law. If, for example, land out of which a rent charge has been granted, be recovered by an elder title, and thereby the rent charge becomes avoided; yet the grantee, shall have a writ of annuity, because the rent charge is made void by due course or act of law, it, being a actus legis nemini est damnosus. 2 Inst. 287.

ACT OF MAN. Every man of sound mind and discretion is bound by his own acts, and the law does not permit him to do any thing against it; and all acts are construed most strongly against him who does them. Plowd. 140.

2. A man is not only bound by his own acts, but by those of others who act or are presumed to act by his authority, and is responsible civilly in all such cases; and, in some cases, even when there is but a presumption of authority, he may be made responsible criminally; for example, a bookseller may be indicted for publishing a libel which has been sold in his store, by his regular salesmen, although he may possibly have had no knowledge of it.

ACTIO BONAE FIDEI, civil law. An action of good faith.

ACTIO COMMODATI CONTRARIA. The name of an action in the civil law, by the borrower against the lender, to compel the execution of the contract. Poth. Pret Usage, n. 75.

ACTIO COMMODATI DIRECTA. In the civil law, is the name of an action, by a lender against a borrower, the principal object of which is to obtain restitution of the thing lent. Poth. Pret. 5, Usage, n. 65, 68.

ACTIO CONDICTIO INDEBITI. The name of an action in the civil law, by which the plaintiff recovers the amount of a sum of money or other thing be paid by mistake. Poth. Promutuum, n. 140. See Assumpsit.

ACTIO EXCONDUCTIO, civil law. The name of an action which the bailor of a thing for hiremay bring against the bailee, in order to compel him to redeliver the thing hired. Poth. du Contr. de Louage, n. 59.

ACTIO DEPOSITI CONTRARIA. The name, of an action in the civil law which the depositary has against the depositor to compel him to fulfil his engagement towards him. Poth. Du Depot, la. 69.

ACTIO DEPOSITI DIRECTA. the civil law, this is the name of an action which is brought by the depositor against the depositary, in order to get back the, thing deposited. Poth. Du Depot, n. 60.

ACTIO JUDICATI, civil law. Was an action instituted, after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and, if at the end of two mouths, the debt was not paid, the land was sold. Dig. 42, t. 1. – Code, 8, 34.

ACTIO NON, pleading. After stating the appearance and defence, special pleas begin with this allegation, "that the said plaintiff ought not to have or maintain his aforesaid action thereof against him," actio non habere debet. This is technically termed the actio non. 1 Ch. Plead. 531 2 Ch. Plead. 421 ; Steph. Plead. 394.

ACTIO NON ACCREVIT INFRA SEX ANNOS. The name of a plea to the statute of limitations when the defendant insists that the plaintiff's action has not accrued within six years. It differs from non assumpsit in this: non assumpsit is the proper plea to an action on a simple contract, when the action accrues on the promise but when it does not accrue on the promise but subsequently to it, the proper plea is actio non accrevit, &c. Lawes, Pl. in Ass. 733; 5 Binn. 200, 203; 2 Salk. 422; 1 Saund. Rep. 83 n. 2; 2 Saund, 63, b; 1 Sell. N.P. 121.

ACTIO PERSONALIS MIORITUR CUM PERSONA. That a personal action dies with the person, is an ancient and uncontested maxim. But the term personal action, requires explanation. In a large sense all actions except those for the recovery of real property may be called personal. This definition would include contracts for the payment of money, which never were supposed to die with the person. See 1 Saund. Rep. 217, note 1.

2. The maxim must therefore be taken in a more restricted meaning. It extends to all wrongs attended with actual force, whether the affect the person or property and to all injuries to the person only, though without actual force. Thus stood originally the common law, in which an alteration was made by the statute 4 Ed. III. c. 7, which gave an action to an executor for an injury done to the personal property of his testator in his lifetime, which was extended to the executor of an executor, by statute of 25 Ed.

III. c. 5. And by statute 31 Ed. III. c. 11, administrators have the same remedy as executors.

3. These statutes received a liberal construction from the judges, but they do not extend to injuries to the person of the deceased, nor to his freehold. So that no action lies by an executor or administrator for an assault and battery of the deceased, or trespass, vi et armis on his land, or for slander, because it is merely a personal injury. Neither do they extend to actions against executors or administrators for wrongs committed by the deceased. 13 S. 184; Cowp. 376; 1 Saund. 216, 217, n. 1; Com. Dig 241, B 13; 1 Salk. 252; 6 S. & R. 272; W. Jones, 215.

4. Assumpsit may be maintained by executors or administrators, in those cases where an injury has been done to the personal, property of the deceased, and he might in his lifetime have waived the tort and sued in assumpsit. 1 Bay's R. 61; Cowp. 374; 3 Mass. 321; 4 Mass. 480; 13 Mass. 272; 1 Root, 2165. An action for a breach of a promise of marriage cannot be maintained by an executor, 2 M. & S. 408; nor against 13 S. & R. 183; 1 Picker. 71; unless, perhaps, where the plaintiff's testator sustained special damages. 13 S. & R. 185. See further 12.S. & R. 76; 1 Day's Cas. 180; Bac. Abr. Ejectment, H11 Vin. Abr. 123; 1 Salk. 314; 2 Ld. Raym. 971 1 Salk. 12 Id. 295; Cro. Eliz. 377, 8 1 Str. 60 Went. Ex. 65; 1 Vent. 176 id. so; 7 Serg. & R. 183; 7 East, 134-6 1 Saund. 216, a, n. 1; 6 Mass. 394; 2 Johns. 227; 1 Bos. & Pull. 330, n. a.; 1 Chit. Pi. 86; 3 Bouv. Inst. n. 2750; this Dictionary, tit. actions; Death; Parties to actions; Survivor.

ACTIO PRO SOCIO. In the civil law, is the name of an action by which either partner could compel his co-partners to perform their social contract. Poth. Contr. de Societe, n. 134.

ACTION. Conduct, behaviour, something done. Nomen actionis latissime patere vulgo notum est ac comprehenders omnem omnino viventis operationem quae passioni opponitur. Vinnius, Com. lib. 4, tit. 6. De actionibus.

2. Human actions have been divided into necessary actions, or those over which man has no control; and into free actions, or such as he can control at his pleasure. As man is responsible only when he exerts his will, it is clear lie can be punished only for the Iatter.

3. Actions are also divided into positives and negative the former is called an act of commision the latter is the omission of something which ought to be done, and is called an act of omission. A man may be responsible as well for acts of omission, as for acts of commission.

4. Actions are voluntary and involuntary. The former are performed freely and without constraint – the latter are performed not by choice, against one's will or in a manner independent of the will. In general a man is not responsible for his involuntary actions. Yet it has been ruled that if a lunatic hurt a man, he shall be answerable in trespass, although, if he kill a man, it is not felony. See Hob. Rep. 134; Popham, 162; Pam. N. P. 68. See also Duress; Will.

ACTION, French com. law. Stock in a coompany, shares in a corporation.

ACTION, in practice. Actio nihil aliud est, quam jus persequendi in judicio quod sibi debetur. Just. Inst. Lib. 4, tit. 6; Vinnius, Com. Actions are divided into criminal and civil. Bac. Abr. Actions, A. 2. – 1. A criminal action is a prosecution in a court of justice in the name of the government, against one or more individuals accused of a crime. See 1 Chitly's Cr. Law.

1. – 2. A civil action is a legal demand of one's right, or it is the form given by law for the recovery of that which is due. Co. Litt. 285; 3 Bl. Com. 116; 9 Bouv. Inst. n. 2639; Domat. Supp. des Lois Civiles, liv. 4, tit. 1, No. 1; Poth. Introd. generale aux Coutumes, 109; 1 Sell. Pr. Introd. s. 4, p. 73. Ersk. Princ. of Scot. Law, B. 41 t. 1. 1. Till judgment the writ is properly called an action, but not after, and therefore, a release of all actions is regularly no bar of all execution. Co. Litt. 289 a; Roll. Ab. 291. They are real, personal and mixed. An action is real or personal, according as realty or personalty is recovered; not according to the nature of the defence. Willes' Rep. 134.

4. – 1. Real actions are those brought for the specific recovery of lands, tenements, or hereditaments. Steph. PI. 3. They are either droitural, when the demandant seeks to recover the property; or possessory when he endeavors to obtain the possession. Finch's Law, 257, 8. See Bac. Abr. Actions, A, contra. Real Actions are, 1st. Writs of right; 2dly, Writs of entry, which lie in the per, the per et cui, or the post, upon disseisin, intrusion. or alienation. 3dly. Writs ancestral possessory, as Mort d' ancester, aid, besaiel, cosinage, or Nuper obiit. Com. Dig. Actions, D 2. By these actions formerly all disputes concerning real estate, were decided; but now they are pretty generally laid aside in practice, upon account of the great nicety required in their management, and the inconvenient length of their process; a much more expeditious, method of trying titles being since introduced by other actions, personal and mixed. 3 Bl. Com. 118. See Booth on Real Actions.

5. – 2. Personal actions are those brought for the specific recovery of goods and chattels; or for damages or other redress for breach of contract, or other injuries, of whatever description; the specific recovery of lands, tenements, and hereditaments only excepted. Steph. PI. 3; Com. Dig. Actions, D 3; 3 Bouv. Inst. n. 2641. Personal

actions arise either upon contracts, or for wrongs independently of contracts. The former are account, assumpsit, covenant, debt, and detinue; see these words. In Connecticut and Vermont there is, an action used which is peculiar to those states, called the action of book debt. 2 Swift's Syst. Ch. 15. The actions for wrongs, injuries, or torts, are trespass on the case, replevin, trespass, trover. See these words, and see Actio personalis moritur cum persona.

6. – 3. Mixed actions are such as appertain, in some degree, to both the former classes, and, therefore, are properly reducible to neither of them, being brought for the specific recovery of lands, tenements, or hereditaments, and for damages for injury sustained in respect of such property. Steph. Pl. 3; Co. Litt. 284, b; Com. Dig. Actions, D 4. Every mixed action, properly so called, is also a real action. The action of ejectment is a personal action, and formerly, a count for an assault and battery might be joined with a count for the recovery of a term of Years in land.

7. Actions are also divided into those which are local and such as are transitory.

1. A local action is one in which the venue must still be laid in the county, in which the cause of action actually arose. The locality of actions is founded in some cases, on common law principles, in others on the statute law.

8. Of those which continue local, by the common law, are, lst, all actions in which the subject or thing to be recovered is in its nature local. Of this class are real actions, actions of waste, when brought on the statute of Gloucester, (6 Edw. I.) to recover with the damages, the locus in quo or place wasted; and actions of ejectment. Bac. Abr. Actions Local, &c. A, a; Com. Dig. Actions, N 1; 7 Co. 2 b; 2 Bl. Rep. 1070. All these are local, because they are brought to recover the seisin or possession of lands or tenements, which are local subjects.

9. – 2dly. Various actions which do not seek the direct recovery of lands or tenements, are also local, by the common law; because they arise out of some local subject, or the violation of some local right or interest. For example, the action of quare impedit is local, inasmuch as the benefice, in the right of presentationto which the plaintiff complains of being obstructed, is so. 7 Co. 3 a; 1 Chit. PI. 271; Com. Dig. Actions, N 4. Within this class of cases are also many actions in which only pecuniary damages are recoverable. Such are the common law action of waste, and trespass quare clausum fregit; as likewise trespass on the case for injuries affecting things real, as for nuisances to houses or lands; disturbance of rights of way or of common; obstruction or diversion of ancient water courses, &c. 1 Chit. Pl. 271; Gould on Pl. ch. 3, 105, 106, 107. The action of replevin, also, though it lies for damages only, and does not arise out of the violation of any local right, is nevertheless local. 1 Saund. 347, n. 1. The reason of its locality appears to be the necessity of giving a local description of

the taking complained of. Gould on PI. ch. 3, 111. A scire facias upon a record, (which is an action, 2 Term Rep. 46,) although to some intents, a continuation of the original suit, 1 Term Rep. 388, is also local.

10. – 2. Personal actions which seek nothing more than the recovery of money or personal chattels of any kind, are in most cases transitory, whether they sound in tort or in contract; Com. Dig. Actions, N 12; 1 Chit. PI. 273; because actions of this class are, in most instances, founded on the violation of rights which, in contemplation of law, have no locality. 1 Saund. 241, b, note 6. And it will be found true, as a general position, that actions ex delicto, in which a mere personalty is recoverable, are, by the common law, transitory;except when founded upon, or arising out of some local subject. Gould on Pl. ch. 3, 112. The venue in a transitory action may be laid in any county which the plaintiff may prefer. Bac. Abr. Actions Local, &c. A. (a.)

11. In the civil law actions are divided into real, personal, and mixed. A real action, according to the civil law, is that which he who is the owner of a thing, or, has a right in it, has against him who is in possession of it, to compel him to give up the plaintiff, or to permit him to enjoy the right he has in it. It is a right which a person has in a thing, follows the thing, and may be instituted against him who possesses it; and this whether the thing be movable or immovable and, in the sense of the common law, whether the thing be real or personal. See Domat, Supp. des Lois Civiles, Liv. 4, tit. 1, n. 5; Pothier, Introd. Generales aux Coutumes 110; Ersk. Pr. Scot. Law, B. 4, t. 1, 2.

12. A personal action is that which a creditor has against his debtor, to compel him to fulfil his engagement. Pothier, lb. Personal actions are divided into civil actions and criminal actions. The former are those which are instituted to compel the payment or to do some other thing purely civil the latter are those by which the plaintiff asks the reparation of a tort or injury which he or those who belong to him have sustained. Sometimes these two kinds of actions are united when they assume the name of mixed personal actions. Domat, Supp. des Lois Civiles, Liv. 4, tit. 1, n. 4; 1 Brown's Civ. Law, 440.

13. Mixed actions participate both of personal and real actions. Such are the actions of partition, and to compel the parties to put down landmarks or boundaries. Domat, ubi supra.

ACTION AD EXHIBENDUM, civil law. This was an action instituted for the purpose of compelling the defendant to exhibit a thing or title, in his power. It was preparatory to another action, which was always a real action in the sense of the Roman law, that is, for the recovery of a thing, whether it was movable or immovable. Merl. Quest. de Dr. tome i. 84. This is not unlike a bill of discovery. (q. v.)

ACTION OF ADHERENCE, Scotch law. An action competent to a hushand or Wife to compel either party to adhere in case of desertion.

ACTION OF BOOK DEBT. The name of an action in Connecticutand Vermont, resorted to for the purpose of recovering payment for articles usually charged on book. 1 Day, 105; 4 Day, 105; 2 Verm, 66. See 1 Root, 59; 1 Conn. 75; Kirby, 89; 2 Robt, 130; 11 Conn. 205.

ACTION. REDHIBITORY, civil law. An action instituted to avoid a sale on account of some Vice or defect in the thing sold which readers it either absolutely useless, or its use so inconvenient and, imperfect, that it must be, supposed the buyer would not have purchased it, had he known of the vice. Civ. Code of Louis. art. 2496.

ACTION OF A WRIT. This phrase is used when one pleads some matter by which he shows that the plaintiff had no cause to have the writ which he brought, and yet he may have a writ or action for the same matter. Such a plea is called: a plea to the action of the writ, whereas if it should appear by the plea that the plaintiff has no cause to have action for the thing demanded, then it is called a plea to the action. Termes de la ley.

ACTIONS ORDINARY. Scotch law. By this term is understood all actions not recissory. Ersk. Pr. L. Scot. 4, 1, 5.

ACTIONS RESCISSORY, Scotch law. Are divided into, 1, Actions of proper improbation; 2, Actions of reduction-improbation; 3, Actions of simple reduction. Ersk. Pr. L. Scot. 4 1, 5,

2. – 1. Proper improbation is an action brought for declaring writing false or forged.

3. – 2. Reduction-improbation is an action whereby a person who may be hurt, or affected by a writing, insists for producing or exhibiting it in court, in order to have it set aside or its effects ascertained, under the certification, that the writing if not produced, shall be declared false and forged.

4. – 3. In an action of simple reduction, the certification is only temporary, declaring the writings called for, null, until they be produced; so that they recover their full force after their production. Ib. 4, 1, 8.

ACTIONARY. A commercial term used among foreigners, to signify stockholders.

ACTIONES NOMINATAE. Formerly the English courts of chancery would make no writs when there was no precedent, and the cases for which there were precedents

were called actiones nominatoe. The statute of Westm. 2, c. 24, gave chancery authority to form new writs in consimili casu. Hence arose the action on the case. Bac. Ab. Court of Chancery, A; 17, Serg. R. 195.

ACTIVE. The opposite, of passive. We say active debts, or debts due to us; passive debts are those we owe.

ACTON BURNELL. Statute of Vide de Mercatoribus. Cruise, Dig. tit. 14, s. 6.

ACTOR, practice. 1. A plaintiff or complainant. 2. He on whom the burden of proof lies. In actions of replevin both parties are said to be actors. The proctor or advocate in the courts of the civil law, was called actor.

ACTS OF COURT. In courts of admiralty, by this phrase is understood legal memoranda of the nature of pleas. For example, the English court of admiralty disregards all tenders, except those formally made by acts of court. Abbott on Ship. pi. 3, c. 10, 2, p. 403; 4 Rob. R. 103; 1 Hagg. R. 157; Dunl. Adm. Pr. 104, 6.

ACTS OF SEDERUNT. In the laws of Scotland, are ordinances for regulating the forms of proceeding, before the court of session, in the administration of justice, made by the judges, who have a delegated power from the legislature for that purpose. Ersk. Pr. L. Scot. B. 1, t. 1, s. 14.

ACTUAL. Real; actual.

2. Actual notice. One which has been expressly given by which knowledge of a fact hos been brought home to a party directly ; it is opposed to constructive notice.

3. Actual admissions. Those which are expressly made; they are plenary or partial. 4 Bouv. Inst. n. 4405.

4. An actual escape takes place when a prisoner in fact gets out of prison, and unlawfull regains his liberty. Vide Escape.

ACTUARIUS. An ancient name or appellation of a notary.

ACTUARY. A clerk in some corporations vested with various powers. In the ecclesiastical law he is a clerk who registers the acts and constitutions of the convocation.

ACTUS. A foot way and horse way. Vide Way.

AD DAMNUM, pleading. To the damage. In all personal and mixed actions, with the exception of actions of debt qui tam, where the plaintiff has sustained no damages, the declaration concludes ad damnum. Archb. Civ. Pl. 169.

AD DIEM. At the day, as a plea of payment ad diem, on the day when the money became due. See Solvit ad diem, and Com. Dig. Pleader, 2 W. 29.

AD INQUIRENDUM, practice. A judicial writ, commanding inquiry to be made of any thing relating to a cause depending in court.

AD INTERIM. In the mean time. An officer is sometimes appointed ad interim, when the principal officer is absent, or for some cause incapable of acting for the time. AD LARGUM. At large; as, title at large, assize at large. See Dane's Abr. ch. 144,

AD QUEM. A Latin expression which signifies to which, in the computation of time or distance, as the day ad quem. The last day of the term, is always computed. See A quo.

QUOD DAMNUM, Eng. law. The name of a writ issuing out of and returnable into chancery, directed to the sheriff, commanding him to inquire by a jury 'What damage it will be to the king, or any other, to grant a liberty, fair, market, highway, or the like.

AD SECTAM. At the suit of, commonly abbreviated ads. It isusual in filing pleas, and other papers, for a defendant, instead of putting the name of the plaintiff first, as Peter v. Paul to put his own first, and instead of v. to put ads., as Paul ads. Peter.

AD TERMINUM QUI PRETERIIT. The name of a writof entry which lay for the lessor or his heirs, when a lease had been made of lands or tenements, for term of life or years, and, after the term had expired, the lands were withheld from the lessor by the tenant, or other person possessing the same. F. N. B. 201. The remedy now applied for holdiug over (q, v.) is by ejectment, or under local regulations, by summary prooceedings.

AD TUNC ET IBIDEM. That part of an indictment, where it is stated that the object-matter of the crime or offence " then and there being found," is technically so called. N. C. Term R. 93; Bac. Ab. Indictment, G 4.

AD VITAM AUT CULPAM. An office to be so held as to determine only by the death or delinquency of the possessor; in other words it is held quam diu se benegesserit.

AD VALOREM. According to the value. This Latin term is used in commerce in reference to certain duties, called ad valorem duties, which are levied on commodities at certain rates per centum on their value. See Duties; Imposts; Act of Cong. of March 2, 1799, s. 61 of March 1, 1823 s. 5.

ADDITION. Whatever is added to a man's name by way of title, as additions of estate, mystery, or place. 10 Went. Plead. 871; Salk. 6; 2 Lord Ray. 988; :1 WUS. 244, 5.

2. Additions of an estate or quality are esquire, gentleman, and the like; these titles can however be claimed by none, and may be assumed by any one. In Nash v. Battershy (2 Lord Ray. 986 6 Mod. 80,) the plaintiff declared with the addition of gentleman. The defendant pleaded in abatement that the plaintiff was no gentleman. The plaintiff demurred, and it was held ill; for, said the court, it amounts to a confession that the plaintiff is no gentleman, and then not the person named in the count. He should have replied that he is a gentleman.

3. Additions of mystery are such as scrivener, painter, printer, manufacturer, &c.

4. Additions of places are descriptions by the place of residence, as A. B. of Philadelpliia and thelike. See Bac. Ab. b. t.; Doct. PI. 71; 2 Vin. Abr. 77; 1 Lilly's Reg. 39; 1 Metc. R. 151.

5. At common law there was no need of addition in any case, 2 Lord Ray. 988; it was, required only by Stat. 1 H. 5. c. 5, in cases where process of outlawry lies. In all other cases it is only a description of the person, and common reputation is sufficient. 2 Lord Ray. 849. No addition is necessary in a Homine Replegiando. 2 Lord Ray. 987; Salk. 5; 1 Wils. 244, 6; 6 Rep. 67.

ADDITIONALES, in contracts. Additional terms or propositions to be added to a former agreement.

ADDRESS, chan. plead. That part of a bill which contains the appropriate and technical description of the court where the plaintiff seeks his remedy. Coop. Eq. PI. 8; Bart. Suit in Eq. 20Story, Eq. PI. 26 Van Hey. Eq. Draft. 2.

ADDRESS, legislation. In Pennsylvania it is a resolution of both, branches of the legislature, two-thirds of each house concurring, requesting the governor to remove a judge from office. The constitution of that state, art. 5, s. 2, directs that " for any reasonable cause, which shall not be, ground for impeachment, the governor may remove any of them [the judges], on the address of two-third's of each branch of the legislature." The mode of removal by address is unknown to the constitution of the,

United States, but it is recognized in several of the states. In some of the state constitutions the language is imperative; the governor when thus addressed shall remove; in others it is left to his discretion, he may remove. The relative proportion of each house that must join in the address, varies also in different states. In some a bare majority is sufficient; in others, two-thirds are requisite; and in others three-fourths. 1 Journ. of Law, 154.

ADEMPTION, wills. A taking away or revocation of a legacy, by the testator.

2. It is either express or implied. It is the former when revoked in express terms by a codicil or later will; it is implied when by the acts of the testator it is manifestly his intention to revoke it; for example, when a specific legacy of, a chattel is made, and afterwards the testator sells it; or if a father makes provision for a child by his will and afterwards gives to such child, if a daughter, a portion in marriage; or, if a son, a sum of money to establish him in life, provided such portion or sum of money be equal to or greater than the legacy. 2 Fonbl. 368 et, seq. Toll. Ex. 320; 1 Vern. R. by Raithby, 85 n. and the cases there cited. 1 Roper, Leg. 237, 256, for, the distinction between specific and general legacies.

ADHERING. Cleaving to, or joining; as, adhering to the enemies of the United States.

2. The constitution of the United States, art. 3, s 3, defines treason against the United States, to consist only in levying war against them or in adhering to their enemies, giving them aid and comfort.

3. The fact that a citizen is cruising in an enemy's ship, with a design to capture or destroy American ships, would be an adhering to the enemies of the United States. 4 State Tr. 328 ; Salk. 634; 2 Gilb. Ev. by Lofft, 798.

4. If war be actually levied, that is, a body of men be actually assembled for the purpose of effecting by force a treasonable enterprise, all those who perform any part, however minute, or however remote from the scene of action, and who are leagued in the general conspiracy are to be considered as traitors. 4 Cranch. 126.

ADJOURNMENT. The dismissal by some court, legislative assembly, or properly authorized officer, of the business before them, either finally, which is called an adjournment sine die, without day; or, to meet again at another time appointed, which is called a temporary adjournment. 2. The constitution of the United States, art. 1, s. 5, 4, directs that "neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, that that

in which the two houses shall be sitting,." Vide Com. Dig. h. t.; Vin. Ab. h. t.; Dict. de Jur. h. t.

ADJOURNMENT-DAY. In English practice, is a day so called from its being a further day appointed by the judges at the regular sittings, to try causes at nisi prius.

ADJOURNMENT-DAY IN ERROR. In the English courts, is a day appointed some days before the end of the term, at which matters left undone on the affirmance day are finished. 2 Tidd, 1224.

ADJUDICATION, in practice. The giving or pronouncing a judgment in a cause; a judgment.

ADJUDICATIONS, Scotch law. Certain proceedings against debtors, by way of actions, before the court of sessions and are of two kinds, special and general.

2. – 1. By statute 1672, c. 19, such part only of the debtor's lands is to be adjudged to the principal sum and interest of the debt, with the compositions due to the superior, and the expenses of infeoffment, and a fifth part more, in respect the creditor is obliged to take landsfor his money but without penalties or sheriff fees. The debtor must deliver to the creditor a valid right to the lands to be adjudged, or transumpts thereof, renounce the possession in his favor, and ratify the decree of adjudication: and the law considers the rent of the lands as precisely commensurate to the interest of the debt. In this, which is called a special adjudication, the time allowed the debtor to redeem the lands adjudged, (called the legal reversion or the legal,) is declared to be five years.

3. – 2. Where the debtor does not produce a sufficient right to the lands, or is not willing to renounce the possession and ratify the decree, the statute makes it lawful for the creditor to adjudge all right belonging to the debtor, in the same manner, and under the same reversion of ten years. In this kind, which is called a general adjudication, the creditor must limit his claim to the principal sum, interest and penalty, without demanding a fifth part more. See Act 1 Feb. 1684; Ersk. Pr. L. Scot,. (????) s. 15, 16. See Diligences.

ADJUNCTION. in civil law. Takes place when the thing belonging to one person is attached or united to that which belongs to another, whether this unionis caused by inclusion, as if one man's diamond be encased in another's ring; by soldering, as if one's guard be soldered on another's sword; by sewing, as by employing the silk of one to make the coat of another; by construction; as by building on another's land; by writing, as when one writes on another's parchment; or by painting, when one paints a picture on another's canvas.

2. In these cases, as a general rule, the accessory follows the principal; hence these things which are attached to the things of another become the property of the latter. The only exception which the civilians made was in the case of a picture, which although an accession, drew to itself the canvas, on account of the importance which was attached to it. Inst. lib. 2, t. 1, 34; Dig. lib. 41, t. 1, 1. 9, 2. See Accession, and 2 Bl. Comm. 404; Bro. Ab. Propertie; Com. Dig. Pleader, M. 28; Bac. Abr. Trespass, E 2. 1 Bouv. Inst. n. 499.

ADJUNCTS, English law. Additional judges appointed to determine causes in the High Court of Delegates, when the former judges cannot decide in consequence of disagreement, or because one of the law judges of the court was not one of the majority. Shelf. on Lun. 310.

ADJURATION. The act by which one person solemnly charges another to tell or swear to the truth. Wolff. Inst. 374.

ADJUSTMENT, maritime law. The adjustment of a loss is the settlling and ascertaining the amount of the indemnity which the insured after all proper allowances and deductions have been made, is entitled to receive, and the proportion of this, which each underwriter is liable to pay, under the policy Marsh. Ins. B. 1, c. 14, p. 617 or it is a written admission of the amounts of the loss as settled between the parties to a policy of insurance. 3 Stark. Ev. 1167, 8.

2. In adjusting a loss, the first thing to be considered is, how the quantity of damages for which the underwriters are liable, shall be ascertained. When a loss is a total loss, and the iusured decides to abandon, he must give notice of this to the underwriters iii a reasonable time, otherwise he will waive his right to abandon, and must be content to claim only for a partial loss. Marsh. Ins. B. 1, .c. 3, s. 2; 15 East, 559; 1 T. R. 608; 9 East, 283; 13 East 304; 6 Taunt. 383. When the loss is admitted to be total, and the policy is a valued one, the insured is entitled to receive the whole sum insured, subject to such deductions as may have been agreed by the policy to be made in case of loss.

3. The quantity of damages being known, the next point to be settled, is, by what rule this shall be estimated. The price of a thing does not afford a just criterion to ascertain its true value. It may have been bought very dear or very cheap. The circumstances of time and place cause a continual variation in the price of things. For this reason, in cases of general average, the things saved contribute not according to prune cost, but according to the price for which they may be sold at the time of settling the average. Marsh. Ins. B. 1, c. 14, s. 2, p. 621; Laws of Wishuy, art. 20 Laws of Oleron, art. 8 this Dict. tit. Price. And see 4 Dall. 430; 1 Caines' R. 80; 2 S. & R. 229 2 S.& R. 257, 258.

4. An adjustment being endorsed on the policy, and signed by the underwriters, with the promise to pay in a given time, is prima facie evidence against them, and amouuts to an admission of all the facts necessary to be proved by the insured to entitle him to recover in an action on the policy. It is like a note of hand, and being proved, the insured has no occasion to go into proof of any other circumstances. Marsh. Ins. B. 1, c. 14, s. 3, p. 632; 3 Stark. Ev. 1167, 8 Park. ch. 4; Wesk. Ins, 8; Beaw. Lex. Mer. 310; Com. Dig. Merchant, E 9; Abbott on Shipp. 346 to 348. See Damages.

ADJUTANT. A military officer, attached to every battalion of a regiment. It is his duty to superintend, under his superiors, all matters relating to the ordinary routine of discipline in the regiment.

ADJUTANT-GENERAL. A staff officer; one of those next in rank to the Commander-in-chief.

ADJUNCTUM ACCESSORIUM, civil law. Something which is an accessory and appurtenant to another thing. 1 Chit. Pr. 154.

ADMEASUREMENT OF DOWER, remedies. This remedy is now nearly obsolete, even in England; the following account of it is given by Chief Baron Gilbert. "The writ of admeasurement of dower lieth where the heir when he is within age, and endoweth the wife of more than she ought to have dower of; or if the guardian in chivalry, [for the guardian in socage cannot assign dower,] endoweth the wife of more than one-third part of the land of which she ought to have dower, then the heir, at full age, may sue out this writ against the wife, and thereby shall be admeasured, and the surplusage she hath in dower shall be restored to the heir; but in such case there shall not be assigned anew any lands to hold to dower, but to take from her so much of the lands as surpasseth the third part whereof she ought to be endowed; and he need not set forth of whose assignments she holds." Gilb. on Uses, 379; and see F. N. B. 148; Bac. Ab. Dower, K; F. N. B. 148; Co. Litt. 39 a; 2 Inst. 367 Dower; Estate in Dower.

ADMEASUREMENT OF PASTURE, Eng. law. The name of a writ which lies where any tenants have common appendant in another ground and one overcharges the common with beasts. The other commoners, to obtain their just rights, may sue out this writ against him.

ADMINICLE1. A term, in the Scotch and French law, for any writing or deed referred to by a party, in an action at law, for proving his allegations.

2. An ancient term for aid or support.

3. A term in the civil, law for imperfect proof. Tech. Dict. h. t.; Merl. Repert. mot Adminicule.

ADMINICULAR EVIDENCE, eccl. law. This term is used in the eclesiastical law to signify evidence, which is brought to explain or complete other evidence. 2 Lee, Ecel.R. 595.

TO ADMINISTER, ADMINISTERING. The stat. 9 G. IV. c. 31, S. 11, enacts "that if any person unlawfully and maliciously shall administer, or attempt to administer to any person, or shall cause to be taken by any person any poison or other destructive things," &c. every such offender, &c. In a case which arose under this statute, it was decided that to constitute the act of administering the poison, it was not absolutely necessary there should have been a delivery to the party poisoned, but that if she took it from a place where it had been put for her by the defendant, and any part of it went into her stomach, it was an administering. 4 Carr. & Payne, 369; S. C. 19 E. C. L. R. 423; 1 Moody's C. C. 114; Carr. Crim. L. 23. Vide Attempt to Persuade.

TO ADMINISTER, trusts. To do some act in relation to an estate, such as none but the owner, or some one authorized by him or by the law, in caseof his decease, could legally do. 1 Harr. Cond. Lo. R. 666.

ADMINISTRATION, trusts. The management of the estate of an intestate, a minor, a lunatic, an habitual drunkard, or other person who is incapable of managing his own affairs, entrusted to an administrator or other trustee by authority of law. In a more confinedsense, and in which it will be used in this article, administration is the management of an intestate's estate, or of the estate of a testator who, at the time administration was granted, had no executor.

2. Administration is granted by a public officer duly authorized to delegate the trust; he is sometimes called surrogate, judge of probate, register of wills and for granting letters of administration. It is to be granted to such persons as the statutory provisions of the several states direct. In general the right of administration belongs to him who" has the right to the vendue of the personalty: as if A make his will, and appoint B his executor, who dies intestate, and C is the legatee of the residue of A's estate, C has the right of administration cum testamento annexo. 2 Strange, 956; 12 Mod. 437, 306; 1 Jones, 225; 1 Croke. 201; 2 Leo. 55; 1 Vent. 217.

3. There are several kinds of administrations, besides the usual kind which gives to the administrator the management of all the personal estate of the deceased for an unlimited time. Administration durante minore oetate, administration durante absentia, administration pendente lite, administration de bonis non, administration cum testamento annexo.

ADMINISTRATION, government. The management of the affairs of the government; this word is also applied to the persons entrusted with the management of the publio affairs.

ADMIINISTRATOR, trusts. An administrator is a person lawfully appointed, with his assent, by an officer having jurisdiction, to manage and settle the estate of a deceased person who has left no executor, or one who is for. the time incompetent or unable to act.

2. It will be proper to consider, first, his rights; secondly, his duties.; thirdly, the number of administrators, and their joint and several powers; fourthly, the several kinds of administrators.

3. – 1. By the grant of the letters, of administration, the administrator is vested with full and ample power, unless restrained to some special administration, to take possession of all the personal estate of the deceased and to sell it; to collect the debts due to him; and to represent him in all matters which relate to his chattels real or personal. He is authorized to pay the debts of the, intestate in the order dire ted by law; and, in the United States, he is generally entitled to a just compensation, which is allowed him as commmisions on the amount whichpasses through his hands.

4. – 2. He is bound to use due diligence in the management of the estate; and he is generally on his appointment required to give security that he will do so; he is responsible for any waste which. may happen for his default. See Devastavit.

5. Administrators are authorized to bring and defend actions. They sue and are sued in their own names; as, A B, administrator of C D, v. E F; or E F v. A B, administrator of C D.

6. – 3. As to the number of administrators. There may be one or more. When there are several they must, in general, act together in bringing suits, and they must all be sued ; but, like executors, the acts of each, which relate to the delivery, gift, sale, payment, possession. or release of the intestate's goods, are considered as of equal validity as the acts of all, for they have a joint power and authority over the whole. Bac. Ab. Executor, C 4; 11 Vin. Ab. 358; Com. Dig. Administration, B 12; 1 Dane's Ab. 383; 2 Litt. R. 315. On the death of one of several joint administrators, the whole authority is vested in the survivors.

7. – 4. Administrators are general, or those who have right to administer the whole estate of the intestate; or special, that is, those who administer it in part, or for a Iimited time.

8 – 1. General administrators are of two kinds, namely: first, when the grant of administration is unlimited, and the administrator is required to administer the whole estate. under the intestate laws. secondly, when the grant is made with the annexation of the will, which is the guide to the administrator to administer and distribute the estate. This latter administration is granted when the deceased has made a will, and either he has not appointed an executor, or having appointed one he refuses to serve, or dies, or is incompetent to act; this last kind is called an administrator cum testamento annexo. 1 Will. on Wills, 309.

9. – 2. Special administrators are of two kinds; first, when the administration is limited to part of the estate, as for example, when the former administrator has died, leaving a part of the estate unadministered, an administrator is appointed to administer the remainder, and he is called an administrator de bonis non. He has all the powers of a common administrator. Bac. Ab. Executors, B 1; Sw. 396; Roll. Ab. 907; 6 Sm. & Marsh. 323. When an executor dies leaving a part of the estate unadministered, the administrator appointed to complete the execution of the win is called an administrator de bonis non, cum testamento annexo. Com. Dig. Administrator, B 1. Secondly, When the authority of the administrator is limited as to time. Administrators of this kind are, 1. An administrator durante minore oetate. This administrator is appointed to act as such during the minority of an infant executor, until the latter shall, attain his lawful age to act. Godolph. 102; 5 Co. 29. His powers extend to administer the estate so far as to collect the same, sell a sufficiency of the personal property to pay the debts, sell bona peritura, and perform such other acts as require immediate attention. He may sue and be sued. Bac. Ab. Executor, B 1 ; Roll. Ab. 110; Cro. Eliz. 718. The powers of such an administrator cease, as soon as the infant executor attains the age at which the law authorizes him to act for himself, which, at common law, is seventeen years, but by statutory provision in several states twenty-one years.

10. – 2. An administrator durante absentid, is one who is appointed to administer the estate during the absence of the executor, before he has proved the will. The powers of this administrator continue until the return of the executor, and. then his powers cease upon the probate of the will by the executor. 4 Hagg. 860. In England it has been holden, that the death of the executor abroad does not determine the authority of the administrator durante absentia. 3 Bos. & Pull. 26.

11. – 3. An administrator pendente lite. Administration pendente lite may be granted pending the controversy respecting an alleged will and it has been granted pending a contest as to, the right to administration. 2 P. Wms. 589; 2 Atk. 286; 2 Cas. temp. Lee, 258. The administrator pendente lite is merely an officer of the court, and holds the property only till the suit terminates. 1 Hagg. 313. He may maintain suits, 1 Ves. sen.

325; 2 Ves. & B. 97; 1 Ball & B. 192; though his power does not extend to the distribution of the assets. 1 Ball & B. 192.

ADMINISTRATRIX. This term is applied to a woman to whom letters of administration have been granted. See Administrator.

ADMIRAL, officer. In some countries is the commander in chief of the naval forces. This office does not exist in the United States.

ADMIRALTY. The name of a jurisdiction which takes cognizance of suits or actions which arise in consequence of acts done upon or relating to the sea; or, in other words, of all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea. 2 Gall. R. 468. In the great maritime nations of Europe, the term " admiralty jurisdiction," is, uniformly applied to courts exercising jurisdiction over maritime contracts and concerns. It is as familiarly known among the jurists of Scotland, France, Holland and Spain, as of England, and applied to their own courts, possessing substantially the same jurisdiction as the English Admiralty had in the reign of Edward III. Ibid., and the authorities there cited; and see, also, Bac. Ab. Court of Admiralty; Merl. Repert. h. t. Encyclopedie, h. t.; 1 Dall. 323.

2. The Constitution of the United States has delegated to the courts of the national government cognizance "of all cases of admiralty and maritime jurisdiction;" and the act of September 24, 1789, ch. 20 s. 9, has given the district court " cognizance of all civil causes of admiralty and maritime jurisdiction," including all seizures under laws of imposts, navigation or trade of the United States, where the seizures are made on waters navigable from the sea, by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas.

3. It is not within the plan of this work to enlarge upon this subject. The reader is referred to the article Courts of the United States, where he will find all which has been thought necessary to say upon it as been the subject. Vide, generally, Dunlap's Adm. Practice; Bett's Adm. Practice; 1 Kent's Com. 353 to 380; Serg. Const. Law, Index, h. t.; 2 Gall. R. 398. to 476; 2 Chit. P. 508; Bac. Ab. Courts of Admiralty; 6 Vin. Ab. 505; Dane's Ab. Index b. t; 12 Bro. Civ. and Adm. Law; Wheat. Dig. 1; 1 Story L. U. S. 56, 60; 2 Id. 905, 3 Id. 1564, 1696; 4 Sharsw. cont. of Story's L. U. S. 2262; Clerke's Praxis; Collectanea Maritima; 1 U. S. Dig. tit. Admiralty Courts, XIII.

ADMISSION, in corporations or companies. The act of the corporation or company by which an individual acquires the rights of a member of such corporation or company.

2. In trading and joint stock corporations no vote of admission is requisite; for any person who owns stock therein, either by original subscription or by conveyance, is in general entitled to, and cannot be refused, the rights and privileges of a member. 3 Mass. R. 364; Doug. 524; 1 Man. & Ry. 529.

3. All that can be required of the person demanding a transfer on the books, is to prove to the corporation his right to the property. See 8 Pick. 90.

4. In a Mutual Insurance Company, it has been held, that a person may become a member by insuring his property, paying the premium and deposit-money, and rendering himself liable to be assessed according to the rules of the corporation. 2 Mass. R. 315.

ADMISSIONS, in evidence. Concessions by a party of the existence of certain facts. The term admission is usually applied to civil transactions, and to matters of fact in criminal cases, where there is no criminal intent the term confession, (q. v.) is generally considered as an admission of guilt.

2. An admission is the testimony which the party admitting bears to the truth of a fact against himself. It is a voluntary act,which he acknowledges as true the fact in dispute. [An admission and consent are, in fact, one and the same thing, unless indeed for more exactness we say, that consent is given to a present fact or agreement, and admission has reference to au agreement or a fact anterior for properly speaking, it is not the admission which forms a contract, obligation or engagement, against the party admitting. The admission is, by its nature, only the proof of a pre-existing obligation, resulting from the agreement or the fact, the truth of which is acknowledged. There is still another remarkable difference between admission and consent: the first is always free in its origin, the latter, always morally forced. I may refuse to consent to a proposition made to me, abstain from a fact or an action which would subject me to an obligation ; but once my consent is given, or the action committed, I am no longer at liberty to deny or refuse either; I am constrained to admit, under the penalty of dishonor and infamy. But notwithstanding all these differences, admission is identified with consent, and they are both the manifestation of the will. These admissions are generally evidence of those facts, when the admissions themselves are proved.]

3. The admissibility and effect of evidence of this description will be considered generally, with respect to the nature and manner, of the admission itself and, secondly, with respect to the parties to be affected by it.

4. In the first place, as to the nature and manner of the admission; it is either made with a view to evidence; or, with a view to induce others to act upon the representation; or, it is an unconnected or casual representation.

5. – 1. As an instance of admission made with a view to evidence may be mentioned the case where a party has solemnly admitted a fact under his hand and seal, in which case he is, estopped, not only from disputing the deed itself, but every fact which it recites. B. N. P. 298; 1 Salk. 186; Com. Dig. Estoppel, B 5; Stark. Ev. pt. 4, p. 3 1.

6. – 2. Instances of thing second class of admissions which have induced others to act upon them are those where a man has cohabited with a woman, and treated her in the front of the world as his wife, 2 Esp. 637; or where he. has held himself out to the world in a particular character; Ib. 1 Camp. 245; he cannot in the one case deny her to be his Wife when sued by a creditor who has supplied her with goods as such, nor in the other can he divest himself of the character be has assumed.

7. – 3. Where the admission or declaration is not direct to the question pending, although admissible, it is not in general conclusive evidence; and though a party may by falsifying his former declaration, show that he has acted illegally andimmorally, yet if he is not guilty of any breach of good faith in the existing transaction, and has not induced others, to act upon his admission or declaration, nor derived any benefit from it against his adversary, be is not bound by it. The evidence in such cases is merely presumptive, and liable to be rebutted.

8. Secondly, with respect to the parties to be affected by it. 1. By a party to a suit, 1 Phil. Ev. 74; 7 T. R. 563; 1 Dall. 65. The admissions of the party really interested, although he is no party to the suit, are evidence. 1 Wils. 257.

9. – 2. The admissions of a partner during the existence of a partnership, are evidence against both. 1 Taunt. 104; Peake's C. 203 1 Stark. C. 81. See 10 Johns. R. 66 Ib. 216; 1 M. & Selw. 249. As to admissions made after the dissolution. of the partnership, see 3 Johns. R. 536; 15 Johns. R. 424 1 Marsh. (Kentucky) R. 189. According to the English decisions, it seems, the admissions of one partner, after the dissolution, have been holden to bind the other partner; this rule has been partially changed by act of parliament. Colly. on Part. 282; Stat. 9 Geo. IV. c. 14, (May 9, 1828.) In the Supreme Court of the United States, a rule, the reverse of the English, has been adopted, mainly on the ground, that the admission is a new contract or promise, springing out of, ana supported by the original consideration. 1 Pet. R. 351; 2 M'Lean, 87. The state courts have varied in their decisions some have adopted the English rule; and, in others it has been overruled. 2 Bouv. Inst. ii. 1517; Story, Partn. 324; 3 Kent, Com. Lect. 43, p. 49, 4th ed.; 17 S. & R. 126; 15 Johns. R. 409; 9 Cowen, R. 422; 4 Paige, R. 17; 11 Pick. R. 400; 7 Yerg. R. 534.

10. – 3. By one of several persons who have a community of interest. Stark, Ev. pt. 4, p. 47; 3 Serg. & R. 9.

11. – 4. By an agent, 1 Phil. Ev. 77-82 3 Paley Ag. 203-207.

12. – 5. By an attorney, 4 Camp. 133; by wife, Paley, Ag. 139, n. 2 Whart. Dig. tit. Evidence, 0 7 T. R. 112 ; Nott & M'C. 374.

13. Admissions are express or implied. An express admission is one made in direct terms. An admission may be implied from the silence of the party, and may be presumed. As for instance, when the existence of the debt, or of the particular right, has been asserted in his presence, and he has not contradicted it. And an aquiescence and endurance, when acts are done by another, which if wrongfully done, are encroachments, and call for resistance and opposition, are evidence, as a tacit admission that such acts could not be legally resisted. See 2 Stark. C. 471. See, generally, Stark. Ev. part 4, tit. Admissions; 1 Phil. Ev. part 1, c. 5, s . 4; 1 Greenl. Ev. 169-212; 2 Evans' Pothier, 319; 8 East, 549, ii. 1; Com. Dig. Testemoigne, Addenda, vol. 7, p. 434; Vin. Abr. Evidence, A, b. 2, A, b. 23 Ib. Confessions; this Dict. tit. Confessions, Examination; Bac. Abr. Evidence L.; Toullier, Droit, Civil Francais, tome 10, p. 375, 450; 3 Bouv. Inst. n. 3073.

ADMISSIONS, of attorneys and counsellors. To entitle counsellors and attorneys to practice in court, they must be admitted by the court to practice there. Different statutes and rules have been made to regulate their admission; they generally require a previous qualification by study under the direction of some practicing counsellor or attorney. See 1 Troub. & Haly's Pr. 18; 1 Arch. Pr. 16; Blake's Pr. 30.

ADMISSIONS. in pleading. Where one party means to take advantage of, or rely upon some matter alleged by his adversary, and to make it part of his case, he ought to admit such matter in his own pleadings; as if either party states the title under which his adversary claims, in which instances it ,is directly opposite in its nature to a protestation. See Prote stando. But where the party wishes to prevent the application of his pleading to some matter contained in the pleading of his adversary, and therefore makes an express admission of such matter (which is sometimes the case,) in order to exclude it from the issue taken or the like, it is somewhat similar in operation and effect, to a protestation.

2. The usual mode of making an express admission in pleading, is, after saying that the plaintiff ought not to have or maintain his action, &c., to proceed thus, " Because he says that although it be true that" &c.;repeating such of the allegations of the adverse party as are meant to be admitted. Express admissions are only matters of fact alleged in the pleadings; it never being necessary expressly to admit their legal

sufficiency, which is always taken for granted, unless some objection be made to them. Lawes' Civ. Pl. 143, 144. See 1 Chit PI. 600; Arcbb. Civ. PI. 215.

3. In chancery pleadings, admissions are said to be plenary and partial. They are plenary by force of terms not only when the answer runs in this form, "the defendant admits it to be true," but also when he simply asserts, and generally speaking, when be says, that "he has been informed, and believes it to be true," without adding a qualification such as, "that he does not know it of his own knowledge to be so, and therefore does not admit the same." Partial admissions are those which are delivered in terms of uncertainty, mixed up as they frequently are, with explanatory or qualifying circumstances.

ADMISSIONS, in practice, It, frequently occurs in practice, that in order to save expenses as to mere formal proofs, the attorneys on each side consent to admit, reciprocally, certain facts in the cause without calling for proof of them.

2. These are usually reduced to writing, and the, attorneys shortly, add to this effect, namely, " We agree that the above facts shall on the trial of this cause be admitted, and taken as proved on each side;" and signing two copies now called, "admissions " in the cause, each attorney takes one. Gresl. Eq. Ev. c. 2, p. 38.

ADMITTANCE, Eng. law. The act of giving possession of a copyhold estate, as livery of seisin is of a freehold; it is of three kinds, namely uponavoluntary grant by the lord) upon a surrender by the former tenant and upon descent.

ADMIITENDO IN SOCIUM. Eng. law. A writ associating certain persons to justices of assize.

ADMONITION. A reprimamd from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him, that should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. Merlin, Repert. h. t.

2. The admonition was authorized by the civil law, as a species of punishment for slight misdemeanors. Vide Reprimand

ADNEPOS. A term employed by the Romans to designate male descendants in the fifth degree, in a direct line. This term is used in making genealogical tables.

ADOLESCENCE, persons. That age which follows puberty and precedes the age of majority; it commences for males at fourteen, and for females at twelve years completed, and continues till twenty-one years complete.

ADOPTION, civil law. The act by which a person chooses another from a strange family, to have all the rights of his own child. Merl. Repert. h. t.; Dig. 1, 7, 15, 1; and see Arrogation. By art. 232, of the civil code of Louisiana, it is abolished in that state. It never was in use in any other of the United States.

ADROGATION, civil law. The adoption of one who was impubes, that is, if a male, under fourteen years of age; if a female, under twelve. Dig. 1, 7, 17, 1.

ADULT, in the civil law. An infant who, if a boy, has attained his full age of fourteen years, and if a girl, her full age of twelve. Domat, Liv. Prel. t. 2, s. 2, n. 8. In the common law an adult is considered one of full age. 1 Swanst. R. 553.

ADULTERATION. This term denotes the act of mixing something impure with something pure, as, to mix an inferior liquor with wino; au inferior article with coffee, tea,.and the like.

ADULTERINE. A term used in the civil law to denote the issue of an adulterous intercourse. See Nicholas on Adulterine Bastardy.

ADULTERIUM. In the old records this word does not signify the offence of adultery, but the fine imposed for its commission. Barr. on the Stat. 62, note.

ADULTERY, criminal law. From ad and alter, another person; a criminal conversation, between a man married to another woman, and a woman married to another man, or a married and unmarriod person. The married person is guilty of adultery, the unmarried of fornicatiou. (q. v.) 1 Yeates, 6; 2 Dall. 124; but see 2 Blackf. 318.

2. The elements of this crime are, 1st, that there shall be an unlawful carnal connexion; 2dly, that the guilty party shall at the time be married; 3dly, that he or she shall willingly commit the offence; for a woman who has been ravished against her will is not guilty of adultery. Domat, Supp. du Droit Public, liv. 3, t. 10, n. 13.

3. The punishment of adultery, in the United States, generally, is fine and imprisonment.

4. In England it is left to the feeble hands of the ecclesiastical courts to punish this offence.

5. Adultery in one of the married persons is good cause for obtaining a divorce by the innocent partner. See 1 Pick. 136; 8 Pick. 433; 9 Mass. 492: 14 Pick. 518; 7 Greenl. 57; 8 Greenl. 75; 7 Conn. 267 10 Conn. 372; 6 Verm. 311; 2 Fairf. 391 4 S. & R. 449;

5 Rand. 634; 6 Rand. 627; 8 S. & R. 159; 2 Yeates, 278, 466; 4 N. H. Rep. 501; 5 Day, 149; 2 N. & M. 167.

6. As to proof of adultery, see 2 Greenl. 40, Marriage.

ADVANCEMENT. That which is given by a father to his child or presumptive heir, by anticipation of whathe might inherit. 6 Watts, R. 87; 17 Mass. R. 358; 16 Mass. R. 200; 4 S. & R. 333; 11 John. R. 91; Wright, R. 339. See also Coop Just. 515, 575; 1 Tho. Co. Lit. 835, 6; 3 Do. 345, 348; Toll. 301; 5 Vez. 721; 2 Rob. on Wills, 128; Wash. C. C. Rep. 225; 4 S. & R. 333; 1 S. & R. 312; 3 Conn. Rep. 31; and post Collatio bonorum.

2. To constitute an advancement by the law of England, the gift must be made by the father and not by another, not even by the mother. 2 P. Wms. 856. In Pennsylvania a gift of real or personal estate by the father or mother may be an advancement. 1 S. & R. 427; Act 19 April 1794, 9; Act 8 April, 1833, 16. There are in the statute laws of the several states provisions relative to real and personal estates, similar in most respects to those which exist in the English statute of distribution, concerning an advancement to a child. If any child of the intestate has been advanced by him by settlement, either out of the real or personal estate, or both, equal or superior to the amount in value of the share of such child which would be due from the real and personal estate, if no such advancementhad been made, then such child and his descendants, are excluded from any share in the real or personal estate of the intestate.

3. But if the advancement be not equal, then such child, and in case of his death, his descendants, are entitled to receive, from the real and personal estate, sufficient to make up the deficiency, and no more.

4. The advancement, is either express or implied. As to what is an implied advancement, see 2 Fonb. Eq. 121; 1 Supp. to Ves. Jr. 84; 2 lb. 57; 1 Vern. by Raithby, 88, 108, 216; 5 Ves. 421; Bac. Ab. h. t.; 4 Kent, Com. 173.

5. A debt due by a child to his father differs from an advancement. In case of a debt, the money due may be recovered by action for the use of the estate, whether any other property be left by the deceased or not; whereas, an advancement merely bars the child's right to receive any part of his father's estate, unless he brings into hotch pot the property advanced. 17 Mass. R. 93, 359. See, generally, 17 Mass. R. 81, 356; 4 Pick. R. 21; 4 Mass. R. 680; 8 Mass. R. 143; 10. Mass. R. 437; 5 Pick. R. 527; 7 Conn. R. 1; 6 Conn. R. 355; 5 Paige's R. 318; 6 Watts' R. 86, 254, 309; 2 Yerg. R. 135; 3 Yerg. R. 95; Bac. Ab. Trusts, D; Math. on Pres. 59; 5 Hayw. 137; 11 John. 91; l Swanst. 13; 1 Ch. Cas. 58; 3 Conn. 31; 15 Ves. 43, 50; U. S. Dig. h. t.; 6 Whart. 370; 4 S. & R. 333; 4 Whart. 130, 540; 5 Watts, 9; 1 Watts & Serg. 390; 10 Watts, R. 158;

5 Rawle, 213; 5 Watts, 9, 80; 6 Watts & Serg. 203. The law of France in respect to advancements is stated at length in Morl. Rep. de Jurisp. Rapport a succession.

ADVANCES, contracts. Said to take place when, a factor or agent pays to his principal , a sum of, money on the credit of goods belonging to the principal, which are placed, or are to be placed, in the possession of the factor or agent, in order to reimburse himself out of the proceeds of the sale. In such case the factor or agent has a lien to the amount of his claim. Cowp. R. 251; 2 Burr. R. 931; Liverm. on Ag. 38; Journ. of Law, 146.

2. The agent or factor has a right not only to advances made to the owner of goods, but also for expenses and dishursements made in the course of his agency, out of his own moneys, on account of, or for the benefit of his principal; such as incidental charges forwarehouse-room, duties, freight, general average, salvage, repairs, journeys, and all other acts done to preserve the property of the principal, and to enable the agent to accomplish the objects of the principal, are to be paid fully by the latter. Story on Bailm. 197; Story on Ag. 335.

3. The advances, expenses and dishursements of the agent must, however, have been made in good faith, without any default on his part Liv. on Ag. 14-16; Smith on Merc. 56 Paley on Ag. by Lloyd, 109; 6 East, R. 392; 2 Bouv. list. n. 1340.

4. When the advances and dishursements have been properly made, the agent is entitled not only to the return of the money so advanced, but to interest upon such advances and dishursements, whenever from the nature of the business, or the usage of trade, or the particular agreement of the parties, it may be fairly presumed to be stipulated for, or due to the agent. 7 Wend. R. 315; 3 Binn. R. 295; 3 Caines' R. 226; 1 H. Bl. 303; 3 Camp. R. 467 15 East, R. 223; 2 Bouv. Inst. n. 1341. This just rule coincides with the civil law on this subject. Dig. 17, 1, 12, 9; Poth. Pand. lib. 17, t. 1, n. 74.

ADVENTITIOUS, adventitius. From advenio; what comes incidentally; us adventitia bona, goods that, fall to a man otherwise than by inheritance; or adventitia dos, a dowry or portion given by some other friend beside the parent.

ADVENTURE, bill of. A writing signed by a merchant, to testify that the goods shipped on board a certain vessel are at the venture of another person, he himself being answerable only for the produce. Techn. Dict.

ADVENTURE, crim. law. See Misadventure.

ADVENTURE, mer. law. Goods sent abroad under the care of a supercargo, to be disposed of to the best advantage for the benefit of his employers, is called an adventure.

ADVERSARY. One who is a party in a writ or action opposed to the other party.

ADVERSE POSSESSION, title to lands. The enjoyment of land, or such estate as lies in grant, under such circumstances as indicate that such enjoyment has been commenced and contiuued, under an assertion or color of right on the part of the possessor. 3 East, R. 394; 1 Pick. Rep. 466; 1 Dall. R. 67; 2 Serg. & Rawle, 527; 10 Watts R, 289; 8 Con R. 440; 3 Penn. 132; 2 Aik. 364; 2 Watts, 23; 9, John. 174; 18 John. 40, 355; 5 Pet. 402; 4 Bibb, 550. Actual possession is a pedis possessio which can be only of ground enclosed, and only such possession can a wrongdoer have. He can have no constructive possession. 7 Serg. & R. 192; 3 Id. 517; 2 Wash. C. Rep. 478, 479.

2. When the possession or enjoyment has been adverse for twenty years, of which the jury are to judge from the circumstances the law raises the presumption of a grant. Ang. on Wat. Courses, 85, et seq. But this presumption arises only when the use or occupation would otherwise have been unlawful. 3 Greenl. R. 120; 6 Binn. R. 416; 6 Cowen, R. 617, 677; Cowen, R. 589; 4 S. & R. 456. See 2 Smith's Lead. Cas. 307-416.

3. There are four general rules by which it may be ascertained that possession is not adverse; these will be separately considered.

4. – 1. When both parties claim under the same title; as, if a man seised of certain land in fee, have issue two sons and die seised, and one of the sons enter by abatement into the land, the statute, of limitations will not operate against the other son; for when the abator entered into the land of his father, before entry made by his brother, the law intends that he entered claiming as heir to his father, by which title the other son also claims. Co. Litt s. 396.

5. – 2. When the possession of the one party is consistent with the title of the other; as, where, the rents of a trust state were received by a cestui que trust for more than twenty years after the creation of the trust, without any interference, of the trustee, such ppssession being consistent with and secured to the cestui qwe trust by the terms of the deed, the receipt was held not to be adverse to the title of the trustee. 8 East. 248.

6. – 3. When, in contemplation of law, the claimant has never been out of possession; as, where Paul devised lands to John and his heirs, and died, and John died, and

afterwards the heirs of John and a stranger entered, and took the profits for twenty years; upon ejectment brought by the devisee of the heir of John against the stranger, it was held that the perception of the rents and profits by the stranger was not adverse to the devisee's title; for when two men are in possession, the law adjudges it to be the possession of him who has the right. Lord Raym. 329.

7. – 4. When the occupier has acknowledged the claimant's titles; as, if a lease be granted for a term, and, after paying the rent for the land during such term, the tenant hold for twenty years without paying rent, his possession will not be adverse. See Bos. & P. 542; 8 B. & Cr. 717; 2 Bouv. Inst. n. 2193-94, 2351.

ADVERTISEMENT. A 'notice' published either in handbills or in a newspaper.

2. The law in many instances requires parties to advertise in order to give notice of acts which are to be done; in these cases, the advertisement is in general equivalent to notice.

3. When an advertisement contains the terms of sale, or description of the property to be sold, it will bind the seller; and if there be a material misrepresentation, it may avoid the contract, or at least entitle the purchaser to a compensation and reduction from the agreed, price. Kapp's R. 344; 1 Chit. Pr. 295.

ADVICE, com. law. A letter containing information of any circumstances unknown to the person to whom it is written; when goods are forwarded by sea or land, the letter transmited to inform the consignee of the fact, is termed advice of goods, or letter of advice. When one merchant draws upon another, he generally advises him of the fact. These letters are intended to give notice of the facts they contain.

ADVICE, practice. The opinion given by counsel to their clients; this should never be done but upon mature deliberation to the best of the counsel's ability; and without regard to the consideration whether it will affect the client favorably or unfavorably.

ADVISEMENT. Consideration, deliberation, consultation; as the court holds the case under advisement.

ADVOCATE, civil and ecclesiastical law. 1. An officer who maintains or de fends the rights of his client in the same manner as the counsellor does in the common law.

2. Lord Advocate. An, officer of state in Scotland, appointed by the king, to advise about the making and executing the law, to prosecute capital crimes, &c.

3. College or faculty of advocates. A college consisting of 180 persons, appointed to plead in. all actions before the lords of sessions.

4. Church or ecclesiastical advocates. Pleaders appointed by the church to maintain its rights.

5. – 2. A patron who has the advowson or presentation to a church. Tech. Dict.; Ayl. Per. 53; Dane Ab. c.,31, 20. See Counsellor at law; Honorarium.

ADVOCATIA, civil law. This sometimes signifies the quality, or functions, and at other times the privilege, or the territorial jurisdiction of an advocate, See Du Cange, voce Advocatia, Advocatio.

ADVOCATION, Scotch law. A writing drawn up in the form of a petition, called a bill of advocation, by which a party in an action applies to the supreme court to advocate its cause, and to call the action out of an inferior court to itself. Letters of advocation, are the decree or warrant of the supreme court or court of sessions, discharging the inferior tribunal from all further proceedings in the matter, and advocating the action to itself. This proceeding is similar to a certiorari (q. v.) issuing out of a superior court for the removal of a cause from an inferior.

ADVOCATUS. A pleader, a narrator. Bract. 412 a, 372 b.

ADVOWSON, ecclesiastical law. From advow or advocare, a right of presentation to a church or benefice. He who possesses this right is called the patron or advocate, (q. v.) when there is no patron, or he neglects to exercise his right within six months, it is called a lapse, i. e. a title is given to the ordinary to collate to a church; when a presentation is made by one who has no right it is called a usurpation.

2. Advowsons are of different kinds, as Advowson appendant, when it depends upon a manor, &c. – Advowson in gross, when it belongs to a person and not to a manor. – Advowson presentative, where the patron presents to the bishop. – Advowson donative, where the king or patron puts the clerk into possession without presentation. – Advowson of the moiety of the church, where there are two several patrons and two incumbents in the same churcb. – A moiety of advowson, where two must join the presentation, of one incumbent. – Advowson of religious houses, that whicb is vested in the person who founded such a house. Techn. Dict.; 2 Bl. Com. 21; Mirehouse on Advowsons; Com. Dig. Advowson, Quare Impedit; Bac. Ab. Simony; Burn's Eccl. Law, h. t.; Cruise's Dig. Index, h. t.

AFFECTION, contracts. The making over, pawning, or mortgaging a thing to assurp the payment of a sum of money, or the discharge of some other duty or service. Techn. Diet.

AFFEERERS, English law. Those who upon oath settle and moderate fines in courts leet. Hawk. 1. 2, c. 112.

TO AFFERE, English law. Signifies either "to affere an amercement," i. e. to mitigate the rigor of a fine; or "to affere an account," that is, to confirm it on oath in the exchequer.

AFFIANCE, contracts. From affidare or dare fidem, to give a pledge. A plighting of troth between a man and woman. Litt. s. 39. Pothier, Traite du Mariage, n. 24, defines it to be a an agreement by which a man and a woman promise each other that they will marry together. This word is used by some authors as synonymous with marriage. Co. Litt. 34, a, note 2. See Dig. 23, 1 Code 5, 1, 4; Extrav. 4, 1.

AFFIDARE. To plight one's faith, or give fealty, i. e. fidelity by making oath, &c. Cunn. Dict. h. t.

AFFIDATIO DOMINORUM, Eng. law. An oath taken by a lord in parliament.

AFFIDAVIT, practice. An oath or affirmation reduced to writing, sworn or affirmed to before some officer who has authority to administer it. It differs from a deposition in this, that in the latter the opposite party has had an opportunity to cross-examine the witness, whereas an affidavit is always taken ex parte. Gresl. Eq. Ev. 413. Vide Harr. Dig. h. t.

2. Affidavit to hold to bail, is in many cases required before the defendant can be arrested; such affidavit must be made by a person who is acquainted with the fact, and must state, 1st, an indebtedness from the defendant to the plaintiff; 2dly, show a distinct cause of action; 3dly, the whole must be clearly and certainly, expressed. Sell. Pr. 104; 1 Chit. R. 165; S. C. 18 Com. Law, R. 59 note; Id. 99.

3. An affidavit of defence, is made by a defendant or a person knowing the facts, in which must be stated a positive ground of defence on the merits. 1 Ashm. R. 4, 19, n. It has been decided that when a writ of summons has been served upon three defendants, and only one appears, a judgment for want of an affidavit of defence may be rendered against au. 8 Watts, R. 367. Vide Bac. Ab. h. t.

AFFINITAS AFFINITATIS. That connexion between two persons which has neither consanguinity nor affinity; as, the connexion between the hushand's brother

and the wife's sister. This connexion is formed not between the parties themselves, nor between one of spouses and the kinsmen of the other, but between the kinsmen of both. Ersk. Inst. B, 1, tit. 6, s. 8.

AFFINITY. A connexion formed by marriage, which places the hushand in the same degree of nominal propinquity to the relations of the wife, as that in which she herself stands towards them, and gives to the wife the same reciprocal connexion with the relations of the hushand. It is used in contradistinction to consanguinity. (q. v.) It is no real kindred.

2. Affinity or alliance is very different from kindred. Kindred are relations. by blood; affinity is the tie which exists between one of the spouses with the kindred of the other; thus, the relations, of my wife, her brothers, her sisters, her uncles, are allied to me by affinity, and my brothers, sistors, &c., are allied in the same way to my wife. But my brother and the sister of my wife are not allied by the ties of affinity: This will appear by the following paradigms

My wife's father ---| | | | ----------| | | |-- are all allied to me. Ego ----- My Wife 0 My wife's sister ---| | | 0 My wife's niece ---| My wife's father, ---| My Father | |My brother | | |and my wife's | | |sister are |----------| |----------| |not allied | | | | |to each other My brother Ego ---- My wife, My wife's sister, |

3. A person cannot, by legal succession, receive an inheritance from a relation by affinity; neither does it extend to the nearest relations of hushand and wife, so as to create a mutual relation between them. The degrees of affinity are computed in the same way as those of consanguinity. See Pothier, Traite du Mariage, part 3, ch. 3, art. 2, and see 5 M. R. 296; Inst. 1, 10, 6; Dig. 38, 10, 4, 3; 1 Phillim. R. 210; S. C. 1 Eng. Eccl. R. 72; article Marriage.

TO AFFIRM, practice. 1. To ratify or confirm a former law or judgment, as when the supreme court affirms the judgment of the court of common pleas. 2. To make an affirmation, or to testify under an affirmation.

AFFIRMANCE. The confirmation of a voidable act; as, for example, when an infant enters into a contract, which is not binding upon him, if, after attaining his full age, he gives his affirmance to it, he will thereafter be bound, as if it had been made when of full age. 10 N. H. Rep. 194.

2. To be binding upon the infant, the affirmance must be made after arriving of age, with a full knowledge that it would be void without such confirmation. 11 S. & R. 305.

3. An affirmance may be express, that is, where the party declares his determination of fulfilling the contract; but a more acknowledgment is not sufficient. Dudl. R, 203. Or it may be implied, as, for example, where an infant mortgaged his land and, at full age, conveyed it, subject to the mortgage. 15 Mass. 220. See 10 N. H. Rep. 561.

AFFIRMANCE-DAY, GENERAL. In the English Court of Exchequer, is a day appointed by the judges of the common pleas, and barons of the exchequer, to be held a few days after the beginning of every term for the general affirmance or reversal of judgments. 2 Tidd. 1091.

AFFIRMANT, practice. One who makes affirmation instead of making oath that the evidence which he is about to give shall be the truth, as if he had been sworn. He is liable to all the pains and penalty of perjury, if he shall be guilty of wilfully and maliciously violating his affirmation.

AFFIRMATION, practice. A solemn declaration and asseveration, which a witness makes before an officer, competent to administer an oath in a like case, to tell the truth, as if be had been sworn.

2. In the United States, generally, all witnesses who declare themselves conscientiously scrupulous against taking a corporal oath, are permitted to make a solemn affirmation, and this in all cases, as well criminal as civil.

3. In England, laws have been enacted which partially relieve persons who, have conscientious scruples against taking an oath, and authorize them to make affirmation. In France, the laws which allow freedom of religious opinion, have received the liberal construction that all persons are to be sworn or affirmed according to the dictates of their consciences; and a quaker's affirmation has been received and held of the same effect as an oath. Merl. Quest. de Droit, mot Serment, 1.

4. The form is to this effect: "You, A B, do solemnly, sincerely, and truly declare and affirm," &c. For the violation of the truth in such case, the witness is subject to the punishment of perjury " as if he had been sworn.

5. Affirmation also means confirming; as, an affirmative statute.

AFFIRMATiVE. Averring a fact to be true; that which is opposed to negative. (q. v.)

2. It is a general rule of evidence that the affirmative of the issue must be proved. Bull. N. P. 298 ; Peake, Ev. 2.

3. But when the law requires a person to do an act, and the neglect of it, will render him guilty and punishable, the negative must be proved, because every man is presumed to do his duty and in that case they who affirm he did not, must prove it. B. N. P. 298; 1 Roll. R. 83; Comb. 57; 3 B.& P. 307; 1 Mass. R. 56.

AFFIRMATIVE PREGNANT, Pleading. An affirmative allegation, implying some negative, in favor of the adverse party, for example, if to an action of assumpsit, which is barred by the act of limitations of six years, the defendant pleads that be did not undertake &c. within ten years; a replication that he did undertake, &c. within ten years, would be an affirmative pregnant; since it would impliedly admit that the defendant had not promised within six years. As no proper issue could be tendered upon such plea the plaintiff should, for that reason, demur to it. Gould, PI. c. 6 29, 37; Steph. PI. 381; Lawes, Civ. PI. 113; Bac. Ab. Pleas, N 6.

AFFORCE, AFFORCEMENT OF THE ASSIZE, Old English law, practice. An ancient practice in trials by jury, which is explained by Bracton, (fo. 185, b. 292 a) and by the author of Fleta, lib. 4, cap. 9, 2. It consisted in adding other jurors to the panel of jurors, after the cause had been committed to them, in case they could not agree in a verdict. The author of Fleta (ubi sup) thus describes it. The oath having been administered to the jury, the (prenotarius) prothonotary, addressed them thus: "You will say upon the oath you have taken, whether such a one unjustly and without judgment disseized such a one of his freehold in such a ville within three years or not." The justices also repeat for the instruction of, the jurors the plaint of the plaintiff, &c. The jurors then retire and confer together, &c.;If the jurors differ among themselves and cannot agree in one (sententiam) finding, it will be in the discretion of the judges, &c; to afforce the assize by others, provided there remain of the jurors summoned many as the major party of the dissenting jurors; or they may compel the same jurors to unanimity, viz. by directing the sheriff to keep them safely without, meat or drink until they agree. The object of adding to the panel a number equal to the major party of the dissenting jurors, was to ensure a verdict by twelve of them, if the jurors thus added to the panel should concur with the minor party of the dissenting jurors. This practice of afforcing the assize, was in reality a second trial of the cause, and was abandoned, because the courts found it would save delay and trouble by insisting upon unanimity. The practice of confining jurors without meat and drink in order to enforce unanimity, has in more modern times also been abandoned and the more rational practice adopted of discharging the jury and summoning a new one for the trial of the cause, in cases where they cannot agree. This expedient for enforcing unanimity was probably introduced from the canon law, as we find it was resorted to on the continent, in other cases where the unanimity of a consultative or deliberative body was deemed indispensable. See Barring. on Stats. 19, 20; 1, Fournel, Hist. des Avocats, 28, note.

TO AFFRANCHISE. To make free.

AFFRAY, criminal law. The fighting of two or more persons, in some public place, to the terror of the people.

2. To constitute this offence there must be, 1st, a fighting; 2d, the fighting must be between two or more persons; 3d, it must be in some public place ; 4th, it must be to the terror of the people.

3. It differs from a riot, it not being premeditated; for if any persons meet together upon any lawful or innocent occasion, and happen on a sudden to engage in fighting, they are not guilty of a riot but an affray only; and in that case none are guilty except those actually engaged in it. Hawk. b. 1, c. 65, s. 3 ; 4 Bl. Com. 146; 1 Russell, 271.

AFFREIGHTMEET, Com. law. The contract by which a vessel or the use of it, is let out to hire. See Freight; General ship.

AFORESAID. Before mentioned; already spoken of. This is used for the purpose of identifying a person or thing; as where Peter, of the city of Philadelphia, has been mentioned; when it is necessary to speak of him, it is only requisite to say Peter aforesaid, and if the city of Philadelphia, it may be done as the city of Philadelphia, aforesaid.

AFORETHOUGHT, crim. law. Premeditated, prepense; the length of time during which the accused has entertained the thought of committing the offence is not very material, provided he has in fact entertained such thought; he is thereby rendered criminal in a greater degree than if he had committed the offence without. premeditation. Vide Malice; aforethought; Premeditation 2 Chit. Cr. 785; 4 Bl. Com. 199; Fost. 132, 291, 292; Cro. Car. 131; Palm. 545; W. Jones, 198; 4 Dall. R. 146; 1 P. A. Bro. App. xviii.; Addis. R. 148; 1 Ashm. R. 289.

AFTERMATH. A right to have the last crop of grass or pasturage. 1 Chit. Pr. 181.

AGAINST THE FORM OF THE STATUTE. When a statute prohibits a thing to be done, and an action is brought for the breach of the statute, the declaration or indictment must conclude against the form of the statute. See Contra formam statuti.

AGAINST THE WILL, pleadings. In indictments for robbery from the person, the words "feloniously and against the will," must be introduced; no other words or phrase will sufficiently charge the offence. 1 Chit. Cr. 244.

AGARD. An old word which signifies award. It is used in pleading, as nul agard, no award;

AGE. The time when the law allows persons to do acts which, for want of years, they were prohibited from doing before. See Coop. Justin. 446.

2. For males, before they arrive at fourteen years they are said not to be of discretion; at that age they may consent to marriage and choose a guardian. Twenty-one years is full age for all private purposes, and the may then exercise their rights as citizens by voting for public officers; and are eligible to all offices, unless otherwise provided for in the constitution. At 25, a man may be elected a representative in Congress; at 30, a senator; and at 35, he may be chosen president of the United States. He is liable to serve in the militia from 18 to 45. inclusive, unless exempted for some particular reason.

3. As to females, at 12, they arrive at years of discretion and may consent to marriage; at 14, they may choose a guardian; and 21, as in males, is fun Age, when they may exercise all the rights which belong to their sex.

4. In England no one can be chosen member of parliament till he has attained 21 years; nor be ordained a priest under the age of 24; nor made a bishop till he has completed his 30th year. The age of serving in the militia is from 16 to 45 years.

5. By the laws of France many provisions are made in respect to age, among wbich are the following. To be a member of the legislative body, the person must have attained 40 years; 25, to be a judge of a tribunal de remiere instance; 27, to be its president, or to be judge or clerk of a cour royale ; 30, to be its president or procureur general; 25, to be a justice of the peace; 30, to be judge of a tribunal of commerce, and 35, to be its president; 25, to be a notary public; 21, to be a testamentary witness; 30, to be a juror. At 16, a minor may devise one half of his, property as if he were a major. A male cannot contract marriage till after the 18th year, nor a female before full 15 years. At 21, both males and females are capable to perform all the act's of civil life.. – Toull. Dr. Civ. Fr. Liv. 1, Intr. n. 188.

6. In the civil law, the age of a man was divided as follows: namely, the infancy of males extended to the full accomplishment of the 14th year; at 14, he entered the age of puberty, and was said to have acquired full puberty at 18 years accomplished, and was major on completing his 25th year. A female was an infant – til 7 years; at 12, she entered puberty, and accquired full puberty at 14; she became of fall age on completing her 25th year. Lecons Elem. du Dr. Civ. Rom. 22.See Com. Dig. Baron and Feme, B 5, Dower, A, 3, Enfant, C 9, 10, 11, D 3, Pleader, 2 G 3, 2 W 22, 2 Y 8; Bac. Ab. Infancy and Age; 2 Vin. Ab. 131; Constitution of the United States; Domat.

Lois Civ.tome 1, p. 10; Merlin, Repert. de Jurisp. mot Age; Ayl. Pand. 62; 1 Coke Inst. 78; 1 Bl. Com. 463. See Witness.

AGE-PRAYER, AGE-PRIER, oetatis precatio. English law, practise. Wnen an action is brought against an infant for lands which he hath by descent, he may show this to the court, and pray quod loquela remaneat until he shall become of age; which is called his age-prayer. Upon this being ascertained, the proceedings are stayed accordingly. When the lands did not descend, he is not allowed this privilege. 1 Lilly's Reg. 54.

AGED WITNESS. When a deposition is wanted to be taken on account of the age of a witness, he must be at least seventy years old to be considered an aged witness. Coop. Eq. PI. 57; Amb. R. 65; 13 Ves. 56, 261.

AGENCY, contracts. An agreement, express , or implied, by which one of the parties, called the principal, confides to the other, denominated the agent, the management of some business; to be transacted in his name, or on his account, and by which the agent assumes to do the business and to render an account of it. As a general rule, whatever a man do by himself, except in virtue of a delegated authority, he may do by an agent. Combee's Case, 9 Co. 75. Hence the maxim qui facit per alium facit per se.

2. When the agency express, it is created either by deed, or in writing not by deed, or verbally without writing. 3 Chit. Com. Law 104; 9 Ves. 250; 11 Mass. Rep. 27; Ib. 97, 288; 1 Binn. R. 450. When the agency is not express, it may be inferred from the relation of the parties and the nature of the employment, without any proof of any express appointment. 1 Wash. R. 19; 16 East, R. 400; 5 Day's R. 556.

3. The agency must be antecedently given, or subsequently adopted; and in the latter case there must be an act of recognition, or an acquiescence in the act of the agent, from which a recognition may be fairly implied. 9 Cranch, 153, 161; 26 Wend. 193, 226; 6 Man. & Gr. 236, 242; 1 Hare & Wall. Sel. Dec. 420; 2 Kent, Com. 478; Paley on Agency; Livermore on Agency.

4. An agency may be dissolved in two ways – 1, by the act of the principal or the agent; 2, by operation of law.

5. – 1. The agency may be dissolved by the aet of one of the parties. 1st. As a general rule, it may be laid down that the principal has a right to revoke the powers which he has given; but this is subject to some exception, of which the following are examples. When the principal has expressly stipulated that the authority shall be irrevocable, and the agent has an interest in its execution; it is to be observed, however, that although there may be an express agreement not to revoke, yet if the agent has no interest in its

execution, and there is no consideration for the agreement, it will be considered a nude pact, and the authority may be revoked. But when an authority or power is coupled with an interest, or when it is given for a valuable consideration, or when it is a part of a security, then, unless there is an express stipulation that it shall be revocable, it cannot be revoked, whether it be expressed on the face of the instrument giving the authority, that it be so, or not. Story on Ag. 477; Smith on Merc. L. 71; 2 Liv. on Ag. 308; Paley on Ag. by Lloyd, 184; 3 Chit. Com. f. 223; 2 Mason's R. 244; Id. 342; 8 Wheat. R. 170; 1 Pet. R. 1; 2 Kent, Com. 643, 3d edit.; Story on Bailm. 209; 2 Esp. R. 665; 3 Barnw. & Cressw. 842; 10 Barnw. & Cressw. 731; 2 Story, Eq. Jur. 1041, 1042, 1043

6. – 2. The ageacy may be determined by the renunciation of the agent. If the renunciation be made after it has been partly executed, the agent by renouncing it, becomes liable for the damages which may thereby be sustained by his principal. Story on Ag. 478; Story on Bailm. 436; Jones on Bailm. 101; 4 John r. 84.

7. – 2 The agency is revoked by operation of law in the following cases: 1st. When the agency terminates by the expiration of the period, during which it was to exist, and to have effect; as, if an agency be created to endure a year, or till the happening of a contingency, it becomes extinct at the end or on the happening of the contingency.

8. – 2. When a change of condition, or of state, produces an incapacity in either party; as, if the principal, being a woman, marry, this would be a revocation, because the power of creating an agent is founded on the right of the principal to do the business himself, and a married woman has no such power. For the same reason, when the principal becomes insane, the agency is ipso facto revoked. 8 Wheat. R. 174, 201 to @04; Story on Ag. 481; Story on Bailm. 206. 2 Liv. on Ag. 307. The incapacity of the agent also amounts to a revocation in law, as in case of insanity, and the like, which renders an agent altogether incompetent, but the rule does not reciprocally apply in its full extent. For instance, an infant or a married woman may in some cases be agents, althouah they cannot act for themselves. Co. Litt. 52a.

9. – 3. The death of either principal or agent revokes the agency, unless in cases where the agent has an interest in the thing actually vested in the agent. 8 Wheat. R. 174; Story on Ag. 486 to 499; 2 Greenl. R. 14, 18; but see 4 W. & S. 282; 1 Hare & Wall. Sel. Dec. 415.

10. – 4. The agency is revoked in law, by the extinction of the subject-matter of the agency, or of the principal's power over it, or by the complete execution of the trust. Story on Bailm. 207, Vide generally, 1 Hare & Wall. Sel. Dec. 384, 422; Pal. on Ag.; Story on Ag.; Liv. on Ag.; 2 Bouv. Inst. n. 1269-1382.

AGENT, practice. An agent is an attorney who transacts the business of another attorney.

2. The agent owes to his principal the unremitted exertions of his skil and ability, and that all his transactions in that character, shall be distinguished by punctuality, honor and integrity. Lee's Dict. of Practice.

AGENT, international law. One who is employed by a prince to manage his private affairs, or, those of his subjects in his name, near a foreign, government. Wolff, Inst. Nat. 1237.

AGENT, contracts. One who undertakes to manage some affair to be transacted for another, by his authority on account of the latter, who is called the principal, and to render an account of it.

2. There are various descriptiona of agents, to whom different appellations are given according to the nature of their employments; as brokers, factors, supercargoes, attorneys, and the like; they are all included in this general term. The authority is created either by deed, by simple writing, by parol, or by mere employment, according to the capacity of the parties, or the nature of the act to be done. It is, therefore, express or implied. Vide Authority.

3. It is said to be general or special with reference to its object, i.e., according as it is confined to a single act or is extended to all acts connected with a particular emplowment.

4. With reference to the manner of its execution, it is either limited or unlimited, i. e. the agent is bound by precise instructions, (q. v.) or left to pursue his own discretion. It is the duty of an agent, 1, To perform what he has undertaken in relation to his agency. 2, To use all necessary care. 3, To render an account. Pothier, Tr. du Contrat de Mandat, passim; Paley, Agency, 1 and 2; 1 Livrm. Agency, 2; 1 Suppl. to Ves. Jr. 67, 97, 409; 2 Id. 153, 165, 240; Bac. Abr. Master and Servant, 1; 1 Ves. Jr. R. 317. Vide Smith on Merc. Law, ch. 3, p. 43,. et seq. and the articles Agency, Authority, and Principal.

5. Agents are either joint or several. It is a general rule of ther common law, that when an authority is given to two or more persons to do an act, and there is no several authority given, all the ageuts must concur in doing it, in order to bind the principal. 3 Pick. R. 232; 2 Pick. R. 346; 12 Mass. R. 185; Co. Litt. 49 b, 112 b, 113, and Harg. n. 2; Id. 181 b. 6 Pick. R. 198 6 John. R. 39; 5 Barn. & Ald. 628.

6. This rule has been so contrued that when the authority is given jointly and severally to three person, two cannot properly execute it; it must be done by all or by one only. Co. Litt. 181 b; Com. Dig. Attorney, C 11; but if the authority is so worded that it is apparent, the principal intended to give power to either of them, an execution by two will be valid. Co. Litt. 49 b; Dy. R. 62; 5 Barn. & Ald. 628. This rule aplies to private agencies: for, in public agencies an authority executed by a major would be sufficient. 1 Co. Litt. 181b; Com. Dig. Attorney, C 15; Bac. Ab. Authority, C; 1 T. R. 592.

7. The rule in commercial transactions however, is very different; and generally when there are several agents each possesses the whole power. For example, on a consignment of goods for sale to two factors, (whether they are partners or not,) each of them is understood to possess the whole power over the goods for the purposes of the consigment. 3 Wils. R. 94, 114; Story on Ag. 43.

8. As to the persons who are capable of becoming agents, it may be observed, that but few persons are excluded from acting as agents, or from exercising authority delegated to them by others. It is not, therefore, requisite that a person be sui juris, or capable of acting in his own right, in order to be qualified to act for others. Infants, femes covert, persons attainted or outlawed, aliens and other persons incompetent for many purposes, may act as agents for others. Co. Litt. 62; Bac. Ab. Authority, B; Com. Dig. Attorney, C 4; Id. Baron and Feme, P 3; 1 Hill, S. Car. R. 271; 4 Wend. 465; 3 Miss. R. 465; 10 John. R. 114; 3 Watts, 39; 2 S. & R. 197; 1 Pet. R. 170.

9. But in the case of a married woman, it is to be observed, that she cannot be an agent for another when her husband expressly dissents, particularly when he may be rendered liable for her acts. Persons who have clearly no understanding, as idiots and lunatics cannot be agents for others. Story on Ag. 7.

10. There is another class who, though possessing understanding, are incapable of acting as agents for others; these are persons whose duties and characters are incompatible with their obligations to the principal. For example, a person cannot act as agent in buying for another, goods belonging to himself. Paley on Ag. by Lloyd, 33 to 38; 2 Ves. Jr. 317.

11. An agent has rights which he can enforce, and is, liable to obligations which he must perform. These will be briefly considered:

1. The rights to which agents are entitled, arise from obligations due to them by their principals, or by third persons.

12 – 1. Their rights against their principals are, 1., to receive a just compensation for their services, when faithfully performed, in execution of a lawful agency, unless such

services, are entirely gratuitous, or the agreement between the parties repels such a claim; this compensation, usually called a commission, is regulated either by particulaar agreement, or by the usage of trade, or the presumed intention of the parties. 8 Bing. 65; 1 Caines, 349; 2 Caines, 357.

2. To be reimbursed all their just advances, expenses and disbursemnts made in the course of their agency, on account of, or for the benefit of their principal; 2 Liverm. on Ag. 11-23; Story on Ag. 335; Story on Bailm. 196; Smith on Mer. Law, 56; 6 East, 392; and also to be paid interest upon such advances, whenever from the nature of the business, or the usage of trade, or the particular agreement of the parties, it may be fairly presumed to have been stipulated for, or due to the agent. 7 Wend. 315; 3 Binn. 295; 3 Caines, 226; 3 Camp. 467; 15 East, 223.

13. Besides the personal remedies which an agent has to enfored his claims against his principal for his commissions and, advancements, he has a lien upon the property of the principal in his hand. See Lien, and Story on Ag. 351 to 390.

14. – 2. The rights of agents against third penons arise, either on contracts made between such third persons and them, or in consequence of torts committed by the latter. 1. The rights of agents against third persons on contracts, are, 1st, when the contract is in writing and made expressly with the agent, and imports to be a contract personally with him, although he may be known to act as an agent; as, for example, when a promissory note is given to the agent as such, for the benefit of his principal, and the promise is to pay the money to the agent, oe nomine. Story on Ag. 393, 394; 8 Mass. 103; see 6 S.& R. 420; 1 Lev. 235; 3 Camp. 320; 5 B.& A. 27. 2d. When the agent is the only known or ostensible pincipal, and therefore, is in contemplation of law, the real contracting party. Story on Ag. 226, 270, 399. As, if an agent sell goods of his principal in his own name, as if he were the owner, he is entitled to sue the buyer in his own name; although his prncipal may also sue. 12 Wend. 413; 5 M.& S. 833. And on the other hand, if he so buy, he may enforce the contract by action. 3d. When, by the usage of trade, the agent is authorized to act as owner, or as a principal contracting party, although his character as agent is known, he may enforce his contract by action. For example, an auctioner, who sells the goods of another may maintain an action for the price, because he has a possession coupled with an interest in the goods, and it is a general rule, that whenever an agent, though known as such, has a special property in the subject-matter of the contract, and not a bare-custody, or when he has acquired an interest, or has a lien upon it, he may sue upon the contract. 2 Esp. R. 493; 1 H. Bl. 81, 84; 6 Wheat. 665; 3 Chit. Com.Law, 10; 3 B. & A. 276. But this right to bring an action by agents is subordinate to the rights of the principal, who may, unless in particular cases, where the agent has a lien, or some other vested right, bring a suit himself, and suspend or extinguish the right of the agent. 7 Taunt. 237, 243; 2 Wash. C. C. R. 283. 2. Agents are entitled to actions against third persons for

torts committed against them in the course of their agency. 1st. They may maintain actions, of trespass or trover against third persons for any torts or injuries affecting their possession of the goods which they hold as agents. Story on Ag. 414; 13 East, 135; 9 B. & Cressw. 208; 1 Hen. Bl. 81. 2d. When an agent has been induced by the fraud of a third person to sell or buy goods for his principal, and he has sustained loss, he may maintain an action against such third person for such wrongful act, deceit, or fraud. Story on Ag. 415.

15 – 2. Agents are liable for their acts, 1, to their principals; and 2, to third person.

16. – 1. The liabilities of agents to their principals arise from a violation of their duties and obligations to the principal, by exceeding their authority, by misconduct, or by any negligence or omission, or act by which the principal sustains a loss. 3 B. & Adol. 415; 12 Pick. 328. Agents may become liable for damages and loss under a special contract, contrary to the general usages of trade. They may also become responsible when charging a del credere commission. Story on Ag. 234.

17. – 2. Agents become liable to third persons; 1st, on their contract; 1, when the agent, undertakes to do an act for another, and does not possess a sufficient authority from the principal, and that is unknown to the other party, he will be considered as having acted for himself as a principal. 3 B. 9 Adol. 114. 2. When the agent does not disclose his agency, he will be considered as a principal; 2 Ep. R. 667; 15 East, 62; 12 Ves. 352; 16 Martin's R. 530; and, in the case of agents or factors, acting for merchants in a foreign country, they will be considered liable whether they disclose their principal or not, this being the usage of the trade; Paley on Ag. by Lloyd, 248, 373; 1 B.& P. 368; but this presumption may be rebutted by proof of a contrary agreement. 3. The agent will be liable when he expressly, or by implication, incurs a personal responsibility. Story on Ag. 156-159. 4. When the agent makes a contract as such, and there is no other responsible as principal, to whom resort can be had; as, if a man sign a note as "guardian of AB," an infant; in that case neither the infant nor his property will be liable, and the agent alone will be responsible. 5 Mass. 299; 6 Mass., 58. 2d. Agents become liable to third persons in regard to torts or wrongs done by them in the course of their agency. A distinction has been made, in relation to third persons, between acts of misfeasance and non-feasance: an agent is, liable for the former, under certain circumstances, but not for the latter; he being responsible for his non-feasance only to his principal. Story on Ag. 309, 310. An agent is liable for misfeasance as to third persons, when, intentionally or ignorantly, he commits a wrong, although authorized by his principal, because no one can lawfully authorize another to commit a wrong upon the rights or property of another. 1 Wils. R. 328; 1 B. & P. 410. 3d. An agent is liable to refund money, when payment to him is void ab initio, so that, the money was never received for the use of his principal, and he is consequently not accountable to the latter for it, if he has not actually paid it over at

the time he receives notice of the take. 2 Cowp. 565; 10 Mod. 233; M.& S. 344. But unless "caught with the money in his possession," the agent is not responsible. 2 Moore, 5; 8 Taunt. 136; 9 Bing. 878; 7 B.& C. 111; 1 Cowp. 69; 4 Taunt. 198. This last rule is, however, subject to this qualification, that the money shall have been lawfully received by the agent; for if, in receiving it, the agent was a wrongdoer, he will not be exempted from liability by payment to his principal. 1 Campb. 396; 8 Bing. 424; 1 T. R. 62; 2 Campb. 122; 1 Selw. N. P. 90, n.; 12 M. & W. 688; 6 A.& Ell. N. S. 280; 1 Taunt. 359; 3 Esp. 153. See Diplomatic agent.

AGENT AND PATIENT. This phrase is used to indicate the state of a person who is required to do a thing, and is at the same time the person to wbom it is done; as, when a man is indebted to another, and he appoints him his executor, the latter is required to pay the debt in his capacity of executor, and entitled to receive it in his own right, he is then agent and patient. Termes de la ley.

AGGRAVATION, crimes, torts. That which increases the enormity of a crime or the injury of a wrong. The opposite of extenuation.

2. – When a crime or trespass has been committed under aggravating circumstances, it is punished with more severity; and, the damages given to vindicate the wrong are greater.

AGGRAVATION, in pleading. The introduction of matter into the declaration which tends to increase the amount of damages, but does not affect the right of action itself. Steph. Pl. 257; 12 Mod. 597. See 3 An. Jur. 287, 313. An example of this is found in the case where a plaintiff declares in trespass for entering his house, and breaking his close, and tossing his goods about; the entry of the house is the principal ground and foundation of the action, and the rest is only stated by way of agravation; 3 Wils. R. 294; and this matter need not be proved by the plintiff or answered by the defendant.

AGGREGATE. A collection of particular persons or items, formed into one body; as a corporation aggregate, which is one formed of a number of natural persons; the union of individual charges make an aggregate charge.

AGGRESSOR, crim. law. He who begins, a quarrel or dispute, either by threatening or striking another. No man may strike another because he has threatened, or in consequence of the use of any words.

AGIO, aggio. This term is used to denote the difference of price beteen the value of bank notes and nominal money, and the coin of the country. – Encyc.

AGIST, in contrads. The taking of other men's cattle on one's own ground at a certain rate. 2 Inst. 643; 4 Inst. 293.

AGISTER. One who takes horses or other animals to agist.

2. The agister is not, like an innkeeper, bound to take all horses offered to him, nor is he liable for any injury done to such animals in his care, unless he has been guilty of negligence, or from his ignorance, negligence may be inferred. Holt's R. 457.

AGISTMENT, contracts. The taking of another person's cattle into one's own ground to be fed, for a consideration to be paid by the owner. The person who receives the cattle is called an agister.

2. An agister is bound to ordinary diligence, and of course is responsible for loses by ordinary negligence; but he does not insure the safety of the cattle agisted. Jones, Bailm. 91; I Bell's Com. 458; Holt's N. P. Rep. 547; Story, Bail. 443; Bac. Ab. Tythes, C l.

AGNATES. In the sense of the Roman law were those whose propinquity was connected by males only; in the relation of cognates, one or more females were interposed.

2. By the Scotch lanv, agnates are all those who ar related by the father, even though females intervene; cognates are those who are related by the mother. Ersk. L. Scot. B. 1, t. 7, s. 4.

AGNATI, in descents. Relations on the father's side: they are different from the cognati, they being relations on the mother's side, affines, who are allied by marriage, and the propinqui, or relations in general. 2 Bl. Com. 235; Toull. Dr. Civ. Fr. tome 1, p. 139; Poth. Pand. Tom. 22, p. 27. Calvini Lex.

AGNATION, in descents. The relation by blood which exists between such males as are descended from the same father; in distinction from cognation or consanguinity, which includes the descendants from females. This term is principally used in the civil law.

AGRARIAN LAW. Among the Romans, this name was given to a law, which had for its object, the division among the people of all the lands which had been conquered, and which belonged to the domain of the state.

AGREEMENT, contract. The consent of two or more persons concurring, respecting the transmissiou of some property, right or benefit, with a view of contracting an

obligation. Bac. Ab. h.t.; Com. Dig. h.t.; Vin. Ab. h.t.; Plowd. 17; 1 Com. Contr. 2; 5 East's R. 16. It will be proper to consider, 1, the requisites of an agreement; 2, the kinds of agreements; 3, how they are annulled.

2. – 1. To render an agreement complete six things must concur; there must be, 1, a person able to contract; 2, a person able to be contracted with; 3, a thing to be contracted for; 4, a lawful consideration, or quid pro quo; 5, words to express the agreement; 6, the assent of the contracting parties. Plowd. 161; Co. Litt. 35, b.

3. – 2. As to their form, agreements are of two kinds; 1, by parol, or, in writing, as contradistinguished from specialties; 2, by specialty, or under seal. In relation to their performance, agreements are executed or executory. An agreement is said to be executed when two or more persons make over their respective rights in a thing to one another, and thereby change the property therein, either presently and at once, or at a future time, upon some event that shall give it full effect, without either party trusting to the other; as where things are bought, paid for and delivered. Executory agreements, in the ordinary acceptation of the term, are such contracts as rest on articles, memorandums, parol promises, or undertakings, and the like, to be performed in future, or which are entered into preparatory to more solemn and formal alienations of prtperty. Powel on Cont. Agreements are also conditional and unconditional. They are conditional when some condition must be fulfilled before they can have full effect; they are unconditional when there is no condition attached;

4. – 3. Agreements are annulled or rendered of no effect, first, by the acts of the parties, as, by payment; release – accord and satisfction; rescission, which is express or implied; 1 Watts & Serg. 442; defeasance; by novation: secondly, by the acts of the law, as, confusion; merger; lapse of time; death, as when a man who has bound himself to teach an apprentice, dies; extinction of the thing which is the subject of the contract, as, when the agreement is to deliver a certain horse and before the time of delivery he dies. See Discharge of a Contract.

5. The writing or instrument containing an agreement is also called an agreement, and sometimes articles of agreement.(q. V.)

6. It is proper, to remark that there is much dfference between an agreement and articles of agreement which are only evidence of it. From the moment that the parties have given their consent, the agreement or contraet is formed, and, whether it can be proved or not, it has not less the quality to bind both contracting parties. A want of proof does not make it null, because that proof may be supplied aliunde, and the moment it is obtained, the contract may be enforced.

7. Again, the agreement may be mull, as when it was obtained by fraud, duress, and the like; and the articles of agreement may be good, as far as the form is concerned. Vide Contract. Deed; Guaranty; Parties to Contracts.

AGRI. Arable land in the common fields. Cunn. Dict. h. t.

AGRICULTURE. The art of cultivating the earth in order to obtain from it the divers things it can produce; and particularly what is useful to man, as grain, fruit's, cotton, flax, and other things. Domat, Dr. Pub. liv. tit. 14, s. 1, n. 1.

AID AND COMFORT. The constitution of the United States, art. 8, s. 3, declares, that adhering to the enemies of the United States, giving them aid and comfort, shall be treason. These words, as they are to be understood in the constitution, have not received a full judicial construction. They import, however, help, support, assistance, countenance, encouragement. The word aid, which oocurs in the Stat. West. 1, c. 14, is explained by Lord Coke (2 just. 182) as comprehending all persons counselling, abetting, plotting, assenting, consenting, and encouraging to do the act, (and he adds, what is not applicable to the Crime to treason,) who are not present when the act is done, See, also, 1 Burn's Justice, 5, 6; 4 Bl. Com. 37, 38.

AID PRAYER, English law. A petition to the court calling in help from another person who has an interest in the matter in dispute. For example, a tenant for life, by the courtesy or for years, being impleaded, may pray aid of him in reversion; that is, desire the court that he may be called by writ, to allege what he thinks proper for the maintenance of the right of the person calling him, and of his own. F. N. B. 60; Cowel.

AIDERS, crim. law. Those who assist, aid, or abet the principal, and who are principals in the second degree. 1. Russell, 21.

AIDS, Engl. law. Formerly they were certain sums of money granted by the tenant to his lord in times of difficulty and distress, but, as usual in such cases, what was received as a gratuity by the rich and powerful from the weak and poor, was soon claimed as a matter of right; and aids became a species of tax to be paid by the tenant to his lord, in these cases: 1. To ransom the lord's person, when taken priisoner; 2. To make the lord's eldest son a knight; – 3. To marry the lord's eldest daughter, by giving her a suitable portion. The first of these remained uncertain; the other two were fixed by act of parliament at twenty shillings each being the supposed twentieth part of a knight's fee, 2 Bl. Com. 64.

AILE or AYLE, domestic relations. This is a corruption of the French word aieul, grandfather, avus. 3.Bl. Com. 186.

AIR. That fluid transparent substance which surrounds our globe.

2. No property can be had in the air it belongs equally to all men, being indispensable to their existence. To poison or materially to change the air, to the annoyance of the public, is a nuisance. Cro. Cr. 610; 2 Ld. Raym 1163; I Burr. 333; 1 Str. 686 Hawk. B. 1, c. 75, s. 10; Dane's Ab. Index h. t. But this must be understood with this qualification, that no one has a right to use the air over another man's land, in such a manner as to be injurious to him. See 4 Campb. 219; Bowy. Mod. Civ. Law, 62; 4 Bouv. Inst. n. 36 1; Grot. Droit de la Guerre et de la Paix, liv. 2, c. 2, 3, note, 3 et 4.

3. It is the right of the proprietor of an estate to enjoy the light and air that will come to him, and, in general, no one has a right to deprive him of them; but sometimes in building, a man opens windows over his neighbor's ground, and the latter, desirous of building on his own ground, necessarily stops the windows already built, and deprives the first builder of light and air; this he has the right to do, unless the windows are ancient lights, (q. v.) or the proprietor has acquired a right by grant or prescription to have such windows open. See Crabb on R. P. 444 to 479 and Plan. Vide Nuisance.

AJUTAGE. A conical tube, used in drawing water through an aperture, by the use of which the quantity of water drawn is much increased. When a privilege to draw water from a canal through the forebay or tunnel by means of in aperture has been granted, it is not lawful to add an adjutage, unless such was the intention of the parties. 2 Whart. R. 477.

ALABAMA. The name of one of the new states of the United States of America. This state was admitted into the Union by the resolution of congress, approved December 14th, 1819, 3 Sto. L. U. S. 1804, by which it is resolved that the state of Alabama shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever. The convention which framed the constitution in this state, assembled at the town of Huntsville on Monday the fifth day of July, 1819, and continued in session by adjournment, until the second day of August, 1819, when the constitution was adopted.

2. The powers of the government are divided by the constitution into three distinct, departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to a third. Art. 2,

3. – 1. The legislative power of the state is vested in two distinct branches; the one styled the senate, the other the house of representatives, and both together, the general assembly of the state of Alabama. 1. The senate is never to be less than one-fourth nor

more than one-third of the whole number of representatives. Senators are chosen by the qualified electors for the term of three years, at the same time, in the same manner, and at the same place, where they vote for members of the house of representatives; one-third of the whole number of senators are elected every year. Art. 3, s. 12. 2. The house of representatives is to consist of not less than forty-four, nor more than sixty members, until the number of white inhabitant's shall be one hundred thousand; and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred. Art. 3, B. 9. The members of the house of representatives are chosen by the qualified electors for the term of one year, from the commencement of the general election, and no longer.

4. – 2. The supreme executive power is vested in a chief magistrate, styled the governor of the state of Alabama. He is elected by the qualified electors, at the time and places when they respectively vote for representatives; he holds his office for the term of two years from the time of his installation, and until a successor is duly qualified; and is not eligible more than four years in any term of six years. t. 4. He is invested, among other things, with the veto power. Ib. s. 16. In cases of vacancies, the president of the senate acts as governor. Art. 4, s. 18.

5. – 3. The judicial power is vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and, equity, to consist of not more than five members, as the general assembly may, from time to time direct, ordain, and establish. Art. 6, S. 1.

ALBA FIRMA. Eng. law. When quit rents were reserved payable in silver or white money, they wero called white rents, or blanch farms reditus albi. When they were reserved payable in work, grain, or the like, they were called reditus nigri or black mail. 2 Inst. 19.

ALCADE, Span. law. The name of a judicial officer in Spain, and in those countries which have received the body of their laws from those of Spain.

ALDERMAN. An officer, generally appointed or elected in towns corporate, or cities, possessing various powers in different places.

2. The aldermen of the cities of Pennsylvania, possess all the powers and jurisdictions civil and criminal of justices of the peace. They are besides, in conjunction with the respective mayors or recorders, judges of ibe mayor's courts.

3. Among the Saxons there was an officer called the ealderman. ealdorman, or aldernwn, which appellation signified literally elderman. Like the Roman senator, he was so called, not on account of his age, but because of his wisdom and dignity, non

propter oetatem sed propter sapientism et dignitatem. He presided with the bisbop at the scyregemote, and was, ex officio, a member of the witenagemote. At one time he was a military officer, but afterwards his office was purely judical.

4. There were several kinds of aldermen, as king's aldermen, aldermen of all England, aldermen of the county, aldermen of the hundred, &c., to denote difference of rank and jurisdiction.

ALEA; civil law. The chance of gain or loss in a contract. This chance results either from the uncertainty of the thing sold, as the effects of a succession; or from the uncertainty of the price, as when a thing is sold for an annuity, which is to be greater or less on the happening of a future event; or it sometimes arises in consequence of the uncertainty of both. 2 Duv. Dr. Civ. Fr. n. 74.

ALEATORY CONTRACTS, civil law. A mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties, or to some of them, depend on an uncertain event. Civ. Code of Louis. art. 2951.

2. – These contracts are of two kinds; namely, 1. When one of the parties exposes himself to lose something which will be a profit to the other, in consideration of a sum of money which the latter pays for the risk. Such is the contract of insurance; the insurer takes all the risk of the sea, and the assured pays a premium to the former for the risk which he runs.

3. – 2. In the second kind, each runs a risk which is the consideration of the engagement of the other; for example, when a person buys an annuity, he runs the risk of losing the consideration, in case of his death soon after, but he may live so as to receive three times the amount of the price he paid for it. Merlin, Rep. mot Aleatoire.

ALER SANS JOUR, or aller sans jour, in practice. A French phrase which means go without day; and is used to signify that the case has been finally dismissed the court, because there is no further day assigned for appearance. Kitch. 146.

ALFET, obsolete. A vessel in which hot water was put, for the purpose of dipping a criminal's arm in it up to the elbow.

ALIA ENORMIA, pleading. And other wrongs. In trespass, the declaration ought to conclude "and other wrongs to the said plaintiff then and there did, against the peace," &c.

2. Under this allegation of alia enormia, some matters may be given in evidence in aggravatiou of damages, though not specified in other parts of the declaration. Bull.

N. P. 89; Holt, R. 699, 700. For example, a trespass for breaking and entering a house, the plaintiff may, in aggravation of damages, give in evidence the debauching of his daughter, or the beating of his servants, under the general allegation alia enormia, &c.;6 Mod. 127.

3. But under the alia nomia no evidence of the loss of service, or any other matter which would of itself sustain an action; for if it would, it should be stated specially. In trespass quare clausum fregit, therefore, the plaintiff would not, under the above general allegation, be permitted to give evidence of the defendant's taking away a horse, &c. Bull. N. P. 89; Holt, R. 700; 1 Sid. 225; 2 Salk. 643; 1 Str. 61; 1 Chit. Pl. 388; 2 Greenl. Ev. 278.

ALIAS, practice. This word is prefixed to the name of a second writ of the same kind issued in the same cause; as, when a summons has been issued and it is returned by the sheriff, nil, and another is issued, this is called an alias summons. The term is used to all kinds of writs, as alias fi. fa., alias vend. exp. and the like. Alias dictus, otherwise called; a description of the defendant by an addition to his real name of that by wbich he is bound in the writing; or when a man is indicted and his name is uncertain, he may be indicted as A B, alias dictus C D. See 4 John. 1118; 1 John. Cas. 243; 2 Caines, R. 362; 3 Caines, R. 219.

ALIBI, in evidence. This is a Latin word which signifies, elsewhere.

2. When a person, charged with a crime, proves (se eadem die fuisse alibi,) that he was, at the time alleged, in a different place from that in which it was committed, he is said to prove an alibi, the effect of which is to lay a founation for the necessary inference, that he could not have committed it. See Bract. fo. 140, lib. 3, cap. 20, De Corona.

3. This proof is usually made out by the testimony of witnesses, but it is presumed it might be made out by writings; as if the party could prove by a record properly authenticated, that on the day or at the time in question, he was in another place.

4. It must be admitted that mere alibi evidence lies under a great and general prejudice, and ought to be heard with un-common caution; but if it appear, to be founded in truth, it is the best negative evidence that can be offered; it is really positive evidence, which in the nature of things necessarily implies a negative; and in many cases it is the only evidence which an innocent man can offer.

ALIEN, persons. One born out of the jurisdiction of the United States, who has not since been naturalized under their constitution and laws. To this there are some

exceptions, as this children of the ministers of the United States in foreign courts. See Citizen, Inhabitant.

2. Aliens are subject to disabilities, have rights, and are bound to perform duties, which will be briefly considered. 1. Disabilities. An alien cannot in general acquire title to real estate by the descent, or by other mere operation of law; and if he purchase land, he may be divested of the fee, upon an inquest of office found. To this general rule there are statutory exceptions in some of the states; in Pennsylvania, Ohio, Louisiana, New Jersey, Rev. Laws, 604, and Michigan, Rev. St. 266, s. 26, the disability has been removed; in North Carolina, (but see Mart. R. 48; 3 Dev. R. 138; 2 Hayw. 104, 108; 3 Murph. 194; 4 Dev. 247; Vermont and Virginia, by constitutional provision; and in Alabama, 3 Stew R. 60; Connecticut, act of 1824, Stat. tit. Foreigners, 251; Indiana, Rev. Code, a. 3, act of January 25, 1842; Illinois, Kentucky, 1 Litt. 399; 6 Mont. 266 Maine, Rev. St,. tit. 7, c. 93, s. 5 Maryland, act of 1825, ch. 66; 2 Wheat. 259; and Missouri, Rev. Code, 1825, p. 66, by statutory provision it is partly so.

3. An alien, even after being naturalized, is ineligible to the office of president of the United States; and in some states, as in New York, to that of govenor; he cannot be a member of congress, till the expiration of seven years after his naturalization. An alien can exercise no political rights whatever; he cannot therefore vote at any political election, fill any office, or serve as a juror. 6 John. R. 332.

4. – 2. An alien has a right to acquire personal estate, make and enforce contracts in relation to the same – he is protected from injuries, and wrongs, to his person and property, his relative rights and character; he may sue and be sued.

5. – 3. He owes a temporary local allegiance, and his property is liable to taxation. Aliens are either alien friends or alien enemies. It is only alien friends who have the rights above enumerated; alien enemies are incapable, during the existence of war to sue, and may be ordered out of the country. See generally, 2 Kent. Com. 43 to 63; 1 Vin. Ab. 157; 13 Vin. ab. 414; Bac. Ab. h.t.; 1 Saund. 8, n.2; Wheat. Dig. h.t.; Bouv. Inst. Index, h.t.

ALIENAGE. The condition or state of alien.

ALIENATE, aliene, alien. This is a generic term applicable to the various methods of transfering property from one person to another. Lord Coke, says, (1 Inst. 118 b,) alien cometh of the verb alienate, that is, alienum facere vel ex nostro dominio in alienum trawferre sive rem aliquam in dominium alterius transferre. These methods vary, according to the nature of the property to be conveyed and the particular objects

the conveyance is designed to accomplish. It has been held, that under a prohibition to alienate, long leases are comprehended. 2 Dow's Rep. 210.

ALIENATION, estates. Alienation is an act whereby one man transfers the property and possession of lands, tenements, or other things, to another. It is commonly applied to lands or tenements, as to alien (that is, to convey) land in fee, in mortmain. Termes de la ley. See Co. Litt. 118 b; Cruise Dig. tit. 32, c. 1, 1-8.

2. Alienations may be made by deed; by matter of record; and by devise.

3. Alienations by deed may be made by original or primary conveyances, which are those by means of which the benefit or estate is created or first arises; by derivative or secondary conveyances, by which the benefit or esta te originally created, is enlarged, restrained, transferred, or extinguished. These are conveyances by the common law. To these may be added some conveyances which derive their force and operation from the statute of uses. The original conveyances are the following: 1. Feoffment; 2. Gift; 3. Grant; 4. Lease; 6. Exchange; 6. Partition. The derivative are, 7. Release; 8. Confirmation; 9. Surrender; 10. Assignment; 11. Defeasance. Those deriving their force from the statute of uses, are, 12. Covenants to stand seised to uses; 13. Bargains and sales; 14. Lease and release; 15. Deeds to lend or declare the uses of other more direct conveyances; 16. Deeds of revocation of uses. 2 Bl. Com. ch. 20. Vide Conveyance; Deed. Alienations by matter of record may be, 1. By private acts of the legislature; 2. By grants, as by patents of lands; 3. By fines; 4. By common recovery. Alienations may also be made by devise (q.v.)

ALIENATION, med. jur. The term alienation or mental alienation is a generic expression to express the different kinds of aberrations of the human understandiug. Dict. des Science Med. h. t.; 1 Beck's Med. Jur. 535.

ALIENATION OFFICE, Engligh law. An office to which all writs of covenants and entries are carried for the recovery of fines levied thereon. See Alienate.

TO ALIENE, contracts. See Alienate.

ALIENEE. One to whom an alienation is made.

ALIEXI JURIS. Words applied to persons who are subject to the authority of another. An infant who is under the authority of his father or guardian, and a wife under the power of her husband, are said to be alieni juris. Vide sui juris.

ALIENOR. He who makes a grant or alienation.

ALIMENTS. In the Roman and French law this word signifies the food and other things necessary to the support of life, as clothing and the like. The same name is given to the money allowed for aliments. Dig. 50, 16, 43.

2. By the common law, parents and children reciprocally owe each other aliments or maintenance. (q. v.) Vide 1 Bl. Com. 447; Merl. Rep. h. t.; Dig. 25, 3, 5. In the common law, the word alimony (q.v.) is used. Vide Allowance to a Prisoner.

ALIMONY. The maintenance or support which a husband is bound to give to his wife upon separation from her; or the support which either father or mother is bound to give to his or her children, though this is more usually called maintenance.

2. The causes for granting alimony to the wife are, 1, desertion, (q. v.) or cruelty of the husband; (q. v.) 4 Desaus. R. 79,; 1 M'Cord's Ch. R. 205; 4 Rand. R. 662; 2 J. J; Marsh. R. 324.; 1 Edw. R. 62; and 2, divorce. 4 Litt. R. 252; 1 Edw. R. 382; 2 Paige, R. 62; 2 Binn. R. 202; 3 Yeates, R. 50; S.& R. 248; 9 S.& R. 191; 3 John. Ch. R. 519; 6 John. Ch. 91.

3. In Louisiana by alimony is meant the nourishment, lodging and support of the person who claims it. It includes education when the person to whom alimoiay is due is a minor. Civil Code of L. 246.

4. Alimony is granted in proporion to the wants of the person requiring it, and the circumstances of those who are to pay it. By the common law, parents and children owe each other alimony. 1 Bl. Com. 447; 2 Com. Dig. 498;. 3 Ves. 358; 4 Vin. Ab. 175; Ayl. Parerg. 58; Dane's Ab. Index. h.t.; Dig. 34, 1. 6.

5. Alimony is allowed to the wife, pendente lite, almost as a matter of course whether she be plaintiff or defendant, for the obvious reason that she has generally no other means of living. 1 Clarke's R. 151. But there are special cases where it will not be allowed, as when the wife, pending the progress of the suit, went to her father's, who agreed with the husband to support her for services. 1 Clarke's R. 460. See Shelf. on Mar. and Div. 586; 2 Toull. n. 612.

ALITER, otherwise. This term is frequently used to point out a difference between two decisions; as, a point of law has been decided in a particular way, in such a case, aliter in another case.

ALIUNDE. From another place; evidence given aliunde, as, when a will contains an ambiguity, in some cases, in order to ascertain the meaning of the testator, evidence aliunde will be received.

ALL FOURS. This is a metaphorical expression, to signify that a case agrees in all its circumstances with another case; it goes as it were upon its four legs, as an animal does.

ALLEGATA. A word which the emperors formerly signed at the bottom of their rescripts and constitutions; under other instrumets they usually wrote nata or testate. Ency. Lond.

ALLEGATA AND PROBATA. The allegations made by a party to a suit, and the proof adduced in their support. It is a general rule of evidence that the allegata and probata must correspond; that is, the proof must at least be sufficiently extensive to cover all the allegations of the party. Greenl. Ev. 51; 3 R. s. 636.

ALLEGATION, English ecclesiastical law. According to the practice of the prerogative court, the facts intended to be relied on in support of the contested suit are set forth in the plea, which is termed an allegation; this is submitted to the inspection of the counsel of the adverse party, and, if it appear to them objectionable in form or substance, they oppose the admission of it. If the opposition goes to the substance of the allegation, and is held to be well founded, the court rejects it; by which mode of proceeding the suit is terminated without, going into any proof of the facts. 1 Phil. 1, n.; 1 Eccl. Rep. ll, n. S. C. See 1 Brown's Civ. Law, 472, 3, n.

ALLEGATION, common law. The assertion, declaration or statement of a party of what he can prove.

ALLEGATI6N, civil law. The citation or reference to a voucher to support a proposition. Dict. de jurisp.; Encyclopedie, mot Allegation; 1 Brown's Civ. Law, 473, n.

ALLEGATION OF FACULTIES When a suit is instituted in the English ecclesiastical courts, in order to obtain alimony, before it is allowed, an alIegation must be made on the part of the wife, stating the property of the husband. This allegation is called an allegation of faculties. Shelf. on Mar. and Div. 587.

ALLEGIANCE. The tie which binds the citizen to the government, in return for the protection which the government affords him.

2. It is natural, acquired, or local. Natural allegiance is such as is due from all men born within the United States; acquired allegiance is that which is due by a naturalized citizen. It has never been decided whether a citizen can, by expatriation, divest himself absolutely of that character. 2 Cranch, 64; 1 Peters' C. C. Rep. 159; 7 Wheat.

R. 283; 9 Mass. R. 461. Infants cannot assume allegiance, (4 Bin. 49) although they enlist in the army of the United States. 5 Bin. 429.

3. It seems, however, that he cannot renounce his allegiance to the United States without the permission of the government, to be declared by law. But for commercial purposes he may acquire the rights of a citizen of another country, and the place of his domicil determines the character of a party as to trade. 1 Kent, Com. 71; Com. Rep. 677; 2 Kent, Com. 42.

4. Local allegiance is that which is due from an alien, while resident in the United States, for the protection which the government affords him. 1 Bl. Com. 366, 372; Com. Dig. h.t; Dane's Ab. Index, h. t.; 1 East, P.C. 49 to 57.

ALLIANCE, relationship. The union or connexion of two persons or families by marraiage, which is also called affinity. This is derived from the Latin preposition ad and ligare, to bind. Vide Inst 1, 10, 6; Dig 38, 10, 4, 3; and Affinity.

ALLIANCE, international law. A contract, treaty, or league between two sovereigns or states, made to insure their safety and common defence.

2. Alliances made for warlike purposes are divided in general into defensive and offensive; in the former the nation only engages to defend her ally in case he be attacked; in the latter she unites with him for the purpose of making an attack, or jointly waging the war against another nation. Some alliances are both offensive and defensive; and there seldom is an offensive alliance which is not also defensive. Vattel, B. 3, c. 6, 79; 2 Dall. 15.

ALLISION, maritime law. The running of one vessel against another. It is distiguished from collision in this, that the latter means the running of two vessels against each other; this latter term is frequently used for allision.

ALLOCATION, Eng. law. An allowance upon account in the Exchequer; or rather, placing or adding to a thing. Eucy. Lond.

ALLOCATIONE FACIENDA. Eng. law. A writ commanding that an allowance be made to an accountant, for such moneys as he has lawfully expended in his office. It is directed to the lord treasurer and barons of the exchequer.

ALLOCATUR, practice. The allowance of a writ; e. g. when a writ of habeas corpus is prayed for, the judge directs it to be done, by writing the word allowed and signing his name; this is called the allocator. In the English courts this word is used to indicate

the master or prothonotary's allowance of a sum referred for his consideration, whether touching costs, damages, or matter of account. Lee's Dict. h, t.

ALLODIUM estates. Signifies an absolute estate of inheritance, in coutradistinction to a feud.

2. In this country the title to land is essentially allodial, and every tenant in fee simple has an absolute and perfect title, yet in technical language his estate is called an estate in fee simple, and the tenure free and common socage. 3 Kent, Com. 390; Cruise, Prel. Dis. c. 1, 13; 2 Bl. Com. 45. For the etymology of this word, vide 3 Kent Com. 398 note; 2 Bouv. Inst. n. 1692.

ALLONGE, French law. When a bill of exchange, or other paper, is too small to receive the endorsements which are to be made on it, another piece of paper is added to it, and bears the name of allonge. Pard. n. 343; Story on P. N. 121, 151; Story on Bills, 204. See Rider.

ALLOTMENT. Distribution by lot; partition. Merl. Rep. h. t.

TO ALLOW, practice. To approve; to grant; as to allow a writ of error, is to approve of it, to grant it. Vide Allocatur. To allow an amount is to admit or approve of it.

ALLOWANCE TO A PRISONER. By the laws of, it is believed, all the states, when a poor debtor is in arrest in a civil suit, the plaintiff is compelled to pay an allowance regulated by law, for his maintenance and support, and in default of such payment at the time required, the prisoner is discharged. Notice must be given to the plaintiff before the defendant can be discharged.

ALLOY, or ALLAY. An inferior metal, used with gold. and silver in making coin or public money. Originally, it was one of the allowances known by the name of remedy for errors, in the weight and purity of coins. The practice of making such allowances continued in all European mints after the reasns, upon which they were originally founded, had, in a great measure, ceased. In the imperfection of the art of coining, the mixture of the metals used, and the striking of the coins, could not be effected with, perfect accuracy. There would be some variety in the mixture of metals made at different times, although intended to be in the same proportions, and in different pieces of coin, although struck by the same process and from the same die. But the art of coining metals has now so nearly attained perfection, that such allowances have become, if not altogether, in a great measure at least, unnecessary. The laws of the United States make no allowance for deficiencies of weight. See Report of the Secretary of State of the United States, to the Senate of the U. S., Feb. 22, 1821, pp. 63, 64.

2. The act of Congress of 2d of April, 1792, sect. 12, directs that the standard for all gold coins of the United States, shall be eleven parts fine to one part of alloy; and sect. 13, that the standard for all silver coins of the United States, shall be one thousand four hundred and eighty-five parts fine, to one hundred and seventy-nine parts alloy. 1 Story's L. U. S. 20. By the act of Congress, 18th Feb. 1831, 8, it is provided, that the standard for both gold and silver coin of the United States, shall be such, that of one thousand parts by weight, nine hundred shall be of pure metal, and one hundred of alloy; and the alloy of the silver coins shall be of copper, and the alloy of gold coins shall be of copper and silver, provided, that the silver do not exceed one-half of the whole alloy. See also, Smith's Wealth of Nations, vol. i., pp. 49, 50.

ALLUVION. The insensible increase of the earth on a shore or bank of a river by the force of the water, as by a current or by waves. It is a part of the definition that the addition, should be so gradual that no one can judge how much is added at each moment of time. Just. Inst. lib. 2, tit. 1, 20; 3 Barn. & Cress. 91; Code Civil Annote No. 556. The proprietor of the bank increased by alluvion is entitled to the addition. Alluvion differs from avulsion in this: that the latter is sudden and perceptible. See avulsion. See 3 Mass. 352; Coop. Justin. 458; Lord Raym. 77; 2 Bl. Com. 262, and note by Chitty; 1 Swift's Dig. 111; Coop. Just. lib. 2, t. 1; Angell on Water Courses, 219; 3 Mass. R. 352; 1 Gill & Johns. R. 249; Schultes on Aq. Rights, 116; 2 Amer. Law Journ. 282, 293; Angell on Tide Waters, 213; Inst. 2, 1, 20; Dig. 41, 1, 7; Dig. 39, 2, 9; Dig. 6, 1, 23; Dig. 1, 41, 1, 5; 1 Bouv. Inst. pars 1, c. 1 art. 1, 4, s. 4, p. 74.

ALLY, international law. A power which has entered into an alliance with another power. A citizen or subject of one of the powers in alliance, is sometimes called an ally; for example, the rule which renders it unlawful for a citizen of the United States to trade or carry on commerce with an enemy, also precludes an ally from similar intercourse. 4 Rob. Rep. 251; 6 Rob. Rep. 406; Dane's Ab, Index, h. t.; 2 Dall. 15.

ALMANAC. A table or calendar, in which are set down the revolutions of the seasons, the rising and setting of the sun, the phases of the moon, the most remarkable conjunctions, positions and phenomena of the heavenly bodies, the months of the year, the days of the month and week, and a variety of other matter.

2. The courts will take judicial notice of the almanac; for example, whether a certain day of the month was on a Sunday or not. Vin. Ab. h. t.; 6 Mod. 41; Cro. Eliz. 227, pl. 12; 12 Vin. Ab. Evidence (A, b, 4.) In dating instrments, some sects, the Quakers, for example, instead of writing January, February, March, &c., use the terms, First month, Second month, Third month, &c., and these are equally valid in such writings. Vide 1 Smith's Laws of Pennsylvania, 217.

ALLODARII, Eng. law, Book of Domesday. Such tenants, who have as large an estate as a subject can have. 1 Inst. 1; Bac. Ab Tenure, A.

ALMS. In its most extensive sense, this comprehends every species of relief bestowed upon the poor, and, therefore, including all charities. In a more, limited sense, it signifies what is given by public authority for the relief of the poor. Shelford on Mortmain, 802, note (x); 1 Dougl. Election Cas. 370; 2 Id. 107; Heywood on Elections, 263.

ALTA PRODITIO, Eng. law. High treason.

ALTARAGE, eccl. law. Offerings made on the altar; all profits which accrue to the priest by means of the altar. Ayl. Par. 61; 2 Cro. 516.

TO ALTER. To change. Alterations are made either in the contract itself, or in the instrument which is evidence of it. The contract may at any time be altered with the consent of the parties, and the alteration may be either in writing or not in writing.

2. It is a general rule that the terms of a contract under seal, cannot be changed by a parol agreement. Cooke, 500; 3 Blackf. R. 353; 4 Bibb. 1. But it has been decided that an alteration of a contract by specialty, made by parol, makes it all parol. 2 Watts, 451; 1 Wash. R. 170; 4 Cowen, 564; 3 Harr. & John. 438; 9 Pick. 298; 1 East, R. 619; but see 3 S.& R. 579.

3. When the contract is, in writing, but not under seal, it may be varied by parol, and the whole will make but one agreement. 9 Cowen, 115; 5.N. H. Rep. 99; 6 Harr. & John, 38; 18 John. 420; 1 John. Cas. 22; 5 Cowen, 606; Pet. C. C. R. 221; 1 Fairf. 414.

4. When the contract is evidenced by a specialty, and it is altered by parol, the whole will be considered as a parol agreement. 2 Watt 451; 9 Pick. 298. For alteration of instruments see Erasure; Interlineation. See, generally, 7 Greenl. 76, 121, 394; 15 John. 200; 2 Penna. R. 454.

ALTERATION. An act done upon an instrument in writing by a party entitled under it, without the consent of the other party, by which its meaning or language is changed; it imports some fraud or design on the part of him who made it. This differs from spoliation, which is the mutilation of the instrument by the act of a stranger.

2. When an alteration has a tendency to mislead, by so changing the character of the instrument, it renders it void; but if the change has not such tendency, it will not be considered an alteration. 1 Greenl. Ev. 566.

3. A spoliation, on the contrary, will not affect the legal character of the instrument, so long as the original writing remains legible; and, if it be a deed, any trace of the seal remains. 1 Greenl. Ev. 566. See Spoliation.

ALTERNAT. The name of a usage among diplomatists by which the rank and places of different powers, who have the same rights and pretensions to precedence, are changed from time to time, either in a certain regular order, or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. Wheat. Intern. Law, pt. 2, c. 3, 4..

ALTERNATIVE. The one or the other of two things. In contracts a party has frequently the choice to perform one of several things, as, if he is bound to pay one hundred dollars, or to deliver a horse, he has the alternative. Vide Election; Obligation; Alternative.

ALTIUS NON TOLLENDI, civil law. The name of a servitude due by the owner of a house, by which he is restrained from building beyond a certain height. Dig. 8, 2, 4, and 1, 12, 17, 25.

ALTIUS TOLLENDI, civil law. The name of a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he, is restrained by home contrary title.

ALTO ET BASSO. High and low. This phrase is applied to an agreement made between two contending parties to submit all matters in dispute, alto et basso, to arbitration. Cowel.

ALTUM MARE. The high sea. (q. v.)

ALUMNUS, civil law. A child which one has nursed; a foster child. Dig. 40, 2, 14.

AMALPHITAN CODE. The name given to a collection of sea-laws, complied about the end of the eleventh century, by the people of Amalphi. It consists of the laws on maritime subjects which were, or had been, in force in counries bordering on the Mediterranean; and, on account of its being collected into one regular system, it was for a long time received as authority in those countries. 1 Azun. Mar. Law, 376.

AMANUENSIS. Oe who write another dictates. About the beginning of the sixth century,, the tabellions (q.v.) were known by this name. 1 Sav. Dr. Rom. Moy. Age, n. 16.

AMBASSADOR, interaational law. A public minister sent abroad by some sovereign state or prince, with a legal commission and authority to transact business on behalf of his country with the government to which he is sent. He is a minister of the highest rank, and represents the person of his sovereign.

2. The United States have always been represented by ministers plenipotentiary, never having sent a person of the rald of an, ambassador in the diplomatic sense. 1 Kent's Com. 39, n.

3. Ambassadors, when acknowledged as such, are exempted, absolutely from all allegiance, and from all responsibility to the laws. If, however, they should be so regardless of their duty, and of the object of their privilege, as to insult or openly to attack the laws of the government, their functions may be suspended by a refusal to treat with them, or application can be made to their own sovereign for their recall, or they may be dismissed, and required to depart within a reasonable time. By fiction of law, an ambassador is considered as if he were out of the territory of the foreign power; and it is an implied agreement among nations, that the ambassador, while he resides in the foreign state, shall be considered as a member of his own country, and the government he represents has exclusive cognizance of his conduct, and control of his person. The attendants of the ambassador are attached to his person, and the effects in his use are under his protection and privilege, and, generally, equally exempt from foreign jurisdiction.

4. Ambassadors are ordinary or extraordinary. The former designation is exclusively applied to those sent on permanent missions; the latter, to those employed on particular or extraordinary occasions, or residing at a foreign court for an indeterminate period. Vattel, Droit des Gens, 1. 4, c. 6, 70-79.

5. The act of dtigress of April 30th, 1790, s. 25, makes void any writ or process sued forth or prosecuted against any ambassador authorized and received by the president of the United States, or any domestic servant of such ambassador; and the 25th section of the same act, punishes any person who shall sue forth or proseeute such writ or process, and all attorneys – and soliciters prosecuting or soliciting in such case, and all officers executing such writ or process, with an imprisonment not exceeding three years, and a fine at the discretion of the court. The act provides that citizens or inhabitants of the United States who were indebted when they went into the service of an ambassador, shall not be protected as to such debt; and it requires also that the names of such servants shall be registered in the office of the secretary of state. The

16th section imposes the like punishment on any person offering violence to the person of an ambassador or other minister. P Vide 1 Kent, Com. 14, 38, 182; Rutherf. Inst. b. 2, c. 9; Vatt. b. 4, c. 8, s. 113; 2 Wash. C. C. R. 435; Ayl. Pand. 245; 1 Bl. Com. 253; Bac. Ab. h. t.; 2 Vin. Ab. 286; Grot. lib. 2, c. 8, 1, 3; 1 Whart. Dig. 382; 2 Id. 314; Dig. l. 50, t. 7; Code I. 10, t. 63, l. 4; Bouv. Inst. Index, h. t.

6. The British statute 7 Ann, cap. 12; is similar in its provisions; it extends to the family and servants of an ambassador, as well when they are the natives of the country in which the ambassador resides, as when they are foreigners whom he brings with him. (3 Burr. 1776-7) To constitute a domestic servant within the meaning of the statute, it is not necessary that the servant should lodge, at night in the house of the ambassador, but it is necessary to show the nature of the service he renders and the actual performance of it. 3 Burr. 1731; Cases Temp. Hardw. 5. He must, in fact, prove that he is bona fide the ambassador's servant. A land waiter at the custom house is not such, nor entitled to the privilege of the statute. 1 Burr. 401. A trader is not entitled to the protection of the statute. 3 Burr. 1731; Cases Temp. Hardw. 5. A person in debt cannot be taken into an ambassador's service in order to protect him. 3 Burr. 1677.

AMBIDEXTER. It is intended by this Latin word, to designate one who plays on both sides; in a legal sense it is taken for a juror or embraceor who takes money from the parties for giving his verdict. This is seldom or never done in the United States.

AMBIGUITY, contracts, construction. When au expression has been used in an instrument of writing which may be understood in more than one sense, it is said there is an ambiguity,

2. There are two sorts of amiguities of words, ambiguitas latens and ambiguitas patens.

3. The first occurs when the deed or instrument is sufficiently certain and free from ambiguity, but the ambiguity is produced by something extrinsic, or some collateral matter out of the instrument; for example, if a man devise property to his cousin A B, and he has two cousins of that name, in such case parol evidence will be received to explain the ambiguity.

4. The second or patent ambiguity occurs when a clause in a deed, will, or other instrument, is so defectively expressed, that a court of law, which has to put a construction on the instrument, is unable to collect the intention of the party. In such case, evidence of the declaration of the party cannot be submitted to explain his intention, and the clause will be void for its uncertainty. In Pennsylvania, this rule is somewhat qualified. 3 Binn. 587; 4 Binn. 482. Vide generally, Bac. Max. Reg. 23; 1 Phu. Ev. 410 to 420; 3 Stark. Ev. 1021 ; I Com. Dig. 575; Sudg. Vend. 113. The civil

law on this subject will be found in Dig. lib. 50, t. 17, 1. 67; lib. 45, t. 1, 1. 8; and lib. 22, t. 1, 1. 4.

AMBULATORIA VOLUNTAS. A phrase used to designate that a man has the power to alter his will or testament as long as he lives. This form of phrase frequently occurs in writers on the civil law; as ambulatoria res, ambulatoria actio, potestas, conditio, &c.;Calvini Lexic.

AMENABLE. Responsible; subject to answer in a court of justice liable to punishment.

AMENDE HONORABLE, EngIish law. A penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offence, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about hte neck, and a ortch in the hand, and begging the pardon of God, or the king, or any private individual, for some delinquency.

2. A punishment somewhat similar to this, and which bore the same name, was common in France; it was abolished by the law of the 25th of September, 1791. Merlin Rep. de Jur. h.'t.

3. For the form of a sentence of amende horrorable, see D'Agaesseau, Oeuvres, 43 Plaidoyer, tom. 4, p. 246.

AMENDMENT, legislation. An alteration or change of something proposed in a bill.

2. Either house of the legislature has a rigt to make amendments; but, when so made, they must be sanctioned by the other house before they can become a law. The senate has no power to originate any money bills, (q. v,) but may propose and make amendments to such as have passed the House of representatives. Vide Congress; Senate.

3. The constitution of the United States, art. 5, and the constitutions of some of the states, provide for their amendment. The provisions contained in tho constitution of the United States, are as follows: "Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and

eight, shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

AMMENDMENT, practice. The correction, by allowance of the court, of an error committed in the progress of a cause.

2. Amendments at common law, independently of any statutory provision on the subject, are in all cases in the discretion of the court, for the furtherance of justice they may be made while the proceedings are in paper, that is, until judgment is signed, and during the term in which it is signed ; for until the end of the term the proceedings are considered in fieri, and consequently subject to the control of the court; 2 Burr. 756; 3 Bl. Com. 407; 1 Salk. 47; 2 Salk. 666 ; 8 Salk. 31; Co. Litt. 260; and even after judgment is signed, and up to the latest period of the action, amendment is, in most cases, allowable at the discretion of the court under certain statutes passed for allowing amendments of the record; and in later times the judges have been much more liberal than formerly, in the exercise of this discretion. 3 McLean, 379; 1 Branch, 437; 9 Ala. 647. They may, however, be made after the term, although formerly the rule was otherwise; Co. Litt. 260, a; 3 Bl. Com. 407; and even after error brought, where there has been a verdict in a civil or criminal case. 2 Serg. & R. 432, 3. A remittitur damna may be allowed after error; 2 Dall. 184; 1 Yeates, 186; Addis, 115, 116; and this, although error be brought on the ground of the excess of damages remitted. 2 Serg. & R. 221. But the application must be made for the remittitur in the court below, as the court of error must take the record as they find it. 1 Serg. & R. 49. So, the death of the defendant may be suggested after errer coram nobis. 1 Bin. 486; I Johns. Cases, 29; Caines' Cases, 61. So by agreement of attormeys, the record may be amended after error. 1 Bin. 75; 2 Binn. 169.

3. Amendments are, however, always Iimited by due consideration of the rights of the opposite party; and, when by the amendment he would be prejudiced or exposed to unreasonable delay, it is not allowed. Vide Bac. Ab Com. Dig. h. t.; Viner's. Ab. h. t.; 2 Arch. Pr. 200; Grah. Pt. 524; Steph. Pl. 97; 2 Sell. Pr. 453; 3 Bl. Com. 406; Bouv. Inst. Index, h. t.

AMENDS. A satisfaction, given by a wrong doer to the party injured for a wrong committed. 1 Lilly's Reg. 81.

2. By statute 24 Geo. II. c. 44, in England, and by similar statutes in some of the United States, justices of the peace, upon being notified of an intended suit against them, may tender amends fore the wrong alleged or done by them in their official character, and if found sufficient, the tender debars the action. See Act of Penn. 21

March, 1772, 1 and.2; Willes' Rep. 671, 2; 6 Bin. 83; 5 Serg. & R. 517, 299; 3 Id. 295; 4 Bin. 20.

AMERCEMENT, practice. A pecuniary penalty imposed upon a person who is in misericordia; as, for example, when the defendant se retaxit, or recessit in contemptum curioe. 8 Co. 58; Bar. Ab. Fines and Amercements. By the common law, none can be amerced in his absence, except for his default. Non licet aliquem in sua absentia amerciare nisi per ejus defaltas. Fleta, lib. 2, cap. 65, 15.

2. Formerly, if the sheriff failed in obeying the writs, rules, or orders of the court, he might be amerced; that is, a penalty might be imposed upon bim; but this practice has been superseded by attachment. In New Jersey and Ohio, the sheriff may, by statutory provision, be amerced for making a return contrary to the provision of the statute. Coxe, 136, 169; 6 Halst. 334; 3 Halst. 270, 271; 5 Halst. 319; 1 Green, 159, 341; 2 Green, 350; 2 South. 433; 1 Ham. 275; 2 Ham. 603; 6 Ham. 452; Wright, 720.

AMERCIAMENT, AMERCEMENT, English law. A pecuniary punishment arbitrarily imposed by some lord or count, in distinction from a fine which is expressed according to the statute. Kitch. 78. Amerciament royal, when the amerciament is made by the sheriff, or any other officer of the king. 4 Bl. Com. 372.

AMI. A friend; or, as it is written in old works, amy. Vide Prochein amy.

AMICABLE ACTION, Pennsylvania practice. An action entered by agreement of parties on the dockets of the courts; when entered, such action is considered as if it, had been adversely commenced, and the defendant had been regularly summoned. An amicable action may be entered by attorney, independently of the provisions of the act of 1866. 8 Er & R. 567.

AMICUS CURIAE, practice. A friend of the court. One, who as a stander by, when a judge is doubtful or mistaken in a matter of law, may inform the court. 2 Inst. 178; 2 Vin. Abr. 475; and any one, as amicus curia, may make an application to the court in favor of an infant, though he be no relation. 1 Ves. Sen. 313. AMITA. A paternal aunt; the sister of one's father. Inst. 3, 6, 3.

AMNESTY, government. An act of oblivion of past offences, granted by the government to those who have been guilty of any neglect or crime, usually upon condition that they return to their duty within a certain period.

2. An amnesty is either express or implied; it is express, when so declared in direct terms; and it is implied, when a treaty of peace is made between contending parties. Vide Vattel, liv. 4, c. 2, 20, 21, 22; Encycl. Amer. h.t.

3. Amnesty and pardon, are very different. The former is an act of the sove reign power, the object of which is to efface and to cause to be forgotten, a crime or misdemeanor; the latter, is an act of the same authority, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. 7 Pet. 160. Amnesty is the abolition and forgetfulness of the offence; pardon is forgiveness. A pardon is given to one who is certainly guilty, or has been convicted; amnesty, to those who may have been so.

4. Their effects are also different. That of pardon, is the remission of the whole or a part of the punishment awarded by the law; the conviction remaining unaffected when only a partial pardon is granted: an amnesty on the concrary, has the effect of destroying the criminal act, so that it is as if it had not been committed, as far as the public interests are concerned.

5. Their application also differs. Pardon is always given to individuals, and properly only after judgment or conviction: amnesty may be granted either before judgment or afterwards, and it is in general given to whole classes of criminals or supposed criminals, for the purpose of restoring tranquillity in the state. But sometimes amnesties are limited, and certain classes are excluded from their operation.

AMORTIZATION, contracts, English law. An alienation of lands or tenements in mortraain. 2 Stat. Ed. I.

2. The reduction of the property of lands or tenements to mortmain.

AMORTISE, contracts. To alien lands in mortmain. **AMOTION**. In corporations and companies, is the act of removing an officer from his office; it differs from disfranchisement, which is applicable to members, as such. Wille. on Corp. n. 708. The power of amotion is incident to a corporation. 2 Str. 819; 1 Burr. 639.

2. In Rex v. Richardson, Lord Mansfield specified three sorts of offences for which an officer might be discharged; first, such as have no immediate relation to the office, but are in themselves of so infamous a nature, as to render the offender unfit to execute any public franchise; secondly, such as are only against his oath, and the duty of his office as a corporator, and amount to breaches of the tacit condition annexed to his office; thirdly, the third offence is of a mixed nature; as being an offence not only against the duty of his officer but also a matter indictable at common law. 2 Binn. R. 448. And Lord Mansfield considered the law as settled, that though a corporation has express power of amotion, yet for the first sort of offences there must be a previous indictment and conviction; and that there was no authority since Bagg's Case, 11 Rep. 99, which says; that the power of trial as well as of amotion, for the second offense, is not incident to every corporation. He also observed: "We think that from the reason of

the thing, from the nature of the corporation, and for the sake of order and good government, this power is incident as much as the power of making by-laws." Doug. 149. See generally, Wilcock on Mun. Corp. 268; 6 Conn. Rep. 632; 6 Mass. R. 462; Ang. & Am. on Corpor. 236.

AMOTION, tort. An amotion of possession from an estate, is an ouster which happens by a species of disseisin or turning out of the legal propritor before his estate is determined. 3 Bl. Com. 198, 199. Amotion is also applied to personal chattels when they are taken unlawfully out of the possession of the owner, or of one who has a special property in them.

AMPLIATION, civil law. A deferring of judgment until the cause is further examined. In this case, the judges pronounced the word amplius, or by writing the letters N.L. for non liquet, signifying that the cause was not clear. In practice, it is usual in the courts when time is taken to form a judgment, to enter a curia advisare vult; cur. adv. vult. (q. v.)

AMPLIATION, French law. Signifies the giving a duplicate of an acquittance or other instrument, in order that it may be produced in different places. The copies which notaries make out of acts passed before them, and which are delivered to the parties, are also called ampliations. Dict. de Jur. h. t.

AMY or ami, a French word, signifying, friend. Prochein amy, (q. v.) the next friend. Alien amy, a foreigner, the citizen or subject of some friendly power or prince.

AN, JOUR, ET WASTE. See Year, day, and waste.

ANALOGY, comtruction. The similitude of relations which exist between things compared.

2. To reason analogically, is to draw conclusions based on this similitude of relations, on the resemblance, or the connexion which is perceived between the objects compared. "It is this guide," says Toollier, which leads the law lawgiver, like other men, without his observing it. It is analogy which induces us, with reason, to suppose that, following the example of the Creator of the universe, the lawgiver has established general and uniform laws, which it is unnecessary to repeat in all analogous cases." Dr. Civ. Fr. liv. 3, t. 1, c. 1. Vide Ang. on Adv. Enjoym. 30, 31; Hale's Com. Law, 141.

3. Analogy has been declared to be an argument or guide in forming legal judgments, and is very commonly a ground of such judgments. 7 Barn. & Cres. 168; 3 Bing. R. 265; 8 Bing R. 557, 563; 3 Atk. 313; 1 Eden's R. 212; 1 W. Bl. 151; 6 Ves. jr. 675,

676; 3 Swanst. R. 561; 1 Turn. & R. 103, 338; 1 R. & M. 352, 475, 477; 4 Burr. R. 1962; 2022, 2068; 4 T. R. 591; 4 Barn. & Cr. 855; 7 Dowl. & Ry. 251; Cas. t. Talb. 140; 3 P. Wms. 391; 3 Bro. C. C. 639, n.

ANARCHY. The absence of all political government; by extension, it signifies confusion in government.

ANATHEMA, eccl. law. A punishment by which a person is separate from, the body of the church, and forbidden all intercourse with the faithful: it differs from excommunication, which simply forbids the person excommunicated, from going into the church and communicating with the faithful. Gal. 1. 8, 9.

ANATOCISM, civil law. Usury, which consists in taking interest on interest, or receiving compound interest. This is forbidden. Code, lib. 4, t. 32, 1, 30; 1 Postlethwaite's Dict.

2. Courts of equity have considered contracts for compounding interest illegal, and within the statute of usury. Cas. t. Talbot, 40; et vide Com. Rep. 349; Mass. 247; 1 Ch. Cas. 129; 2 Ch. Cas. 35. And contra, 1 Vern. 190. But when the interest has once accrued, and a balance has been settled between the parties, they may lawfully agree to turn such interest into principal, so as to carry interest in futuro. Com. on Usury, ch. 2, s. 14, p. 146 et eq.

ANCESTOR, descents. One who has preceded another in a direct line of descent; an ascendant. In the common law, the word is understood as well of the immediate parents, as, of these that are higher; as may appear by the statute 25 Ed. III. De natis ultra mare, and so in the statute of 6 R. III. cap. 6, and by many others. But the civilians relations in the ascending line, up to the great grandfather's parents, and those above them, they term, majores, which common lawyers aptly expound antecessors or ancestors, for in the descendants of like degree they are called posteriores. Cary's Litt.45. The term ancestor is applied to natural persons. The words predecessors and successors, are used in respect to the persons composing a body corporate. See 2 Bl. Com. 209; Bac. Abr. h. t.; Ayl. Pand. 58.

ANCESTRAL. What relates to or has, been done by one's ancestors; as homage ancestral, and the like.

ANCHOR. A measure containing ten gallons. Lex, Mereatoria.

ANCHORAGE, merc. law. A toll paid for every anchor cast from a ship into a river, and sometimes a toll bearing this name is paid, although there be no anchor cast. This toll is said to be incident to almost every port. 1 Wm. Bl. 413; 2 Chit. Com. Law, 16.

ANCIENT. Something old, which by age alone has acquired some force; as ancient lights, ancient writings.

ANCIENT DEMESNE, Eng. law. Those lands which either were reserved to the crown at the original distribution of landed property, or such as came to it afterwards, by forfeiture or other means. 1. Sal. 57; hob. 88; 4 Inst. 264; 1 Bl. Com. 286; Bac. Ab. h. t.; F. N. B. 14.

ANCIENT LIGHTS, estates. Windows which have been opened for twenty years or more, and enjoyed without molestation by the owner of the house. 5 Har. & John. 477; 12 Mass. R. 157,.220.

2. It is proposed to consider, 1. How the right of ancient light is gained. 2, What amounts to interruption of an ancient light. 3, The remedy for obstructing an ancient light.

3. – 1. How the right of opening or keeping a window open is gained. 1. By grant. 2. By lapse of time. Formerly it was holden that a party could not maintain an action for a nuisance to an ancient light, unless he had gained a right to the window by prescription. 1 Leon. 188; Cro. Eliz. 118. But the modern doctrine is, that upon proof of an adverse enjoyment of light; for twenty yers or upwards, unexplained, a jury may be directed to presume a right by grant, or otherwise. 2 Saund. 176, a; 12 Mass. 159; 1 Esp. R. 148. See also 1 Bos. & Pull. 400.; 3 East, 299; Phil. Ev. 126; 11 East, 372; Esp. Dig. 636. But if the window was opened during the seisin of a mere tenant for life, or a tenaucy for years, and the owner in fee did not acquiesce in, or know of, the use of the light, he would not be bound. 11 East, 372; 3 Camp. 444; 4 Camp. 616. If the owner of a close builds a house upon one half of it, with a window lighted from the other half, he cannot obstruct lights on the premises granted by him; and in such case no lapse of time necessary to confirm the grantee's right to enjoy them. 1 Vent. 237, 289; 1 Lev. 122; 1 Keb. 553; Sid. 167, 227; L. Raym. 87; 6 Mod. 116; 1 Price, 27; 12 Mass. 159, Rep. 24; 2 Saund. 114, n. 4; Hamm. N. P. 202; Selw. N. P. 1090; Com. Dig. Action on the Case for a Nuisance, A. Where a building has been used twenty years to one purpose, (as a malt house,) and it is converted to another, (as a dwelling-house,) it is entitled in its new state only to the same degree of light which was necessary in its former state. 1 Campb. 322; and see 3 Campb. 80. It has been justly remarked, that the English doctrine as to ancient lights can hardly be regarded as applicable to narrow lots in the new and growing cities of this country; for the effect of the rule would be greatly to impair the value of vacant lots, or those having low buildings upon them, in the neighborhood of other buildings more than twenty years old. 3 Kent, Com. 446, n.

4. – 2. What amounts to an interruption of an ancient light. Where a window has been completely blocked up for twenty years, it loses its privilege. 3 Camp. 514. An abandonment of the right by express agreement, or by acts from which an abandonment may be inferred, will deprive the party having such ancient light of his right to it. The building of a blank wall where the lights formerly existed, would have that effect. 3 B. & Cr. 332. See Ad. & Ell. 325.

5. – 3. Of the remedy for interrupting an ancient light. 1. An action on the case will lie against a person who obstructs an ancient light. 9 Co. 58; 2 Rolle's Abr. 140, 1. Nusans, G 10. And see Bac. Ab. Actions on the Case, D; Carth. 454; Comb.481; 6 Mod. 116.

6. – Total deprivation of light is not necesary to sustain this action, and if the party cannot enjoy the light in so free and ample a manner as he did before, he may sustain the action; but there should be some sensible diminution of the light and air. 4. Esp. R. 69. The building a wall which merely obstructs the right, is not actionable. 9 Ca. 58, b; 1 Mod. 55.

7. – 3. Nor is the opening windows and destroying, the privacy of the adjoining property; but such new window may be immediately obstructed to prevent a right to it being acquired by twenty years use. 3 Campb. 82.

8. – 5. When the right is clearly established, courts of equity will grant an injunction to restrain a party from building so near the plaintiff's house as to darken his windows. 2 Vern. 646; 2 Bro. C. C. 65; 16 Ves. 338; Eden on Inj. 268, 9; 1 Story on Eq 926; 1 Smith's Chan. Pr. 593.; 4 Simm. 559; 2 Russ. R. 121. See Injunction; Plan.

See generally on this subject, 1 Nels. Abr. 56, 7; 16 Vin. Abr. 26; 1 Leigh's N. P. C. 6, s. 8, p. 558; 12 E. C. L. R. 218; 24 Id. 401; 21 Id. 373; 1 id. 161; 10 Id. 99; 28 Id. 143; 23 Am. Jur. 46 to 64; 3 Kent, Com. 446, 2d ed. 7 Wheat. R. 106; 19 Wend. R. 309; Math on Pres. 318 to 323; 2 Watts, 331; 9 Bing. 305; 1 Chit. Pr. 206, 208; 2 Bouv. Inst. n. 1619-23.

ANCIENT WRITINGS, evidence. Deeds, wills, and other writings more than thirty years old, are considered ancient writings. They may in general be read in evidence, without any other proof of their execution than that they have been in the possession of those claiming rights under them. Tr. per Pais, 370; 7 East, R. 279; 4 Esp. R. 1; 9 Ves. Jr. 5; 3 John. R. 292; 1 Esp. R. 275; 5 T. R. 259; 2 T. R. 466; 2 Day's R. 280. But in the case of deeds, possession must have accompanied them. Plowd. 6, 7. See Blath. Pres. 271, n. (2.)

ANCIENTLY, English law. A term for eldership or seniority used in the statute of Ireland, 14 Hen. Vni.

ANCIENTS, English law. A term for gentlemen in the Inns of Courts who are of a certain standing. In the Middle Temple, all who have passed their readings are termed ancients. In Gray's Inn, the ancients are the oldest barristers; besides which the society consists of benchers, barristers and students. In the Inas of Chancery, it conts of ancients, and students or clerks.

ANCILLARY. That which is subordinate on, or is. subordinate to, some other decision. Encyc. Lond. 1

ANDROLEPSY. The taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former. Wolff. 1164; Molloy, de Jure lar. 26.

ANGEL. An ancient English coin of the value of ten shillings sterling. Jac. L. D. h. t.

ANIENS. In some of our law books signifies void, of no force. F. N. B. 214.

ANIMAL, property. A name given to every animated being endowed with the power of voluntary motion. In law, it signifies all animals except those of the him, in species.

2. Animals are distinguished into such as are domitae, and such as are ferae naturae.

3. It is laid down, that in tame or domestic animals, such as horse, kine, sheep, poultry, and the like, a man may have an absolute property, because they coutiaue perpetually in his possession and occupation, and will not stray from his house and person unless by accident or fraudulent enticement, in either of which cases the owner does not lose his property. 2 Bl. Com. 390; 2 Mod. 319. 1.

4. But in animals ferae naturae, a man can have no absolute property; they belong to him only while they continue in his keeping or actual possession; for if at any they regain their natural liberty, his property instantly ceases, unless they have animum revertendi, which is only to be known by their usual habit of returning. 2 Bl. Com. 396; 3 Binn. 546; Bro. Ab. Propertie, 37; Com. Dig. Biens, F; 7 Co. 17 b; 1 Ch. Pr. 87; Inst. 2, 1, 15. See also 3 Caines' Rep. 175; Coop. Justin. 457, 458; 7 Johns. Rep. 16; Bro. Ab. Detinue, 44.

5. The owner of a mischievous animal, known to him to be so, is responsible, when he permits him to go at large, for the damages he may do. 2 Esp. Cas. 482; 4 Campb. 198; 1 Starkie's Cas. 285; 1 Holt, 617; 2 Str.1264; Lord Raym. 110; B. N. P. 77; 1 B.

& A. 620; 2 C. M.& R. 496; 5 C.& P. 1; S. C. 24 E. C. L. R. 187. This principle agrees with the civil law. Domat, Lois Civ. liv. 2, t. 8, s. 2. And any person may justify the killing of such ferocious animals. 9 Johns. 233; 10. Johns. 365; 13 Johns. 312. The owner, of such an animal may be indicted for a common nuisance. 1 Russ. Ch. Cr. Law, 643; Burn's Just., Nuisance, 1.

6. In Louisiana, the owner of an animal is answerable for the damage he may cause; but if the animal be lost, or has strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury; except where the master turns loose a dangerous or noxious animal; for then he must pay all the harm done, without being allowed to make the abndonment. Civ. Code, art. 2301. See Bouv. Inst. Index, h. t.

ANIMANLS OF A BASE NATURE. Those which, though they may be reclaimed, are not Such that at common law a larceny may be committed of them, by reason of the baseness of their nature. Some animals, which are now usually tamed, come within this class; as dogs and cats; and others which, though wild by nature, and oftener reclaimed by art and industry, clearly fall within the same rule; as, bears, foxes, apes, monkeys, ferrets, and the like. 3 Inst. 109,; 1 Hale, P. C. 511, 512; 1 Hawk. P. C. 33, s. 36; 4 Bl. Com. 236; 2 East, P. C. 614. See 1 Saund. Rep. 84, note 2.

ANIMUS. The intent; the mind with which a thing is done, as animus. cancellandi, the intention of cancelling; animus farandi, the intention of stealing; animus maiaendi; the intention of remaining; auimus morandi, the intention or purpose of delaying.

2. Whether the act of a man, when in appearance criminal, be so or not, depends upon the intention with which it was done. Vide Intention.

ANIMUS CANCELLANDI. An intention to destroy or cancel. The least tearing of a will by a testator, animus cancellandi, renders it invalid. See Cancellation.

ANIMUS FURANDI, crim. law. The intention to steal. In order to comstitute larceny, (q. v.) the thief must take the property anino furandi; but this, is expressed in the definition of larceny by the word felonious. 3 Inst. 107; Hale, 503; 4. Bl. Com. 229. Vide 2 Russ. on Cr. 96; 2 Tyler's R. 272. When the taking of property is lawful, although it may afterwards be converted animo furandi to the taker's use, it is not larceny. 3 Inst. 108; Bac. Ab. Felony, C; 14 Johns. R. 294; Ry. & Mood. C. C. 160; Id. 137; Prin. of Pen. Law, c. 22, 3, p. 279, 281.

ANIMUS MANENDI. The intention of remaining. To acquire a domicil, the party must have his abode in one place, with the intention of remaining there; for without

such intention no new domicil can be gained, and the old will not be lost. See Domicile.

ANIMUS RECIPIENDI. The intention of receiving. A man will acquire no title to a thing unless he possesses it with an intention of receiving it for himself; as, if a thing be bailed to a man, he acquires no title.

ANIMUS REVERTENDI. The intention of returning. A man retains his domicil, if he leaves it animo revertendi. 3 Rawle, R. 312; 1 Ashm. R. 126; Fost. 97; 4 Bl. Com. 225; 2 Russ. on Cr. 18; Pop. 42,. 62; 4 Co. 40.

ANIMUS TESTANDI. An intention to make a testament or will. This is required to make a valid will; for whatever form may have been adopted, if there was no animus testandi, there can be no will. An idiot for example, can make no will, because he has no intention.

ANN, Scotch law. Half a year's stipend over and above what is owing for the incumbency due to a minister's relict, or child, or next of kin, after his decease. Wishaw. Also, an abbreviation of annus, year; also of annates. In the old law French writers, ann or rathe r an, signifies a year. Co. Dig h. v.

ANNATES, ecc. law. First fruits paid out of spiritual benefices to the pope, being, the value of one year's profit.

ANNEXATION, property. The union of one thing to another.

2. In the law relating to fixtures, (q. v.) annexation is actual or constructive. By actual annexation is understood every movement by which a chattel can be joined or united to the freehold. By constructive annexation is understood the union of such things as have been holden parcel of the realty, but which are not actually annexed, fixed, or fastened to the freehold; for example, deeds, or chattels, which relate to the title of the inheritance. Shep. Touch. 469. Vide Anios & Fer. on Fixtures, 2.

3. This term has been applied to the union of one country, to another; as Texas was annexed to the United States by the joint reolution of Congress of larch 1, 1845., See Texas.

ANNI NUBILES. The age at which a girl becomes by law fit for marriage, which is twelve years.

ANNIENTED. From the French aneantir; abrogated or made null. Litt. sect. 741.

ANNO DOMINI, in the year of our Lord, abbreviated, A. D. The computation of time from the incarnation of our Saviour which is used as the date of all public deeds in the United tites and Christian countries, on which account it is called the "vulgar vera."

ANNONAE CIVILES, civil law. A species of rent issuing out of certain lands, which were paid to Rome monasteries.

ANNOTATION, civil law. The designation of a place of deportation. Dig. 32, 1, 3 or the summoning of an, absentee. Dig. lib. 5.

2. In another sense, annotations were the answers of the prince to questions put to him by private persons respecting some doubtful point of law. See Rescript.

ANNUAL PENSION, Scotch law. Annual rent. A yearly profit due to a creditor by way of interest for a given sum of money. Right of annual rent, the original right of burdening land with payment yearly for the payment of money.

ANNUITY, contracts. An anuity is a, yearly sum of money granted by one party to another in fee for life or years, charging the person of the grantor only. Co. Litt. 144; 1 Lilly's Reg. 89; 2 Bl. Com. 40; 5 M. R. 312; Lumley on Annuities. 1; 2 Inst. 293; Davies' Rep. 14, 15.

2. In a less technical sense, however, when the money is chargeable on land and on the person, it is generally called an annuity. Doet. and Stud Dial. 2, 230; Roll. Ab. 226. See 10 Watts, 127.

3. An anuuity is different from a rent charge, with which it is frequently confounded, in this; a rent charge is a burden imposed upon and issuing out of lands, whereas an annuity is chargeable only upon the person of the grantee. Bac. Abr. Annuity, A. See, for many, regulations in England relating to annuities, the Stat,. 17 Geo. III. c. 26.

4. An annuity may be created by contract, or by will. To enforce the payment of an annuity, the common law gives a writ of annuity which may be brought by the grantee or his heirs, or their grantees, against the grantor and his heirs. The action of debt cannot be maintained at the common law, or by the Stat. of 8 Anne, c. 14, for the arrears of an annuity devised to A, payable out of lands during the life of B, to whom the lands are devised for life, B paying the annuity out of it, so long as the freehold estates continues. 4 M. & S. 113; 3 Brod. & Bing. 30; 6 Moore, 336. It has been ruled also, that if an action of annuity be brought, and the annuity determines pending the suit, the writ faileth forever because no such action is maintainable for arrearages only, but for the annuity and the arrearages. Co. Litt. 285, a.

5. The first payment of an annuity is to be made at the time appointed in the instrument creating it. In cases where testator directs the annuity to be paid at the end of the first quarter, or other period before the expiration of the first year after his death, it is then due; but in fact it is not payable by the executortill the end of the year. 3 Mad. Ch. R. 167. When the time is not appointed, as frequently happens in will, the following distinction is presumed to exist. If the bequest be merely in the form of an annuity as a gift to a man of "an annuity of one hnndred dollars for life" the first payment will be due at the end of the year after the testator's death. But if the disposition be of a sum of money, and the interest to be given as an annuity to the same man for life, the first payment will not accrue before the expiration of the second year after ihe testator's death. This distinction, though stated from the bench, does not appear to have been sanctioned by express decision. 7 Ves. 96, 97.

6. The Civil Code of Louisiana makes the following provisions in relation to annuities, namely: The contract of annuity is that by which one party delivers to another a sum of money, and agrees not to reclaim it, so long as the receiver pays the rent agreed upon. Art. 2764.

7. This annuity mav be perpetual or for life. Art. 2765.

8. The amount of the annuity for life can in no case exceed the double of the conventional interest. The amount of the perpetual annuity cannot exceed the double of the conventional interest. Art. 2766.

9. Constituted annuity is essentially redeemable. Art. 2767.

10. The debtor of a constituted annuity may be compelled to redeem the same: 1, If he ceases fulfilling his obligations during three years: 2, If he does not give the lender the securities promised by the contract. Art. 2768.

11. If the debtor should fail, or be in a state of insolvency, the capital of the constituted annuity becomes exigible, but only up to the amount at wich it is rated, according to the order of contribution amongst the creditors. Art. 2769.

12. A similar rule to that contained in the last article has been adopted in England. See stat. 6 Geo. IV., c. 16, s. 54 and 108; note to Ex parte James, 5 Ves. 708; l Sup. to Ves. Jr. 431; note to Franks v. Cooper, 4 Ves. 763; 1 Supp. to Ves. Jr. 308. The debtor, continues the Code, may be compelled by his security to redeem the annuity within the time which has been fixed in the contract, if any time has been fixed, or after ten years, if no mention be made of the time in the act. Art. 2770.

13. The interest of the sums lent, and the arrears of constituted and life annuity, cannot bear interest but from the day a judicial demand of the same has been made by the creditor, and when the interest is due for at least one whole year. The parties may only agree, that the same shall not be redeemed prior to a time which cannot exceed ten years, or without having warned the creditor a time before, which they shall limit. Art. 2771. See generally, Vin. Abr. Annuity; Bac. Abr. Annuity and Rent; Com. Dig. Annuity; 8 Com. Dig. 909; Doct. Plac. 84; 1 Rop. on Leg. 588; Diet. de Jurisp. aux mots Rentes viageres, Tontine. 1 Harr. Dig. h. t.

ANNUM DIEM ET VASTUM, English law. The title which the king acquires in land, when a party, who held not of the king, is attainted of felony. He acquires the power not only to take the profits for a full year, but to waste and demolish houses, and to extirpate woods and trees.

2. This is but a chattel interest.

ANONYMOUS. Without name. This word is applied to such.books, letters or papers, which are published without the author's name. No man is bound to publish his name in connexion with a book or paper he has publisbed; but if the publication is libellous, he is equally responsible as if his name were published.

ANSWER, pleading in equity. A defence in writing made by a defendant, to the charges contained in a bill or information, filed by the plaintiff against him in a court of equity. The word answer involves a double sense; it is one thing when it simply replies to a question, another when it meets a charge; the answer in equity includes both senses, and may be divided into an examination and a defence. In that part which consists of an examination, a direct andfull answer, or reply, must in general be given to every question asked. In that part which consists of a defence, the defendant must state his, case distinctly; but is not required to give information respecting the proofs that are to maintain it. Gresl . Eq. Ev. 19.

2. As a defendant is called by a bill or information to make a discovery of the several cbarges it contains, he must do so, unless he is protected either by a demurrer a plea or disclaimer. It may be laid down as an invariable rule, that whatever part of a bill or information is not covered by one of these, must be defended by answer. Redesd. Tr. Ch. PI. 244.

3. In form, it usually begins, 1st, with its title, specifying which of the defendants it is the answer of, and the names of the plaintiffs in the cause in which it is filed as answer; 2d, it reserves to the defendant all the advantages which might be taken by exception to the bill; 3d, the substance of the answer, according to the defendant's knowledge, remembrance, information and belief, then follows, in which the matter of

the bill, with the interrogatories founded thereon, are answered, one after the other, together with such additional matter as the defendant thinks necessary to bring forward in his, defence, either for the purpose of qualifying, or adding to, the case made by the bill, or to state a new case on his own behalf; 4th, this is followed by a general traverse or denial of all unlawful combinations charged in the bill, and of all other matters therein contained 5th, the answer is always upon oath or affirmation, except in the case of a corporation, in which case it is under the corporate seal.

4. In substance, the answer ought to contain, 1st, a statement of facts and not arguments 2d, a confession and avoidance, or traverse and denial of the material parts of the bill 3d, its language ought to be direct and without evasion. Vide generally as to answers, Redes. Tr. Ch. PI. 244 to 254; Coop. Pl. Eq. 312 to 327; Beames PI. Eq. 34 et seq.; Bouv. Inst. Index, h. t. For an historical account of this instrument, see 2 Bro. Civ. Law, 371, n. and Barton's Hist. Treatise of a Suit in Equity.

ANSWER, practice. The declaration of a fact by a witness after a question has been put asking for it.

2. If a witness unexpectedly state facts against the interest of the party calling him, other witnesses may be called by the same party, to disprove those facts. But the party calling a witness cannot discredit him, by calling witnesses to prove his bad character for truth and veracity, or by proving that he has made statements out of court contrary to what he has sworn on the trial; B. N. P.; for the production of the witness is virtually an assertion by the party producing him, that he is credible.

ANTECEDENT. Something that goes before. In the construction of laws, agreements, and the like, reference is always to be made to the last antecedent; ad proximun antecedens fiat relatio. But not only the antecedents but the subsequent clauses of the instrument must be considered: Ex antecedentibus et consequentibus fit optima interpretatio.

/B>. Before suit brought, before controversy moved.

ANTEDATE. To, put a date to an instrument of a time before the time it was written. Vide Date.

ANTENATI. Born before. This term is applied to those who were born or resided within the United States before or at the time of the declaration of independence. These had all the rights of citizens. 2 Kent, Com. 51, et seq.

ANTE-NUPTIAL. What takes place before marriage; as, an ante-nuptial agreement, which is an agreement made between a man and a woman in contemplation of marriage. Vide Settlement.

ANTHETARIUS, obsolete See Anti-thetarius.

ANTI-MANlFESTO. The declaration of the reasons which one of the belligerents publishes, to show that the war as to him is defensive. Wolff, 1187. See Manifesto.

ANTlCIPATION. The act of doing or taking a thing before its proper time.

2. In deeds of trust there is frequently a provision that the income of the estate shall be paid by the trustee as it shall accrue, and not by way of anticipation. A payment made contrary to such provision would not be considered as a discharge of the trustee.

ANTICHRESIS, contracts. A word used in the civil law to denote the contract by which a creditor acquires the right of reaping the fruit or other revenues of the immovables given to him in pledge, on condition of deducting, annually, their proceeds from the interest, if any is due to him, and afterwards from the principal of his debt. Louis. Code, art. 3143 Dict. de Juris. Antichrese, Mortgage; Code Civ. 2085. Dig. 13, 7, 7 ; 4, 24, 1 Code, 8, 28, 1.

ANTINOMY. A term used in the civil law to signify the real or apparent contradiction between two laws or two decisions. Merl. Repert. h. t. Vide Conflict of Laws.

ANTIQUA CUSTOMA, Eng. law. A duty or imposition which was collected on wool, wool-felts, and leather, was so called. This custom was called nova customa until the 22 Edw. I., when the king, without parliament, set a new imposition of 40s. a sack, and then, for the first time, the nova customa went by the name of antiqua customa. Bac. Ab. Smuggling &c. B.

ANTIQUA STATUTA. In England the statutes are divided into new and ancient statutes; since the time of memory; those from the time 1 R. I. to E. III., are called antiqua statuta – those made since, nova statuta.

ANTITHETARIUS, old English law. The name given to a man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver (q, v.) in this, that the latter does not charge the accuser, but others. Jacob's Law Dict.

APARTMENTS. A part of a house occupied by a person, while the rest is occupied by another, or others. 7 Mann. & Gr. 95 ; 6 Mod. 214 ; Woodf. L. & T. 178. See House.

APOSTACY, Eng. law. A total renunciation of the Christian religion, and differs from heresy. (q. v.) This offence is punished by the statute of 9 and 10 W. III. c. 32. Vide Christianity.

APOSTLES. In the British courts of admiralty, when a party appeals from a decision made against him, he prays apostles from the judge, which are brief letters of dismission, stating the case, and declaring that the record will be transmitted. 2 Brown's Civ. and Adm. Law, 438; Dig. 49. 6.

2. This term was used in the civil law. It is derived from apostolos, a Greek word, which signifies one sent, because the judge from whose sentence an appeal was made, sent to the superior judge these letters of dismission, or apostles. Merl. Rep. mot Apotres.

APPARATOR or APPARITOR, eccles. law. An officer or messenger employed to serve the process of the spiritual courts in England.

APPARENT. That which is manifest what is proved. It is required that all things upon which a court must pass, should be made to appear, if matter in pays, under oath if matter of record, by the record. It is a rule that those things which do not appear, are to be considered as not existing de non apparentibus et non existentibus eadem est ratio. Broom's Maxims, 20, What does not appear, does not exist; quod non apparet, non est.

APPARLEMENT. Resemblance. It is said to be derived from pareillement, French, in like manner. Cunn. Dict. h. t.

APPEAL, English crim. law. The accusation of a person, in a legal form, for a crime committed by him; or, it is the lawful declaration of another man's crime, before a competent judge, by one who sets his name to the declaration, and undertakes to prove it, upon the penalty which may ensue thereon. Vide Co. Litt. 123 b, 287 b; 6 Burr. R. 2643, 2793; 2 W. Bl. R. 713; 1 B. & A. 405. Appeals of murder, as well as of treason, felony, or other offences, together with wager of battle, are abolished by stat. 59 Geo. M. c. 46.

APPEAL, practice. The act by which a party submits to the decision of a superior court, a cause which has been tried in an inferior tribunal. 1 S. & R. 78 Bin. 219; 3 Bin. 48.

2. The appeal generally annuls the judgment of the inferior court, so far that no action can be taken upon it until after the final decision of the cause. Its object is to review the whole case, and to secure a just judgment upon the merits.

3. An appeal differs from proceedings in error, under which the errors committed in the proceedings are examined, and if any have been committed the first judgment is reversed; because in the appeal the whole case is exainined and tried as if it had not been tried before. Vide Dane's Ab. h. t.; Serg. Const. Law Index, h. t. and article Courts of the United States.

APPEARANCE, practice. Signifies the filing common or special bail to the action.

2. The appearance, with all other subsequent pleadings supposed to take placein court, should (in accordance with the ancient practice) purport to be in term time. It is to be observed, however, that though the proceedings are expressed as if occurring in term time, yet, in fact, much of the business is now done, in periods of vacation.

3. The appearance of the parties is no longer (as formerly) by the actual presence in court, either by themselves or their attorneys; but, it must be remembered, an appearance of this kind is still supposed, and exists in contemplation of law. The appearance is effected on the part of the defendant (when be is not arrested) by making certain formal entries in the proper office of the court, expressing his appearance; 5 Watts & Serg. 215; 1 Scam. R. 250; 2 Seam. R. 462; 6 Port. R. 352; 9 Port. R. 272; 6 Miss. R. 50; 7 Miss. R. 411; 17 Verm. 531; 2 Pike, R. 26; 6 Ala. R. 784; 3 Watts & Serg. 501; 8 Port. R. 442; or, in case of arrest, it may be considered as effected by giving bail to the action. On the part of the plaintiff no formality expressive of appearance is observed.

4. In general, the appearance of either party may be in person or by attorney, and, when by attorney, there is always supposed to be a warrant of attorney executed to the attorney by his client, authorizing such appearance.

5. But to this general rule there are various exceptions; persons devoid of understanding, as idiots, and persons having understanding, if they are by law deprived of a capacity to appoint an attorney, as married women, must appear in person. The appearance of such persons must purport, and is so entered on the record, to be in person, whether in fact an attorney be employed or not. See Tidd's Pr. 68, 75; 1 Arch. Pract. 22; 2 John. 192; 8 John. 418; 14 John. 417; 5 Pick. 413; Bouv. Inst. Index, h. t.

6. There must be an appearance in person in the following cases: 1st. An idiot can appear only in person, and as, a plaintiff he may sue in person or by his next friend 2d.

A married woman, when sued without her hushand, should defend in person 3 Wms. Saund. 209, b and when the cause of action accrued before her marriage, and she is afterwards sued alone, she must plead her coverture in person, and not by attorney. Co. Litt. 125. 3d. When the party pleads to the jurisdiction, be must plead in person. Summ.on Pl. 51; Merrif. Law of Att. 58. 4th. A plea of misnomer must always be in person, unless it be by special warrant of attorney. 1 Chit. PI. 398; Summ. on PI. 50; 3 Wms. Saund. 209 b.

7. An infant cannot appoint an attorney; he must therefore prosecute or appear by guardian, or prochein ami.

8. A lunatic, if of full age, may appear by. attorney; if, under age, by guardian. 2 Wms. Saund. 335; Id. 332 (a) n. (4.)

9. When an appearance is lawfully entered by the defendant, both parties are considered as being in court. lmp. Pr. 215. And if the defendant pleads to issue, defects of process are cured but not, if he demurs to the process, (I Lord Raym. 21,) or, according to the practice of some courts, appears de bene esse, or otherwise conditionally.

10. In criminal cases, the personal presence of the accused is often necessary. It has been held, that if the record of a conviction of a misdemeaner be removed by certiorari, the personal presence of the defendant is necessary, in order to move in arrest. of judgment: but, after a special verdict, it is not necessary that the defendant should be personally present at the argument of it. 2 Burr. 931 1 Bl. Rep. 209, S. C. So, the defendant must appear personally in court, when an order of bastardy is quashed and the reason is, he must enter into a recognizance to abide the order of sessions below. 1 Bl. Rep. 198. So, in a case, when two justices of the peace, having confessed an information for mishehaviour in the execution of their office, and a motion was made to dispense with their personal appearance, on their clerks undertaking in court to answer for their flues, the court declared the rule to be, that although such a motion was subject to the discretion of the court either to grant or refuse it, in cases where it is clear that the punishment would not be corporal, yet it ought to be denied in every case where it is either probable or possible that the punishment would be corporal; and therefore the motion was overruled in that case. And Wilmot and Ashton, Justices, thought, that even where the punishment would most probably be pecuniary only, yet in offences of a very gross and public nature, the persons convicted should appear in person, for the sake of example and prevention of the like offences being committed by other persons; as the notoriety of being called up to answer criminally for such offences, would very much conduce to deter others from venturing to commit the like. 3 Burr. 1786, 7.

APPEARANCE DAY. The day on which the parties are bound to appear in court. This is regulated in the different states by particular provisions.

APPELLANT, practice. He who makes an appeal from one jurisdiction to another.

APPELLATE JURISDICTION. The jurisdiction which a superior court has to bear appeals of causes which have been tried in inferior courts. It differs from original jurisdiction, which is the power to entertain suits instituted in the first in stance. Vide Jurisdiction; Original jurisdiction.

APPELLEE, practice. The party in a cause against whom an appeal has been taken.

APPELLOR. A criminal who accuses his accomplices; one who challenges a jury.

APPENDANT. An incorporeal inheritance belonging to another inheritance.

2. By the word appendant in a deed, nothing can be conveyed which is itself substantial corporeal real property, and capable of passing by feoffment and livery of seisin: for one kind of corporeal real property cannot be appendant to another description of the like real property, it being a maxim that land cannot be appendant to land. Co. Litt. 121; 4 Coke, 86; 8 Barn. & Cr. 150; 6 Bing. 150. Only, such things can be appendant as can consistently be so, as a right of way, and the like. This distinction is of importance, as will be seen by the following case. If a wharf with the appurtenances be demised, and the water adjoining the wharf were in tended to pass, yet no distress for rent on the demised premises could be made on a barge on the water, because it is not a place which could pass as a part of the thing demised. 6 Bing. 150.

3. Appendant differs from appurtenant in this, that the former always arises from prescription, whereas an appurtenance may be created at any time. 1 Tho. Co. Litt. 206; Wood's Inst. 121; Dane's Abr. h. t.; 2 Vin. Ab. 594; Bac. Ab. Common, A 1. And things appendant must have belonged by prescription to another principal substantial thing, which is considered in law as more worthy. The principal thing and the appendant must be appropriate to each other in nature and quality, or such as may be properly used together. 1 Chit. Pr. 154.

APPENDITIA. From appendo, to hang at or on; the appendages or pertinances of an estate the appurtenauces to a dwelling, &c.; thus pent-houses, are the appenditia domus, &c.

APPLICATION. The act of making a request for something; the paper on which the request is written is also called an application; as, an application to chancery for leave

to invest trust funds; an application to an insurance company for insurance. In the land law of Pennsylvania, an application is understood to be a request in writing to have a certain quantity of land at or near a certain place therein mentioned. 3 Binn. 21; 5 Id. 151; Jones on Land Office Titles, 24.

2. An application for insurance ought to state the facts truly as to the object to be insured, for if any false representation be made with a fraudulent intent, it will avoid the policy. 7 Wend. 72.

3. By application is also meant the use or disposition of a thing; as the application of purchase money.

4. In some cases a purchaser who buys trust property is required, to see to the application of thee purchase money, and if be neglects to do so, and it be misapplied, he will be considered as a trustee of the property he has so purchased. The subject will be examined by considering, 1, the kind of property to be sold; 2, the cases where the purchaser is bound to see to the application of the purchase money in consequence of the wording of the deed of trust.

5. – 1. Personal property is liable, in the hands of the executor, for the payment of debts, and the purchaser is therefore exempted from seeing to the application of the purchase money, although it may have been bequeathed to be sold for the payment of debts. 1 Cox, R. 145; 2 Dick. 725; 7 John. Ch. Rep., 150, 160; 11 S. & R. 377, 385; 2 P. Wms. 148; 4 Bro. C. C. 136; White's L. C. in Eq. 54; 4 Bouv. Inst. n. 3946.

6. With regard to real estate, which is not a fund at law for the payment of debt's, except where it is made so by act of assembly, or by direction in the will of the testator or deed of trust, the purchaser from an executor or trustee may be liable for the application of the purchase money. And it will now be proper to consider the cases where such liability exists.

7. – 2. Upon the sale of real estate, a trustee in whom the legal title is vested, can it law give a valid discharge for the purchase money, because he is the owner at law. In equity, on the contrary, the persons among whom the produce of the sale is to be distributed are considered the owners; and a purchaser must obtain a discharge from them, unless the power of giving receipts is either expressly or by implication given to the trustees to, give receipts for the purchase money. It is, for this reason, usual to provide in wills and trust deeds that the purchaser shall not be required to see to the application of the purchase money.

APPOINTEE. A person who is appointed or selected for a particular purpose; as the appointee under a power, is the person who is to receive the benefit of the trust or power.

/B>. One authorized by the donor under the statute of uses, to execute a power. 2 Bouv. Ins. n. 1923.

APPOINTMENT, chancery practice. The act of a person authorized by a will or other instrument to direct how trust property shall be disposed of, directing such disposition agreeably to the general directions of the trust.

2. The appointment must be made in such a manner as to come within the spirit of the power. And although at law the rule only requires that some allotment, however small, shall be given to each person, when the power is to appoint to and among several persons; the rule in equity differs, and requires a real and substantial portion to each, and a mere nominal allotment to one is deemed illusory and fraudulent. When the distribution is left to discretion, without any prescribed rule, Is to such of the children as the trustee shall think proper, he may appoint to one only; 5 Ves. 857; but if the words be, 'amongst' the children as he should think proper, each must have a share, and the doctrine of illusory appointment applies. 4 Ves. 771 Prec. Ch. 256; 2 Vern. 513. Vide, generally, 1 Supp. to Ves. Jr. 40, 95, 201, 235, 237; 2 Id. 1 27; 1 Vern.67, n.; 1 Ves. Jr. 31 0, n.; 4 Kent, Com. 337; Sugd. on Pow. Index, h. t.; 2 Hill. Ab. Index, h. t.; 2 Bouv. Inst. n. 1921, et seq.

APPOINTMENT, government, wills. The act by which a person is selected and invested with an office; as the appointment of a judge, of which the making out of his commission is conclusive evidence. 1 Cranch, 137, 155; 10 Pet. 343. The appointment of an executor, which is done by nominating him as such in a will or testament.

2. By appointment is also understood a public employment, nearly synonymous with office. The distinction is this, that the term appointment is of a more extensive signification than office; for example, the act of authorizing a man to print the laws of the United States by authority, and the right conveyed by such an act, is an appointment, but the right thus conveyed is not an office. 17 S. & R. 219, 233. See 3 S. & R. 157; Coop. Just. 599, 604.

APPORTIONMENT, contracts. Lord Coke defines it to be a division or partition of a rent, common, or the like, or the making it into parts. Co . Litt. 147. This definition seems incomplete. Apportionment frequently denotes, not, division, but distribution; and in its ordinary technical sense, the distribution of one subject in proportion to another previously distributed. 1 Swanst. C. 87, n.

2. Apportionment will here be considered only in relation to contracts, by talking a view, 1, of such as are purely personal and, 2, of such as relate to the realty.

3. – 1. When a Purely personal contract is entire and not divisible in its nature, it is manifest it cannot be apportioned; as when the subject of the contract is but one thing, and there is but one creditor and one debtor, neither can apportion the obligation without the consent of the other. In such case the creditor cannot force his debtor to pay him a part of his debt only, and leave the other part unpaid, nor can the debtor compel his creditor to receive a part only of what is due to him on account of his claim. Nor can the assignee of a part sustain an action for such part. 5 N. S. 192.

4. When there is a special contract between the parties, in general no compensation can be received unless the whole contract has been actually fulfilled. 4 Greenl. 454; 2 Pick. R. 267; 10 Pick. R. 209; 4 Pick. R. 103; 4 M'Cord, R. 26, 246; 6 Verm. R. 35. The subject of the contract being a complex event, constituted by the performance of various acts, the imperfect completion of the event, by the performance of only some of those acts, cannot, by virtue of that contract, of which it is not the subject, afford a title to the whole, or any part of the stipulated benefit. See 1 Swanst. C. 338, n. and the cases there cited; Story, Bailm. 441; Chit. Contr. 168; 3 Watts, 331; 2 Mass. 147, 436; 3 Hen. & Munf. 407; 2 John. Cas. 17; 13 John. R. 365; 11 Wend. 257; 7 Cowen, 184; 8 Cowen, 84; 2 Pick. 332. See generally on the subject of the apportionment, of personal obligations, 16 Vin. Ab. 138; 22 Vin. Ab. 13; Stark. Ev. part 4, p. 1622; Com. Dig. Chancery, 2 E and 4 N 5; 3 Chit. Com. Law 129; Newl. Contr. 159; Long on Sales, 108. And for the doctrine of the civil law, see Dumoulin, de dividuo et individuo, part 2, n. 6, 7; Toull. Dr. Civ. Fr. liv. 3, tit 3, c. 4, n. 750, et seq.

5. – 2. With regard to rents, the law is different. Rents may in general be apportioned, and this may take place in several ways; first, by the act of the landlord or reversioner alone, and secondly, by virtue of the statute of 11 Geo. II., c. 19, s. 15, or by statutes in the several states in which its principles have been embodied.

6. – 1. When there is a subsisting obligation on the part of the tenant to pay a certain reat, the reversioner may sell his estate in different parts, to as many persons as he may deem proper, and the lessee or tenant will be bound to pay to each a proportion of the rent. 3 Watts, 404; 3 Kent Com. 470, 3d. ed.; Co. Litt. 158 a; Gilb. on Rents, 173; 7 Car. 23; 13 Co. 57 Cro. Eliz. 637, 651; Archb. L. &. T. 172 5 B. & A.876; 6 Halst. 262. It is usual for the owners of the reversion to agree among themselves as to the amount which each is to receive; but when there is no agreement, the rent will be apportioned by the jury. 3 Kent, Com. 470; 1 Bouv. Inst. n. 697.

7. – 2. Rent may be apportioned as to time by virtue of the stat. 11 Geo. H., C. 19, s. 15, by which it is provided that the rent due by a tenant for life, who dies during the

currency of a quarter, of a year, or other division of time at which the rent was made payable, shall be apportioned to the day of his death. In Delaware, Missouri, New Jersey, and New York, it is provided by statutes, that if the tenant for life, lessor, die on the rent day, his executors may recover the whole rent; if before, a proportional part. In Delaware, Kentucky, Missouri, and New York, when one is entitled to rents, depending on the life of another, he may recover them notwithstanding the death of the latter. In Delaware, Kentucky, Missouri, and Virginia, it is specially provided, that the hushand, after the death of his wife, may recover the rents of her lands. 1 Hill. Ab. c. 16, 50. In Kentucky, the rent is to be apportioned when the lease is determined upon any contingency.

8. When the tenant is deprived of the land, as by eviction, by title paramount, or by quitting the premises with the landlord's consent, in the absence of any agreement to the contrary, his obligation to pay rent ceases, as regards the current quarter or half year, or other day of payment, as the case may be. But rent which is due may be recovered. Gilb. on Rents, 145; 3 Kent, Comm. 376; 4 Wend. 423; 8 Cowen, 727 1 Har. & Gill, 308; 11 Mass. 493. See 4 Cruise's Dig. 206; 3 Call's R. 268; 4 M'Cord 447; 1 Bailey's R. 469; 2 Bouv. Inst. n. 1675, et seq.

APPOSAL OF SHERIFFS, English law. The charging them with money received upon account of the Exchequer. 22 Car. II.

APPOSER, Eng. law. An officer of the Court of Exchequer, called the foreign apposer.

APPOSTILLE, French law. Postil. In general this means an addition or annotation made in the margin of an act, [contract in writing,] or of some writing. Mer. Rep.

APPRAISEMENT. A just valuation of property.

2. Appraisements are required to be made of the property of persons dying intestate, of insolvents and others; an inventory (q. v.) of the goods ought to be made, and a just valuation put upon them. When property real or personal is taken for public use, an appraisement of it is made, that the owner may be paid it's value.

APPRAISER, practice. A person appointed by competent authority to appraise or value goods; as in case of the death of a person, an appraisement and inventory must be made of the goods of which he died possessed, or was entitled to. Appraisers are sometimes appointed to assess the damage done to property, by some public work, or to estimate its value when taken for public use.

APPREHENSION, practice. The capture or arrest of a person. The term apprehension is applied to criminal cases, and arrest to civil cases; as, one having authority may arrest on civil process, and apprehend on a criminal warrant.

APPRENTICE, person, contracts. A person bound in due form of law to a master, to learn from him his art, trade or business, and to serve him during the time of his apprenticeship. (q. v.) 1 Bl. Com. 426; 2 Kent, Com. 211; 3 Rawle, Rep. 307; Chit. on Ap. 4 T. R. 735; Bouv. Inst. Index, h. t.

2. Formerly the name of apprentice en la ley was given indiscriminately to all students of law. In the reign of Edward IV. they were sometimes called apprentice ad barras. And in some of the ancient law writers, the term apprentice and barrister are synonymous. 2 Inst. 214; Eunom. Dial, 2, 53, p. 155.

APPRENTICESHIP, contracts. A contract entered into between a person who understands some art, trade or business, and called the master, and another person commonly a minor, during his or her minority, who is called the apprentice, with the consent of his or her parent or next friend by which the former undertakes to teach such minor his art, trade or business, and to fulfil such other covenants as may be agreed upon; and the latter agrees to serve the master during a definite period of time, in such art, trade or business. In a common indenture of apprenticeship, the father is bound for the performance of the covenants by the son. Daug. 500.

2. The term during which the apprentice is to serve is also called his apprenticeship. Pardessus,)Dr. Com. n. 34.

3. This contract is generally entered into by indenture or deed, and is to continue no longer than the minority of the apprentice. The English statute law as to binding out minors as apprentices to learn some useful art,. trade or business, has been generally adopted in the United States, with some variations which cannot, be noticed here. 2 Kent, Com. 212.

4. The principal duties of the parties are as follows: 1st, Duties of the master. He is bound to instruct the apprentice by teaching him, bona fide, the knowledge of the art of which he has undertaken to teach him the elements. He ought to, watch over the conduct of the apprentice, giving him prudent advice and showing him a good example, and fulfilling towards him the duties of a father, as in his character of master, he stands in loco parentis. He is also required to fulfil all the covenants he has entered into by the indenture. He must not abuse his authority, either by bad treatment, or by employing his apprentice in menial employments, wholly unconnected with the business he has to learn. He cannot dismiss his apprentice except by application to a competent tribunal, upon whose, decree the indenture may

be cancelled. But an infant apprentice is not capable in law of consenting to his own discharge. 1 Burr. 501. Nor can the justices, according to some authorities, order money to be returned on the discharge of an apprentice. Strange, 69 Contra, Salk. 67, 68, 490; 11 Mod. 110 12 Mod. 498, 553. After the apprenticeship is at an end, he cannot retain the apprentice on the ground that he has not fulfilled his contract, unless specially authorized by statute.

5. – 2d. Duties of the apprentice. An apprentice is bound to obey his master in all his lawful commands, take care of his property, and promote his interest, endeavor to learn his trade or business, and perform all the covenants in his indenture not contrary to law. He must not leave his master's service during the term of the apprenticeship. The apprentice is entitled to payment for extraordinary services, when promised by the master; 1 Penn. Law Jour. 368. See 1 Whart. 113; and even when no express promise has been made, under peculiar circumstances. 2 Cranch, 240, 270; 3 Rob. Ad. Rep. 237; but see 1 Whart, 113. See generally, 2 Kent, Com. 211-214; Bac. Ab. Master and Servabt; 1 Saund. R. 313, n. 1, 2, 3, and 4; 3 Rawle, R. 307 3 Vin. Ab. 19; 1 Bouv. Inst. n. 396, et seq. The law of France on this subject is strikingly similar to our own. Pardessus, Droit Com. n. 518-522.

6. Apprenticeship is a relation which cannot be assigned at the common law 5 Bin. 428 4 T. R. 373; Doug. 70 3 Keble, 519; 12 Mod. 554; although the apprentice may work with a second master by order and consent of the first, which is a service to the first under the indenture. 4 T. R. 373. But, in Pennsylvania and some other states the assignment of indentures of apprenticeship is authorized by statute. 1 Serg. & R. 249; 3 Serg. & R. 161, 164, 166.

APPRIZING. A name for an action in the Scotch law, by which a creditor formerly carried off the estates of his debtor in payment of debts due to him in lieu of which, adjudications are now resorted to.

APPROBATE AND REPROBATE. In Scotland this term is used to signify to approve and reject. It is a maxim quod approbo non reprobo. For example, if a testator give his property to A, and give A's property to B, A shall not be at liberty to approve of the will so far as the legacy is given to him, and reject it as to the bequest of his property to B in other words, he cannot approve and reject the will. 1 Bligh. 21; 1 Bell's Com. 146.

APPROPRIATION, contracts. The application of the payment of a sum of money, made by a debtor to his creditor, to one of several debts.

2. When a voluntary payment is made, the law permits the debtor in the first place, or, if he make no choice, then it allows the creditor to make an appropriation of such

payment to either of several debts which are due by the debtor to the creditor. And if neither make an appropriation, then the law makes the application of such payment. This rule does not apply to payments made under compulsory process of law. 10 Pick. 129. It will be proper to consider, 1, when the debtor may make the appropriation; 2, when the creditor may make it; 3, when it will be made by law.

3. – 1. In general the appropriation may be made by the debtor, but this must be done by his express declaration, or by circumstances from which his intentions can be inferred. 2 C. M. & R. 723; 14 East, 239; 1 Tyrw. & Gr. 137; 15 Wend. 19; 5 Taunt. 7 Wheat. 13; 2 Ear. & Gill, 159; S. C. 4 Gill & Johns. 361; 1 Bibb, 334; 5 Watts, 544; 12 Pick. 463; 20 Pick. 441; 2 Bailey, 617; 4 Mass. 692; 17 Mass. 575. This appropriation, it seems, must be notified to the creditor at the time; for an entry made by the debtor in his own books, is not alone sufficient to determine the application of the payment. 2 Vern. 606; 4 B. & C. 715. In some cases, in consequence of the circumstances, the presumption will be that the payment was made on account of one debt, in preference to another. 3 Caines, 14; 2 Stark. R. 101. And in some cases the debtor has no right to make the appropriation, as, for example, to apply 4 partial payment to the liquidation of the principal, when interest is due. 1 Dall. 124; 1 H. & J. 754; 2 N. & M'C. 395; 1 Pick. 194; 17 Mass. 417.

4. – 2. When the debtor has neglected to make an appropriation, the creditor may, in general, make it, but this is subject to some exceptions. If, for example, the debtor owes a debt as executor, and one in his own right, the creditor cannot appropriate a payment to the liquidation of the former, because that may depend on the question of assets. 2 Str. 1194. See 1 M. & Malk. 40; 9 Cowen, 409; 2 Stark. R. 74; 1 C. & Mees. 33.

5. Though it is not clearly settled in England whether a creditor is bound to make the appropriation immediately, or at a subsequent time Ellis on D. and C. 406-408 yet in the United States, the right to make the application at any time has been recognized, and the creditor is not bound to make an immediate election. 4 Cranch, 317; 9 Cowen, 420, 436. See 12 S. & R. 301 2 B. & C. 65; 2 Verm. 283; 10 Conn. 176.

6. When once made, the appropriation cannot be changed; and, rendering an account, or bringing suit and declaring in a particular way, is evidence of such appropriation. 1 Wash. 128 3 Green. 314; 12

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7. When no application of the payment has been made by either party, the law will appropriate it, in such a way as to do justice and equity to both parties. 6 Cranch, 8, 28; 4 Mason, 333; 2 Sumn. 99, 112; 5 Mason, 82; 1 Nev. & Man. 746; 5 Bligh, N. S. 1; 11 Mass. 300;1 H. & J. 754; 2 Vern. 24; 1 Bibb. 334; 2 Dea. & Chit. 534; 5 Mason,

11. See 6 Cranch, 253, 264; 7 Cranch, 575; 1 Mer. 572, 605; Burge on Sur. 126-138; 1 M. & M. 40. See 1 Bouv Inst. n. 8314. 8. In Louisiana, by statutory enactment, Civ. Code, art. 1159, et seq., it is provided that the debtor of several debts has a right to declare, when he makes a payment, what debt he means to discharge. The debtor of a debt which bears interest or produces rents, cannot, without the consent of the creditor, impute to the reduction of the capital, any payment he may make, when there is interest or rent due. When the debtor of several debts has accepted a receipt, by which the creditor has imputed what he has received to one of the debts especially, the debtor can no longer require the imputation to be made to a different debt, unless there have been fraud or surprise on the part of the creditor. When the receipt bears no imputation, the payment must be imputed to the debt which the debtor had at the time most interest in discharging of those that are equally due, otherwise to the debt which has fallen due, though less burdensome than those which are not yet payable. If the debts be of a like nature, the imputation is made to the less burdensome; if all things are equal, it is made proportionally." This is a translation of the Codo Napoleon, art. 1253-1256 slightly altered. See Poth. Obl. n. 528 translated by Evans, and the notes; Bac. Ab. Obligations, F; 6 Watts & Amer. Law Mag. 31; 1 Hare & Wall. Sel. Dec. 123-158.

APPROPRIATION, eccl. law. The setting apart an ecclesiastical benefice, which is the general property of the church, to the perpetual and proper use of some religious house, bishop or college, dean and chapter and the like. Ayl. Pat. 86. See the form of an appropriation in Jacob's Introd. 411.

TO APPROVE, approbare. To increase the profits upon a thing; as to approve land by increasing the rent. 2 Inst. 784.

APPROVEMENT, English crim. law. The act by which a person indicted of treason or felony, and arraigned for the same, confesses the same before any plea pleaded, and accuses others, his accomplices, of the same crime, in order to obtain his pardon. 2 This practice is disused. 4 Bl. Com. 330 1 Phil. Ev. 37. In modern practice, an accomplice is permitted to give evidence against his associates. 9 Cowen, R. 707; 2 Virg. Cas. 490; 4 Mass. R. 156; 12 Mass. R. 20; 4 Wash. C. C. R. 428; 1 Dev. R. 363; 1 City Hall Rec. 8. In Vermont, on a trial for adultery, it was held that a particeps criminis was not a competent witness, because no person can be allowed to testify his own guilt or turpitude to convict another. N. Chap. R. 9.

APPROVEMENT, English law. 1. The inclosing of common land within the lord's waste, so as to leave egress and regress to a tenant who is a commoner. 2. The augmentation of the profits of land. Stat. of Merton, 20 Hen. VIII.; F. N. B. 72 Crompt. Jus. 250; 1 Lilly's Reg. 110.

APPROVER, Bngl. crim. law. One confessing himself guilty of felony, and approving others of the same crime to save himself. Crompt. Inst. 250 3 Inst. 129.

APPURTENANCES. In common parlance and legal acceptation, is used to signify something belonging to another thing as principal, and which passes as incident to the principal thing. 10 Peters, R. 25; Angell, Wat. C. 43; 1 Serg. & Rawle, 169; 5 S. & R. 110; 5 S. & R. 107; Cro. Jac. 121 3 Saund. 401, n. 2; Wood's Inst. 121 Rawle, R. 342; 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 b, 56 a, b; 1 Plowd. 171; 2 Saund. 401, n. 2; 1 Lev. 131; 1 Sid. 211; 1 Bos. & P. 371 1 Cr. & M. 439; 4 Ad., & Ell. 761; 2 Nev. & M. 517; 5 Toull. n. 531. 2. The word appurtenances, at least in a deed, will not pass any corporeal real property, but only incorporeal easements, or rights and privileges. Co. Lit. 121; 8 B. & C. 150; 6 Bing. 150; 1 Chit. Pr. 153, 4. Vide Appendant.

APPURTENANT. Belonging to; pertaining to of right.

AQUA. Water. This word is used in composition, as aquae ductus, &c. 2. It is a rule that water belongs to the land which it covers, when it is stationary: aqua cedit solo. But the owner of running water, or of a water course, cannot stop it the inferior inheritance having a right to the flow: aqua currit et debet currere, ut currere solebat.

AQUAE DUCTUS, civil law. The name of a servitude which consists in the right to carry water by means of pipes or conduits over or through the estate of another. Dig. 8, 3, 1; Inst. 2, 3; Lalaure, Des Serv. c. 5, p. 23.

AQUAE HAUSTUS, civil law. The name of a servitude which consists in the right to draw water from the fountain, pool, or spring of another. Inst. 2, 3, 2; Dig. 8, 3, 1, 1.

AQUAE IMMITTENDAE, Civil law. The name of a servitude, which frequently occurs among neighbors. It is the right which the owner of a house, built in such a manner as to be surrounded with other buildings, so that it has no outlet for its waters, has, to cast water out of his windows on his neighbor's roof court or soil. Lalaure, Des. Serv. 23.

AQUAGIUM, i. e. aquae agium. 1. A water course. 2. A toll for water.

AQUATIC RIGHTS. This is the name of those rights which individuals have in water, whether it be running, or otherwise.

ARBITER. One who, decides without any control. A judge with the most extensive arbitrary powers; an arbitrator.

ARBITRAMENT. A term nearly synonymous with arbitration. (q. v.)

ARBITRAMENT AND AWARD. The name of a plea to an action brought for the same cause which had been submitted to arbitration, and on which an award had been made. Wats. on Arb. 256.

ARBITRARY. What depends on the will of the judge, not regulated or established by law. Bacon (Aphor. 8) says, Optima lex quae minimum relinquit arbitrio judicis et (Aph. 46) optimus judex, qui mi nimum sibi

2. In all well adjusted systems of law every thing is regulated, and nothing arbitrary can be allowed; but there is a discretion which is sometimes allowed by law which leaves the judge free to act as he pleases to a certain extent. See Discretion

ARBITRARY PUNISHMENTS, practice. Those punishments which are left to the decision of the judge, in distinctiou from those which are defined by statute.

ARBITRATION, practice. A reference and submission of a matter in dispute concerning property, or of a personal wrong, to the decision of one or more persons as arbitrators.

2. They are voluntary or compulsory. The voluntary are, 1. Those made by mutual consent, in which the parties select arbitrators, and bind themselves by bond abide by their decision; these are made without any rule of court. 3 Bl. Com. 16.

3. – 2. Those which are made in a cause depending in court, by a rule of court, before trial; these are arbitrators at common law, and the award is enforced by attachment. Kyd on Awards, 21.

4. – 3. Those which are made by virtue of the statute, 9 & l0 Will. III., c. 15, by which it is agreed to refer a matter in dispute not then in court, to arbitrators, and agree that the submission be made a rule of court, which is enforced as if it had been made a rule of court; Kyd on Aw. 22; there are two other voluntary arbitrations which are peculiar to Pennsylvania.

5. – 4. The first of these is the arbitration under the act of June 16, 1836, which provides that the parties to, any suit may consent to a rule of court for referring all matters of fact in controversy to referees, reserving all matters of law for the decision of the court, and the report of the referees shall have the effect of a special verdict, which is to be proceeded upon by the court as a special verdict, and either party may have a writ of error to the judgment entered thereupon

6. – 5. Those by virtue of the act of 1806, which authorizes " any person or persons desirous of settling any dispute or controversy, by themselves, their agents or attorneys, to enter into an agreement in writing, or refer such dispute or controversy to certain persons to be by them mutually chosen; and it shall be the duty of the referees to make out an award and deliver20it to the party in whose favor it shall be made, together with the written agreement entered into by the parties; and it shall be the duty of the prothonotary, on the affidavit of a subscribing witness to the agreement, that it was duly executed by the parties, to file the same in Iiis office; and on the agreement being so filed as aforesaid, he shall enter the award on record, which shall be as available in law as an award made under a reference issued by the court, or entered on the docket by the parties."

7. Compulsory arbitrations are perhaps confined to Pennsylvania. Either party in a civil suit or action,, or his attorney, may enter at the prothonotary's office a rule of reference, wherein be shall declare his determination to have arbitrators chosen, on a day certain to be mentioned therein, not exceeding thirty days, for the trial of all matters in variance in the suit between the parties. A copy of this rule is served on the opposite party. On the day. appointed they meet at the prothonotary's, and endeavor to agree upon arbitrators; if they cannot, the prothonotary makes out a list on whicb are inscribed the names of a number of citizens, and the parties alternately strike each one of them from the list, beginning with the plaintiff, until there are but the number agreed upon or fixed by the prothonotary left, who are to be the arbitrators; a time of meeting is then agreed upon or appointed by the prothonotary, when the parties cannot agree, – at which time the arbitrators, after being sworn or affirm and equitably to try all matters in variance submitted to them, proceed to bear and decide the case; their award is filed in the office of the prothonotary, and has the effect of a judgment, subject, however, to appeal, which may be entered at any time within twenty days after the filing of such award. Act of 16th June, 1836, Pamphl. p. 715.

8. This is somewhat similar to the arbitrations of the Romans; there the praetor selected from a list Of citizens made for the purpose, one or more persons, who were authorized to decide all suits submitted to them, and which had been brought before him; the authority which the proctor gave them conferred on them a public character and their judgments were without appeal Toull. Dr. Civ. Fr. liv. 3, t. 3, ch. 4, n. 820. See generally, Kyd on Awards; Caldwel on Arbitrations; Bac. Ab. h. t.; 1 Salk. R. 69, 70-75; 2 Saund. R. 133, n 7; 2 Sell. Pr. 241; Doct. PI. 96; 3 Vin. Ab. 40; 3 Bouv. Inst. n. 2482.

ARBITRATOR. A private extraordinary judge chosen by the parties who have a matter in dispute, invested with power to decide the same. Arbitrators are so called because they have generally an arbitrary power, there being in common no appeal

from their sentences, which are called awards. Vide Caldw. on Arb. Index,. h. t.; Kyd on Awards, Index, h. t. 3 Bouv. Inst. n. 2491.

ARBOR CONSANGUINITATIS. A table, formed in the shape of a tree, in order to show the genealogy of a family. The progenitor is placed beneath, as if for the root or stem the persons descended from him are represented by the branches, one for each descendant. For example : if it be desired to form the genealogical tree of Peter's family, Peter will be made the trunk of the tree; if he has two sons, John and James, their names will be written on the first two branches, which will themselves shoot as many twigs as John and James have children; these will produce others, till the whole family shall be represented on the tree.

ARCHAIONOMIA. The name of a collection of Saxon laws, published during the reign of the English Queen Elizabeth, in the Saxon language, with a Latin version, by Mr. Lambard. Dr. Wilkins enlarged this. collection in his work, entitled Leges Anglo Saxonicae, containing all the Saxon laws extant, together with those ascribed to Edward the Confessor, in Latin; those of William the Conqueror, in Norman and Latin; and of Henry I., Stephen, and Henry II., in Latin.

ARCHBISHOP, eccl. law. The chief of the clergy of a whole province. He has the, inspection of the bishops of that province, as well as of the inferior clergy, and may deprive them on notorious cause. The archbishop has also his own diocese, in which he exercises, episcopal jurisdiction, as in his province he exercises archiepiscopal authority. 1 Bl. Com. 380; L. Raym. 541; Code, 1, 2.

ARCHES COURT. The name of one of the English ecclesiastical courts. Vide Court of Arches.

ARCHIVES. Ancient cbarters or titles, which concern a nation, state, or community, in their rights or privileges. The place where the archives are kept bears the same name. Jacob, L. D. h. t.; Merl. Rep. h. t.

ARCHIVIST. One to whose care the archives have been confided.

ARE. A French measure of surface. This is a square, the sides of which are of the length of ten metres. The are is equal to 1076.441 square feet. Vide Measure.

AREA. An enclosed yard or opening in a house; an open place adjoining to a house. 1 Chit. Pr. 176.

AREOPAGITE. A senator, or a judge of the Areopagus. Solon first established the Areopagites; although some say, they were established in the time of Cecrops, (Anno

Mundi, 2553,) the year that Aaron, the brother of Moses, died; that Draco abolished the order, and Solon reestablished it. Demosthenes, in his harangue against Aristocrates, before the Areopagus, speaks of the founders of that tribunal as unknown. See Acts of the Apostles, xviii. 34.

AREOPAGUS. A tribunal established in ancient Athens, bore this name. It is variously represented; some considered as having been a model of justice and perfection, while others look upon it as an aristocratic court, which had a very extended jurisdiction over all crimes and offences, and which exercised an absolute power. See Acts 17, 19 and 22.

ARGENTUM ALBUM. White money; silver coin. See Alba Firma,

ARGUMENT, practice. Cicero defines it ii probable reason proposed in order to induce belief. Ratio probabilis et idonea ad faciendam fidem. The logicians define it more scientifically to be a means, which by its connexion between two extremes) establishes a relation between them. This subject belongs rather to rhetoric and logio than to law.

ARGUMENT LIST. A list of cases put down for the argument of some point of law.

ARGUMENTATIVENESS. What is used by way of reasoning in pleading is so called.

2. It is a rule that pleadings must not be argumentative. For example, when a defendant is sued for taking away the goods of the plaintiff, he must not plead that "the plaintiff never had any goods," because although this may be an infallible argument it is not a good plea. The plea should be not guilty. Com. Dig. Pleader R 3; Dougl. 60; Co. Litt. 126 a.

ARGUMENTUM AB INCONVENIENTI. An argument arising from the inconvenience which the construction of the law would create, is to have effect only in a case where the law is doubtful where the law is certain, such an argument is of no force. Bac. Ab. Baron and Feme, H.

ARISTOCRACY. That form of government in which the sovereign power is exercised by a small number of persons to the exclusion of the remainder of the people.

ARISTODEMOCRACY. A form of government where the power is divided between the great men of the nation and the people.

ARKANSAS. The name of one of the new states of the United States. It was admitted into the Union by the act of congress of June 15th, 1836, 4 Sharsw. cont. of Story's L. U. S. 2444, by which it is declared that the state of Arkansas shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

2. A convention assembled at Little Rock, on Monday, the 4th day of January, 1836, for the purpose of forming a constitution, by which it is declared that " We, the people of the Territory of Arkansas, by our representatives in convention assembled, in order to secure to ourselves and our posterity the enjoyments of all the rights of life, liberty and property, and the free pursuit of happiness do mutually agree with each other to form ourselves into a free and independent state, by the name and style of `The State of Arkansas.' " The constitution was finally adopted on the 30th day of January, 1836.

3. The powers of the government are divided into three departments; each of them is confided to a separate body of magistry, to wit; those which are legislative, to one; those which are executive, to another and those which are judicial, to a third.

4. – 1. The legislative authority of the state is vested in a general assembly, which consists of a senate and house of representatives. Each house shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as each house shall provide. Sect. 15. Each house may determine the rules of its own proceedings, punish its own members for disorderly behaviour, and with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offence. They shall each from time to time publish a journal of their proceedings, except such parts as, in their opinion, require secrecy; and the yeas and nays shall be entered on the journal, at the desire of any five members. Sect. 16.

5. The doors of each house while in session, or in a committee of the whole shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence, during, their session; but such imprisonment shall not extend beyond the final adjournment of that session. Sect. 17.

6. Bills may originate in either house, and be amended or rejected in the other and every bill shall be read on three different days in each house, unless two-thirds of, the house where the same is pending shall dispense with the rules : and every bill having

passed both houses shall be signed by the president of the senate, and the speaker of the house of representatives. Sect. 81.

7. Whenever an officer, civil or military, shall be appointed by the joint concurrent vote of both houses, or by the separate vote of either house of the general assembly, the vote shall be taken viva voce, and entered on the journal. Sect. 19.

8. The senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place. Sect. 20.

9. The members of the general assembly shall severally receive, from the public treasury, compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made. Sect. 21.

10. – 1. The senate shall never consist of less than seventeen nor more than thirty-three members. Art. 4, Sect. 31. The members shall be chosen for four years, by the qualified electors of the several districts. Art. 4, Sect. 5. No person shall be a senator who shall not have attained the age of thirty years; Who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state for one year; and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent. Art. 4, Sect. 6.

11. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the chief justice of the supreme court shall preside; and no person shall be convicted without the concurrence of two-thirds of the senators elected. Art. 4, Sect. 27.

12. – 2. The house of representatives shall consist of not less than fifty-four, nor more than one hundred representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as the ratio, until the number of representatives amounts to seventy-five; and when they amount to seventy-five, they shall not be further increased until the population of the state amounts to five hundred thousand souls. Provided that each county now organized shall, although its population may not give the existing ratio, always be entitled to one representative. The members are chosen every second year, by the qualified electors of the several counties. Art. 4, Sect. 2.

13. The qualification of an elector is as follows: he must 1, be a free, white male citizen of the United States; 2, have attained the age of twenty-one years; 3, have been a citizen of this state six months; 4, be must actually reside in the county, or district where he votes for an office made elective under this state or the United States. But no soldier, seaman, or marine, in the army of the United States, shall be entitled to vote at any election within this state. Art. 4, Sect. 2.

14. No person shall be a member of the house of representatives, who shall not have attained the age of twenty-five years; who shall not be a free, white male citizen of the United States; who shall not have been an inhabitant of this state one year; and who shall not, at the time of his election, have an, actual residence in the county he may be chosen to represent. Art. 4, Sect. 4.

15. The house of representatives shall have the sole power of impeachment. Art. 4, Sect. 27.

16. 2. The supreme executive power of this state is vested in a chief magistrate, who is styled " The Governor of the State of Arkansas." Art. 5, Sect. 1.

17. – 1. He is elected by the electors of the representatives.

18. – 2. He must be thirty years of age a native born citizen of Arkansas, or a native born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States; and, shall have been a resident of the same at least four years next before his election. Art. 4, s. 4.

19. – 3. The governor holds his office for the term of four years from the time of, his installation, and until his successor shall be duly qualified; but he is not eligible for more than eight years in any term of twelve years. Art. 5, sect. 4.

20. – 4. His principal duties are enumerated in the fifth article of the constitution, and are as follows: He Shall be commander-in-chief of the army of this state, and of the militia thereof, except when they shall be called into the service of the United States; s. 6: He may require information, in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices; s. 7. He may by proclamation, on extraordinary occasions, convene the general assembly, at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious diseases. In case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the general assembly; s, 8. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their

consideration such measures as he may deem expedient; s. 9. He shall take care that the laws be faithfully executed s. 10. In all criminal and penal cases, except those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law in cases of treason, he shall have power, by and with the advice and consent of the senate, to grant reprieve sand pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly s. 11. He is the keeper of the seal of the' state, which is to be used by him officially; s. 12. Every bill which shall have passed both houses, shall be presented to the governor. If he approve, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it Shall have originated, who shall enter his objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered; and if approved by a majority of the whole number elected to that house it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays; and the names of persons voting for or against the bill, shall be entered on the journals of each house respectively. If the bill shall not be returned by the governor within three days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if be had signed it, unless the general assembly, by their adjournment, prevent its return; in such case it shall not be a law; s. 16. 5. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, or absence from the state, the president of the senate shall exercise all the authority appertaining to the office of governor, until another governor shall have been elected and qualified, or until the governor absent or impeached, shall return or be acquitted; s. 18. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government; s. 19.

2l. – 3. The judicial power of this state is vested by the sixth article of the constitution, as follows

22. – 1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts, and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary, in corporation courts; and, when they deem it expedient, may establish courts of chancery.

23. – 2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, any two of whom shall constitute a quorum and the concurrence of any two of the said judges shall, in every case, be necessary to a decision. The supreme court, except in cases otherwise directed by this constitution, shall have

appellate jurisdiction only, which shall be coextensive with the state, under such rules and regulations as may, from time to time, be prescribed by law; it shall have a general superintending control over all inferior and other courts of law and equity it shall have power to issue writs of error and Bupersedeas, certiorari and habeas corpus, mandamus, and quo warranto, and other remedial writs, and to hear and determine the same; said judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

24. – 3. The circuit court shall have jurisdiction over all criminal cases whicb shall not be otherwise provided for by law and exclusive original jurisdiction of all crimes amounting to felony.at common law; and original jurisdiction of all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly; and original jurisdiction in all matters of contract) when the sum in controversy is over one hundred dollars. It shall hold its terms at such place in each county, as may be by law directed.

25. – 4. The state shall be divided into convenient circuits, each to consist of not less than five, nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

26. – 5. The circuit courts shall exercise a superintending control over the county courts, and over justices of the peace, in each county in their respective circuits; and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

27. – 6. Until the general assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.

28. – 7. The general asserably shall, by joint vote of both houses, elect the judges of the supreme and circuit courts, a majority of the whole number in joint vote being necessary to a choice. The judges of the supreme court shall be at least thirty years of age; they shall hold their offices for eight years from the date of their commissions. The judges of the circuit courts shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions.

29. – 8. There shall be established in each county, a court to be holden by the justices of the peace, and called the county court, which shall have jurisdiction in all matters relating, to county taxes, dishursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

30. – 9. There shall be elected by the justices of the peace of the respective counties, a presiding judge of the county court, to be commissioned by the governor, and hold his office for the term of two years, and until his successor is elected or qualified. He shall, in addition to the duties that may be required of him by law, as presiding judge of the county court, be a judge of the court of probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators, and guardians, as may be prescribed by law, until otherwise directed by the general assembly.

31. – 10. No judge shall preside in the trial of any cause, in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be proscribed by law, or in which he shall have been of counsel, or have presided in any inferior court, except by consent of all the parties.

32. – 11. The qualified voters in each township shall elect the justices of the peace for their respective townships. For every fifty voters there may be elected one justice of the peace, provided, that each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for two years, and shall be commissioned by the governor, and reside in the townships for which they shall have been elected, during their continuance in office. They shall have individually, or two or more of them jointly, exclusive original jurisdiction in all matters of contract, except in actions of covenant, where the sum in controversy is of one hundred dollars and under. Justices of the peace shall in no case have jurisdiction to try and determine any criminal case or penal offence against the state; but may sit as examining courts, and commit, discbarge, or recognize to the court having jurisdiction, for further trial, offenders against the peace. For the foregoing purposes they shall have power to issue all necessary process they shall also bave power to bind to keep the peace, or for good behaviour.

ARM OF THE SEA. Lord Coke defines an arm of the sea to be where the sea or tide flows or reflows. Constable's Case, 5 Co. 107. This term includes bays, roads, creeks, coves, ports, and rivers where the water flows and reflows, whether it be salt or fresh. Ang. Tide Wat. 61. Vide Creek; Haven; Navigable; Port; Reliction; River; Road.

ARMISTICE. A cessation of hostilities between belligerent nations for a considerable time. It is either partial and local, or general. It differs from a mere suspension of arms which takes place to enable the two armies to bury their dead, their chiefs to hold conferences or pourparlers, and the like. Vattel, Droit des Gens, liv. 3, c. 16, 233. The terms truce, (q. v.) and armistice, are sometimes used in the same sense. Vide Truce.

ARMS. Any thing that a man wears for his defence, or takes in his hands, or uses in his anger, to cast at, or strike at another. Co. Litt. 161 b, 162 a; Crompt. Just. P. 65; Cunn. Dict. h. t.

2. The Constitution of the United States, Amendm. art. 2, declares, "that a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." In Kentucky, a statute " to prevent persons from wearing concealed arms," has been declared to be unconstitutional; 2 Litt. R. 90; while in Indiana a similar statute has been holden valid and constitutional. 3 Blackf. R. 229. Vide Story, Const. – 1889, 1890 Amer. Citizen, 176; 1 Tuck. Black. App. 300 Rawle on Const. 125.

ARMS, heraldry. Signs of arms, or drawings painted on shields, banners, and the like. The arms of the United States are described in the Resolution of Congress, of June 20, 1782. Vide Seal of the United States.

ARPENT. A quantity of land containing a French acre. 4 Hall's Law Journal, 518.

ARPENTATOR, from arpent. A measurer or surveyor of land.

ARRAIGNMENT, crim. law practice. Signifies the calling of the defendant to the bar of the court, to answer the accusation contained in the indictment. It consists of three parts.

2. – 1. Calling the defendant to the bar by his name, and commanding him to hold up his hand; this is done for the purpose of completely identifying the prisoner, as the person named in the indictment; the holding20up his hand is not, however, indispensable, for if the prisoner should refuse to do so, he may be identified by any admission that he is the person intended. 1 Bl. Rep. 3.

3. – 2. The reading of the indictment to enable him fully to understand, the charge to be produced against him; The mode in which it is read is, after' saying, " A B, hold up your hand," to proceed, "you stand indicted by the name of A B, late of, &c., for that you on, &c." and then go through the whole of the indictment.

4. – 3. After this is concluded, the clerk proceeds to the third part, by adding, " How say you, A B, are you guilty or not guilty?" Upon this, if the prisoner, confesses the charge, the confession is recorded, and nothing further is done till judgment if, on the contrary, he answers "not guilty", that plea is entered for him, and the clerk or attorney general, replies that he is guilty; when an issue is formed. Vide generally, Dalt. J. h. t.; Burn's J. h. t.; Williams; J. h. t.; 4 Bl. Com. 322; Harg. St. Tr. 4 vol. 777, 661; 2 Hale, 219; Cro. C. C. 7; 1 Chit. Cr. Law, 414.

ARRAMEUR, maritime law. The name of an ancient officer of a port, whose business was to load and unload vessels.

2. In the Laws of Oleron, art 11, (published in English in the App. to 1 Pet. Adm. R. xxv.) some account of arrameurs will be found in these words: " There were formerly, in several ports of Guyenne, certain officers called arrameurs, or stowers, who were master-carpenters by profession, and were paid by the merchants, who loaded the ship. Their business was to dispose right, ana Stow closely, all goods in casks, bales, boxes, bundles or otherwise to balance both sides, to fill up the vacant spaces, and manage every thing to the best advantage. It was riot but that the greatest part of the ship's crew understood this as well as these stowers but they would not meddle with it, nor undertake it, to avoid falling under the merchant's displeasure, or being accountable for any ill accident that might.happen by that means. There were also sacquiers, who were very ancient officers, as may be seen in the 14th book of the Theodosian code, Unica de Saccariis Portus Romae, lib. 14. Their business was to load and unload vessels loaded with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandize otherwise." See Sacquier; Stevedore.

ARRAS, Span. law. The property contributed by the hushand, ad sustinenda onera matrimonii, is called arras. The hushand is under no obligation to give arras, but it is a donation purely voluntary. He is not permitted to give in arras more than a tenth of his property. The arras is the exclusive property of the wife, subject to the hushand's usufruct during his life. Burge on the Confl. of Laws, 417.

2. By arras is also understood the donation which the hushand makes to his wife, by reason or on account of marriage, and in consideration of the dote, or portion, which be receives from her. Aso & Man. Inst. h. t. 7, c. 3.

ARRAY, practice. The whole body of jurors summoned to attend a court, as they are arrayed or arranged on the panel. Vide Challenges, and Dane's Ab. Index, h. t.; 1 Chit. Cr. Law, 536; Com. Dig. Challenge, B.

ARREARAGE. Money remaining unpaid after it becomes due as rent unpaid interest remaining due Pow. Mortgages, Index, h. t.; a sum of money remaining in the hands of an accountant. Merl. Rep. h. t.; Dane's Ab. Index, h. t.

ARREST</'B>. To stop; to seize; to deprive one of his liberty by virtue of legal authority.

ARREST IN CIVIL CASES, practice. An arrest is the apprehension of a person by virtue of a lawful authority, to answer the demand against him in a civil action.

2. To constitute an arrest, no actual force or manual touching of the body is requisite; it is sufficient if the party be within the power of the officer, and submit to the arrest. 2 N. H. Rep. 318; 8 Dana, 190; 3 Herring. 416; 1 Baldw. 239; Harper, 453; 8 Greenl. 127; 1 Wend. 215 2 Blackf. 294. Barewords, however, will not make an arrest, without laying the person or otherwise confining him. 2 H. P. C. 129 1 Burn's Just. 148; 1 Salk. 79. It is necessarily an assault, but not necessarily a battery. Cases Temp. Hardw. 300.

3. Arrests are made either on mesne or final process. An arrest on mesne process is made in order that the defendant shall answer, after judgment, to satisfy the claim of the plaintiff; on being arrested, the defendant is entitled to be liberated on giving sufficient bail, which the officer is bound to take. 2. When the arrest is on final process, as a ca. sa., the defendant cannot generally be dis charged on bail; and his discharge is considered as an escape. Vide, generally, Yelv. 29, a, note; 3 Bl. Com. 288, n.; 1 Sup. to Ves. Jr. 374; Wats. on Sher. 87; 11 East, 440; 18 E. C. L. R. 169, note.

4. In all governments there are persons who are privileged from arrest in civil cases. In the United States this privilege continues generally while the defendant remains invested with a particular character. Members of congress and of the state legislatures are exempted while attending the respective assemblies to which they belong parties and witnesses, while lawfully attending court; electors, while attending a public election; ambassadors and other foreign ministers; insolvent debtors, when they have been lawfully discharged; married women, when sued upon their contracts, are generally privileged; and executors and administrators, when sued in their representative characters, generally enjoy the same privilege. The privilege in favor of members of congress, or of the state legislatures, of electors, and of parties and witnesses in a cause, extend to the time of going to, remaining at, and returning from, the places to which they are thus legally called.

5. The code of civil practice of Louisiana enacts as follows, namely: Art. 210. The arrest is one of the means which the law gives the creditor to secure the person of his debtor while the suit is pending, or to compel him to give security for his appearance after judgment. Art. 211. Minors of both sexes, whether emancipated or not, interdicted persons, and women, married or single, cannot be arrested. Art. 212. Any creditor, whose debtor is about to leave the state, even for a limited time, without leaving in it sufficient property to satisfy the judgment which he expects to obtain in the suit he intends to bring against him, may have the person of such debtor arrested and confined until he shall give sufficient security that be shall not depart from the state without the leave of the court. Art. 213. Such arrest may be ordered in all demands brought for a debt, whether liquidated or not, when the term of payment has expired, and even for damages for any injury sustained by the plaintiff in either his

person or property. Art. 214. Previous to obtaining an order of arrest against his debtor, to compel him to give sufficient security that be shall not depart from the state, the creditor must swear in the petition which he presents to that effect to any competent judge, that the debt, or the damages which he claims, and the amount of which he specifies, is really due to him, and that he verily believes that, the defendant is about to remove from the state, without leaving in it and lastly, that he does not take this oath with the intention of vexing the defendant, but only in order to secure his demand. Art. 215. The oath prescribed in the preceding article, ulay be taken either by the creditor himself, or in his absence, by his attorney in fact or his agent, provided either the one or the other can swear to the debt from his personal and direct knowledge of its being due, and not by what he may know or have learned from the creditor he represent. Art. 216. The oath which the creditor is required to take of the existence and nature of the debt of which he claims payment, in the cases provided in the two preceding articles, may be taken either before any judge or justice of the peace of the place where the court is held, before which he sues, or before the judge of any other place, provided the signature of such judge be proved or duly authenticated. Vide Auter action pendant; Lis pendens: Privilege; Rights.

ARREST, in criminal cases. The apprehending or detaining of the person, in order to be forthcoming to answer an alleged or suspected crime. The word arrest is more properly used in civil cases, and apprehension in criminal. A man is arrested under a capias ad respondendum, apprehended under a warrant charging him with a larceny.

2. It will be convenient to consider, 1, who may be arrested; 2, for what crimes; 3, at what time; 4, in what places; 5, by whom and by what authority.

3. – 1. Who may be arrested. Generally all persons properly accused of a crime or misdeameanor, may be arrested; by the laws of the United States, ambassadors (q. v.) and other public ministers are exempt from arrest.

4. – 2. For what offences an arrest may be made. It may be made for treason, felony, breach of the peace, or other misdemeanor.

5. – 3. At what time. An arrest may be made in the night as well as in the day time and for treasons, felonies, and breaches of the peace, on Sunday as well as on other days. It may be made before as well as after indictment found. Wallace's R. 23.

6. – 4. At what places. No place affords protection to offenders against the criminal law; a man may therefore be arrested in his own house, (q. v.) which may be broken into for the purpose of making the arrest.

7. – 5. Who may arrest and by what authority. An offender may be arrested either without a warrant or with a warrant. First, an arrest may be made without a warrant by a private individual or by a peace officer. Private individuals are enjoined by law to arrest an offender when present at the time a felony is committed, or a dangerous wound given – 11 Johns. R. 486 and vide Hawk. B. 1, c, 12, s. 1; c. 13, F3. 7, 8; 4 Bl. Com. 292; 1 Hale, 587; Com. Dig. Imprisonment, H 4; Bac. Ab. Trespass, D.

3. Peace officers may, a fortiori, make an arrest for a crime or misdemeanor committed in their view, without any warrant. 8 Serg. & R. 47. An arrest may therefore be made by a constable, (q. v.) a justice of the peace, (q. v.) slieriff, (q. v.) or coroner. (q. v.) Secondly, an arrest may be made by virtue of a warrant, (q. v.) which is the proper course when the circumstances of the case will permit it. Vide, generally, 1 Chit. Cr. Law, 11 to 71; Russ. on Cr. Index, h. t.

ARREST OP JUDGMENT. The act of a court by which the judges refuse to give judgment, because upon the face of the record, it appears that the plaintiff is not entitled to it. See Judgment, arrest of.

ARRESTANDIS bonis ne dissipentur. In the English law, a writ for him whose cattle or goods, being taken during a controversy, are likely, to be wasted and consumed.

ARRESTEE, law of Scotland. He in whose hands a debt, or property in his possession, has been arrested by a regular arrestment. If, in contempt of the arrestment, he shall make payment of the sum, or deliver the goods arrested to the common debtor, he is not only liable criminally for breach of the arrestment, but he must pay the debt again to the arrester. Ersk. Pr. L. Scot. 3, 6, 6.

ARRESTER, law of Scotland. One who sues out and obtains an arrestment of his debtor's goods or movable obligations. Ersk. Pr. L. Soot. 3, 6, 1.

ARRESTMENT, Scotch law. By this term is sometimes meant the securing of a criminal's person till trial, or that of a debtor till he give security judicio sisti. Ersk. Pr. L. Scot. 1, 2, 12. It is also the order of a judge, by which he who isdebtor in a movable obligation to the arrester's debtor, is probibited to make payment or delivery till the debt due to the arrester be paid or secured. Ersk. Pr. L. Scot. 3, 6, 1. See Attachment, foreign. where arrestment proceeds on a depending action, it may be loosed by the common debtor's giving security to the arrester for his debt, in the event it shall be found due. Id. 3, 6, 7.

ARRET, French law. An arret is a judgment, sentence, or decree of, a court of competent jurisdiction. Saisie-arret is an attachment of property in the hands of a third person. Code of Pract. of Lo. art. 209.

ARRETTED, arrectatus, i. e. ad rectum vocatus. Convened before a judge and charged with a crime. Ad rectum malefactorem, is, according to Bracton, to have a malefactor forthcoming to be put on his trial. Sometimes it is used for imputed or laid to his charge; as, no folly may be arretted to any one under age. Bract. 1. 3, tr. 2, c. 10; Cunn. Dict. h. t.

ARRHAE, contracts, in the civil law. Money or other valuable things given by the buyer to the seller, for the purpose of evidencing the contract earnest.

2. There are two kinds of arrhae; one kind given when a contract has only been proposed; the other when a sale has actually taken place. Those which are given when a bargain has been merely proposed, before it has been concluded, form the matter of the contract, by which he who gives the arrhae consents and agrees to lose them, and to transfer the title to them in the opposite party, in case he should refuse to complete the proposed bargain; and the receiver of arrhae is obliged on his part to return double the amount to the giver of them in case be should fail to complete his part of the contract. Poth. Contr. de Vente, n. 498. After the contract of sale has been completed, the purchaser usually gives arrbae as evidence that the contract has been perfected. Arrbae are therefore defined quod ante pretium datur, et fidem fecit contractus, facti totiusque pecuniae solvendae. Id. n. 506; Code, 4, 45, 2.

TO ARRIVE. To come to a particular place; to reach a particular or certain place as, the ship United States arrived in New York. See 1 Marsh. Dec. 411.

ARROGATION, civil law. Signifies nearly the same as adoption; the only difference between them is this, that adoption was of a person under full age but as arrogation required the person arrogated, sui juris, no one could be arrogated till he was of full age. Dig. 1, 7, 5; Inst. 1, 11, 3 1 Brown's Civ. Law, 119.

ARSER IN LE MAIN. Burning in the hand. This punishment was inflicted on those who received the benefit of clergy. Terms de la Ley.

ARSON, criminal law. At common law an offence of the degree of felony; and is defined by Lord Coke to be the malicious and voluntary burning of the house of another, by night or day. 3 Inst. 66.

2. In order to make this crime complete, there must be, 1st, a burning of the house, or some part of it; it is sufficient if any part be consumed, however small it may be. 9 C. & P. 45; 38 E. C. L. R. 29; 16 Mass. 105. 2d. The house burnt must; belong to another; but if a man set fire to his own house with a view to burn his neighbor's, and does so, it is at least a great misdemeanor, if not a felony. 1 Hale, P. C. 568; 2 East, P. C. 1027; 2 Russ. 487. 3d. The burning must have been both malicious and willful.

3. The offence of arson at common law, does not extend further than the burning of the house of another. By statute this crime is greatly enlarged in some of the states, as in Pennsylvania, where it is extended to the burning of any barn or outhouse having bay or grain therein; any barrack, rick or stack of hay, grain, or bark; any public buildings, church or meeting-house, college, school or library. Act 23d April, 1829; 2 Russell on Crimes, 486; 1 Hawk. P. C. c. 39 4 Bl. Com. 220; 2 East, P. C. c. 21, s. 1, p. 1015; 16 John. R. 203; 16 Mass. 105. As to the extension of the offence by the laws of the United States, see Stat. 1825, c. 276, 3 Story's L. U. S. 1999.

ARSURA. The trial of money by fire after it was coined. This word is obsolete.

ART. The power of doing. something not taught by nature or instinct. Johnson. Eunomus defines art to be a collection of certain rules for doing anything in a set form. Dial. 2, p. 74. The Dictionaire des Sciences Medicales, h. v., defines it in nearly the same terms.

2. The arts are divided into mechanical and liberal arts. The mechanical arts are those which require more bodily than mental labor; they are usually called trades, and those who pursue them are called artisans or mecbanics. The liberal are those which have for the sole or principal object, works of the mind, and those who are engaged in them are called artists. Pard. Dr. Com. n. 35.

3. The act of Congress of July 4, 1836, s. 6, in describing the subjects of patents, uses the term art. The sense of this word in its usual acceptation is perhaps too comprehensive. The thing to be patented is not a mere elementary, principle, or intellectual discovery, but a principle put in practice, and applied to some art, machine, manufacture, or composition of matter. 4 Mason, 1.

4. Copper-plate printing on the back of a bank note, is an art for which a patent may be granted. 4 Wash. C. C. R. 9.

ART AND PART, Scotch law. Where one is accessory to a crime committed by another; a person may be guilty, art and part, either by giving advice or counsel to commit the crime; or, 2, by giving warrant or mandate to commit it; or, 3, by actually assisting the criminal in the execution.

2. In the more atrocious crimes, it seems agreed, that the adviser is equally punishable with the criminal and that in the slighter offences, the circumstances arising from the adviser's lesser age, the jocular or careless manner of giving the advice, &c., may be received as pleas for softening the punishment.

3. One who gives a mandate to commit a crime, as he is the first spring of the action, seems more guilty than the person20employed as the instrument in executing it.

4. Assistance may be given to the committer of a crime, not only in the actual execution, but previous to it, by furnishing him, with a criminal intent, with poison, arms, or other means of perpetrating it. That sort of assistance which is not given till after the criminal act, and which is commonly called abetting, though it be itself criminal, does not infer art and part of the principal crime. Ersk. Pr. L; Scot. 4, 4, 4 ; Mack. Cr. Treat. tit. Art and Part.

ARTICLES. A division in some books. In agreements and other writings, for the sake of perspicuity, the subjects are divided into parts, paragraphs, or articles.

ARTICLES, chan. practice. An instrument in writing, filed by a party to a proceeding in chancery, containing reasons why a witness in the cause should be discredited.

2. As to the matter which ought to be contained in these articles, Lord Eldon gave some general directions in the case of Carlos v. Brook, 10 Ves. 49. " The court," says he, "attending with great caution to an application to permit any witness to be examined after publication, has held where the proposition was to examine a witness to credit, that the examination is either to be confined to general credit; that is, by produciug witnesses to swear, that the person is not to be believed upon his oath; or, if you find him swearing to a matter, not to issue in the cause, (and therefore not thought material to the merits,) in that case, as the witness is not produced to vary the case in evidence by, testimony that relates to matters in issue, but is to speak only to the truth or want of veracity, with which a witness had spoken to a fact not, in issue, there is no danger in permitting him to state that such fact, not put in issue, is false and, for the purpose of discrediting a witness, the court has not considered itself at liberty to sanction such a proceeding as an examination to destroy the credit of another witness, who had deposed only to points put in issue. In Purcell v. M'Namara, it was agreed that after publication it was competent to examine any witness to the point, whether he would believe that man upon his oath. It is not competent, even at law, to ask the ground of that opinion; but the general question only is permitted. In Purcell v. M'Namara, the witness went into the history of his whole life and as to his solvency, & c. It was not at all put at issue whether he had been insolvent, or had compounded with his creditors; but, having sworn the contrary, they proved by witnesses, that he, who had sworn to a, matter not in issue, had sworn falsely to that fact; and that he had been insolvent, and had compounded with his creditors; and it would be lamentable, if the court could not find means of getting at it; for he could not be indicted for perjury, though swearing falsely, the fact not being material. The rule is, in general cases the cause is heard upon evidence given before publication; but that you may examine after publication, provided you examine to credit only, and do not go to matters in

issue in the cause, or in contradiction of them, under pretence of examing to credit only. Those depositions," he continued, " appear to me material to what is in issue in the cause; and therefore must be suppressed," See a form of articles in Gresl. Eq. Ev. 140, 141; and also 8 Ves. 327; 9 Ves. 145; 1 S. & S. 469.

ARTICLES, eccl. law. A complaint in the form of a libel, ex hibited to an ecclesiastical court.

ARTICLES OF AGREEMENT, contracts. Relate either to real or personal estate, or to both. An article is a memorandum or minute of an agreement, reduced to writing to make some future disposition or modification of property; and such an instrument will create a trust or equitable estate, of which a specific performance will be decreed in chancery. Cruise on Real Pr. tit. 32 c. 1, s. 31. And see Id. tit. 12, c. 1.

2. This instrument should contain: 1, the name and character of the parties; 2, the subject-matter of the contracts; 3, the covenants which each of the parties bind themselves to perform; 4, the date; 5, the signatures of the parties.

3. – 1. The parties should be named, and their addition should also be mentioned, in order to identify them. It should also be stated which persons are of the first, second, or other part. A confusion, in this respect, may occasion difficulties.

4. – 2. The subject-matter of the contract ought to be set out in clear and explicit language, and the time and place of the performance of the agreement ought to be mentioned and, when goods are to be delivered, it ought to be provided at whose expense they shall be removed, for there is a difference in the delivery of light and bulky articles. The seller of bulky articles is not in general bound to deliver them unless he agrees to do so. 5 S. & R. 19 12 Mass. 300; 4 Shepl. 49.

5. – 3. The covenants to be performed by each party should be specially and correctly stated, as a mistake in this respect leads to difficulties which might have been obviated had they been properly drawn.

6. – 4. The instrument should be truly dated.

7. – 5. It should be signed by the parties or their agents. When signed by an agent he should state his authority, and sign his principal's name, and then his own, as, A B, by his agent or attorney C D.

ARTICLES OF CONFEDERATION. The compact which was made by the original thirteen states of the United States of America, bore the name of the "Articles of Confederation and perpetual union between, the states of New Hampshire,

Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia." It was adopted and went into force on the first day of March, 1781, and remained as the supreme law until the first Wednesday of March, 1789. 5 Wheat. R. 420. The following analysis of this celebrated instrument is copied from Judge Story's Commentaries on the Constitution of the United States, Book 2, c. 3.

2. "In pursuance of the design already announced, it is now proposed to give an analysis of the articles of confederation, or, as they are denominated in the instrument itself, the Articles of Confederation and Perpetual Union between the States, as they were finally adopted by the thirteen states in 1781.

3. "The style of the Confederacy was, by the first article, declared to be, `The United States of America.' The second article declared, that each state retained its sovereignty, freedom, and independence, and every power, jurisdiction and right, which was not by this confederation expressly delegated to the United States, in congress assembled. The third article declared, that the states severally entered into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever. The fourth article declared, that the free inhabitants of each of the states, (vagabonds and fugitives from justice excepted,) should be entitled to all the privileges of free citizens in the several states; that the people of each state should have free ingress and regress to any from any other state, and should enjoy all the privileges of trade and commerce, subject to the same duties and restrictions, as the inhabitants; that fugitives from justice should, upon the demand of the executive of the state, from which they fled, be delivered up; and that full faith and credit should be given, in each of the states, to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

4. "Having thus provided for the security and intercourse of the states, the next article (5th) provided for the organization of a general congress, declaring that delegates should be chosen in such manner, as the legislature of each state should direct; to meet in congress on the first Monday in every year, with a power, reserved to each state, to recall any or all of the delegates, and to send others in their, stead. No state was to be represented in congress by less than two, nor than seven members. No delegate was eligible for more than three, in any term of six years; and no delegate was capable of holding any office of emolument under the United States. Each state was to maintain its own delegates; and, in determining questions in congress, was to have one vote. Freedom of speech and debate in congress was not to be impeached or questioned in

any other place; and the members were to be protected from arrest and imprisonment, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

5. "By subsequent articles, congress was invested with the sole and exclusive right and power of determining on peace and war, unless in case of an invasion of a state by enemies, or an imminent danger of an invasion by Indians; of sending and receiving ambassadors; entering into treaties and alliances, under certain limitations, as to treaties of commerce; of establishing rules for deciding all cases of capture on land and water, and for the division and appropriation of prizes taken by the land or naval forces, in the service of the United States of granting letters of marque and reprisal in times of peace; of appointing courts for the trial of piracies and felonies committed on the high seas; and of establishing courts for receiving and finally determining appeals in all cases of captures.

6. "Congress was also invested with power to decide in the last resort, on appeal, all disputes and differences between two or more states concerning boundary, jurisdiction, or any other cause whatsoever; and the mode of exercising that authority was specially prescribed. And all controversies concerning the private right of soil, claimed under different grants of two or more states before the settlement of their jurisdiction, were to be finally determined in the same manner, upon the petition of either of the grantees. But no state was to be deprived of territory for the benefit of the United States.

7. "Congress was also invested with the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or that of the United States; of fixing the standard of weights and measures throughout the United States; of regulating the trade and managing all affairs with the Indians, not members of any of the states, provided, that the legislative right of any state within its own limits should not be infringed or violated of establishing and regulating post offices from one state to another, and exacting postage to defray the expenses; of appointing all officers of the land forces in the service of the United States, except regimental officers; of appointing all officers of the naval forces, and commissioning all officers whatsoever in the service of the United States; and of making rules for the government and regulation of the land and naval forces, and directing their operations.

8. "Congress was also invested with authority to appoint a committee of the states to sit in the recess of congress, and to consist of one delegate from each state, and other committees and civil officers, to manage the general affairs under their direction; to appoint one of their number to preside, but no person was to serve in the office of president more than one year in the term of three years; to ascertain the necessary sums for the, public service, and to appropriate the same for defraying the public

expenses; to. borrow money and emit bills ou credit of the United States to build and equip a navy; to agree upon the number of land forces, and make requisitioins upon each state for its quota, in proportion to the number of white inhabitants in such state. The legislatures of each state were to appoint the regimental officers, raise the men, and clothe, arm, and equip them at the expense of the United States.

9. "Congress was also invested with power to adjourn for any time not exceeding six months, and to any place within the United States and provision was made for the publication of its journal, and for entering the yeas and nays thereon, when desired by any delegate.

10. "Such were the powers confided in congress. But even these were greatly restricted in their exercise; for it was expressly. provided, that congress should never engage in a war; nor grant letters of marque or reprisal in, time of peace; nor enter into any treaties or alliances; nor coin money or regulate the value thereof; nor ascertain the sums or expenses necessary for the, defence and welfare of the United States, nor emit bills nor borrow money on the credit of the United States nor appropriate money; nor agree upon the number of vessels of war to be built, or purchased; or the number of land or sea forces to be raised; nor appoint a commander-in-chief of the army or navy; unless nine states should assent to the same. And no question on any other point, except for adjournng from day to day, was to be determined, except by vote of the majority of the states.

11. "The committee of the states or any tine of them, were authorized in the recess of congress to exercise such powers, as congress, with the assent of nine states, should think it expedient to vest them with, except such powers for the exercise of which, by the articles of confederation, the assent of nine states was required, which could not be thus delegated.

12. "It was further. provided, that all bills of credit, moneys borrowed, and debts contracted by or under the authority of congress before the confederation, should be a charge against the United States; that when land forces were raised by any state for the common defence, all officers of or under the rank of colonel should be appointed by the legislature of the state, or in such manner as the state should direct; and all vacancies should be filled up in the same manner that all charges of war, and all other expenses for the common defence or general welfare, should be defrayed out of a common treasury, which should be supplied by the several states, in proportion to the value of the land within each state granted or surveyed, and the buildings and improvements thereon, to be estimated according to the mode prescribed by congress; and the taxes for that proportion were to be laid and levied by the legislatures of the states within the time agreed upon by congress.

13. "Certain prohibitions were laid upon the exercise of powers by the respective states. No state, without the consent of the United States, could send an embassy to, or receive an embassy from, or enter into, any treaty with any king, prince or state; nor could any person holding any office under the United States, or any of them, accept any present, emolument, office – or title, from any foreign king, prince or state; nor could congress itself grant any title of nobility. No two states could enter into any treaty, confederation, or alliance with each other, without the consent of congress. No state could lay any imposts or duties, which might interfere with any proposed treaties. No vessels of war were to be kept up by any state in time of peace, except deemed necessary by congress for its defence, or trade; nor any body of forces, except such as should be deemed requisite by congress to garrison its forts, and necessary for its defence. But every state was required always to keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and to be provided with suitable field-pieces, and tents, and arms, and amunition, and camp equipage. No state could engage in war without the consent of congress, unless actually invaded by enemies, or in danger of invasion by the Indians. Nor could any state grant commissions to any ships of war, nor letters of marque and reprisal, except after a declaration of war by congress, unless such state were infested by pirates, and then subject to the determination of congress. No state could prevent the removal of any property imported into any state to any other state, of which the owner was an inhabitant. And no imposition, duties, or restriction, could be laid by any state on the Property of the United States or of either of them.

14. "There was also provision made for the admission of Canada, into the Union, and of other colonies with the assent of nine states. And it was finally declared, that every state should abide by the determinations of congress on all questions submitted to it by the confederation; that the articles should be inviolably observed by every state; that the union should be perpetual; and that no alterations should. be made in any of the articles, unless agreed to by congress, and 'Confirmed by the legislatures of every state.

15. "Such is the substance of this celebrated instrument, under which the treaty of peace, acknowledging our independence, was negotiated, the war of the revolution concluded, and the union of the states maintained until the adoption of. the present constitution."

ARTICLES OF IMPEACHMENT. An instrument which, in cases of impeachment, (q. v.) is used, and performs the same office which an indictment does, in a common criminal case, is known by this name. These articles do not usually pursue the strict form and accuracy of an indictment., Wood. Lect. 40, p. 605; Foster, 389, 390; Com. Dig. Parliament, L 21. They are sometimes quite general in the form of the allegations, but always contain, or ought to contain, so much certainty, as to enable

the party to put himself on the proper defence, and in case of an acquittal, to avail himself of it, as a bar to another impeachment. Additional articles may, perhaps, be exhibited at any stage of the prosecution. Story on the 806; Rawle on the Const. 216.

2. The answer to articles of impeachment is exempted from observing great strictness of form; and it may contain arguments as well as facts. It is usual to give a full and particular answer to each article of the accusation. Story, 808.

ARTICLES OF PARTNERSHIP. The name given to an instrument of writing by which the parties enter into a partnership, upon the conditions therein mentioned. This instrument generally contains certain provisions which it is the object here to point out.

2. But before proceeding more particularly to the consideration of the Subject, it will be proper to observe that sometimes preliminary agreements to enter into a partnership are formed, and that questions, not unfrequently, arise as to their effects. These are not partnerships, but agreements to enter into partnership at a future time. When such an agreement has been broken, the parties may apply for redress to a court of law, where damages will be given, as a compensation. Application is sometimes made to courts of equity for their more efficient aid to compel a specific performance. In general these courts will not entertain bills for specific performance of such preliminary contracts; but in order to suppress frauds, or manifestly mischievous consequences, they will compel such performance. 3 Atk. 383; Colly. Partn. B. 2, c. 2, 2 Wats. Partn. 60; Gow, Partn. 109; Story, Eq. Jur. 666, note; Story, Partn. 189; 1 Swanst. R. 513, note. When, however, the partnership may be immediately dissolved, it seems the contract cannot be specifically enforeed. 9 Ves. 360.

3. It is proper to premise that under each particular head, it is intended briefly to examine the decisions which have been made in relation to it.

4. The principal parts of articles of partnership are here enumerated. 1. The names of the contracting parties. These should all be severally set out.

5. – 2. The agreement that the parties actually by the instrument enter into partnership, and care must be taken to distinguish this agreement from a covenant to enter into partnership at a future time.

6. – 3. The commencement of the partnership. This ought always to be expressly provided for. When no other time is fixed by it, the commencement will take place from the date of the instrument. Colly. Partn. 140 5 Barn. & Cres. 108.

7. – 4. The duration of the partnership. This may be. for life, or for a, specific period of time; partnerships may be conditional or indefinite in their duration, or for a single adventure or dealing; this period of duration is either express or implied, but it will not be presumed to be beyond life. 1 Swanst. R. 521. When a term is fixed, it is presumed to endure until that period has elapsed; and, when no term is fixed, for the life of the parties, unless sooner dissolved by the acts of one of them, by mutual consent, or operation of law. Story, Part. 84.

8. A stipulation may lawfully be introduced for the continuance of the partnership after the death of one of the parties, either by his executors or administrators, or for the admission of one or more of his children into the concern. Colly. Partn. 147; 9 Ves. 500. Sometimes this clause provides, that the interest of the partner shall go to such persons, as be shall by his last will name and appoint, and for want of appointment to such persons as are there named. In these cases it seems that the executors or administrators have an option to continue the partnership or not. Colly. Partn. 149; 1 McCl. & Yo. 569; Colles, Parl. Rep. 157.

9. when the duration of the partnership has been fixed by the articles, and the partnership expires by mere effluxion of time, and, after such determination it is carried on by the partners without any new agreement, in the absence of all circumstances which may lead as to the true intent of the partners, the partnership will not, in general, be deemed one for a definite period; 17 Ves. 298; but in other respects, the old articles of the expired partnership are to be deemed adopted, by implication as the basis of the new partnership during its continuance. 5 Mason, R. 176, 185; 15 Ves. 218; 1 Molloy, R. 466.

10. – 5. The business to be carried on and the place where it is to be conducted. This clause ought to be very particularly written, as courts of equity will grant an injunction when one or more of the partners attempt, against the wishes of one or more of them, to extend such busiress beyond the provision contained in the articles. Story, Partn. 193; Gow, Partn 398.

11 – 6. The name of the firm, as for example, John Doe and Company, ought to be ascertained. The members of the partnership are required to use the name thus agreed upon, and a departure from it will make them individually liable to third persons or to their partners, in particular cases. Colly. Partn. 141; 2 Jac. & Walk. 266; 9 Adol. & Ellis, 314; 11 Adol. & Ellis, 339; Story, Partn. 102, 136, 142, 202.

12. – 7. A provision is not unfrequently inserted that the business shall be managed and administered by a particular partner,20or that one of its departments shall be under his special care. In this case, courts of equity will protect such partner in his rights. Story, Partn. 172, 182, 193, 202, 204 Colly. Partn. 753. In Louisiana, this

provision is incorporated in it's civil code, art. 2838 to art. 2840. The French and civil law also agree as to this provision. Poth. de Societe, n. 71; Dig. 14, 1, 1, 13; Poth. Pand. 14, 1, 4.

13. Sometimes a provision is introduced that a majority of the partners shall have the management of the affairs of the partnership. This is requisite, particularly when the associates are numerous, As to the rights of the majority, see Partners.

14. – 8. A provision should be inserted as to the manner of furnishing the capital or stock of the partnership. When a partner is required to furnish his proportion of the stock at stated periods, or pay by installments, he will, where there are no stipulutions to the contrary, be considered a debtor to the firm. Colly. Partn. 141; Story, Partn. 203; 1 Swanst. R. 89, Sometimes a provision is inserted that real estate, and fixtures belonging to the firm shall be considered, as between the partners, not as partnership but as several property. In cases of bankruptcy this property will be treated as the separate property of the partners. Colly. Partn. 141, 595, 600; 5 Ves. 189; 3 Madd. R. 63.

15. – 9. A provision for the apportionment of the profits a and losses among the partners should be introduced. In the absence of all proof, and controlling circumstances, the partners are to share in both equally, although one may have furnished all the capital, and the other only his skill, Wats. Partn. 59; Colly. Partn. 105; Story, Partn. 24; 3 Kent, Com. 28; 4th ed.; 6 Wend. R. 263; but see 7 Bligh, R. 432; 5 Wils. & Shaw, 16.

16. – 10. Sometimes a stipulation for an annual account of the Property of the partnership whether in possession or in action, and of the debts due by partnership is inserted. These accounts when settled are at least prima facie evidence of the facts they contain. Colly. Partn. 146 Story Partn. 206; 7 Sim. R. 239.

17. – 11. A provision is frequently introduced forbidding any one partner to carry on any other business. This should be provided for, though there is an implied provision in every partnership that no partner shall carry. on any separate business inconsistent or contrary to the true interest of the partnership. Story, Partn. 178, 179, 209.

18. – 12. When the partners are numerous, a provision is often made for the expulsion of a partner for gross misconduct, for insolvency, bankruptcy, or other causes particularly enumerated. This provision will govern when the case occurs.

19. – 13. This instrument should allways contain a provision for winding up the business. This is generally provided for in one of three modes: first, by turning all the assets into cash, and, after paying all the liabilities of the partnership, dividing such

money in proportion to the several interests of the parties; secondly, by providing that one or more of the partners shall be entitled to purchase the shares of the others at a valuation;thirdly, that all the property of partnership shall be appraised, and that after paying the partnership debts, it shall be divided in the proper proportions. The first of these modes is adopted by courts of equity in the absence of express stipulations. Colly. Partn. 145 Story, Partn. 207 8 Sim. R. 529.

20. – 14. It is not unusual to insert in these articles, a provision that in case of disputes the matter shall be submitted to arbitration. This clause seems nugatory, for no action will lie for a breach of it, as that would deprive the courts of their jurisdiction, which the parties cannot do. Story, Partn. 215; Gow, Partn. 72; Colly. Partn, 165 Wats. Partn. 383.

21. – 15. The articles should be dated, and executed by the parties. It is not requisite that the instrument, should be under seal. Vide Parties to contracts; Partners Partnership.

ARTICLES OF THE PEACE, Eng. practice. An instrument which is presented to a court of competent jurisdiction, in which the exhibitant shows the grievances under which be labors, and prays the protection of the court. It is made on oath. See a form in 12 Adol. & Ellis, 599; 40 E. C. L. R. 125, 126; 1 Chit. Pr. 678.

2. The truth of the articles cannot be contradicted, either by affidavit or otherwise; but the defendant may either except to their sufficiency, or tender affidavits in reduction of the amounts of bail. 13 East. 171.

ARTICLES OF WAR. The name commonly given to a code made for the government of the army. The act of April 10, 1806, 2 Story's Laws U. S. 992, contains the rulesand articles by which the armies of the United States shall be governed. The act of April 23, 1800, 1 Story's L. U. S. 761, contains the rules and regulations for the government of the navy of the United States.

ARTICULATE ADJUDICATION. A term used in Scotch, law in cases where there is more than the debt due to the adjudging creditor, when it is usual to accumulate each debt by itself, so that any error that may arise in ascertaining one of the debts need not reach to all the rest.

ARTIFICERS. Persons whose employment or business consists chiefly of bodily labor. Those who are masters of their arts. Cunn. Dict. h. t. Vide drt.

ARTIFICIAL. What is the result of, or relates to, the arts; opposed to natural; thus we say a corporation is an artificial person, in opposition to a natural person. Artificial

accession is the uniting one property to another by art, opposed to a simple natural union. 1 Bouv. Inst. n. 503.

ARTIFICIAL PERSON. In a figurative sense, a body of men or company are sometimes called an artificial person, because the law associates them as one, and gives them various powers possessed by natural persons. Corporations are such artificial persons. 1 Bouv. Inst. n. 177.

AS. A word purely Latin. It has two significations. First, it signifies weight, and in this sense, the Roman as, is the same thing as the Roman pound, which was composed of twelve ounces. It was divided also into many other parts (as may be seen in the law, Servum de hoeredibus, Inst. Lib. xiii. Pandect,) viz. uncia, 1 ounce; sextans, 2 ounces; quodrans, 3 ounces; triens, 4 ounces quincunx, 5 ounces; semis, 6 ounces; septunx, 7 ounces; bes, 8 ounces, dodrans, 9 ounces; dextans, 10 ounces; deunx, 11 ounces.

2. From this primitive and proper sense of the word another was derived: that namely of the totality of a thing, Solidum quid. Thus as signified the whole of an inheritance, so that an heir ex asse, was an heir of the whole inheritance. An heir ex triente, ex semisse, ex besse, or ex deunce, was an heir of one-third, one-half, two-thirds, or eleven-twelfths.

ASCENDANTS. Those from whom a person is descended, or from whom he derives his birth, however remote they may be.

2. Every one has two ascendants at the first degree, his father and mother; four at the second degree, his paternal grandfather and grandmother, and his maternal grandfather and grandmother; eight at the third. Thus in going up we ascend by various lines which fork at every generation. By this progress sixteen ascendants are found at the fourth degree; thirty-two, at the fifth sixty-four, at the sixth; one hundred and twenty-eight at the seventh, and so on; by this progressive increase, a person has at the twenty-fifth generation, thirty-three millions five hundred and fifty-four thousand, four hundred and thirty-two ascendant's. But as many of the ascendants of a person have descended from the same ancestor, the lines which were forked, reunite to the first comnmon ancestor, from whom the other descends; and this multiplication thus frequently interrupted by the common ancestors, may be reduced to a few persons. Vide Line.

ASCRIPTITIUS, civil law. Among the Romans, ascriptitii were foreigners, who had been naturalized, and who had in general the same rights as natives. Nov. 22, ch. . 17 Code 11, 47.

ASPHYXY, med. jur. A temporary suspension of the motion of the heart and arteries; swooning, fainting. This term includes persons who have been asphyxiated by submersion or drowning; by breathing mephitic gas; by the effect of lightning; by the effect of cold; by heat; by suspension or strangulation. In a legal point of view it is always proper to ascertain whether the person who has thus been deprived of his senses is the victim of another, whether the injury has been caused by accident, or whether it is. the act of the sufferer himself.

2. In a medical point of view it is important to ascertain whether the person is merely asphyxiated, or whether he is dead. The following general remarks have been made as to the efforts which ought to be made to restore a person thus situated,

1st. Persons asphyxiated are frequently in a state of only apparent death.

2d. Real from apparent death, can be distinguished only by putrefaction.

3d. Till putrefaction commences, aid ought to be rendered to persons asphyxiated.

4th. Experience proves that remaining several hours under water does not always produce death.

5th. The red, violet, or black color of the face, the coldness of the body, the stiffness of the limbs, are not always signs of death.

6th. The assistance to persons thus situated, maybe administered by any intelligent person; but to insure success, it must be done without discouragement for several hours together.

7th. All unnecessary persons should be sent away; five or six are in general sufficient.

8th. The place where the operation is performed should not be too warm.

9th. The assistance should be rendered with activity, but without precipitation.

ASPORTATION. The act of carrying a thing away; the removing a thing from one place to another. Vide Carrying away; Taking.

ASSASSIN, crim, law. An assassin is one who attacks another either traitorously, or with the advantage of arms or place) or of a number of persons who support him, and kills his victim. This being done with malice, aforethought, is murder. The term assassin is but little used in the common law, it is borrowed from the civil law.

ASSASSINATION, crim. law. A murder committed by an assassin. By assassination is understood a murder committed for hire in money, without any provocation or cause of resentment given by the person against whom the crime is directed. Ersk. Inst. B. 4, t. 4, n. 45.

ASSAULT, crim. law. An assault is any unlawful attempt or offer with force or violence to do a corporal hurt to another, whether from malice or wantonness; for example, by striking at him or even holding up the fist at him in a threatening or insulting manner, or with other circumstances as denote at the time. an intention, coupled with a present ability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it. 6 Rogers Rec: 9. When the injury is actually inflicted, it amounts to a battery. (q. v.)

2. Assaults are either simple or aggravated. 1. A simple assault is one Where there is no intention to do any other injury. This is punished at common law by fine and imprisonment. 2. An aggravated assault is one that has in addition to the bare intention to commit it, another object which is also criminal; for example, if a man should fire a pistol at another and miss him, the former would be guilty of an assault with intent to murder; so an assault with intent to rob a man, or with intent to spoil his clothes, and the like, are aggravated assaults, and they are more severely punished than simple assaults. General references, 1 East, P. C. 406; Bull. N. P. 15; Hawk. P. B. b. 1, c. 62, s. 12; 1 Russ. Cr. 604; 2 Camp. Rep. 650 1 Wheeler's Cr. C. 364; 6 Rogers' Rec. 9; 1 Serg. & Rawle, 347 Bac. Ab. h. t.; Roscoe. Cr. Ev. 210.

ASSAY. A chemical examination of metals, by which the quantity of valuable or precious metal contained in any mineral or metallic mixture is ascertained. 2. By the acts of Congress of March 3, 1823, 3 Story's L. U. S. 1924; of June 25, 1834, 4 Shars. cont. Story's L. U. S. 2373; and of June 28, 1834, Id. 2377, it is made the duty of the secretary of the treasury to cause assays to be made at the mint of the United States, of certain coins made current by the said acts, and to make report of the result thereof to congress.

ASSEMBLY. The union of a number of persons in the same place. There are several kinds of assemblies.

2. Political assemblies, or those authorized by the constitution and laws; for example, the general assembly, which includes the senate and house of representatives; the meeting of the electors of the president and vice-president of the United States, may also be called an assembly.

3. Popular assemblies are those where the people meet to deliberate upon their rights; these are guaranteed by the constitution. Const. U. S. Amend. art. 1 Const. of Penn. art. 9, s. 20.

4. Unlawful assemblies. An unlawful assembly is the meeting of three or more persons to do an unlawful act, although they may not carry their purpose into execution. It differs from a riot or rout, (q. v.) because in each of the latter-cases there is some act done besides the simple meeting.

ASSENT, contracts. An agreement to something that has been done before.

2. It is either express, where it is openly declared; or implied, where it is presumed by law. For instance, when a conveyance is made to a man, his assent to it is presumed, for the following reasons; cause there is a strong intendment of law, that it is for a person's benefit to take, and no man can be supposed to be unwilling to do that which is for his advantage. 2. Because it would seem incongruous and absurd, that when a conveyance is completely executed on the part of the grantor, the estate should continue in him. 3. Because it is contrary to the policy of law to permit the freehold to remain in suspense and uncertainty. 2 Ventr. 201; 3 Mod. 296A 3 Lev. 284; Show. P. C. 150; 3 Barn. & Alders. 31; 1 Binn. R. 502; 2 Hayw. 234; 12 Mass IR. 461 4 Day, 395; 5 S. & R. 523 20 John. R. 184; 14 S. & R. 296 15 Wend. R. 656; 4 Halst. R. 161; 6 Verm. R. 411.

3. When a devise draws after it no charge or risk of loss, and is, therefore, a mere bounty, the assent of the devisee to, take it will be presumed. 17 Mass. 73, 4. A dissent properly expressed would prevent the title from passing from the grantor unto the grantee. 1 2 Mass. R. 46 1. See 3 Munf. R. 345; 4 Munf. R. 332, pl. 9 5 Serg. & Rawle, 523; 8 Watts, R. 9, 11 20 Johns. R. 184. The rule requiring an express dissent, does not apply, however, when the grantee is bound to pay a consideration for the thing granted. 1 Wash. C. C. Rep. 70.

4. When an offer to do a thing has been made, it is not binding on the party making it, until the assent of the other paity has been given and such assent must be to the same subject-matter, in the same sense. 1 Summ. 218. When such assent is given, before the offer is withdrawn, the contract is complete. 6 Wend. 103. See 5 Wend. 523; 5 Greenl. R. 419; 3 Mass. 1; 8 S. R. 243; 12 John. 190; 19 John. 205; 4 Call, R. 379 1 Fairf. 185; and Offer.

5. In general, when an assignment is made to one for the benefit of creditors the assent of the assignees will be presumed. 1 Binn. 502, 518; 6 W. & S. 339; 8 Leigh, R. 272, 281. But see 24 Wend. 280.

ASSERTORY COVENANT. One by which the covenantor affirms that a certain fact is in a particular way, as that the grantor of land is lawfully seised; that it is clear of encumbrances, and the like. If the assertion is false, these covenants are broken the moment that the instrument is signed. See 11 S. & R. 109, 112.

TO ASSESS.

1. To rate or to fix the proportion which every person has to pay of any particular tax.

2. To assess damages is to ascertain what damages are due to the plaintiff; in actions founded on writings, in many cases after interlocutory judgment, the prothonotary is directed to assess the damages; in cases sounding in tort the damages are frequently assessed on a writ of inquiry by the sheriff and a jury.

2. In actions for damages, the jury are required to fix the amount or to assess the damages. In the exercise of this power or duty, the jury must be guided by sound discretion, and, when the circumstances will warrant it, may give high damages. Const. Rep. 500. The jury must, in the assessment of damages be guided by their own judgment, nd not by a blind chance. They cannot lawfully, therefore, in making up their verdict, each one put down a sum, add the sums together, divide the aggregate by the number of jurors, and adopt the quotient for their verdict. 1 Cowen, 238.

ASSESSMENT. The making out a list of property, and fixing its valuation or appraisement; it is also applied to making out a list of persons, and appraising their several occupations, chiefly with a view of taxing the said persons and their property.

ASSESSMENT OF DAMAGES. After an interlocutory judgment has been obtained, the damages must be, ascertained; the act of thus fixing the amount of damages is called the assessment of damages.

2. In cases sounding in damages, (q. v.) that is, when the object of the action is to recover damages only, and not brought for the specific recovery of lands, goods, or sums of money, the usual course is to issue a writ of inquiry, (q. v.) and, by virtue of such writ, the sheriff, aided by twelve lawful men, ascertains the amount of damages, and makes return to the court of the inquisition, which, unless set aside, fixes the damages, and a final judgment follows.

3. When, on the contrary, the action is founded on a promissory note, bond, or other contract in writing, by which the amount of money due may be easily computed, it is the practice, in some courts, to refer to the clerk or prothonotary the assessment of damages,. and in such case no writ of inquiry is issued. 3 Bouv. Inst. n. 8300.

ASSESSORS, civil law. So called from the word adsidere, which Signifies to be seated with the judge. They were lawyers who were appointed to assist, by their advice, the Roman magistrates, who were generally ignorant of law. being mere military men. Dig. lib. 1, t. 22; Code, lib. 1, t. 51.

2. In our law an assessor is one who has been legally appointed to value and appraise property, generally. with a view of laying a tax on it.

ASSETS. The property in the hands of an heir, executor, administrator or trustee, which is legally or equitably chargeable with the obligations, which such heir, executor, administrator or other trustee, is, as such, required to discharge, is called assets. The term is derived from the French word assez, enough; that is, the heir or trustee has enough property. But the property is still called assets, although there may not be enough to discharge all the obligations; and the heir, executor, &c., is chargeable in distribution as far as such property extends.

2. Assets are sometimes divided by all the old writers, into assets enter mains and assets per descent; considered as to their mode of distribution, they are 1egal or equitable; as to the property from which they arise, they are real or personal.

3. Assets enter maim, or assets in hand, is such property as at once comes to the executor or other trustee, for the purpose of satisfying claims against him as such. Termes de la Ley.

4. Assets per descent, is that portion of the ancestor's estate which descends to the heir, and which is sufficient to charge him, as far as it goes, with the specialty debts of his ancestor. 2 Williams on Ex. 1011.

5. Legal assets, are such as constitute the fund for the payment of debts according to their legal priority.

6. Equitable assets, are such as can be reached only by the aid of a court of equity, and are to be divided,, pari passu, among all the creditors; as when a debtor has made his property subject to his debts generally, which, without his act would not have been so subject. 1 Madd. Ch. 586; 2 Fonbl. 40 1, et seq.; Willis on Trust, 118.

7. Real assets, are such as descend to the heir, as in estate in fee simple.

8. Personal assets, are such goods and chattels to which the executor or administrator is entitled.

9. In commerce, by assets is understood all the stock in trade, cash, and all available property belonging to a merchant or company. Vide, generally, Williams on Exec. Index, h. t.; Toll. on Exec. Index, h. t.; 2 Bl. Com. 510, 511; 3 Vin. Ab. 141; 11 Vin. Ab. 239; 1 Vern. 94; 3 Ves. Jr. 117; Gordon's Law of Decedents, Index, h. t.; Ram on Assets.

ASSEVERATION. The proof which a man gives of the truth of what be says, by appealing to his conscience as a witness. It differs from an oath in this, that by the latter he appeals to God as a witness of the truth of what he says, and invokes him as the avenger of falsehood and perfidy, to punish him if he speak not the truth. Vide Affirmation; Oath; and Merl. Quest. de Droit, mot Serment.

TO ASSIGN, contracts; practice. 1. To make a right over to another; as to assign an estate, an annuity, a bond, &c., over to another. 5 John. Rep: 391. 2. To appoint; as, to appoint a deputy,, &c. Justices are also said to be assigned to keep the peace. 3. To set forth or point out; as, to " assign errors," to show where the error is committed; or to assign false judgment, to show wherein it was unjust. F. N. B. 19.

ASSIGNATION, Scotch law. The ceding or yielding a thing to another of which intimation must be made. ASSIGNEE. One to whom an assignment has been made.

2. Assignees are either assignees in fact or assignees in law. An assignee in fact is one to whom an assignment has been made in fact by the party having the right. An assignee in law is one in whom the law vest's the right, as an executor or administrator. Co. Litt. 210 a, note 1; Hob. 9. Vide Assigns, and 1 Vern. 425; 1 Salk. 81 7 East, 337; Bac. Ab. Covenant, E; a Saund. 182, note 1; Arch. Civ. PI. 50, 58, 70 Supp, to Ves. Jr, 72 2 Phil. Ev. Index, h. t.

ASSIGNMENT, contracts. In common parlance this word signifies the transfer of all kinds of property, real, personal, and mixed, and whether the same be in possession or in action; as, a general assignment. In a more technical sense it Is usually applied to the transfer of a term for years; but it is more properly used to signify a transfer of some particular estate or interest in lands.

2. The proper technical words of an assignment are, assign, transfer, and set over; but the words grant, bargain, and sell, or any other words which will show the intent of the parties to make a complete transfer, will amount to an assignment.

3. A chose in action cannot be assigned at law, though it may be done in equity; but the assignee takes it subject to all the equity to which it was liable in the hands of the original party. 2 John. Ch. Rep. 443, and the cases there cited. 2 Wash. Rep. 233.

4. The deed by which an assignment is made,, is also called an assignment. Vide, generally, Com. Dig. h. t.; Bac. Ab. h. t. Vin. Ab. h. t.; Nelson's Ab. h. t.; Civ. Code of Louis. art. 2612. In relation to general assignments, see Angell on Assignments, passim; 1 Hate & Wall. Sel. Dec. 78-85.

5. By an assignment of a right all the accessories which belong to it, will pass with it as, if the assignor of a bond had collateral security, or a lien on property, the collateral security and the lien will pass with the assignment of the bond. 2 Penn. 361; 3 Bibb, 291; 4 B. Munroe, 529; 2 Drev. n. 218; 1 P. St. R. 454. 6. The assignment of a thing also carries with it all that belongs to it by right of accession; if, therefore, the thing produce interest or rent, the interest or the arrearages of the rent since the assignment, will belong to the assignee. 7 John. Cas. 90 6 Pick. 360.

ASSIGMENT OF DOWER. The act by which the rights of a widow, in her deceased hushand's real estate, are ascertained and set apart for her benefit. 2 Bouv. Inst. 242.

ASSIGNMENT OF ERRORS. The act by which the plaintiff in error points out the errors in the record of which he complains.

2. The errors should be assigned in distinct terms, such as the defeudant in error may plead to; and all the errors of which the plaintiff complains should be assigned. 9 Port. 186; 16 Conn. 83; 6 Dana, 242 3 How. (Miss.) R. 77.

ASSIGNOR. One who makes an assignment; one who transfers property to another.

2. In general the assignor can limit the operation of his assignment, and impose whatever condition he may think proper, but when he makes a general assignment in trust for the use of his creditors, he can impose no condition whatever which will deprive them of any right; 14 Pick. 123; 15 John. 151; 7 Cowen, 735; 5 Cowen, 547 20 John. 442; 2 Pick. 129; nor any condition forbidden by law; as giving preference when the law forbids it.

3. Ad assignor may legally choose his own trustees. 1 Binn. 514.

ASSIGNS, contracts. Those to whom rights have been transmitted by particular title, such as sale, gift, legacy, transfer, or cession. Vide Ham. Paities, 230; Lofft. 316. These words, and also the word forever, are commonly added to the word heirs in deeds conveying a fee simple, heirs and assigns forever "but they are in such cases inoperative. 2 Barton's Elem. Convey. 7, (n.) But see Fleta, lib. 3, cap. 14, 6. The use of naming them, is explained in Spencer's Case, 5 Rep. 16; and Ham. Parties, 128. The word heirs, however, does not include or imply assigns. 1 Anderson's Rep. 299.

ASSISES OF JERUSALEM. The name of a code of feudal law, made at a general assembly of lords, after the conquest of Jerusalem. It was compiled principally from the laws and customs of France. They were reduced to form about the year 1290, by Jean d'Iblin, comte de Japhe et d'Ascalon. Fournel (Hist. des Avocats, vol. i. p. 49,) calls them the most precious monument of our (French) ancient law. He defines the word assises to signify the assemblies of the great, men of the realm. See also, 2 Profession d'Avocat, par Dupin, 674 to 680; Steph. on Plead. App. p. xi.

ASSISORS, Scotch law. This term corresponds nearly to that of jurors.

ASSIZE, Eng. law. This was the name of an ancient court; it derived its name from assideo, to sit together. Litt. s. 234; Co. Litt. 153 b., 159 b. It was a kind of jury before which no evidence was adduced, their verdict being regarded as a statement of facts, which they knew of their own knowledge. Bract. iv. 1, 6.

2. The name of assize was also given to a remedy for the restitution of a freehold, of which the complainant had been disseised. Bac. Ab. h. t. Assizes were of four kinds: Mort d'ancestor Novel Disseisin Darrien Presentment; and Utrum. Neale's F. & F. 84. This reimedy has given way to others less perplexed and more expeditious. Bac. Ab. h. t.; Co. Litt. 153-155.

3. The final judgment for the plaintiff in an assize of Novel Disseisin, is, that he recover per visum recognitorum, and it is sufficiently certain. if the recognitors can put the demandant in possession. Dyer, 84 b; 10 Wentw. PI. 221, note. In this action, the plaintiff cannot be compelled to be nonsuited. Plowd. 11 b. See 17 Serg. & R. 187; 1 Rawle, Rep. 48, 9.

4. There is, however, in this class of actions, an interlocutory judgment, or award in the nature of a judgment, and which to divers intents and purposes, is a judgment; 11 Co. Rep. 40 b; like the judgment of quod computet, in account render; or quod partitio flat, in partition; quod mensuratio fiat; ouster of aid; award of a writ of inquiry, in waste.; of damages in trespass; upon these and the like judgments, a writ of error does not lie. 11 Co. Rep. 40 a; Metcalf's Case, 2 Inst. 344 a: 24 Ed. III, 29 B 19.

ASSIZE OF MORT D' ANCESTOR. The name, of an ancient writ, now obsolete. It might have been sued out by one whose father, mother, brother, &c., died seised of lands, and tonements, which they held in fee , and which, after their death, a stranger abated. Reg. Orig. 223. See Mort d' Ancestor.

ASSOCIATE. This term is applied to a judge who is not the president of a court; as associate judge.

ASSOCIATION. The act of a number of persons uniting together for some purpose; the persons so joined are also called an association. See Company.

ASSUMPSIT, contracts. An undertaking either express or implied, to perform a parol agreement. 1 Lilly's Reg. 132.

2. An express assumpsit is where one undertakes verbally or in writing, not under seal, or by matter of record, to perform an act, or to pay a sum of money to another.

3. An implied assumpsit is where one has not made any formal promise to do an act or to pay a sum of money to another, but who is presumed from his conduct to have assumed to do what is in point of law just and right; for, 1st, it is to be presumed that no one desires to enrich himself at the expense of another; 2d, it is a rule that he who desires the antecedent, must abide by the consequent; as, if I receive a loaf of bread or a newspaper daily sent to my house without orders, and I use it without objection, I am presumed to have accepted the terms upon which the person sending it had in contemplation, that I should pay a fair price for it; 3d, it is also a rule that every one is presumed to assent to what is useful to him. See Assent

ASSUMPSIT, remedies, practice., A form of action which may be defined to be an action for the recovery of damages for the non-performance of, a parol or simple contract; or, in other words, a contract not under seal, nor of record; circumstances which distinguish this remedy from others. 7 T. R. 351; 3 Johns. Cas. 60. This action differs from the action of debt; for, in legal consideration, that is for the recovery of a debt eo nomine, and in numero, and may be upon a deed as well as upon any other contract. 1 h. Bl. 554; B. N. P. 167. It differs from covenant, which, though brought for the recovery of damages, can only be supported upon a contract under seal. See Covenant.

2. It will be proper to consider this subject with reference, 1, to the contract upon which this action may be sustained; 2, the declaration 3, the plea; 4, the judgment.

3. – 1. Assumpsit lies to recover damages for the breach of all parol or simple contracts, whether written or not written express or implied; for the payment of money, or for the performance or omission of any other act. For example, to recover, money lent, paid, or had and received, to the use of the plaintiff; and in some cases, where money has been received by the defendant, in consequence of some tortious act to the plaintiff's property, the plaintiff may waive the tort, and sue the defendant in assumpsit. 5 Pick. 285; 1 J. J. Marsh. 543 3 Watts, R. 277; 4 Binn. 374; 3 Dana, R. 552; 1 N. H. Rep. 151; 12 Pick. 120 4 Call. R. 461; 4 Pick. 452. It is the proper remedy for work and labor done, and services rendered 1 Gill, 95; 8 S. & M. 397 2 Gilman, 1 3 Yeates, 250 9 Ala. 788 but such work, labor, or services, must be

rendered at the request, express or implied, of the defendant; 2 Rep. Cons. Ct. 848; 1 M'Cord, 22; 20 John. 28 11 Mass. 37; 14 Mass. 176; 5 Monr. 513 1 Murph. 181; for goods sold and delivered; 6 J. J. Marsh. 441; 12 Pick. 120; 3 N. H. Rep. 384; 1 Mis. 430; for a breach of promise of marriage. 3 Mass. 73 2 Overton, 233 2 P. S. R. 80. Assumpsit lies to recover the purchase money for land sold; 14 Johns. R. 210; 14 Johns. R. 162; 20 Johns. R. 838 3 M'Cord, R. 421; and it lies, specially, upon wagers; 2 Chit. PI. 114; feigned issues; 2 Chit. PI. 116; upon foreign judgments; 8 Mass. 273; Dougl. 1; 3 East, 221; 11 East, 124; 3 T. R. 493; 5 Johns. R. 132. But it will not lie on a judgment obtained in a sister state. 1 Bibb, 361 19 Johns. 162; 3 Fairf. 94; 2 Rawle, 431. Assumpsit is the proper remedy upon an account stated. Bac. Ab. Assumpsit, A. It will lie for a corporation, 2 Lev. 252; 1 Camp. 466. In England it does not lie against a corporation, unless by express authority of some legislative act; 1 Chit. PI. 98; but in this country it lies against a corporation aggregate, on an express or implied promise, in the same manner as against an individual. 7 Cranch, 297 9 Pet. 541; 3 S. & R. 117 4 S. & R. 16 12 Johns. 231; 14 Johns. 118; 2 Bay, 109 1 Chipm. 371, 456; 1 Aik. 180 10 Mass, 397. But see 3 Marsh. 1; 3 Dall. 496.

4. – 2. The declaration must invariably disclose the consideration of the contract, the contract itself, and the breach of it; Bac. Ab. h. t. F 5 Mass. 98; but in a declaration on a negotiable instrument under the statute of Anne, it is not requisite to, allege any consideration; 2 Leigh, R. 198; and on a note expressed to have been given for value received, it is not necessary to aver a special consideration. 7 Johns. 321. See Mass. 97. The gist of this action is the promise, and it must be averred. 2 Wash. 187 2 N. H. Rep. 289 Hardin, 225. Damages should be laid in a sufficient amount to cover the real amount of the claim. See 4 Pick. 497; 2 Rep. Const. Ct. 339; 4 Munf. 95; 5 Munf. 23; 2 N. H. Rep. 289; 1 Breese, 286; 1 Hall, 201; 4 Johns. 280; 11 S. & R. 27; 5 S. & R. 519 6 Conn. 176; 9 Conn. 508; 1 N. & M. 342; 6 Cowen, 151; 2 Bibb, 429; 3 Caines, 286.

5. – 3. The usual plea is non-assumpsit, (q. v.) under which the defendant may give in evidence most matters of defence. Com. Dig. Pleader, 2 G 1. When there are several defendants they cannot plead the general issue severally; 6 Mass. 444; nor the same plea in bar, severally. 13 Mass. 152. The plea of not guilty, in an action of assumpsit, is cured by verdict. 8 S. & R. 541; 4 Call. 451. See 1 Marsh, 602; 17 Mass. 623. 2 Greenl. 362; Minor, 254 Bouv. Inst. Index, h. t.

6. – 4. Judgment. Vide Judgment in Assumpsit. Vide Bac. Ab. h. t.; Com. Dig. Action upon the Case upon Assumpsit; Dane's Ab. Index, h. t.; Viner's Ab. h. t.; 1 Chit. Pi. h. t.; Petersd. h. t.; Lawes PI. in Assumpsit the various Digests, h. t. Actions; Covenant; Debt; Indebitatus assumpsit; Padum Constitutiae pecuniae.

ASSURANCE, com. law. Insurance. (q. v.)

ASSURANCE, conveyancing. This is called a common assurance. But the term assurances includes, in an enlarged sense, all instruments which dispose of property, whether they be the grants of private persons, or not; such are fines and recoveries, and private acts of the legislature. Eunom. Dial. 2, s. 5.

ASSURED. A person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance. Vide Insured.

ASSURER. One who insures another against certain perils and dangers. The same as underwriter. (q. v.) Vide Insurer.

ASSYTHMENT, Scotch law. An indemnification which a criminal is bound to make to the party injured or his executors, though the crime itself should be extinguished by pardon. Ersk. Pr. L. Scot. 4, 3, 13.

ASYLUM. A place, of refuge where debtors and criminals fled for safety.

2. At one time, in Europe, churches and other consecrated places served as asylums, to the disgrace of the law. These never protected criminals in the United States. It may be questioned whether the house of an ambassador (q. v.) would not afford protection temporarily, to a person who should take refuge there.

AT LAW. This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity.

2. In many cases when there is no remedy at law, one will be afforded in equity. See 3 Bouv. Inst. n. 2411.

ATAVUS. The male ascendant in the fifth degree, was so called among the Romans, and in tables of genealogy the term is still employed.

ATHEIST. One who denies the existence of God.

2. As atheists have not any religion that can bind their consciences to speak the truth, they are excluded from being witnesses. Bull. N. P. 292; 1 Atk. 40; Gilb. Ev. 129; 1 Phil. Ev. 19. See also, Co. Litt. 6 b.; 2 Inst. 606; 3 Inst. 165; Willes, R. 451 Hawk. B. 2, c. 46, s. 148; 2 Hale's P. C. 279.

TO ATTACH, crim. law, practice. To an attachment for contempt for the non-take or apprehend by virtue of the order of a writ or precept, commonly called an attachment. It differs from an arrest in this, that he who arrests a man, takes him to a person of

higher power to be disposed of; but be who attaches, keeps the party attached, according to the exigency of his writ, and brings him into court oh the day assigned. Kitch. 279; Bract. lib. 4; Fleta, lib. 5, c. 24; 17 S. & R. 199.

ATTACHE'. Connected with, attached to. This word is used to signify those persons who are attached to a foreign legation. An attache is a public minister within the meaning of the Act of April 30, 1790, s. 37, 1 Story's L. U. S. 89, which protects from violence "the person of an ambassador or other public minister." 1 Bald. 240 Vide 2 W. C. C. R. 205; 4 W. C. C. R. 531; 1 Dall. 117; 1 W. C. C. R. 232; 4 Dall. 321. Vide Ambassador; Consul; Envoy; Minister.

ATTACHMENT, crim. law, practice. A writ requiring a sheriff to apprehend a particular person, who has been guilty of. a contempt of court, and to bring the offender before the court. Tidd's Pr. Index, h. t.; Grab. Pr. 555.

2. It may be awarded by the court upon a bare suggestion, though generally an oath stating what contempt has been committed is required, or on their own knowledge without indictment or information. An attachment may be issued against officers of the court for disobedience or contempt of their rules and orders, for disobedience of their process, and for disturbing them in their lawful proceedings. Bac. Ab. h. t. A. in the nature of a civil execution, and it was therefore held it could not be executed on Sunday; 1 T. R. 266; Cowper, 394; Willes, R. 292, note (b); yet, in. one case, it was decided, that it was so far criminal, that it could not be granted in England on the affirmation of a Quaker. Stra. 441. See 5 Halst. 63; 1 Cowen, 121, note; Bac. Ab. h. t.

ATTACHMENT, remedies. A writ issued by a court of competent jurisdiction, commanding the sheriff or other proper officer to seize any property; credit, or right, belonging to the defendant, in whatever hands the same may be found, to satisfy the demand which the plaintiff has against him.

2. This writ always issues before judgment, and is intended to compel an appearance in this respect it differs from an execution. In some of the states this process can be issued only against absconding debtors, or those who conceal themselves; in others it is issued in the first instance, so that the property attached may respond to the exigency of the writ, and satisfy the judgment.

3. There are two kinds of attachment in Pennsylvania, the foreign attachment, and the domestic attachment. l. The foreign attachment is a mode of proceeding by a creditor against the property of his debtor, when the debtor is out of the jurisdiction of the state, and is not an inhabitant of the same. The object of this process is in the first instance to compel an appearance by the debtor, although his property may even eventually be made liable to the amount of the plaintiff Is claim. It will be proper to

consider, 1. by whom it be issued; 2. against what property 3. mode of proceeding. 1. The plaintiff must be a creditor of the defendant; the claim of the plaintiff need not, however, be technically a debt, but it may be such on which an action of assumpsit would lie but an attachment will not lie for a demand which arises ex delicto; or when special bail would not be regularly required. Serg. on Att. 51. 2. The writ of attachment may be issued against the real and personal estate of any person not residing within the commonwealth, and not being within the county in which such writ may issue, at the time. of the issuing thereof. And proceedings may be had against persons convicted of crime, and sentenced to imprisonment. 3. The writ of attachment is in general terms, not specifying in the body of it the name of the garnishee, or the property to be attached, but commanding the officer to attach the defendant, by all and singular his goods and chattels, in whose hands or possession soever the same may be found in his bailiwick, so that he be and appear before the court at a certain time to answer, &c. The foreign attachment is issued solely for the benefit of the plaintiff.

4. – 2. The domestic attachment is issued by the court of common pleas of the county in which any debtor, being an inhabitant of the commonwealth, may reside; if such debtor shall have absconded from the place of his usual abode within the same, or shall have remained absent from the commonwealth, or shall have confined himself to his own house, or concealed himself elsewhere, with a design, in either case, to defraud his creditors. It is issued on an oath or affirmation, previously made by a creditor of such person, or by some one on his bebalf, of the truth of his debt, and of the facts upon which the attachment may be founded. Any other creditor of such person, upon affidavit of his debt as aforesaid, may suggest his name upon the record, and thereupon such creditor may proceed to prosecute his said writ, if the person suing the same shall refuse or neglect to proceed thereon, or if he fail to establish his right to prosecute the same, as a creditor of the defendant. The property attached is vested in trustees to be appointed by the court, who are, after giving six months public notice of their appointment, to distribute the assets attached among the creditors under certain regulations prescribed by the act of assembly. Perishable goods way be sold under an order of the court, both under a foreign and domestic attachment. Vide Serg. on Attachments Whart. Dig. title Attachment.

5. By the code of practice of Louisiana, an attachment in the hands of third person is declared to be a mandate which a creditor obtains from a competent officer, commanding the seizure of any property, credit or right, belonging to his debtor, in whatever hands they may be found, to satisfy the demand which he intends to bring against him. A creditor may obtain such attachment of the property of his debtor, in the following cases. 1. When such debtor is about permanently leaving the state, without there being a possibility, in the ordinary course of judicial proceedings, of

obtaining or executing judgment against him previous to, his departure; or when such debtor has already left the state never again to return. 2. When such debtor resides out of the state. 3. When he conceals himself to avoid being cited or forced to answer to the suit intended to be brought against him. Articles 239, 240.

6. By the local laws of some of the New England states, and particularly of the states of Massachusetts, New Hampshire and Maine, personal property and real estate may be attached upon mesne process to respond the exigency of the writ, and satisfy the judgment. In such cases it is the common practice for the officer to bail the goods attached, to some person, who is usually a friend of the debtor, upon an express or implied agreement on his part, to have them forthcoming on demand, or in time to respond the judgment, when the execution thereon shall be issued. Story on Bailm. 124. As to the rights and duties of the officer or bailor in such cases, and as to the rights and duties of the bailee, who is conmmonly called the receiptor, see 2 Mass. 514; 9 Mass. 112 11 Mass. 211; 6 Johns. R. 195 9 Mass. 104, 265; 10 Mass. 125 15 Mass. 310; 1 Pick. R. 232, 389. See Metc. & Perk. Dig. tit. Absent and Absconding Debtors.

ATTACHMENT OF PRIVILEGE, Eng. law. A process by which a man by virtue of his privilege, calls another to litigate in that court to which he himself belongs; and who has the privilege to answer there.

ATTAINDER, English criminal law. Attinctura, the stain or corruption of blood which arises from being condemned for any crime.

2. Attainder by confession, is either by pleading guilty at the bar before the judges, and not putting one's self on one's trial by a jury; or before the coroner in sanctuary, when in ancient times, the offender was obliged to abjure the realm.

3. Attainder by verdict, is when the prisoner at the bar pleads not guilty to the indictment, and is pronounced guilty by the verdict of the jury.

4. Attainder by process or outlawry, is when the party flies, and is subsequently outlawed. Co. Lit. 391.

5. Bill of attainder, is a bill brought into parliament for attainting persons condemned for high treason. By the constitution of the United States, art. 1, sect. 9, 3, it is provided that no bill of attainder or ex post facto law shall be passed.

ATTAINT, English law. 1. Atinctus, attainted, stained, or blackened. 2. A writ which lies to inquire whether a jury of twelve men gave a false verdict. Bract. lib. 4, tr. 1, c. 134; Fleta, lib. 5, c. 22, 8.

2. It was a trial by jury of twenty-four men empanelled to try the goodness, of a former verdict. 3 Bl. Com. 351; 3 Gilb. Ev. by Lofft, 1146. See Assize.

ATTEMPT, criminal law. An attempt to commit a crime, is an endeavor to accomplish it, carried beyond mere preparation, but falling short of execution of the ultimate design, in any part of it.

2. Between preparations and attempts to commit a crime, the distinction is in many cases, very indeterminate. A man who buys poison for the purpose of committing a murder, and mixes it in the food intended for his victim, and places it on a table where he may take it, will or will not be guilty of an attempt to poison, from the simple circumstance of his taking back the poisoned food before or after the victim has had an opportunity to take it; for if immediately on putting it down, he should take it up, and, awakened to a just consideration of the enormity of the crime, destroy it, this would amount only to preparations and certainly if before he placed it on the table, or before he mixed the poison with the food, he had repented of his intention there would have been no attempt to commit a crime; the law gives this as a locus penitentiae. An attempt to commit a crime is a misdemeanor; and an attempt to commit a misdemeanor, is itself a misdemeanor. 1 Russ. on Cr. 44; 2 East, R. 8; 3 Pick. R. 26; 3 Benth. Ev. 69; 6 C. & P. 368.

ATTENDANT. One who owes a duty or service to another, or in some sort depends upon him. Termes de la Ley, h. t. As to attendant terms, see Powell on Morts. Index, tit. Attendant term; Park on Dower, c. 1 7.

ATTENTAT, In the language of the civil and canon laws, is anything whatsoever in the suit by the judge a quo, pending an appeal. 1 Addams, R. 22, n.; Ayl. Par. 100.

ATTERMINING. The granting a time or term for the payment of a debt. This word is not used. See Delay.

ATTESTATION, contracts and evidence. The act of witnessing an instrument of writing, at the request of the party making the same, and subscribing it as a witness. 3 P. Wms. 254 2 Ves. 454 1 Ves. & B. 362;3 Marsh. 146; 3 Bibb. 494; 17 Pick. 373.

2. It will be proper to consider, 1. how it is to be made 2. bow it is proved; 3. its effects upon the witness; 4. its effect upon the parties.

3. – 1. The attestation should be made in the case of wills, agreeably to the direction of the statute; Com. Dig. Estates, E 1 and in the case of deeds or other writings, at the request of the party executing the same. A person who sees an instrument executed, but is not desired by the parties to attest it, is not therefore an attesting witness,

although he afterwards subscribes it as such. 3 Camp. 232. See, as to the form of attestation, 2 South. R. 449.

4. – 2. The general rule is, that an attested instrument must be proved by the attesting witness. But to this rule there are various exceptions, namely: 1. If he reside out of the jurisdiction of the court; 22 Pick. R. 85; 2. or is dead; 3. or becomes insane; 3 Camp. 283; 4. or has an interest; 5 T. R. 371; 5. or has married the party who offers the instrument; 2 Esp. C. 698 6. or refuses to testify 4 M. & S. 353; 7. or where the witness swears he did not see the writing executed; 8. or becomes infamous; Str. 833; 9. or blind; 1 Ld. Raym. 734. From these numerous cases, and those to be found in the books, it would seem that, whenever from any cause the attesting witness cannot be had secondary evidence may be given. But the inability to procure the witness must be absolute, and, therefore, when be is unable to attend from sickness only, his evidence cannot be dispensed with. 4 Taunt. 46. See 4 Halst. R. 322; Andr. 236 2 Str. 1096; 10 Ves. 174; 4 M. & S. 353 7 Taunt. 251; 6 Serg. & Rawle, 310; 1 Rep. Const.; Co. So. Ca. 310; 5 Cranch, 13; Com. Dig. tit. Testmoigne, Evidence, Addenda; 5 Com. Dig. 441; 4 Yeates, 79.

5. – 3. When the witness attests an instrument which conveys away, or disposes of his property or rights, he is estopped from denying the effects of such instrument; but in such case he must have been aware of its contents, and this must be proved. 1 Esp. C. 58.

6. – 4. Proof of the attestation is evidence of the sealing and delivery. 6 Serg. & Rawle, 311; 2 East, R. 250; 1 Bos. & Pull. 360; 7 T. R. 266. See, in general, Starkie's Ev. part 2, 332; 1 Phil. Ev. 419 to 421; 12 Wheat. 91; 2 Dall. 96; 3 Rawle's Rep. 312 1 Ves. Jr. 12; 2 Eccl. Rep. 60, 214, 289, 367 1 Bro. Civ, Law, 279, 286; Gresl. Eq. Ev. 119 Bouv. Inst. n. 3126.

ATTESTATION CLAUSE, wills and contracts. That clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same. The usual attestation clause to a will, is in the following formula, to wit: "Signed, sealed, published and declared by the above named A B, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names as the witnesses thereto, in the presence of the said testator, and of each other." That of deeds is generally in these words " Sealed and delivered in the presence of us."

2. When there is an attestation clause to a will, unsubscribed by witnesses, the presumption, though slight, is that the will is in an unfinished state; and it must be removed by some extrinsic circumstances. 2 Eccl. Rep. 60. This 'presumption is infinitely slighter, where the writer's iutention to have it regularly attested, is to be

collected only from the single vord " witnesses." Id. 214. See 3 Phillim. R. 323; S. C. 1 Eng. Eccl. R. 407.

ATTESTING WITNESS. One who, upon being required by the parties to an instrument, signs his name to it to prove it, and for the purpose of identification.

2. The witness must be desired by the parties to attest it, for unless this be done, he will not be an attesting witness, although he may have seen the parties execute it. 3 Campb. 232. See Competent witness; Credible witness; Disinterested witness; Respectable witness; Subscribing witness; and Witness; Witness instrumentary; 5 Watts, 399; 3 Bin. 194.

ATTORNEY. One who acts for another byvirtue of an appointment by the latter. Attorneys are of various kinds.

2. Attorney in fact. A person to whom the authority of another, who is called the constituent, is by him lawfully delegated. This term is employed to designate persons who act under a special agency, or a special letter of attorney, so that they are appointed in factum, for the deed, or special act to be performed; but in a more extended sense it includes all other agents employed in any business, or to do any act or acts in pais for another. Bac. Ab. Attorney; Story, Ag. 25.

3. All persons who are capable of acting for themselves, and even those who are disqualified from acting in their own capacity, if they have sufficient understanding, as infants of a proper age and femes coverts, may act as attorneys of others. Co. Litt. 52, a; 1 Esp. Cas. 142; 2 Esp. Cas. 511 2 Stark. Cas. N. P. 204.

4. The form of his appointment is by letter of attorney. (q. v.)

5. The object of his appointment is the transaction of some business of the constituent by the attorney.

6. The attorney is bound to act with due diligence after having accepted the employment, and in the end, to 'render an account to his principal of the acts which be has performed for him. Vide Agency; Agent; Authority; and Principal.

7. Attorney at law. An officer in a court of justice, who is employed by a party in a cause to manage the same for him. Appearance by an attorney has been allowed in England, from the time of the earliest records of the courts of that country. They are mentioned in Glanville, Bracton, Fleta, and Britton; and a case turning upon the party's right to appear by attorney, is reported, B. 17 Edw. III., p. 8, case 23. In France such appearances were first allowed by letters patent of Philip le Bel, A. D. 1290. 1

Fournel, Hist. des Avocats, 42; 43, 92, 93 2 Loisel Coutumes, 14, 15. It results from the nature of their functions, and of their duties, as well to the court as to the client, that no one can, even by consent, be the attorney of both the litigating parties, in the same controversy. Farresly, 47.

8. In some courts, as in the supreme court of the United States, advocates are divided into counsellors at law, (q. v.) and attorneys. The business of attorneys is to carry on the practical and formal parts of the suit. 1 Kent, Com. 307. See as to their powers, 2 Supp. to Ves. Jr. 241, 254; 3 Chit. Bl. 23, 338; Bac. Ab. h. t.; 3 Penna. R. 74; 3 Wils. 374; 16 S. & R. 368; 14 S. & R. 307; 7 Cranch, 452; 1 Penna. R. 264. In general, the agreement of an attorney at law, within the scope of his employment, binds his client; 1 Salk. 86 as to amend the record, 1 Binn. 75; to refer a cause 1 Dall. Rep. 164; 6 Binn. 101; 7 Cranch, 436; 3 Taunt. 486; not to sue out a writ of error; 1 H. Bl. 21, 23 2 Saund. 71, a, b; 1 Term Rep. 388 to strike off a non pros; 1 Bin. 469-70 to waive a judgment by default; 1 Arcb. Pr. 26; and this is but just and reasonable. 2 Bin. 161. But the act must be within the scope of their authority. They cannot, for example, without special authority, purchase lands for the client at sheriff's sale. 2 S. & R. 21 11 Johns. 464.

9. The name of attorney is given to those officers who practice in courts of common law; solicitors, in courts. of equity and proctors, in courts of admiralty, and in the English ecclesiastical courts.

10. The principal duties of an attorney are, 1. To be true to the court and to his client; 2. To manage the business of his client with care, skill and integrity. 4 Burr. 2061 1 B. & A. 202; 2 Wils. 325; 1 Bing. R. 347; 3. To keep his client informed as to the state of his business; 4. To keep his secrets confided to him as such. See Client Confidential Communication.

11. For a violation of his duties, an action will in general lie; 2 Greenl. Ev. 145, 146; and, in some cases, he may be punished by an attachment. His rights are, to be justly compensated for his services. Vide 1 Keen's R. 668; Client; Counsellor at law.

12. Attorney-general of the United States, is an officer appointed by the president. He should be learned in the law, and be sworn or affirmed to a faithful execution of his office.

13. His duties are to prosecute and conduct all suits in the supreme court, in which the United States shall be concerned; and give his advice upon questions of law, when required by the president, or when requested by the heads of any of the departments, touching matters that may Concern their departments. Act of 24th Sept. 1789.

14. His salary is three thousand five hundred dollars per annum, and he is allowed one clerk, whose compensation shall not exceed one thousand dollars per annum. Act 20th Feb. 1819, 3 Story's Laws, 1720, and Act 20th April, 1818, s. 6, 3 Story's Laws, 1693. By the act of May 9, 1830, 4 Sharsw. cont. of Story, L. U. S. 2208, 10, his salary is increased five hundred dollars per annum.

ATTORNMENT, estates. Was the agreement of the tenant to the grant of the seignory, or of a rent, or the agreement of the donee in tail, or tenant for life, or years, to a grant of a reversion or of a remainder made to another. Co. Litt. 309; Touchs. 253. Attornments are rendered unnecessary, even in England, by virtue of sundry statutes, and they are abolished in the United States. 4 Kent, Com. 479; 1 Hill. Ab. 128, 9. Vide 3 Vin. Ab. 317; 1 Vern. 330, n.; Saund. 234, n. 4; Roll. Ab. h. t.; Nelson's Ab. h. t.; Com. Dig. h. t.

AU BESOIN. This is a French phrase, used in commercial law. When the drawer of a foreign bill of exchange wishes as a matter of precaution, and to-save expenses, he puts in the corner of the bill, " Au besoin chez Messieurs or, in other words, " In case of need, apply to Messrs. at _____ " _____." 1 Bouv. Inst. n. 1133 Pardess Droit Com. 208.

AUBAINE, French law. When a foreigner died in France, the crown by virtue of a right called droit d'aubaine, formerly claimed all the personal property such foreigner had in France at the time of his death. This barbarous law was swept away by the French revolution of 1789. Vide Albinatus Jus. 1 Malleville's Analyse de la Discussion du Code Civil, pp. 26, 28 1 Toullier, 236, n. 265.

AUCTION, commerce, contract. A public sale of property to the highest bidder. Among the Romans this kind of sale, was made by a crier under a spear (sub hasta) stuck in the ground.

2. Auctions are generally held by express authority, and the person who conducts them is licensed to do so under various regulations.

3. The manner of conducting an auction is imaterial; whether it be by public outcry or by any other manner. The essential part is the selection of a purchaser from a number of bidders. In a case where a woman continued silent during the whole time of the sale, but whenever anyone bid she gave him a glass of brandy, and when the sale broke up, the person who received the last glass of brandy was taken into a private room, and he was declared to be the purchaser; this was adjudged to be an auction. 1 Dow. 115.

4. The law requires fairness in auction sales, and when a puffer is employed to raise the property offered for sale on bona fide bidders, or a combination is entered into between two or more persons not to overbid each other, the contract may in general be avoided. Vide Puffer, and 6 John. R. 194; 8 John. R. 444; 3 John. Cas. 29; Cowp. 395; 6 T. R. 642; Harr. Dig. Sale, IV.; and the article Conditions Sale. Vide Harr. Dig. Sale, IV.; 13 Price, R. 76; M'Clel. R. 25; 6 East, R. 392; 5 B. & A. 257; S. C. 2 Stark. R. 295; 1 Esp. R. 340; 5 Esp. R. 103 4 Taunt. R. 209; 1 H. Bl. R. 81; 2 Chit. R. 253; Cowp. R. 395; 1 Bouv. Inst., n. 976.

AUCTIONEER, contracts, commerce. A person authorized by law to sell the goods of others at public sale.

2. He is the agent of both parties, the seller and the buyer. 2 Taunt. 38, 209 4 Greenl. R. 1; Chit. Contr. 208.

3. His rights are, 1. to charge a commission for his services; 2. be has an interest in the goods sold coupled with the possession; 3. he has a lien for his commissions; 4. he may sue the buyer for the purchase-money.

4. He is liable, 1. to the owner for a faithful discharge of his duties in the sale, and if he gives credit without authority, for the value of the goods; 2. he is responsible for the duties due to the government; 3. he is answerable to the purchaser when he does not disclose the name of the principal; 4. be may be sued when he sells the goods of a third person, after notice not to sell them. Peake's Rep. 120; 2 Kent, Com. 423, 4; 4 John. Ch. R. 659; 3 Burr. R. 1921;.2 Taunt. R. 38; 1, Jac. & Walk. R. 350; 3 V. & B. 57; 13 Ves. R. 472; 1 Y. & J. R. 389; 5 Barn, & Ald. 333; 1 H. Bl. 81; 7 East, R. 558; 4 B. & Adolpb. R. 443; 7 Taunt. 209; 3 Chit. Com. L. 210; Story on Ag. 27 2 Liv. Ag. 335 Cowp. 395; 6 T. R. 642; 6 John. 194; Bouv. Inst. Index, h. t.

AUCTOR. Among the Romans the seller was called auctor; and public, sales were made by fixing a spear in the forum, and a person who acted as crier stood by the spear the catalogue of the goods to be sold was made in tables called auctionariae.

AUDIENCE. A hearing. It is usual for the executive of a country to whom a minister has been sent, to give such minister an audience. And after a minister has been recalled, au audience of leave usually takes place.

AUDIENCE COURT, Eng. eccl. law. A court belonging to the archbishop of Canterbury, having the same authority with the court of arches. 4 Inst. 337.

AUDIENDO ET TERMINANDO, oyer and terminer, English crim. law. A writ, or rather a commission, directed to certain persons for the trial and punishment of such

persons as have been concerned in a riotous assembly, insurrection or other heinous misdemeanor.

AUDITA QUERELA. A writ applicable to the case of a defendant against whom a judgment has been recovered, (and who is therefore in danger of execution or perhaps actually in execution,) grounded on some matter of discharge which happened after the judgment, and not upon any matter which might have been pleaded as a defence to the action. 13 Mass. 453; 12 Mass. 270; 6 Verm. 243; Bac. Ab. h. t.; 2 Saund. 148, n. 1; 2 Sell. Pr. 252.

2. It is a remedial process, which bears solely on the wrongful acts of the opposite party, and not upon the erroneous judgments or acts of the court. 10 Mass. 103; 17 Mass. 159; 1 Aik. 363. It will therefore, where the cause of complaint is a proper subject for a writ of error. 1 Verm. 433, 491; Brayt. 27.

3. An audita querela is in the nature of an equitable suit, in which the equitable rights of the parties will be considered. 10 Mass. 101; 14 Mass. 448 2 John. Cas. 227.

4. An audita querela is a regular suit, in which the parties may plead, take issue, &c. 17 John. 484. But the writ must be allowed in open court, and is not, of itself, a supersedeas, which may or may not be granted, in the discretion of the court, according to circumstances. 2 John. 227.

5. In modern practice, it is usual to grant the same relief, on motion, which might be obtained by audita querela: 4 John. 191 11 S. & R. 274 and in Virginia, 5 Rand. 639, and South Carolina, 2 Hill, 298; the summary remedy, by motion, has superseded this ancient remedy. In Pennsylvania this writ. It seems, may still be maintained, though relief is more generally obtained on motion. 11 S. & R. 274. Vide, generally, Pet. C. C. R. 269; Brayt. 2 or, 28; Walker, 66 1 Chipm. 387; 3 Conn. 260; 10 Pick. 439 1 Aik. 107; 1 Overt. 425 2 John. Cas. 227 1 Root; 151; 2 Root, 178; 9 John. 221 Bouv. Inst. Index, h. t.

AUDITOR. An officer whose duty is to examine the accounts of officers who have received and dishursed public moneys by lawful authority. See Acts of Congress, April 3, 1817; 3 Story's Laws U. S. 1630; and the Act of February 24, 1819, 3 Story's L. U. S. 1722.

AUDITORS, practice. Persons lawfully appointed to examine and digest accounts referred to them, take down the evidence in writing, which may be lawfully offered in relation to such accounts, and prepare materials on which a decree or judgment may be made; and to report the whole, together with their opinion, to the, court in which such accounts originated. 6 Cranch, 8; 1 Aik. 145; 12 Mass. 412.

2. Their report is not, per se, binding and conclusive, but will become so, unless excepted to. 5 Rawle, R. 323. It may be set aside, either with or without exceptions to it being filed. In the first case, when errors are apparent on its face, it may be set aside or corrected. 2 Cranch, 124; 5 Cranch, 313. In the second case, it may be set aside for any fraud, corruption, gross misconduct, or error. 6 Cranch, 8; 4 Cranch, 308; 1 Aik. 145. The auditors ought to be sworn, but this will be presumed. 8 Verm. 396.

3. Auditors are also persons appointed to examine the accounts subsisting between the parties in an action of account render, after a judgment quod computet. Bac. Ab. Accompt, F.

4. The auditors are required to state a special account, 4 Yeates, 514, and the whole is to be brought down to the time when they make an end of their account. 2 Burr. 1086. And auditors are to make proper charges and credits without regard to time, or the verdict. 2 S. & R. 317. When the facts or matters of law are disputed before them, they are to report them to the court, when the former will be decided by a jury, and the latter by the court, and the result sent to the auditors for their guidance. 5 Binn. 433.

AUGMENTATION, old English law. The name of a court erected by Henry VIII., which was invested with the power of determining suits and controversies relating to monasteries and abbey lands.

AULA REGIS. The name of an English court, so called because it was held in the great hall of the king's palace. Vide Curia Regis.

AUNT, domestic relations. The sister of one's father or mother; she is a relation in the third degree. Vide 2 Com. Dig. 474 Dane's Ab. c. 126, a. 3. 4.

AUTER. Another. This word is frequently used in composition, us auter droit, auter vie, auter action, &c. .

AUTRE ACTION PENDANT. A plea that another action is pending for the same cause.

2. It is evident that a plaintiff cannot have two actions at the same time, for the same cause, against the same defendant; and when a second action is so commenced, and this plea is filed, the first action must be discontinued, and the costs paid, and this ought to be done before the plaintiff replies nul tiel record. Grah. Pr. 98. See Lis Pendens.

3. But the suit must be for the same cause, in order to take advantage of it under these circumstances, for if it be for a different cause, as, if the action be for a lien, as, a

proceeding in, rem to enforce a mechanic's lien, it cannot be pleaded in abatement in an action for the labor and materials. 3 Scamm. 201. See 16 Verm. 234; 1 Richards, 438; 3 Watts & S. 395 7 Mete. 570; 9 N. H. Rep. 545.

4. In general, the pending of another action must be pleaded in abatement; 3 Rawle, 320; 1 Mass. 495; 5 Mass. 174, 179; 2 N. H. Rep. 36 7 Verm. 124; 3 Dana, 157; 1 Ashm. 4, 2 Browne, 175 4 H. & M. 487; but in a penal action, at the suit of a common informer, the priority of a former suit for the same penalty in the name of a third person, may be pleaded in bar, because the party who first sued is entitled to the penalty. 1 Chit. PI. 443.

5. Having once arrested a defendant, the plaintiff cannot, in general, arrest him again for the same cause of action. Tidd. 184. But under special circumstance's, of which the court will judge, a defendant may be arrested a second time. 2 Miles, 99, 100, 141, 142. Vide Bac. Ab. Bail in civil cases, B 3; Grah. Pr. 98; Troub. & H. Pr. 44; 4 Yeates, 206, 1 John. Cas. 397; 7 Taunt. 151; 1 Marsh. 395; and Lis Pendens.

AUTER DROIT, or more properly, Autre Droit, another's right. A man may sue Or be sued in another's right; this is the case with executors and administrators.

AUTHENTIC. This term signifies an original of whichthere is no doubt.

AUTHENTIC ACT, civil law, contracts, evidence. The authentic act is that which has been executed before a notary or other public officer authorized to execute such functions, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register. Nov. 73, c. 2; Code, 7, 52; 6; Id. 4, 21; Dig. 22, 4.

2. In Louisiana, the authentic act, as it relates to contracts, is that which has been executed before a notary public or other officer authorized to execute such functions, in presence of two witnesses, free, male, and aged at least fourteen years, or of three witnesses, if the party be blind. If the party does not know how to sign, the notary must cause him to affix his mark to the instrument. Civil Code of Lo., art. 2231.

3. The authentic act is full proof of the agreement contained in it, against the contracting parties and their. heirs or assigns, unless it be declared and proved to be a forgery. Id. art. 2233. Vide Merl. Rep. h. t.

AUTHENTICATION, practice. An attestation made by a proper officer, by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed by law to do so.

2. The Constitution of the U. S., art. 4, s. 1, declares, "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." The object of the authentication is to supply all other proof of the record. The laws of the United States have provided a mode of authentication of public records and office papers; these acts are here transcribed.

3. By the Act of May 26, 1790, it is provided, "That the act of the legislatures of the several states shall be authenticated by havig the seal of their respective states affixed thereto: That the records and judicial proceedings of the courts of any state shall be proved or admitted, in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the state from whence the said records are, or shall be taken."

4. The above act having provided only for one species of record, it was necessary to pass the Act of March 27, 1804, to provide for other cases. By this act it is enacted, 1. " That, from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be proved or admitted in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the; governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the state from whence the same are or shall be taken."

5. – 2. That all the provisions of this act, and the act to which this is, a supplement, shall apply, as well to the public acts, records, office books, judicial proceedings, courts, and offices of the respective territories of the United States, and countries

subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several states."

6. The Act of May 8, 1792, s. 12, provides: That all the records and proceedings of the court of appeals, heretofore appointed, previous to the adoption of the present constitution, shall be deposited in the office of the clerk of the supreme court of the United States, who is hereby authorized and directed to give copies of all such records and proceedings, to any person requiring and paying for the same, in like manner as copies of the records and other proceedings of the said court are by law directed to be given; which copies shall have like faith and credit as all other proceedings of the said court."

7. By authentication is also understood whatever act is done either by the party or some other person with a view of causing an instrument to be known and identified as for example, the acknowledgment of a deed by the grantor; the attesting a deed by witnesses. 2 Benth. on Ev. 449.

AUTHENTICS, civ. law. This is the name given to a collection of the Novels of Justinian, made by an anonymous author. It is called authentic on account of its authority.

2. There is also another collection which bears the name of authentics. It is composed of extracts made from the Novels, by a lawyer named Irnier, and which he inserted in the code at such places as they refer; these extracts have the reputation of not being correct. Merlin, Repertoire, mot Authentique.

AUTHORITIES, practice. By this word is understood the citations which are made of laws, acts of the legislature, and decided cases, and opinions of elementary writers. In its more confined sense, this word means, cases decided upon solemn argument which are said to 'be authorities for similar judgments iii like cases. 1 Lilly's Reg. 219. These latter are sometimes called precedents. (q. v.) Merlin, Repertoire, mot Autorites.

2. It has been remarked, that when we find an opinion in a text writer upon any particular point, we must consider it not merely as the opinion of the author, but as the supposed result of the authorities to which he refers; 3 Bos. & Pull. 361; but this is not always the case, and frequently the opinion is advanced with the reasons which support it, and it must stand or fall as these are or are not well founded. A distinction has been made between writers who have, and those who have not holden a judicial station; the former are considered authority, and the latter are not so considered unless their works have been judicially approved as such. Ram. on Judgments, 93. But this distinction appears not to be well founded; some writers who have occupied a judicial

station do not possess the talents or the learning of others who have not been so elevated, and the works or writings of the latter are much more deserving the character of an authority than those of the former. See 3 T. R. 4, 241.

AUTHORITY, contracts. The delegation of power by one person to another.

2. We will consider, 1. The delegation 2. The nature of the authority. 3. The manner it is to be executed. 4. The effects of the authority.

3. – 1. The authority may be delegated by deed, or by parol. 1. It may be delegated by deed for any purpose whatever, for whenever an authority by parol would be sufficient, one by deed will be equally so. When the authority is to do something which must be performed through the medium of a deed, then the authority must also be by deed, and executed with all the forms necessary, to render that instrument perfect; usless, indeed, the principal be present, and verbally or impliedly authorizes the agent to fix his name to the deed; 4 T. R. 313; W. Jones, R. 268; as, if a man be authorized to convey a tract of land, the letter of attorney must be by deed. Bac. Ab. h. t.; 7 T. R. 209; 2 Bos. & Pull, 338; 5 Binn. 613;. 14 S. & A. 331; 6 S. & R. 90; 2 Pick. R. 345; 6 Mass. R. 11; 1 Wend. 424 9 Wend. R. 54, 68; 12 Wend. R. 525; Story, Ag. 49; 3 Kent, Com. 613, 3d edit.; 3 Chit. Com. Law, 195. But it does not require a written authority to sign an unscaled paper, or a contract in writing not under seal. Paley on Ag. by Lloyd, 161; Story, Ag. 50.

4. – 2. For many purposes, however, the authority may be by parol, either in writing not under seal, or verbally, or by the mere employment of the agent. Pal. on Agen. 2. The exigencies of commercial affairs render such an appointment indispensable; business would be greatly embarrassed, if a regular letter of attorney were required to sign or negotiate a promissory note or bill of exchange, or sell or buy goods, or write a letter, or procure a policy for another. This rule of the common law has been adopted and followed from the civil law. Story, Ag. 47; Dig. 3, 3, 1, 1 Poth. Pand. 3, 3, 3; Domat, liv. 1, tit. 15, 1, art. 5; see also 3 Chit. Com. Law, 5, 195 7 T. R. 350.

5. – 2. The authority given must have been possessed by the person who delegates it, or it will be void; and it must be of a thing lawful, or it will not justify the person to whom it is given. Dyer, 102; Kielw. 83. It is a maxim that delegata potestas non potest delegari, so that an agent who has a mere authority must execute it himself, and cannot delegate his authority to a sub-agent. See 5 Pet. 390; 3 Story, R. 411, 425; 11 Gill & John. 58; 26 Wend. 485; 15 Pick. 303, 307; 1 McMullan, 453; 4 Scamm. 127, 133; 2 Inst. 597. See Delegation.

6. Authorities are divided into general or special. A general authority is one which extends to all acts connected with a particular employment; a special authority is one confined to "an individual instance." 15 East, 408; Id. 38.

7. They are also divided into limited and unlimited. When the agent is bound by precise instructions, it is limited; and unlimited when be is left to pursue his own discretion. An authority is either express or implied.

8. An express authority may be by deed of by parol, that is in writing not under seal, or verbally.. The authority must have been actually given.

9. An implied authority is one which, although no proof exists of its having been actually given, may be inferred from the conduct of the principal; for example, when a man leaves his wife without support, the law presumes he authorizes her to buy necessaries for her maintenance; or if a master, usually send his servant to buy goods for him upon credit, and the servant buy some things without the master's orders, yet the latter will be liable upon the implied authority. Show. 95; Pal. on Ag. 137 to 146.

10. – 3. In considering in what manner the authority is to be executed, it will be necessary to examine, 1. By whom the authority must be executed. 2. In what manner. 3. In what time.

11. – 1. A delegated authority can be executed only by the person to whom it is given, for the confidence being personal, cannot be assigned to a stranger. 1 Roll. Ab. 330 2 Roll. Ab. 9 9 Co. 77 b .; 9 Ves. 236, 251 3 Mer. R. 237; 2 M. & S. 299, 301.

12. An authority given to two cannot be executed by one. Co. Litt. 112 b, 181 b. And an authority given to three jointly and separately, is not, in general, well executed by two. Co. Litt. 181 b; sed vide 1 Roll. Abr. 329, 1, 5; Com. Dig. Attorney, C 8 3 Pick. R. 232; 2 Pick. R. 345; 12 Mass. R. 185; 6 Pick. R. 198; 6 John. R. 39; Story, Ag. 42. These rules apply to on authority of a private nature, which must be executed by all to whom it is given; and notto a power of a public nature, which may be executed by all to whom majority. 9 Watts, R. 466; 5 Bin. 484, 5; 9 S, & R. 99. 2. When the authority is particular, it must in general be strictly pursued, or it will be void, unless the variance be merely circumstantial. Co. Litt. 49 b, 303, b; 6 T. R. 591; 2 H. Bl. 623 Co. Lit. 181 , b; 1 Tho. Co. Lit. 852.

13. – 2. As to the form to be observed in the execution of an authority, it is a general rule that an act done under a power of attorney must be done in the name Of the person who gives a power, and not in the attorney's name. 9 Co. 76, 77. It has been holden that the name of the attorney is not requisite. 1 W. & S. 328, 332; Moor, pl. 1106; Str. 705; 2 East, R. 142; Moor, 818; Paley on Ag. by Lloyd, 175; Story on Ag.

146 T 9 Ves. 236: 1 Y. & J. 387; 2 M. & S. 299; 4 Campb. R. 184; 2 Cox, R. 84; 9 Co. R. 75; 6 John. R. 94; 9 John. Pi,. 334; 10 Wend. R. 87; 4 Mass. R. 595; 2 Kent, Com. 631, 3d ed. But it matters not in what words this is done, if it sufficiently appear to be in the name of the principal, as, for A B, (the principal,) C D, (the attorney,) which has been held to be sufficient. See 15 Serg. & R. 55; 11 Mass. R. 97; 22 Pick. R. 168; 12 Mass. R. 237 9 Mass. 335; 16 Mass. R. 461; 1 Cowen, 513; 3 Wend. 94; Story, Ag. 154,275, 278, 395; Story on P. N., 69; 2 East, R. 142; 7 Watt's R. 121 6 John. R. 94. But see contra, Bac. Ab. Leases, J 10; 9 Co, 77; l Hare & Wall. Sel. Dec. 426.

14. – 3. The execution musr take place during the continuance, of the authority, which is determined either by revocation, or performance of the commission.

15. In general, an authority is revocable, unless it be given as a security, or it be coupled with an interest. 3 Watts & Serg. 14; 4 Campb. N. P. 272; 7 Ver. 28; 2 Kent's Com. 506; 8 Wheat. 203; 2 Cowen, 196; 2 Esp. N. P. Cases, 565; Bac. Abr. h. t. The revocation (q. v.) is either express or implied; when it is express and made known to the person authorized, the authority is at an end; the revocation is implied when the principal dies, or, if a female, marries; or the subject of the authority is destroyed, as if a man have authority to sell my house, and it is destroyed by fire or to buy for me a horse, and before the execution of the authority, the horse dies.

16. When once the agent has exercised all the authority given to him, the authority is at an end.

17. – 4. An authority is to be so construed as to include all necessary or usual means of executing it with effect 2 H. Bl. 618; 1 Roll. R. 390; Palm. 394 10 Ves. 441; 6 Serg. & R. 149; Com'. Dig. Attorney, C 15; 4 Campb. R. 163 Story on Ag. 58 to 142; 1 J. J. Marsh. R. 293 5 Johns. R. 58 1 Liv. on Ag. 103, 4 and when the agent acts, avowedly as such, within his authority, he is not personally responsible . Pal. on Ag. 4, 5. Vide, generally, 3 Vin. Ab. 416; Bac. Ab. h. f.; 1 Salk. 95 Com. Dig. h. t., and the titles there referred to. 1 Roll. Ab. 330 2 Roll. Ab. 9 Bouv. Inst. Index, h. t. and the articles, Attorney; Agency; Agent; Principal.

AUTHORITY, government. The right and power which an officer has in the exercise of a public function to compel obedience to his lawful commands. A judge, for example, has authority to enforce obedience to his not being correct. Merlin, Repertoire, mot Authentique.

AUTOCRACY. The name of a government where the monarch is unlimited by law. Such is the power of the emperor of Russia, who, following the example of his predecessors, calls himself the autocrat of all the Russias.

AUTRE VIE. Another's life. Vide, Pur autre vie.

AUTREFOIS. A French word, signifying formerly, at another time; and is usually applied to signify that something was done formerly, as autrefois acquit, autrefois convict, &c.

AUTREFOIS ACQUIT, crim. law, pleading. A plea made by a defendant, indicted for a crime or misdemeaner, that he has formerly been tried and acquitted of the same offence. See a form of this plea in Arch. Cr. PI. 90.

2. To be a bar, the acquittal must have been by trial, and by the verdict of a jury on a valid indictment. Hawk. B. 2, c. 25, s. 1; 4 Bl. Com. 335. There must be an acquittal of the offence charged in law and in fact. Stark. PI. 355; 2 Swift's Dig. 400 1 Chit. Cr. Law, 452; 2 Russ. on Cr. 41.

3. The Constitution of the U. S., Amend. Art. 5, provides that no person shall be subject for the same offence to be put twice in jeopardy of life or limb. Vide generally, 12 Serg. & Rawle, 389; YeIv. 205 a, note.

AUTREFOIS ATTAINT, crim. law. Formerly attainted.

2. This is a good plea in bar, where a second trial would be quite superfluous. Co. Litt. 390 b, note 2; 4 Bl. Com. 336. Where, therefore, any advantage either to public justice, or private individuals, would arise from a second prosecution, the plea will not prevent it; as where the criminal is indicted for treason after an attainder of felony, in which case the punishment will be more severe and more extensive. 3 Chit. Cr. Law, 464.

AUTREFOIS CONVICT, crim. law, pleading. A plea made by a defendant, indicted for a crime or misdemeanor, that he has formerly been tried and convicted of the same.

2. As a man once tried and acquitted of an offence is not again to be placed in jeopardy for the same cause, so, a fortiori, if he has suffered the penalty due to his offence, his conviction ought to be a bar to a second indictment for the same cause, least he should be punished twice for the same crime. 2 Hale, 251; 4 Co, 394; 2 Leon,. 83.

3. The form of this plea is like that of autrefois acquit; (q. v.) it must set out the former record, and show the identity of the offence and of the person by proper averments. Hawk. B. 2, c. 36; Stark. Cr. Pi. 363; Arcb. Cr, PI, 92; 1 Chit. Cr. Law, 462; 4 Bl. Com. 335; 11 Verm. R. 516.

AVAIL. Profits of land; hence tenant paravail is one in actual possession, who makes avail or profits of the land. Ham. N. P. 393.

AVALUM. By this word is understood the written engagement of a third person to guaranty and to become security that a bill of exchange shall be paid when due.

AVERAGE. A term used in commerce to signify a contribution made by the owners of the ship, freight and goods, on board, in proportion to their respective interests, towards any particular loss or expense sustained for the general safety of the ship and cargo; to the end that the particular loser may not be a greater sufferer than the owner of the ship and the other owners of goods on board. Marsh. Ins. B. 1, c. 12, s. 7; Code de Com. art. 397; 2 Hov. Supp. to Ves. jr. 407; Poth. Aver. art. Prel.

2. Average is called general or gross average, because it falls generally upon the whole or gross amount of the ship, freight and cargo; and also to distinguish it from what is often though improperly termed particular average, but which in truth means a particular or partial, and not a general loss; or has no affinity to average properly so called. Besides these there are other small charges, called petty or accustomed averages; such as pilotage, towage, light-money, beaconage, anchorage, bridge toll, quarantine, river charges, signals, instructions, castle money, pier money, digging the ship out of the ice, and the like.

3. A contribution upon general average can only be claimed in cases where, upon as much deliberate on and consultation between the captain and his officers as the occasion will admit of, it appears that the sacrifice at the time it was made, was absolutely and indispensably necessary for the preservation of the ship and cargo. To entitle the owner of the goods to an average contribution, the loss must evidently conduce to the preservation of the ship and the rest of the cargo; and it must appear that the ship and the rest of the cargo were in fact saved. Show. Ca. Parl. 20. See generally Code de Com. tit. 11 and 12; Park, Ins. c. 6; Marsh. Ins. B. 1, c. 12, s. 7 4 Mass. 548; 6 Mass. 125; 8 Mass. 467; 1 Caines' R. 196; 4 Dall. 459; 2 Binn. 547 4 Binn. 513; 2 Serg. & Rawle, 237, in note; 2 Serg. & Rawle, 229 3 Johns. Cas. 178; 1 Caines' R. 43; 2 Caines' R. 263; Id. 274; 8 Johns. R . 237, 2d edit 9 Johns. R. 9; 11 Johns. R 315 1 Caines' R. 573; 7 Johns R. 412; Wesk. Ins. tit. Average; 2 Barn. & Crest. 811 1 Rob. Adlm. Rep. 293; 2 New Rep. 378 18 Ves. 187; Lex. Mer. Armer. ch. 9; Bac Abr. Merchant, F; Vin. Abr. Contribution and' Average; Stev. on Av.; Ben. on Av.

AVERIA. Cattle. This word, in its most enlarged signification is used to include horses of the plough, oxen and cattle. Cunn. Dict. h. t.

AVERIIS CAPTIS IN WlTHERNAM, Eng. law. The name of a writ which lies in favor of a man whose cattle have been unlawfully taken by another, and driven out of the county where they were taken, so that they cannot be replevied.

2. This writ issues against the wrong doer to take his cattle to the plaintiff's use. Reg. of Writs, 82.

AVERMENT, pleading. Comes from the Latin verificare, or the French averrer, and signifies a positive statement of facts in opposition to argument or inference. Cowp. 683, 684.

2. Lord Coke says averments are two-fold, namely, general and particular. A general averment is that which is at the conclusion of an offer to make good or prove whole pleas containing new affirmative matter, but this sort of averment only applies to pleas, replications, or subsequent pleadings for counts and a vowries which are in the nature of counts, need not be averred, the form of such averment being et hoc paratus. est verificare.

3. Particular averments are assertions of the truth of particular facts, as the life of tenant or of tenant in tail is averred: and, in these, says Lord Coke, et hoc, &c., are not used. Co. Litt. 362 b. Again, in a particular averment the party merely protests and avows the truth of the fact or facts averred, but in general averments he makes an offer to prove and make good by evidence what he asserts.

4. Averments were formerly divided into immaterial and impertinent; but these terms are now treated as synonymous. 3 D. & R. 209. A better division may be made of immaterial or impertinent averments, which are those which need not be stated, and, if stated, need not be proved; and unnecessary averments, which consist of matters which need not be alleged, but if alleged, must be proved. For example, in an action of assumpsit, upon a warranty on the sale of goods, allegation of deceit on the part of the seller is impertinent, and need not be proved. 2 East, 446; 17 John. 92. But if in an action by a lessor against his tenant, for negligently keeping his fire, a demise for seven years be alleged, and the proof be a lease at will only, it will be a fatal variance; for though an allegation of tenancy generally would have been sufficient, yet having unnecessarily qualified it, by stating the precise term, it must be proved as laid. Carth. 202.

5. Averments must contain not only matter, but form. General averments are always in the same form. The most common form of making particular averments is in express and direct words, for example: And the party avers or in fact saith, or although, or because, or with this that, or being, &c. But they need not be in these words, for any words which necessarily imply the matter intended to be averred are sufficient. See, in

general, 3 Vin. Abr. 357 Bac. Abr. Pleas, B 4 Com. Dig. Pleader, C 50, C 67, 68, 69, 70; 1 Saund. 235 a, n. 8 3 Saund. 352, n. 3; 1 Chit. PI. 308; Arch. Civ. PI. 163; Doct. PI. 120; 1 Lilly's Reg. 209 United States Dig. Pleading II (c); 3 Bouv. Inst. n. 2835-40.

AVOIDANCE, eccl. law. It is when a benefice becomes vacant for want of an incumbent; and, in this sense, it is opposed to plenarty. Avoidances are in fact, as by the death of the incumbent or in law.

AVOIDANCE, pleading. The introductiou of new or special matter, which, admitting the premises of the opposite party, avoids or repels his conclusions. Gould on PI. c. 1 24, 42.

AVOIR DU POIS, comm. law. The name of a peculiar weight. This kind of weight is so named in distinction from the Troy weight. One pound avoir du pois contains 7000 grains Troy; that is, fourteen ounces, eleven pennyweights and sixteen grains Troy a pound avoir du pois contains sixteen ounces; and an ounce sixteen drachms. Thirty-two cubic feet of pure spring-water, at the temperature of fifty-six degrees of Fahrenheit's thermometer, make a ton of 2000 pounds avoir du pois, or two thousand two hundred and forty pounds net weight. Dane's Abr. c. 211, art. 12, 6. The avoir du pois ounce is less than the Troy ounce in the proportion of 72 to 79; though the pound is, greater. Eneye. Amer. art. Avoir du pois., For the derivation of this phrase, see Barr. on the Stat. 206. See the Report of Secretary of State of the United States to the Senate, February 22d, 1821, pp. 44, 72, 76, 79, 81, 87, for a learned exposition of the whole subject.

AVOUCIIER. The call which the tenant makes on another who is bound to him by warranty to come into court, either to defend the right against the demandant, or to yield him other land in value. 2 Tho. Co. Lit. 304.

AVOW or ADVOW, practice. Signifies to justify or maintain an act formerly done. For example, when replevin is brought for a thing distrained, and the distrainer justifies the taking, he is said to avow. Termes de la Ley. This word also signifies to bring forth anything. Formerly when a stolen thing was found in the possession of any one" he was bound advocare, i. e. to produce the seller from whom he alleged he had bought it, to justify the sale, and so on till they found the thief. Afterwards the word was taken to mean anything which a man admitted to be his own or done by him, and in this sense it is mentioned in Fleta, lib. 1, c. 5, par 4. Cunn., Dict. h. t.

AVOWANT, practice, pleading. One who makes an avowry.

AVOWEE, eccl. law. An advocate of a church benefice.

AVOWRY, pleading. An avowry is where the defendant in an action of replevin, avows the taking of the distress in his own right, or in right of his wife, and sets forth the cause of it, as for arrears of rent, damage done, or the like. Lawes on PI. 35 Hamm. N. P. 464; 4 Bouv. Inst. n. 3571.

2. An avowry is sometimes said to be in the nature of an action or of. a declaration, and privity of estate is necessary. Co. Lit. 320 a; 1 Serg. & R. 170-1. There is no general issue upon an avowry and it cannot be traversed cumulatively. 5 Serg. & R. 377. Alienation cannot be replied to it without notice; for the tenure is deemed to exist for the purposes of an avowry till notice be given of the alienation. Ham. Parties, 131-2; Ham. N. P. 398, 426.

AVOWTERER, Eng. law. An adulterer with whom a married woman continues in adultery. T. L.

AVOWTRY, Eng. law. The crime of adultery.

AVULSION. Where, by the immediate and manifest power of a river or stream, the soil is taken suddenly from one man's estate and carried to another. In such case the property belongs to the first owner. An acquiescence on his part, however, will in time entitle the owner of the land to which it is attached to claim it as his own. Bract. 221; Harg. Tracts, De jure maris, &c. Toull. Dr. Civ. Fr. tom. 3, p. 106; 2. Bl. Com. 262; Schultes on Aq. Rights, 115 to 138. Avulsion differs from alluvion (q. v.) in this, that in the latter case the change of the soil is gradual and imperceptible.

AVUS. Grandfather. This term is used in making genealogical tables.

AWAIT, crim. law. Seems to signify what is now understood by lying in wait, or way-laying.

AWARD. The judgment of an arbitrator or arbitrators on a matter submitted to him or them : arbitrium est judicium. The writing which contains such judgment is also called an award.

2. The qualifications requisite to the validity of an award are, that it be consonant to the submission; that it be certain; be of things possible to be performed, and not contrary to law or reason; and lastly, that it be final.

3. – 1. It is manifest that the award must be confined within the powers given to the arbitrators, because, if their decisions extend beyond that authority, this is all assumption of, power not delegated, which cannot legally affect the parties. Kyd on Aw. 140 1 Binn. 109; 13 Johns. 187 Id. 271; 6 Johns. 13, 39 11 Johns. 133; 2 Mass.

164; 8 Mass. 399; 10 Mass. 442 Caldw. on Arb. 98; 2 Harring. 347; 3 Harring. 22; 5 Sm. & Marsh. 172; 8 N. H. Rep. 82; 6 Shepl. 251; 12 Gill & John. 456; 22 Pick. 144. If the arbitrators, therefore, transcend their authority, their award pro tanto will be void but if the void part affect not the merits. of the submission, the residue will be valid. 1 Wend. 326; 13 John. 264; 1 Cowen, 117 2 Cowen, 638; 1 Greenl. 300; 6 Greenl. 247; 8 Mass. 399; 13 Mass. 244; 14 Mass.43; 6 Harr. & John. 10; Doddr. Eng, Lawyer, 168-176; Hardin, 326; 1 Yeates, R. 513.

4. – 2. The award ought to be certain, and so expressed that no reasonable doubt can arise on the face of it, as to the arbitrator's meaning, or as to the nature and extent of the duties imposed by it on the parties. An example of such uncertainty may be found in the following cases: An award, directing one party to bind himself in an obligation for the quiet enjoyment of lands, without expressing in what sum the obligor should be bound. 5 Co. 77 Roll. Arbit. Q 4. Again , an award that one should give security to the other, for the payment of a sum of money, or the performance of any particular, act, when the kind of security is not specified. Vin. Ab. Arbitr. Q 12; Com. Dig. Arbitrament, E 11 Kyd on Aw. 194 3 S. & R. 340 9 John. 43; 2 Halst. 90; 2 Caines, 235 3 Harr. & John. 383; 3 Ham. 266 1 Pike, 206; 7 Metc. 316 5 Sm. & Marsh. 712 13 Verm. 53; 5 Blackf. 128; 2 Hill, 75 3 Harr 442.

5. – 3. It must be possible to be performed, be lawful and reasonable. An award that could not by any possibility be performed, as if it directed that the party should deliver a deed not in his possession, or pay a sum of money at a day past, it would of course be void. But the, award that the party should pay a sum of money, although he might not then be able to do so, would be binding. The award must not direct anything to be done contrary to law, such as the performance of an act which would render the party a trespasser or a felon, or would subject him to an action. It must also be reasonable, for if it be of things nugatory in themselves, and offering no advantage to either of the parties, it cannot be enforced. Kirby, 253.

6. – 4. The award must be final that is, it must conclusively adjudicate all the matters submitted. 1 Dall. 173 2 Yeates, 4 Rawle, 304; 1 Caines, 304 Harr. & Gill, 67 Charlt. 289; 3 Pike) 324; 3 Harr. 442; 1 P. S. R. 395; 4 Blackf. 253; 11 Wheat. 446. But if the award is as final as, under the circumstances of the case it might be expected, it will be considered as valid. Com. Dig. Arbitrament, E 15. As to the form, the award may be by parol or by deed, but in general it must be made in accordance with the provisions and requirements of the submission. (q. v.) Vide, generally, Kyd on Awards, Index, h. t.; Caldwell on Arbitrations, Index, h. t.; Dane's Ab. c. 13; Com. Dig. Arbitrament, E; Id Chancery, 2 K 1, &c.; 3 Vin. Ab. 52, 372 1 158 15 East, R. 215; 1 Ves. Jr. 364 1 Saund. 326, notes 1, 2, and 3; Wats. on Arbitrations and Awards; 3 Bouv. Inst., n. 2402 to 2500.

AWM, or AUME. An ancient measure, used in measuring Rhenish wines it contained forty gallons. AYANT CAUSE. French law. This term, which is used in Louisiana, signifies one to whom a right has been assigned, either by will, gift, sale, exchange, or the like. An assignee. An ayant cause differs from an heir who acquires the right by inheritance. 8 Toull. n. 245.

AYUNTAMIENTO, Spanish law. A congress of persons the municipal council of a city or town. 1 White's Coll. 416; 12 Pet. 442, notes.

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B

BACHELOR. The first degree taken at the universities in the arts and sciences, as bachelor of arts, & c. It is called, in Latin, Baccalaureus, from bacalus, or bacillus, a staff, because a staff was given, by way of distinction, into the hands of those who had completed their studies. Some, however, have derived the word from baccalaura, others from bas chevalier, as designating young squires who aspire to the knighthood. (Dupin.) But the derivation. of the word is uncertain.

BACK-BOND. A bond given by one to a surety, to* indemnify such surety in case of loss. In Scotland, a back-bond is an instrument which, in conjunction with another which gives an absolute disposition, constitutes a trust. A declaration of trust.

BACK-WATER. That water in a stream which, in consequence of some obstruction below, is detained or checked in its course, or reflows.

2. Every riparian owner is entitled to the benefit of the water in its natural state. Whenever, therefore, the owner of land dams or impedes the water in such a manner as to back it on his neighbor above, he is liable to an action; for no one has a right to alter the level of the water, either where it enters, or where it leaves his property. 9 Co. 59; 1 B. & Ald. 258; 1 Wils. R. 178; 6 East, R. 203; 1 S. & Stu. 190.; 4 Day, R. 244; 7 Cowen, R. 266; 1 Rawle, R. 218; 5 N. R. Rep. 232; 9 Mass. R. 316; 7 Pick. R. 198; 4 Mason, R. 400; 1 Rawle, R. 27; 2 John. Ch. R. 162, 463; 1 Coxe's. R. 460. Vide, Dam; Inundation; Water-course; and 5 Ohio R. 322.

BACKING, crim. law practice. Backing a warrant occurs whenever it becomes necessary to execute it out of the jurisdiction of the magistrate who granted it; as when an offender escapes out of the county in which he committed the offence with which he is charged, into another county. In such a case, a magistrate of the county in which the offender may, be found, endorses, or writes his name on the back of the warrant, and thereby gives authority to execute it within his jurisdiction. This is called backing the warrant. This may be from county to county, if necessary.

BACKSIDE, estates. In England this term was formerly used in conveyances and even in pleadings, and is still, adhered to with reference to ancient descriptions in deeds, in continuing the transfer of the same. property. It imports a yard at the back part of, or behind a house, and belonging thereto: but although formerly used in

pleadings, it is now unusual to adopt it, and the word yard is preferred. 1 Chitty's Pr. 177; 2 Ld. Raym. 1399.

BADGE. A mark or sign worn by some persons, or placed upon certain things for the purpose of designation. Some public officers, as watchmen, policemen, and the like, are required to wear badges that they may be readily known. It is used figuratively when we say, possession of personal property by the seller, is. a badge of fraud.

BAGGAGE. Such articles as are carried by a traveller; luggage. Every thing which a passenger, carries, with him is not baggage. Large sums of money, for example, carried in a travelling trunk, will not be considered baggage, so as to render the carrier responsible. 9 Wend. R. 85. But a watch deposited in his trunk is part of his baggage. 10 Ohio R. 145. See, as to what is baggage, 6 Hill, R. 586 5 Rawle, 188, 189; 1 Pick. 50.

2. In general a common carrier of passengers is responsible for baggage, if lost, though no distinct price be paid for transporting it, it being included in the passenger's fare. Id. The carrier's responsibility for the baggage begins as soon as it has been delivered to him, or to his servants, or to some other person authorized by him to receive it. Then the delivery is complete. The risk and responsibility of the carrier is at an end as soon as he has delivered the baggage to the owner or his agent; and if an offer to deliver it be made at a proper time, the carrier will be discharged from responsibility, us 'such yet, if the baggage remain in his custody afterwards, he will hold as, bailee, and be responsible for it according to the terms of such bailment ana, R. 92. Vide Common Carriers

3. By the act of congress of March 2, 1799, sect. 46, 1 Story's L. U. S. 612, it is declared that all wearing apparel and other personal baggage, &c., of persons who shall arrive in the United States, shall be free and exempted from duty.

BAIL, practice, contracts. By bail is understood sureties, given according to law, to insure the appearance of a party in court. The persons who become surety are called bail. Sometimes the term is applied, with a want of exactness, to the security given by a defendant, in order to obtain a stay of execution, after judgment, in civil cases., Bail is either civil or criminal.

2.- 1. Civil bail is that which is entered in civil cases, and is common or special bail below or bail above.

3. Common bail is a formal entry of fictitious sureties in the proper office of the court, which is called filing. common bail to the action. It is in the same form as special bail, but differs from it in this, that the sureties are merely fictitious, as John Doe and

Richard Roe: it has, consequently, none of, the incidents of special bail. It is allowed to the defendant only when he has been discharged from arrest without bail, and it is necessary in such cases to perfect the appearance of the defendant. Steph. Pl. 56, 7; Grah. Pr. 155; Highm. on Bail 13.

4. Special bail is an undertaking by one or more persons for another, before some officer or court properly authorized for that purpose, that he shall appear at a certain time and place, to answer a certain charge to be exhibited against him. The essential qualification to enable a person to become bail, are that he must be, 1. a freeholder or housekeeper; 2. liable to the ordinary process of the court 3. capable of entering into a contract; and 4. able to pay the amount for which he becomes responsible.

1. He must be a freeholder or housekeeper. (q. v.) 2 Chit. R. 96; 5 Taunt. 174; Lofft, 148 3 Petersd. Ab. 104.

2. He must be subject to the ordinary process of the court; and a person privileged from arrest, either permanently or temporarily, will not be taken. 4 Taunt. 249; 1 D. & R. 127; 2 Marsh. 232.

3. He must be competent to enter into a contract; a feme covert, an infant, or a person non compos mentis, cannot therefore become bail.

4. He must be able to pay the amount for which he becomes responsible. But it is immaterial whether his property consists of real or personal estate, provided it be his own, in his own right; 3 Peterd. Ab. 196; 2 Chit. Rep. 97; 11 Price, 158; and be liable to the ordinary process of the law; 4 Burr. 2526; though this rule is not invariably adhered to, for when part of the property consisted of a ship, shortly expected, bail was permitted to justify in respect of such property. 1 Chit. R. 286, n. As to the persons who cannot be received because they are not responsible, see 1 Chit. R. 9, 116; 2 Chit. R. 77, 8; Lofft, 72, 184; 3 Petersd. Ab. 112; 1 Chit. R. 309, n.

5. Bail below. This is bail given to the sheriff in civil cases, when the defendant is arrested on bailable process; which is done by giving him a bail bond; it is so called to distinguish it from bail above. (q. v.) The sheriff is bound to admit a man to bail, provided good and sufficient sureties be tendered, but not otherwise. Stat. 23 H. VI. C. 9, A. D. 1444; 4 Anne, c. 16, §20; B. N. P. 224; 2 Term Rep., 560. The sheriff, is not, however, bound-to demand bail, and may, at his risk, permit the defendant to be at liberty, provided he will appear, that is, enter bail above, or surrender himself in proper time. 1 Sell. Pr. 126, et seq. The undertaking of bail below is, that the defendant will appear or put in bail to the action on the return day of the writ.

6. Bail above, is putting in bail to the action, which is an appearance of the defendant. Bail above are bound either to satisfy the plaintiff his debt and costs, or to surrender the defendant into custody, provided judgment should be against him and he should fail to do so. Sell. Pr. 137.

7. It is a general rule that the defendant having been held to bail, in civil cases, cannot be held a second time for the same cause of action. Tidd' s Pr. 184 Grah. Pr. 98; Troub. & Hal. 44; 1 Yeates, 206 8 Ves. Jur. 594. See Auter action Pendent; Lis pendens.

8. - 2. Bail in criminal cases is defined to be a delivery or bailment of a person to sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to be in their friendly custody, instead of going to prison.

9. The Constitution of the United States directs that "excessive bail shall not be required." Amend. art. 8.

10. By the acts of congress of September, 24, 1789, s. 33, and March 2, 1793, s. 4, authority is given to take bail for any crime or offence against the United States, except where the punishment is death, to any justice or judge of the United States, or to any chancellor, judge of the supreme or superior court, or first judge of any court of common pleas, or mayor of any city of any state, or to any justice of the peace or other magistrate of any state, where the offender may be found the recognizance tal,- en by any of the persons authorized, is to be returned to the court having cognizance of the offence.

11. When the punishment by the laws of the United States is death, bail can be taken only by the supreme or circuit court, or by a judge of the district court of the United States. If the person committed by a justice of the supreme court, or by the judge of a district court, for an offence not punishable with death, shall, after commitment, offer bail, any judge of the supreme or superior court of law, of any state, (there being no judge of the United States in the district to take such bail,) way admit such person to bail.

12. Justices of the peace have in general power to take bail of persons accused; and, when they have such authority they are required to take such bail There are many cases, however, under the laws of the several states, as well as under the laws of the United States,, as above mentioned, where justices of the peace cannot take bail, but must commit; and, if the accused offers bail, it must be taken by a judge or other,, officer lawfully authorized.

13. In Pennsylvania, for example, in cases of murder, or when the defendant is charged with the stealing of any horse, mare, or gelding, on the direct testimony of one witness; or shall be taken having possession of such horse, mare, or gelding, a justice of the peace cannot admit the party to bail. 1 Smith's L. of Pa. 581.

14. In all cases where the party is admitted to bail, the recognizance is to be returned to the court having jurisdict on of the offence charged. Vide Act of God. Arrest; Auter action pendent; Deat Lis pendens.

BAIL BOND, practice, contracts. A specialty by which the defendant and other persons, usually not less than two, though the sheriff may take only one, become bound to the sheriff in a penalty equal to that for which bail is demanded, conditioned for the due appearance of such defendant to the legal process therein described, and by which the sheriff has been commanded to arrest him. It is only where the defendant is arrested or in the custody of the sheriff, under other than final process, that the sheriff can take such bond. On this bond being tendered to him, which he is compelled to take if the sureties are good, he must discharge the defendant. Stat. 23 H. VI. c. 9.

2. With some exceptions, as for example, where the defendant surrenders; 5 T. R. 754; 7 T. R. 123; 1 East, 387; 1 Bos. & Pull. 326; nothing can be a performance of the condition of the bail bond, but putting in bail to the action. 5 Burr. 2683.

3. The plaintiff has a right to demand from the sheriff an assignment of such bond, so that he may sue it for his own benefit. 4 Ann. c. 16, §20; Wats. on Sheriff, 99; 1 Sell. Pr. 126, 174. For the general requisites of a bail bond, see 1 T. R. 422; 2 T. R. 569 15 East. 320; 2 Wils. 69; 6 T. R. 702; 9 East, 55; . D. & R. 215; 4 M. & S. 338; 1 Moore, R. 514; 6 Moore, R. 264 East, 568; Hurls. on Bonds, 56; U. S. Dig. Bail V.

BAIL PIECE. A certificate given by a judge or the clerk of the court, or other person authorized to keep the record, in which it is certified that A B, the bail, became bail, for C D, the defendant, in a certain sum, and in a particular case. It was the practice formerly, to write these certificates upon small pieces of parchment, in the following form: (See 3 Bl. Com. Appendix.)

In the Court of _____, of the Term of _____, in the year of our Lord, _____, _____City and County of _____, ss.
Theunis Thew is delivered to bail upon the taking of his body, to Jacobus Vanzant, of the city of_____, merchant, and to John Doe, of the same city, yeoman. SMITH, JR. At the suit of Attorney for Deft. PHILIP CARSWELL. Taken and acknowledged the ____ day of _____, A. D. _____, before me. D. H.

2. As the bail is supposed to have the custody of the defendant, when he is armed with this process, he may arrest the latter, though he is out of the jurisdiction of the court in which he became bail, and even in a different state. 1 Baldw. 578; 3 Com. 84, 421; 2 Yeates, 263 8 pick. 138; 7 John. 145; 3 Day, 485. The bail may take him even while attending court as a suitor, or any time, even on Sunday. 4 Yeates, 123; 4 Conn. 170. He may break even an outer door to seize him; and command the assistance of the sheriff or other officers; 8 Pick. 138; and depute his power to others.. 1 John. Cas. 413; 8 Pick. 140. See 1 Serg. & R. 311.

BAILABLE ACTION. One in which the defendant is entitled to be discharged from arrest, only upon giving bail to answer.

BAILABLE PROCESS. Is that process by which an officer is required to arrest a person, and afterwards to take bail for his appearance. A capias ad respondendum is bailable, but a capias ad satisfaciendum is not.

BAILEE, contracts. One to whom goods are bailed.

2. His duties are to act in good faith he is bound to use extraordinary diligence in those contracts or bailments, where he alone receives the benefit, as in loans; he must observe ordinary diligence of those bailments, which are beneficial to both parties, as hiring; and he will be responsible for gross negligence in those bailments which are only for the benefit of the bailor, is deposit and mandate. Story's Bailm. §17, 18, 19. He is bound to return the property as soon as the purpose for which it was bailed shall have been accomplished.

3. He has generally a right to retain and use the thing bailed, according to the contract, until the object of the bailment shall have been accomplished.

4. A bailee with a mere naked authority, having a right to remuneration for his trouble, but coupled with no other interest, may support trespass for any injury, amounting to a trespass, done while he was in the actual possession of the thing. 4 Bouv. Inst. n. 3608.

BAILIFF, account render. A bailiff is a person who has, by delivery, the custody and administration of lands or goods for the benefit of the owner or bailor, and is liable to render an account thereof. Co. Lit. 271; 2 Leon. 245; 1 Mall . Ent. 65. The word is derived from the old French word bailler, to bail, that is, to deliver. Originally, the word implied the delivery of real estate, as of land, woods, a house, a part of the fish in a pond; Owen, 20; 2 Leon. 194; Keilw. 114 a, b; 37 Ed. III. 7; 10 H. VII. 7, 30; but was afterwards extended to goods and chattels. Every bailiff is a ,receiver, but every receiver is not a bailiff. Hence it is a good plea that the defendant never was receiver,

but as bailiff. 18 Ed. III. 16. See Cro. Eliz. 82-3; 2 Anders. 62-3, 96-7 F. N. B. 134 F; 8 Co. 48 a, b.

2. From a bailiff is required administration, care, management, skill. He is, therefore, entitled to allowance for the expense of administration, and for all things done in his office, according to his own judgment, without the special direction of his principal, and also for casual things done in the common course of business: 1 Mall. Ent. 65, (4) 11; 1 Rolle, Ab. 125, 1, 7; Co. Lit. 89 a; Com. Dig. E 12 Bro. Ab. Acc. 18 Lucas, Rep. 23 but not for things foreign to his office. Bro. Ab. Acc .26, 88; Plowd. 282b, 14; Com. Dig. Acc. E13; Co. Lit. 172; 1 Mall. Ent. 65, (4) 4. Whereas, a mere receiver, or a receiver who is not also a bailiff, is not entitled to allowance for any expenses. Bro. Ab. Acc. 18; 1 Mall. Ent. 66, (4) 10; 1 Roll. Ab. 118; Com. Dig. E 13; 1 Dall. 340.

3. A bailiff may appear and plead for his principal in an assize; " and his plea commences " thus, " J. S., bailiff of T. N., comes " &c., not " T. N., by his bailiff, J. S., comes," &c. 2 Inst. 415; Keilw. 117 b. As to what matters he may plead, see 2 Inst. 414.

BAILIFF, office. Magistrates who for merly administered justice in the parliaments or courts of France, answering to the English sheriffs as mentioned by Bracton. There are still bailiffs of particular towns in England as the bailiff of Dover Castle, &c., otherwise bailiffs are now only officers or stewards, &c. as Bailiffs of liberties, appointed by every lord within his liberty, to serve writs, &c. Bailiff errent or itenerant, appointed to go about the country for the same purpose. Sheriff 's bailies, sheriff's officers to execute writs; these are also called bound bailiffs because they are usually bound in a bond to the sheriff for the due exeecution of their office. Bailiffs of court baron, to summon the court, &c. Bailffs of hushandry, appointed by private persons to collect their rents and manage their estates. Water bailiffs, officers in port towns for searching ships, gathering tolls, &c. Bac. Ab. h. t.

BAILMENT, contracts. This word is derived from the French, bailler, to deliver. 2 Bl. Com. 451; Jones' Bailm. 90 Story on Bailm. c. 1, §2. It is a compendious expression, to signify a contract resulting from delivery. It has been defined to be a delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purposes for which they are bailed shall be answered. 1 Jones' Bailm. 1. Or it is a delivery of goods in trust, on a contract either expressed or implied, that the trust shall be duly executed, and the goods redelivered, as soon as the time or use for which they were bailed shall have elapsed or be performed. Jones' Bailm. 117.

2. Each of these definitions, says Judge Story, seems redundant and inaccurate if it be the proper office of a definition to include those things only which belong to the genus

or class. Both these definitions suppose that the goods are to be restored or redelivered; but in a bailment for sale, as upon a consignment to a factor, no redelivery is contemplated between the parties. In some cases, no use is contemplated by the bailee, in others, it is of the essence of the contract: in some cases time is material to terminAte the contract; in others, time is necessary to give a new accessorial right. Story, on Bailm. c. 1, §2.

3. Mr. Justice Blackstone has defined a bailment to be a delivery of goods in trust, upon contract, either expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 Bl. Com. 451. And in another place, as the delivery of goods to another person for a particular use. 2 Bl. Com. 395. Vide Kent's Comm. Lect. 40, 437.

4. Mr. Justice Story says, that a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Story on Bailm. c. 1, §2. This corresponds very nearly with the definition of Merlin. Vide Repertoire, mot Bail.

5. Bailments are divisible into three kinds: 1. Those in which the trust is for the benefit of the bailor, as deposits and mandates. 2. Those in which the trust is for the benefit of the bailee, as gratuitous loans for use. 3. Those in which the trust is for the benefit of both parties, as pledges or pawns, and hiring and letting to hire. See Deposit; Hire; Loans; mandates and Pledges.

6. Sir William Jones has divided bailments into five sorts, namely: 1. Depositum, or deposit. 2. Mandatum, or commission without recompense. 3. Commodatum, or loan for use, without pay. 4. Pignori acceptum, or pawn. 5. Locatum, or hiring, which is always with reward. This last is subdivided into, 1. Locatio rei, or biring, by which the hirer gains a temporary use of the thing. 2. Locatio operis faciendi, when something is to be done to the thing delivered. 3. Locatio operis mercium vehendarum, when the thing is merely to be carried from one place to another. See these several words. As to the obligations and duties of bailees in general, see Diligence, and Story on Bailm. c. 1; Chit. on Cont. 141; 3 John. R. 170; 17 Mass. R. 479; 5 Day, 15; 1 Conn. Rep. 487; 10 Johns. R. 1, 471; 12 Johns. R. 144, 232; 11 Johns. R. 107; 15 Johns. R. 39; 2 John. C. R. 100; 2 Caines' Cas. 189; 19 Johns. R. 44; 14 John. R. 175; 2 Halst. 108; 2 South. 738; 2 Harr. & M'Hen. 453; 1 Rand. 3; 2 Hawks, 145; 1 Murphy, 417; 1 Hayw. 14; 1 Rep. Con. Ct. 121, 186; 2 Rep. Con. Ct. 239; 1 Bay, 101; 2 Nott & M'Cord, 88, 489; 1 Browne, 43, 176; 2 Binn. 72; 4 Binn. 127; 5 Binn. 457; 6 Binn. 129; 6 Serg. & Rawle, 439; 8 Serg. & Rawle, 500, 533; 14 Serg. & R. 275; Bac. Ab. h. t.; 1 Bouv. Inst. n. 978-1099.

BAILOR, contracts. He who bails a thing to another.

2. The bailor must act with good faith towards the bailee; Story's Bailm. §74, 76, 77; permit him to enjoy the thing bailed according to contract; and, in some bailments, as hiring, warrant the title and possession of the thing hired, and probably, to keep it in suitable order and repair for the purpose of the bailment. Id. §Vide Inst. lib. 3, tit. 25.

BAILIWICK. The district over which a sheriff has jurisdiction; it signifies also the same as county, the sheriff's bailiwick extending over the county.

2. In England, it signifies generally that liberty which is exempted from the sheriff of the county over which the lord of the liberty appoints a bailiff. Vide Wood's Inst. 206.

BAIR-MAN, Scottish law. A poor insolvent debtor left bare.

BAIRN'S PART, Scottish, law. Children's part a third part of the defunct's free movables, debts deducted, if the wife survive, and a half if there be no relict.

BALANCE, com. law. The amount which remains due by one of two persons, who have been dealing together, to the other, after the settlement of their accounts.

2. In the case of mutual debts, the balance only can be recovered by the assignee of an insolvent, or the executor of a deceased person. But this mutuality must have existed at the time of the assignment by the insolvent, or at the death of the testator.

3. The term general balance is sometimes used to signify the difference which is due to a party claiming a lien on goods in his hands, for work or labor done, or money expended in relation to those and other goods of the debtor. 3 B. & P. 485; 3 Esp. R. 268.

BALANCE SHEET. A statement made by merchants and others to show the true state of a particular business. A balance sheet should exhibit all the balances of debits and credits, also the value of merchandize, and the result of the whole. Vide Bilan.

BALANCE OF TRADE, Com. law. The difference between the exports and importations, between two countries. The balance of trade is against that country which has imported more than it has exported, for which it is debtor to the other country.

BALIVA. A bailiwick or jurisdiction.

BALIVO AMOVENDO, Eng. practice. A writ to remove a bailiff out of his office.

BALLASTAGE, mar. law. A toll paid for the privilege, of taking up ballast from the bottom of the port. This arises from the property in the soil. 2 Chit. Com. Law, 16.

BALLOT, government. A diminutive ball, i. e. a little ball used in giving votes; the act itself of giving votes. A little ball or ticket used in voting privately, and, for that purpose, put, into a box, (commonly called a ballot-box,) or into some other contrivance.

BALNEARII, civil law. Stealers of the clothes of person who were washing in the public baths. Dig. 47, 17; 4 Bl. Com. 239; Calviui Lex. Jurid.

BAN, A proclamation, or public notice any summons or edict by which a thing is forbidden or commanded. Vide Bans of Matrimony; Proclamation; Cowell's Interp.

BANC or BANK. The first of these is a French word signifying bench, pronounced improperly bank. 1. The seat of judgment, as banc le roy, the king's bench banc le common pleas, the bench of common pleas.

2. The meeting of all the judges or such as may form a quorum, as, the court sit in banc. Cowell's Interp.

BANCO. A commercial term, adopted from the Italian, used to distinguish bank money from the common currency; as $1000,

BANDIT. A man outlawed; one who is said to be under ban.

BANE. This word was formerly used to signify a malefactor. Bract. 1. 2, t. 8, c. 1.

BANISHMENT, crim. law. A punishment inflicted upon criminals, by compelling them to quit a city, place, or country, for, a specified period of time, or for life. Vide 4 Dall. 14. Deportation; Relegation.

BANK, com. law. 1. A place for the deposit of money. 2. An institution, generally incorporated, authorized to receive deposits of money, to lend money, and to issue promissory notes, usually known by the name of bank notes. 3. Banks are said to be of three kinds, viz : of deposit, of discount, and of circulation; they generally perform all these operatious. Vide Metc. & Perk. Dig. Banks and Banking.

BANKBOOK ,commerce. A book which persons dealing with a bank keep, in which the officers of the bank enter the amount of money deposited by them, and all notes or bills deposited by them, or discounted for their use.

BANK NOTE, contracts. A bank note resembles a common promissory note, (q. v.) issued by a bank or corporation authorized to act as a bank. It is in fact a promissory note, but such notes are not, for many purposes, to be considered as mere securities for money; but are treated as money, in the ordinary course and transactions of business, by the general consent of mankind and, on payment of them, when a receipt is required, the receipts are always given as for money, not as for securities or notes. 1 Burr. R. 457; 12 John. R. 200; 1 John. Ch. R. 231; 9 John. R. 120; 19 John. 144; 1 Sch. & Lef. 318, 319; 11 Ves. 662; 1 Roper, Leg. 3; 1 Ham. R. 189, 524; 15 Pick. 177; 5 G. & John. 58; 3 Hawks, 328; 5 J. J. Marsh. 643.

2. Bank notes are assignable by delivery. Rep. Temp. Hard. 53 9 East, R. 48; 4 East, R. 510 Dougl. 236. The holder of a bank note is prima facie entitled to prompt payment of it, and cannot be affected by the fraud of any former holder in obtaining it, unless evidence be given to bring it home to his privity. 1 Burr. 452; 4 Rawle, 185 13 East, R. 135 Dane's Ab. Index, h. t.; Pow. on Mortg. lndex, h. t. U. S. Dig. h. t. Vide Bouv. Inst. Index, h. t. Note; Promissory note; Reissuable note.

3. They cannot be taken in execution. Cunning. on Bills, 537; Hardw. Cases, 53; 1 Arch. Pr. 268 1 Wils. Rep. 9 Cro. Eliz. 746, pl. 25

BANK STOCK. The capital of a bank. It is usually divided in shares of a certain amount. This stock is generally transferable on the bools of the bank, and considered as personal property. Vide Stock.

BANKER, com. law. A banker is one engaged in the business of receiving other persons money in deposit, to be returned on demand discounting other persons' notes, and issuing his own for circulation. One who performs the business usually transacted by a bank. Private bankers are generally not permitted.

2. The business of bankers is generally performed through the medium of incorporated banks.

3. A banker may be declared a bankrupt by adverse proceedings against him. Act of Congress of 19th Aug. 1841. See 1 Atk. 218; 2 H. Bl. 235; 1 Mont. B. L. 12.

4. Among the ancient Romans there were bankers called argentarii, whose office was to keep registers of contracts between individuals, either to loan money, or in relation to sales and stipulations. These bankers frequently agreed with the creditor to pay him the debt due to him by the debtor. Calvini Lex. Jurid.

BANKERS' NOTE, contracts. In England a distinction is made between bank notes, (q. v.) and bankers' notes. The latter are promissory notes, and resemble bank notes in

every respect, except that they are given by persons acting as private bankers. 6 Mod. 29; 3 Chit. Com. Law, 590; 1 Leigh's N. P. 338.

BANKRUPT. A person who has done, or suffered some act to be done, which is by law declared an act of bankruptcy; in such case he may be declared a bankrupt.

2. It is proper to notice that there is much difference between a bankrupt and an insolvent. A man may be a bankrupt, and yet be perfectly solvent; that is, eventually able to pay all his debts or, he may be insolvent, and, in consequence of not having done, or suffered, an act of bankruptcy. He may not be a bankrupt. Again, the bankrupt laws are intended mainly to secure creditors from waste, extravagance, and mismanagement, by seizing the property out of the hands of the debtors, and placing it in the custody of the law; whereas the insolvent laws only relieve a man from imprisonment for debt after he has assigned his property for the benefit of his creditors. Both under bankrupt and insolvent laws the debtor is required to surrender his property, for the benefit of his creditors. Bankrupt laws discharge the person from imprisonment, and his property, acquired after his discharge, from all liabilities for his debts insolvent laws simply discharge the debtor from imprisonment, or liability to be imprisoned, but his after-acquired property may be taken in satisfaction of his former debts. 2 Bell, Com. B. 6, part 1, c. 1, p. 162; 3 Am. Jur. 218.

BANKRUPTCY. The state or condition of a bankrupt.

2. Bankrupt laws are an encroacbment upon the common law. The first in England was the stat. 34 and 35 H. VIII., c. 4, although the word bankrupt appears only in the title, not in the body of the act. The stat. 13 Eliz. c. 7, is the first that defines the term bankrupt, and discriminates bankruptcy from mere insolvency. Out of a great number of bankrupt laws passed from time to time, the most considerable are the statutes 13 Eliz. c. 7; 1 James I., c. 19 21 James I., c. 19 5 Geo. II., c. 30. A careful consideration of these statutes is sufficient to give am adequate idea of the system of bankruptcy in England. See Burgess on Insolvency, 202-230.

3. The Constitution of the United States, art. 1, s. 8, authorizes congress "to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States." With the exception of a short interval during which bankrupt laws existed in this country, this power lay dormant till the passage of the act of 1841, since repealed.

4. Any one of the states may pass a bankrupt law, but no state bankrupt or insolvent law can be permitted to impair the obligation of contracts; nor can the several states pass laws conflicting with an act of congress on this subject 4 Wheat. and the bankrupt laws of a state cannot affect the rights of citizens of another state. 12 Wheat.

It. 213. Vide 3 Story on the Const. §1100 to 1110 2 Kent, Com. 321 Serg. on Const. Law, 322 Rawle on the Const. c. 9 6 Pet. R. 348 Bouv. Inst. Index, h. t. Vide Bankrupt.

BANKS OF RIVERS, estates. By this term is understood what retains the river in its natural channel, when there is the greatest flow of water.

2. The owner of the bank of a stream, not navigable, his in general the right to the middle of the stream. Vide Riparian Proprietor.

3. When by imperceptible increase the banks on one side extend into the river, this addition is called alluvion. (q. v.) When the increase is caused by the sudden transfer of a mass of earth or soil from the opposite bank, it is called an increase by avulsion. (q. v.)

BANNITUS. One outlawed or banished. See Calvini Lex.

BANS OF MATRIMONY. The giving public notice or making proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract, to the end that persons objecting to the same, may have an opportunity to declare such objections before the marriage is solemnized. Poth. Du Mariage, partie 2, c. 2. Vide Ban.

BAR, actions. A perpetual destruction or temporary taking away of the action of the plaintiff. In ancient authors it is called exceptio peremptorid. Co. Litt. 303 b Steph. Pl. Appx. xxviii. Loisel (Institutes Coutumieres, vol. ii. p. 204) says, "Exceptions (in pleas) have been called bars by our ancient practitioners, because, being opposed, they arrest the party who has sued out the process, as in war (une barriere) a barrier arrests an enemy; and as there have always been in our tribunals bars to separate the advocates from the judges, the place where the advocates stand (pour parler) when they speak, has been called for that reason (barreau) the bar."

2. When a person is bound in any action, real or personal, by judgment on demurrer, confession or verdict, he is barred, i. e. debarred, as to that or any other action of the like nature or degree, for the same thing, forever; for expedit reipublicae ut sit finis litim.

3. But there is a difference between real and personal actions.

4. In personal actions, as in debt or account, the bar is perpetual, inasmuch as the plaintiff cannot have an action of a higher nature, and therefore in such actions he has

generally no remedy, but by bringing a writ of error. Doct. Plac. 65; 6 Co. 7, 8 4 East, 507, 508.

5. But if the defendant be barred in a real action, by judgment on a verdict, demurrer or confession, &c., he may still have an action of a higher nature, and try the same right again. Lawes, Pl. 39, 40. See generally, Bac. Ab. Abatement, N; Plea in bar. Also the case of Outram v. Morewood, 3 East, Rep. 346-366; a leading case on this subject.

BAR, practice. A place in a court where the counsellors and advocates stand to make their addresses to the court and jury; it is so called because formerly it was closed with a bar. Figuratively the counsellors and attorneys at law are called the bar of Philadelphia, the New York bar.

2. A place in a court having criminal jurisdiction, to which prisoners are called to plead to the indictment, is also called, the bar. Vide Merl. Repert. mot Barreau, and Dupin, Profession d'Avocat, tom. i. p. 451, for some eloquent advice to gentlemen of the bar.

BAR, contracts. An obstacle or opposition. 2. Some bars arise from circumstances, and others from persons. Kindred within the prohibited degree, for example, is a bar to a marriage between the persons related; but the fact that A is married, and cannot therefore marry B, is a circumstance which operates as a bar as long as it subsists; for without it the parties might marry.

BAR FEE, Eng. law. A fee taken time out of mind by the sheriff for every prisoner who is acquitted. Bac. Ab. Extortion.

BARBICAN. An ancient word to signify a watch-tower. Barbicanage was money given for the support of a barbican.

BARGAIN AND SALE, conveyancing, contracts. A contract in writing to convey lands to another person; or rather it is the sale of a use therein. In strictness it is not an absolute conveyance of the seizin, as a feoffment. Watk. Prin. Conv. by Preston, 190, 191. The consideration must be of money or money's worth. Id. 237.

2. In consequence of this conveyance a use arises to a bargainee, and the statute 27 Henry VIII. immediately transfers the˜20legal estate and possession to him.

3. A bargain and sale, may be in fee, for life, or for years.

4. The proper and technical words of this conveyance are bargain and sale, but any other words that would have been sufficient to raise a use, upon a valuable consideration, before the statute, are now sufficient to constitute a good bargain and sale. Proper words of limitation must, however, be inserted. Cruise Dig. tit. 32, c. 9; Bac. Ab. h. t. Com. Dig. h. t.; and the cases there cited; Nels. Ab. h. t. 2 Bl. Com. 338.

5. This is the most common mode of conveyance in the United States. 4 Kent, Com. 483; 3 Pick. R. 529; 3 N. H. Rep. 260; 6 Harr. & John. 465; 3 Wash. C. C. Rep. 376; 4 Mass. R. 66; 4 Yeates, R. 295; 1 Yeates, R. 828; 3 John. R. 388; 4 Cowen's R. 325; 10 John. R. 456, 505; 3 N. H. Rep. 261; 14 John. R. 126; 2 Harr. & John. 230; 2 Bouv. Inst. n. 207 7 8.

BARGAINEE. A person to whom a bargain is made; one who receives the advantages of a bargain.

BARGAINOR. A person who makes a a bargain, and who becomes bound to perform it.

BARGEMEN. Persons who own and keep a barge for the purpose of carrying the goods of all. such other persons who may desire to employ them. They are liable as common, carriers. Story, Bailm. 496.

BARLEYCORN. A lineal measure, containing one-third of an inch. Dane's Ab. c. 211, a. 13, s. 9. The barleycorn was the first measure, with its division and multiples, of all our measures of length, superfices, and capacity. Id. c. 211, a. 1 2, s. 2.

BARN, estates. A building on a farm used to receive the crop, the stabling of animals, and other purposes.

2. The grant or demise of a barn, without words superadded to extend its meaning, would pass no more than the barn itself, and as much land as would be necessary for its complete enjoyment. 4 Serg. & Rawle, 342.

BARON. This word has but one signification in American law, namely, hushand: we use baron and feme, for hushand and wife. And in this sense it is going out of use.

2. In England, and perhaps some other countries, baron is a title of honor; it is the first degree of nobility below a viscount. Vide Com. Dig. Baron and Feme; Bac. Ab. Baron and Feme; and the articles. Hushand; Marriage; Wife.

3. In the laws of the middle ages, baron or bers, (baro) signifes a great vassal; lord of a fief and tenant immediately from the king: and the words baronage, barnage and

berner, signify collectively the vassals composing the court of the king; as Le roi et son barnage, The king and his court. See Spelman's Glossary, verb. Baro.

BARONS OF EXCHEQUER, Eng. law. The name given to the five judges of the Exchequer formerly these were baros of the realm, but now they are chosen from persons learned in the law.

BARRACK. By this term, as used in Pennsylvania, is understood an erection of upright posts supporting a sliding roof, usually of thatch. 5 Whart. R. 429.

BARRATOR, crimes. One who has been guilty of the offence of barratry.

BARRATRY, crimes. In old law French barat, baraterie, signifying robbery, deceit, fraud. In modern usage it may be defined as the habitual moving, exciting, and maintaining suits and quarrels, either at law or otherwise. 1 Inst. 368; 1 Hawk. 243.

2. A man cannot be indicted as a common barrator in respect of any number of false and groundless actions brought in his own right, nor for a single act in right of another; for that would not make him a common barrator.

3. Barratry, in this sense, is different from maintenance (q. v.) and champerty. (q. v.)

4. An attorney cannot be indicted for this crime, merely for maintaining another in a groundless action. Vide 15 Mass. R. 229 1 Bailey's R. 379; 11 Pick. R. 432; 13 Pick. R. 362; 9 Cowen, R. 587; Bac. Ab. h. t.; Hawk. P. C. B. 1, c. 21; Roll. Ab. 335; Co. Litt. 368; 3 Inst. 175.

BARRATRY, maritime law, crimes. A fraudulent act of the master or mariners, committed contrary to their duty as such, to the prejudice of the owners of the ship. Emer. tom. 1, p. 366; Merlin, Repert. h. t.; Roccus, h. t.; 2 Marsh. Insur. 515; 8 East, R. 138, 139. As to what will amount to barratry, see Abbott on Shipp. 167, n. 1; 2 Wash. C. C. R. 61; 9 East, R. 126; 1 Str. 581; 2 Ld. Raym. 1349; 1 Term R. 127; 6 Id. 379; 8 Id. 320; 2 Cain. R. 67, 222; 3 Cain. R. 1; 1 John. R. 229; 8 John. R. 209, n. 2d edit.; 5 Day. R. 1; 11 John. R. 40; 13 John. R, 451; 2 Binn. R. 274; 2 Dall. R. 137; 8 Cran. R. 39; 3 Wheat. R. 168; 4 Dall. R. 294; 1 Yeates, 114.

2. The act of Congress of April, 30, 1790, s. 8, 1 Story's Laws U. S. 84, punishes with death as piracy, "any captain or mariner of any ship or other vessel who shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifty dollars; or yield up such ship or vessel to any pirate or if any such seamen shall lay violent hands upon his commander, thereby to binder

or prevent his fighting in defence of his ship, or goods, committed to his trust, or shall make a revolt in the said ship."

BARREL. A measure of capacity, equal to tliirty-six gallons.

BARREN MONEY, civil law. This term is used to denote money which bears no interest.

BARRENNESS. The incapacity to produce a child. This, when arising from impotence, is a cause for dissolving a marriage. 1 Fodere, Med. Leg. §254.

BARRISTER, English law. A counsellor admitted to plead at the bar.

2. Ouster barrister, is one who pleads ouster or without the bar.

3. Inner barrister, a serjeant or king's counsel who pleads within the bar.

4. Vacation barrister, a counsellor newly called to the bar, who is to attend for several long vacations the exercise of the house.

5. Barristers are called apprentices, apprentitii ad legem, being looked upon as learners, and not qualified until they obtain the degree of serjeant. Edmund Plowden, the author of the Commentaries, a volume of elaborate reports in the reigns of Edward VI., Mary, Philip and Mary, and Elizabeth, describes himself as an apprentice of the common law.

BARTER. A contract by which the parties exchange goods for goods. To complete the contract the goods must be delivered, for without a delivery, the right of property is not changed.

2. This contract differs from a sale in this, that barter is always of goods for goods, whereas a sale is an exchange of goods for money. In the former there never is a price fixed, in the latter a price is indispensable. All the differences which may be pointed out betwen these two contracts, are comprised in this; it is its necessary consequence. When the contract is an exchange of goods on one side, and on the other side the consideration is partly goods and partly money, the contract is not a barter, but a sale. See Price; Sale.

3. If an insurance be made upon returns from a country where trade is carried on by barter, the valuation of the goods in return shall be made on the cost of those given in barter, adding all charges. Wesk. on Ins. 42. See 3 Camp. 351 Cowp. 818; 1 Dougl. 24, n.; 1 N. R. 151 Tropl. de l'Echange.

BARTON, old English law. The demesne land of a manor; a farm distinct from the mansion.

BASE. Something low; inferior. This word is frequently used in composition; as base court, base estate, base fee, &c.

BASE COURT. An inferior court, one not of record. Not used.

BASE ESTATE, English law. The estate which base tenants had in their lands. Base tenants were a degree above villeins, the latter being compelled to perform all the commands of their lords; the former did not hold their lands by the performance of such commands. See Kitch. 41.

BASE FEE, English law. A tenure in fee at the will of the lord. This was distinguished from socage free tenure. See Co. Litt. 1, 18.

BASILICA, civil law. This is derived from a Greek word, which signifies imperial constitutions. The emperor Basilius, finding the Corpus Juris Civilis of Justinian too long and obscure, resolved to abridge it, and under his auspices the work proceeded to the fortieth book, which, at his death, remained unfinished. His son and successor, Leo, the philosopher, continued the work, and published it in sixty books, about the year 880. Constantine Porphyro-genitus, younger brother of Leo, revised the work, re-arranged it, and republished it, Anno Domini, 910. From that time the laws of Justinian ceased to have any force in the eastern empire, and the Basilica were the foundation of the law observed there till Constantine XIII, the last of the Greek emperors, under whom, in 1453, Constantinople was taken by Mahomet the Turk, who put an end to the empire and its laws. Histoire de la Jurisprudence Etienne, Intr. a 1'etude du Droit Romain, §LIII. The Basilica were written in Greek. They were translated into Latin by J. Cujas (Cujacius) Professor of Law in the University of Bourges, and published at Lyons, 22d of January, 1566, in one vol. fo.

BASTARD. A word derived from bas or bast, signifying abject, low, base; and aerd, nature. Minshew, Co. Lit. 244; a. Enfant de bas, a child of low birth. Dupin. According to Blackstone, 1 Com. 454, a bastard in the law sense of the word, is a person not only begotten, but born out of lawful matrimony. This definition does not appear to be complete, inasmuch as it does not embrace the case of a person who is the issue of an illicit connection, during the coverture of his mother. The common law, says the Mirror, only taketh him to be a son whom the marriage proveth to be so. Horne's Mirror, c. 2, §7; see Glanv. lib 8, cap. 13 Bract. 63, a. b.; 2 Salk. 427;, 8 East, 204. A bastard may be perbaps defined to be one who is born of an illicit union, and before the lawful marriage of his parents.

2. A man is a bastard if born, first) before the marriage of his parents; but although he may have been begotten while his parents were single, yet if they afterwards marry, and he is born during the coverture, he is legitimate. 1 Bl. Com. 455, 6. Secondly, if born during the coverture, under circumstances which render it impossible that the hushand of his mother can be his father. 6 Binn. 283; 1 Browne's R. Appx. xlvii.; 4 T. R. 356; Str. 940 Id. 51 8 East, 193; Hardin's R. 479. It seems by the Gardner peerage case, reported by Dennis Le Marebant, esquire, that strong moral improbability that the hushand is not the father, is sufficient to bastardize the issue. Bac. Ab. tit. Bastardy, A, last ed. Thirdly, if born beyond a competent time after the coverture has determined. Stark. Ev. part 4, p. 221, n. a Co. Litt. 123, b, by Hargrave & Butler in the note. See Gestation.

3. The principal right which bastard children have, is that of maintenance from their parents. 1 Bl. Com. 458; Code Civ. of Lo. 254 to 262. To protect the public from their support, the law compels the putative father to maintain his bastard children. See Bastardy; Putative father.

4. Considered as nullius filius, a bastard has no inheritable blood in him, and therefore no estate can descend. to him; but he may take by testment, if properly described, after he has obtained a name by reputation. 1 Rop. Lew. 76, 266; Com. Dig. Descent, C, l2; Ie. Bastard, E; Co. Lit. 123, a; Id. 3, a; 1 T. R. 96 Doug. 548 3 Dana, R. 233; 4 Pick. R. 93; 4 Desaus. 434. But this hard rule has been somewhat mitigated in some of the states, where, by statute, various inheritable qualities have been conferred upon bastards. See 5 Conn. 228; 1 Dev. Eq. R. 345; 2 Root, 280; 5 Wheat.. 207; 3 H. & M. 229, n; 5 Call. 143; 3 Dana, 233.

5. Bastards can acquire the rights of legitimate children only by an act of the legislature. 1 Bl. Com. 460; 4 Inst. 36.

6. By the laws of Louisiana, a bastard is one who is born of an illicit union. Civ. Code of Lo. art. 27, 199. There are two sorts of illegitimate cbildren; first, those who are born of two persons, who, at the moment such children were conceived, might have legally contracted marriage with each other; and, secondly, those who are born from persons, to whose marriage there existed at the time, some legal impediment. Id. art. 200. An adulterous bastard is one produced by an unlawful connexion between two persons, who, at the time he was conceived, were, either of them, or both, connected by marriage with some other person or persons. Id. art. 201. Incestuous bastards are those who are produced by the illegal connexion of two persons who are relations within the degrees prohibited by law. Id. art. 202.

7. Bastards, generally speaking, belong to no family, and have no relations; accordingly they are not subject to paternal authority, even when they have been

acknowledged. See 11 East, 7, n. Nevertheless, fathers and mothers owe alimony. to their children when they are in need. Id. art. 254, 256. Alimony is due to bastards, though they be adulterous or incestuous, by the mother and her ascendants. Id. art. 262.

8. Children born out of marriage, except those who are born from an incestuous or adulterous connexion, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before the marriage or by the contract of marriage itself. Every other mode of legitimating children is abolished. Id. art. 217. Legitimation may even be extended to deceased children who have left issue, and in that ease, it enures to the benefit of that issue. Id. art. 218. Children legitimated by a subsequent marriage, have the same rights as if born during the marriage. Id. art. 219. See, generally, Vin. Abr. Bastards Bac. Abr. Bastard; Com. Dig. Bastard; Metc. & Perk. Dig. h. t.; the various other American Digests, h. t.; Harr. Dig. h. t.; 1 Bl. Com. 454 to 460; Co. Litt. 3, b.; Bouv. Inst. Index, h. t., And Access; Bastardy; Gestation; Natural Children.

BASTARD EIGNE', Eng. law. Elder bastard. By the old English law, when, a man had a bastard son, and he afterwards married the mother, and by her had a legitimate son, the first was called a bastard eigne, or, as it is now spelled, aine, and the second son was called puisne, or since born, or sometimes he was called mulier puisne. See Mulier; Eigne, 2 Bl. Com. 248.

BASTARDY, crim. law. The offence of begetting a bastard child.

BASTARDY, persons. The state or condition of a bastard. The law presumes every child legitimate, when born of a woman in a state of wedlock, and casts the onus probandi (q. v.) on the party wlio affirms the bastardy. Stark. Ev. h. t.

BASTON. An old French word, which signifies a staff, or club, In some old English statutes the servants or officers of the wardens of the Fleet are so called, because they attended the king's courts with a red staff. Vide Tipstaff.

BATTEL, in French Bataille; Old English law. An ancient and barbarous mode of trial, by Bingle combat, called wager of battel, where, in appeals of felony, the appellee might fight with the appellant to prove his innocence. It was also used in affairs of chivalry or honor, and upon civil cases upon certain issues. Co. Litt. 294. Till lately it disgraced the English code. This mode of trial was abolished in England by stat. 59 Geo.,III. c. 46.

2. This mode of trial was not peculiar to England. The emperor Otho, A. D. 983, held a diet at Verona, at which several sovereigns and great lords of Italy, Germany and

France were present. In order to put a stop to the frequent perjuries in judicial trials, this diet substituted in all cases, even in those which followed the course of the Roman law, proof by combat for proof by oath. Henrion de Pansey, Auth. Judic. Introd. c. 3; and for a detailed account of this mode of trial see Herb. Antiq. of the Inns of Court, 119-145.

BATTERY. It is proposed to consider, 1. What is a battery; 2. When a battery, may be justified.

2. §1. A battery is the unlawful touching the person of another by the aggressor himself, or any other substance put in motion by him. 1 Saund. 29, b. n. 1; Id. 13 & 14, n. 3. It must be either wilfully committed, or proceed from want of due care. Str. 596; Hob. 134; Plowd. 19 3 Wend. 391. Hence an injury, be it never so small, done to the person of another, in an angry, spiteful, rude or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him, are batteries in the eye of the law. 1 Hawk. P. C. 263. See 1 Selw. N. P. 33, 4. And any thing attached to the person partakes of its inviolability if, therefore, A strikes a cane in the hands of B, it is a battery. 1 Dall. 1 14 1 Ch. Pr. 37; 1 Penn. R. 380; 1 Hill's R. 46; 4 Wash. C. C. R. 534 . 1 Baldw. R. 600.

3. - §2. A battery may be justified, 1. on the ground of the parental relation 2. in the exercise of an office; 3. under process of a court of justice or other legal tribunal 4. in aid of an authority in law; and lastly, as a necessary means of defence.

4. First. As a salutary mode of correction. For example: a parent may correct his child, a master his apprentice, a schoolmaster his scholar; 24 Edw. IV.; Easter, 17, p. 6 and a superior officer, one under his command. Keilw. pl. 120, p. 136 Bull. N. P. 19 Bee, 161; 1 Bay, 3; 14 John. R. 119 15 Mass. 365; and vide Cowp. 173; 15 Mass. 347.

5. - 2. As a means to preserve the peace; and therefore if the plaintiff assaults or is fighting with another, the defendant may lay hands upon him, and restrain him until his anger is cooled; but he cannot strike him in order to protect 'the party assailed, as he way in self-defence. 2 Roll. Abr. 359, E, pl. 3.

6. - 3. Watchmen may arrest, and detain in prison for examination, persons walking in the streets by might, whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. 3 Taunt. 14.

7. - 4. Any person has a right to arrest another to prevent a felony.

8. - 5. Any one may arrest another upon suspicion of felony, provided a felony has actually been committed and there is reasonable ground for suspecting the person

arrested to be the criminal, and that the party making the arrest, himself entertained the suspicion.

9. - 6. Any private individual may arrest a felon. Hale's P. C. 89.

10. - 7. It is lawful for every man to lay hands on another to preserve public decorum; as to turn him out of church, and to prevent him from disturbing the congregation or a funeral ceremony. 1 Mod. 168; and see 1 Lev. 196; 2 Keb. 124. But a request to desist should be first made, unless the urgent necessity of the case dispenses with it.

11. Secondly. A battery may be justified in the exercise of an office. 1. A constable may freshly arrest one who, in, his view, has committed a breach of the peace, and carry him before a magistrate. But if an offence has been committed out of the constable's sight, he cannot arrest, unless it amounts to a felony; 1 Brownl. 198 or a felony is likely to ensue. Cro. Eliz. 375.

12. - 2. A justice of the peace may generally do all acts which a constable has authority to perform hence he may freshly arrest one who, in his view has broken the peace; or he may order a constable at the moment to take him up. Kielw. 41.

13. Thirdly. A battery may be justified under the process of a court of justice, or of a magistrate having competent jurisdiction. See 16 Mass. 450; 13 Mass. 342.

14. Fourthly. A battery may be justified in aid of an authority in law. Every person is empowered to restrain breaches of the peace, by virtue of the authority vested in him by the law.

15. Lastly. A battery may be justified as a necessary means of defence. 1. Against the plaintiffs assaults in the following instances: In defence of himself, his wife, 3 Salk. 46, his child, and his servant. Ow. 150; sed vide 1 Salk. 407. So, likewise, the wife may justify a battery in defending her hushand; Ld. Raym. 62; the child its parent; 3 Salk. 46; and the servant his master. In these situations, the party need not wait until a blow has been given, for then he might come too late, and be disabled from warding off a second stroke, or from protecting the person assailed. Care, however, must be taken, that the battery do not exceed the bounds of necessary defence and protection; for it is only permitted as a means to avert an impending evil, which might otherwise overwhelm the party, and not as a punishment or retaliation for the injurious attempt. Str. 953. The degree of force necessary to repel an assault will naturally depend upon, and be proportioned to, the violence of the assailant; but with this limitation any degree is justifiable. Ld. Raym. 177; 2 Salk. 642.

16. - 2. A battery may likewise be justified in the necessary defence of one's property; if the plaintiff is in the act of entering peaceably upon the defendant's land, or having entered, is discovered, not committing violence, a request to depart is necessary in the first instance; 2 Salk. 641; and if the plaintiff refuses, the defendant may then, and not till then, gently lay hands upon the plaintiff to remove him from the close and for this purpose may use, if necessary, any degree of force short of striking the plaintiff, as by thrusting him off. Skinn. 228. If the plaintiff resists, the defendant may oppose force to force. 8 T. R. 78. But if the plaintiff is in the act of forcibly entering upon the land, or having entered, is discovered subverting the soil, cutting down a tree or the like, 2 Salk. 641, a previous request is unnecessary, and the defendant may immediately lay hands upon the plaintiff. 8 T. R. 78. A man may justify a battery in defence of his personal property, without a previous request, if another forcibly attempt to take away such property. 2 Salk. 641. Vide Rudeness; Wantonness.

BATTURE. An elevation of the bed of a river under the surface of the water; but it is sometimes used to signify the same elevation when it has risen above the surface. 6 M. R. 19, 216. The term battures is applied, principally, to certain portions of the bed of the river Mississippi, which are left dry when the water is low, and are covered again, either in whole or in part by the annual swells. The word battures, in French, signifies shoals or shallows, where there is not water enough for a ship to float. They are otherwise called basses or brisans. Neuman's Marine Pocket Dict.; Dict. de Trevoux.

BAWDY-HOUSE, crim. law. A house of ill-fame, (q. v.) kept for the resort and unlawful commerce of lewd people of both sexes.

2. Such a house is a common nuisance, as it endangers the public peace by drawing together dissolute and debauched persons; and tends to corrupt both sexes by an open profession of lewdness. 1 Russ. on Cr.; 299: Bac. Ab. Nuisances, A; Hawk. B. 1, c. 74, §1-5.

3. The keeper of such a house may be indicted for the nuisance; and a married woman, because such houses are generally kept by the female sex, may be indicted with her hushand for keeping such a house. 1 Salk. 383; vide Dane's Ab. Index, h. t. One who assists in establishing a bawdyhouse is guilty of a misdemeanor. 2 B. Monroe, 417.

BAY. Is an enclosure to keep in the water for the supply of a mill or other contrivance, so that the water may be able to, drive the wheels of such mill. Stat. 27 Eliz. c. 19.

2. A large open water or harbor where ships may ride, is also called a bay; as, the Chesapeake Bay, the, Bay of New York.

BEACH. The sea shore. (q. v.)

BEACON. A signal erected as a sea mark for the use of mariners; also, to give warning of the approach of an enemy. 1 Com. Dig. 259; 5 Com. Dig. 173.

TO BEAR DATE. In the description of a paper in a declaration, to say it bears date such a day, is to aver that such date is upon it; and if, on being produced, it is dated at another day, the variance will be fatal. But if it be averred it was made on such a day, and upon its production it bears date on another day, it will not be a variance, because it might have been made one day and dated another. 3 Burr. 904.

BEADLE. Eng. law. A messenger or apparitor of a court, who cites persons to appear to what is alleged against them, is so called.

BEARER. One who bears or carries a thing.

2. If a bill or note be made payable to bearer, it will pass by delivery only, without endorsement; and whoever fairly acquires a right to it, may maintain an action against the drawer or acceptor.

3. It has been decided that the bearer of a bank note, payable to bearer, is not an assignee of a chose in action within the 11th section of the judiciary act of, 1789, c. 20, limiting the jurisdiction of the circuit court. 3 Mason, R. 308.

4. Bills payable to bearer are contra-distinguished from those payable to order, which can be transferred only by endorsement and delivery.

5. Bills payable to fictitious payees, are considered as bills payable to, bearer.

BEARERS, Eng. crim. law. Such as bear down or oppress others; maintainers. In Ruffhead's Statutes it is employed to translate the French word emparnours, which signifies, according to Kelham, undertakers of suits. 4 Ed. III. c. 11. This word is no longer used in this sense.

BEARING DATE. These words are frequently used in conveyancing and in pleading; as, for example, a certain indenture bearing date the first day of January, 1851, which signifies not that the indenture was made on that day, but simply that such date has been put to it.

2. When in a declaration the plaintiff alleges that the defendant made his promissory note on such a day, he will not be considered as having alleged it bore date on that

day, so as to cause a variance between the declaration and the note produced bearing a different date. 2 Greenl. Ev. §1610; 2 Dowl. & L. 759.

BEAU PLEADER, Eng. law. Fair pleading. See Stultiloquium.

2. This is the name of a writ upon the statute of Marlbridge, 52 H. III. c. 11, which enacts, that neither in the circuit of justices, nor in counties, hundreds, or courts baron, any fines shall be taken for fair pleading; namely, for not pleading fairly or aptly to the purpose. Upon this statute this writ was ordained, directed to the sheriff, bailiff, or him who shall demand the fine; and it is a prohibition or command not to do it. Now Nat. Br. 596 2 Inst. 122; Termes de la Le 2 Reeves' Hist. Eng. Law, 70 Cowel; Crabb's Hist. of the Eng. Law, 150. The explanations given of this term are not very satisfactory.

BEDEL, Eng. law. A cryer or messenger of a court, who cites men to appear and answer. There are also inferior officers of a parish or liberty who bear this name.

BEE. The name of a well known insect.

2. Bees are considered ferae naturae while unreclaimed; and they are not more subjects of property while in their natural state, than the birds which have their nests on the tree of an individual. 3 Binn. R. 546 5 Sm. & Marsh. 333. This agrees with the Roman law. Inst. 2 1, 14; Dig. 41, 1, 5, 2; 7 Johns. Rep. 16; 2 Bl. Com. 392 Bro. Ab. Propertie, 37; Coop. Justin. 458.

3. In New York it has been decided that bees in a tree belong, to the owner of the soil, while unreclaimed. When they have been reclaimed, and the owner can identify them, they belong to him, and not to the owner of the soil. 15 Wend. R. 550. See 1 Cowen, R. 243.

BEGGAR. One who obtains his livelihood by asking alms. The laws of several of the states punish begging as an offence.

BEHAVIOUR. In old English, haviour without the prefix be. It is the manner of having, holding, or keeping one's self or the carriage of one's self with respect to propriety, morals, and the requirements of law. Surety to be of -good behaviour is a larger requirement than surety to keep the peace. Dalton, c. 122; 4 Burn's J. 355.

BEHOOF. As a word of discourse, Signifies need, (egestas, necessitas, indigentia.) It comes from behoove, (Sax. behoven,) to need or have need of. In a secondary sense, which is the law sense of the word, it signifies use, service, profit, advantage, (interesse, opus.) It occurs in conveyances of land in fee simple.

BELIEF. The conviction of the mind, arising from evidence received, or from information derived, not from actual perception by our senses, but from. the relation or information of others who have had the means of acquiring actual knowledge of the facts and in whose qualifications for acquiring that knowledge, and retaining it, and afterwards in communicating it, we can place confidence. " Without recurring to the books of metaphysicians' "says Chief Justice Tilghman, 4 Serg. & Rawle, 137, "let any man of plain common sense, examine the operations of, his own mind, he will assuredly find that on different subjects his belief is different. I have a firm belief that, the moon revolves round the earth. I may believe, too, that there are mountains and valleys in the moon; but this belief is not so strong, because the evidence is weaker." Vide 1 Stark. Ev. 41; 2 Pow. Mortg. 555; 1 Ves. 95; 12 Ves. 80; 1 P. A. Browne's R 258; 1 Stark. Ev. 127; Dyer, 53; 2 Hawk. c. 46, s. 167; 3 Wil. 1, s. 427; 2 Bl. R. 881; Leach, 270; 8 Watts, R. 406; 1 Greenl. Ev. §7-13, a.

BELOW. Lower in place, beneath, not so high as some other thing spoken of, of tacitly referred to.

2. The court below is an inferior court, whose, proceedings may be examined on error by a superior court, which is called the court above.

3. Bail below is that given to the sheriff in bailable actions, which is so called to distinguish it from bail to t-he action, which is called bail above. See Above; Bail above; Bail below.

BENCH. Latin Bancus, used for tribunal. In England there are two courts to which this word is applied. Bancus Regius, King's Bench Bancus Communis, Com- mon Bench or Pleas. The jus banci, says Spelman, properly belongs to the king's judges, who administer justice in the last resort. The judges of the inferior courts, as of the barons, are deemed to, judge plano pede, and are such as are called in the civil law pedanei judices, or by the Greeks Xauaidixastai, that is, humi judicantes. The Greeks called the seats of their higher judges Bumata, and of their inferior judges Bathra. The Romans used the word sellae and tribunalia, to designate the seats of their higher judges, and subsellia, to designate those of the lower. See Spelman's Gloss. (ad verb.) Bancus; also, 1 Reeves Hist. Eng. Law, 40, 4to ed., and postea Curia Regis.

BENCH WARRANT, crim. law. The name of a process sometimes given to an attachment issued by order of a criminal court, against an individual for some contempt, or for the purpose of arresting a person accused; the latter is seldom granted unless when a true bill has been found.

BENCHER, English law. A bencher is a senior in the inns of court, entrusted with their government and direction.

BENEFICE, eccles. law. In its most extended sense, any ecclesiastical preferment or dignity; but in its more limited sense, it is applied only to rectories and vicarages.

BENEFICIA. In the early feudal times, grants were made to continue only during the pleasure of the grantor, which were called munera, (q. v.) but soon afterwards these grants were made for life, and then they assumed the name of beneficia. Dalr. Feud. Pr. 199. Pomponius Laetus, as cited by Hotoman, De Feudis, ca. 2, says, " That it was an ancient custom, revived by the emperor Constantine, to give lands and villas to those generals, prefects, and tribunes, who had grown old in enlarging the empire, to supply their necessities as long as they lived, which they called. parochial parishes, &c. But, between (feuda) fiefs or feuds, and (parochias) parishes, there was this difference, that the latter were given to old men, veterans, &c., who, as they had deserved well of the republic, sustained the rest of their life (publico beneficio) by the public benefaction; or, if any war afterwards arose, they were called out, not so much as soldiers, as leaders, (majistri militum.) Feuds, (feuda,) on the other hand, were usually given to robust young men who could sustain the labors of war. In later times, the word parochia was appropriated exclusively to ecclesiastical persons, while the word beneficium (militare) continued to be used in reference to military fiefs or fees.

BENEFICIAL. Of advantage, profit or interest; as the wife has a beneficial interest in property held by a trustee for her. Vide Cestui que trust.

BENEFICIAL INTEREST. That right which a person has in a contract made with another; as if A makes a contract with B that he will pay C a certain sum of money, B has the legal interest in the contract, and C the beneficial interest. Hamm. on Part. 6, 7, 25 2 Bulst. 70.

BENEFICIARY. This term is frequently used as synonymous with the technical phrase cestui que trust. (q. v.)

BENEFICIO PRIMO ECCLESIASTICO HABENDO, Eng. eccl. law. A writ directed from the king to the chancellor, commanding him to bestow the benefice which shall first fall in the king's gift, above or under a certain value, upon a particular and certain person.

BENEFICIUM COMPETENTIAE. The right which an insolvent debtor had, among the Romans, on making session of his property for the benefit of his creditors, to retain what was required for him to live honestly according to his condition. 7 Toull. n. 258.

BENEFIT. This word is used in the same sense as gain (q. v.) and profits. (q. v.) 20 Toull. n. 199.

BENEFIT OF CESSION, Civil law. The release of a debtor from future imprisonment for his debts, which the law operates in his favor upon the surrender of his property for the benefit of his, creditors, Poth. Proced. Civ. 5eme part., c. 2, §1. This was something like a discharge under the insolvent laws, which releases the person of the debtor, but not the goods he may acquire afterwards. See Bankrupt; Cessio Bo. Insolvent.

BENEFIT OF CLERGY, English law. An exemption of the punishment of death which the laws impose on the commission of certain crimes, on the culprit demanding it. By modern statute's, benefit of clergy was rather a substitution of a more mild punishment for the punishment of death.

2. It was lately granted, not only to the clergy, as was formerly the case, but to all persons. The benefit of clergy seems never to have been extended to the crime of high treason, nor to have embraced misdemeanors inferior to felony. Vide 1 Chit. Cr. Law, 667 to 668 4 Bl. Com. ch. 28. But this privilege improperly given to the clergy, because they had more learning than others) is now abolished by stat. 7 Geo. IV. c. 28, s. 6.

3. By the Act of Congress of April 30, 1790, it is provided, §30, that the benefit of clergy shall not be used or allowed, upon conviction of any crime, for which, by any statute of the United States, the punishment is, or shall be declared to be, death.

BENEFIT OF DISCUSSION, civil law. The right which a surety has to cause the property of the principal debtor to be applied in satisfaction of the obligation in the first instance. See Civil Code of Lo. art. 3014 to 3020, and Discussion.

BENEFIT OF DIVISION. In the civil law, which, in this respect, has been adopted in Louisiana, although, when there are several sureties, each one is bound for the whole debt, yet when one of them is sued alone, he has a right to have the debt apportioned among all the solvent sureties on the same obligation, so that he shall be compelled to pay his own share only. This is called the benefit of division. Civil Code of Lo. art. 3014 to 3020. See 2 Bouv. Inst. n. 1414.

BENEFIT OF INVENTORY, civil law. The benefit of inventory is the privilege which the heir obtains of being liable for the charges and debts of the succession, only to the value of the effects of the succession, in causing an inventory of these effects within the time and manner proscribed by law. Civil Code of Louis. art. 1025. Vide Poth. Traits des Successions, c. 3, s. 3, a. 2.

BENEVOLENCE, duty. The doing a kind action to another, from mere good will, without any legal obligation. It is a moral duty only, and it cannot be enforeed by law. A good wan is benevolent to the poor, but no law can compel him to be so.

BENEVOLENCE, English law. An aid given by the subjects to the king under a pretended gratuity, but in realty it was an extortion and imposition.

TO BEQUEATH. To give personal property by will to another.

BEQUEST. A gift by last will or testament; a legacy. (q. v.) This word is sometimes, though improperly used, as synonymous with devise. There is, however, a distinction between them. A bequest is applied, more properly, to a gift by will of a legacy, that is, of personal property; devise is properly a gift by testament of real property. Vide Devise.

BESAILE or BESAYLE, domestic relations. The grea-grandfather, proavus. 1 Bl. Com. 186. Vide dile.

BEST EVIDENCE. Means the best evideince of which the nature of the case admits, not the highest or strongest evidence which the nature of the thing to be proved admits of: e. g. a copy of a deed is not the best evidence; the deed itself is better. Gilb. Ev. 15; 3 Campb.. 236; 2 Starkey, 473 2 Campb. 605; 1 Esp. 127.

2. The rule requiring the best evidence to be produced, is to be understood of the best legal evidence. 2 Serg. & R. 34; 3 Bl. Com. 368, note 10, by Christian. It is relaxed in some cases, as, e. g. where the words or the act of the opposite party avow the fact to be proved. A tavern keeper's sign avows his occupation; taking of tithes avows the clerical character; so, addressing one as The Reverend T. S." 2 Serg. & R. 440 1 Saund. on Plead. & Evid. 49.

BETROTHMENT. A contract between a man and a woman, by which they agree that at a future, time they will marry together.

2. The requisites of this contract are 1. That it be reciprocal. 2. That the parties be able to contract.

3. The contract must be mutual; the Promise of the one must be the consideration for the promise of the other. It must be obligatory on both parties at the same instant, so that each may have an action upon it, or it will bind neither. 1 Salk. 24, Carth. 467; 5 Mod. 411; 1 Freem. 95; 3 Keb. 148; Co. Lit. 79 a, b.

4. The parties must be able to contract. if either be married at the time of betrothment, the contract is void; but the married party cannot take advantage of his own wrong, and set up a marriage or previous engageinent, as an answer to the action for the breach of the contract, because this disability proceeds from the defendant's own act. Raym. 387 3 Just. 89; I Sid. 112 1 Bl. Com. 438.

5. The performance of this engagement or completion of the marriage, must be performed within a reasonable time. Either party may, therefore, call upon the other to fulfil the engagement, and in case of refusal or neglect to do so, within a reasonable time after request made, may treat the betrothment as at an end, and bring action for the breach of the contract. 2 C. & P. 631.

6. For a breach of the betrothment, without a just cause, an action on the case may be maintained for the recovery of damages. See Affiance; Promise of Marriage.

BETTER EQUITY. In England this term has lately been adopted. In the case of Foster v. Blackston, the master of the rolls said, be could no where find in the authorities what in terms was a better equity, but on a reference to all the cases, he considered it might be thus defined: If a prior incumbrancer did not take a security which effectually protected him against any subsequent dealing to his prejudice, by the party who had the legal estate, a second incumbrancer, taking a security which in its nature afforded him that protection, had what might properly be called a better equity. 1 Ch. Pr. 470, note. Vide 4 Rawle, R. 144 3 Bouv. Inst. n. 2462.

BETTERMENTS. Improvement's made to an estate. It signifies such improvements as have been made to the estate which render it better than mere repairs. See 2 Fairf. 482; 9 Shepl. 110; 10 Shepl. 192; 13 Ohio, R. 308; 10 Yerg. Verm. 533; 17 Verm. 109.

BEYOND SEA. This phrase is used in the acts of limitations of several of the states, in imitation of the phraseology of the English statute of limitations. In Pennsylvania, the term has been construed to signify out of the United States. 9 S. & R. 288; 2 Dall. R. 217; 1 Yeates, R. 329. In Georgia, it is equivalent to without the limits of the state; 3 Wheat. R. 541; and the same construction prevails in Maryland; 1 Har. & John. 350; 1 Harr. & M'H. 89; in South Carolina; 2 McCord, Rep. 331; and in Massachusetts. 3 Mass. R. 271; 1 Pick. R. 263. Vide Kirby, R. 299; 3 Bibb. R. 510; 3 Litt. R. 48; 1 John. Cas. 76. Within the four seas, infra quatuor maria, and beyond the four seas, extra quatuor maria, in English law books signify within and without the kingdom of England, or the jurisdiction of the king of England. Co. Lit. 244 a; 1 Bl. Com. 457.

BIAS. A particular influential power which sways the judgment; the inclination or propensity of the mind towards a particular object.

2. Justice requires that the judge should have no bias for or against any individual; and that his mind should be perfectly free to act as the law requires.

3. There is, however, one kind of bias which the courts suffer to influence them in their judgments it is a bias favorable to a class of cases, or persons, as distinguished from an individual case or person. A few examples will explain this. A bias is felt on account of convenience. 1 Ves. sen. 13, 14; 3 Atk. 524. It is also felt in favor of the heir at law, as when there is an heir on one side and a mere volunteer on the other. Willes, R. 570 1 W. Bl. 256; Amb. R. 645; 1 Ball & B. 309 1 Wils. R. 310 3 Atk. 747 Id. 222. On the other hand, the court leans against double portions for children; M'Clell. R. 356; 13 Price, R. 599 against double provisions, and double satisfactions; 3 Atk. R. 421 and against forfeitures. 3 T. R. 172. Vide, generally, 1 Burr. 419 1 Bos. & Pull. 614; 3 Bos. & Pull. 456 Ves. jr. 648 Jacob, Rep. 115; 1 Turn. & R. 350.

BID, contracts. A bid is an offer to pay a specified price for an article about to be sold at auction. The bidder has a right to withdraw his bid at any time before it is accepted, which acceptance is generally manifested by knocking down the hammer. 3 T. R. 148; Hardin's Rep. 181; Sugd. Vend. 29; Babington on Auct. 30, 42; or the bid may be withdrawn by implication. 6 Penn. St. R. 486; 8, Id. 408. Vide 0ffer.

BIDDER, contracts. One who makes an offer to pay a certain price for an article which is for sale.

2. The term is applied more particularly to a person who offers a price for goods or other property, while up for sale at an auction. The bidder is required to act in good faith, and any combination between him and others, to prevent a fair competition, would avoid the sale made to himself.

3. But there is nothing illegal in two or more persons agreeing together to purchase a property at sheriff's sale, fixing a certain price which they are. willing to give, and appointing one of their number to be the bidder. 6 Watts & Serg. 122.

4. Till the bid is accepted, the bidder may retract it. Vide articles, Auction and Bid; 3 John. Cas. 29 6 John. R. 194; 8 John. R. 444 1 Fonbl. Eq. b. 1, c. 4, §4, note (x).

BIENS. A French word, which signifies property. In law, it means property of every description, except estates of freehold and inheritance. Dane's Ab. c. 133, a, 3 Com. Dig. h. t.; Co. Litt. 118, b; Sugd. Vend. 495.

2. In the French law, this term includes all kinds of property, real and personal. Biens are divided into biens meubles, movable or personal property; and biens immeubles, immovable property or real estate. This distinction between movable and immovable

property, is, however, recognized by them, and gives rise in the civil, as well as in the common law, to many important distinctions as to rights and remedies. Story, Confl. of Laws, §13, note 1.

BIGAMUS, Canon law, Latin. One guilty of bigamy.

BIGAMY, crim. law, domestic relations. The wilful contracting of a second marriage when the contracting party knows that the first is still subsisting; or it is the state of a man who has two wives, or of a woman who has two hushands living at the same time. When the man has more than two wives, or the woman more than two hushands living at the same time, then the party is said to have committed polygamy, but the name of bigamy is more frequently given to this offence in legal proceedings. 1 Russ. on Cr. 187.

2. In England this crime is punishable by the stat. 1 Jac. 1, c. 11, which makes the offence felony but it exempts from punishment the party whose hushand or wife shall continue to remain absent for seven years before the second marriage, without being heard from, and persons who shall have been legally divorced. The statutory provisions in the U. S. against bigamy or polygamy, are in general similar to, and copied from the statute of 1 Jac. 1, c. 11, excepting as to the punishment. The several exceptions to this statute are also nearly the same in the American statutes, but the punishment of the offence is different in many of the states. 2 Kent, Com. 69; vide Bac. Ab. h. t.; Com. Dig. Justices, §5; Merlin, Repert. mot Bigamie; Code, lib. 9, tit. 9, 1. 18; and lib. 5, tit. 5, 1. 2.

3. According to the canonists, bigamy is three-fold, viz.: (vera, interpretative, et similitudinaria,) real, interpretative and similitudinary. The first consisted in marrying two wives successively, (virgins they may be,) or in once marrying a widow; the second consisted, not in a repeated marriage, but in marrying (v. g. meretricem vel ab alio corruptam) a harlot; the third arose from two marriages indeed, but the one metaphorical or spiritual, the other carnal. This last was confined to persons initiated in sacred orders, or under the vow Of continence. Deferriere's Tract, Juris Canon. tit. xxi. See also Bac. Abr. h. t.; 6 Decret, 1. 12. Also Marriage.

BILAN. A book in which bankers, merchants and traders write a statement of all they owe and all that is due to them. This term is used in the French law, and in the state of Louisiana. 5 N. S; 158. A balance sheet. See 3 N. S. 446, 504.

BILATERAL CONTRACT, civil law. A contract in which both the contracting parties are bound to fulfil obligations reciprocally towards each other; Lec. Elem. §781; as a contract of sale, where one becomes bound to deliver the, thing sold, and the other to pay the price of it. Vide Contract; Synallagmatic contract.

BILINGUIS, English law. One who uses two tongues or languages. Formerly a jury, part Englishmen and part foreigners, to give a verdict between an Englishman and a foreigner. Vide Medietas Linguae, Plowd. 2. It is abolished in Pennsylvania. Act April 14, 1834, §149.

BILL, legislation. An instrument drawn or presented by a member or committee to a legislative body for its approbation and enactment. After it has gone through both houses and received the constitutional sanction of the chief magistrate, where such approbation is requisite, it becomes a law. See Meigs, R. 237.

BILL, chancery practice. A complaint in writing addressed to the chancellor, containing the names of the parties to the suit, both complainant and defendant, a statement of the facts on which the complainant relies, and the allegations which he makes, with an averment that the acts complained of are contrary to equity , and a prayer for relief and proper process. Its office in a chancery suit, is the same as a declaration in an action at law, a libel in a court of admiralty or an allegation in, the spiritual courts.

2. A bill usually consists of nine parts. 1. The address, which must be to the chancellor, court or judge acting as such. 2. The second part consists of the names of the plaintiffs and their descriptions; but the description of the parties in this part of the bill does not, it seems, constitute a sufficient averment, so as to put that fact in issue. 2. Ves. & Bea. 327. 3. The third part is called the premises or stating part of the bill, and contains the plaintiff's case. 4. In the fourth place is a general charge of confederacy. 5. The fifth part consists of allegations of the defendant's pretences, and charges in evidence of them. 6. The sixth part contains the clause of jurisdiction and in averment that the acts complained of are contrary to equity. 7. The seventh part consists of a prayer that the parties answer the premises, which is usually termed the interrogatory part. 8. The prayer for relief sought forms the eighth part. And, 9. The ninth part is a prayer for process. 2 Mad. Ch. 166; Blake's Ch. P. 35; 1 Mitf. Pl. 41. The facts contained in the bill, as far as known to the complainant, must, in some cases, be sworn to be true; and such as are not known to him, he must swear he believes to be true; and it must be signed by counsel; 2 Madd. Ch. Pr. 167; Story, Eq. Pl. §26 to 47; and for cases requiring an affidavit, see, 3 Brow. Chan. Cas. 12, 24, 463; Bunb. 35; 2 Brow. 11 1 Fow. Proc. 256 Mitf. Pl. 51; 2 P. Wms. 451; 3 Id. 77; 1 Atk. 450; 3 Id. 17, 132; 3 Atk. 132 Preced. in Ch. 332 Barton's Equity, 48 n. 1, 53 n. 1, 56 n. 1 2 Brow. Ch. Cas. 281, 319; 4 Id. 480

3. Bills may be divided into three classes, namely: 1. Original bills. 2. Bills not original. 3. Bills in the nature of original bills.

4. - 1. An original bill is one which prays the decree of the court, touching some right claimed by the person exhibiting the bill, in opposition to some right claimed by the person against whom the bill is exhibited. Hinde, 19; Coop. Eq. Pl. 43. Original bills always relate to some matter not before litigated in the court by the same persons, and standing in the same interests. Mitf. Eq. Pl. by Jeremy, 34; Story, Eq. Pl., §16. They may be divided into those which pray relief, and those which do not pray relief.

5. - 1st. Original bills praying relief are of three kinds. First. Bills Praying the decree or order of the court, touching some right claimed by the party exhibiting the bill, in opposition to some right, real or supposed, claimed by the party against whom the bill is exhibited, or touching some wrong done in violation of the plaintiff's right. Mitf. Eq. Pl. 32.

6. - Secondly. A bill of interpleader, is one in which the person exhibiting it claims no right in opposition to the rights claimed by the person against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons, for the safety of the person exhibiting the bill. Hinde, 20; Coop. Eq. Pl. 43; Mitf. Pl. 32. The Practical Register defines it to be a bill exhibited by a third person, who, not knowing to whom he ought of right to render a debt or duty, or pay his rent, fears he may be hurt by some of the claimants, and therefore prays be may interplead, so that the court may judge to whom the thing belongs, and he be thereby safe on the payment. Pr. Reg. 78; Harr. Ch. Pr. 45; Edw. Inj. 393; 2 Paige, 199 Id. 570; 6 John. Ch. R. 445.

7. The interpleader has been compared to the intervention (q. v.) of the civil law. Gilb. For. Rom. 47. But there is a striking difference between them. The tertius in our interpleader in equity, professes to have no interest in the subject, and calls upon the parties who allege they have, to come forward and discuss their claims: the tertius of the civil law, on the other hand, asserts a right himself in the 'Subject, which two persons are at the time actually contesting, and insists upon his right to join in the discussion. A bill of interpleader may be filed, though the party has not been sued at law, or has been sued by one only of the conflicting claimants, or though the claim of one of the defendants is actionable at law, and the other in equity. 6 Johns. Chan. R. 445. The requisites of a bill of this kind are, 1. It must admit the want of interest in the plaintiff in the subject matter of dispute. 2. The plaintiff must annex an affidavit that there is no collusion between him and either of the parties. 3. The bill must contain an offer to bring the money into court, when there is any due; the want of which is a ground of demurrer, unless the money has actually been paid into court. Mitf. Eq. Pl. 49; Coop. Eq. Pl. 49; Barton, Suit in Eq. 47, note 1. 4. The plaintiff should state his own rights, and thereby negative any interest in the thing in controversy; and also should state the several claims of the opposite parties; a neglect on this subject is good cause of demurrer. Mitf. Eq. Pl. by Jeremy, 142; 2 Story on Eq. §821; Story, Eq. Pl.

292. 5. The bill should also show that there are persons in esse capable of interpleading, and setting up opposite claims. Coop. Eq. Pl. 46; 1 Mont. Eq. Pl. 234; Story, Eq. Pl. §295; Story on Eq. §821; 1 Ves. 248. 6. The bill should pray that the defendants set forth their several titles, and interplead, settle, and adjust their demands between themselves. The bill also generally prays an injunction to restrain the proceedings of the claimants, or either of them, at law; and, in this case, the bill should offer to bring the money into court and the court will not in general act upon this part of the prayer, unless the money be actually brought into court. 4 Paige's R. 384 6 John. Ch. R. 445.

8. Thirdly. A bill of certiorari, is one praying the writ of certiorari to remove a cause from an inferior court of equity. Coop. El q. 44. The requisites of this bill are that it state, 1st. the proceedings in the inferior court; 2d. the incompetency of such court, by suggesting that the cause is out of its jurisdiction; or that the witnesses live out of its jurisdiction; or are not able, by age or infirmity, or the distance of the place, to follow the suit there or that, for some other cause, justice is not likely to be done-, 3d. the bill must pray a writ of certiorari, to certify and remove the record and the cause to the superior court. Wyatt, Pr. Reg. 82; Harr. Ch. Pr. 49; Story, Eq. Pl. §298. This bill is seldom used in the United States.

9. - 2d. Original bills not praying relief are of two kinds. First,. Bills to secure evidence, which are bills to perpetuate the testimony of witnesses or bills to examine witnesses de bene esse. These will be separately considered.

10. - 1. A bill to perpetuate the testimony of witnesses, is one which prays leave to examine them, and states that the witnesses are old, infirm, or sick, or going beyond the jurisdiction of the court, whereby the party is in danger of losing the benefit of their testimony. Hinde, 20. It does not pray for relief. Coop. Eq. Pl. 44.

11. In order to maintain such a bill, it is requisite to state on its face all the material facts to support the jurisdiction. It must state, 1. the subject-matter toucbing which the plaintiff is desirous of giving evidence. Rep. Temp. Finch, 391; 4 Madd. R. 8, 10. 2. It must show that the plaintiff has some interest in the subject-matter, which may be endangered if the testimony in support of it be lost; and a mere expectancy, however strong, is not sufficient. 6 Ves. 260 1 Vern. 105; 15 Ves. 136; Mitf. Eq. Pl. by Jeremy, 51 Coop. Eq. Pl., 52. 3. It must state that the defendant has, or pretends to have, or that he claims an interest to contest the title of the plaintiff in the subject-matter of the proposed testimony. Coop. Pl. 56; Story, Eq. Pl. §302. 4. It must exhibit some ground of necessity for perpetuating the evidence. Story, Eq. Pl. §303 Mitf. Eq. Pl. by Jeremy, 52, 148 and note y; Coop. Eq. Pl. 53. 5. The right of which the bill is brought to perpetuate the evidence or testimony, should be described with reasonable certainty in the bill, so as to point the proper interrogations on both sides to the true merits of the

controversy. 1 Vern. 312; Coop. Eq. Pl. 56. 6. It should pray leave to examine the witnesses touching the matter stated, to the end that their testimony maybe preserved and perpetuated. Mitf. Pl 52. A bill to perpetuate testimony differs from a bill to take testimony de bene esse, in this, that the latter is sustainable only when there is a suit already depending, while the former can be maintained only when no present suit can be brought at law by the party seeking the aid of a court to try his right. Story, Eq. Pl. §307. The canonists had a similar rule. According to the canon law, witnesses could be examined before any action was commenced, for fear that their evidence might be lost. x, cap. 5 Boehmer, n. 5 8 Toull. n. 23.

12. - 2. Bill to take testimony de bene esse. This bill, the name of which is sufficiently descriptive of its object, is frequently confounded with a bill to perpetuate testimony; but although it bears a close analogy to it, ,it is very different. Bills to perpetuate testimony can be maintained only, when no present suit can be maintained at law by the party seeking the aid of the court to try his right; whereas bills to take testimony de bene esse, are sustainable only in aid of a suit already depending. 1 Sim. & Stu. 83. The latter may be brought by a person who is in possession, or out of possession; and whether he be plaintiff or defendant in the action at law. Story, Eq Pl. §307 and 303, note; Story on Eq. 1813, note 3. In many respects the rules which regulate the framing of bills to perpetuate testimony, are applicable to bills to take testimony ae bene esse.

13. - Secondly. A bill of discovery, emphatically so called, is one which prays for the discovery of facts resting within the knowledge of the person against whom the bill is exhibited, or of deeds, writings, or other things in his custody or power. Hinde, 20; Blake's Ch. Pr. 37. Every bill, except the bill of certiorari, may in truth, be considered a bill of discovery, for every bill seeks a disclosure of circumstances relative to the plaintiff's case; but that usually and emphatically distinguished by this appellation is a bill for the discovery of facts, resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power, and seeking no relief in consequence of the discovery.

14. This bill is commonly used in aid of the jurisdiction of some other court as to enable the plaintiff Ito prosecute or defend an action at law. Mitf. Pl. 52. "The plaintiff, in this species of bill, must be entitled to the discovery he seeks, and shall only have a discovery of what is necessary for his own title, as of deeds he claims under, and not to pry into that of the defendant. 2 Ves. 445. See Blake's Ch. Pr. 45 Mitf. Pl. 52 Coop. Eq. Pl. 58 1 Madd. Ch. Pr. 196 Hare on Disc. passim Wagr. on Disc. passim.

15. The action ad exhibendum, in the Roman law, was not unlike a bill of discovery. Its object was to force the party against whom it was instituted, to exhibit a thing or a title in his power. It was always preparatory to another, which was always a real

action in the sense of the word in the Roman law. See Action ad exhibendum; Merlin, Questions de Droit, tome i. 84.

16. - II . Bills not original. These are either in addition to, or a continuance of an original bill, or both. Mitf. c. 1, s . 2; Story, Eq. Pl. §388; .4 Bouv. Inst. n. 4100.

17. - 1st. Of the first class are, 1. A supplemental bill. This bill is occasioned by some defect in a suit already instituted, whereby the parties cannot obtain complete justice, to which otherwise the case by their bill would have entitled them. It is used for the purpose of supplying some irregularity discovered in the formation of the original bill, or some of the proceedings there upon; or some defect in a suit, arising from events happening since the points in the original were at issue, which give an interest to˜20persons not parties to the suit. Blake's Ch. Pr. 50. See 3 Johns. Ch. R. 423.

18. It is proper to consider more minutely 1. in what cases such a bill may be filed; 2. its particular requisites.

19.- 1. A supplemental bill may be filed, 1st. whenever the imperfection in the original bill arises from the omission of some material fact, which existed before the filing of the bill, but the time has passed in which it can be introduced into the bill by amendment,, Mitf. Eq. Pl. 55, 61, 325 but leave of court must be obtained, before a bill which seeks to change the original structure of the bill, and to introduce a new and different case, can be filed. 2d. When a party necessary to the proceedings has been omitted, and cannot be admitted by an amendment. Mitf. Eq. Pl. 61 6 Madd. R. 369; 4 John. Ch. R. 605. 3d. When, after the court has decided upon the suit as framed, it appears necessary to bring some other matter before the court to obtain the full effect of the decision; or before a decision has been obtained, but after the parties are at issue upon the points in the original bill, and witnesses have been examined, (in which case, an amendment is not in general permitted,) some other point appears necessary to be made, or some additional discovery is found requisite. Mitf. Eq. Pl. by Jeremy, 55; Coop Eq. Pl. 73; 3 Atk. R. 110; 12 Paige, R. 200. 4th. When new events or new matters have occurred since the filing of the bill; Coop. Eq. Pl. 74; these events or matters, however, are confined to such as refer to and support the rights and interests already mentioned in the bill. Story, Eq. Pl. §336.

20. - 2. The supplemental bill must state the original bill, and the proceedings thereon and when it is occasioned by an event which has occurred subsequently to the original bill, it must state that event, and the consequent alteration with regard to the parties. In general, the supplemental bill must pray that all defendants appear and answer the charges it contains. Mitf. Eq. Pl. by Jeremy, 75 Story, Eq. Pl. §343.

21. - 2. A bill of revivor, which is a continuance of the original bill, when by death some party to it has become incapable of prosecuting or defending a suit, or a female plaintiff has by marriage incapacitated herself from suing alone. Mitf. Pl. 33, 70; 2 Madd. Ch. Pr. 526. See 3 Johns. Ch. R. 60: Story, Eq. Pl. §354, et. seq.

22. - 3. A bill of revivor and supplement. This is a compound of a supple-mental bill and bill of revivor, and not only continues the suit, which has abated by the death of the plaintiff, or the like, but supplies any defects in the original bill, arising from subsequent events, so as to entitle the party to relief on the whole merits of his case. 5 Johns.Ch R. 334; Mitf. Pl. 32, 74.

23. - 2d. Among the second class may be placed, 1. A cross bill. This is one which is brought by a defendant in a suit against the plaintiff, respecting the matter in question in that bill. Coop. Eq. Pl. 85 Mitf. Pl. 75.

24. A bill of this kind is usually brought to obtain, either a necessary discovery, or full relief to all the parties. It frequently happens, and particularlly if any questions arises between two defendants to a bill, that the court cannot make a complete decree without a cross bill, or cross bills to bring every matter in dispute completely before the court, litigated by the proper parties, and upon proper proofs. In this case it becomes necessary for some one of the defendants to the original bill to file a bill against the plaintiff and other defendants in that bill, or some of them, and bring the litigated point properly before the court.

25. A cross bill should state the original bill, and the proceedings thereon, and the rights of the party exhibiting the bill which are necessary to be made the subject of a cross litigation, or the grounds on which he resists the claims of the plaintiff in the original bill, if that is the object of the new bill.

26. A cross bill may be filed to answer the purpose of a plea puis darrein continuance at the common law. For example, where, pending a suit, and after replication and issue joined, the defendant having obtained a release and attempted to prove it viva voce at the bearing, it was determined that the release not being in issue in the cause, the court could not try the facts, or direct a trial at law for that purpose, and that a new bill must be filed to put the release in issue. Mitf. Pl. 75, 76 Coop. Eq. Pl. 85; 1 Harr. Ch. Pr. 135.

27. A cross bill must be brought before publication is passed on the first bill, 1 Johns. Ch. R. 62, and not after, except the plaintiff in the cross bill go to the hearing on the depositions already published; because of the danger of perjury and subornation, if the parties should, after publication of the former depositions, examine witnesses, de

novo, to the same matter before examined into. 7 Johns. Ch. Rep. 250; Nels. Ch. R. 103.

28. - 2. A bill of review. Bills of review are in the nature of writs of error. They are brought to have decrees of the court reviewed, altered, or reversed, and there are two sorts of these bills. The first is brought where the decree has been signed and enrolled and the second, where the decree has not been signed and enrolled. 1 Ch. Cas. 54; 3 P. Wms. 371. The first of these is called, by way of preeminence, a bill of review; while the other is distinguished by the appellation of a bill in the nature of a bill of review, or a supplemental bill iii the nature of a bill of review. Coop. Eq. Pl. 88; 2 Madd. Ch. Pr. 537.

29. A bill of review must be either for error in point of law; 2 Johns. C. R. 488; Coop. Eq. Pl. 89; or for some new matter of fact, relevant to the case, discovered since publication passed in the cause; and which could not, with reasonable diligence, have been discovered before. 2 Johns. C. R. 488; Coop. Eq. Pl. 94. See 3 Johns. R. 124,

30. - 3. Bill to impeach a decree on the ground of fraud. When a decree has been obtained by fraud, it may be impeached by original bill, without leave of court. As the principal point in issue, is the fraud in obtaining it, it must be established before the propriety of the decree can be investigated, and the fraud must be distinctly stated in the bill. The prayer must necessarily be varied according to the nature of the fraud used, and the extent of its operation in obtaining an improper decision of the court. When the decree to set aside a fraudulent decree has been obtained, the court will restore the parties to their former situation, whatever their rights may be. Mitf. Eq. Pl. 84; Sto. Eq. Pl. §426.

>31. - 4. Bill to suspend a decree. The operation of a decree may be suspended under special circumstances, or avoided by matter subsequent to the decrees upon a new bill for that purpose. See 1 Ch. Cas. 3, 61 2 Ch . Cal 8 Mitf. Eq. Pl. 85 , 86.

32. - 5. Bill to carry a decree into execution. This is one which is filed when from the neglect of parties, or some other cause, it may become impossible to carry a decree into execution without the further decree of the court. Hinde, 68; 1 Harr. Ch. 148.

33. - 6. Bills partaking of the qualities of some one or more of other bills. These are,

34. First. Bill in the nature of a bill of revivor. A bill in the nature of a bill of revivor, is one which is filed when the death of a party, whose interest is not determined by his death, is attended with such a transmission of his interest, that the title to it, as well as the person entitled, may be litigated in the court of chancery, as in the case of a devise of real estate, the suit is not permitted to be continued by bill of revivor. 1 Ch. Cas.

123; Id. 174; 3 Ch. Rep. 39; Mosely, R. 44. In such cases an original bill, upon which the title may be litigated, must be filed, and this bill will have so far the effect of a bill of revivor, that if the, title of the representative by the act of the deceased party is established, the same benefit may be had of the proceedings upon the former bill, as if the suit had been continued by bill of revivor. 1 Vern. 427; 2 Vern. 548 Id. 672; 2 Bro. P. C. 529; 1 Eq. Cas. Ab. 83; Mitf. Pl. 66, 67.

35. Secondly. Bill in the nature. of a supplemental bill. An original bill in the nature of a supplemental bill, is one filed when the interest of the plaintiff or defendant, suing or defending, wholly determines, and the same property becomes vested in another person not claiming under him. Hinde, 71; Blake's Ch. Pr. 38. The principal difference between this and a supplemental bill, seems to be, that a supplemental bill is applicable to such cases only, where the same parties or the same interests remain before the court; whereas, an original bill in the nature of a supplemental bill, is properly applicable where new parties, with new interests, arising from events occurring since the institution of the suit, are brought before the court. Coop. Eq. Pl. 75; Story, Eq. Pl. §345.

36. Thirdly. Bill in the nature of a bill of review. A bill in the nature of a bill of review, is one brought by a person not bound by a decree, praying that the same may be examined and reversed; as where a decree is made against a person who has no interest at all in the matter in dispute, or had not an interest sufficient to render the decree against him binding upon some person claiming after him. Relief may be obtained against error in the decree, by a bill in the nature of a bill of review. This bill in its frame resembles a bill of review, except that instead of praying that the former decree may be reviewed and reversed, it prays that the cause may be heard with respect to the new matter made the subject of the supplemental bill, at the same time that it is reheard upon the original bill; and that the plaintiff may have such relief as the nature of the case made by the supplemental bill may require. 1 Harr. Ch. P. 145.

37. There are also bills which derive their names from the object which the complainant has in view. These will be separately considered.

38.- 1. Bill of foreclosure. A bill of foreclosure is one filed by a mortgagee against the mortgagor, for the purpose of having the estate, sold, thereby to obtain the sum mortgaged on the premises, with interest and costs. 1 Madd. Ch. Pr. 528. As to the persons who are to be made parties to a bill of foreclosure, see Story, Eq. Pl. §199-202.

39. - 2. Bill of information. A bill of information is a bill instituted in behalf of the state, or those whose rights are the object of its care and protection. It is commenced by information exhibited in the name of the attorney-general, and differs from other

bills little more than in name. If the suit immediately concerns the right of the state, the information is generally exhibited without a relator. If it does not immediately concern those rights, it is conducted at the instance and under the immediate direction of, some person whose name is inserted in the information, and is termed the relator; the officers of the state, in such or the like cases, are not further concerned than as they are instructed and advised by those whose rights the state is called upon to protect and establish. Blake's Ch. Pl. 50; see Harr. Ch. Pr. 151.

40. - 3. Bill to marshal assets. A bill to marshal assets is one filed in favor of simple contract creditors, and of legatees, devisees, and heirs, but not in favor of next of kin, to prevent specialty. creditors from exhausting the personal estate. See Marshaling of Assets.

41. - 4. Bill to marshal securities. A bill to marshal securities is one which is filed against a party who has two funds by which his debt is secured, by a person having an interest in only one of those funds. As if A has two mortgages and B has but one, B has a right to throw A upon the security which B cannot touch. 2 Atk. 446; see 8 Ves. 388, 395. This last case contains a luminous exposition in all its bearings. In Pennsylvania, and perhaps in some other states, the object of this bill is reached by subrogation, (q. v.) that is, by substituting the creditor, having but one fund to resort to, to the rights of the other creditor, in respect to the other fund.

42. - 5. Bill for a new trial. This is a bill filed in a court of equity praying for an injunction after judgment at law, when there is any fact, which renders it against conscience to execute such judgment, and of which the injured party could not avail himself in a court of law-, or, if he could, was prevented by fraud or accident, unmixed with any fault or negligence of himself or his agents. Mitf. Pl. by Jer. 131; 2 Story Eq. §887. Of late years bills of this description are not countenanced. Id.˜201 John. Ch. R. 432 6 John. Ch. R. 479.

43. - 6. Bill of peace. A bill of peace is one which is filed when a person has a right which may be controverted by various persons, at different times, and by different actions. In such a case the court will prevent a multiplicity of suits, by directing an issue to determine the right, and ultimately grant an injunction. 1 Madd. Ch. Pr. 166; 1 Harr. Ch. Pr. 104; Blake's Ch. Pr. 48; 2 Story, Eq. Jur. §852 to 860; Jeremy on Eq. Jurisd. 343 2 John. Ch. R. 281; 8 Cranch, R. 426.

44. There is another class of cases in which a bill of peace is now ordinarily applied; namely, when the plaintiff, after repeated and satisfactory trials, has established his right at law, and is still in danger of new attempts to controvert it. In order to quiet the possession of the plaintiff, and to suppress future litigation, courts of equity, under

such circumstances, will interfere, and grant a perpetual injunction. 3 John. R. 529; 8 Cranch, R. 462; Mit. Pl. by Jeremy, 143; 2 John. Ch. R. 281; Ed. on Inj. 356.

45. - 7. Bill quia timet. A bill quia timet, is one which is filed when a person is entitled to property of a personal nature after another's death, and has reason to apprehend it may be destroyed by the present possessor; or when he is apprehensive of being subjected to a future inconvenience, probable or even possible to happen or be occasioned by the neglect, inadvertance, or culpability of another. Upon a proper case being made out, the court will, in one case, secure the property for the use of the party (which is the object of the bill) by compelling the person in possession of it, to give a proper security against any subsequent disposition or wilful destruction and in the other case, they will quiet the party's apprehension of future inconvenience, by removing the causes which may lead to it. 1 Harr. Ch. Pr. 107; 1 Madd. Ch. Pr. 218: Blake's Ch. Pr. 37, 47; 2 Story, Eq. Jur. §825 to 851. Vide, generally, Bouv. Inst. Index, h. t.

BILL, merc. law. An account containing the items of goods sold, or of work done by one person against another. It differs from an account stated (q. v.) in this, that the latter is a bill approved and sanctioned by the debtor, whereas a bill is made out by the creditor alone.

BILL OF ADVENTURE, com. law, contracts. A writing signed by a merchant, to testify that the goods shipped on board a certain vessel belong to another person who is to take the hazard, the subscriber signing only to oblige himself to account to him, for the proceeds.

BILL OP ATTAINDER, legislation, punishment. An act of the legislature by which one or more persons are declared to be attainted, and their property confiscated.

2. The Constitution of the United States declares that no state shall pass any bill of attainder.

3. During the revolutionary war, bills of attainder, and ox post facto acts of confiscation, were passed to a wide extent. The evils resulting from them, in times of more cool reflection, were discovered to have far outweighed any imagined good. Story on Const. §1367. Vide Attainder; Bill of Pains and Penalties.

BILL-BOOK, commerce, accounts. One in in which an account is kept of promissory notes, bills of exchange, and other bills payable or receivable: it ought to contain all that a man issues or receives. The book should show the date of the bill, the term it has to run before it becomes due, the names of all the parties to it, and the time of its becoming due, together with the amount for which it was given.

BILL OF CONFORITY. The name of a bill filed by an executor or administrator, who finds the affairs of the deceased so much involved that he cannot safely administer the estate, except under the direction of a court of chancery. This bill is filed against the creditors generally, for the purpose of having all their claims adjusted, and procuring a final decree settling the order of payment of the assets. 1 Story, Eq. Jur. 440.

BILL 0F COST, practice. A statement of the items which form the total amount of the costs of a suit or action. This is demandable as a matter of right before the payment of the costs.

BILL OF CREDIT. It is provided by the Constitution of the United States, art. 1, s. 10, that no state shall " emit bills of credit, or make anything but gold and silver coin a tender in payment or debts." Such bills of credit are declared to mean promissory notes or bills issued exclusively on the credit of the. state, and for the payment of which the faith of the state only is pledged. The prohibition, therefore, does not apply to the notes of a state bank, drawn on the credit of a particular fund set apart for the purpose. 2 M'Cord's R. 12; 2 Pet. R. 818; 11 Pet. R. 257. Bills of credit may be defined to be paper issued and intended to circulate through the community for its ordinary purposes, as money redeemable at a future day. 4 Pet. U. S. R. 410; 1 Kent, Com. 407 4 Dall. R. xxiii.; Story, Const. §§ 1362 to 1364 1 Scam. R. 87, 526.

2. This phrase is used in another sense among merchants it is a letter sent by an agent or other person to a merchant, desiring him to give credit to the bearer for goods or money. Com. Dig. Merchant, F 3; 5 Sm. & Marsh. 491; R. M. Charlt. 151; 4 Pike, R. 44; 3 Burr. Rep. 1667.

BILL OP DEBT, BILL OBLIGATORY, contracts. When a merchant by his writing acknowledges himself in debt to another, in a certain sum to be paid on a certain day and subscribes it at a day and place certain. It may be under seal or not. Com. Dig. Merchant, F 2.

BILL OF EXCEPTION, practice. The statement in writing, of the objection made by a party in a cause, to the decision of the court on a point of law, which, in confirmation of its accuracy, is signed and sealed by the judge, or court who made the decision. The object of the bill of exceptions is to put the question of law on record, for the information of the court of error having cognizance of such cause.

2. The bill of exception is authorized by the statute of Westminster 2, 13 Ed. I. c. 31, the principles of which have, been adopted in all the states of the Union. It is thereby enacted, "when one impleaded before any of the justices, alleges an exception praying they will allow it, and if they will not, if he that alleges the exception writes the same,

and requires 'that the justices will put their seals, the justices shall do so, and if one will not, another ,shall; and if, upon complaint made of the justice, the king cause the record to come before him, and the exception be not found in the roll, and the plaintiff show the written exception, with the seal of the justices thereto put, the justice shall be commande to appear at a certain day, either to confess or deny his seal, and if he cannot deny his seal, they shall proceed to judgment according to the exception, as it ought to be allowed or disallowed." The statute extends to both plaintiff and defendant. Vide the, form of confessing a bill of exceptions, Burr. 1692. And for precedents see Bull. N. P. 317; Brownlow's Entries; Latine Redivio, 129; Trials per pais, 222, 3; 4 Yeates, 317, 18; 2 Yeates, 295, 6. 485, 6; 1 Morgan's Vade Mecum, 471-5. Bills of exception differ materially from special verdicts; 2 Bin. 92; and from the opinions of the court filed in the cause. 10 S. & R. 114, 15.

3. Here will be considered, 1 the cases in which a bill of exceptions may be had; 2. the time of making the exception; 3. the form of the bill; 4. the effect of the bill.

4. - 1. In general a bill of exception can be had only in a civil case. When in the course of the trial of a cause, the judge, either in his charge to the jury, or in deciding an interlocutory question, mistakes the law, or is supposed by the counsel on either. side, to have mistaken the law, the counsel against whom the decision is made may tender an exception to his opinion, and require him to seal a bill of exceptions. 3 Bl. Com. 372. See Salk. 284, pl. 16 7 Serg. & Rawle, 178; 10 Id. 114, 115 Whart. Dig. Error, D, E 1 Cowen, 622; 2 Caines, 168; 2 Cowen, 479 5, Cowen, 243 3 Cranch, 298 4 Cranch, 62; 6 Cranch, 226; 17 Johns. R. 218; 3 Wend. 418 9 Wend. 674. In criminal cases, the judges, it seems, are not required to seal a bill of exceptions. 1 Chit. Cr. Law, 622; 13 John. R. 90; 1 Virg. Cas. 264; 2 Watts, R. 285; 2 Sumn. R. 19. In New York, it is provided by statute, that on the trial of any indictment, exceptions to any decision of the court may be made by the defendant, in the same cases and manner provided by law in civil cases and a bill thereof shall be settled, signed and sealed, and filed with the clerk of the court. But such bill of exception shall not stay or delay the rendering of judgment, except in some specified cases. Grah. Pr. 768, note.. Statutory provisions have been made in several other states authorizing the taking of exceptions in criminal cases. 2 Virg. Cas. 60 and note 14 Pick. R. 370; 4 Ham. R. 348; 6 Ham. R. 16 7 Ham. R. 214; 1 Leigh, R. 598; 14 Wend. 546. See also 1 Halst. R. 405; 2 Penn. R. 637.

5. - 2. The bill of exceptions must be tendered at the time the decision complained of is made or if the exception be to the charge of the court, it must be made before the jury have given their verdict. 8 S. & R. 216 4 Dall. 249; S. C. 1 Binn. 38; 6 John. 279; 1 John. 312; 5 Watts, R. 69; 10 John. R. 312; 5 Monr. R. 177; 7 Wend. R. 34; 7 S. & R. 219; 11 S. & R. 267 4 Pet. R. 102; Ala. R. 66; 1 Monr. 215 11 Pet. R. 185; 6 Cowen, R. 189. In practice, however, the, point is merely noted, at the time, and the bill is afterwards settled. 8 S. & R. 216; 11 S. & R. 270; Trials per pais, 467; Salk.

288; Sir T. Ray. 405 Bull. N. P. 315-16; Jacob's Law Dict. They may be sealed by the judge after the record has been removed by a writ of error, and after the expiration of his office. Fitz. N. B. 21 N, note.

6. - 3. The bill of exception must be signed by the judge who tried the cause; which is to be done upon notice of the time and place, when and where it is to be done. 3 Cowen, 32; 8 Cowen, 766; Bull. N. P. 316 3 Bl. Com. 372. When the bill of exception is sealed, both parties are concluded by lit. 3 Dall. 38; Bull. N. P. 316.

7.- 4. The bill of exceptions, being part of the record, is evidence between the parties, as to the facts therein stated. 3 Burr. 1765. No notice can be taken of objections or exceptions not appearing on the bill. 8 East, 280; 3 Dall. 38, 422, n.; 2 Binn. 168. Vide, generally, Dunlap's Pr.; Grah. Pr.; Tidd's Pr.; Chit. Pr.; Penna. Pr.; Archibold's Pr. Sellon's Pr.; in their several indexes, h. t.; Steph. Pl. 111; Bac. Ab. h. t.; 1 Phil. Ev. 214; 12 Vin. Ab. 262; Code of Pract. of Louisiana, art. 487, 8, 9; 6 Watts & Serg, 386, 397; 3 Bouv. Inst. n. 3228-32.

BILL OF EXCHANGE, contracts. A bill of exchange is defined to be an open letter of request from, and order by, one person on another, to pay a sum of money therein mentioned to a third person, on demand, or at a future time therein specified. 2 Bl. Com. 466; Bayl. on Bills, 1; Chit. Bills, 1; 1 H. Bl. 586; 1 B. & P. 291, 654; Selw. N. P. 285. Leigh's N. P. 335; Byles on Bills, 1; 1 Bouv. Inst. n. 895.

2. The subject will be considered with reference, 1 . to the parties to a bill; 2. the form; 3. their different kinds 4. the indorsement and transfer; 5. the acceptance 6. the protest.

3. - §1. The parties to a bill of exchange are the drawer, (q. v.) or he who makes the order; the drawee, (q. v.) or the person to whom it is addressed; the acceptor, (q. v.) or he who accepts -the bill; the payee, (q. v.) or the party to whom, or in whose favor the bill is made. The indorser, (q. v.) is he who writes his name on the back of a bill; the indorsee, (q. v.) is one to whom a bill is transferred by indorsement; and the holder, (q. v.) is in general any one of the parties who is in possession of the bill, and entitled to receive the money therein mentioned.

4. Some of the parties are sometimes fictitious persons. When a bill is made payable to a fictitious person, and indorsed in the name of the fictitious payee, it is in effect a bill to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties, who were privy to the transaction. 2 H. Bl. 178, 288; 3 T. R. 174, 182, 481; 1 Camp. 130; 19 Ves. 311. In a case where the drawer and payee were fictitious persons, the acceptor was held liable to a bona fide holder. 10 B. & C. 468;

S. C. 11 E. C. L. R. 116. Vide, as to parties to a bill, Chit. Bills, 15 to 76, (ed. of 1836.)

5. - §2. The form of the bill. 1. The general requisites of a bill of exchange, are, 1st. that it be in writing. R. T. Hardw. 2; 2 Stra. 955; 1 Pardess. 344-5.

6.- 2d. That it be for the payment of money, and not for the payment of merchandise. 5 T. R. 485; 3 Wils. 213; 2 Bla. Rep. 782; 1 Burr. 325; 1 Dowl. & Ry. N. P. C. 33; 1 Bibb's R. 502; 3 Marsh. (Kty.) R. 184; 6 Cowen, 108; 1 Caines, R. 381; 4 Mass. 245; 10 S. & R. 64; 14 Pet. R. 293; 1, M'Cord, 115; 2 Nott & M'Cord, 519; 9 Watts, R. 102. But see 9 John. R. 120; and 19 John. R. 144, where it was held that a note payable in bank bills was a good negotiable note.

7. - 3d. That the money be payable at all events, not depending on any contingency, either with regard to the fund out of which payment is to be made, or the parties by or to whom payment is to be made. 8 Mod. 363; 4 Vin. Ab. 240, pl. 16; 1 Burr. 323; 4 Dougl. 9; 4 Ves. 372; Russ. & Ry. C. C. 193; 4 Wend. R. 576; 2 Barn. & Ald. 417.

8. - 2. The particular requisites of a bill of exchange. It is proper here to remark that no particular form or set of words is necessary to be adopted. An order " to deliver money," or a promise that " A B shall receive money," or a promise " to be accountable" or " responsible" for it, have been severally held to be sufficient for a bill or note. 2 Ld. Raym. 1396; 8 Mod, 364.

9. The several parts of a bill of exchange are, 1st. that it be properly dated as to place

10.- 2d. That it be properly dated as to the time of making. As the time a bill, becomes due is generally regulated by the time when it was made, the date of the instrument ought to be clearly expressed. Beawes, pl. 3 1 B . & C. 398; 2 Pardess. n. 333.

11. - 3d. The superscription of the sum for which the bill is payable is not indispensable, but if it be not mentioned in the bill, the superscription will aid. the omission. 2 East, P. C. 951.

12. - 4th. The time of payment ought to be expressed in the bill; if no time be mentioned, it is considered as payable on demand. 7 T. R. 427; 2 Barn. & C. 157.

13. - 5th. Although it is proper for the drawer to name the place of payment, either in the body or subscription of the bill, it is not essential; and it is the common practice for the drawer merely to write the address of the drawee, without pointing out any, place of payment; in such case the bill is considered payable, and to be presented at the residence of the drawee, where the bill was made, or to him personally any where.

2 Pardess. n. 337 10 B. & C. 4; Moody & M. 381; 4 Car. & Paine, 35. It is at the option of the drawer whether or not to prescribe a particular place of payment, and make the payment there part of the contract. Beawes, pl. 8. The drawee, unless restricted by the drawer, may also fix a place of payment by his acceptance. Chit. Bills, 172.

14. - 6th. There must be an order or request to pay and that must be a matter of right, and not of favor. Mood. & M. 171. But it seems that civility in the terms of request cannot alter the legal effect of the instrument. "il vous plair a de payer," is, in France, the proper language of a bill. Pailliet, Manuel de Droit Francais, 841. The word pay is not indispensable, tor the word deliver is equally operative. Ld. Raym. 1397.

15. - 7th. Foreign bills of exchange consist, generally, of several parts; a party who has engaged to deliver a foreign bill, is bound to deliver as many parts as may be requested. 2 Pardess. n. 342. The several parts of a bill of exchange are called a set; each part should contain a condition that it shall be paid, provided the others remain unpaid. Id. The whole set make but one bill.

16. - 8th. The bill ought to specify to whom it is to be paid. 2 Pardess. n. 338; 1 H. Bl. 608; Russ. & Ry. C. C. 195. When the name of the payee is in blank, and the bill has been negotiated by indorsement, the holder may fill the blank with his own name. 2 M. & S. 90; 4 Camp. 97. It may, however, be drawn payable to bearer, and then it is assignable by delivery. 3 Burr. 1526.

17. - 9th. To make a bill negotiable, it must be made payable to order, or bearer, or there must be other operative and equivlent words of transfer. Beawes, pl. 3; Selw. N. P. 303, n. 16; Salk. 133. if, however, it is not intended to make the bill negotiable, these words need not be inserted, and the instrument will, nevertheless, be valid as a bill of exchange. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines' R. 137; 9 John. It. 217. In France, a bill must be made payable to order. Code de Com. art. 110; 2 Pardess. n. 339.

18. - 10th. The sum for which the bill is drawn, must be clearly expressed in the body of it, in writing at length. The sum must be fixed and certain, and not contingent. 2 Stark. R. 375. And it may be in the money of any country. Payment of part of the bill, the residue being unpaid, cannot be indorsed. The, contract is indivisible, and the acceptor would thereby be compelled to make two payments instead of one. But when part of a bill has been paid the residue may be assigned, since then it becomes a contract for the residue only. 12 Mod. 213; 1 Salk. 65; Ld. Ray. 360.

19. - 11th. It is usual to insert the words, value received, but it is. implied that every bill and indorsement has been made for value received, as much as if it had been expressed in totidem verbis. 3 M. & S. 352; Bayl. 40, n. 83.

20. - 12th. It is usual, when the drawer of the bill is debtor to the drawee, to insert in the bill these words: " and put it to my account but when the drawee, or the person to whom it is directed, is debtor to the drawer, then he inserts these words : "and put it to your account;" and, sometimes, where a third person is debtor to the drawee, it may be expressed thus: "and put it to the account of A B;" Marius, 27;. C, om. Dig. Merchant, F 5; R. T. Hardw. 1, 2, 3; but it is altogether unnecessary to insert any of these words. 1 B. & C. 398; S. C. 8 E. C. L. R. 108.

21. - 13th. When the drawer is desirous to inform the drawee that he has drawn a bill, he inserts in it the words, "as per advice;" but when he wishes the bill paid without any advice from him, he writes, "without further advice." In the former case the drawee is not authorized to pay the bill till he has received the advice; in the latter he may pay before he has received advice.

22. - 14th. The drawee must either subscribe the bill, or, it seems, his name may be simply inserted in the body of the instrument. Beawes, pl. 3; Ld. Raym. 1376 1 Stra. 609.

23. - 15th. The bill being a letter of request from the maker to a third person, should be addressed to that person by the Christian name and surname, or by the full style of their firm. 2 Pardess. n. 335 Beawes, pl. 3; Chit. Bills, 186, 7.

24. - 16th. The place of payment should be stated in the bill.

25. - 17th. As a matter of precaution, the drawer of a foreign bin may, in order to prevent expenses, require the holder to apply to a third person, named in the bill for that purpose, when the drawee refuses to accept the bill. This requisition is usually in these words, placed in a corner, under the drawee's address: " Au besoin chez Messrs. - at -," in other words, ((In case of need apply to Messrs. at -. "

26. - 18th. The drawer may also add a request or direction, that in case the bill should not be honored by the drawee, it shall be returned without protest or without expense, by subscribing the words, " retour sans protet," or " sans frais;" in. this case the omission of the holder to protest, having been induced by the drawer, he, and perhaps the indorsers, cannot resist the payment on that account, and thus the expense is avoided. Chit. Bills, 188.

27. - 19th. The drawer may also limit the amount of damages, by making a memorandum on the bill, that they shall be a definite sum; as, for example: "In case of non-acceptance or uon-payment, re-exchange and expenses not to, exceed dollars." Id.

28. - §3. Bills of, exchange are either foreign or inland. Foreign, when drawn by a person out of, on another in, the United States, or vice versa; or by a person in a foreign country, on another person in another foreign country; or by a person in one state, on another in another of the United States. , 2 Pet. R. 589 .; 10 Pet. R. 572; 12 Pick. 483 15 Wend. 527; 3 Marsh. (Kty.) R. 488 1. Rep. Const.; Ct. 100 4 Leigh's R. 37 4 Wash. C. C. Rep. 148; 1 Whart. Dig. tit. Bills of Exchange, pl. 78. But see 5 John. R. 384, where it is said by Van Ness, Justice, that a bill drawn in the United States, upon any place within the United States, is an inland bill.

29. An inland bill is one drawn by a person in a state, on another in the same state. The principal difference between foreign and inland bills is, that the former must be protested, and the latter need not. 6 Mod. 29; 2 B. & A. 656; Chit Bills, (ed. of 1836,) p. 14. The English rule requiring protest and notice of non-acceptance of foreign bills, has been adopted and followed as the true rule of mercantile law, in the states of Massachusetts, Connecticut) New York, Maryland, and South Carolina. 3 Mass. Rep. 557; 1 Day's R. 11; 3 John. Rep. 202; 4 John. R. 144; 1 Bay's Rep. 468; 1 Harr. & John. 187. But the supreme court of the United States, in Brown v. Berry, 3 Dall. R. 365, and in Clark v. Russel, cited in 6 Serg. & Rawle, 358, held, that in an action on a foreign bill of exchange, after a protest for non-payment, protest for non-acceptance, or notice of non-acceptance need not be shown, inasmuch as they were not required by the custom of merchants in this country; and those decisions have been followed in Pennsylvania. 6 Serg. & Rawle, 356. It becomes a little difficult, therefore, to know what is the true rule of the law-merchant in the United States, on this point, after such contrary decisions." 3 Kent's Com. 95. As to what will be considered a foreign or an inland bill, when part of the bill is made in one place and part in another, see 1 M. & S. 87; Gow. R. 56; S. c. 5 E. C. L. R. 460; 8 Taunt., 679; 4 E. C. L. R. 245; 5 Taunt. 529; 1 E. C. L. R. 179.

30. - §4. The indorsement. Vide articles Indorsement; Indorser; Indorsee.

31. - §5. The acceptance. Vide article, Acceptance.

32. - §6. The protest. Vide article, Protest. Vide, generally, Chitty on Bills; Bayley on Bills; Byles on Bills; Marius on Bills; Kyd on Bills; Cunningham on Bills; Pothier, h. t.; Pardess. Index, Lettre de Change; 4 Vin. Ab. 238; Bac. Ab. Merchant and Merchandise, M.; Com. Digest, Merchant; Dane's Ab. Index, h. t.; 1 Sup: to Ves. Jr. 86, 514; Smith on Mer. Law, Book 3, c. 1; Bouv. Inst. Index,.h. t.

BILL OF GROSS ADVENTURE. A phrase used in French maritime law; it comprehends every instrument of writing which contains a contract of bottomry, respondentia, and every species of maritime loan. We have no word of similar import. Hall on Mar. Loans, 182, n. See Bottomry; Gross adventure; Respondentia.

BILL OF HEALTH; commercial law. A certificate, properly authenticated, that a certain ship or vessel therein named, comes from a place where no contagious distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper.

2. It is generally found on board of ships coming from the Levant, or from the coast of Barbary, where the plague so frequently prevails. 1 Marsh. on Ins. 408. The bill of health is necessary whenever a ship sails from a suspected port; or when it is required at the port of destination. Holt's R. 167; 1 Bell's Com. 553, 5th ed.

3. In Scotland the name of bill of health, has been given to an application.made by an imprisoned debtor for relief under the Act of Sederunt. When the want of health of the prisoner requires it, the prisoner is indulged, under proper regulations, with such a degree of liberty as may be necessary to restore him. 2 Bell's Com. 549, 5th ed.

BILL OF INDICTMENT. A written accusation of one or more persons, of a crime or misdemeanor, lawfully presented to a grand jury, convoked, to consider whether there is sufficient evidence of the charge contained therein to put the accused on trial. It is returned to the court with an indorsement of true bill (q. v.) when the grand jury are satisfied that the accused ought to be tried; or ignoramus, when they are ignorant of any just cause to put the accused upon hi.% trial.

BILL, contracts. A bill or obligation, (which are the same thing, except that in English it iis commonly called bill, but in Latin obligatio, obligation,) is a deed whereby the obligor acknowledges himself to owe unto the obligee a certain sum of money or some other thing, in which, besides the names of the parties, are to be considered the sum or thing due, the time, place, and manner of payment or delivery thereof. It may be indented, or poll, and with or without a penalty. West's Symboleography s. 100, 101, and the various forms there given.

BILL OF LADING, contracts and commercial law. A memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order, on board of his ship or vessel, therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order, (the dangers of the seas excepted,) at the place therein appointed for the delivery of the same, to the consignee therein named or to his assigns, he or they paying freight for the same. 1 T. R. 745; Bac. Abr. Merchant L Com. Dig.

Merchant E 8. b; Abbott on Ship. 216 1 Marsh. on Ins. 407; Code de Com. art. 281. Or it is the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. Per Lord Loughborougb, 1 H. Bl. 359.

2. A bill of lading ought to contain the name of the consignor; the name of the consignee the name of the master of the vessel; the name of the vessel; the place of departure and destination; the price of the freight; and in the margin, the marks and numbers of the things shipped. Code de Com. art. 281; Jacobsen's Sea Laws.

3. It is usually made in three original's, or parts. One of them is commonly sent to the consignee on board with the goods; another is sent to him by mail or some other conveyance; and the third is retained by the merch ant or shipper. The master should also take care to have another part for his own use. Abbotton Ship. 217.

4. The bill of lading is assignable, and the assignee is entitled to the goods, subject, however, to the shipper's right, in some cases, of stoppage in transitu. See In transitu; Stoppage in transitu. Abbott on Shipping. 331; Bac. Ab. Merchant, L; 1 Bell's Com. 542, 5th ed.

BILLS OF MORTALITY. Accounts of births and deaths which have occurred in a certain district, during a definite space of time.

BILL OBLIGATORY. An instrument in common use and too well known to be misunderstood. It is a bond without condition, sometimes called a single bill, and differs in nothing from a promissory note, but the seal which is affixed to it. 2 Serg. & Rawle, 115. See Read's Pleaders' Assistant, 256, for a declaration setting forth such a bill. Also West's Symboleography, s. 100, 101, for the forms both with and without a penalty.

BILL OF PAINS AND PENALTIES. A special act of the legislature which inflicts a punishment, less than death, upon persons supposed to be guilty of high offences, Such as; treason and felony, without any conviction in the ordinary course of judicial proceedings. 2 Wood. Law Lect. 625. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death.

2. The Constitution of the United States Provides that "no bill of attainder shall be passed." It has been judicially said by the supreme court of the United States, that " a bill of attainder may affect the life of an individual, or i-nay confiscate his property, or both." 6 Cranch, R. 138. in the sense of the constitution, then, it seems that bills of attainder include bills of pains and penalties. Story, Const. §1338. Vide Attainder; Bills of Attainder.

BILL OP PARCELS, merc. law. An account containing in detail the names of the items which compose a parcel or package of goods; it is usually transmitted with the goods to the purchaser, in order that if any mistake have been made, it may be corrected.

BILL OF PARTICULARS, practice. A detailed informal statement of a plaintiff is cause of action, or of the defendants's set-off.

2. In all actions in which the plaintiff declares generally, without specifying his cause of action, a judge upon application will order him to give the defendant a bill of the particulars, and in the meantime stay, proceedings. 3 John. R. 248. And when the defendant gives notice or pleads a set-off, he will be required to give a bill of the particulars of his set-off, on failure of which he will be precluded from giving any evidence in support of it at the trial. The object in both cases is to prevent surprise and procure a fair trial. 1 Phil. Ev. 152; 3 Stark Ev. 1055. The bill of particulars is an account of the items of the demand, and states in what manner they arose. Mete. & Perk. Dig. h. t. For forms, see Lee's Dict. of Pr., Particulars of demand.

BILL PENAL, contracts. A written obligation, by which a debtor acknowledges himself indebted in a certain sum, may one hundred dollars, and for the payment of the debt binds himself in a larger sum, say two hundred dollars. Bills penal do not frequently occur in modern practice; bonds, with conditions, have superseded them. Steph. on Pl. 265, note. See 2 Vent. 198. Bills-penal are sometimes called bills obligatory. Cro. Car. 515; 2 Vent. 106. But a bill obligatory is not necessarily a bill penal. Com. Dig. Obligations, D.

BILL OF PRIVILEGE, Eng. law. A process issued out of the court against an attorney, who is privileged from arrest, instead of process demanding bail. 3 Bl. Com. 289.

BILL OF PROOF. In the mayor's court, London, the claim made by a third person to the subject-matter in dispute between two others in a suit there, is called bill of Proof. It is somewhat similar to an intervention. (q. v.) 3 Chit. Com. Law, 633; 2 Chit. Pr. 492; 1 Marsh, R. 233.

BILL OF SUFFRANCE, Eng. law. The name of a license granted at the custom house to a merchant, authorizing him to trade from one English port to another without paying custom. Cunn. L. D.

BILL OF RIGHTS. English law. A statute passed in the reign of William and Mary, so called, because it declared the true rights of British subjects. W. & M. stat. 2, c. 2.

BILL OF SALE, Contracts. An agreement in writing, under seal, by which a man transfers the right or interest he has in goods and cbattels, to another. As the law imports a consideration when an agreement is made by deed, a bill of sale alters the property. Yelv. 196; Cro. Jac. 270 6 Co. 18.

2. The Act of Congress of January 14, 1793, 1 Story, L. U. S. 276, provides, that when any ship or vessel which shall have been registered pursuant to that act, or the act thereby partially repealed, shall in whole or in part be sold or transferred to a citizen of the United States, in every such sale or transfer, there shall be some instrument or writing in the nature of a bill of sale, which shall recite at length the certificate of registry; otherwise the said ship or vessel shall be incapable to be registered anew.

3. In England a distinction is made between a bill of sale for the transfer of a ship at sea, and one for the conveyance of a ship in the country; the former is called a grand bill of sale, the latter, simply, a bill of sale. In this country there does not appear to be such a distinction. 4 Mass. 661.

4. In general, the maritime law requires that the transfer of a ship should be evidenced by a bill of sale. 1 Mason, 306. But a contract to sell, accompanied by delivery of possession, is sufficient. 8 Pick. 86 16 Pick. 401; 16 Mass. 336; 7 John. 308. See 4 Mason, 515; 4 John. 54 16 Pet. 215; 2 Hall, 1; 1 Wash. C. C. 226.

BILL OF SIGHT, English commercial law. When a merchant i's ignorant of the real quantities or qualities of any goods consigned to him, so that he is unable to make a perfect entry of them, he is required to acquaint the collector or comptroller of the circumstances and such officer is authorized, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by bill of sight, for the packages, by the best description which can be given, and to grant a warrant that the same be landed and examined by the importer in presence of the officer; and within three days after the goods have been so landed, the importer is required to make a perfect entry. See stat. 3 & 4 Will. IV. c . 52, §24.

BILL, SINGLE, contracts. A writing by which one person or more, promises to another or others, to pay him or them a sum of money at a time therein specified, without any condition. It is usually under seal; and when so, it is sometimes, if not commonly, called a bill obligatory. (q. v.) 2 S. & R. 115.

2. It differs from a promissory note in this, that the latter is always payable to order; and from a bond, because that instrument has always a condition attached to it, on the performance of which it is satisfied. 5 Com. Dig. 194; 7 Com. 357.

BILL OF STORE, English commercial law. A license granted by custom house officers to merchants, to carry such stores and provisions as are necessary for a voyage, free of duty. See stat. 3 and 4 Will. IV., c. 5 2.

BILL, TRUE. A true bill is an indictment approved of by a grand jury. Vide Billa Vera; True Bill.

BILLS PAYABLE, COMMERCE. Engagements which a merchant has entered into in writing, and which he is to pay on their becoming due. Pard. n. 85.

BILLS RECEIVABLE, Commerce. Promissory notes, bills of exchange, bonds, and other evidences or securities which a merchant or trader holds, and which are payable to him. Pard. n. 85.

BILLA VERA, practice. When the proceedings of the courts were recorded in Latin, and the grand jury found a bill of indictment to be supported by the evidence, they indorsed on it billa vera; now they indorse in plain English " a true bill."

TO BIND, BINDING, contracts. These words are applied to the contract entered into, between a master and an apprentice the latter is said to be bound.

2. In order to make a good binding, the consent of the apprentice must be had, together with that of his father, next friend, or some one standing in loco parentis. Bac. Ab. Master and Servant, A; 8 John. 328; 2 Pen. 977; 2 Yerg. 546 1 Ashmead, 123; 10 Sergeant & Rawle, 416 1 Massachusetts, 172; 1 Vermont, 69. Whether a father has, by the common law, a right to bind out his child, during his minority without his consent, seems not to be settled. 2 Dall. 199; 7 Mass. 147; 1 Mason, 78; 1 Ashm. 267. Vide Apprentice; Father; Mother; Parent.

3. The words to bind or binding, are also used to signify that a thing is subject to an obligation, engagement or liability; as, the judgment binds such an estate. Vide Lien.

TO BIND, OR TO BIND OVER, crim. law. The act by which a magistrate or a court hold to bail a party, accused of a crime or misdemeanor.

2. A person accused may be bound over to appear at a court having jurisdiction of the offence charged, to answer; or he may be bound over to be of good behaviour, (q. v.) or to keep the peace. See Surety of the Peace.

3. On refusing to enter into the requisite recognizance, the accused may be committed to prison.

BIPARTITE. Of two parts. This term is used in conveyancing as, this indenture bipartite, between A, of the one part, and B, of the other part. But when there are only two parties, it is not necessary to use this word.

BIRRETUM or BIRRETUS. A cap or coif used formerly in England, by judges and sergeants at law. Spelm. h. t.; Cunn. Dict. Vide Coif.

BIRTH. The act of being wholly brought into the world. The whole body must be detached from that of the mother, in order to make the birth complete. 5 C. & P. 329; S. C. 24 E. C. L. R. 344 6 C. & P. 349; S. C. 25 E. C. L. R. 433.

2. But if a child be killed with design and maliciously after it has wholly come forth from the body of the mother, although still connected with her by means of the umbilical cord, it seems that such killing will be murder. 9 C. & P. 25 S . C. 38 E. C. L. R. 21; 7 C. & P. 814. Vide articles Breath; Dead Born; Gestation; Life; and 1 Beck' s Med. Jur. 478, et seq.; 1 Chit. Med. Jur. 438; 7 C. & P. 814; 1 Carr. & Marsh. 650; S. C. 41 E. C. L. R. 352; 9 C. & P. 25.

3. It seems that unless the cbild be born alive, it is not properly a birth, but a carriage. 1 Chit. Pr. 35, note z. But see Russ. & Ry. C. C. 336.

BISAILE, domestic relations. A corruption of the French word besaieul, the father of the grandfather or grandmother. In Latin he is called proavus. Inst. 3, 6, 3 Dig. 38, 10, 1, 5. Vide Aile.

BISHOP. An ecclesiastical officer, who is the chief of the clergy of his diocese, and is the archbishop's assistant. Happily for this country, these officers are not recognized by law. They derive all their authority from the churches over which they preside. Bishop's COURT, Eng. law. An ecclesiastical court held in the cathedral of each diocese, the judge of which is the bishop's chancellor.

BISHOPRICK, eccl. law. The extent of country over which a bishop has jurisdiction a see; a diocese. For their origin, see Francis Duarenus de sacris Eccles. Ministeriis ac beneficiis, lib. 1, cap. 7; Abbe Fleury, 2d Discourse on Ecclesiastical History, §v.

BISSEXTILE. The day which is added every fourth year to the month of February, in order to make the year agree with the course of the sun. It is called bissextile, because in the Roman calendar it was fixed on the sixth day before the calends of March, (which answers to the 24th day of February,) and this day was counted twice; the first was called bissextus prior, and the other bissextus posterior, but the latter was properly called bissextile or intersalary day. Although the name bissextile is still retained in its obsolete import, we intercalate the 29th of February every fourth Year,

which is called leap year; and for still greater accuracy, make only one leap year out of every four centenary years. The years 1700 and 1800 were not leap years, nor will the .year A. D. 1900 be reckoned as one, but the year A. D. 2000 will be a leap year or bissextile. For a learned account of the Julian and Gregorian calendars, see Histoire du Calendrier Romain, by Mons. Blondel; also, Savigny Dr. Rom. §192; and Brunacci's Tract on Navigation, 275, 6. BLACK ACT, English law. An act of parliament made in the 9 Geo. II., which tears this name, to punish certain marauders who committed great outrages, in disguise, and with black faces. See Charlt. R. 166.

BLACK BOOK OF THE ADMIRALTY. An ancient book compiled in the reign of Edw. III. It has always been deemed of the highest authority in matters concerning the admiralty. It contains the laws of Oleron, At large; a view of the crimes and offences cognizable in the admiralty; ordinances and commentaries on matters of prize and maritime torts, injuries and contracts, 2 Gall. R. 404.

BLACK BOOK OP THE EXCHEQUER. The name of a book kept in the English exchequer, containing a collection of treaties) conventions, charters, &c.

BLACK MAIL. When rents were reserved payable in work, grain, and the like, they were called reditus nigri, or black mail, to distinguish them from white rents or blanch farms, or such as were paid in money. Vide Alba firma.

BLANCH FIRMES. The same as white rent. (q. v.)

BLANK. A space left in writing to be filled, up with one or more words, in order to make sense. 1. In what cases the ambiguity occasioned by blanks not filled before execution of the writing may be explained 2. in what cases it cannot be explained.

2. - 1. When a blank is left in a written agreement which need not -have been reduced to writing, and would have been equally binding whether written or unwritten, it is presumed, in an action for the non-performance of the contract, parol evidence might be admitted to explain the blank. And where a written instrument, which was made professedly to record a fact, is produced as evidence of that fact which it purports to record, and a blank appears in a material part, the omission may be supplied by other proof. 1 Phil. Ev. 475 1 Wils. 215; 7 Verm. R. 522; 6 Verm. R. 411. Hence a blank left in an award for a name, was allowed to be supplied by parol proof. 2 Dall. 180. But where a creditor signs a deed of composition leaving the amount of his debt in blank, he binds himself to all existing debts. 1 B. & A. 101; S. C. 2 Stark. R. 195.

3. - 2. If a blank is left in a policy of insurance for the name of the place of destination of a ship, it will avoid the policy. Molloy, b. 2, c. 7, s. 14; Park, Ins. 22; Wesk. Ins. 42. A paper signed and sealed in blank, with verbal authority to. fill it up, which is

afterwards done, is void, unless afterwards delivered or acknowledged and adopted. 1 Yerg. 69, 149; 1 Hill, 267 2 N. & M. 125; 2 Brock. 64; 2 Dev. 379 1 Ham. 368; 6 Gill & John. 250; but see contra, 17 S. & R. 438. Lines ought to be drawn wherever there are blanks, to prevent anything from being inserted afterwards. 2 Valin's Comm. 151.

4. When the filling up blanks after the execution of deeds and other writings will vitiate them or not, see 3 Vin. Abr. 268; Moore, 547; Cro. Eliz. 626; 1 Vent. 185; 2 Lev. 35; 2 Ch. R. 187; 1 Anst. 228; 5 Mass. 538; 4 Binn. 1; 9 Crancb, 28; Yelv. 96; 2 Show. 161; 1 Saund. Pl. & Ev. 77; 4 B. & A. 672; Com. Dig. Fait, F 1; 4 Bing. 123; 2 Hill. Ab. c. 25, §80; n. 33, §54-and 72; 1 Ohio, R. 368; 4 Binn. R. 1; 6 Cowen, 118; Wright, 176.

BLANK BAR, pleading. The same with that called a common bar, whicb, in an action of trespass, is put in to oblige the plaintiff to assign the certain' place where the trespass was committed. Cro. Jac. 594, pl. 16.

BLANK INDORSEMENT, contrad. An indorsement which does not mention the name of the person in whose favor it is made; it is usually made by writing the name of the indorser on the back of the bill. Chit. Bills, 170.

2. When a bill or note has been indorsed in blank, its negotiability cannot afterwards be restrained. 1 Esp. N. P. Cas. 180; 1 Bl. Rep. 295. As many persons as agree may join in suing on a bill when indorsed in blank; for although it was given to one alone, yet by allowing the others to join in the suit, he has 'Made them sharers in his rights. 8 Camp. N. P. Cas. 239. Vide Indorsement; Negotiable paper; Restrictive indorsement.

BLASPHEMY, crim. law. To attribute to God that which is contrary to his nature, and does not belong to him, and to deny what does or it is a false reflection uttered with a malicious, design of reviling God. Elym's Pref. to vol. 8, St. Tr.

2. This offence has been enlarged in Pennsylvania, and perhaps most of the states, by statutory provision. Vide Christianity; 11 Serg. & Rawle, 394. In England all blasphemies against God, the Christian religion, the Holy Scriptures, and malicious revilings of the established church, are punishable by indictment. 1 East, P. C. 3; 1 Russ. on Cr. 217.

3. In France, before the 25th of September, 1791, it was a blasphemy also to speak against the holy virgin and the saints, to deny one's faith, to speak with impiety of holy things, and to swear by things sacred. Merl. Rep. h. t. The law relating to blasphemy in that country was totally repealed by the code of 25th of September, 1791, and its present penal code, art. 262, enacts, that any person who, by words or gestures, shall commit any outrage upon objects of public worship, in the places

designed or actually employed for the performance of its rites, or shall assault or insult the ministers of such worship in the exercise of their functions, shall be fined from sixteen to five hundred francs, and be imprisoned for a period not less than fifteen days nor more than six months.

4. The civil law forbad the crime of blasphemy; such, for example, as to swear by the hair or the head of God; and it punished its violation with death. Si enim contra homines factae blasphemiae impunitae non relinquuntur; multo magis qui ipsum Deum Blasphemant, digni sunt supplicia sustinere. Nov. 77, ch. 1, §1.

5. In Spain it is blasphemy not only to speak against God and his government, but to utter injuries against the Virgin Mary and the saints. Senen Villanova Y Manes, Materia Criminal, forense, Observ. 11, cap. 3, n

BLIND. One who is deprived of the faculty of seeing.

2. Persons who are blind may enter into contracts and make wills like others. Carth. 53; Barn. 19, 23; 3 Leigh, R. 32. When an attesting witness becomes blind, his handwriting may be proved as if he were dead. 1 Stark. Ev. 341. But before proving his handwriting the witness must be produced, if within the jurisdiction of the court, and examined. Ld. Raym. 734; 1 M. & Rob. 258; 2 M. & Rob. 262.

BLOCKADE, international law. The actual investment of a port or place by a hostile force fully competent to cut off all communication therewith, so arranged or disposed as to be able to apply its force to every point of practicable access or approach to the port or place so invested.

2. It is proper here to consider, 1. by what authority a blockade can be established; 2. what force is sufficient to constitute a blockade; 3. the consequences of a violation of the blockade.

>3. - 1. Natural sovereignty confers the right of declaring war, ana the right which nations at war have of destroying or capturing each other's citizens, subjects or goods, imposes on neutral nations the obligation not to interfere with the exercise of this right within the rules prescribed by the law of nations. A declaration of a siege or blockade is an act of sovereignty, 1 Rob. Rep. 146; but a direct declaration by the sovereign authority of the besieging belligerent is not always requisite; particularly when the blockade is on a distant station; for its officers may have power, either expressly or by implication, to institute such siege or blockade. 6 Rob. R. 367.

4. - 2. To be sufficient, the blockade must be effective, and made known. By the convention of the Baltic powers of 1780, and again in 1801, and by the ordinance of

congress of 1781, it is required there should be a number of vessels stationed near enough to the port to make the entry apparently dangerous. The government of the United States has, uniformly insisted, that the blockade should be effective by the presence of a competent force, stationed and present, at or near the entrance of the port. 1 Kent, Com. 145, and the authorities by him cited; and see 1 Rob. R. 80; 4 Rob. R. 66; 1 Acton's R. 64, 5; and Lord Erskine's speech, 8th March, 1808, on the orders in council, 10 Cobber's Parl. Debates, 949, 950. But "it is not an accidental absence of the blockading force, nor the circumstance of being blown off by wind, (if the suspension and the-reason of the suspension are known,) that will be sufficient in law to remove a blockade." But negligence or remissness on the part of the cruizers stationed to maintain the blockade, may excuse persons, under circumstances, for violating the blockade. 3 Rob. R. 156 .) 1 Acton's R. 59. To involve a neutral in the consequences of violating a blockade, it is indispensable that he should have due notice of it: this information may be communicated to him in two ways; either actually, by a formal notice from the blockading power, or constructively by notice to his government, or by the notoriety of the fact. 6 Rob. R. 367; 2 Rob. R. 110; Id. 111, note; Id. 128; 1 Acton's R. 6 1.

4. - 3. In considering the consequences of the violation of a blockade, it is proper to take a view of what will amount to such a violation, and, then, of its effects. As all criminal acts require an intention to commit them, the party must intend to violate the blockade, or his acts will be perfectly innocent; but this intention will be judged of by the circumstances. This violation may be, either, by going into the place blockaded, or by coming out of it with a cargo laden after the commencement of the blockade. Also placing himself so near a blockaded port as to be in a condition to slip in without observation, is a violation of the blockade, and raises the presumption of a criminal intent. 6 Rob. R. 30, 101, 182; 7 John. R. 47; 1 Edw. R. 202; 4 Cranch, 185. The sailing for a blockaded port, knowing it to be blockaded, is, it seems, such an act as may charge the party with a breach of the blockade. 5 Cranch, 335 9 Cranch, 440, 446; 1 Kent, Com. 150. When the ship has contracted guilt by a breach of the blockade, she may be taken at any time before the end of her voyage, but the penalty travels no further than the end of her return voyage. 2 Rob. R. 128; 3 Rob. R. 147. When taken, the ship is confiscated; and the cargo is always, prima facie, implicated in the guilt of the owner or master of the ship and the burden of rebutting the presumption that the vessel was going in for the benefit of the cargo, and with the direction of the owners, rests with them. 1 Rob. R. 67, 130 3 Rob. R. 173 4 Rob. R. 93; 1 Edw. It 39. Vide, generally, 2 Bro. Civ. & Adm. Law, 314 Chit. Com. Law, Index, h. t.; Chit. Law of Nations, 128 to 147; 1 Kent's Com. 143 to 151; Marsh. Ins. Index, h. t.; Dane's Ab. Index, h. t.; Mann. Com. B. 3, c. 9.

BLOOD, kindred. This word, in the law sense, is used to signify relationship, stock, or family; as, of the blood of the ancestor. 1 Roper on Leg. 103; 1 Supp. to Ves. jr. 365. In a more extended sense, it means kindred generally. Bac. Max. Reg. 18.

2. Brothers and sisters are said to be of the whole blood, (q. v.) if they have the same father and mother of the half blood, (q. v.) if they have only one parent in common. 5 Whart. Rep. 477.

BLOTTER, mer. law. A book among merchants, in which entries of sales, &c.;are first made.

2. This book, containing the original entries, is received in evidence, when supported by the oaths or affirmations of those who keep it. See Original entry.

BOARD. This word is used to designate all the magistrates of a city or borough, or all the managers or directors of any institution; as, the board of aldermen; the board of directors of the Bank of North America. The majority of the board have in general the power to perform the acts of the whole board, but sometimes they are restrained by their charters, and it requires a greater number to perform certain acts.

BOARD OF CIVIL AUTHORITY. A used in Vermont. This board is composed of the selectmen and justices of the peace of their respective towns. They are authorized to abate taxes, and the like.

BOCKLAND, Eng. law. The name of an ancient allodial tenure, which was exempt from feudal services. Bac. Ab. Gavelkind, A Spelman's English Works, vol. 2, 233.

BODY. A person.

2. In practice, when the sheriff returns cepi corpus to a capias, the plaintiff may obtain a rule, before special bail has been entered, to bring in the body and this must be done either by committing the defendant or entering special bail. See Dead Body.

BODY POLITIC, government, corporations. When applied to the government this phrase signifies the state.

2. As to the persons who compose the body politic, they take collectively the name, of people, or nation; and individually they are citizens, when considered in relation to their political rights, and subjects as being submitted to the laws of the state.

3. When it refers to corporations, the term body politic means that the members of such corporations shall be considered as an artificial person.

BOILARY. A term used to denote the water which arises from a salt well, belonging to one who has no right to the soil. Ejectment may be maintained for it. 2 Hill, Ab. c. 14, §5; Co. Litt. 4 b.

BONA, goods and chattels. In the Roman law, it signifies every kind of property, real, personal, and mixed, but chiefly it was applied to real estates; chattels being chiefly distinguished by the words, effects, movables, &c. Bona were, however, divided into bona mobilia, and bona immobilia. It is taken in the civil law in nearly the sense of biens (q. v.) in the French law.

BONA FIDE. In or with good faith.

2. The law requires all persons in their transactions to act with good faith and a contract where the parties have not acted bonafide is void at the pleasure of the innocent party. 8 John. R. 446; 12 John. R. 320; 2 John. Ch. R. 35. If a contract be made with good faith, subsequent fraudulent acts will not vitiate it; although such acts may raise a presumption of antecedent fraud, and thus become a means of proving the want of good faith in making the contract. 2 Miles' Rep. 229; and see also, Rob. Fraud. Conv. 33, 34; Inst. 2, 6 Dig. 41, 3, 10 and 44; Id. 41, 1, 48; Code, 7, 31; 9 Co. 11; Wingate's Maxims, max. 37; Lane, 47; Plowd. 473; 9 Pick. R. 265; 12 Pick. R. 545; 8 Conn. R. 336; 10 Conn. R. 30; 3 Watts, R. 25; 5 Wend. R. 20, 566. In the civil law these actions are called (actiones) bonae fidei, in which the judge has a. more unrestrained power (liberior potestas) of estamating how much one person ought to give to or do, for another; whereas, those actions are said to be stricti juris, in which the power of the judge is confined to the agreement of the parties. Examples of the foraier are the actions empti-venditi, locati-conducti, negitiorum gestorum, &c.; of the latter, the actions ex mutus, ex chirographo, ex stipilatu, ex indebito, actions proescriptis verbis, &c.

BONA GESTURA. Good behaviour.

BONA MOBILIA. Movable goods, personal property.

BONA NOTABILIA Engl. ecclesiastical law. Notable goods. When a person dies having at the time of his death, goods in any other diocese, beside's the goods in the diocese where he dies, amounting to the value of five pounds in the whole, he is said to have bona notabilia; in which case proof of his will, or granting letters of administration, belongs to the archbishop of the province. 1 Roll. Ab. 908; Toll. Ex. 51 Williams on Ex. Index, h. t.

BONA PERITURA. Perishable goods.

2. An executor, administrator, or trustee, is bound to use due diligence in disposing of perishable goods, such as fattened cattle, grain, fruit, or any other article which may be worse for keeping. Bac. Ab. Executors, &c.;D; 11 Vin. Ab. 102; 1 Roll. Ab. 910; 5 Cro. Eliz.518; Godb.104; 3 Munf. R. 288; 1 Beat. R. 5,14; Dane's Ab. Index, h. t.

3. In Pennsylvania, when goods are attached, they may be sold by order of court, when they are of a perishable nature. Vide Wesk. on Ins. 390; Serg. on Attachm. Index.

BONA VACANTIA. Goods to which no one claims a property, as, shipwrecks, treasure trove, &c.; vacant goods.

BONA WAVIATA. Goods waived or thrown away by a thief, in his flight, for fear of being apprehended.

BOND, contract. An obligation or bond is a deed whereby the obligor, obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed. But see 2 Shepl. 185. If this be all, the bond is called a single one, simplex obligatio; but there is generally a condition added, that if the obligor pays a smaller sum, or does, or omits to do some particular act, the obligation shall be void. 2 Bl. Com. 840. The word bond ex vi termini imports a sealed instrument. 2 S. & R. 502; 1 Bald. R. 129; 2 Porter, R. 19; 1 Blackf. R. 241; Harp. R. 434; 6 Verm. R. 40. See Condition; Interest of money; Penalty. It is proposed to consider: 1. The form of a bond, namely, the words by which it may be made, and the ceremonies required. 2. The condition. 3. The performance or discharge.

2.-I. 1. There must be parties to a bond, an obligor and obligee : for where a bond was made with condition that the obligor should pay twenty pounds to such person or persons; as E. H. should, by her last will and testament in writing, name and appoint the same to be paid, and E. H. did not appoint any person to, whom the same should be paid, it was held that the money was not payable to the executors of E. H. Hob. 9. No particular form of words are essential to create an obligation, but any words which declare the intention of the parties, and denote that one is bound to the other, will be sufficient, provided the ceremonies mentioned below have been observed. Shep. Touch. 367-8; Bac. Abr. Obligations, B; Com. Dig. Obligations, B 1.

3. - 2. It must be in writing, on paper or parchment, and if it be made on other materials it is void. Bac. Abr. Obligations, A.

4. - 3. It must be sealed, though it is not necessary that it should be mentioned in the writing that it is sealed. As to what is a sufficient sealing, see the above case, and the word Seal.

5. - 4. It must be delivered by the party whose bond it is, to the other. Bac. Abr. Obligations, C. But the delivery and acceptance may be by attorney. The date is not considered of the substance of a deed, and therefore a bond which either has no date or an impossible one is still good, provided the real day of its being dated or given, that is, delivered, can be proved. 2 Bl. Com. 304; Com. Dig. Fait, B 3; 3 Call, 309. See Date.

6. - II. The condition is either for the payment of money, or for the performance of something else. In the latter case, if the condition be against some rule of law merely, positively impossible at the time of making it, uncertain or insensible, the condition alone is void, and the bond shall stand single and unconditional; for it is the folly of the obligor to enter into such an obligation, from which he can never be released. If it be to do a thing malum in se, the obligation itself is void, the whole contract being unlawful. 2 Bl. Com. 340; Bac. Abr. Conditions, K, L; Com. Dig. Conditions, D 1, D 2, D 3, D 7, D 8.

7. - III. 1. When, by the condition of an obligation, the act to be done to the obligee is of its own nature transitory, as payment of money, delivery of charters, or the like, and no time is limited, it ought to be performed in convenient time. 6 Co. 31 Co. Lit. 208; Roll. Abr. 436.

8. - 2. A payment before the day is good; Co. Lit. 212, a; or before action brought. 10 Mass. 419; 11 Mass. 217.

9.-3. If the condition be to do a thing within a certain time, it may be performed the last da of the time appointed. Bac. Abr. Conditions, P 3.

10. - 4. If the condition be to do an act, without limiting any time, he who has the benefit may do it at what time he pleases. Com. Dig. Conditions, G 3.

11. - 5. When the place where the act to be performed is agreed upon, the party who is to perform it, is not obliged to seek the opposite party elsewhere; nor is he to whom it is to be performed bound to accept of the performance in another place. Roll. 445, 446 Com. Dig. Conditions, G 9 Bac. Abr. Conditions, P 4. See Performance.

12. - 6. For what amounts to a breach of a condition in a bond see Bac. Abr. Conditions, 0; Com. Dig. Conditions, M; and this Dict. tit. Breach.

BOND TENANT, Eng. law. Copyholders and customary tenants are sometimes so called. Calth. on Copyh. 51, 54.

BONDAGE. Slavery.

BONIS NON AMOVENDIS. The name of a writ addressed to the sheriff, when a writ of error has been brought, commanding that the person against whom judgment has been obtained, be not suffered to remove his goods till the error be tried and determined. Reg. Orig. 131.

BONO ET MALO. The name of a special writ of jail delivery, which formerly issued of course for each particular prisoner. 4 Bl. Com. 270.

BONUS, contrads. A premium paid to a grantor or vendor; as, e. g. the bank paid a bonus to the state for its charter. A consideration given for what is received.

BOOK. A general name given to every literary composition which is printed; but appropriately to a printed composition bound in a volume.

2. The copyright, (q. v.) or exclusive right to print and publish a book, may be secured to the author and his assigns for the term of twenty-eight years; and, if the author be living, and a citizen of the United States, or resident therein, the same right shall be continued to him for the further term of fourteen years, by complying with the conditions of the act of Congress; one of which is, that he shall, within three months after publication, deliver, or cause to be delivered, a copy of the same to the clerk of the said district. Act of February 3, 1831. 4 Sharsw. cont. of Story's L. U. S. 2223.

BOOK-LAND, English law. Land, also called charter-land, which was held by deed under certain rents and fee services, and differed in nothing from free socage land. 2 Bl. Com. 90. See 2 Spelman's English Works, 233, tit. Of Ancient Deeds and Charters.

BOOKS, commerce, accounts. Merchants, traders, and other persons, who are desirous of understanding their affairs, and of explaining them when necessary, keep, 1. a day book; 2. a journal; 3. a ledger; 4. a letter book; 5. an invoice book; 6. a cash book; 7. a bill book; 8. a bank book; and 9. a cheek book. The reader is referred to these several articles. Commercial books are kept by single or by double entry.

BOOTY, war. The capture of personal property by a public enemy on land, in contradistinction to prize, which is a capture of such property by such an enemy, on the sea.

2. After booty has been in complete possession of the enemy for twenty-four hours, it becomes absolutely his, without any right of postliminy in favor of the original owner, particularly when it has passed, bona fide, into the hands of a neutral. 1 Kent, Com. 110.

3. The right to the booty, Pothier says, belongs to the sovereign but sometimes the right of the sovereign, or the public, is transferred to the soldiers, to encourage them. Tr. du Droit de Propriete, part 1, c. 2, art. 1, §2; Burl. Nat. and Pol. Law, vol. ii. part 4, o. 7, n. 12.

BOROUGH. An incorporated town; so called in the charter. It is less than a city. 1 Mann. & Gran. 1; 39 E. C. L. R. 323.

BOROUGH ENGLISH, English law. This, as the name imports, relates exclusively to the English law.

2. It is a custom, in many ancient boroughs, by which the youngest son succeeds to the burgage tenement on the death of the father. 2 Bl. Com. 83.

3. In some parts of France, there was a custom by which the youngest son was entitled to an advantage over the other children in the estate of their father. iller. Rep. mot Mainete.

BORROWER, contracts. He to whom a thing is lent at his request.

2. The contract of loan confers rights, and imposes duties on the borrower' 1. In general, he has the right to use the thing borrowed, during the time and for the purpose intended between the parties; the right of using the thing bailed, is strictly confined to the use, expressed or implied, in the particular transaction, and by any excess, the borrower will make himself responsible. Jones' Bailment, 58 6 Mass. R. 104; Cro. Jac. 244; 2 Ld. Raym. 909; Ayl. Pand. B. 4, t. 16, p. 517; Domat, B. 1, t. 5, §2, n. 10, 11, 12; Dio. 13, 6, 18 Poth. Pret a Usage, c. 2, §1, n. 22; 2 Bulst. 306; Ersk. Pr. Laws of ScotI. B. 3, t. 1, §9; 1 Const. Rep. So. Car. 121 Bracton, Lib. 3, c. 2, §l, p. 99. The loan is considered strietly personal, unless, from other circumstances, a different intention may be presumed. 1 Mod. Rep. 210; S. C. 3 Salk. 271.

3. - 2. The borrower is bound to take extraordinary care of the thing borrowed; to use it according to the intention of the lender, to restore it in proper time; to restore it in a proper condition. Of these, in their order.

4. - 1. The loan being gratuitous, the borrower is bound to extraordinary diligence, and is responsible for slight neglect in relation to the thing loaned. 2 Ld. Raym. 909, 916 Jones on Bailm. 65; 1 Dane's Abr. c. 17, art. 12; Dig. 44, 73 1, 4; Poth. Pret. a Usage, c. 2, §2, art. 21, n. 48.

5. - 2. The use is to be according to the condition of the loan; if there is an excess in the nature, time, manner, or quantity of the use, beyond what may be inferred to be

within the intention of the parties, the borrower will be responsible, not only for any damages occasioned by the excess, but even for losses by accidents, which could not be foreseen or guarded against. 2 Ld. Raym. 909; Jones on Bailm. 68, 69.

6. - 3. The borrower is bound to make a return of the thing loaned, at the time, in the place, and in the manner contemplated by the contract.. Domat, Liv. 1, t. 5, §1, n. 11; Dig. 13, 6, 5, 17. If tho borrower does not return the thing at the proper time, he is deemed to be in default, and is geneally responsible for all injuries, even for accidents. Jones on Bailm. 70; Pothier, Pret a Usage , ch. 2, §3, art. 2, n. 60; Civil Code Of Louis. art. 2870; Code Civil, art. 1881; Ersk. Inst. B. 3, t. 1, §22 Ersk. Pr. Laws of Scotl. B. 3, t. 1, §9.

7. - 4. As to the condition in which the thing is to be restored. The borrower not being liable for any loss or deterioration of the thing, unless caused by his own neglect of duty, it follows, that it is sufficient if he returns it in the proper manner, and at the proper time, however much it may be deteriorated from accidental or other causes, not connected with any such neglect. Story on Bailm. eh. 4, §268. See, generally, Story on Bailm. oh. 4; Poth. Pret A Usage; 2 Kent, Com. 446-449; Vin. Abr. Bailment, B 6; Bac. Abr. Bailment; Civil Code of Louis. art. 2869-2876; 1 Bouv. Inst. n. 1078-1090. Vide Lender.

BOSCAGE, Eng. law. That food which wood and trees yield to cattle.

BOTE, contracts A recompense, satisfaction, amends, profit or advantage : hence came the word man-bote, denoting a compensation for a man slain; house-bote, cart-bote, plough-bote, signify that a tenant is privileged to cut wood for these uses. 2 Bl. Com. 35; Woodf. L. & T. 232.

BOTELESS, or bootless. Without recompense, reward or satisfaction made unprofitable or without success.

BOTTOMRY, maritime law. A contract, in nature of a mortgage of a ship, on which the owner borrows money to enable him to fit out the ship, or to purchase a cargo, for a voyage proposed: and he pledges the keel or bottom of the ship, pars pro toto, as a security for the repayment; and it is stipulated that if the ship should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender also shall lose his money but if the ship should arrive in safety, then he shall receive back his principal, and also the interest agreed upon, which is generally called marine interest, however this may exceed the legal rate of interest. Not only the ship and tackle, if they arrive safe, but also the person of the borrower, is liable for the money lent and the marine interest. See 2 Bl. Com. 458; Marsh. Ins. B. 21 c. 1; Ord. Louis XIV. B. 3, tit. 5; Laws of Wishuy, art. 45 Code de Com. B. 2, tit. 9.

2. The contract of bottomry should specify the principal lent, and the rate of marine interest agreed upon; the subject on which the loan is effected the names of the vessel and of the master those of the lender and borrower whether the loan be for an entire voyage; for what voyage and for what space of time; and the period of re-payment. Code de Com. art. 311 Marsh. Ins. B. 2.

3. Bottomry differs materially from a simple loan. In a loan, the money is at the risk of the borrower, and must be paid at all events. But in bottomry, the money is at the risk of the lender during the voyage. Upon a loan, only legal interest can be received; but upon bottomry, any interest may be legally reserved which the parties agree upon. See, generally, Metc. & Perk. Dig. h. t.; Marsh. lnst. B. 2; Bac. Abr. Merchant, K; Com. Dig. Merchant. E 4; 3 Mass. 443; 8 Mass. 340; 4 Binn. 244; 4 Cranch, 328; 3 John. R. 352 2 Johns. Cas. 250; 1 Binn. 405; 8 Cranch, 41 8; 1 Wheat. 96; 2 Dall. 194. See also this Dict. tit. Respondentia; Vin. Abr. Bottomry Bonds 1 Bouv. Inst. n. 1246-57.

BOUGHT NOTE, contracts. An instrument in writing, given by a broker to the seller of merchandise, in which it is stated that the goods therein mentioned have been sold for him. There appears, however, some confusion in the books, on the subject of these notes sometimes they are called sold notes. 2 B. & Ald. 144 Blackb. on Sales, 89.

2. This note is signed in the broker's name, as agent of the buyer and seller; and, if he has not exceeded his authority, the parties are thereby respectively bound. 1 Bell's Com. (5th ed.) 435; Holt's C. 170; Story on Agency, §28; 9 B. & Cr. 78; 17 E. C. L. R. 335; 5 B. & Ad. 521; 1 N. R. 252; 1 Moo. & R. 368; Moo. & M. 43; 22 E. C. L. R. 243; 2 M. & W. 440; Moo. & M. 43; 6 A. & E. 486; 33 E. C. L. R. 122; 16 East, 62 Gow, R. 74; 1 Camp. R. 385; 4 Taunt. 209; 7 Ves. 265. Vide Sold Note.

BOUND BAILIFFS. Sheriff's officers, who serve writs and make arrests; they are so called because they are bound to the sheriff for the due execution of their office. 1 Bl. Com. 345.

BOUNDARY, estates. By this term is understood in general, every separation, natural or artificial, which marks the confines or line of division of two contiguous estates. 3 Toull. n. 171.

2. Boundary also signifies stones or other materials inserted in the earth on the confines of two estates.

3. Boundaries are either natural or artificial. A river or other stream is a natural boundary, and in that case the centre of the stream is the line. 20 John. R. 91; 12 John.

R. 252; 1 Rand. R. 417; 1 Halst. R. 1; 2 N. H. Rep. 369; 6 Cowen, R. 579; 4 Pick. 268; 3 Randolph's R. 33 4 Mason's R. 349-397.

4. An artificial boundary is one made by man.

5. The description of land, in a deed, by specific boundaries, is conclusive as to the quantity; and if the quantity be expressed as a part of the description, it will be inoperative, and it is immaterial whether the quantity contained within the specific boundaries, be greater or less than that expressed; 5 Mass. 357; 1 Caines' R. 493; 2 John. R. 27; 15 John. 471; 17 John. R. 146; Id. 29; 6 Cranch, 237; 4 Hen. & Munf. 125; 2 Bay, R. 515; and the same rule is applicable, although neither the courses and distances, nor the estimated contents, correspond with such specific boundaries; 6 Mass. 131; 11 Mass. 193; 2 Mass. 380; 5 Mass. 497; but these rules do not apply in cases where adherence to them would be plainly absurd. 17 Mass. 207. Vide 17 S. & R. 104; 2 Mer. R. 507; 1 Swanst. 9; 4 Ves. 180; 1 Stark. Ev. 169; 1 Phil. Ev. Index, h. t.; Chit. Pr. Index, h. t.; 1 Supp. to Ves. jr. 276; 2 Hill. Ab. c. 24, §209, and Index, h. t.

6. When a boundary, fixed and by mutual consent, has been permitted to stand for twenty-one years, it cannot afterwards be disturbed. In accordance with this rule, it has been decided, that where town lots have been occupied up to a line fence between them, for more than twenty-one years, each party gained an incontrovertible right to the line thus established, and this whether either party knew of the adverse claim or not; and whether either party has more or less ground than was originally in the lot he owns. 9 Watts, R. 565. See Hov. Fr. c. 8, p. 239 to 243; 3 Sum. R 170 Poth. Contr. de Societe, prem. app. n. 231.

7. Boundaries are frequently marked by partition fences, ditches, hedges, trees, &c. When such a fence is built by one of the owners of the land, on his own premises, it belongs to him exclusively; when built by both at joint expense, each is the owner of that part on his own land. 5 Taunt. 20. When the boundary is a hedge and a single ditch, it is presumed to belong to him on whose side the hedge is, because he who dug the ditch is presumed to have thrown the earth upon his own land, which was alone lawful to do, and that the hedge was planted, as is usual, on the top of the bank thus raised. 3 Taunt. 138. But if there is a ditch on each side of the hedge, or no ditch at all, the hedge is presumed to be the common property of both proprietors. Arch. N. P. 328; 2 Greenl. Ev. §617. A tree growing in the boundary line is the joint property of both owners of the land. 12 N. H. Rep. 454.

8. Disputes arising from a confusion of boundaries may be generally settled by an action at law. But courts of equity will entertain a bill for the settlement of boundaries, when the rights of one of the parties may be established upon equitable grounds. 4 Bouv. Inst. n. 3923.

BOUNTY. A sum of money or other thing, given, generally by' the government, to certain persons, for some service they have done or are about to do to the public. As bounty upon the culture of silk; the bounty given to an enlisted soldier; and the like. It cliffers from a reward, which is generally applied to particular cases; and from a payment, as there is no contract on the part of the receiver of the bounty.

BOVATA TERRAE. As much land as one ox can plough.

BRANCH. This is a metaphorical expression, which designates, in the genealogy of a numerous family, a portion of that family which has sprang from the same root or stock; these latter expressions, like the first, are also metaphorical.

2. The whole of a genealogy is often called the genealogical tree; and sometimes it is made to take the form of a tree, which is in the first place divided into as many branches as there are children, afterwards into as many branches as there are grand-children, then of great grandchildren, &c. If, for example, it be desired to have a genealogical tree of Peter's family, Peter will be made the trunk of the tree; if he has had two children, John and James, their names will be written on the first two branches; which will themelves shoot out as many smaller branches as John and James have children; from these other's proceed, till the whole family is represented on the tree; thus the origin, the application, and the use of the word branch in genealogy will be at once perceived.

BRANCHES. Those solid parts of trees which grow above the trunk.

2. In general the owner of a tree is the owner of the branches; but when they grow beyond his line, and extend over the adjoining estate, the proprietor of the latter may cut them off as far as they grow over his land. Rolle's R. 394.; 3 Bulst. 198. But as this nuisance is one of omission, and, as in the case of such nuisances, it is requisite to give notice before abating them, it would be more prudent, and perhaps necessary, to give notice to the owner of the tree to remove such nuisance. 1 Chit. Pr. 649, 650, 652. See Root; Tree.

TO BRAND. An ancient mode of punishment, which was to inflict a mark on an offender with a hot iron. This barbarous punishment has been generally disused.

BRANDY. A spirituous liquor made of wine by distillation. See stat. 22 Car. H. c. 4.

BREACH, contract, torts. The violation of an obligation, engagement or duty; as a breach of covenant is the non-performance or violation of a covenant; the breach of a promise is non-performance of a promise; the breach of a duty, is the refusal or neglect to execute an office or public trust, according to law.

2. Breaches of a contract are single or continuing breaches. The former are those which are committed at one single time. Skin. 367; Carth. 289. A continuing breach is one committed at different times, as, if a covenant to repair be broken at one time, and the same covenant be again broken, it is a continuing breach. Moore, 242; 1 Leon. 62; 1 Salk. 141; Holt, 178; Lord Raym. 1125. When a covenant running with the land is assigned after a single breach, the right of action for such breach does not pass to the assignee but if it be assigned after the commencement of a continuing breach, the right of action then vests in such assignee. Cro. Eliz. 863; 8 Taunt. 227;, 2 Moore, 164; 1 Leon. 62.

3. In general the remedy for breaches of contracts, or quasi contracts, is by a civil action.

BREACH OF THE PEACE. A violation of public order; the offence of disturbing the public peace. One guilty of this offence may be held to bail for his good behaviour. An act of public indecorum is also a breach of the peace. The remedy for this offence is by indictment. Vide Pace,

BREACH OF PRISON. An unlawful escape out of prison. This is of itself a misdemeanor. 1 Russ. Cr. 378; 4 Bl. Com. 129 2 Hawk. P. C. c. 18, s. 1 7 Conn. 752. The remedy for this offence is by indictment. See Escape.

BREACH OF TRUST. The wilful misappropriation, by a trustee, of a thing which had been lawfully delivered to him in confidence.

2. The distinction between larceny and a breach of trust is to be found chiefly in the terms or way in which the thing was taken originally into the party's possession; and the rule seems to be, that whenever the article is obtained upon a fair contract, not for a mere temporary purpose, or by one who is in the. employment of the deliverer, then the subsequent misappropriation is to be considered as an act of breach of trust. This rule is, however, subject to many nice distinctions. 15 S. & R. 93, 97. It has been adjudged that when the owner of goods parts with the possession for a particular purpose, and the person who receives them avowedly for that purpose, has at the time a fraudulent intention to make use of the possession as the weans of converting the goods to his own use, and does so convert them, it is larceny; but if the owner partwith the property, although fraudulent means have been used to obtain it, the, act of conversion is not larceny. Id. Alis. Princ. c. 12, p. 354.

3. In the Year Book, 21 H. VII. 14, the distinction is thus stated: Pigot. If I deliver a jewel or money to my servant to keep, and he flees or goes from me with the jewel, is it felony ? Cutler said, Yes : for so long as he is with me or in my house, that which I have delivered to him is adjudged to be in my possession; as my butler, who has my

plate in keeping, if he flees with it, it is felony. Same law; if he who keeps my horse goes away with, him: The reason is, they are always in my possession. But if I deliver a horse to my servant to ride to market or the fair and he flee with him, it is no felony; for e comes lawfully to the possession of the horse by delivery. And so it is, if I give him a jewel to carry to London, or to pay one, or to buy a thing, and he flee with it, it is not felony : for it is out of my possession, and he comes lawfully to it. Pigot. It can well be: for the master in these cases has an action against him, viz., Detinue, or Account. See this point fully discussed in Stamf. P. C. lib. 1; Larceny, c. 15, p. 25. Also, 13 Ed. IV. fo. 9; 52 H. III. 7; 21 H. VII. 15.

BREACH. pleading. That part of the declaration in which the violation of the defendant's contract is stated.

2. It is usual in assumpsit to introduce the statement of the particular breach, with the allegation that the defendant, contriving and fraudulently intending craftily and subtilely to deceive and defraud the plaintiff, neglected and refused to perform, or performed the particular act contrary to the previous stipulation. ?

3. In debt, the breach or cause of action. complained of must proceed only for the non-payment of money previously alleged to be payable; and such breach is nearly similar, whether the action be in debt on simple contract, specially, record or statute, and is usually of the following form: " Yet the said defendant, although often requested so to, do, hath not as yet paid the said sum of ____ dollars, above demanded, nor any part thereof, to the said plaintiff, but bath hitherto wholly neglected and refused so to do, to the damage of the said plaintiff _____ dollars, and therefore he brings suit," &c.

4. The breach must obviously be governed by the nature of the stipulation; it ought to be assigned in the words of the contract, either negatively or affirmatively, or in words which are co-extensive with its import and effect. Com. Dig. Pleader, C 45 to 49; 2 Saund. 181, b, c; 6 Cranch, 127; and see 5 John. R. 168; 8 John. R. 111; 7 John. R. 376; 4 Dall. 436; 2 Hen. & Munf. 446.

5. When the contract is in the disjunctive, as, on a promise to deliver a horse by a particular day, or pay a sum of money, the breach ought to be assigned that the defendant did not do the one act nor the other. 1 Sid. 440; Hardr. 320; Com. Dig. Pleader, C.

BREAKING. Parting or dividing by force and violence a solid substance, or piercing, penetrating, or bursting through the same.

2. In cases of burglary and house-breaking, the removal, of any part of the house, or of the fastenings provided to secure it, with violence and a felonious intent, is called a breaking.

3. The breaking is actual, as in the above case; or constructive, as when the burglar or house-breaker gains an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 2; 2 Chit. Cr. Law, 1092; 1 Hale, P. C. 553; Alis. Prin. 282, 291. In England it has been decided that if the sash of a window be partly open, but not sufficiently so to admit a person, the raising of it so as to admit a person is not a breaking of the house. 1 Moody, Cr. Cas. 178. No reasons are assigned. It is difficult to conceive, if this case be law, what further opening will amount to a breaking. But see 1 Moody, Cr. Cas. 327, 377; and Burglary.

BREAKING DOORS. The act of forcibly removing the fastenings of a house, so that a person may enter.

2. It is a maxim that every man's house is his castle, and it is protected from every unlawful invasion. An officer having a lawful process, of a criminal nature, authorizing him to do so, may break an outer door, if upon making a demand of admittance it is refused. The house may also be broken open for the purpose of executing a writ of habere facias possessionem. 5 Co. 93; Bac. Ab. Sheriff, N 3.

3. The house protects the owner from the service of all civil process in the first instance, but not, if once lawfully arrested, he takes refuge in his own house; in that case the officer may pursue him, and break open any door for the Purpose. Foster, 320; 1 Rolle's R. 138 Cro. Jac. 555. Vide Door; House.

BREATH, med. juris. The air expelled from the chest at each expiration.

2. Breathing, though a usual sign of life, is not conclusive that a child was wholly born alive, as breathing may take place before the whole delivery of the mother is complete. 5 Carr. & Payn, 329; S. C. 24 E. C. L. R. 344. Vide Birth; Life; Infanticide.

BREPHOTROPHI, civil law. Persons appointed to take care of houses destined to receive foundlings. Clef des Lois Rom. mot Administrateurs.

BREVE, practice. A writ in which the cause of action is briefly stated, hence its name. Fleta, lib. 2, c. 13, §25; Co. Lit. 73 b.

2. Writs are distributed into several classes. Some are called brevia formata, others brevia de cursu, brevia judicialia, or brevia magistralia. There is a further distinction with respect to real actions into brevia nominata and innominata. The former, says

Bacon, contain the time, place and demand very particularly; and therefore by such writ several lands by several titles cannot be demanded by the same writ. The latter contain only a general complaint, without expressing time, damages, &c., as in trespass quare clausum fregit, &o., and therefore several lands coming to the demandant by several titles may be demanded in such writ. F. N. B. 209; 8 Co. 87; Kielw. 105; Dy. 145; 2 Brownl. 274; Bac. Ab. Actions in General, C. See Innominate contracts.

BREVE DE RECTO. A writ of right. (q. v.)

BREVE TESTATUM, feudal law. A declaration by a superior lord to his vassal, made in the presence of the pares curias, by which he gave his consent to the grant of land, was so called. Ersk. Inst. B. 2, tit. 3, s. 17. This was made in writing, and had the operation of a deed. Dalr. Feud. Pr. 239.

BREVET. In France, a brevet is a warrant granted by the government to authorize an individual to do something for his own benefit, as a brevet d'invention, is a patent to secure a man a right as inventor.

2. In our army, it signifies a commission conferring on an officer a degree of rank immediately above the one which he holds in his particular regiment, without, however conveying a right to receive a corresponding pay.

BREVIA, writs. They were called brevia, because of the brevity in which the cause of action was stated in them.

BREVIA ANTICIPANTIA. This name is given to a number of writs, which are also called writs of prevention. See Quia Ti. met.

BREVIA FORMATA, Eng law. The collection of writs found in the Registrum Brevium was so called. The author of Fleta says, these writs were formed upon their cases. They were different from the writs de cursu, which were approved by the council of the whole realm, and could not be changed without the will of the same. Fleta, lib. 2, c. 13, §2. See 17 S. & R. 194-5, and authorities there cited.

BREVIA JUDICIALIA. Subsidiary process issued pending a suit, or process issued in execution of the judgment. They varied, says the author of Fleta, according to the variety of the pleadings of the parties and of their responses. Lib. 2. c. 13, §3; Co. Lit. 73 b, 54 b. Many of them, however, long since became fixed in their forms, beyond the power of the courts to alter them, unless authorized to do so by the legislature. See 1 Rawle, Rep. 52; Act of Pennsylvania, June. 16, 1836, §§3, 4, 5.

BREVIA MAGISTRALIA. These were writs formed by the masters in chancery, pursuant to the stat. West. 2, c. 24. They vary according to the diversity of cases and complaints, of which, says the author of Fleta, some are personal, some real, some mixed, according as actions are diverse or various, because so many will be the forms of writs as there are kinds of actions. Fleta, lib. 2, c. 13, §4; Co. Lit. 73 b, 54 b.

BREVIARIUM. The name of a code of laws of Alaric II., king of the Visigoths.

BREVIBUS ET ROTULIS LIBERANDIS, Eng. law. A writ or mandate directed to a sheriff, commanding him to deliver to his successor the county and the appurtenances, with all the briefs, rolls, remembrances, and all other things belonging to his office.

BRIBE, crim. law. The gift or promise, which is accepted, of some advantage, as the inducement for some illegal act or omission; or of some illegal emolument, as a consideration, for preferring one person to another, in the performance of a legal act.

BRIBERY, crim. law. The receiving or offering any undue reward by or to any person whomsoever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behaviour in office, and to incline him to act contrary to his duty and the known rules of honesty and integrity. 3 Inst. 149; 1 Hawk. P. C. 67, s. 2 4 Bl. Com. 139; 1 Russ. Cr. 156.

2. The term bribery extends now further, and includes the offence of giving a bribe to many other officers. The offence of the giver and of the receiver of the bribe has the same name. For the sake of distinction, that of the former, viz : the briber, might be properly denominated active. bribery; while that of the latter, viz : the person bribed, might be called passive bribery.

3. Bribery at elections for members of parliament, has always been a crime at common law, and punishable by indictment or information. It still remains so in England notwithstanding the stat. 24 Geo. H. c. 14 3 Burr. 1340, 1589. To constitute the offence, it is not necessary that the person bribed should, in fact, vote as solicited to do 3 Burr. 1236; or even that he should have a right to vote at all both are entirely immaterial. 3 Bur. 1590-1.

4. An attempt to bribe, though unsuccessful, has been holden to be criminal, and the offender may be indicted. 2 Dall. 384; 4 Burr. 2500 3 Inst. 147; 2 Campb. R. 229; 2 Wash. 88; 1 Virg. Cas. 138; 2 Virg. Cas. 460.

BRIBOUR. One that pilfers other men's goods; a thief. See 28 E. II., c. 1.

BRIDGE. A building constructed over a river, creek, or other stream, or ditch or other place, in order to facilitate the passage over the same. 3 Harr. 108.

2. Bridges are of several kinds, public and private. Public bridges may be divided into, 1st. Those which belong to the public; as state, county, or township bridges, over which all the people have a right to pass, with or without paying toll these are built by public authority at the public expense, either of the state itself, or a district or part of the state.

3. - 2d. Those which have been built by companies, or at the expense of private individuals, and over Which all the people have a right to pass, on the payment of a toll fixed by law. 3d. Those which have been built by private individuals and which have been dedicated to public uscs. 2 East, R. 356; 5 Burr. R. 2594; 2 Bl. R. 685 1 Camp. R. 262, n.; 2 M. & S. 262.

4. A private bridge is one erected for the use of one or more private persons; such a bridge will not be considered a public bridge, although it may be occasionally used by the public. 12 East, R. 203-4. Vide 7 Pick. R. 844; 11 Pet. R. 539; 7 N. H. Rcp. 59; 1 Pick. R. 432; 4 John. Ch. R. 150.

BRIEF, eccl. law. The name of a kind of papal rescript. Briefs are writings sealed with wax, and differ in this respect from bulls, (q. v.) which are scaled with lead. They are so called, because they usually are short compendious writings. Ayl. Parerg. 132. See Breve.

BRIEF, practice. An abridged statement of a party's case.

2. It should contain : 1st. A statement of the names of the parties, and of their residence and occupation, the character in which they sue and are sued, and wherefore they prosecute or resist the action. 2d. An abridgment of all the pleadings. 3d. A regular, chronological, and methodical statement of the facts in plain common language. 4th. A summary of the points or questions in issue, and of the proof which is to support such issues, mentioning specially the names of the witnesses by which the facts are to be proved, or if there be written evidence, an abstract of such evidence. 5th. The personal character of the witnesses should be mentioned; whether the moral character is good or bad, whether they are naturally timid or over-zealous, whether firm or wavering. 6th. If known, the evidence of the opposite party, and such facts as are adapted to oppose, confute, or repel it. Perspicuity and conciseness are the most desirable qualities of a brief, but when the facts are material they cannot be too numerous when the argument is pertinent and weighty, it cannot be too extended.

3. Brief is also used in the sense of breve. (q. v.)

BRIEF OP TITLE, practice, conveyancing. An abridgment of all the patents, deeds, indentures, agreements, records, and papers relating to certain real estate.

2. In making a brief of title, the practitioner should be careful to place every deed and other paper in chronological order. The date of each deed; the names of the parties; the consideration; the description of the property; should be particularly, noticed, and all covenants should also be particularly inserted.

3. A vendor of an interest in realty ought to have his title investigated, abstracted, and evidence in proof of it ready to be produced and established before he sells; for if he sell with a confused title, or without being ready to produce deeds and vouchers, he must be at the expense of clearing it. 1 Chit. Pr. 304, 463.

BRINGING MONEY INTO COURT. The act of depositing money in the hands of the proper officer of the court, for the purpose of satisfying a debt or duty, or of an interpleader.

2. Whenever a tender of money is pleaded, and the debt is not discharged by the tender and refusal, money may be brought into court, without asking leave of the court; indeed, in such cases the money must be brought into court inorder to have the benefit of the tender. In other cases, leave must be had, before the money can be brought into court.

3. In general, if the money brought into court is sufficient to satisfy the plaintiff 's claim, he shall not recover costs. See Bac. Ab. Tender, &c.

BROCAGE, contracts. The wages or commissions of a broker his occupation is also sometimes called brocage. This word is also spelled brokerage.

BROKERAGE, contracts. The trade or occupation of a broker; the commissions paid to a broker for his services.

BROKERS, commerce. Those who are engaged for others, in the negotiation of contracts, relative to property, with the custody of which they have no concern. Paley on Agency, 13; see Com. Dig. Merchant, C.

2. A broker is, for some purposes, treated as the agent of both parties; but in the first place, he is deemed the agent only of the person by whom he is originally employed; and does not become the agent of the other until the bargain or contract has been definitely settled, as to the terms, between the principals. Paley on Ag. by Lloyd, 171, note p; 1 Y. &, J. 387.

3. There are several kinds of brokers, as, Exchange Brokers, such as negotiate in all matters of exchange with foreign countries.

4. Ship Brokers. Those who transact business between the owners of vessels, and the merchants who send cargoes.

5. Insurance Brokers. Those who manage the concerns both of the insurer and the insured.

6. Pawn Brokers. Those who lend money, upon goods, to necessitous people, at interest.

7. Stock Brokers. Those employed to buy and sell shares of stocks in corporations and companies. Vide Story on Ag. §28 to 32; T. L. h. t.; Maly. Lex Mer. 143; 2 H. Bl. 555; 4 Burr, R. 2103; 4 Kent, Com. 622, note d, 3d ed.; Liv. on Ag. Index, h. t.; Chit. Com. L. Index, h. t.; and articles Agency; dgent; Bought note; Factor; Sold note.

BROTHELS, crim. law. Bawdy-houses, the common habitations of prostitutes; such places have always been deemed common nuisances in the United States, and the keepers of them may be fined and imprisoned.

2. Till the time of Henry VIII, they were licensed in England, when that lascivious prince suppressed them. Vide 2 Inst. 205, 6; for the history of these pernicious places, see Merl. Rep. mot Bordel Parent Duchatellet, De la Prostitution dans la ville de Paris, c. 5, §1; Histoire de la Legislation sur les femmes publiques, & c., par M. Sabatier.

BROTHER, domest. relat. He who is born from the same father and mother with another, or from one of them only.

2. Brothers are of the whole blood, when they are born of the same father and mother, and of the half blood, when they are the issue of one of them only.

3. In the civil law, when they are the children of the same father and mother, they are called brothers germain; when they descend from the same father, but not the same mother, they are consanguine brothers; when they are the issue of the same mother, but not the same father, they are uterine brothers. A half brother, is one who is born of the same father or mother, but not of both. One born of the same parents before they were married, a left-sided brother; and a bastard born of the same father or mother, is called a natural brother. Vide Blood; Half-blood; Line; and Merl. Repert. mot Frere; Dict. de Jurisp. mot Frere; Code, 3, 28, 27 Nov. 84, praef; Dane's Ab. Index, h. t.

BROTHER-IN-LAW, domestic relat. The brother of a wife, or the hushand of a sister. There is no relationship, in the former case, between the hushand and the brother-in-law, nor in the latter, between the brother and the hushand of the sister; there is only affinity between them. See Vaughan's Rep. 302, 329.

BRUISE, med. jurisp. An injury done with violence to the person, without breaking the skin; it is nearly synonymous with contusion. (q . v.) 1. Ch. Pr. 38; vide 4 Car. & P. 381, 487, 558, 565; Eng. C. L. Rep. 430, 526, 529. Vide Wound.

BUBBLE ACT, Eng. law. The name given to the statute 6 Geo. I., c. 18, which was passed in 1719, and was intended " for restraining several extravagant and unwarrantable practices therein mentioned." See 2 P. Wms. 219.

BUGGERY, crim. law. The detestable crime of having commerce contrary to the order of nature, by mankind with mankind, or with brute beasts, or by womankind with brute beasts. 3 Inst. 58; 12 Co. 36; Dane's Ab. Index, h. t.; Merl. Repert. mot Bestialie. This is a highly penal offence.

BUILDING, estates. An edifice erected by art, and fixed upon or over the soil, composed of stone, brick, marble, wood, or other proper substance, 'Connected together, and designed for use in the position in which it is so fixed. Every building is an accessory to the soil, and is, therefore, real estate: it belongs to the owner of the soil. Cruise, tit. 1, S. 46. Vide 1 Chit. Pr. 148, 171; Salk. 459; Hob. 131; 1 Mete. 258; Broom's Max. 172.

BULK, contracts. Said to be merchandise which is neither counted) weighed, nor measured.

2. A sale by bulk, is a sale of a quantity of goods,, such as they are, without measuring, counting, or weighing. Civ. Code of Louis. a. 3522, n. 6.

BULL, eccles. law. A letter from the pope of Rome, written on parchment, to which is attached a leaden seal, impressed with the images of Saint Peter and Saint Paul.

2. There are three kinds of apostolical rescripts, the brief, the signature, and the bull, which last is most commonly used in legal matters. Bulls may be compared to the edicts and letters-patent of secular princes: when the bull grants a favor, the seal is attached by means of silken strings; and when to direct execution to be performed, with flax cords. Bulls are written in Latin, in a round and Gothic hand. Ayl. Par. 132; Ayl. Pand. 21; Mer. Rep. h. t.

BULLETIN. An official account of public transactions on matters of importance. In France, it is the registry of the laws.

BULLION. In its usual acceptation, is uncoined gold or silver, in bars, plates, or other masses. 1 East, P. C. 188.

2. In the acts of Congress, the term is also applied to copper properly manufactured for the purpose of being coined into money. For the acts of Congress, authorizing the coinage of bullion for private individuals, see Act of April 2, 1792, s. 14, 1 Story, 230; Act of May 19, 1828, 4 Sharsw. cont. of Story's Laws U. S. 2120; Act of June 28, 1834, Id. 2376; Act of January 18, 1837, Id. 2522 to 2529. See, for the English law on the subject of crimes against bullion, 1 Hawk. P. C. 32 to 41.

BUOY. A piece of wood, or an empty barrel, floating on the water, to show the place where it is shallow, to indicate the danger there is to navigation. The act of Congress, approved the 28th September, 1850, enacts, " that all buoys along the coast, in bays, harbors, sounds, or channels, shall be colored and numbered, so that passing up the coast or sound, or entering the bay, harbor or channel, red buoys with even numbers, shall be passed on the starboard hand, black buoys, with uneven numbers, on the port hand, and buoys with red and black stripes on either hand. Buoys in channel ways to be colored with alternate white and black perpendicular stripes."

BURDEN OF PROOF. This phrase is employed to signify the duty of proving the facts in dispute on an issue raised between the parties in a cause.

2. The burden of proof always lies on the party who takes the affirmative in pleading. 1 Mass. 71, 335; 4 Mass. 593; 9 Pick. 39.

3. In criminal cases, as every man is presumed to be innocent until the contrary is proved, the burden of proof rests on the prosecutor, unless a different provision is expressly made by statute. 12 Wheat. See Onus probandi.

BUREAU. A French word, which literally means a large writing table. It is used figuratively for the place where business is transacted: it has been borrowed by us, and used in nearly the same sense; as, the bureau of the secretary of state. Vide Merl. Repert. h. t.

BUREAUCRACY. The abuse of official influence in the affairs of government; corruption. This word has lately been adopted to signify that those persons who are employed in bureaus abuse their authority by intrigue to promote their own benefit, or that of friends, rather than the public good. The word is derived from the French.

BURGAGE, English law. A species of tenure in socage; it is where the king or other person is lord of an ancient borough, in which the tenements are held by a rent certain. 2 B1. Com. 82.

BURGESS. A magistrate of a borough; generally, the chief officer of the corporation, who performs, within the borough, the same kind of duties which a mayor does in a city. In England, the word is sometimes applied to all the inhabitants of a borough, who are called burgesses sometimes it signifies the representatives of a borough in parliament.

BURGH. A borough; (q. v.) a castle or town.

BURGLA. One who commits a burglary. (q. v.)

BURGLARIOUSL, pleadings. This is a technical word, which must be introduced into an indictment for burglary; no other word will answer the same purpose, nor will any circumlocution be sufficient. 4 Co. 39; 5 Co. 121; Cro. Eliz. 920; Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Chit. Cr. Law, 242.

BURGLARY, crim. law. The breaking and entering the house of another in the night time, with. intent to commit a felony therein, whether the felony be actually committed or not. 3 Inst. 63; 1 Hale, 549; 1 Hawk. c. 38, s. 1; 4 Bl. Com. 224; 2 East, P. C. C. 15, s. 1, p. 484; 2 Russell on Cr. 2; Roscoe, Cr. Ev. 252; Coxe, R. 441; 7 Mass. Rep. 247.

2. The circumstances to be considered are, 1. in what place the offence can be committed; 2. at what time 3. by what means; 4. with what intention.

3.- 1. In what place a burglary can be committed. It must, in general, be committed in a mansion house, actually occupied as a dwelling; but if it be left by the owner animo revertendi, though no person resides in it in his absence, it is still his mansion. Fost. 77; 3 Rawle, 207. The principal question, at the present day, is what is to be deemed a dwelling-house. 1 Leach, 185; 2 Leach, 771; Id. 876; 3 Inst. 64; 1 Leach, 305; 1 Hale, 558; Hawk. c. 38, s. 18; 1 Russ. on Cr. 16; 3 Berg. & Rawle, 199 4 John. R. 424 1 Nott & M'Cord, 583; 1 Hayw. 102, 242; Com. Dig. Justices, P 5; 2 East, P. C. 504.

4. - 2. At what time it must be committed. The offence must be committed in the night, for in the day time there can be no burglary. 4 Bl. Com. 224. For this purpose, it is deemed night when by the light of the sun a person cannot clearly discern the face or countenance of another 1 Hale, 550; 3 nst. 63. This rule, it is evident, does not apply to moonlight. 4 Bl. Com. 224; 2 Russ. on Cr. 32. The breaking and entering need not be done the same night 1 Russ. & Ry. 417; but it is necessary the breaking

and entering should be in the night time, for if the breaking be in daylight and the entry in the night, or vice versa, it will not be burglary. 1 Hale, 551; 2 Russ. on Cr. 32. Vide Com. Dig. Justices, P 2; 2 Chit. Cr. Law, 1092.

5.-3. The means used. There must be both a breaking and an entry. First, of the breaking, which may be actual or constructive. An actual breaking tal-,es place when the burglar breaks or removes ally part of, the house, or the fastenings provided for it, with violence. Breaking a window, taking a pane of glass out, by breaking or bending the nails, or other fastenings, raising a latch where the door is not otherwise fastened; picking open a lock with a false key; putting back the lock of a door or the fastening of a window, with an instrument; turning the key when the door is locked in the inside, or unloosening any other fastening which the owner has provided, are several instances of actual breaking. According to the Scotch law, entering a house by means of the true key, while in the door, or when it had been stolen, is a breaking. Alis. Pr. Cr. Law, 284. Constructive breakings occur when the burglar gams an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 22 Chit. Cr. Law, 1093. The breaking of an inner door of the house will be sufficient to constitute a burglary. 1 Hale, 553. Any, the least, entry, with the whole or any part of the body , hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, will be sufficient to constitute the offence. 3 Inst. 64; 4 Bl. Com. 227; Bac. Ab. Burglary, B Com. Dig. Justices, P 4. But the introduction of an instrument, in the act of breaking the house, will not be a sufficient entry, unless it be introduced for the purpose of committing a felony.

6. - 4. The intention. The intent of the breaking and entry must be felonious; if a felony however be committed, the act will be prima facie evidence of an intent to commit it. If the breaking and entry be with an intention to commit a bare trespass, and nothing further is done, the offence will not be a burglary. 1 Hale, 560; East, P., C. 509, 514, 515; 2 Russ. on Cr. 33.

BURGOMASTER. In Germany this is, the title by which an officer who performs the duties of a mayor is, called.

BURIAL. The act of interring the dead.

2. No burial is lawful unless made in conformity with the local regulations; an when a dead body has been found, it cannot be lawfully buried until the coroner has holden an inquest over it. In England. it is the practice for coroners to issue warrants to bury, after a view. 2 Umf. Lex. Coron. 497, 498.

BURNING. Vide Accident; Arson; Fire, accidental.

BURYING-GROUND. A place appropriated for depositing the dead; a cemetery. In Massachusetts, burying-grounds cannot, be appropriated to roads without the consent of the owners. Massachusetts Revised St. 239.

BUSHEL, measure. The Winchester bushel, established by the 13 W. III. c. 5, A. D. 1701, was made the standard of grain; a cylindrical vessel, eighteen and a half inches in diameter, and eight inches deep inside, contains a bushel; the capacity is 2145.42 cubic inches. By law or usage it is established in most of the United States. The exceptions, as far as known, are Connecticut, where the bushel holds 2198 cubic inches Kentucky, 2150 2/3; Indiana, Ohio, Mississippi and Missouri, where it contains 2150.4 cubic inches. Dane's Ab. c. 211, a. 12, s. 4. See the whole subject discussed in report of the Secretary of State of the United States to the Senate, Feb. 22, 1821.

BUSINESS HOURS. The time of the day during which business is transacted. In respect to the time of presentment and demand of bills and notes, business hours generally range through the whole day down to the hours of rest in the evening, except when the paper is payable it a bank or by a banker. 2 Hill, N. Y. R. 835. See 3 Shepl. 67; 5 Shepl. 230.

BUTT. A measure of capacity, equal to one hundred and eight gallons. See Measure.

BUTTS AND BOUNDS. This phrase is used to express the ends and boundaries of an estate. The word butt, being evidently derived from the, French bout, the end; and bounds, from boundary.

TO BUY. To purchase. Vide Sale.

BUYER, contracts. A purchaser; (q. v.) a vendee.

BUYING OF TITLES. The purchase of the rights of a person to a piece of land when the seller is disseised.

2. When a deed is made by one who, though having a legal right to land, is at the time of the conveyance disseised, as a general rule of the common law, the sale is void; the law will not permit any person to sell a quarrel, or, as it is commonly termed, a pretended title. Such a conveyance is an offence at common law, and by a statute of Hen. VIII. This rule has been generally adopted in the United States, and is affirmed by express statute. In some of the states, it has been modified or abolished. It has been recognized in Massachusetts and Indiana. 1 Ind. R. 127. In Massacbusetts, there is no statute on the subject, but the act has always been unlawful. 5 Pick. R. 356. In Connecticut the seller and the buyer forfeit, each one half the value of the land. 4 Conn. 575. In New York, a person disseised cannot convey, except by way of

mortgage. But the statute does not apply to judicial sales. 6 Wend. 224; see 4 Wend. 474; 2 John. Cas. 58; 3 Cow. 89; 5 Wend. 532; 5 Cow. 74; 13 John. 466; 8 Wend. 629; 7 Wend. 53, 152 11 Wend. 442; 13 John. 289. In North Carolina and South Carolina, a conveyance by a disseisee is illegal; the seller forfeits the land, andthe buyer its value. In Kentucky such sale is void. 1 Dana, R. 566. But when the deeds were made since the passage of the statute of 1798, the grantee might, under that act, sue for land conveyed to him, which was adversely possessed by another, as the grantor might have done before. The statute rendered transfers valid to pass the title. 2 Litt. 393; 1 Wheat. 292; 2 Litt. 225; 3 Dana, 309. The statute of 1824, " to revive and amend the champerty and maintenance law," forbids the buying ot titles where there is an adverse possession. See 3 J. J. Marsh. 549; 2 Dana, 374; 6 J. J. Marsh. 490, 584. In Ohio, the purchase of land from one against whom a suit is pending for it, is void, except against himself, if he prevails. Walk. Intr. 297, 351, 352. In Pennsylvania. 2 Watts, R. 272 Illinois, 111. Rev. L. 130; Missouri, Misso. St. 119, a deed is valid, though there be an adverse possession. 2 Hill, Ab. c. 33, §42 to 52.

3. The Roman law forbade the sale of a right or thing in litigation. Code, 8. 37, 2.

BY ESTIMATION, contracts. In sales of land it not unfrequently occurs that the property is said to contain a certain number of acres, by estimation, or so many acres, more or less. When these expressions are used, if the land fall short by a small quantity, the purchaser will receive no relief. In one case of this kind, the land fell short two-fifths, and the purchaser received no relief. 2 Freem. 106. Vide 1 Finch, 109 1 Call, R. 301; 6 Binn. Rep. 106 1 Serg. & Pawle, R. 166; 1 Yeates, R. 322 2 John. R. 37 5 John. R. 508; 15 John. R. 471; 1 Caines, R. 493; 3 Mass. Rep. 380; 5 Mass. R. 355; 1 Root: R. 528; 4 Hen. & Munf. 184. The meaning of these words has never been precisely ascertained by judicial decision. See Sugd. Vend. 231 to 236; Wolff, Inst. §658 and the cases cited under the articles Constitution; More or less; Subdivision.

BY-LAWS. Rules and ordinances made by a corporation for its own government.

2. The power to make by-laws is usually conferred by express terms of the charter creating the corporation, though, when not expressly granted, it is given by implication, and it is incident to the very existence of a corporation. When there is an express grant, limited to certain cases and for certain purposes, the corporate power of legislation is confined to the objects specified, all others being excluded by implication. 2 Kyd on Corp. 102; 2 P. Wms. 207; Ang. on Corp. 177. The power of making by-laws, is to be exercised by those persons in whom it is vested by the charter; but if that intrument is silent on that subject, it resides in the members of the corporation at large. Harris & Gill's R. 324; 4 Burr. 2515, 2521; 6 Bro. P. C. 519.

3. The constitution of the United States, and acts of congress made in conformity to it the constitution of the state in which a corporation is located, and acts of the legislature, constitutionally made, together with the common-law as there accepted, are of superior force to any by-law; and such by-law, when contrary to either of them, is therefore void, whether the charter authorizes the making of such by-law or not; because no legislature can grant power larger than they themselves possess. 7 Cowen's R. 585; Id. 604 5 Cowen's R. 538. Vide, generally, Aug. on Corp. ch. 9; Willc. on Corp. ch. 2, s. 3; Bac. Ab. h. t.; 4 Vin. Ab. 301 Dane's Ab. Index, h. t., Com. Dig. h. t.; and Id. vol. viii. h. t.

BY THE BYE, Eng. law. A declaration may be filed without a new process or writ, when the defendant is in court in another case, by the plaintiff in that case having filed common bail for him; the declaration thus filed is called a declaration by the bye. 1 Crompt. 96; Lee's Diet. of Pr. Declaration IV.

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Bouvier's Law Dictionary

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C

CABALLERIA, Spanish law. A measure of land, which is different in different provinces. Diccionario por la Real Academia. In those parts of the United States, which formerly belonged to Spain, the caballeria is a lot of one hundred feet front and two hundred feet deep, and equal, in all respects, to five peonias. (q. v.) 2 White's Coll. 49; 12 Pet. 444. note. See Fanegas.

CABINET. Certain officers who taken collectively make a board; as, the president's, cabinet, which is usually composed of the secretary of state, secretary of the treasury, the attorney general, and some others.

2. These officers are the advisers of the president.

CADASTRE. A term derived from the French, which has been adopted in Louisiana, and which signifies the official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 3 Am. St. Pap. 679; 12 Pet. 428, n.

CADET. A younger brother, one trained up for the army or navy.

CADI. The name of a civil magistrate among the Turks.

CALENDER. An almanac. Julius Caesar ordained that the Roman year should consist of 365 days, except every fourth year, which should contain 366, the additional day to be reckoned by counting the twenty-fourth day of February (which was the 6th of the calends of March) twice. See Bissextile is period of time exceeds the solar year by eleven minutes or there abouts, which amounts to the error of a day in about 131 years. In 1582, the error amounted to eleven days or more, which was corrected by Pope Gregory. Out of this correction grew the distinction between Old and New Style. The Gregorian or New Style was introduced into England in 1752, the 2d day of September (0. S.) of that year being reckoned as the 14th day of September, (N. S.) glee Almanac.

CALENDER, crim. law. A list of prisoners, containing their names, the time when they were committed, and by whom, and the cause of their commitments.

CALIFORNIA. The name of one of the states of the United States. It was admitted into the Union, by-an Act of Congress, passed the 9th September, 1850, entitled "An act for the admission of the state of California into the Union."

1. This section enacts and declares that the state of California shall be one of the United States, and admitted into the Union on an equal footing with the original states, in all respects whatever.

2. Enacts that the state of California shall be entitled to two representatives, until the representatives in Congress shall be apportioned according to the actual enumeration of the inhabitants, of the United States.

3. By this section a condition is expressly imposed on the said state that the people thereof shall never interfere with the primary disposal of the public lands within its limits, nor pass any law, nor do any act, whereby the title of the United States to, and right to dispose of the same, shall be impaired or questioned. It also provides that they shall never lay any tax, or assessment of any description whatever, upon the public domain of the United States; and that in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; that all navigable waters within the said state shall be common highways, forever free, as well to the inhabitants of said state, as to citizens of the United States, without any tax, impost or duty therefor; with this proviso, viz., that nothing contained in the act shall be construed as recognizing or rejecting the propositions tendered by the people of California, as articles of compact in the ordinance adopted by the convention whicb formed the constitution of that state.

2. The principal features of the constitution, of California, are similar to those of most, of the recently formed state constitutions. It establishes an elective judiciary, and: confers on the executive a qualified veto. It prohibits the creation of a state debt exceeding $300,000. It provides for the protection of the homestead from execution, and secures the property of married females separate from that of their husbands. It makes a liberal provision for the support of schools, prohibits the legislature from granting divorces, autborizing lotteries, and creating corporations, except by general laws, and from establishing any bank's of issue or circulation. It provides also that every stockholder of a corporation or joint-stock association, shall be individually and personally liable for his proportion of all its, debts or liabilities. There is also a clause prohibiting slavery, which, it is said, was inserted by the unanimous vote of the delegates.

CALLING THE PLAINTIFF, practice. When a plaintiff perceives that he has not given evidence to maintain his issue, and intends to become nonsuited, he withdraws

himself, when the cryer is ordered to call the plaintiff, and on his failing to appear, he becomes nonsuited. 3 Bl. Com. 376.

CALUMNIATORS, civil law. Persons who accuse others, whom they know to be innocent, of having committed crimes. Code 9, 46, 9.

CAMBIST. A person skilled in exchange; one who deals or trades in promissory notes or bills of exchange.

CAMERA STELLATA, Eng. law. The court of the Star Chamber, now abolished.

CAMPARTUM. A part or portion of a larger field or ground, which would otherwise be in gross or common. Vide Champerty.

CANAL. A trench dug for leading water in a particular direction, and confin- ing it.

2. Public canals are generally protected by the law which authorizes their being made. Various points have arisen under numerous laws authorizing the construction of canals, which have been decided in cases reported in 1 Yeates, 430; 1 Binn. 70; 1 Pennsyl. 462; 2 Pennsyl. 517; 7 Mass. 169; 1 Sumu. 46; 20 Johns. 103, 735; 2 Johns. 283; 7 John. Ch. 315; 1 Wend. 474; 5 Wend. 166; 8 Wend. 469; 4 Wend. 667; 6 Cowen, 698; 7 Cowen, 526 4 Hamm. 253; 5 Hamm. 141, 391; 6 Hamm. 126; 1 N. H. Rep. 339; See River.

CANCELLARIA CURIA. The name formerly given to the court of chancery.

CANCELLATION. Its general acceptation, is the act of crossing a writing; it is used sometimes to signify the manual operation of tearing or destroying the instrument itself. Hyde v. Hyde, 1 Eq. Cas. Abr. 409; Rob. on Wills, 367, n.

2. Cancelling a will, animo revocandi, is a revocation of it, and it is unnecessary to show a complete destruction or obliteration. 2 B. & B. 650; 3 B. & A. 489; 2 Bl. R. 1043; 2 Nott & M'Cord, 272; Whart. Dig. Wills, c.; 4 Mass. 462. When a duplicate has been cancelled, animo revocandi, it is the cancellation of both parts. 2 Lee, Ecc. R. 532.

3. But the mere act of cancelling a will is nothing, unless it be done animo revocandi, and evidence is admissible to show, quo animo, the testator cancelled it., 7 Johns. 394 2 Dall. 266; S. C. 2 Yeates, 170; 4 Serg. & Rawle, 297; cited 2 Dall. 267, n.; 3 Hen. & Munf. 502; Rob. on Wills, 365; Lovel, 178; Toll. on Ex'rs, Index, h. t.; 3 Stark. Ev. 1714; 1 Adams' Rep. 529 Mass. 307; 5 Conn. 262; 4 Wend. 474; 4 Wend. 585; 1 Harr.

& M'H. 162; 4 Conn. 550; 8 Verm. 373; 1 N. H. Rep. 1; 4 N. H. Rep. 191; 2 Eccl. Rep. 23.

4. As to the effect of cancelling a deed, which has not been recorded, see 1 Adams' Rep. 1; Palm. 403; Latch. 226; Gilb. Law, Ev. 109, 110; 2 H . Bl. 263: 2 Johns. 87 1 Greenl. R. 78; 10 Mass. 403; 9 Pick. 105; 4 N. H. Rep. 191; Greenl. Ev. 265; 5 Conn. 262; 4 Conn. 450; 5 Conn. 86; 2 John. R. 84; 4 Yerg. 375; 6 Mass. 24; 11 Mass. 337; 2 Curt. Ecc. R. 458.

5. As to when a court of equity will order an agreement or other instrument to be cancelled and delivered up, see 4 Bouv. Inst. n. 3917-22.

CANDIDATE. One who offers himself or is offered by others for an office.

CANON, eccl. law. This word is taken from the Greek, and signifies a rule or law. In ecelesiastical law, it is also used to designate an order of religious persons. Francis Duaren says, the reason why the ecclesiastics called the rules they established canons or rules, (canones id est regulas) and not laws, was modesty. They did not dare to call them (leges) laws, lest they should seem to arrogate to themselves the authority of princes and magistrates. De Sacris Ecclesiae Ministeriis, p. 2, in pref. See Law, Canon.

CANONIST. One well versed in canon or ecclesiastical law.

CANNON SHOT, war. The distance which a cannon will throw a ball. 2. The whole space of the sea, within cannon shot of the coast, is considered as making a part of the territory; and for that reason, a vessel taken under the cannon of a neutral fortress, is not a lawful prize. Vatt. b. 1, c. 23, s. 289, in finem Chitt. Law of Nat. 113; Mart. Law of Nat. b. 8, c. 6, s. 6; 3 Rob. Adm. Rep. 102, 336; 5 Id. 373; 3 Hagg. Adm. R. 257. This part of the sea being considered as part of the adjacent territory, (q. v.) it follows that magistrates can cause the orders of their governments to be executed there. Three miles is considered as the greatest distance that the force of gunpowder can carry a bomb or a ball. Azun. far. Law, part 2, c. 2, art. 2, 15; Bouch. Inst. n. 1848. The anonymous author of the poem, Della Natura, lib. 5, expresses this idea in the following lines: Tanto slavanza in mar questo dominio, Quant esser puo d'antemurale e guardia, Fin dove puo da terra in mar vibrandosi Correr di cavo bronzo acceso fulinine. Far as the sovereign can defend his sway, Extends his empire o'er the watery way; The shot sent thundering to the liquid plain, Assigns the limits of his just domain. Vide League.

CAPACITY. This word, in the law sense, denotes some ability, power, qualification, or competency of persons, natural, or artificial, for the performance of civil

acts, depending on their state or condition, as defined or fixed by law; as, the capacity to devise, to bequeath, to grant or convey lands; to take; or to take. and hold lands to make a contract, and the like. 2 Com. Dig. 294; Dane's Abr. h. t.

2. The constitution requires that the president, senators, and representatives should have attained certain ages; and in the case of the senators and representatives, that out these they have no capacity to serve in these offices.

3. All laws which regulate the capacity of persons to contract, are considered personal laws; such are the laws which relate to minority and majority; to the powers of guardians or parents, or the disabilities of coverture. The law of the domicil generally governs in cases of this kind. Burge. on Sureties, 89.

CAPAX DOLI. Capable of committing crime. This is said of one who has sufficient mind and understanding to be made responsible for his actions. See, Discretion.

CAPE, English law. A judicial writ touching a plea of lands and tenements. The writs which bear this name are of two kinds, namely, cape magnum, or grand, cape, and cape parvum, or petit cape. The petit cape, is so called, not so much on account of the smallness of the writ, as of the letter. Fleta , lib. 6, c. 55, 40. For the difference between the form and the use of these writs, see 2 Wms. Saund. Rep. 45, c, d; and Fleta, ubi sup.

CAPERS. Vessels of war owned by private persons, and different from ordinary privateers (q. v.) only in size, being smaller. Bea. Lex. Mer. 230.

CAPIAS, practice. This word, the signification of which is " that you take," is applicable to many heads of practice. Several writs and processes, commanding the sheriff to take the person of the defendant, are known by the name of capias. For example: there are writs of capias ad respondendum, writs of capias ad computandum, writs of capias ad satisfaciendum, &c., each especially adapted to the purposes indicated by the words used for its designation. See 3 Bl. Com. 281; 3 Bouv. Inst. n. 2794.

CAPIAS AD AUDIENDUM JUDICIUM, practice. A writ issued in a case of misdemeanor, after the defendant has appeared and found guilty, and is not present when called. This writ is to bring him to judgment. 4 BI. Com. 368.

CAPIAS AD COMPUTANDUM, practice. A writ issued in the action of account render, upon the judgment quod computet, when the defendant refuses to appear, in his proper person, before the auditors, and enter into his account. According to the ancient practice, the defendant, after arrest upon this process, might be delivered on

main-prize, or in default of finding mainpernors, he was committed to the Fleet prison, where the auditors attended upon him to hear and receive his account. As the object of this process is to compel the defendant to render an account, it does not appear to be within the scope of acts abolishing imprisonment for debt. For precedents, see Thesaurus Brevium, 38, 39, 40; 3 Leon. 149; 1 Lutw. 47, 51 Co. Ent. 46, 47; Rast. Ent. 14, b, 15.

CAPIAS AD RESPONDENDUM, practice. A writ commanding the sheriff, or other proper officer, to "take the body of the defendant and to keep the same to answer, ad respondendum, the plaintiff in a plea," &c. The amount of bail demanded ought to, be indorsed on the writ.

2. A defendant arrested upon this writ must be committed to prison, unless he give a bail bond (q. v.) to the sheriff. In some states, (as, until lately, in Pennsylvania,) it is the practice, when the defendant is liable to this process, to indorse on the writ, No bail required in which case he need only give the sheriff, in writing, an authority to the prothonotary to enter his appearance to the action, to be discharged from the arrest. If the writ has been served, and the defendant have not given bail, but remains in custody, it is returned C. C., cepi corpus; if he have given bail, it is returned C. C. B. B., cepi corpus, bail bond; if the defendant's appearance have been accepted, the return is, " C. C. and defendant's appearance accepted." According to the course of the practice at common law, the writ bears teste, in the name of the chief justice, or presiding judge of the court, on some day in term time, when the judge is supposed to be present, not being Sunday, and is made returnable on a regular return day. 1 Penna. Pr. 36; 1 Arch. Pr. 67.

CAPIAS AD SATISFACIENDUM, practice. A writ of execution issued upon a judgment in a personal action, for the recovery of money, directed to the sheriff or coroner, commanding him to take the defendant, and him safely keep, so that he may have his body in court on the return day, to satisfy, ad satisfaciendum, the plaintiff. This writ is tested on a general teste day, and returnable on a regular return day.

2. It lies after judgment in most instances in which the defendant was subject to a capias ad respondendum before, and plaintiffs are subject to it, when judgment has been given against them for costs. Members of congress and of the legislature, (eundo, morando, et redezzndo,) going to, remaining at, and returning from the places of sitting of congress, or of the legislature, are not liable to this process, on account of their public capacity; nor are ambassadors, (q. v.) and other public ministers, and their ,servants. Act of Congress of April 30, 1790, s. 25 and 26, Story's Laws United States, 88; 1 Dunl. Pr. 95, 96; Com. Dig. Ambassador, B; 4 Dall. 321. In Pennsylvania, women are not subject to this writ except in actions founded upon tort, or claims arising otherwise than ex contractu. 7 Reed's Laws of Pa. 150. In several of the United

States, the use of this writ, as well as of the capias ad respondendum, has been prohibited in all actions instituted for the recovery of money due upon any contract, express or implied, or upon any judgment or decree, founded on any contract, or for the recovery of damages for the breach of any contract, with a few exceptions. See Arrest.

3. It is executed by arresting the body of the defendant, and keeping him in custody. Discharging him upon his giving security for the payment of the debt, or upon his promise to return into custody again before the return day, is an escape, although he do return; 13 Johns. R. 366 8 Johns. R. 98; and the sheriff is liable for the debt. In England, a payment to the sheriff or other officer having the ca. sa., is no payment to the plaintiff. Freem. 842 Lutw. 587; 2 Lev. 203; 1 Arch. Pr. 278. The law is different in Pennsylvania. 3 Serg. & Rawle, 467. The return made by the officer is either C. C. & C., cepi corpus et comittitur, if the defendant have been arrested and held in custody; or N. E. I., non est inventus, if the officer has not been able to find him. This writ is, in common language, called a ca. sa.

CAPIAS PRO FINE, practice, crim. law. The name of a writ which issues against a defendant who has been fined, and who does not discharge it according to the judgment. This writ commands the sheriff to arrest the defendant and commit him to prison, there to remain till he pay the fine, or be otherwise discharged according to law.

CAPIAS UTLAGATUM English practice. A capias utlagatum is general or special; the former against the person only, the latter against the person, lands and goods.

2. This writ issues upon the judgment of outlawry being returned by the sheriff upon the exigent, and it takes its name from the words of the mandatory part of the writ, which states the defendant being outlawed utlagatum, which word comes from the Saxon utlagh, Latinized utlagatus, and signifies bannitus, extra legem. Cowel.

3. The general writ of capias utlagatum commands the sheriff to take the defendant, so that he have him before the king on a general return day, wheresoever, &c., to do and receive what the court shall consider of him.

4. The special capias utlagatum, like the general writ, commands the sheriff to take the defendant. The defendant is discharged upon an attorney's undertaking, or upon giving bond to the sheriff, in the same manner as when the writ is general. But the special writ also commands the sheriff to inquire by a jury, of the defendant's goods and lands, to extend and appraise the same, and to take them in the king's hands and safely keep them, so that he may answer to the king for the value and issue's of the same. 2 Arch. Pr. 161. See Outlawry.

CAPIAS IN WITHERNAM, practice. A writ issued after a return of elongata or eloigned has been made to a writ of retorno habendo, commanding the sheriff to take so many of the distrainer's goods by way of reprisal, as will equal the goods mentioned in the retorno habendo. 2 Inst. 140; F. N. B. 68; and see form in 2 Sell. Pr. 169.

CAPIATUR, pro fine. The name of a writ which was issued to levy a fine due to the king. Bac. Ab. Fines and Amercements, in prin. See Judgment of Capiatur.

CAPITA, or PER CAPITA. By heads. An expression of frequent occurrence in laws regulating the distribution of the estates of persons dying intestate. When all the persons entitled to shares in the distribution are of the same degree of kindred to the deceased person, (e.g. when all are grandchildren,) and claim directly from him in their own right and not through an intermediate relation, they take per capita, that is, equal shares, or share and share alike. But when they are of different degrees of kindred, (e. g. some tho children, others the grandchildren or the great grandchildren of the, deceased,) those more remote take er stirpem or per stirpes, that is, they take respectively the shares their parents (or other relation standing in the same degree with them of the surviving kindred entitled) who are in the nearest degree of kindred to the intestate,) would have taken had they respectively survived the intestate. Reeves' Law of Descent, Introd. xxvii.; also 1 Rop. on Leg. 126, 130. See Per Capita; Per Stirpes; Stirpes;

CAPITAL, political economy, commerce. In political economy, it is that portion of the produce of a country, which may be made directly available either to support the human species or to the facilitating of production.

2. In commerce, as applied to individuals, it is those objects, whether consisting of money or other property, which a merchant, trader, or other person adventures in an undertaking, or which he contributes to the common stock of a partnership. 2 Bouv. Inst. n. 1458.

3. It signifies money put out at interest.

4. The fund of a trading company or corporation is also called capital, but in this sense the word stock is generally added to it; thus we say the capital stock of the Bank of North America.

CAPITAL CRIME. One for the punishment of which death is inflicted, which punishment is called capital punishment. Dane's Ab. Index, h. t.

2. The subject of capital punishment has occupied the attention of enlightened men for a long time, particularly since the middle of the last century; and none deserves to be more carefully investigated. The right of punishing its members by society cannot be denied; but how far this right extends, by the laws of nature or of God, has been much disputed by theoretical writers, although it cannot be denied, that most nations, ancient and modern, have deemed capital punishment to be within the scope of the legitimate powers of government. Beccaria contends with zeal that the punishment of death ought not to be inflicted in times of peace, nor at other times, except in cases where the laws can be maintained in no other way. Bee. Chap. 28.

3. It is not within the plan of this work to examine the question, whether the punishment is allowed by the natural law. The principal arguments for and against it are here given.

4.- 1. The arguments used in favor of the abolition of capital punishment, are;

5. - 1st. That existence is a right which men hold from God, and which society in body can, no more than a member of that society, deprive them of, because society is governed by the immutable laws of humanity.

6. - 2d. That, even should the right be admitted, this is a restraint badly selected, which does not attain its end, death being less dreaded than either solitary confinement for life, or the performance of hard labor and disgrace for life.

7. - 3d. That the infliction of the punishment does not prevent crimes, any more thau, other less severe but longer punishments.

8. - 4th. That as a public example, this punishment is only a barbarous show, better calculated to accustom mankind to the contemplation of bloodshed, than to restrain them.

9. - 5th. That the law by taking life, when it is unnecessary for the safety of society, must act by some other motive this can be no other than revenge. To the extent the law punishes an individual beyond what is requisite for the preservation of society, and the restoration of the offender, is cruel and barbarous. The law) to prevent a barbarous act, commits one of the same kind,; it kills one of the members of society, to convince the others that killing is unlawful.

10. - 6th. That by depriving a man of life, society is deprived of the benefits which he is able to confer upon it; for, according to the vulgar phrase, a man hanged is good for nothing.

11. - 7th. That experience has proved that offences which were formerly punished with death, have not increased since the punishment has been changed to a milder one.

12. - 2. The arguments which have been urged on the other side, are,

13. - 1st. That all that humanity commands to legislators is, that they should inflict only necessary and useful punisliments; and that if they keep within these bounds, the law may permit an extreme remedy, even the punishment of death, when it is requisite for the safety of society.

14. - 2d. That, whatever be said to the contrary, this punishment is more repulsive than any other, as life is esteemed above all things, and death is considered as the greatest of evils, particularly when it is accompanied by infamy.

15. - 3d. That restrained, as this punishment ought to be, to the greatest crimes, it can never lose its efficacy as an example, nor harden the multitude by the frequency of executions.

16. - 4th. That unless this punishment be placed at the top of the scale of punishment, criminals will always kill, when they can, while committing an inferior crime, as the punishment will be increased only by a more protracted imprisonment, where they still will hope for a pardon or an escape.

17th. - 5th. The essays which have been made by two countries at least; Russia, under the reign of Elizabeth, and Tuscany, under the reign of Leopold, where the punishment of death was abolished, have proved unsuccessful, as that punishment has been restored in both.

18. Arguments on theological grounds have also been advanced on both sides. See Candlish's Contributions towards the Exposition of the Book of Genesis, pp. 203-7. Vide Beccaria on Crimes and Punishments; Voltaire, h. t.; Livingston's Report on a Plan of a Penal Code; Liv. Syst. Pen. Law, 22; Bentham on Legislation, part 3, c. 9; Report to the N. Y. Legislature; 18 Am. Jur. 334.

CAPITATION. A poll tax; an imposition which is yearly laid on each person according to his estate and ability.

2. The Constitution of the United States provides that "no capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, therein before directed to be taken." Art. 1, s. 9, n. 4. See 3 Dall. 171; 5 Wheat. 317.

CAPITE, descents. By the head. Distribution or succession per capita, is said to take place when every one of the kindred in equal degree, and not jure representationis, receive an equal part of an estate.

CAPITULARIES.The Capitularia or Capitularies, was a code of laws promulgated by Childebert, Clotaire, Carloman, Pepin, Charlemague, and other kings. It was so called from the small chapters or heads into which they were divided. The edition by Baluze, published in 1677, is said to be the best.

CAPITULATION, war. The treaty which determines the conditions under which a fortified place is abandoned to the commanding officer of the army which besieges it.

2. On surrender by capitulation, all the property of the inhabitants protected by the articles, is considered by the law of nations as neutral, and not subject to capture on the high seas, by the belligerent or its ally. 2 Dall.

CAPITULATION, civ.law. An agreement by which the prince and the people, or those who have the right of. the people, regulate the manner in which the government is to be administered. Wolff, 989.

CAPTAIN or SEA CAPTAIN, mar. law. The name given to the master or commander of a vessel. He is known in this country very generally by the name of master. (q. v.) He is also frequently denominated patron in foreign laws and books.

2. The captains in the navy of the United States, are officers appointed by government. Those who are employed in the mercantile service, have not strictly an official character. They are appointed or employed by the owners on the vessels they command.

3. It is proposed to consider the duty of the latter. Towards the owner of the vessel he is bound by his personal attention and care, to take all the necessary precautions for her safety; to, proceed on the voyage in which such vessel may be engaged, and to obey faithfully his instructions; and by all means in his power to promote the interest of his owner. But he is not required to violate good faith, nor employ fraud even with an enemy. 3 Cranch, 242.

4. Towards others, it is the policy of the law to hold him responsible for all losses or damages that may happen to the goods committed to his charge; whether they arise from negligence, ignorance, or wilful misconduct of himself or his mariners, or any other person on board the ship. As soon, therefore, as goods are put on board, they are in the master's charge, and he is bound to deliver them again in the same state in which they were shipped, and he is answerable for all losses or damages they may

sustain, unless it proceed from au inherent defect in the article, or from some accident or misfortune which could not be prevented.

5. It may be laid down as a general rule, that the captain is responsible when any loss occurs in consequence of his doing what he ought not to do, unless he was forced by the act of God,. the enemies of the United States, or the perils of the sea.1 Marsh. Ins. 241; Pard. n. 658.

6. The rights of the captain are, to choose his crew as he is responsible for their acts, this seems but just, but a reasonable deference to the rights of the owner require that he should be consulted, as he, as well as the captain, is responsible for the acts of the crew. On board, the captain is invested with almost arbitrary power overthe crew, being responsible for the abuse of his authority. Ab. on Sbipp.162. He may repair the ship, and, if he is not in funds to pay the expenses of such repairs, he may borrow money, when abroad, on the credit of his owners or of the ship. Abb. on Sh. 127-8. In such cases, although contracting within the ordinary scope of his owers and duties, he is generally responsible as well as the owner. This is the established rule of the maritime law, introduced in favor of commerce it has been recognized and adopted by the commercial nations of, Europe, and is derived from the civil or Roman law. Abbott, Ship. 90; Story, Ag. 11 6 to 123, 294; Paley, Ag. by Lloyd, 244; 1 Liverm. Ag. 70; Poth. Ob. n. 82; Ersk. Inst. 3, 3, 43; Dig. 4, 9, 1; Poth. Pand. lib. 14, tit. 1; 3 Summ. R. 228. See Bell's Com. 505, 6th ed; Bouv. Inst. Index, h. t.

CAPTATION, French law. The act of one who succeeds in controlling the will of another, so as to become master of it. It is generally taken in a bad sense.

2. Captation takes place by those demonstrations of attachment and friendship, by those assiduous attentions, by those services and officious little presents which are usual among friends, and by all those means which ordinarily render us agreeable to others. When those attentions are unattended by deceit or fraud, they are perfectly fair, and the captation is lawful; but if, under the mask of friendship, fraud is the object, and means are used to deceive the person with whom you are connected, then the captation is fraudulent, and the acts procured by the captator are void. See Influence.

CAPTATOR, French law. The name which is sometimes given, to him who by flattery and artifice endeavors to surprise testators, and induce them to. give legacies or devices, or to make him some other gift. Diet. de Jur.

CAPTION, practice. That part of a legal instrument, as a 'Commission, indictment, &c., which shows where, when, and by what authority it was taken, found or executed. As to the forms and requisites of captions, see 1 Murph. 281; 8 Yerg. 514; 4

Iredell, 113; 6 Miss,. 469; 1 Scam. 456; 5 How. Mis. 20; 6 Blackf. 299; 1 Hawks, 354; 1 Brev. 169.

2. In the English practice, when an in ferior court in obedience to the writ of certiorari, returns an indictment into the K. B. , it is annexed to the caption, then called a schedule, and the caption concludes with stating, that " it is presented in manner and form as appears in a certain indictment thereto annexed, " and the caption and indictment are returned on separate parch ments. 1 Saund. 309, n. 2. Vide Dane's Ab. Index, h. t.

3. Caption is another name for arrest.

CAPTIVE. By this term is understood one who has been taken; it is usually applied to prisoners of war. (q.v.) Although he bas lost his liberty, a captive does not by his captivity lose his civil rights.

CAPTOR, war. One who has talken property from an enemy; this term is also employed to designate one who has taken an enemy.

2. Formerly, goods taken in war were adjudged to belong to the captor; they are now considered to vest primarily, in the state or sovereign, and belong to the individual captors only to the extent that the municipal laws provide.

3. Captors are responsible to the owners of the property for all losses and damages, when the capture is tortious and without reasonable cause in the exercise of belligerent rights. But if the capture is originally justifiable, the captors will not be responsible, unless by subsequent misconduct they become trespassers ab initio. i Rob. R. 93, 96. See 2 Gall. 374; 1 Gall. 274; 1 Pet. Adm. Dee. 116; 1 Mason, R. 14.

CAPTURE, war. The taking of property by one belligerent from another.

2. To make a good capture of a ship, it must be subdued and taken by an enemy in open war, or by way of reprisals, or by a pirate, and with intent to deprive the owner of it.

3. Capture may be with intent to possess both ship and cargo, or only to seize the goods of the enemy, or contraband goods which are on board: The former is the capture of the ship in the proper sense of the word; the latter is only an arrest and detention, witbout any design to deprive the owner of it. Capture is deemed lawful, when made by a declared enemy, lawfully commissioned and according to the laws of war; and unlawful, when it is against the rules established by the law of nations. Marsh. Ins. B. 1, c. 12, s. 4.See, generally, Lee on Captures, passim; 1 Chitty's Com.

Law, 377 to 512; 2 Woddes. 435 to 457; 2 Caines' C. Err 158; 7 Johns. R. 449; 3 Caines' R. 155; 11 Johns. R. 241; 13 Johns. R.161; 14 Johns. R. 227; 3 Wheat. 183; 4 Cranch, 436 Mass. 197; Bouv. Inst. Index, h. t.

CAPUT LUPINUM, Eng. law. Having the head of a wolf. An outlawed felon was said to have the head of a wolf, and might have been killed by any one legally. Now, such killing would be murder. 1. Hale, Pl. C. 497. The rules of the common law on this subject are rauch more severe in their consequences, than the doctrine of the civil law relating to civil death. See 1 Toull. Droit Civil, n. 280, and pp. 254-5, note 3.

CARAT, weights. A carat is a weight equal to three and one-sixth grains, in diamonds, and the like. Jac. L. Dict. See Weight.

CARCAN, French law. A French word, which is applied to an instrument of punishment somewhat resembling a pillory. It sometimes signifies the punishment itself. Biret Vocab.

CARDINAL, eccl. law. The title given to one of tho highest dignitaries of the court of Rome. Cardinals are next to the pope in dignity; he is elected by them and out of their body. There are cardinal bishops, cardinal priests, and cardinal deacons. See Fleury, Hist. Eccles. liv. xxxv. n. 17, Ii. n. 19 Thomassin, part ii. liv. i. oh. 53, part iv. liv. i. c. 79, 80 Loiseau, Traite des Ordres, c. 3, n. 31; Andre, Droit Canon, au mot.

CARDS, crim. law. Small square pasteboards, generally of a fine quality, on which are painted figures of various colors, and used for playing different games. The playing of cards for amusement is not forbidden, but gaming for money is unlawful. Vide Faro bank, and Gaming.

CARGO, mar. law. The entire load of a ship or other vessel. Abb. on Sh. Index, h. t.; 1 Dall. 197; Merl. Rep. h. t.; 2 Gill & John. 136. This term is usually applied to goods only, and does not include human beings. 1 Phill. Ins. 185; 4 Pick. 429. But in a more extensive and less technical sense, it includes persons; thus we say a cargo of emigrants. See 7 Mann. Gr. 729, 744.

CARNAL KNOWLEDGE, crim. law. This phrase is used to signify a sexual connexion; as, rape is the carnal knowledge of a woman, &c. See Rape.

CARNALLY KNEW, pleadings. This is a technical phrase, essential in an indictment to charge the defendant with the crime of rape; no other word or circumlocution will answer the same purpose as these word's. Vide Ravished, and Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Hale, 632; 3 Inst. 60; Co.

Litt. 137;) 1 Chit. Cr. Law, *243. It has been doubted whether these words were indispensible. 1 East, P. C. 448. But it would be unsafe to omit them.

CARRIERS, contracts. There are two kinds of carriers, namely, common carriers, (q. v.) who have been considered under another head; and private carriers. These latter are persons who, although they do not undertake to transport the goods of such as choose to employ them, yet agree to carry the goods of some particular person for hire, from one place to another.

2. In such case the carrier incurs no responsibility beyond that of any other ordinary bailee for hire, that is to say, the responsibility of ordinary diligence. 2 Bos. & Pull. 417; 4 Taunt. 787; Selw. N. P. 382 n.; 1 Wend. R. 272; 1 Hayw. R. 14; 2 Dana, R. 430; 6 Taunt. 577; Jones, Bailm. 121; Story on Bailm, 495. But in Gordon v. Hutchinson, 1 Watts & Serg. 285, it was holden that a Wagoner Who carries goods for hire, contracts,the responsibility of a common carrier, whether transportation be his principal and direct business, or only an occasional and incidental employment.

3. To bring a person within the description of a common carrier, he must exercise his business as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to engage in the transportation of goods for hire, as a business; not as a casual occupation pro hac vice. 1 Salk. 249; 1 Bell's Com. 467; 1 Hayw. R. 14; 1 Wend. 272; 2, Dana, R. 430. See Bouv. Inst. Index, b. t.

CARRYING AWAY, crim. law. To complete the crime of larceny, the thief must not only feloniously tale the thing stolen, but carry it away. The slightest carrying away will be sufficient; thus to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair. 1 Leach, 320. To remove sheets from a bed and carry them into an adjoining room. 1 Leach, 222 n. To take plate from a trunk, and lay it on the floor with intent to carry it away. Ib. And to remove a package from one part of a wagon to another, with a view to steal it; 1 Leach, 286; have respectively been holden to be felonies. 2 Chit. Cr. Law, 919. Vide 3 Inst. 108, 109 1 Hale, 507; Kel. 31 Ry. & Moody, 14 Bac. Ab. Felony, D 4 Bl. Com. 231 Hawk. c.32, s. 25. Where, however, there has not been a complete severance of the possession, it is not a complete carrying away. 2 East, P. C. 556; 1 Hale, 508; 2 Russ. on Cr. 96. Vide Invito Domino; Larceny; Robbery; Taking.

CART BOTE. An allowance to the tenant of wood, sufficient for carts and other instruments of husbandry.

CARTE BLANCHE. The signature of an individual or more, on a while. paper, with a sufficient space left above it to write a note or other writing.

2. In the course of business, it not unfrequently occurs that for the sake of convenience, signatures in blank are given with authority to fill them up.. These are binding upon the parties. But the blank must be filled up by the very person authorized. 6 Mart. L. R. 707. Vide Ch. on Bills, 702 Penna. R. 200. Vide Blank.

CARTEL,war. An agreement between two belligerent powers for the delivery of prisoners or deserters, and also a written challenge to a duel.

2. Cartel ship, is a ship commissioned in time of war, to exchange prisoners, or to carry any proposals between hostile powers; she must carry no cargo, ammunitions, or implements of war, except a single gun for signals. The conduct of ships of this description cannot be too narrowly watched. The service on which they are sent is so highly important to the interests of humanity, that it is peculiarly incumbent on all parties to take care that it should be conducted in such a manner as not to become a subject of jealousy and distrust between the two nations. 4 Rob. R. 357. Vide Merl. Rep. b. t.; Dane's Ab. c. 40, a. 6, 7; Pet. C. C. R. 106; 3 C. Rob. 141 C. Rob. 336; 1 Dods. R. 60.

CARTMEN. Persons who carry goods and merchandise in carts, either for great or short distances, for hire. 2. Cartmen who undertake to carry goods for hire as a common employment, are common carriers. Story on Bailm. 496; and see 2 Wend. 327 2 N. & M. 88; 1 Murph. 41 7; 2 Bailey, 421 2 Verm. 92; 1 M'Cord, 444; Bac. Ab. Carriers, A.

CASE practice. A contested question before a court of justicea suit or action a cause. 9 Wheat. 738.

CASE, remedies. This is the name of an action in very general use, which lies where a party sues for damages for any wrong or cause of complaint towhich covenant or trespass will not lie. Steph. Pl. 153 Wodd. 167 Ham. N. P. 1. Vide Writ of trespass on the case. In its most comprehensive signification, case includes assumpsit as well as an action in form ex delicto; but when simply mentioned, it is usually understood to mean an action in form ex delicto. 7 T. R. 36. It is a liberal action; Burr, 906, 1011 1 Bl. Rep. 199; bailable at common law. 2 Barr 927-8; founded on the justice and conscience of the Tiff's case, and is in the nature of a bill in equity 3 Burr, 1353, 1357 and the substance of a count in case is the damage assigned. 1 Bl. Rep. 200.

2. An action on the case lies to recover damages for torts not committed with force actual or implied, or having been occasioned by force, where the matter affected was not tangible, or where the injury was not immediate but consequential; 11 Mass. 59, 137 1 Yeates, 586; 6 S. & R. 348; 12 S. & R. 210 ; 18 John. 257 19 John. 381; 6 Call, 44; 2 Dana, 378 1 Marsh. 194; 2 H. & M. 423; Harper, 113; Coxe, 339; or where the

interest in the property was only in reversion. 8 Pick. 235; 7 Conn. 3282 Green, 8 1 John. 511; 3 Hawks, 2462 Murph. 61; 2 N. H. Rep. 430. In these several cases trespass cannot be sustained. 4 T. 11. 489 7 T. R. 9. Case is also the proper remedy for a wrongful act done under legal process regularly issuing from a court of competent jurisdiction. 2 Conn. 700 11 Mass. 500 6 Greenl. 421; 1 Bailey, 441, 457; 9 Conn. 141; 2 Litt. 234; 3 Conn. 5373 Gill & John. 377. Vide Regular and irregular process.

3. It will be proper to consider, 1. in what cases the action of trespass on the case lies; 2. the pleadings 3. the evidence; 4. the judgment.

4. 1. This action lies for injuries, 1. to the absolute rights of persons 2. to the relative rights of persons; 3. to personal property; 4. to real property.

5. - 1. When the injury has been done to the absolute rights of persons by an act not immediate but consequential, as in the case of special damages Irising from a public nuisance Willes, 71 to 74 or where an incumbrance had been placed in a public street, and the plaintiff passing there received an injury; or for a malicious prosecution. See malicious prosecution.

6. - 2. For injuries to the relative rights, as for enticing away an infant child, per quod servitium amisit, 4 Litt. 25; for criminal conversation, seducing or harboring wives; debauching daughters, but in this case the daughter must live with her father as his servant, see Seduction; or enticing away or harboring apprentices or servants. 1 Chit. Pl. 137 2 Chit. Plead. 313, 319. When the seduction takes place in the husband's or father's house, he may, at his election, have trespass or case; 6 Munf. 587; Gilmer, 33but when the injury is done in the house of another, case is the proper remedy. 5 Greenl. 546.

7. - 3. When the injury to personal property is without force and. not immediate, but consequential, or when the plaintiff Is right to it is in reversion, as, where property is injured by a third person while in the hands of a hirer; 3 Camp. 187; 2 Murph. 62; 3 Hawks, 246, case is the proper remedy. 8 East, 693; Ld. Raym. 1399; Str. 634; 1 Chit. Pl. 138.

8. - 4. When the real property which has been injured is corporeal, and the injury is not immediate but consequential, as for example, putting a spout so near the plaintiff's land that the water runs upon it; 1 Chit. Pl. 126, 141; Str. 634; or where the plaintiff's property is only in reversion. When the injury has been done to, incorporeal rights, as for obstructing a private way, or disturbing a party in the use of a pew, or for injury to a franchise, as a ferry, and the like, case is the proper remedy. l Chit. Pl. 143.

9. - 2. The declaration in case, technically so called, differs from a declaration in trespass, chiefly in this, that in case, it must not, in general, state the injury to have been committed vi et armis; 3 Conn. 64; see 2 Ham. 169; 11 Mass. 57; Coxe, 339; yet after verdict, the words " with force and arms" will, be rejected as surplusage; Harp. 122; and it ought not to conclude contra pacem. Com. Dig. Action on the Case, C 3. The plea is usually the general issue, not guilty.

l0. - 3. Any matter may, in general, be given in evidence, under the plea of not guilty, except the statute of limitations. In cases of slander and a few other instances, however, this cannot be done. 1 Saund. 130, n. 1; Wilies, 20. When the plaintiff declares in case, with averments appropriate to that form of action and the evidence shows that the injury was trespass; or when he declares in trespass, and the evidence proves an injury for which case will lie, and not trespass, the defendant should be acquitted by the jury, or the plaintiff should be nonsuited. 5 Mass. 560; 16 Mass. 451; Coxe, 339; 3 John. 468.

11. - 4. The judgment is, that the plaintiff recover a sum of money, ascertained by a jury, for his damages sustained by the committing of the grievances complained of in the declaration, and costs.

12. In the civil law, an action was given in all cases of nominate contracts, which was always of the same name. But in innominate contracts, which had always the same consideration, but not the same name, there could be no action of the same denomination, but an action which arose from the fact, in factum, or an action with a form which arose from the particular circumstance, praescriptis verbis actio. Lec. Elem. 779. Vide, generally, Bouv. Inst. Index, h. t.

CASE, STATED, practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as there agreed upon and mentioned, 3 Whart. 143.

2. The facts being thus ascertained, it is left for the court to decide for which party is the law. As no writ of error lies on a judgment rendered on a case stated, Dane's Ab. c. 137, art. 4, n. 7, it is usual in the agreement to insert a clause that the case stated shall be considered in the nature of special verdict.

3. In that case, a writ of error lies on the judgment which may be rendered upon it. And a writ of error will also lie on a judgment on a case stated, when the parties have agreed to it. 8 Serg. & Rawle, 529.

4. In another sense, by a case stated is understood a statement of all the facts of a case, together with the names of the witnesses, and, a detail of the documents which are to support them. In other words, it is a brief. (q. v.)

CASH, commerce. Money on hand, which a merchant, trader or other person has to do business with.

2. Cash price, in contracts, is the price of articles paid for in cash, in contradistinction to the credit price. Pard. n. 85; Chipm. Contr. 110. In common parlance, bank notes are considered as cash; but bills receivable are not.

CASH-BOOK, Commerce, accounts. One in which a merchant or trader enters an account of all the money, or paper moneys he receives or pays. An entry of the same thing ought to be made under the proper dates, in the journal. The object of the cash-book is to afford a constant facility to ascertain the true state of a man's cash. Pard. n. 87.

CASHIER. An officer of a moneyed institution, who is entitled by virtue of his office to take care of the cash or money of such institution.

2. The cashier of a bank is usually entrusted with all the funds of the bank, its notes, bills, and other choses in action, to be used from time to time for the ordinary and extraordinary exigencies of the bank. He usually receives directly, or tbrough subordinate officers, all moneys and notes of the bankdelivers up all discounted notes and other securities, when they have been paid draws checks to withdraw the funds of the bank where they have been deposited; and, as the executive officer of the bank, transacts much of the business of the institution. In general, the bank is bound by the acts of the cashier within the scope of his authority, expressed or implied. 1 Pet. R. 46, 70Wheat. R. 300, 361 5 Wheat. R. 326; 3 Mason's R. 505; 1 Breese, R. 45; 1 Monr. Rep. 179. But the bank is not bound by a declaration of the cashier, not within the scope of his authority; as when a note is about to be discountedby the bank, he tells a person that he will incur no risk nor responsibility by becoming an indorser upon such note. 6 Pet. R. 51; 8 Pet. R. 12.Vide 17 Mass. R. 1 Story on Ag. 114, 115; 3 Halst. R. 1; 12 Wheat. R. 183; 1 Watts & Serg. 161.

To CASHIER, punishment. To break; to deprive a military man of his office. Example: every officer who shall be convicted, before a general court martial, of leaving signed a false certificate relating to the absence of either officer or private soldier, or relative to his daily pay, shall be, cashiered. Articles of war, art. 14.

CASSATION, French law. A decision which emanates from the sovereign authority, and by which a sentence or judgment in the last resort is annulled., Merl. Rep. h. t. This jurisdiction is now given to the Cour de Cassation.

2. This court is composed of fifty-two judges, including four presidents, an attorney-general, and six substitutes, bearing the title of advocates general; a chief clerk, four subordinate clerks, and eight huissiers. Its jurisdiction extends to the examination and superintendence of the judgments and decrees of the inferior court, both in civil and criminal cases. It is divided into three sections, namely, the section des requetes, the section civile, and the section criminelle. Merl. Rep. mots Cour de Cassation.

CASSETUR BREVE, practice. That the writ be quashed. This is the name of a judgment sometime sentered against a plaintiff when he cannot prosecute his writ with effect, in consequence of some allegation on the defendant's part. The plaintiff, in order to put an end to any further proceeding in the action,enters on the roll cassetur breve, the effect of which is to quash his own writ,which exonerates him from the liability to any future costs, and allows him to sue out new process. A cassetur bill a may be entered with like effect. 3 Bl. Com. 340; and vide 5 T. R. 634; Gould's Plead. c. 5, 139; 3 Bouv. Inst. n. 2913-14. Vide To quash.

CASTIGATORY, punishments. An engine used to punishwomen who have been convicted of being common scolds it is sometimes called the trebucket, tumbrel, ducking stool, or cucking stool. This barbarous punishment has perhaps never been inflicted in the United States. 12 S. & It. 225. Vide Common Scold.

CASTING VOTE, legislation. The vote given by the president or speaker of a deliberate assembly; when the votes of the other members are equal on both sides, the casting vote then decides the question. Dane's Ab. h. t.

CASTRATION, crim. law. The act of gelding. When this act is maliciously performed upon a man, it is a mayhem, and punishable as such, although the sufferer consented to it.

2. By the ancient law of England this crime was punished by retaliation, membrum pro membro. 3 Inst. 118. It is punished in the United States generally by fine and imprisonment. The civil law punished it with death. Dig. 48, 8, 4, 2. For the French law, vide Code Penal, art. 316. 3. The consequences ofcastration, when complete, are impotence and sterility. 1 Beck's Med. Jur. 72.

CASUPROVISO, practice. A writ of entry given by the statute of Gloucester, c. 7, when a tenant in dower aliens in fee or for life. It might have been brought by the

reversioner against the alienee. This, is perhaps an obsolete remedy, having yielded to the writ of ejectment. F. N. B. 205 Dane's Ab. Index, h. t.

CASUAL. What happens fortuitously what is accidental as, the casual revenue's of the government, are those which are contingeut or uncertain.

CASUAL EJECTOR, pratice, ejectment. A person, supposed to come upon-land casually, (although usually by previous agreement,) who turns out the lessee of the person claiming the possession against the actual tenant or occupier of the land. 3 Bl. Com. 201, 202.

2. Originally, in order to try the right by ejectment, Several things were necessary to be made out before the court first, a title to the land, in question, upon which the owner was to make a formal entry; and being so in possession he executed a lease to some third person or lessee, leaving him in possession then the prior tenant or some other person, called the casual ejector, either by accident or by agreement beforehand, came upon the land and turned him out, and for this ouster or turning out, the action was brought. But these formalities are now dispensed with, and the trial relates merely to the title, the defendant being bound to acknowledge the lease, entry, and ouster. 3 Bl. Com. 202;.Dane's Ab. Index, h. t.

CASUS FOEDORIS. When two nations have formed a treaty of alliance, in anticipation of a war or other difficulty with another, and it is required to determine the case in which the parties must act in consequence of the alliance, this is called the casus foederis, or case of alliance. Vattel, liv. 3, c. 6, 88.

CASUS FORTUITUS. A fortuitous case; an uncontrollable accident an act of God. See Act of God; Cas fortuit; Fortuitous event.

CASUS OMISSUS. An omitted case.

2. When a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a casus omissus.For example, when a statute provides for the descent of intestates estates, and omits a case, the estate descends as it did before the statute, whenever that, case occurs, although it appear to be within the general scope and intent of the statute. 2 Binn. R. 279.

3. When there has been a casus omissus in a statute, the subject is ruled by the common law: casus omissuset oblivioni datus dispositioni juris communis relinquitur. 5 Co. 38. Vide Dig. 38, 1, 44 and 55 Id. 38, 2, 10; Code, 6, 52, 21 and 30.

CATCHING BARGAIN, contracts, fraud. An agreement made with an heir expectant, for the purchase of his expectancy, at an inadequate price.

2. In such case, the heir is, in general, entitled to relief in equity, and way have the contract rescinded upon terms of redemption. 1 Vern. 167; 2 Cox, 80; 2 Cli. Ca. 136; 2 Vern., 121; 2 Freem. 111; 2 Vent. 329; 2 Rep. in Ch. 396; 1 P.Wms. 312; 3 PWms. 290, 293, n.; 1Cro. C. C. 7; 2 Atk. 133; 2 Swanst. 147, and the cases cited in the note; 1 Fonb.140 1 Supp. to Ves. Jr. 66 Id. 361 1 Vern. 320, n. It has been said that all persons dealing for a reversionary interest are subject to this rule, but it may be doubted whether the course of decisions authorizes so extensive a conclusion and whether, in order to constitute a title to relief, the reversioner must not combine the character of heir. 2 Swanst. 148, n. Vide 1 Ch. Pr. 112, 113, n., 458, 826, 838, 839. A mere hard bargain is not sufficient ground for relief.

3. The French law is in unison with these principles. An agreement, which has for its object the succession of aman yet alive, is generally void.Merl. Rep. mots Succession Future. Vide also Dig. 14,6, and Lesion.

CATCHPOLE, officer. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is not now in use as an official designation. Minshew ad verb.

CAUSA MATRIMONII PRAELOCUTI, Engl. law. An obsolete writ, which lies when a woman gives land to a man in fee simple, or for a less estate, to the intent that he should marry her and he refuses upon request. New. Nat. Bre. 455.

CAUSE, civ. law. This word has two meanings. 1. It signifies the delivery of the thing, or the accomplishment of the act which is the object of a convention. Datio vel factum, quibus ab una parte conventio, impleri caepta est. 6 Toull. n. 13, 166. 2. it is the consideration or motive formakinga contract. An obligation without a cause, or with a false or unlawful cause, has no effect; but an engagement is not the less valid, though the cause be not expressed. The cause is illicit, when it is forbidden by law, when it is contra bones mores, or public order. Dig. 2, 14, 7, 4; Civ. Code of Lo. a. 1887-1894 Code Civil, liv. 3, c. 2, s. 4, art. 1131-1133; Toull. liv. 3, tit. 3, c. 2, s. 4.

CAUSE, contra torts, crim. That which produces an effect.

2. In considering a contract, an injury, or a crime, the law for many purposes looks to the immediate, and not to any remote cause. Bac. Max. Reg. 1; Bac. Ab. Damages, E; Sid. 433; 2 Taunt. 314. If the cause be lawful, the party will be justified; if unlawful, he will be condemned. The following is an example in criminal law of an immediate and remote cause. If Peter, of malice prepense, should discharge a pistol at Paul, and

miss him, and then cast away the pistol and fly and, being pursued by Paul, he turn round, and kill him with a dagger, the law considers the first as the impulsive cause, and Peter would be guilty of murder. But if Peter, with his dagger drawn, had fallen down, and Paul in his haste had fallen upon it and killed himself, the cause of Paul's death would have been too remote to charge Peter as the murderer. Id.

3. In cases of insurance, the general rule is that the immediate and not the remote cause of the loss is to be considered; causa proximo non remota s pedatur. This rule may, in some cases, apply to carriers. Story, Bailm. 515.

4. For the reach of contracts, the contractor is liable for the immediate effects of such breach, but not for any remote cause, as the failure of a party who was to receive money, and did not receive it, in consequence of which he was compelled to stop payment. 1 Brock. Cir. C. Rep. 103. See Remote; and also Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 6 Bing. R. 716; 6 Ves. 496; Pal. Ag. by Lloyd, 10; Story, Ag. 200; 3 Sumn. R. 38.

CAUSE, pleading.The reason; the motive.

2. In a replication de injuria, for example, the plaintiff alleges that the defendant of his own wrong, and without the cause by him in his plea alleged, did, &c. The word cause here means without the matter of excuse alleged, and though in the singular number, it puts in issue all the facts in the plea, which constitute but one cause. 8 Co. 67; 11 East, 451; 1 Chit. Pl. 585.

CAUSE, practice. A Contested question before a court of justice; it is a Suit or action. Causes are civil or criminal. Wood's Civ. Law, 302; Code, 2, 416. 20

CAUSE OF ACTION. By this phrase is understood the right to bring an action, which implies, that there is some person in existence who can assert, and also a person who can lawfully be sued; for example, where the payee of a bill was dead at the time when it fell due, it was held the cause of action did not accrue, and consequently the statute of limitations did not begin to run until letters of administration had been obtained by some one. 4 Bing. 686.

2. There is no cause of action till the claimant can legally sue, therefore the statute of limitations does not run from the making of a promise, if it were to perform something at a future time, but only from the expiration of that time, though, when the obligor promises to pay on demand, or generally, without specifying day, he may be sued immediately, and then the cause of action has accrued. 5 Bar. & Cr. 860; 8 Dowl. & R. 346.When a wrong has been committed, or a breach of duty has occurred, the cause

of action has accrued, though the claimant may be ignorant of it. 3 Barn. & Ald. 288, 626 5 B. & C. 259; 4 C. & P. 127.

CAUTIO PRO EXPENSIS. Security for costs or expenses.

2. This term is used among the civilians, Nov. 112, c. 2, and generally on the continent of Europe. In nearly all the countries of Europe, a foreign plaintiff, whether resident there or not, is required to give caution pro expenses; that is, security for costs. In some states this requisition is modified, and, when such plaintiff has real estate, or a commercial or manufacturing establishent within the state, he is not required to give such caution. Faelix, Droit. Intern. Prive, n. 106.

CAUTION. A term of the Roman civil law, which is used in various senses. It signifies, sometimes, security, or security promised. Generally every writing is called cautio, a caution by which any object is provided for. Vicat, ad verb. In the common law a distinction is made between a contract and the security. The contract may be good and the security void. The contract may be divisible, and the security entire and indivisible. 2 Burr, 1082. The securities or cautions judicially required of the defendant, are, judicio sisti, to attend and appear during the pendency of the suit; de rato, to confirm the acts of his attorney or proctor; judicium solvi, to pay the sum adjudged against him. Coop. Just. 647; Hall's Admiralty Practice, 12; 2 Brown, Civ. Law, 356.

CAUTION, TURATORY, Scotch law. Juratory caution is that which a suspender swears is the best he can offer in order to obtain a suspension. Where the suspender cannot, from his low or suspected circumstances, procure unquestionable security, juratory caution is admitted. Ersk. Pr. L. Scot. 4, 3, 6.

CAUTIONER, Scotch law, contracts. One who becomes bound as caution or surety for another, for the performance of any obligation or contract contained in a deed.

CAVEAT, practice. That hebeware. Caveat is the name of a notice given by a party having an interest, to some officer, not to do an act, till the party giving the notice shall have been heard; as, a caveat to the register of wills, or judge of probate, not to permit a will to be proved, or not to grant letters of administration, until the party shall have been heard. A caveat is also frequently made to prevent a patent for inventions being issued. 1 Bouv. Inst. 71, 534; 1 Burn's Ecc. Law, 19, 263; Bac. Abr. Executors and Administrators, E 8; 3 Bl. Com. 246; Proctor's Pract. 68; 3 Bin. Rep. 314; 1 Siderf. 371 Poph. 133; Godolph. Orph. Leg. 258; 2 Brownl. 119; 2 Fonbl. Eq. book 4, pt. 2, c. 1, 3; Ayl. Parer. 145 Nelson's Ab. h. t.; Dane's Ab. c. 223, a. 15, 2, and a. 8, 22. See 2 Chit. Pr. 502, note b, for a form.

CAVEAT EMPTOR. Let the purchaser take heed; that is, let him see to it, that the title he is buying is good. This is a rule of the common law, applicable to the sale and purchase of lands and other real estate. If the purchaser pay the consideration money, he cannot, as a general rule, recover it back after the deed has been executed; except in cases of fraud, or by force of some covenant in the deed which has been broken. The purchaser,if he fears a defect of title, has it in his power to protect himself by proper covenants, and if he fails to do so, the law provides for him no remedy. Cro. Jac. 197; 1 Salk. 211 Doug. 630, 654; 1 Serg. & R. 52, 53 , 445. This rule is discussed with ability in Rawle on Covenants for Title, p. 458, et seq. c. 13, and the leading authorities collected. See also 2 Kent, Com. Lect. 39, p. 478; 2 Bl. Com. 451; 1 Stor , Eq. 212 6 Ves. 678; 10 Ves. 505; 3 Cranch, 270; 2 Day, R. 128; Sugd. Vend. 221 1 Bouv. Inst. n. 954-5.

2. This rule has been severely assailed, as being the instrument of falsehood and fraud; but it is too well established to be disregarded. Coop., Just. 611, n. See 8 Watts, 308, 309.

CAVIL. Sophism, subtlety. Cavilis a captious argument, by which a conclusion evidently false, is drawn from a principle evidently true: Ea est natura cavillationis ut ab evidenter veris, per brevissimas mutationes disputatio, ad ea quce evidentur falsa sunt perducatur. Dig. 60, 16, 177 et 233; Id. 17, 65; Id. 33, 2, 88 .

CAESARIAN OPERATION, med. juris. An incision made through the parietes of the abdomen and uterus to extract the foetus. It is said that Julius Caesar was born in this manner. When the child is cut out after the death of the mother, his coming into being in this way confers on other persons none of the rights to which they would have been entitled if he had been born, in the usual course of nature, during her life. For example, his father would not be tenant by the curtesy; for to create that title, it ought to begin by the birth of issue arive, and be consummated by the death of the wife. 8 Co. Rep. 35; 2 Bl. Com. 128 Co. Litt. 29 b.; 1 Beck's Med. Jur. 264 Coop. Med. Jur. 7; 1 Fodere, Med. Leg. 334. The rule of the civil law on this subject will be found in Dig. lib. 50, t. 16, 1. 132 et 141; lib. 5, t. 2, 1. 6; lib. 28, t. 2, 1. 12.

C2ETERORUM. The name of a kind of administration, which, after an administration has been granted for a limited purpose, is granted for the rest of the estate. 1 Will. on Ex. 357; 2 Hagg. 62; 4 Hagg. Eccl. R. 382, 386; 4 Mann. & Gr. 398. For example, where a wife had a right to devise or bequeath certain stock, and she made a will of the same, but there were accumulations that did not pass, the husband might take out letters of administration caeterorum. 4 Mann. & Grang.398;1 Curteis, 286.

TO CEDE, civil law. To assign; to transfer; as, France ceded Louisiana to the United States.

CEDENT, civil law, Scotch law. An assignor. The term is usually applied to the assignor of a chose in action. Kames on Eq. 43.

CELEBRATION, contracts. This word is usually applied, in law, to the celebration of marriage, which is the solemn act by which a man and woman take each other for husband and wife, conformably to the rules prescribed by law. Diet. de Juris. h. t.

CELL. A small room in a prison. See Dungeon.

CENOTAPH. An empty tomb. Dig. 11, 7, 42.

CENSUS. An enumeration of the inhabitants of a country.

2. For the purpose of keeping the reeresentation of the several states in congress equal, the constitution provides, that " representatives and direct taxes shall be apportioned among the several states, which may be included in this Union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Idians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such a manner as they shall by law direct." Art. 1, s. 2; vide 1 Story, L. U. S., 73, 722, 751; 2 Id. 1134, 1139, 1169, 1194; 3 Id. 1776; 4 Sharsw. continuation, 2179.

CENT, money. A copper coin of the United States of the value of ten mills; ten of them are equal to a dime, and one hundred, to one dollar. Each cent is required to contain one hundred and sixty-eight grains. Act of January 18th, 1837, 4 Sharsw. cont. of Story',s L. U. S. 2524.

CENTIME. The name of a French money; the one hundredth part of a franc.

CENTRAL. Relating to the centre, or placed in the centre; as, the central courts of the United States, are those located in the city of Washington, whose jurisdiction extends over the whole country. These are, first, the Senate of the United States, when organized to try impeachments; secondly, the Supreme Court of the United States.

2. The government of the United States is the central government.

CENTUMVIRI, civil law. the citizens of Rome were distributed into thirty-five tribes, and three persons out of each tribe were elected judges, who were called centumviri, although they were one hundred and five in number. They were distributed into four different tribunals, but in certain causes called centumvirales causas, the judgments of the four tribunals were necessary. Vicat,.ad verb.; 3 Bl. Com. 315.

CENTURY, civil law. One hundred. The Roman people were dividedinto centu ries. In England they were divided into hundreds. Vide Hundred. Century also means one hundred years.

CEPI. A Latin word signifying I have taken. Cepicorpus, I have taken the body; cepiand B. B., I have taken the body and discharged him on bail bond; cepi corpus et est in custodia, I have taken the body and it is in custody; cepi corpus, et est languidus, I have taken the body of, &c. and he is sick. These are some of the various returns made by the sheriff to a writ of capias.

CEPI CORPUS, practice. The return which the sheriff, or otherproper officer, makes when he has arrested a defendant by virtue of a capias. 3 Bouv. Inst. n. 2804. See Capias. F. N. B. 26.

CEPIT. Took. This is a technical word, which cannot be supplied by any other in an indictment for larceny. The charge against the defendant must be that he took the thing stolen with a felonious design. Bac. Ab. Indictment, G 1.

CEPIT ET ABDUXIT. He took and led away. These words are applied to cases of trespass or larceny, where the defendant took a living chattel, and led it away. It is used in contradistinction to took and carried away, cepit et asportavit. (q. v.)

CEPIT ET ASPORTAVIT. Took and carried away. (q. v.)

CEPIT IN ALIO LOCO, pleadings. He took in another place. This is a plea in replevin, by which the defendant alleges, that he took the thing replevied in another place than that mentioned in the plaintiff's declaration. 1 Chit. Pl. 490, 4 Bouv. Inst. n. 3569 2 Chit. Pl. 558; Rast. 554, 555; Clift. 636 Willes, R. 475; Tidd's App. 686.

CERTAINTY, UNCERTAINTY, contracts. In matters of obligation, a thing is certain, when its essence, quality, and quantity, are described, distinctly set forth, Dig. 12, 1, 6. It is uncertain, when the description is not that of one individual object, but designates only the kind. Louis. Code, art. 3522, No. 8 5 Co. 121. Certainty is the mother of repose, and therefore the law aims at certainty. 1 Dick. 245. Act of the 27th

of July, 1789, ii. 2, 1 Story's Laws, 6. His compensation for his servicer, shall not exceed two thousand dollars per annum. Gordon's Dig. art. 211.

2. If a contract be so vague in its terms, that its meaning cannot be certainly collected, and the statute of frauds preclude the admissibility of parol evidence to clear up the difficulty; 5 Barn. & Cr. 588; S. C. 12 Eng. Com. L. R. 827; or parol evidence cannot supply the defect, then neither at law, nor in equity, can effect be given to it. 1 Russ. & M. 116; 1 Ch. Pr. 123.

3. It is a maxim of law, that, that is certain which may be made certain; certum est quod certum reddi potest Co. Litt. 43; for example, when a man sells the oil he has in his store at so much a gallon, although there is uncertainty as to the quantity of oil, yet inasmuch as it can be ascertained, the maxim applies, and the sale is good. Vide generaly, Story, Eq. El. 240 to 256; Mitf. Pl. by Jeremy, 41; Coop. Eq. Pl. 5; Wigr. on Disc. 77.

CERTAINTY, pleading. By certainty is understood a clear and distinct statement of the facts which constitute the cause of action, or ground of defence, so that they may be understood by the party who is to answer them, by the jury who are to ascertain the truth of the allegations, and by the court who are to give the judgment. Cowp. 682; Co. Litt. 308; 2 Bos. & Pull. 267; 13 East, R. 107; Com. Dig. Pleader, C 17; Hob. 295. Certainty has been stated by Lord Coke, Co. Litt. 303, a, to be of three sorts namely, 1. certainty to a common intent 2. to a certain intent in general; and, 3. to a certain intent in every particular. In the case of Dovaston.v. Paine Buller, J. said he remembered to have heard Mr. Justice Ashton treat these distinctions as a jargon of words without meaning; 2 H. Bl. 530. They have, however, long been made, and ought not altogether to be departed from.

2. - 1. Certainty to a common intent is simply a rule of construction. It occurs when words are used which will bear a natural sense, and also an artificial one, or one to be made out by argument or inference. Upon the ground of this rule the natural sense of words is adopted, without addition. 2 H. Bl. 530.

3. - 2. Certainty to, a certain intent in general, is a greater degree of certainty than the last, and means what upon a fair and reasonable construction may be called certain, without recurring to possible facts which do not appear; 9 Johns. R. 317; and is what is required in declarations, replications, and indictments, in the charge or accusation, and in returns to writs of mandamus. See 1 Saund. 49, n. 1; 1 Dougl. 159; 2 Johns. Cas. 339; Cowp. 682; 2 Mass. R. 363 by some of which authorities, it would seem, certainty to a common intent is sufficient in a declaration.

4. - 3. The third degree of certainty, is that which precludes all argument, inference, or presumption against the party, pleading, and is that technical accuracy which is not liable to the most subtle and scrupulous objections, so that it is not merely a rule of construction, but of addition; for where this certainty is necessary, the party must not only state the facts of his case in the most precise way, but add to them such as show that they are not to be controverted, and, as it were, anticipate the case of his adversary. Lawes on Pl. 54, 55. See 1 Chitty on Pl. 235 to 241.

CERTIFICATE, practice. A writing made in any court, and properly authenticated, to give notice to another court of anything done therein; or it is a writing by which an officer or other person bears testimony that a fact has or has not taken place.

2. There are two kinds of certificates; those required by the law, and those which are merely voluntary. Of the first kind are certificates given to an insolvent of his discharge, and those given to aliens, that they have been naturalized. Voluntary certificates are those which are not required by law, but which are given of the mere motion of the party. The former are evidence of the facts therein mentioned, while the latter are not entitled to any credit, because the factscertified, may be proved in the usual way under the solemnity of an oath or affirmation. 2 Com. Dig. 306; Ayl. Parerg. 157; Greenl. Ev. 498.

CERTIFICATE, JUDGE'S, English practice. The judge who tries the cause is authorized by several statutes in certain cases to certify, so as to decide when the party or parties shall or shall not be entitled to costs. It is of great importance in many cases, that these certificates should be obtained at the time of trial. See 3 Camp. R. 316; 5 B. & A. 796; Tidd's Pr. 879; 3 Ch. Pr. 458, 486.

2. The Lord Chancellor often requires the opinion of the judges upon a question of law; to obtain this, a case is trained, containing the admissions on both sides, and upon these the legal question is stated; the case is then submitted to the judges, who, after hearing counsel, transmit to the chancellor their opinion. This opinion, signed by the judges of the court, is called their certificate. See 3 Bl. Com. 453.

CERTIFICATE, ATTORNEY'S, Practice, English law. By statute 37 Geo. III., c. 90, s. 26, 28, attorneys are required to deliver to the commissioners of stamp duties, a paper or note-in writing, containing the name and usual place of residence of such person, and thereupon, on paying certain duties, such person is entitled to a certificate attesting the payment of such duties, which must be renewed yearly. And by the 30th section, an attorney is liable to the penalty of fifty pounds for practising without.

CERTIFICATION or CERTIFICATE OF ASSISE. A term used in the old English law, applicable to a writ granted for the reexamination or re-trial of a matter passed by

assise before justices. F. N. B. 181 3 Bl. Com. 389. The summary motion for a new trial has entirely superseded the use of this writ, which was one of the means devised by the judges to prevent a resort to the remedy by attaint for a wrong verdict.

CERTIORARI, practice. To be certified of; to be informed of. This is the name of a writ issued from a superior court directed to one of inferior jurisdiction, commanding the latter to certify and return to the former, the record in the particular case. Bac. Ab. h. t.; 4 Vin. Ab. 330; Nels. Ab. h. t.; Dane's Ab. Index, h. t.; 3 Penna. R. 24. A certiorari differs from a writ of error. There is a distinction also between a hab. corp. and a certiorari. The certiorari removes the cause; the hab. corp. only supersedes the proceedings in below. 2 Lord Ray. 1102.

2. By the common law, a supreme court has power to review the proceedings of all inferior tribunals, and to pass upon their jurisdiction and decisions on questions of law. But in general, the determination of such inferior courts on questions of fact are conclusive, and cannot be reversed on certiorari, unless some statute confers the power on such supreme court. 6 Wend. 564; 10 Pick. 358; 4 Halst. 209. When any error has occurred in the proceedings of the court below, different from the course of the common law, in any stage of the cause, either civil or criminal cases, the writ of certiorari is the only remedy to correct such error, unless some other statutory remedy has been given. 5 Binn. 27; 1 Gill & John. 196; 2 Mass. R. 245; 11 Mass. R. 466; 2 Virg. Cas. 270; 3 Halst. 123; 3 Pick. 194 4 Hayw. 100; 2 Greenl. 165; 8 Greenl. 293. A certiorari, for example, is the correct process to remove the proceedings of a court of sessions, or of county commissioners in laying out highways. 2 Binn. 250 2 Mass. 249; 7 Mass. 158; 8 Pick. 440 13 Pick. 195; 1 Overt. 131; 2 Overt. 109; 2 Pen. 1038; 8 Verm. 271 3 Ham. 383; 2 Caines, 179.

3. Sometimes the writ of certiorari is used as auxiliary process, in order to obtain a full return to some other process. When, for example, the record of an inferior court is brought before a superior court by appeal, writ of error, or other lawful mode, and there is a manifest defect, or a suggestion of diminution, a certiorari is awarded requiring a perfect transcript and all papers. 3 Dall. R. 413; 3 John. R. 23; 7 Cranch, R. 288; 2 South. R. 270, 551; 1 Blackf. R. 32; 9 Wheat. R. 526; 7 Halst. R. 85; 3 Dev. R. 117; 1 Dev. & Bat. 382; 11 Mass. 414; 2 Munf. R. 229; 2 Cowen, R. 38. Vide Bouv. Inst. Index, h. t.

CESSET EXECUTIO. The staying of an execution.

2. When a judgment has been entered, there is sometimes, by the agreement of the parties, a cesset executio for a period of time fixed upon and when the defendant enters security for the amount of the judgment, there is a cesset executio until the time allowed by law has expired.

CESSET PROCESSUS, practice. An entry made on the record that there be a stay of the procas or proceedings.

2. This is made in cases where the plaintiff has become insolvent after action brought. 2 Dougl. 627.

CESSAVIT, Eng. law. An obsolete writ, which could formerly have been sued out when the defendant had for two years ceased or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or cbattels to be distrained. F. N. B. 208.

CESSIO BONORUM, civil law. The relinquishment which a debtor made of his property for the benefit of his creditors.

2. This exempted the debtor from imprisonment, not, however, without leaving an ignominious stain on his reputation. Dig. 2, 4, 25; Id. 48, 19, 1; Nov. 4, c. 3, and Nov. 135. By the latter Novel, an honest unfortunate debtor might be discharged, by simply affirming that he was insolvent, without having recourse to the benefit of cession. By the cession the creditors acquired title to all the property of the insolvent debtor.

3. The cession discharged the debtor only to the extent of the property ceded, and he remained responsible for the difference. Dom. Lois Civ. liv. 4, tit. 5., s. 1, n. 2. Vide, for the law of Louisiana, Code, art. 2166, et seq. 2 M. R. 112; 2 L. R. 354; 11 L. R. 531; 5 N. S. 299; 2 L. R. 39; 2 N. S. 108; 3 M. R. 232; 4 Wheat. 122; and Abandonment.

CESSION, contracts. Yielding up; release.

2. France ceded Louisiana to the United States, by the treaty of Paris, of April 30, 1803 Spain made a cession of East and West Florida, by the treaty of February 22, 1819. Cessions have been severally made of a part of their territory, by New York, Virginia, Massachusetts, Connecticut) South Carolina, North Carolina, and Georgia. Vide Gord. Dig. art. 2236 to 2250.

CESSION, civil law. The, act by which a party assigns or transfers property to a other; an assignment.

CESSION, eccl. law. When an ecclesiastic is created bishop, or when a parson takes another benefice, without dispensation, the first benefice becomes void by a legal cession, or surrender. Cowel, h. t.

CESTUI. He. This word is frequently used in composition as, cestui que trust, cestui que vie, &c.

CESTUI QUE TRUST, A barbarous phrase, to signify the beneficiary of an estate held in trust. He for whose benefit another person is enfeoffed or seised of land or tenements, or is possessed of personal property. The cestui que trust is entitled to receive the rents and profits of the land; he may direct such conveyances, consistent with the trust, deed or will, as he shall choose, and the trustee (q. v.) is bound to execute them: he may defend his title in the name of the trustee. 1 Cruise, Dig. tit. 12, c. 4, s. 4; vide Vin. Ab. Trust, U, W, X, and Y 1 Vern. 14; Dane's Ab. Index, h. t.: 1 Story, Eq. Jur. 321, note 1; Bouv. Inst. Index, h. t.

CESTUI QUE VIE. He for whose life land is holden by another person; the latter is called tenant per auter vie, or tenant for another's life. Vide Dane's Ab. Index, h. t.

CESTUI QUE USE. He to whose use land is granted to another person the latter is called the terre-tenant, having in himself the legal property and possession; yet not to his own use, but to dispose of it according to the directions of the cestui que use, and to suffer him to take the profits. Vide Bac. Read. on Stat. of Uses, 303, 309, 310. 335, 349; 7 Com. Dig. 593.

CHAFEWAX , Eng, law. An officer in chancery who fits the wax for sealing, to the writs, commissions and other. instruments then made to be issued out. He is probably so called because he warms (chaufe) the wax.

CHAFFERS. Anciently signified wares and merchandise; hence the word chaffering, which is yet used for buying and selling, or beating down the price of an article. The word is used in stat. 3 Ed. III. c. 4.

CHAIRMAN. The presiding officer of a committee; as, chairman of the committee of ways and means. The person selected to preside over a popular meeting, is also called a chairman or moderator.

CHALDRON. A measure of capacity, equal to fifty-eight and two-third cubic feet nearly. Vide Measure.

CHALLENGE. This word has several significations. 1. It is an exception or objection to a juror. 2. A call by one person upon another to a single combat, which is said to be a challenge to fight.

CHALLENGE, criminal law. A request by one person to another, to fight a duel.

2. It is a high offence at common law, and indictable, as tending to a breach of the peace. It may be in writing or verbally. Vide Hawk. P. C. b. 1, c. 63, s. 3; 6 East, R. 464; 8 East, R. 581; 1 Dana, R. 524; 1 South.. R. 40; 3 Wheel. Cr. C. 245 3 Rogers' Rec. 133; 2 M'Cord, R. 334 1 Hawks. R. 487; 1 Const. R. 107. He who carries a challenge is also punishable by indictment. In most of the states, this barbarous practice is punishable by special laws.

3. In most of the civilized nations challenging another to fight. is a crime, as calculated to destroy the public peace; and those who partake in the offence are generally liable to punishment. In Spain it is punished by loss of offices, rents, and horrors received from the king, and the delinquent is incapable to hold them in future. Aso & Man. Inst. B. 2, t. 19, c. 2, 6. See, generally, 6 J. J. @larsh. 120; 1 Munf. 468; 1 Russ. on Cr. 275; 6 J. J. Marsh. 1 19; Coust. Rep. 10 7; Joy on Chal. passim.

CHALLENGE, practice. An exception made to jurors who are to pass on a trial; to a judge; or to a sheriff.

2. It will be proper here to consider, 1. the several kinds of challenges; 2. by whom they are to be made; 3. the time and manner of making them.

3. - 1. The several kinds of challenges may be divided into those which are peremptory, and those which are for cause. 1. Peremptory challenges are those 'which are made without assigning any reason, and which the court must allow. The number of these which the prisoner was allowed at common law, in all cases of felony, was thirty-five, or one under three full juries. This is regulated by the local statutes of the different states, and the number except in capital cases, has been probably reduced.

4. - 2. Challenges for cause are to the array or to the polls. 1. A challenge to the array is made on account of some defect in making the return to the venire, and is at once an objection to all the jurors in the panel. It is either a principal challenge, that is, one founded on some manifest partiality, or error committed in selecting, depositing, drawing or summoning the jurors, by not pursuing the directions of the acts of the legislature; or a challenge for favor.

5. - 2. A challenge to the polls is objection made separately to each juror as he is about to be sworn. Challenges to the polls, like those to the array, are either principal or to the favor.

6. First, principal challenges may be made on various grounds: 1st. propter defectum, on account of some personal objection, as alienage, infancy, old age, or the want of those qualifications required by legislative enactment. 2d. Propter affectum, because of some presumed or actual partiality in the juryman who is made the subject of the

objection; on this ground a juror may be objected to, if he is related to either within the ninth degree, or is so connected by affinity; this is supposed to bias the juror's mind, and is only a presumption of partiality. Coxe, 446; 6 Greenl. 307; 3 Day, 491. A juror who has conscientious scruples in finding a verdict in a capital case, may be challenged. 1 Bald. 78. Much stronger is the reason for this challenge, where the juryman has expressed his wishes as to the result of the trial, or his opinion of the guilt or innocence of the defendant. 4 Harg. St. Tr. 748; Hawk. b. 2, c. 43, s. 28; Bac. Ab. Juries, E 5. And the smallest degree of interest in the matter to be tried is a decisive objection against a juror. 1 Bay, 229; 8 S. & R. 444; 2 Tyler, 401. But see 5 Mass. 90.
3d. The third ground of principal challenge to the polls, is propter delictum, or the legal incompetency of the juror on the ground of infamy. The court, when satisfied from their own examination, decide as to the principal challenges to the polls, without any further investigation and there is no occasion for the appointment of triers. Co. Litt. 157, b; Bac. Ab. Juries, E 12; 8 Watts. R. 304.

7. - Secondly. Challenges to the poll for favor may be made, when, although the juror is not so evidently partial that his supposed bias will be sufficient to authorize. a principal challenge, yet there are reasonable grounds to suspect that he will act under some undue influence or prejudice. The causes for such cballenge are manifestly very numerous, and depend, on a variety of circumstances. The fact to be ascertained is, whether the juryman is altogether indifferent as he stands unsworn, because, even unconsciously to himself, be may be swayed to one side. The line whicb separates the causes for principal challenges, and for challenge to the favor, is not very distinctly marked. That the juror has acted as godfather to the child of the prosecutor or defendant, is cause for a principal cballenge; Co. Litt. 157, a; while the fact that the party and the juryman are fellow servants, and that the latter has been entertained at the house of the former, is only cause for challenge to the favor. Co. Litt. 147; Bac. Ab. Juries, E 5. Challenges to the favor are not decided upon by the court, but are settled by triers. (q. v.)

8. - 2. The challenges may be made by the government, or those who represent it, or by the defendant, in criminal cases; or they may be made by either party in civil cases.

9. - 3. As to the time of making the challenge, it is to be observed that it is a general rule, that no challenge can be made either to the array or to the polls, until a full jury have made their appearance, because if that should be the case, the issue will remain pro defectu juratorum; and on this account, the party who intends to challenge the array, may, under such a contingency, pray a tales to complete the number, and then object to the panel. The proper time, of challenging, is between the appearance and the swearing of the jurors. The order of making challenges is to the array first, and should not that be supported, then to the polls; challenging any one juror, waives the right of challenging the array. Co. Litt. 158, a; Bac. Ab. Juries, E 11. The proper

manner of making the challenge, is to state all the objections against the jurors at one time; and the party will not be allowed to make a second objection to the same juror, when the first has been over-ruled. But when a juror has been challenged on one side, and found indifferent, he may still be challenged on the other. When the juror has been cliallenged for cause, and been pronounced impartial, he may still be challenged peremptorily. 6 T. R. 531; 4 Bl. Com. 356; Hawk. b. 2, c. 46, s. 10.

10. As to the mode of making the challenge, the rule is, that a challenge to the array must be in writing; but when it is only to a single individual, the words " I challenge him " are sufficient in a civil case, or on the part of the defendant, in a criminal case when the challenge is made for the prosecution, the attorney-general says, We challenge him." 4 Harg. St. Tr. 740 Tr. per Pais, 172; and see Cro. C. 105; 2 Lil. Entr. 472; 10 Wentw. 474; 1 Chit. Cr. Law, 533 to 551.

11. Interest forms the only ground at common law for challenging a judge. It is no ground of challenge that he has given an opinion in the case before. 4 Bin. 349; 2 Bin. 454. By statute, there are in some states several other grounds of challenge. See Courts of the U. S., 633 64.

12. The sheriff may be challenged for favor as well as affinity. Co. Litt. 158, a; 10 Serg. &. R. 336-7. And the challenge need not be made to the court, but only to the prothonotary. Yet the Sheriff cannot be passed by in the direction of process without cause, as he is the proper officer to execute writs, except in case of partiality. Yet if process be directed to the coroner without cause, it is not void. He cannot dispute the authority of the court, but must execute it at his peril, and the misdirection is aided by thc statutes of amendment. 11 Serg. & R. 303.

CHAMBER. A room in a house.

2. It was formerly hold that no freehold estate could be had in a chamber, but it was afterwards ruled otherwise. When a chamber belongs to one person, and the rest of the house with the land is owned by another the two estates are considered as two separate but adjoining dwelling house's. Co. Litt. 48, b; Bro. Ab. Demand, 20; 4 Mass. 575; 6 N. H. Rep. 555; 9 Pick. R. 297; vide 3 Leon. 210; 3 Watts. R. 243.

3 . By chamber is also understood the place where an assembly is held; and, by the use of a figure, the assembly itself is called a chamber.

CHAMBER OF COMMERCE. A society of the principal merchants and traders of a city, who meet to promote the general trade and commerce of the place. Some of these are incorporated, as in Philadelphia.

CHAMBERS, practice. When a judge decides some interlocutory matter, which has arisen in the course of the cause, out of court, he is said to make such decision at his chambers. The most usual applications at chambers take place in relation to taking bail, and staying proceedings on process.

CHAMPART, French law. By this name was formerly understood the grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. IS Toull. n. 182.

CHAMPERTOR, crim. law. One who makes pleas or suits, or causes them to be moved, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gain.

CHAMPERTY, crimes. A bargain with a plaintiff or defendant, campum partire, to divide the land or other matter sued for between them, if they prevail at law, the champertor undertaking to carry on the suit at his own expense. 1 Pick. 416; 1 Ham. 132; 5 Monr. 416; 4 Litt. 117; 5 John. Ch. R. 44; 7 Port. R. 488.

2. This offence differs from maintenance, in this, that in the latter the person assisting the suitor receives no benefit, while in the former he receives one half, or other portion, of the thing sued for. See Punishment; Fine; Imprisonment; 4 Bl. Com. 135.

3. This was an offence in the civil law. Poth. Pand. lib. 3, t. 1; App. n. 1, tom. 3, p. 104; 15 Ves. 139; 7 Bligh's R. 369; S. C. 20 E. C. L. R. 165; 5 Moore & P. 193; 6 Carr. & P. 749; S. C. 25 E. C. L. R. 631; 1 -Russ. Cr. 179 Hawk. P. C. b. 1 c. 84, s. 5.

4. To maintan a defendant may be champerty. Hawk. P. C. b. 1, c. 84, s. 8 3 Ham. 541; 6 Monr. 392; 8 Yerg. 484; 8 John. 479; 1 John. Ch. R. 444;, 7 Wend. 152; 3 Cowen, 624; 6 Coaven, 90.

CHAMPION. He who fights for another, or takes his place in a quarrel; it also includes him who fights his own battles. Bract. lib. 4, t. 2, c. 12.

CHANCE, accident. As the law punishes a crime only when there is an intention to commit it, it follows that when those acts are done in a lawful business or pursuit by mere chance or accident, which would have been criminal if there had been an intention, express or implied, to commit them, there is no crime. For example, if workmen were employed in blasting rocks in a retired field, and a person not knowing of the circumstance should enter the field, and be killed by a piece of the rock, there would be no guilt in the workmen. 1 East, P. C. 262 Poster, 262; 1 Hale's P. C. 472; 4 Bl. Com. 192. Vide Accident.

CHANCE-MEDLEY, criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens se defendendo. (q. v.) 4 Bl. Com. 184.

CHANCELLOR. An officer appointed to preside over a court of chancery, invested with various powers in the several states.

2. The office of chancellor is of Roman origin. He appears, at first, to have been a chief scribe or secretary, but he was afterwards invested with judicial power, and had superintendence over the other officers of the empire. From the Romans, the title and office passed to the church, and therefore every bishop of the catholic church has, to this day, his chancellor, the principal judge of his consistory. When the modern kingdoms of Europe were established upon the ruins of the empire, almost every state preserved its chancellor, with different jurisdictions and dignities, according to their different constitutions. In all he seems to have had a supervision of all charters, letters, and such other public instruments of the crown, as were authenticated in the most solemn manner; and when seals came into use, he had the custody of the public seal.

3. An officer bearing this title is to be found in most countries of Europe, and is generally invested with extensive authority. The title and office of chancellor came to us from England. Many of our state constitutions provide for the appointment of this officer, who is by them, and by the law of the several states, invested with power as they provide. Vide Encyclopedie, b. t.; Encycl.. Amer. h. t.; Dict. de Jur. h. t.; Merl. Rep. h. t.; 4 Vin. Ab. 374; Blake's Ch. Index, h. t.; Woodes. Lect. 95.

CHANCERY. The name of a court exercising jurisdiction at law, but mainly in equity.

2. It is not easy to determine how courts of equity originally obtained the jurisdiction they now exercise. Their authority, and the extent of it, have been subjects of much question, but time has firmly established them; and the limits of their jurisdiction seem to be in a great degree fixed and ascertained. 1 Story on Eq. ch. 2; Mitf. Pl. Introd.; Coop. Eq. Pl. Introd. See also Butler's Reminiscences, 38, 40; 3 Bl. Com. 435; 2 Bin. 135; 4 Bin. 50; 6 Bin. 162; 2 Serg. & R. 356; 9 Serg. & R. 315; for the necessity, origin and use of courts of chancery.

3. The judge of the court of chancery, often called a court of equity, bears the title of chancellor. The equity jurisdiction, in England, is vested, principally, in the high court of chancery. This court is distinct from courts of law. " American courts of equity are, in some instances, distinct from those of law, in others, the same tribunals exercise the jurisdiction both of courts of law and equity, though their forms of proceeding are different in their two capacities. The supreme court of the United States, and the

circuit courts, are invested with general equity powers, and act either as court's of law or equity, according to the form of the process and the subject of adjudication. In some of the states, as New York, Virginia, and South Carolina, the equity court is a distinct tribunal, having its appropriate judge, or chancellor, and officers. In most of the states, the two jurisdictions centre in the same judicial officers, as in the courts of the United States; and the extent of equity jurisdiction and proceedings is very various in the different states, being very ample in Connecticut, New York, New Jersey, Maryland, Virginia, and South Carolina, and more restricted in Maine, Massachusetts, Rhode Island, and Pennsylvania. But the salutary influence of these powers on the judicial administration generally, by the adaptation of cbancery forms and modes of proceeding to many cases in which a court of law affords but an imperfect remedy, or no remedy at all, is producing a gradual extension of them in those states where they have been, heretofore, very limited."

4. The jurisdiction of a court of equity differs essentially from that of a court of law. The remedies for wrongs, or for the enforcement of rights, may be distinguished into two classes those which are administered in courts of law, and those which are administered in courts of equity. The rights secured by the former are called legal; those secured by the latter are called equitable. The former are said to be rights and remedies at common law, because recognized and enforced in courts of common law. The latter are said to be rights and remedies in equity, because they are administered in courts of equity or chancery, or by proceedings in other courts analogous to those in courts of equity or chancery. Now, in England and America, courts of common law proceed by certain prescribed forms, and give a general judgment for or against the defendant. They entertain jurisdiction only in certain actions, and give remedies according to the particular exigency of such actions. But there are many cases in which a simple judgment for either party, without qualifications and conditions, and particular arrangements, will not. do entire justice, ex aequo et bono, to either party. Some modification of the rights of both parties is required; some restraints on one side or the other; and some peculiar adjustments, either present or future, temporary or perpetual. Now, in all these cases, courts of common law have no methods of proceeding, which can accomplish such objects. Their forms of actions and judgment are not adapted to them. The proper remedy cannot be found, or cannot be administered to the full extent of the relative rights of all parties. Such prescribed forms of actions are not confined to our law. They were known in the civil law; and the party could apply them only to their original purposes. In other cases, he had a special remedy. In such cases, where the courts of common law cannot grant the proper remedy or relief, the law of England and of the United States (in those states where equity is administered) authorizes an application to the courts of equity or chancery, which are not confined or limited in their modes of relief by such narrow regulations, but which grant relief to all parties, in cases where they have rights, ex

aequo et bono, and modify and fashion that relief according to circumstances. The most general description of a court of equity is, that it has jurisdiction in cases where a plain, adequate and complete remedy cannot be had at law that is, in common law courts. The remedy must be plain; for, if it be doubtful and obscure at law, equity will assert a jurisdiction. So it must be adequate at law; for, if it fall short of what the party is entitled to, that founds a jurisdiction in equity. And it must be complete; that is, it must attain its full end at law it must reach the whole mischief and secure the whole right of the party, now and for the future otherwise equity will interpose, and give relief. The jurisdiction of a court of equity is sometimes concurrent with that of courts of, law and sometimes it is exclusive. It exercises concurrent jurisdiction in cases where the rights are purely of a legal nature, but where other and more efficient aid is required than a court of law can afford, to meet the difficulties of the case, and ensure full redress. In some of these cases courts of law formerly refused all redress but now will grant it. But the jurisdiction having been once justly acquired at a time when there was no such redress at law, it is not now relinquished. The most common exercise of concurrent jurisdiction is in cases of account, accident, dower, fraud, mistake, partnership, and partition. The remedy is here often more complete and effectual than it can be at law. In many cases falling under these heads, and especially in some cases of fraud, mistake and accident, courts of law cannot and do not afford any redress; in others they do, but not always in so perfect a manner. A court of equity also is assistant to the jurisdiction of courts of law, in many cases, where the latter have no like authority. It will remove legal impediments to the fair decisiou of a question depending at law. It will prevent a party from improperly setting up, at a trial, some title or claim, which would be inequitable. It will compel him to discover, on his own oath, facts which he knows are material to the rights of the other party, but which a court of law cannot compel the party to discover. It will perpetuate the testmony of witnesses to rights and titles, which are in danger of being lost, before the, matter can be tried. It will provide for the safety of property in dispute pending litigation. It will counteract and control, or set aside, fraudulent judgments. It will exercise, in many cases, an exclusive jurisdiction. This it does in all cases of morely equitable rights, that is, such rights as are not recognized in courts of law. Most cases of trust and confidence fall under this head. Its exclusive jurisdiction is also extensively exercised in granting special relief beyond the reach of the common law. It will grant injunctions to prevent waste, or irreparable injury, or to secure a settled right, or to prevent vexatious litigations, or to compel the restitution of title deeds; it will appoint receivers of property, where it is in danger of misapplication it will compel the surrender of securities improperly obtained; it will prohibit a party from leaving the country in order to avoid a suit it will restrain any undue exercise of a legal right, against conscience and equity; it will decree a specific performance of contracts respecting real estates; it will, in many cases, supply the imperfect execution of instruments, and reform and alter them according to the real intention of the parties; it

will grant relief in cases of lost deeds or securities; and, in all cases in which its interference is asked, its general rule is, that he who asks equity must do equity. If a party, therefore, should ask to have a bond for a usurious debt given up, equity could not decree it, unless he could bring into court the money honestly due without usury. This is a very general and imperfect outline of the jurisdiction of a court of equity; in respect to which it has been justly remarked, that, in matters within its exclusive jurisdiction, where substantial justice entitles the party to relief, but the positive law is silent, it is impossible to define the boundaries of that jurisdiction, or to enumerate, with precision, its various principles." Ency. Am. art. Equity. Vide Fonb. Eq.; Story on Eq.; Madd. Ch. Pr.; 10 Amer. Jur. 227; Coop. Eq. Pl.; Redesd. Pl.; Newl. Cb. Practice; Beame's Pl. Eq.; Jeremy on Eq.; Encycl. Amer. article Equity, Court.

CHANGE. The exchange of money for money. The giving, for example, dollars for eagles, dimes for dollars, cents for dimes. This is a contract which always takes place in the same place. By change is also understood small money. Poth. Contr. de Change, n. 1.

CHANGE TICKET. The name given in Arkansas to a species of promissory notes issued for the purpose of making change in small transactions. Ark. Rev. Stat. cb. 24.

CHAPLAIN. A clergyman appointed to say prayers and perform divine service. Each house of congress usually appoints it own cbaplain.

CHAPMAN. One whose business is to buy and sell goods or other things. 2 Bl. Com. 476.

CHAPTER, eccl. law. A congregation of clergymen. Such an assembly is termed capitulum, which signifies a little head it being a kind of head, not only to govern the diocese in the vacation of the bishopric, but also for other purposes. Co. Litt. 103.

CHARACTER, evidence. The opinion generally entertained of a person derived from the common re 'port of the people who are acquainted with him. 3 Serg. & R. 336; 3 Mass. 192; 3 Esp. C. 236.

2. There are three classes of cases on which the moral character and conduct of a person in society may be used in proof before a jury, each resting upon particular and distinct grounds. Such evidence is admissible, 1st. To afford a presumption that a particular party has not been guilty of a criminal act. 2d. To affect the damages in particular cases, where their amount depends on the character and conduct of any individual; and, 3d. To impeach or confirm the veracity of a witness.

3. - 1. Where the guilt of an accused party is doubtful, and the character of the supposed agent is involved in the question, a presumption of innocence arises from his former conduct in society, as evidenced by his general character, since it is not probable that a person of known probity and humanity, would commit a dislionest or outrageous act in the particular instance. Such presumptions, however, are so remote from fact, and it is frequently so difficult to estimate a person's real character, that they20are entitled to little-weight, except in doubtful cases. Since the law considers a presumption of this nature to be admissible, it is in principle admissible 'Whenever a reasonable presumption arises from it, as to the fact in question; in practice it is admitted whenever the character of the party is involved in the issue. See 2 St. Tr. 1038 1 Coxes Rep. 424; 5 Serg. & R. 352 3 Bibb, R. 195; 2 Bibb, R. 286; 5 Day, R. 260; 5 Esp. C. 13; 3 Camp. C. 519; 1 Camp. C. 460; Str. R. 925. Tha. Cr. Cas. 230; 5 Port. 382.

4. - 2. In some instances evidence in disparagement of character is admissible, not in order to prove or disprove the commission of a particular fact, but with a view to damages. In actions for criminal conversation with the plaintiff's wife, evidence may be given of the wife's general bad character, for want of chastity, and even of particular acts of adultery committed by her, previous to her intercourse with the defendant. B. N. P. 27, 296; 12 Mod. 232; 3 Esp. C. 236. See 5 Munf. 10. In actions for slander and libel, when the defendant has not justified, evidence of the plaintiff's bad character has also been admitted. 3 Camp. C. 251; 1 M. & S. 284; 2 Esp. C. 720; 2 Nott & M'Cord, 511; 1 Nott & M'Cord, 268; and see 11 Johns. R. 38; 1 Root, R. 449; 1 Johns. R. 46; 6 Penna. St. Rep. 170. The ground of admitting such evidence is, that a person of disparaged fame is not entitled to the same measure of damages with one whose character is uublemished. When, however, the defendant justifies the slander, it seems to be doubtful whether the evidence of reports as to the conduct and character of the plaintiff can be received. See 1 M. & S. 286, n (a) 3 Mass. R. 553 1 Pick. R. 19. When evidence is admitted touching the general character of a party, it is manifest that it is to be confined to matters in reference to the nature of the, charge against him. 2 Wend. 352.

5. - 3. The party against whom a witness is called, may disprove the fact& stated by him, or may examine other witnesses as to his general character; but they will not be allowed to speak of particular facts or parts of his conduct. B. N. P. 296. For example, evidence of the general character of a prosecutrix for a rape, may be given, as that she was a street walker; but evidence of specific acts of criminality cannot be admitted. 3 Carr. & P. 589. The regular mode is to inquire whether the witness under examination has the means of knowing the former witness general character, and whether from such knowledge he would believe, him on his oath. 4 St. Tr. 693; 4 Esp. C. 102. In answer to such evidence against character, the other party may cross-examine the

witness as to his means of knowledge, and the grounds of his opinion; or he may attack such witness general character, and by fresh evidence support the character of his own. 2 Stark. C. 151; Id. 241; St. Ev. pt. 4, 1753 to 1758; 1 Phil. Ev. 229. A party cannot give evidence to confirm the good character of a witness, unless his general character has been impugned by his antagonist. 9 Watts, R. 124. See, in general, as to character, Phil. Ev. Index, tit. Character; Stark. Ev. pl. 4, 364 Swift's Ev. 140 to 144 5 Ohio R. 227; Greenl. Ev. 54; 3 Hill, R. 178 Bouv. Inst. Index, h. t.

CHARGE, practice. The opinion expressed by the court to the jury, on the law arising out of a case before them.

2. It should contain a clear and explicit exposition of the law, when the points of the law in dispute arise out of the facts proved on the trial of the cause; 10 Pet. 657; but the court ought at no time to undertake to decide the facts, for these are to be decided by the jury. 4 Rawle's R. 195; 2 Penna. R. 27; 4 Rawle's R. 356 Id. 100; 2 Serg. & Rawle, 464; 1 Serg. & Rawle, 515; 8 Serg. & Rawle, 150. See 3 Cranch, 298; 6 Pet. 622 1 Gall. R. 53; 5 Cranch, 187; 2 Pet. 625; 9 Pet. 541.

CHARGE, contracts. An obligation entered into by the owner of an estate which makes the estate responsible for its performance. Vide 2 Ball & Beatty, 223; 8 Com. Dig. 306, Appendix, h. t. Any obligation binding upon him who enters into it, which may be removed or taken away by a discharge. T. de la Ley, h. t.

2. That particular kind of commission which one undertakes to perform for another, in keeping the custody of his goods, is called a charge.

CHARGE. wills, devises. An obligation which a testator imposes on his devisee; as, if the testator give Peter, Blackacre, and direct that he shall pay to John during his life an annuity of one hundred dollars, which shall be a charge" on said land; or if a legacy be and directed to be paid out of the real property. 1 Rop. Leg. 446. Vide 4 Vin. Ab. 449; 1 Supp. to Ves. jr. 309; 2 Id. 31; 1 Vern. 45, 411; 1 Swanst. 28; 4 East, R. 501; 4 Ves. jr. 815; Domat, Loix Civ. liv. 3, t. 1, s. 8, n.

CHARGE' DES AFFAIRES or CHARGE' D'AFFAIRES, internationat law. These phrases, the first of which is used in the acts of congress, are synonymous.

2. The officer who bear; this title is a diplomatic representative or minister of an inferior grade, to whose care are confided the affairs of his nation. He has not the title of minister, and is generally introduced and admitted through a verbal presentation of the minister, at his departure, or through letters of credence addressed to the minister of state of the court to which they are sent. He has the essential rights of a minister. Mart. Law of Nat. 206; 1 Kent, Com. 39, n.; 4 Dall. 321.

3. The president is authorized to allow to any, charge des affaires a sum not greater than at the rate of four thousand five hundred dollars per annum, as a compensation for his personal services and expenses. Act of May 1, 1810, 2 Story's Laws U. S. 1171.

CHARGER, Scotch law. He in whose favor a decree suspended is pronounced; vet a decree may be suspended before a charge is given on it. Ersk. Pr. L. Scot. 4, 3, 7.

CHARGES. The term charges signifies the expenses which have been incurred in relation either to a transaction or to a suit; as the charges incurred for his benefit must be paid by a hirer; the defendant must pay the charges of a suit. The term charges, in relation to actions, includes something more than the costs, technically called.

CHARITY. In its widest sense it denotes all the good affections which men ought to bear towards each other; 1 Epistle to Cor. c. xiii.; in its most restricted and usual sense, it signifies relief to the poor. This species of charity is a mere moral duty, which cannot be enforced by the law. Kames on Eq. 17. But it is not employed in either of these senses in law; its signification is derived chiefly from the statute of 43 Eliz. c. 4. Those purposes are considered charitable which are enumerated in that act, or which by analogy are deemed within its spirit and intendment. 9 Ves. 405; 10 Ves, 541; 2 Vern. 387; Shelf. Mortm. 59. Lord Chancellor Camden describes a charity to be a gift to a general public use, which extends to the rich as well as to the poor. Ambl. 651; Boyle on Charities, 51; 2 Ves. sen. 52; Ambl. 713; 2 Ves. jr. 272; 6 Ves. 404; 3 Rawle, 170; 1 Penna. R. 49 2 Dana, 170; 2 Pet. 584; 3 Pet. 99, 498 9 Cow. 481; 1 Hawks, 96; 12 Mass. 537; 17 S. & R. 88; 7 Verm. 241; 5 Harr. & John. 392; 6 Harr. & John. 1; 9 Pet. 566; 6 Pet. 435; 9 C-ranch, 331; 4 Wheat. 1; 9 Wend. 394; 2 N. H. Rep. 21, 510; 9 Cow. 437; 7 John. Cb. R. 292; 3 Leigh. 450; 1 Dev. Eq. Rep. 276; 4 Bouv. Inst. n. 3976, et seq.

CHARRE OF LEAD, Eng. law, commerce. A quantity of lead consisting of thirty pigs, each pig containing six stones wanting two pounds, and every stone being twelve pounds. Jacob.

CHARTA. An ancient word which signified not only a charter or deed in writing, but any signal or token by which an estate was held.

CHARTA CHYROGRAPIHATA VEL COMMUNIS. Signifies an indenture. Shep. Touch. 50; Beames, Glanv. 197-8; Fleta, lib. 3, c. 14, 3. It was so called, because each party had a part.

CHARTA DE UNA PARTE. A deed of one part; a deed poll.

2. Formerly, this phrase was used to distinguish, a deed poll, which is an agreement made by one party only, that is, only one of the parties does any act which is binding upon him, from a deed inter partes. Co. Litt. 229. Vide Deed poll; Indenture; Inter partes.

CHARTER. A grant made by the sovereign either to the whole people or to a portion of them, securing to them the enjoyment of certain rights. Of the former kind is the late charter of France, which extended to the whole country; the charters which were granted to the different American colonies by the British government were charters of the latter species. 1 Story, Const. L. 161; 1 Bl. Com. 108 Encycl. Amer. Charte Constitutionelle.

2. A charter differs from a CONSTITUTION in this, that the former is granted by the sovereign, while the latter is established by the people themselves: both are the fundamental law of the land.

3. This term is susceptible of another signification. During the middle ages almost every document was called carta, charta, or chartula. In this sense the term is nearly synonymous with deed. Co. Litt. 6; 1 Co. 1; Moor. Cas. 687.

4. The act of the legislature creating a corporation, is called its charter. Vide 3 Bro. Civ. and Adm. Law, 188; Dane's Ab. h. t.

CHARTER, mar. contr. An agreement by which a vessel is hired by the owner to another; as A B chartered the ship Benjamin Franklin to C D.

CHARTER-LAND, Eng. law. Land formerly held by deed under certain rents and free services, and it differed in nothing from free socage land. It was also called bookland. 2 Bl. Com. 90.

CHARTER-PARTY, contracts. A contract of affreightment in writing, by which the owner of a ship or other vessel lets the whole, or a part of her, to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. This term is derived from the fact, that the contract which bears this name, was formerly written on a card, and afterwards the card was cut into two parts from top to bottom, and one part was delivered to each of the parties, which was produced when required, and by this means counterfeits were prevented.

2. This instrument ought to contain, 1. the name and tonnage of the vessel; 2. the name of the captain; 3. the names of the letter to freight and the freighter; 4. the place and time agreed upon for the loading and discharge; 5. the price of the freight; 6. the demurrage or indemnity in case of delay; 7. such other conditions as the parties may

agree upon. Abbott on Ship. pt. 3, c. 1, s. 1 to 6; Poth. h. t. n. 4; Pardessus, Dr. Coin. pt. 4, t. 4, c. 1, n. 708.

3. When a ship is chartered, this instrument serves to authenticate many of the facts on which the proof of her neutrality must rest, and should therefore be always found on board chartered ships. 1 Marsh. Ins. 407 . When the goods of several merchants unconnected with each other, are laden on board without may particular contract of affreightment with any individual for the entire ship; the vessel is called a general ship, (q. v.) because open to all merchauts. but where one Or more merchants contract for the ship exclusively, it is said to be a chartered ship. 3 Kent, Com. 158. Abbott, Ship. pt. 2, c. 2, S. 1 Harr. Dig. Ship and Shipping, iv.

CHARTERED SHIP. When a ship is hired or freighted by one or more merchants for a particular voyage or on time, it is called a chartered ship. It is freighted by a special contract of affreightment, executed between the owners, ship's husband, or master on the one hand, and the merchants on the other. It differs, from a general ship. (q. v.)

CHARTIS REDDENDIS, Eng. law. An ancient writ, now obsolete, which lays against one who had charters of feoffment entrusted to his keeping, and who refused to deliver them. Reg. Orig. 159. CHASE, Eng. law. The liberty of keeping beasts of chase, or royal gaine, on another man's ground as well as on one's own ground, protected even from the owner of the land, with a power of hunting them thereon. It differs from a park, because it may be on another's ground, and because it is not enclosed. 2 Bl. Com. 38.

CHASE, property. The act of acquiring possession of animals ferae naturae by force, cunning or address. The hunter acquires a right to such animals by occupancy, and they become his property. 4 Toull. n. 7. No man has a right to enter on the lands of another for the purpose of hunting, without his consent. Vide 14 East, R. 249 Poth. Tr. du Dr. de Propriete, part 1, c. 2, art. 2.

CHASTITY. That virtue which prevents the unlawful commerce of the sexes.

2. A woman may defend her chastity by killing her assailant. See Self-defence. And even the solicitation of her chastity is indictable in some of the states; 7 Conn. 267; though in England, and perhaps elsewhere, such act is not indictable. 2 Chit. Pr. 478. Words charging a woman with a violation of chastity are actionable in themselves. 2 Conn. 707.

CHATTELS, property. A term which includes all hinds of property, except the freehold or things which are parcel of it. It is a more extensive term than goods or

effects. Debtors taken in execution, captives, apprentices, are accounted chattels. Godol. Orph. Leg. part 3, chap. 6, 1.

2. Chattels are personal or real. Personal, are such as belong immediately to the person of a man; chattels real, are such as either appertain not immediately to the person, but to something by way of dependency, as a box with the title deeds of lands; or such as are issuing out of some real estate, as a lease of lands, or term of years, which pass like personally to the executor of the owner. Co. Litt. 118; 1 Chit. Pr. 90; 8 Vin. Ab. 296; 11 Vin. Ab. 166; 14 Vin. Ab. 109; Bac. Ab. Baron, &c. C 2; 2 Kent, Com. 278; Dane's Ab. Index, h. t.; Com. Dig. Biens, A; Bouv. Inst. Index, h. t.

CHEAT, criminal law, torts. A cheat is a deceitful practice, of a public nature, in defrauding another of a known right, by some artful device, contrary to the plain rules of common honesty. 1 Hawk. 343.

2. To constitute a cheat, the offence must be, lst. of a public nature for every species of fraud and dishonesty in transactions between individuals is not the subject-matter of a criminal charge at common law; it must be such as is calculated to defraud numbers, and to deceive the people in general. 2 East, P. C. 816; 7 John. R. 201; 14 John. R. 371; 1 Greenl. R. 387; 6 .Mass. R. 72; 9 Cowen, R. 588; 9 Wend. R. 187; 1 Yerg. R. 76; 1 Mass. 137. 2. The cheating must be done by false weights, false measures, false tokens, or the like, calculated to deceive numbers. 2 Burr, 1125; 1 W. Bl. R. 273; Holt, R. 354.

3. That the object of the defendant in defrauding the prosecutor was successful. If unsuccessful, it is a mere attempt. (q. v.) 2 Mass. 139. When two or more enter into an agreement to cheat, the offence is a conspiracy. (q. v.) To call a man a cheat is slanderous. Hetl. 167; 1 Roll's Ab. 53; 2 Lev. 62. Vide Illiterate; Token.

CHECK, contracts. A written order or request, addressed to a bank or persons carrying on the banking business, and drawn upon them by a party having money in their hands, requesting them to pay on presentment to a person therein named or to bearer, a named sum of money.

2. It is said that checks are uniformly payable to bearer Chit. on Bills, 411; but that is not so in practice in the United States. they are generally payable to bearer, but sometimes they are payable to order.

3. Cheeks are negotiable instruments, as bills of exchange; though, strictly speaking, they are due before payment has been demanded, i$n which respect they differ from promissory notes and bills of exchange payable on a particular day. 7 T. R. 430.

4. The differences between a common check and a bill of exchange, are, First, that a check may be taken after it is overdue, and still the holder is not subject to the equities wbich may exist between the drawer and the party 'from whom he receives it; in the case of bills of exchange, the holder is subject to such equity. 3 John. Cas. 5, 9; 9 B. & Cr. 388. Secondly, the drawer of a bill of exchange is liable only on the condition that it be presented in due time, and, if it be dishonored, that he has had notice; but such is not the case with a check, no delay will excuse the drawer of it, unless he has suffered some loss or injury on that account, and then only pro tanto. 3 Kent, Com. 104 n. 5th ed.; 8 John. Cas. 2; Story, Prom. Notes, 492.

5. There is a kind of check known by the name of memorandum cheeks; these are given in general with an understanding that they are not to be presented at the bank on which they are drawn for payment; and, as between the parties, they have no other effect than an IOU, or common due bill; but third persons who become the holders of them, for a valuable consideration, without notice, have all the rights which the holders of ordinary cheeks can lawfully claim. Story, Prom. Notes, 499.

6. Giving a creditor a cheek on a bank does not constitute payment of a debt. 1 Hall, 56, 78; 7 S. & R. 116; 2 Pick. 204; 4 John. 296. See 3 Rand. 481. But a tender was held good when made by a check contained in a letter, requesting a receipt in return, which the plaintiff sent back, demanding a larger sum, without objecting to the nature of the tender. 3 Bouv. Inst. n. 2436.

7. A cheek delivered by a testator in his lifetime to a person as a gift, and not presented till after his death, was considered as a part of his will, and allowed to be proved as such. 3 Curt. Ecc. R. 650. Vide, generally,4 John. R. 304; 7 John. R. 26; 2 Ves. jr. 111; Yelv. 4, b, note; 7 Serg. & Rawle, 116; 3 John. Cas. 5, 259; 6 Wend. R. 445; 2 N. & M. 251; 1 Blackf. R. 104; 1 Litt. R. 194; 2 Litt. R. 299; 6 Cowen, R. 484; 4 Har. & J. 276; 13 Wend. R. 133; 10 Wend. R. 304; 7 Har. & J. 381; 1 Hall, R. 78; 15 Mass. R. 74; 4 Yerg. R. 210; 9 S. & R. 125; 2 Story, R. 502; 4 Whart. R. 252.

CHECK BOOK, commerce. One kept by persons who have accounts in bank, in which are printed blank forms of cheeks, or orders upon the bank to pay money.

CHEMISTRY med. jur. The science which teaches the nature and property of all bodies by their analysis and combination. In considering cases of poison, the lawyer will find a knowledge of chemistry, even very limited in de ree, to be greatly useful. 2 Cbit. Pr. 42, n.

CHEVISANCE, contracts, torts. This is a French word, which signifies in that language, accord, agreement, compact. In the English statutes it is used to denote a

bargain or contract in general. In a legal sense it is taken for an unlawful bargain or contract.

CHIEF, principal. One who is put above the rest; as, chief magistrate chief justice : it also signifies the best of a number of things. It is frequently used in composition.

CHIEF CLERK OF THE DEPARTMENT OF STATE. This officer is appointed by the secretary of state; his duties are to attend to the business of the ofFice under the superintendence of the secretary; and when the secretary shall be removed from office, by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books and papers appertaining to such department,

CHIEF JUSTICE, officer. The president of a supreme court; as the chief justice of the United States, the chief justice of Pennsylvania, and the -like. Vide 15 Vin. Ab. 3.

CHIEF JUSTICIARY. An officer among the English, established soon after the conquest.

2. He had judicial power, and sat as a judge in the Curia Regis. (q. v.) In the absence of the king, he governed the kingdom. In the course of time, the power and distinction of this officer gradually diminished, until the reign of Henry III, when the office was abolished.

CHILD, CHILDREN, domestic relations. A child is the son or daughter in relation to the father or mother.

2. We will here consider the law, in general terms, as it relates to the condition, duties, and rights of children; and, afterwards, the extent which has been given to the word child or children by dispositions in wills and testaments.

3. - 1. Children born in lawful wedlock, or within a competent time afterwards, are presumed to be the issue of the father, and follow his condition; thoseborn out of lawful wedlock, follow the condition of the mother. The father is bound to maintain his children and to educate them, and to protect them from injuries. Childrenare, on their part, bound to maintain their fathers and mothers, when in need, and they are of ability so to do. Poth. Du Marriage, n. 384, 389. The father in general is entitled to the custody of minor children, but, under certain circumstances, the mother will be entitled to them, when the father and mother have separated. 5 Binn. 520. Children are liable to the reasonable correction of their parents. Vide Correction

4. - 2 The term children does not ordinarily and properly speaking comprehend grandchildren, or issue generally; yet sometimes that meaning is, affixed to it, in cases of necessity; 6 Co. 16; and it has been held to signify the same as issue, in cases where the testator, by using the terms children and issue indiscriminately, showed his intention to use the former term in the sense of issue, so as to entitle grandchildren, & c., to take under it. 1 Ves. sen. 196; Ambl. 555; 3 Ves. 258; Ambl. 661; 3 Ves. & Bea. 69. When legally construed, the term children is confined to legitimate children. 7 Ves. 458. The civil code of Louisiana, art. 2522, n. 14, enacts, that "under the, name of children are comprehended, not only children of the first degree, but the grandchildren, great-grand-children, and all other descendants in the direct line."

5. Children are divided into legitimate children, or those born in lawful wedlock; and natural or illegitimate children, who are born bastards. (q. v.) Vide Natural Children. Illegitimate children are incestuous bastards, or those which are not incestuous.

6. Posthumous children are those who are born after the death of their fathers. Domat, Lois Civ. liv. prel. t. 2, s. 1, 7 L. 3, 1, ff de inj. rupt.

7. In Pennsylvania, the will of their fathers, in, which no provision is made for them, is revoked, as far as regards them, by operation of law. 3 Binn. R. 498. See, as to the law of Virginia on this subject, 3 Munf. 20, and article In ventre sa mere. Vide, generally, 8 Vin. Ab. 318; 8 Com. Dig. 470; Bouv. Inst. Index, h. t.; 2 Kent, Com. 172; 4 Kent, Com. 408, 9; 1 Rop. on Leg. 45 to 76; 1 Supp. to Ves. jr. 442 Id. 158; Natural children.

CHILDISHNESS. Weakness of intellect, such as that of a child.

2. When the childishness is so great that a man has lost his memory, or is incapable to plan a proper disposition of his property, he is unable to make a will. Swinb. part. 11, 1; 6 Co. 23. See 9 Conn. 102; 9 Phil. R. 57.

CHIMIN. This is a corruption of the French word chemin, a highway. It is used by old writers. Com. Dig. Chimin.

CHINESE INTEREST. Interest for money charged in China. In a case where a note was given in China, payable eighteen months after date, without, any stipulation respecting interest, the court allowed the Chinese interest of one per cent. per month, from the expiration of the eighteen months. 2 Watts & Serg. 227, 264.

CHIROGRAPH, conveyancing. Signifies a deed or public instrument in writing. Chirographs were anciently attested by the subscription and crosses of witnesses; afterwards, to prevent frauds and concealments, deeds of mutual covenant were made

in a script and rescript, or in a part and counterpart; and in the middle, between the two copies, they drew the capital letters of the alphabet, and then tallied, or cut asunder in an indented manner, the sheet or skin of parchment, oneof which parts being delivered to each of the parties, were proved authentic by matching with and answering to one another. Deeds thus made were denominated syngrapha, by the canonists, because that word, instead of the letters of the alphabet, or the word chirographum, was used. 2 Bl. Com. 296. This method of preventing counterfeiting, or of detecting counterfeits, is now used by having some ornament or some word engraved or printed at one end of certificates of stocks, checks, and a variety of other instruments, which are bound up in a book, and after they are executed, are cut asunder through such ornament or word.

2. Chirograph is also the last part of, a fine of land, commonly called the foot of the fine. It is an instrument of writing beginning with these. words: " This is the final agreement," &c. It includes the whole matter, reciting the parties, day, year and place, and before Whom the fine was acknowledged and levied. Cruise, Dig. tit. 35, c. 2, s. 52. Vide Chambers' Diet. h. t.; Encyclopaedia Americana, Charter; Encyclopedie de D'Alembert, h. t.; Pothier, Pand. tom. xxii. p. 73.

CHIROGRAPHER. A word derived from the Greek, which signifies "a writing with a man's hand." A chirographer is an officer of the English court of C. P.who engrosses the fines, and delivers the indentures of them to the parties, &c.

CHIVALRY, ancient Eng. law. This word is derived from the French chevelier, a horseman. It is. the name of a tenure of land by knight's service. Chivalry was of two kinds: the first; which was regal, or held only of the king; or common, which was held of a common person. Co. Litt. h. t.

CHOICE. Preference either of a person or thing, to one of several other persons or things. Election. (q. v.)

CHOSE, property. This is a French word, signifying thing. In law, it is applied to personal property; as choses in possession, are such personal things of which one has possession; choses in action, are such as the owner has not the possession, but merely a right of action for their possession. 2 Bl. Com. 889, 397; 1 Chit. Pract. 99; 1 Supp. to Ves. Jr. 26, 59. Chitty defines choses in actions to be rights to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with contract, but which cannot be enforced without action, and therefore termed choses, or things in action. Com. Dig. Biens; Harr. Dig. Chose in ActionChitty's Eq. Dig. b. t. Vide 1 Ch. Pr. 140.

2. It is one of the qualities of a chose in action, that, at common law, it is not assignable. 2 John. 1; 15 Mass. 388; 1 Crancb, 367. But bills of exchange and promissory notes, though choses in action, may be assigned by indorsement, when payable to order, or by delivery when payable to bearer. See Bills of Exchange.

3. Bonds are assignable in Pennsylvania, and perhaps some other states, by virtue of statutory provisions.Inequity, however, all choses in action are assignable and the assignee has an equitable right to enforce the fulfilment of the obligation in the name of the assignor. 4 Mass. 511; 3 Day. 364; 1 Wheat. 236; 6 Pick. 316 9 ow. 34; 10 Mass. 316; 11 Mass. 157, n. 9 S. & R. 2441; 3 Yeates, 327; 1 Binn. 429; 5 Stew. & Port. 60; 4 Rand. 266; 7 Conn. 399; 2 Green, 510; Harp. 17; Vide, generally, Bouv. Inst. Index, h. t.

4. Rights arising ex delicto are not assignable either at law or in equity.

CHRISTIANITY. The religion established by Jesus Christ.

2. Christianity has been judicially declared to be a part of the common law of Pennsylvania; 11 Serg. & Rawle, 394; 5 Binn. R.555; of New York, 8 Johns. R. 291; of Connecticut, 2 Swift's System, 321; of Massachusetts, Dane's Ab. vol. 7, c. 219, a. 2, 19. To write or speak contemptuously and maliciously against it, is an indictable offence. Vide Cooper on the Law of Libel, 59 and 114, et seq.; and generally, 1 Russ. on Cr. 217; 1 Hawk, c. 5; 1 Vent. 293; 3 Keb. 607; 1 Barn. & Cress. 26. S. C. 8 Eng. Com. Law R. 14; Barnard. 162; Fitzgib. 66; Roscoe, Cr. Ev. 524; 2 Str. 834; 3 Barn. & Ald. 161; S. C. 5 Eng. Com. Law R. 249 Jeff. Rep. Appx. See 1 Cro. Jac. 421 Vent. 293; 3 Keb. 607; Cooke on Def. 74; 2 How. S. C. 11-ep. 127, 197 to 201.

CHURCH. In a moral or spiritual sense this word signifies a society of persons who profess the Christian religion; and in a physical or material sense, the place where such. persons assemble. The term church is nomen collectivum; it comprehends the chancel, aisles, and body of the churcb. Ham. N. P. 204.

2. By the English law, the terms church or chapel, and church-yard, are expressly recognized as in themselves correct and technical descriptions of the building and place, even in criminal proceedings. 8 B. & C. *25; 1 Salk. 256; 11 Co. 25 b; 2 Esp. 5, 28.

3. It is not within the plan of this work to give an account of the different local regulations in the United States respecting churches. References are here given to enable the inquirer to ascertain what they are, where such regulations are known to exist. 2 Mass. 500; 3 Mass. 166; 8 Mass. 96; 9 Mass. 277; Id. 254; 10 Mass. 323; 15 Mass. 296 16 Mass. 488; 6 Mass. 401; 10 Pick. 172 4 Day, C. 361; 1 Root 3, 440;

Kirby, 45; 2 Caines' Cas. 336; 10 John. 217; 6 John. 85; 7 John. 112; 8 John. 464; 9 John. 147; 4 Desaus. 578; 5 Serg. & Rawle, 510; 11 Serg. & Rawle, 35; Metc. & Perk. Dig. h. t.; 4 Whart. 531.

CHURCH-WARDEN. An officer whose duties are, as the name implies, to take care of, or guard the church.

2. These officers are created in some ecclesiastical corporations by the charter, and their rights and duties are definitely explained.In England, it is said, their principal duties are to take care of, 1. the church or building; 2. the utensils and furniture; 3. the church-yard; 4. - matters of good order concerning the church and church-yard; 5. the endowments of the church. Bac. Ab. h. t. By the common law, the capacity of church-wardens to hold property for the church, is limited to personal property. 9 Cranch, 43.

CINQUE PORTS, Eng. law. Literally, five ports. The name by which tho five ports of Hastings, Ramenhale, Hetha or Hethe, Dover, and Sandwich, are known. 2. These ports have peculiar charges and services imposed upon them, and were entitled to certain privileges and liberties. See Harg. L. Tr. 106-113.

CIPHER. An arithmetical character, used for numerical notation. Vide Figures, and 13 Vin. Ab. 210; 18 Eng. C. L. R. 95; 1 Ch. Cr. Law, 176.

2. By cipher is also understood a mode of secret writing. Public ministers and other public agents frequently use ciphers in their correspondence, and it is sometimes very useful so to correspond in times of war. A key is given to each minister before his departure, namely, the cipher for writing ciphers, (chiffre chiffrant,) and the cipher for deciphering (chiffre dechiffrant.) Besides these, it is usual to give him a common cipher, (chiffre banal,) -which is known to all the ministers of the same power, who occasionally use it in their correspondence with each other.

3. When it is suspected that, a cipher becomes known to the cabinet where the minister is residing, recourse is had to a preconcerted sign in order to annul, entirely or in part, what has been written in cipher, or rather to indicate that the contents are to be understood in an inverted or contrary sense. A cipher of reserve is also employed in extraordinary cases.

CIRCUIT COURT. The name of a court of the United States, which has both civil and criminal jurisdiction. In several of the states there are courts which bear this name. Vide Courts of the United States.

CIRCUITY OFACTION, practice, remedies. It is where a party, by bringing an action, gives an action to the defendant against him.

2. As, supposing the obligee of a bond covenanted that he would not sue on it; if he were to sue he would give an. action against himself to the defendant for a breach of his covenant. The courts prevent such circuitous actions, for it is a maxim of law, so to judge of contracts as to prevent a multiplicity of actions; and in the case just put, they would hold that the covenant not to sue operated as a release. 1 T. R. 441. It is a favorite object of courts of equity to prevent a multiplicity of actions. 4 Cowen, 682.

CIRCUITS. Certain divisions of the country, appointed for particular judges to visit for the trial of causes, or for the administration of justice. See 3 Bl. Com. 58; 3 Bouv. Inst. n. 2532.

CIRCULATING MEDIUM. By this term is understood whatever is used in making payments, as money, bank notes, or paper which passes from hand to hand in payment of goods, or debts.

CIRCUMDUCTION, Scotch law. A term applied to the time allowed for bringing proof of allegiance, which being elapsed, if either party sue for circumduction of the time of proving, it has the effect that no proof can afterwards be brought; and the cause must be determined as it stood when circumduction was obtained. Tech. Dict.

CIRCUMSTANCES, evidence. The particulars which accompany a fact.

2. The facts proved are either possible or impossible, ordinary and probable, or extraordinary and improbable, recent or ancient; they may have happened near us, or afar off; they are public or private, permanent or transitory, clear and simple, or complicated; they are always accompanied by circumstances which more or less influence the mind in forming a judgment. And in some instances these circumstances assume the character of irresistible evidence; where, for example, a woman was found dead in a room, with every mark of having met with a violent death, the presence of another person at thescene of action was made manifest by the bloody mark of a left hand visible on her left arm. 14 How. St. Tr. 1324. These points ought to be carefully examined, in order to form a correct opinion. The first question ought to be, is the fact possible ? If so, are there any circumstances which render it impossible ? If the facts are impossible, the witness ought not to be credited. If, for example, a man should swear that he saw the deceased shoot himself with his own pistol, and upon an examination of the ball which killed him, it should be found too large to enter into the pistol, the witness ought not to be credited. 1 Stark. Ev. 505; or if one should swear that another had been guilty of an impossible crime.

3. Toullier mentions a case, which, were it not for the ingenuity of the counsel, would require an apology for its introducion here, on account of its length. The case was this: La Veuve Veron brought an action against M. de Morangies on some notes, which the

defendant alleged were fraudulently obtained, for the purpose of recovering 300,000 francs, and the question was, whether the defendant had received the money. Dujonquai, the grandson of the plaintiff, pretended he had himself, alone and on foot, carried this sum in gold to the defendant, at his hotel at the upper end of the rue Saint Jacques, in thirteen trips, between half-past seven and about one o'clock, that is, in about five hours and a half, or, at most, six hours. The fact was improbable; Linquet, the counsel of the defendant, proved it was impossible; and this is his argument:

4. Dujonquai said that he had divided the sum in thirteen bags, each containing six hundred louis d'ors, and in twenty-three other bags, each containing two hundred. There remained twenty-five louis to complete the whole sum, which, Dujonquai said, he received from the defendant as a gratuity. At each of 'these trips, he says, he put a bag, containing two hundred louis, that is, about three pounds four ounces, in each of his coat pockets, which, being made in the fashion of those times, hung about the thighs, and in walking must have incommoded him and obstructed his speed; he took, besides, a bag containing six hundred louis in his arms; by this means his movements were impeded by a weight of near ten pounds.

5. The measured distance between the house where Dujonquai took the bags to the foot of the stairs of the defendant, "as five hundred and sixteen toises, which, multiplied by twenty-six, the thirteen trips going and returning, make thirteen thousand four hundred and sixteen toises, that is, more than five leagues and a half (near seventeen miles), of two thousand four hundred toises, which latter distance is considered sufficient for an hour's walk, of a good walker. Thus, if Dujonquai had been unimpeded by any obstacle, he would barely have had time to perform the task in five or six hours, even without taking any rest orrefreshment. However strikingly improbable this may have been, it was not physically impossible. But

6.- 1. Dujonquai, in going to the defendant's, had to descend sixty-three steps from his grandmother's, the plaintiff's chamber, and to ascend twenty-seven to that of the defendant, in the whole, ninety steps. In return ing, the ascent and descent were changed, but the steps were the same; so that by multiplying, by twenty-six, the number of trips going and returning, it would be seen tbere were two thousand three hundred and forty steps. Experience had proved that in ascending to the top of the tower of Notre Dame (a church in Paris), where there are three hundred and eighty-nine steps, it occupied from eight to nine minutes of time. It must then have taken an hour out of the five or six which had been employed in making the thirteen trips.

7.-2. Dujonquai had to go up the rue Saint Jacques, which is very steep; its ascent would necessarily decrease the speed of a man, burdened and encumberedwith the bags which he carried in his pockets and in his arms.

8.-3. This street, which is very public, is usually, particularly in the morning, encumbered by a multitude of persons going in every direction, so that a person going along must make an infinite number of deviations from a direct line; each by itself, is almost imperceptible, but at the end of five or six hours, they make a considerable sum, which may be estimated at a tenth part of the whole course in a straight line; this would make about half a league, to be added to the five and a half leagues, which is the distance in a direct line.

9. - 4. On the morning that Dujonquai made these trips, the daily and usual incumbrances of this street were increased by sixty or eighty workmen, who were employed in removing by hand and with machine, an enormous stone, intended for the church of Saint Genevieve, now the pantheon, and by the immense crowd which this attracted; this was a remarkable eircumstance, which, supposing that Dujonquai had not yielded to the temptation of stopping a few moments to see what was doing, must necessarily have impeded his way, and made him lose seven or eight minutes each trip, which, multiplied by twenty-six would make about two hours and a half.

10. - 5. The, witness was obliged to open and shut the doors at the defendant's house; it required time to take up the bags and place them in his pockets, to take them out and put them on the defendant's table, who, by an improbable supposition, counted the money in the intervals between the trips, and not in the presence of the witness. Dujonquai, too, must have taken receipts or acknowledgments at each trip, he must read them, and on arriving at home, deposited them in some place of safety all these distractions would necessarily occasion the loss of a few minutes. By adding these with scrupulous nicety, and by further adding the time employed in taking and depositing the bags, the opening and shutting of the doors, the reception of the receipts, the time occupied in reading and putting them away, the time consumed in several conversations, which he admitted he had with persons in the street; all these joined to the obstacles above mentioned, made it evident that it was physically impossible that Dujonquai should have carried the 300,000 francs to the house of the defendant, as he affirmed he had done. Toull. tom. 9, n. 241, p. 384. Vide, gencrally, 1 Stark. Ev. 502; 1 Phil. Ev. 116. See some curious cases of circumstantial evidence in Alis. Pr. Cr. Law, 313, 314; and 2 Theorie des Lois Criminelles, 147, n.; 3 Benth. Jud. Ev. 94, 223; Harvey's Meditations on the Night, note 35; 1 Taylor's Med. Jur. 372; 14 How. St. Tr. 1324; Theory of Presumptive Proof, passim; Best on Pres. SSSS 187, 188, 197. See Death; Presumption; Sonnambulism.

CIRCUMSTANDIBUS, persons, practice. Bystanders from whom jurors are to be selected when the panel has been exhausted. Vide Tales de circumstandibus.

CIRCUMVENTION, torts, Scotch law. Any act of fraud whereby a person is reduced to a deed by decreet. Tech. Dict. It has the same sense in the civil law. Dig. 50, 17, 49 et 155; Id. 12, 6, 6, 2; Id. 41, 2, 34. Vide Parphrasis.

CITATIO AD REASSUMENDAM CAUSAM, civil law. The name of a citation, which issued when a party died pending a suit, against the heir of the defendant, or when the plaintiff died, for the heir of the plaintiff. Our bill of revivor is probably borrowed from this proceeding.

CITATION, practice. A writ issued out of a court of competent, jurisdiction, commanding a person therein named to appear and do something therein mentioned, or to show cause why he should not, on a day named. Proct. Pr. h. t. In the ecclesiastical law, the citation is the beginning and foundation of the whole cause; it is said to have six requisites, namely.: the insertion of the name of the judge; of the promovert; of the impugnant; of the cause of suit; of the place; and of the time of appearance; to which may be added the affixing the seal of the court, and the name of the register or his deputy. 1 Bro. Civ. Law, 453-4; Ayl. Parer. xliii. 175; Hall's Adm. Pr. 5; Merl. Rep. h. t. By, citation is also understood the act by which a person is summoned, or cited.

CITATION OF AUTHORITIES. The production or reference to the text of acts of legislatures and of treatises, and decided cases, in order to support what is advanced.

2. Works are sometimes surcharged with useless and misplaced citations; when they are judiciously made, they assist the reader in his researches. Citations ought not to be made to prove what is not doubted; but when a controverted point is mooted, it is highly proper to cite the laws and cases, or other authorities in support of the controverted proposition.

3. The mode of citing statutes varies in the United States; the laws of the United States are generally cited by their date, as the act of Sept. 24, 1789, s. 35; or act of 1819, eh. 170, 3 Story's U. S. Laws, 1722. In Pennsylvania, acts of assembly are cited as follows: act of 14th of April, 1834; in Massachusetts, stat. of 1808, c. 92. Treatises and books of reports, are generally cited by the volume and page, as, 2 Powell on Morts. 600; 3 Binn. R. 60. Judge Story and some others, following the examples of the civilians, have written their works and numbered the paragraphs; these are cited as follows: Story's Bailm. 494; Gould on Pl. c. 5, 30. For other citaions the reader is referred to the article Abbreviations.

4. It is usual among the civilians on the continent of Europe, in imitation of those in the darker ages, in their references to the Institutes, the Code and the Pandects or Digest, to mention the number, not of the book, but of the law, and the first word of

the title to which it belongs; and as there are more than a thousand of these, it is no easy task for one not thoroughly acquainted with those collections, to find the place to which reference is made. The American writers generally follow the natural mode of reference, by putting down the name of the collection, and then the number of the book, title, law, and section. For example, Inst. 4, 15, 2, signifies Institutes, book four, title fifteen, and section two; Dig. 41, 9, 1, 3, means Digest, book 41, title 9, law 1, section 3; Dig. pro dote, or ff pro dote, that is, section 3, law 1, of the book and title of the Digest or Pandects, entitled pro dote. It is proper to remark, that Dig. and ff are equivalent; the former signifies Digest, and the latter, which is a careless mode of writing the Greek letter it, the first letter of the word pavdectai, Pandects, and the Digest and Pandects are different names for one and the same thing. The Code is cited in the same way. The Novels are cited by their number, with tbat of the chapter and paragraph; for example, Nov. 185, 2, 4; for Novella Justiniani 185, capite 2, paragrapho 4. Novels are also quoted by the Collation, the title, chapter, and paragraph as follows: in Authentics, Collatione 1 titulo 1, cap. 281. The Authentics are quoted by their first words, after which is set down the title of the Code under which they are placed for example, Authentica cum testator, Codice ad legem fascidiam Sele Mackel. Man. Intro. 66. Modus Legendi Abbreviaturas passim in jure tam civili quam pontificii occurrentes, 1577.

CITIZEN, persons. One who, under the constitution and laws of the United States, has a right to vote for representatives in congress, and other public officers, and who is qualified to fill offices in the gift of the people. In a more extended sense, under the word citizen, are included all white persons born in the United States, and naturalized persons born out of the same, who have not lost their right as such. This includes men, women, and children.

2. Citizens are either native born or naturalized. Native citizens may fill any office; naturalized citizens may be elected or appointed to any office under the constitution of the United States, except the office of president and vice-president. The constitution provides, that " the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." Art. 4, s. 2.

3. All natives are not citizens of the United States; the descendants of the aborigines, and those of African origin, are not entitled to the rights of citizens. Anterior to the adoption of the constitution of the United States, each state had the right to make citizens of such persons as it pleased. That constitution does not authorize any but white persons to become citizens of the United States; and it must therefore be presumed that no one is a citizen who is not white. 1 Litt. R. 334; 10 Conn. R. 340; 1 Meigs, R. 331.

4. A citizen of the United States, residing in any state of the Union, is a citizen of that state. 6 Pet. 761 Paine, 594;1 Brock. 391; 1 Paige, 183 Metc. & Perk. Dig. h. t.; vide 3 Story's Const. 1687 Bouv. Inst. Index, b. t.; 2 Kent, Com. 258; 4 Johns. Ch. R. 430; Vatt. B. 1, c. Id, 212; Poth. Des Personnes, tit. 2, s. 1. Vide Body Politic; Inhabitant.

CITY, government. A town incorporated by that name. Originally, this word did not signify a town, but a portion of mankind who lived under the same government: what the Romans called civitas, and, the Greeks polis; whence the word politeia, civitas seu reipublicae status et administratio. Toull. Dr. Civ. Fr. 1. 1, t. 1, n. 202; Henrion de Pansey, Pouvoir Municipal, pp. 36, 37.

CIVIL. This word has various significations. 1. It is used in contradistinction to barbarous or savage, to indicate a state of society reduced to order and regular government; thus we speak of civil life, civil society, civil government, and civil liberty

2. It is sometimes used in contradistinction to criminal, to indicate the private rights and remedies of men, as members of the community, in contrast to those which are public and relate to the government; thus we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction.

3. It is also used in contradistinction to military or ecclesiastical, to natural or foreign; thus we speak of a civil station, as opposed to a military or ecclesiastical stationa civil death as opposed to a natural death; a civil warasopposed to a foreign war. Story on the Const. 789; 1 Bl. Coin. 6, 125, 251; Montesq. Sp. of Laws, B 1, c. 3; Ruth. Inst. B. 2, c. 2; Id. ch. 3Id. ch. 8, p. 359; Hein. Elem. Jurisp. Nat. B. 2, ch. 6.

CIVIL ACTION. In New York, actions are divided only into two kinds, namely, criminal and civil. A criminal action is prosecuted by the state, as a party, against a person charged with a public offence, for the punishment thereof. Every other action is a civil action. Code of Procedure, s. 4, 5, 6; 3 Bouv. Inst. n. 2638. In common parlance, however, writs of mandamus, certiorari, habeas corpus, &c., are not comprised by the expression, civil actions. 6 Bin. Rep. 9.

CIVIL COMMOTION. Lord Mansfield defines a civil commotion to be "an insurrection of the people for general purposes, though it may not amount to rebellion where there is an usurped power." 2 Marsh. lnsur. 793. In the printed proposals which are considered as making a part of the contract of insurance against fire, it is declared that the insurance company will not make good any loss happening by any civil commotion.

CIVIL DEATH, persons. The change of the state (q. v.) of a person who is declared civilly dead by judgment of a competent tribunal. In such case, the person against whom such sentence is pronounced is considered dead. 2 John. R. 218. See Gilb. Uses, 150; 2 Bulst. 188; Co. tit. 132; Jenk. Cent. 250; 1 Keble, 398; Prest. on Convey. 140. Vide Death, civil.

CIVIL LAW. The municipal code of the Romans is so called. It is a rule of action, adopted by mankind in a state of society. It denotes also the municipal law of the land. 1 Bouv. Inst. n. 11. See Law, civil.

CIVIL LIST. The sum which is yearly paid by the state to its monarch, and the domains of which he is suffered to have the enjoyment.

CIVIL OBLIGATION, Civil law. One which binds in law, vinculum juris, and which may be enforeed in a court of justice. Poth. Obl. 173, and 191. See Obligation.

CIVIL OFFICER. The constitution of the United States, art. 2, s. 4, provides, that the president, vice-president, and civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors. By this term areincluded all officers of the United States who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or the lowest departments; of the government, with the exception of officers of the army and navy. Rawle on the Const. 213; 2 Story, Const. 790; a senator of the United States, it was decided, was not a civil officer, within the meaning of this clause in the constitution. Senate Journals, 10th January, 1799; 4 Tuck. Bl. Com. Appx. 57, 58; Rawle, Const. 213; Serg. on Const. Law, 376; Story, Const. 791.

CIVIL REMEDY, practice. This term is used in opposition to the remedy given by indictment in a criminal case, and signifies the remedy which the law gives to the party against the offender.

2. In cases of treason and felony, the law,, for wise purposes, suspends this remedy in order to promote the public interest, until the wrongdoer shall have been prosecuted for the public wrong. 1 Miles, Rep. 316-17; 12 East, 409; R. T. H. 359; 1 Hale's P. C. 546; 2 T. R. 751, 756; 17 Ves. 329; 4 Bl. Com. 363; Bac. Ab. Trepass, E 2; and Trover, D. This principle has been adopted in New Hampshire N. H. R. 239; but changed in New York by statutory provision; 2 Rev. Stat. 292, 2 and by decisions in Massachusetts, except perhaps in felonies punishable with death; 15 Mass. R. 333; in Ohio; 4 Ohio R. 377; in North Carolina; 1 Tayl. R. 58. By the common law, in cases of homicide, the civil remedy is merged in the felony. 1 Chit. Pr. 10. Vide art. Injuries; Merger.

CIVIL STATE. The union of individual men in civil society under a system of laws and a magistracy, or magistracies, charged with the administration of the laws. It is a fundamental law of the civil state, that no member of it shall undertake to redress or avenge any violation of his rights, by another person, but appeal to the constituted authorities for that purpose, in all cases in which is is possible for him to do so. Hence the citizens are justly considered as being under the safeguard of the law. 1 Toull. n. 201. Vide Self-defence.

CIVILIAN. A doctor, professor, or student of the civil law.

CIVILITER. Civilly; opposed to criminaliter or criminally.

2. When a person does an unlawful act injurious to another, whether with or without an intention to commit a tort, he is responsible civiliter. In order to make him liable criminaliter, he must have intended to do the wrong; for it is a maxim, actus non facit reum nisi mens sit rea. 2 East, 104.

CIVILITER MORTUUS. Civilly dead; one who is considered as if he were naturally dead, go far as his rights are concerned.

CLAIM. A claim is a challenge of the ownership of a thing which a man has not in possession, and is wrongfully withheld by another. Plowd. 359; Wee i Dall.444; 12 S. & R. 179.

2. In Pennsylvania, the entry on of the demand of a mechanic or materialman for work done or material furnished in the erection of a building, in those counties to which the lien laws extend, is called a claim.

3. A continual c1aim is a claim made in a particular way, to preserve the' rights of a feoffee. See Continual claim.

4. Claim of conusance is defined to be an intervention by a third person, demanding jurisdiction of a cause against a plaintiff, who has chosen to commence his action out of the claimant's court. 2 Wils. 409; 1 Cit. Pb. 403; Vin. Ab. Conusance; Com. Dig. Courts, P; Bac. Ab. Courts, D 3; 3 Bl. Com. 298.

CLAIMANT. In the courts of admiralty, when the suit is in rem, the cause is entitled in the Dame of the libellant against the thing libelled, as A B v. Ten cases of calico and it preserves that title through the whole progress of the suit.When a person is authorized and admitted to defend the libel, he is called the claimant. The United States v. 1960 bags of coffee; 8 Cranch, R. 398; United States v. The Mars; 8 Cranch, R. 417; 30 hhds. of sugar, (Brentzon, claimant, v. Boyle. 9 Cranch, R. 191.

CLANDESTINE. That which is done in secret and contrary to law.

2.Generally a clandestine act in case of the limitation of actions will prevent the act from running. A clandestine marriage is one which has been contracted without the form which the law has prescribed for this important contract. Alis. Princ. 543

CLARENDON. The constitutions of Clarendon were certain statutes made in the reign of Henry H., of England, in a parliament holden at Clarendon, by which the king cheeked the power of the pope and his clergy. 4 Bl. Com. 415.

CLASS. The order according to which are arranged or distributed, or are supposed to be arranged or distributed, divers persons or things; thus we say, a class of legatees.

2. When a legacy is given to a class of individuals, all who answer the description at the time the will takes effect, are entitled; and though the expression be in the plural, yet if there be but one, he shall take the whole. 3 M'Cord, Ch. R. 440.

3. When a bond is given to a class of persons, it is good, and all composing that class are entitled to sue upon it; but if the obligor be a member of such class, the bond is void, because a man cannot be obligor and obligee at the same-time; as, if a bond be given to the justices of the county court, and at the time the obligor is himself one of said justices. 3 Dev. 284, 287,289; 4 Dev. 882.

4. When a charge is made against a class of society, a profession, an order or body of men, and cannot possibly import a personal application to private injury, no action lies; but if any one of the class have sustained special damages inconsequence of such charge, he may maintain an action. 17 Wend. 52, 23, 186. See 12 John. 475. When the charge is against one of a class, without designating which, no action lies; as, where three persons had been examined as witnesses, and the defendant said in addressing himself to them, " one of you three is perjured." 1 Roll. Ab. 81; Cro. Jac. 107; 16 Pick. 132.

CLAUSE, contracts. A particular disposition which makes part of a treaty; of an act of the legislature; of a deed, written agreement, or other written contract or will. When a clause is obscurely written, it ought to be construed in such a way as to agree with what precedes and what follows, if possible. Vide Dig. 50, 17, 77; Construction; Interpretation.

CLAUSUM FREGIT, torts, remedies. He broke the close. These words are used in a writ for an action of trespass to real estate, the defendant being summonedto answer quare clausum fregit, that is, why he broke the close of the plaintiff. 3 Bl. Com. 209.

2. Trespass quare clausum fregit lies for every unlawful intrusion into land, whether enclosed or not, though only grass may be trodden. 1 Dev. & Bat. 371. And to maintain this action there must be a possession in the plaintiff, and a right to that possession.9 Cowen 39; 4 Yeates, 418; 11 Conn. 60, 10 Conn. 225; 1 John. 511; 12 John. 1834 Watts, 377; 4 Bibb, 218; 15 Pick. 32; 6 Rand. 556; 2 Yeates, 210; 1 Har. & John. 295; 8 Mass. 411.

CLEARANCE, com. law. The name of a certificate given by the collector of a port, in which is stated the master or commander (naming him) of a ship or vessel named and described, bound for a port, named, and having on board goods described, has entered and cleared his ship or vessel according to law.

2. The Act of Congress of 2d March, 1790, section 93, directs, that the master of any vessel bound to a foreign place, shall deliver to the collector of the dis ot from which such vessel shall be about to depart, a manifest of all the cargo on board, and the value thereof, by him subscribed, and shall swear or affirm to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo; but without specifying the particulars thereof in such clearance, unless required by the master so to do. And if any vessel bound to any foreign place shall depart on her voyage to such foreign place, without delivering such a manifest and obtaining a clearance, the master shall forfeit and pay the sum of five hundred dollars for every such offence. Provided, anything to the contrary notwithstanding, the collectors and other officers of the customs shall pay due regard to the inspection laws of the states in which they respectively act, in such manner, that no vessel having on board goods liable to inspection, shall be cleared out, until the master or other person shall have produced such certificate, that all such goods have been duly inspected, as the laws of the respective states do or may require, to be produced to the collector or other officer of the customs. And provided, that receipts for the payment of all legal fees which shall have accrued on any vessel, shall, before any clearance is granted, be produced to the collector or other officer aforesaid .

3. According to Boulay-Paty, Dr. Com. tome 2, p. 19, the clearance is imperiously demanded for the safety of the vessel; for if a vessel should be found without it at sea, it may be legally taken and brought into some port for adjudication, on a charge of priacy. Vide Ship's papers.

CLEARING HOUSE, com. law. Among the English bankers, the clearing house is a place in Lombard street, in London, where the bankers of that city daily settle with each other the balances which they owe, or to which they are entitled. Desks are placed around the room, one of which is appropriated to each bankiug house, and they are: occupied in alphabetical order. Each clerk has a box or drawer along side of him, and the name of the house he represents is inscribed over his head. A clerk of each

house comes in about half-past three o'clock in the afternoon, and brings the drafts or cheeks on the other bankers, which have been paid by his house that day, and deposits thein in their proper drawers. The clerk at the desk credits their accounts separately which they have against him, as found in the drawer. Balances are thus struck from all the accounts, and the claims transferred from one to another, until they are so wound up and cancelled, that each clerk has only to settle with two or three others, and the balances are immediately paid. When drafts are paid at so late an hour that they cannot be cleared that day, they are sent to the houses on which they are drawn, to be marked, that is, a memorandum is made on them, and they are to be cleared the next day. See Gilbert's Practical Treatise on Banking, pp. 16-20, Babbage on the Economy of Machines, n. 173, 174; Kelly's Cambist; Byles, on Bills, 106, 110; Pulling's Laws and Customs of London, 437.

CLEMENCY. The disposition to treat with leniency. See Mercy; Pardon.

CLEMENTINES, eccl. law. The name usually given to the collection of decretals or constitutious of Pope Clement V., which was made by order of John XXII. his successor, who published it in 1317. The death of Clement V., which happened in 1314, prevented him from publishing this collection, which is properly a compilation, as well of the epistles and constitutions of this pope, as of the decrees of the council of Vienna, over which he presided. The Clementines are divided in five books, in which the matter is distributed nearly upon the same plan as the Decretals of Gregory IX. VideLa Bibliotheque des auteurs ecclesiastiques, par Dupin.

CLERGY. All who are attached to the ecclesiastical ministry are called the clergy; a clergyman is therefore an ecclesiastical minister.

2. Clergymen were exempted by the emperor Constantine from all civil burdens. Baronius ad ann. 319, 30. Lord Coke says, 2 Inst. 3, ecclesiastical persons have more and greater liberties than other of the king's subjects, wherein to set down all, would take up a whole volume of itself.

3. In the United States the clergy is not established by law, but each congregation or church may choose its own clergyman.

CLERICAL ERROR. An error made by a clerk in transcribing or otherwise. This is always readily corrected by the court. 2. An error, for example, in the teste of a fi. fa.; 4 Yeates, 185, 205; or in the teste and return of a vend. exp.; 1 Dall. 197 or in writing Dowell forMcDowell. 1 Serg. & R. 120; 8 Rep. 162 a; 9 Serg. & R. 284, 5. An error is amendable where there is something to amend by, and this even in a criminal case. 2 Bin. 5-16; 5 Burr. 2667; 1 Bin. 367-9; Dougl. 377; Cowp. 408. For the party ought not

to be harmed by the omission of the clerk; 3 Bin. 102; even of his signature, if he affixes the seal. 1 Serg. & R. 97.

CLERK, commerce, contract. A person in the employ of a merchant, who attends only to a part of his business, while the merchant himself superintends the whole. He differs from a factor in this, that the latter wholly supplies the place of his principal in respect to the property consigned to him. Pard. Dr. Com. n. 38, 1 Chit. Pract. 80; 2 Bouv. Inst. n. 1287.

CLERK, officer. A person employed in an office, public or private, for keeping records or accounts. His business is to write or register, in proper form, the transactions of the tribunal or body to which he belongs. Some clerks, however, have little or no writing to do in their offices, as, the clerk of the market, whose duties are confined chiefly to superintending the markets. In the English law, clerk also signifies a clergyman.

CLERK, eccl. law. Every individual, who is attached to the ecclesiastical state, and who has submitted to the ceremony of the tonsure, is a clerk.

CLIENT, practice. One who employs and retains an attorney or counsellor to manage or defend a suit or action in which he is a party, or to advise him about some legal matters.

2. The duties of the client towards his counsel are, 1st. to give him a written authority, 1 Ch. Pr. l9; 2. to disclose his case with perfect candor3. to offer spontaneously, advances of money to his attorney; 2 Ch. Pr. 27; 4. he should, at the end of the suit, promptly pay his attorney his fees. Ib. His rights are, 1. to be diligently served in the management of his business 2. to be informed of its progress and, 3. that his counsel shall not disclose what has been professionally confided to him. See Attorney at law; Confidential communication.

CLOSE. Signifies the interest in the soil, and not merely a close or enclosure in the common acceptation of the term. Doct. & Stud. 307 East, 207 2 Stra. 1004; 6 East, 1541 Burr. 133 1 Ch. R. 160.

2. In every case where one man has a right to exclude another from his land, the law encircles it, if not already enclosed, with an imaginary fence; and entitles him to a compensation in damages for the injury he sustains by the act of another passing through his boundary, denominating the injurious act a breach of the enclosure. Hamm. N. P. 151; Doct. & Stud. dial. 1, c. 8, p. 30; 2 Whart. 430.

3. An ejectment will not lie for a close. 11 Rep. 55; 1 Rolle's R. 55 Salk. 254 Cro. Eliz. 235; Adams on Eject. 24.

CLOSE ROLLS, or close writs, Eng. law. Writs containing, grants from the crown, to particular persons, and for particular purposes, and, not being intended for public inspection, are closed up and sealed on the outside, and for that reason called close writs ,in contradistinction. to grants relating to the public in general, which are left open and not sealed up, and are called letters patent. (q. v.) 2 Bl. Com. 346.

CLOSED DOORS. Signifies that something is done privately. The senate sits with closed doors on executive business.

2. In general the legislative business of the country is transacted openly. And the constitution and laws require that courts of justice shall be open to the public.

CLUB. An association of persons.It differs from a partnersbip in this, that the members of a club have no authority to bind each other further than they are authorized, either expressly or by implication, as each other's agents in the particular transaction; whereas in trading associations, or common partnerships, one partner may bind his co-partners, as each has a right of property in the whole. 2 Mees. & Welsb. 172; Colly, Partn. 31; Story, Partn. 144; Wordsworth on Joint Stock Companies, 154, et seq.; 6 W. & S. 67; 3, W. & S. 118.

CO. A prefix or particle in the nature of an inseparable proposition, signifying with or in conjunction. Con and the Latin cum are equivalent, as, co-executors, co-obligor. It is also used as an abbreviation for company as, John Smith & Co.

COADJUTOR, eccl. law. A fellow helper or assistant; particularly applied to the assistant of a bishop.

COAL NOTE, Eng. law. A species of promissory note authorized by the st. 3 Geo. H., c. 26, SSSS 7 and 8, which, having these words expressed therein, namely, " value received in coals," are to be protected and noted as inland bills of exchange.

COALITION, French law. By this word is understood an unlawful agreement among several persons, not to do a thing except on some conditions agreed upon.

2. The most usual coalitions are, 1st. those which take place among master workmen, to reduce, diminish or fix at a low rate the wages of journeymen and other workmen; 2d. those among workmen or journeymen, not to work except at a certain price. These offences are punished by fine and imprisonment. Dict. de Police, h. t. In our law this offence is known by the name of conspiracy. (q. v.)

CO-ADMINISTRATOR. One of several administrators. In general, they have, like executors, the power to act singly to the personal estate of the intestate. Vide Administrator.

CO-ASSIGNEE. One who is assignee with another.

2. In general, the rights and duties of co-assignees are equal.

CO-EXECUTOR. One who is executor of a will in company with another. In general each co-executor has the full power over the personal estate of the testator, that all the executors have jointly. Vide Joint Executors. But one cannot bring suit without joining with the others.

COAST. The margin of a country bounded by the sea. This term includes the natural appendages of the territory which rise out of the water, although they are not of sufficient firmness to be inhabited or fortified. Shoals perpetually covered with water are not, however, comprehended under the name of coast. The small islands, situate at the mouth of the Mississippi, composed of earth and trees drifted down by the river, which are not of consistency enough to support the purposes of life, and are uninhabited, though resorted to for shooting birds, were held to form a part of the coast. 5 Rob. Adm. R. 385. (c).

COCKET, commerce. In England the office at the custom house, where the goods to be exported are entered, is so called, also the custom house seal, or the parchment sealed and delivered by the officers of customs to merchants, as a warrant that their goods are customed. Crabbe's Tech. Dict.

COCKETTUM, commerce. In the English law this word signifies, 1. the custom-house seal; 2. the office at the custom where cockers are to be procured. Crabbe's Tech. Dict.

CODE, legislation. Signifies in general a collection of laws. It is a name given by way of eminence to a collection of such laws made by the legislature. Among the most noted may be mentioned the following:

CODES, Les Cing Codes; French law. The five codes.

2. These codes are, 1st. Code Civil, which is divided into three books; book 1, treats of persons, and of the enjoyment and privation of civil rights; book 2, of property and its different modifications; book 3, of the different ways of acquiring property. One of the most perspicuous and able, commentators on this code is Toullier, frequently citedin this work.

3. - 2d. Code de procedure civille, which is divided into two parts. Part 1, is divided into five books; 1. of justices of the. peace; 2. of inferior tribunals; 3. of royal courts; 4. of extraordinary means of proceeding; 5. of execution and judgment. Part 2, is divided into three books; 1. of tender and consignation; 2. of process in relation to the opening of a succession; 3. of arbitration.

4. - 3d. Code de Commerce, in four books; 1. of commerce in general; 2. of maritime comraerce; 3. of failures and bankruptcy; 4. of commercial jurisdiction. Pardessus is one of the ablest commentators on this code.

5. - 4th. Code d'Instructions Criminelle, in two books; 1. of judiciary police, and its officers; 2. of the administration of justice.

6.-5th. Code Penal, in four books; 1. of punishment in criminal and correctional cases, and their effects; 2. of the persons punishable, excusable or responsible, for their crimes or misdemeanors; 3. of crimes, misdemeanors, (delits,) and their punishment; 4. of contraventions of police, and their punishment. For the history of these codes, vide Merl. Rep. h. t.; Motifs, Rapports, Opinions et Discours sur les Codes; Encyclop. Amer. h. t.

7. Henrion de Pansey, late a president of the Court of Cassation, remarks in reference to these codes: "In the midst of the innovations of these later times, a system of uniformity has suddenly engrossed all minds, and we have had imposed upon us the same weights, the same measures, the same laws, civil, criminal, rural and commercial. These new codes, like everything which comes from the hand of man, have imperfections and obscurities. The administration of them is committed to nearly thirty sovereign courts and a multitude of petty tribunals, composed of only three judges, and yet are invested with the right of determining in the last resort, under many circumstances. Each tribunal, the natural interpreter of these laws, applies them according to its own view, and the new codes were scarcely in operation before this beautiful system of uniformity became nothing more than a vain theory. Authorite Judiciaire, c. 31, s. 10.

CODE HENRI. A digest of the laws of Hayti, enacted by Henri, king of Hayti. It is based upon the Code Napoleon, but not servilely copied. It is said to be judiciously adapted to the situation of Hayti. A collection of laws made by order of Henry III of France, is also known by the name of Code Henri.

CODE, JUSTINIAN, civil law. A collection of the constitutions of the emperors, from Adrian to Justinian; the greater part of those from Adrian to Constantine are mere rescripts; those from Constantine to Justinian are edicts or laws, properly speaking.

2. The code is divided into twelve books, which are subdivided into titles, in which the constitutions are collected under proper heads. They are placed in chronological order, but often disjointed. At the head of each constitution is placed the name of the emperor who is the author, and that of the person to whom it is addressed. The date is at the end. Several of these constitutions, which were formerly in the code were lost, it is supposed by the neglect of "copyists. Some of them have been restored by modern authors, among whom may be mentioned Charondas, Cugas, and Contius, who translated them from Greek, versions.

CODE, OF LOUISIANA. In 1822, Peter Derbigny, Edward Livingston, and Moreau Lislet, were selected by the legislature to revise and amend the civil code, and to add to it sucb laws still in force as were not included therein. They were authorized to add a system of commercial law, and a code of practice. The code they prepared having been adopted, was promulgated in 1824, under the title of the " Civil Code of the State of Louisiana."

2. The code is based on the Code Napoleon, with proper and judicious modifications, suitable for the state of Louisiana. It is composed of three books: 1. the first treats of persons; 2. the second of tbings, and of the different modifications of property; 3. and the third of the different modes of acquiring the property of tbings. It contains 3522 articles, numbered from the beginning, for the convenience of reference.

3. This code, it is said, contains many inaccurate definitions. The legislature modified and changed many of the provisions relating to the positive legislation, but adopted the definitions and abstract doctrines of the code without material alterations. From this circumstance, as well as from the inherent difficulty of the subject, the positive provisions of the code are often at variance with the theoretical part, which was intended to elucidate them. 13 L. R. 237.

4. This code went into operation on the 20th day of May,. 1825. 11 L. R. 60. It is in both the French and English languages; and in construing it, it is a rule that when the expressions used in the French text of the code are more comprehensive than those used in English, or vice versa, the more enlarged sense will be taken, as thus full effect will be given to both clauses. 2 N. S. 582.

CODE, NAPOLEON. The Code Civil of France, enacted into law during the reign of Napoleon, bore his name until the restoration of the Bourbons when it was deprived of that name, and it is now cited Code Civil.

CODE PAPIRIAN. The name of a collection of the Roman laws, promulgated by Romulus, Numa, and other kings who governed. Rome till the time of Tarquin, the Proud. It was so called in honor if Sextus Parrius, the compiler. Dig. 1, 2, 2.

CODE PRUSSIAN. Allgemeines Landrecht. This code is also known by the name of Codex Fredericianus, or Frederician code. It was compiled by order of Frederic H., by the minister of justice, Samuel V. Cocceji, who completed, a part of it before his death, in 1755. In 1780, the work was renewed under the superintendence of the minister Von Carmer, and prosecuted with unceasing activity and was published from 1784 to 1788, in six parts. The opinions of those who understood the subject were requested, and prizes offered on the best commentaries on it; and the whole was completed in June, 1791, under the title " General Prussian Code."

CODE THEODOSIAN. This code, which originated in the eastern empire, was adopted in the Western empire towards its decline. It is a collection of the legislation of the Christian emperors, from and including Constantine to Theodosius, the Younger; it is composed of sixteen books, the edicts, acts, rescripts, and ordinances of the two empires, that of the east and that of the west.

CO-DEFENDANT. One who is made defendant in an action with another person.

CODEX. Literally, a volume or roll. It is particularly applied to the volume of the civil law, collected by the emperor Justinian, from all pleas and answers of the ancient lawyers, which were in loose scrolls or sheets of parchment. These he compiled into a book which goes by the name of Codex.

CODICIL, devises. An addition or supplement to a will; it must be executed with the same solemnities. A codicil is a part of the will, the two instruments making but one will. 4 Bro. C. C. 55; 2 Ves. sen. 242 4 Ves. 610; 2 Ridgw. Irish P. C. 11, 43.

2. There may be several codicils to one will, and the whole will be taken as one: the codicil does not, consequently, revoke the will further than it is in opposition to some of its particular dispositions, unless there be express words of revocation. 8 Cowen, Rep. 56.,

3. Formerly, the difference between a will and a codicil consisted in this, that in the former an executor was named, while in the latter none was appointed. Swinb. part 1, s. 5, pl. 2; Godolph. Leg. part 1, c. 6, s. 2. This is the distinction of the civil law, and adopted by the canon law. Vide Williams on Wills, ch. 2; Rob. on Wills, 154, n. 388, 476; Lovelass on Wills, 185, 289 4 Kent, Com. 516; 1 Ves. jr. 407, 497; 3 Ves. jr. 110; 4 Ves. jr. 610; 1 Supp. to Ves. jr. 116, 140.

4. Codicils were chiefly intended to mitigate the strictness of the ancient Roman law, which required that a will should be attested by seven Roman citizens, omni exceptione majores. A legacy could be bequeathed, but the heir could not be

appointed by codicil, though he might be made heir indirectly by way of fidei commissum.

5. Codicils owe their origin to the following circumstances. Lucius Lentulus, dying in Africa, left. codicils, confirmed by anticipation in a will of former date, and in those codicils requested the emperor Augustus, by way of fidei commissum, or trust, to do something therein expressed. The emperor carried this will into effect, and the daughter of Lentulus paid legacies which she would not otherwise have been legally bound to pay. Other persons made similar fidei-commissa, and then the emperor, by the advice of learned men whom he consulted, sanctioned the making of codicils, and thus they became clothed with legal authority. Just. 2, 25; Bowy. Com. 155, 156.

6. The form of devising by codicil is abolished in Louisiana; Code, 1563; and whether the disposition of the property be made by testament, under this title, or under that of institution of heir, of legacy, codicil, donation mortis causa, or under any other name indicating the last will, provided it be clothed with the forms required for the validity of a testament, it is, as far as form is concerned, to be considered a testament. Ib. Vide 1 Brown's Civil Law, 292; Domat, Lois Civ. liv. 4, t. 1, s. 1; Lecons Element, du Dr. Civ. Rom. tit. 25.

COERCION, criminal law, contracts. Constraint; compulsion; force.

2. It is positive or presumed. 1. Positive or direct coercion takes place when a man is by physical force compelled to do an act contrary to his will; for example, when a man falls into the hands of the enemies of his country, and they compel him, by a just fear of death, to fight against it.

3. - 2. It is presumed where a person is legally under subjection to another, and is induced, in consequence of such subjection, to do an act contrary to his win. A married woman, for example, is legally under the subjection of her husband, and if in his company she commit a crime or offence, not malum in se, (except the offence of keeping a bawdy-house, In which case she is considered by the policy of the law as a principal, she is presumed to act under this coercion.

4. As will (q. v.) is necessary to the commission of a crime, or the making of a contract, a person coerced into either, has no will on the, subject, and is not responsible. Vide Roscoe's Cr. Ev. 7 85, and the cases there cited; 2 Stark. Ev. 705, as to what will, amount to coercion in criminal cases.

CO-EXECUTOR. One who is executor with another.

2. In general, the rights and duties of co-executors are equal.

COGNATION, civil law. Signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

2. Cognation is of -three kinds: natural, civil, or mixed. Natural cognation is that which is alone formed by ties of blood; such is the kindred of those who owe their origin to an illicit connexion, either in relation to their ascendants or collaterals.

3. Civil cognation is that which proceeds alone from the ties of families as the kindred between the adopted father and the adopted child.

4. Mixed cognation is that which unites at the same time the ties of blood and family, as that which exists between brothers, the issue of the same lawful marriage. 6; Dig. 38, 10.

COGNATI, cognates. This term occurs frequently in the Roman civil law, and denotes collateral heirs through females. It is not used in the civil law as it now prevails in France. In the common law it has no technical sense, but as a word of discourse in English it signifies, generally, allied by blood, related in origin, of the same family. See Vicat, ad verb.; also, Biret's Vocabulaire.

COGNISANCE, pleading. Where the defendant in an action of replevin (not being entitled to the distress or goods which are the subject of the replevin) acknowledges the taking of the distress, and insists that such taking was legal, not because he himself had a right to distrain on his own account, but because he made the distress by the command of another, who had a right to distrain on the goods which are the subject of the suit. Lawes on Pl. 35, 36; 4 Bouv. Inst. n. 3571.

COGNISANCE, practice. Sometimes signifies jurisdiction and juudicial power, an sometimes the hearing of a matter judicially. It is a term used in the acknowledgment of a fine. See Vaughan's Rep. 207.

COGNISANCE OF PLEAS, Eng. law. A privilege granted by the king to a city or town, to hold pleas within the same; and when any one is impleaded in the courts at Westminster, the owner of the franchise may demand cognisance of the plea. T. de la Ley.

COGNISEE. He to whom a fine of lands, &c. is acknowledged. See Cognisor.

COGNISOR, English law. One who passes or acknowledges,a fine of lands or tenements to another, in distinction from the cogzisee, to whom the fine of the lands, &c. is acknowledged.

COGNITIONIBUS ADMITTENDIS, English law, practice. A writ to a justice ,or other person, who has power to take a fine, and having taken the acknowledgment of a fine, delays to certify it in the court of common pleas, requiring him to do it. Crabbe's Tech. Dict.

COGNOMEN. A Latin word, which signifies a family name. The praenomen among the Romans distinguished the person, the nomen, the gens, or all the kindred descended from a remote common stock through males, while the cognomen denoted the particular family. The agnomen was added on account of some particular event, as a further distinction. Thus, in the designation Publius Cornelius Scipio Africanus, Publius is the proenomen, Cornelius is the nomen, Scipio the cognomen, and Africanus the agnomen. Vicat. These several terms occur frequently in the Roman laws. See Cas. temp. Hardw. 286; 1 Tayl. 148. See Name; Surname.

COGNOVIT, contr. leading. A written confession of an action by a defendant, subscribed but not sealed, and authorizing the plaintiff to sign judgment and issue execution, usually for a sum named.

2. It is given after the action is brought to save expense.

3. It differs from a warrant of attorney, which is given before the commencement of any action, and is under seal. A cognovit actionem is an acknowledgment and confession of the plaintiff's cause of action against the defendant to be just and true. Vide 3 Ch. Pr. 664; 3 Bouv. Inst. n. 8299.

COHABITATION. Living together.

2. The law presumes that husband and wife cohabit, even after a voluntary separation has taken place between them; but where there has been a divorce a mensa et thoro, or a sentence of separation, the presumption then arises that they have obeyed the sentence or decree, and do not live together.

3. A criminal cohabitation will not be presumed by the proof of a single act of criminal intercourse between a man and woman not married. 10 Mass. R. 153.

4. When a woman is proved to cohabit with a man and to assume his name with his consent, he will generally be responsible for her debts as if she had been his wife; 2 Esp. R. 637; 1 Campb. R. 245; this being presumptive evidence of marriage; B. N. P. 114; but this liability will continue only while they live together, unless she is actually his were. 4 Campb. R. 215.

5. In civil actions for criminal conversation with the plaintiff's wife, after the husband and wife have separated, the plaintiff will not in general be entitled to recover. 1 Esp. R. 16; S. C. 5 T. R. 357; Peake's Cas. 7, 39; sed vide 6 East, 248; 4 Esp. 39.

CO-HEIR. One of several men among whom an inheritance is to be divided.

CO-HEIRESS. A woman who inherits an estate in common with other women. A joint heiress.

COIF. A head-dress. In England there are certain serjeants at law, who are called serjeants of the coif, from the lawn coif they wear on their heads under their thin caps when they are admitted to that order.

COIN, commerce, contracts. A piece of gold, silver or other metal stamped by authority of the government, in order to determine its value, commonly called money. Co. Litt. 207; Rutherf. Inst. 123. For the different kinds of coins of the United States, see article Money. As to the value of foreign coins, see article Foreign Coins.

COLLATERAL, collateralis. From latus, a side; that which is sideways, and not direct.

COLLATERAL ASSURANCE, contracts. That which is made over and above the deed itself.

COLLATERAL FACTS evidence. Facts unconnected with the issue or matter in dispute.

2. As no fair and reasonable inference can be drawn from such facts, they are inadmissible in evidence, for at best they are useless, and may be mischievous, because they tend to distract the attention of the jury, and to mislead them. Stark. Ev. h. t.; 2 Bl. Rep. 1169; 1 Stark Ev. 40; 3 Bouv. Inst. n. 3087.

3. It is frequently difficult to ascertain a priori, whether a particular fact offered in evidence, will, or will not clearly appear to be material in the progress of the cause, and in such cases it is usual in practice for the court to give credit to the assertion of the counsel who tenders such evidence, that the facts will turn out to be material; but this is always within the sound discretion of the court. It is the duty of the counsel, however, to offer evidence, if possible, in such order that each part of it will appear to be pertinent and proper at the time it is offered; and it is expedient to do so, as this method tends to the success of a good cause.

4. When a witness is cross-examined as to collateral facts, the party cross-examining will be bound by the answer, and he cannot, in general, contradict him by another witness. Rosc. Ev. l39.

COLLATERAL ISSUE, practice, pleading. Where a criminal convict pleads any matter, allowed by law, in bar of execution; as pregnancy, a pardon, and the like.

COLLATERAL KINSMEN, descent, distribution. Those who descend from one and the same common ancestor, but not from one another; thus brothers and sisters are collateral to each other; the uncle and the nephew are collateral kinmen, and cousins are the same. The term collateral is used in opposition to the phrase lineal kinsmen. (q. v.)

COLLATERAL SECURITY, contracts. A separate obligation attached to another contract, to guaranty its performance. By this term is also meant the transfer of property or of other contracts to insure the performance of a principal engagement. The property or securities thus conveyed are also called collateral securities. 1 Pow. Mortg. 393; 2 Id. 666, n. 871; 3 Id. 944, 1001.

COLLATERAL WARRANTY, contracts, descent. Where the heir's title to the land neither was, nor could have been, derived from the warranting ancestor; and yet barred the heir from ever claiming the land, and also imposed upon him the same obligation of giving the warrantee other lands, in case of eviction, as if the warranty were lineal, provided the heir had assets. 4 Cruise, Real Prop. 436.

2. The doctrine of collateral warranty, is, according to Justice Story, one of the most unjust, oppressive and indefensible, in the whole range of the common law. 1 Sumn. R. 262.

3. By the statute of 4 & 5 Anne, c. 16, 21, all collateral warranties of any land to be made after a certain day, by any ancestor who has no estate of inheritance in possession in the same, were made void against the heir. This Statute has been reenacted in New. York; 4 Kent, Com. 460, 3d ed.; and in New Jersey. 3 Halst. R. 106. It has been adopted and is in force in Rhode Island; 1 Sumn. R. 235; and in Delaware. Harring. R. 50. In Kentucky and Virginia, it seems that collateral warranty binds the heir to the extent of assets descended. 1 Dana, R. 59. In Pennsylvania, collateral warranty of the ancestor, with sufficient real assets descending to the heirs, bars them from recovering the lands warranted. 4 Dall. R. 168; 2 Yeates, R. 509; 9 S. & R. 275. See 1 Sumn. 262; 3 Halst. 106; Harring. 50; 3 Rand. 549; 9 S. & R. 275; 4 Dall. 168; 2 Yeates, 509; 1 Dana, 50.

COLLATIO BONORUM, descent, distribution. Where a portion or money advanced to a son or daughter, is brought into botchpot, in order to have an equal distributive share of the ancestor's personal estate. The same rule obtains in the civil law. Civil Code of Louis. 1305; Diet. de Jur. mot Collation; Merlin Rep. mot Collation.

COLLATION, descents. A term used in the laws of Louisiana. Collation -of goods is the supposed or real return to the mass of the succession, which an heir makes of the property he received in advance of his share or otherwise, in order that such property may be divided, together with the other effects of the succession. Civil Code of Lo. art. 1305.

2. As the object of collation is to equalize the heirs, it follows that those things are excluded from collation, which the heir acquired by an onerous title from the ancestor, that is, where he gave a valuable consideration for them. And upon the same principle, if a co-heir claims no share of the estate, he is not bound to collate. Qui non vult hereditatem, non cogitur ad collationem. See Id. art. 1305 to 1367; And Hotchpot.

COLLATION, eccl. law. The act by which the bishop, who has the bestowing of a benefice, gives it to an incumbent. T. L.

COLLATION, practice. The comparison of a copy with its original, in order to ascertain its correctness and conformity; the report of the officer who made the comparison, is also called a collation.

COLLATION OF SEALS. Where, on the same label, one seal was set on the back or reverse of the other, this was said to be a collation of seals. Jacob. L. D. h. t.

COLLECTOR, officer. One appointed to receive taxes or other impositions; as collector of taxes; collector of militia fines, &c. A collector is also a person appointed by a private person to collect the credits due him. Metc. & Perk. Dig. h. t.

COLLECTORS OF THE CUSTUMS. Officers of the United States, appointed for the term of four years, but removable at the pleasure of the president. Act of May 15, 1820, sect. 1, 3 Story's U. S. Laws, 1790.

2. The duties of a collector of customs are described in general terms, as follows: " He shall receive all reports, manifests and documents, to be made or exhibited on the entry of any ship or vessel, according to the regulations of this act shall record in books, to be kept for the purpose, all manifests; shall receive the entries of all ships or vessels, and of the goods, wares and merchandise imported in them; shall, together with the naval officer, where there is one, or alone, where there is none, estimate the amount of duties payable thereupon, endorsing the said amounts upon the respective

entries; shall receive all moneys paid for duties, and shall take bonds for securing the payment thereof; shall grant all permits for the unlading and delivery of goods; shall, with the approbation of the principal officer of the treasury department, employ proper persons as weighers, gaugers, measurers and inspectors, at the several ports within his district; and also, with the like approbation, provide, at the public expense, storehouses for the safe keeping of goods, and such scales, weights and measures, as may be necessary." Act of March 2,1799) s. 21, 1 Story, U. S. Laws, 590. Vide, for other duties of collectors, 1 Story, U. S. Laws, 592, 612, 620, 632, 659, and vol. 3, 1650, 1697, 1759, 1761, 1791, 1811, 1848, 1854; 10 Wheat. 246.

COLLEGE. A civil corporation, society or company, authorized by law, having in general a literary object. In some countries by college is understood the union of certain voters in *one body; such bodies are called electoral colleges; as, the college of electors or their deputies to the diet of Ratisbon; the college of cardinals. The term is used in the United States; as, the college of electors of president and vice-president, of the United States. Act of Congress of January 23, 1845.

COLLISION, maritime law. It takes place when two ships or other vessels run foul of each other, or when one runs foul of the other. In such cases there is almost. always a damage incurred.

2. There are four possibilities under which an accident of this sort may occur. 1. It may happen without blame being imputable to either party, as when the loss is occasioned by a storm, or any other vis major; in that case the loss must be borne by the party on whom it happens to light, the other not being responsible to him in, any degree.

3. - 2. Both parties may be to blame, as when there has been a want of due diligence or of skill on both sides; in such cases, the loss must be apportioned between them, as having been occasioned by the fault of both of them. 6 Whart. R. 311..

4. - 3. The suffering party may have been the cause of the injury, then he must bear the loss.

5. - 4. It may have been the fault of the ship which ran down the other; in this case the injured party would be entitled to an entire corapensation from the other. 2 Dodson's Rep. 83, 85; 3 Hagg. Adm. R. 320; 1 .How. S. C. R. 89. The same rule is applied to steamers.. Id. 414.

6. - 5. Another case has been put, namely, when there has been some fault or neglect, but on which side the blame lies, is uncertain. In this case, it does not appear to be

settled whether the loss shall be apportioned or borne by the suffering party opinions on this subject are divided.

7. A collision between two ships on the high seas, whether it be the result of accident or negligence, is, in all cases, to be deemed a peril of the seas within the meaning of a policy of insurance. 2 Story, R. 176; 3 Sumn. R. 889. Vide, generally, Story, Bailm. 607 to 612; Marsh.. Ins. B. 1, c. 12, s. 2; Wesk. Ins. art. Running Foul; Jacobsen's Sea Laws, B. 4, c. 1; 4 Taunt. 126; 2 Chit. Pr. 513, 535; Code de Com. art. 407; Boulay-Paty, Cours de Dr. Commercial, tit. 12, s. 6; Pard. n. 652 to 654; Pothier, Avaries, n. 155; 1 Emerig. Assur. ch. 12, 14.

COLLISTRIGIUM. The pillory.

COLLOCATION, French law. The act by which the creditors of an estate are arranged in the order in which they are to be paid according to law. The order in which the creditors-are placed, is also called collocation. Merl. Rep. h. t. Vide Marshalling Assets.

COLLOQUIM, pleading. A discourse a conversation or conference.

2. In actions of slander, it is generally true that an action does not lie for words, on account of, their being merely disgraceful to a person in his office, profession or trade; unless it be averred, that at the time of publishing the words, there was a colloquium concerning the office, profession or trade of the plaintiff.

3. In its technical sense, the term colloquium signifies an averment in a declaration that there was a conversation or discourse on the part of the defendant, which connects the slander with the office, profession or trade of the plaintiff; and this colloquium must extend to the whole of the prefatory matter to render the words actionable. 3 Bulst. 83. Vide Bac. Ab. Slander, S, n. 3; Dane's Ab. Index, h. t.; Com. Dig. Action upon the case for Defamation, G 7, 8, &c.; Stark. on Sland. 290, et seq.

COLLUSION, fraud. An agreement between two or more persons, to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law; as, for example, where the husband and wife collude to obtain a divorce for a cause not authorized by law. It is nearly synonymous with covin. (q. v.)

2. Collusion and fraud of every kind vitiate all acts which are infected with them, and render them void. Vide Shelf. on Mar. .& Div. 416, 450; 3 Hagg. Eccl. R. 130, 133; 2 Greenl. Ev. 51; Bousq. Dict. de Dr. mot Abordage.

COLONEL. An officer in the army, next below a brigadier general, bears this title.

COLONY. A union of citizens or subjects who have left their country to people another, and remain subject to the mother country. 3 W. C. C. R. 287. The country occupied by the colonists is also called a colony. A colony differs from a possession, or a dependency. (q. v.) For a history of the American colonies, the reader is referred to Story on the Constitution, book I.; 1 Kent, Com. 77 to 80; 1 Dane's Ab. Index, b. t.

COLOR, pleading. It is of two kinds, namely, express color, and implied color. 2. Express color. This is defined to be a feigned matter, pleaded by the defendant, in an action of trespass, from which the plaintiff seems to have a good cause of action, whereas he has in truth only an appearance or color of cause. The practice of giving express color in pleas, obtained in the mixed actions of assize, the writ of entry in the nature of assize, as well as in the personal action of trespass. Steph. on Plead. 230; Bac. Ab. Trespass, 14.

3. It is a general rule in pleading that no man shall be allowed to plead specially such plea as amounts to the general issue, or a total denial of the charges contained in the declaration, and must in such cases plead the general issue in terms, by which the whole question is referred to the jury; yet, if the defendant in an action of trespass, be desirous to refer the validity of his title to the court, rather than to the jury; he may in his plea stated his title specially, by expressly giving color of title to the plaintiff, or supposing him to have an appearance of title, had indeed in point of law, but of which the jury are not competent judges. 3 Bl. Com. 309. Suppose, for example, that the plaintiff wag in wrongful possession of the close, without any further appearance of title than the possession itself, at the time of the trespass alleged, and that the defendants, entered upon him in assertion of their title: but being unable to set forth this title in the pleading, in consequence of the objection that would arise for want of color, are driven to plead the general issue of not guilty. By this plea an issue is produced whether the defendants are-guilty or not of the trespass; but upon the trial of the issue, it will be found that the question turns entirely upon a construction of law. The defendants say they are not guilty of the trespasses, because they are not guilty of breaking the close of the plaintiff, as alleged in the declaration; and that they are not guilty of breaking the close of the plaintiff, because they themselves had the property in that close; and their title is. this, that the father of one of the defendants being seised of the close in fee, gave it in tail to his eldest son, remainder in tail to one of the defendants; the eldest son was disseised, but made continual claim till the death of the disseisor; after whose death, the descent being cast upon the heir, the disseisee entered upon the heir, and afterwards died, when the remainder took effect in the said defendant who demised to the other defendant . Now, this title involves a legal question; namely, whether continual claim will no preserve the right of entry in the disseisee, notwithstanding a descent cast on the heir of the disseisor. (See as to this point, Continual Claim.) The issue however is merely not guilty, and this is triable by

jury; and the effect, therefore, would be, that a jury would have to decide this question of law, subject to the direction upon it, which they would receive from the court. But, let it be supposed that the defendants, in a view to the more satisfactory decision of the question, wish to bring it under the consideration of the court in bank, rather than have it referred to a jury. If they have any means of setting forth their title specially in the plea, the object will be attained; for then the plaintiff, if disposed to question the sufficiently of the title, may demur to the plea, and thus refer the question to the decision of the judges. But such plea if pleaded simply, according to the state of the fact, would be informal for want of color; and hence arises a difficulty.

4. The pleaders of former days, contrived to overcome this difficulty in the following singular manner. In such case as that supposed, the plea wanting implied color, they gave in lieu of it an express one, by inserting a fictitious allegation of some colorable title in the plaintiff, which they, at the same time avoided by the preferable title of the defendant. S Step . Pl. 225 Brown's Entr. 343, for a form of the plea. Plowd. Rep. 22 b.

5. Formerly various suggestions of apparent right, might be adopted according to the fancy of the pleader; and though the same latitude is, perhaps, still available, yet, in practice, it is unusual to resort to any except certain known fictions, which long usage has applied to the particular case for example, in trespass to land, the color universally given is that of a defective charter of the demise. See, in general, 2 Saund. 410; 10 Co. 88; Cro. Eliz. 76; 1 East, 215; Doct. Pl. 17; Doct. & Stud. lib. 2, c. 53; Bac. Abr. Pleas, I 8; Trespass, I 4; 1 Chit. Pl. 500 Steph. on Pl. 220.

6. Implied color. That in pleading which admits by implication, an apparent right in the opposite party, and avoids it by pleading some new matter by which that apparent right is defeated. Steph. Pl. 225.

7. It is a rule that every pleading by way of confession and avoidance, must give color; that is, it must admit an apparent right in the opposite party, and rely, therefore, on some new matter by which that apparent right is defeated. For example, where the defendant pleads a release to an action for breach of covenant, the tendency of the plea is to admit an apparent right in the plaintiff, namely, that the defendant did, as alleged in the declaration, execute the deed and break the covenant therein contained, and would therefore, prima facie, be liable on that ground; but shows new matter not before disclosed, by which that apparent right is done away, namely, that the plaintiff executed to him a release. Again, if the plaintiff reply that Such release was obtained by duress, in his, replication, he impliedly admits that the defendant has, prima facie, a good defence, namely, that such release was executed as alleged in the plea; and that the defefadant therefore would be discharged; but relies on new matter by which the plea is avoided, namely, that the release was obtained by duress. The plea, in this case,

therefore, gives color to the declaration, and the replication, to the plea. But let it be supposed that the plaintiff has replied, that the release was executed by him, but to another person, and not to the defendant; this would be an informal replication wanting color; because, if the release were not to the defendant there would not exist even an apparent defence, requiring the allegation of new matter to avoid it, and the plea might be sufficiently answered by a traverse, denying that the deed stated in the plea is the deed of the plaintiff. See Steph. Pl. 220; 1 Chit. Pl. 498; Lawes, Civ. Pl. 126; Arch. Pl. 211; Doct. Pl. 17; 4 Vin. Abr. 552; Bac. Abr. Pleas, &e. I 8; Com. Dig. Pleader, 3 M 40, 3-M 41. See an example of giving color in pleading in the Roman law, Inst. lib. 4, tit 14, De replicantionibus.

COLOR OR OFFICE, criminal law. A wrong committed by an officer under the pretended authority of his office; in some cases the act amounts to a misdemeanor, and the party may then be indicted. In other cases, the remedy to redress the wrong is by an action.

COLT. An animal of the horse species, whether male or female, not more than four years old. Russ. & Ry. 416.

COMBAT, Eng. law. The form of a forcible encounter between two or more persons or bodies of men; an engagement or battle. A duel.

COMBINATION. A union of different things. A patent may be taken out for a new combination of existing machinery, or machines. See 2 Mason, 112; and Composition of matter.

2. By combination is understood, in a bad sense, a union of men for the purpose of violating the law.

COMBUSTIO DOMORUM. Burning of houses; arson. Vide 4 Bl. Com. 372.

COMES, pleading. In a plea, the defendant says, " And the said C D, by E F, his attorney, comes, and defends, &c. The word comes, venit, expresses the appearance of the defendant , in court. It is taken from the style of the entry of the proceedings on the record, and formed no part of the viva voce pleading. It is, accordingly, not considered as, in strictness, constituting a part of the Plea. 1 Chit. Pl. 411; Steph. Pl. 432.

COMES, offices. A Count. An officer during the middle ages, who possessed civil and military authority. Sav. Dr. Rom. Moy. age, n. 80.

2. Vice-comes, the Latin name for sheriff, was originally the lieutenant of the comes.

COMITATUS. A county. Most of the states are divided into counties; some, as Louisiana, are divided into parishes.

COMITES. Persons who are attached to a public minister, are so called. As to their privileges, see 1 Dall. 117; Baldw. 240; and Ambassador.

COMITY. Courtesy; a disposition to accomodate.

2. Courts of justice in one state will, out of comity, enforce the laws of another state, when by such enforcement they will not violate their laws or inflict. an injury on some one of their own citizens; as, for example, the discharge of a debtor under the insolvent laws of one state, will be respected in another state, where there is a reciprocity in this respect.

3. It is a general rule that the municipal laws of a country do not extend beyond its limits, and cannot be enforced in another, except on the principle of comity. But when those laws clash and interfere with the rights of citizens, or the laws of the countries where the parties to the contract seek to enforce it, as one or the other must give way, those prevailing where the relief is sought must have the preference. 2 Mart. Lo. Rep. N. S. 93; S. C. 2 Harr. Cond. Lo. Rep. 606, 609; 2 B. & C. 448, 471; 6 Binn. 353; 5 Crancb, 299; 2 Mass. 84; 6 Mass. 358; 7 Mart. Lo. R. 318. See Conflict of Laws; Lex loci contractus.

COMMAND. This word has several meanings. 1. It signifies an order; an apprentice is bound to obey the lawful command of his master; a constable may command rioters to keep the peace. 2. He who commands another to do an unlawful act, is accessary to it. 3 Inst. 51, 57; 2 Inst. 182; 1 Hayw.

3. Command is also equivalent to deputation or voluntary substitution; as, when a master employs one to do a thing, he is said to have Commanded him to do it; and he is responsible accordingly. Story Ag. 454, note.

COMMENCEMENT OF A SUIT OR ACTION. The suit is considered as commenced from the issuing of the writ; 3 Bl. Com. 273, 285; 7 T. R. 4; 1 Wils. 147; 18 John. 14; Dunl. Pr. 120; 2 Phil. Ev. 95; 7 Verm. R. 426; 6 Monr. R. 560; Peck's R. 276; 1 Pick. R. 202; Id. 227; 2 N. H. Rep. 36; 4 Cowen, R. 158; 8 Cowen, 203; 3 John. Cas. 133; 2 John. R. 342; 3 John. R. 42; 15 John. R. 42; 17 John. R. 65; 11 John. R. 473; and if the teste or date of the writ be fictitious, the true time of its issuing may be a and proved, whenever the purposes of justice require it; as in cases of a plea of tender or of the statute of limitations. Bac. Ab. Tender D; 1 Stra. 638; Peake's Ev. 259; 2 Saund. 1, n. 1. In Connecticut, the service of, the writ is the commencement of

the action. 1 Root, R. 487; 4 Conn. 149; 6 Conn. R. 30; 9 Conn. R. 530; 7 Conn. R. 558; 21 Pick. R. 241; 2 C. & M. 408, 492 1 Sim. R. 393. Vide Lis Pendens.

COMENDAM, eccles. law. When a benefice or church living is void or vacant, it is commended to the. care of some sufficient clerk to be supplied, until it can be supplied with a pastor. He to whom the church is thus commended is said to hold in commendam, and he is entitled to the profits of the living. Rob. 144; Latch, 236.

2. In Louisiana, there is a species of limited partnership called a partnership in commendam. It is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses, to the amount furnished, and no more. Civ. Code of Lo. 2810. A similar partnership exists in France. Code de Comm. 26, 33; Sirey, tom. 12, part 2, p. 25. He who makes this contract is called in respect to those to whom he makes the advance of capital, a partner in commendam. Civ. Code of Lo. art. 2811.

COMMENDATARY. A person who holds a church living or presentment in commendam.

COMMENDATION. The act of recommending, praising. A merchant who merely commends goods he offers for sale, does not by that act warrant them, unless there is some fraud: simplex commendatio non obligat.

COMMENDATORS, eccl. law. Secular persons upon whom ecclesiastical benefices are bestowed, because they were commended and instructed to their oversight: they are merely trustees.

COMMERCE, trade, contracts. The exchange of commodities for commodities; considered in a legal point of view, it consists in the various agreements which have for their object to facilitate the exchange of the products of the earth or industry of man, with an intent to realize a profit. Pard. Dr. Coin. n. 1. In a narrower sense, commerce signifies any reciprocal agreements between two persons, by which one delivers to the other a thing, which the latter accepts, and for which he pays a consideration; if the consideration be money, it is called a sale; if any other thing than money, it is called exchange or barter. Domat, Dr. Pub. liv. 1, tit. 7, s. 1, n. 2. Congress have power by the constitution to regulate commerce with foreign nations and among the several states, and with the Indian tribes. 1 Kent. 431; Story on Corst. 1052, et seq. The sense in which the word commerce is used in the constitution seems not only to include traffic, but intercourse and navigation. Story, 1057; 9 Wheat. 190,

191, 215, 229; 1 Tuck. Bl. App. 249 to 252. Vide 17 John. R. 488; 4 John. Ch. R. 150; 6 John. Ch. R. 300; 1 Halst. R. 285; Id. 236; 3 Cowen R. 713; 12 Wheat. R. 419; 1 Brock. R. 423; 11 Pet. R. 102; 6 Cowen, R. 169; 3 Dana, R. 274; 6 Pet. R. 515; 13 S. & R. 205.

COMMISSARIATE. The whole body of officers who act in the department of the commissary, are called the, commissariate.

COMMISSARY. An officer whose principal duties are to supply the army witli provisions.

2. The Act of April 14, 1818, s. 6, requires that the president, by and with the consent of the senate, shall appoint a commissary general with the rank, pay, and emoluments of colonel of ordnance, and as many assistants, to be taken from the sub-alterns of the line, as the service may require. The commissary general and his assistants shall perform such duties, in the purchasing and issuing of rations to the armies of the United States, as the president may direct. The duties of these officers are further detailed in the subsequent sections of this act,, and in the Act of March 2, 1821.

COMMISSION, contracts, civ. law. When one undertakes, without reward, to do something for another in respect to a thing bailed. This term is frequently used synonymously with mandate. (q. v.) Ruth. Inst. 105; Halifax, Analysis of the Civil Law, 70. If the service the party undertakes to perform for another is the custody of his goods, this particular sort of, commission is called a charge.

2. In a commission, the obligation on his part who undertakes it, is to transact the business without wages, or any other reward, and to use the same care and diligence in it, as if it were his own.

3. By commission is also understood an act performed, opposed to omission, which is the want of performance of such an act; is, when a nuisance is created by an act of commission, it may be abated without notice; but when it arises from omission, notice to remove it must be given before it is abated. 1 Chit. Pr. 711. Vide dbatement of Nuisances; Branches; Trees.

COMMISSION, office. Persons authorized to act in a certain matter; as, such a matter was submitted, to the commission; there were several meetings before the commission. 4 B. & Cr. 850; 10 E. C. L. R. 459.

COMMISSION, crim. law. The act of perpetrating an offence. There are crimes of commission and crimes of omission.

COMMISSION, government. Letters-patent granted by the government, under the public seal, to a person appointed to an office, giving him authority to perform the duties of his office. The commission is not the appointment, but only evidence of it; and as soon as it is signed and sealed, vests the office in the appointee. 1 Cranch, 137; 2 N. & M. 357; 1 M'Cord, 233, 238. See Pet. C. C. R. 194; 2 Summ. 299; 8 Conn. 109; 1 Penn. 297; 2 Const. Rep. 696; 2 Tyler, 235.

COMMISSION, practice. An instrument issued by a court of, justice, or other competent tribunal, to authorize a person to take depositions, or do any other act by authority of such court, or tribunal, is called a commission. For a form of a commission to take.depositions, see Gresley, Eq. Ev. 72.

COMMISSION OF LUNACY, A writ issued out of chancery, or such court as may have jurisdiction of the case directed to a proper officer, to inquire whether a person named therein is a lunatic or not. 1 Bouv. Inst. n. 382, et seq.

COMMISSION MERCHANT. One employed to sell goods for another on commission; a factor. He is sometimes called. a consignee, (q. v.) and the goods he receives are a consignment. 1 Bouv. Inst. n. 1013.

COMMISSION OF REB ELLION, chan. prac. The name of a writ issuing out of chancery, generally directed to four special commissioners, named by the plaintiff, commanding them to attach the defendant wheresoever he may be found within the state, as a rebel and contemner of the law, so as to have him in chancery on a certain day therein named. This writ may be issued after an attachment with proclamation, and a return of non est inventus. Blake's Ch. Pr. 102; Newl. Ch. Pr. 14.

COMMISSIONER, officer. One who has a lawful commission to execute a public office. In a more restricted sense it is one who is authorized to execute. a particular duty, as, commissioner of the revenue, canal commissioner. The term when used in this latter sense is not applied, for example, to a judge. There are commissioners, too, who have no regular commissions and derive their author from the elections held by the people. County commissioners, in Pennsylvania, are officers of the latter kind.

COMMISSIONER OF PATENTS. The name of an officer of the United States whose duties are detailed in the act to promote the useful arts, &c., which will be found under the article Patent.

COMMISSIONERS OF BAIL, practice. Officers appointed by some courts to take recognizances of bail in civil cases.

COMMISSIONERS OF SEWERS, Eng. law. Officers whose duty it is to repair sea banks aud walls, survey rivers, public streams, ditches, &c.

COMMISSIONS, contracts, practice. An allowance of compensation to an agent, factor, executor, trustee or other person who manages the affairs of others, for his services in performing the same.

2. The right of agents, factors or other contractors to commissions, may either be the subjeot of a special contract, or rest upon the quantum meruit. 9 C. & P. 559; 38 E. C. L. R. 227; 3 Smith's R. 440; 7 C. & P. 584; 32 E. C. L. R. 641; Sugd. Vend. Index, tit. Auctioneer

3. This compensation is usually the allowance of a certain, per centage upon the actual amount or value of the business done. When there is a usage of trade at the particular place, or in the particular business in which the agent is engaged, the amount of commissions allowed to auctioneers, brokers and factors, is regulated by such usage. 3 Chit. Com. Law, 221; Smith on Mere. Law, 54; Story, Ag. 326; 3 Camp. R. 412; 4 Camp. R. 96; 2 Stark. 225, 294.

4. The commission of an agent is either ordinary or del credere. (q. v.) The latter is an increase of the ordinary commission, in consideration of the responsibility which the agent undertakes, by making himself answerable for the solvency of those with whom he contracts. Liverm. Agency, 3, et seq.; Paley, Agency, 88, et seq.

5. In Pennsylvania, the amount missions allowed to executors and trustees is generally fixed at five per centum on the sum received and paid out, but this is varied according to circumstances. 1 9 S. & R. 209, 223; 4 Whart. 98; 1 Serg. & Rawle, 241. In England, no commissions are allowed to executors or trustees. 1 Vern. R. 316, n. and the cases there: cited. 4 Ves. 72, n.

TO COMMIT. To send a person to prison by virtue of a warrant or other lawful writ, for the commission of a crime, offence or misdemeanor, or for a contempt, or non-payment of a debt.

COMMITMENT, criminal law, practice. The warrant. or order by which a court or magistrate directs a ministerial officer to take a person to prison. The commitment is either for further hearing, (q. v.) or it is final.

2. The formal requisites of the commitment are, 1st. that it be in writing, under hand, and seal, and show the authority of the magistrate, and the time and place of making it. 3 Har. & McHen. 113; Charl. 280; 3 Crancb, R. 448; see Harp. R. 313. In this case it is said a seal is not indispensable.

3. - 2d. It must be made in the name of the United States, or of the commonwealth, or people, as required by the constitution of the United States or, of the several states.

4. - 3d. It should be directed to the keeper of the prison, and not generally to carry the party to prison. 2 Str. 934; 1 Ld. Raym. 424.

5. - 4th. The prisoner should be described by his name and surname, or the name he gives as his.

6. - 5th. The commitment ought to state that the party has been charged on oath. 3 Cranch, R.448. But see 2 Virg. Cas. 504; 2 Bail. R. 290.

7. - 6th. The particular crime charged against the prisoner should be mentioned with convenient certainty. 3 Cranch, R. 449; 11 St. Tr. 304. 318; Hawk. B. 2, c. 16, s. 16 Chit. Cr. Law, 110.

8. - 7th. The commitment should point out the place of imprisonment, and not merely direct that the party be taken to prison. 2 Str. 934; 1 Ld. Ray. 424.

9. - 8th. In a final commitment, the command to the keeper of the prison should be to keep the prisoner "until he shall be discharged by due course of law," when the offence is not bailable; when it is bailable the gaoler should be, directed to keep the prisoner in his " said custody for want of sureties, or until he shall be discharged by due course of law." When the commitment is not final, it is usual to commit the prisoner " for further hearing." The commitment is also called a mittimus. (q. v.)

10. The act of sending a person to prison charged with the commission of a crime by virtue of such a warrant is also called a commitment. Vide, generally, 4 Vin. Ab. 576; Bac. Ab. h. t.; 4 Cranch, R. 129; 4 Dall. R. 412; 1 Ashm. R. 248; 1 Cowen, R. 144; 3 Conn. R. 502; Wright, R. 691; 2 Virg. Cas. 276; Hardin, R. 249; 4 Mass. R. 497; 14 John. R. 371 2 Virg. Cas. 594; 1 Tyler, R. 444; U. S. Dig. h. t.

COMMITTEE, practice. When a person has been found non compos, the law requires that a guardian should be appointed to take care of his person and estate; this guardian is called the committee.

2. It is usual to select the committee from the next of kin; Shelf. on Lun. 137; and in case of the lunacy of the husband or wife, the one who is of sound mind is entitled, unless under very special circumstances, to be the committee of the other. Id. 140. This is the committee of the person. For committee of the estate, the heir at law is most favored. Relations are referred to strangers, but the latter may be appointed. Id. 144.

3. It is the duty of the committee of the person, to take care of the lunatic; and the committee of the estate is bound to administer the estate faithfully, and to account for his administration. He cannot in general, make contracts in relation to the estate of the lunatic, or bind it, without a Special order of the court or authority that appointed him. Id. 179; 1 Bouv. Inst. n. 389-91.

COMMITTEE, legislation. One or more members of a legislative body to whom is specially referred some matter before that body, in order that they may investigate and examine into it and report to those who delegated this authority to them.

COMMITTITUR PIECE, Eng. law. An instrument in writing, on paper or parchment, which charges a person already in prison, in execution at the suit of, the person who arrested him.

COMMIXTION, civil law. This term is used to signify the act by which goods are mixed together.

2. The matters which are mixed are dry or liquid. In the commixtion of the former, the matter retains its substance and individuality; in the latter, the substances no longer remain distinct. The commixtion of liquids is called confusion, (q. v.) and that of solids, a mixture. Lec. Elem. du Dr. Rom. 370, 371; Story, Bailm. 40; 1 Bouv. Inst. n. 506.

COMMODATE, contracts. A term used in the Scotch law, which is synonymous to the Latin commodatum, or loan for use. Ersk. Inst. B. 3, t. 1, 20; 1 Bell's Com. 225; Ersk. Pr. Laws of Scotl. B. 3, t. 1, 9.

2. Judge Story regrets this term has not been adopted and naturalized, as mandate has been from mandatum. Story, Com. 221. Ayliffe, in his Pandects, has gone further, and terms the bailor the commodant, and the bailee the commodatory, thus avoiding those circumlocutions, which, in the common phraseology of our law, have become almost indispensable. Ayl. Pand. B. 4, t. 16, p. 517. Browne, in his Civil Law, vol. 1, 352, calls the property loaned "commodated property." See Borrower; Loan for use; Lender.

COMMODATUM. A contract, by which one of the parties binds himself to return to the other certain personal chattels which the latter delivers to him, to be used by him, without reward; loan -for use. Vide Loan for use.

COMMON. or right of common, English law. An encorporeal hereditament, which consists in a profit which a man has in the lands of another. 12 S. & R. 32; 10 Wend. R. 647; 11 John. R. 498; 2 Bouv. Inst. 1640, et seq.

2. Common is of four sorts; of pasture, piscary, turbary and estovers. Finch's Law, 157; Co. Litt. 122; 2 Inst. 86; 2 Bl. Com. 32.

3. - 1. Common of pasture is a right of feeding one's beasts on another's land, and is either appendant, appurtenant, or in gross.

4. Common appendant is of common right, and it may be claimed in pleading as appendant, without laying a prescription. Hargr. note to 2 Inst. 122, a note.

5. Rights of common appurtenant to the claimant's land are altogether independent of the tenure, and do not arise from any absolute necessity; but may be annexed to lands in other lordships, or extended to other beasts besides. such as are generally commonable.

6. Common in gross, or at large, is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. All these species of pasturable common, may be and usually are limited to number and time; but there are also commons without stint, which last all the year. 2 Bl. Com. 34.

7. - 2. Common of piscary is the liberty of fishing in another man's water. lb. See Fishery.

8. - 3. Common of turbary is the liberty of digging turf in another man's ground. Ib.

9.-4. Common of estovers is the liberty of taking necessary wood-for the use or furniture of a house or farm from another man's estate. Ib.; 10 Wend. R. 639. See Estovers.

10. The right of common is little known in the United States, yet there are some regulations to be found in relation to this subject. The constitution of Illinois provides for the continuance of certain commons in that state. Const. art. 8, s. 8.

11. All unappropriated lands on the Chesapeake Bay, on the Shore of the sea, or of any river or creek, and the bed of any river or creek, in the eastern parts of the commonwealth, ungranted and used as common, it is declared by statute in Virginia, shall remain so, and not be subject to grant. 1 Virg. Rev. C. 142.

12. In most of the cities and towns in the United States, there are considerable tracts of land appropriated to public use. These commons were generally laid out with the cities or towns where they are found, either by the original proprietors or by the early inhabitants. Vide 2 Pick. Rep. 475; 12 S. & R. 32; 2 Dane's. Ab. 610; 14 Mass. R. 440; 6 Verm. 355. See, in general, Vin. Abr. Common; Bac. Abr. Common; Com.

Dig. Common; Stark. Ev. part 4, p. 383; Cruise on Real Property, h. t.; Metc. & Perk. Dig. Common, and Common lands and General fields.

COMMON APPENDANT, Eng. law. A right attached to arable land, and is an incident of tenure, and supposed to have originated by grant of the lord or owner of a manor or waste, in consideration of certain rents or services, or other value, to a freeholder or copyholder of plough land, and at the same time either expressly or by implication, and as of common right and necessity common appendant over his other wastes and commons. Co. Litt. 122 a; Willis, 222.

COMMON APPURTENANT, Eng. law. A right granted by deed, by the owner of waste or other land, to another person, owner of other land, to have his cattle, or a particular description of cattle; levant and couchant upon the land, at certain seasons of the year, or at all times of the year. An uninterrupted usage for twenty years, is evidence of a grant. 15 East, 116.

COMMON ASSURANCES. Title by deeds are so called, because, it is said, every man ' s estate is assured to him; these deed's or instruments operate either as conveyances or as charges.

2.- 1. Deeds of conveyance are, first, at common law, and include feoffments, gifts, grants, leases, exchanges, partition's, releases, confirmations, surrenders, assignments, and defeasances; secondly, deeds of conveyance under the statute of uses, as covenants to stand seised to uses, bargains and sale, lease and release, deeds to lead or declare uses, and deeds of appointment and revocation.

3. - 2. Deeds which do not convoy, but only charge or discharge lands, are obligations, recognizances, and defeasances. Vide Assurance; Deed.

COMMON BAIL. The formal entry of fictitious sureties in the proper office of the court, which is called filing common bail to the action. See Bail.

COMMON BAR, pleading. A plea to compel the plaintiff to assign the particular place where the trespass has been Committed. Steph. Pl. 256. It i's sometime's called a blank bar. (q. v.)

COMMON BENCH, bancus communis. The court of common pleas was anciently called common bench, because the pleas and controversies there determined were between common persons. See Bench.

COMMON CARRIER, contracts. One who undertakes for hire or reward to transport the goods of any who may choose to employ him, from place to place. 1 Pick. 50, 53; 1 Salk. 249, 250; Story, Bailm. 495 1 Bouv. Inst. n. 1020.

2. Common carriers are generally of two descriptions, namely, carriers by land and carriers by water. Of the former description are the proprietors of stage coaches, stage wagons or expresses, which ply between different places, and' carry goods for hire; and truckmen, teamsters, cartmen, and porters, who undertake to carry goods for hire, as a common employment, from one part of a town or city to another, are also considered as common carriers. Carriers by water are the masters and owners of ships and steamboats engaged in the transportation of goods for persons generally, for hire and lightermen, hoymen, barge-owners, ferrymen, canal boatmen, and others employed in like manner, are so considered.

3. By the common law, a common carrier is generally liable for all losses which may occur to property entrusted to his charge in the course of business, unless he can prove the loss happened in consequence of the act of God, or of the enemies of the United States, or by the act of the owner of the property. 8 S. & R. 533; 6 John. R. 160; 11 John. R. 107; 4 N. H. Rep. 304; Harp. R. 469; Peck. R. 270; 7 Yerg. R. 340; 3 Munf. R. 239; 1 Conn. R. 487; 1 Dev. & Bat. 273; 2 Bail. Rep. 157.

4. It was attempted to relax the rigor of the common law in relation to carriers by water, in 6 Cowen, 266; but that case seems to be at variance with other decisions. 2 Kent,. Com. 471, 472; 10 Johns. 1; 11 Johns. 107.

5. In respect to carriers by land, the rule of the common law seems every where admitted in its full rigor in the states governed by the jurisprudence of the common law. Louisiana follows the doctrine of the civil law in her code. Proprietors of stage coaches or wagons, whose employment is solely% to carry passengers, as hackney coachmen, are not deemed common carriers; but if the proprietors of such vehicles for passengers, also carry goods for hire, they are, in respect of such goods, to be deemed common carriers. Bac. Ab. Carriers, A; 2 Show. Rep. 128 1 Salk. 282 Com. Rep. 25; 1 Pick. 50 5 Rawle, 1 79. The like reasoning applies to packet ships and steam-boats, which ply between different ports, and are accustomed to carry merchandise as well as passengers. 2 Watts. R. 443; 5 Day's Rep. 415; 1 Conn. R. 54; 4 Greenl. R. 411; 5 Yerg. R. 427; 4 Har. & J. 291; 2 Verm. R. 92; 2 Binn. Rep. 74; 1 Bay, Rep. 99; 10 John. R. 1; 11 Pick. R. 41; 8 Stew. and Port. 135; 4 Stew. & Port. 382; 3 Misso. R. 264; 2 Nott. & M. 88. But see 6 Cowen, R. 266. The rule which makes acommon carrier responsible for the loss of goods, does not extend to the carriage of persons; a carrier of slaves is, therefore, answerable only for want of care and skill. 2 Pet. S. C. R. 150. 4 M'Cord, R. 223; 4 Port. R. 238.

6. A common carrier of goods is in all cases entitled to demand the price of carriage before he receives the goods, and, if not paid, he may refuse to take charge of them; if, however, he take charge of them without the hire being paid, he may afterwards recover it. The compensation which becomes due for the carriage of goods by sea, is commonly called freight (q.v.); and see also, Abb. on Sh. part 3, c. 7. The carrier is also entitled to a lien on the goods for his hire, which, however, he may waive; but if once waived, the right cannot be resumed. 2 Kent, Com. 497. The consignor or shipper is commonly bound to the carrier for the hire or freight of goods. 1 T. R. 659. But whenever the consignee engages to pay it, he also becomes responsible. It is usual in bills of lading to state, that the goods are to be delivered to the consignee or to his assigns, he or they paying freight, in which case the consignee and his assigns, by accepting the goods, impliedly become bound to pay the freight, and the fact that the consignor is also liable to pay it, will not, in such case, make any difference. Abbott on Sh. part 3, o. 7, 4.

7. What is said above, relates to common carriers of goods. The duties, liabilities, and rights of carriers of passengers, are now to be considered. These are divided into carriers of passengers on land, and carriers of passengers on water.

8. First, of carriers of passengers on land. The duties of such carriers are, 1st. those which arise on the commencement of the journey. 1. To carry passengers whenever they offer themselves and are ready to pay for their transportation. They have no more right to refuse a passenger, if they have sufficient room and accommodation, than an innkeeper has to refuse a guest. 3 Brod. & Bing. 54; 9 Price's R. 408; 6 Moore, R. 141; 2 Chit. R. 1; 4 Esp. R. 460; 1 Bell's Com. 462; Story, Bailm. 591.

9. - 2. To provide coaches reasonably strong and sufficient for the journey, with suitable horses, trappings and equipments.

10. - 3. To provide careful drivers of reasonable skill and. good habits for the journey; and to employ horses which are steady and not vicious, or likely to endanger the safety of the passengers.

11. - 4. Not to overload the coach either with passengers or luggage.

12. - 5. To receive and take care of the usual luggage allowed to every passenger on the journey. 6 Hill, N. Y. Rep. 586.

13. - 2d. Their duties on the progress of the journey. 1. To stop at the usual places, and allow the..Usual intervals for the refreshment of the passengers. 5 Petersd. Ab. Carriers, p. 48, note.

14. - 2. To use all the ordinary precautions for the safety of passengers on the road.

15. - 3d. Their duties on the termination of the journey. 1. To carry the passengers to the end of the journey.

16. - 2. To put them down at the usual place of stopping, unless there has been a special contract to the contrary, and then to put them down at the place agreed upon. 1 Esp. R. 27. ,

17. The liabilities of such carriers. They are bound to use extraordinary care and diligence to carry safely those whom they take in their coaches. 2 Esp. R. 533; 2 Camp. R. 79; Peake's R. 80. But, not being insurers, they are not responsible for accidents, when all reasonable skill and diligence have been used.

18. The rights of such carriers. 1. To demand and receive their fare at the time the passenger takes his seat. 2. They have a lien on the baggage of the passenger for his fare or passage money, but not on the person of the passenger nor the clothes he has on. Abb. on Sh. part 3, c. 3, 11; 2 Campb. R. 631.

19. Second, carriers of passengers by water. By the act of Congress of 2d March, 1819, 3 Story's Laws U. S. 1722, it is enacted, 1. that no master of a vessel bound to or from the United States shall take more than two passengers for every five tons of the ship's custom-house measurement. 2. That the quantity of water and provisions, which shall be taken on board and secured under deck, by every Ship bound from the United States to any port on the continent of Europe, shall be sixty gallons of water, one hundred pounds of salted provisions, one gallon of vinegar, and one hundred pounds of wholesome ship bread for each passenger, besides the stores of the crew. The tonnage here mentioned, is the measurement of the custom-house; and in estimating the number of passengers in a vessel, no deduction is to be made for children or persons not paying, but the crew is not to be included. Gilp. R. 334.

20. The act of Congress of February 22, 1847, section 1, provides: " That if the master of any vessel, owned in whole or in part by a citizen of the United States of America, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place, a greater number of passengers than in the following proportion to the space occupied by them and appropriated for their use, and unoccupied by stores or other goods, not being the personal luggage of such passengers, that is to say, on the lower deck or platform one passenger for every fourteen clear superficial feet of deck, if such vessel is not to pass within the tropics during such voyage; but if such vessel is to pass within the tropics during such voyage, then one passenger for every twenty such clear superficial feet of deck, and on the orlop deck (if any) one passenger for every thirty such superficial feet in all cases, with intent to bring such passengers to

the United States of America, and shall leave such port or, place with the same, and bring the same, or any number thereof, within the jurisdiction of the United States aforesaid, or if any such master of a vessel shall take on board of his vessel at any port or place within the jurisdiction of the United States aforesaid, any greater number of passengers than the proportions aforesaid admit, with intent to carry the same to any foreign port or place, every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any circuit or district court of the United States aforesaid, shall, for each passenger taken on board beyond the above proportions, be fined in the sum of fifty dollars, and may also be imprisoned for any term not exceeding one year: Provided, That this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel."

21. Children under one year of age not to be computed in counting the passengers, and those over one year and under eight, are to be counted as two cbildren for one passenger, Sect. 4. But this section is repealed so far as authorizes shippers to estimate two children of eight years of age and under as one passenger by the act of March 2, 1847, s. 2.

22. In New York, statutory regulations have been made in relation to their canal navigation. Vide 6 Cowen's R. 698. As to the conduct of carrier vessels on the ocean, Vide Story, Bailm. 607 et seq; Marsh. Ins. B. 1, c. 12, s. 2. And see, generally, 1 Vin. Ab. 219; Bac. Ab. h. t.; 1 Com. Dig. 423; Petersd. Ab. h. t.; Dane's Ab. Index, h. t.; 2 Kent, Com. 464; 16 East, 247, note; Bouv. Inst. Index, h. t.

23. In Louisiana carriers and watermen are subject, with respect to the safe-keeping and preservation of the tbings entrusted to them, to the same obligations and duties, as are imposed on tavern keepers; Civ. Code, art. 2722; that is, they are responsible for the effects which are brought, though they were not delivered into their personal care; provided, however, they were delivered to a servant or person in their employment; art. 2937. They are responsible if any of the effects be stolen or damaged, either by their servants or agents, or even by strangers; art. 2938; but they are not responsible for what is stolen b force of arms or with exterior breaking open of doors, or by any other extraordinary violence; art. 2939. For the authorities on the subject ofCommon carriers in the civil law, the reader is referred to Dig. 4, 9, 1 to 7; Poth. Pand. lib. 4, t. 9; Domat liv. 1, t. 16, S. 1 and 2; Pard. art. 537 to 555; Code Civil, art. 1782, 1786, 1952; Moreau & Carlton, Partidas 5, t. 8, 1. 26; Ersk. Inst. B. 2, t. 1, 28; 1 Bell's Com. 465; Abb. on Sh. part 3, c. 3, 3, note (1); 1 Voet, ad Pand. lib. 4, t. 9; Merl. Rep. mots Voiture, Voiturier; Dict. de Police, Voiture.

COMMON COUNCIL. In many cities the charter provides for their government, in imitation of the national and state governments. There are two branches of the

legislative assembly; the less numerous, called the select, the other, the common council.

2. In English law, the common council of the whole realm means the parliament. Fleta, lib. 2, cap. 13.

COMMON COUNTS. Certain general counts, not founded on any special contract, which are introduced in a declaration, for the purpose of preventing a defeat of a just right by the accidental variance of the evidence. These are in an action of assumpsit; counts founded on express or implied promises to pay money in consideration of a precedent debt, and are of four descriptions: 1. The indebitatus assumpsit; 2. The quantum meruit; 3 . The quantum valebant; and, 4. The account stated.

COMMON FISHERY. A fishery to which all persons have a right, such as the cod fisheries off Newfoundland. A common fishery is different from a common of fishery, which is the right to fish in another's pond, pool, or river. See Fishery.

COMMON HIGHWAY. By this term is meant a road to be used by the community at large for any purpose of transit or traffic. Hamm. N. P. 239. See Highway.

COMMON INFORMER. One who, without being specially required by law, or by virtue of his office, gives information of crimes, offences or misdemeanors, which have been committed, in order to prosecute the offenders; a prosecutor. Vide Informer; Prosecutor.

COMMON INTENT, construction. The natural sense given to words.

2. It is a rule that when words are used which will bear a natural sense and an artificial one, or one to be made out by argument and inference, the natural sense shall prevail; it. is simply a rule of construction and not of addition common intent cannot add to a sentence words which have been omitted. 2 H. Black. 530. In pleading, certainty is required, but certainty to a common intent is sufficient; that is, what upon a reasonable construction may be called certain, without recurring to possible facts. Co. Litt. 203, a; Dougl. 163. See Certainty.

COMMON LAW. That which derives its force and authority from the universal consent and immemorial practice of the people. See Law, common.

COMMON NUISANCE. One which affects the public in general, and not merely some particular person. 1 Hawk. P. C. 197. See Nuisance.

COMMON PLEAS. The name of a court having jurisdiction generally of civil actions. For a historical account of the origin of this court in England, see Boote's Suit at Law, 1 to 10. Vide Common Bench and Bench.

2. By common pleas, is also understood, such pleas or actions as are brought by private persons against private persons; or by the government, when the cause of action is of a civil nature. In England, whence we derived this phrase, common pleas are so called to distinguish them from pleas of the crown. (q. v.)

COMMON RECOVERY. A judgment recovered in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in the suit., A common recovery is a kind of conveyance. 2 Bouv. Inst. n. 2088, 2092-3. Vide Recovery.

COMMON SCOLD, Crim. law, communes rixatrix. A woman, who, in consequence of her boisterous, disorderly and quarrelsome tongue, is a public nuisance to the neighborhood.

2. Such a woman may be indicted, and on conviction, punished. At common law, the punishment was by being placed in a certain engine of correction called the trebucket or cocking stool.

3. This punisbment has been abolished in Pennsylvania, where the offence may be punished by fine and imprisonment.12 Serg. & Rawle, 220; vide 1 Russ. on Cr. 802 Hawk. B. 2, c. 25, s. 59 1 T. R. 756 4 Rogers' Rec. 90; Roscoe on Cr. Ev. 665.

COMMON SEAL, A seal used by a corporation. See Corporation.

COMMON SENSE , med. jur. When a person possesses those perceptions, associations and judgments, in relation to persons and things, which agree with those of the generality of mankind, he is said to possess common sense. On the contrary, when a particular individual differs from the generality of persons in these respects, he is said not to have common sense, or not to be in his senses. 1 Chit. Med. Jur. 334.

COMMON, TENANTS IN. Tenants in common are such as hold an estate, real or personal, by several distinct titles, but by a unity of possession. Vide Tenant in common; Estate in common.

COMMON TRAVERSE. This kind of traverse differs from those called technical traverses principally in this, that it is preceded by no inducement general or special; it is taken without an absque hoc, or any similar words, and is simply a direct denial of the adverse allegations, in common language, and always concludes to the country. It

can be used properly only when an inducement is not requisite; that is, when the party traversing has no need to allege any new matter. 1 Saund. 103 b. ii. 1.

2. This traverse derives its name, it is presumed, from the fact that common language is used, and that it is more informal than other traverses.

COMMON VOUCHEE. In common recoveries, the person who vouched to warranty. In this fictitious proceeding, the crier of the court usually performs the office of a common vouchee. 2 Bl. Com. 358; 2 Bouv. Inst. n. 2093.

COMMONALTY, Eng. law. This word signifies, 1st. the common people of England, as contradistinguished from the king and the nobles; 2d. the body of a society as the masters, wardens, and commonalty of such a society.

COMMONER. One who is entitled with others to the use of a common.

COMMONS, Eng. law. Those subjects of the English nation who are not noblemen. They are represented in parliament in the house of commons.

COMMONWEALTH, government. A commonwealth is properly a free state, or republic, having a popular or representative government. The term has been, applied to the government of Great Britain. It is not applicable to absolute governments. The states composing the United States are, properly, so many commonwealths.

2. It is a settled principle, that no sovereign power is amenable to answer suits, either in its own courts or in those of a foreign country, unless by its own consent. 4 Yeates, 494.

COMMORANCY, persons. An abiding dwelling, or continuing as an inhabitant in any place. It consists, properly, in sleeping usually in one place.,

COMMORANT. One residing or inhabiting a particular place. Barnes, 162.

COMMORIENTES. This Latin word signifies those wbo die at the same time, as, for example, by shipwreck.

2. When several persons die by the same accident, and there is no evidence as to who survived, the presumption of law is, they all died at the same time. 2 Phillim. R. 261 Fearne on Rem. iv.; 5 B. & Adol. 91; Cro. Eliz. 503; Bac. Ab. Execution, D; 1 Mer. R. 308. See Death; Survivor.

COMMUNICATION, contracts. Information; consultation; conference.

2. In order to make a contract, it is essential there should be an agreement; a bare communication or conference will not, therefore, amount to a contract; nor can evidence of such communication be received in order to take from, contradict, or alter a written agreement. 1 Dall. 426; 4 Dall. 340; 3 Serg. & Rawle, 609. Vide Pour-parler; Wbarton's Dig. Evid. R.

COMMUNINGS, Scotch law. This term is used to express the negotiations which have taken place before making a contract, in relation thereto. See Pourparler.

2. It is a general rule, that such communings or conversations, and the propositions then made, are no part of the contract for no parol evidence will be allowed to be given to contradict, alter, or vary a written instrument. 1 Serg. & R. 464 Id. 27; Add. R. 361; 2 Dall. R. 172 1 Binn. 616; 1 Yeates, R. 140; 12 John. R. 77; 20 John. R. 49; 3 Conn. R. 9; 11 Mass. R. 30; 13 Mass. R. 443; 1 Bibb's R. 271; 4 Bibb's R. 473; 3 Marsh. (Kty.) R. 333; Bunb. 175; 1 M. & S. 21; 1 Esp. C. 58; 3 Campb. R. 57.

COMMUNIO BONORUM, civil law. Common goods.

2. When a person has the management of common property, owned by himself and others, not as partners, he is bound to account for the profits, and is entitled to be reimbursed for the expenses which he has sustained by virtue of the quasi-contract which is created by his act, called communio bonorum. Vicat; 1 Bouv. Inst. n. 907, note.

COMMUNITY. This word has several meanings; when used in common parlance it signifies the body of the people.

2. In the civil law, by community is understood corporations, or bodies politic. Dig. 3, 4.

3. In the French law, which has been adopted in this respect in Louisiana, Civ. Code, art. 2371, community is a species of partnership, which a man and woman contract when they are lawfully married to each other. It consists of the profits of all, the effects of which the husband has the administration and enjoyment, either of right or in fact; of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them, or by purchase, or in any other similar way, even although the purchase he made in the name of one of the two, and not of both; because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. 10 L. R. 146; Id. 172, 181; 1 N. S. 325; 4 N. S. 212. The debts contracted during the marriage enter into the community, and must be acquitted out of the common fund; but not the debts contracted before the marriage.

4. The community is either, first, conventional, or that which is formed by an express agreement in the contract of marriage itself; by this contract the legal community may be modified, as to the proportions which each shall take, or as to the things which shall compose it; Civ. Code of L. art. 2393; second, legal, which takes place when the parties make no agreement on this subject in the contract of marriage; when it is regulated by the law of the domicil they had at the time of marriage.

5. The effects which compose the community of gains, are divided *into two equal portions between the heirs, at the dissolution of the marriage. Civ. Code of L. art. 2375. See Poth. h. t.; Toull. h. t.; Civ. Code of Lo. tit. 6, c. 2, s. 4.

6. In another sense, community is the right which all men have, according to the laws of nature, to use all things. Wolff, Inst. 186.

COMMUTATION, punishments. The change of a punishment to which a person has been condemned into a less severe one. This can be granted only by the executive authority in which the pardoning power resides.

COMMUTATIVE CONTRACT, civil law. One in which each of the contracting parties gives and, receives an equivalent. The contract of sale is of this kind. The seller gives the thing sold, and receives the price, which is the equivalent. The buyer gives the price and receives the thing sold, which is the equivalent.

2. These contracts are usually distributed into four classes, namely; Do ut des; Facio ut facias; Facio ut des; Do ut facias. Poth. Obl. n. 13. See' Civ. Code of Lo. art. 1761.

COMMUTATIVE JUSTICE. That virtue whose object is, to render to every one what belongs to him, as nearly as may be, or that which governs contracts.

2. The word commutative is derived from commutare, which signifies to exchange. Lepage, El. du Dr. ch. 1, art. 3, 3. See Justice.

TO COMMUTE. To substitute one punishment in the place of another. For example, if a man be sentenced to be hung, the executive may, in some states, commute his punishment to that of imprisonment.

COMPACT, contracts. In its more general sense, it signifies an agreement. In its strict sense, it imports a contract between parties, which creates obligations and rights capable of being enforeed, and contemplated as such between the parties, in their distinct and independent characters. Story, Const. B. 3, c. 3; Rutherf. Inst. B. 2, c. 6, 1. 2. The constitution of the United States declares that " no state shall, without the

consent of congress, enter into agreement or compact with another state, or with a foreign power." See 11 Pet: 1; 8 Wheat. 1 Bald. R. 60; 11 Pet. 185.

COMPANION, dom. rel. By 5 Edw. III., st. 5, c. 2, 1, it is declared to be high treason in any one who " doth compass or imagine the death of our lord the king, or our lady his companion," &c. See 2 Inst. 8, 9; 1 H. H. P. C. 124.

COMPANIONS, French law. This is a general term, comprehending all persons who compose the crew of a ship or vessel. Poth. Mar. Contr. n. 163.

COMPANY. An association of a number of individuals for the purpose of carrying on some legitimate business.

2. This term is not synonymous with partnership, though every such unincorporated compass is a partnership.

3. Usage has reserved this term to associations whose members are in greater number, their capital more considerable, and their enterprizes greater, either on account of their risk or importance.

4. When these companies are authorized by the government, they are known by the name of corporations. (q. v.)

5. Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm; as, A.B & Company. Vide, 12 Toull. n, 97; Mortimer on Commerce, 128. Vide Club; Corporation; Firm; Parties to actions; Partnership.

COMPARISON OF HANDWRITING, evidence. It is a general rule that comparison of hands is not admissible; but to this there are some exceptions. In some instances, when the antiquity of the writing makes it impossible for any living witness to swear that he ever saw the party write, comparison of handwriting, with documents known to be in his handwriting, has been admitted. For the general principle, see Skin. 579, 639; 6 Mod. 167; 1 Lord Ray. 39, 40; Holt. 291; 4 T. R. 497; 1 Esp. N. P. C. 14, 351; Peake's Evid. 69; 7 East, R. 282; B. N. P. 236; Anthon's N. P. 98, n.; 8 Price, 653; 11 Mass. R. 309 2 Greenl. R. 33 2 Johns. Cas. 211 1 Esp. 351; 1 Root, 307; Swift's Ev. 29; 1 Whart. Dig 245; 5 Binn. R. 349; Addison's R. 33; 2 M'Cord, 518; 1 Tyler, R. 4 6 Whart. R. 284; 3 Bouv. Inst. n. 3129-30. Vide Diploma.

TO COMPASS. To imagine; to contrive.

2. In England, to compass the death of the king is high treason. Bract. 1. 3, c. 2 Britt. c. 8; Mirror, c. 1, s. 4.

COMPATIBILITY. In speaking of public offices it is meant by this term to convey the idea that two of them may be held by the same person at the same time. It is the opposite of incompatibility. (q. v.)

COMPENSATIO CRIMINIS. The compensation or set-off of one crime against another; for example, in questions of divorce, where one party claims the divorce on the ground of adultery of his or her companion, the latter may show that the complainant has been guilty of the same offence, and having himself violated the contract, he cannot complain of its violation on the other side. This principle is incorporated in the codes of most civilized nations. 1 Ought. Ord. per tit. 214; 1 Hagg. Consist. R. 144; 1 Hagg. Eccl. R. 714; 2 Paige, 108; 2 Dev. & Batt. 64. See Condonation.

COMPENSATION, chancery practice. The performance of tbat which a court of chancery orders to be done on relieving a party who has broken a condition, which is to place the opposite party in no worse situation than if the condition had not been broken.

2. Courts of equity will not relieve from the consequences of a broken condition, unless compensation can be made to the opposite party. Fonb. c. 6; s. 51 n. (k) Newl. Contr: 251, et. seq.

3. When a simple mistake, not a fraud, affects a contract, but does not change its essence, a court of equity will enforce it, upon making compensation for the error, The principle upon wbich courts of equity act," says Lord Chancellor Eldon, "is by all the authorities brought to the true standard, that though the party had not a title at law, because he had not strictly complied with the terms so as to entitle him to an action, (as to time for instance,) yet if the time, though introduced, as some time must be fixed, where something is to be done on one side, as a consideration for something to be done on the other, is not the essence of the contract; a material object, to which they looked in the first conception of it, even though the lapse of time has not arisen from accident, a court of equity will compel the execution of the contract upon this ground, that one party is ready to perform, and that the other ma, have performance in substance if he will permit it." 13 Ves. 287. See 10 Ves. 505; 13 Ves. 73, 81, 426; 6 Ves. 675; 1 Cox, 59.

COMPENSATION, contracts. A reward for services rendered.

COMPENSATION, contracts, civil law. When two persons are equally indebted to each other, there takes place a compensation between them, which extinguishes both debts. Compensation is, therefore, a reciprocal liberation between two persons who are creditors and debtors to each other, which liberation takes place instead of payment, and prevents a circuity. Or it may be more briefly defined as follows; compensatio est debiti et crediti intter se contributio.

2. Compeasation takes places, of course, by the more operation of law, even unknown to the debtors the two debts are reciprocally extinguished, as soon as they exist simultaneously, to the, amount of their respective sums. Compensation takes place only between two debts, having equally for their object a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable. Compensation takes place, whatever be the cause of either of the debts, except in case, 1st. of a demand of restitution of a tbing of which the owner has been unjustly deprived; 2d. of a demand of restitution of a deposit and a loan for use; 3d. of a debt which has for its cause, aliments declared not liable to seizure. Civil Code of. Louis. 2203 to 2208. Compensation is of three kinds: 1. legal or by operation of law; 2. compensation by way of exception; and, 3. by reconvention. 8 L. R. 158; Dig. lib. 16, t. 2; Code, lib. 4, t. 31; Inst. lib. 4, t' 6, s. 30; Poth. Obl. partie. 3eme, ch. 4eme, n. 623; Burge on Sur., Book 2, c. 6, p. 181.

3. Compensation very nearly resembles the set-off (q. v.) of the common law. The principal difference is this, that a set-off, to have any effect, must be pleaded; whereas compensation is effectual without any such plea, only the balance is a debt. .2 Bouv. Inst. n. 1407.

COMPENSATION, crim. law; Compeusatio crimiuura, or recrimination (q. v.)

2. In cases of suits for divorce on the ground of adultery, a compensation of the crime hinders its being granted; that is, if the defendant proves that the party has also committed adultery, the defendant is absolved as to the matters charged in the libel of the plaintiff. Ought. tit. 214, Pl. 1; Clarke's Prax. tit. 115; Shelf. on Mar. & Div. 439; 1 Hagg. Cons. R. 148. See Condonation; Divorce.

COMPENSATION, remedies. The damages recovered for an injury, or the violation of a contract.. See Damages.

COMPERUIT AD DIEM, pleading. He appeared at the day. This is the name of a plea in bar to an action of debt on a bail-bond. The usual replication to this plea is nul tiel record: that there is not any such record of appearance of the said. For forms of this plea, vide 5 Wentw. 470; Lil. Entr. 114; 2 Chit. Pl. 527.

2. When the issue is joined on this plea, the trial is by the record. Vide 1 Taunt. 23; Tidd, 239. And see, generally, Com. Dig. Pleader, 2 W. 31; 7 B. & C. 478.

COMPETENCY, evidence. The legal fitness or ability of a witness to be heard on the trial of a cause. This term is also applied to written or other evidence which may be legally given on such trial, as, depositions, letters, account-books, and the like.

2. Prima facie every person offered is a competent witness, and must be received, unless Lis incompetency (q. v.) appears. 9 State Tr. 652.

3. There is a difference between competency and credibility. A witness may be competent, and, on examination, his story may be so contradictory and improbable that he may not be believed; on the contrary he may be incompetent, and yet be perfectly credible if he were examined.

4. The court are the sole judges of the competency of a witness, and may, for the purpose of deciding whether the witness is or is not competent, ascertain all the facts necessary to form a judgment. Vide 8 Watts, R. 227; and articles Credibility; Incompetency; Interest; Witness.

5. In the French law, by competency is understood the right in a court to exercise jurisdiction in a particular case; as, where the, law gives jurisdiction to the court when a thousand francs shall be in dispute, the court is competent if, the sum demanded is a thousand francs or upwards, although the plaintiff may ultimately recover less.

COMPETENT WITNESS. One who is legally qualified to be heard to testify in a cause. In Kentucky, Michigan, and Missouri, a will must be attested, for the purpose of passing lands, by competent witnesses; but if wbolly written by the testator, in Kentucky, it need not be so attested. See Attesting witness; Credible witness; Disinterested witness; Respectable witness; and Witness.

COMPETITORS, French law. Persons who compete or aspire to the same office, rank or employment. As an English word in common use, it has a much wider application. Ferriere, Dict. de Dr. h. t.

COMPILATION. A literary production, composed of the works of others, and arranged in some methodical manner.

2. When a compilation requires in its execution taste, learning, discrimination and intellectual labor, it 'is an object of copyright; as, for example, Bacon's Abridgment. Curt. on Copyr. 186.

COMPLAINANT. One who makes a complaint. A plaintiff in a suit in chancery is so called.

COMPLAINT, crim. law. The allegation made to a proper officer, that some person, whether known or unknown, has been guilty of a designated offence, with an offer to prove the fact, and a request that the offender may be punished.

2. To have a legal effect, the complaint must be supported by such evidence as shows that an offence has been committed, and renders it certain or probable that it was committed by the person named or described in the complaint.

COMPOS MENTIS. Of sound mind. See non compos mentis.

COMPOSITION, contracts. An agreement, made upon a sufficient consideration, between a debtor and creditor, by which the creditor accepts part of the debt due to him in satisfaction of the whole. Montagu on Compos. 1; 3 Co. 118; Co. Litt. 212, b; 4 Mod. 88; 1 Str. 426; 2 T. R. 24, 26; 2 Chit. R. 541, 564; 5 D. & R. 56 3 B. & C. 242; 1 R. & M. 188; 1 B. & A. 103, 440; 3 Moore's R. 11; 6 T. R. 263; 1 D. & R. 493; 2 Campb. R. 283; 2 M. & S. 120; 1 N. R. 124; Harr. Dig. Deed VIII.

2. In England, compositions were formerly allowed for crimes and misdemeanors, even for murder. But these compositions are no longer allowed, and even a qui tam action cannot be lawfully compounded. Bac. Ab. Actions qui tam, See 2 John. 405; 9 John. 251; 10 John. 118; 11 John. 474; 6 N. H.-Rep. 200.

COMPOSITION OF MATTER. In describing the subjects of patents, the Act of Congress of July 4, 1836, sect. 6, uses the words "composition of matter;" these words are usually applied to mixtures and chemical compositions, and in these cases it is enough that the compound is new. Both the composition and the mode of compounding may be considered as included in the invention, when the compound is new.

COMPOUND INTEREST. Interest allowed upon interest; for example, when a sum of money due for interest, is added to the principal, and then bears interest. This is not, in general, allowed. See Interest for money.

COMPOUNDER, in Louisiana. He who makes a composition. An amicable compounder is one who has undertaken by the agreement of the parties to compound or settle differences. between them. Code of Pract. of Lo. art. 444.

COMPOUNDING A FELONY, The act of a party immediately aggrieved, who agrees with a thief or other felon that he will not prosecute him, on condition that he

return to him the goods stolen, or who takes a reward not to prosecute. This is an offence punishable by fine and imprisonment. The mere retaking by the owner of stolen goods is no offence, unless the offender is not to be prosecuted. Hale, P. C. 546 1 Chit. Cr. Law, 4.

COMPROMISE, contracts. An agreement between two or more persons, who, to avoid a lawsuit, amicably settle their differences, on such terms as they can agree upon. Vide Com. Dig. App. tit. Compromise.

2. It will be proper to consider, 1. by whom the compromise must be made; 2. its form; 3. the subject of the compromise; 4. its effects.

3. It must be made by a person having a right and capacity to enter into the contract, and carry out his part of it, or by one having lawful authority from such person.

4. The compromise may be by parol or in writing, and the writing may be under seal or not: though as a general rule a partner cannot bind his copartner by deed, unless expressly authorized, yet it would seem that a compromise with the principal is an act which a partner may do in behalf of his copartners, and that, though under seal, it would conclude the firm. 2 Swanst. 539.

5. The compromise may relate to a civil claim, either as a matter of contract, or for a tort, but it must be of something uncertain; for if the debt be certain and undisputed, a payment of a part will not, of itself, discharge the whole. A claim connected with a criminal charge cannot be compromised. 1 Chit. Pr. 17. See Nev. & Man. 275.

6. The compromise puts an end to the suit, if it be proceeding, and bars any Suit which may afterwards be instituted. It has the effect of res judicata. 1 Bouv. Inst. n. 798-9.

7. In the civil law, a compromise is an agreement between two or more persons, who, wishing to settle their disputes, refer the matter, in controversy to arbitrators, who are so called because those who choose them give them full powers to arbitrate and decide what shall appear just and reasonable, to put an end -to the differences of which they are made the judges. 1 Domat, Lois Civ. lib. h. t. 14. Vide Submission; Ch. Pr. Index, h. t.

COMPROMISSARIUS, civil law. A name sometimes given to an arbitrator; because the parties to the submission usually agree to fulfil his award as a compromise.

COMPTROLLERS. There are officers who bear this name, in the treasury depart ment of the United States.

2. There are two comptrollers. It is the duty of the first to examine all accounts settled by the first and fifth auditors, and certify the balances arising thereon to the register; to countersign all warrants drawn by the secretary.of the treasury, other than those drawn on the requisitions of the sec retaries of the war and navy departments, which shall be warranted by law; to report to the secretary the official forms to be issued in the different offices for collecting the public revenues, and the manner and form of stating the accounts of the several persons employed therein; and to superintend the preservation of the public accounts, subject to his revision; and to provide for the payment of all moneys which may be collected. Act of March 3, 1817, sect. 8; Act of Sept. 2, 1789, s. 2 Act of March 7, 1822 .

3. To superintend the recovery of all debts due to the United States; to direct suits and legal proceedings, and to take such measures as may be authorized by the laws, to enforce prompt payment of all such debt; Act of March 3, 1817, sect. 10; Act of Sept. 2, 1789, s. 2; to lay before congress annually, during the first week of their session, a list of such officers as shall have failed in that year to make the settlement required by law; and a statement of the accounts in the treasury, war, and navy departments, which may have remained more than three years unsettled, or on which balauces appear to have been due more than three years prior to the thirteenth day of September, then last past; together with a statement of the causes which have prevented a settlement of the accounts, or the recovery of the balances due to the United States. Act of March 3, 1809, sect. 2.

4. Besides these, this officer is required to perform minor duties, which the plan of this work forbids to be enumerated here.

5. His salary is three thousand five hundred dollars per annum. Act of Feb. 20, 1804, s. 1.

6. The duties of the second comptroller are to examine all accounts settled by the second, third and fourth auditors, and certify the balances arising -thereon to the secretary of the department in which the expenditure has been incurred; to counter-sign all the warrants drawn by the secretary of the treasury upon the requisition of the secretaries of the war and navy departments, which shall be warranted by law; to report to the said secretaries the official forms to be issued in the different offices for disbursing public money in those departments, and the manner and form of keeping and stating the accounts of the persons employed therein, and to superintend the preservation of public accounts subject to his revision. His salary is three thousand dollars per annum. Act of March 3, 1817, s. 9 and 15; Act of May 7, 1822.

7. A similar officer exists in several of the states, whose official title is comptroller of the public accounts, auditor general, or other title descriptive of the duties of the office.

COMPULSION. The forcible inducement to au act.

2. Compulsion may be lawful or unlawful. 1. When a man is compelled by lawful authority to do that which be ought to do, that compulsion does not affect the validity of theact; as for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the grantor cannot object to it on the ground of compulsion. 2. But if the court compelled a party to do an act forbidden by law, or not having jurisdiction over the parties or the subject-matter, the act done by such compulsion would be void. Bowy. Mod. C. L. 305.

3. Compulsion is never presumed. Coercion. (q. v.)

COMPURGATOR. Formerly, when a person was accused of a crime, or sued in a civil action, he might purge himself upon oath of the accusation made against him, whenever the proof was not the most clear and positive; and if upon his oath he declared himself innocent, he was absolved.

2. This usage, so eminently calculated to encourage perjury by impunity, was soon found to be dangerous to the public safety. To remove this evil the laws were changed, by requiring that the oath should be administered with the greatest solemnity; but the form was soon disregarded, for the mind became. easily familiarized to those ceremonies which at first imposed on the imagination, and those who cared not to violate the truth did not hesitate to treat the form with contempt. In order to give a greater weight to the oath of the accused, the law was again altered so as to require that the accused should appear before the judge with a certain number of his neighbors, relations or friends, who should swear that they believed the accused had sworn truly. This new species of witnesses were called compurgators.

3. The number of compurgators varied according to the nature of the charge and other circumstances. Encyclopedie, h. t.. Vide Du Cange, Gloss. voc. Juramentum; Spelman's Gloss. voc. Assarth; Merl. Rep. mot Conjurateurs.

4. By the English law, when a party was sued in debt or simple contract, detinue, and perhaps some other forms of action, the defendant might wage his law, by producing eleven compurgators who would swear they believed him on his oath, by which he discharged himself from the action in certain cases. Vide 3 Bl. Com. 341-848; Barr. on the Stat. 344; 2 Inst. 25; Terms de la Ley; Mansel on Demurrer, 130, 131 Wager of Law.

COMPUTATION counting, calculation. It is a reckoning or ascertaining the number of any thing.

2. It is sometimes used in the common law for the true reckoning or account of time. Time is computed in two ways; first, naturally, counting years, days and hours; and secondly, civilly, that is, that when the last part of the time has once commenced, it is considered as accomplished. Savig. Dr. Rom. 182. See Infant; Fraction. For the computation of a year, see Com. Dig. Ann; of a mouth, Com. Dig. Temps. A; 1 John. Cas. 100 15 John. R. 120; 2 Mass. 170, n.; 4 Mass. 460; 4 Dall. 144; 3 S. & R. 169; of a day, vide Day.; and 3, Burr 1434; 11 Mass. 204; 2 Browne, 18; Dig. 3, 4, 5; Salk. 625; 3 Wils. 274.

3. It is a general rule that when an act is to be done within a certain time, one day is to be taken inclusively, and one exclusively. Vide Lofft, 276; Dougl. 463; 2 Chit. Pr. 69; 3 Id. 108, 9; 3 T. R. 623; 2 Campb. R. 294; 4 Man. and Ryl. 300, n. (b) 5 Bingh. R. 339; S. C. 15, E. C. L. R. 462; 3 East, R. 407; Hob. 139; 4 Moore, R. 465; Har. Dig. Time, computation of; 3 T. R. 623; 5 T. R. 283; 2 Marsh. R. 41; 22 E. C. L. R. 270; 13 , E, C. L. R. 238; 24 E. C. L. R. 53; 4 Wasb. C. C. R. 232; 1 Ma-son, 176; 1 Pet. 60; 4 Pet. 349; 9 Cranch, 104; 9 Wheat. 581. Vide Day; Hour; Month; Year.

CONCEALMENT, contracts. The unlawful suppression of any fact or circumstance, by one of the partis to a contract, from the other, which in justice ought to be made known. 1 Bro. Ch. R. 420; 1 Fonbl. Eq. B. 1, c. 3, 4, note (n); 1 Story, Eq. Jur. 207.

2. Fraud occurs when one person substantially misrepresents or conceals a material fact peculiarly within his own knowledge, in consequence of which a delusion exists; or uses a device naturally calculated to lull the suspicions of a careful man, and induce him to forego inquiry into a matter upon which the other party has information, although such information be not exclusively within his reach. 2 Bl. Com. 451; 3 Id. 166; Sugd. Vend. 1 to 10; 1 Com. Contr. 38; 3 B. & C. 623; 5 D. & R. 490; 2 Wheat. 183; 11 Id. 59; 1 Pet. Sup. C. R. 15, 16. The party is not bound, however, to disclose patent defects. Sugd. Vend. 2.

3. A distinction has been made between the concealment of latent defects in real and personal property. For example, the concealment by an agent that a nuisance existed in connexion with a house the owner had to hire, did not render the lease void. 6 IV. & M. 358. 1 Smith, 400. The rule with regard to personalty is different. 3 Camp. 508; 3 T. R. 759.

4. In insurances, where fairness is so essential to, the contract, a concealment which is only the effect of accident, negligence, inadvertence, or mistake, if material, is equally fatal to the contract as if it were intentional and fraudulent. 1 Bl. R. 594; 3 Burr. 1909.

The insured is required to disclose all the circumstances within his own knowledge only, which increase the risk. He is not, however, bound to disclose general circumstances which apply to all policies of a particular description, notwithstanding they may greatly increase the risk. Under this rule, it has been decided that a policy is void, which was obtaineed by the concealment by the assured of the fact that he had heard that a vessel like his was taken. 2 P. Wms. 170. And in a case where the assured had information of "a violent storm" about eleven hours after his vessel had sailed, and had stated only that "there had been blowing weather and severe storms on the coast after the vessel had sailed" but without any reference to the particular storm it was decided that this was a concealment, which vitiated the policy. 2 Caines R. 57. Vide 1 Marsh. Ins: 468; Park, Ins. 276; 14 East, R. 494; 1 John. R. 522; 2 Cowen, 56; 1 Caines, 276; 3 Wash. C. C. Rep. 138; 2 Gallis. 353; 12 John. 128.

5. Fraudulent concealment avoids the contract. See, generally, Verpl. on Contr. passim; Bouv. Inst. Index, h. t.; Marsh. Ins. B. 1, c. 9; 1 Bell's Com. B. 2, pt. 3, c. 15 s. 3, 1; 1 M. & S. 517; 2 Marsh. R. 336.

CONCESSI, conveyancing. This is a Latin word, signifying, I have granted. It was frequently used when deeds and other conveyances were written in Latin.. It is a word of general extent, and is said to amount to a grant, feoffment, lease, release, and the like. 2 Saund. 96; Co. Lift. 301, 302; Dane's Ab. Index, h. t.; 5 Whart. R. 278.

2. It has been held that this word in a feoffment or fine implies no -warranty. Co. Lit. 384 Noke's Case, 4 Rep. 80; Vaughan's Argument in Hayes v. Bickoxsteth, Vaughan, 126; Butler"s Note, Co. Lit. 3 84. But see 1 Freem. 339, 414.

CONCESSION. A grant. This word is frequently used in this sense when applied to grants made by the French and Spanish governments in Louisiana.

CONCESSIMUS. A Latin word, which signifies, we have granted. This word creates a covenant in law, for the breach of which the grantors may be jointly sued. It imports no warranty of a freehold, but as in case of a lease for years. Spencer's Case, 5 Co. Rep. 16 Brown v. Heywood, 3 Keble, Rep. 617 Bac. Ab. Covenant, B. See Bac. Ab. officers, &c. E.

CONCESSOR. A grantor; one who makes a concession to another.

CONCILIUM. A day allowed to a defendant to make his defence; an imparlance, 4 Bl. Com. 356, n.; 3 T. R. 530.

CONCILIUM REGIS. The name of a tribunal which existed in England during the times of Edward I. and Edward H., composed of the judges and sages of the law. To them were referred cases of great difficulty. Co. Litt. 804.

CONCLAVE. An assembly of cardinals for the purpose of electing a pope; the place where the assembly is held is also called a conclave. It derives this name from the fact that all the windows and doors are looked, with the exception of a single panel, which admits a gloomy light.

CONCLUSION, practice. Making the last argument or address to the court or jury. The party on whom the onus probandi is cast, in general has the conclusion.

CONCLUSION, remedies. An estoppel; a bar; the act of a man by which he has confessed a matter or thing which he can no longer deny; as, for example, the sheriff is concluded by his return to a writ, and therefore, if upon a capias he return cepi corpus, he cannot afterwards show that he did not arrest the defendant, but is concluded by his return. Vide Plowd. 276, b; 3 Tho. Co. Litt. 600.

CONCLUSION TO THE COUNTRY, pleading. The tender of. an issue to be tried by a jury is called the conclusion to the country.

2. This conclusion is in the following words, when the issue is tendered by the defendant: " And of this the said C D puts himself upon the country." When it is tendered by the plaintiff, the formula is as follows: " And this the said A B prays may be inquired of by the country." It held, however, that there is no material difference between these two modes of expression, and that, if ponit se, be substituted for petit quod inquiratur, or vice versa, the mistake is unimportant. 10 Mod. 166.

3. When there is an affirmative on one side, and a negative on the other, or vice versa, the conclusion should be to the country. T. Raym. 98; Carth. 87; 2 Saund. 189; 2 Burr. 1022. So it is, though the affirmative and negative be not in express words, but only tantamount thereto. Co. Litt. 126, a; Yelv. 137; 1 Saund. 103; 1 Chit. Pl. 592; Com. Dig. Pleader, E 32.

CONCLUSIVE. What puts an end to a thing. A conclusive presumption of law, is one which cannot be contradicted even by direct and positive proof. Take, for example, the presumption that an infant is incapable of judging whether it is or is not against his interest; When infancy is pleaded and proved, the plaintiff cannot show that the defendant was within one day of being of age when the contract was made, and perfectly competent to make a contract. 3 Bouv. Inst. n. 3061.

CONCLUSIVE EVIDENCE. That which cannot be contradicted by any other evidence,; for example, a record, unless impeached for fraud, is conclusive evidence between the parties. 3 Bouv. Inst. n. 3061-62.

CONCLUSUM, intern. law. The form of an acceptance or conclusion of a treaty; as, the treaty was ratified purely and simply by a conclusum. It is the name of a decree of the Germanic diet, or of the aulic council.

CONCORD, estates, conveyances, practice. An agreement or supposed agreement between the parties in levying a fine of lands, in which the deforciant (or he who keeps the other out of possession,) acknowledges that the lands in question, are the right of the complainant;. and from the acknowledgment or recognition of right thus made, the party who levies the fine is called the cognisor, and the person to whom it is levied, the cognisee. 2 Bl. Com. 350; Cruise, Dig. tit. 35, c. 2, s. 33; Com. Dig. Fine, E 9.

CONCORDATE. A convention; a pact; an agreement. The term is generally confined to the agreements made between independent government's; and, most usually applied to those between the pope and some prince.

CONCUBINAGE. This term has two different significations; sometimes it means a species of marriage which took place among the ancients, and which is yet in use in some countries. In this country it means the act or practice of cobabiting as man and woman, in sexual commerce, without the authority of law, or a legal marriage. Vide 1 Bro. Civ. Law, 80; Merl. Rep. b. t.; Dig. 32, 49, 4; Id. 7, 1, 1; Code, 5, 27, 12.

CONCUBINE. A woman who cohabits with a man as his wife, without being married.

TO CONCUR. In Louisiana, to concur, signifies, to claim a part, of the estate of an insolvent along with other claimants; 6 N. S. 460; as " the wife concurs with her husband's creditors, and claims a privilege over them."

CONCURRENCE, French law. The equality of rights, or privilege which several persons-have over the same thing; as, for example, the right which two judgment creditors, Whose judgments were rendered at the same time, have to be paid out of the proceeds of real estate bound by them. Dict. de Jur. h. t.

CONCURRENT. Running together; having the same authority; thus we say a concurrent consideration occurs in the case of mutual promises; such and such a court have concurrent jurisdiction; that is, each has the same jurisdiction.

CONCUSSION, civ. law. The unlawful forcing of another by threats of violence to give something of value. It differs from robbery in this, that in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Hein. Lec. El, 1071

CONDEDIT, eccl. law. The name of a plea, entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Eccl. Rep. 438; 6 Eng. Eccl. Rep. 431.

CONDELEGATES. Advocates who have been appointed judges of the bigh court of delegates are so called. Shelf. on Lun. 310.

CONDEMNATION, mar. law. The sentence or judgment of a court of competent jurisdiction that a ship or vessel taken as a prize on the high seas, was liable to capture, and was properly and legally captured.

2. By the general practice of the law of nations, a sentence of condemnation is, at present, generally deemed necessary in order to divest the title of a vessel taken as a prize. Until this has been done the original owner may regain his property, although the ship may have been in possession of the enemy twenty-four hours, or carried infra praesidia. 1 Rob. Rep. 134; 3 Rob. Rep. 97, n.; Carth. 423; Chit. Law of Nat. 99, 100; 10 Mod. 79; Abb. on Sh. 14; Wesk. on Ins. h. t.; Marsh. on Ins. 402. A sentence of condemnation is generally binding everywhere. Marsh. on Ins. 402.

3. The term condemnation is also applied to the sentence which declares a ship to be unfit for service; this sentence and the grounds of it may, however, be re-examined and litigated by parties interested in disputing it. 5 Esp. N. P. C. 65; Abb. on Shipp. 4.

CONDEMNATION, civil law. A sentence of judgment which condemns some one to do, to give, or to pay something; or which declares that his claim or pretensions are unfounded. This word is also used by common lawyers, though it is more usual to say conviction, both in civil and criminal cases. It is a maxim that no man ought to be condemned unheard, and without the opportunity of being heard.

CONDICTIO INDEBITI, civil law. When the plaintiff has paid to the defendant by mistake what he was not bound to pay either in fact or in law, he may recover it back by an action called condictio indebiti. This action does not lie, 1. if the sum was due ex cequitate, or by a natural obligation; 2. if he who made the payment knew that nothing was due, for qui consulto dat quod non debetat, prcesumitur donare. Vide Quasi contract.

CONDICTION, Lat. condictio. This term is used in the civil law in the same sense as action. Condictio certi, is an action for the recovery of a certain thing, as our action of replevin, condictio incerti, is an action given for the recovery of an uncertain thing. Dig. 12 , 1.

CONDITION, contracts, wills. In its most extended signification, a condition is a clause in a contract or agreement which has for its object to suspend, to rescind, or to modify the principal obligation; or in case of a will, to suspend, revoke, or modify the devise or bequest. 1 Bouv. Inst. n. 730. It ii in fact by itself, in many cases, an agreement; and a sufficient foundation as an agreement in writing, for a bill in equity, praying for a specific performance. 2 Burr. 826. In pleading, according to the course of the common Iaw, the bond and its condition are to some intents and purposes, regarded as distinct things. 1 Saund. Rep. by Wms. 9 b. Domat has given a definition of a condition, quoted by Hargrave, in these words: "A condition is any portion or agreement which regulates what the parties have a mind should be done, if a case they foresee should come to pass." Co. Litt. 201 a.

2. Conditions sometimes suspend the obligation; as, when it is to have no effect until they are fulfilled; as, if I bind myself to pay you one thousand dollars ou condition that the ship Thomas Jefferson shall arrive in the United States from Havre; the contract is suspended until the arrival of the ship.

3. The condition sometimes rescinds the contract; as, when I sell you my horse, on condition that he shall be alive on the first day of January, and he dies before that time.

4. A condition may modify the contract; as, if I sell you two thousand bushels of corn, upon condition that my crop shall produce that much, and it produces only fifteen hundred bushels.

5. In a less extended acceptation, but in a true sense, a condition is a future and uncertain event, on the existence or non-existence of which is made to depend, eitther the accomplishment, the modification, or the rescission of an obligation or testamentary disposition.

6. There is a marked difference between a condition and a limitation. When a in is given generally, but the gift may defeated upon the happening of an uncertain event, the latter is called a condition but when it is given to be enjoyed until the event arrives, it is a limitation. See Limitation; Estates. It is not easy to say when a condition will be considered a covenant and when not, or when it will be holden to be both. Platt on Cov. 71.

7. Events foreseen by conditions are of three kinds. Some depend on the acts of the persons who deal together, as, if the agreement should provide that a partner should not join another partnership. Others are independent of the will of the parties, as, if I sell you one thousand bushels of corn,. on condition that my crop shall not be destroyed by a fortuitous event, or act of God. Some depend in part on the contracting parties and partly on the act of God, as, if it be provided that such merchandise shall arrive by a certain day.

8. A condition may be created by inserting the very word condition, or on condition, in the deed or agreement; there are, however, other words that will do so as effectually, as proviso, if, &c. Bac. Ab. Conditions, A.

9. Conditions are of various kinds; 1. as to their form, they are express or implied. This division is of feudal origin. 2 Woodes. Lect. 138. 2. As to their object, they are lawful or unlawful; 3. as to the time when they are to take effect, they are precedent or subsequent; 4. as to their nature, they are possible or impossible 5. as to their operation, they are positive or negative; 6. is to their divisibility, they are copulative or disjunctive; 7. as to their agreement with the contract, they are consistent or repugnant; 8. as to their effect, they are resolutory or suspensive. These will be severally considered.

10. An express condition is one created by express words; as for instance, a condition in a lease that if the tenant shall not pay the rent at the day, the lessor may reenter. Litt. 328. Vide Reentry.

11. An implied condition is one created by law, and not by express words; for example, at common law, the tenant for life holds upon the implied condition not to commit waste. Co. Litt. 233, b.

12 . A lawful or legal condition is one made in consonance with the law. This must be understood of the law as existing at the time of making the condition, for no change of the law can change the force of the condition. For example, a conveyance was made to the grantee, on condition that he should not aliens until be reached the age of twenty-five years. Before he acquired this age be aliened, and made a second conveyance after he obtained it; the first deed was declared void, and the last valid. When the condition was imposed, twenty-five was the age of majority in the state; it was afterwards changed to twenty-one. Under these circumstances the condition was held to be binding. 3 Miss., R. 40.

13. An unlawful or illegal condition is one forbidden by law. Unlawful conditions have for their object, lst. to do something malum in se, or malum prohibitum; 2d. to omit the performance of some duty required by law 3d. to encourage such act or

omission. 1 P. Wms. 189. When the law prohibits, in express terms, the transaction in respect to which the condition is made, and declares it void, such condition is then void; 3 Binn. R. 533; but when it is prohibited, without being declared void, although unlawful, it is not void. 12 S. @ R. 237. Conditions in restraint of marriage are odious, and are therefore held to the utmost rigor and strictness. They are contrary to sound policy, and by the Roman law were all void. 4 Burr. Rep. 2055; 10 Barr. 75, 350; 3 Whart. 575.

14. A condition precedent is one which must be performed before the estate will vest, or before the obligation is to be performed. 2 Dall. R. 317. Whether a condition shall be considered as precedent or subsequent, depends not on the form or arrangement of the words, but on the manifest intention of the parties, on the fair construction of the contract. 2 Fairf. R. 318; 5 Wend. R. 496; 3 Pet, R. 374; 2 John. R. 148; 2 Cain es, R. 352; 12 Mod. 464; 6 Cowen, R. 627 9 Wheat. R. 350; 2 Virg. Cas. 138 14 Mass. R. 453; 1 J. J. Marsh. R. 591 6 J. J. Marsh. R. 161; 2 Bibb, R. 547 6 Litt. R. 151; 4 Rand. R. 352; 2 Burr. 900

15. A subsequent condition is one which enlarges or defeats an estate or right, already created. A conveyance in fee, reserving a life estate in a part of the land, and made upon condition that the grantee shall pay certain sums of money at divers times to several persons, passes the fee upon condition subsequent. 6 Greenl. R. 106. See 1 Burr. 39, 43; 4 Burr. 1940. Sometimes it becomes of great importance to ascertain whether the condition is precedent or subsequent. When a precedent condition becomes impossible by the act of God, no estate or right vests; but if the condition is subsequent, the estate or right becomes absolute. Co. Litt. 206, 208; 1 Salk. 170.

16. A possible condition is one which may be performed, and there is nothing in the laws of nature to prevent its performance.

17. An impossible condition is one which cannot be accomplished according to the laws of nature; as, to go from the United States to Europe in one day.; such a condition is void. 1 Swift's Dig. 93; 5 Toull. n. 242-247. When a condition becomes impossible by the act of God, it either vests the estate, or does not, as it is precedent or subsequent: when it is the former, no estate vests when the latter, it becomes absolute. Co. Litt. 206, a, 218, a; 3 Pet. R. 374; 1 Hill. Ab. 249. When the performance of the condition becomes impossible by the act of the party who imposed it, the estate is rendered absolute. 5 Rep. 22; 3 Bro. Parl. Cas. 359. Vide 1 Paine's R. 652; Bac. Ab. Conditions, M; Roll. Ab. 420; Co. Litt. 206; 1 Rop. Leg. 505; Swinb. pt. 4, s. 6; Inst. 2, 4, 10; Dig. 28, 7, 1; Id. 44, 7, 31; Code 6, 25, 1; 6 Toull. n. 486, 686 and the article Impossibility.

18. A positive condition requires that the event contemplated shall happen; as, If I marry. Poth. Ob. part 2, c. 3, art. 1, 1. 19. A negative condition requires that the event contemplated shall not happen as If I do not marry. Potb. Ob. n. 200.

20. A copulative condition, is one of several distinct-matters, the whole of which are made precedent to the vesting of an estate or right. In this case the entire condition must be performed, or the estate or right can never arise or take place. 2 Freem. 186. Such a condition differs from a disjunctive condition, which gives to the party the right to perform the one or the other; for, in this case, if one becomes impossible by the act of God, the whole will, in general, be excused. This rule, however, is not without exception. 1 B. & P. 242; Cro. Eliz. 780; 5 Co. 21; 1 Lord Raym. 279. Vide Conjunctive; Disjunctive.

21. A disjunctive condition is one which gives the party to be affected by it, the right to perform one or the other of two alternatives.

22. A consistent condition is one which agrees with other parts of the contract.

23. A repugnant condition is one which is contrary to the contract; as, if I grant to you a house and lot in fee, upon condition that you shall not aliene, the condition is repugnant and void, as being inconsistent with the estate granted. Bac. Ab. Conditions L; 9 Wheat. 325; 2 Ves. jr. 824.

24. A resolutory condition in the civil law is one which has for its object, when accomplished the revocation of the principal obligation. This condition does not suspend either the existence or the execution of the obligation, it merely obliges the creditor to return what he has received.

25. A suspensive condition is one which susends the fulfilment of the obligation until it has been performed; as, if a man bind himself to pay one -hundred dollars, upon condition that the ship Thomas Jefferson shall arrive from Europe. The obligation, in this case, is suspended until the arrival of the ship, when the condition having been performed, the obligation becomes absolute , and it is no longer conditional. A suspensive condition is in fact a condition precedent.

26. Pothier further divides conditions into potestative, casual and mixed.

27. A potestative condition is that which is in the power of the person in whose favor it is contracted; as, if I engage to give my neighbor a sum of money, in case he outs down a tree which obstructs my. prospect. Poth. Obl. Pt. 2, c. 3, art. 1, 1.

28. A casual condition is one which depends altogether upon chance, and not in the power of the creditor, as the following: if I have children; if I have no children; if such a vessel arrives in the United States, &c. Poth. Ob. n. 201.

29. A mixed condition is one which depends on the will of the creditor and of a third person; as, if you marry my cousin. Poth. Ob. n. 201. Vide, generally, Bouv. Inst. Index, h. t.

CONDITION, persons. The situation in civil society which creates certain relations between the individual, to whom it is applied, and one or more others, from which mutual rights and obligations arise. Thus the situation arising from marriage gives rise to the conditions of husband and wife that of paternity to the conditions of father and child. Domat, tom. 2, liv. 1, tit. 9, s. 1, n. 8.

2. In contracts every one is presume to know the condition of the person with whom he deals. A man making a contract with an infant cannot recover against him for a breach of the contract, on the ground that he was not aware of his condition.

CONDITIONAL OBLIGATION. One which is superseded by a condition under which it was created and which is not yet accomplished. Poth. Obl. n. 176, 198.

CONDITIONS OF SALE, contracts. The terms upon which the vendor of property by auction pro poses to sell it; the instrument containing these terms, when reduced to writing or printing, is also called the conditions of sale.

2. It is always prudent and advisable that the conditions of sale should be printed and exposed in the auction room; when so done, they are binding ou both parties, and nothing that is said at the time of sale, to add to or vary such printed conditions, will be of any avail. 1 H. Bl. 289 12 East, 66 Ves. 330; 15 Ves. 521; 2 Munf. Rep. 119; 1 Desauss. Ch. Rep. 573; 2 Desauss. Ch. R. 320; 11 John. Rep. 555; 3 Camp. 285. Vide forms of conditions of sale in Babington on Auctions, 233 to 243; Sugd. Vend. Appx. No. 4. Vide duction; ductioneer; Puffer.

CONDONATION. A term used in the canon law. It is a forgiveness by the husband of his wife, or by a wife of her husband, of adultery committed, with an implied condition that the injury shall not be repeated, and that the other party shall be treated with conjugal kindness. 1 Hagg. R. 773; 3 Eccl. Rep. 310. See 5 Mass. 320 5 Mass. 69; 1 Johns. Ch. R. 488.

2. It may be express or implied, as, if a husband, knowing of his wife's infidelity, cohabit with her. 1 Hagg. Rep. 789; 3 Eccl. R. 338.

3. Condonation is not, for many rea sons, held so strictly against a wife as against a husband. 3 Eccl. R. 830 Id. 341, n.; 2 Edw. R. 207. As all condonations, by operation of law, are expressly or impliedly conditional, it follows that the effect is taken off by the repetition of misconduct; 3 Eccl. R. 329 3 Phillim. Rep. 6; 1 Eccl. R. 35; and cruelty revives condoned adultery. Worsley v. Worsley, cited in Durant v. Durant, 1 Hagg. Rep. 733; 3 Eccl. Rep. 311.

4. In New York, an act of cruelty alone, on the part of the husband, does not revive condoned adultery, to entitle the wife to a divorce. 4 Paige's R. 460. See 3 Edw. R. 207.

5. Where the parties have separate beds, there must, in order to found condonation, be something of matrimonial intercourse presumed; it does not rest merely on the wife's not. withdrawing herself. 3 Eccl. R. 341, n.; 2 Paige, R. 108.

6. Condonation is a bar to a sentence of divorce. 1 Eccl. Rep. 284; 2 Paige, R. 108. In Pennsylvania, by the Act of the 13th of March, 1815, 7, 6 Reed's Laws of Penna. 288, it is enacted that " in any suit or action for divorce for cause of adultery, if the defendant shall allege and prove that the plaintiff has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the plaintiff (if the husband) allowed of his wife's prostitutions, or received hire, for them, or exposed his wife to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence, and perpetual bar against the same." The same rule may be found, perhaps, in the codes of most civilized countries. Villanova Y Manes, Materia Criminal Forense, Obs. 11, c. 20, n. 4. Vide, generally, 2 Edw. 207; Dev. Eq. R. 352 4 Paige, 432; 1 Edw. R. 14; Shelf. on M. & D. 445; 1 John. Ch. R. 488 4 N. Hamp. R. 462; 5 Mass. 320.

CONDUCT, law of nations. This term is used in the phrase safe conduct, to signify the security given, by authority of the government, under the great seal, to a stranger, for his quietly coming into and passing out of the territories over which it has jurisdiction. A safe conduct differs from a passport; the former is given to enemies, the latter to friends or citizens.

CONDUCT MONEY. The money advanced to a witness who has been subpoenaed to enable him to attend a trial, i's so called. CONDUCTOR OPERARUM, civil law. One who undertakes, for a reward, to perform a job or piece of work for another. See Locator Operis.

CONFEDERACY, intern. law. An agreement between two or more states or nations, by which they unite for their mutual protection and good. This term is applied to such

agreement between two independent nations, but it is used to signify the union of different states of the same nation, as the confederacy of the states.

2. The original thirteen states, in 1781, adopted for their federal government the " Articles of confederation and perpetual union between the States," which continued in force until the present constitution of the United States went into full operation, on the 30th day of April, 1789, when president Washington was sworn into office. Vide 1 Story on the Const. B. 2, c. 3 and 4.

CONFEDERACY, crim. law. An agreement between two or more persons to do an unlawful act, or an act, which though not unlawful in itself, becomes so by the confederacy. The technical term usually employed to signify this offence, is conspiracy. (q. v.)

CONFEDERACY, equity pleading. The fourth part of a bill in chancery usually charges a confederacy; this is either general or special.

2. The first is by alleging a general charge of confederacy between the defendants and other persons to injure or defraud the plaintiff. The common form of the charge is, that the defendants, combining and confederating together, to and with divers other persons as yet to the plaintiff unknown, but whose names, when discovered, he prays may be inserted in the bill, and they be made parties thereto, with proper and apt words to charge them with the premises, in order to injure and oppress the plaintiff in ti e premises, do absolutely refuse, &c. Mitf. Eq. Pl. by Jeremy, 40; Coop. Eq. Pl. 9 Story, Eq. Pl. 29; 1 Mont. Eq. Pl. 77; Barton, Suit in Eq. 33; Van Heyth. Eq. Drafts, 4.

3. When it is intended to rely on a confederacy or combination as a ground of equitable jurisdiction, the confederacy must be specially charged to justify an assumption of jurisdiction. Mitf. Eq. Pl. by Jeremy, 41; Story, Eq. Pl. 30.

4. A general allegation of confederacy is now considered as mere form. Story, Eq. Pl. 29; 4 Bouv. Inst. n. 4169.

CONFEDERATION, government. The name given to that form of government which the American colonies, on shaking off the British yoke, devised for their mutual safety and government.

2. The articles of confederation, (q. v.) were finally adopted on the 15th of November, 1777, and with the exception of Maryland, which, however, afterwards also agreed to them, were speedily adopted by the United States, and by which they were formed into a federal bod y, and went into force on the first day of March, 1781; 1 Story Const. 225; and so remained until the adoption of the present constitution, which

acquired the force of the supreme law of the land on the first Wednesday of March, 1789. 5 Wheat. R. 420. Vide Articles of Confederation.

CONFERENCE, practice, legislation. In practice, it is the meeting of the parties or their attorneys in a cause, for the purpose of endeavoring to settle the same.

2. In legislation, when the senate and house of representatives cannot agree on a bill or resolution which it is desirable should be passed, committees are appointed by the two bodies respectively, who are called committees of confrence, and whose duty it is, if possible, to -reconcile the differences between them.

3. In the French law, this term is used to signify the similarity and comparison between two laws, or two systems of law; as the Roman and the common law. Encyclopedie, h. t.

4. In diplomacy, conferences are verbal explanations between ministers of two nations at least, for the purpose of accelerating various difficulties and delays, necessarily attending written communications.

CONFESSION, crim. law, evidence. The voluntary declaration made by a person who has committed a crime or misdemeanor, to another, of the agency or participation which he had in the same.

2. When made without bias or improper influence, confessions are admissible in evidence, as the highest and most satisfactory proof: because it is fairly presumed that no man would make such a confession against himself, if the facts confessed were not true but they are excluded, if liable to the of having been unfairly obtained.

3. Confessions should be received with great caution, as they are liable to many objections. There is danger of error from the misapprehension of witnesses, the misuse of words, the failure of a party to express his own meaning, the prisoner being oppressed by his unfortunate situation, and influenced by hope, fear, and sometimes a worse motive, to male an untrue confession. See the case of the two Boorns in Greenl. Ev . 214, note 1; North American Review, vol. 10, p. 418; 6 Carr. & P. 451; Joy on Confess. s. 14, p. 100; and see1 Chit. Cr. Law, 85.

4. A confession must be made voluntarily, by the party himself, to another person. 1. It must be voluntary. A confession, forced from the mind by the flattery of hope, or the torture of fear, comes in so questionable a shape, when it is to be considered as evidence of guilt, that Lo credit ought to be given to it. 1 Leach, 263. This is the principle, but what amounts to a promise or a threat, is not so easily defined. Vide 2 East, P. C. 659; 2 Russ. on Cr. 644 4 Carr. & Payne, 387; S. C. 19 Eng. Com. L. Rep.

434; 1 Southard, R. 231 1 Wend. R. 625; 6 Wend. R. 268 5 Halst. R. 163 Mina's Trial, 10; 5 Rogers' Rec. 177 2 Overton, R. 86 1 Hayw. (N. C.) R, 482; 1 Carr. & Marsh. 584. But it must be observed that a confession will be considered as voluntarily made, although it was made after a promise of favor or threat of punishment, by a person not in authority, over the prisoner. If, however, a person having such authority over him be present at the time, and he express no dissent, evidence of such confession cannot be given. 8 Car. & Payne, 733.

5. - 2. The confession must be made by the party to be affected by it. It is evidence only against him. In case of a conspiracy, the acts of one conspirator are the acts of all, while active in the progress of the conspiracy, but after it is over, the confession of one as to the part he and others took in the crime, is not evidence against any but himself. Phil. Ev. 76, 77; 2 Russ. on Cr. 653.

6. - 3. The confession must be to another person. It may be made to a private individual, or under examination before a magistrate. The whole of the confession must be taken, together with whatever conversation took place at the time of the confession. Roscoe's Ev. N. P. 36; 1 Dall. R. 240 Id. 392; 3 Halst. 27 5 .2 Penna. R. 27; 1 Rogers' Rec. 66; 3 Wheeler's C. C. 533; 2 Bailey's R. 569; 5 Rand. R. 701.

7. Confession, in another sense, is where a prisoner being arraigned for an offence, confesses or admits the crmie with which he is charged, whereupon the plea of guilty is entered. Com Dig. Indictment, K; Id. Justices, W 3; Arch. Cr. Pl. 1 2 1; Harr. Dig. b. t.; 20 Am. Jur. 68; Joy on Confession.

8. Confessions are classed into judicial and extra judicial. Judicial confessions are those made before a magistrate, or in court, in the due course of legal proceedings; when made freely by the party, and with a full and perfect knowledge of their nature and consequences, they are sufficient to found a conviction. These confessions are such as are authorized by a statute, as to take a preliminary examination in writing; or they are by putting in the plea of guilty to an indictment. Extra judicial confessions are those wbich are made by the part elsewhere than before a magistrate or in open court. 1 Greenl. Ev. 216. See, generally, 3 Bouv. Inst. n. 3081-2.

CONFESSIONS AND AVOIDANCE, pleadings. Pleas in confession and avoidance are those which admit the averments in the plaintiff Is declaration to be true, and allege new facts which obviate and repel their legal effects.

2. These pleas are to be considered, first, with respect to their division. Of pleas in confession and avoidance, some are distinguished (in reference to their subjectmatter) as pleas in justification or excuse, others as pleas in discharge. Com. Dig. Pleader, 3 M 12. The pleas of the former class, show some justification or excuse of the matter

charged in the declaration; of the latter, some discharge or release of that matter. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful; the effect of the latter, to show that though he had once a right of action, it is discharged or released by some matter subsequent. Of those in justification or excuse, the plea of son assault demesne is an example; of those in discharge, a release. This division applies to pleas only; for replications and other subsequent pleadings in confession and avoidance, are not subject to such Classification;

3. Secondly, they are to be considered in respect to their form. As to their form, the reader is referred to Stephens on Pleading, 72, 79, where forms are given. In common with all pleadings whatever, which do not tender issue, they always conclude with a verification and prayer of judgment.

4. Thirdly, with respect to the quality of these pleadings, it is a rule that every pleading by way of confession and avoidance must give color. (q. v.) And see, generally, 1 Chit. Pl. 599; 2 Chit. Pl, 644; Co. Litt. 282, b; Arch. Civ. Pl. 215; Dane's Ab. Index, ii. t.; 3 Bouv. Inst. n. 2921, 293 1.

CONFESSOR, evid. A priest of some Christian sect, who receives an account of the sins of his people, and undertakes to give them absolution of their sins.

2. The general rule on the subject of giving evidence of confidential communications is, that the privilege is confined to counsel, solicitors, and attorneys, and the interpreter between the counsel and the client. Vide Confidential Communications. Contrary to this general rule, it has been decided in New York, that a priest of the Roman Catholic denomination could not be compelled to divulge secrets which he had received in auricular confession. 2 City Hall Rec. 80, n.; Joy on Conf. 4, p. 49. See Bouv. Inst. n. 3174 and note.

CONFIDENTIAL COMMUNICATIONS, evidence. Whatever is communicated professedly by a client to his counsel, solicitor, or attorney, is considered as a confidential communication.

2. This the latter is not permitted to divulge, for this is the privilege of the client and not of the attorney.

3. The. rule is, in general, strictly confined to counsel, solicitors or attorneys, except, indeed, the case of an interpreter between the counsel and client, when the privilege rests upon the same grounds of necessity. 3 Wend. R. 339. In New York, contrary to this general rule, tinder the statute of that state, it has been decided that information disclosed to a physician while attending upon the defendant in his professional

character, which information was necessary to enable the witness to prescribe for his patient, was a confidential communication which the witness need not have testified. about; and in a case where such evidence had been received by the master, it was rejected. 4 Paige, R. 460.

4. As to the matter communicated, it extends to all cases where the party applies for professional assistance. 6 Mad. R. 47; 14 Pick., R. 416. But the privilege does not extend to extraneous or impertinent communications; 3 John. Cas. 198; nor to information imparted to a counsellor in the character of a friend, and not as counsel. 1 Caines' R. 157.

5. The cases in which communications to counsel have been holden not to be privileged may be classed under the following heads: 1. When the communication was made before the attorney was employed as such; 1 Vent. 197; 2 Atk. 524; 2. after the attorney's employment has ceased 4 T. R. 431; 3. when the attorney was consulted because he was an attorney, yet he refused to act as such, and was therefore only applied to as a friend; 4 T. R. 753; 4. where a fact merely took place in the presence of the attorney, Cowp. 846; 2 Ves. 189; 2 Curt. Eccl. R. 866; but see Str. 1122; 5. when the matter communicated was not in its nature private, and could in no sense be termed the subject of a confidential communication; 7 East,, R. 357; 2 B. & B. 176; 3 John' Cas. 198; 6. when the things disclosed had no reference to professional employment, though disclosed while the relation of attorney and client subsisted; Peake's R. 77; 7. when the attorney made himself a subscribing witness; 10 Mod. 40 2 Curt. Eccl. R. 866; 3 Burr. 1687

8. when he was directed to plead the facts to wbich he is called to testify. 7 N. S. 179. See a well written article! on this subject in the American Jurist, vol. xvii. p. 304. Vide, generally, Stark. Ev. h. t.; 1 Greenl. Ev. 236-247; 1 Peters' R. 356; 1 Root, 383; Whart. Dig. 275; Caryls' R. 88, 126, 143; Toth. R. 177; Peake's Cas. 77 2 Stark. Cas. 274; 4 Wash. C. C. R. 718; 11 Wheat. 280; 3 Yeates, R. 4; 4 Munf. R. 273 1 Porter, R. 433; Wright, R. 136; 13 John. R. 492. As to a confession made to a catholic priest, see 2 N. Y. City Hall Rec. 77. Vide 2 Ch. Pr. 18-21; Confessor.

CONFIRMATIO CHARTORUM. The name given to a statute passed during reign of the English king Edward I. 25 Ed. I., c. 6. See Bac. Ab. Smuggling, B.

CONFIRMATION, contracts, conveyancing. 1 . A contract by which that which was voidable, is made firm and unavoidable.

2. A species of conveyance.

2. - 1. When a contract has been entered into by a stranger without authority, he in whose name it has been made may, by his own act, confirm it; or if the contract be made by the party himself in an informal and voidable manner, he may in a more formal manner confirm and render it valid; and in that event it will take effect, as between the parties, from the original making. To make a valid confirmation, the party must be apprised of, his rights, and where there has been a fraud in the transaction, he must be award of it, and intend to confirm his contract. Vide 1 Ball & Beatty, 353; 2 Scho. & Lef. 486; 12 Ves. 373; 1 Ves. Jr. 215; Newl. Contr. 496; 1 Atk. 301; 8 Watts. R. 280.

3. - 2. Lord Coke defines a confirmation of an estate, to be "a conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable; or where a particular estate is increased."

4. The first part of this definition may be illustrated by the following case, put by Littleton, 516; where a person lets land to another for the term of his life, who lets the same to another for forty years, by force of which he is in possession; if the Iessor for life confirms the estate of the tenant for years by deed, and afterwards the tenant for life dies, during the term; this deed will operate as a confirmation of the term for years.. As to the latter branch of the definition; whenever a confirmation operates by way of increasing the estate, it is similar in every respect to a release that operates by way of enlargement, for there must be privity of estate, and proper words of limitation. The proper technical words of a confirmation are, ratify and confirm; although it is usual and prudent to insert also the words given and granted. Watk. Prin. Convey. cbap. vii.

5. A confirmation does not strengthen a void estate. Confirmatio est nulla, ubi donum precedens est invalidum, et ubi donatio nulla est nec valebit confirmatio. For confirmation may make a voidable or defeasible estate good, but cannot operate on an estate void in law. Co. Litt. 295. The canon law agrees with this rule, and hence the maxim , qui confirmat nihil dat. Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 6, n. 476. Vide Vin. Ab. h. t.; Com. Dig. 11. t.; Ayliffe's Pand. *386; 1 Chit. Pr. 315; 3 Gill & John. 290; 3 Yerg. R. 405; Co. Litt. 295; Gilbert on Ten. 75; 1 Breese's R. 236; 9 Co. 142, a; 2 Bouv. Inst. n. 2067-9.

6. An infant is said to confirm his acts performed during infancy, when, after coming to full age, be expressly approves of them, or does acts from which such confirmation way be implied. Sec Ratification.

CONFIRMEE. He to whom a confirmation is made.

CONFIRMOR. He who makes a confirmation to another.

CONIFISCATION. The act by which the estate, goods or chattels of a person who has been guilty of some crime, or who is a public enemy, is declared to be forfeited for the benefit of the public treasury. Domat, Droit Public, liv. 1, tit. 6, s. 2, n. 1. When property is forfeited as a punishment for the commission of crime, it is usually called a forfeiture. 1 Bl. Com. 299.

2. It is a general rule that the property of the subjects of an enemy found in the country may be appropriated by the government, without notice, unless there be a treaty to the contrary. 1 Gallis. R. 563; 8 Dall. R. 199; N. Car. Cas. 79. It has been frequently provided by treaty that foreign subjects should be permitted to remain and continue their business, notwithstanding a rupture between the governments, so long as they conducted themselves innocently and when there was no such treaty, such a liberal permission has been announced in the very declaration of war. Vattel, liv. 3, c. 4, 63. Sir Michael Poster, (Discourses on High Treason, p. 185, 6, mentions several instances of such declarations by the king of Great Britain; and he says that aliens were thereby enabled to acquire personal chattels and to maintain actions for the recovery of their personal rights, in as full a manner as alien friends. 1 Kent, Coin. 57.

3. In the United States, the broad principle has been assumed "that war gives to the sovereign full right to take the persons and confiscate the property of the enemy, wherever found. The mitigations of this rigid rule, which the policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself." 8 Cranch, 122-3. Commercial nations have always considerable property in the possession of their neighbors: and when war breaks out the question, what shall be done with enemies property found in the country, is one rather of policy than of law, and is properly addressed to the consideration of the legislature, and not to courts of law. The strict right of confiscation exists in congress; and without a legislative act authorizing the confiscation of enemies' property, it cannot be condemned. 8 Cranch, 128, 129. See Chit. Law of Nations, c. 3; Marten's Law of Nat. lib. 8, c. 3, s. 9; Burlamaqui, Princ. of Pol. Law, part 4, c. 7; Vattel, liv. 3, c. 4, 63.

4. The claim of a right to confiscate debts, contracted by individuals in time of peace, and which remain due to subjects of the enemy in time of war, rests very much upon the same principles as that concerning the enemy's tangible property, found in the country at the commencement of the war. But it is the universal practice to forbear to seize and confiscate debts and credits. 1 Kent, Com. 64, 5; vide 4 Cranch, R. 415 Charlt. 140; 2 Harr. & John. 101, 112, 471 6 Cranch, R. 286; 7 Conn. R. 428: 2 Tayl. R. 115; 1 Day, R. 4; Kirby, R. 228, 291 C. & N. 77, 492.

CONFLICT. The opposition or difference between two judicial jurisdictions, when they both claim the right to decide a cause, or where they both declare their incompetency. The first is called a positive conflict, and the, latter a negative conflict.

CONFLICT OF JURISDICTION. The contest between two officers, who each claim to have cognizance of a particular case.

CONFLICT OF LAWS. This phrase is used to signify that the laws of different countries, on the subject-matter to be decided, are in opposition to each other; or that certain laws of the same country are contradictory.

2. When this happens to be the case, it becomes necessary to decide which law is to be obeyed. This subject has occupied the attention and talents of some of the most learned jurists, and their labors are comprised in many volumes. A few general rules have been adopted on this subject, which will here be noticed.

3. - 1. Every nation possesses an exclusive sovereignty and jurisdiction within its own territory. The laws of every state, therefore, affect and bind directly all property, whether real or personal, within its territory; and all persons who are resident within it, whether citizens or aliens, natives or foreigners; and also all contracts made, and acts done within it. Vide Lex Loci contractus; Henry, For. Law, part 1, c. 1, 1; Cowp. It. 208; 2 Hag. C. R. 383. It is proper, however, to observe, that ambassadors and other public ministers, while in the territory of the state to, which they are delegates, are exempt from the local jurisdiction. Vide Ambassador. And the persons composing a foreign army, or fleet, marching through, or stationed in the territory of another state, with whom the foreign nation is in amity, are also exempt from the civil and criminal jurisdiction of the place. Wheat. Intern. Law, part 2, c. 2, 10; Casaregis, Disc. 136-174 vide 7 Cranch, R. 116.

4. Possessing exclusive authority, with the above qualification, a state may regulate the manner and circumstances, under which property, whether real or personal, in possession or in action, within it shall be held, transmitted or transferred, by sale, barter, or bequest, or recovered or enforced; the condition, capacity, and state of all persons within it the validity of contracts and other acts done there; the resulting rights and duties growing out of these contracts and acts; and the remedies and modes of administering justice in all cases. Story, Confl. of Laws, 18; Vattel, B. 2, c. 7, 84, 85; Wheat. Intern. Law, part 1, c. 2, 5.

5. - 2. A state or nation cannot, by its laws, directly affect or bind property out of its own territory, or persons not resident therein, whether they are natural born or naturalized citizens or subjects, or others. This result flows from the principle that each sovereignty is perfectly independent. 13 Mass. R. 4. To this general rule there

appears to be an exception, which is this, that a nation has a right to bind its own citizens or subjects by its own laws in every place; but this exception is not to be adopted without some qualification. Story, Confl. of Laws, 21; Wheat. Intern. Law, part 2, c. 2, 7.

6. - 3. Whatever force and obligation the laws of one, country have in another, depends upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent. Huberus, lib. 1, t. 3, 2. When a statute, or the unwritten or common law of the country forbids the recognition of the foreign law, the latter is of no force whatever. When both are silent, then the question arises, which of the conflicting laws is to have effect. Whether the one or the other shall be the rule of decision must necessarily depend on a variety of circumstances, which cannot be reduced to any certain rule. No nation will suffer the laws of another to interfere with her own, to the injury of her own citizens; and whether they do or not, must depend on the condition of the country in which the law is sought to be enforced, the particular state of her legislation, her policy, and the character of her institutions. 2 Mart. Lo. Rep. N. S. 606. In the conflict of laws, it must often be a matter of doubt which should prevail; and, whenever a doubt does exist, the court which decides, will prefer the law of its own country to that of the stranger. 17 Mart. Lo. R. 569, 595, 596. Vide, generally, Story, Confl. of Laws; Burge, Confl. of Laws; Liverm. on Contr. of Laws; Foelix, Droit Intern.; Huberus, De Conflictu Leguin; Hertius, de Collisions Legum; Boullenois, Traits de Ia personnalite' et de la realite de lois, coutumes et statuts, par forme d'observations; Boullenois, Dissertations sur des questions qui naissent de la contrariete des lois, et des coutumes.

CONFRONTATION, crim. law, practice. The act by which a witness is brought in the presence of the accused, so that the latter may object to him, if he can, and the former may know and identify the accused, and maintain the truth in his presence. No man can be a witness unless confronted with the accused, except by consent.

CONFUSION. The concurrence of two qualities in the same subject, which mutually destroy each other. Potli. Ob. P. 3, c. 5 3 Bl. Com. 405; Story Bailm. 40.

CONFUSION OF GOODS. This takes place where the goods of two or more persons become mixed together so that they cannot be separated. There is a difference between confusion and commixtion; in the former it is impossible, while in the latter it is possible, to make a separation. Bowy. Comm. 88.

2. When the confusion takes place by the mutual consent of the owners, they have an interest in the mixture in proportion to their respective shares. 2 Bl. Com. 405; 6 Hill, N. Y. Rep. 425. But if one willfully mixes his money, corn or hay, with that of another man, without his approbattion or knowledge, the law, to guard against fraud,

gives the entire property without any account, to him whose original dominion is invaded land endeavored to be rendered uncertain, without his cosent. Ib.; and see 2 Johns. Ch. It. 62 2 Kent's Comm. 297.

3. There may be a case neither of consent nor of wilfulness, in the confusion of goods; as where a bailee by negligence or unskilfuluess, or inadvertence, mixes up his own goods of the same sort with those bailed; and there may be a confusion arising from accident and unavoidable casualty. Now, in the latter case of accidental intermixture, the rule, following the civil law, which deemed the property to be held in common, might be adopted; and it would make no difference whether the mixture produced a thing of the same sort or not; as, if the wine of two persons were mixed by accident. See Dane's Abr. ch. 76, art. 5, 19.

4. But in cases of mixture by unskilfulness, negligence, or inadvertence, the true principle seems to be, that if a man having undertaken to keep the property of another distinct from, mixes it with his own, the whole must, both at law and in equity, be taken to be the property of the other, until the former puts the subject under such circumstances, that it may be distinguished as satisfactorily as it might have been before the unauthorized mixture on his part. 15 Ves. 432, 436, 439, 440; 2 John. Ch. R. 62; Story on Bailm. c. l, 40. And see 7 Mass. 11. 123; Dane's Abr. c. 76, art. 3, 15; Com. Dig. Pleader, 3 M 28; Bac. Ab. Trespass, E 2; 2 Campb. 576; 2 Roll. 566, 1, 15 2 Bul. 323. 2 Cro. 366 , 2 Roll. 393; 5 East, 7; 21 Pick. R. 298.

CONFUSION OF RIGHTS, contracts. When the qualities of debtor and creditor are united in the same person, there arises a confusion of rights, which extinguishes the two credits; for instance, when a woman obliges marries the obligor, the debt is extinguished. 1 Salk. 306; Cro. Car. 551; 1 Ld. Raym. 515; Ca. Ch. 21, 117. There is, however, an excepted case in relation to a bond given by the husband to the wife; when it is given to the intended wife for a provision to take effect after his death. 1 Ld. Raym. 515; 5 T. R. 381; Hut. 17 Hob. 216; Cro. Car. 376; 1 Salk. 326 Palm. 99; Carth. 512; Com. Dig. Baron & Feme, D. A further exception is the case of a divorce. If one be bound in an obligation to a feme sole and then marry her, and afterwards they are divorced, she may sue her former husband on the obligation, notwithstanding, her action was in suspense during the marriage. 26 H. VIII. 1.

2. Where a person possessed of an estate, becomes in a different right entitled to a charge upon the estate; the charge is in general merged in the estate, and does not revive in favor of the personal representative against the heir; there are particular exceptions, as where the person in whom the interests unite is a minor, and can therefore dispose of the personalty, but not of the estate; but in the case of a lunatic the merger and confusion was ruled to have taken place. 2 Ves. jun. 261. See Louis.

Code, art. 801 to 808; 2 Ld. R. 527; 3 L. R. 552 4 L. R. 399, 488. Burge on Sur. Book 2, c. 11, p. 253.

CONGE'. A French word which signifies permission, and is understood in that sense in law. Cunn. Diet. h. t. In the French maritime law, it is a species of passport or permission to navigate, delivered by public authority. It is also in the nature of a clearance. (q. v.) Bouch. Inst. n. 812; Repert. de la Jurisp. du Notoriat, by Rolland de Villargues. Conge'.

CONGEABLE, Eng. law. This word is nearly obsolete. It is derived from the French conge', permission, leave; it signifies that a thing is lawful or lawfully done, or done with permission; as entry congeable, and the like. Litt. s. 279.

CONGREGATION. A society of a number of persons who compose an ecclesiastical body. In the ecclesiastical law this term is used to designate certain bureaux at Rome, where ecclesiastical matters are attended to. In the United States, by congregation is meant the members of a particular church, who meet in one place worsbip. See 2 Russ. 120.

CONGRESS. This word has several significations. 1. An assembly of the deputies convened from different governments, to treat of peace or of other political affairs, is called a congress.

2. - 2. Congress is the name of the legislative body of the United States, composed of the senate and house of representatives. Const. U. S. art. 1,s. 1.

3. Congress is composed of two independent houses. 1. The senate and, 2. The house of representatives.

4.- 1. The senate is composed of two senators from each state, chosen by the legislature thereof for six years, and each senator has one vote. They represent the states rather than the people, as each state has its equal voice and equal weight in the senate, witliout any regard to the disparity of population, wealth or dimensions. The senate have been, from the first formation of the government, divided into three classes; and the rotation of the classes was originally determined by lots, and the seats of one class are vacated at the end of the second year, and one-third of the senate is chosen every second year. Const. U. S. art 1, s. 3. This provision was borrowed from a similar one in some of the state constitutions, of which Virginia gave the first example.

5. The qualifications which the constitution requires of a senator, are, that he should be thirty years of age, have been nine years a citizen of the United States, and, when elected, be an inhabitant of that state for which he shall be chosen. Art. 1, s. 3.

6.-2. The house of representatives is composed of members chosen every second year by the people of the several states, who are qualified electors of the most numerous branch of the legislature of the state to which they belong.

7. No person can be a representative until he has attained the age of twenty-five years, and has been seven years a citizen of the United States, and is, at the time of his election, an inhabitant of the state in which he is chosen. Const. U. S. art. 1, 2.

8. The constitution requires that the representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. Art. 1, s. 1.

9. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative. Ib.

10. Having shown how congress is constituted, it is proposed here to consider the privileges and powers of the two houses, both aggregately and separately.

11. Each house is made the judge of the election, returns, and qualifications of its own members. Art. 1, s. 5. As each house acts in these cases in a judicial character, its decisions, like the decisions of any other court of justice, ought to be regulated by known principles of law, and strictly adhered to, for the sake of uniformity and certainty. A majority of each house shall constitute a quorum to do business but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as, each may provide. Each house may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member. Each house is bound to keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and to enter the yeas and nays on the journal, on any question, at the desire of one-fifth of the members present. Art. 1, s. 5.

12. The members of both houses are in all cases, except treason, felony, and breach of the peace, privileged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same. Art. 1, s. 6.

13. These privileges of the two houses are obviously necessary for their preservation and character; And, what is still more important to the freedom of deliberation, no member can be questioned in any other place for any speech or debate in either house. lb.

14. There is no express power given to either house to punish for contempts, except when committed by their own members, but they have such an implied power. 6 Wheat. R. 204. This power, however, extends no further than imprisonment, and that will continue no farther than the duration of the power that imprisons. The imprisonment will therefore terminate with the adjournment or dissolution of congress.

15. The house of representatives has the exclusive right of originating bills for raising revenue, and this is the only privilege that house enjoys in its legislative character, which is not shared equally with the other; and even those bills are amendable by the senate in its discretion. Art. 1, s. 7.

16. The two houses are an entire and perfect check upon each other, in all business appertaining to legislatiou and one of them cannot even adjourn, during the session of congress, for more than three days, without the consent of the either nor to any other place than that in which the two houses shall be sitting. Art. 1, s. 5.

17. The powers of congress extend generally to all subjects of a national nature. Congress are authorized to provide for the common defence and general welfare; and for that purpose, among other express grants, they have the power to lay and collect taxes, duties, imposts and excises; to borrow money on the credit of the United States; to regulate commerce with foreign nations, and among the several states, and with the Indians; 1 McLean R. 257; to establish all uniform rule of naturalization, and uniform laws of bankruptcy throughout the United States; to establish post offices and post roads; to promote the progress of science and the useful arts, by securing for a limited time to authors and inventors, the exclusive right to their respective writings and discoveries; to constitute tribunals inferior to the supreme court; to define and punish piracies on the high seas, and offences against the laws of nations; to declare war; to raise and support armies; to provide and maintain a navy; to provide for the calling forth of the militia; to exercise exclusive legislation over the District of Columbia; and to give full efficacy to the powers contained in the constitution.

18. The rules of proceeding in each house are substantially the same; the house of representatives choose their own speaker; the vice-president of the United States is, ex officio, president of the senate, and gives the casting vote when the members are equally divided. The proceedings and discussions in the two houses are generally in public.

19. The ordinary mode of passing laws is briefly this; one day's notice of a motion for leave to bring in a bill, in cases of a general nature, is required; every bill must have three readings before it is passed, and these readings must be on different days; and no bill can be committed and amended until it has been twice read. In the house of representatives, bills, after being twice read, are committed to a committee of the whole house, when a chairman is appointed by the speaker to preside over the committee, when the speaker leaves the chair, and takes a part in the debate as an ordinary member.

20. When a bill has passed one house, it is transmitted, to tho other, and goes through a similar form, though in the senate there is less formality, and bills are often committed to a select committee, chosen by ballot. If a bill be altered or amended in the house to which it is transmitted, it is then returned to the house in which it orignated, and if the two houses cannot agree, they appoint a committee to confer on the subject See Conference.

21. When a bill is engrossed, and has received the sanction of both houses, it is sent to the president for his approbation. If he approves of the bill, he signs it. If he does not, it is returned, with his objections, to the house in which it originated, and that house enters the objections at large on their journal, and proceeds to re-consider it. If, after such re-consideration, two-thirds of the house agree to pass the bill, it is sent, together with the objections, to the other house, by which it is likewise re-considered, and if approved by two-thirds of that house, it becomes a law. But in all such cases, the votes of both houses are determined by yeas and nays; and the names of the persons voting for and against the bill, are to be entered on the journal of each house respectively.

22. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law. Art. 1, s. 7. See House of Representatives; President; Senate; Veto; Kent, Com. Lecture xi.; Rawle on the Const. ch. ix.

CONGRESS, med. juris. This name was anciently given in France, England, and other countries, to the-indecent intercourse between married persons, in the presence of witnesses appointed by the courts, in cases when the husband or wife was charged by the other with impotence. Trebuchet, Jurisp. de Med. 101 Dictionnaire des Sciences Medicales, art. Congres, by Marc.

CONJECTURE. Conjectures are ideas or notions founded on probabilities without any demonstration of their truth. Mascardus has defined conjecture: "rationable vestigium latentis veritatis, unde nascitur opinio sapientis;" or a slight degree of

credence arising from evidence too weak or too remote to produce belief. De Prob. vol. i. quoest. 14, n. 14. See Dict. de Trevoux, h. v.; Denisart, h. v.

CONJOINTS. Persons married to each other. Story, Confl. of L. 71; Wolff. Dr. de la Nat. 858.

CONJUGAL. Matrimonial; belonging, to marriage as, conjugal rights, or the rights which belong to the husband or wife as such.

CONJUNCTIVE, contracts, wills, instruments. A term in grammar used to designate particles which connect one word to another, or one proposition to another proposition.

2. There are many cases in law, where the conjunctive and is used for the disjunctive or, and vice versa.

3. An obligation is conjunctive when it contains several things united by a conjunction to indicate that they are all equally the object of the matter or contract for example, if I promise for a lawful consideration, to deliver to you my copy of the Life of Washington, my Encyclopaedia, and my copy of the History of the United States, I am then bound to deliver all of them and cannot be discharged by delivering one only. There are, according to Toullier, tom. vi. n. 686, as many separate obligations Is there are things to be delivered, and the obligor may discharge himself pro tanto by delivering either of them, or in case of refusal the tender will be valid. It is presumed, however, that only one action could be maintained for the whole. But if the articles in the agreement had not been enumerated; I could not, according to Toullier, deliver one in discharge of my contract, without the consent of the creditor; as if, instead of enumerating the, books above mentioned, I had bound myself to deliver all my books, the very books in question. Vide Disjunctive, Item, and the case, there cited; and also, Bac. Ab. Conditious, P; 1 Bos. & Pull. 242; 4 Bing. N. C. 463 S. C. 33 E. C. L. R. 413; 1 Bouv. Inst. n. 687-8.

CONJURATION. A swearing together. It signifies a plot, bargain, or compact made by a number of persons under oath, to do some public harm. In times of ignorance, this word was used to signify the personal conference which some persons were supposed to have had with the devil, or some evil spirit, to know any secret, or effect any purpose.

CONNECTICUT. The name of one of the original states of the United States of America. It was not until the year 1665 that the territory now known as the state of Connecticut was united under one government. The charter was granted by Charles II. in April, 1662, but as it included the whole colony of New Haven, it was not till 1665

that the latter ceased its resistance, when both the colony of Connecticut and that of New Haven agreed, and then they were indissolubly united, and have so remained. This charter, with the exception of a temporary suspension, continued in force till the American revolution, and afterwards continued as a fundamental law of the state till the year 1818, when the present constitution was adopted. 1 Story on the Const. 86-88.

2. The constitution was adopted on the fifteenth day of September, 1818. The powers of the government are divided into three distinct departments, and each of them confided to a separate magistracy, to wit: those which are legislative, to one; those which are executive to another; and those which are judicial to a third. Art. 2.

3. - 1st. The legislative power is vested in two distinct houses or branches, the one styled the senate, and the other the house of representatives, and both together the general assembly. 1. The senate consists of twelve members, chosen annually by the electors. 2. The house of representatives consists of electorr residing in towns from which they are elected. The number of representatives is to be the same as at present practised and allowed; towns which may be hereafter incorporated are to be entitled to one representative only.

4. - 2d. The executive power is vested in a governor and lieutenant-governor. 1. The supreme executive power of the state is vested in a governor, chosen by the electors of the state; he is to hold his office for one year from the first Wednesday of May, next succeeding his election, and until his successor be duly qualified. Art. 4, s. 1. The governor possesses the veto power, art. 4, s. 12. 2. The lieutenant-governor is elected immediately after the election of governor, in the same manner as is provided for the election of governor, who continues in office the same time, and is to possess the same qualifications as the governor. Art. 4, s. 3. The lieutenant-governor, by virtue of his office, is president of the senate; and in case of the death, resignation, refusal to serve, or removal from office of the governor, or of his impeachment or absence from the state, the lieutenant-governor exercises all the powers and authority appertaining to the office of governor, until another be chosen, at the next periodical election for governor, and be duly qualified; or until the governor, impeached or absent, shall be acquitted or return. Art. 4, s. 14.

5. - 3d. The judicial, power of the state is vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly may, from time to time, ordain and establish; the powers of which courts shall be defined. A sufficient number of justices of the peace, with such jurisdiction, civil and criminal, as the general assembly may prescribe, are to be appointed in each county. Art. 5.

CONNIVANCE. An agreement or consent, indirectly given, that something unlawful shall be done by another.

2. The connivance of the husband to his wife's prostitution deprives him of the right of obtaining a divorce; or of recovering damages from the seducer. 4 T. R. 657. It may be satisfactorily proved by implication.

3. Connivance differs from condonation, (q. v.) though either may have the same legal consequences. Connivance necessarily involves criminality on the part of the individual who connives, condonation may take place without implying the slightest blame to the party who forgives the injury.

4. Connivance must be the act of the mind before the offence has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. 3 Hagg. Eccl. R. 350.

5. Connivance differs, also, from collusion (q. Y.); the former is generally collusion. for a particular purpose, while the latter may exist without connivance. 3 Hagg, Eccl. R. 130. Vide Shelf. on Mar. & Div. 449; 3 Hagg. R. 82; 2 Hagg. R. 376; Id. 278; 3 Hagg. R. 58, 107, 119, 131, 312; 3 Pick. R. 299; 2 Caines, 219; Anth. N.P. 196.

CONQUEST, feudal law. This term was used by the feudists to signify purchase.

CONQUEST, international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire.

2. It is a general rule, that where conquered countries have laws of their own, these laws remain in force after the conquest, until they are abrogated, unless they are contrary to our religion, or enact any malum in se. In all such cases the laws of the conquering country prevail; for it is not to be presumed that laws opposed to religion or sound morals could be sanctioned. 1 Story, Const. 150, and the cases there cited.

3. The conquest and military occupation of a part of the territory of the United States by a public enemy, renders such conquered territory, during such occupation, a foreign country with respect to the revenue laws of the United States. 4 Wheat. R. 246; 2 Gallis. R. 486. The people of a conquered territory change theirallegiance, but, by the modern practice, their relations to each other, and their rights of property, remain the same. 7 Pet. R. 86.

4. Conquest does not, per se, give the conqueror plenum dominium et utile, but a temporary right of possession and government. 2 Gallis. R. 486; 3 Wash. C. C. R. 101. See 8 Wheat. R. 591; 2 Bay, R. 229; 2 Dall. R. 1; 12 Pet. 410.

5. The right which the English government claimed over the territory now composing the United States, was not founded on conquest, but discovery. Id. 152, et seq.

CONQUETS, French law. The name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, enures to the extent of one-half for the benefit of the other. Merl. Rep. mot Conquet; Merl. Quest. mot Conquet. In Louisiana, these gains are called aquets. (q. v.) Civ. Code of Lo. art. 2369.

CONSANGUINITY The relation subsisting among all the different persons descendiug from the same stock, or common ancestor. Vaughan, 322, 329; 2 Bl. Com. 202 Toull. Dr. Civ.. Fr. liv. 3, t. 1, ch. n 115 2 Bouv. Inst. n. 1955, et seq.

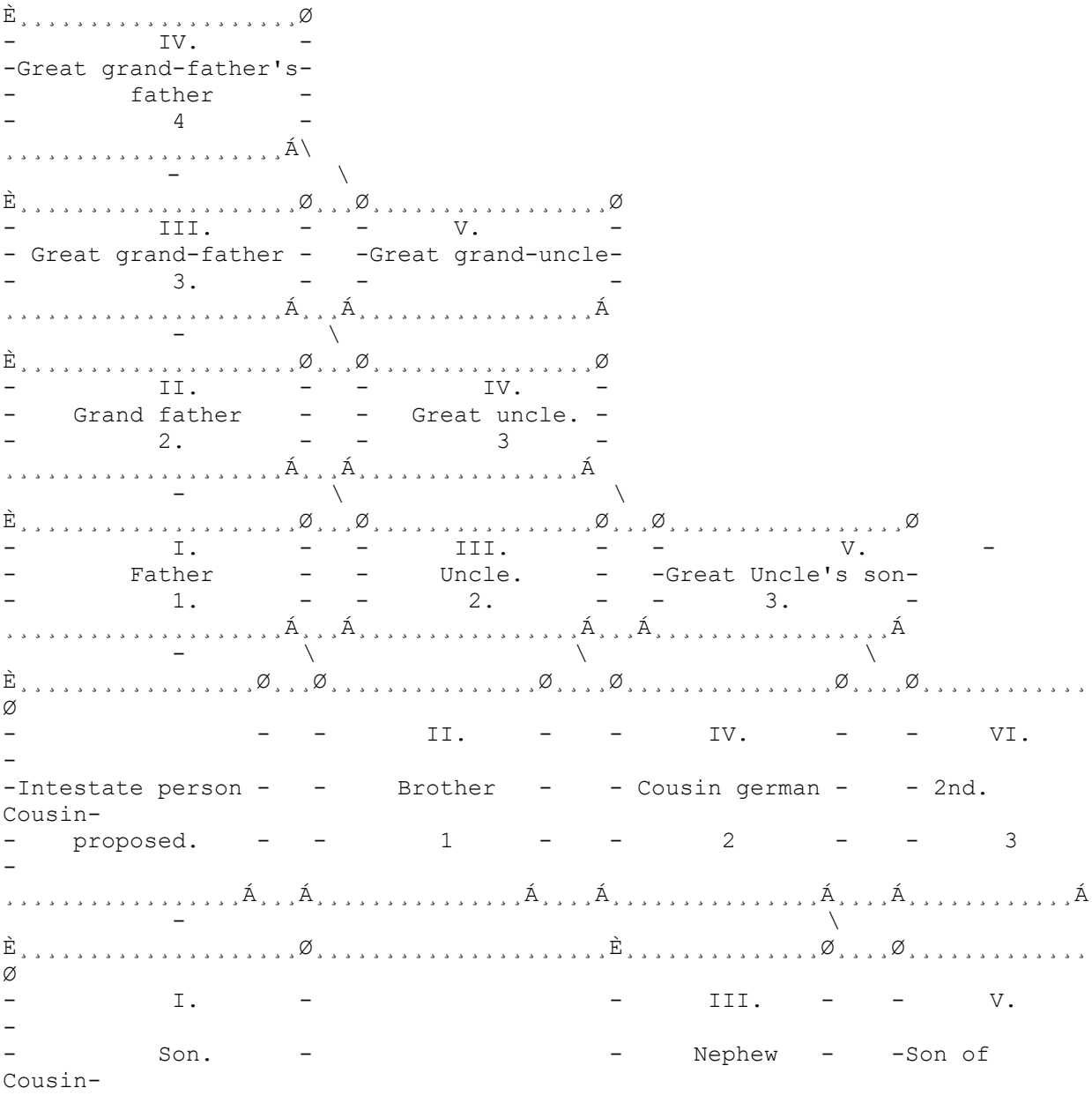
2. Some portion of the blood of the common ancestor flows through the veins of all his descendants, and though mixed with the blood flowing from many other families, yet it constitutes the kindred or alliance by blood between any two of the individuals. This relation by blood is of two kinds, lineal and collateral.

3. Lineal consanguinity is that relation which exists among persons, where one is descended from the other, as between the son and the father, or the grandfather, and so upwards in a direct ascending line; and between the father and the son, or the grandson, and so downwards in a direct descending line. Every generation in this direct course males a degree, computing either in the ascending or descending line. This being the natural mode of computing the degrees of lineal, consanguinity, it has been adopted by the civil, the canon, and the common law.

4. Collateral consanguinity is the relation subsisting among persons who descend from the same commnon ancestor, but not from each other. It is essential to constitute this relation, that they spring from the same common root or stock, but in different branches. The mode of computing the degrees is to discover the common ancestor, to begin with him to reckon downwards, and the degree the two persons, or the more remote of them, is distant from the ancestor, is the degree of kindred subsisting between them. For instance, two brothers are related to each other in the first degree, because from the father to each of them is one degree. An uncle and a nephew are related to each other in tho second degree, because the nephew is two degrees distant from the common ancestor, and the rule of computation is extended to the remotest degrees of collateral relationship. This is the mode of computation by the common

and canon law. The method of computing by the civil law, is to begin at either of the persons in questian and count up to the common ancestor, and then downwards to the, other person, calling it a degree for each person, both ascending and descending, and the degrees they stand from each other is the degree in which they stand related. Thus, from a nephew to his father, is one degree; to the grandfather, two degrees and then to the uncle, three; which points out the relationship.

5. The following table, in which the Roman numeral letters express the degrees by the civil law, and those in Arabic figures at the bottom, those by the common law, will fully illustrate the subject.



6. The mode of the civil law is preferable, for it points out the actual degree of kindred in all cases; by the mode adopted by the common law, different relations may stand in the same degree. The uncle and nephew stand related in the second degree by the common law, and so are two first cousins, or two sons of two brothers; but by the civil law the uncle and nephew are in the third degree, and the cousins are in the fourth. The mode of computation, however, is immaterial, for both will establish the same person to be the heir. 2 Bl. Com. 202; 1 Swift's Dig. 113; Toull. Civ. Fr. liv. 8, t. 1, o. 3, n. 115. Vide Branch; Degree; Line.

CONSCIENCE. The moral sense, or that capacity of our mental constitution, by which we irresistibly feel the difference between right and wrong.

2. The constitution of the United States wisely provides that "no religious test shall ever be required." No man, then, or body of men, have a right to control a man's belief or opinion in religious matters, or to forbid the most perfect freedom of inquiry in relation to them, by force or threats, or by any other motives than arguments or persuasion. Vide Story, Const. 1841-1843.

CONSENSUAL, civil law. This word is applied to designate one species of contract known in the civil laws; these contracts derive their name from the consent of the parties which is required in their formation, as they cannot exist without such consent.

2. The contract of sale, among the civilians, is an example of a consensual contract, because the moment there is an agreement between the seller and the buyer as to the thing and the price, the vendor and the purchaser have reciprocal actions On the contrary, on a loan, there is no action by the lender or borrower, although there may have been consent, until the thing is delivered or the money counted. This is a real contract in the sense of the civil law. Lec. El. Dr: Rom. 895; Poth. Ob. pt. 1, c. 1, s. 1, art. 2; 1 Bell's Com. (5th ed.) 435. Vide Contract.

CONSENT. An agreement to something proposed, and differs from assent. (q. v.) Wolff, Ins. Nat. part 1, SSSS 27-30; Pard. Dr. Com. part 2, tit. 1, n. 1, 38 to 178. Consent supposes, 1. a physical power to act; 2. a moral power of acting; 3. a serious, determined, and free use of these powers. Fonb. Eq. B; 1, c. 2, s. 1; Grot. de Jure Belli et Pacis, lib. 2, c. 11, s. 6.

2. Consent is either express or implied. Express, when it is given viva voce, or in writing; implied, when it is manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been given.

3. - 1. When a legacy is given with a condition annexed to the bequest, requiring the consent of executors to the marriage of the legatee, and under such consent being given, a mutual attachment has been suffered to grow up, it would be rather late to state terms and conditions on which a marriage between the parties should take place;. 2 Ves. & Beames, 234; Ambl. 264; 2 Freem. 201; unless such consent was obtained by deceit or fraud. 1 Eden, 6; 1 Phillim. 200; 12 Ves. 19.

4. - 2. Such a condition does not apply to a second marriage. 3 Bro. C. C. 145; 3 Ves. 239.

5. - 3. If the consent has been substantially given, though not modo et forma, the legatee will be held duly entitled to the legacy. 1 Sim. & Stu. 172; 1 Meriv. 187; 2 Atk. 265.

6. - 4. When trustees under a marriage settlement are empowered to sell "with the consent of the husband and, wife," a sale made by the trustees without the distinct consent of the wife, cannot be a due execution of their power. 10 Ves. 378.

7. - 5. Where a power of sale requires that the sale should be with the consent of certain specified individuals, the fact of such consent having been given, ought to be evinced in the manner pointed out by the creator of the power, or such power will not be considered as properly executed. 10 Ves. 308. Vide, generally, 2 Supp. to Ves. jr. 161, 165, 169; Ayliffe's Pand. 117; 1 Rob. Leg.. 345, 539.

8. - 6. Courts of equity have established the rule, that when the true owner of property stands by, and knowingly suffers a stranger to sell the same as his own, without objection, this will be such implied consent as to render the sale valid against the true owner. Story on Ag. 91 Story on Eq. Jur. 385 to 390. And courts of law, unless restrained by technical formalities, act upon the principles of justice; as, for example, when a man permitted, without objection, the sale of his goods under an execution against another person. 6 Adolph. & El 11. 469 9 Barn. & Cr. 586; 3 Barn. & Adolph. 318, note.

9. The consent which is implied in every agreement is excluded, 1. By error in the essentials of the contract; ,is, if Paul, in the city of Philadelphia, buy the horse of Peter, which is in Boston, and promise to pay one hundred dollars for him, the horse at the time of the sale, unknown to either party, being dead. This decision is founded on the rule that he who consents through error does not consent at all; non consentiunt qui errant. Dig. 2, 1, 15; Dig. lib. 1, tit. ult. 1. 116, 2. 2. Consent is excluded by duress of the party making the agreement.

3. Consent is never given so as to bind the parties, when it is obtained by fraud. 4. It cannot be given by a person who has no understanding, as an idiot, nor by one who, though possessed of understanding, is not in law capable of making a contract, as a feme covert. See Bouv. Inst. Index, h. t.

CONSENT RULE. In the English practice, still adhered to in some of the states of the American Union, the defendant in ejectment is required to enter on record that he confesses the lease, entry, and ouster of the plaintiff; this is called the consent rule.

2. The consent rule contains the following particulars, namely: 1. The person appearing consents to be made defendant instead of the casual ejector; 2. To appear at the suit of the plaintiff; and, if the proceedings are by bill, to file common bail; 3. To receive a declaration in ejectment, and plead not guilty; 4. At the trial of the case to confess lease, entry, and ouster, and insist upon his title only; 5. That if at the trial, the party appearing shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able to prosecute his suit, such party shall pay to the plaintiff the costs of the nonpros, and suffer judgment to be entered against the casual ejector; 6. That if a verdict shall be given for the defendant, or the plaintiff shall not prosecute his suit for any other cause than the non-confession of lease, entry, and ouster, the lessor of the plaintiff shall pay costs to the defendant; 7. When the landlord appears alone, that the plaintiff shall be at liberty to sign judgment immediately against the casual ejector, but that execution shall be stayed until the court shall further order. Adams, Ej. 233, 234 and for a form see Ad. Ej. Appx. No. 25. Vide 2 Cowen, 442; 4 John. R. 311; Caines' Cas. 102; 12 Wend. 105, 3 Cowen, 356; 6 Cowen, 587; 1 Cowen, 166; and Casual Ejector; Ejectment.

CONSEQUENTIAL DAMAGES, torts. Those damages or those losses which arise not from the immediate act of the party, but in consequence of such act; as if a man throw a log into the public streets, and another fall upon it and become injured by the fall or if a man should erect a dam over his own ground, and by that means overflow his neighbor's, to his injury.

2. The form of action to be instituted for consequential damages caused without force, is by action on the case. 3 East, 602; 1 Stran. 636; 5 T. R. 649; 5 Vin. Ab. 403; 1 Chit. Pl. 127 Kames on Eq. 71; 3 Bouv. Inst. n. 3484, et seq. Vide Immediate.

CONSERVATOR. A preserver, a protector.

2. Before the institution of the office of justices of the peace in England, the public order was maintained by officers who bore the name of conservators of the peace. All judges, justices, sheriffs and constables, are conservators of the peace, and are bound, ex officio, to be aiding and assisting in preserving older.

3. In Connecticut, this term is applied to designate a guardian who has the care of the estate of an idiot. 5 Conn. R. 280.

CONSIDERATIO CURLAE, practice. The judgment of the court. In pleadings where matters are determined by the court, it is said, therefore it is considered and adjudged by the court ideo consideratum est per curiam.

CONSIDERATION, contracts. A compensation which is paid, or all inconvenience suffered by the, party from whom it proceeds. Or it is the reason which moves the contracting party to enter into the contract. 2 Bl. Com. 443. Viner defines it to be a cause or occasion meritorious, requiring a mutual recompense in deed or in law. Abr. tit. Consideration, A. A consideration of some sort or other, is so absolutely necessary to the forming a good contract, that a nudum pactum, or an agreement to do or to pay any thing on one side, without any compensation to the other, is totally void in law, and a man cannot be compelled to perform it. Dr. & Stud. d. 2, c. 24 3 Call, R. 439 7 Conn. 57; 1 Stew. R. 51 5 Mass. 301 4 John. R. 235; C. Yerg. 418; Cooke, R. 467; 6 Halst. R. 174; 4 Munf. R. 95. But contracts under seal are valid without a consideration; or, perbaps, more properly speaking, every bond imports in itself a sufficient consideration, though none be mentioned. 11 Serg. & R. 107. Negotiable instruments, as bills of exchange and promissory notes, carry with them prima facie evidence of consideration. 2 Bl. Com. 445.

3. The consideration must be some benefit to the party by whom the promise is made, or to a third person at his instance; or some detriment sustained at the instance of the party promising, by the party in whose favor the promise is made. 4 East, 455; .1 Taunt. 523 Chitty on Contr. 7 Dr. & Stu. 179; 1 Selw. N. P. 39 , 40; 2 pet. 182 1 Litt. 123; 3 John. 100; 6 Mass. 58 2 Bibb. 30; 2 J. J. Marsh. 222; 5 Cranch, 142, 150 2 N. H. Rep. 97 Wright, It. 660; 14 John. R. 466 13 S. & R. 29 3 M. Gr. & Sc. 321.

4. Considerations are good, as when they are for natural love and affection; or valuable, when some benefit arises to the party to whom they are made, or

inconvenience to the party making them. Vin. Abr. Consideration, B; 5 How. U. S. 278; 4 Barr, 364; 3 McLean, 330; 17 Conn. 511; 1 Branch, 301; 8 Ala. 949.

5. They are legal, which are sufficient to support the contract or illegal, which render it void. As to illegal considerations, see 1 Hov. Supp. to Ves. jr. 295; 2 Hov. Supp. to Ves. jr. 448; 2 Burr. 924 1 Bl. Rep. 204. If the, performance be utterly impossible, in fact or in law, the consideration is void. 2 Lev. 161; Yelv. 197, and note; 3 Bos. & Pull. 296, n. 14 Johns. R. 381.

6. A mere moral obligation to pay a debt or perform a duty, is a sufficient consideration for an express promise, although no legal liability existed at the time of making such promise. Cowp. 290 Bl. Com. 445 3 Bos. & Pull. 249, note; 2 East, 506; 3 Taunt. 311; 5 Taunt. 36; 13 Johns. R. 259; Yelv. 41, b, note; 3 Pick. 207. But it is to be observed, that in such cases there must have been a good or valuable consideration; for example, every one is under a moral obligation to relieve a person in distress, a promise to do so, however, is not binding in law. One is bound to pay a debt which he owes, although he has been released; a promise to pay such a debt is obligatory in law on the debtor, and can therefore be enforeed by action. 12 S. & R. 177; 19 John. R. 147; 4 W. C. C. R. 86, 148; 7 John. R. 26; 14 John. R. 178; 1 Cowen, R. 249; 8 Mass. R. 127. See 7 Conn. R. 57; 1 Verm. R. 420; 5 Verm. R. 173; 5. Ham. R. 58; 3 Penna. R. 172; 5 Binn. R. 33.

7. In respect of time, a consideration is either, 1st. Executed, or Something done before the making of the obligor's promise. Yelv. 41, a. n. In general, an executed consideration is insufficient to support a contract; 7 John. R. 87; 2 Conn. R. 404; 7 Cowen, R. 358; but an executed consideration on request; 7 John. R. 87 1 Caines R. 584; or by some previous duty, or if the debt be continuing at the time, or it is barred by some rule of law, or some provision of a statute, as the act of limitation, it is sufficient to maintain an action. 4 W. C. C. R. 148 14 John. R. 378 17 S. & R. 126. 2d. Executory, or something to be done after such promise. 3d. Concurrent, as in the case of mutual promises; and, 4th. A continuing consideration. Chitty on Contr. 16.

8. As to cases where the contract has been set aside on the ground of a total failure of the consideration, see 11 Johns. R. 50; 7 Mass. 14; 8 Johns. R. 458; 8 Mass. 46 6 Cranch, 53; 2 Caines' Rep. 246 and 1 Camp. 40, n. When the consideration turns out to be false and fails, there is no contract; as, for example, if my father by his will gives me all his estate, charged with the payment of a thousand dollars, and I promise to give you my house instead of the legacy to you, and you agree to buy it with the legacy, and before the contract is completed, and I make you a deed for the house, I discover that my father made a codicil to his will and by it be revoked the gift to you' I am not bound to complete the contract by making you a deed for my house. Poth. on Oblig. part 1, c. 1, art. 3, 6. See, in general, Obligation,, New Promise; Bouv. Inst.

Index. b. t,; Evans' Poth. vol. ii. p. 19; 1 Fonb. Eq. 335; Newl. Contr. 65; 1 Com. Contr. 26; Fell on Guarrant. 337; 3 Chit. Com. Law, 63 to 99; 3 Bos. & Pull. 249, n; 1 Fonb. Eq. 122, note z; Id. 370, note g; 5 East, 20, n.; 2 Saund. 211, note 2; Lawes Pl. Ass. 49; 1 Com. Dig. Action upon the case upon Assumpsit, B Vin. Abr. Actions of Assumpsit, Q; Id. tit. Consideration.

CONSIDERATUM EST per curiam. It is considered by the court. This formula is used in giving judgments. A judgment is the decision or sentence of the law, given by a court of justice, as the result of proceedings instituted therein, for the redress of an injury. The language of the judgment is not, therefore, that " it is decreed," or " resolved," by the court; but that " it is considered by the court," consideratum est per curiam, that the plaintiff recover his debt, &c. 3 Bouv. Inst. n. 3298.

CONSIGNATION, contracts. In the civil law, it is a deposit which a debtor makes of the thing that he owes, into the hands of a third person, and under the authority of a court of justice. Poth. Oblig. P. 3, c. 1, art. 8.

2. Generally the consignation is made with a public officer it is very similar to our practice of paying money into court.

3. The term to consign, or consignation, is derived from the Latin consignare, which signifies to seal, for it was formerly the practice to seal up the money thus received in a bag or box. Aso & Man. Inst. B. 2, t. 11, c. 1, 5. See Burge on Sur. 138.

CONSIGNEE, contracts. One to whom a consignment is made.

2. When the goods consigned to him are his own, and they have been ordered to be sent, they are at his risk the moment the consignment is made according to his direction; and the persons employed in the transmission of the goods are his agents. 1 Liverm. on Ag, 9. When the goods are not his own, if he accept the consignment, he is bound to pursue the instructions of the consignor; as if the goods be consigned upon condition that the consignee will accept the consignor's bills, he is bound to accept them; Id. 139; or if he is directed to insure, he must do so. Id. 325.

3. It is usual in bills of lading to state that the goods are to be delivered to the consignee or his assigns, he or they paying freight; in such case the consignee or his assigns, by accepting the goods, by implication, become bound to pay the freight, Abbott on Sh. p. 3, c. 7, 4; 3 Bing. R, 383.

4. When a person acts, publicly as a consignee, there is an implied engagement on his part that he will be vigilant in receiving goods consigned to his care, so as to make

him responsible for any loss which the owner may sustain in consequence of his neglect. 9 Watts & Serg. 62.

CONSIGINMENT. The goods or property sent by a common carrier from one or more persons called the consignors, from one place, to one or more persons, called the consignees, who are in another. By this term ig also understood the goods sent by one person to another, to be sold or disposed of by the latter for and on account of the former.

CONSIGNOR, contracts. One who makes a consignment to another.

2. When goods are consigned to be sold on commission, and the property remains in the consignor; or when goods have been consigned upon a credit, and the consignee has become a bankrupt or failed, the consignor has a right to stop them in transitu. (q. v.) Abbot on Sh. p. 3, c.

3. The consignor is generally liable for the freight or the hire for the carriage of goods. 1 T. R. 6 5 9.

CONSILIUM, or dies consilii, practice. A time allowed for the accused to make his defence, and now more commonly used for a day appointed to argue a demurrer. In civil cases, it is a special day appointed for the purpose of hearing an argument. Jer. Eq. Jur. 296; 4 Bouv. Inst. n. 3753.

CONSIMILI CASU. These words occur in the Stat. West. 21 C. 24, 13 Ed. 1. wbich gave authority to the clerks in chancery to form new writs in consimili casu simili remedio indigente sicut prius fit breve. In execution of the powers granted by this statute, many new writs were formed by the clerk's in chancery, especially in real actions, as writs of quod permittat prosternere, against the alienee of land after the erection of a nuisance thereon, according to the analogy of the assize of nuisance, writs of juris utrum, c. &c. In respect to personal actions, it has, long been the practice to issue writs in consimili casu, in the most general form, e. g. in trespass on the case upon promises, leaving it to the plaintiff to state fully, and at large, his case inthe declaration the sufficiency of which in point of law is always a question for the court to consider upon the pleadings and evidence. See Willes, Rep. 580; 2 Lord Ray. 957; 2 Durnf. & East, 51; 2 Wils. 146 17 Serg. & R.. 195; 3 Bl. Com. 51 7 Co. 4; F. N. B. 206; 3 Bouv. Inst. n. 3482.

CONSISTENT. That which agrees with something else; as a consistent condition, which is one which agrees with all other parts of a contract, or which can be reconciled with every other part. 1 Bouv. Just. n. 752,

CONSISTORY, ecclesiastical law. An assembly of cardinals convoked by the pope. The consistory is public or secret. It is vublic, when the pope receives princes or gives audience to ambassadors; secret, when he fills vacant sees, proceeds to the canonization of saints, or judges and settles certain contestations submitted to him.

2. A court which was formerly held among protestants, in which the bishop presided, assisted by some of his clergy, also bears this name. It is now held in England, by the bishop's chancellor or commissary, and some other ecclesiastical officers, either in the cathedral, church, or other place in his diocese, for the determination of ecclesiastical cases arising in that diocese. Merl. Rep. h. t.; Burns' Dict. h. t.

CONSOLATO DEL MARE, (IL). The name of a code of sea laws compiled by order of the ancient kings of Aragon. Its date is not very certain, but it was adopted on the continent of Europe, as the code of maritime law, in the course of the eleventh, twelfth, and thirteenth centuries. It comprised the ancient ordinances of the Greek and Roman emperors, and of the kings of France and Spain; and the laws of the Mediterranean islands, and of Venice and Genoa. It was originally written in the dialect of Catalonia, as its title plainly indicates, and it has been translated into every language of Europe. This code has been reprinted in the second volume of the " Collection de Lois Maritimes Anterieures au XVIII. Siecle, par J. M. Pardessus, (Paris, 1831)." A collection of sea laws, which is very complete.

CONSOLIDATION, civil law. The union of the usufruct with the estate out of which it issues, in the same person which happens when the usufructuary acquires the estate, or vice versa. In either case the usufruct is extinct. In the common law this is called a merger. Ley. El. Dr. Rom. 424. U. S. Dig. tit. Actions, V.

2. Consolidation may take place in two ways: first, by the usufructuary surrendering his right to the proprietor, which in the common law is called a surrender; secondly, by the release of the. proprietor of his rights to the usufructuary, which in our law is called a release.

CONSOLIDATION RULE, practice, com. law. When a number of actions are brought on the same policy, it is the constant practice, for the purpose of saving costs, to consolidate them. by a rule of court or judge's order, which restrains the plaintiff from proceeding to trial in more than one, and binds the defendants in all the others to abide the event of that one; but this is done upon condition that the defendant shall not file any bill inequity, or bring any writ of error for delay. 2 Marsh. Ins. 701. For the history of this rule, vide Parke on Ins. xlix.; Marsh. Ins. B. 1, c. 1 6, s. 4. And see 1 John. Cas. 29; 19 Wend. 23; 13 Wend. 644 5 Cowen, 282,; 4 Cowen, 78; Id. 85; 1 John. 29; 9 John. 262.

2. The term consolidation seems to be rather misapplied in those cases, for in point of fact there is a mere stay of proceedings in all those cases but one. 3 Chit. Pr. 644. The rule is now extended to other cases: when several actions are brought on the same bond against several obligors, an order for a stay of proceedings in all but one will be made. 3 Chit. Pr. 645 3 Carr. & P. 58. See 4 Yeates, R. 128 3 S. & R. 262; Coleman, 62; 3 Rand. 481; 1 N. & M. 417, n.; 1 Cow n 89; 3 Wend. 441; 9 Wend. 451; M. 438, 440, n.; 5 Cowen, 282; 4 Halst. 335; 1 Dall. 145; 1 Browne, Appx. lxvii.; 1 Ala. R. 77; 4 Hill, R. 46; 19 Wend. 23 5 Yerg. 297; 7 Miss. 477; 2 Tayl. 200.,

3. The plaintiff may elect to join in the same suit several causes of action, in many cases, consistently with the rules of pleading, but having done so, his election is determined. He cannot ask the court to consolidate them; 3 Serg. & R. 266; but the court will sometimes, at the instance of the defendant, order it against the plaintiff. 1 Dall. Rep. 147, 355; 1 Yeates, 5; 4 Yeates, 128; 2 Arch. Pr. 180; 3 Serg. & R. 264.

CONSOLS, Eng. law. This is an abbreviation for consolidated annuities. Formerly when a loan was made, authorized by government, a particular part of the revenue was appropriated for the payment of the interest and of the principal. This was called the fund, and every loan had its fund. In this manner the Aggregate fund originated in 1715; the South Sea fund, in 1717; the General fund, 1617 and the Sinking fund, into which the surplus of these three funds flowed, which, although destined for the diminution of the national debt, was applied to the necessities of the government. These four funds were consolidated into one in the year 1787, under the name of consolidated fund.

2. The income arises from the receipts on account of excise, customs, stamps, and other, perpetual taxes. The charges on it are the interest on and the redemption of the public debt; the civil list; the salaries of the judges and officers of state, and the like.

3. The annual grants on account of the army and navy, and every part of the revenue which is considered temporary, are excluded from this fund. 4. Those persons who lent the money to the government, or their assigns, are entitled to an annuity of three per cent on the amount lent, which, however, is not to be returned, except at the option of the government so that the holders of consols are simply annuitants.

CONSORT. A man or woman married. The man is the consort of his wife, the woman is the consort of her husband.

CONSPIRACY, crim. law, torts. An agreement between two or more persons to do an unlawful act, or an act which may become by the combination injurious to others. Formerly this offence was much more circumscribed in its meaning than it is now. Lord Coke describes it as "a consultation or agreement between two or more to appeal

or indict an innocent person falsely and maliciously, whom accordingly they cause to be indicted or appealed and afterwards the party is acquitted by the verdict of twelve men."

2. The crime of conspiracy, according to its modern interpretation, may be of two kinds, Damely, conspiracies against the public, or such as endanger the public health, violate public morals, insult public justice, destroy the public peace, or affect public trade or business. See 3 Burr. 1321.

3. To remedy these evils the guilty persons may be indicted in the name of the commonwealth. Conspiracies against individuals are such as have a tendency to injure them in their persons, reputation, or property. The remedy in these cases is either by indictment or by a civil action.

4. In order to reader the offence complete, there is no occasion that any act should be done in pursuance of the unlawful agreement entered into between the parties, or that any one should have been defrauded or injured by it. The conspiracy is the gist of the crane. 2 Mass. R. 337; Id. 538 6 Mass. R. 74; 3 S. & R. 220 4 Wend. R. 259; Halst. R. 293 2 Stew. Rep. 360; 5 Harr. & John. 317 8 S. & R. 420. But see 10 Verm. 353.

5. By the laws of the United State's, St. 1825, c. 76, 23, 3 Story's L. U. S., 2006, a wilful and corrupt conspiracy to cast away, burn or otherwise destroy any ship or vessel. with intent to injure any underwriter thereon, or the goods on board thereof, or any lender of money on such vessel, on bottomry or respondentia, is, by the laws of the United States, made felony, and the offender punishable by fine not exceeding ten thousand dollars, and by imprisonment and confinement at hard labor, not exceeding ten years.

6. By the Revised Statutes of New York, vol. 2, p. 691, 692, it is enacted, that if any two or more persons shall conspire, either, 1. To commit any offence; or, 2. Falsely and maliciously to indict another for any offence; or, 3. Falsely to move or maintain any suit; or, 4. To cheat and defraud any person of any property, by any means which are in themselves criminal; or, 5. To cheat and defraud any person of any property, by means which, if executed, would amount to a cheat, or to obtaining property by false pretences; or, 6. To commit any act injurious to the public health, to public morals, or to trade and commerce, or for the perversion or obstruction of justice, or the due administration of the laws; they shall be deemed guilty of a misdemeanor. No other conspiracies are there punishable criminally. And no agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

7. When a felony has been committed in pursuance of a conspiracy, the latter, which is only a misdemeanor, is merged in the former; but when a misdemeanor only has been committed in pursuance of such conspiracy, the two crimes being of equal degree, there can be no legal technical merger. 4 Wend. R. 265. Vide 1 Hawk. 444 to 454; 3 Chit. Cr. Law, 1138 to 1193 3 Inst. 143 Com. Dig. Justices of the Peace, B 107; Burn's Justice, Conspiracy; Williams' Justice, Conspiracy; 4 Chit. Blacks. 92; Dick. Justice Conspiracy, Bac. Ab. Actions on the Case, G 2 Russ. on Cr. 553 to 574 2 Mass. 329 Id. 536 5 Mass. 106 2 D R. 205; Whart. Dig. Conspiracy; 3 Serg. & Rawle, 220; 7 Serg. & Rawle, 469 4 Halst. R. 293; 5 Harr. & Johns. 317 4 Wend. 229; 2 Stew. R. 360;1 Saund. 230, u. 4. For the French law, see Merl. Rep. mot Conspiration Code Penal, art. 89.

CONSPIRATORS. Persons guilty of a conspiracy. See 3 Bl. Com. 126-71 Wils. Rep. 210-11. See Conspiracy.

CONSTABLE. An officer, who is generally elected by the people.

2. He possess power, virture officii, as a conservator of the peace at common law, and by virtue of various legislative enactments; he. way therefore apprehend a supposed offender without a warrant, as treason, felony, breach of the peace, and for some misdemeanors Iess than felony, when committed in his view. 1 Hale, 587; 1 East, P. C. 303 8 Serg. & Rawle, 47. He may also arrest a supposed offender upon the informatiou of others but he does so at his peril, unless he can show that a felony has been committed by some person, as well as the reasonableness of the suspicion that the party arrested is guilty. 1 Chit. Cr. L. 27; 6 Binn. R. 316; 2 Hale, 91, 92 1 East, P. C. 301. He has power to call others to his assistance; or he may appoint a deputy to do ministerial acts. 3 B urr. Rep. 1262.

3. A constable is also a ministerial officer, bound to obey the warrants and precepts of justices, coroners, and sheriffs. Constables are also in some states bound to execute the warrants and process of justices of the peace in civil cases.

4. In England, they have many officers, with more or less power, who bear the name of constables; as, lord high constable of England, high constable 3 Burr. 1262 head constables, petty constables, constables of castles, constables of the tower, constables of the fees, constable of the exchequer, constable of the staple, &c.

5. In some of the cities of the United States there are officers who are called high constables, who are the principal police officers where they reside. Vide the various Digests of American Law, h. t.; 1 Chit. Cr. L. 20; 5 Vin. Ab. 427; 2 Phil. Ev. 253 2 Sell. Pr. 70; Bac. Ab. h. t.; Com. Dig. Justices of the Peace, B 79; Id. D 7; Id, Officer, E 2; Wille. Off. Const.

CONSTABLEWICK. In England, by this word is meant the territorial jurisdiction of a constable. 5 Nev. & M. 261.

CONSTAT, English law. The name of a certificate, which the clerk of the pipe and auditors of the exchequer make at the request of any person who intends to plead or move in the court for the discharge of anything; and the effect of it is, the certifying what constat (appears) upon record touching the matter in question.

2. A constat is held to be superior to an ordinary certificate, because it contains nothing but what is on record. An exemplification under the great seal, of the enrolment of any letters-patent, is called a constat. Co. Litt. 225. Vide Exemplification; Inspeximus.

3. Whenever an officer gives a certificate that such a thing appears of record, it is called a constat; because the officer does not say that the fact is so, but it appears to be as he certifies. A certificate that it appears to the officer that a judgment has been entered, &c., is insufficient. 1 Hayw. 410.

CONSTITUENT. He who gives authority to another to act for him. 1 Bouv. Inst. n. 893.

2. The constituent is bound with whatever his attorney does by virtue of his authority. The electors of a member of the legislature are his constituents, to whom he is responsible for his legislative acts.

CONSTITUIMUS. A Latin word which signifies we constitute. Whenever the king of England is vested with the right of creating a new office, he must use proper words to do so, for example, erigimus, constituimus, c . Bac. Ab. Offices, &c. E.

TO CONSTITUTE, contr. To empower, to authorize. In the common form of letters of attorney, these words occur, I nominate, constitute and appoint."

CONSTITUTED AUTHORITIES. Those powers which the constitution of each people has established to govern them, to cause their rights to be respected, and to maintain tliose of eacli of its members.

2. They arc called constituted, to distinguish them from the constituting authority which has created or organized them, or has delegated to an authority, which it has itself created, the right of establishing or regulating their movements. The officers appointed under the constitution are also collectively called the constituted authorities. Dall. Dict. mots Contrainte par corps, n. 526.

CONSTITUTION,, government. The fundamental law of the state, containing the principles upon which the government is founded, and regulating the divisions of the sovereign powers, directing to what persons each of these powers is to be confided, and the, manner it is to be exercised as, the Constitution of the United States. See Story on the Constitution; Rawle on the Const.

2. The words constitution and government (q. v.) are sometimes employed to express the same idea, the manner in which sovereignty is exercised in each state. Constitution is also the name of the instrument containing the fundamental laws of the state.

3. By constitution, the civilians, and, from them, the common law writers, mean some particular law; as the constitutions of the emperors contained in the Code.

CONSTITUTION, contracts. The constitution of a contract, is the making of the contract as, the written constitution of a debt. 1 Bell's Com. 332, 5th ed.

CONSTITUTION OF THE UNITED STATES OF AMERICA. The fundamental law of the United States.

2. It was framed by a convention of the representatives of the people, who met at Philadelphia, and finally adopted it on the 17th day of September, 1787. It became the law of the land on the first Wednesday in March, 1789. 5 Wheat. 420.

3. A short analysis of this instrument, so replete with salutary provisions for insuring liberty and private riglits, and public peace and prosperity, will here be given.

4. The preamble declares that the people of the United States, in order to form a more perfect union, establish justice, insure public tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, do ordain and establish this constitution for the United States of America.

5. - 1. The first article is divided into ten sections. By the first the legislative power is vested in congress. The second regulates the formation of the house of representatives, and declares who shall be electors. The third provides for the organization of the senate, and bestows on it the power to try impeachments. The fourth directs the times and places of holding elections and the time of meeting of congress. The fifth determines the power of the respective houses. The sixth provides for a compensation to members of congress, and for their safety from arrests and disqualifies them from holding certain offices. The seventh directs the manner of passing bills. The eighth defines the powers vested in congress. The ninth contains the following provisions: 1st. That the migration or importation of persons shall not be prohibited prior to the

year 1808. 2d. That the writ of habeas corpus shall not be suspended, except in particular cases. 3d. That no bill of attainder, or ex post facto law, shall be passed. 4th. The manner of laying taxes. 5th. The manner of drawing money out of the treasury. 6th. That no title of nobility shall be granted. 7th. That no officer shall receive a present from a foreign government. The tenth forbids the respective states to exercise certain powers there enumerated.

6. - 2. The second article is divided into four sections. The first vests the executive power in the president of the United States of America, and provides for his election, and that of the vice-president. The second section confers various powers on the president. The third defines his duties. The fourth provides for the impeachment of the president, vice-president, and all civil officers of the United States.

7. - 3. The third article contains three sections. The first vests the judicial power in sundry courts, provides for the tenure of office by the judges, and for their compensation. The second provides for the extent of the judicial power, vests in the supreme court original jurisdiction in certain cases, and directs the manner of trying crimes. The third defines treason, and vests in congress the power to declare its punishment.

8. - 4. The fourth article is composed of four sections. The first relates to the faith which state records, &c., shall have in other states. The second secures the rights of citizens in the several states for the delivery of fugitives from justice or from labor. The third for the admission of new states, and the government of the territories. The fourth guaranties to every state in the Union the republican form of government, and protection from invasion or domestic violence.

9. - 5. The Fifth Article provides for amendments to the constitution.

10. - 6. The sixth article declares that the debts due under the confederation shall be valid against the United States; that the constitution and treaties made under its powers shall be the supreme law of the land that public officers shall be required by oath or affirmation to support the Constitution of the United States that no religious test shall be required as a qualification for office.

11. - 7. The seventh article directs what shall be a sufficient ratification of this constitution by the states.

12. In pursuance of the fifth article of the constitution, articles in addition to, and amendment of, the constitution, were proposed by congress, and ratified by the legislatures of the several states. These additional articles are to the following import:

13. - 1. Relates to religious freedom; the liberty of the press; the right of the people to assemble and petition.

14. - 2. Secures to the people the right to bear arms.

15. - 3. Provides for the quartering of soldiers.

16. - 4. Regulates the right of search, and of arrest on criminal charges.

17. - 5. Directs the manner of being held to answer for crimes, and provides for the security of the life, liberty and property of the citizens.

18. - 6. Secures to the accused the right to a fair trial by jury.18. - 6. Secures to the accused the right to a fair trial by jury.

19. - 7. Provides for a trial by jury in civil cases.

20. - 8. Directs that excessive bail shall not be required; nor excessive fines imposed nor cruel and unusual punishments inflicted.

21. - 9. Secures to the people the rights retained by them.

22.- 10. Secures the rights to the states, or to the people the rights they have not granted.

23. - 11. Limits the powers of the courts as to suits against one of the United States.

24. - 12. Points out the manner of electing the president and vice-president.

CONSTITUTIONAL. That which is consonant to, and agrees with the constitu- tion.

2. When laws are made in violation of the constitution, they are null and void: but the courts will not declare such a law void unless there appears to be a clear and unequivocal breach of the constitution. 4 Dall. R. 14; 3 Dall. R. 399; 1 Cranch, R. 137; 1 Binn. R. 415 6 Cranch, R. 87, 136; 2 Hall's Law Journ. 96, 255, 262; 3 Hall's Law Journ. 267; Wheat. Dig. tit. Constitutional Law; 2 Pet. R. 522; 2 Dall. 309; 12 Wheat. R. 270; Charlt. R. 175, .235; 1 Breese, R. 70, 209; 1 Blackf. R. 206 2 Porter, R. 303; 5 Binn. 355; 3 S. & R. 169; 2 Penn. R. 184; 19 John. R. 58; 1 Cowen, R. 550; 1 Marsb. R. 290 Pr. Dec. 64, 89 2 Litt. R. 90; 4 Monr R. 43; 1 South. R. 192; 7 Pick. R. 466; 13 Pick. R. 60 11 Mass. R. 396; 9 Greenl. R. 60; 5 Hayw. R. 271; 1 Harr. & J. 236; 1 Gill & J. 473; 7 Gill & J. 7; 9 Yerg. 490; 1 Rep. Const. Ct. 267; 3 Desaus. R. 476; 6 Rand. 245; 1 Chip. R. 237, 257; 1 Aik. R. 314; 3 N. H. Rep. 473; 4 N. H. Rep.

16; 7 N. H. Rep. 65; 1 Murph. R. 58. See 8 Law Intell. 65, for a list of decisions made by the supreme court of the United States, declaring laws to be unconstitutional.

CONSTITUTOR, civil law. He who promised by a simple pact to pay the debt of another; and this is always a principal obligation. Inst. 4, 6, 9.

CONSTRAINT. In the civil and Scottish law, by this term is understood what, in the common law, is known by the name of duress.

2. It is a general rule, that when one is compelled into a contract, there is no effectual consent, thougb, ostensibly, there is the form of it. In such case the contract will be declared void.

3. The constraint requisite thus to annul a contract, must be a vis aut me us qui cadet in constantem virum, such as would shake a man of firmness and resolution. 3 Ersk. 1, 16; and 4, 1, 26; 1 Bell's Conn. B. 3, part 1, o. 1, s. 1, art. 1, page 295.

CONSTRUCTION, practice. It is defined by Mr. Powell to be "the drawing in inference by the act of reason, as to the intent of an instrument, from given circumstances, upon principles deduced from men's general motives, conduct and action." This definition may, perbaps, not be sufficiently complete, inasmuch as the term instrument generally implies something reduced into writing, whereas construction, is equally necessary to ascertain the meaning of engagements merely verbal. In other respects it appears to be perfectly accurate. The Treatise of Equity, defines interpretation to be the collection of the meaning out of signs the most probable. 1 Powell on Con . 370.

2. There are two kinds of constructions; the first, is literal or strict; this is uniformly the construction given to penal statutes. 1 Bl. Com. 88; 6 Watt's & Serg. 276; 3 Taunt. 377. 2d. The other is liberal, and applied, usually, to remedial laws, in order to enforce them according to their spirit.

3. In the supreme court of the United States, the rule which has been uniformly observed " in construing statutes, is to adopt the construction made by the courts of the country by whose legislature the statute was enacted. This rule may be susceptible of some modification when applied to British statutes which are adopted in any of these states. By adopting them, they become our own, as entirely as if they had been enacted by the legislature of the state.

4. The received construction, in England, at the time they are admitted to operate in this couutry - indeed, to the time of our separation from the British empire - may very properly be considered as accompanying the statutes themselves, and forming an

integral part of them. But, however we may respect the subsequent decisions (and certainly they are entitled to great respect,) we do not admit their absolute authority. If the English courts vary their construction of a statute, which is common to the two countries, we do not hold ourselves bound to fluctuate with them. 5 Pet. R. 280.

5. The great object which the law has in all cases, in contemplation, as furnishing the leading principle of the rules to be observed in the construction of contracts, is, that justice is to be done between the parties, by enforcing the performance of their agreement, according to the sense in which it was mutually understood and relied upon at the time of making it.

6. When the contract is in writing, the difficulty lies only in the construction of the words; when it is to be made out by parol testimony, that difficulty is augmented by the possible mistakes of the witnesses as to the words used by the parties; but still, when the evidence is received, it must be assumed as correct, when a construction is to be put upon it. The following are the principal rules to be observed in the construction of contracts. When. the words used are of precise and unambiguous meaning, leading to no absurdity, that meaning is to be taken as conveying the intention of the parties. But should there be manifest absurdity in the application of such meaning, to the particular occasion, this will let in construction to discover the true intention of the parties: for example; 1st. When words are manifestly inconsistent with the declared purpose and object of the contract, they will be rejected; as if, in a contract of sale, the price of the thing sold should be acknowledged as received, while the obligation of the seller was not to deliver the commodity. 2 Atk. R. 32. 2d. When words are omitted so as to defeat the effect of the contract, they will be supplied by the obvious sense and inference from the context; as, if the contract stated that the seller, for the consideration of one hundred dollars, sold a horse, and the buyer promised to pay him for the said horse one hundred, the word dollars would be supplied. 1 3d. When the words, taken in one sense, go to defeat the contract, while they are susceptible of another construction which will give effect to the design of the parties, and not destroy it, the latter will be preferred. Cowp. 714.

8. - 2. The plain, ordinary, and popular sense of the words, is to be preferred to the more unusual, etymological, and recondite meaning or even to the literal, and strictly grammatical construction of the words, where these last would lead to any inefficacy or inconsistency.

9. - 3. When a peculiar meaning has been stamped upon the words by the usage of a particular trade or place in which the contract occurs, such technical or peculiar meaning will prevail. 4 East, R. 135. It is as if the parties in framing their contract had made use of a foreign language, which the court is not bound to understand, but which on evidence of its import, must be applied. 7 Taunt. R. 272; 1 Stark. R. 504. But the

expression so made technical and appropriate, and the usage by which it has become so, must be so clear that the court cannot entertain a doubt upon the subject. 2 Bos. & P. 164; 3 Stark. Ev. 1036: 6 T. R. 320. Technical words are to be taken according to their approved and known use in the trade in which the contract is entered into, or to wbich it relates, unless they have manifestly been understood in another sense by the parties. Vide 16 Serg. & R. 126.

10. - 4. The place where a contract has been made, is a most material consideration in its construction. Generally its validity is to be decided by the law of the place where it is made; if valid there, it is considered valid every where. 2 Mass. R. 88; 1 Pet. R. 317 Story, Confl. of Laws, 2; 4 Cowen's R. 410, note; 2 Kent, p. 39, 457, in the notes 3 Conn. R. 253 , 472; 4 Conn. R. 517. Its construction is to be according to the laws of the place where it is made for example, where a note was given in China, payable eighteen months after date, without any stipulation as to the amount of interest, the court allowed the Chinese interest of one per centum per month from the expiration of the eighteen mouths. 1 Wash. C. C. R. 253 see 12. Mass. R. 4, and the article Interest for noney.

11. - 5. Previous conversations, and all that passes in the course of correspondence or negotiation leading to the contract, are entirely superseded by the written agreement. The parties having agreed to reduce the terms of their contract to writing, the document is constituted as the only true and final exposition of their admissions and intentions; and nothing which does not appear in the written agreement will be considered as a part of the contract. 5 Co. R. 26; 2 B. & C. 634; 4 Taunt. R. 779. But this rule admits of some exceptions; as, where a declaration is made before a deed is executed, showing the design with which it was to be executed, in cases of frauds; 1 S. & R. 464; 10 S. & R. 292; and trusts, though no trust was declared in the writing. 1 Dall. R. 426; 7 S. & R. 114.

12. - 6. All contracts made in general terms, in the ordinary course of trade, are presumed to incorporate the usage and custom of the trade to which they relate. The parties are presumed to know such usages, and not to intend to exclude them. But when there is a special stipulation in opposition to, or inconsistent with the custom, that will of course prevail. Holt's R. 95.

13. - 7 . When there is an ambiguity which impedes the execution of the contract, it is first, if possible, to be resolved, on a view of the whole contract or instrument, aided by the admitted views of the parties, and, if indispensable, parol evidence may be admitted to clear it, consistently with the words. 1 Dall. R. 426; 4 Dall. R. 34 0; 8 S. & R. 609.

14. - 8. When the words cannot be reconciled with any practicable or consistent interpretation, they are to be considered as not made use of " perinde sunt ac si scripts non essent."

15. It is the duty of the court to give a construction to all written instruments; 3 Binn. R. 337; 7 S. & R. 372; 15 S. & R. 100 4 S. & R. 279 8 S. & R. 381; 1 Watts. R. 425; 10 Mass. R. 384; 3 Cranch, R. 180 3 Rand. R. 586 to written evidence 2 Watts, R. 347 and to foreign laws, 1 Penna. R. 388. For general rules respecting the construction of contracts, see 2 Bl. Com. 379; 1 Bouv. Inst. n. 658, 669; 2 Com. on Cont. 23 to 28 3 Chit. Com. Law, 106 to 118 Poth. Oblig. P. 1, c. 1, art. 7; 2 Evans' Poth. Ob. 35; Long on Sales, 106; 1 Fonb. Eq. 145, n. b Id. 440, n. 1; Whart. Dig. Contract, F; 1 Powell on Contr. 370 Shepp. Touchst. c. 5 Louis. Code, art. 1940 to 1957; Corn. Dig. Merchant, (E 2,) n. j.; 8 Com. Dig. tit. Contract, iv.; Lilly's Reg. 794; 18 Vin. Abr. 272, tit. Reference to Words; 16 Vin. Abr. 199, tit. Parols; Hall's Dig. 33, 339; 1 Ves. Jun. 210, n.; Vattel, B. 2, c. 17; Chit. Contr. 19 to 22; 4 Kent. Com. 419; Story's Const. 397-456; Ayl. Pa d. B. 1, t. 4; Rutherf. Inst. B. 2, c. 7, 4-11; 20 Pick. 150; 1 Bell's Com. 5th ed. 431; and the articles, Communings; Evidence; Interpretation; Parol; Pourparler. As to the construction of wills, see 1 Supp. to Ves. Jr. 21, 39, 56, 63, 228, 260, 273, 275, 364, 399; 1 United States Law Journ. 583; 2 Fonb. Eq. 309; Com. Dig. Estates by Devise. N 1; 6 Cruise's Dig. 171 Whart. Dig. Wills, D. As to the construction, of Laws, see Louis. Code, art. 13 to 21; Bac. Ab. Statutes, J; 1 Bouv. Inst. n. 86-90; 3 Bin. 858; 4 Bin . 169, 172; 2 S. & R. 195; 2 Bin. 347 Rob. Digest, Brit. Stat. 370; 7 Term. Rep. 8 2 Inst. 11, 136; 3 Bin. 284-5; 3 S. & R. 129; 1 Peere Wms. 207; 3 Burr. Rep. 1755-6; 3 Yeates, 108; 11 Co. 56, b; 1 Jones 26; 3 Yeates, 113 117, 118, 120; Dwarris on Statutes.

16. The following words and phrases have received judicial construction in the cases referred to. The references may be useful to the student and convenient to the practitioner.

A and his associates. 2 Nott.& M'Cord, 400.
A B, agent. 1 Breese's R. 172.
A B, (seal) agent for C D. 1 Blackf. R. 242.
A case. 9 Wheat. 738.
A piece of land. Moor. 702; S. C. Owen, 18.
A place called the vestry. 3 Lev. R. 96; 2 Ld. Raym. 1471.
A slave set at liberty. 3 Conn. R. 467.
A true bill. I Meigs, 109.
A two penny bleeder. 3 Whart. R. 138.
Abbreviations. 4 C. & P. 51; S. C. 19 Engl. C. L. R. 268.
Abide. 6 N. H. Rep. 162.
About. 2 Barn. & Adol. 106; 22 E. C. L. R. 36; 5 Greenl. R. 482. See 4 Greenl. 286. About _____ dollars. 5 Serg. & Rawles, 402. About $150. 9 Shep. 121.
Absolute disposal. 2 Eden, 87; 1 Bro. P. C. 476; 2 Johns. R. 391; 12 Johns. R. 389.

Absolutely. 2 Pa. St. R. 133.
Accept. 4 Gill & Johns. 5, 129
Acceptance. There is your bill, it is all right. 1 Esp. 17. If you will send it to the counting-house again, I will give directions for its being accepted. 3 Camp. 179. What, not accepted ? We have had the money, and they ought to have been paid; but I do not interfere; you should see my partner. 3 Bing. R. 625; S. C. 13 Eng. C. L. R. 78. The bill shall be duly honored, and placed to the drawer's credit. 1 Atk. 611. Vide Leigh's N. P. 420.
Accepted. 2 Hill, R. 582.
According to the bill delivered by the plaintiff to the defendant. 3 T. R. 575.
According to their discretion. 5 Co. 100; 8 How,. St. Tr. 55 n.
Account. 5 Cowen, 587, 593. Account closed. 8 Pick. 191. Account stated. 8 Pick. 193. Account dealings. 5 Mann. & Gr. 392, 398.
Account and risk. 4 East, R. 211; Holt on Sh. 376.
Accounts. 2 Conn. R. 433.
Across. 1 Fairf. 391.
Across a country. 3 Mann. & Gr. 759.
Act of God. 1 Cranch, 345; 22 E. C. L. R. 36; 12 Johns. R. 44; 4 Add. Eccl. R. 490.
Acts. Platt on Cov. 334.
Actual cost. 2 Mason, R. 48, 393, 2 Story's C. C. R. 422.
Actual damagei. 1 Gall. R. 429.
Adhere. 4 Mod. 153.
Adjacent. Cooke, 129.
Adjoining. 1 Turn. R. 21.
Administer. 1 Litt. R. 93, 100.
Ad tunc et indem. I Ld. Raym. 576.
Advantage, priority or preference. 4 W. C. C. R. 447.
Adverse possession. 3 Watts, 70, 77, 205, 345; 3 Penna. R. 134; 2 Rawle's R. 305; 17 Serg. & Rawle, 104; 2 Penna. R. 183; 3 Wend. 337, 357; 4 Wend. 507; 7 Wend. 62; 8 Wend. 440; 9 Wend. 523; 15 Wend. 597; 4 Paige, 178; 2 Gill & John. 173; 6 Pet. R. 61, 291 11 Pet. R. 41; 4 Verm. 155; 14 Pick. 461.
Advice. As per advice. Chit. Bills, 185.
Affecting. 9 Wheat. 855.
Aforesaid. Ld. Baym. 256; Id. 405.
After paying debts. 1 Ves. jr. 440; 3 Ves. 738; 2 Johns. Ch. R. 614; 1 Bro. C. C. 34; 2 Sch. & Lef. 188.
Afterwards to wit. 1 Chit. Cr. Laws, 174.
Against all risks. 1 John. Cas. 337.
Aged, impotent, and poor people. Preamble to Stat. 43 Eliz. c. 4; 17 Ves. @)73, in notes; Amb. 595; 7 Ves. 423; Scho. & Lef. 111; 1 P. Wims. 674; S. C. Eq. Cas. Ab. 192, pl. 9; 4 Vin. Ab. 485; 7 Ves. 98, note; 16 Ves. 206: Duke's Ch. Uses, by Bridgman, 361; 17 Ves. 371; Boyle on Charities, 31.
Agreed. 1 Roll's Ab. 519,
Agreement. 7 E. C. L. R. 331; 3 B. & B. 14; Fell on Guar. 262. Of a good quality and mode rate price. 1 Mo. & Malk. 483; S. C. 22 E. C. L. R. 363.
Aiding and abetting. Act of Congress of 1818, c. 86, 3; 12 Wheat. 460.
Aliments. Dig. 34, 1, 1.
All. 1 Vern. 3; 3 P. Wms. 56; 1 Vern. 341; Dane's Ab. Index, h. t. All debts due to me.; 1 Meriv. 541, n.; 3 Meriv. 434. All I am worth. 1 Bro. C.

C. 487; 8 Ves. 604. All I am possessed of. 5 Ves. 816. All my clothes and linen whatsoever. 3 Bro. C. C. 311. All my household goods and furniture, except my plate and watch. 2 Munf. 234. All my estate. Cows, 299; 9 Ves. 604. All my real property. 18 Ves. 193. All my freehold lands. 6 Ves. 642.
All and every other my lands, tenements, and hereditaments. 8 Ves. 256; 2 Mass. 56; 2 Caines' R. 345; 4 Johns. R. 398. All the inhabitants. 2 Conn. R. 20. All sorts of. 1 Holt's N. P. R. 69. All business. 8 Wendell. 498; 23 E. C. L. R. 398; 1 Taunt. R. 349; 7 B. & Cr. 278, 283, 284. All claims and demands whatsoever. 1 Edw. Ch. R. 34. All baggage is at the owner's risk. 13 Wend. R. 611; 5 Rawle's R. 179; 1 Pick. R. 53; 3 Fairf R. 422; 4 Har. & John. 317. All civil suits. 4 S. & R. 76. All demands. 2 Caines' R. 320, 327; 15 John R. 197; 1 Ld. Raym. 114. All lots I own in the town of F. 4 Bibb, R, 288. All the buildings thereon. 4 Mass. R. 110; 7 John. R. 217.
All my rents. Cro. Jac. 104. All I am worth. 1 Bro. C. C. 437. All and every other my lands, tenements, and hereditaments. 8 Ves. 246; 2 Mass. 56; 2 Caines' R. 345; 4 John. Ch. 388.
All other articles perishable in their own nature. 7 Cowen, 202.
All and every. Ward on Leg. 105; Cox, R. 213.
All minerals, or magnesia of any kind. 5 Watts, 34.
All my notes. 2 Dev. Eq. R. 489.
All that I possess, in doors and out of doors. 3 Hawks, R. 74.
All timber trees and other trees, but not the annual fruit thereof. 8 D. & R. 657; S. ic. 5 B. & C, R. 942.
All two lots. 7 Gill & Johns. 227.
All action. 5 Binn. 457.
Also. 4 Rawle, R. 69; 2 Bayw. 161
Amongst. 9 Ves. 445; 9 Wheat. R. 164; 6 Munf. 352.
And, construed or. 3 Ves. 450; 7 Ves. 454; 1 Supp. to Ves. jr. 435; 2 Supp. to Ves. jr. 9, 43, 114; 1 Yeates, 41, 319; 1 Serg. & Rawle, 141. Vide Disjunction, Or.
And all the buildings thereon. 4 Mass. R. 110; 7 John R. 217.
And also. 1 Hayw. 161.
And so on, from year to year, until the tenancy hereby created shall be determined as hereinafter mentioned. 1 P. & D. 454; and see 2 Campb. R. 573; 3 Campb. 510; 1 T. R. 378.
And the plaintiff doth the like. 1 Breese's R. 125.
Annual interest. 16 Verm. 44.
Annually, or in any way he may wish. 2 M'Cord's Ch. R. 281.
Any person or persons. 11 Wheat. R. 392; 3 Wheat. R. 631.
Any court of record. 6 Co. 19.
Any goods. 3 Campb. 321.
Any creditor. 5 B. & A. 869.
Any other fund. 1 Colly. R. 693.
Any other matter or thing from the beginning of the world. 4 Mason, 227.
Apartment. 10 Pick. 293.
Apparel. Goods and wearing apparel, in a will. 3 Atk. 61.
apparatus. 9 Law Rep. 207.
Appeals. 1 Breese's R. 261.
Appear. 2 Bailey's R. 513.
Appellate. 1 Breese's R. 261
Appropriation. 1 Scam. R. 344.
Approved paper. 4 Serg. & Rawle, 1; 20 Wend. R. 431; 2 Campb. 532.
Appurtenances. 1 Serg. & Rawle, 169; 8 Johns. R. 47, 2d edit.; Com. Dig.

Grant, E 9; 5 Serg. & Rawle, 110; Holt on Shipp. 404; 9 Pick. 293; 7 Mass.
6; 12 Pick. 436.
Are. 2 B. & B. 223.
Arrears. Ward on Leg. 219; 2 Ves. 430.
Arrive. 17 Mass. 188.
Articles perishable in their own nature. 7 Cowen, 202.
As appears by the bond or by the books. 1 Wils. 339, 279, 121; 2 Str. 1157, 1209, 1219.
As appears by the master's allocator. 2 T. R. 55.
As executors are bound in law to do. 2 Ohio R. 346.
As follows. 1 Chit. Cr. Law 233.
As this deponent believes. 2 M. & S. 563.
Ass. 2 Moody, C. C. 3.
Asses-Cattle. 1 R. & M. C. C. 3; 2 Russ. Cr. & M. 498.
Assent to. 4 Gill & Johns. 5, 129.
Assignment, actual or potential. 5 M. & S. 228.
Assings. 5 Co. 77 b.
At. 2 Caines' Err. 158.
At and from. 1 Marsh. Ins. 358, 261, a; 1 Caines' R. 75, 79; 1 New Rep. 23; 4 East, R. 130.
At any port or places. 1 Marsh. Ins. 191.
At his will. Roll's Ab. 845; Bac. Ab. Estate for life and occupancy, A.
At least. 8 W. & S. 470.
At such time and manner. 19 Ves. 387.
At twenty-one. Payable at twenty-one. 6 Ves. 245.; 7 ves. 412; 9 Ves. 225; 1 Bro. C. C. 91.
At the trial of the cause. 9 E. C. L. R. 202, 186.
At the wholesale factory price. 2 Conn. R. 69.
Attention, shall meet. 3 E. C. L. R. 407; 13 Id. 329.
Attest. 9 Mees. & W. 404.
Authority - Jurisdiction. 2 Bl. R. 1141.

Baggage. 6 Hill, N.Y. 586.
Baggage of Passengers at the risk of the owners. 19 Wend. 234, 251; 21 Wend. 153; 26 Wend. 591; 17 Verm. 151.
Bank money. 5 Humph. R. 140.
Bank notes. 5 Mason's R. 549; 6 Wend. 346, 354.
Bankruptcy. 6 T. R. 684.
Bar-keeper. 3 S. & R. 351.
Bargain and sell. 4 Monr. R. 463.
Barley. 4 C. & P. 548.
Barrels. 7 Cowen, R. 681.
Beans. Bac. Ab. Merchant, &c. I. 1 Mood. C. C. 323.
Bearing Interest. 1 Stark. r. 452; 2 E.C. L.R. 466.
Beast. 1 Russ. C. & M. 568; 1 Russ. on Cr. 568; Bac. Ab. Sodomy.
Beef. 6 W. & S. 279.
Before the next term. 1 Binn. 76; 4 Yeates, 511.
Before the first day of the term after the action has been commenced. 4 Dall. 433.
Before the sitting of the court. 5 Mass. R. 197.
Beginning to keep house. 6 Bing. R. 363; 19 Ves. 543.
Begotten. To be begotten. Co. Litt. 20 b, and n. 3; 3 Leon. 5.
Belongs - Belonging. 3 Conn. R. 467; 2 Bing. 76; Chit. Pr. 475 n.; 11 Conn. R. 240; 1 Coxe's R. 255.
Believe. 2 Wend. 298.

Belong. 3 Conn. R. 467.
Benefits of my real estate, construed, 4 Yates, 23.
Benevolent purposes. 3 Mer. 17; Amb. 585, n. (Blunt's Edit.)
Best of his knowledge and belief. 1 Paige, 404; 3 Id. 107, 212.
Between. 2 Saund. 158 b. n. 6; 1 Shipl. R. 201; 1 Mass. 91.
Between them. 2 Mer. R. 70.
Beyond sea. 3 Wheat. R. 541; 3 Cranch, R. 177; 14 Pet. C. 141; I Harr. & McHen. 89; 1 Har. & J. 350; 2 McCord, R. 331; 3 Mass. R. 271; 1 Pick. R. 263; 9 Serg. & Rawle, 288; 2 Dall. 217; 1 Yeates, 329. Vide Beyond 8ea, in the body of the work.
Beyond seas. 3 Wheat. 343; 9 S. & R. 291.
Bien. 2 Ves. 163.
Big. 2 Dev. R. 115.
Blubber. 1 Story, R. 603.
Board, boarding. 2 Miles, R. 323.
Bag. Cro. Car. 511.
Boiler. Wright, 143.
Book. 2 Campb. 25, 28, n.; 11 East, 244.
Book debt-Book entries. 2 Miles, R. 101, 102; 3 Ired. R. 77, 443; 4 Ired. 110.
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Boons. Sugd. Pow. 633, 671.
Bound by surety. 5 Serg. & Rawle, 329.
Bound with surety, 6 Binn. 53.
Bounded on the margin. 6 Cowen, 526.
Bounded on the road. 13 Mass. 259.
Breach of good-behaviour. 2 Mart. N. S. 683.
Brick factory. 21 Pick. R. 25.
Building. 16 John. R. 14; 13 John. R. 346; 9 Bing. 305; 5 Mann. & Gr. 9, 33.
Business. 1 M. & Selw. 95.
Butcher. 1 Barn. & A. 617; 6 Watts & Serg. 269, 277.
By act and operalion of law. 3 Caines' R. 64.
By surety. 5 Serg. & Rawle, 329.
By a certain time. Penna. R. 48.
By any other means. 2 Co. 46
By virtue of his office. 3 E. C. L. R. 425.
By a stream. 3 Sumn. R. 170.
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Cabinet of curiosities. 1 Cox, R. 77; 1 Bro. C. C. 467.
Came by descent, gift, or devise. 2 Pet. 58.
Cargo. 4 Pick. 433; 2 Gill & John. 134, 162.
Case-suit. 2 Murph. 320.
Catchings. 1 Story, R. 603.
Cattle. 1 R. & M. C. C. 3; 2 Russ. C. & M. 498; R. & R. C. C. 77; 2 East, P. C. 1074; 1 Leach, C, C. 72; 2 W. Black. 721; 2 Moody, C: C. 3.
Cause. 1 Supp. to Ves. jr. 510.
Cause of action. Wilk. on Lim. [49).
Cease. Coop. Ch. R. 14.5.
Cede. 1 liar. (N. J.) 181.
Certificate of deposit. 6 Watts & Sero,. 227.
Chamber or rooms. 3 Leon. 210.
Chambres. 5 Watts, R. 243,
Charged in execution. 4 T. R. 367.

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Cheat. 2 Hale's Hist. P. C. 183: Bac. Ab. Indictment, G 3.
Chiefest and discreetest. 13 Ves. 13.
Child, grandchild, issue, son; see Legatee; 1 Ves. 290; Id. 335; Ambl. 397; Id. 701; 5 Burr. 2703; Cowp. 314; 3 Anstr. 684; Lofft, 19; 7 T. R. 322; 1 East, 120; 2 Eden, 194; 2 Bro. C. C. 33: 2 Ves. jr. 673; 3 Ves. 232; Id. 421; 4 Ves. 437; Id. 692; 5 Ves. 530; 6 Ves. 43, Id. 345; 7 Ves. 522; 10 Ves. 160, Id. 176; Id. 195; 13 Ves. 340; 1 Cox, 248; Id. 327; 2 Cox, 184; 1 Ves. & Bea. 422, 462, 469; 2 Ves. & Bea. 213; 3 Ves. & Bea. 59, 67, 69, 113; 1 Meriv. 654; 2 Meriv. 382; Dick. 344; 1 Eden, 64; 1 Bro. C. C. 530; 2 Bro. C. C. 68, 230, 658; 3 Bro. C. C. 148, 347, 352, 434: 1 Bro. C. C. 55; 19 Ves. 125; 1 Ball & B. 486; Com. Dig. App., Devise of real property, x. 5, 6, 7, 8, 9; Id. Devise of personal property, viii. 13.
Child's part. 2 Roll. R. 104; Poph. 148; 1 Roll. R. 193; Cro. Jac. 417.
Children. 3 Paige, 10; 5 Ves. 530; 1 Ves. & Bea. 434; 4 Eng. Ch. R. 565; 5 Conn. R. 228.
To such child or children, if more than one, as may happen to be enceinte by me. 17 Ves. 528.
To the children which I may have by A, living at my decease. 1 Ves. & Bea. 422.
Chromate of iron. 5 Watts, 34.
Civil action. 6 Binn. 5; 1 Binn. 197.
Civil suit. 4 S. & R. 76.
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Clear of all charges and assessments whatever. 4 Yeates, 386.
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Closing an account. 7 Serg. & Rawle, 128; 8 Pick. 187.
Clothes. All my clothes and linen whatsoever. 3 Bro. C. C. 311.
Coal mine. Cro. Jac. 150; Noy, 121; Gilb. Ej. 61, 2d ed.; Rosc. R. Act. 486.
Coasting trade. 3 Cowen, R. 713,
Coffer. 2 Hale's Hist. P. C. 3; Bac. Ab. Indictment, G 3.
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Collectable. 8 Watts, R. 361.
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Commerce - Navigation. 9 Wheat. 1.
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Consentable lines. 10 Serg. & Rawles 110.
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Convenieid speed, or as soon as convenient. 19 Ves. 336, 390, notes; 1 Ves. jr. 366.
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Counly aforesaid. 2 Bl. R. 847.
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To wait awhile. 1 Penna. R. 385.
Toll. 2 Show,. 34.
Took the oath in such case required by the act of congress. 5 Leigh's R. 743.
Tools. 2 Whart. 26.
Touch and stay. 1 Marsh. Ins. 188; 1 Esp. N. R. 610; Wesk. Ins. 548.
Transact all business. 22 E. C. L. R. 397; 1 Taunt. R. 349; 5 B. & Ald. 204, 210, 211; 1 Yo. & Col. 394.
Transaction. 7 Mann. & Gr. 538.
Treasonable practices. 1 Stuart's L. C. R. 4.
Tree. 2 Dev. 162.
Trees, woods, coppice - wood grounds, of what kind or growth soever. 4 Taunt. 316.
True value. 17 Wheat. R. 419; 1 Stuart's L. C. R. 419.
Trifling. 1 W. & S. 328; 14 S. & R. 349.
Trinkets. 1 Carr. & Marsh. 45.
Truly. 2 Brock. R. 484, 5.
Tunc. 5 Mann. & Gr. 696.
Turnpike Road. 20 Johns. R. 742.
Two years after demand. 8 D. & R. 347.

Unavoidable accident. 1 Brock. R. 187.
Understood. 2 Cox's Ch. R. 16.
Underwood. 2 Rolle's R. 485.
Unexecuted writ. 1 Barr. N. J. Rep. 154.
Unless. Boyle on Char. 291; 1 Mer. 102; 3 Id. 65, 79; 3 Burr. 1550.
Unmarried. 2 Supp. to Ves. jr. 43; 2 Barn. & Ald. 452. Without being married. 7 Ves. 458.
Until. Cows. 571; 5 East, 250; Cas. t. Hard. 116. Until she hath moored at anchor twenty-four hours in good safety. Park, Ins. 35; 1 Marsh. Ins. 262; 2 Str. 1248; 1 Esp. Rep. 412.
Unto and amongst. 9 Ves. 445.
Up the creek. 1 Wilc. R. 508.
Used. 1 Chit. Pr. 214.
Use till paid. Kirb. 145.
Useful invention. 1 Mason, R. 302; 4 Wash. C. C. R. 9.
Usque. 2 Mod. 280.
Usual clauses. 2 Chit. Com. Law, 227; 1 Mer. R. 459.
Usual covenants. Platt on Cov. 430.
Usual terms. 8 Mod. 308; Barnes, 330; 3 Chit. Pr. 705.
Usurped power. 2 Marsh. Ins. 700; 2 Wils. 363.
Usury. Vide 2 Rick. (2d ed.) 152, n. 1; 5 Mass. R. 53; 7 Mass. R. 36; 10 Mass. R. 121; 13 Mass. R. 443; 4 Day, R. 37; 2 Com. R. 341; 7 Johns. R. 402; S. C. 8 Johns. R. 218; 4 Dall. R. 216; 2 Dall. R. 92; 6 Munf. R. 430, 433; 3 Ohio R. 18; 1 Blackford's R. 336; 1 Fairfield, R. 315; 2 Chit. Cr. Law, *549; 3 Ld. Raym. 36; Trem. P. C. 269; Co. Entr. 394, 435; Rast. Entr. 689; Cro. C. C. 743; Com. Dig. Usury, C; 4 Bl. Com. 158; Hard. 420.

Vacancies. 2 Wend. 273.
Vacancy. 1 Breese's R. 70.
Valuable things. 1 Cox, t7; 1 Bro. C. C. 467.
Value received. 3 M. & S. 351; 5 M. & S. 65; 5 B. & C. 360; S. C. 11 Engl. C. L. R. 252; 3 Kent, Com. 50; Maxw. L. Dict. h. t.; 1 Hall, 201; 1 Blackf. R. 41; 2 M'Lean, R. 213. True value. 11 Wheat. 419.
Vegetable production. 1 Mo. & Mal. 341.
Victual. 3 Inst. 195; Hale's P. C. 152; Cro. Car. 231 Bac. Ab. Forestalling, B; 1 East, R. 169.
Victualler. 9 E. & E. 406; 6 Watts & Serg. 278.
Videlicet. 8 Ves. 194.
Village or town. Co. Litt. 5; Plowd. 168; Touchst. 92.
Voluntary assignment. 3 Sumn. R. 345.

Wantonness. 1 Wheel. Cr. Cas. 365; 4 W. C. C. R. 534; 1 Hill, 46, 363.
Warbles. Oliph. on Law of Horses, 53; 9 M. & W. 670.
Warehouse. Cro. Car. 554; Gilb. Ej. 57; 2 Rosc. R. Act. 484; 8 Mass. 490.
Waste. 1 Ves. 461; 2 Ves. 71.
Watch. Ward on Leg. 221; Mos. 112.
Water lots. 14 Pet. R. 302.
Way. In, through, and along. 1 T. R. 560.
Well and truly executes the duties of his office. 1 Pet. R. 69.
Well and truly to administer. 9 Mass. 114, 119, 370; 13 John. 441; 1 Bay, 328.

Well and truly to administer according to law. 1 Litt. R. 93, 100.
What I may die possessed of. 8 Ves. 604; 3 Call, 225.
What remains. 11 Ves. 330.
Wharf. 6 Mass. 332.
Wheat. An unthrashed parcel of wheat. 1 Leach, 494; 2 East, P. C. 1018; 2 T. R. 255.
Wheezing. Oliph. on Law of Horses, 61.
When. 6 Ves. 239; 11 Ves. 489; 3 Bro. C. C. 471.
When able. 3 Esp. 159; 3 E. C. L. R. 264, note; 4 Esp. 36.
When received. 13 Ves. 325.
When the same shall be recovered. lb.
When or if. 1 Hare, R. 10.
When paid. 15 S. & R. 114.
Wherefore he prays judgment, &c. 2 John. Cas. 312.
Whereupon. 6 T. R. 573.
Whilst. 7 Fast, 116.
Wholesale factory prices. 2 Conn. R. 69.
Widows and Orphans. 2 Sim. & Stu. 93.
Wife. 3 Ves. 570.
Wilful. 1 Benth. Ev. 351.
Wilful and corrupt. 1 Benth. Rat. Jud. Ev. 351.
Wilfully. 8 Law Rep. 78.
Will. He will change. 2 B. & B. 223.
With. 2 Vern. 466; Prec. Ch. 200; 1 Atk. 469; 2 Sch. & Lef. 189; 3 Mer. 437; 2 B. & Ald. 710; 2 B. & P. 443.
With all faults. 5 B. & A. 240; 7 E. C. L. R. 82; 3 E. C. L. R. 475.
With surety. 6 Binn. 53; 12 Serg. & Rawle, 112.
With the prothonotary. 5 Binn. 461.
With all usual and reasonable covenauts. 12 Ves. 179, 186; 3 Bro. C. C. 632; 15 Ves. 528; 3 Anstr. 700.
With sureties. 2 Bos. & Pull. 443.
With effect. 2 Watts & Serg. 33.
With liberty. 8 Gill & John. 190.
Within four days. 15 Serg. & Rawle, 43.
Within ___ days after. 3 Serg. & Rawle, 395.
Without fraud, deceit or oppression. 6 Wend. 454.
Without prejudice. 2 Chit. Pr. 24, note (x); 3 Mann. & Gr. 903.
Without recourse. 1 Cowen, 538; 3 Cranch, 193; 7 Cranch, 159; 12 Mass. 172; 14 Serg. & Rawle, 325; 8 W. & S. 353; 2 Penn. St. R. 200. Vide article Sans Recours, in the body of this work.
Without reserve. 5 Mass. R. 34.
Wm. William. 1 Scam. R. 451.
Wood. Cro. Jac. 166.
Wood-land. 1 Serg. & Rawle, 169.
Woods. 4 Mass. 268.
Working days. 1 Bell's Com. 577, 5th ed
Worldly labor. 4 Bing. 84; S. C. 13 R. 351.
Worth and value. 3 B. & C. 516.
Writing. 14 John. 484; 8 Ves. 504; 2 M. & S. 286; 17 Ves. 459.
Writing in pencil. 1 Eng. Eccl. Rep. 406.

Yard lane. Touchs. 93; Co. Litt. 5.
Yearly meeting of Quakers. 6 Conn. 393.
Yearly meeting. 6 Conn. 292.
You. 2 Dowl. R. 145; S. C. 6 Leg. Obs. 138.

CONSTRUCTIVE. That which is interpreted.

2. Constructive presence. The commission of crimes, is, when a party is not actually present, an eye-witness to its commission but, acting with others, watching while another commits the crime. 1 Russ. Cr. 22.

3. Constructive larceny. One where the taking was not apparently felonious, but by construction of the prisoner's acts it is just to presume he intended at the time of taking to appropriate the property feloniously to his own use; 2 East, P. C. 685; 1 Leach, 212; as when he obtained the delivery of the goods animo furandi. 2 N. & M. 90. See 15 S. & R. 93; 4 Mass. 580; I Bay, 242.

4. Constructive breaking into a house. In order to commit a burglary, there must be a breaking of the house; this may be actual or constructive. A constructive breaking is when the burglar gains an entry into the house by fraud, conspiracy, or threat. See Burglary, A familiar instance of constructive breaking is the case of a burglar who coming to the house under pretence of business, gains adiuittance, and after being admitted, commits such acts as, if there had been an actual brooking, would have amounted to a burglary Bac. Ab. Burglary, A. See 1 Moody Cr. Cas. 87, 250.

5. Constructive notice. Such a notice, that although it be not actual, is sufficient in law; an example of this is the recording of a deed, which is notice to all the world, and so is the pendancy of a suit a general notice of an equity. 4 Bouv. Inst. n. 3874. See Lis pendens.

6. Constructive annexation. The annexation to the inheritance by the law, of certain things which are not actually attached to it; for example, the keys of a house; and heir looms are constructively annexed. Shep. Touch. 90; Poth- Traits des Choses, 1.

7. Constructive fraud. A contract or act, which, not originating in evil design and contrivance to perpetuate a positive fraud or injury upon other persons, yet, by its necessary tendency to deceive or mislead them, or to violate a public or private confidence, or to impair or injure public interest, is deemed equally reprehensible with positive fraud, and therefore is prohibited by law, as within the same reason and mischief as contracts and acts done malo animo. 1 Story, Eq. 258 to 440.

CONSUETUDINES FEUDORUM. The name of an institute of the feudal system and usages, compiled about the year 1170, by authority of the emperor Frederic, surnamed Barbarossa. Ersk. Inst. B. 2, t. 3, n. 5. CONSUL, government, commerce. Consuls are commercial agent's appointed by a government to reside in the seaports of a foreign country, and commissioned to watch over the commercial rights an@

privileges of the nation deputing them. A vice-consul is one acting in the place of a consul.

2. Consuls have been greatly multiplied. Their duties and privileges are now generally limited, defined and secured by commercial treaties, or by the laws of the countries they represent. As a general rule, it may be laid down that they represent the subjects or citizens of their own nation, not otherwise represented. Bee, R. 209 3 Wheat. R. 435; 6. Wheat. R., 152; 10 Wheat. 66; 1 Mason's R. 14.

3. This subject will be considered by a view, first, of the appointment, duties, powers, rights, and liabilities of American consuls; and secondly, of the recognition, duties, rights, and liabilities of foreign consuls.

4. - 1. Of American consuls. First. The president authorized by the Constitution of the United States, art. 2, s. 2, el. 3, to nominate, and, by and with the advice and consent of the senate, appoint consuls.

5. - Secondly. Each consul and vice-consul is required, before he enters on the execution of his office, to give bond, with such sureties as shall be approved by the secretary of state, in a sum not less than two thousand nor more than ten thousand dollars, conditioned for the true and faithful discharge of the duties of his office, and also for truly accounting for all moneys, goods and effects which may come into his possession by virtue of the act of 14th April, 1792, which bond is to be lodged in the office of the secretary of State. Act of April 14, 1792, sect. 6.

6. - Thirdly. They have the power and are required to perform many duties in relation to the commerce of the United States and towards masters of ships, mariners, and other citizens of the United States; among these are the authority to receive protests or declarations which captains, masters, crews, passengers, merchants, and others make relating to American commerce; they are required to administer on the estate of American citizens, dying within their consulate, and leaving no legal representatives, when the laws of the country permit it; [see 2 Curt. Ecc. R. 241] to take charge and secure the effects of stranded American vessels in the absence of the master, owner or consignee; to settle disputes between masters of vessels and the mariners; to provide for destitute seamen within their consulate, and send them to the United States, at the public expense. See Act of 14th April, 1792; Act of 28th February, 1803, ch. 62; Act of 20th July, 1840, Ch. 23. The consuls are also authorized to make certificates of certain facts in certain cases, which receive faith and credit in the courts of the United States. But those consular certificates are not to be received in evidence, unless they are given in the performance of a consular function; 2 Cranch, R. 187; Paine, R. 594; 2 Wash. C. C. R. 478; 1 Litt. R. 71; nor are they evidence, between persons not parties

or privies to the transaction, of any fact, unless, either expressly or impliedly, made so by statute. 2 Sumn. R. 355.

7. - Fourthly. Their rights are to be protected agreeably to the laws of nations, and of the treaties made between the nation to which they are sent, and the United States. They are entitled, by the act of 14th April, 1792, s. 4, to receive certain fees, which are there enumerated. And the consuls in certain places, as London, Paris, and the Barbary states, receive, besides, a salary.

8. - Fifthly. A consul is liable for negligence or omission to perform, seasonably, the duties imposed upon him, or for any malversation or abuse of power, to any injured person, for all damages occasioned thereby; and for all malversation and corrupt conduct in office, a consul is liable to indictment, and, on conviction by any court of competent jurisdiction, shall be fined not less than one, nor more than ten thousand dollars; and be imprisoned not less than one nor more than five years. Act of July 20, 1840, ch. 23, cl. 18. The act of February 28, 1803, ss. 7 and 8, imposes heavy penalties for falsely and knowingly certifying that property belonging to foreigners is the property of citizens of the United States; or for granting a passport, or other paper, certifying that any alien, knowing him or her to be such, is a citizen of the United States.

9. The duties of consuls residing on the Barbary coast are prescribed by a particular statute. Act of May 1, 1810, S. 4.

10. - 2. Of foreign consuls. First. Before a consul can perform any duties in the United States, he must be recognized by the president of the United States, and have received his exequatur. (q. v.)

11. - Secondly. A consul is clothed only with authority for commercial purposes, and he has a right to interpose claims for the restitution of property belonging to the citizens or subjects of the country he represents; 10 Wheat. R. 66; 1 Mason R. 14; See, R. 209; 6 Wheat. R. 152; but he is not to be considered as a minister or diplomatic Agent, entrusted by virtue of his office to represent his sovereign in negotiations with foreign states. 3 Wheat, R. 435.

12. - Thirdly. Consuls are generally invested with special privileges by local laws and usages, or by international compact; but by the laws of nations they are not entitled to the peculiar immunities of ambassadors. In civil and criminal cases, they are subject to the local laws in the same manner with other foreign residents owing a temporary allegiance to the state. Wicquefort, De l'Ambassadeur, liv. 1, 5; Bynk. cap. 10 Martens, Droit des Gens, liv. 4, c. 3, 148. In the United States, the act of September 24th, 1789, s. 13 gives to the supreme court original, but not exclusive jurisdiction of

all suits in which a consul or vice-consul shall be a party. The act last cited, section 9, gives to the district courts of the United States, jurisdiction exclusively of the courts of the several states, of all suits against consuls or vice-consuls, except for offences where whipping exceeding thirty stripes, a fine exceeding one hundred dollars, or a term of imprisonment exceeding six months, is inflicted. For offences punishable beyond these penalties, the circuit has jurisdiction in the case of consuls. 5 S. & R. 545. See 1 Binn. 143; 2 Dall. 299; 2 N. & M. 217; 3 Pick. R. 80; 1 Green, R. 107; 17 Johns. 10; 6 Pet. R. 41; 7 Pet. R. 276; 6 Wend. 327.

13. - Fourthly. His functions may be suspended at any time by the government to which he is sent, and his exequatur revoked. In general, a consul is not liable, personally, on a contract made in his official capacity on account of his government. 3 Dall. 384.

14. During the middle ages, the term consul was sometimes applied to ordinary judges; and, in the Levant, maritime judges are yet called consuls. 1 Boul. Paty, Dr. Mar. Tit. Prel. s. 2, p. 57.

15. Among the Romans, consuls were chief magistrates who were annually elected by the people, and were invested with powers and functions similar to those of kings. See, generally, Abbott on Ship. 210; 2 Bro. Civ. Law, 503; Merl. Repert. h. t.; Ayl. Pand. 160; Warden on Consuls; Marten on Consuls; Borel, de l'Origine, et des Fonctions des Consuls; Rawle on the Const. 222, 223; Story on the Const. 1654 Serg. Const. Law, 225; Azuni, Mar. Law, part 1, c. 4, art. 8, 7.

CONSULTATION, practice. A conference between the counsel or attorneys engaged on the same side of a cause, for the purpose of examining their case, arranging their proofs, and removing any difficulties there may be in their way.

2. This should be had sufficiently early to enable the counsel to obtain an amendment of the pleadings, or further evidence. At these consultations the exact course to be taken by the plaintiff in exhibiting his proofs should be adopted, in consultation, by the plaintiff's counsel. In a consultation on a defendant's case, it is important to ascertain the statement of the defence, and the evidence which may be depended upon to support it; to arrange the exact course of defence, and to determine on the cross-examination of the plaintiff's witnesses; and, above all, whether or not evidence shall be given on the part of the defendant, or withheld, so as to avoid a reply on the part of the plaintiff. The wishes of the client should, in all cases, be consulted. 3 Chit. Pr. 864.

CONSULTATION, Eng. law. The name of a writ whereby a cause, being formerly removed by prohibition out of an inferior court into some of the king's courts in

Westminster, is returned thither again for if the judges of the superior court, comparing the proceedings with the suggestion of the party, find the suggestion false or not proved, and that therefore the cause was wrongfully called from the inferior court, then, upon consultation and deliberation, they decree it to be returned, where upon this writ issues. T. de la Ley.

CONSULTATION, French law. The opinion of counsel, on a point of law submitted to them. Dict. de Jur. h. t.

CONSUMATE. What is completed. A right is said to be initiate, when it is not complete; and when it is perfected, it is consummated.

CONSUMMATION. The completion of a thing; as the consummation of marriage; (q. v.) the consummation of a contract, and the like.

2. A contract is said to be consummated, when everything to be done in relation to it, has been accomplished. It is frequently of great importance to know when a contract has been consummated, in order to ascertain the rights of the parties, particularly in the contract of sale. Vide Delivery, where the subject is more fully examined. It is also sometimes of consequence to ascertain where the consummation of the contract took place, in order to decide by what law it is to be governed.

3. It has been established as a rule, that when a contract is made by persons absent from each other, it is considered as consummated in, and is governed by the law of, the country where the final assent is given. If, therefore, Paul in New Orleans, order goods from Peter in London, the contract is governed by the laws of the latter place. 8 M. R. 135; Plowd. 843. Vide Conflict of Laws;, Inception; Lex Loci Contractus; Lex Fori; Offer.

CONSUMMATION OF MARRIAGE. The first time that the husband and wife cobabit together, after the ceremony of marriage has been performed, is thus called.

2. The marriage, when otherwise legal, is complete without this; for it is a maxim of law, borrowed from the civil, law, that consensus, non concubitus, facit nuptias. Co. Litt. 33; Dig. 50, 17, 30; 1 Black. Com. 434.

CONTAGIOUS DISORDERS, police, crim. law. Diseases which are capable of being transmitted by mediate or immediate contact.

2. Unlawfully and injuriously to expose persons infected with the smallpox or other contagious disease in the public streets where persons are passing, or near the habitations of others, to their great danger, is indictable at common law. 1 Russ. Cr.

114. Lord Hale seems to doubt whether if a person infected with the plague, should go abroad with intent to infect another, and another should be infected and die, it would not be murder; and he thinks it clear that though there should be no such intent, yet if another should be infected, it would be a great misdemeanor. 1 Pl. Cor. 422. Vide 4 M. & S. 73, 272; Dane's Ab. h. t.

CONTEMPORANEOUS EXPOSITION. The construction of a law, made shortly after its enactment, when the reasons for its passage were then fresh in the minds of the judges, is considered as of great weight: contemporanea expositio est optima et fortissima in lege. 1 Cranch, 299.

CONTEMPT, crim. law. A wilful disregard or disobedience of a public authoritoy.

2. By the Constitution of the United States, each house of congress may determine the rules of its proceeding's, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. The same provision is substantially contained in the constitutions of the several states.

3. The power to make rules carries that of enforcing them, and to attach persons who violate them, and punish them for contempts. This power of punishing for contempts, is confined to punishment during the session of the legislature, and cannot extend beyond it; 6 Wheat. R. 204, 230, 231 and, it seems this power cannot be exerted beyond imprisonment.

4. Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process, and for disturbing them in their proceedings. Bac. Ab. Courts and their jurisdiction in general, E; Rolle's Ab. 219; 8 Co. 38 11 Co. 43 b.; 8 Shepl. 550; 5 Ired. R. 199.

5. In some states, as in Pennsylvania, the power to punish for contempts is restricted to offences committed by the officers of the court, or in its presence, or in disobedience of its mandates, orders, or rules; but no one is guilty of a contempt for any publication made or act done out of court, which is not in violation of such lawful rules or orders, or disobedience of its process. Similar provisions, limiting the power of the courts of the United States to punish for contempts, are incorporated in the Act March 2, 1831. 4 Sharsw. cont. of Stor. L. U. S. 2256. See Oswald's Case, 4 Lloyd's Debates, 141,. et seq.

6. When a person is in prison for a contempt, it has been decided in New York that he cannot be discharged by another judge, when brought before him on a habeas corpus; and, according to Chancellor Kent, 3 Com. 27, it belongs exclusively to the court offended to judge of contempts, and what amounts to them; and no other court or

judge can, or ought to undertake, in a collateral way, to question or review an adjudication of a contempt made by another competent jurisdiction. This way be considered as the establisbed doctrine equally in England as in this country. 3 Wils. 188 14 East, R. 12 Bay, R. 182 6 Wheat. R. 204 7 Wheat. R. 38; 1 Breese, R. 266 1 J. J. Marsh. 575; Charlt. R. 136; 1 Blackf. 1669 Johns. 395 6 John. 337.

CONTENTIOUS JURISDICTION, eccl. law. In those cases where there is an action or judicial process, and it consists in hearing and determining the matter between party and party, it is said there is contentious jurisdiction, in contradistinction to voluntary jurisdiction, which is exercised in matters that require no judicial proceeding, as in taking probate of wills, granting letters of administration, and the like. 3 Bl. Com. 66.

CONTESTATIO LITIS, civil law. The joinder of issue in a cause. Code of Pr. of Lo. art. 357.

CONTESTATION. The act by which two parties to an action claim the same right, or when one claims a right to a thing which the other denies; a controversy. Wolff, Dr. de la Nat. 762.

CONTEXT. The general series or composition of a law, contract, covenant, or agreement.

2. When, there is any obscurity in the words of an agreement or law, the context must be considered in its construction, for it must be performed according to the intention of its framers. 2 Cowen, 781,; 3 Miss. 447 1 Harringt. 154; 6 John. 43; 5 Gill & John. 239; 3 B. & P. 565; 8 East, 80 1 Dall. 426; 4 Dall. 340; 3 S. & R. 609 See Construction; Interpretation.

CONTINGENT. What may or may not happen;. what depends upon a doubtful event; as, a contingent debt, which is a debt depending upon some uncertain event. 9 Ves. It. 110; Co. Bankr. Laws, 245; 7 Ves. It. 301; 1 Ves. & Bea. 176; 8 Ves. R. 334; 1 Rose, R. 523; 3 T. R. 539; 4 T. R. 570. A contingent legacy is one which is not vested. Will. on Executors, h. t. See Contingent Remainder; Contingent Use.

CONTINGENT DAMAGES. Those given where the issues upon counts to which no demurrer has been filed, are tried, before demurrer to one or more counts in the same declaration has been decided. 1 Str. 431.

CONTINGENT ESTATE. A contingent estate depends for its effect upon an event which may or may not happen: as an estate limited to a person not in esse or not yet born. Crabb on Real Property, b. 3, c. 1, sect. 2. 946.

CONTINGENT REMAINDER, estates. An estate in remainder which is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event, by, which no present or particular interest passes to the remainder-man, so that the particular estate may chance to be determined and the remainder never take effect. 2, Bouv. Inst. n. 1832. Vide Remainder.

CONTINGENT USE, estates. A use limited in a deed or conveyance of land which may or may not happen to vest, according to the contingency expressed in the limitation of such use. A contingent use is such as by possibility may happen in possession, reversion or remainder. 1 Rep. 121 Com. Dig. Uses, K. 6.

CONTINUAL CLAIM, English law. When the feoffee of land is prevented from taking possession by fear of menaces or bodily harm, he may make a claim -to the land in the presence of the vares, and if this claim is regularly made once every year and a day, which is then called a continual claim, it preserves to the feoffee his rights, and is equal to a legal entry. 3 Bl. Com. 175; 2 Bl. Com. 320; 1 Chit. Pr. 278 (a) in note; Crabbe's Inst. E. L. 403.

CONTINUANCE, practice. The adjournment of a cause from one day to another is called a continuance, an entry of which is made upon the record.

2. If these continuances are omitted, the cause is thereby discontinued, and the defendant is discharged sine die, (q. v.) without a day, for this term. By his appearance he has obeyed the command of the writ, and, unless he be adjourned over to a certain day, he is no longer bound to attend upon that summons. 3 Bl. Com. 316.

3. Continuances may, however, be entered at any time, and if not entered, the want of them is aided or cured by the appearance of the parties; and Is a discontinuance can never be objected to pendente placito, so after the judgment it is cured by the statute of jeofails. Tidd's Pr. 628, 835.

4. Before the declaration the continuance is by dies datus prece partium; after the declaration and before issue joined, by imparlance; after issue joined and before verdict, by vicecomes non misit breve; and after verdict or demurrer by curia advisare vult. 1 Chit. Pl. 421, n. (p); see Vin. Abr. 454; Bac. Abr. Pleas, &c. P; Bac. Abr. Trial, H.; Com. Dig. Pleader, V. See, as to the origin of continuances, Steph. Pl. 31; 1 Ch. Pr. 778, 779.

CONTINUANDO, plead. The Dame of an averment sometimes contained in a declaration in trespass, that the injury or trespass has been continued. For example, if Paul turns up the ground of Peter and tramples upon his grass, for three days together, and Peter desires to recover damages, as well for the subsequent acts of treading down

the grass and subverting the soil, as for the first, he must complain of such subsequent trespasses in his actions brought to compensate the former. This he may do by averring that Paul, on such a day, trampled upon the herbage and turned up the ground, " continuing the said trespasses for three days following." This averment seems to impart a continuation of the same identical act of trespass; it has, however, received, by continued usage, another interpretation, and is taken, also, to denote a repetition of the same kind of injury. When the trespass is not of the same kind, it cannot be averred in a continuando; for example, when the injury consists in killing and carrying away an animal, there remains nothing to which a similar injury may again be offered. 1 Wms. Saund. 24, n. 1.

2. There is a difference between he continuando and the averment diversis diebus et temporibus, on divers days and times. In the former, the injuries complained of have been committed upon one and the same occasion; in the latter, the acts complained of, though of the same kind, are distinct and unconnected, See Gould, Pl. ch. 3, 86, et seq.; Ham. N. P. 90, 91 Bac. A. Trespass, I 2, n. 2.

CONTINUING CONSIDERATION. A continuing consideration is one which in point of time remains good and binding, although it may have served before to Support a contract. 1 Bouv. Inst. n. 628; 1 Saund. 320 e, note (5.)

CONTINUING DAMAGES. Those which are continued at different times, or which endure from one time to another. If a person goes upon successive day's and tramples the grass of the plaintiff, he commits continuing damages; or if one commit a trespass to the possession, and it is in fact injurious to him who has the reversion or remainder, this will be continuing damages. In this last case the person in possession may have an action of trespass against the wrong doer to his possession, and the reversioner has an action against him for an injury to the reversion. 1 Chit. Pr. 266, 268, 385; 4 Burr. 2141 , 3 Car. & P. 817.

CONTRA. Over; against; opposite to anything: as, such a case lays down a certain principle; such other case, contra.

CONTRA BONOS MORES. Against good morals.

2. All contracts contra bonos mores, are illegal. These are reducible to Several classes, namely, those which are, 1. lncentive to crime. A claim cannot be sustained, therefore, on. a bond for compounding a crime; as, for example, a prosecution for perjury; 2 Wils. R. 341, 447; or for procuring a pardon. A distinction has been made between a contract made as a reparation for an injury to the honor of a female, and one which is to be the reward of future illicit cohabitation; the former is good and valid, and the latter is illegal. 3 Burr. 1568; 1 Bligh's R. 269.

3. - 2. Indecent or mischievous consideration. An obligation or engagement prejudicial to the feelings of a third party; or offensive to decency or morality; or which has a tendency to mischievous or pernicious consequences, is void. Cowp. 729; 4 Campb. R. 152; Rawle's R. 42; 1 B. & A. 683; 4 Esp. Cas. 97; 16 East R. 150; Vide Wagers.

4. - 3. Gaming. The statutes against gaming render all contracts made for the purpose of gaming, void. Vide Gaming; Unlawful; Void.

CONTRA FORMAM STATUTI. Contrary to the form of the statute.

2.- 1. When one statute prohibits a thing and another gives the penalty, i n an action for the penalty, the declaration should conclude contra fornam statutorum. Plowd. 206; 2 East, R. 333; Esp. on Pen. Act. 111; 1 Gallis. R. 268. The same rule applies to informations and indictments. 2 Hale, P. C. 172; 2 Hawk. c. 25, 117 Owen, 135.

3. - 2. But where a statute refers to a former one, and adopts and, continues the provisions of it, the declaration or indictment should conclude contraformam statuti. Hale, P. C, 172; 1 Lutw. 212.

4. - 3. Where a thing is prohibited by several statutes, if one only gives the action, and the others are explanatory and restrictive, the conclusion should be contra formam statuti. Yelv. 116; Cro. Jac. 187 Noy, 125, S. C.; Rep. temp. Hard. 409 Andr. 115, S. C.; 2 Saund. 377.

5. - 4. When the act prohibited was not an offence or ground of action at common law, it is necessary both in criminal and civil cases to conclude against the form of the statute or statutes. 1 Saund, 135, c.; 2 East, 333; 1 Chit. Pl. 358; 1 Saund. 249; 7 East, 516; 2 Mass. 116; 7 Mass. 9; 11 Mass. 280; 10 Mass. 36; 1 M'Cord, 121; 1 Gallis. 30.

6. - 5. But if the act prohibited by the statute is an offence or ground of action at common law, the indictment or action may be in the common law form, and the statute need not be noticed, even though it prescribe a form of prosecution or of action-the statute remedy being merely cumulative. 2 Inst. 200; 2 Burr.-803; 4 Burr. 2351; 3 Burr. 1418; 2 Wils. 146; 3 Mass. 515.

7. - 6. When a statute only inflicts a punishment on that which was an offence at common law, the offence prescribed may be inflicted, though the statute is not noticed in the indictment. 2 Binn. 332.

8. - 7. If an indictment for an offence at common law only, conclude "against the form of the statute in such case made and provided;" or " the form of the statute" generally,

the conclusion will be rejected as surplusage, and the indictment maintained as at common. law. 1 Saund. 135, 3.

9. - 8. But it will be otherwise if it conclude against the form of "the statute aforesaid," when a statute has been previously recited. 1 Chit. Cr. Law, 266, 289. See further, Com. Dig. Pleader C 76; 5 Vin. Abr. 552, 556 1 Gallis. 26, 257; 9 Pick. 162 5 Pick. 128 2 Yerg. 390; 1 Hawks. 192; 3 Conn. 1 11 Mass. 280; 5 Greenl. 79.

CONTRA PACEM, pleadings. Against the peace.

2. In actions of trespass, the words contra pacem should uniformly accompany the allegation of the injury; in some cases they are material to the foundation of the action. Trespass to lands in a foreign country cannot be sustained. 4 T. R. 503 2 Bl. Rep.. 1O58.

3. The conclusion of the declaration, in trespass or ejectment, should be contra pacem , though these are now mere words of form, and not traversable, and the omission of that allegation will be aided, if not specially demurred to. 1 Chit. Pl. 375, 6 vide Arch. Civ. Pl. 169; 5 Vin. Ab. 557 Com. Dig. Action upon the case, C 4 Pleader, 3, M 8; Prohibition, F 7.

CONTRABAND, mar. law. Its most extensive sense, means all commerce which is carried on contrary to the laws of the state. This term is also used to designate all kinds of merchandise which are used, or transported, against the interdictions published by a ban or solemn cry.

2. The term is usually applied to that unlawful commerce which is so carried on in time of war. Merlin, Repert. h. t. Commodities particularly useful in war are contraband as arms, ammunition, horses, timber for ship building, and every kind of naval stores. When articles come into use as implements of war, which were before innocent, they may be declared to be contraband. The greatest difficulty to decide what is contraband seems to have occurred in the instance of provisions, which have not been held to be universally contraband, though Vattel admits that they become so on certain occasions, when there is an expectation of reducing an enemy by famine.

3. In modern times one of the principal criteria adopted by the courts for the decision of the question, whether any particular cargo of provisions be confiscable as contraband, is to examine whether tbose provisions be in a rude or manufactured state; for all articles, in such examinations, are treated with greater indulgence in their natural condition than when wrought tip for the convenience of the enemy's immediate use. Iron, unwrought, is therefore treated with indulgence, though anchors, and other instruments fabricated out of it, are directly contraband. 1 Rob. Rep. 1 89.

See Vattel, b. 3, c. 7 Chitty's L. of Nat. 120; Marsh. Ins. 78; 2 Bro. Civ., Law, 311; 1 Kent. Com. 135; 3 Id. 215. 4. Contraband of war, is the act by which, in times of war, a neutral vessel introduces, or attempts to introduce into the territory of, one of the belligerent parties, arms, ammunition, or other effects intended for, or which may serve, hostile operations. Merlin, Repert. h. t. 1 Kent, Com. 135; Mann. Comm. B. 3, c. 7; 6 Mass. 102; 1 Wheat. 382; 1 Cowen, 56 John. Cas. 77, 120.

CONTRACT. This term, in its more extensive sense, includes every description of agreement, or obligation, whereby one party becomes bound to another to pay a sum of money, or to do or omit to do a certain act; or, a contract is an act which contains a perfect obligation. In its more confined sense, it is an agreement between two or more persons, concerning something to be, done, whereby both parties are hound to each other, *or one is bound to the other. 1 Pow. Contr. 6; Civ. Code of Lo. art. 1754; Code Civ. 1101; Poth. Oblig. pt. i. c. 1, S. 1, 1; Blackstone, (2 Comm. 442,) defines it to be an agreement, upon a sufficient consideration, to do or not to do a particular thing. A contract has also been defined to be a compact between two or more persons. 6 Cranch, R. 136.

2. Contracts are divided into express or implied. An express contract is one where the terms of the agreement are openly uttered and avowed at the time of making, as to pay a stated price for certain goods. 2 BI . Com. 443.

3. Express contracts are of three sorts 1. BI parol, or in writing, as contradistinguished from specialties. 2. By specialty or under seal. 3. Of record.

4. - l. A parol contract is defined to be a bargain or voluntary agreement made, either orally or in writing not under, seal, upon a good consideration, between two or more persons capable of contracting, to, do a lawful act, or to omit to do something, the performance whereof is not enjoined by law. 1 Com. Contr. 2 Chit. Contr. 2.

5. From this definition it appears, that to constitute a sufficient parol agreement, there must be, 1st. The reciprocal or mutual assent of two or more persons competent to contract. Every agreement ought to be so certain and complete, that each party may have an action upon it; and the agreement would be incomplete if either party withheld his assent to any of its terms. Peake's R. 227; 3 T. R. 653; 1 B. & A. 681 1 Pick. R. 278. The agreement must, in general, be obligatory on both parties, or it binds neither. To this rule there are, however, some exceptions, as in the case of an infant's contract. He may always sue, though he cannot be sued, on his contract. Stra. 937. See other instances; 6 East, 307; 3 Taunt. 169; 5 Taunt. 788; 3 B. & C. 232.

6. - 2d. There must be a good and valid consideration, motive or inducement to make the promise, upon which a party is charged, for this is of the very essence of a contract

under seal, and must exist, although the contract be reduced to writing. 7 T. R. 350, note (a); 2 Bl. Coin. 444. See this Dict. Consideration; Fonb. Tr. Eq. 335, n. (a) Chit. Bills. 68.

7. - 3d. There must be a thing to be done, wbicb is not forbidden; or a thing to be omitted, the performance of which is not enjoined by law. A fraudulent or immoral contract, or one contrary to public policy is void Chit. Contr. 215, 217, 222: and it is also void if contrary to a statute. Id. 228 to 250; 1 Binn. 118; 4 Dall. 298 4 Yeates, 24, 84; 6 Binn. 321; 4 Serg & Rawle, 159; 4 Dall. 269; 1 Binn. 110 2 Browne's R. 48. As to contracts which are void for want of a compliance with the statutes of frauds, see Frauds, Statute of.

8. - 2. The second kind of express contracts are specialties, or those which are made under seal, as deeds, bonds, and the like; they are not merely written, but delivered over by the party bound. The solemnity and deliberation with whicb, on account of the ceremonies to be observed, a deed or bond is presumed to be entered into, attach to it an importance and character which do not belong to a simple contract. In the case of a specially, no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 477; 4 B. & A. 652; 3 T. R. 438; 3 Bingh. 111, 112; 1 Fonb. Eq, 342, note When, a contract by specialty has been changed by a parol agreement, the whole of it becomes a parol contract. 2 Watts, 451; 9 Pick. 298; see 13 Wend. 71.

9. - 3. The highest kind of express contracts are those of record, such as judgments, recognizances of bail, and in England, statutes merchant and staple, and other securities of the same nature, cutered into with the intervention of some public authority. 2 Bl. Com. 465 . See Authentic Facts.

10. Implied contracts are such as reason and justice dictates, and which, therefore, the law presumes every man undertakes to perform; as if a man employs another to do any business for him, or perform any work, the law implies that the former contracted or undertook to pay the latter as much as his labor is worth; see Quantum merwit; or if one takes up goods from a tradesman, without any agreement of price, the law concludes that he contracts to pay their value. 2 Bl. Com. 443. See Quantum valebant; Assumpsit. Com. Dig. Action upon the case upon assumpsit, A 1; Id. Agreement.

11. By the laws of Louisiana, when considered as to the obligation of the parties, contracts are either unilateral or reciprocal. When the party to whom the engagement is made, makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. Civ. Code of Lo. art. 1758. A loan for use, and a loan of money, are of this kind. Poth. Ob. P. 1, c. 1, s. 1, art. 2. A reciprocal contract is where the parties expressly enter into mutual engagements such as sale, hire, and the like. Id.

12. Contracts, considered in relation to their substance, are either commutative or independent, principal or accessory.

13. Commutative contracts, are those in which what is done, given or promised by one party, is considered as equivalent to, or in consideration of what is done, given or promised by the other. Civ. Code of Lo. art. 17GI.

14. Independent contracts are those in which the mutual acts or proniises have no relation to each other, either as ecluivalents or as considerations. Id. art. 1762.

15. A principal contract is one entered into by both parties, on their accounts, or in the several qualities they assume.

16. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledges. Id. art. 1764. Poth. Obl. p. 1, c. 1, s. 1, art. 2, n. 14.

17. Contracts, considered inrelation to the motive for. making them, are either gratuitous or onerous. To be gratuitous, the object of a contract must be to benefit the person with whom it is made, without any profit or advantage, received or promised, as a consideration for it. It is not, however, the less gratuitous, if it proceed either from gratitude for a benefit before received, or from the hope of receiving one hereafter, although such benefits be of a pecuniary nature. Id. art. 1766. Any thing given or promised, as a consideration for the engagement or gift; any service, interest, or condition, imposed on what is given or promised, although unequal to it in value, makes a contract onerous in its nature. Id. art. 1767.

18. Considered in relation to their effects, contracts are either certain or hazardous. A contract is certain, when the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. It is hazardous, when the performan ce.of that which is one of its objects, depends on an uncertain event. Id. art. 1769. 19. Pothier, in his excellent treatise on Obligations, p. 1, c. 1, s. 1, art. 2, divides contracts under the five following heads:

20.- 1. Into reciprocal and unilateral.

21. - 2. Into consensual, or those which are formed by the mere consent of the parties, such as sale, hiring and mandate; and those in which it is necessary there should be something more than mere consent, such as loan of money, deposite or pledge, which from their nature require a delivery of the thing, (rei); whence they are called real contracts. See Real Contracts.

22.-3. Into-first, contracts of mutual interest, which are such as are entered into for the reciprocal interest and utility of each of the parties, as sales exchange, partnership, and the like.

23.-2d. Contracts of beneficence, which are those by which only one of the contracting parties is benefited, as loans, deposit and mandate. 3d. Mixed contracts, which are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge,

24. - 4. Into principal and accessory.

25. - 5. Into those which are subjected by the civil law to certain rules and forms, and those which ate regulated by mere natural justice. See, generally, as to contracts, Bouv. Inst. Index, h. t.; Chitty on Contracts; Comyn on Contracts; Newland on Contracts; Com. Dig. titles Abatement, E 12, F 8; Admiralty, E 10, 11; Action upon the Case upon Assumpsit; Agreement; Bargain and Sale; Baron and Feme, Q; Condition; Dett, A 8, 9; Enfant, B 5; Idiot, D 1 Merchant, E 1; Pleader, 2 W, 11, 43; Trade D 3; War, B 2; Bac. Abr. tit. Agreement; Id. Assumpsit; Condition; Obligation; Vin. Abr. Condition; Contracts and Agreements; Covenants; Vendor, Vendee; Supp. to Ves. jr. vol. 2, p. 260, 295, 376, 441; Yelv. 47; 4 Ves. jr., 497, 671; Archb. Civ. Pl. 22; Code Civ. L. 3, tit. 3 to 18; Pothier's Tr. of Obligations Sugden on Vendors and Purchasers; Story's excellent treatise on Bailments; Jones on Bailments; Toullier, Droit Civil Francais, tomes 6 et 7; Ham. Parties to Actions, Ch. 1; Chit. Pr. Index, h. t.; and the articles Agreement; Apportionment; Appropriation; Assent; Assignment; Assumpsit; Attestation; Bailment; Bargain and sale; Bidder; Bilateral contract; Bill of Exchange; Buyer; Commodate; Condition; Consensual contract; Conjunctive; Consummation; Construction; Contracto of benevolence; Covenant; Cumulative contracts; Debt; Deed; Delegation. Delivery; Discharge Of a contract; Disjunctive; Equity of a redemption; Exchange; Guaranty; Impairing the obligation of contracts; Insurance; Interested contracts; Item; Misrepresentation; Mortgage; Mixed contract; Negociorum gestor; Novation; Obligation; Pactum constitutae, pecuniae; Partners; Partnership; Pledge; Promise; Purchaser; Quasi contract; Representatian; Sale; Seller; Settlement; Simple contract; Synallagmatic contract; Subrogation; Title; Unilateral contract.

CONTRACT or BENEVOLENCE, Civil law. One which is made for the benefit of only one of the contracting parties; such as loan for use, deposit, and mandate. Poth. Obl. n. 12. See Contracts.

CONTRACTION. An abbreviation; a mode of writing or printing by which some of the letters of a word are omitted. See Abbreviations.

CONTRACTOR. One who enters into a contract this term is usually applied to persons who undertake to do public work, or the work for a company or corporation on a large scale, at a certain fixed price, or to furnish goods to another at a fixed or ascertained price. 2 Pardess. n. 300. Vide 5 Whart. 366.

CONTRADICTION. The incompatibility, contrariety, and evident opposition of two ideas, which are the subject of one and the same proposition.

2. In general, when a party accused of a crime contradicts himself, it is presumed he does so because he is guilty for truth does not contradict itself, and is always consistent, whereas falsehood is in general inconsistent and the truth of some known facts will contradict thefalsehood of those which are falsely alleged to be true. But there must still be much caution used by the judge, as there may be sometimes apparent contradictions which arise either from the timidity, the ignorance, or the inability of the party to explain himself, when in fact he tells the truth.

3. When a witness contradicts himself as to something which is important in the case, his testimony will be much weakened, or it may be entirely discredited and when he relates a story of facts which he alleges passed only in his presence, and he is contradicted as to other facts which are known to others, his credit will be much impaired.

4. When two witnesses, or other persons, state things directly opposed to each other, it is the duty of the judge or jury to reconcile these apparent contradictions; but when this cannot be done, the more improbable statement must be rejected; or, if both are entitled to the same credit, then the matter is as if no proof had been given. See Circumstances.

CONTRAFACTION, crim. law. Counterfeiting, imitating. In the French law contrafaction (contrefacon) is the illegal reprinting of a took for which the author or his assignee has a copyriglit, to the prejudice of the latter. Merl' Repert. mot Contrefacon.

CONTRAVENTION, French law. An act which violates the law, a treaty or an agreement which the party has made. The Penal Code, art. 1, denominates a contravention, that infraction of the law punished by a fine, which does not exceed fifteen francs, and an imprisonment not exceeding three days.

CONTRECTATION. The ability to be removed. In order to commit a larceny, the property must have been removed. When, from its nature, it is incapable of contrectation, as real estate, there can be no larceny. Bowy. Mod. Civ. Law, 268. See Larceny Furtum est contrectatio rei fraudulosa. Dig. 47, 2. See Taking.

CONTREFACON, French law. Counterfeit. This is a bookseller's term, which signifies the offence of those who print or cause to be printed, without lawful authority, a book of which the author or his assigns have a copyright. Merl. Rep. h. t.

CONTRIBUTION, civil law. A partition by which the creditors of an insolvent debtor divide, among themselves the proceeds of his property, proportionably to the amount of their respective credits. Civ. Code of Lo. art. 2522, n. 10. It is a division pro rata. Merl. Rep. h. t.

CONTRIBUTION, contracts. When two or more persons jointly owe a debt, and one is compelled to pay the whole of it, the others are bound to indemnify him for the payment of their shares; this indemnity is called a contribution. 1 Bibb. R. 562; 4 John. Ch. R. 545; 4 Bouv. Inst. n. 3935-6.

2. The subject will be considered by taking a view, 1. Of right of the creditors where there are several debtors. 2. Of the right of the debtor who pays the whole debt. 3. Of the liabilities of the debtors who are liable to contribution. 4. Of the liability of land owned by several owners, when it is subject to a charge. 5. Of the liability of owners of goods in a vessel, when part is thrown overboard to save the rest.

3. - 1. The creditor of several debtors, jointly bound to him, has a right to compel the payment by any he may choose; but hecannot sue them severally, unless they are severally bound.

4. - 2. When one of several debtors pays a debt, the creditor is bound in conscience, if not by contract, to give to the party paying the debt all his remedies against the other debtors. 1 Cox, R. 318 S. C. 2 B. & P. 270 2 Swanst. R. 189, 192; 3 Bligh, 59 14 Ves. 160; 1 Ves. 31 12 Wheat. 596 1 Hill, Ch. R. 844, 351 1 Term. St. It. 512, 517; 1 Ala. R. 23, 28; 11 Ohio It. 444, 449 8 Misso. It. 169, 175.

5.- 3. A debtor liable to contribution is not responsible upon a contract, but is so in equity. But courts of common law, in modern times, have assumed a jurisdiction to compel contribution among sureties, in the absence of any positive contract, on the ground of an implied assumpsit, and each of the sureties may be sued for his respective quota or proportion. White's L. C. in Eq. 66. The remedyin equity is, however, much more effective. For example, a surety who pays an entire debt, can, in equity, compel the solvent sureties to contribute towards the payment of the entire debt. 1 Chan. R. 34 1 Chan. Cas. 246; Finch, R. 15, 203. But at law he can recover no more than an aliquot part of the whole, regard being had to the number of co-sureties. 2 B. & P. 268; 6 B. & C. 697.

6. - 4. When land is charged with the payment of a legacy, or an estate with the portion of a posthumous child, every part is bound to make contribution. 3 Munf. R. 29; 1 John. Ch. R. 425 2 Bouv. Inst. n. 1301.

7. - 5. Contribution takes place in another case; namely, when in order to save a ship or cargo, a part of the goods are cast overboard, the ship and cargo are liable to contribution in order to indemnify the owner of the goods lost, except his just proportion. No contribution can be claimed between joint wrong doers. Bac. Ab. Assumpsit A; Vide 3 Com. Dig. 143; 8 Com. Dig. 373; 5 Vin. Ab. 561; 2 Supp. to Ves. jr. 159, 343; 3 Ves. jr. 64; Wesk. Ins. 130; 10 S. & R. 75; 5 B. & Ad. 936; S. C. 3 N. & M. 258; Rast. Entr. 161; 2 Ventr. 348; 2 Vern. 592; 2 B. & P. 268; 3 B. & P 235; 5 East, 225; 1 J. P. Smith 411 5 Esp. 194; 3 Campb. 480; Gow, N. P. C. 13; 2 A. & E. 57; 4 N. & M. 64; 6 N. & M. 494.

CONTRIBUTIONS, public law. Taxes or money contributed to the support of the government.

2. Contributions are of three kinds, namely: first, those which arise from persons on account of their property, real or personal, or which are imposed upon their industry - those which are laid on and paid by real estate without regard to its owner; and - those to which personal property is subject, in its transmission from hand to hand, without regard to the owner. See Domat, Dr. Publ. 1. 1, t. 5, s. 2, n. 2.

3. this is a generic term which includes all kinds of impositions for the public benefit. See Duties; Imports; Taxes.

4. By contributions is also meant forced levy of money or property by a belligerent in a hostile country which he occupies, by which means the country is made to contribute to the support of the army of occupation. These contributions are usually taken instead of pillage. Vatt. Dr. des Gens, liv. 3, 9, 165; Id. liv. 4, c. 3, 29.

CONTROLLERS. Officers who are appointed, to examine the accounts of other officers. More usually written comptrollers. (q. v.)

CONTROVER, obsolete. One who invents false news. 2 Inst. 227.

CONTROVERSY. A dispute arising between two or more persons. It differs from case, which includes all suits criminal as well as civil; whereas controversy is a civil and not a criminal proceeding. 2 Dall. R. 419, 431, 432; 1 Tuck. Bl. Com. App. 420, 421; Story, Const. 1668.

2. By the constitution of the United States the judicial power shall extend to controversies to which the United States shall be a party. Art. 2, 1. The meaning to be attached to the word controversy in the constitution , is that above given.

CONTUBERNIUM, civ. law. As among the Romans, slaves had no civil state, their marriages, although valid according to natural law, when contr acted with the consent of their masters, and when there was no legal bar to them, yet were without civil effects; they having none except what arose from natural law; a marriage of this kind was called contubernium. It was so called whether both or only one of the parties was a slave. Poth. Contr. de Mariage, part 1, c. 2, 4. Vicat, ad verb.

CONTUMACY, civil law. The refusal or neglect of a party accused to appear and answer to a charge preferred against him in a court of justice. This word is derived from the Latin contumacia, disobedience. 1 Bro. Civ. Law, 455; Ayl. Parer. 196; Dig. 50, 17, 52; Code Nap. art. 22.

2. Contumacy is of two kinds, actual and presumed: actual contumacy is when the party before the court refuses to obey some order of the court; presumed contumacy is the act of refusing or declining to appear upon being cited. 3 Curt. Ecc. R. 1.

CONTUMAX, civ. law. One accused of a crime who refuses to appear and answer to the charge. An outlaw.

CONTUSION, med. jurisp. An injury or lesion, arising from the shock of a body with a large surface, which presents no loss of substance, and no apparent wound. If the skin be divided, the injury takes the name of a contused wound. Vide 1 Ch. Pr, 38; 4 Carr. & P. 381, 487, 558, 565; 6 Carr. & P. 684; 2 Beck's Med. Jur. 178.

CONUSANCE, CLAIM OF, English law. This is defined to be an intervention by a third person, demanding judicature in the cause against the plaintiff, who has chosen to commence his action out of claimant's court. 2 Wilson's R. 409.

2. It is a question of jurisdiction between the two courts Fortesc. R. 157; 5 Vin. Abr. 588; and not between the plaintiff and defendant, as in the case of plea to the jurisdiction, and therefore it must be demanded by the party entitled to conusance, or by his representative, and not by the defendant or his attorney. Id. ibid. A plea to the jurisdiction must be pleaded in person, but a claim of conusance may be made by attorney. 1 Chit. Pl. 403.

3. There are three sorts of conusance. 1. Tentere placita, which does not oust another court of its jurisdiction, but only creates a concurrent one. 2. Cognitio placitorum, when the plea is commenced in one court, of which conusance belongs to another. 3.

A conusance of exclusive jurisdiction; as that no other court shall hold pica, &c. Hard. 509 Bac. Ab. Courts, D.

CONUSANT. One who knows as if a party knowing of an agreement in which he has an interest, makes no objection to it, he is said to be conusant. Co. Litt. 157.

CONUSOR. The same as cognizor; one who passes or acknowledges a fine of lands or tenements to another. See Consignor. CONVENE, civil law. This is a technical term, signifying to bring an action.

CONVENTIO, canon law. The act of convening or calling together the parties, by summoning the defendant. Vide Reconvention. When the defendant was brought to answer, he was said to be convened, which the canonists called conventio, because the plaintiff and defendant met to contest. Sto. Eq. Pl. 402; 4 Bouv. Inst. n. 4117.

CONVENTION, contracts, civil law. A general term which comprehends all kinds of contracts, treaties, pacts, or agreements. It is defined to be the consent of two or more persons to form with each other an engagement, or to dissolve or change one which they had previously formed. Domat, Lois Civ. 1. 1, t. 1, s. 1 Dig. lib. 2, t. 14, 1. 1 Lib. 1, t. 1, 1. 1, 4 and 5; 1 Bouv. Inst. n. 100.

CONVENTION, legislation. This term is applied to a selecting of the delegates elected by the people for other purposes than usual legislation. It is mostly used to denote all assembly to make or amend the constitution of, a state, but it sometimes indicates an assembly of the delegates of the people to nominate officers to be supported at an election.

CONVERSANT. One who is in the habit of being in a particular place, is said to be conversant there. Barnes, 162.

CONVERSION. torts. the uulawful turning or applying the personal goods of another to the use of the taker, or of some other person than the, owner; or the unlawful destroying or altering their nature. Bull. N. P. 44; 6 Mass. 20; 14 Pick. 356; 3 Brod. & Bing. 2; Cro. Eliz. 219 12 Mod. 519; 5 Mass. 104; 6 Shepl. 382; Story, Bailm. 188, 269, 306; 6 Mass. 422; 2 B. & P. 488; 3 B. & Ald. 702; 11 M. & W. 363; 8 Taunt. 237; 4 Taunt. 24.

2. When a party takes away or wrongfully assumes the right to goods which belong to another, it will in general be sufficient evidence of a conversion but when the original taking was, lawful, as when the party found the goods, and the detention only is illegal, it is absolutely necessary to male a demand of the goods, and there must be a refusal to deliver them before the conversion will, be complete. 1 Ch. Pr. 566; 2

Saund. 47 e, note 1 Ch. Pl. 179; Bac. Ab. Trover, B 1 Com. Dig. 439; 3 Com. Dig. 142; 1 Vin. Ab. 236; Yelv. 174, n.; 2 East, R. 405; 6 East, R. 540; 4 Taunt. 799 5 Barn. & Cr. 146; S. C. 11 Eng. C. L. Rep. 185; 3 Bl. Com. 152; 3 Bouv. Inst. n. 3522, et seq. The refusal by a servant todeliver the goods entrusted to him by his master, is not evidence of a conversion by his master. 5 Hill, 455.

3. The tortious taking of property is, of itself, a conversion 15 John. R. 431 and any intermeddling with it, or any exercise of dominion over it, subversive of the dominion of the owner, or the nature of the bailment, if it be bailed, is, evidence of a conversion. 1 Nott & McCord, R. 592; 2 Mass. R. 398; 1 Har. & John. 519; 7 John. R. 254; 10 John. R. 172 14 John. R. 128; Cro. Eliz. 219; 2 John. Cas. 411. Vide Trover.

CONVERSION, in equity, The considering of one thing as changed into another; for example, land will be considered as converted into money, and treated as such by a court of equity, when the owner has contracted to sell his estate in which case, if he die before the conveyance, his executors and not his heirs will be entitled to the money. 2 Vern. 52; S., C. 3 Chan. R. 217; 1 B1. Rep. 129. On the other hand, money is converted into land in a variety of ways as for example, when a man agrees to buy land, and dies before he has received the conveyance, the money he was to pay for it will be considered as converted into lands, and descend to the heir. 1 P. Wms. 176 2 Vern. 227 10 Pet. 563; Bouv. Inst. Index, h. t.

CONVEYANCE, contracts. The transfer of the title to land by one or more persons to another or others. By the term persons is here understood not only natural persons but corporations. The instrument which conveys the property is also called a conveyance. For the several kinds of conveyances see Deed. Vide, generally, Roberts on Fraud. Conv. passim; 16 Vin. Ab. 138; Com. Dig. Chancery, 2 T 1; 3 M 2; 4 S 2; Id. Discontinuance, C 3, 4, 5; Id. Guaranty, D; Id. Pleader, C 37; Id. Poiar, C 5; Bouv. Inst. Index, h. t. The whole of a conveyance, when it consists of different parts or instruments, must be taken together, and the several parts of it relate back to the principal part; 4 Burr. Rep. 1962; as a fine; 2 Burr. R. 704; or a recovery; 2 Burr. Rep. 135. 2. When there is no express agreement to the contrary, the expense of the conveyance falls upon the purchaser; 2 Ves. Jr. 155, note; who must prepare and tender the conveyance but see contra, 2 Rand. 20. The expense of the execution of the conveyance is, on the contrary, always borne by the vendor. Sugd. Vend. 296; contra, 2 Rand. 20; 2 McLean, 495. Vide 5 Mass. R. 472; 3 Mass. 487; Eunom. Dial. 2, 12; Voluntary Conveyance.

CONVEYANCE OF VESSELS. The act of congress, approved the 29th July, 1850, entitled an act to provide for recording the conveyances of vessels and for other purposes, enacts that no bill of sale, moortgage, hypothecation or conveyance of any vessel, or part of any vessel of the United States, shall be valid against any person,

other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof, unless such, bill of sale, mortgage, hypothecation or conveyance be recorded in the office of the collector of the customs, where such vessel is registered or enrolled. Provided, that the lien by bottomry on any vessel, created during her voyage, by a loan of money or materials necessary to repair or enable such vessel to prosecute a voyage, shall not lose its priority or be in any way affected by the provisions of the act. See. 2 enacts, that the collectors of the customs shall record all such bills of sale, mortgages, hypothecations or conveyances, and also all certificates for discharging and cancelling any such conveyances, in a book or books to be kept for that purpose, in the order of their reception; noting in said book or books, and also on the bill of sale, mortgage, hypothecation or conveyance, the time when the same was received; and shall certify on the bill of sale, mortgage, hypothecation or conveyance, or certificate of discharge or cancellation, the number of the book and page where recorded and shall receive, for so recording such instrument of conveyance or certificate of discharge, fifty cents. Sec. 3 enacts, that the collectors of the customs shall keep an index of such records, inserting alphabetically the names of the vendor or mortgagor, and of the vendee or mortgagee, and shall permit said index and books of 'records to be inspected during office hours, under such reasonable regulations as they may establish and shall, when required, furnish to any person a certificate setting forth the names of the owners of any vessel registered or enrolled, the parts or proportions owned by each, if inserted in the register or enrollment, and also the material facts of any existing bill of sale, mortgage, hypothecation, or other incumbrance upon such vessel, recorded since the issuing of the last register or enrollment; viz. the date, amount of such incumbrance, and from and to whom or in whose favor made. The collector shall receive for each such certificate one dollar. Sec. 4. By this section it is enacted, that the collectors of the customs shall furnish certified copies of such records, on the receipt of fifty cents for each bill of sale, mortgage, or other conveyance. Sect. 5. This section provides that the owner or agent of the owner of any vessel of the United States, applying to a collector of the customs for a register or enrollment of a vessel, shall, in addition to the oath now prescribed by law, set forth, in the oath of ownership, the part or proportion of such vessel belonging to each owner, and the same shall be inserted in the register of enrollment; and that all bills of sale of vessels registered or enrolled shall set forth the part of the vessel owned by each person selling, and the part conveyed to each person purchasing.

CONVEYANCER. One who makes it his business to draw deeds of conveyance of lands for others., 3 Bouv. Inst. n. 2422.

2. It is usual also for conveyancers to act as brokers for the seller. In these cases the conveyancer should examine with scrupulous exactness into the title of the lands which are conveyed by his agency, and, if this be good, to be very cautious that the

estate be, not encumbered. In cases of doubt he should invariably propose to his employer to take the advice of his counsel.

3. Conveyancers also act as brokers for the loan of money on real estate, Secured by mortgage. The same care should be observed in these cases.

CONVICIUM, civil law. The name of a species of slander, or, in the meaning of the civil law, injury, uttered in pubic, and which charged some one with some act contra bonos mores. Vicat, ad verb; Bac. Ab. Slander.

CONVICT. One who has been condemned by a competent court. This term is wore commonly applied to one who has been convicted of a crime or misdemeanor. There are various local acts which punish the importation of convicts.

CONVICTION, practice. A condemnation. In its most extensive sense this word signifies the giving judgment against a defendant, whether criminal or civil. In a more limited sense, it means, the judgment given against the criminal. And in its most restricted sense it is a record of the summary proceedings upon any penal statute before one or more justices of the peace, or other persons duly authorized, in a case where the offender has been convicted and sentenced: this last is usually termed a summary conviction.

2. As summary. convictions have been introduced in derogation of the common law, and operate to the exclusion of trial by jury, the courts have required that the strict letter of the statute should be observed 1 Burr. Rep. 613 and that the magistrates should have been guided by rules similar to those adopted by the common law, in criminal prosecution, and founded in natural justice; unless when the statute dispenses with the form of stating them.

3. The general rules in relation to convictions are, first, it must be under the hand and seal of the magistrate before whom it is taken; secondly, it must be in the present tense, but this, perhaps, ought to extend only to the judgment; thirdly, it must be certain; fourthly, although it is well to lay the offence to be contra pacem, this is not indispensable; fifthly, a conviction cannot be good in part and bad in part.

4. A conviction usually consists of six parts; first, the information; which should contain, 1. The day when it was taken. 2. The place where it was taken. 3. The name of the informer. 4. The name and style of the justice or justices to whom it was given. 5. The name of the offender. 6. The time of committing the offence. 7. The place where the offence was committed. 8. An exact decription of the offence.

5. Secondly, the summons.

6. Thirdly, the appearance or non-appearance of the defendant.

7. Fourthly, his defence or confessions.

8. Fifthly, the evidence. Dougl. 469; 2 Burr. 1163; 4 Burr. 2064.

9. Sixthly, the judgment or adjudication, which should state, 1. That the defendant is convicted. 2. The forfeiture or penalty. Vide Bosc. on Conviction; Espinasse on Penal Actions; 4 Dall. 266; 3 Yeates, 475; 1 Yeates, 471. As to the effect of a conviction as evidence in a civil case, see 1 Phil. Ev. 259; 8 Bouv. Inst. 3183.

CONVOCATION, eccles. law. This word literally signifies called together. The assembly of the representatives of the clergy. As to the powers of convocations, see Shelf. on M. & D. 23., See Court of Convocation.

CONVOY, mar. law. A naval force under the command of an officer appointed by government, for the protection of merchant ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. B. 1, c. 9, s. 5 Park. Ins. 388.

2. Warranties are sometimes inserted in policies of insurance that the ship shall sail with convoy. To comply with this warranty, five things are essential; first, the ship must sail with the regular convoy appointed by the government; secondly, she must sail from the place of rendezvous appointed by government; thirdly, the convoy must be for the Voyage; fourthly, the ship insured must have sailing instructions; fifthly, she must depart and continue with the convoy till the end of the voyage, unless separated by necessity. Marsh. Ins. B. 1, c. 9, s. 5.

CO-OBLIGOR, contracts. One who is bound together with one or more others to fulfil an obligation. As to what will constitute a joint obligation, see 5 Bin. 199; Windham's Case, 5 Co. 7; 2 Ev. Poth. 63; Ham. Parties, 29, 20, 24; 1 Saund. 155; Saunders, Arguendo and note 2; 5 Co. 18 b, 19 a, Slingsly's Case. He may be jointly, or severally bound.

2. When obligors are jointly and not severally bound to pay a joint debt, they must be sued jointly during their joint lives, and after the death of some of them, the survivors alone can be sued; each is bound to pay the whole debt, having recourse to the others for contribution. See 1 Saund. 291, n. 4; Hardress, 198; 2 Ev. Poth. 63, 64, 66. Yet an infant co-obligor need not be joined, for his infancy may be replied to a plea of non-joinder in abatement. 3 Esp. 76; 5 Esp. 47; also, see 5 Bac. Abr. 163-4; 2 Vern. 99; 2 Moss. Rep. 577; 1 Saund. 291 b, n. 2; 6 Serg. & R. 265, 266; 1 Caines' Cases in Err. 122.

3. When co-obligors are severally bound, each may be sued separately; and in case of the death of any one of them, his executors or administrators may be sued.

4. On payment of the obligation by any one of them, when it was for a joint debt, the payer is entitled to contribution from the other co-obligors.

COOL BLOOD. A phrase sometimes used to signify tranquillity, or calmness; that is, the condition of one who has the calm and undisturbed use of his reason. In cases of homicide, it frequently becomes necessary to. ascertain whether the act of the person killing was done in cool blood or not, in order to ascertain the degree of his guilt. Bac. Ab. Murder, B; Kiel 56 Sid. 177 Lev. 180. Vide Intention; Murder; Manslaughter; Will.

CO-OPTATION. A concurring choice. Sometimes applied to the act of the members of a corporation, in choosing a person to supply a vacancy. in their body.

COPARCENERS, estates. Persons on whom lands of inheritance descend from their ancestor. According to the English law, there must be no males; that is no the rule in this country. Vide Estates in Coparcenary, and 4 Kent, Com. 262; 2 Bouv. Inst. n. 187 L-2.

COPARTNER. One who is a partner with one or more other persons; a member of a partnership.

COPARTNERSHIP. This word is frequently used in the sense of partnership. (q. v.)

CO-PLAINTIFF. One who is plaintiff in an action with another.

COPULATIVE TERM. One which is placed between two or more others to join them together: the word and is frequently used for this purpose. For example, a man promises to pay another a certain sum of money, and to give his note for another sum: in this case he must perform both.

2. But the copulative may sometimes be construed into a disjunctive, (q. v.) as, when things are copulated which cannot possibly be so; for example, " to die testate and intestate." For examples of construction of disjunctive terms, see the cases cited at the word Disjunctive, and Ayl. Pand. 55; 5 Com. Dig. 338; Bac. Ab. Conditions, P 5; Owen, 52; Leon. 74; Golds. 71; Roll. Ab. 444; Cro. Jac. 594.

COPY. A copy is a true transcript of an original writing.

2. Copies cannot be given in evidence, unless proof is made that the originals, from which they are taken, are lost, or in the power of the opposite party; and in the latter case, that notice has been given him to produce the original. See 12 Vin. Abr. 97; Phil. Ev. Index, h. t.; Poth. Obl. Pt. 4, c. 1, art. 33 Bouv. Inst. n. 3055. 3. To prove a copy of a record, the witness must be able to swear that he has examined it, line for line, with the original, or has examined the copy, while another person read the original. 1 Campb. R. 469. It is not requisite that the persons examining should exchange, papers, and read them alternately. 2 Taunt. R. 470. Vide, generally, 3 Bouv. Inst. n. 3106-10; 1 Stark. R. 183; 2 E. C. L. Rep. 183; 4 Campb. 372; 2 Burr.1179; B.N.P.129; 1 Carr. & P. 578. An examined copy of the books of unincorporated banks are not, per se, evidence. 12 S. & R. 256. See 13 S. & R. 135, 334; 2 N. & McC. 299.

COPYRIGHT. The property which has been secured to the author of a book, map, chart, or musical composition, print, cut or engraving, for a limited time, by the constitution and laws of the United States. Lord Mansfield defines copy, or as it is now termed copyright, as follows: I use the word copy in the technical sense in which that name or term has been used for ages, to signify an incorporeal right to the sole printing and publishing of something intellectual, communicated by letters. 4 Burr. 3296; Merl. Repert. mot Contrefacon.

2. This subject will be considered by taking a view of, 1. The legislation of the United States. 2. Of the persons entitled to a copyright. 3. For what it is granted. 4. Nature of the right. 5. Its duration. 6. Proceedings to obtain Such right. 7. Requisites after the grant. 8. Remedies. 9. Former grants.

3. - 1. The legislation of the United States. The Constitution of the United States, art. 1, s. 8, gives power to congress "to promote the progress of science, and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. In pursuance of this constitutional autbority, congress passed the act of May 31, 1790; 1 Story's L. U. S. 94, and the act of April 29, 1802, 2 Story's L. U. S. 866, but now repealed by the act of February 3, 1831, 4 Shars. Cont. of Story, 2221, saving, always such rights as may have been obtained in conformity to their provision. By this last mentioned act, entitled " An act to amend the several acts respecting copyrights," the subject is now regulated.

4.- 2. Of the persons entitled to a copyright. Any person or persons, being a citizen or citizens of the United States, or resident therein, who is the author or authors of any book or books, map, chart, or musical composition, or who has designed, etched, engraved, worked, or caused to be engraved, etched or worked from his own design, any print or engraving, and the executors, administrators, or legal representatives of such person or persons. Sect. 1, and sect. 8.

5. - 3. For what work the copyright is granted. The copyright is granted for any book or books, map, chart, or musical composition, which may be now, (February 3, 1831, the date of the act,) made or composed, and not printed or published, or shall hereafter be made or composed, or any print or engraving, which the author has invented, designed, etched, engraved or worked, or caused to be engraved, etched or worked from his own design. Sect. 1.

6.- 4. Nature of the right. The person or persons to whom a copyrigbt has been lawfully granted, have the sole right and liberty of printing, reprinting, publishing and vending such book or books, map, chart, musical composition, print, out or engraving, in whole or in part. Sect. 1.

7.- 5. Duration of the copyright. The right extends for the term of twenty-eight Years from the time of recording the title of the book, &c., in the office of the clerk of the court, as directed by law. Sect. 1.

8. But this time may be extended by the following provisions of the act.

9. Sect. 2. If, at the expiration of the aforesaid term of years, such author, inventor, designer, engraver, or any of them, where the work had been originally composed and made by wore than one person, be still living, and a citizen or citizens of the United States, or resident therein, or being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author, designer, or engraver, or if dead, then to such widow and child, or children, for the further term of fourteen years: Provided, that the title of the work so secured shall be a second time recorded, and all such other regulations as are herein required in regard to original copyrights, be complied with in respect to such renewed copyright, and that within six months before the expiration of the first term.

10. Sect. 3. In all cases of renewal of copyright under this act, such author or proprietor shall, within two months from the date of, said renewal, cause a copy of the record thereof to be published in one or more of the newspapers printed in the United States, for the space of four weeks.

11. - Sect. 16. Whenever a copyright has been heretofore obtained by an author or authors, inventor, designer, or engraver, of any book, map, chart, print, cut, or engraving, or by a proprietor of the same; if such author or authors, or either of them such inventor, desiginer, or engraver, be living at the passage of this act, then, such author or authors, or the survivor of them, such inventor, engraver, or designer, shall continue to have tbe same exclusive right to his book, chart, map, print, cut or engraving, with the benefit of each and all the provisions of this act, for the security thereof, for such additional period of time as will, together with the tune which shall

have elapsed from the first entry of such copyright, make up the term of twenty-eight years, with the same right to his widow, child, or children, to renew the copyright, at the expiration thereof, as is provided in relation to copyrights originally secured under this act. And if such author or authors, inventor, designer, or engraver, shall not be living at the passage of this act, then, his or their heirs, executors and administrators, shall be entitled to the like exclusive enjoyment of said copyright, with the benefit of each and all the provisions of this act for the security thereof, for the period of twenty-eight years from the first entry of said copyright with the like privilege of renewal to the widow, child, or children, of author or authors, designer, inventor, or engraver, as is provided in relation to copyrights originally secured under this act.

12. - 6. Proceedings to obtain a copyright. No person shall be entitled to the benefit of this act, unless he shall, before publication, deposit a printed copy of the title of such book, or books, map, chart, musical composition, print, out, or engraving, in the clerk's office of the district court of the district wherein the author or proprietor shall reside, and the clerk of such court is hereby directed and required to record the same therein forthwith, in a book to be kept for that purpose, in the words following (giving a copy of the title under the seal of the court, to the said author or proprietor, whenever he shall require the same:) " District of_____to wit: Be it remembered, that on the _____ day of _____ Anno Domini, A. B. of the said district, hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be,) the title of which is in the words following, to wit; (here insert the title;) the right whereof he claims as author (or proprietor, as the case may be in conformity with an act of congress, entitled 'An act to amend the several acts respecting copyrights.' C. D. clerk of the district." For which record, the clerk shall be entitled to receive from the person claiming such right as aforesaid, fifty cents; and the like sum for every copy, under seal, actually given to such person or his assigns. The act to establish the Smithsonian Institution, for the increase and diffusion of knowledge among men, enacts, section 10, that the author or proprietor of any book, map, chart, musical composition, print, cut, or engraving, for, which a copyright shall be secured under the existing acts of congress, or those 'which shall hereafter be enacted respecting copyrights, shall, within three months from the publication of said book, etc., deliver or cause to be delivered, one copy of the same to the librarian of the Smithsonian Institution, and one copy to the librarian, of Congress Library, for the use of the said libraries.

13.- 7. Requisites after the grant. No person shall be entitled to the benefit of this act, unless he shall give information of copyright being secured, by-causing to be inserted, in the several copies of each and every edition published during the term secured, on the title page, or the page immediately following, if it be a book, or, if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music or engravings, upon the title or

frontispice thereof, the following words, viz: " Entered according to act of congress, in the year by A. B., in the clerk's office of the district court of _____" (as the case may be.)

14. The author or proprietor of any such book, map, chart, musical composition, print, cut, or engraving, shall, within three months from the publication of said book, map, chart, musical composition, print, cut, or engraving, deliver or cause to be delivered a copy. of the same to the clerk of said district. And it shall be the duty of the clerk of each district court, at least once in every year, to transmit a certified list of all such records of copyright, including the titles so recorded, and the date of record, and also all the several copies of books or other works deposited in his office, according to this act, to the secretary of state, to be preserved in his office.

15.- 8. The remedies may be considered with regard, 1. To the penalties wbich may be incurred. 2. The issue in actions under this act. 3. The costs. 4. The Iimitation.

16. - 1. The penalties imposed by this act relate, first, to the violation of the copyright of books secondly, the violation of the copyright of prints, outs or engravings, maps, charts, or musical compositions thirdly, the printing or publishing of any manuscripts without the consent of the author or legal proprietor; fourthly, for inserting in any book, &c., that the copyright has been secured contrary to truth.

17. - First. If any other person or persons, from and after recording the title of any book or books, according to this act, shall, within the term or terms herein limited, print, publish, or import, or cause to be printed, published, or imported, any copy of such book or books, without the consent of the person legally entitled to the copyright thereof, first had and obtained in writing, signed in presence of two or more credible witnesses, or shall, knowing the same to be so printed or imported, publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such book, without such consent in writing, then such offender Shall forfeit every copy of such book to the person legally, at the time, entitled to the copyright thereof and shall also forfeit and pay fifty cents for every such sheet which may be found in his possession, either printed or printing, published, imported, or exposed to sale, contrary tor the intent of this act; the one moiety thereof to such legal owner of the copyright as aforesaid, and the other to the use of the United States; to be recovered by action of debt in any court having competent jurisdiction thereof.

18. - Secondly. If any person or persons, after the recording the title of any print, cut or engraving, map, chart, or musical composition, according to the provisions of this act, shall, within the term or terms limited by this act, engrave, etch, or work, sell, or Copy, or cause to be engraved, etched, worked, or sold, or copied, either on the whole, or by varying, adding to, or diminisbing the main design, with intent to evade the law,

or shall print or import for sale, or cause to be printed or imported for sale, any such map, cbart, musical composition, print, cut, or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copyright thereof, first obtained in writing, signed in the presense of two credible witnesses; or, knowing the same to be so printed or imported, without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, musical composition, engraving, cut, or print, without such consent, as foresaid; then such offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, or print, shall be copied, and also all and every sheet thereof so copied or printed, as aforesaid, to the proprietor or proprietors of the copyright thereof; and shall further forfeit one dollar for every sheet of such map, chart, musical composition, print, cut, or engraving, which may be found in his or their possession, printed or published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the proprietor or proprietors, and the other moiety to the use of the United States, to be recovered in any court having competent jurisdiction thereof.

19. Nothing in this act shall be construed to extend to prohibit the importation or vending, printing or publishing, of any map, chart, book, musical composition, print, or engraving, written, composed, or made by any person not being a citizen of the United States, nor resident within the jurisdiction thereof.

20. Thirdly. Any person or persons, who shall print or publish any manuscript whatever, without the consent of the author or legal proprietor first obtained as aforesaid, (if such author or proprietor be a citizen of the United States, or resident therein,) shall be liable to suffer and pay to the author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, in any court having cognizance thereof; and the several courts of the United States empowered to grant injunctions to prevent the violation of the rights of authors and inventors, are hereby empowered to grant injunctions, in like manner, according to the principles of equity, to restrain such publication of any manuscript, as aforesaid.

21.-Fourthly. If any person or persons, from and after the passing of this act, shall print or publish any book, map, chart, musical composition, print, cut, or engraving, not having legally acquired the copyright thereof, and shall insert or impress that the same hath been entered according to act of congress, or words purporting the same, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be re-covered by action of debt, in any court of record leaving cognizance thereof.

22. - 2. The issue. If any person or persons shall be sued or prosecuted, for any matter, act or thing done under or by virtue of this act, he or they may plead the general issue, and give the special matter in evidence.

23. - 3. The costs. In all recoveries under this act, either for damages, forfeitures, or penalties, full costs shall be allowed thereon, anything in any former act to the contrary notwithstanding.

24. - 4. The limitation of actions is regulated as follows. No action or prosecution shall be maintained in any case of forfeiture or penalty under this act, unless the same shall have been commenced within two years after the cause of action shall have arisen.

25. - 9. Former grants. All and several the provisions of this act, intended for the protection and security of. copyrights, and providing remedies, penalties, and forfeitures in case of violation thereof, shall be held and construed to extend to the benefit of the legal proprietor or proprietors of each and every copyright heretofore obtained, according to law, during the term thereof, in the same manner as if such copyright had been entered and secured according to the directions of this act. And by the 16th section it is provided that this act shall not extend to any copyright heretofore secured, the term of which has already expired.

26. Copyrights are secured in most countries of Europe. In Great Britain, an author has a copyright in his work absolutely for twenty-eight years, and if he be living at the end of that period, for the residue of his life. In France, the copyright of an author extends to twenty years after his death. In most, if not in all the German states, it is perpetual; it extends only over the state in which it is granted. In Russia, the right of an author or translator continues during his life, and his heirs enjoy the privilege twenty-five years afterwards. No manuscript or printed work of an author can be sold for his debts. 2 Am. Jur. 253, 4. Vide, generally, 2 Am. Jur. 248; 10 Am. Jur. 62; 1 Law Intell. 66; and the articles Literary property; Manuscript.

COPYHOLD, estate in the English law. A copyhold estate is a parcel of a manor, held at the will of the lord, according to the custom of the manor, by a grant from the lord, and admittance of the tenant, entered on the rolls of the manor court. Cruise, Dig. t. 10, c. 1, s. 3. Vide Ch. Pr. Index, h. t.

CORAM. In the presence of; before. Coram nobis, before us; coram vobis, before you; coram non judice, is said of those acts of a court which has no jurisdiction, either over the person, the, cause, or the process. 1 Con. 40. Such acts have no validity. Where a thing is required to be done before a particular person, it would not be considered as done before him, if he were asleep or non compos. Vide Dig. 4, 8, 27, 5;

Dane's Ab. Index, h. t.; 5 Harr. & John. 42; 8 Cranch, 9; Paine's R. 55; Bouv. Inst. Index, h. t.

CORD, measures. A cord of wood must, when the wood is piled close, measure eight feet by four, and the wood must be four feet long. There are various local regulations in our principal cities as to the manner in which wood shall be measured and sold.

CORN. In its most comprehensive sense, this term signifies every sort of grain, as well as peas and beans, this is its meaning in the memorandum usually contained in policies of insurance. But it does not include rice. 1 Park. Ins. 112; Marsh. Ins. 223, note; Stev. on Av. part 4, art. 2; Ben. on Av. eh. 10; 1 Marsh. Ins. 223; Park on Ins. 112; Wesk. Ins. 145. Vide Com. Dig. Biens, G 1.

CORNAGE. The name of a species of tenure in England. The tenant by cornage was bound to blow a horn for the sake of alarming the country on the approach of an enemy. Bac. Ab. Tenure, N.

CORNET. A commissioned officer in a regiment of cavalry.

CORODY, incorporeal hereditaments. An allowance of meat, drink, money, clothing, lodging, and such like necessaries for sustenance. 1 Bl. Com. 282; 1 Ch. Pr. 225.

CORONER. An officer whose principal duty it is to hold an inquisition, with the assistance of a jury, over the body of any person who may have come to a violent death, or who has died in prison. It is his duty also, in case of the death of the sheriff, or when a vacancy happens in that office, to serve all the writs and process which the sheriff is usually bound to serve. The chief justice of the King's Bench is the sovereign or chief coroner of all England, although it is not to be understood that he performs the active duties of that office in any one count. 4 Rep. 57, b. Vide Bac. Ab. h. t.; 6 Vin. Ab.242; 3 Com. Dig. 242; 5 Com. Dig. 212; and the articles Death; Inquisition.

2. The duties of the coroner are of the greatest consequence to society, both for the purpose of bringing to punishment murderers and other offenders against the lives of the citizens, and of protecting innocent persons from criminal accusations. His office, it is to be regretted, is regarded with too much indifference. This officer should be properly acquainted with the medical and legal knowledge so absolutely indispensable in the faithful discharge of his office. It not unfrequently happens that the public mind is deeply impressed with the guilt of the accused, and when probably he is guilty, and yet the imperfections of the early examinations leave no alternative to the jury but to acquit. It is proper in most cases to procure the examination to be made by a physician, and in some cases, it is his duty. 4 Car. & P. 571.

CORPORAL. An epithet for anything belonging to the body, as, corporal punishment, for punishment inflictedon the person of the criminal; corporal oath, which is an oath by the party who takes it being obliged to lay his hand on the Bible.

CORPORAL, in the army. A non-commissioned officer in a battalion of infantry.

CORPORAL TOUCH. It was once decided that before a seller of personal property could be said to have stopped it in transitu, so as to regain the possession of it, it was necessary that it should come to his corporal touch. 3 T. R. 466 5 East, 184. But the contrary is now settled. These words were used merely as a figurative expression. 3 T. R. 464 5 East, 184.

CORPORATION. An aggregate corporation is an ideal body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues the same, notwithstanding the changes of the individuals who compose it, and which for certain purposes is considered as a natural person. Browne's Civ. Law, 99; Civ. Code of Lo. art. 418; 2 Kent's Com. 215. Mr. Kyd, (Corpor. vol. 1, p. 13,) defines a corporation as follows: " A corporation, or body politic, or body incorporate, is a collection of many; individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law, with a capacity of acting in several respects as an individual, particularly of taking and granting property, contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence." In the case of Dartmouth College against Woodward, 4 Wheat. Rep. 626, Chief Justice Marshall describes a corporation to be "an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law," continues the judge, "it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and if the expression may be allowed, individuality properties by which a perpetual succession of many persons are considered, as the same, and may act as the single individual, They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessityof perpetual conveyance for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use." See 2 Bl. Corn. 37.

2. The words corporation and incorporation are frequently confounded, particularly in the old books. The distinction between them is, however, obvious; the one is the institution itself, the other the act by which the institution is created.

3. Corporations are divided into public and private.

4. Public corporations, which are also called political, and sometimes municipal corporations, are those which have for their object the government of 'a portion of the state; Civil Code of Lo. art. 420 and although in such case it involves some private interests, yet, as it is endowed with a portion of political power, the term public has been deemed appropriate.

5. Another class of public corporations are those which are founded for public, though not for political or municipal purposes, and the, whole interest in which belongs to the government. The Bank of Philadelphia, for example, if the whole stock belonged exclusively to the government, would be a public corporation; but inasmuch as there are other owners of the stock, it is a private corporation. Domat's Civil Law,- 452 4 Wheat. R. 668; 9 Wheat. R. 907 8 M'Cord's R. 377 1 Hawk's R. 36; 2 Kent's Corn. 222.

6. Nations or states, are denominated by publicists, bodies politic, and are said to have their affairs and interests, and to deliberate and resolve, in common. They thus become as moral persons, having an understanding and will peculiar to themselves, and are susceptible of obligations and laws. Vattel, 49. In this extensive sense the United States may be termed a corporation; and so may each state singly. Per Iredell, J. 3 Dall. 447.

7. Private corporations. In the popular meaning of the term, nearly every corporation is public, inasmuch as they are created for the public benefit; but if the whole interest does not belong to the government, or if the corporation is not created for the administration of political or municipal power, the corporation is private. A bank, for instance, may be created by the government for its own uses; but if the stock is owned by private persons, it is a private corporation, although it is created by the government, and its operations partake of a private nature. 9 Wheat. R. 907. The rule is the same in the case of canal, bridge, turnpike, insurance companies, and the like. Charitable or literary corporations, founded by private benefaction, are in point of law private corporations, though dedicated to public charity, or for the general promotion of learning. Ang. & Ames on Corp. 22.

8. Private corporations are divided into ecclesiastical and lay.

9. Ecclesiastical corporations, in the United States, are commonly called religious corporations they are created to enable religious societies to manage with more facility and advantage, the temporalities belonging to the church or congregation.

10. Lay corporations are divided into civil and eleemosynary. Civil corporations are created for an infinite variety of temporal purposes, such as affording facilities for obtaining loans of money; the making of canals, turnpike roads, and the like. And also such as are established for the advancement of learning. 1 Bl. Com. 471.

11. Eleemosynary corporations are such as are instituted upon a principle of charity, their object being the perpetual distribution of the bounty of the founder of them, to such persons as he has directed. Of this kind are hospitals for the relief of the impotent, indigent and sick, or deaf and dumb. 1 Kyd on Corp. 26; 4 Conn. R. 272; Angell & A. on Corp. 26.

12. Corporations, considered in another point of view, are either sole or agregate.

13. A sole corporation, as its name implies, consists of only one person, to whom and his successors belongs that legal perpetuity, the enjoyment of which is denied to all natural persons. 1 Black Com. 469. Those corporations are not common in the United States. In those states, however, where the religious establishment of the church of England was adopted, when they were colonies, together with the common law on that subject, the minister of the parish was seised of the freehold, as persona ecclesiae, in the same manner as in England; and the right of his successors to the freehold being thus established was not destroyed by the abolition of the regal government, nor can it be divested even by an act of the state legislature. 9 Cranch, 828.

14. A sole corporation cannot take personal property in succession; its corporate capacity of taking property is confined altogether to real estate. 9 Crancb, 43.

15. An aggregate corporation cousists of several persons, who are' united in one society, which is continued by a succession of members. Of this kind are the mayor or commonalty of a city; the heads and fellows of a college; the members of trading companies, and the like. 1 Kyd on Corp. 76; 2 Kent's Com. 221 Ang. & A. on Corp. 20. See, generally, Bouv. Inst. Index, h. t.

CORPORATOR. One who is a member of a corporation.

2. In general, a corporator is entitled to enjoy all the benefits and rights which belong to any other member of the corporation as such. But in some corporations, where the rights are of a pecuniary nature, each corporator is entitles to those rights in

proportion to his interest; he will therefore be entitled to vote only in proportion to the amount of his stock, and be entitled to dividends in the same proportion.

3. A corporator is not in general liable personally for any act of the corporation, unless he has been made so by the charter creating the corporation.

CORPOREAL PROPERTY, civil law. That which consists of such subjects as are palpable. In the common law, the term to signify the same thing is properly in possession. It differs from incorporeal property, (q. v.) which consists of choses in action and easements, as a right of way, and the like.

CORPSE. The dead body (q. v.) of a human being. Russ. & Ry. 366, n.; 2 T. R. 733; 1 Leach, 497; 16 Eng. Com. L. Rep. 413; 8 Pick. 370; Dig. 47, 12, 3, 7 Id. 11, 7, 38; Code, 3, 441.

2. As a corpse is considered as nullius bonis, or the property of no one, it follows that stealing it, is not, at common law, a larceny. 3 Inst. 203.

CORPUS. A Latin word, which signifies body; as, corpus delicti, the body of the offence, the essence of the crime; corpus juris canonis, the body of the canon law; corpus juris civilis, the body of the Civil law.

CORPUS COMITATUS. The body of the county; the inhabitants or citizens of a whole county, used in contradistinction to a part of a county, or a part of its citizens. See 5 Mason, R. 290.

CORPUS JURIS CIVILIS. The body of the civil law. This, is the name given to a collection of the civil law, consisting of Justinian's Institutes, the Pandects or Digest, the Code, and the Novels.

CORPUS CUM CAUSA, practice. The writ of habeas corpus cum causa (q. v.) is a writ commanding -the person to whom it is directed, to have the body, together with the cause for which he is committed, before the court or judge issuing the same.

CORPUS DELICTI. The body of the offence; the essence of the crime

2. It is a general rule not to convict unless the corpus delicti can be established, that is, until the dead body has been found. Best on Pres. 201; 1 Stark. Ev. 575, See 6 C. & P. 176; 2 Hale, P. C. 290. Instances have occurred of a person being convicted of having killed another, who, after the supposed criminal has been put to death for the supposed offence, has made his appearance - alive. The wisdom of the rule is apparent; but it has been questioned whether, in extreme cases, it may not be competent to prove the

basis of the corpus delicti by presumptive evidence. 3 Benth. Jud. Ev. 234; Wills on Circum. Ev. 105; Best on Pres. 204. See Death.

CORPUS JURIS CANONICI. The body of the canon law. A compilation of the canon law bears this name. See Law, canon.

CORRECTION,punishment. Chastisement by one having authority of a person who has committed some offence, for the purpose of bringing him to legal subjection.

2. It is chiefly exercised in a parental manner, by parents, or those who are placed in loco parentis. A parent may therefore justify the correction of the child either corporally or by confinement; and a schoolmaster, under whose care and instruction a parent has placed his child, may equally justify similar correction; but the correction in both, cases must be moderate, and in proper manner. Com. Dig. Pleader, 3 M. 19; Hawk. c. 60, s. 23, and c. 62, s. 2 c. 29, s. 5.

3. The master of an apprentice, for disobedience, may correct him moderately 1 Barn. & Cres. 469 Cro. Car. 179 2 Show. 289; 10 Mart. Lo. It. 38; but he cannot delegate the authority to another. 9 Co. 96.

4. A master has no riglit to correct his servants who are not apprentices.

5. Soldiers are liable to moderate correction from their superiors. For the sake of maintaining their discipline on board of the navy, the captain of a vessel, either belonging to the United States, or to private individuals, may inflict moderate correction on a sailor for disobedience or disorderly conduct. Abbott on Shipp. 160; 1 Ch . Pr. 73; 14 John. R. 119; 15)lass. 365; 1 Bay, 3; Bee, 161; 1 Pet. Adm. Dec. 168; Molloy, 209; 1 Ware's R. 83. Such has been the general rule. But by a proviso to an act of congress, approved the 28th of September, l850, flogging in the navy and on board vessels of commerce was abolished.

6. Any excess of correction by the parent, master, officer, or captain, may render the party guilty of an assault and battery, and liable to all its consequences. In some prisons, the keepers have the right to correct the prisoners.

CORREGIDOR, Spanish law. A magistrate who took cognizance of 'various misdemeanors, and of civil matters. 2 White's Coll. 53.

CORRELATIVE. This term is used to designate those things, one of which cannot exist without another; for example, father and child; mountain and valley, &c. Law, obligation, right, and duty, are therefore correlative to each other.

CORRESPONDENCE. The letters written by one to another, and the answers thereto, make wbat is called the correspondence of the partie's.

2. In general, the correspondence of the parties contains the best evidence of the facts to which it relates. See Letter, contracts; Proposal.

3. When an offer to contract is made by letter, it must be accepted unconditionally for if the precise terms are changed, even in the slightest degree, there is no contract. 1 Bouv. Inst. n. 904. See, as to the power of revoking an offer made by letter, 1 Bouv. Inst. n. 933.

CORRUPTION. An act done with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another. Merl. Rep. h. t.

2. By corruption, sometimes, is understood something against law; as, a contract by which the borrower agreed to pay the lender usurious interest. It is said, in such case, that it was corruptly agreed, &c.

CORRUPTION OF BLOOD,, English crim. law. The incapacity to inherit, or pass an inheritance, in consequence of an attainder to which the party has been subject

2. When this consequence flows from an attainder, the party is stripped of all honors and dignities he possessed, and becomes ignoble.

3. The Constitution of the United States, Amendm. art. 5, provides, that no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval, forces, or in the militia, when in actual service in time of war or public danger" and by art. 3, s. 3, n. 2, it is declared tbat " no attainder of treason shall work. corruption of blood, or forfeiture, except during the life of the person attainted."

4. The Constitution of Pennsylvania, art. 9, s. 19, directs that " no attainder shall work corruption of blood." 3 Cruise, 240, 378 to 381, 473 1 Cruise, 52 1 Chit. Cr. Law, 740; 4 Bl. Com. 388.

CORSNED, ancient Eng. law. This was a piece of accursed bread, which a person accused of a crime swallowed to test his innocence. It was supposed that, if he was guilty, it would choke him.

CORTES. The name of the legislative assemblies of Spain and Portugal.

COSENAGE, torts. Deceit, fraud: that kind of circumvention and wrong, which has no other specific name. Vide Ayl. Pand. 103 Dane's Ab. Index, h. t.

COSMOPOLITE. A citizen of the world; one who has no fixed. residence. Vide Citizen.

COSTS, practice. The expenses of a suit or action which may be recovered by law from the losing party.

2. At common law, neither the plaintiff nor the defendant could recover costs eonomine; but in all actions in which damages were recoverable, the plaintiff, in effect, recovered his costs when he obtained a verdict, for the jury always computed them in the damages. When the defendant obtained a verdict, or the plaintiff became non-suit, the former was wholly without remedy for any expenses he had incurred. It is true, the plaintiff was amerced pro falso clamore suo, but the amercement was given to the king. Hull on Costs, 2 2 Arch. Pr. 281.

3. This defect was afterwards corrected by the statute of Gloucester, 6 Ed. I, c. 1, by which it is enacted that "the demandant in assise of novel disseisin, in writs of mort d'ancestor, cosinage, aiel and be sail, shall have damages. And the demandant shall have the costs of the writ purchased, together with damages, and this act shall hold place in all cases where the parly recovers damages, and every person shall render damages where land is recovered against him upon his own intrusion, or his own act." About forty-six years after the passing of this statute, costs were for the first time allowed in France, by an ordinance of Charles le Bel, (January, 1324.) See Hardw. Cas. 356; 2 Inst. 283, 288 2 Loisel, Coutumes, 328-9.

4. The statute of Gloucester has been adopted, substantially, in all the United States. Though it speaks of the costs of the writ only, it bas, by construction, been extended to the costs of the suit generally. The costs which are recovered under it are such as shall be allowed by the master or prothonotary upon taxation, and not those expenses which the. plaintiff may have. incurred for himself, or the extraordinary fees he may have paid counsel, or for the loss of his time. 2 Sell. Pr. 429.

5. Costs are single, when the party receives the same amount he has expended, to be ascertained by taxation; double, vide Double costs. and treble, vide Treble costs. Vide, generally, Bouv. Inst. Index, h. t.; Hullock on Costs; Sayer's Law of Costs; Tidd's Pr. c. 40; 2 Sell. Pr. c. 19; Archb. Pr. Index, h. t.; Bac. Ab. h. t.; Com. Dig. h. t.; 6 Vin. Ab. 321; Grah. Pr. c. 23 Chit. Pr. h. t. 1 Salk. 207 1 Supp. to Ves. jr. 109; Amer. Dig. h. t.; Dane's Ab. h. t.; Harr. Dig. h. t. As to the liability of executors and administrators for costs, see 1, Chit. R. 628, note; 18 E. C. L. R. 185; 2 Bay's R. 166,

399; 1 Wash. R. 138; 2 Hen. & Munf. 361, 369; 4 John. R. 190; 8 John. R. 389; 2 John. Ca. 209. As to costs in actions qui tam, see Esp. on Pen. Act. 154 to 165.

COTTAGE, estates. A small dwelling house. See 1 Tho. Co. Litt. 216; Sheph. Touchst. 94; 2 Bouv. Inst. n. 1571, note.

2. The grant of a cottage, it is said, passes a small dwelling-house, which has no land belonging to it. Shep. To. 94.

COUCHANT. Lying down. Animals are said to have been levant and couchant, when they have been upon another person's land, damage feasant, one night at least. 3 Bl. Com. 9.

COUNCIL, legislation. This word signifies an assembly.

2. It was used among the Romans to express the meeting of only a part of the people, and that the most respectable, in opposition to the assemblies of the whole people.

3. It is now usually applied to the legislative bodies of cities and boroughs.

4. In some states, as in Massacbusetts, a body of men called the council, are elected, whose duties are to advise the governor in the executive part of the government. Const. of Mass. part 2, c. 2, s. 3, art. 1 and 2. See 14 Mass. 470; 3 Pick. 517; 4 Pick. 25 19 John. R. 58. In England, the king's council are the king's judges of his courts of justice. 3 Inst. 125; 1 Bl. Com. 229.

COUNSEL. Advice given to another as to what he ought to do or not to do.

2. To counsel another to do an unlawful act, is to become accessory to it, if it be a felony, or principal, if it be treason, or a misdemeanor. By the term counsel is also understood counsellor at law. Vide To open; Opening.

COUNSEL, an officer of court. One who undertakes to conduct suits and actions in court. The same as counsellor.

COUNSEL, practice, crim. law. In the oath of the grand jurors, there is a provision requiring them to keep secret " the commonwealth's counsel, their fellows, and their own." In this sense this word is synonymous with knowledge; therefore, all the knowledge acquired by grand jurors, in consequence of their office, either from the officers of the commonwealth, from their fellow-jurors, or which they have obtained in any manner, in relation to cases which come officially before them, must be kept secret. See Grand Jury.

COUNSELLOR, government. A counsellor is a member of a council. In some of the states the executive power is vested in a governor, or a governor and lieutenant governor, and council. The members of such council are called counsellors. See the names of the several states.

COUNSELLOR AT LAW, offices. An officer in the supreme court of the United States, and in some other courts, who is employed by a party in a cause, to conduct the same on its trial on his behalf. He differs from an attorney at law. (q. v.)

2. In the supreme court of the United States, the two degrees of attorney and counsel are kept separate, and no person is permitted to practise both. It is the duty of the counsel to draft or review and correct the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the case. 1 Kent, Com. 307.

3. Generally in the other courts of the United States, as well as in the courts of Pennsylvania, the same person perform's the duty of counsellor and attorney at law.

4. In giving their advice to their clients, counsel and others, professional men have duties to perform to their clients, to the public, and to themselves. In such cases they have thrown upon them something which they owe to the fair administration of justice, as well as to the private interests of their employers. The interests propounded for them ought, in their own apprehension, to be just, or at least fairly disputable; and when such interests are propounded, they ought not to be pursued per fas et nefas . Hag. R. 22.

5. A counsellor is not a hired person, but a mandatory; he does not render his services for a price, but an honorarium, which may in some degree recompense his care, is his reward. Doubtless, he is not indifferent to this remuneration, but nobler motives influence his conduct. Follow him in his study when he examines his cause, and in court on the trial; see him identify himself with the idea of his client, and observe the excitement he feels on his account; proud when he is, conqueror, discouraged, sorrowful, if vanquished; see his whole soul devoted to the cause he has undertaken, and which he believes to be just, then you perceive the elevated man, ennobled by the spirit of his profession, full of sympathy for his cause and his client. He may receive a reward for his services, but such things cannot be paid for with money. No treasures can purcbase the sympathy and devotedness of a noble mind to benefit humanity; these things are given, not sold. See Honorarium. 6. Ridley says, that the law has appointed no stipend to philosophers and lawyers not because they are not reverend services and worthy of reward or stipend, but because either of them are most honorable professions, whose worthiness is not to be valued or dishonored by money. Yet, in these cases many things are honestly taken, whi ch are not bonestly asked, and

the judge may, according to the quality of the cause, and the still of the advocate, and the custom of the court, and, the worth of the matter that is in hand, appoint them a fee answerable to their place. View of the Civil and Eccles. Law, 38, 39.

COUNT, pleading. This word, derived from the French conte, a narrative, is in our old law books used synonymously with declaration but practice has introduced the following distinction: when the plaintiff's complaint embraces only a single cause of action, and he makes only one statement of it, that statement is called, indifferently, a declaration or count; though the former is the more usual term.

2. But when the suit embraces two or more causes of action, (each of which of course requires a different statement;) or when the plaintiff makes two or more different statements of one and the same cause of action, each several statement is called a count, and all of them, collectively, constitute the declaration.

3. In all cases, however, in which there are two or more counts, whether there is actually but one cause of action or several, each count purports, upon the face of it, to disclose a distinct right of action, unconnected with that stated in any of the other counts.

4. One object proposed, in inserting two or more counts in one declaration, when there is in fact but one cause of action, is, in some cases, to guard against the danger of an insufficient statement of the cause, where a doubt exists as to the legal sufficiency of one or another of two different modes of declaring; but the more usual end proposed in inserting more than one count in such case, is to accommodate the statement to the cause, as far as may be, to the possible state of the proof to be exhibited on trial; or to guard, if possible, against the hazard of the proofs varying materially from the statement of the cause of action; so that if one or more or several counts be not adapted to the evidence, some other of them may be so. Gould on Pl. c. 4, s. 2, 3, 4; Steph. Pl. 279; Doct. Pl. 1 78; 8 Com. Dig. 291; Dane's Ab. Index, h. t.; Bouv. Inst. Index, h. t. In real actions, the declaration is most usually called a count. Steph. Pl. 36, See Common count; Money count.

COUNTER, Eng. law. The name of an ancient prison in the city of London, which has now been demolished.

COUNTER AFFIDAVIT. An affidavit made in opposition to one already made; this is allowed in the preliminary examination of some cases.

COUNTER SECURITY. Security given to one who has become security for another, the condition of which is, that if the one who first became surety shall be damnified, the one who gives the counter security will indemnity him.

TO COUNTERFEIT, criminal law. To make something false, in the semblance of that which is true; it always implies a fraudulent intent. Vide Vin. Ab. h. t. Forgery.

COUNTERMAND. This word signifies a. change or recall of orders previously given.

2. It may be express or implied. Express, when contrary orders are given and a revocation. of the former order is made. Implied, when a new order is given which is inconsistent with the former order: as, if a man should order a merchant to ship him in a particular vessel -certain goods which belonged to him, and then, before the goods were shipped, he directed him to ship them in another vessel; this would be a countermand of the first order.

3. While the first command is unrecalled, the person who gave it would be liable to all the consequences in case he should be obeyed; but if, for example, a man should command another to commit a crime and, before its perpetration, he should repent and countermand it, he would not be liable for the consequences if the crime should afterwards be committed.

4. When a command or order has been given, and property delivered, by which a right vests in a third person, the party giving the order cannot countermand it; for example, if a debtor should deliver to A a sum of money to be paid to B, his creditor, B has a vested right in the money, and unless he abandon that right, and refuse to take the money, the debtor cannot recover it from A. 1 Roll. Ab. 32, pl. 13; Yelv. 164 Sty. 296. See 3 Co. 26 b.; 2 Vent. 298 10 Mod. 432; Vin. Ab. Countermand, A 1; Vin. Ab. Bailment, D; 9 East, 49; Roll. Ab. 606; Bac. Ab. Bailment, D; Com. Dig. Attorney, B 9, c. 8; Dane's Ab. h. t.; and Command.

COUNTERPART, contracts. Formerly each party to an indenture executed a separate deed; that part which was executed by the grantor was called the original, and the rest the counterparts. It is now usual for all the parties to execute every part, and this makes them all originals. 2 Bl. Com. 296.

2. In granting lots subject to a ground rent reserved to the grantor, both parties execute the deeds, of which there are two copies; although both are original, one of them is sometimes called the counterpart. Vide 12 Vin. Ab. 104; Dane's Ab. Index, h. t.; 7 Com. Dig. 443; Merl. Repert. mots Double Ecrit.

COUNTERPLEA, pleading. When a tenant in any real action, tenant by the curtesy, or tenant in dower, in his answer and plea, vouches any one to warrant his title, or prays in aid another who has a larger estate, as of the remainder-man or reversioner or when a stranger to the action comes and prays to be received to save his estate; then

that which the defendant alleges against it, why it should not be admitted, is called a counterplea. T. de la Ley; Doct. Placit. 300 Com. Dig. h. t.; Dane's Ab. Index, h. t.

COUNTERS, English law. - Formerly there were in London two prisons belonging to the sheriffs courts, which bore this name. They are now demolished. 4 Inst. 248.

COUNTERSIGN. To countersign is to sign on the opposite side of an instrument already signed by some other person or officer, in order to secure its character of a genuine paper; as a bank note is signed by the president and countersigned by the cashier.

COUNTRY. By country is meant the state of which one is a member.

2. Every man's country is in general the state in which he happens to have been born, though there are some exceptions. See Domicil; Inhabitant. But a man has the natural right to expatriate himself, i. e. to abandon his country, or his right of citizenship acquired by means of naturalization in any country in which he may have taken up his residence. See Allegiance; Citizen; Expatriation. in another sense, country is the same as pais. (q. v.)

COUNTY. A district into which a state is divided.

2. The United States are generally divided into counties; counties are divided into townships or towns.

3. In Pennsylvania the division of the province into three Counties, viz. Philadelphia, Bucks and Chester, was one of the earliest acts of William Penn, the original proprietary. There is no printed record of this division, or of the original boundaries of these counties. Proud says it was made about the year 1682. Proud's Hist. vol. 1) p. 234 vol. 2, p. 258.

4. In some states, as Illinois; 1 Breese, R. 115; a county is considered as a corporation, in others it is only a quasi corporation. 16 Mass. R. 87; 2 Mass. R. 644 7 Mass. R. 461; 1 Greenl. R. 125; 3 Greenl. R. 131; 9 Greenl. R. 88; 8 John. R. 385; 3 Munf. R. 102. Frequent difficulties arise on the division of a county. On this subject, see 16 Mass. R. 86 6 J. J. Marsh. 147; 4 Halst. R. 357; 5 Watts, R. 87 1 Cowen, R. 550; 6 Cowen, R. 642; Cowen, R. 640; 4 Yeates, R. 399 10 Mass. Rep. 290; 11 Mass. Rep. 339.

5. In the English law this word signifies the same as shire, county being derived from the French and shire from the Saxon. Both these words signify a circuit or portion of the realm, into which the whole land is divided, for the better government thereof, and

the more easy administration of justice. There is no part of England that is not within some county, and the shire-reve, (sheriff) originally a yearly officer, was the governor of the county. Four of the counties of England, viz. Lancaster, Chester, Durham and Ely, were called counties Palatine, which were jurisdictions of a peculiar nature, and held by, especial charter from the king. See stat. 27 H. VIII. c.25.

COUNTY COMMISSIONERS. Certain officers generally entrusted with the superintendence of the collection of the county taxes, and the disbursements made. for the county. They are administrative officers, invested by the local laws with various powers.

2. In Pennsylvania the office of county commissioner originated in the act of 1717, which was modified by the act of 1721, and afterwards enlarged by the act of 1724. Before the office of county commissioner was established, assessors were elected who performed-similar duties. See Act of 1700, 4 Votes of Assembly, 205, 209.

COUPONS. Those parts of a commercial instrument which are. to be cut, and which are evidence of something connected with the contract mentioned in-the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payor.

COURIER. One who is sent on some public occasion as an express, to bear despatches, letters, and other papers.

2. Couriers sent. by an ambassador or other public minister, are protected from arrest or molestation. Vattel, liv. 4, c. 9, 123.

COURSE. The direction in which a line runs in surveying.

2. When there are no monuments, (q. v.) the land must be bounded by the courses and distances mentioned in the patent or deed. 4 Wheat. 444; 3 Pet. 96; 3 Murph. 82; 2 Har. & John. 267; 5 Har. & John. 254. When the lines are actually marked, they must be adhered to, though they vary from the course mentioned in the deeds. 2 Overt. 304; 7 Wheat. 7. 1 See 3 Call, 239 7 Mont. 333. Vide Boundary; Line.

COURSE OF TRADE. What is usually done in the management of trade or business.

2. Men are presumed to act for their own interest, and to pursue the way usually adopted by men generally; hence it is presumed in law, that men in their actions will pursue the usual course of trade. For this reason it is presumed that a bank note was signed before it was issued, though the signature be torn off. 2 Rob. Lo. R. 112. That

one having possession of a bill of exchange upon him, has paid it; that one who pays an order or draft upon him, pays out of the funds of the drawer in his hands. But the case is different where the order is for the delivery of goods, they being presumed to have been sold by the drawee to the drawer. 9 Wend. 323; 1 Greenl. Ev. 38.

COURSE OF THE VOYAGE. By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. on Ins. 185.

COURT, practice. A court is an incorporeal political being, which requires for its existence, the presence of the judges, or a competent number of them, and a clerk or prothonotary, at the time during which, and at the place where it is by law authorized to be held; and the performance of some public act, indicative of a design to perform the functions of a court.

2. In another sense, the judges, clerk, or prothonotary, counsellors and ministerial officers, are said to constitute the court.

3. According to Lord, Coke, a court is a place where justice is judicially administered. Co. Litt. 58, a.

4. The judges, when duly convened, are also called the court. Vide 6 Vin. Ab. 484; Wheat . Dig. 127; Merl. Rep. h. t.; 3 Com. Dig. 300; 8 Id. 386; Dane's Ab. Index, h. t.; Bouv. Inst. Index, h. t.

5. It sometimes happens that the judges composing a court are equally divided on questions discussed before them. It has been decided, that when such is the case on an appeal or writ of error, the judgment or decree is affirmed. 10 Wheat. 66; 11 Id. 59. If it occurs on a motion in arrest of judgment, a judgment is to be entered on the verdict. 2 Dall. Rep. 388. If on a motion for a new trial, the motion is rejected. 6 Wheat. 542. If on a motion to enter judgment on a verdict, the judgment is entered. 6 Binn. 100. In England, if the house of lords be equally divided on a writ of error, the judgment of the court below is affirmed. 1 Arch. Pr. 235. So in Cam. Scacc. 1 Arch. Pr. 240. But in error coram nobis, no judgment can be given if the judges are equally divided, except by consent. 1 Arch. Pr. 246. When the judges are equally divided on the admission of testimony, it cannot be received. But see 3 Yeates, 171. Also, 2 Bin. 173; 3 Bin. 113 4 Bin. 157; 1 Johns. Rep. 118 4 Wash. C. C. Rep. 332, 3. See Division of Opinion.

6. Courts are of various kinds. When considered as to their powers, they are of record and not of record; Bac. Ab. Courts, D; when compared. to each other, they are supreme, superior, and inferior, Id.; when examined as to their original jurisdiction, they are civil or criminal; when viewed as to their territorial jurisdiction, they are

central or local; when divided as to their object, they are courts of law, courts of equity, courts martial, admiralty courts, and ecclesiastical courts. They are also courts of original jurisdiction, courts of error, and courts of appeal. Vide Open Court.

7. Courts of record cannot be deprived of their jurisdiction except by express negative words. 9 Serg. & R. 298; 3 Yeates, 479 2 Burr. 1042 1 Wm. Bl. Rep. 285. And such a court is the court of common pleas in Pennsylvania. 6 Serg. & R. 246.

8. Courts of equity are not, in general, courts of record. Their decrees touch the person, not lands. or goods. 3 Caines, 36. Yet, as to personalty, their decrees are equal to a judgment; 2. Madd. Chan. 355; 2 Salk., 507; 1 Ver. 214; 3 Caines, 35; and have preference according to priority. 3 P. Wms. 401 n.; Cas. Temp. Talb. 217; 4 Bro. P. C. 287; 4 Johns. Chan. Cas. 638. They are also conclusive between the parties. 6 Wheat. 109. Assumpsit will lie on a decree of a foreign court of chancery for a sum certain; 1 Campb. Rep. 253, per Lord Kenyon; but not for a sum not ascertained. 3 Caines, 37, (n.) In Pennsylvania, an action at law will lie on a decree of a court of chancery, but the pleas nil debet and nultiel record cannot be pleaded in such an action. 9 Serg. & R. 258.

COURT CHRISTIAN. An ecclesiastical judicature, known in England, so called from its handling matters of an ecclesiastical or religious nature. 2 Inst. 488. Formerly the jurisdiction of these courts was not thus Iimited. The emperor Theodosius promulgated a law that all suits (lites) and forensic controversies should be remitted to the judgment of the church, if either of the litigating parties should require it. Fr. Duaren De Sac. Minist. Eccl. lib. 1, c. 2. This law was renewed and confirmed by Charlemagne.

COURT OF ARCHES , eccl. law. The most ancient consistory court belonging to the archbishop of Canterbury for the trial of spiritual causes. It is so called, because it was anciently held in the church of Saint Mary le bow; which church had that appellation from its steeple, which was raised at the top with stone pillars, in the manner of an arch or bow. Termes de la Ley.

COURT OF ADMIRALTY. A court having jurisdiction of all maritime causes. Vide Admiralty; Courts of the United States; Instance Courts; Prize Court; 2 Chit. Pr. 508 to 538.

COURT OF AUDIENCE, Eng. eccl. law. The name of a court kept by the archbishop in his palace, in which are transacted matters of form only; as confirmation of bishops, elections, consecrations, and the like.

COURT OF COMMON PLEAS. The name of an English court which was established on the breaking up of the aula regis, for the determination of pleas merely civil. It was at first ambulatory, but was afterwards located. This jurisdiction is founded on original write issuing out of chancery, in the cases of common persons. But when an attorney or person belonging to the court, is plaintiff, he sues by writs, of privilege, and is sued by bill, which is in the nature of a petition; both which originate in the common pleas. See Bench; Banc.

2. There are courts in most of the states of the United States which bear the name of common pleas; they have various powers and jurisdictions.

COURT OF CONSCIENCE, Eng. law. The name of a court in London. It has equity jurisdiction in certain cases. The reader is referred to Bac. Ab. Courts in London, 2.

COURT OF CONVOCATION, eccles. law. The name of an English ecclesiastical court. It is composed of every bishop, dean, and archdeacon, a proctor for the chapter, and two proctors for the clergy of each diocese in the province of Canterbury, for the province of York, there are two proctors for each archdeaconry.

2. This assembly meets at the time appointed in the king's writ, and constitute an ecclesiastical parliament. The archbishop and his suffragans, as his peers, are sitting together, and composing one house, called the upper house of convocation the deans, archdeacons, and a proctor for the chapter, and two proctors for the clergy, the lower house. In this house a prolocutor, performing the duty of a president, is elected.

8. The jurisdiction of this tribunal extends to matters of heresy, schisms, and other mere spiritual or ecclesiastical causes. Bac. Ab. Ecclesiastical Courts, A 1.

COURT OF EXCHEQUER, Eng. law. A court of record anciently established for the trial of all matters relating to the revenue of the crown. Bac. Ab. h. t.

COURT OF FACULTIES, Eng. eccl. law. The name of a court which belongs to the archbishop, in which his officer, called magister ad facultates, grants dispensations to marry, to eat flesh on days prohibited, or to ordain a deacon under age, and the like. 4 Inst. 337.

COURT, INSTANCE. One of the branches of the English admiralty is called an instance court. Vide Instance Court.

COURT OF INQUIRY. A court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction, accusation, or imputation against any officer or soldier; the said court shall consist. of one or more

officers, not exceeding three, and a judge advocate, or other suitable person, as a recorder, to reduce the proceedings and evidencee to writing, all of whom shall be sworn to the performance of their duty. Art. 91. Gord. Dig. Laws U. S., art. 3558 to 3560.

COURT OF KING'S BENCH. The name of the supreme court of law in England. Vide King's Bench.

COURT MARTIAL. A court authorized by the articles of war, for the trial of all offenders in the army or navy, for military offences. Article 64, directs that general courts martial may consist of any number of commissioned officers, from five to thirteen, inclusively; but they shall not consist of less than thirteen, where the number can be convened, without manifest injury to the service.

2. The decision of the commanding officer who appoints the court, as to the number that can be convened without injury to the service, is conclusive. 12 Wheat. R. 19. Such a court has not jurisdiction over a citizen of the United States not employed in military service 12 John. R. 257. It has merely a limited jurisdiction, and to render its jurisdiction valid, it must appear to have acted within such jurisdiction. 3 S. & R. 590 11 Pick. R. 442; 19 John. R. 7; 1 Rawle, R. 143.

3. A court martial must have jurisdiction over the subject matter of inquiry, and over the person for a want of these will render its judgment null, and the members of the court and the officers who execute its sentence, trespassers. 3 Cranch, 331. See 5 Wheat. 1; 12 Wheat. 19; 1 Brock. 324. Vide Gord. Dig. Laws U. S., art. 3331 to 3357; 2 Story,. L. U. S. 1000; and also the Treatises of Adye, Delafon, Hough, J. Kennedy, M. V. Kennedy, McArthur, McNaghten, Simmons and Tyler on Courts Martial; and 19 John. R, 7; 12 John. R. 257; 20 John. R. 343; 5 Wheat. R. 1; 1 U. S. Dig. tit. Courts, V.

COURT OF PECULIARS, Eng. eccl. law. The name of a court, which is a branch of, and annexed to, the. court of arches.

2. It has jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses. In the other peculiars, the jurisdiction is exercised by commissaries. 1 Phill. R. 202, n.

3. There are three sorts of peculiars 1. Royal peculiars. 3 Phill. R. 245. 2. The second sort are those in which the bishop has no concurrent jurisdiction, and are exempt from his visitation. 3. The third are subject to the bishop's visitation, and liable to his superintendence and jurisdiction. 3 Phill. R. 245; Skinn. R. 589.

COURT PREROGATIVE. Vide Prerogative Court.

COURT, PRIZE. One of the branches of the English admiralty, is called a prize court. Vide Prize Court.

COURT OF RECORD. At common law, any jurisdiction which has the power to fine and imprison, is a court of record. Salk. 200; Bac. Ab. Fines and Amercements, A. And courts which do not possess this power are not courts of record. See Court.

2. The act of congress, to establish an uniform rule of naturalization, &c., approved April 14, 1802, enacts, that for the purpose of admitting aliens to become citizens, that every court of record in any individual state, having common law jurisdiction and a seal, and a clerk or prothonotary, shall be considered as a district court within. the meaning of this act.

COURT, SUPREME. Supreme court is the name of a court having jurisdiction over all other courts Vide Courts of the United States.

COURTS OF THE UNITED STATES. The judiciary of the United States is established by virtue of the following provisions, contained in the third article of the constitution, namely:

2. - "1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

3.- "2. (I.) The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party to controversies between two or more states, between a state and a citizen of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

4. - " (2.) In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as congress shall make.

5. - " (3.) The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as congress may by law have directed."

6. By the amendments to the constitution, the following alteration has been made: "Art. 11. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commence or prosecuted against one of the United States by citizens of another state, or citizens or subjects of any foreign state."

7. This subject will be considered by taking a view of, 1. The central courts; an 2. The local courts. Art. 1 The Central Courts of the United States.

8. The central courts of the United States are, the senate, for the trial of impeachments, and the supreme court. The territorial jurisdiction of these courts extends over the whole country.

1. Of the Senate of the United States.

9.- 1. The constitution of the United States, art. 1, 3, provides that the senate shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside and no person shall be convicted without the concurrence of two-thirds of the members present.

10. lt will be proper here to consider, 1. The organization of this extraordinary court; and, 2. Its jurisdiction.

11. - 1. Its organization differs according as it has or, has not the president of the United States to try. For the trial of all impeachment of the president, the preseuce of the chief justice is required. There must also be a sufficient number of senators present to form a quorum. For the trial of all other impeachments, it is sufficient if a quorum be present.

12. - 2. The jurisdiction of the senate, as a court for the trial of impeachments, extends to the following officers, namely; the president, vice-president, and all civil officers of the United States, art. 2, 4, when they shall have been guilty of treason, bribery, and other high crimes and misdemeanors. Id. The constitution defines treason, art.

3, - 3, but recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by " other high crimes and

misdemeanors," resort, it is presumed, must be had to parliamentary practice. and the common law, in order to ascertain what they are. Story, Const. 795.

2. Of the Supreme Court.

13. The constitution of the United States directs that the judicial power of the United States shall be vested in one supreme court; and in such inferior courts as congress may, from time to time, ordain and establish. It will be proper to consider, 1st. Its organization; 2dly. Its Jurisdiction.

14. - 1. Of the organization of the supreme court. Under this head will be considered, l. The appointment of the judges. 2. The number necessary to form a quorum. 3. The time and place of holding the court.

15. - 1. The judges of the supreme court are appointed by the president, by and with the consent of the senate, Const. art. 2, 2. They hold their office during good behaviour, and receive for their services a compensation, which shall not be diminished during their continuance in office. Const. art" 3, 1. They consist of a chief justice and eight associate justices. Act of March 3, 1837, 1.

16. - 2. Five judges are required to make a quorum, Act of March 3, 1837, 1; but by the act of the 21st of January, 1829, the judges attending on the day appointed for holding a session of the court, although fewer than a quorum, at that time, four have authority to adjourn the court from day to day, for twenty days, after the time appointed for the commencement, of said session, unless a quorum shall sooner attend; and the business shall not be continued over till the next session of the court, until the expiration of the said twenty days. By the same act, if, after the judges shall have assembled, on any day less than a quorum shall assemble, the judge or judges. so assembling shall have authority to adjourn the said court, from day to day, until a quorum shall attend, and, when expedient and proper, may adjourn the same without day.

17 - 3. The supreme court is holden at the city of Washington. Act of April 29, 1 802. The session commences on the second Monday of January, in each and every year. Act of May, 4, 1826. The first Monday of August in each year is appointed as a return day. Act of April 29, 1802. In case of a contagious sickness, the chief justice or his senior associate may direct in what other place the court shall be held, and the court shall accordingly be ad to such place. Act of February 25, 1799, 7. The officers of the court are a clerk, who is appointed by the court, a marshal, appointed by the president, by and with the advice and the consent of the senate, crier, and other inferior officers.

18. - 2. Of the jurisdiction of the supreme. court. The jurisdiction of the supreme court is either civil or criminal.

19. - 1. The civil jurisdiction is either original or appellate.

20. - (1.) The provisions of the constitution that relate to the original jurisdiction of the supreme court, are contained in the articles of the constitution already cited.

21. By the act of September 24th, 1789, 13, the supreme court shall have exclusive jurisdiction of all controversies of civil nature where a state is a party, except "between a state and it's citizens; and except also, between a state and citizens of other states or aliens, in which latter case it shall have original, but not exclusive jurisdiction. And shall have, exclusively, all such jurisdiction of suits, or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have or exercise consistently with the law of nations. And original, but not exclusive jurisdiction of all suits brought by ambassadors or other public ministers, or in which a consul or vice-consul shall be a party. And the trial of issues in fact, in the supreme court, in all actions at law, against citizens of the United States, shall be by jury.

22. In consequence of the decision of the case of Chisholm v. Georgia, where it was held that assumpsit might be maintained against a state by a citizen of a different state, the llth article of the amendments of the constitution above quoted, was adopted.

23. In those cases in which original jurisdiction is given to the supreme court, the judicial power of the United States cannot be exercised in its appellate form. With the exception of those cases in which original jurisdiction is given to this court, there is none to which the judicial power extends, from which the original jurisdiction of the inferior courts is excluded by the constitution.

24. The constitution establishes the supreme court and defines its jurisdiction. It enumerates the cases in which its jurisdiction is original and exclusive, and defines that which is appellate. See ll Wheat. 467.

25. Congress cannot vest in the supreme court original jurisdiction in a case in which the constitution has clearly not given that court original jurisdiction; and affirmative words in the constitution, declaring in what cases the supreme court shall have original jurisdiction, must be construed negatively as to all other cases, or else the clause would be inoperative and useless. 1 Cranch, 137. See 5 Pet. 15 Pet. 284; 12 Pet. 657; 9 Wheat. 738 6 Wheat. 264.

26. - 2. The supreme court exercises appellate jurisdiction in the following different modes:

(1.) By writ of error from the final judgments of the circuit courts; of the district courts, exercising the powers of circuit courts; and of the superior, courts of the territories, exercising the powers of circuit, courts, in certain cases. A writ of error does not lie to the supreme court to reverse the judgment of a circuit court, in a civil action by writ of error carried from the district court to the circuit court. The United States v. Goodwin, 7 Cranch, 108. But now, by the act of July 4, 1840, c. 20, 3, it is enacted that writs of error shall lie to the supreme court from all judgments of a circuit court, in cases brought there by writs of error from the district court, in like manner and under the same regulations, as are provided by law for writs of error for judgments rendered upon suits originally brought in the circuit court.

27. - (2.) The supreme court has jurisdiction by appeals from the final decrees of the circuit courts; of the district courts exercising the powers of circuit courts; and of the superior courts of territories, exercising the powers of circuit courts in certain cases. See 8 Cranch, 251 6 Wheat. 448.

28. - (3.) The supreme court has also jurisdiction by writ of error from the, final judgments and decrees of the highest courts of law or equity in a state, in the cases provided for by the twenty-fifth section of the act of September 24th, 1789, which enacts that a final judgment or decree, in any suit in the highest court of law, or equity of a, state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed in the supreme court of the United States, upon a writ of error, the citation being signed by the chief-justice or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the supreme court of the United States, in the same manner, and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceeding upon the reversal shall also be the same, except that the supreme court, instead of remanding the cause for a final decision as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall

be assigned or regarded as a ground of reversal, in ny such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity, or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute. See 5 How. S. C. R. 20, 55

29. The appellate jurisdiction of the supreme court extends to all cases pending in the state courts and the twenty-fifth section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by writ of error, is supported by the letter and spirit of the constitution. 1 Wheat. 304.

30. When the construction or validity of a treaty of the United States is drawn in question in the state courts, and the decision is against its validity, or the title specially set up by either party under the treaty, the supreme court has jurisdiction to ascertain that title, and to determine its legal meaning. 1 Wheat. 358; 5 Cranch, 344; 9 Wheat. 738; 1 Pet. 94; 9 Pet. 224; 10 Pet. 368; 6 Pet. 515.

31. The supreme court has jurisdiction although one of the parties is a state, and the other a citizen of that state. 6 Wheat. 264.

32. Under the twenty-fifth section of the judiciary act, when any clause of the constitution or any statute of the United States is drawn in question, the decision must be against the title or right set up by the party under such clause or statute; otherwise the supreme court has no appellate jurisdiction of the case. 12 Wheat. 117, 129 6 Wheat. 598 3 Cranch, 268 4 Wheat. 311; 7 Wheat. 164; 2 Peters, 449; 2 Pet. 241; 11 Pet. 167; 1 Pet. 655; 6 Pet. 41; 5 Pet. 248.

33. When the judgment of the highest court of law of a state, decides in favor of the validity of a statute of a state drawn in question, on the ground of its being repugnant to the constitution of the United States, it is not a final judgment within the twenty-fifth section of the judiciary act if the suit has been remanded to the inferior court, where it originated, for further proceedings, not inconsistent with the judgment of the highest court. 12 Wheat. 135.

34. The words " matters in dispute" in the act of congress, which is to regulate the jurisdiction of the supreme court, seem appropriated to civil causes. 3 Cranch, 159. As to the manner of ascertaining the matter in dispute, see 4 Cranch, 216; 4 Dall. 22; 3 Pet. 33; 3 Dall. 365; 2 Pet. 243; 7 Pet. 634; 5 Cranch, 13; 4 Cranch, 316.

35. - (4.) The supreme court has juris- diction by certificate from the circuit court, that the opinions of the judges are opposed on points stated, as provided for by the sixth section of the act of April 29th, 1802. The provisions of the act extend to criminal as

well as to civil cases. See 2 Cranch, 33; 10 Wheat. 20 2 Dall. 385; 4 Hall's Law Journ. 462; 5 Wheat. 434; 6 Wheat. 542; 12 Wheat. 212; 7 Cranch, 279.

36. - (5.) It has also jurisdiction by mandamus, prohibition, habeas corpus, certiorari, and procedendo.

37. - 2. The criminal jurisdiction of the supreme court is derived from the constitution and the act of September 24th, 1789, s. 13, which gives the supreme court exclusively, all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, as a court of law can have or exercise consistently with the law of nations. But it must be remembered that the act of April 30tb, 1790, sections 25 and 26, declares void any writ or process whereby the person of any ambassador, or other public minister, their domestics or domestic servants, may be arrested or imprisoned. Art. 2. The local courts.

38. The local courts of the United States are, circuit courts, district courts, and territorial courts., 1. The circuit courts.

39. In treating of circuit courts, it will be convenient to consider, 1st. Their organization; and, 2d. Their jurisdiction.

40. - 1. Of the organization of the circuit courts. The circuit courts are the principal inferior courts established by congress. There are nine circuit courts, composed of the districts which follow, to wit:

41. - 1. The first circuit consists of the districts of New Hampshire, Massachusetts, Rhode Island, and Maine. It consists of a judge of the supreme court and the district judge of the district where such court is holden. See Acts April 29, 1802 March 26, 1812 and March 30, 1820.

42. - 2 The second circuit is composed of the districts of Vermont, Connecticut and New York. Act of March 3, 183 7.

43. - 3. The third circuit consists of the districts of New Jersey, and eastern and western Pennsylvania;. Act of March 3, 1837.

44. - 4. The fourth circuit is composed of Maryland, Delaware, and Virginia. Act of Aug. 16, 1842.

45. - 5. The fifth circuit is composed of Alabama and Louisiana. Act of August 16, 1842.

46.- 6. The sixth circuit consist of the districts of North Carolina, South Carolina, and Georgia. Act of Aug. 16, 1842.

47. - 7. The seventh circuit is composed of Ohio, Indiana, Illinois, and Michigan. Act of March 3, 1837, 1.

48.-8. The eighth circuit includes Kentucky, East and West Tennessee, and Missouri. Act of March 3, 1837, 1. By the Act of April 14, 1842, ch. 20, 1, it is enacted that the district court of the United States at Jackson, in the district of West Tennessee, shall in future be attached to, and form a part of the eighth judicial district of the United States, with all the power and jurisdiction of the circuit court held at Nashville, in the middle district of Tennessee.

49. - 9. The ninth circuit is composed of the districts of Alabama, the eastern district of Louisiana, the district of Mississippi, and the district of Arkansas. Act of March 3, 1837, 1.

50. In several districts of the United States, owing to their remoteness from any justice of the supreme court, there are no circuit courts held. But in these, the district court there is authorized to act as a circuit court, except so far as relates to writs of error or appeals from judgments or decrees in such district court.

51. The Act of March 3, 1837, provides, " That so much of any act or acts of congress as vests in the district courts of the United States for the districts of Indiana, Illinois, Missouri, Arkansas, the eastern district of Louisiana, the district of Mississippi, the northern district of New York, the western district of Virginia, and the western district of Pennsylvania, and the district of Alabama, or either of them, the power and jurisdiction of circuit courts, be, and the same is hereby, repealed; and there shall hereafter be circuit courts held for said districts by the chief or associate justices of the supreme court, assigned or allotted to the circuit to which such districts may respectively belong, and the district judges of such districts, severally and respectively, either of whom shall constitute a quorum; which circuit courts, and the judges thereof, shall have like powers, and exercise like jurisdiction as other circuit courts and the judges thereof; and the said district courts, and the judges thereof, shall have like powers, and exercise like jurisdiction, as the district courts, and the judges thereof in the other circuits. From all judgments and decrees, rendered in the district courts of the United States for the western district of Louisiana, writs of error and appeals shall lie to the circuit court in the other district in said state, in the same manner as from decrees and judgments rendered in. the districts within which a circuit court is provided by this act."

52. In all cases where the day of meeting of the circuit court is fixed for a particular day of the mouth, if that day happen on Sunday, then, by the Act of 29th April, 1802, and other acts, the court shall be held the next day.

53. The Act of April 29, 1802, 5, further provides, that on every appointment which shall be hereafter made, of a chief justice, or associate justice, the chief justice and associate justices shall allot among themselves the aforesaid circuits, as they shall think fit, and shall enter such allotment on record.

54. The Act of March 3, 1837, 4, directs that the allotment of the chief justice and the associate justices of the said supreme court to the several circuits shall be made as heretofore.

55. And by the Act of August 16, 1842, the justices of the supreme court of the United States, or a majority of the are required to allot the several districts among the justices of the said court.

56. And in case no such allotment shall be made by them, at their sessions next succeeding such appointment, and also, after the appointment of any judge as aforesaid, and before any other allotment shall have been made, it shall and may be lawful for the president of the United States, to make such allotment as he shall deem proper which allotment, in either case, shall be binding until another allotment shall be made. And the circuit courts constituted by this act shall have all the power, authority and jurisdiction, within the several districts of their respective circuits, that before the 13th February, 1801, belonged to the circuit courts of the United States.

57. The justices of the supreme court of the United States, and the district judge of the district where the circuit is holden, compose the judges of the circuit court. The district judge may alone hold a circuit court, though no judge of the supreme court may be allotted to that circuit. Pollard v. Dwight, 4 Cranch, 421.

58. The Act of September 24th, 1789, 6, provides, that a circuit court may be adjourned from day to day, by one of its judges, or if none are present, by the marshal of the district, until a quorum be convened. By the Act of May 19, 1794, a circuit court in any district, when it shall happen that no judge of the supreme court attends within four days after the time appointed by law, for the commencement of the sessions, may be adjourned to the next stated term, by the judge of the district, or, in case of his absence also, by the marshal of the district. But by the 4th section of the Act of April 29, 1802, where only one of the judges thereby directed to hold the circuit courts shall attend, such circuit court may be held by the judge so attending.

59. By the Act of March 2, 1809, certain duties are imposed oil the justices of the supreme court, in case of the disability of a district judge within their respective circuits to hold a district court. Sect. 2, enacts, that in case of the disability of the district judge of either of the district courts of the United States, to hold a district court, and to perform the duties of his office, and satisfactory evidence thereof being shown to the justice of the supreme court allotted to that circuit, in which such district court ought, by law to be holden, and on application of the district attorney, or marshal of such district, in writing, the said justice of the supreme court shall, thereupon, issue his order in the nature of a certiorari) directed to the clerk of such district court, requiring him forthwith to certify unto the next circuit court, to be holden, in said district, all actions, suits, pauses, pleas, or processes, civil or criminal, of what nature or land soever, that may be depending in such district court, and undetermined, with all the proceedings thereon, and all files, and papers relating, thereto, which said order shall be immediately published in one or more newspapers, printed in said district, and at least thirty days before the session of such circuit court, and shall be deemed a sufficient notification to all coucerned. And the said circuit court shall, thereupon, have the same cognizance of all such actions, suits, causes, pleas, or processes, civil or criminal, of what nature or kind soever, and in the like manner, as the district court of said district by law might have, or the circuit court, had the same been originally commenced therein, and shall proceed to hear and deterime the same accordingly; and the said justice of the supreme court, during the continuance of such disability, shall, moreover, be invested with, and exercise all and singular the, powers and authority, vested by law in the judge of the district court in said district. And all bonds and recognizances taken for, orreturnable to, such district court, shall be construed and taken to be the circuit court to be holden thereafter, in pursuance of this act, and shall have the same force and effect in such court as they would have had in the district court to which they were taken. Provided, that nothing in this act contained shall be so construed, as to require of the judge of the supreme court, within whose circuit such district may lie, to hold any special court, or court of admiralty, at any other time than the legal time for holding the circuit court of the United States in and for such district.

60. Sect. 2, provides, that the clerk of such district shall, during the continuance of the disability of the district judge, continue to certify, as aforesaid, all suits or actions, of what nature or kind soever, which may thereafter be brought to such district court, and the same transmit to the circuit court next thereafter to be holden in the same district. And the said circuit court shall have cognizance of the same, in like manner as is hereinbefore provided in this act, and shall proceed to bear and determine the same. Provided, nevertheless, that when the disability of the district judge shall cease, or be removed, all suits or actions then pending and undetermined in the circuit court, in which, by law, the district courts have an exclusive original cognizance, shall be

remanded, and the clerk of the said circuit court shall transmit the same, pursuant to the order of the said court, with all matters and things relating thereto, to the district Court next thereafter to be holden in said district, and the same proceedings shall be had therein, as would have been, had the same originated, or been continued, in the said district court.

61. Sect. 3, enacts, that in case of the district judge in any district being unable to discharge his duties as aforesaid, the district clerk of such district shall be authorized and empowered, by leave or order of the circuit judge of the circuit in which such district is included, to take, during such disability of the district judge, all examinations, and depositions of witnesses, and to make all necessary rules and orders, preparatory to the final hearing of all causes of admiralty and maritime jurisdiction. See 1 Gall. 337 1 Cranch, 309 note to Hayburn's case, 3 Dall. 410.

62. If the disability of the district judge terminate in his death, the circuit court must remand the certified causes to the district court. Ex parte United States, 1 Gall. 337.

63. By the first section of the Act of March 3, 1821, in all suits and actions in any district court of the United States, in which it shall appear that the judge of such court is any ways concerned in interest, or has been of counsel for either party, or is so related to, or connected with, either party, as to render it improper for him, in his opinion, to sit on the trial of such suit or action, it shall be the duty of such judge, on application of either party, to cause the fact to be entered on the records of the court, and also an order that an authenticated copy the thereof, with all the proceedings in such suit or action, shall be forthwith certified to the next circuit court of the district, and if there be no circuit court in such district, to the next circuit court in the state, and if there be no circuit court in such state, to the most convenient circuit court in an adjacent state; which circuit court shall, upon such record being filed with the clerk thereof, take cognizance thereof, in like manner as if such suit or action had been originally commenced in that court, and shall proceed to bear and determine the same accordingly, and the jurisdiction of such circuit court shall extend to all such cases to be removed, as were cognizable in the district court from which the same was removed.

64. And the Act of February 28, 1839, 8, enacts, "That in all suits and actions, in any circuit court of the United States, in which it shall appear that both the judges thereof, or the judge thereof, who is solely competent by law to try the same, shall be any ways concerned in interest therein, or shall have been of counsel for either party, or is, or are so related to, or connected with, either party as to render it improper for him or them, in his or their opinion, to sit in the trial of such suit or action, it shall be the duty of such judge, or judges, on application of either party, to cause the fact to be entered on the records of the court; and, also, to make an order that an authenticated copy

thereof, with all the proceedings in such suit or action, shall be certified to the most couvenient circuit court in the next adjacent state, or in the next adjacent circuit; which circuit court shall, upon such record and order being filed with the clerk thereof, take cognizance thereof in the same manner as if such suit or action had been rightfully and originally commenced therein, and shall proceed to hear and determine the same accordingly; and the proper process for the due execution of the judgment or decree rendered therein, shall run into, and may be executed in, the district where such judgment or decree was rendered; and, also, into the district from which such suit or action was removed."

65. The judges of the supreme court are not appointed as circuit court judges, or, in other words, have no distinct commission for that purpose: but practice and acquiescence under it, for many years, were held to afford an irresistible argument against this objection to their authority to act, when made in the year, 1803, and to have fixed the construction of the judicial system. The court deemed the contemporary exposition to be of the most forcible nature, and considered the question at rest, and not to be disturbed then. Stuart v. Laird, 1 Cranch, 308. If a vacancy exist by the death of the justice of the supreme court to whom the district was allotted, the district judge may, under the act of congress, discharge the official duties, (Pollard v. Dwight, 4 Cranch, 428. See the fifth section of the Act of April 29, 1802,) except that he cannot sit upon a writ of error from a decision in the district court. United States v. Lancaster, 5 Wheat. 434.

66. It is enacted, by the Act of Februrary 28, 1839, 2, that all the circuit courts of the United States shall have the appointment of their own clerks; and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court.

67. The marshal of the district is an officer of the court, and the clerk of the district court is also clerk of the circuit court in such district. Act of September 24, 1789, 7.

68. In the District of Columbia, there is a circuit court established by particular acts of congress, composed of a chief justice and two associates. See Act. of February 27, 1801; 12 Pet. 524; 7 Pet. 203; 7 Wheat. R. 534; 3 Cranch, 159; 8 Cranch, 251; 6 Cranch 233. 2. Of the Jurisdiction of the Circuit Courts.

69. The jurisdiction of the circuit courts is either civil or criminal. (1.) Civil Jurisdiction. The civil jurisdiction is either at law or in equity. Their civil jurisdiction at law is, 1st. Original. 2d. By removal of actions from the state courts. 3d. By writ of mandamus. 4tb. By appeal.

70. - 1st. The original jurisdiction of the circuit courts at law, may be considered, first, as to the matter in controversy second, with regard to the parties litigant. (1.) The Matter in Dispute.

71. By the Act of September 24, 1789, 11, to give jurisdiction to the circuit court, the matter in dispute must exceed $500. In actions to recover damages for torts, the sum laid in the declaration is the criterion as to the matter in dispute. 3 Dall. 358. In an action of covenant on an instrument under seal, containing a penalty less than $500, the court has jurisdiction if the declaration demand more than $500. 1 Wash. C. C. R. 1. In ejectment, the value of the land should appear in the declaration; 4 Wash. C. C. R. 624; 8 Cranch, 220; 1 Pet. 73; but though the jury do not find the value of the land in dispute, yet if evidence be given on the trial, that the value exceeds $500, it is sufficient to fix the jurisdiction; or the court may ascertain its value by affidavits. Pet. C. C. R. 73.

72. If the matter in dispute arise out of a local injury, for which a local action must be brought, in order to give the circuit court jurisdiction, it must be brought in the district where the lands lie. 4 Hall's Law Journal, 78.

73. By various acts of congress, jurisdiction is given to the circuit courts in cases where actions are brought to recover damages for the violation of patent and Copyrights, without fixing any amount as the limit. See Acts of April 17, 1800, 4; Feb. 15, 1819; 7 Johns. 144; 9 Johns. 507.

74. The circuit courts have jurisdiction in cases arising under the patent laws. By the Act of July 4, 1836, 17, it is enacted, " That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court; which courts shall have power, upon bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor, as secured to him by any law of the United States, on such terms and conditions as said courts may deem reasonable. Provided, however, That from all judgments and decrees, from any such court rendered in. the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the game."

75. In general, the circuit court has no original jurisdiction of suits for penalties and forfeitures arising under the laws of the United States, nor in admiralty cases. 2 Dall. 365 4 Dall. 342; Bee, 19. (2.) The character of the parties.

76. Under this head will be considered 1. The United States. 2. Citizens of difrerent states. 3. Suits where an alien is a party. 4. When an assignee is plaintiff. 5. Defendant must be an inhabitant of the circuit. (i.) The United States.

77. The United States may sue on all contracts in the circuit courts where the sum in controversy exceeds, besides costs, the sum of $500 but, in cases of penalties, the action must be commenced in the district court, unless the law gives express jurisdiction to the circuit courts. 4 Dall. 342. Under the Act of March 3, 1815, 4, the circuit court has jurisdiction concurrently with the district court of all suits at common law where any officer of the United States sues under the authority of an act of congress; as where the post-master general sues under an act of congress for debts or balances due to the general post-office. 12 Wheat. 136. See 2 Pet. 447; 1 Pet. 318.

78. The circuit court has jurisdiction on a bill in equity filed b the United States against the debtor of their debtor, they claiming priority under the statute of March 2, 1798, c. 28, 65, though the law of the state where the suit is brought permits a creditor to proceed against the debtor of his debtor by a peculiar process at law. 4 Wheat. 108. (ii.) Suits between citizens of different states.

79. The Act of September 24, 1789, 11, gives jurisdiction to the circuit court in suits of civil nature when the matter in dispute is of a certain amount, between a citizen of the state where the suit is brought, and a citizen of another state; one of the parties must therefore be a citizen of the state where the such is brought. See 4 Wash. C. C. R. 84; Pet. C. C. R. 431; 1 Sumn. 581; 1 Mason, 520; 5 Cranch, 288; 3 Mason, 185; 8 Wheat.'699; 2 Mason, 472; 5 Cranch, 57; Id. 51; 6 Wheat. 450; 1 Pet. 238; 4 Wash. C. C. R. 482, Id. 595.

80. Under this section the division of a state into two or more districts does not affect the jurisdiction of the circuit court, on account of citizenship. The residence of a party in a different district of a state from that in which the suit is brought, does not exempt him from the jurisdiction of the court; if he is found in the district where he is sued he is not within the prohibition of this section. 11 Pet. 25. A territory is not a state for the purpose of giving jurisdiction, and, therefore, a citizen of a territory cannot sue the citizen of a State in the circuit court. 1 Wheat. 91. (iii.) Suits where on alien is a party.

81. The Act of September 24, 1780, 11, gives the circuit court cognizance of all suits of a civil nature where an alien is a party; but these general words; must be restricted by the provision in the constitution which gives jurisdiction in controversies between

a state, or the citizens of a state, and foreign states, citizens or subjects; and the statute cannot extend the jurisdiction beyond the limits of the constitution. 4 Dall. 11; 5 Cranch, 308. When both parties are aliens, the circuit court has no jurisdiction. 4 Cranch, 46; 4 Dall. 11. An alien who holds lands under a special law of the state in which he is resident, may maintain an action in relation to those lands, in the circuit court. 1 Baldw. 216. (iv.) When an assignee is the plaintiff.

82. The court has no jurisdiction unless a suit might have been prosecuted in such court to recover on the contract assigned, if no assignment had been made, except in cases of bills of exchange. Act of September 24, 1789, 11; see 2 Pet. 319; 1 Mason, 243; 6 Wheat. 146; 11 Pet. 83; 9 Wheat. 537; 6 Cranch, 332; 4 Wash. C. C. R. 349; 4 Mason, 435; 12 Pet. 164; 2 Mason, 252. It is said that this section of the act of congress has no application to the conveyance of lands from a citizen of one state to a citizen of another. The grantee in such, case may maintain his action in the circuit court, when otherwise properly qualified, to try the title to such lands. 2 Sumn. 252. (V.) The defendant must be an inhabitant of, or found in the circuit.

83. The circuit court has no jurisdiction of an action against a defendant unless he be an inhabitant of the district in which such court is located, or found therein, at the time of serving the writ. 3 Wash. C. C. R. 456. A citizen of one state may be sued in another, it the process be served upon him in the latter; but in such cases) the plaintiff must be a citizen of the latter state, or an alien. 1 Pet. C. C. R. 431. 2d. Removal of actions from the state court's.

84. The, Act of September 24, 1789, gives, in certain cases, the right of removing a suit instituted in a state court to the circuit court of the district. It is enacted by that law, that if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought, against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court, and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial, into the next circuit court, to be held in the district where the suit is pending, and offer good and sufficient security for his entering in such court, on the first day of its session, copies of the said process against bim, and also for his then appearing and entering special bail in the cause, if special bail was originally required therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause. And any bail that may have been originally taken shall be discharged. And the said copies being entered as aforesaid in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process. And any attachment of the goods or estate of the defendant, by the original process, shall hold the goods or estate so attached, to answer the final judgment, in the same manner as by the laws of such state they would have been

holden to answer final judgment, had it been rendered by the circuit court in which the suit commenced. Vide Act of September 24, 1789, 12; 4 Dall. 11; 5 Cranch, 303; 4 Johns. R. 493; 1 Pet. R. 220; 2 Yeates, R. 275; 4 W. C. C. R. 286, 344.

85. By the Constitution, art. 3, 2, 1, the judicial power shall extend to controversies between citizens of the same state, claiming lands under grants of different states.

86. By a clause of the 12th section of the Act of September 24th, 1789, it is enacted, that, if in any action conmmenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court, and make affidavit, if it require it, that he claims, and shall rely upon a right or title to the land, under grant from a state, other than that in which the suit is pending, and produce the original grant, or an exemplification of it, except where the loss of records shall put it out of his power, and shall move that the adverse party inform the court, whether he claims a right of title to the land under a grant from the state in which the suit is pending; the said adverse party shall give such information, otherwise not be allowed to plead such grant, or give it in evidence upon the trial; and if he informs that he does claim under any such grant, the party claiming under the grant first mentioned, may then, on motion, remove the cause for trial, to the next circuit court to be holden in such district. But if he is the defendant, he shall do it under the same regulations, as in the before mentioned case of the removal of a cause into such court by an alien. And neither party removing the cause shall be allowed to plead, or give evidence of, any other title than that by him stated as aforesaid, as the ground of his claim. See 9 Cranch, 292 2 Wheat. R. 378.

87. Application for removal must be made during the term at which the defendant enters his appearance. 1 J. J. Marsh. 232. If a state court agree to consider a petition to remove the cause as filed of the preceding term, yet if the circuit court see by the record, that it was not filed till a subsequent term, they will not permit the cause to be docketed. Pet. C.. C. R. 44 Paine, 410 but see 2 Penning. 625.

88. In chancery, when the defendant wishes to remove the suit, he must file his petition when he enters his appearance; 4 Johns. Ch. 94; and in an action in a court of law, at the time of putting in special bail. 12 Johns. 153. And if an alien file his petition when he filed special bail, he is in time, though the bail be excepted to. 1 Caines, 248; Coleman, 58. A defendant in ejectment may file his petition. when he is let in to defend. 4 Johns. 493. See Pet. C. C. R. 220; 2 Wash. C. C. R. 463; 2 Yeates, 275, 352; 3 Dall. 467; 4 Wash. C. C. R. 286; 2 Root 444; 5 John. Ch. R. 300 3 Harn. 48; 4 Wash. C. C. R. 84. 3d. Remedy by Mandamus.

89. The power of the circuit Court to issue a mandamus, is confined, exclusively, to cases in which it may be necessary for the exercise of a jurisdiction already existing; as, for instance, if the court below refuse to proceed to judgment, then a mandamus in the nature of a procedendo may issue. 7 Cranch, 504; 6 Wheat. R. 598. After the state court had refused to permit the removal of a cause on petition, the circuit court issued a mandamus to transfer the cause.

4th. Appellate Jurisdiction.

90. The appellate jurisdiction is exercised by means of, 1. Writs of error. 2 Appeals from the district courts in admiralty and maritime jurisdiction. 3. Certiorari. 4. Procedendo.

91. - [l.] This court has jurisdiction to issue writs of error to the district court, on judgments of that court in civil cases at common law.

92. The 11th section of the Act of September 24, 1789, provides, that the circuit courts shall also have appellate jurisdiction from the district courts, under the regulations and restrictions thereinafter provided.

93. By the 22d section, final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the, sum or value of fifty dollars, exclusive of costs, may be reexamined, and reversed or affirmed in a circuit court holden in the same district, upon a writ of error, whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record and assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the supreme court, the adverse party having at least twenty days notice. But there shall be no reversal on such writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact. And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of; or, in case the person entitled to such writ of error be an infant, non compos mentis, or imprisoned, then within five years, as aforesaid, exclusive of the time of such disability. And every justice or judge signing a citation or any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs, if he fail to make his plea good.

94. The district judge cannot sit in the circuit court on a writ of error to the district court. 5 Wheat. R. 434.

95. It is observed above, that writs of error may be issued to the district court in civil cases at common law, but a writ of error does not lie from a circuit to a district court in an admiralty or maritime cause. 1 Gall. R. 5..

96. - [2.] Appeals from the district to the circuit court take place generally in civil causes of admiralty or maritime jurisdiction.

97. By the Act of March 3, 1803, 2, it is enacted, that from all final judgments or decrees in any of the district courts of the United States, an appeal where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the district court next to be holden in the district where such final judgment or judgments, decree or decrees shall be rendered: and the circuit courts are thereby authorized and required, to hear and determine such appeals.

98. - [3.] Although no act of congress authorizes the circuit court to, issue a certiorari to the district court for the removal of a cause, yet if the cause be so removed, and instead of taking advantage of the irregularity in proper time and in a proper manner, the defendant makes the defence and pleads to issue, he thereby waives the objection, and the suit will be considered as an original one in the circuit court, made so by consent of parties. 2 Wheat. R. 221.

99.-[4.1 The circuit court may issue a writ of procedendo to the district court.

Equity Jurisdiction of the Circuit Courts.

100. Circuit courts are vested with equity jurisdiction in certain cases. The Act of September, 1789, 11, gives original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or. the suit is between a citizen of the state where the suit is brought and a citizen of another state.

101. The Act of April 15, 1819, 1, provides, " That the circuit court of the United States shall. have original cognizance, as well in equity as at law, of all actions, suits, controversies, and cases arising under may law of the United States, granting or confirming to authors or inventors, the exclusive right to their respective writings, inventions, and discoveries; and upon any bill in equity filed by any party aggrieved, in such cases, shall have authority to grant injunctions according to the course and principles of courts of equity, to prevent the viola-tion of the rights of any authors or inventors, secured to them by any laws of the United States, on such terms and conditions as the said courts may deem fit and reasonable:.provided, however, that from all judgments and decrees of any circuit courts rendered in the premises, a writ

of error or appeal as the case may. require, shall lie to the supreme court of the United States, in the same Maniaer and under the same circumstances, as is now provided by law, in other judgments and decrees of such circuit court."

102. By the Act of August 23, 1842, it is enacted, 5, " That the district courts, as courts of admiralty, and the circuit courts, as courts of equity, shall be deemed always open for the purpose of filing libels, bills, petitions, answers, pleas, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings whatever, preparatory to the hearing of all causes pending therein upon their merits. And it shall be competent for any. judge of the court, upon reasonable notice to the parties, in the clerk's office or at chambers, and in vacation as well as in term, to make and direct, and award all such process, commissions, and interlocutory orders, rules, and other proceedings, whenever the same are not grantable of course according to the rules and practice of the court."

(2.) Criminal Jurisdiction of the Circuit Courts.

103. The often cited llth section of the Act of the 24th of September, 1789, gives the circuit courts exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where that act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable. therein. The jurisdiction of the circuit courts in criminal cases is confined to offences committed within the district for which those courts respectively sit when they are committed on land. Serg. Const. Law, 129; 1 Gallis. 488.

2. Of the District Courts.

104. In treating of district courts, the same division which was made, in considering circuit courts, will here be adopted, by taking a view, 1. Of their organization and, 2. Of their jurisdiction. 1. Of the Organization of the District Courts.

105. The United States are divided into districts, in each of which is a court called a district court, which is to consist of one judge, who is to reside in the district for wbich he is appointed, and to hold annually four sessions. Act of September 24, 1789. By subsequent acts of congress, the number of annual sessions in particular districts, is sometimes more and sometimes less; and they are to be held at various places in the district. There is also a district court in the District of Columbia, held by the chief justice of the circuit court of that district. 2. Jurisdiction of the District Courts.

106. Their jurisdiction is either civil or criminal.

107. - (1.) Their civil jurisdiction extends, 1. To admiralty and maritime causes: the admiralty and maritime jurisdiction, is either the ordinary jurisdiction, which comprehends prize suits; cases of salvage actions for torts; and actions on contracts, such. as seamen's wages, pilotage, bottomry, ransom, materials, and the like; or the extraordinary or expressly vested jurisdiction, which includes cases of seizures under the revenue laws, &c.; and captures within the jurisdiction of the United States.

108.-2. To cases of seizure on land under the laws of the United States, and in suits for penalties and forfeitures, incurred under the laws of the United States.

109.-3. To cases in which an alien sues for a tort, in violation of the laws of nations, or a treaty of the United States.

110. - 4. To suits instituted by the United States.

111. - 5. To actions by and against consuls.

112. - 6. To certain cases in equity.

113. - 1. The admiralty and maritime jurisdiction of the district court is ordinary or extraordinary.

114. - 1st. The ordinary jurisdiction is granted by the Act of September 24th, 1789, It is there enacted, that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction. This jurisdiction is exclusive. Bee, 19; 3 Dall. 16; Paine, 111; 4 Mason, 139.

115. This ordinary jurisdiction is exercised in,

116. - 1. Prize suits. The Act of September 24, 1789, 9, vests in the district courts as full jurisdiction of all prize causes as the admiralty of England; and this jurisdiction is an ordinary inherent branch of the powers of the court of admiralty, whether considered as prize courts or instance courts, 3 Dall. 16; Paine, 111.

117. The act of congress marks out not only the general jurisdiction of the district courts, but also that of the several courts in relation to each other, in cases of seizure on the waters of the United States, navigable, &c. When the seizure is made within the waters of one district, the court of that district has exclusive, jurisdiction, though the offence may have been committed out of the district. When the seizure is made on the high seas, the jurisdiction is in the court of the district where the property may be brought. 9 Wheat. 402; 6 Cranch; 281; 1 Mason, 360; Paine, 40.

118. When the seizure has been made within the waters of a foreign nation, the district court has jurisdiction, when the property has been brought into the district, and a prosecution has been instituted there. 9 Wheat. 402; 9 Cranch. 102.

119. The district court has jurisdiction of seizures, and of the question of who is entitled to their proceeds, as informers or otherwise; and the principal jurisdiction is exclusive; the question, as to who is the informer, is also exclusive. 4 Mason, 139.

120. - (2.) Cases of salvage. Under the constitution and laws of the United States, this court has exclusive original cognizance in cases of salvage; and, as a consequence, it has the power to determine to whom the residue of the property belongs, after deducting the salvage. 3 Dall. 183.

121. - (3.) Actions arising out of tort's and injuries. The district court has jurisdiction over all torts and injuries committed on the high seas, and in ports or harbors within the ebb and flow of the tide. Vide 1 Wheat. R. 304; 2 Gall. R. 389; 1 Mason, 96; 3 Mason., 242; 4 Mason, 380; 18 Johns. R. 257.

122. A court of admiralty has jurisdiction to redress personal wrongs committed on a passenger, on the high seas, by the master of a vessel, whether those wrongs be by direct force or consequential injuries. 3 Mason, 242.

123. The admiralty may decree damages for an unlawful capture of an American vessel by a French privateer, and may proceed by attachment in ?-em. Bee, 60.

124. It has jurisdiction in cases of maritime torts, in personam as well as in rem. 10 Wheat. 473,

125. This court has also jurisdiction of petitory suits to reinstate owners of vessels who have been displaced from their possession. 5 Mason, 465. It exercises jurisdiction of all torts and injuries committed on the high seas, and in ports or barbors within the flow or ebb of the tide. 2 Gallis. 398; Bee, 51.

126. A father, whose minor son has been tortiously abducted and seduced on a voyage on the high seas, may sue, in the admiralty, in the nature of an action per quod, &c., also for wages earned by such son in maritime service. 4 Mason, 380.

127. - (4.) Suits on contracts. As a court of admiralty, the district court has a jurisdiction, concurrent with the courts of common law, over all maritime contracts, wheresoever the same may be made or executed, or whatsoever be the form of the contract. 2 Gallis. 398. It may enforce the performance of charter-parties for foreign voyages, and by proceeding in rem, a lien for freight under them. 1 Sumn. 551; 2

Sumn. 589. It has jurisdiction over contracts for the hire of seamen, when the service is substantially performed on the sea, or on waters within the flow and reflow of the tide 10 Wheat. 428; 7 Pet. 324; Bee, 199; Gilp. 529. But unless the services are essentially maritime, the jurisdiction does not attach. 10 Wheat. 428; Gilp. 529.

128. The master of a vessel may sue in the admiralty, for his wages; and the mate, who on his death succeeds him, has the same right. 1 Sumn. 157; 9 Mason, 161; 4 Mason, 196. But when the services for which he sues have not been performed by him as master, they cannot be sued for in admiralty. 3 Mason, 161.

129. The jurisdiction of the admiralty attaches when the services are performed on a ship in port where the tide ebbs and flows. 7 Pet. 324; Gilp. 529.

130. Seamen, employed on board of steamboats and lighters engaged in trade or commerce on tide-water, are within the admiralty jurisdiction. But those in ferryboats are not so. Gilp. 532 Gilp. 203.

131. Wages may be recovered in the admiralty by the pilot, deck-hands, engineer, and firemen, on board of a steamboat. Gilp. 505.

132. But unless the service of those employed contribute in navigating the vessel, or to its preservation, they cannot sue for their wages in the admiralty; musicians on board of a vessel, who are hired and employed as such, cannot therefore enforce a payment of their wages by a suit in rem in the admiralty. Gilp. 516.

133. - 2d. The extraordinay jurisdiction of the district court, as a court of admiralty, or that which is vested by various acts of congress, consists of -

(1.) Seizures under the laws of imposts, navigation, or trade of the United States. It is enacted, by the Act of September 24, 1789, 9, that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas; saving to suitors, in all cases, the right of a common law remedy, when the common law is competent to give it.

134. Causes of this kind are to be tried by the district court, and not by a jury. 4 Cranch, 438; 5 Cranch, 281; 1 Wheat. 9, 20: 7 Cranch, 112; 3 Dall. 297.

135. It is the place of seizure, and not the committing of the offence, that, under the Act of September 24, 1789, gives jurisdiction to the court; 4 Cranch, 443 5 Cranch,

304; for until there has been a seizure, the forum cannot be ascertained. 9 Cranch, 289.

136. When the seizure has been voluntarily abandoned, it loses its validity, and no jurisdiction attaches to any court, uuless there be a new seizure. 10 Wheat. 325 1 Mason, 361.

137. - (2.) The. admiralty jurisdiction, expressly vested in the district court, embraces, also, captures made within the jurisdictional limits of the United States. By the Act of April. 20, 1818, 7, the district court shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts and shores thereof.

138. - 2. The civil jurisdiction of the district court extends to cases of seizure on land, under the laws of the United States, and in suits for penalties and forfeitures incurred under the laws of the United States.

139. The Act of September 24, 1789, 9, gives to the district court exclusive original cognizance of all seizures made on land, and other waters than as aforesaid, (that is, those which are navigable by vessels of ton or more tons burden, within their respective districts, or on the high seas,) and of all suits for penalties and forfeitures incurred under the laws of the United States.

140. In all cases of seizure on land, the district court sits as a court of common law, and its jurisdiction is entirely distinct from that exercised in case of seizure on waters navigable by vessels of ten tons burden and upwards. 8 Wheat. 395.

141. Seizures of this kind are triable by jury; they are not cases of admiralty and maritime jurisdiction. 4 Crauch, 443.

142. - 3. The civil jurisdiction of the district court extends also to cases in which an alien sues for a tort, in violation of the law of nations, or a treaty of tho United States.

143. The Act of September 24, 1789, 9, directs that the district court shall have cognizance, concurrent with the courts of the several states, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only, in violation of the law of nations, or of a treaty of the United States.

144. - 4. The civil jurisdiction of this court extends further to suits instituted by the United States. By the 9th section of the Act of September 24, 1789, the district court shall also have cognizance, concurrent as last mentioned, of all suits at common law, where the United States sue, and the matter in dispute amounts, exclusive of costs, to

the sum or value of one hundred dollars. And by the Act of March 3; 1815, 4, it has cognizance, concurrent with the courts and magistrates of the several states, and the circuit courts of the United States, of all suits at common law where the United States, or any officer thereof, under the authority of any act of congress sue, although the debt, claim, or other matter in dispute, shall not amount to one hundred dollars.

145. These last words do not confine the jurisdiction given by this act to one hundred dollars, but prevent it from stopping at that sum: and consequently, suits for sums over one hundred dollars are cognizable in the district, circuit, and state courts, and before magistrates, in the cases here mentioned. By virtue of this act, these tribunals have jurisdiction over suits brought by the postmaster-general, for debts and balances due the general post office. 12 Wheat. 147; 2 Pet. 447; 1 Pet. 318.

146.-5. This court has jurisdiction of actions by and against consuls or vice-consuls, exclusively of the courts of the several states, except for offences where other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is inflicted.

147. For offences above this description formerly the circuit court only had jurisdiction in cases of consuls. 5 S. & R. 545; 2 Dall. 299. But by the Act of August 23, 1842, the district courts shall have concurrent jurisdiction with the circiut courts of all crimes and offences against the United States, the punishment of which is not capital. And by the, Act of February 28, 1839, 5, the punishment of whipping is abolished. See also the Act of 28th Sept. 1850, making appropriations for the naval service, &c.

148. - 6. The jurisdiction of the district court under the bankrupt laws will be found under the title Bankrupt.

149. - 7. The district courts have equitable jurisdiction in certain cases. 150. By the first section of the Act of February 13, 1807, the judges of the district courts of the United States shall have as full power to grant writs of injunctions, to operate within their respective districts, as is now exercised by any of the judges of the supreme court of the United States. under the same rules, regulations, and restrictions, as are prescribed by the several acts of congress establishing the judiciary of the United States, any law to the contrary notwithstanding. Provided, that the same shall not, unless so ordered by the circuit court, continue longer than to the circuit then next ensuing; nor shall an injunction be issued by a district judge in any case, where the party has had a reasonable time to apply to the circuit court for the writ.

151. An injunction may be issued by the district judge under the Act of March 3, 1820, SSSS 4, 5, where proceedings have taken place by warrant and distress against

a debtor to the United States or his sureties, subject by 6, to appeal to the circuit court from the decision of such district judge in refusing or dissolving the injunction, if such appeal be allowed by a justice of the supreme court. On which, with an exception as to the necessity of an answer on the part of the United States, the proceedings are to be as in other cases.

152. The Act of September 24, 1789, 14, vests in the judges of the district courts, power to grant writs of habeas corpus, for the purpose of an inquiry into the cause of commitment.

153. Other acts give them power to issue writs, make rules, take depositions, &c. The acts of congress already treated of relating to the privilege of not being sued out of the district of which the defendant is an inhabitant, or in which he is found, restricting suits by assignees, and various others, apply to the district court as well as to the circuit court.

154. Bythe 9th section of the Act of September 24, 1789, the trial of issues in fact in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury. Serg. Const. Law, 226, 227.

(2.) The criminal jurisdiction of the district court.

155. By the Act of August 23, 1842, 3, it is enacted that the district courts of the United States shall have concurrent jurisdiction with the circuit courts, of all crimes and offences against the United States, the punishment of which is not capital.

156. There is a class of district courts of a peculiar description. These exercise the power of a circuit court, under the same regulations as they were formerly exercised by the district court of Kentucky, which was the first of the kind.

157. The Act of September 24, 1789, 10, gives the district court of the Kentucky district, besides the usual jurisdiction of a district court, the jurisdiction of all causes, except of appeals and writs of error, thereinafter made cognizable in a circuit court, and writs of error and appeals were to lie from decisions therein to the supreme court, and under the, same regulations. By the 12th section, authority was given to remove cases from a state court to such court, in the same manner as to a circuit court.

3. The territorial courts.

158. The act to establish the territorial government of Oregon, approved August 14, 1848, establishes the judicial power of the said territory as follows: 9. The judicial power of said territory shall be vested in a supreme court, district courts, probate

courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the just of the supreme court, at such times and places as may be prescribed by law; and the said judges shall after their appointments, respectively, reside in the districts which shall be assigned them The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: Provided, That justices of the peace shall not have jurisdiction of any case in which the title to land shall in anywise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery, as well as common law, jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of the said supreme court shll be allowed, and way be taken to the supreme court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars; and in all cases where the constitution of the United States, or acts of congress, or a treaty of the United States, is brought in question; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States, and the laws of said territory, as is vested in the circuit and district courts of the United States writs of error and appeal in all such cases shall be made to the supreme court of said territory, the same as in other cases. Writs of error and, appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars; and each of said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States, and also of all cases arising under the laws of the said territory, and otherwise. The said clerk shall receive,

in all such cases, the same fees which the clerks of the district courts of the late Wisconsin Territory received for similar services.

159. - 10. There shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as were provided by law for the attorney of the United States for the late territory of Wisconsin. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as were provided by law for the marshal of the district court of the United States, for the present [late] territory of Wisconsin; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

160. The act to establish a territorial government for Utah, approved September 9, 1850, contains the following provisions relative to this subject. They are the same in most respects with the preceding. Section 9 of this act provides, " That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: Provided, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk and every clerk shall hold his office at

the pleasure of the court for which be shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, except only that, in all, cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said supreme court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal shall also be allowed to the supreme court of the United States, from the decisions of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom: and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal, in all such cases, shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon territory now rceive for similar services.

161. "There shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Oregon. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States: he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees as the marshall of the district court of the United States for the present territory of Oregon; and shall, in addition, be paid two hundred dollars annually as a compensation for extra sci-vices."

COURTESY, OR CURTESY, Scotch law. A right which vests in the hushand, and is in the nature of a life-rent. It is a counterpart of the terce. Courtesy requires, 1st. That there shall have been a living child born of the marriage, who is heir of the wife, or who, if surviving, would have been entitled to succeed. 2d. That the wife shall have

succeeded to the subjects in question as heir either of line, or of talzie, or of provision. 1 Bell's Com. 61; 2 Ersk. 9, 53. See Curtesy.

COURTESY OF ENGLAND. See Estates by the Courtesy.

COUSIN, domest. rel. Cousins are kindred who are the issue of two brothers or two sisters, or of a brother and a sister. Those who descend from the brother or sister of the father of the person spoken of are called patternal cousins; maternal cousins are those who are descended from the brothers or sisters of the mother. Vide 2 Bro. C. C. 125; 1 Sim. & Stu. 301; 3 Russ. C. C. 140; 9 Sim. R. 386, 457.

COVENANT, remedies. The name of an action instituted for the recovery of damages for the breach of a covenant or promise under seal. 2 Ld. Raym. 1536 F; N. B. 145 Com. Dig. Pleader, 2 V 2 Id. Covenant, A 1; Bouv. lnst. Index, h. t.

2. The subject will be considered with reference, 1. To the kind of claim or obligation on which this action may be maintained. 2. The form of the declaration. 3. The plea. 4. The judgment.

3.- 1. To support this action, there must be a breach of a promise under seal. 6 Port. R. 201; 5 Pike, 263; 4 Dana, 381; 6 Miss. R. 29. Such promise may be contained in a deed-poll, or indenture, or be express or implied by. law from the terms of the deed; or for the performance of something in futuro, or that something has been done; or in some cases, though it relate to something in presenti, as that the covenantor has, a good title. 2 Saund. 181, b. Though, in general, it is said that covenant will not lie on a contract inpresenti, as on a covenant to stand seized, or that a certain horse shall henceforth be the property of another. Plowd. 308; Com. Dig. Covenant, A 1; 1 Chit. PI.. 110. The action of covenant is the peculiar remedy for the non-performance of a promise under seal, where the damages are unliquidated, and depend in amount on the opinion of a jury, in which case neithor debt nor assumpsit can be supported but covenant as well as the action of debt, may be maintained upon a single bill for a sum certain. When the breach of the covenant amounts to misfeasance, the covenantee has an election to proceed by action of covenant, or by action on the case for a tort, as against a lessee, either during his term or afterwards, for waste; 2 Bl. R. 1111; 2 Bl. R. 848; but this has been questioned. When the contract under seal has been enlarged by parol, the substituted agreement will be considered, together with the original agreement, as a simple contract. 2 Watt's R. 451 1 Chit. Pl. 96; 3 T. R. 590.

4. - 2. The declaration must state that the contract was under seal and it should make profert of it, or show some excuse for the omission. 3 T. 11. 151. It is not, in general, requisite to state tho consideration of the defendant's promise, because a contract under seal usually imports a consideration; but when the performance of the

consideration constitutes a condition precedent, such performance must be averred. So much only of the deed and covenant should be set forth as is essential to the cause of action: although it is usual to declare in the words of the deed, each covenant may be stated as to its legal effect. The breach may be in the negative of the covenant generally 4 Dall. R. 436; or, according to the legal effect, and sometimes in the alternative and several breaches may be assigned at common law. Damages being the object of the suit, should be laid sufficient to cover the real amount. Vide 3 Serg. & Rawle, 364; 4 Dall. R. 436 2 Yeates' R. 470 3 Serg. & Rawle, 564, 567; 9 Serg. & Rawle, 45.

5. - 3. It is said that strictly there is no general issue in this action, though the plea of non est factum has been said by an intelligent writer to be the general issue. Steph. Pl. 174. But this plea only puts in issue the fact of scaling the deed. 1 Chit. Pl. 116. Non infregit conventionem, and nil debet, have both been held to be insufficient. Com. Dig. Pleader, 2 V 4. In Pennsylvania, by a practice peculiar to that state, the defendant may plead covenants and under this. plea, upon notice of the special matter, in writing, to the plaintiff, without form, he may give anything in evidence which he might have pleaded. 4 Dall. 439; 2 Yeates, 107; 15 Serg. & Rawle, 105. And this evidence, it seems, may be given in the circuit courts of the United States in that state without notice, unless called for. 2 W. C. C. R. 4 5 6.

6. - 4. The judgmeut is that the plaintiff recover a named sum for his damages, which he has sustained by reason of the breach or breaches of covenant, together with costs.

COVENANT, contracts. A covenant, conventio, in its most general signification, means any kind of promise or contract, whether it be made in writing or by parol. Hawk. P. C. b. 1, c. 27, 7, s. 4. In a more technical sense, and the one in which it is here considered, a covenant is an agreement between two or more persons, entered into in writing and under seal, whereby either party stipulates for the truth of certain facts, or promises to perform or give something to the other, or to abstain from the performance of certain things. 2 Bl. Com. 303-4; Bac. Ab. Covenant, in pr.; 4 Cruise, 446; Sheppard, Touchs. 160; 1 Harring. 151, 233 1 Bibb, 379; 2 Bibb, 614; 3 John. 44; 20 John. 85; 4 Day, 321.

2. It differs from an express assumpsit in this, that the former may be verbal, or in writing not under seal, while the latter must always be by deed. In an assumpsit, a consideration must be shown; in a covenant no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 447; 4 Barn. & Ald. 652; 3 Bingh. 111.

3. It is proposed to consider first, the general requisites of a covenant; and secondly, the several kinds of covenants.

4. - 1. The general requisites are, 1st. Proper parties. 2d. Words of agreement. 3d A legal purpose. 4th. A proper form.

5. - 1st. The parties must be such as by law can enter into a contract. If either for want of understanding, as in the case of an idiot or lunatic; or in the case of an infant, where the contract is not for his benefit; or where there is understanding, but owing to certain causes, as coverture, in the case of a married woman, or duress, in every case, the parties are not competent, they cannot bind themselves. See Parties to Actions.

6. - 2d. There must be an agreement. The assent or consent must be mutual for the agreement would be incomplete if either party withheld his assent to any of its terms. The assent of the parties to a contract necessarily supposes a free, fair, serious exercise of the reasoning faculty. Now, if from any cause, this free assent be not given, the contract is not binding. See Consent.

7. - 3d. A covenant against any positive law, or public policy, is, generally speaking, void. See Nullity; Shep. Touchs. 163. As an example of the first, is a covenant by one man that he will rob another; and of the last, a covenant by a merchant or tradesman that he will not follow his occupation or calling. This, if it be unlimited, is absolutely void but, if the covenant be that he shall not pursue his business in a particular place, as, that he will not trade in the city of Philadelphia, the covenant is no longer against public policy. See Shep. Touchs. 164. A covenant to do an impossible thing is also void. Ib.

8. - 4th. To make a covenant, it must, according to the definition above given, be by deed, or under seal. No particular form of words is necessary to make a covenant, but any words which manifest the intention of the parties, in respect to the subject matter of the contract, are sufficient. Sec numerous examples in Bac. Abr. Covenant, A Selw. N. P. 469; Com. Dig. Covenant, A 2; 3 Johns. R. 44; 5 Munf. 483.

9. In Pennsylvania, Delaware, and Missouri, it is declared by statute that the words grant, bargain, and sell, shall amount to a covenant that the grantor was seised of an estate in fee, free from all incumbrances done or suffered by him, and for quiet enjoyment against his acts. But it has been adjudged that those words in the Pennsylvania statute of 1715, (and the decision will equally apply to the statutory language in the other two states,) did not amount to a general warranty, but merely to a covenant that the grantor had not done any act, nor created any incumbrance whereby the estate might be defeated. 2 Bin. 95; 11 S. & R. 111, 112; 4 Kent, Com. 460.

10. - 2. The several kinds of covenants. They are, 1. Express or implied. 1. An express, covenant, or a covenant in fact, is one expressly agreed between the parties

and inserted in the deed. The law does not require any particular form to create an express covenant. The formal word "covenant" is therefore not indispensably requisite. 2. Mod. 268; 3 Keb. 848; 1 Leon, 324; 1 Bing. 433; 8 J. B. Moore, 546; 1 Ch. Cas. 294; 16 East, 352; 12 East, 182 n.; 1 Bibb, 379; 2 Bibb 614; 3 John. 44; 5 Cowen, 170; 4 Day, 321 4 Conn. 508; 1 Harring. 233. The words "I oblige;" "agree," 1 Ves. 516; 2 Mod. 266; or, "I bind myself to pay so much such a day, and so much such another day;" Hardr. 178; 3 Leon. 119, Pl. 199; are held to be covenants; and so are the word's of a bond. 1 Ch. Cas. 194. But words importing merely an order or direction that other persons should pay a sum of money, are not a coveiaant. 6 J. B. Moore, 202, n. (a.)

11. - 1. An implied covenant is one which the law intends and implies, though it be not expressed in words. 1 Common Bench Rep. 402; co. Lit. 139, b; Vaugnan's Rep. 118; Rawle on Covenants, 364. There are some words which of themselves do not import an express covenant, yet being made use of in certain contracts, have a similar operation and are called covenants in law. They are as effectually binding on the parties as if expressed in the most unequivocal terms. Bac. Ab. Covenant, B. A few examples will fully explain this. If a lessor demise and grant to his lessee a house or lands for a certain term, the law will imply a covenant on the part of the lessor, that the lessee shall during the term quietly enjoy the same against all incumbrances. Co. Litt. 384. When in a lease the words "grant," 1 Mod. 113 Freem. 367; Cro. Eliz. 214; 4 Taunt. 609; "grant and demise, " 4 Wend. 502; "demise," 10 Mod. 162; 4 Co. 80; Hob. 12; or " demiserunt," I Show. 79 1 Salk. 137, are used, they are so many instances of implied covenants. And the words "yielding and paying" in a lease, imply a covenant on the part of lessee, that he will pay the rent. 9 Verm. 151; 3 Penn. 461, 464.

12. - 2. Real and personal. 1st. A real covenant is one which has for its object something annexed to, or inherent in, or connected with land or other property. Co Litt. 334; enk 241; Cruise, Dig. tit. 32, c. 25, s. 22; Platt. on Cov. 60, 61; 2 Bl. Com. 304. A covenant real, which necessarily runs with the land, as to pay rent, not to cut timber, and the like, is said to be an inherent covenant. Shep. To. 161. A covenant real runs with the land and descends to the heir; it is also transferred to a purchaser. Such covenants are said to run with the land, so that he who has the one is subject to the other. Bac. Ab. Covenants, E 2. See 2 Penn. 507; 10 Wend 180; 12 Mass. 306; 17 Mass. 586; 5 Cowen, 137; 5 Ham. 156; 5 Conn. 497; 1 Wash. C. C. 375; 8 Cowen 206; 1 Dall. 210; 11 Shep. 283; 6 Met. 139; 3 Mete. 81; 3 Harring. 338; 17 Wend. 136.

13. - 2. As commonly reckoned, there are five covenants for title, viz: 1. Covenant for seisin. 2. That the grantor has perfect right to convey. 3. That the grantee shall quietly possess and enjoy the premises without interuption, called a covenant for quiet

enjoyment. 4. The covenant against incumbrances. 5. The covenant for futher assurance. 6. Besides these covenants, there is another frequently resorted to in the United Staes, which is relied on more, perhaps, than any other, called the covenant of warranty. See Rawle on Covenants for Title, where the import and effect of these covenants are elaborately and luminously discussed.

14. - 3. A personal covenant relates only to matters personal, as distinguished from real, and is binding on the covenantur during life, and on his personal representatives after his decease, in respect of his assets. According to Sir William Blackstone, a personal convenant may be transformed into a real, by the mere circumstance of the heirs being named therein, and having assets by descent from the covenantor. 2 Bl. Com 304. A covenant is personal in another sense, where the covenantor is bound to fulfil the covenant himself; as, to teach an apprentice. F.N.B. 340, A.

15. Personal covenants are also said to be transitive and intransitive; the former, when the duty of performing them passes to the covenantor's representatives; the latter, when it is limited to himself; as, in the case of teaching an apprentice. Bac. Ab. h.t.

16. As they affect each other in the same deed, covenants may be divided into three classes. 1st. Dependent covenants are those in which the performance, of one depends on the performance of the other; there may be conditions which must be performed before the other party is liable to an action on his covenant. 8 S. & R. 268; 4 Conn. 3; 1 Blackf. 175; John. 209; 2 Stew. & Port. 60; 6 Cowen 296; 3 Ala. R. 330; 3 Pike 581; 2 W. & S. 227; 5 Shep. 232; 11 Verm. 549; 4 W. C. C. 714; Platt on Cov. 71; 2 Dougl. 689; Lofft, 191; 2 Selw. N. P. 443, 444. To ascertain whether covenants are dependent or not, the intention of the parties is to be sought for and regarded rather than the order or time in which the acts are to be done, or the structure of the instrument, or the arrangements of the covenant. 4 Wash. C. C. 714; 1 Root, 170; 4 Rand. 352; 4 Rawle, 26; 5 Wend. 496; 2 John. 145; 13 Mass. 410; 2 W. & S. 227; 4 W. & S. 527; Willis, 157; 7 T. R. 130; 8 T.R. 366; 5 B. & P. 223; 1 Saund. 320 n.

17. - 2d. Some covenants are mutual conditions to be performed at the same time; these are concurrent covenants. When, in these cases, one party is redy and offers to perform his part, and the other refuses or neglects to perform his, he who is ready and offers, has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. 4 Wash. C. C. 714; Dougl. 698; 2 Selw. N. P. 443; Platt. on Cov. 71.

18.- - 3d. Covenants are independent or mutual, when either party may recover damages from the other for the injury he may have received by a breach of the covenants in his favor, and when it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. 2 Wash. C. C. R. 456; 5 Shepl. 372; 4 Leigh,

21; 3 Watts & S. 300; 13 Mass. 410; 2 Pick. 300; 2 John. 145; 10 John. 203; Minor 21; 2 Bibb, 15; 3 Stew. 361; 1 Fairf. 49; 6 Binn. 166; 2 Marsh. 429; 7 John. 249; 5 Wend. 496; 3 Miss. 329; 2 Har. & J. 467; 4 Har. & J. 285; 2 Marsh. 429; 4 Conn. 3.

19. Covenants are affirmative and negative. 1st. An affirmative covenant is one by whicb the covenantor binds himself that something has already been done or shall be performed hereafter. Such L convenant will not deprive a man of a right lawfully enjoyed by him independently of the covenant; 5 as, if the lessor agreed with the lessee that he shall have thorns for hedges growing upon the land, by assignment of the lessor's bailiff; here no restraint is imposed upon the exercise of that liberty which the law allows to the lessee, and therefore he may take hedge-bote without assignment. Dy. 19 b, pl. 115; 1 Leon, 251.

20. - 2d. A negative covenant is one where the party binds himself that he has not performed and will not perform a certain act; as, that he will not encumber. Such a covenant cannot be said to be performed until it becomes impossible to break it. On this ground the courts are unwilling to construe a covenant of this kind to be a condition precedent. Therefore, where a tailor assigned his trade to the defendant, and covenanted thenceforth to desist from carrying on the said business with any of the customers, and the defendant in consideration of the performance thereof, covenanted to pay him a life annuity of 190, it was held that if the words "in consideration of the performance thereof," should be deemed to amount to a condition precedent, the plaintiff would never obtain his annuity; because as at anytime during his life he might exercise his former trade, until his death it could never be ascertained whether he had performed the covenant or not. 2 Saund. 156; 1 Sid. 464; 1 Mod. 64; 2 Keb. 674. The defendant, however, on a breach by plaintiff, might have his remedy by a crossaction of covenant. There is also a difference between a negative covenant, which is only in affirmance of an affirmative covenant precedent, and a negative covenant which is additional to the affirmative covenant. 1 Sid. 87; 1 Keb. 334, 372. To a covenant of the former class a plea of performance generally is good, but not to the latter; the defendant in that case must plead specially. Id.

21. Covenants, considered with regard to the parties who are to perform them, are joint or several. 1st. A joint covenant is one by which several parties agree to perform or do a thing together. In this case although there are several covenantors there is but one contract, and if the covenant be broken, all the covenantors living, must be sued; as there is not a separate obligation of each, they cannot be sued separately.

22. - 2d. A several covenant is one entered into by one person only. It frequently happens that a number of persons enter into the same contract, and that each binds himself to perform the whole of it; in such case, when the Contract is under seal, the covenantors are severally bound for the performance of it. The terms usually

employed to make a several covenant are " severally," or " each of us." In practice, it is common for the parties to bind themselves jointly and severally, and then the covenant is both joint and several. Vide Hamm. on Parties 19; Cruise, Dig. tit. 32, c. 25, s. 18; Bac. Ab. Covenant D.

23. Covenants are executed or executory. 1st. An executed covenant is one which relates to an act already performed. Shep. To. 161.

24. - 2d. An executory covenant is one to be performed at a future time. Shep. To. 161.

25. Covenants are obligatory or declaratory. 1st. An obligatory covenant is one which is binding on the party himself, and shall never be construed to raise a use. 1 Sid. 27; 1 Keb. 334.

26. - 2d. A declaratory covenant is one which serves to limit and direct uses. 1 Sid. 27; 1 Heb. 334.

27. Covenants are principal and auxiliary. 1st. A principal covenant is one which relates directly to the principal matter of the contract entered into between the parties; as, if A covenants to serve B for one year.

28. - 2d. An auxiliary covenant is one, which, not relating directly to the principal matter of the contract between the parties, yet relates to something connected with it; as, if A covenants with B, that C will perform his covenant to serve him for one year. In this case, if the principal covenant is void, the auxiliary is discharged. Anstr. 256.

29. Covenants are legal or illegal. 1st. A legal covenant is one not forbidden by law. Covenants of this kind are always binding on the parties.

30. - 2d. An illegal covenant is one forbidden by law, either expressly or by implication. A covenant entered into, in violation of, the express provision of a statute is absolutely void. 5 Har. & J. 193; 5 N. H. Rep. 96; 6 N. H. Rep. 225; 4 Dall. 298; 6 Binn. 321; 4 S.& R. 159; 1 Binn. 118; 4 Halst. 252. A covenant is also void, if it be of immoral nature; as, a covenant for future illicit intercourse and cohabitation; 3 Monr. 35; 3 Burr. 1568; S. C. 1 Bl. Rep. 517; 1 Esp. 13; 1 B. P. 340; or against public policy; 5 Mass. 385; 7 Greenl. 113; 4 Mass. 370; 5 Halst. 87; 4 Wash. C. C. 297; 11 Wheat. 258; 3 Day, 145; 2 McLean, 464; 7 Watts, 152; 5 Watts & S. 315; 5 How. Miss. 769; Geo. Decis. part 1, 39 in restraint of trade, when the restraiut is general; 21 Wend. 166; 19 Pick. 51; 6 Pick. 206; 7 Cowen, 307; or fraudulent between the parties; 5 Mass. 16; 4 S. & R. 488; 4 Dall. 250; 7 W. & S. 111; or third persons; 3 Day, 450; 14 S. & R. 214; 3 Caines, 213; 15 Pick. 49; 2 John. 286 12 John. 306.

31. Covenants, in the disjunctive or alternative, are those which give the covenantor the choice of doing, or the covenontee the choice of having, performed one of two or more things at his election; as, a covenant to make a lease to Titus, or pay him one hundred dollars on the fourth day of July, as the covenantor, or the covenantee, as the case may be, shall prefer. Platt on Cov. 21.

32. Collateral covenants are such as concern some collateral thing, which does not at all, or not so immediately relate to the thing granted; as, to pay a sum of money in gross, that the lessor shall distrain for rent, on some other land than that which is demised, or the like. Touchs. 161; 4 Burr. 2446; 2 Wils. R. 27; 1 Ves. R. 56. These covenants are also termed covenants in gross. Vide 5 Barn. & Ald. 7, 8; Platt on Cov. 69, 70.

COVENANT NOT TO SUE. This is a covenant entered into by a party who had a cause of action at the time of making it, and by which he agrees not to sue the party liable to such action.

2. Covenants of this nature, are either covenants perpetual not to sue, or covenants not to sue for a limited time; for example, seven years.

3. - 1. Covenants perpetual not to sue. These will be considered with regard to their effect as relates, 1. To the covnantee; 2. To his partners or co-debtors.

4. - 1. A covenant not to sue the covenantee at all, has the effect of a release to him, and may be pleaded as such to avoid a circuity of action. Cro. EIiz. 623; 1 T. R. 446; 8 T. R. 486; 1 Ld. Raym 688; S. C. Holt, 178; 2 Salk. 575; 3 Salk. 298; 12 Mod. 415, 548; 7 Mass. 153, 265; 16 Mass. 24; 17 Mass. 623. And see 11 Serg. & Rawle, 149.

5. - 2. Where the covenantee is jointly and severally bound with another to the covenantor, a covenant not to sue him will be no protection to the other wbo may be sued on his several obligations and such a covenant does not mount to a release to him. 2 Salk. 575; S. C. 12 Mod. 551; 8 T. R. 168; 6 Munf. 6; 1 Com. 139; 4 Greenl. 421; 2 Dana, 107; 17 Mass. 623, 628; 16 Mass. 24; 8 Mass. 480. A covenant not to sue, entered into by only one of several partners, cannot be set up as a release in an action by all the partners. 3 P. & D. 149.

6. - 2. Covenant not to sue for - a limited time. Such a covenant does not operate as a release, nor can it be pleaded as such, but is a covenant only for a breach of which the obliger may bring his action. Carth. 63; 1 Show. 46; Comb 123, 4; 2 Salk. 573; 6 Wend. 471.

COVENANT FOR QUIET ENJOYMENT. A covenant usually contained in a lease, by which the lessor covenants or agrees that the tenant shall quietly enjoy the premises leased. 11 East, 641.

2. Such a covenant is express or implied; express, when it is so mentioned in the deed it is implied, either from the words used, or from the conduct of the lessor. The words "grant" or "demise" are held to amount to an implied covenant for quiet enjoyment, unless afterwards restrained by a qualified express covenant. 1 Chit. Pr. 344.

COVENANT TO STAND SEISED TO USES. A species of conveyance which derives its effect from the statute of uses, and operates without transmutation of possession.

2. By this conveyance, a person seised of lands, covenant's that he will stand seised of them to the use of another. On executing the covenant, the other party becomes seised of the use of the land, according to the terms of the use; and the statute immediately annexes the possession to the use. This conveyance has the same force and effect as a common deed of bargain and sale; the great distinction between them is, that the former can only be made use of among near domestic relations, for it must be founded on the consideration of blood or marriage. 2 Bl. Com. 338; 2 Bouv. Inst. n. 2080; 4 Kent Com 480; Lilly's Reg.h. t.; 1 Vern. by Raithby, 40, n.; Cruise, Dig. tit. 32, c. 10; 11 John. R. 337; 1 John. Cas. 91; 7 Pick. R. 111; 1 Hayw.,R. 251, 259, 271, note; 1 Conn. R. 354; 20 John. R. 85; 4 Mass. R. 135; 4 Hayw. R. 229; 1 Cowen, R. 622; 3 N. H. Rep. 234; 16 John. R. 515; 9 Wend. R. 641; 7 Mass. R. 384.

COVENANT FOR TITLE. An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey. 11 East, 642. See 4 Dall. Rep. 439.

COVENANTEE. One in whose favor a covenant is made.

COVENANTOR. One who becomes bound to perform a covenant.

2. To become a covenantor a person must be sui juris, and intend, at the time of becoming bound, to covenant to perform some act mentioned in the covenant. He can be discharged from his covenant by performance, or, by the act of the covenantee, as the non-performance of a condition precedent, a release, or a rescission of the contract.

COVENANTS PERFORMED, pleading. In Pennsylvania, the defendant may plead covenants performed to an action of covenant, and upon this plea, upon informal notice to the plaintiff, he may give anything in evidence which he might have pleaded.

4 Dall. 439; 2 Yeates, 107; 15 S. & R. 105. And this evidence, it seems, may be given in the circuit court without notice unless called for. 2 Wash. C. C. R. 456.

COVENTRY ACT, criminal law. The common name for the statute 22 and 23 Car. II. c. 1; it having been enacted in consequence of an assault on Sir John Coventry in the street, and slitting his nose, in revenge, as was supposed, for some obnoxious words uttered by him in parliament.

2. By this statute it is enacted, that if any person shall, of malice aforethought, and by laying in wait, unlawfully cut or disable the tongue, put out an eye, slit the nose, cut off the nose or lip, or cut off or disable any limb, or member of any other person, with intent to maim or disfigure him, such person, his counsellors, aiders and abettors, shall be guilty of felony, without benefit of clergy. 4 Bl. Com. 207. This statute is copied by the act of the legislature of Pennsylvania, of April 22, 1794, s. 6, 3 Smith's Laws of Pa. 188; and the offence is punished by fine and imprisonment. For the act of Connecticut, see 2 Swift's Dig. 293.

COVERT, BARON. A wife; so called, from her being under the cover or protection of her hushand, baron or lord.

COVERTURE. The state or condition of a married woman.

2. During coverture, the being of the wife is civilly merged, for many purposes, into that of her hushand; she can, therefore, in general, make no contracts without his consent, express or implied. Com. Dig. Baron and Feme, W; Pleader, 2 A 1; 1 Ch. Pl. 19, 45; Litt. s. 28; Chit. Contr. 39; 1 Bouv. Inst. n. 276.

3. To this rule there are some exceptions: she may contract, when it is for her benefit, as to save her from starvation. Chit. Contr. 40.

4. In some cases, when coercion has been used by the hushand to induce her to commit crime, she is exempted from punishment. 1 Ha1e, P. C. 516; 1 Russ. Cr. 16.

COVIN, fraud. A secret contrivance betwen two or more persons to defraud and prejudice another of his rights. Co. Litt 357, b; Com. Dig. Covin, A; 1 Vin. Abr. 473. Vide Collusion; Fraud.

COW. In a penal statute which mentions both cows and beefer's, it was held that by the term cow, must be understood one that had a calf. 2 East, P. C. 616; 1 Leach, 105.

COWARDICE. Pusillanimity; fear.

2. By the act for the better government of the navy of the United States, passed April 21, 1800, 1 Story, L. U. S. 761; it is enacted, art. 5, "every officer or private who shall not properly observe the orders of his commanding officer, or shall not use his utmost exertions to carry them into execution, when ordered to prepare for, join in, or when actually engaged in battle; or shall, at such time, basely desert his duty or station, either then, or while in sight of an enemy, or shall induce others to do so, every person so ofending, shall, on conviction thereof by a general court martial, suffer death, or such other punishment as the said court shall adjudge.

3. - Art. 6. "Every officer or private who shall, through cowardice, negligence, or disaffection, in the time of action, withdraw from, or keep out of battle, or shall not do his utmost to take or destroy every vessel which it is his duty to encounter, or shall not do his utmost ondeavor to afford relief to ships belonging to the United States, every such offender shall, on conviction thereof by a general court martial, suffer death, or such other punishment as the said court shall adjudge."

4. By the act for establishing rules and articles for the government of the armies of the United States, passed April 10, 1806, it is enacted, art. 52, " any officer or soldier, who shall mishehave himself before the enemy, run away, or shamefully abandon any fort, post, or guard, which he or they may be commanded to defend, or speak, words inducing others to do the like, or shall cast away his arms and ammunition, or who shall quit his post or colors to plunder and pillage, every such offender, being duly convicted thereof, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court martial."

CRANAGE. A toll paid for drawing merchandise out of vessels to the wharf, so called, because the instrument used for the purpose is called a crane. 8 Co. 46.

TO CRAVE. To ask; to demand.

2. This word is frequently used in pleading; as,-to crave oyer of a bond on which the suit is brought; and in the settlement of accounts, the accountant general craves a credit or an allowance. 1 Chit. Pr. 520. See Oyer.

CRAVEN. A word of obloquy, which in trials by battel, was pronounced by the vanquished; upon which judgment was rendered against him.

CREANCE. This is a French word, which, in its extensive sense, signifies claim; in a narrower sense it means a debt. 1 Bouv. Inst. n. 1040, note.

CREDENTIALS, international law. The instruments which authorize and establish a public minister in his character with the state or prince to whom they are addressed. If

the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, mandatum manifestum. Vattel, liv. 4, c. 6, 76.

CREDIBILITY. Worthiness of belief. To entitle a witness to credibility, he must be competent. Vide Competency.

2. Human testimony can seldom acquire the certainty of demonstration. Witnesses not unfrequently are mistaken or wish to deceive; the most that can be expected is that moral certainty which arises from analogy. The credibility which is attached to such testimony, arises. from the double presumption that the witnesses have good sense and intelligence, and that they are not mistaken nor deceived; they are further presumed to have probity, and that they do not wish to deceive.

3. To gain credibility, we must be assured, first, that the witness has not been mistaken nor deceived. To be assured as far as possible on this subject, it is proper to consider the nature and quality of the facts proved; the quality and person of the witness; the testimony in itself; and to compare it with the depositions of other witnesses on the subject, and with known facts. Secondly, we must be satisfied that he does not wish to deceive: there are strong assurances of this, when the witness is under oath, is a man of integrity, and disinterested. Vide Arch. Civ. Pl. 444; 5 Com. Dig. 449; 8 Watts, R. 227; Competency.

CREDIBLE WITNESS. A credible witness is one who is competent to give evidence, and is worthy of belief. 5 Mass. 219 17 Pick. 134; 2 Curt. Ecc. R. 336. In deciding upon the credibility of a witness, it is always pertinent to consider whether he is capable of knowing the thing thoroughly about which he testifies. 2. Whether he was actually present at the transaction. 3. Whether he paid, sufficient attention to qualify himself to be a reporter of it; and 4. Whether he honestly relates the affair fully as he knows it, without any purpose or desire to deceive, or suppress or add to the truth.

2. In some of the states, as Delaware, Illinois, Maine, Maryland, Rhode Island, Vermont, and Virginia, wills must be attested by credible witnesses. See Attesting Witness; Competent Witness; Disinterested Witness; Respectable Witness; and Witness.

CREDIT, common law, contracts. The ability to borrow, on the opinion conceived by the lender that he will be repaid. This definition includes the effect and the immediate cause of credit. The debt due in consequence of such a contract is also called a credit; as, administrator of an the goods, chattels, effects and credits, &c.

2. The time extended for the payment of goods sold, is also called a credit; as, the goods were sold at six months credit.

3. In commercial law, credit is understood as opposed to debit; credit is what is due to a merchant, debit, what is due by him

4. According to M. Duvergier, credit also signifies that influence acquired by intrigue connected with certain social positions. 20 Toull. n. 19. This last species of credit is not, of such value as to be the object of commerce. Vide generally, 5 Taunt. R. 338.

CREDITOR, persons, contracts. A creditor is he who has a right to require the fulfilment of an obligation. or contract.

2. Creditors may; be divided into personal and real.

3. The former are so called, because their claims are mainly against the person, who can reach the property of their debtors only by; virtue of the general rule by which he who has become personally obligated, is bound to fulfil his engagements, with all his property acquired and to be acquired, Which is a common guaranty for all his creditors.

4. The latter are called real, because they have mortgages or other securities binding on the real estates of their debtors.

5. It is proper to state that personal creditors may be divided into two classes first, those who have a right on all the property of their debtors, without considering the origin, or the nature of their claims; secondly, those who, in consequence of some provision of law, are entitled to some special prerogative, either in the manner of recovery, or in the rank they are to hold among creditors; these are entitled to preference. As an example, may be mentioned the case of the United State; when they are creditors, they have always a preforenee in case of insolvent estates.

6. A creditor sometimes becomes so, unknown to his debtor, as is the case when the former receives an assignment of commercial; paper, the title to recover which may be conveyed either by endorsement, or, in some cases, by mere delivery. But in general it is essential there should be a privity of contract between the parties. Vide, generally, 7 Vin. Ab. 42; 3 Com. Dig. 343; 8 Com. Dig. 388; 1 Supp. to Ves. Jr. 302 2 Sup. to Ves. Jr. 305 Code, 7, 72, 6; Id. 8, 18; Dig 42, 6, 17; Nov. 97 ch. t3 Bouv. Inst. Index, h. t.

CREEK, mar. law. Creeks are of two kinds, viz. creeks of the sea and creeks of ports. The former sorts are such little inlets of the sea whether within the precinct or extent

of a, port or without, which are narrow rittl6 passages@ and-have shore on either side of them. The latter, Viz. breeks of ports, are by a kind of civil denomination such. They are such, that though possibly for their extent and. situation they might be ports, yet they are either members of or dependent upon other ports. In England it began thus: the king, could not conveniently have a customer and comptroller in every port or haven. But these custom officers were fixed at some eminent port; and the smaller adjacent ports became by that means creeks, or appendants. of that where these custom officers were placed. 1 Chit. Com. Law, 726; Hale's Tract. de Portibus Maris, part 2, c. 1, vol. 1, p. 46; Com. Dig. Navigation, C; Callis, 34.

2. In a more popular sense, creek signifies a small stream, less than a river. 12 Pick. R. 184,

CRETION, civil law.. The acceptance of a succession. Cretion was an act made before a magistrate, by which an instituted heir, who was required to accept of the succession within a certain time, declares within that time that he accepted the suecession. Clef cles Lois Rom. h. t.

2. Cretion is also used to signify the term during which the heir is allowed to make his election to take or not to take the inheritance. It is so called, because the heir is allowed to see, cernere, examine, and decide. Gaii, lust. lib. 2, 164.

CREW. Those persons who are employed in the navigation of a vessel.

2. A vessel to be seaworthy must have a sufficient crew. 1 Caines, R. 32; 1 John. R. 184.

3. In general, the master or captain (q.v.) has the selection of the crew. Vide Muster roll; Seaman; Ship; Shipping articles.

CRIB-BITING. A defect in horses, which consists in biting the crib while in the stable. This is not, considered as a breach of general warranty of soundness. Holt's Cas. 630.

CRIER. An inferior officer of a court, whose duty it is to open and adjourn the court, when ordered by the judges; to make proclamations and obey the directions of the court in anything which concerns the administration of juustice.

CRIME. A crime is an offence against a public law. This word, in its most general signification, comprehends all offences but, in its limited sense, it is confined to felony. 1 Chitty, Gen. Pr. 14.

2. The term misdemeanor includes every offence inferior to felony, but punishable by indictment or by-particular prescribed proceedings.

3. The term offence, also, may be considered as, having the same meaning, but is usually, by itself, understood to be a crime not indictable but punishable, summarily, or by the forfeiture of, a penalty. Burn's Just. Misdemeanor.

4. Crimes are defined and punished by statutes and by the common law. Most common law offences are as well known, and as precisely ascertained, as those which are defined by statutes; yet, from the difficulty of exactly defining and describing every act which ought to be punished, the vital and preserving principle has been adopted, that all immoral acts which tend to the prejudice of the community are punishable by courts of justice. 2 Swift's Dig.

5. Crimes are mala in se, or bad in themselves; and these include. all offences against the moral law; or they are mala prohibita, bad because prohibited, as being against sound policy; which, unless prohibited, would be innocent or indifferent. Crimes may be classed into such as affect:

6.- 1. Religion and public worship: viz. blasphemy, disturbing public worship.

7. - 2. The sovereign power: treason, misprision of treason.

8. - 3. The current coin: as counterfeiting or impairing it.

9. - 4. Public justice: 1. Bribery of judges or jurors, or receiving the bribe. 2. Perjury. 3. Prison breaking. 4. Rescue. 5. Barratry. 6. Maintenance. 7. Champerty. 8. Compounding felonies. 9. Misprision of felonies. 10. 6ppression. 11. Extortion. 12. Suppressing evidence. 13. Negligence or misconduct in inferior officers. 14. Obstructing legal process. 15. Embracery.

10. - 5. Public peace. 1. Challenges to fight a duel. 2. Riots, routs and unlawful assemblies. 3. Affrays. 4. Libels. 11. - 6. Public trade. 1. Cheats. 2. Forestalling. S. Regrating. 4. Engross- ing. 5. Monopolies.

12. - 7. Chastity. 1. Sodomy. 2. Adultery. 3. Incest. 4. Bigamy. 5. Fornication.

13. - 8. Decency and morality. 1. Public indecency. 2. Drunkenness. 3. Violatiug the grave.

14. - 9. Public police and economy. 1. Common nuisances. 2. Keeping disorderly houses and bawdy houses. 3. Idleness, vagrancy, and beggary.

15. - 10. Public. policy. 1. Gambling. 2. Illegal lotteries.

16. - 11. Individuals. 1. Homicide, which is justifiable, excusable or felonious.

2. Mayhem. 3. Rape. 4. Poisoning, with intent to murder. 5. Administering drugs to a woman quick with child to cause, miscarriage. 6. Concealing death of bastard child.

7. Assault and battery, which is either simple or with intent to commit some other crime. 8. kidnapping. 9. False imprisonment. 10. Abduction.

17. - 12. Private property. 1. Burglary. 2. Arson. 3. Robbery. 4., Forgery. Counterfeiting. 6. Larceny. 7. Receiving stolen goods, knowing them to have been stolen, or theft-bote. 8. Malicious mischief. 18. - 13. The public, individuals, or their property, according to the intent of the criminal. 1. Conspiracy.

CRIME AGAINST NATURE. Sodomy. It is a crime not fit to be named; peccatum horribile, inter christianos non nominandum. 4 Bl. Com. 214. See Sodomy.

CRIMEN FALSI, civil law, crime. It is a fraudulent alteration, or forgery, to conceal or alter the truth, to the prejudice of another. This crime may, be committed in three ways, namely: 1. By forgery. 2. By false declarations or false oath, perjury. 3. By acts; as, by dealing with false weights and measures, by altering the current coin, by making false keys, and the like. Vide Dig. 48, 10, 22; Dig. 34, 8 2; Code, lib. 9, t. 22, 1. 2, 5, 9. 11, 16, 17, 23, and 24; Merl. Rep. h. t.; 1 Bro. Civ. Law, 426; 1 Phil. Ev. 26; 2 Stark. Ev. 715.

2. What is understood by this, term in the common law, is not very clearly defined. Peake's Ev. 133; 1 Phil. Ev. 24; 2 Stark. Ev. 715. It extends to forgery, perjury, subornation of perjury, suppression of testimony by bribery, and conspiracy to convict of perjury. See 12 Mod. 209; 2 S. & R. 552; 1 Greenl. Ev. 373; and article Faux.

CRIMINAL. Relating to, or having the character of crime; as, criminal law, criminal conversation, &c. It also signifies a person convicted of a crime.

CRIMINAL CONVERSATION, crim. law. This phrase is usually employed to denote the crime of adultery. It is abbreviated crim. con. Bac. Ab. Marriage, E 2; 4 Blackf. R. 157.

2. The remedy for criminal conversation is, by an action on the case for damages. That the plaintiff connived, or assented to, his wife's infidelity, or that he prostituted her for gain, is a complete answer to the action. See Connivance. But the facts that the wife's character for chastity was bad before the plaintiff married her; that he lived with her

after he knew of the criminal intimacy with the defendant; that he had connived at her intimacy with other men;, or that the plaintiff had been false to his wife, only go in mitigation of damages. 4 N. Hamp. R. 501.

3. The wife cannot maintain an action for criminal conversation with her hushand; and for this, among other reasons, because her hushand, who is particeps criminis, must be joined with her as plaintiff.

CRIMINAL LETTERS. An instrument in Scotland, which contains the charges against a person accused of a crime. Criminal letters differ from an indictment, in that the former are not, like an indictment, the mere statement of the prosecutor, but sanctioned by a judge. Burt. Man. Pub. L. 301, 302.

CRIMINALITER. Criminally; opposed to civiliter, civilly.

2. When a person commits a wrong to the injury of another, he is answerable for it civiliter, whatever may have been his intent; but, unless his intent has been unlawful the is not answerable criminaliter. 1 East, 104.

TO CRIMINATE. To accuse of a crime; to admit having committed a crime or misdemeanor.

2. It is a rule, that a witness cannot be compelled to answer any question which has a tendency to expose him to a penalty, or to any kind of punishment, or to a criminal charge. 3 Bouv. Inst. n. 3209-12; 4 St. Tr. 6; 10 How. St. Tr.@ 1096; 6 St. Tr. 649; 16 How. St. Tr. 1149; 2 DougI. R. 593; 2 Ld. Raym. 1088; 24 How. St. Tr. 720; 16 Ves. jr. 242; 2 Swanst. Ch. R. 216; 1 Cranch. R. 144; 2 Yerg. R. 110 5 Day, Rep. 260; I Carr., & Payne, 11 2 Nott & M'C. 13; 6 Cowen, Rep. 254; 2 Peak. N. P. C. 106; 1 John. R. 498; 12 S. & R. 284; 8 Wend. 598.

3. An accomplice, admitted to give evidence against his associates in guilt, is bound to make a full and fair confession of the whole truth respecting the subject-matter of the prosecution; but he is not bound to answer with respect to his share in other offences, in which he was not concerned with the prisoner. 9 Cowen, R. 721, note (a); 2 Carr. & Payne, 411. Vide Disgrace,; Witness;

CRIMINATOIN. The act by which a party accused, is proved to be guilty.

2. It is a rule, founded in common sense, that no one is bound to criminate himself. A witness may refuse to answer a question, when the answer would criminate him, and subject him to punishment. And a party in equity is not bound to answer a bill, when

the answer would form a step in the prosecution. Coop. Eq. Pl. 204; Mitf. Eq. Pl. by Jeremy, 194; Story, Eq,. Pl. 591; 14 Ves. 59.

CRITICISM. The art of judging skilfully of the merits or beauties, defects or faults of a literary or scientific performance, or of a production of art; when the criticism is reduced to writing, the writing itself is called a criticism.

2. Liberty of criticism must be allowed, or there would be neither purity of taste nor of morals. Fair discussion, is essentially necessary to, the truth of history and advancement of scienc. That publication therefore, is not a libel, which has for its object, not to injure the reputation of an individual, but to correct misrepresentations of facts, to refute sophistical reasoning, to expose a vicious taste for literature, or to censure what is hostile to morality. Campb. R. 351-2. As every man who publishes a book commits himself to the judgment of the public, any one may comment on his performance. If the commentator does not step aside from the work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. And the critic does a good service to the public who writes down any vapid or useless publication such as ought never to have appeared; and, although the author may suffer a loss from it, the law does nto conisder such loss an injury; because it is a loss which the party ought to sustain. It is the loss of fame and profit, to which he was never entitled. 1 Campb. R. 358, n. See 1 Esp. N. P. Cas. 28; 2 Stark. Cas. 73; 4 Bing. N. S. 92; S. C. 3 Scott, 340;. 1 M. & M. 44; 1 M. & M. 187; Cooke on Def. 52.

CROFT, obsolete. A little close adjioning to a dwelling-house, and enclosed for pasture or arable, or any particular use. Jacob's Law Dict.

CROP. This word is nearly synonymous with emblements. (q. v.),

2. As between the landlord and tenant, the former has a lien; in some of -the states, upon the crop for the rent, for a limited time, and, if sold on an execution against the tenant, the purchaser succeds to the liability of the tenant, for rent and good hushandry, and the crop is still liable to be distrained. Tenn. St. 1825, c. 21; Misso. St. 377; Del. St. 1829, 366; 1 N. J. R. C. 187; Atk. Dig. 357; 1 N. Y. R. S. 746; 1 Ky. R. L. 639; 5 Watts, R. 134; 41 Griff. Reg. 671, 404; 1 Hill. Ab. 148, 9; 5 Penn. St. R. 211.

3. A crop is not considered is a part of the real estate, so as to make a sale of it void, when the contract has not been reduced to writing, within the statute of frauds. 11 East, 362; 2 M. & S. 205; 5 B. & C. 829; 10 Ad. & El. 753; 9 B. & C. 561; but see 9 M. & W. 501.

4. If a hushand sow land and die, and the land which was sown is assigned to the wife for her dower, she shall have the corn, and not the executors of the hushand. Inst. 81.

CROPPER, contracts. One who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. 2 Rawle, R. 12.

CROSS. contracts. A mark made by persons who are unable to write, instead of their names.

2. When properly attested, and proved to have been made by the party whose name is written with the mark, it is generally admitted as evidence of the party's signature.

CROSS ACTION. An action by a defendant in an action, against the plaiutiff in the same action, upon the same contract, or for the same tort; as, if Peter bring an action of trespass against Paul, and Paul bring another action of trespass against Peter, the subject of the dispute being an assault and battery, it is evident that Paul could not set off the assault committed upon him by Peter, in the action which Peter, had brought against him; therefore the cross action became necessary.

CROSS BILLS, practice. When an individual prosecutes a bill of indictment against another, and hte defendant procures another bill to be found against the first prosecutor, the bills so found by the grand jury are called corss bills. The most usually occur in cases of assault and battery.

2. In chancery practice it is not unusual for parties to file cross bills. Vide Bill, cross.

CROSS-EXAMINATION, practice. The examination of a witness, by the party who did not call him, upon matters to which he has been examined in chief.

2. Every party has a right to cross-examine a witness produced by his antagonist, in order to test whether the witness has the knowledge of the things he testifies and if, upon examination, it is found that the witness had the means and ability to ascertain the facts about which he testifies, then his memory, his motives, everything may be scrutinized by the cross- examination.

3. In cross-examinations a great latitude is allowed in the mode of putting questions, and the counsel may put leading questions. (q. v.) Vide further on this subject, and for some rules which limit the abuse of this right, 1 Stark. Ev,. 96; 1 Phil. Ev. 210; 6 Watts & Serg. 75.

4. The object of a cross-examination is to sift the evidence, and try the credibility of a witness who has been called and given evidence in chief. It is one of the principal

tests which the law has devised for the ascertainment of truth, and it is certainly one of the most efficacious. By this means the situation of the witness, with respect to the parties and the subject of litigation, his interest, his motives, his inclinations and his prejudices, his means of obtaining a correct and certain knowledge of the facts to which he testifies the manner in which he has used those means, his powers of discerning the facts in the first instance, and of his capacity in retaining and describing them, are fully investigated and ascertained. The witness, however artful he may be, will seldom be able to elude the keen perception of an intelligent court or jury, unless indeed his story be founded on truth. When false, he will be liable to detection at every step. 1 Stark. Ev. 96; 1 Phil. Ev. 227; Fortese. Rep. Pref. 2 to 4; Vaugh. R. 143.

5. In order to entitle a party to a cross-examination, the witness must have been sworn and examined; for, even if the witness be asked a question in chief, yet if he mahe no answer, the opponent has no right to cross-examine. 1 Cr. M. & Ros. 95; 1 16 S. & R. 77; Rosc. Cr. Ev. 128; 3 Car. & P. 16; S. C. 14 E. C. L. Rep. 189; 3 Bouv. Inst. n. 3217. Formerly, however, the rule seems to have been different. 1 Phil. Ev. 211.

6. A cross-examination of a witness is not always necessary or advisable. A witness tells the truth wholly or partially, or he tells a falsebood. If he tells the whole truth, a cross-examination may have the effect of rendering his testimony more circumstantial, and impressing the jury with a stronger opinion of its truth. If he tells only a part of the truth, and the part omitted is favorable to the client of the counsel cross-exaimining, he should direct the attention of the witness to the matters omitted. If the testimony of the witness be false, the whole force of the cross-examination should be directed to his credibility. This is done by questioning him as to his means of knowledge, his disinterestedness, and other matters calculated to show a want of integrity or veracity, if there is reason to believe the witness prejudiced, partial, or wilfully dishonest. Arch. Crim. Pl. 111. See Credible Witness.

CROWN. A covering for the head, commonly used by kings; figuratively, it signifies royal authority. By pleas of the crown, are understood criminal actions.

CRUELTY. This word has different meanings, as it is applicd to different things. Cruelty may be, 1. From hushand towards the wife, or vice versa. 2. From superior towards inferior, 3. From master towards slave. 4. To animals. These will be separately considered.

2. - 1. Between hushand and wife, those acts which affect the life, the health, or even the comfort of the party aggrieved, and give a reasonable apprehension of bodily hurt, are called cruelty. What merely wounds the feelings is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil

attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; 17 Conn. 189; a fortiori, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessaries, is not cruelty. The negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. 1 Hagg. R. 35; S. C. 4 Eccles. R. 311, 312; 2 Hagg. Suppl. 1; S. C. 4 Eccles. R. 238; 1 McCord's Ch. R. 205; 2 J. J. Marsh. R. 324; 2 Chit. Pr. 461, 489; Poynt. on Mar. & Div. c. 15, p. 208; Shelf. on Mar. & Div. 425; 1 Hagg. Cons. R. 37, 458; 2 Ragg. Cons. Rep. 154; 1 Phillim. 111, 132; 8 N H. Rep. 307; 3 Mass. 321; 4 Mass. 487. It is to be remarked that exhibitions of passion and gusts of anger, which would be sufficient to create irreconcilable hatred between persons educated and trained to respect each other's feelings, would, with persons of coarse manners and habits, have but a momentary effect. An act which towards the latter would cause but a momentary difference, would with the former, be excessive cruelty. 1 Briand Med. Leg. 1 ere part. c. 2, art. 3.

3. - 2. Cruelty towards weak and helpless persons takes place where a party bound to provide for and protect them, either abuses them by whipping them unnecessarily, or by neglecting to provide for them those necessaries which their helpless condition requires. To expose a person of tender years, under a party's care, to the inclemency of the weather; 2 Campb. 650; or to keep such a child, unable to provide for himself, without adequate food; 1 Leach, 137; Russ. & Ry. 20 or an overseer neglecting to provide food and medical care to a pauper having urgent and immediate occasion for them; Russ. & Ry. 46, 47, 48; are examples of this species of cruelty.

4. - 3. By the civil code of Louisiana, art. 192, it is enacted, that when the master shall be convicted of cruel treatment of his slave, the judge may pronounce, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which his master has abused.

5. - 4. Cruelty to animals is an indictable offence. A defendant was convicted of a misdemeanor for tying the tongue of a calf so near the root as to prevent its sucking, in order to sell the cow at a greater price, by giving to her udder the appearance of being full of milk, while affording the calf all he needed. 6 Rogers, City Hall Rec. 62. A man may be indicted for cruelly beating his horse. 3 Rogers, City Rec. 191.

CRUISE, mar. law. A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail through any particular track of the sea, at a certain season of the year the region in which these cruises are performed is usually termed the rendezvous or cruising latitude.

2. When the ships employed for this purpose, which are accordingly called cruisers, have arrived at the destined station, they traverse the sea, backwards and forwards, under an easy sail, and within a limited space, conjectured to be in the track of their expected adversaries. Wesk. Ins. h. t.; Lex Merc. Rediv. 271, 284; Dougl. 11. 509; Park. Ins. 58; Marsh. Ins. 196, 199, 520; 2 Gallis. 268.

CRY DE PAYS, OR CRI DE PAIS. Literally, cry of the country. In England, when a felony has been committed, hue and cry (q. v.) may be raised by the country, in the absence of the constable. It is then cry de pays. 2 Hale, P. C. 100.

CRYER, practice. An officer in a court whose duty it is to make various proclamations ordered by the court.

CUEILLETTE. A term in French maritime law. Affreightment of a vessel a cueillette, is a contract by which the captain obligates himself to receive a partial cargo, only upon condition that he shall succeed in completing his cargo by other partial lading; that is, by gathering it (en recueillant) wherever he may be able to find it. If he fails to collect a cargo, such partial charterin is void. Code de Com. par M. Fournel, art. 286, n.

CUI ANTE DIVORTIUM. The name of an ancient writ, which was issued in favor of a woman divorced from her hushand, to recover the lands and tenements which she had in fee simple, or in tail, or for life, from him to whom her hushand alienated them during the marriage, when she could not gainsay it. F. N. B. 240. Vide Sur cui ante divortium.

CUI IN VITA. The name of a writ of entry for a widow against a person to whom the hushand had, in his lifetime, aliened the lands of the wife. F. N. B. 193. This writ was founded sometimes on the stat. 13 Ed. 1. c. 3, and sometimes on the common law. The object of this statute, was to enable the wife to avoid a judgment to recover her land which had been rendered on the default or confession of her hushand. It is now of no use in England, because the stat. 32 H. VIII. c. 28, 6, provides that no act of the hushand, whether fine, feoffment, or other act of the hushand during coverture, shall prejudice the wife. Both these statutes are reported as in force in Pennsylvania. 3 Bin. Appx. See Booth on Real Actions, 186; 6 Rep. 8, 9, Forrers' Case. Still, that part of the stat. 13 Ed. I. c. 8, which relates to the pleadings and evidence iu such cases is important if it can be enforced in the modern action of ejectment, viz: that which requires the tenant of the lands to show his right according to the form of the writ he sued out against the hushand. See Report of the Commissioners to revise the Civil Code of Pennsylvania, Jan. 16, 1835, pp. 90, 91.

CUL DE SAC. This is a French phrase, which signifies, literally, the bottom of a bag, and, figuratively, a street not open at both ends. It seems not to be settled whether a cul de sac is to be considered a highway. See 1 Campb. R. 260; 11 East, R. 376, note; 5 Taunt. R. 137; 5 B. & Ald. 456; Hawk. P. C. b. 1, c. 76, s. 1 Dig. lib. 50, tit. 16, l. 43; Dig. lib. 43, t. 12, l. 13; Dig. lib. 47, tit. 10, 1. 15, 7.

CULPA. A fault committed without fraud, and this distinguishes it from dolus, which is a trick to deceive. See Dolus.

CULPRIT, crim. law. When a prisoner is arraigned, and he pleads not guilty, in the English practice, the clerk, who arraigns him on behalf of the crown, replies that the prisoner is guilty, and that he is ready to prove the accusation; this is done by two monosyllables, cul. prit. Vide Abbreviations; 4 Bl. Com. 339; 1 Chit. Cr. Law, 416.

CUM PERTINENTIS. With the appurtenances. See Appurtenances.

CUM ONERE. This term is usually employed to show that something is taken, subject to a charge or burden.

CUM TESTAMENTO ANNEXO. With the testament or will annexed. It often happens that the deceased, although he makes a will, appoints no executor, or else the appointment fails; in either of which events he is said to die quasi intestatus. 2 Inst. 397. The appointment of an executor fails, 1st. When the person appointed refuses to act. 2d. When the person appointed dies before the testator, or before he has proved the will, or when, from any other legal cause, he is incapable of acting. 3d. When the executor dies intestate, (and in some places, as in Pennsylvania, whether he die testate or intestate,) after having proved the will, but before he has administered all the personal estate of the deceased. In all these cases, as well as when no executor has been appointed, administration, with the will annexed, must be granted by the proper officer. In the case where the goods are, not all administered before the death of the executor, the administration is also called an administration de bonis non.

2. The office of such an an administrator differs little from that of an executor. Vide Com. Dig. Administration; Will. Ex. p. 1, b. 5, c. 3, s. 1; 2 Bl. Com. 504-5; 11 Vin. Ab. 78; Toll. 92 Gord. Law of Deced. 98.

CUMULATIVE. Forming a heap; additional; as, cumulative evidence, or that which goes to prove the same point which has been established by other evidence. Cumulative legacy, or accumulative legacy, is a second bequest, given by the same testator to the same legatee. 2 Rop. Log. 19,. See 1 Saund. 134, n. 4; Remedy.

CUMULATIVE LEGACY. Vide Legacy accumulative; and 8 Vin. Ab. 308 1 Supp. to Ves. jr. 133, 282, 332.

CURATE, eccl. Iaw. One who represents the incumbent of a church, person, or20 vicar, and tades care of the church, and performs divine service in his stead.

CURATOR, persons, contracts. One who has been legally appointed to take care of the interests of one who, on account of his youth, or defect of his understanding, or for some other cause, is unable to attend to them himself.

2. There are curators ad bona, of property, who administer the estate of a minor, take care of his person, and intervene in all his contracts; curators ad litem, of suits, who assist the minor in courts of justice, and act as curator ad bona in cases where the interests of the curator are opposed to the interests of the minor. Civ. Code of Louis. art. 357 to 366. There are also curators of insane persons Id. art. 31; and of vacant successions and absent heirs. Id. art. 1105 to 1125.

3. The term curator is usually employed in the civil law, for that of guardian.

CURATORSHIP, offices, contracts, in the civil law. The power given by authority of law, to one or more persons, to administer the property of an individual who is unable to take care of his owu estate and affairs, either on account of his absence without an authorized agent, or in consequence of his prodigality, or want of mind. Poth. Tr. des Personnes, t. 6, s. 5. As to the laws of Louisiana, which authorize a curatorship, vide Civ. Code, art. 31, 50, et seq. 357, et seq.; 382, 1105, et seq.

2. Curatorship differs from tutorship, (q. v.) in this, that the latter is instituted for the protection of property in the first place, and, secondly, of the person; while the former is intended to protect, first, the person, and, secondly, the property. 1 Lecons Elem. du Droit Civ. Rom. 241.

CURATRIX. A woman who has been appointed to the office of curator.

CURE. A restoration to health.

2. A person who had quitted the habit of drunkenness for the space of nine months, in consequece of medicines he had taken, and who had lost his appetite for ardent spirits, was held to have been cured. 7 Yerg. R. 146.

3. In a figurative sense, to cure is to remedy any defect; as, an informal statement of the plaintiff's cause of action in his declaration is cured by verdict, provided it be substantially stated.

CURFEW. The name of a law, established during the reign of the English king, William, the conquerer, by which the people were commanded to dispense with fire and candle at eight o'clock at night. It was abolished in the reign of Henry I., but afterwards it signified the time at which the curfew formerly took place. The word curfew is derived, probably, from couvre few, or cover fire. 4 Bl. Com. 419, 420.

CURIA. A court of justice.

CURIA CLAUDENDA, WRIT DE, Eng. law. The name of a writ, used to compel a party to enclose his land. F. N. B. 297.

CURIA ADVISARE VULT, practice. The court will consider the matter. This entry is made on the record when the court wish to take time to consider of a case before they give a final judgment, which is made by an abbreviation, cur. ad vult, for the purpose of marking the continuance. In the technical sense, it is a continuance of the cause to another term.

CURIA REGIS. An English court, which assumed this name, during the reign of Henry II. It was Curia or Aula Regis, because it was held in the g reat hall of the king's palace; and where the king, for some time, administered justice in person. But afterwards, the judicial power was more properly entrusted to the king's judges. The judges who sat in this court were distinguished by the name of justices, or justiciaries. Besides these, the chief justiciary, the stewart of all England, the chancellor, the chamberlain, and the treasurer, also took part in the judicial proceedings of this court.

CURIALITY, Scotch law. The same as courtesy. (q. v.) 1 Bell's Com. 61.

CURRENCY. The money which passes, at a fixed value, from hand to hand; money which is authorized by law.

2. By art. 1, s. 8, the Constitution of the United States authorizes congress "to coin money, and to regulate the value thereof." Changes in the currency ought not to be made but for the most urgent reason, as they unsettle commerce, both at home and abroad. Suppose Peter contracts to pay Paul one thousand dollars in six months - the dollar of a certain fineness of silver, weighing one hundred and twelve and a half grains - and afterwards, before the money becomes due, the value of the dollar is changed, and it weighs now but fifty-six and a quarter grains; will one thousand of the new dollars pay the old debt? Different opinion may be entertained, but it seems that such payment would be complete; because, 1. The creditor is bound to receive the public currency; and, 2. He is bound to receive it at its legal value. 6 Duverg. n. 174.

CURRENT, merc. law. A term used to express present time; the current month; i.e. the present month. Price current, is the ordinary price at the time spoken of. A printed paper, containing such prices, is also called a price current.

2. Current, in another sense, signifies that which is readily received; as, current money.

CURSITOR BARON, Eng. law. An officer of the court of the exchequer, who is appointed by patent under the great seal, to be one of the barons of the exchequer.

CURTESY, or COURTESY, Scotch law. A life-rent given by law to the surviving hushand, of all his wife's heritage of which she died infeft, if there was a child of the marriage born alive. The child born of the marriage must be the mother's heir. If she had a child by a former marriage, who is to succeed to her estate, the hushand has no right to the curtesy while such child is alive; so that the curtesy is due to the hushand rather as father to the heir, than as hushand to an heiress, conformable to the Roman law, which gives to the father the usufruct of what the child succeeds to by the mother. Ersk. Pr. L. Scot. B. 2, t. 9, s. 30. Vide Estate by the curtesy.

CURTILAGE, estates. The open space situated within a common enclosure belonging to a dwelling-house. Vide 2 Roll, Ab. 1, l. 30; Com. dig. Grant, E 7, E 9; Russ. & Ry. 360; Id. 334, 357; Ry & Mood. 13; 2 Leach, 913; 2 Bos. & Pull. 508; 2 East, P. C. 494; Russ. & Ry. 170, 289, 322; 22 Eng. Com. Law R. 330; 1 Ch. Pr. 175; Shep. Touchs. 94.

CUSTODY. The detainer of a person by virtue of a lawful authority. To be in custody, is to be lawfully detained under arrest. Vide 14 Vin. Ab. 359; 3 Chit. Pr. 355. In another sense, custody signifies having the care and possession of a thing; as, the chancellor is entitled to the custody as the keeper of the seal.

CUSTOM. A usage which had acquired the force of law. It is, in fact, a lex loci, which regulates all local or real property within its limits. A repugnancy which destroys it, must be such as to show it never did exist. 5 T. R. 414. In Pennsylvania no customs have the force of law but those which prevail throughout the state. 6 Binn. 419, 20.

2. A custom derives its force from the tacit consent of the legislature and the people, and supposes an original, actual deed or agreement. 2 Bl. Com. 30, 31; 1 Chit. Pr. 283. Therefore, custom is the best interpreter of laws: optima est legum interpres consuetudo. Dig. 1, 8, 37; 2 Inst. 18. It follows, therefore, there; can be no custom in relation to a matter regulated by law. 8 M. R. 309. Law cannot be established or abrogated except by the sovereign will, but this will may be express or implied and

presumed and whether it manifests itself by word or by a series of facts, is of little importance. When a custom is public, peaceable, uniform, general, continued, reasonable and certain, and has lasted "time whereof the memory of man runneth not to the contrary," it acquires the force of law. And when any doubts arise as to the meaning of a statute, the custom which has prevailed on the subject ought to have weight in its construction, for the manner in which a law has always been executed is one of its modes of interpretation. 4 Penn. St. Rep. 13.

3. Customs are general or, particular customs. 1. By general customs is meant the common law itself, by which proceedings and determinations in courts are guided.

2. Particular customs, are those which affect the inhabitants of some particular districts only. 1 Bl. Com. 68, 74. Vide 1 Bouv. Inst. n. 121 Bac. Ab. h. t.; 1 Bl. Com. 76; 2 Bl. Com. 31; 1 Lill. Reg. 516; 7 Vin. Ab. 164; Com. Dig. h. t.; Nelson's Ab. h. t. the various Amer. Digs. h. t. Ayl. Pand. 15, 16; Ayl. Pareg. 194; Doct. Pl. 201; 3 W. C. C. R. 150; 1 Gilp. 486; Pet. C. C. R. 220; I Edw. Ch. R. 146; 1 Gall. R. 443; 3 Watts, R. 178; 1 Rep. Const. Ct. 303, 308; 1 Caines, R. 45; 15 Mass. R. 433; 1 Hill, R. 270; Wright, R. 573; 1 N. & M. 176; 5 Binn. R. 287; 5 Ham. R. 436; 3 Conn. R. 9; 2 Pet. R. 148; 6 Pet. R. 715; 6 Porter R. 123; 2 N. H. Rep. 93; 1 Hall, R. 612; 1 Harr. & Gill, 239; 1 N. S. 192; 4 L. R. 160; 7 L. R. 529; Id. 215.

CUSTOM OF MERCHANTS, lex mercatoria. A system of customs acknowledged and taken notice of by all nations, and are, therefore, a part of the general law of the land. See Law merchant, and 1 Chit. Bl. 76, note 9.

CUSTOM-HOUSE. A place appointed by law, in ports of entry, where importers of goods, wares and merchandise are bound to enter the same, in order to pay or secure the duties or customs due to the government.

CUSTOMARY RIGHTS. Rights which are acquired by custom. They differ from prescriptive rights in this, that the former are local usages, belonging to all the inhabitants of a particular place or district - the latter are rights of individuals, independent of the place of their residence. Best on Pres. 79; Cruise, Dig. t. 31, c. 1, 7; 2 Greenl. Evi 542.

CUSTOMS. This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. Story, Const. 949; Bac. Ab. Smuggling. CUSTOS ROTULORUM, Eng. law. The principal justice of the peace of a county, who is the keeper of the records of the county. 1 Bl. Com. 349.

TO CUT, crim. law. To wound with an instrument having a sharp edge. 1 Russ. on Cr. 577. Vide To Stab; Wound.

CY PRES, construction. These are old French words, which signify "as near as."

2. In cases where a perpetuity is attempted in a will, the courts do not, if they can avoid it, construe the devise to be utterly void, but expound the will in such a manner as to carry the testator's intentions into effect, as far as the rules respecting perpetuities will allow; this is called construction cy pres. When the perpetuity is attempted in a deed, all the Iimitations are totally void. Cruise, Dig. t. 38, c. 9, s. 34; and vide 1 Vern. 250; 2 Ves. Jr. 380, 336, 357, 364; 3 Ves. Jr. 141, 220; 4 Ves. 13; Com. Dig. Condition, L. 1; 1 Rop. Leg. 514; Swinb. pt. 4, s. 7, a. 4; Dane's Ab. Index, h. t.; Toull. Dr. Civ. Fr. liv. 3, t. 3, n. 586, 595, 611; Domat, Loix Civ. liv. 6. t. 2, s. 1; 1 Supp. to Ves. Jr. 134, 259, 317; 2 Id. 316,473; Boyle on Charities, Index, h. t.; Shelford on Mortmain, Index, h. t.; 3 Bro. C. C. 166; 2 Bro. C. C. 492; 4 Wheat. R. 1; S. C. 3 Peters, R. App. 481; 3 Peters, R. 99; 15 Ves., 232; 2 Sto. Eq. Jur. 1169.

CZAR. A title of honor which is assumed by the emperor of all the Russias. See Autocracy.

CZARINA. The title of the empress of Russia.

CZAROWITZ.. The title of the eldest son of the czar and czarina of Russia.

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Bouvier's Law Dictionary
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D

DAM. A construction of wood, stone, or other materials, made across a stream of water for the purpose of confining it; a mole.

2. The owner of a stream not navigable, may erect a dam across it, and employ the water in any reasonable manner, either for his use or pleasure, so as not to destroy or render useless, materially diminish, or affect the application of the water by the proprietors below on the stream. He must not shut the gates of his dams and detain the water unreasonably, nor let it off in unusual quantities to the annoyance of his neighbors. 4 Dall. 211; 3 Caines, 207; 13 Mass. 420; 3 Pick, 268; 2 N. H. Rep. 532; 17 John. 306; 3 John. Ch. Rep. 282; 3 Rawle, 256; 2 Conn. Rep. 584; 5 Pick. 199; 20 John. 90; 1 Pick. 180; 4 Id. 460; 2 Binn. 475; 14 Srrg. & Rawle, 71; Id. 9; 13 John. 212; 1 McCord, 580; 3 N. H. Rep. 321; 1 Halst. R. 1; 3 Kents Com. 354.

3. When one side of the stream is owned by one person and the other by another, neither, without the eonsent of the other, can build a dam which extends beyond the filum aqua, thread of the river, without committing a trespass. Cro. Eliz. 269; 12 Mass. 211; Ang. on W. C. 14, 104, 141; vide Lois des Bat. P. 1, c. 3, s. 1, a. 3; Poth. Traite du Contrat de Societe, second app. 236; Hill. Ab. Index, h. t.; 7 Cowen, R. 266; 2 Watts, R. 327; 3 Rawle, R. 90; 17 Mass. R. 289; 5 Pick. R. 175; 4 Mass. R. 401. Vide Inundation.

DAMAGE, torts. The loss caused by one person to another, or to his property, either with the design of injuring him, with negligence and carelessness, or by inevitable accident.

2. He who has caused the damage is bound to repair it and, if he has done it maliciousiy, he may be. compelled to pay beyond the actual loss. When damage occurs by accident, without blame to anyone, the loss is borne by the owner of the thing injured; as, if a horse run away with his rider, without any fault of the latter, and injure the property of another person, the injury is the loss of the owner of the thing. When the damage happens by the act of God, or inevitable accident, as by tempest, earthquake or other natural cause, the loss must be borne by the owner. Vide Com. Dig. h. t.; Sayer on Damages.

3. Pothier defines damage (dommiges et interets) to be the loss which some one has sustained, and the gain which he has failed of making. Obl. n. 159.

DAMAGE FEASANT, torts. This is a corruption of the French words faisant dommage, and signifies doing damage. This term is usually applied to the injury which animals belonging to one person do upon the land of another, by feeding there, treading down his grass, corn, or other production of the earth. 3 Bl. Com. 6; Co. Litt. 142, 161; Com. Dig. Pleader, 3 M 26. By the common law, a distress of animals or things damage feasant is allowed. Cow. Inst. 230; Gilb. on Distress and Replevin, 21. It was also allowed by the ancient customs of France. 11 Toull. 402 Repertoire de Jurisprudence, Merlin, au mot Fourriere; 1 Fournel, Traits de Voisinage, au mot Abandon. Vide Animals.

DAMAGED GOODS. In the language of the customs, are goods subject to duties, which have received some injury either in the voyage home, or while bonded in warehouses. See Abatement, merc. law.

DAMAGES, practice. The indemnity given by law, to be recovered from a wrong doer by the person who has sustained an injury, either in his person, property, or relative rights, in consequence of the acts of another.

2. Damages are given either for breaches of contracts, or for tortious acts.

3. Damages for breach of contract may be given, for example, for the non-performance of a written or verbal agreement; or of a covenant to do or not to do a particular thing.

4. As to the measure of damages the general rule is that the delinquent shall answer for all the injury which results from the immediate and direct breach of his agreement, but not from secondary and remote consequences.

5. In cases of an eviction, on covenant of seisin and warranty, the rule seems to be to allow the consideration money, withinterest and costs. 6 Watts & Serg. 527; 2 Dev. R. 30; 3 Brev. R. 458. See 7 Shepl. 260; 4 Dev. 46. But in Massachusetts, on the covenant of warranty, the measure of damages is the value of the land at the time of eviction. 4 Kent's Com. 462, 3, and the cases there cited; 3 Mass. 523; 4 Mass. 108; 1 Bay, 19, 265; 3 Desaus. Eq. R. 247; 4 Penn. St. R. 168.

6. In estimating the measure of damages sustained in consequence of the acts of a common carrier, it frequently becomes a question whether the value of the goods at the place of embarkation or the port of destination is the rule to establish the damages sustained. It has been ruled that the value at the port of destination is the proper criterion. 12 S. & R. 186;. 8 John. R. 213; 10 John. R. 1; 14 John. R. 170; 15 John. R. 24. But contrary decisions have taken place. 3 Caines, R. 219 4 Hayw. R. 112; and see 4 Mass. R. 115; 1 T. R. 31; 4 T. R. 582.

7. Damages for tortious acts are given for acts against the person, as an assault and battery against the reputation, as libels and slander, against the property, as trespass, when force is used; or for the consequential acts of the tort-feasor, as, when a man, in consequence of building a dam on his own premises, overflows his neighbor's land; or against the relative rights of the party injured, as for criminal conversation with his wife.

8. No settled rule or line of distinction can be marked out when a possibility of damages shall be accounted too remote to entitle a party to claim a recompense: each case must be ruled by its own circumstances. Ham. N. P. 40; Kames on Eq. 73, 74. Vide 7 Vin. Ab. 247; Yelv. 45, a; Id. 176, a; Bac. Ab. h. t.; 1 Lilly's Reg. 525; Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 2 Saund. 107, note; 1 Rawle's Rep. 27; Coop. Just. 606; Com. Dig. 11. t.; Bouv. Inst. Index, h. t. See, Cause; Remote.

9. Damages for torts are either compensatory or vindictive. By compensatory damages is meant such as are given morely to recompense a party who has sustained a loss in consequence of the acts of the defendant, and where there are no circumstances to aggravate the act, for the purpose of compensating the plaintiff for his loss; as, for example, Where the defendant had caused to be seized, property of A for the debt of B, when such property was out of A's possession, and there appeared reason to believe it was B's. Vindictive damages are such as are given against a defendant, who, in addition to the trespass, has been guilty of acts of outrage and wrong which cannot well be measured by a compensation in money; as, for example, where the defendant went to A's bouse, and with insult and outrage seized upon A's property, for a debt due by B, and carried it away, leaving A's family in distress. Sedgw. on Dam. 39; 2 Greenl. Ev. §253; 1 GIllis. 483; 12 Conn. 580; 2 M. & S. 77; 4 S. & R. 19; 5 Watts, 375; 5 Watts & S. 524; 1 P. S. R. 190, 197.

10. In cases of loss of which have been insured from maritime dangers, when an adjustment is made, the damages are settled by valuing the property, not according to prime cost, but at the price at which it may be sold at the time of settlling the average. Marsh. Inst. B. 1, c. 14, s. 2, p. 621. See Adjustment; Price.

DAMAGES, EXCESSIVE. Such damages as are unreasonably great, and not warranted by law.

2. The damages are excessive in the following cases: 1. When they are gre-ater than is demanded by the writ and declaration. 6 Call 85; 7 Wend. 330. 2. When they are greater than is authorized by the rules and principles of law, as in the case of actions upon contracts, or for torts done to property, the value of which may be ascertained by evidence. 4 Mass. 14; 5 Mass. 435; 6 Halst. 284.

3. But in actions for torts to the person or reputation of the plaintiff, the damages will not be considered excessive unless they are outrageous. 2 A. K. Marsh 365; Hard. 586; 3 Dana, 464; 2 Pick. 113; 7 Pick. 82; 9 John. 45; 10 John. 443; 4 Mass. 1; 9 Pick. 11; 2 Penn. 578.

4. When the damages are excessive, a new trial will be granted on that ground.

DAMAGES INADEQUATE. Such as are unreasonably low, and less than is required by law.

2. Damages are inadequate, when the plaintiff sues for a breach of contract, and the damages given are less than the amount proved. 9 Pick. 11.

3. In actions for torts, the smallness of damages cannot be considered by the court. 3 Bibb, 34. See 11 Mass. 150.

4. In a proper case, a new trial will be granted on the ground of inadequate damages.

DAMAGES ON BILLS OF EXCHANGE, contracts. A penalty affixed by law to the non-payment of a bill of exchange when it is not paid at maturity, which the parties to it are obliged to pay to the holder.

2. The discordant and shifting regulaaions on this subject which have been enacted in the several states, render it almost impossible to give a correct view of this subject. The drawer of a bill of exchange may limit the amount of damages by making a memorandum in the bill, that they shall be a definite sum; as, for example, "In case of non-acceptance or non-payment, reexchange and expenses not to exceed _____ dollars. 1 Bouv. Inst. n. 1133. The following abstract of the laws of several of the United States, will be acceptable to the commercial lawyer.

3. - Alabama. 1. When drawn on a person in the United States. By the Act of January 15, 1828, the damages on a protested bill of exchange drawn on a person, either in this or any other of the United States, are ten per cent. By the Act of December 21, 1832, the damages on such bills drawn on any person in this state, or upon any person payable in New Orleans, and purchased by the Bank of Alabama or its branches, are five per cent.

4. - 2. Damages on protested bills drawn on on person out of the United States are twenty per cent.

5. - Arkansus. 1. It is provided by the Act of February 28, 1838, s. 7, Ark. Rev. Stat. 150, that "every bill of exchange expressed to be for value received, drawn or

negotiated within this state, payable after date, to order or bearer, which shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, shall be subject to damages in the following cases: first, if the bill have been drawn on any person at any place within this state, at the rate of two per centum on the principal sum specified in the bill; second, if the bill shall be drawn on any person, and payable in any of the states of Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, or any point on the Ohio river, at the rate of four per centum on the principal sum in such bill specified: third, if the bill shall have been drawn on auy person, and payable at any place within the Iimits of the United States, not hereinbefore expressed, at the rate of five per centum on the principal sum specified in the bill: fourth, if the bill shall have been drawn on any person, and payable at any point or place beyond the limits of the United States, at the rate of ten per centum on the sum specified in the bill.

6. - 2. And by the 8th section of the same act, if any bill of exchange expressed to be for value received, and made payable to order or bearer, shall be drawn on any person at any place within this state, and accepted and protested for non-payment, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases: first, if the bill be drawn by any person at any place within this sate, at the rate of two per centum on the principal sum therein specified: second, if the bill be drawn at any place without this state, but within the limits of the United States, at teh rate of six per centum on the sum therein specified: third, if the bill be drawn on any person at any place without the limites of the United Sates, at the rate of ten per centum on the sum therein specified. And, by sect 9, in addition to the damages allowed inthe two preceding sections to the holder of any bill of exchange protested for non-payment or nonacceptance, he shall be entitled to costs of protest, and interest at the rate of ten per centum per annum, on the amount specified in the bill, from the date of teh protest until the amount of the bill shall be paid."

7. - Connecticut. 1. When drawn on another place in the United States. When drawn upon persons in the city of New York, two per cent. When in other parts of the state of New York, or the New England states (other than this,) New Jersey, Pennsylvania, Delaware, maryland, Virginia, or the District of Columbia, three per cent. When on persons in North or South Carolina, Georgia, or Ohio, five per cent. On other states, territories or districts, in the United States, eight per cent, on the principal sum in each case, with interest on the amount of such sum, with the damage after notice and demand. Stat. tit. 71, Notes and Bills, 413, 414. When drawn on persons residing in Connecticut no damages are allowed.

8. - 2. When the bill is drawn on person out of the United States, twenty per cent is said to be the amount which ought reasonably to be allowed. Swift's Ev. 336. There is no statutory provision on the subject.

9. - Delaware. If any person shall draw or endorse any bill of exchange upon any person in Europe, or beyond seas, and the same shall be returned back unpaid, with a legal protest, the drawer there and all others concerned shall pay and discharge the contents of the said bill, together with twenty per cent advance f or the damage thereof; and so proportionably for a greater or less sum, in the sam specie as the same bill was drawn, or current money of this government equivalent to that which was first paid to the drawer or endorser.

10. - Georgia. 1. Bills on persons in the United States. First, in the state. No damages are allonved on protested bills of exchange drawn in the state, on a person in the state, except bank bills, on which the damages are ten per cent for refusal to pay in specie. 4 Laws of Geo. 75. Secondly, upon bills drawn or negotiated in the state on persons out of the state, but within the United States, five per cent, and interest. Act of 1823, Prince's Dig. 454; 4 Laws of Geo. 212.

11. - 2. When drawn upon a person out of the United States, ten per cent. damages and postage, protest and necessary expenses; also the premium, if any, on the face of the bill; but if at a discount, the discount must be deducted. Act of 1827, Prince's Dig. 462; 4 Laws of Geo. 221.

12. - Indiana. 1. When drawn by a person in the state on another person in Indiana, no damages are allowed.

13. - 2. When drawn on a person in another state, territory, or district, five per cent. 3. When drawn on a person out of the United States, ten percent. Rev. Code, c. 13, Feb. 17, 1838.

14. - Kentucky. 1. When drawn by a person in Kentucky on a person in the state, or in any other state, territory, or district of the United Stateg, no damages are allowed. See, Acts, Sessions of 1820, p. 823.

15. - 2. When on a person in a foreign country, damages are given at the rate of ten per cent. per ann. from the date of the bill until paid, but not more than eighteen months interest to be collected. 2 Litt. 101.

16. - Louisiana. The rate of damages to be allowed and paid upon the usual protest for non-acceptance, or for non-payment of bills of exchange, drawn or negotiated within this state in the following cases, is as follows: on all bills of exchange drawn on or payable in foreign countries, ten dollars upon the hundred upon the principal sum specified in such bills; on all bills of exchange, drawn on and payable in other states in the United States, five dollars upon the hundred upon the principal sum specified in such bill. Act of March 7, 1838, s. 1.

17. By the second section of the same act it is provided that such damages shall be in lieu of interest, charge of protest, and all other charges, incurred previous to the time of giving notice of non-acceptance or non-payment; but the principal and damages shall bear interest thereafter.

18. By section 3, it is enacted, that if the contents of such bill be expressed in the money of account of the United States, the amount of the principal and of the damages herein allowed for the non-acceptance or non-payment shall be ascertained and determined, without any reference to the rate of exchange existing between this state and the place on which such bill shall have been drawn, at the time of the payment, on notice of non-acceptance or non- payment.

19. - Maine. 1. When drawn payable in the United States. The damages in addition to the interest are as follows: if for one hundred dollars or more, and drawn, accepted, or endorsed in the state, at a place, seventy-five miles distant from the place where drawn, one per cent.; if, for any sum drawn, accepted, and endorsed in this state, and payable in New Hampshire, Vermont, Connecticut, Rhode Island, or New York, three per cent; if payable in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, or the District of Columbia, six per cent.; if payable in any other state, nine per cent. Rev. St. tit. 10 c. 115, §§110, 111.

20. - 2. Out of the United States, no statutory provision. It is the usage to allow the holder of the bill the money for which it was drawn, reduced to the currency of the state, at par, and also the charges of protest with American interest upon those sums from the time when the bill should have been paid and the further sum of one-tenth of the money for which the bill was drawn, with interest upon it from the time payment of the dishonored bill was demanded of the drawer. But nothing has been allowed for re-exchange, whether it is below or above par. Per Parsons, Ch. J. 6 Mass. 157, 161 see 6 Mass. 162.

21. Maryland. 1. No damages are allowed when the bill is drawn in the state on another person in Maryland.

22. - 2. When it is drawn on any "person, company, or society, or corporation in any other of the United States," eight per cent. damages on the amount of the bill are allowed, and an amount to purchase another bill, at the current exchange, and interest and losses of protest.

24. - 3. If the bill be drawn on a "foreign country," fifteen per cent. damages are allowed, and the expense of purchasing a new bill as above, besides interest and costs of protest. See Act of 1785, c. 88.

25. - Michigan. 1. When a bill is drawn in the state on a person in the state, no damages are allowed.

26. - 2. When drawn or endorsed within the state and payable out of it, within the United States, the rule is as follows: in addition to the contents of the bill, with interest and costs, if payable within the states of Wisconsin, Illinois, Indiana, Ohio, and New York, three per cent. on the contents of the bill if payable within the states of Missouri, Kentucky, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, or the District of Columbia, five per centum; if payable elsewhere in the United States, out of Michigan, ten per cent. Rev. St. 156, S. 10.

27. - 3. When the bill is drawn within this state, and payable out of the United States, the party liable must pay the same at the current rate of exchange at the time of demand of payment, and damages at the rate of five per cent. on the contents thereof, together with interest on the said contents, which must be computed, from the date of the protest, and are in full of all damages and charges and expenses. Rev. Stat. 156, s. 9.

28. - Mississippi. 1. When drawn on a person in the state, five per cent. damages are allowed. How. & Hutch. 376, ch. 35, s. 20, L. 1827; How. Rep. 3. 195.

29. - 2. When drawn on a person in another state or territory, no damages are given. Id. 3. When drawn on a person out of the United States, ten per cent. damages are given, and all charges incideutal thereto, with lawful interest. How. & Hutch. 376, ch. 35, s. 19, L. 1837.

30. - Missouri. 1. When drawn on a person within the state, four per cent. damages on the sum specified in the bill are given. Rev. Code, 1835, §8, cl. 1, p. 120.

31. - 2. When on another state or territory, ten per cent. Rev. Code, 1835, §8, cl. 2, p. 120. 3. When on a person out of the Unted States, twenty per cent. Rev. Code, 1835, §8, cl. 3, p. 120.

32. - New York. By the Revised Statutes, Laws of N. Y. sess. 42, ch. 34, it is provided that upon bills drawn or negotiated within the state upon any person, at any place within the six states east of New York, or in New Jersey, Pennsylvania, Ohio, Delaware, Maryland, Virginia, or the District of Columbia, the damages to be allowed and paid upon the usual protest for non-acceptance or non-payment, to the holder of the bill, as purchase thereof, or of some interest therin, for a valuable consideration, shall be three per cent. upon the principal sum specified in the bill; and upon any person at any place within the states of North Carolina, South Carolina, Georgia,

Kentucky, and Tennessee, five percent; and upon any person in any other state or territory of the United States, or at any other place on, or adjacent to, this continent, and north of the equator, or in any British or foreign possessions in the West Indies, or elsewhere in the Western Atlantic Ocean, or in Europe, ten per cent. The damages are to be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of, giving notice of non-acceptance or non-payment. But the holder will be entitled to demand and recover interest upon the aggregate amount of the principal sum specified in the bill, and the damages from time of notice of the protest for non-acceptance, or notice of a demand and protest for non-payment. If the contents of the bill be expressed in the money of account of the United States, the amount due thereon, and the damages allowed for the non-payment, are to be ascertained and determined, without reference to the rate of exchange existing between New York and the place on which the bill is drawn. But if the contents of the bills be expressed in the money of account or currency of any foreign. country, then the amount due, exclusive of the damages, is to be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

33. - Pennsylvania. The Act of March 30, 1821, entitled an act concerning bills of exchange, enacts, that, §1, "whenever any bill of exchange hereafter be drawn and endorsed within this commonwealth, upon any person or persons, or body corporate, of, or in any other state, territory, or place, shall be returned unpaid with a legal protest, the person or persons to whom the same shall or may be payable, shall be entitled to recover and receive of and from the drawer or drawers, or the endorser or endorsers of such bill of exchange, the damages hereinafter specified, over and above the principal sum for which such bill of exchange shall have been drawn, and the charges of protest, together with lawful interest on the amount of such principal sum, damages and charges of protest, from the time at which notice of said protest shall have been given, and the payment of said principal sum and damages, and charges of protest demanded; that is to say, if such bill shall have been drawn upon any person or persons, or body corporate, of, or in any of the United States or territories thereof, excepting the state of Louisiana, five per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in Louisiana, or of, or in any other state or place in North America, or the islands thereof, excepting the northwest coast of America and Mexico, or of, or in any of the West India or Bahama Islands, ten per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in the island of Madeira, the Canaries, the Azores, the Cape de Verde Islands, the Spanish Main, or Mexico, fifteen per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in any state or place in Europe, or any of the island's thereof, twenty per cent. upon such principal sum; if upon any person or

persons, or body corporate, of, or in any other part of the world, twenty-five per cent. upon such principal sum.

34. - §2. "The damages, which, by this act, are to be recovered upon any bill of exchange, shall be in lieu of interest and all other charges, except the charges of protest, to the time when notice of the protest and demand of psyment shall have been given and made, aforesaid; and the amount of such bill and of the damages payable thereon, as specified in this act, shall be ascertained and determined by the rate, of exchange, or value of the money or currency mentioned in such bill, at the time of notice of protest and demand of payment as before mentioned."

35. - Tennessee. 1. On a bill drawn or endorsed within the state upon any person or persons, or body corporate, of, or in, any other state, territory, or place, which shall be returned unpaid, with a legal protest, the holder shall be entitled to the damages hereinafter specified, over and above the principal sum for which such bill of exchange shall have been drawn, and the charge of protest, together with lawful interest on the amount of such principal sum, damages, and charges of protest, from the time at which notice of such protest shall have been given, and the payment of said principal sum, damages, and charges of protest demanded; that is to say, if such bill shall have been drawn on any person or persons, or body corporate, of, or in any of these United States, or the territories thereof, three per cent. upon such principal sum: if upon any other person or persons, or body corporate, of, or in, any other state or place in North America, bordering upon the Gulf of Mexico, or of, or in, any of the West India Islands, fifteen per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in, any other part of the world, twenty per ceut. upon such principal sum.

36. - 2. The damages which, by this act, are to be recovered upon any bill of exchange, shall be in lieu of interest and all other charges, except charges of protest, to the time when notice of the protest and demand of payment shall have been given and made as aforresaid. Carr. & Nich. Comp. 125; Act of 1827, c. 14.

DAMAGES, DOUBLE or TREBLE, practice. In cases where a statute gives a party double or treble damages, the jury are to find single damages, and the court to enhance them, according to the statute Bro. Ab. Damages, pl. 70; 2 Inst. 416; 1 Wils. 126; 1 Mass. 155. In Sayer on Damages, p. 244, it is said, the jury may assess the statute damages and it would seem from some of the modern cases, that either the jury or the court may assess. Say. R. 214; 1 Gallis. 29.

DAMAGES, GENERAL, torts. General damages are such as the law implies to have accrued from the act of a tort-feasor. To call a man a thief, or commit an assault and battery upon his person, are examples of this kind. In the first case the law presumes

that calling a man a thief must be injurious to him, with showing that it is so. Sir W. Jones, 196; 1 Saund. 243, b. n. 5; and in the latter case, the law imples that his person has been more or less deteriorated, and that the injured party is not required to specify what inury he has sustained, nor to prove it. Ham. N. P. 40; 1 Chit. Pl. 386; 2 L.R. 76; 4 Bouv. Inst. n. 3584.

DAMAGES, LAYING, pleading. In personal and mixed actions, (but not in penal actions, for obvious reason,) the declaration must allege, in conclusion, that the injury is to the damage of the plaintiff; and must specify the amount of damages. Com. Dig. Pleader, C 84; 10 Rep. 116, b.

2. In personal actions there is a distinction between actions that sound in damages, and those that do not; but in either of these cases, it is equally the practice to lay damages. There is, however, this difference: that, in the former case, damages are the main object of the suit, and are, therefore, always laid high enough to cover the whole demand; but in the latter, the liquidated debt, or the chattel demanded, being the main object, damages are claimed in respect of the detention only, of such debt or chattel; and are, therefore, usually laid at a small sum. The plaintiff cannot recover greater damages than he has laid in theconclusion of his declaration. Com. Dig.Pleader, C 84; 10 Rep. 117, a, b; Vin. Ab. Damages, R.

3. In real actions, no damages are to be laid, because, in these, the demand is specially for the land withheld, and damages are in no degree the object of the suit. Steph. Pl. 426; 1 Chit. Pl. 397 to 400.

DAMAGES, LIQUIDATED, contracts. When the parties to a contract stipulate for the payment of a certain su, as a satisfaction fixed and agreed upon by them, for the not doing of certain things particularly mentioned in the agreement, the sum so fixed upon is called liquidated damages. (q.v.) It differ from a penalty, becasue the latter is a forfeiture from which the defaulting party can be relieved. An agreement for liquidated damages can only be when there is an engagement for the performance of certain acts, the not doing of which would be an injury to one of the parties; or to guard against the performance of acts which, if done, would also be injurious. In such cases an estimate of the damages may be made by a jury, or by a previous agreement between the parties, who may foresee the consequences of a breach of the engagement, and stipulate accordingly. 1 H. Bl. 232; and vide 2 Bos. & Pul. 335, 350-355; 2 Bro. P. C. 431; 4 Burr, 2225; 2 T. R. 32. The civil law appears to agree with these principles. lnst. 3, 16, 7; Toull. liv. 3, n. 809; Civil Code of Louis. art. 1928, n. 5; Code Civil, 1152, 1153.

2. It is to be observed, that the sum fixed upon will be considered as liquidated damages, or a penalty, according to the intent of the parties, and the more use of the

words - "penalty," &c "forfeiture," or "liquidated damages," will not be regarded is at all decisive of the question, if the instrument discloses, upon the whole, a different intent. 2 Story, Eq. §1318; 6 B.& C. 224; 6 Bing. 141; 6 Iredell, 186; 3 Shepl. 273; 2 Ala. 425; 8 Misso. 467.

3. Rules have been adopted to ascertain whether such sum so agreed upon shall be considered a penalty or liquidated damages, which will be here enumerated by considering, first, those cases where it has been considered as a penalty - and, secondly, where it has been considered as liquidated damages.

4. - 1. It has been treated as penalty, 1st. where the parties in the agreement have expressly declared the sum intended as a forfeiture or a penalty, and no other intent can be collected from the instrument. 2 B. & P, 340, 350, 630; 1 McMullan, 106; 2 Ala. 425; 5 Metc. 61; 1 H. Bl. 227; 1 Campb. 78; 7 Wheat. 14; 1 Pick. 451; 4 Pick. 179; 3 Johns. Cas. 297. 2d. Where it is doubtful whether it was intended as a penalty or not, and a certain debt or damages, less than the penalty, is made payable on the face of the instrument. 3 C. & P. 240; 6 Humph. 186. 3d. Where the agreement was made, evidently, for the attainment of another objeet, to which the sum specified is wholly collateral. 11 Mass. 76; 15 Mass. 488; 1 Bro. C. C. 418. 4th. Where the agreement contains several matters, of different degrees of importance, and yet the sum named is payable for the breach of any, even the least. 6 Bing. 141; 5 Bing. N. C. 390; 7 Scott, 364; sed vide, 7 John. 72; 15 John. 200. 5th. Where the contract is not under seal, and the damages are capable of being certainly known and estimated. 2 B. & Al. 704; 6 B. & C. 216; 1 M. & Malk. 41; 4 Dall. 150; 5 Cowen, 144.

5. - 2. The sum agreed upon has been considered as liquidated damages, 1st. Where the damages are uncertain, and are not capable of being ascertained by any satisfactory and known rule. 2 T. R. 32; 1 Alc. & Nap. 389; 2 Burr, 2225; 10 Ves. 429; 3 M. & W. 545; 8 Mass. 223; 3 C. & P. 240; 7 Cowen 307; 4 Wend. 468. 2d. Where, from the tenor of the agreement, or from the nature of the case, it appears that the parties have ascertained the amount of damages by fair calculation and adjustment. 2 Story, Eq. Juris. §1318; 10 Mass. 459; 7 John. 72; 15 John. 200; 1 Bing. 302; 7 Conn. 291; 13 Wend. 507; 2 Greenl. Ev. §259; 11 N. H. Rep. 234; 6 Blackf. 206; 26 Wend. 630; 17 Wend. 447; 22 Wend. 201; 7 Metc. 583; 2 Ala. 425; 2 Shepl. 250. Vide, generally, 7 Vin. Ab. 247; 16 Vin. Ab. 58; 2 W. Bl. Rep. 1190;. Coop. Just. 606; 1 Chit. Pr. 872; 2 Atk. 194; Finch. 117; Prec. in Ch. 102; 2 Bro. P. C. 436; Fonbl. 151, 2, note; Chit. Contr. 836; 11 N. Hamp. Rep. 234.

DAMAGES, SPECIAL, torts. Special damages are such as are in fact sustained, and are not implied by law; these are either superadded to general damages, arising from an act injurious in itself, as when some particular loss arises. from the uttering of slanderous words, actionable in themselves, or are such as arise from an act

indifferent and not actionable in itself, but injurious only in its consequences, as when the words become actionable only by reason of special damage ensuing. To constitute special damage the legal and natural consequence must arise from the tort, and not be a mere wrongful act of a third person, or a remote consequence. 1 Camp. 58; Ham. N. P. 40; 1 Chit. Pl. 385, 6.

DAMAGES, SPECIAL, pleading. As distinguished from the gist of the action, signify that special damage which is stated to result from the gist; as, if a plaintiff in an action of trespass for breaking his close, entering his house, and tossing his goods about, were to state that by means of the damage done to his house, he was obliged to seek lodging elsewhere.

2. Sometimes the special damage is said to constitute the gist of the action itself; for example, in an action wherein the plaintiff declares for slanderous words, which of themselves are not a sufficient ground or foundation for the suit, if any particular damage result to the plaintiff from the speaking of them, that damage is properly said to be the gist of the action.

3. But whether special damage be the gist of the action, or only collatercal to it, it must be particularly stated in the declaration, as the plaintiff will not otherwise be permitted to go into evidence of it at the trial, because the defendant cannot also be prepared to answer it. Willes, 23. See Gist.

DAMAGES, UNLIQUIDATED. The unascertained amount which is due to a person by another for an injury to the person, property, or relative rights of the party injured. These damages, being unknown, cannot be set off against the claim which the tort feasor has against the party injured. 2 Dall. 237; S. C. 1 Yeates, 571; 10 Serg. & Rawle 14; 5 Serg. & Rawle 122.

DAMNIFICATION. That which causes a loss or damage to a society, or to one who has indemnified another. For example, when a society has entered into an obligation to pay the debt of the principal, and the principal has become bound in a bond to indemuify the surety, the latter has suffered a damnification the moment he becomes liable to be sued for the debt of the principal - and it has been held in an action brought by the surety, upon a bond of indemnity, that the terror of suit, so that the surety dare not go about his business, is a damnification. Ow. 19; 2 Chit. R. 487; 1 Saund. 116; 8 East, 593; Cary, 26.

2. A judgment fairly obtained against a party for a cause against which another person is bound to indemnify him, with timely notice to that person of the bringing of the action, is admissible as evidence in an action brought against the guarantor on the

indemnity. 7 Cranch, 300, 322. See F. N. B. Warrantia Chartae; Lib. Int. Index, Warrantia Chartae; 2 S. & R. 12, 13.

DAMNIFY. To cause damage, injury or loss.

DAMNOSA HAEREDITAS. A name given by Lord Kenyon to that species of property of a bankrupt, which, so far from being valuable, would be a charge to the creditors for example, a term of years, where the rent would exceed the revenue.

2. The assignees are not bound to take such property, but they must make their election, and, having once entered into possession, they cannot afterwards abandon the property. 7 East, R. 342; 3 Campb. 340.

DAMNUM ABSQUE INJURIA. A loss or damage without injury.

2. There are cases when the act of one man may cause a damage or loss to another, and for which the latter has no remedy; he is then said to have received damnum absque injuria; as, for example, if a man should set up a school in the neighborhood of another school,and, by that means, deprive the former of its patronage; or if a man should build a mill along side of another, and consequently reduce his custom. 9 Pick. 59, 528.

3. Another instance may be given of the case where a man using proper care and diligence, while excavating for a foundation, injures the adjoining house, owing to the unsuitable materials used in such house; here the injury is damnum absque injuria.

4. When a man slanders another by publishing the truth, the person slandered is said to have sustained loss without injury. Bac. Ab. Actions on the Case, C Dane's Ab. Index, h. t.

DAMNUM FATALE, civil law. Damages caused by a fortuitous event, or inevitable accident; damages arising from the act of God. Among these were included losses by shipwreck, lightning, or other casualty; also losses by pirates or by vis major, by fire, robbery, and burglary; but theft was not numbered among these casualties.

2. In general, bailees are not liable for such damages. Story, Bailm. p. 471.

DANE-LAGE, Eng. law. That system of laws which was maintained in England while the Danes had possession of the country.

DANGERS OF THE SEA, mar. law. This phrase is sometimes put in bills of lading, the master of the ship agreeing to deliver the goods therein mentioned to the

consignee, who is named, the dangers of the sea excepted. Sometimes the phrase is "Perils of the Sea." (q. v.) See 1 Brock. R. 187.

DARREIN. A corruption of the French word "dernier," the last. It is sometimes used as, "darrein continuance," the last continuance. When any matter has arisen in discharge of the defendant in action, he may take advantage of it, provided he pleads itpuis darrein continuance; for if he neglect to do so, he waives his right. Vide article darrein continuance.

DARREIN SEISIN. The name of a plea to a writ of entry or a writ of right. 3 Met. 175.

DATE. The designation or indication in an instrument of writing, of the time, and usually of the time and place, when and where it was made. When the place is mentioned in the date of a deed, the law intends, unless the contrary appears, that it was executed at the place of the date. Plowd. 7 b., 31 H. VI. This word is derived from the Latin datum, because when deeds and agreements were written in that language, immediately before the day, month and year in which they were made, was set down, it was usual to put the word datum, given.

2. All writings ought to bear a date, and in some it is indispensable in order to make them valid, as in policies of insurance; but the date in these instruments is not inserted in the body of the writing because as each subscription makes a separate contract, each underwriter sets down the day, month and year he makes his subscription. Marsh. Ins. 336.

3. Deeds, and other writings, when the date is an impossible one, take effect from the time of deliver; the presumption of law is, that the deed was dated on the day it bears date, unless, as just mentioned, the time is impossible; for example, the 32d day of January.

4. The proper way of dating, is to put the day, month, and year of our Lord; the hour need not be mentioned, unless specially required; an instance of which may be taken from the Pennsylvania Act of the 16th June, 1836, sect. 40, which requires the sheriff, on receiving a writ of fieri facias, or other writ of execution, to endorse thereon the day of the month, the year, and the hour of the day whereon he received the same.

5. In public documents, it is usual to give not only the day, the month, and the year of our Lord, but also the year of the United States, when issued by authority of the general government; or of the commonwealth, when issued under its authority. Vide, generally, Bac. Ab. Obligations, C; Com. Dig, Fait, B 3; Cruise, Dig. tit, 32, c. 20, s.

1-6; 1 Burr. 60; 2 Rol. Ab. 27, 1. 22; 13 Vin. Ab. 34; Dane's Ab. lndex, h. t. See Almanac.

DATION, civil law, contracts. The act of giving something. It differs from donation, which is a gift; dation, on the contrary, is giving something without any liberality; as, the giving of an office.

2. Dation in payment, datio in solutionem, which was the giving one thing in payment of another which was due, corresponds nearly to the accord and satisfaction of the common law.

DATION EN PAIEMFNT, civil law. This term is used in Louisiana; it signifies that, when instead of paying a sum of money due on a pre-existing debt, the debtor gives and the creditor agrees to receive a movable or immovable.

2. It is somewhat like the accord and satisfaction of the common law. 16 Toull. n. 45 Poth. Vente, U. 601. Dation en paiement resembles in some respects the contract of sale; dare in solutum, est quasi vendere. There is, however, a very marked difference between a sale and a dation en paiement. 1st. The contract of sale is complete by the mere agreement of the parties the dation en paiement requires a delivery of the thing given. 2d. When the debtor pays a certain sum which he supposed he was owing, and be discovers he did not owe so much, he may recover back the excess, not so when property other than money has been given in payment. 3d. He who has in good faith sold a thing of which he believed himself to be the owner, is not precisely required to transfer the property of it to the buyer and, while he is not troubled in the possession of the thing, he cannot pretend that the seller has not fulfilled his obligations. On the contrary, the dation en paiement is good only when the debtor transfers to the creditor the property in the thing which he has agreed to take in, payment and if the thing thus delivered be the property of another, it will not operate as a payment. Poth. Vente, n. 602, 603, 604.

DATIVE. That which may be given or disposed of at will and pleasure. It sometimes means that which is not cast upon the party by the law, or by a testator, but which is given by the magistrate; in this sense it is that tutorship is dative, when the tutor is appointed by the malistrate. Lec. Elem. §239; Civ. Code of L. art. 288, 1671.

DAUGHTER. An immediate female descendant. See Son.

DAUGHTER-IN-LAW. In Latin, nurus, is the wife of one's son.

DAY. A division of time. It is natural, and then it consists of twenty-four hours, or the space of time which elapses while the earth makes a complete revolution on its axis;

or artificial, which contains the time, from the rising until the setting of the sun, and a short time before rising and after setting. Vide Night; and Co. Lit. 135, a.

2. Days are sometimes calculated exclusively, as when an act required that an appeal should be made within twenty days after a decision. 3 Penna. 200; 3 B. & A. 581; 15 Serg. & Rawle, 43. In general, if a thing is to be done within such a time after such a fact, the day of the fact shall be taken inclusively. Hob. 139; Doug. 463; 3 T. R. 623; Com. Dig. Temps, A; 3 East, 407.

3. The law, generally, rejects fractions of days, but in some cases it takes notice of such parts. 2 B. & A. 586. Vide Date.

4. By the custom of some places, the word day's is understood to be working days, and not including Sundays. 3 Espin. N. P. C. 121. Vide, generally, 2 Chit. Bl. 141, note 3; 1 Chit. Pr. 774, 775; 3 Chit. Pr. 110; Lill. Reg. h. t; 1 Rop. Leg. 518; 15 Vin. Ab. 554; Dig. 33, 1, 2; Dig. 50, 16, 2, 1; Id. 2, 12, 8; and articles Hour; Month; Year.

DAY BOOK, mer. law. An account book, in which merchants and others make entries of their daily transactions. This is generally a book of original entries, and as such may be given in evidence to prove the sale and delivery, of merchandise or of work done.

DAY RULE, or DAY WRIT, English practice. A rule or order of the court, by which a prisoner on civil process, and not committed, is enabled, in term time, to go out of the prison, and its rule or bounds; a prisoner is enabled to quit the prison, for more or less time, by three kinds of rules, namely: 1. The day-rule. 2. The term-rule; and 3. The rules. See 9 East, R. 151.

DAYS IN BANK, Eng. practice. Days of appearance in the court of common pleas, usually called bancum. They are at the distance of about a week from each other, and are regulated by some festival of the church. 8 Bl. Com. 277.

DAYS OF GRACE. Certain days after the time limited by the bill or note, which the acceptor or drawer has a right to demand for payment of the bill or note; these days were so called because they were formerly gratuitously allowed, but now, by the custom of merchants, sanctioned by decisions of courts of justice, they are demandable of right. 6 Watts & Serg. 179. The number of these in the United States is generally three. - Chitty on Bills, h. t. But where the established usage of the where the instrument is payable, or of the bank at which it is payable, or deposited for collection, be to make the demand on the fourth or other day, the parties to the note will be bound by such usage. 5 How. U. S. Rep. 317; 1 Smith, Lead. Cas. 417. When the last day of grace happens on the 4th of July; 2 Caines Cas. in Err. 195; or on

Sunday; 2 Caines' R. 343; 7 Wend. 460; the demand must be made on the day previous. 13 John. 470; 7 Wend. 460; 12 Mass. 89; 6 Pick. 80; 2 Caines, 343: 2 McCord, 436. But see 2 Conn. 69. See 20 Wend. 205; 1 Metc. R. 43; 2 Cain. Cas. 195; 7 How. Miss. R. 129; 4 J. J. Marsh. 332.

2. In Louisiana, the days of grace are no obstacle to a set off, the bill being due, for this purpose before the expiration of those days. Louis. Code, art. 2206.

3. In France all days of grace, of favor, of usage, or of local custom, for thne payment of bills of exchange, are abolished. Code de Com. art. 185. See 8 Verm. 833; 2 Port. 286; 1 Conn. 329; 1 Pick. 401; 2 Pick. 125; 3 Pick. 414; 1 N. & M. 83.

DAYS OF THE WEEK. These are Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday. See Week.

2. The court will take judicial notice of the days of the week - for example, when a writ of inquiry was stated in the pleadings to have been executed on the fifteenth of June, and, upon an examination, it was found to be Sunday, the proceeding was held to be defective. Forteso. 373; S. C. Str. 387.

DE. A preposition used in many Latin phrases - as, de bone esse, de bonis non.

DE ARBITRATIONE FACTA, WRIT. In the ancient English law, when an action was brought for the same cause of action which had been before settled by arbitration, this writ was brought. Wats. on Arb. 256.

DE BENE ESSE, practice. A technical phrase applied to certain proceedings which are deemed to be well done for the present, or until an exception or other avoidance, that is, conditionally, and in that meaning the phrase is usually accepted. For example, a declaration is filed or delivered, special bail put in, witness examined, &c. de bene esse, or conditionally; good for the present.

2. When a judge has a doubt as to the propriety of finding a verdict, h(, may direct the jury to find one de bene esse; which verdict, if the court shall afterwards be of opinion it ought to have been found, shall stand. Bac. Ab. Verdict, A. Vide 11 S. & R. 84.

DE BONIS NON. This phrase is used in cases where the goods of a deceased person have not all been administered. When an executor or administrator has been appointed, and the estate is not fully settled, and the executor or administrator is dead, has absconded, or from any cause has been removed, a second administrator is appointed to to perform the duty remaining to be done, who is called an administrator de bonis non, an administrator of the goods not administered and he becomes by the

appointment the only representative of the deceased. 11 Vin. Ab. 111; 2 P. Wms. 340; Com. Dig. Administration, B I; 1 Root's 11. 425. And it seems that though the estate has been distributed, an administrator de nonis non may be appointed, if debts remain unsatisfied. 1 Root's R. 174.

DE BONIS PROPRIIS. Of his own goods. When an executor or administrator has been guilty of a devastavit, (q. v.) he is responsible for the loss which the estate has sustained, de bonis propriis. He may also subject himself to the payment of a debt of the deceased, de bonis propriis, by his false plea, when sued in a representative as, if he plead plene administravit, and it be found against him, or a release to himself, when false. In this latter case the judgment is de bonis testatoris si, et si non de bonis propriis. 1 Saund. 336 b, n. 10 Bac. Ab. Executor, B 8.

DE CONTUMACE CAPIENDO. The name of a writ issued for the arrest of a defendant who is in contempt of the ecclesiastical court. 1 Nev. & Per. 680, 685, 689; 5 Dowl. 213, 646.

DE DOMO REPARANDA. The name of an ancient common law writ, by which one tenant in common might compel his co-tenant to concur in the expense of repairing the property held in common. 8 B. & C. 269; 1 Tho. Co. Litt. 216, note 17, and p. 787.

DE DONIS, STATUTE. The name of an English statute passed the 13 Edwd. I. c. 1, the real design of which was to introduce perpetuities, and to strengthen the power of the barons. 6 Co. 40 a; Co. Litt. 21; Bac. Ab. Estates in tail, in prin.

DE FACTO, i. e. in deed. A term used to denote a thing actually done; a president of the United States de facto is one in the exercise of the executive power, and is distinguished from one, who being legally entitled to such power is ejected from it; the latter would be a president de jure. An officer de facto is frequently considered as an officer de jure, and his official acts are of equal validity. 10 S. & R. 250; 4 Binn. R. 371; 11 S. & R. 411, 414; Coxe, 318; 9 Mass. 231; 10 Mass. 290; 15 Mass. 180; 5 Pick. 487.

DE HOMINE REPLEGIANDO. The name of a writ which is used to replevy a man out of prison, or out of the custody of a private person. See Homine replegiando; Writ de homine replegiando.

DE INJURIA, pleading. The name of a replication in an action for a tort, that the defendant committed the trespasses or crrievances of his own wrong, without the cause by,him in his plea alleged.

2. The import of this replication is to insist that the defendant committed the act complained of, from a motive and impulse altogether different from that insisted on by the plea. For example, if the defendant has justified a battery under a writ of capias, having averred, as he must do, that the arrest was made by virtue of the writ; the plaintiff may rely de injuria sua propria absque tali causa, that the defendant did the act of his own wrong, without the cause by him alleged. This replication, then, has the effect of denying the alleged, motive contained in the plea, and to insist that the defendant acted from another, which was unlawful, and not in, consequence of the one insisted upon in his plea. Steph. Pl. 186; 2 Chit. Pl. 523,.642; Hamm. N. P. 120, 121; Arch. Civ. Pl. 264; Com. Dig. Pleader, F 19.

3. The form of this replication is, "precludi non, because he says that the said defendant at the same time when, &c., of his own wrong, and without the cause by him in his said second plea alleged, committed the said trespass in the introductory part of that plea, in manner and form as the said plaintiff hath above in his said declaration complained against the said defendant, and this the said plaintiff prays, may be inquired of by the country," &c. This is the uniform conclusion of such a replication. 1 Chit. Pl. 585.

4. The replication de injuria is only allowed when an excuse is offered for personal injuries. 1 B. & P. 76; 5 Johns. R. 112; 4 Johns. 150; 12 Johns. 491. Vide 7 Vin. Ab. 503; 3 Saund. 295, note; 1 Lilly's Reg. 587.

5. In England, where the extent of the general issues has been confined in actions on contracts, and special pleas have become common in assumpsit, it has become desirable, that the plaintiff, who hss but one replication, should put in issue the several numerous allegations which the special pleas were found to contain; for, unless he could do this, he would labor under the hardship of being frequently compelled to admit the greater part of an entirely false story. It became, therefore, important to ascertain whether de injuria could not be replied to cases of this description and, after numerous cases which were presented for adjudication, it was finally settled that de injuria may be replied in assumpsit, when the plea consists of matters of excuse. 3 C.M. &,R. 65; 2 Bing. N. C. 579 4 Dowl. 647.

6. The improper use of de injuria is ground of general demurrer. 2 Lev. 65; 4 Tyrw. 771. But if the defendant do not demur, the objection will not avail after verdict. Hob. 76: Sir T. Raym. 50.

7. De injuria puts in issue the whole of the defence contained in the plea. 5 B. & A. 420; 11 East, 451; 10 Bing. 157. But if the plea state some authority in law, which, prima facie, would be a justification of the act complained of, the plaintiff will not be allowed under the plea of de injuria to show an abuse of that authority so as to convert

the defendant into a tort feasor ab initio. 1 Bing. 317; 1 Bing. N. S. 387. See 1 Smith's L. C. 53 to 61; 8 Co. 66.

DE JUDAISMO, STATUTUM. The name of a statute passed in the reign of Edw. I., which enacted severe and absurd penalties against the Jews. Barr. on Stat. 197.

2. The Jews were exceedingly oppressed during the middle ages throughout Christendom, and, are so still in some countries. In France, a Jew was a serf, and his person and goods belonged to the baron on whose demesnes he lived. He could not change his domicil without permission of the baron, who could pursue him as a fugitive even on the domains of the king. Like an article of commerce, he might be lent or hired for a time, or mortgaged. If he became a Christian, his conversion was considered a larceny of the lord, and his property and goods were confiscated. They were allowed to utter their prayers only in a low voice and without chanting. They were not allowed to appear in public without some badge or mark of distinction. Christians were forbidden to employ Jews of either sex as domestics, physicians or surgeons. Admission to the bar was forbidden to Jews. They were obliged to appear in court in person, when they demanded justice for a wrong done them, and it was deemed disgraceful to an advocate to undertake the cause of a Jew. If a Jew appeared in court against a Christian, he was obliged to swear by the ten names of God, and invoke a thousand imprecations against himself, if he spoke not the truth. Sexual intercourse between a Christian man and a Jewess was deemed a crime against nature, and was punishable with death by burning. Quia est rem habere cum cane, rem habere a Christiano cum Judaea quae CANIS reputatur - sic comburi debet. 1 Fournel, Hist. des Avocats, 108, 110. See Merlin, Repert. au mot Juifs.

3. - In the fifth book of the Decretals, it is provided, that if a Jew have a servant that desireth to be a Christian, the Jew shall be compelled to sell him to a Christian for twelve pence that it shall not be lawful for them to take any Christian to be their servant that they may repair their old synagogues, but not build new - that it shall not be lawful for them to open their doors, or windows on good Friday; that their wives neither have Christian nurses, nor themselves be nurses to Christian women - that they wear different apparel from the Christians, whereby they may be known, &c;See Ridley's View of the Civ. and Eccl Law, part 1, chap. 5, sect. 7 and Madox Hist. of the Exchequer, Index, as to their condition in England.

DE JURE, by right. Vide De facto.

DE LUNATICO INQUIRENDO. The name of a writ directed to the sheriff, directing him to inquire by good and lawful men whether the party charged is, a lunatic or not. See 4 Rawle, 234; 1 Whart. 52; 5 Halst. 217; 6 Wend. 497.

DE MEDIETATE LINGUAE. Of half tongue. Vide Medietas linguae.

DE MELIORIBUS DAMNIS. Of the better damages. When a plaintiff has sued several defendants, and the damages have been assessed severally against each, he has the choice of selecting the best, as he cannot recover the whole. This is doue by making, an election de melioribus damnis.

DE MERCATORIBUS. This is the name of a statute passed in the 11 Edw. I.; it is usually called the statute of Acton Burnell De Mercatoribus. It was passed in consequence of the complaints of foreign merchants, who could not recover the claims, because the lands of the debtors could not be sold for their debts. It enacted that the chattels and devisable burgages of the debtor might be sold for the payment of their debts. Cruise, Dig. t. 14, s. 6.

D.E NOVO. Anew. afresh. When a judgment upon an issue in part is reversed on error, for some mistake made by the court, in the course of the trial, a venire de novo is awarded in order that the case may again be submitted to the jury.

DE NOVI OPERIS NUNCIATIONE, Civil law. Where a thiug is intended to be done against another man's right, the party aggrieved may have in many cases, according to the civilians, an interdict or injunctIion, to hinder that which is intended to his prejudice: as where one buildeth an house contrary to the usual and received form of building to the injury of his neighbor, there lieth an injunction de novi operis nunciatione, which being served, the offender is either to desist from his work or to put in sureties that he shall pull it down, if he do not in a short time avow, i. e. show, the lawfulness thereof. Ridley's Civ. and Eccl. Law, part 1, chap 1, sect. 8.

DE ODIO ET ATIA. These words sisignify "from hatred and ill will." When a person was committed on a charge of a crime, from such a motive, he could sue the writ de otio et atia, and procure his liberty on giving bail. The object is now obtained by a writ of habeas corpus. Vide Writ de odio et atia.

DE PARTITIONE FACIENDA. The name of a writ for making partition. Vide Partition.

DE PROPRIETATE PROBANDA, Eng. Practice. The name of a writ which issues in a case of replevin when the defendant claims property in the chattels replevied, and the sheriff makes a return accordingly. The writ directs the sheriff to summon an inquest to determine on the validity of the claim, and, if they find for the defendant, the sheriff merely returns their finding. The plaintiff is not concluded by such finding, he may come into the court above and traverse it. Hamm. N. P. 456.

DE QUOTA LITIS. The name of a part or contract, in the civil law, by which one who has a claim difficult to recover, agrees with another to give a part for the purpose of obtaining his services to recover the rest. 1 Duv. n. 201.

2. Whenever such an agreement amounts to champerty, it is void by law. 5 Monr. 416; 5 John. Ch. 44.

3. Attorneys cannot lawfully make a bargain with their clients to receive for their compensation, a part of the thing sued for; in New York, 2 Caines, 147; Ohio, 1 Ham. 132; Alabama, 755; and some other states - but in some of the states such contracts are not unlawful.

DE REPARATIONE FACIENDA. The name of a writ which lies by one tenant in common against the other, to cause him to aid in repairing the common propert. 8 B. & C. 269.

DE RETORNO HABENDO The name of a writ issued after a judgment has been given in replevin, that the defendant should have a return of the goods replevied. See 3 Bouv. Inst. n. 3376.

DE SON TORT. Of his own wrong. This term is usually applied to a person who, having no right to meddle with the affairs or estate of a deceased person, yet undertakes to do. so, by acting as executor of the deceased. Vide Executor de son tort.

DE SON TORT DEMESNE, Of his own wrong, pleading. The name of a replication in an action for a wrong or injury. When the defendant pleads a matter merely in excuse of an injury to the person or reputation of another, the plaintiff may reply de son tort demesne sans tiel cause; that it was the defendant's own wrong without such cause. Vide the articles, De Injuria, and Without, and also 8 Co. 69 a; Bro. h. t.; Com. Dig. Pleader, F 18.

DE UNA PARTE. A deed de una parte, is one where only one party grants, gives, or binds himself to do.a thing to another. It differs from a deed inter partes. (q. v.) 2 Bouv. Inst. n. 2001.

DE WARRANTIA DIEI, WRIT, Eng. law. Where a man is required to appear on a certain day in person, and before that day the king certifies that the party is in the king's service, he may sue this writ, commanding the justices not to record his default for that day for the cause before mentioned. F. N. B. 36.

DEACON, Eccl. law. A minister or servant in the church whose office, in some churches, is to assist the priest in divine service, and the distribution of the sacrament.

DEAD Something which has no life; figuratively, something of no value.

DEAD BODY, crim. law. A corpse.

2. To take up a dead body without lawful authority, even for the purposes of dissection, is a misdemeanor, for which the offender may be indicted at common law. 1 Russ. on Cr. 414; 1 Dowl. & R. 13; Russ. & Ry. 366, ii. b; 2 Chit. Cr. Law, 35. This offence is punished by statute in New Hampshire, Laws of N. H. 339, 340 in Vermont, Laws of Vermont, 368 .c. 361; in Massachusetts, stat. 1830, c. 51; 8 Pick. 370; 11 Pick. 350; in New York, 2 Rev. Stat. 688. Vide 1 Russ. 414, n. A.

3. The preventing a dead body from being buried, is also an indictable offence. 2 T. R. 734; 4 East, 460; 1 Russ. on Cr. 415 and 416, note A.

4. To inter a dead body found in a river, it seems, would render the offender liable to an indictment for a misdemeanor, unless he first sent for the coroner. 1 Kenyon's R. 250.

DEAD-BORN, descent, persons. Children dead-born are considered, in law, as if they had never been conceived, so that no one can claim a title, by descent, through such dead-born child. This is the doctrine of the civil law. Dig. 50, 16, 129. Non nasci, et natum mori, pare, sunt. Mortuus exitus, non est exitus. Civil Code of Louis. art. 28. A child in ventre sa mere is considered in being, only when it is for its advantage, and not for the benefit of a third person. The rule in the common law is, probably, the same, that a dead-born child is to be considered as if he had never been conceived or born in other words, it is presumed he never had life. it being a maxim of the common law, that mortuus exitus non est exitus. Co. Litt. 29 b. See 2 Paige, R. 35; Domat, liv. prel. t. 2, s. 1, n. 4, 6; 4 Ves. 334.

DEAD FREIGHT, contracts. When the charterer of a vessel has shipped part of the goods on board, and is not ready to ship the remainder, the master, unless restrained by his special contract, may take other goods on board, and the amount which is not supplied, required to complete the cargo, is called dead freight.

2. The dead freight is to be calculated according to the actual capacity of the vessel. 3 Chit. Com. Law; 399 Stark. 450.

DEAD MAN'S PART, English law. By the custom of London, when a deceased freeman of the city left a widow and children, after deducting what was calledthe widow's chamber, (q.v.) his personal property was divided into three parts; one of which belonged to the widow, another tot he children, and the third to the administrator. When there was only a widow, or only children, in either case they

respectively took one moiety, and the administrator the other; when there was neither widow nor child, the administrator took the whole for his own use and this portion was called the "dead man's part." By statute of 1 Jac. 2, c. 17, this was changed, and the dead man's part is declared to be subject to the statute of distribution. 2 Bl. Com. 518. See Bac. Ab. Customs of London, D 4.

DEAD LETTERS. Those which remain in the post-office, uncalled for. By the Act of March 8, 1825, 3 Story. L. U. S. 1993, it is enacted, by §26, "That the postmasters shall, respectively, publish, at the expiration of every three months, or oftener, when the postmaster general shall so direct, in one of the newspapers published at, or nearest, the place of his residence, for three successive weeks, a list of all the letters remaining in their respective offices; or instead thereof, shall make out a number of such lists, and cause them to be posted at such public places, in their vicinity, as shall appear to them best adapted for the information of the parties concerned; and, at the expiration of the next three months, shall send such of the said letters as then remain on hand, as dead letters, to the general post office where the same shall be opened and inspected; and if any valuable papers, or matters of consequence, shall be found therein, it shall be the duty of the postmaster general to return such letter to the writer thereof, or cause a descriptive list thereof to be inserted in one of the newspapers published at the place most convenient to the supposed residence of the owner, if within the United States; and such letter, and the contents, shall be preserved, to be delivered to the person to whom the same shall be addressed, upon payment of the postage, and the expense of publication. And if such letter contain money, the postmaster general may appropriate it to the use of the department, keeping an account thereof, and the amount shall be paid by the department to the claimant as soon as he shall be found."

3. And by the Act of July 2, 1836, 4 Sharsaw. Cont. of Story, L. U. S. 2474, it is enacted by §35 that advertisements of letters remaining in the post-offices, may, under the direction of the postmaster general, be made in more than one newspaper: provided, that the whole cost of advertising shall not exceed four cents for each letter.

DEAD-PLEDGE. A mortgage of lands or goods - mortuum vadium.

DEAF AND DUMB. No definition is requisite, as the words are sufficiently known. A person deaf and dumb is doli capax but with such persons who have not been educated, and who cannot communicate, their ideas in writing, a difficulty sometimes arises on the trial. 2. A case occurred of a woman, deaf and dumb, who was charged with a crime. She was brought to the bar, and the indictment was then read to her, and the question, in the usual form, was put, guilty or not guilty ? The counsel for the prisoner then rose, and stated that he could not allow his client to plead to the indictment, until it was explained to her that she was at liberty to plead guilty or not

guilty. This attempted to be done, but was found impossible, and she was discharged from the bar "simpliciter."

3. A person, deaf and dumb, may be examined as a witness, provided he can be sworn, that is, if he is capable of understanding the terms of the oath, and assents to it and if, after he is sworn, he can convey his ideas, with or without an interpreter, to the court and jury. Phil., Ev. 14.

DEAF, DUMB, AND BLIND. A man born deaf, dumb, and blind, is considered an idiot. (q. v.) 1 Bl. Com. 304; F. N. B. 233; 2 Bouv. Inst. n. 2111.

DEALINGS. Traffic, trade; the transaction of business between two or more persons.

2. The English statute 6 Geo. IV. c. 16, s. 81, declares all dealings with a bankrupt, within a certain time immediately before his bankruptcy, to be void. It has been held, under this statute, that payments were included under the term "dealings." M. & M. 137; 3 Car. & P. 85; S. C. 14 Eng. C. L. R. 219.

DEAN, eccl. law. An ecelesiastictl officer, who derives his name from the fact that he presides over ten canons, or, prebondaries, at least. There are several kinds of deans, namely: 1. Deans of chapters. 2. Deans of peculiars. 3. Rural deans. 4. Deans in the colleges. 5. Honorary deans. 6. Deans of provinces.

DEATH, med. jur., crim. law, evidence. The cessation of life.

2. It is either natural, as when it happens in the usual course, without any violence; or violent, when it is caused either by the acts of the deceased, or those of others. Natural death will not be here considered further than may be requisite to illustrate the manner in which violent death occurs. A violent death is either accidental or criminal; and the criminal act was committed by the deceased, or by another.

3. The subject will be considered, 1. As it relates to medical jurisprudence; and, 2. With regard to its effects upon the rights of persons.

4. - §1. It is the office of medical jurisprudence, by the light and information which it can bestow, to aid in the detection of crimes against the persons of others, in order to subject them to the punishment which is awarded by the criminal law. Medical men are very frequently called upon to make examinations of the bodies of persons. who have been found dead, for the purpose of ascertaining the causes of their death. When it is recollected that the honor, the fortune, and even the life of the citizen, as well as the distribution of impartial justice, frequently depend on these examinations, one cannot but be struck at the responsibility which rests upon such medical men,

particularly when the numerous qualities which are indispensably requisite to form a correct judgment, are considered. In order to form a - correct opinion, the physician must be not only skilled in his art, but he must have made such examinations his special study. A man may be an enlightened physician, and yet he may find it exceedingly difficult to resolve, properly, the grave and almost always complicated questions which arise in cases of this kind. Judiciary annals, unfortunately, afford but too many examples of the fatal mistakes made by physicians, and others, when considering cases of violent deaths.

5. In the examination of bodies of persons who have come to a violent death, every precaution should be taken to ascertain the situation of the place where the body was found; as to whether the ground appears to have been disturbed from its natural condition; whether there are any marks of footsteps, their size, their number, the direction to which they lead, and whence they came -whether any traces of blood or hair can be found - and whether any, and what weapons or instruments, which could have caused death, are found in the vicinity; and these instruments should be carefully preserved so that they may be identified. A case or two may here be mentioned, to show the importance of examining the ground in order to ascertain the facts. Mr. Jeffries was murdered at Walthamstow, in England, in 1751, by his niece and servant. The perpetrators were suspected from the single circumstance that the dew on the ground surrounding the house had not been disturbed on the morning of the murder. Mr. Taylor, of Hornsey, was murdered in December, 1818, and his body thrown into the river. It was evident he, had not gone into the river willingly, as the hands were found clenched and contained grass, which, in the struggle, he had torn from the bank. The marks of footsteps, particularly in the snow, bave been found, not unfrequently, to correspond with the shoes or feet of suspected persons, and led to their detection. Paris, Med. Jur. vol. iii. p. 38, 41.

6. In the survey of the body the following rules should be observed: 1. It should be as thoroughly examined as possible without changing its position or that of any of the limbs; this is particularly desirable when, from appearances, the death has been caused by a wound, because by moving it, the altitude of the extremities may be altered, or the state of a fracture or luxation changed; for the internal parts vary in their position with one another, according to the general position of the body. When it is requisite to remove it, it should be done with great caution. 2. The clothes should be removed, as far as necessary, and it should be noted what compresses or bandages (if any) are applied to particular parts, and to what extent. 3. The color of the skin, the temperature of the body, the rigidity or flexibility of the extremities, the state of the eyes, and of the sphincter muscles, noting at the same time whatever swellings, ecchymosis, or livid, black, or yellow spots, wounds, ulcer, contusion, fracture, or luxation may be present. The fluids from the nose, mouth, ears, sexual organs, &c.,

should be examined; and, when the deceased is a female, it may be proper to examine the sexual organs with care, in order to ascertain whether before death she was ravished or not. 1 Briand, Med. Leg. 2eme partio, ch. 1, art. 3, n. 5, p. 318. 4. The clothes of the deceased should be carefully examined, and if parts are torn or defaced, this fact should be noted. A list should also be made of the articles found on the body, and of their state or condition, as whether the purse of the deceased had been opened; whether he had any money, &c. 5. The state of the body as to decomposition should be, particularly stated, as by this it may sometimes be ascertalued when the death took place; experience proves that in general after the expiration of fourteen days After death, decomposition has so far advanced, that identity cannot be ascertained, excepting in some strongly developed peculiarity; but in a drowned body, adipocire is not produced until five or six weeks after death but this depends upon circumstance's, and varies according to climate, seasun, &c. It is exceedingly important, however to keep this fact in view in some judicial inquiries relative to the time of death. 1 Chit. Med. Jur. 443. A memorandom should be made of all the facts as they are ascertained when possible, it should be made on the ground, but when this cannot be done, as when chemical experiments are to be made, or the body is to be dissected, they should be made in the place where these operations are performed. 1 Beck's Med. Jur. 5; Dr. Gordon Smith, 505; Ryan's Med. Jur. 145; Dr. Male's Elem. of Judicial and For. Med. 101; 3 Paris & Fonbl. Med. Jur. 23 to 25; Vilanova Y Manes, Materia Criminal Forense, Obs. 11, cap. 7, n. 7; Trebuchet, Medecine Legale, 12, et seq; 1 Briand, Med. Leg. 2eme partie, ch. 1, art. 5. Vide article Circumstances.

7. - §2. In examining the law as to the effect which death has upon the rights of others, it will be proper to consider, 1. What is the presumption of life or death. 2. The effects of a man's death.

8. - 1. It is a general rule, that persons who are proved to have been living, will be presumed to be alive till the contrary is proved and when the issue is upon the death of a person, the proof of the fact lies upon the party who asserts the death. 2 East, 312; 2 Rolle's R. 461. But when a person has been absent for a long time, unheard from, the law will presume him to be dead. It has been adjudged, that after twenty-seven years 3 Bro. C. C. 510; twenty years in another case; sixteen years; 5 Ves. 458; fourteen years; 3 Serg. & Rawle, 390 twelve years; 18 John. R. 141; seven years; 6 East, 80, 85; and even five years Finchs R. 419; the presumption of death arises. It seems that even seven years has been agreed as the time when death may in general be presumed. 1 Phil. Ev. 159. See 24 Wend. R. 221; 4 Whart. R. 173. By the civil law, if any woman marry again without certain intelligence of the death of her hushand, how longsoever otherwise her hushand be absent from her, both she and he who married her shall be punished as adulterers. Authentics, 8th Coll.; Ridley's View of the Civ. and Ecc. Law, 82.

9. The survivorship of two or more is to be proved by facts, and not by any settled Iegal rule, or prescribed presumption. 5 B. Adolp. 91; 27 E. C. L. R. 45; Cro. Eliz. 503 Bac. Ab. Execution D; 2 Phillim. 261; 1 Mer. R. 308; 3 Hagg. Eccl. R. 748; But see 1 Yo. & Coll. C. N. 121; 1 Curt. R. 405, 406, 429. In the following cases, no presumption of survivor-ship was held to arise; where two men, the father and son, were hanged about the same time, and one was seen to struggle a little longer than the other; Cor. Eliz. 503; in the case of General Stanwix, who perished at sea in the same vessel with his daughter; 1 Bl. R. 610; and in the case of Taylor and his wife, who also perished by being wrecked at sea with her, to whom he had bequeathed the principal part of his fortune. 2 Phillim. R. 261; S. C. 1 Eng. Eccl. R. 250. Vide Fearne on Rem. iv.; Poth. Obl. by Evans, vol. ii., p. 345; 1 Beck's Med. Jur. 487 to 502. The Code Civil of Fance has provided for most, perhaps all possible cases, art. 720, 721 and 722. The provisions have been transcribed in the Civil Code of Louisiana, in these words:

10. Art. 930. If several persons respectively entitled to inherit from one another, happen to perish in the same event, such as a wreck, a battle, or a conflagration, without any possibility of ascertaining who died first, the presumption of survivorship is determined by the circumstances of the fact.

11. Art. 931. lu defect of the circumstances of the fact, the determination must be guided by the probabilities resulting from the strength, ages, and-difference of sex, according to the following rules.

12. Art. 932. If those who have perished together were under the age of fifteen years, the eldest shall be presumed to have survived. If both were of the age of sixty-years, the youngest shall be presumed to have survived. If some were under fifteen years, and some above sixty, the first shall be presumed to have survived.

13. Art. 933. If those who perished together, were above the age of fifteen years, and under sixty, the male must be presumed to have survived, where there was an equality of age, or a difference of less than one year. If they were of the same sex, the presumption of survivorship, by which the succession becomes open in the order of nature, must be admitted; thus the younger must be presumed to have survived the elder.

14. - 2. The death of a man, as to its effects on others, may be considered with regard, 1. To his contracts. 2. Torts committed by or against him. 3. The disposition of his estate; and, 4. To the liability or discharge of his bail.

15. - 1st. The contracts of a deceased person are in general not affected by his death, and his executors or administrators are required to fulfil his engagements, and may

enforce those in his favor. But to this general rule there are some exceptions; some contracts are either by the terms employed in making them, or by implication of law, to continue only during the life of the contracting party. Among these may be mentioned the following cases: 1. The contract of marriage.- 2. The partnership of individuals. The contract of partnership is dissolved by death, unless otherwise provided for. Indeed the partnership will be dissolved by the death of one or more of the partners, and its effects upon the other partners or third persons will be the same, whether they have notice of the death or otherwise. 3 Mer. R. 593; Story, Partn. §319, 336, 343; Colly. Partn. 71; 2 Bell's Com. 639, 5th ed.; 3 Kent, Com. 56, 4th ed.; Gow, Partn. 351; 1 Molloy, R. 465; 15 Ves. 218; S. C. 2 Russ. R. 325.; 3. Contracts which are altogether personal; as, for example, where the deceased had agreed to accompany the other party to the contract, on a journey, or to serve another; Poth. Ob. P. 3, c. 7, a. 3, §2 and 3; or to instruct an apprentice. Bac. Ab. Executor, P; 1 Burn's Just. 82, 3; Hamm. on Part. 157; 1 Rawle's R. 61.

16. The death of either a constituent or of an attorney puts an end to the power of attorney. To recall such power two things are necessary; 1st. The will or intention to recall; and, 2d. Special notice or general authority. Death is a sufficient recall of such power, answering both requisites. Either it is, according to one hypothesis, the intended termination of the authority or, according to the other, the cessation of that will, the existence of which is requisite to the existence of the attorney's power; while on either supposition, the event is, or is supposed to be, notorious. But exceptions are admitted where the death is unknown, and the authority, in the meanwhile, is in action, and relied on. 3 T. R. 215; Poth; Ob. n. 448.

17. - 2d. In general, when the tort feasor or the party who has received the injury dies, the action for the recovery of the damages dies with him; but when the deceased might have waived the tort, and maintained assumpsit arainst the defendant, his personal representative may do the same thing. See the article Actio Personalis moriturcum persona, where this subject is more fully examined. When a person accused and guilty of crime dies before trial, no proceedings can be had against his representatives or his estate.

18. - 3d. By the death of a person seised of real estate, or possessed of personal property at the time of his death; his property vests when he has made his will, as he has directed by that instrument; but when he dies intestate, his real estate vests in his heirs at law by descent, and his personal property, whether in possession or in action, belongs to his executors or administrators.

19. - 4th. The death of a defendant discharges the special bail. Tidd, Pr. 243; but when he dies after the return of the ca. sa., and before it is filed, the bail are fixed. 6 T. R.

284; 5 Binn. R. 332, 338; 2 Mass. R. 485; 1 N. H. Rep. 172; 12 Wheat. 604; 4 John. R. 407; 3 McCord, R. 49; 4 Pick. R. 120; 4 N. H. Rep. 29.

20. Death is also divided into natural and civil.

21. Natural death is the cessation of life.

22. Civil death is the state of a person who, though possessing natural life, has lost all his civil rights, and, as to them, is considered as dead. A person convicted and attainted of felony, and sentenced to the state prison for life, is, in the state of New York, in consequence of the act of 29th of March, 1799, and by virtue of the conviction and sentence of imprisonment for life, to be considered as civilly dead. 6 Johns. C R. 118; 4 Johns. C. R. 228, 260; Laws of N. Y. Sess. 24, ch. 49, s. 29, 30, 31; 1 N. R. L. 157, 164; Co. Litt. 130, a; 3 Inst. 215; 1 Bl. Com. 132, 133; 4 Bl. Com. 332; 4 Vin. Ab. 152. See. Code Civ. art. 22 a 25; 1 Toull. n. 280 and p. 254, 5, note; also, pp. 243-5, n. 272; 1 Malleville's Discussion of the Code Civil, 45, 49, 51, 57. Biret, Vocab. au mot Effigie.

23. Death of a partner. The following effects follow the death of a partner, namely: 1. The partnership is dissolved, unless otherwise provided for by the articles of partnership. Gow's Partn. 429. 2. The representatives of the deceased partner become tenants in common with the survivor in all partnership effects in possession. 3. Choses in action so far survive that the right to reduce them into possession vests exclusively in the survivor. 4. When recovered, the representatives of the deceased partner have, in, equity, the same right of sharing and participating in them that their testator or intestate would have had had he been living. 5. It is the duty and the right of the surviving partner to settle the affairs of the firm, for which he is not allowed any compensation. 6. The surviving partner is alone to be sued at law for debts of the firm, yet recourse can be had in equity against the assets of the deceased debtor. Gow's Partn. 460. Vide Capital Crime; Dissolution; Firm; Partners; Partnership; Punishment. See, generally, Bouv. Inst. Index, h. t.

DEATH BED, Scotch law. The incapacity to exercise the power of disposing of one's property after being attacked with a mortal disease.

2. It commences with the beginning of such disease.

3. There are two exceptions to this general rule, namely: 1. If he survive for sixty days after the act or, 2. If he go to kirk or market unattended. He is then said to be in legitima potestate, or in liege poustie. 1 Bell's Com. 84, 85.

DEATH BED OR DYING DECLARATIONS. In cases of homicide, those which are made in extremis, when the person making them is conscious of his danger and has given up all hopes of recovery, charging some other person or persons with the murder. See 1 Phil. Ev. 200; Stark. Ev. part 4, p 458; 15 Johns. R. 288; 1 Hawk's R. 442; 2 Hawk's R. 31; McNally's Ev. 174; Swift's Ev. 124.

2. These declarations, contrary to the general rule that, hearsay is not evidence, are constantly received. The principle of this exception is founded partly on the situation of the dying person, which is considered to be as powerful over his conscienceas the obligation of an oath, and partly on the supposed absence of interest on the verge of the next world, which dispenses with a necessity of a cross-examination. But before such declarations can be ad-mitted in evidence against a prisoner, it must be satisfactorily proved, that the deceased at the time of making them was conscious of his danger and had given up all hopes of recovery. 1 Phil. Ev. 215, 216; Stark. Ev. part 4, p. 460.

3. They are admissible, as such, only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. 2 B. & C. 605; 15 John. 286: 4 C. & P. 233.Vide. 2 M. & Rob. 53.

4. The declarant must not have been incapable of a religious sense of accountability to his Maker; for, if it appears that such religious sense was wanting, whether it arose from infidelity, imbecility or tender age, the declarations are alike inadmissible. 1 Greenl. Ev. §157; 1 Phil. Ev. 289; Phil. & Ani. Ev. 296; 2 Russ. on Cr. 688. See, in general, Bac. Abr. Evidence, K; Addis. R. 832 East's P. C. 354, 356; 1 Stark. C. 522 2 Hayw. R. 31; 1 Hawk's R. 442; Swift's Ev. 124; Pothier, by Evans, vol. 2, p. 293; Anth. N. P. 176, and note a; Str. 500.

DEATH'S PART, English law. That portion of the personal estate of a deceased man which remained after his wife and children had received their reasonable parts from his estate; which was, if he had both a wife and child or children, one-third part; if a wife and no child, or a child or children and no wife, one-half; if neither wife nor child, he had the whole to dispose of by his last will and testament; and if he made no will, the same was to go to his administrator. And within the city of London, and throughout the province of York, in case of intestacy, the wife and children were till lately entitled to their reasonable parts, and the residue only was distributable by, the statute of distribution; but by the 11 G. I. c. 18, s. 17, 18, the power of devising was thrown generally open. Burn's L. Dict., See this dict. tit. Legitime, and Lex Falcidia.

DEBATE, legislation, practice. A contestation between two or more persons, in which they take different sides of a question, and maintain them, respectively, by facts and arguments; or it is a discussion, in writing, of some contested point.

2. The debate should be conducted with fairness, candor and decorum, and supported by facts and arguments founded in reason; when, in addition, it is ornamented by learning, and decorated by the powers of rhetoric, it becomes eloquent and persuasive. It is essential that the power of debate should be free, in order to an energetic discharge of his duty by the debator.

3. The Constitution of the United States, art. 1, s. 6, provides, that for any speech or debate, in either bouse, the senators and representatives shall not be questioned in any other place.

4. It is a rule of the common law, that counsel may, in, the discharge of professional duty, use strong epithets, however derogatory to the character of the opponent, or his attorney, or other agent or witness, in commenting on the facts of the case, if pertinent to the cause, and stated in his instructions, without any liability to any action for the supposed slander, whether the thing stated were true or false. 1 B. & Ald. 232; 3 Dow's R. 273, 277, 279; 7 Bing. R. 459; S. C. 20 E. C. L. R. 198. Respectable and sensible counsel, however, will always refrain from the indulgence of any unjust severity, both on their own personal account, and because browheating a witness, or other person, will injuriously affect their case in the eyes of a respectable court and jury. 3 Chit. Pr. 887, 8.

DEBENTURE. A certificate given, in pursuance of law, by the collector of a port of entry, for a certain sum, due by the United States, payable at a time therein mentioned, to an importer for drawhack of duties on merchandise imported and exported by him, provided the duties arising on the importation of the said merchandise shall have been discharged prior to the time aforesaid. Vide Act of Congress of March 2, 1799, s. 80; Encyclop6die, h. t.; Dane's Ab. Index, h. t.

DEBET ET DETINET, pleading. He owes and detains. In an action of.debt, the form of the writ is either in the debet and detinet, that is, it states that the defendant owes and unjustly detains the debt or thing in question, it is so brought between the original contracting parties; or, it is in the detinet only; that is, that the defendant unjustly detains from the plaintiff the debt or thing for which the action is brought; this is the form in in action by an executor, because the debt or duty is not due to him, but it is unjustly detained from him. 1 Saund. 1.

2. There is one case in which the writ must be in the detinet between the contracting parties. This is when the action is instituted for the recovery of goods, as a horse, a

ship, and the like, the writ must bein the detinet, for it cannot be said a man owes another a horse, or a ship, but only that he detains them from him. 3 Bl. Com. 153, 4; 11 Vin. Ab. 32 1; Bac. Ab. Debt, F; 1 Lilly's Reg. 543; Dane's Ab. h. t.

DEBIT, accounts, commerce. A term used in book-keeping, to express the left-hand page of the ledger, to which are carried all the articles supplied or paid on the subject of an account, or that are charged to that account. It also signifies the balance of an account.

DEBITUM IN PRAESENTI, SOLVENDUM IN FUTURO. A debt due at present, to be paid in future. There is a difference between debt payable now and one payable at a future time. On the former an action may be brought, on the latter no action lies until it becomes due. See Due; Owing; and 13 Pet. 494; 11 Mass. 493.

DEBT, contracts. A sum of money due by certain and express agreement. 3 Bl. Com. 154. In a less technical sense, as in the "act to regulate arbitrations and proceedings in courts of justice" of Pennsylvania, passed the 21st of March, 1806, s. 5, it means an claim for money. In a still more enlarged sense, it denotes any kind of a just demand; as, the debts of a bankrupt. 4 S. & R. 506.

2. Debts arise or are proved by matter of record, as judgment debts; by bonds or specialties; and by simple contracts, where the quantity is fixed and specific, and does not depend upon any future valuation to settle it. 3 Bl. Com. 154; 2 Hill. R. 220.

3. According to the civilians, debts are divided into active and passive. By the former is meant what is due to us, by the latter, what we owe. By liquid debt, they understand one, the payment of which may be immediately enforced, and not one which is due at a future time, or is subject to a condition; by hypothecary debt is meant, one which is a lien over an estate and a doubtful debt, is one the payment of which is uncertain. Clef des Lois Rom. h. t.

4. Debts are discharged in various ways, but principally by payment. See Accord and Satisfaction; Bankruptcy; Confusion Compensation; Delegation; -Defeasance; Discharge of a contract; Extinction; Extinguishment; Former recovery; Lapse of time; Novation; Payment; Release; Rescission; Set off.

5. In payment of debts, some are to be paid before others, in cases of insolvent estates first, in consequence of the character of the creditor, as debts due to the United States are generally to be first paid; and secondly, in consequence of the nature of the debt, as funeral expenses and servants' wages, which are generally paid in preference to other debts. See Preference; Privilege; Priority.

DEBT, remedies. The name of an action used for the recovery of a debt eo nomine and in numero though damages are generally awarded for the detention of the debt; these are, however, in most instances, merely nominal. 1 H. Bl. 550; Bull. N. P. 167 Cowp. 588.

2. The subject will be considered with reference, 1. To the kind of claim or obligation on which this action may be maintained. 2. The form of the declaration. 3. The plea. 4. The judgment.

3. - §1. Debt is a more extensive remedy for the recovery of money than assumpsit or covenant, for it lies to recover money due upon legal liabilities, as, for money lent, paid, had and received, due on an account stated; Com. Dig. Dett, A; for work and labor, or for the price of goods, and a quantum valebant thereon; Com. Dig. Dett, B Holt, 206; or upon simple contracts, express or implied, whether verbal or written, or upon contracts under seal, or of record, or by a common informer, whenever the demand for a sum is certain, or is capable of being reduced to certainty. Bull. N. P. 167. It also lies to recover money due on, any specialty or contract under seal to pay money. Str. 1089; Com. Dig. Dett, A 4; 1 T. R. 40. This action lies on a record, or upon a judgment of a court of record; Gilb. Debt, 891; Salk. 109; 17 S. & R. 1; or upon a foreign judgment. 3 Shepl. 167; 3 Brev. 395. Debt is a frequent remedy on statutes, either at the suit of the party grieved, or of a common informer. Com. Dig. Action on Statute, E; Bac. Ab. Debt, A. See, generally, Bouv. Inst. Index, h. t.; Com. Dig. h. t.; Dane's Ab. h. t.. Vin. Ab. h. t.; Chit. Pl. 100 to 109; Selw. N. P. 553 to 682; Leigh's N. P. Index, h. t. Debt also lies, in the detinet, for goods; which action differs from detinue, because it is not essential in this action, as in detinue, that the property in any specific goods should be vested in the plaintiff, at the time the action is brought; Dy. 24 b; and debt in the debet and detinet may be maintained on an instrument by which the defendant is bound to pay a sum of money lent, which might have been discharged, on or before the day of payment, in articles of merchandise. 4 Yerg. R. 171; see, Com. Dig. Dett, A 5; Bac. Ab. Debt, F; 3 Woodd. 103, 4; 1 Dall. R. 458.

4. - §2. When the action is on a simple contract, the declaration must show the consideration of the contract, precisely as in assumpsit; and it should state either a legal liability or an express agrement, though not a promise to pay the debt. 2 T. R. 28, 30. When the action is founded on a specialty or record, no consideration need be shown, unless the performance of the consideration constitutes a condition precedent, when performance of such consideration must be averred. When the action is founded on a deed, it must be declared upon, except in the case of debt for rent. 1 New R. 104.

5. - §3. The plea to an action of debt is either general or special. 1. The plea of general issue to debt on simple contracts, or on statutes, or when the deed is only matter of

inducement, is nil debet. See Nil debet. In general, when the action is on a specialty, the plea denying the existence of the contract is non est factum; 2 Ld. Raym. 1500; to debt on record, nul tiel record. 16 John. 55. Other matters must, in general, be pleaded specially.

6.- §4. For the form of the judgment, see Judgment in debt. Vide Remedy.

DEBTEE. One to whom a debt is due a creditor, as, debtee executor. 3 Bl. Com. 18.

DEBTOR, contracts. One who owes a debt; he who may be constrained to pay what he owes.

2. A debtor is bound to pay his debt personally, and all the estate he possesses or may acquire, is also liable for his debt.

3. Debtors are joint or several; joint, when they all equally owe the debt in solido; in this case if a suit should be necessary to recover the debt, all the debtors must be sued together or, when some are dead, the survivors must be sued, but each is bound for the whole debt, having a right to contribution from the others; they are several, when each promises severally to pay the whole debt; and obligations are generall binding on both or all debtors jointly and severally. When they are severally bound each may be sued separately, and on the payment of debt by one, the others will be bound to contribution, where all had participated in the money or property, which was the cause of the debt.

4. Debtors are also principal and surety; the principal debtor is bound as between him and his surety to pay the whole debt. and if the surety pay it, he will be entitled to recover against the principal. Vide Bouv. Inst. Index, h. t.; Vin. Ab. Creditor and Debtor; Id. Debt; 8 Com. Dig. 288; Dig. 50, 16, 108 Id. 50, 16, 178, 3; Toull. liv. 2, n. 250.

DECAPITATION, punishment. The punishment of putting a person to death by taking off his head.

DECEDENT. In the acts of descent and distribution in Pennsylvania, this word is frequently used for a deceased person, testate or intestate.

DECEIT, tort. A fraudulent. misrepresentation or contrivance, by which one man deceives another, who has no means of detecting the fraud, to the injury and damage of the latter.

2. Fraud, or the intention to deceive, is the very essence of this injury, for if the party misrepresenting was himiself mistaken, no blame can attach to him. The representation must be made malo animo, but whether or not the party is himself to gain by it, is wholly immaterial.

3. Deceit may not only be by asserting a falsebood deliberately to the injury of another as, that Paul is in flourishing circumstances, whereas he is in truth insolvent; that Peter is an honest man, when he knew him to be a, rogue; that property, real or personal, possesses certain qualities, or belongs to the vendor, whereas he knew these things to be false; but by any act or demeanor which would naturally impress the mind of a careful man with a mistaken belief.

4. Therefore, if one whose manufactures are of a superior quality, distinguishes them by a particular mark, which facts are known to Peter, and Paul counterfeits this work, and affixes them to articles of the same description, but not made by such person, and sells them to Peter as goods of such manufacture, this is a deceit.

5. Again, the vendor having a knowledge of a defect in a commodity which cannot be obvious to the buyer, does not disclose it, or, if apparent, uses an artifice and conceals it, he has been guilty of a fraudulent misrepresentation for there is an implied condition in every contract that the parties to it act upon equal terms, and the seller is presumed to have assured or represented to the vendee that he is not aware of any secret deficiencies by which the commodity is impaired, and that he has no advantage which himself does not possess.

6. But in all these cases the party injured must have no means of detecting the fraud, for if he has such means his ignorance will not avail him in that case he becomes the willing dupe of the other's artifice, and volenti non fit injuria. For example, if a horse is sold wanting an eye, and the defect is visible to a common observer, the purchaser cannot be said to be deceived, for by inspection he might discover it, but if the blindness is only discoverable by one experienced in such diseases, and the vendee is an inexperienced person, it is a deceit, provided the seller knew of the defect.

7. The remedy for a deceit, unless the right of action has been suspended or discharged, is by an action of trespass on the case. The old writ of deceit was brought for acknowledging a fine, or the like, in another name, and this being a perversion of law to an evil purpose, and a high contempt, the act was laid contra pacem, and a fine imposed upon the offender. See Bro. Abr. Disceit; Vin Abr. Disceit.

8. When two or more persons unite in a deceit upon another, they may be indicted for a conspiracy. (q. v.) Vide, generally, 2 Bouv. Inst. n. 2321-29; Skin. 119; Sid. 375; 3 T. R. 52-65; 1 Lev. 247; 1 Strange, 583; D Roll. Abr. 106; 7 Barr, Rep. 296; 11 Serg.

& R. 309, 310; Com. Dig. Action upon the case for a deceit; Chancery, 3 F 1 and 2; 3 M 1; 3 N 1; 4 D 3; 4 H 4; 4 L 1; 4 O 2; Covin; Justices of the Peace, B 30; Pleader, 2 H; 1 Vin. Ab. 560; 8 Vin. Ab. 490; Doct. Pl. 51; Dane's Ab. Index, h. t.; 1 Chit. Pr. 832 Ham. N. P. c. 2, s. 4; Ayl. Pand. 99 2 Day, 531; 12 Mass. 20; 3 Johns. 269; 6 Johns. 181; 2 Day, 205, 381; 4 Yeates, 522; 18 John. 395: 8 John. 23; 4 Bibb, 91; 1 N. & M. 197. Vide, also, articles Equality; Fraud; Lie.

TO DECEIVE. To induce another either by words or actions, to take that for true which is not so. Wolff, Inst. Nat. §356.

DECEM TALES, practice. In the English law this is a writ which gives to the sheriff apponere decem tales; i. e. to appoint ten such men for the supply of jurymen, when a sufficient number do not appear to make up a full jury.

DECENNARY, Eng. law. A town or tithing, consisting originally of ten families of freeholders. Ten tithings composed a hundred. 1 Bl. Com. 114.

DECIES TANTUM, Eng. law. The name of an obsolete writ which formerly lay against a juror who had taken money for giving his verdict; called so, because it was sued out to recover from him ten times as much as he took.

DECMATION. The punishment of every tenth soldier by lot, was, among the Romans, called decimation.

DECIME. A French coin, of the value of a tenth part of a franc, or nearly two cents.

DECISION, practice. A judgment given by a competent tribunal. The French lawyers call the opinions which they give on questions propounded to them, decisions. Vide Inst. 1, 2, 8 Dig. 1, 2, 2.

DECLARANT. One who makes a declaration. Vide Declarationis.

DECLARATION, pleading. A declaration is a specification, in a methodical and logical form, of the circumstances which constitute the plaintiff's cause of action. 1 Chit. Pl. 248; Co. Litt. 17, a, 303, a; Bac. Abr. Pleas, B; Com. Dig. Pleader, C 7; Lawes on Pl. 35; Steph Pl. 36; 6 Serg. & Rawle, 28. In real actions, it is most properly called the count; in a personal one, the declaration. Steph. Pl. 36 Doct. Pl. 83; Lawes, Plead. 33; see P. N. B. 16, a, 60, d. The latter, however, is now the general term; being that commonly used when referring to real and personal actions without distinction. 3 Bouv. Inst. n. 2815.

2. The declaration in an action at law answers to the bill in chancery, the libel of the civilians, and the allegation of the ecclesiastical courts.

3. It may be considered with reference, 1st. To those general requisites or qualities which govern the whole declaration; and 2d. To its form, particular parts, and requisites.

4. - 1. The general requisites or quali- ties of a declaration are first, that it correspond with the process. But, according to the present practice of the courts, oyer of the writ cannot be craved; and a variance between the writ and declaration cannot be pleaded in abatement. 1 Saund. 318; a.

5. - Secondly. The second general requisite of a declaration is, that it contain a statement of all the facts necessary in point of law, to sustain the action, and no more. Co. Litt. 303, a; Plowd. 84, 122. See 2 Mass. 863; Cowp. 682; 6 East, R. 422 5 T. R. 623; Vin. Ab. Declarations.

6. - Thirdly. These circumstances must be stated with certainty and truth. The certainty necessary in a declaration is, to a certain intent in general, which should pervade the whole declaration, and is particularly required in setting forth, 1st. The parties; it must be stated with certainty who are the parties to the suit, and therefore a declaration by or against "C D and Company," not being a corporation, is insufficient. See Com. Dig. Pleader, C I 8 1 Camp. R. 446 I T. R. 508; 3 Caines, R. 170. 2d. The time; in personal actions the declaration must, in general, state a time when every material or traversable fact happened; and when a venue is necessary, time must also, be mentioned. 5 T. R. 620; Com. Dig. Plead. C 19; Plowd. 24; 14 East, R. 390.; The precise time, however, is not material; 2 Dall. 346; 3 Johns. R. 43; 13 Johns. R. 253; unless it constitutes a material part of the contract declared upon, or whlere the date, &c., of a written contract or record, is averred; 4 T. R. 590 10 Mod. 313 2 Camp. R. 307, 8, n.; or, in ejectment, in which the demise must be stated to have been made after the title of the lessor of the plaintiff, and his right of entry, accrued. 2 East, R. 257; 1 Johns. Cas. 283. 3d. The Place. See Venue. 4th. Other circumstances necessary to maintain the action.

7. - 2. The parts and particular requisites of a declaration are, first, the title of the court and term. See 1 Chit. Pl. 261, et seq.

8. - Secondly. The venue. Immediately after tñhe title of the declaration follows the statement in the margin of the venue, or county in which the facts are alleged to have occurred, and in which the cause is tried. See Venue.

9. - Thirdly. The commencement. What is termed the commencement of the declaration follows the venue in the margin, and precedes the more circumstantial statement of the cause of action. It contains a statement, 1st. Of the names of the parties to the suit, and if they sue or be sued in another right, or in a political capacity, (as executors, assignees, qui lam, &c.) of the character or right in respect of which they are parties to the suit. 2d. Of the mode in which the defendant has been brought into court; and, 3d. A brief recital of the form of action to be proceeded in. 1 Saund. 318, Id. 111, 112; 6 T. R. 130.

10. Fourthly. The statement of the cause (if action, in which all the requisites of certainty before mentioned must be observed, necessarily varies, according to the circumstances of each particular case, and the form of action, whether in assumpsit, debt, covenant, detinue, case, trover, replevin or trespass.

11. Fifthly. The several counts. A declaration may consist of as many counts as the case requires, and the jury may assess entire or distinct damages on. all the counts; 3 Wils. R. 185; 2 Bay, R. 206; and it is usual, particularly in actions of assumpsit, debt on simple contract, and actions on the case, to set forth the plaintiff's cause of action in various shapes in different counts, so that if the plaintiff fail in proof of one count, he may succeed in another. 3 Bl. Com. 295.

12. - Sixthly. The conclusion. In personal and mixed actions the declaration should conclude to the damage of the plaintiff; Com. Dig. Pleader, C 84; 10 Co. 116, b. 117, a.; unless in scire facias and in penal actions at the suit of a common informer.

13. - Seventhly. The profert and pledges. In an action at the suit of an executor or administrator, immediately after the conclusion to the damages, &c., and before the pledges, a profert of the letters testamentary or letters of administration should be made. Bac. Abr. Executor, C; Dougl. 6, in notes. At the end of the declaration, it is usual to add the plaintiff is common pledges to prosecute, John Doe and Richard Roe.

14. A declaration may be general or special; for example, in debt or bond, a declaration counting on the penal part only, is general; when it sets out both the penalty and the condition, and assigns the breach, it is special. Gould on Pl. c. 4, §50. See, generally, Bouv. Inst. Index, h. t. 1 Chit. Pl. 248 to 402; Lawes, Pl. Index) h. t.; Arch. Civ. Pl. -index, h. t.; Steph. Pl. h. t.; Grab. Pr. h. t.; Com. Dig. Pleader, h. t.; Dane's Ab. h. t.; United States Dig. Pleadings ii.

DECLARATION OF INDEPENDENCE. This is a state paper issued by the congress of the United States of America, in the name and by the authority of the people, on the fourth day of July, 17 76, wherein are set forth:

2. - 1. Certain natural and unalienable rights of man; the uses and purposes of governments the right of the people to institute or to abolish them; the sufferings of the colonies, and their right to withdraw from the tyranny of the king of Great Britain.

3. -2. The various acts of tyranny of the British Icing.

4. - 3. The petitions for redress of these injuries, and the refusal. to redress them; the recital of an appeal to the people of "Great Britain, and of their being deaf to the voice of justice and consanguinity.

5. - 4. An appeal to the Supreme Judge of the world for the rectitude of the intentions of the representatives.

6. - 5. A declaration that the United Colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is and ought to be dissolved.

7. - 6. A pledge by the representatives to each other, of their lives, their fortunes, and their sacred honor.

8. The effect of this declaration was the establishment of the government of the United States as free and independent) and thenceforth the people of Great Britain have been held, as the rest of mankind, enemies in war, in peace friends.

DECLARATION OF lNTENTION. The act of an alien, who goes before a court of record, and in a forma manner declares that it is, bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whereof he may at the time be a citizen or subject. Act of Congress of April 14, 18O2, s. 1.

2. This declaration must, in usual cases, be made at least three years before his admission. Id. But there are numerous exceptions to this rule. See Naturalization.

DECLARATION OF TRUST. The act by which an individual acknowledges that a property, the title of which he holds, does in fact belong to another, for whose use he holds the same. The instrument in which the acknowledgment is made, is also called a declaration of trust; but such a declaration is not always in writing, though it is highly proper it should be so. Will. on Trust, 49, note y; Sudg. on Pow. 200. See Merl. Rep. Declaration au profit d'un tiers.

DECLARATION OF WAR. An act of the national legislature, in which a state of war is declared to exist between the United States and some other nation.

2. This power is vested in congress by the constitution, art. 1, s. 8. There is no form or ceremony necessary, except the passage of the act. A manifesto, stating the causes of the war, is usually publishied, but war exists as soon as the act takes effect. It was formerly usual to precede hostilities by a public declaration communicated to the enemy, and to send a herald to demand satisfaction. Potter, Antiquities of Greece, b. 3, c. 7; Dig. 49, 15, 24. But that is not the practice of modern times. In some countries, as England, the, power of declaring war is vested in the king, but he has no power to raise men or money to carry it on, which renders the right almost nugatory.

4. The public proclamation of the government of a state, by which it declares itself to be at war with a foreign power, which is named, and which forbids all and every one to aid or assist the common enemy, is also called a declaration of war.

DECLARATIONS, evidence. The statements made by the parties to a transaction, in relation to the same.

2. These declarations when proved are received in evidence, for the purpose of illustrating the peculiar character and circumstances of the transaction. Declarations are admitted to be proved in a variety of cases.

3. - 1. In cases of rape, the fact that the woman made declarations in relation to it, soon after the assault took place, is evidence; but the particulars of what she said cannot be heard. 2 Stark; N. P. C. 242; S. C. 3 E. C. L. R. 344. But it is to be observed that these declarations can be used only to corroborate her testimony, and cannot be received as independent evidence; where, therefore, the prosecutrix, died, these declarations could not be received. 9 C. & P. 420; S. C. 38 Eng. C. L. R. 173; 9 C. & P. 471; S. C. 38 E. C. L. It. 188.

4. - 2. When more than one person is concerned in the commission of a crime, as in cases of riots, conspiracies, and the like, the declarations of either of the parties, made while acting in the common design, are evidence against the whole; but the declarations of one of the rioters or conspirators, made after the accomplishment of their object, and when they no longer acted together, are evidence only against the party making them. 2 Stark. Ev. 235 2 Russ. on Cr. 572 Rosc. Cr. Ev. 324; 1 Breese, Rep. 269.

5. In. civil cases the declarations of an agent, made while acting for his principal, are admitted in evidence as explanatory of his acts; but his confessions after he has ceased to, act, are not evidence. 4. S. R. 321.

6. - 3. To prove a pedigree, the declarations of a deceased member of the family are admissible. Vide Hearsay, and the cases there cited.

7. - 4. The dying declarations of a man who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence; but the party making them must be under a full consciousness of approaching death. The declarations of a boy between ten and eleven years of age, made under a consciousness of approaching death, were received in evidence on the trial of a person for killing him, as being declarations in articulo mortis. 9 C. & P. 395; S. C. 38 E. C. L. R. 168. Evidence of such declarations is admissible only when the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declarations. 2 B. & C. 605; S. C. 9 E. C. L. R. 196; 2 B. & C. 608; S. C. 9 E. C. L. R. 198; 1 John. Rep. 159; 15 John. R. 286; 7 John. R. 95 But see contra, 2 Car. Law Repos. 102. Vide Death bed, or Dying declarations. 3 Bouv. Inst. n. 3071.

DECLARATORY. Something which explains, or ascertains what before was uncertain or doubtful; as a declaratory statute, which is one passed to put an end to a doubt as to what the law is, and which declares what it is, and what it has been. 1 Bl. Com. 86.

TO DECLARE. To make known or publish. By tho constitution of the United States, congress have power to declare war. In this sense the word, declare, signifies, not merely to make it known that war exists, but also to make war and to carry it on. 4 Dall. 37; 1 Story, Const. §428; Rawle on the Const. 109. In pleading, to declare, is the act of filing a declaration.

DECOCTION, med. jurisp. The operation of boiling certain ingredients in a fluid, for the purpose of extracting the parts soluble at that temperature. Decoction also means the product of this operation.

2. In a case in which the indictment charged the prisoner with having administered to a woman a decoction of a certain shrub called savin, it appeared that the prisoner had administered an infusion (q. v.) and not a decoction; the prisoner's counsel insisted that he was entitled to an acquittal, on the ground that the medicine was misdescribed, but it was held that infusion and decoction are ejusdem generis, and that the variance was immaterial. 3 Camp. R. 74, 75.

DECONFES, canon law in France. Formerly those persons who died without confession were so called; whether they refused to confess or whether they were criminals to whom the sacrament was refused. Droit Canon, par M. L'Abbe Andre. Dupin, Gloss. to Loisel's Institutes, says, Le deconfes est celui qui meurt sans confession et sans testament car l'un n'alloit point sans l'autre. See Intestate.

DECORUM. Proper behaviour; good order.

2. Decorum is requisite in public places, in order to permit all persons to enjoy their rights; for example, decorum is indispensable in church, to enable those assembled, to worship. If, therefore, a person were to disturb the congregation, it would be lawful to put him out. The same might be done in case of a funeral. 1 Mod. 168; 1 Lev. 196 2 Kebl. 124. But a request to desist should be first made, unless, indeed," when the necessity of the case would render such precaution impossible. In using force to restore order and decorum, care must be taken to use no more than is necessary; for any excess will render the party using it guilty of an assault and battery. Vide Battery.

DECOY. A pond used for the breeding and maintenance of water-fowl. 11 Mod. 74, 130; S. C. 3 Salk. 9; Holt, 14 11 East, 571.

DECREE, practice. The judgment or sentence of a court of equity.

2. It is either interlocutory or final. The former is given on some plea or issue arising in the cause, which does not decide the main question; the latter settles the matter in dispute, and a final decree has the same effect as a judgment at law. 2 Madd. Ch. 462; 1 Chan. Cas. 27; 2 Vern. 89; 4 Bro. P. C. 287.; Vide 7r-Vin. Ab. 394; 7 Com. Dig. 445; 1 Supp. to Ves. Jr. 223 Bouv. Inst. Index, h. t.

DECREE, legislation. In some countries as in France, some acts of the legislature, or of the sovereign, which have the force of law, are called decrees; as, the Berlin and Milan decrees.

DECREE ARBITRAL, Scotch law. A decree made by arbitrators chosen by the parties; an award. 1 Bell's Com. 643.

DECREE OF REGISTRATION, Scotch law. A proceeding by which the creditor has immediate execution; it is somewhat like a warrant of attorney to confess judgment. 1 Bell's Com. B. 1, c. 1, p. 4.

DECRETAL ORDER. Chancery practice. An order made by the court of chancery, upon a motion or petition, in the nature of a decree. 2 Dan. Ch. Pr. 637.

DECRETALS. eccles. law. The decretals are canononical epistles, written by the pope alone, or by the pope and cardinals, at the instance or suit of some one or more persons, for the ordering and determining some matter in. controversy, and have the authority of a law in themselves.

2. The decretals were published in three volumes. The first volume was collected by Raymundus Barcinius, chaplain to Gregory IX., about the year 1231, and published by him to be read in schools, and used in the ecclesiastical courts. The second volume is the work of Boniface VIII compiled about the year 1298, with additions to and alterations of the ordinances of his predecessors. The third volume is called the Clementines, because made by Clement V., and was published by him in the council of Vienna, about the year 1308. To these may be added the Extravagantes of John XXII. and other bishops of Rome, which, relatively to the others, are called Novelle Constitutiones. Ridley's View, &c. 99, 100,; 1 Fournel, Hist. des Avocats, 194-5.

3. The false decretals were forged. in the names of the early bishops of Rome, and first appeared about A. D. 845-850. The author of them is not known. They are mentioned in a letter written in the name of the council of Quiercy, by Charles the Bald, to the bishops and lords. of France. See Van Espen Fleury, Droit de Canon, by Andre.

DEDI, conveyancing. I have given. This word amounts to a warranty in law, when it is in a deed; for example, if in a deed it be said, I have given, &c., to A B, this is a warranty to him and his heirs. Brooke, Abr. Guaranties, pl. 85. Yet the warranty wrought by this word is a special warranty, and extendeth to the heirs of the feoffee during the life of the donor only. Co. Litt. 884, b. Vide Concessi.

DEDICATION. Solemn appropriation. It may be expressed or implied.

2. An express dedication of property to public use is made by a direct appropriation of it to such use, and it will be enforced. 2 Peters, R. 566; 6 Hill, N. Y. Rep. 407.

3. But a dedication of property to public or pious uses may be implied from the acts of the owner. A permission to the public for the space of eight or even six years, to use a street without bar or impediment, is evidence from which a dedication to the public may be inferred. 2 Bouv. Inst. n. 1631; 11 East, R. 376; 12 Wheat. R. 585; 10 Pet. 662; 2 Watts, 23; 1 Whart. 469; 3 Verm, 279; 6 Verm. 365; 7 Ham. part 2, 135; 12 Wend. 172; 11 Ala. R. 63, 81; 1 Spencer, 86; 8 Miss. R. 448 5 Watts & S. 141; Wright, 150; 6 Hill, 407 24 Pick. 71; 6 Pet. 431, 498 9 Port.,527; 3 Bing. 447; sed vide 5 Taunt. R . 125. Vide Street, and the following authorities: 3 Kent, Com. 450; 5 Taunt. 125 5 Barn. & Ald. 454: 4 Barn. & Ald. 447; Math. Pres. 833. As to what shall amount to a dedication of an invention to public use, see 1 Gallis. 482; 1 Paine's C. C. R. 345; 2. Pet. R. 1; 7 Pet. R. 292; 4 Mason, R. 1018. See Destination.

DEDIMUS, practice. The name of a writ to commission private. persons to do some act in the place of a judge; as, to administer an oath of office to a justice of the peace, to examine witnesses, and the like. 4 Com. Dig. 319; 3 Com. Dig. 359; Dane's Ab.

Index, h. t. Rey, in his Institutions Judiciaires, de l'Angleterre, tom. 2, p. 214, exposes the absurdity of the name given to this writ; he says it is applicable to every writ which emanates from the same authority; dedimus, we have given.

DEDIMUS POTESTATEM DE ATTORNO FACIENCDO. The name of a writ which was formerly issued by authority of the crown in England to authorize an attorney to appear for a defendant.

2. By statute of Westminster 2, 13 Edw. I. c. 10, all persons impleaded may make an attorney to sue for them in all pleas moved by or against them, in the superior courts there enumerated. 3 Mann. & Gran. 184, note.

DEED, conveyancing, contracts. A writing or instrument, under seal, containing some contract or agreement, and which has been delivered by the parties. Co. Litt. 171; 2 Bl. Com. 295; Shep. Touch. 50. This applies to all instruments in writing, under seal, whether they relate to the conveyance of lands, or to any other matter; a bond, a single bill, an agreement in writing, or any other contract whatever, when reduced to writing, which writing is sealed and delivered, is as much a deed as any conveyance of land. 2 Serg. & Rawle, 504; 1 Mood. Cr, Cas. 57; 5 Dana, 365; 1 How. Miss. R. 154; 1 McMullan, 373. Signing is not necessary at common law to make a deed. 2 Ev. Poth. 165; 11 Co. Rep. 278 6 S. & R. 311.

2. Deed, in its more confined sense, signifies a writing, by which lands, tenements, and hereditaments are conveyed, which writing is sealed and delivered by the parties.

3. The formal parts of a deed for the conveyance of land are, 1st. The premises, which contains all that precedes the habendum, namely, the date, the names and descriptions of the parties, the recitals, the consideration, the receipt of the same, the grant, the full description of the thing granted, and the exceptions, if any.

4. - 2d. The habendum, which states that estate or interest is granted by the deed this is sometimes, done in the premises.

5. - 3d. The tenendum. This was formerly used to express the tenure by which the estate granted was to be held; but now that all freehold tenures have been converted into socage, the tenendum is of no use and it is therefore joined to the habendum, under the formula to have and to hold.

6th. The redendum is that part of the deed by which the grantor reserves something to himself, out of the thing granted, as a rent, under the following formula, Yielding and paying.

7. - 5th. The conditions upon which the grant is made. Vide Conditions.

8. - 6th. The warranty, is that part by which the grantor warrants the title to the grantee. This is general when the warrant is against all persons, or special, when it is only against the grantor, his heirs, and those claiming under him. See Warranty.

9. - 7th. The covenants, if any; these are inserted to oblige the parties or one of them, to do something beneficial to, or to abstain from something, which, if done, might be prejudicial to the other.

10. - 8th. The conclusion, which mentions the execution and the date, either expressly, or by reference to the beginning.

11. The circumstances necessarily attendant upon a valid deed, are the following: 1. It must be written or printed on parchment or paper. Litt. 229, a; 2 Bl. Com. 297. 2. There must be sufficient parties. 3. A proper subject-matter which is the object of the grant. 4. A. sufficient consideration. 5. An agreement properly set forth. 6. It must be read, if desired. 7. It must be signed and sealed. 8. It must be delivered. 9. And attested by witnesses. 10. It should be properly acknowledged before a competent officer.

11. It ought to be recorded.

12. A deed may be avoided, 1. By alterations made in it subsequent to its execution, when made by the party himself, whether they be material or immaterial, and by any material alteration, made even by a stranger. Vide Erasure; Interlineation.

2. By the disagreement of those parties whose concurrence is necessary; for instance, in the case of a married woman by the disagreement of her hushand. 3. By the judgment of a competent tribunal.

13. According to Sir William Blackstone, 2 Com. 313, deeds may be considered as (1), conveyanees at common law, original and derivative. 1st. The original are, 1. Feoffment. 2. Gift. 3. Grant. 4. Lease. 5. Exchange; and 6. Partition. 2d. Derivative, which are 7. Release. 8. Confirmation. 9. Surrender. 10. Assignment 11. Defeasance. (2). Conveyances which derive their force by virtue of the statute of uses; namely, 12. Covenant to stand seised to uses. 13. Bargain and sale of lands. 14. Lease and release. 15. Deed to lead and declare uses. 16. Deed of revocation of uses.

14. The deed of, bargain and sale, is the most usual in the United States. Vide Bargain and Sale. Chancellor Kent is of opinion that a deed would be perfectly competent in any part of the United States, to convey the fee, if it was to the following effect: "I, A,

B, in consideration of one dollar to me paid, by C D, do bargain and sell , (or in some of the states, grant) to C D, and his heirs, (in New York, Virginia, and some other states, the words, and his heirs may be omitted,) the lot of land, (describing it,) witness my hand and seal," &c. 4 Kent, Com. 452. Vide, generally, Bouv. Inst. Index, h. t.; Vin. Abr. Fait; Com. Dig. Fait; Shep. Touch. ch. 4; Dane's Ab. Index, h. t.; 4 Cruise's Dig. passim.

15. Title deeds are considered as part of the inheritance and pass to the heir as real estate. A tenant in tail is, therefore, entitled to them; and chancery will, enable him to get possession of them. 1 Bro. R. 206; 1 Ves. jr. 227;11 Ves. 277; 15 Ves. 173. See Hill. Ab. c. 25; 1 Bibb, R. 333: 3 Mass. 487; 5 Mass. 472.

16. The cancellation, surrender, or destruction of a deed of conveyance, will not divest the estate which has passed by force of it. 1 Johns. Ch. Rep. 417 2 Johns. Rep. 87. As to the effect of a redelivery of a deed, see 2 Bl. Com. 308 2 H. Bl. 263, 264.

DEED POLL, contracts. A deed made by one party only is not indented, but polled or shaved quite even, and is, for this reason, called a deed poll, or single deed. Co. Litt. 299, a.

2. A deed poll is not, strictly speaking, an agreement between two persons; but a declaration of some one particular person, respecting an agreement made by him with some other person. For example, a feoffment from A to B by deed poll, is not an agreement between A and B, but rather a declaration by A addressed to all mankind, informing them that he thereby gives and enfeoffs B of certain land therein described.

3. It was formerly called charta de una parte, and, usually began with these words, Sciant praesentes et futuri quod ego A, &c.; and now begins, "Know all men by these presents, that I, A B, have given, granted, and enfeoffed, and by these presents do give, grant and enfeoff," &c. Cruise, Real Prop. tit. 32, c. 1, s. 23.

DEFALCATION, practice, contracts. The reduction of the claim of one of the contracting parties against the other, by deducting from it a smaller claim due from the former to the latter.

2. The law operates this reduction , in certain cases, for, if the parties die or are insolvent, the balance between them is the only claim; but if they are solvent and alive, the defendant may or may not defalcate at his choice. See Set off. For the etymology of this word, see Bracken. Law Misc. 186; 1 Rawle's R. 291; 3 Binn. R. 135.

3. Defalcation also signifies the act of a defaulter. The bankrupt act of August 19, 1841, (now repealed), declares that a person who owes debts which have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity, shall not have the benefit of that law.

DEFAMATION, tort. The speaking slanderous words of a person so as, de bona fama aliquid detrahere, to hurt his good fame. Vide Slander.

2. In the United States, the remedy for defamation is by an action on the case, where the words are slanderous.

3. In England, besides the remedy by action, proceedings may be instituted in the ecclesiastical court for redress of the injury. The punishment for defamation, in this court, is payment of costs and penance enjoined at the discretion of the judge. When the slander has been privately uttered, the penance may be ordered to be performed in a private place; when publicly uttered, the sentence must be public, as in the church of the parish of the defamed party, in time of divine service,, and the defamer may be required publicly to pronounce that by such words, naming them, as set forth in the sentence, he had defamed the plaintiff, and, therefore, that he begs pardon, first, of God, and then of the party defamed, for uttering such words. Clerk's Assist. 225; 3 Burn's Eccl. Law, Defamation, pl. 14; 2 Chit. Pr. 471 Cooke on Def.

DEFAULT. The neglect to perform a legal obligation or duty; but in technical language by default is often understood the non-appearance of the defendant within the time prescribed by law, to defend himself; it also signifies the non-appearance of the plaintiff to prosecute his claim.

2. When the plaintiff makes default, he may be nonsuited; and when the defendant makes default, judgment by default is rendered against him. Com. Dig. Pleader, E 42 Id. B 11. Vide article Judgment by Default, and 7 Vin. Ab. 429; Doct. Pl. 208 Grah. Pr. 631. See, as to what will excuse or save a default, Co. Litt. 259 b.

DEFAULT, contracts, torts. By the 4th section of the English statute of frauds, 29 Car. H., c. 3, it is enacted that "no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement," &c., "shall be in writing," &c. By default under this statute is understood the non-performance of duty, though the same be not founded on a contract. 2 B. & A. 516.

DEFAULTER, com. law. One who is deficient in his accounts, or falls in making his accounts correct.

DEFEASANCE, contracts, conveyancing. An instrument which defeats the force or operation of some other deed or estate. That, which in the same deed is called a condition, in another deed is a defeasance.

2. Every defeasance must contain proper words, as that the thing shall be void. 2 Salk. 575 Willes, 108; and vide Carth. 64. A defeasance must be made in eodem modo, and by, matter as high as the thing to be defeated; so that if one be by deed) the other must also be by deed. Touchs. 397.

3. It is a general rule, that the defeasance shall be a part, of the same transaction with the conveyance; though the defeasance may be dated after the deed. 12 Mass. R. 13 Pie P. 413 1 N. 11. Rep. 41; but see 4 Yerg. 57, contra. Vide Bouv. Inst. Index, h. t.; Vin. Ab. h. t.; Com. Dig. h. t.; Id. Pleader, 2 W 35, 2 W 37; Lilly's Reg. h. t.; Nels. Ab. h. t.; 2 Saund. 47 n, note 1; Cruise, Dig. tit. 32, c. 7,, s. 25; 18 John. R. 45; 9 Wend. R. 538; 2 Mass. R. 493.

DEFEASIBLE. What may be undone or annulled.

DEFECT. The want of something required by law.

2. It is a general rule that pleadings shall have these two requisites; 1. A matter sufficient in law. 2. That it be deduced and expressed according to the forms of law. The want of either of these is a defect.

3. Defects in matters of substance cannot be cured, because it does not appear that the plaintiff is entitled to recover; but when the defects are in matter of form, they are cured by a verdict in favor of the party who committed them. 3 Bouv. Inst. n. 3292; 2 Wash. 1; 1 Hen. & Munf. 153; 16 Pick. 128, 541; 1 Day, 315; 4 Conn, 190; 5 Conn. 416; 6 Conn. 176; 12 Conn. 455; 1 P. C. C. R. 76; 2 Green, 133; 4 Blackf. 107; 2 M'Lean, 35; Bac. Ab. Verdict, X.

DEFENCE, torts. A forcible resistance of an attack by force.

2. A man is justified, in defending his person, that of his wife, children, and servants, and for this purpose he may use as much force as may be necessary, even to killing the assailant, remembering that the means used must always be proportioned to the occasion, and an excess becomes, itself, an injury.

3. A man may also repel force by force in defence of his personal property, and even justify homicide against one Who manifestly intends or endeavors by violence or surprise to commit a known felony, as robbery.

4. With respect to the defence or protection of the possession of real property, although it is justifiable even to kill a person in the act of attempting to commit a forcible felony, as burglary or arson, yet this justification can only take place when the party in possession is wholly without fault. 1 Hale, 440, 444; 1 East, P. C. 259, 277. When a forcible attack is made upon the dwelling-house of another, without any felonious intent, but barely to commit a trespass, it is in general lawful to oppose force by force, when the former was clearly illegal. 7 Bing. 305; S. C. 20 Eng. C. L. Rep. 139. Vide, generally, Ham. N. P. 136, 151 1 Chit. Pr. 589, 616; Grot. lib. 2, c. 1 Rutherf. Inst. B. 1, c. 16.

DEFENCE, pleading, practice. It is defined to be the denial of the truth or validity of the complaint, and does not signify a justification. It is a general assertion that the plaintiff has no ground of action, which assertion is afterwards extended and maintained in the plea. 3 Bl. Com. 296; Co. Litt. 127. It is similar to the contestatio litis of the civilians.

2. Defence is of two descriptions; first half defence, which is as follows, "venit et defendit vim et injuriam, et dicit," &c.; or secondly, full defence, "venit et defendit vim et injuriam, quando," &c. meaning "quando et ubi curia consideravit," (or when and where it shall behoove him,) " et damna et quicquid quod ipse defendere debet et dicit," &c. Co. Litt. 127, b; Bac. Abr. Pleas, D Willis, 41.

3. In strictness, the words quando, &c. ought not to be added when only half defence is to be made; and after the words "venit et defendit vim et injuriam," the subject matter of the plea should immediately be stated. Gilb. C. P. 188; 8 T. R. 6 3 2; 3 B. & P. 9, n. a.

4. It has, however, now become the practice in all cases, whether half or full defence be intended, to, state it a's follows: "And the said C D, by M N, his attorney, comes and defends the wrong, (or in trespass, force) and injury, when, &c. and says," which will be considered only as half defence in cases where such defence should be made, and as full defence where the latter is necessary. 8 T. R. 633; Willis, 41 3 B. & P. 9; 2 Saund. 209, c.

5. If full defence were made expressly by the words "when and where it shall behoove him," and "the damages and whatever else he ought to defend," the defendant would be precluded from pleading to the jurisdiction or in abatement, for by defending when and where it shall behoove him, the defendant acknowledges the jurisdiction of the court and by defending the damages he waives all. exception to the person of the plaintiff. 2 Saund. 209, c.; 3 Bl. Com. 297 Co. Litt. 127, b Bac. Abr. Pleas, D.

6. Want of defence being only matter of form, the omission is aided by general demurrer. 3 Salk. 271. See further, 7 Vin. Abr. 497; 1 Chit. Pl. 410; Com. Dig. Abatement, I 16; Gould. on Pl. c. 2, s. 6-15; Steph. Pl. 430.

7. In another sense, defence signifies a justification; as, the defendant has made a successful defence to the charge laid in the indictment.

8. The Act of Congress of April 30, 1790, 1 Story, L. U. S. 89, acting upon the principles adopted in perhaps all the states, enacts, §28, that every person accused and indicted of the crime of treason, or other capital offence, shall "be allowed and admitted to make his full defence by counsel learned in the law; and the court before whom such person shall be tried, or some judge thereof, shall, and they are hereby authorized and requited, immediately upon his request, to assign to such person such counsel, not exceeding two, as such person shall desire, to whom such counsel shall have free access, at all seasonable hours; and every such person or persons, accused or indicted of the crimes aforesaid, shall be allowed and admitted in his said defence, to make any proof that he or they can produce, by lawful witness or witnesses, and shall have the like process of the court where he or they shall be tried, to compel his or their witnesses to appear at his or their trial, as is usually granted to compel witnesses to appear on the prosecution against them."

9. Defences in equity may be classed in two divisions, namely into dilator defences, (q. v.) and into those which are peremptory. Matters of peremptory or permanent defences may be also divided into two sorts, first, those where the plaintiff never had any right to institute the suit; for example: 1. That the plaintiff had not a superior right to the defendant. 2. That the defendant has no interest. 3. That there is no privity between the plaintiff and defendant, or any right to sustain the suit. Secondly, those that insist that the original right, if any, is extinguished or determined; as, 1. When the right is determined by the act of the parties; or, 2. When it is determined by operation of law. 4 Bouv. Inst. n. 4199, et seq.; 1 Montag. Eq. Pl. 89. See Dilatory Defence; Merits.

TO DEFEND. To forbid. This word is used in some old English statutes in the sense it has in French, namely, to forbid. 5 Pic. 2, c. Lord Coke uses the word in this sense: it is defended by law to distrain on the highway." Co Litt. 160, b. 161 a. In an old work entitled , Legends, printed by Winkin de Worde, in 1527, fo. 96, we find examples of the use of the word in this sense, " He defended," (forbade) " to pay the wage," (tribute,) " for he said he was a king." " She wrote the obligation when she put her hand to the tree against the defence." (prohibition of God.)

2. In pleading, to defend is to deny; and the effect of the word "defends" is, that the defendant denies the right of the plaintiff, or the force and wrong charged. Steph. Pl. 432.

3. In contracts, to defend is to guaranty; to agree to indemnify. In most conveyances of land the grantor covenants to warrant and defend. It is his duty, then, to prevent all persons against whom he defends, from doing any act which would evict him; when there is a mortgage upon the land, and the mortgagee demands possession or payment of the covenantee, and threatens suit, this is a breach of the covenant to defend, and for quiet enjoyment. 17 Mass. R. 586.

DEFENDANT. A party who is sued in a personal action. Vide Demandant; Par- ties to Actions; Pursuer; and Com. Dig. Abatement, F; Action upon the case upon assumpsit, E, b; Bouv. Inst. Index, h. t.

2. At common law a defendant cannot have judgment to recoyer a sum of money of the plaintiff. But this rule is, in some cases, altered by the act of assembly in Pennsylvania, as by the. Act of 1705, for defalcation, by which he may sue out a sci. fac. on the record of a verdict for a sum found in his favor. 6 Binn. Rep. 175. See Account 6.

DEFENDANT IN ERROR. A party against whom a writ of error is sued out.

DEFENDER, canon law. The name by which the defendant or respondent is known in the ecclesiastical courts.

DEFENSIVE ALLEGATION. The defence or mode of propounding a defence in the spiritual courts, is so called.

DEFICIT. This Latin term signifies that something is wanting. It is used to express the deficiency which is discovered in the accounts of an accountant, or in the money in which he has received.

DEFINITE NUMBER. An ascertained number; the term is usually applied in opposition to an indefinite number.

2. When there is a definite number of corporators, in order to do a lawful act, a majority of the whole must be present; but it is not necessary they should, be unanimous; a majority of those present can, in general, perform the act. But when the corporators consist of an indefinite number, any number, consisting of a majority of those present, may do the act. 7 Cowen, R. 402 9 B. & Cr. 648, 851; 7 S. & 11. 517; Ang. & Am. on Corp. 281.

DEFINITION. An enumerition of the principal ideas of which a compound idea is formed, to ascertain and explain its nature and character; or it is that which denotes and points out the substance of a thing, to us. Ayliffe's Pand. 59.

2. A definition ought to contain every idea which belongs to the thing defined, and exclude all others.

3. A definition should be, 1st. Universal, that is, such that it will apply equally to all individuals of, the same kind. 2d. Proper, that is, such that it will not apply to any other individual of any other kind. 3d. Clear, that is, without any equivocal, vague, or unknown word. 4th. Short, that is, without any useless word, or any foreign to the idea intended to be defined.

4. Definitions are always dangerous, because it is always difficult to prevent their being inaccurate, or their becoming so; omnis definitio injure civili periculosa est, parum est enim, ut non subvertipossit.

5. All ideas are not susceptible of definitions, and many words cannot be defined. This inability is frequently supplied, in a considerable degree, by descriptions. (q. v.)

DEFINITIVE. That which terminates a suit a definitive sentence or judgment is put in opposition to an interlocutory judgment; final. (q. v.)

DEFLORATION. The act by which a woman is deprived of her virginity.

2. When this is done unlawfully, and against her will, it bears the name of rape, (q. v.) when she consents, it is fornication. (q. v.)

DE FORCIANT. One who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl. Com. 350.

DEFORCIARE. To withhold lands or tenements from the right owner. This is a word of art which cannot be supplied by any other word. Co. Litt. 331 b; 3 Tho. Co. Litt. 3; Bract. lib. 4, 238; Fleta, lib. c.

DEFORCEMENT, tort. In its most extensive sense it signifies the holding of any lands or tenements to which another person has a right; Co . Litt. 277; so that this includes, as well, an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong whatsoever, by which the owner of the freehold is kept out of possession. But, as contradistinguished from the former, it is only such a detainer, of the freehold, from him who has the right of property, as falls within none of the injuries above mentioned. 3 Bl. Com. 173; Archb. Civ. Pl. 13; Dane's Ab. Index, h. t.

DEFORCEMENT, Scotch law. The opposition given, or resistance made, to messengers or other officers, while they are employed in executing the law.

2. This crime is punished by confiscation of movables, the one half to the king, and the other to the creditor at whose suit the diligence is used. Ersk. Pr. L. Scot. 4,4,32.

DEFUNCT. A term used for one that is deceased or dead. In some acts of assembly in Pennsylvania, such deceased person is called a decedent. (q. v.)

DEGRADATION, punishment, ecclesiastical law. A censure by which a clergy man is deprived of his holy orders, which he had as a priest or deacon.

TO DEGRADE, DEGRADING. To, sink or lower a person in the estimation of the public.

2. As a man's character is of great importance to him, and it is his interest to retain the good opinion of all mankind, when he is a witness, he cannot be compelled to disclose any matter which would tend to disgrace or degrade him, 13 How. St. Tr. 17, 334, 16 How. St. Tr. 161. A question having that tendency, however, may be asked, and, in such case, when the witness chooses to answer it, the answer is conclusive. 1 Phil. Ev. 269; R. & M. 383.

DEGREE, descents. This word is derived from the French degre, which is itself taken from the Latin gradus, and signifies literally, a step in a stairway, or the round of a ladder.

2. Figuratively applied, and as it is understood in law, it is the distance between those who are allied by blood; it means the relations descending from a common ancestor, from generation to generation, as by so many steps. Hence, according to some Lexicographers, we obtain the word, pedigree (q. v.) Par degrez, by degree, the descent being reckoned par degrez. Minshew. Each generation lengthens the line of descent one degree, for the degrees are only the generations marked in a line by small circles or squares, in which the names of the persons forming it are written. Vide Consanguinity;, Line; and also Ayliffe's Parergon, 209; Toull. Dr. Civ. Frau. liv. 3, t. 1, c. 3, n. 158; Aso & Man. Inst. B. 2, t. 4, c. 3, §1.

DEGREE, measures. In angular measures, a degree is equal to sixty minutes, or the thirtieth part of a sine. Vide Measure.

DEGREE, persons. By. degree, is understood the state or condition of a person. The ancient English statute of additions, for example, requires that in process, for the better description of a defendant, his state, degree, or mystery, shall be mentioned.

DEGREES, academical. Marks of distinction conferred on students, in testimony of their proficiency in arts and sciences. They are of pontifical origin. See 1 Schmidt's Thesaurus, 144; Vicat, ad voc. Doctores Minshew, Dict. ad voc Bacheler; Merl. Rep ad voc Universite; Van Espen, p. 1, tit. 10, c. Giaunone Istoria, di Napoli, lib. xi. c. 2, for a full account of this matter.

DEHORS. Out of; without. By this word is understood something out of the record, agreement, will, or other thing spoken of; something foreign to the matter in question.

DEI JUDICIUM. The judgment of God. This name was given to the barbarous and superstitious trial by ordeal.

DEL CREDERE, contracts. A del credere commission is one under which the agent, in consideration of an additional premium, engages to insure to his principal not only the solvency of the debtor, but the punctual discharge of the debt; and he is liable, in the first instance, without any demand from the debtor. 6 Bro. P. C. 287; Beawes, 429; 1 T. Rep. 112; Paley on Agency, 39.

2. If the agent receive the amount of sales, and remit the amount to the principal by a bill of exchange, he is not liable if it should be protested. 2 W. C. C. R. 378. See, also, Com. Dig. Merchant, B; 4 M. & S. 574.

DELAWARE. The name of one of the original states of the United States of America. For a time the counties of this state were connected with Pennsylvania, under the name of territories annexed to the latter. In 1703, a separation between them took place, and from that period clown to the Revolution, the territories were governed by a separate legislature of their own, pursuant to the liberty reserved to them by a clause of their original charter. 1 Story, Constitution, §127; 1 Votes of Assembly, 131, and part 2, p. 4, of Pennsylvania.

2. The constitution of this state was amended and adopted December 2, 1831. The powers of the government are divided into three branches, the legislative, the executive, and the judicial.

3. - 1st. The legislative power of the state is vested in a general assembly, which consists of a senate and house of representatives.

4. - 1. The senate is composed of three senators from each county; the number may be increased by the general assembly, two-thirds of each branch concurring, but the number of senators shall never be greater than one-half, nor less than two-thirds of the number of representatives. Art. 2, s. 3. The senators are chosen for four years by the citizens residing in the several counties.

5. - 2. The house of representatives is composed of seven members from each county, but the general assembly, two-thirds of each branch concurring, may increase the number. The representatives are chosen for two years by the citizens residing in the several counties. Art. 2, s. 2.

6. - 2d. The supreme executive power of the state is vested in a governor, who is chosen by the citizens of the state. He holds his office during four years, from the third Tuesday in January next ensuing his election; and is not eligible a second time to the said office. Art. 3. Upon the happening of a vacancy, the speaker of the senate exercises the office, until a governor elected by the people shall be duly qualified. Art. 3, s. 14.

7. - 3d. The judicial power is vested in a court of errors and appeals,, a superior court, a court of chancery, an orphan's court, a court of oyer and terminer, a Court of general sessions of the peace and jail delivery, a register's court, justices of the peace, and such other courts as the general assembly, with the concurrence of two-thirds of all the members of both houses shall, from time to time, establish. Art. 6.

DELAY, civil law. The time allowed either by law or by agreement of the parties to do something.

2. The law allows a delay, for a party who has been summoned to appear, to make defence, to appeal; it admits of a delay during which and action may be brought, certain rights exercised, and the like.

3. By the agreement of the parties there may be a delay in the payment of a debt, the fulfilment of a contract, &c. Vide Code, 3, 11, 4; Nov. 69, c. 2 Merl. Rep. h

DELECTUS PERSONAE. This phrase, which literally signifies the choice of a person, is applied to show that partners have the right to select their copartners; and that no set of partners can take another person into the partnership, without the consent of each of the partners. Story on Partn. 6 Colly. on Partn. 4; 1 Swanst. 508; 2 Bouv. Inst. n. 1443.

DELEGATE. A person elected by the people of a territory of the United States, to congress, who has a seat in congress, and a right of debating, but not of voting. Ordinance of July, 13, 1787, 3 Story's L. U. S. 2076.

2. The delegates from the territories of the United States are entitled to send and receive letters, free of postage, on the same terms and conditions as members of the senate and house of representatives of the United States; and also to the same

compensation as is allowed to members of the senate and house of representatives. Act of February 18, 1802, 2 Story, L. U. S. 828.

3. A delegate is also a person elected to some deliberative assembly, usually one for the nomination of officers.

4. In contracts, a delegate is one who is authorized by another in the name of the latter; an attorney.

DELEGATION, civil law. It is a kind of novation, (q. v.) by which the original debtor, in order to be liberated from his creditor, gives him a third person, who becomes obliged in his stead to the creditor, or to the person appointed by him.

2. It results from this definition that a delegation is made by the concurrence of three parties, and that there may be a fourth. There must be a concurrence, 1. Of the party delegating, that is, the ancient debtor, who procures another debtor in his stead. 2. Of the party delegated, who enters into the obligation in the place of the ancient debtor, either to the creditor of to some other person appointed by him. 3. Of the creditor, who, in consequence of the obligation contracted by the party delegated, discharges the party delegating. Sometimes there intervenes a fourth party namely, the person indicated by the creditor in whose favor the person delegated becomes obliged, upon the indication of the creditor, and by the order of the person delegating. Poth. Ob. part. 3, c. 2, art. 6. See Louis. Code, 2188, 2189; 3 Wend. 66; 5 N. H. Rep. 410; 20 John. R. 76; 1 Wend. 164; 14 Wend. 116; 11 Serg. & Rawle, 179.

3. Delegation is either perfect or imperfect. It is perfect, When the debtor who makes the delegation, is discharged by the creditor. It is imperfect when the creditor retains his rigbts against the original debtor. 2 Duverg. n. 169. See Novation.

DELEGATION, contracts. The transfer of authority from one or more persons to one or more others.

2. In general, all persons sui juris may delegate to another authority to act for them, but to this rule there are exceptions; 1st. On account of the thing to be done; and 2d. Because the act is of a personal nature, and incapable of being delegated. 1. The thing to be done must be lawful; for an authority to do a thing unlawful, is absolutely void. 5 Co. 80. 2. Sometimes, when the thing to be done is lawful, it must be performed by the person obligated himself. Com. Dig. Attorney, C 3; Story, on Ag. §12.

3. When a bare power or authority has been given to another, the latter cannot in general delegate that authority or any part of it to a third person, for the obvious reason that the principal relied upon the intelligence, skill and ability of his agent, and

he cannot have the same confidence in a stranger. Bac. Ab. Authority, D; Com. Dig. Authority, C 3; 12. Mass. 241; 4 Mass. 597; 1 Roll. Ab. Authority, C 1, 15; 4 Camp. 183; 2 M. & Selw. 298, 301; 6 Taunt. 146; 2 Inst. 507.

4. To this general rule that one appointed as agent, trustee, and the like, cannot delegate his authority, there are exceptions: 1. When the agent is expressly authorized to make a substitution. 1 Liverm. on Ag. 54. 2. When the authority is implied, as in the following: cases: 1st. When by the laws such power is indispensable in order to accomplish the end proposed, as, for example, when goods are directed to be sold at auction, and the laws forbid such sales except by licensed auctioneers. 6 S. & R. 386. 2d. When the employment of such substitute is in the ordinary course of trade, as where it is the custom of trade to employ a ship broker or other agent for the purpose of procuring freight and the like . 2 M. & S. 301; 3 John. Ch. R. 167, 178; 6 S. & R. 386. 3d. When it is understood by the parties to be the mode in which the particular thing would be done. 9 Ves. 234; 3 Chit. Com Law, 206. 4th. When the powers thus delegated are merely mechanical in their nature. 1 Hill, (N. Y.) R. 501 Bunb. 166; Sugd. on Pow. 176.

5. As to the form of the delegation, it may be for general purposes, by a verbal or by a written declaration not under seal, or by acts and implications. 3 Chit. Com. Law, 5, 194, 195; 7 T. R. 350. But when the act to be done must be under seal, the delegation must also be under seal. Co. Litt. 48 b; 5 Binn. 613; 14 S. & R. 331 See Authority.

DELEGATION, legislation. It signifies the whole number of the persons who represent a district, a state, and the like, in a deliberative assembly; as, the delegation from Ohio, the delegation from the city of Philadelphia.

TO DELIBERATE. To examine, to consult, in order to form an opinion. Thus, a jury deliberate as to their verdict.

DELIBERATION, contracts, crimes. The act of the understanding, by which the party examines whether a thing proposed ought to be done or not to be done, or whether it ought to be done in one manner or another. The deliberation relates to the end proposed, to the means of accomplishing that end, or to both.

2. It is a presumption of law that all acts committed, are do-ne with due deliberation, that the party intended to do what he has done. But he may, show the contrary; in contracts, for example, he may show he has been taken by surprise; (q. v.) and when a criminal act is charged, he may prove that it Was an accident, and not with deliberation, that in fact there was no intention or will. See Intention; Will.

DELIBERATION. legislation. The council which is held touching some business, in an assembly having the power to act in relation to it.

2. In deliberative assemblies, it is presumed that each member will listen to the opinions and arguments of the others before he arrives at a conclusion.

DELICT, civil law. The act by which one person, by fraud or malignity, causes some damage or tort to some other. In its most enlarged sense, this term includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another, either voluntarily or accidentally without evil intention; but more commonly by delicts are understood those small offences which are punislied by a small fine or a short imprisonment.

2. Delicts are either public or private; the public are those which affect the whole community by their hurtful consequences; the private is that which is directly injurious to a private individual. Inst. 4, 18; Id. 4, 1 Dig. 47, 1; Id. 48, 1.

3. A quasi-delict, quasi delictum, is the act of a person, who without malignity, but by an inexcusable imprudence, causes an injury to another. Poth. Ob. n. 116; Ersk. Pr. Laws of Scotl. B. 4, t. 4, s. 1.

DELINQUENT, civil law. He who has been guilty of some crime, offence or failure of duty.

DELIRIUM, med.jur. A disease of the mind produced by inflammations, particularly in fevers, and other bodily diseases.

2. It is also occasioned by intoxicating agents.

3. Delirium manifests its first appearance "by a propensity of the patient to talk during sleep, and a momentary forgetfulness of his situation, and of things about him, on waking from it. And after being fully aroused, however, and his senses collected, the mind is comparitively clear and tranquil, till the next slumber, when the same scene is repeated. Gradually the mental disorder becomes more intense, and the intervals between its returns of shorter duration, until they are scarcely, or not at all perceptible. The patient lies on his back, his eyes, if open, presenting a dull and listless look, and is almost constantly talking to himself in a low, muttering tone. Regardless of persons or things around him and scarcely capable of recognizing them when aroused by his attendants, his mind retires within itself to dwell upon the scenes and events of the past, which pass before it in wild and disorderly array, while the tongue feebly records the varying impressions, in the form of disjointed, incoherent discourse, or of senseless rhapsody. In the delirium which occurs towards the end of chrome diseases,

the discourse is often more coherent and continuous, though the mind is no less absorbed in its own reveries. As the disorder advances, the voice becomes more indistinct, the fingers are constantly picking at the bed-clothes, the evacuations are passed insensibly, and the patient is incapable of being aroused to any further effort of attention. In some cases, delirium is attended with a greater degree of nervous and vascular excitement, which more or less modifies the above-mentioned symptoms. The eyes are open, dry, and bloodshot, intently gazing into vacancy, as if fixed on some object which is really present to the mind of the patient; the skin is hotter and dryer; and he is more restless and intractable. He talks more loudly, occasionally breaking out into cries and vociferation, and tosses about in bed, frequently endeavoring to get up, though without any particular object in view." Ray, Med. Jur. §213.

4. "So closely does delirium resemble mania to the casual observer, and so important is it that they should be distinguished from each other, that it may be well to indicate some of the most common and prominent features of each. In mania, the patient recognizes persons and things, and is perfectly conscious of, and remembers what is passing around him. In delirium, he can seldom distinguish one person or thing from another, and, as if fully occupied with the images that crowd upon his memory, gives no attention to those that are presented from without. In delirium, there is an entire abolition of the reasoning power; there is no attempt at reasoning at all; the ideas are all and equally insane; no single train of thought escapes the morbid influence, nor does a single operation of the mind reveal a glimpse of its natural vigor and acuteness. In mania, however false and absurd the ideas may be, we are never at a loss to discover patches of coherence, and some semblance of logical sequence in the discourse. The patient still reasons, but he reasons incorrectly. In mania, the muscular power is not perceptibly diminished, and the individual moves about with his ordinary ability. Delirium is invariably attended with great muscular debility; and the patient is confined to bed, and is capable of only a momentary effort of exertion. In mania, sensation is not necessarily impaired and, in most instances, the maniac sees, bears, and feels with all his natural acuteness. In delirium, sensation is greatly impaired, and this avenue to the understanding seems to be entirely closed. In mania, many of the bodily functions are undisturbed, and the appearance of the patient might not, at first sight, convey the impression of disease. In delirium, every function suffers, and the whole aspect of the patient is indicative of discase. Mania exists alone and independent of any other disorder, while delirium is only a symptom or attendant of some other disease. Being a symptom only, the latter maintains certain relations with the -discase on which it depends; it is relieved when that is relieved, and is aggravated when that increases in severity. Mannia, though it undoubtedly tends to shorten life, is not immediately dangerous; whereas the disease on which delirium depends, speedily terminates in death, or restoration to health. Mania never occurs till after the age of

puberty; delirium attacks all periods alike, from early childhood to extreme old age." Id. §216.

5. In the inquiry as to the validity of testamentary dispositions, it is of great importance, in many cases, to ascertain whether the testator labored under delirium, or whether he was of sound mind. Vide Sound mind; Unsound mind; 2 Addams, R. 441; 1 Addams, Rep. 229, 383; 1 Hagg. R. 577; 2 Hagg. R. 142; 1 Lee, Eccl. R. 130; 2 Lee, Eccl. R. 229; 1 Hag . Eccl. Rep. 256.

DELIRIUM TREMENS, med. jur. A species of insanity which has obtained this name, in consequence of the tremor experienced by the delirious person, when under a fit of the disorder.

2. The disease called delirium tremens or mania a potu, is well described in the learned work on the Medical Jurisprudence of Insanity, by Dr. Ray, §315, 316, of which the following is an extract: "it may be the immediate effect of an excess, or series of excesses, in those who are not habitually intemperate, as well as in those who are; but it most commonly occurs in habitual drinkers, after a few days of total abstinence from spirituous liquors. It is also very iable to occur in this latter class when laboring under other diseases, or severe external injuries that give rise to any degree of constitutional disturbance. The approach ofthe disease is generally indicated by a slight tremor and faltering of the hands and lower extremities, a tremulousness of the voice, a certain restlessness and sense of anxiety which the patient knows not how to describe or to account for, disturbed sleep, and impaired appetite. These symptoms having continued two or three days, at the end, of which time they have obviously increased in severity, the patient ceases to sleep altogether, and soon becomes delirious. At first, the delirium is not constant, the mind wandering during the night, but during the day, when its attention is fixed, capable of rational discourse. It is not long, however, before it becomes constant, and constitutes the most prominent feature of the disease. This state, of watchfullness and delirium continues three or four days, when, if the patient recover, it is succeeded by sleep, which, at first appears in uneasy and irregular naps, and lastly in long, sound, and refreshing slumbers. When sleep does not supervene about this period, the, disease is fatal; and whether subjected to medical treatment, or left to itself, neither its symptoms nor duration are materially modified.

3. "The character of the delirium in this disease is peculiar, bearing a stronger resemblance to dreaming, than any other form of mental derangement. It would seem as if the dreams which disturb and harass the mind during the imperfect sleep that precedes the explosion of the disease, continue to occupy it when awake, being then viewed as realities, instead of dreams. The patient imagines himself, for instance, to be in some particular situation, or engaged in certain occupations according to each

individuals habits and profession, and his discourse and conduct will be conformed to this delusion, with this striking peculiarity, however, that he is thwarted at every step, and is constantly meeting with obstacles that defy his utmost efforts to remove. Almost invariably, the patient manifests, more or less, feelings of suspicion and fear, laboring under continual apprehension of being made the victim of sinister designs and practices. He imagines that certain people have conspired to rob or murder him, and insists that he can hear them in an adjoining apartment, arranging their plans and preparing to rush into his room; or that he is in a strange place where he is forcibly detained and prevented from going to his own home. One of the most common hallucinations is, to be constantly seeing devils, snakes, vermin, and all manner of unclean things around him and about him, and peopling every nook and corner of his apartment with these loathsome objects. The extreme terror which these delusions often inspire, produces in the countenance, an unutterable expression of anguish; and, in the hope of escaping from his, fancied tormentors, the wretched patient endeavors to cut his throat, or jump from the window. Under the influence of these terrible apprehensions, he sometimes murders his wife or attendant, whom his disordered imagination identifies with his enemies, though he is generally tractable and not inclined to be mischievous. After perpetrating an act of this kind, he generally gives some illusive reason for his conduct, rejoices in his success, and expresses his regret at not having done it before. So complete and obvious is the mental derangement in this disease, so entirely are, the thoughts and actions governed by the most unfounded and absurd delusions, that if any form of insanity absolves from criminal responsibility, this certainly must have that effect. 3 Am. Jur. 5-20.

DELIVERANCE, Practice. A term used by the clerk in court to every prisoner who is arraigned and pleads not guilty to whom he wishes a good deliverance. In modern practice this is seldom used.

DELIVERY, conveyancing. The transferring of a deed from the grantor to the grantee, in such a manner as to deprive him of the right to recall it; Dev. Eq. R. 14 or the delivery may be made and accepted by an attorney. This is indispensably necessary to the validity of a deed; 9 Shepl. 569 2 Harring. 197; 16 Verm. 563; except it be the deed of a corporation, which, however, must be executed under their common seal. Watkin's Prin. Con. 300. But although, as a general rule, the delivery of a deed is essential to its perfection, it is never averred in pleading. 1 Wms. Saund. Rep. 291, note Arch. Dig. of Civ. Pl. 138.

2. As to the form, the delivery may be by words without acts; as, if the deed be lying upon a table, and the grantor says to the grantee, "take that as my deed," it will be a sufficient delivery; or it may be by acts without words, and therefore a dumb man may deliver a deed. Co. Litt. 36 a, note; 6 Sim. Rep. 31; Gresl. Eq. Ev. 120; Wood. B. 2, c.

3; 6 Miss. R. 326; 5 Shepl. 391; 11 Verm. 621; 6 Watts & S. 329; 23 Wend. 43; 3 Hill, 513; 2 Barr, 191, 193 2 Ev. Poth. 165-6.

3. A delivery may be either absolute, Is when it is delivered to the grantor himself; or it may be conditional, that is, to a third person to keep until some condition shall have been performed by the grantee, and then it is called an escrow. (q. v.) See 2 Bl. Com. 306 4 Kent. Coin. 446 2 Bouv. Inst. n. 2018, et seq.; Cruise, Dig. tit. 32, c. 2, s. 87; 5 Serg. & Rawle, 523; 8 Watts, R. 1; and articles Assent; Deed.

4. The formula, "I deliver this as my act and deed," which means the actual delivery of the deed by the grantor into the hands or for the use of the grantee, is incongruous, not to say absurd, when applied to deeds which cannot in their nature be delivered to any person; as deeds of revocation, appointment, &c., under a power where uses to unborn children and the like, if in fact such instruments, though sealed, can be properly called deeds, i. e. writings sealed and delivered. Ritson's Practical Points, 146.

DELIVERY, contracts. The transmitting the possession of a thing from one person into the power and possession of another.

2. Originally, delivery was a clear and unequivocal act of giving possession, accomplished by placing the subject to be transferred in the hands of the buyer or his avowed agent, or in their respective warehouses, vessels, carts, and the like. This delivery was properly considered as the true badge of transferred property, as importing full evidence of consent to transfer; preventing the appearance of possession in the transferrer from continuing the credit of property unduly; and avoiding uncertainty and risk in the title of the acquirer.

3. The complicated transactions of modern trade, however, render impossible a strict adherence to this simple rule. It often happens that the purchaser of a commodity cannot take immediate possession and receive the delivery. The bulk of the goods; their peculiar situation, as when they are deposited in public custody for duties, or in the hands of a manufacturer for the purpose of having some operation of his art performed upon them, to fit them for the market the distance they are from the house; the frequency of bargains concluded by correspondence between distant countries, and many other obstructions, frequently render it impracticable to give or to receive actual delivery. In these and such like cases, something short of actual delivery has been considered sufficient to transfer the property.

4. In sales, gifts, and other contracts, where the party intends to transfer the property, the delivery must be made with the intent to enable the receiver to obtain dominion over it. 3 Serg. & Rawle, 20; 4 Rawle, 260; 5 Serg. & Rawle, 275 9 John. 337. The delivery may be actual, by putting the thing sold in the hands or possession of the

purchaser; or it may be symbolical, as where a man buys goods which are in a room, the receipt of the keys will be sufficient. 1 Yeates, 529; 5 Johns. R. 335; 1 East, R. 192.; 3 Bos. & Pull. 233; 10 Mass. 308; 6 Watts & Serg. 94. As to what will amount to a delivery of goods and merchandise, vide 1 Holt, 18; 4 Mass. 661; 8 Mass. 287; 14 Johns. R. 167; 15 Johns. R. 849; 1 Taunt. R. 318 H. Black. R. 316, 504; 1 New R. 69; 6 East, R. 614.

5. There is sometimes considerable difficulty in ascertaining the particular period when the property in the goods sold passes from the vendor to the vendee; and what facts amount to an actual delivery of the goods. Certain rules have been established, and the difficulty is to apply the facts of the case.

6. - 1. Where goods are sold, if nothing remains to be done on the part of the seller as between him and the buyer, before the article is to be deliver-ed, the property has passed. East, R. 614; 4 Mass. 661; 8 Mass. 287 14 Johns. 167; 15 Johns. 349; 1 Holt's R. 18; 3 Eng. C. L. r. 9.

7. - 2. Where a chattel is made to order, the property therein is not vested in the quasi vendee, until finished and delivered, though he has paid for it. 1 Taunt. 318.

8. - 3. The criterion to determine whether there has been a delivery on a sale, is to consider whether the vendor still retains, in that character, a right over. the property. 2 H. Blackst, R. 316.

9. - 4. Where a part of the goods sold by an entire contract, has been taken possession of by the vendee, that shall be deemed a taking possession of the whole. 2 H. Bl. R. 504; 1 New Rep. 69. Such partial delivery is not a delivery of the whole, so as to vest in the vendee the entire property in the whole, where some act, other than the payment of the price, is necessary to be performed in order to vest the property. 6 East, R. 614.

10. - 5. Where goods are sent by order to a carrier the carrier receives them as the vendee's agent. Cowp. 294; 3 Bos. & Pull. 582; 2 N. R. 119.

11. - 6. A delivery may be made in a very slight manner; as where one buys goods which are in a room, the receipt of the key is sufficient. 1 Yeates, 529; 5 Johns. 335; 1 East, R. 192. See, also, 3. B. & P. 233 7 East, Rep. 558; 1 Camp. 235.

12. - 7. The vendor. of bulky articles is not bound to, deliver them, unless he stipulated to do so; be must give notice to the buyer that he is ready to deliver them. 5 Serg. & Rawle, 19; 12. Mass. 300; 4 Shepl. Rep. 49; and see 3 Johns. 399; 13 Johns. 294; 19 Johns. 218; 1 Dall. 171.

13. - 8. A sale of bricks in a brick-yard, accompanied with a lease of the yard until the bricks should be sold and removed, was held to be valid against the creditors of the vendor, without an actual removal. 10 Mass. 308.

14. - 9. Where goods were contracted to be sold upon condition that the vendee should give security for the price, and they are delivered without security being given, but with the declaration on the part of the vendor that the transaction should not be deemed a sale, until the security should be furnished; it was held that the goods remained the property of the vendor, notwithstanding the delivery. But it seems that in such cases the goods would be liable for the debts of, the vendee's creditors, originating after the delivery; and that the vendee may, for a bona fide consideration, sell the goods while in his possession. 4 Mass. 405.

15. - 10. Where goods are sold to be paid for on delivery, if, on delivery, the vendee refuses to pay for them, the property is not divested from the vendor. 13 Johns. 434; 1 Yeates, 529.

16. - 11. If the vendor rely on the promises of the vendee to perform the conditions of the sale, and deliver the goods accordingly, the right of property. is changed; but where, performance and delivery are understood to be simultaneous, possession, obtained by artifice, will not vest a title in the vendee. 3 Serg. & Rawle, 20.

17. - 12. Where, on the sale of a chattel, the purchase money is paid, the property is vested in the vendee, and if he permit it to remain in the custody of the vendor, he cannot call upon the latter for any subsequent loss or deterioration not arising from negligence. 2 Johns. 13; 2 Caines, R. 38 3 Jolins. 394.

18. In order to make a good donatio mortis causa, it is requisite that there should be a delivery of the subject to or for the donee, where such delivery can be made. 3 Binn. R. 370; 1 Miles, Rep. 109, 110; 2 Ves. Jr. 120; 9 Ves. Jr. 1.

19. The delivery of the key of the place where bulky goods are deposited, is, however, a sufficient delivery of such goods. 2 Ves. Sen. 445. Vide 3 P. Wms. 357; 2 Bro. C. C. 612; 4 Barn. & A. 1; 3 Barn. & C. 45 Bouv. Inst. Index, h. t. See Sale; Stoppage in transitu; Tender; and Domat, Lois Civiles, Liv. 1, tit. 2, s. 2 Harr. Dig. Sale, II. 3.

DELIVERY, child-birth, med. jur. The act of a woman giving birth to her offspring.

2. It is frequently of great importance to ascertain whether or not a delivery has taken place, and the time when it took place. Delivery may be considered with regard, 1. To pretended delivery. 2. To concealed delivery and, 3. To the usual signs of delivery.

3. - 1. In pretended delivery, the female declares herself to be a mother, without being so in reality; an act always prompted by folly or fraud.

4. Pretended delivery may present itself in three points of view, 1. When the female who feigns has never been pregnant. When thoroughly investigated, this may always be detected. There are signs which must be present, and cannot be feigned. An enlargement of the orifice of the uterus, and a tumefaction of the organs of generation, should always be present, and if absent, are conclusive against the' fact. Annales d'Hygiene, tome ii. p. 227. 2. When the pretended pregnancy and delivery have been preceded by one or more deliveries. In this case, attention should be given to the following circumstances: the mystery, if any, which has been affected with regard to the situation of the female; her age; that of her hushand and particularly whether aged or decrepid. 3. When the woman has been actually delivered, and substitutes a living for a dead child. But little evidence can be obtained on this subject from a physical examination.

5. - 2. Concealed delivery generally takes place when the woman either has destroyed her offspring, or it was born dead. In suspected cases, the following circumstances should be attended to: 1. The proofs of pregnancy which arise in consequence of the examination of the mother. When she has been pregnant, and has been delivered, the usual signs of delivery, mentioned below, will be present. A careful investigation as to the woman's appearance, before and since the delivery, will have some weight, though such evidence is not always to be relied upon, as such appearances are not unfrequently deceptive. 2. The proofs of recent delivery. 3. The connexion between the supposed state of parturition, and the state of the child that is found; for if the age of the child do not correspond to that time, it will be a strong circumstance in favor of the mother's innocence. A redness of the shin and an attachment of the umbilical cord to the navel, indicate a recent birth. Whether the child was living at its birth, belongs to the subject of infanticide. (q. v.)

6. - 3. The usual signs of delivery are very well collected in Beck's excellent treatise on Medical Jurisprudence, and are here extracted: If the female be examined within three or four days after the occurrence of delivery, the following circumstances will generally be observed: greater or less weakness, a slight paleness of the face, the eye a little sunken, and surrounded by a purplish or dark brown colored ring, and a whiteness of the skin, like a person convalescing from disease. The belly is soft, the skin of the abdomen is lax, lies in folds, and is traversed in various directions by shining reddish and whitish lines, which especially extend from the groins and pubis to the naval. These lines have sometimes been termed linecae albicantes, and are particularly observed near the umbilical region, where the abdomen has experienced the greatest distention. The breasts become tumid and hard, and on pressure emit a fluid, which at first is serous, and afterwards gradually becomes whiter; and the

presence of this secretion is generally accompanied with a full pulse and soft skin, covered with a moisture of a peculiar and somewhat acid odor. The areolae round the nipples are dark colored. The external genital organs and vagina are dilated and tumefied throughout the whole of their extent, from the pressure of the foetus. The uterus may be felt through the abdominal parietes, voluminous, firm, and globular, and rising nearly as high as the umbilicus. Its orifice is soft and tumid, and dilated so as to admit two or more fingers. The fourchette; or anterior margin of the perinaeum, is sometimes torn, or it is lax, and appears to have suffered considerable distention. A discharge (termed the lochial) commences from the uterus, which is distinguished from the menses by its pale color, its peculiar and well-known smell, and its duration. The lochia are at first of a red color, and gradually become lighter until they cease.

7. These signs may generally be relied upon as indicating the state of pregnancy, yet it requires much experience in order not to be deceived by appearances.

8. - 1. The lochial discharge might be mistaken for menstruation, or fluor albus, were it not for its peculiar smell; and this it has been found impossible, by any artifice, to destroy.

9. - 2. Relaxation of the soft parts arises as frequently from menstruation as from delivery; but in these cases the os uteri and vagina are not so much tumefied, nor is there that tenderness and swelling. The parts are found pale and flabby, when all signs of contusion disappear, after delivery; and this circumstance does not follow menstruation.

10. - 3. The presence of milk, though a usual sign of delivery, is not always to be relied upon, for this secretion may take place independent of pregnancy.

11.-4. The wrinkles and relaxations of the abdomen which follow delivery, may be the consequence of dropsy, or of lankness following great obesity. This state of the parts is also seldom striking after the birth of the first child, as they shortly resume their natural state. Vide, generally, 1 Beck's Med. Jur. c. 7, p. 206; 1 Chit. Med. Jur. 411; Ryan's Med. Jur. ch. 10, p. 133; 1 Briand, Med. Leg. lere partie, c. 5.

DELUSION, med. jurisp. A diseased state of the mind, in which persons believe things to exist, which exist only, or in the degree they are conceived of only in their own imaginations, with a persuasion so fixed and firm, that neither evidence nor argument can convince them to the contrary.

2. The individual is, of course, insane. For example, should a parent unjustly persist without the least ground in attributing to his daughter a course of vice, and use her with uniform unkindness, there not being the slightest pretence or color of reason for

the supposition, a just inference of insanity, or delusion, would arise in the minds of a jury: because a supposition long entertained and persisted in, after argument to the contrary, and against the natural affections of a parent, suggests that he must labor under some morbid mental delusion. 3 Addams' R. 90, 91; Id. 180; Hagg. R. 27 and see Dr. Connolly's Inquiry into Insanity, 384; Ray, Med. Jur. Prel. Views., §20, p. 41, and §22, p. 47; 3 Addams, R. 79; 1 Litt. R. 371 Annales d'Hygiene Publique, tom. 3, p. 370; 8 Watts, 70; 13 Ves. 89; 1 Pow. Dev. by Jarman, 130, note Shelf. on Lun. 296; 2 Bouv. Inst. n. 2104-10.

DEMAND, contracts. A claim; a legal obligation.

2. Lord Coke says, that demand is a word of art, and of an extent, in its signification, greater than any other word except claim. Litt. sect. 508; Co. Litt. 291; 2 Hill, R. 220; 9 S. & R. 124; 6 Watts and S. 226. Hence a release of all demands is, in general, a release of all covenants, real and personal, conditions, whether broken or not, annuities, recognizances, obligations, contracts, and the like. 3 Tho. Co. Litt. 427; 3 Penna, 120; 2 Hill, R. 228.

3. But a release of all demands does not discharge rent before it is due, if it be a rent incident to the reversion; for the rent was not only not due, but the consideration - the future enjoyment of the lands - for which the rent was to be given, was not executed. 1 Sid. 141; 1 Lev. 99 3 Lev. 274; Bac. Ab. Release, I.

DEMAND, practice. A requisition or a request by one individual to another to do a particular thing.

2. Demands are either express or implied. In many cases, an express demand must be made before the commencement of an action, some of whichwil l be considered below; in other cases an implied demand is all that the law requires, and the bringing of an action is a sufficient demand in those cases. 1 Saund. 33, note 2.

3. A demand is frequently necessary to secure to a man all his rights, both in actions arising on contracts and those which are founded on some tort. It is requisite also, when it is intended to bring the party into contempt for not performing an order which has been made a rule of court.

4. - 1. Whether a demand is requisite before the plaintiff can commence an action arising on contract, depends upon express or implied stipulations of the parties. In case of the sale of property, for example, to be paid for on delivery, a demand of it must be made before the commencement of an action for non-delivery, and proved on the trial, unless it can be shown that the seller has incapacitated himself by a resale and delivery of the property to another person, or otherwise. 1 East, R. 204 5 T. R.

409; 10 East, R. 359; 5 B. & Ald. 712 2 Bibb, 280 Hardin, 79; 1 Verm. 25; 5 Cowen, 516. 16 Mass. 453; 6 Mass. 61 4 Mass. 474; 3 Bibb, 85; 3 Wend. 556; 5 Munf. R. 1; 2 Greenl. 308; 9 John. 361; 6 Hill, N. Y. Rep. 297.

5. On the same principles, a request on a general promise to marry is requisite, unless it be dispensed with by the party's marrying another person, which puts it out of his power to fulfil his contract, or that he refuses to marry at any time. 2 Dow. & Ry. 55; 1 Chit. Pr. 57, note (n), and 438, note (e)

6. A demand of rent must always be made before a re-entry for the non-payment of rent. Vide Re-entry.

7. When a note is given and no time of payment is mentioned, it is payable immediately. 8 John. R. 374; 5 Cowen, R. 516 1 Conn. R. 404; 1 Bibb, R. 164; 1 Blackf. R. 233.

8. There are cases where, a demand is not originally necessary, but becomes so by the act of the obligor. On a promissory note no express demand of payment is requisite before bringing an action, but if the debtor tenders the amount due to the creditor on the note, it becomes necessary before bringing. an action, to make a demand of the debtor for payment; and this should be of the very sum tendered. 1 Campb. 181 Id. 474; 1 Stark. R. 323; 2 E. C. L. R. 409.

9. When a debt or obligation is payable, and no day of payment is fixed, it is payable, on demand. In omnibus obligationibus in quibus dies non ponitur, presenti die debitur. Jac. Introd. 62; 7 T. R. 427 Barn. & Cr. 157. The demand must, however, be made in a reasonable time, for after the lapse of twenty years, a presumption will arise that the note has been paid; but, like some other presumptions, it may be rebutted, by showing the fact that the note remains unpaid. 5 Esp. R. 52 1 D. & R. 16 Byles on Bills, 169.

10. When demand of the payment of a debt, secured by note or other instrument, is made, the party making it should be ready to deliver up such note or instrument, on payment. If it has been lost or destroyed, an indemnity should be offered. 2 Taunt. 61; 3 Taunt. 397; 5 Taunt. 30; 6 Mass. R. 524; 7 Mass. R. 483; 13 Mass. R. 557; 11 Wheat. R. 171; 4 Verm. R. 313; 7 Gill & Johns. 78 3 Whart. R. 116; 12 Pick. R. 132 17 Mass. 449.

11.-2. It is requisite in some cases arising ex delicto, to make a demand of restoration of the right before the commencement of an action.

12. The following are examples 1. When the wife, apprentice, or servant of one person, has been harbored by another, the proper course is to make a demand of

restoration before an action brought, in order to constitute the party a wilful wrongdoer, unless the plaintiff can prove an original illegal enticing away. 2 Lev. 63: Willes, 582; 1 Peake's C. N. P. 55; 5 East, 39; 6 T. R. 652; 4 Moore's R. 12 16 E. C. L. R. 3 5 7.

13. - 2. In cases where the taking of goods is lawful, but their subsequent detention becomes illegal, it is absolutely necessary, in order to secure sufficient evidence of a conversion on the trial, to give a formal notice of the owner's right to the property and possession, and to make a formal demand in writing of thedelivery of such possession to the owner. The refusal to comply with such a demand, unless justified by some right which the possessor may have in the thing detained, will in general afford sufficient evidence of a conversion. 2 Saund. 47, note (e); 1 Chit. Pr. 566.

14. - 3. When a nuisance has been erected or continued by a man on his own land) it is advisable, particularly in the case of a private nuisance, to give the party notice and request him to remove it, either before an entry is made for the purpose of abating it, or an action is commenced against the wrong doer and a demand is always indispensable in cases of a continuance of a nuisance originally created by another person. 2 B. & C. 302; S. C. 9 E. C. L. R. 96 Cro. Jac. 555; 5 Co. 100, 101; 2 Phil. Ev. 8, 18, n. 119; 1 East, 111; 7 Vin. Ab. 506; 1 Ayl. Pand. 497; Bac. Ab. Rent, 1. Vide articles Abatement of Nuisance, and if Nuisance. For the allegation of a demand or request in a declaration, see article Licet scoepius requisitus; and Com. Dig. Pleader, C 70 2 Chit. Pl. 84; 1 Saund. 33, note 2; 1 Chit. Pl. 322.

15. - 4. When an order to pay money, or to do any other thing, has been made a rule of court, a demand for the payment of the money, or performance of the thing, must be made before an attachment will be issued for a contempt. 2 Dowl. P. C. 338, 448: 1 C. M. & R. 88, 459; 4 Tyr. 369; 2 Scott, 193; 4 Dowl. P. C. 114; 1 Hodges 197; 1 Har. & Woll. 216; 1 Hodges, 157; Id. 337; 4 Dowl. P. C. 86.

DEMAND IN RECONVENTION. In Louisiana, this term is used to signify the demand which the defendant institutes in consequence of that which the plaintiff has brought against him. Code of Pr. art. 374. Vide Cross action.

DEFANDANT, practice. The plaintiff or party who brings a real action, is called the demandant. Co. Litt. 127; 1 Com. Dig. 85.

DEMENCY, dementia, med. jur. A defect, hebetude, or imbecility of the under standing, general or partial, but confined to individual faculties of the mind, particularly those concerned in associating and comparing ideas, whence proceeds great, confusion and incapacity in arranging the thoughts. 1 Chit. Med. Jur. 351; Cyclop. Practical Med. tit. Insanity; Ray, Med. Jur. ch. 9; 1 -Beck's Med. Jur. 547.

2. Demency is attended with a general enfeeblement of the moral and intellectual faculties, consequence of age or disease, which were originally well developed and sound. It is characterised by forgetfulness of the past; indifference to the present and future, and a childish disposition. It differs from idiocy and imbecility. In these latter, the powers of the mind were never possessed, while in demency, they have been lost.

3. Demency may also be distinguished from mania, with which it is sometimes confounded. In the former, the mind has lost its strength, and thereby the reasoning faculty is impaired; while in the latter, the madness arises from an exaltation of vital power, or from a morbid excess of activity.

4. Demency is divided into acute and chronic. The former is a consequence of temporary errors of regimen, fevers, hemorrhages, &c., and is susceptible of cure the latter, or chronic demency, may succeed mania, apoplexy, epilepsy, masturbation, and drunkenness, but is generally that incurable decay of the mind which occurs in old age.

5. When demency has been fully established in its last stages, the acts of the individual of a civil nature will be void, because the party had no consenting mind. Vide Contracts; Wills; 2 Phillim. R. 449. Having no legal will or intention, he cannot of course commit a crime. Vide Insanity; Mania.

DEMESNE, Eng. law. The name given to that portion of the Iands of a manor which the lord retained in his own hands for the use of himself and family. These lands were called terra dominicales or demesne lands, because they were occupied by the lord, or dominus manerii, and his servants, &c. 2 Bl. Com. 90. Vide Ancient Demesne; Demesne as of fee; and Soil assault demesne.

DEMESNE AS OF FEE. A man is said to be seised in his demesne as of fee of a corporeal inheritance, because he has a property dominicum or demesne in the thing itself. 2 Bl. Com. 106. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be seised as of fee, and not in his demesne as of fee. Liit. s. 10; 17 S. & R. 196; Jones on Land Titles, i66.

2. Formerly it was the practice in an action on the case, e. g. for a nuisance to real estate, to aver in the declaration the seisin of the plaintiff in demesne as of fee; and this is still necessary, in order to estop the record with the land; so that it may run with or attend the title. Arch. Civ. Pl. 104; Co. Ent. 9, pl. 8 Lill. Ent. 62; 1 Saund. Rep. 346; Willes, Rep. 508. But such an action may be maintained on the possession as well as on the seisin, although the effect of the record in this case upon the title would not be the same. Steph. on Pl. 322 Arch. Dig. 104; 1 Lutw. 12; 2 Mod. 71; 4 T. R. 718; 2 Saund. 1 Arch. Dig. 105; Cro. Car. 500. 575

DEMIDIETAS. This word is used in ancient records for a moiety, or one half. DEMIES. In some universities and colleges this term is synonymous with scholars. Boyle on Charities, 129.

DEMISE, contracts. In its most extended signification, it is a conveyance either in fee, for life, or for years. In its more technical meaning, it is a lease or conveyance for a term of years. Vide Cow. L. & T. Index, h. t.; Ad. Eject. Index, h. t.; 2 Hill. Ab. 130; Com. Dig. h. t., and the heads there referred to. According to Chief Justice Gibson, the term demise strictly denotes a posthumous grant, and no more. 5 1 Whart. R. 278. See 4 Bing. N. C. 678; S. C. 33 Eng. C. L. R. 492; 2 Bouv. Inst. n. 1774, et seq.

DEMISE, persons. A term nearly synonymous with death. It is usually applied in England to the death of the king or queen.

DEMOCRACY, government. That form of government in which the sovereign power is exercised by the people in a body, as was the practice in some of the states of Ancient Greece; the term representative democracy has been given to a republican government like that of the United States.

DEMONSTRATION. Whatever is said or written to designate a thing or person. For example, a gift of so much money, with a fund particularly referred to for its payment, so that if the fund be not the testator's property at his death, the legacy will fail; this is called a demonstrative legacy. 4 Ves. 751; Lownd. Leg. 85; Swinb. 485.

2. A legacy given to James, who married my cousin, is demonstrative; these expressions present the idea of a demonstration; there are many James, but only one who married my cousin. Vide Ayl. Pand. 130; Dig. 12, 1, 6; Id. 35, 1, 34 Inst. 2, 20, 30.

3. By demonstration is also understood that proof which excludes all possibility of error; for example, mathematical deductions.

DEMURRAGE, mar. law. The freighter of a ship is bound not to detain it, beyond the stipulated or usual time, to load, or to deliver the cargo, or to sail. The extra days beyond the lay days (being the days allowed to load and unload the cargo), are called the days of demurrage; and that term is likewise applied to the payment for such delay, and it may become due, either by the ship's detention, for the purpose of loading or unloading the cargo, either before, or during, or after the voyage, or in waiting for convoy. 3 Kent, Com. 159; 2 Marsh, 721; Abbott on Ship. 192 5 Com. Dig. 94, n., 505; 4 Taunt. 54, 55; 3 Chit. Com. Law, 426; Harr. Dig. Ship and Shipping, VII.

DEMURRER. (From the Latin demorari, or old French demorrer, to wait or stay.) In pleading, imports, according to its etymology, that the objecting party will not proceed with the pleading, because no sufficient statement has been made on the other side; but will wait the judgment of the court whether he is bound to answer. 5 Mod. 232; Co. Litt. 71, b; Steph. Pl. 61.

2. A demurrer may be for insufficiency either in substance or in form that is, it may be either on the ground that the case shown by the opposite party is essentially insufficient, or on the ground that it is stated in an inartificial manner; for the law requires in every pleading, two thing's; the one, that it be in matter sufficient; the other, that it be deduced and expressed according to the forms of law; and if either the one or the other of these be wanting, it is cause of demurrer. Hob. 164. A demurrer, as in its nature, so also in its form, is of two kinds; it is either general or special.

3. With respect to the effect of a demurrer, it is, first, a rule, that a demurrer admits all such matters of fact as are sufficiently pleaded. Bac. Abr. Pleas, N 3; Com. Dig. Pleader, Q 5. Again, it is it rule that, on a demurrer, the court will consider the whole record, and give judgment for the party who, on the whole, appears to be entitled to it. Com. Dig. Pleader, M. 1, M 2; Bad. Abr. Pleas. N 3; 5 Rep. 29 a: Hob. 56; 2 Wils. 150; 4 East, 502 1 Saund. 285 n. 5. For example, on a demurrer to the replication, if the court think the replication bad, but perceive a substantial fault in the plea, they will give judgment, not for the defendant, but for the plaintiff; 2 Wils. R. 1&0; provided the declaration be good; but if the declaration also be bad in substance, then upon the same principle, judgment would be given for the defendant. 5 Rep. 29 a. For when judgment is to be given, whether the issue be in law or fact, and whether the cause have proceeded to issue or not, the court is always to examine the whole record, and adjudge for the plaintiff or defendant, according to the legal right, as it may on the whole appear.

4. It is, however, subject to, the following exceptions; first, if the plaintiff demur to a plea in abatement, and the court decide against the plea, they will give judgment of respondeat ouster, without regard to any defect in the declaration. Lutw. 1592, 1667; 1 Salk. 212; Carth. 172 Secondly, the court will not look back into the record, to adjudge in favor of an apparent right in the plaintiff, unless the plaintiff have himself put his action upon that ground. 5 Barn. & Ald 507. Lastly, the court, in examining the whole record, to adjudge according to the apparent right, will consider the right in matter of substance, and not in respect of mere form, such as should have been the subject of a special demurrer. 2 Vent. 198-222.

5. There can be no demurrer to a demurrer: for a demurrer upon a demurrer, or pleading over when an issue in fact is offered, is a discontinuance. Salk. 219; Bac. Abr. Pleas, N 2.

6. Demurrers are general and special, and demurrers to evidence, and to in

terrogatories.

7. - 1. A general demurrer is one which excepts to the sufficiency of a previous pleading in general terms, without showing specifically the nature of the objection; and such demurrer is sufficient, when the objection is on matter of substance. Steph. Pl. 159; 1 Chit. Pl. 639; Lawes, Civ. Pl. 167; Bac. Abr. Pleas, N 5; Co. Lit. 72 a.

8. - 2. A special demurrer is one which excepts to the sufficiency of the pleadings on the,opposite side, and shows specifically the nature of the objection and the particuIar ground of exception. Co. Litt. 72, a.; Bac. Abr. Pleas, N 5.

9. A special demurrer is necessary, where it turns on matter of form only; that is, where, notwithstanding such objections, enough appears to entitle the opposite party to judgment, as far as relates to the merits of the cause. For, by two statutes, 27 Eliz. ch. 5, and 4 Ann. ch. 16, passed with a view to the discouragement of merely formal objections, it is provided in nearly the same terms, that the judges "shall give judgment according to the very right of the cause and matter in law as it shall appear unto them, without regarding any imperfection, omission, defect or want of form, except those only 'Which the party demurring shall, specifically. and particularly set down and express, together with his demurrer, as the causes of the same." Since these statutes, therefore, no mere matter of form can be objected to on a general demurrer; but the demurrer must be in the special form, and the objection specifically stated. But, on the other hand, it is to be observed, that, under a special demurrer, the party may, on the argument, not only take advantage of the particular faults which his demurrer specifies, but also of all objections in substance, or regarding the very right of the cause, (as the statute expresses it.) as under those statutes, need not be particularly set down. It follows, therefore, that unless the objection be clearly of the substantial kind, it is the safer course, in all cases, to demur specially. Yet, where a general demurrer is plainly efficient, it is more usually adopted in prctice; because the effect of the special form being to apprise the opposite party more distinctly of the nature of the objection, it is attended with the inconvenience, of enabling him to prepare to maintain his pleading by argument, or of leading him to apply the earlier to amend. With respect to the degree of particularity, with which, under these statutes, the special demurrer must assign the ground of objection, it may be observed, that it is not sufficient to object, in general terms, that the pleading is "uncertain, defective, and informal," or the like, but if is necessarily to show in what, it respect, uncertain, defective, and informal. 1 Saund. 161, n. 1, 337 b, n. 3; Steph. Pl. 159, 161; 1 Chit. Pl. 642.

10.- 3. A demurrer to evidence is analogous to a demurrer in pleading; the party from whom it comes declaring that he will not proceed, because the evidence offered on the other side, is not sufficient to maintain the issue. Upon joinder in demurrer, by the opposite party, the jury are, in general, discharged from giving any verdict; 1 Arch. Pr. 186; and the demurrer being entered on record, is afterwards argued and decided by the court in banc; and the judgment there given upon it, may ultimately be brought before a court of error. See 2 H. Bl. 187 4 Chit. Pr. 15 Gould on Pl. c. 9, part 2, §47 United States Dig. Pleading, Viii.

11. - 4. Demurrer to interrogatories. By this phrase is understood the reasons which a witness tenders for not answering a particular question in interrogatories. 2 Swanst. R. 194. Strictly speaking, this is not a demurrer, which admits the facts stated, for the purpose of taking the. opinion of the court but by an abuse of the term, the witness objection to answer is called a demurrer, in the popular sense. Gresl. Eq. Ev. 61.

12. The court are judicially to determine their validity. The witness must state his objection very carefully, for these demurrers are held to strict rules, and are readily overruled if they cover too much. 2 Atk. 524; 1 Y. & J. 32. See, in general, as to demurrers,, Bac. Abr. Pleas, N; Com. Dig. Pleader, Q; Saund. Rep. Index, tit. Demurrers; Lawes Civ. Pl. ch. 8; 1 Chit. Pl. 639-649 Bouv. Inst. Index, h. t.

DEMURRER BOOK Eng. law. When an issue in law is formed, a transcript is made upon paper of all the pleadings that have been filed or delivered between the parties, which transcript is called the demurrer book. Steph. Pl. 95. See Paper book.

DEMY SANKE or SANGUE. This is a barbarous corruption of, demi sang, half-blood. (q. v.)

DENARII. An ancient general term for any sort of pecunia numerata, or ready money. The French use the word denier in the same sense: payer de ses propres deniers.

DENARIUS DEI. A term used in some countries to signify a certain sum of money which is given by one of the contracting parties to the other, as a sign of the completion of the contract.

2. It does not however bind the parties he who received it may return it in a limited time, or the other may abandon it, and avoid the engagement.

3. It differs from arrhae in this, that the latter is a part of the consideration, while the denarius dei is no part of it. 1 Duverg. n. 132 3 Duverg. n. 49; Repert. de Jur. verbo Denier a Dieu.

DENIAL, pleading. To traverse the statement of the opposite party a defence. See Defence; Traverse.

DENIER A DIEU, French law. It is a sum of money which the hirer of a thing gives to the other party as evidence, or for the consideration of the * contract, which either party may annul, within twenty-four hours, the one who, giving the denier a dieu, by demanding, and the other by returning it. It differs from arrhae. Vide Arrhae; Denarius Dei.

DENIZATION, Eng. law.. The act by which a foreigner becomes a subject of England; but he has not the rights either of a natural born subject, nor of one who has become naturalized. Bac. Ab. Aliens, B.

DENIZEN, English law. An alien born, who has obtained, ex donatione legis, letters patent to make him au English subject.

2. He is intermediate between a natural born subject and an alien. He may. take lands by purchase or devise, which an alien cannot, but he is incapable of taking by inheritance. 1 Bl. Com. 374. In the United States there is no such civil condition.

DENUNCIATION, crim. law. This term is used by the civilians to signify the act by which au individual informs a public officer, whose duty it is to prosecute offenders, that a crime has been committed. It differs from a complaint. (q. v.) Vide 1 Bro. C. L. 447; 2 Id. 389; Ayl. Parer. 210, Poth. Proc. Cr. sect. 2, §2.

DEODAND, English law. This word is derived from Deo dandum, to be given to God; and is used to designate the instrument, whether it be an animal or inanimate thing, which has caused the death of a man. 3 Inst. 57; Hawk. bk. 1, c. 8.

2. The deodand is forfeited to the king, and was formerly applied to pious uses. But the presentment of a deodand by a grand jury, under their general charge from the judge of assize, is void. 1 Burr. Rep. 17.

DEPARTMENT. A portion of a country. In France, the country is divided into departments, which are somewhat similar to the counties in this country. The United States have been divided into military departments, including certain portions of the country. 1 Pet. 293.

2. By department is also meant the division of authority, as, the department of state, of the navy, &c.

DEPARTMENT OF THE NAVY, government. The Act of April 80, 1798, 1 Story's Laws, 498, establishes an executive department, under the denomination of the department of the navy, the chief officer of which shall be called the secretary of the navy. (q. v.)

2. A principal clerk, and such other clerks as he shall think necessary, shall be appointed by the secretary of the navy, who shall be employed in such manner as he shall deem most expedient. In case of vacancy in the office of the secretary, by removal or otherwise, it shall be the duty of the principal clerk to take charge and custody of all books, records, and documents of said office. Id. s. 2

DEPARTMENT OF STATE, government. The laws of the United States provide that there shall be an executive department, denominated the department of state; and a principal officer therein, called the secretary of state. (q. v.) Acts of July 27, 1789; September 15, 1789, s. 1. There shall be in such department an inferior officer, to be appointed by the Secretary, and employed therein, as he shall deem proper, to be called the chief clerk of the department of state. (q. v.) Act of July 27, 1789, s. 2.

2. He may employ, besides, one chief clerk, whose compensation shall not exceed two thousand dollars. per annum; two clerks, whose compensation shall not exceed one thousand six hundred dollars; four clerks, whose compensation shall not exceed one thousand four hundred dollars each; one clerk, whose compensation shall not exceed one thousand dollars; two clerks, whose compensation shall not exceed eight hundred dollars each; one, messenger and assistant, at a compensation not exceeding one thousand and fifty dollars per annum; one superintendent of the patent office, whose compensation shall not exceed one thousand five hundred dollars; and, in the patent office, one clerk, whose compensation shall not exceed one thousand dollars; one machinist, at a compensation not exceeding seven hundred dollars; and one messenger, at a compensation not exceeding four hundred dollars per annum. Act of May 26, 1824; Act of April 20, 1818, s. 2.

3. By the Act of March 2, 1827, 3 Story's Laws, 2061, he is authorized to employ, in the state department, one additional clerk, whose compensationsh all not exceed sixteen hundred dollars; two additional clerks, whose compensation shall not exceed one thousand dollars each; and one additional clerk for the patent office, whose compensation shall not exceed eight hundred dollars.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES, government. The department of the treasury is constituted of the following officers, namely: the secretary of the treasury, (q. v.) the head of the department, two comptrollers, five auditors, a treasurer, a register, and a commissioner of the land office.

2. Each of these officers is required to perform certain appropriate duties, in which they are assisted by numerous clerks. They are prohibited from carrying on the business of trade or commerce, from being the owners or part owners of any sea vessel, from buying any public lands, from disposing or purchasing any securities of any state, or of the United States, from receiving or applying to their own use any emolument or gain in transacting business in this department, other than what shall be allowed by law, under the penalty of three thousand dollars, and of being removed from office, and of being thereafter incapable of holding any office under the United States. Gord. Dig. 228 to 248

DEPARTMENT OF WAR, government. The act of August 7, 1789, 1 Story's Laws, 31, creates an executive department, to be denominated the department of war; and there shall be a principal officer therein, to be called the secretary for the department of war. (q. v.) .

2. There shall be in the said department, an inferior officer, to be appointed by the secretary, to be employed therein, and to be called the chief clerk in the department of war, and who, whenever the said principal officer shall be removed by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers, appertaining to the said department. Id.

DEPARTURE, pleading. Said to be when a party quits or departs from the case, or defence, which he has first made, and has recourse to another; it is when his replication or rejoinder contains matter not pursuant to the declaration, or plea, and which does not support and fortify it. Co. Litt. 304, a; 2 Saund. 84, a, n. (1); 2 Wils. 98; 1 Chit. Pl. 619. The following example will illustrate what is a departure: if to assumpsit, the defendant plead infancy, and to a replication of necessaries, rejoin, duress, payment, release, &c., the rejoinder is a departure , and a good cause of demurrer, because the defendant quits or departs from the case or defence which he first made, though either of these matters, newly pleaded, would have been a good bar, if first pleaded as such.

2. A departure in pleading is never allowed, for the record would, by such means, be spun out into endless prolixity; for he who has departed from and relinquished his first plea, might resort to a second, third, fourth, or even fortieth defence; pleading would, by such means, become infinite. He who had a bad cause, would never be brought to issue, and he who had a good one, would never obtain the end of his suit. Summary on Pleading, 92; 2 Saund. 84, a. n. (l); 16 East, R. 39; 1 M. & S. 395 Coin. Dig. Pleader, F 7, 11; Bac. Abr. Pleas, L; Vin. Abr. Departure; 1 Archb. Civ. Pl. 247, 253; 1 Chit. Pl. 618.

3. A departure is cured by a verdict in favor of him who makes it, if the matter pleaded by way of departure is a sufficient answer, in substance, to what is before pleaded by the opposite party; that is, if it would have been sufficient, if pleaded in the first instance. 2 Saund. 84 1 Lill. Ab. 444.

DEPARTURE, maritime law. A deviation from the course of the voyage insured. 2. A departure is justifiable or not justifiable it is justifiable ill consequence of the stress of weather, to make necessary repairs, to succor a ship in distress, to avoid capture, of inability to navigate the ship, mutiny of the crew, or other compulsion. 1 Bouv. Inst. n. 1189.

DEPENDENCY. A territory distinct from the country in which the supreme sovereign, power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. It differs from a colony, because it is not settled by the citizens of the sovereign or mother state; and from possession, because it is held by other title than that of mere conquest: for example, Malta was considered a dependency of Great Britain in the year 1813. 3 Wash. C. C. R. 286. Vide act of congress, March 1, 1809, commonly called the non-importation law.

DEPENDENT CONTRACT. One which it is not the duty of the contractor to perform, until some obligation contained in the same agreement has been performed by the other party. Ham. on Part. 17, 29, 30, 109.

DEPONENT, witness. One who gives information, on oath or affirmation, respecting some facts known to him, before a magistrate he who makes a deposition.

DEPOPULATION. In its most proper signification, is the destruction of the people of a country or place. This word is, however, taken rather in a passive than an active one; we say depopulation, to designate a diminution of inhabitants, arising either from violent causes, or the want of multiplication. Vide 12 Co. 30.

DEPORTATION, civil law. Among the Romans a perpetual banishment, depriving the banished of his rights as a citizen; it differed from relegation (q. v.) and exile. (q. v.). 1 Bro. Civ. Law, 125 note; Inst. 1, 12, 1 and 2; -Dig. 48, 22, 14, 1.

TO DEPOSE, practice. To make a deposition; to give testimony as a witness.

TO DEPOSE, rights. The act of depriving an individual of a public employment or office, against his will. Wolff, §1063. The term is usually applied to the deprivation of all authority of a sovereign.

DEPOSIT, contracts. Usually defined to be a naked bailment of goods to be kept for the bailor, without reward, and to be returned when he shall require it. Jones' Bailm. 36, 117; 1 Bell's Com. 257. See also Dane's Abr. ch. 17, aft. 1, §3; Story on Bailm. c. 2, §41. Pothier defines it to be a contract, by which one of the contracting parties gives a thing to another to keep, who is to do so gratuitously, and obliges himself to return it when he shall be requested. Traite du Depot. See Code Civ. tit. 11, c. 1, art. 1915; Louisiana Code, tit. 13, c. 1, art. 2897.

2. Deposits, in the civil law, are divisible into two kinds; necessary and voluntary. A necessary deposit is such as arises from pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity; and thence it is called miserabile depositum. Louis. Code 2935. A voluntary deposit is such as arises without any such calamity, from the mere consent or agreement of the parties. Dig. lib. 16, tit. 3, §2.

3. This distinction was material in the civil law, in respect to the remedy, for in voluntary deposits @ the action was only in simplum; in the other in duplum, or two-fold, whenever the depositary was guilty of any default. The common law has made no such distinction, and, therefore, in a necessary deposit, the remedy is limited to damages co-extensive with the wrong. Jones, Bailm. 48.

4. Deposits are again divided by the civil law into simple deposits, and sequestrations; the former is when there is but one party depositor (of whatever number composed), having a common interest; the latter is where there are two or more depositors, having each a different and adverse interest. See Sequestration.

5. These distinctions give rise to very different considerations in point of responsibility and rights. Hitherto they do not seem to have been incorporated in the common law; though if cases should arise, the principles applicable to them would scarcely fail of receiving general approbation, at least, so far as they affect the rights and responsibilities of the parties. Cases of judicial sequestration and deposits, especially in courts of chancery and admiralty, may hereafter require the subject to be fully investigated. At present, there have been few cases in which it has been necessary to consider upon whom the loss should fall when the property has perished in the custody of the law. Story on Bailm. §41-46.

6. There is another class of deposits noticed by Pothier, and called by him irregular deposits. This arises when a party having a sum of money which he doe's not think safe in his own hands; confides it to another, who is to return him, not the same money , but a like sum when he shall demand it. Poth. Traite du Depot, ch. 3, §3. The usual deposit made by a person dealing with a bank is of this nature. The depositor, in such case, becomes merely a creditor of the depositary for the money or other thing which he binds himself to return.

7. This species of deposit is also called an improper deposit, to distinguish it from one that is regular and proper, and which latter is sometimes called a special deposit. 1 Bell's Com. 257-8. See 4 Blackf. R. 395.

8. There is a kind of deposit which may, for distinction's sake, be called a quasi deposit, which is governed, by the same general rule as common deposits. It is when a party comes lawfully to the possession of another person's property by finding. Under such circumstances, the finder seems bound to the same reasonable care of it as any voluntary depositary ex contractu. Doct. & Stu. Dial. 2, ch. 38; Story on Bailm. §85; and see Bac. Abr. Bailm. D. See further, on the subject of deposits, Louis. Code, tit. 13; Bac. Abr. Bailment; Digest, depositi vel contra; Code, lib. 4, tit. 34; Inst. lib. 3, tit. 15, §3; Nov. 73 and 78; Domat, liv. 1, tit. 7, et tom. 2, liv. 3, tit. 1, s. 5, n. 26; 1 Bouv. Inst. n. 1053, et seq.

DEPOSITARY, contracts. He with whom a deposit is confided or made.

2. It is, the essence of the contract of deposits that it should be gratuitous on the part 'of the depositary. 9 M. R. 470. Being a bailee without reward, the depositary is bound to slight diligence only, and he is not therefore answerable except for gross neglect. 1 Dane's Abr. c. 17, art. 2. But in every case good faith requires that he should take reasonable care; and what is reasonable care, must materially depend upon the nature and quality of the thing, the circumstances under which it is deposited, and sometimes upon the character and confidence, and particular dealing of the parties. See 14 Serg. & Rawle, 275. The degree of care and diligence is not altered by the fact, that the depositary is the joint owner of the goods with the depositor; for in such a case, if the possessor is guilty of gross negligence, he will still be responsible, in the same manner as a common depositary, having no interest in the thing. Jones' Bailm. 82, 83. As to the care which. a depositary is bound to use, see 2 Ld. Raym. 900, 914; 1 Ld. Raym. 655; 2 Kent's Com. 438; 17 Mass. R. 479, 499; 4 Burr.. 2298; 14 Serg. & Rawle, 275; Jonees' Bailm. 8; Story on Bailm. §63, 64.

3. The depositary is bound to return the deposit in individuo, and in the same state in which he received it; if it is lost, or injured, or spoiled, by his fraud or gross negligence, he is responsible to the extent of the loss or injury. Jones' Bailm. 36, 46, 120; 17 Mass. R. 479; 2 Hawk. N. Car. R. 145; 1 Dane's Abr. c. 17, art. 1 and 2. He is also bound to restore, not only the thing deposited, but any increase or profits which may have accrued from it; if an animal deposited bear young, the latter are to be delivered to the owner. Story on Bailm. §99.

4. In general it may be laid down that a depositary has no, right to use the thing deposited. Bac. Abr. Bailm. D; Jones' Bailm. 81, 82; 1 Dane's Abr. c. 17, art. 11, §2. But this proposition must be received with many qualifications. There are certain

cases, in which the use of the thing may be necessary for the due preservation of the deposit. There are others, again, where it would be mischievous; and others again, where it would be, if not beneficial, at least indifferent. Jones' Bailm. 81, 82; Owen's R. 123, 124; 2 Salk. 522; 2 Kent's Com. 450. The best general rule on the subject, is to consider whether there may or may not be an implied consent, on the part of the owner, to the use. If the use would be for the benefit of the deposit, the assent of the owner may well be presumed; if to his injury, or perilous, it ought not to be presumed; if the use would be indifferent, and other circumstances, do not incline either way, the use may be deemed not allowable. Jones' Bailm. 80, 81; Story on Bailm. §90; 1 Bouv. Inst. n. 1008, et seq.

DEPOSITION, evidence. The testimony of a witness reduced to writing, in due form of law, taken by virtue of a commission or other authority of a competent tribunal.

2. Before it is taken, the witness ought to be sworn or affirmed to declare the truth, the whole truth, and nothing but the truth. It should properly be written by the commissioner appointed to take it, or by the witness himself; 3 Penna. R. 41; or by one not interested in the matter in dispute, who is properly authorized by the commissioner. 8 Watts, R. 406, 524. It ought to answer all the interrogatories, and be signed by the witness, when he can write, and by the commissioner. When the witness cannot write, it ought to be so stated, and he should make his mark or cross.

3. Depositions in criminal cases cannot be taken without the consent of the defendant. Vide, generally, 1 Phil. Ev. 286; 1 Vern. 413, note; Ayl. Pand. 206; 2 Supp. to Ves. jr. 309; 7 Vin. Ab. 553; 12 Vin. Ab. 107; Dane's Ab. Index, h. t.; Com. Dig. Chancery, P 8, T 4, T 5; Com. Dig. Testmoigne, C 4.

4. The Act of September 24, 1789, s. 30, 1 Story's L. U. S. 64, directs that when the testimony of any person shall be necessary in any civil cause depending in any district, in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient, or very infirm, the deposition of such person may be taken de bene esse, before any justice or judge of any of the courts of the United States, or before any chancellor, justice, or judge of a supreme or superior court, mayor, or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause; provided that a notification from the magistrate before whom the deposition is to be taken, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served ou the adverse party, or his attorney, as either may be nearest, if either is within one hundred miles of the place of such caption,

allowing time for their attendance after being notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel . And in causes of admiralty and maritime jurisdiction, or other causes of seizure, when a libel shall be filed, in which an adverse party is not named, and depositions of persons, circumstanced as aforesaid, shall be taken before a claim be put in, the like notification, as aforesaid, shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid, shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the deposition so taken shall be retained by such magistrate, until he deliver the same with his own, hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid, of their being taken, and of the notice, if any given, to the adverse party, be by him, the said magistrate, sealed up and directed to such court, and remain under his seal until opened in court. And any person may be compelled to appear and depose as aforesaid, in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court, that probably it will not be in his power to produce the witnesses, there testifying, before the circuit court, should an appeal be had, and shall move that their testimony shall be taken down in writing, it shall be so done by the clerk of the court. And if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court, which shall try the appeal, that the witnesses are then dead, or gone out of the United States, or to, a greater distance than as aforesaid, from the place where the court is sitting; or that, by reason of age, sickness, bodily infirmity, or imprisonment, they are unable to travel or, appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. Provided, that nothing herein shall be construed to prevent any court of the United States from granting a dedimus potestatem, to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice; which power they shall severally possess nor to extend to depositions taken in perpetuam rei memoriam, which, if they relate to matters that may be cognizable in any court of the United States, a circuit court, on application thereto made as a court of equity, may, according to the usages in chancery, direct to be taken.

5. The Act of January 24, 1827, 3 Story's L. U. S . 2040, authorizes the clerk of any court of the United States within which a witness resides or where he is found, to issue a subpoena to compel the attendance of such witness, and a neglect of the

witness to attend may be punished by the court whose clerk has issued the subpoena, as for a contempt. And when papers are wanted by the parties litigant, the judge of the court within which they are, may issue a subpoena duces tecum, and enforce obedience by punishment as for a contempt. For the form and style of depositions, see Gresl. Eq. Ev. 77.

DEPOSITION, eccl. law. The act of depriving a clergyman, by a competent tribunal, of his clerical orders, to punish him for some offence, and to prevent his acting in future in his clerical character. Ayl. Par. 206.

DEPOSITOR, contracts. He who makes a deposit.

2. He is generally entitled to receive the deposit from the depositary, but to this rule there are exceptions; as. when the depositor at the time of making the deposit had no title to the property deposited, and the owner claims it from the depositary, the depositor cannot recover it; and for this reason, that he can never be in a better situation than the owner. 1 Barn. & Ald. 450; 5 Taunt. 759. As to the place where the depositor is entitled to receive his deposit, see Story on Bailm. §117-120 1 Bouv. Inst. n. 1063.

DEPREDATION, French law. The pillage which is made of the goods of a decedent. Ferr. Mod. h. t.

DEPRIVATION, ecclesiastical Punishment. A censure by which a clergyman is deprived of his parsonage, vicarage, or other ecclesiastical promotion or dignity. Vide Ayliffe's Parerg. 206; 1 Bl. Com. 393.

DEPUTY. One authorized by an officer to exercise the office or right which the officer possesses, for and in place of the latter.

2. In general, ministerial officers can appoint deputies; Com. Dig. Officer, D 1; unless the office is to be exercised by the ministerial officer in person; and where the office partakes of a judicial and ministerial character, although a deputy may be made for the performance of ministerial acts, one cannot be made for the performance of a judicial act; a sheriff cannot therefore make a deputy to hold an inquisition, under a writ of inquiry, though he may appoint a deputy to serve a writ.,

3. In general, a deputy has power to do every act which his principal might do but a deputy cannot make a deputy.

4. A deputy should always act in the name of his principal. The principal is liable for the deputy's acts performed by him as such, and for the neglect of the deputy; Dane's

Ab. vol. 3, c. 76, a. 2; and the deputy is liable himself to the person injured for his own tortious acts. Dane's Ab. Index, h. t.; Com. Dig. Officer, D; Viscount, B. Vide 7 Vin. Ab. 556 Arch. Civ. Pl. 68; 16 John. R. 108.

DEPUTY OF THE ATTORNEY GENERAL. An officer appointed by the attorney general, who is to hold his office during the pleasure of the latter, and whose duty it is to perform, within a specified district, the duties of the attorney general. He must be a member of the bar. In Pennsylvania, by an act of assembly, passed May 3, 1850, district attorneys are elected by the people, who are required to perform the duties which, before that act, were performed by deputies of the attorney general.

DEPUTY DISTRICT ATTORNEYS. The Act of Congress of March 3, 1815, 2 Story L. U. S. 1530, authorizes and directs the district attorneys of the United States to appoint by warrant, an attorney as their substitute or deputy in all cases when necessary to sue or prosecute for the United States, in any of the state or county courts, by that act invested with certain jurisdiction, within the sphere of whose jurisdiction the said district attorneys do not themselves reside or practice; and the said substitute or deputy shall be sworn or affirmed to the faithful execution of his duty.

DERELICT, common law. This term is applied in the common law in a different sense from what it bears in the civil law. In the former it is applied to lands left by the sea.

2. When so left by degrees the derelict land belongs to the owner of the soil adjoining but when the sea retires suddenly, it belongs to the government. 2 Bl. Com. 262 1 Bro. Civ. Law, 239; 1 Sumn. 328, 490 1 Gallis. 138; Bee, R. 62, 178, 260; Ware, R. 332.

DERELICTO, civil law. Goods voluntarily abandoned by their owner; he must, however, leave them, not only sine spe revertendi, but also sine animzo revertendi; his intention to abandon them may be inferred by the great length of time during which he may have been out of possession, without any attempt to regain them. 1 Bro. Civ. Law, 239; 2 Bro. Civ. Law, 51; Wood's Civ. Law, 156; 19 Amer. Jur. 219, 221, 222 Dane's Ab. Index, h. t.; 1 Ware's R. 4 1.

DERIVATIVE. Coming from another; taken from something preceding, secondary; as derivative title, which is that acquired from another person. There is considerable difference between an original and a derivative title. When the acquisition is original, the right thus acquired to the thing becomes property, which must be unqualified and unlimited, and since no one but the occupant has any right to the thing, he must have the whole right of disposing of it. But with regard to derivative acquisition, it may be otherwise, for the person from whom the thing is acquired may not have an unlimited

right to it, or he may convey or transfer it with certain reservations of right. Derivative title must always be by contract.

2. Derivative conveyances are, those which presuppose some other precedent conveyance, and serve only to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance, 3 Bl. Com. 321.

DERIVATIVE POWER. An authority by which one person enables another to do an act for him. See Powers.

DEROGATION, civil law. The partial abrogation of a law; to derogate from a law is to enact something which is contrary to it; to abrogate a law is' to abolish it entirely. Dig. lib. 50, t. 17, 1. 102. See Abrogation.

DESCENDANTS. Those who have issued from an individual, and include his children, grandchildren, and their children to the remotest degree. Ambl. 327 2 Bro. C. C. 30; Id. 230 3 Bro. C. C. 367; 1 Rop. Leg. 115; 2 Bouv. n. 1956.

2. The descendants form what is called the direct descending line. Vide Line. The term is opposed to that of ascendants. (q. v.)

3. There is a difference between the number of ascendants and descendants which a man may have every one his the same order of ascendants, though they may not be exactly alike as to numbers, because some may be descended from a common ancestor. In the line of descendants they fork differently, according to the number of children and continue longer or shorter as generations continue or cease to exist. Many families become extinct, while others continue; the line of descendants is therefore diversified in each family.

DESCENDER. In the descent; as formedon in the descender. Bac. Ab. Formedon, A 1. Vide Formedon.

DESCENT. Hereditary succession. Descent is the title, whereby a person, upon the death of his ancestor, acquires the estate of the latter, as his heir at law: This manner of acquiring title is directly opposed to that of purchase. (q. v.) 2 Bouv. Inst. n. 1952, et seq.

2. It will be proper to consider, 1. What kind of property descends; and, 2. The general rules of descent.

3. - §1. All real estate, and all freehold of inheritance in land, descend to the heir. And, as being accessory to the land and making a part of the inheritance, fixtures, and

emblements, and all things annexed to, or connected with the land, descend with it to the heir. Terms for years, and other estates less than freehold, pass to the executor, and are not subjects of descent. It is a rule at common law that no one can inherit read estate unless he was heir to the person last seised. This does not apply as a general rule in the United States. Vide article Possessio fratris.

4. - §2. The general rules of the law of descent. 1. It is a general rule in the law of inheritance, that if a person owning real estate, dies seised, or as owner, without devising the same, the estate shall descend to his descendants in the direct line of lineal descent, and if there be but one person, then to him or her alone; and if more than one person, and all of equal degree of consanguinity to the ancestor, then the inheritance shall descend to the several persons as tenants in common in equal parts, however remote from the intestate the common degree of consanguinity may be. This rule is in favor of the equal claims of descending line, in the same degree, without distinction of sex, and to the exclusion of all other claimants. The following example will, illustrate it; it consists of three distinct cases: 1. Suppose Paul shall die seised of real estate, leaving two sons and a daughter, in this case the estate would descend to them in equal parts; but suppose, 2. That instead of children, he should leave several grandchildren, two of them the children of his son Peter, and one the son of his son John, these will inherit the estate in equal proportions; or, 3. Instead of children and grandchildren, suppose Paul left ten great grandchildren, one the lineal descendant of his son John, and nine the descendants of his son Peter; these, like the others, would partake equally of the inheritance as tenants in common. According to 'Chancellor Kent, this rule prevails in all the United States, with this variation, that in Vermont the male descendants take double the share of females; and in South Carolina, the widow takes one-third of the estate in fee; and in Georgia, she tales a child's share in fee, if there be any children, and, if none, she then takes in each of those states, a moiety of the estate. In North and South Carolina, the claimant takes in all cases, per stirpes, though standing in the same degree. 4 Kent, Com. 371; Reeves' Law of Desc. passim; Griff. Law Reg., answers to the 6th interr. under the head of each state. In Louisiana the rule is, that in all cases in which representation is admitted, the partition is made by roots; if one root has produced several branches, the subdivision is also made by root in each branch, and the members of the branch take between them by heads. Civil Code, art. 895.

5. - 2. It is also a rule, that if a person dying seised, or as owner of the land, leaves lawful issue of different degrees of consanguinity, the inheritance shall descend to the children and grandchildren ofthe ancestor, if any be living, and to the issue of such children and grandchildren as shall be dead, and so on to the remotest degree, as tenants in common; but such grandchildren and their descendants, shall inherit only such share as their parents respectively would have inherited if living. This rule may

be illustrated by the following example: 1. Suppose Peter, the ancestor, had two children; John, dead, (represented in the following diagram by figure 1,) and Maria, living (fig. 2); John had two children, Joseph, living, (fig. 3,) and Charles, dead (fig. 4); Charles had two children, Robert, living, (fig. 5,) and James, dead (fig. 6.); James had two children, both living, Ann, (fig. 7,) and William, (fig. 8.)

Peter (0) the ancestor. - È¸¸Ø - - (1) John (2) Maria - È¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸Ø - - (3) Joseph (4) Charles - È¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸Ø - - (5) Robert (6) James - È¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸¸Ø - - (7) Ann (8) William

In this case Maria would inherit one-half; Joseph, the son of John, one-half of the half, or quarter of the whole; Robert, one-eighth of the whole; and Ann and William, each one-sixteenth of the whole, which they would hold as tenants in common in these proportions. This is called inheritance per stirpes, by roots, because the heirs take in such portions only as their immediate ancestors would have inherited if living.

6. - 3. When the owner of land dies without lawful issue, leaving parents, it is the rule in some of the states, that the inheritance shall. ascend to them, first to the father, and then to the mother, or jointly to both, under certain regulations prescribed by statute.

7. - 4. When the intestate dies without issue or parents, the estate descends to his brothers and sisters and their representatives. When there are such relations, and all of equal degree of consanguinity to the intestate, the inheritance descends to them in equal parts, however remote from the intestate the common degree of consanguinity may be. When all the heirs are brothers and sisters, or all of them nephews and nieces, they take equally. When some are dead who leave issue, and some are living, then those who are living take the share they would have taken if all had been living, and the descendants of those who are dead inherit only the share which their immediate parents would have received if living. When the direct lineal descendants stand in equal degrees, they take per capita, by the head, each one full share; when, on the contrary, they stand in different degrees of consanguinity to the common ancestor, they take per stirpes, by roots, by right of representation. It is nearly a general rule, that the ascending line, after parents, is postponed to the collateral line of brothers and sisters. Considerable difference exists in the laws of the several states, when the next of kin are nephews and nieces, and uncles and aunts claim as standing in the same degree. In many of the states, all these relations take equally as being next of kin; this is the rule in the states of New Hampshire, Vermont, (subject to the claim of the males to a double portion as above stated,) Rhode Island, North Carolina, and Louisiana. In Alabama, Connecticut, Delaware, Georgia, Indiana, Illinois, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvaaia, South Carolina, Tennessee, and Virginia, on the contrary, nephews and nieces take in exclusion of uncles and aunts, though they be of equal degree of

consanguinity to the intestate. In Alabama, Connecticut, Georgia, Maryland, New Hampshire, Ohio, Rhode Island, and Vermont, there is no representation among collaterals after the children of brothers and sisters in Delaware, none after the grandchildren. of brothers and sisters. In Louisiana, the ascending line must be exhausted before the estate passes to collaterals, Code, art. 910. In North Carolina, claimants take per stirpes in every case, though they stand in equal degree of consanguinity to the common ancestor. As to the distinction between whole and half blood, vide Half blood.

8. - 5. Chancellor Kent lays it down as a general rule in the American law of descent, that when the intestate has left no lineal descendants, nor parents, nor brothers, nor sisters, or their descendants, that the grandfather takes the estate, before uncles and aunts, as being nearest of kin to the intestate.

9. - 6. When the intestate dies leaving no lineal descendants, nor parents, nor brothers, nor sisters, nor any of their descendants, nor grand parents, as a general rule, it is presumed, the inheritance descends to the brothers and sisters, of both the intestate's parents, and to their descendants, equally. When they all stand in equal degree to the intestate, they take per capita, and when in unequal degree, per stirpes. To this general rule, however, there are sligbt variations in some of the states, as, in Now York, grand parents do not take before collaterals.

10. - 7. When the inheritance came to the intestate on the part of the father, then the brothers and sisters of the father and their descendant's shall have the preference, and, in default of them, the estate shall descend to the brothers and sisters of the mother, and their descendants and where the inheritance comes to the intestate on the part of his mother, then her brothers and sisters, and their descendants, have a preference, and in default of them, the brothers and sisters on the side of the father, and their descendants, inherit. This is the rule in Connecticut, New Jersey, New York, North Carolina, Ohio, Rhode island, Tennessee, and Virginia. In Pennsylvania, it is provided by act of assembly, April 8, 1833, that no person who is not of the blood of the ancestors or other relations from whom any real estate descended, or by whom it was given or devised to the intestate, shall in any of the cases before mentioned, take any estate of inheritance therein, but such real estate subject to such life estate as may be in existence by virtue of this act, shall pass to and vest in such other persons as would be entitled by this act, if the persons not of the blood of such ancestor, or other relation, had never existed, or were dead at the decease of the intestate. In some of the states there is perhaps no distinction as to the descent, whether they have been acquired by purchase or by descent from an ancestor.

11. - 8. When there is a failure of heirs under the preceding rules, the inheritance descends" to the remaining next of kin of the intestate, according to the rules in the

statute of distribution of the personal estate, subject to the doctrine in the preceding rules in the different states as to the half blood, to ancestral estates, and as to the equality of distribution. This rule prevails in several states, subject to some peculiarities in the local laws of descent, which extend to this rule.

12. It is proper before closing this article, to remind the reader, that in computing the degrees of consanguinity, the civil law is followed generally in this country, except in Norrh Carolina, where the rules of the common law in their application to descents are adopted, to ascertain the degree of consanguinity. Vide the articles Branch; Consanguinity; Degree; Line.

DESCRIPTIO PERSONAE. Description of the person. In wills, it frequently happens, that the word heir is used as a descriptio personae; it is then a sufficient designation of the person.

DESCRIPTION. A written account of the state and condition of personal property, titles, papers, and the like. It is a kind of inventory, (q. v.) but is more particular in ascertaining the exact condition of the property, and is without any appraisement of it.

2. When goods are found in the possession of a person accused of stealing them, a description ought to be made of them. Merl. Rep. h. t.

3. A description is less perfect than a definition. (q. v.) It gives some knowledge of the accidents and qualities of a thing; for example, plants, fruits, andanimals, are described by their shape, bulk, color, and the like accidents. Ayl. Pand. 60.

4. Description may also be of a person, as description of a legatee. 1 Roper on Leg. chap. 2.

DESERTER. One who abandons his post; as, a soldier who abandons the public service without leave; or a sailor who abandons a ship when he has engaged to serve.

DESERTION, crim. law. An offence which consists in the abandonment of the public service, in the army or navy, without leave.

2. The Act of March 16, 1802, s. 19, enacts, that if any non-commissioned officer, musician, or private, shall desert the service of the United Staies, he shall, in addition to the penalties mentioned in the rules and articles of war, be liable to serve for and during such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall and may be tried by a court-martial, and punished, although the term of his enlistment may have elapsed previous to his being apprehended or tried.

3. By the articles of war, it is enacted, that "any non-commissioned officer or soldier who shall, without leave from his commanding officer, absent himself from his troop, company, or detachment, shall, upon being convicted thereof, be punished, according to the nature of his offence, at the discretion of a court-martial." Art. 21.

4. By the articles for the government of the navy, art. 16, it is enacted, that "if any person in the navy shall desert to an enemy, or rebel, he shall suffer death;" and by art. 17, "if any person in the navy shall desert, or shall entice others to desert, he shall suffer death, or such other punishmemt as a court-martial shall adjudge."

DESERTION, torts. The act by which a man abandons his wife and children, or either of them.

2. On proof of desertion, the courts possess the power to grant the 'Wife, or such children as have been deserted, alimony (q. v.)

DESERTION, MALICIOUS. The act of a hushand or wife, in leaving a consort, without just cause, for the purpose of causing a perpetual separation. Vide Abandonment, malicious.

DESERTION OF SEAMEN, contracts. The abandonment, by a sailor, of a ship or vessel, in which he engaged to perform a voyage, before the expiration of his time, and without leave.

2. Desertion, without just cause, renders the sailor liable, on his shipping articles, for damages, and will, besides, work a forfeiture of his wages previously earned.

3 Kent, Com. 155. It has been decided, in England, that leaving the ship before the completion of the voyage is not desertion, in the case, 1. Of the seaman's entering into the public service, either voluntarily or by impress; and 2. When he is compelled to leave it by the inhuman treatment of the captain. 2 Esp. R. 269; 1 Bell's Com. 514, 5th ed.; 2 Rob. Adm. R. 232.

DESIGNATIO PERSONAE. The persons described in a contract as being parties to it.

2. In all contracts, under seal, there must be some designatio personae. In general, the names of the parties,appear in the body of the deed, "between A B of, &c., of the one part, and C D of, &c., of the other part," being the common formula. But there is a sufficient designation and description of the party to be charged, if his name is written at the foot of the instrument.

3. A deed alleged to have been made between plaintiff and defendant began as follows: "Tis agreed that a gray nag bought of A B by C D shall run twenty five miles in two hours for X, In witness whereof, we have hereunto set our hands and seals." The plaintiff and defendant subscribed their names at the bottom of the writing, and afterwards sealed and delivered the document as their deed. Held, that the omission to state the names of the contracting parties in the body of the instrument, was supplied by the signatures at the bottom, and it sufficiently appeared whose deed it was. 1 Raym. 2; 1 Salk. 214 2 B. & P. 339.

4. When a person is described in the body of the instrument by the name of James, and he signs the name of John, on being sued by the latter name he cannot deny it. 3 Taunt. 505; Cro. Eliz. 897, n. (a.) Vide 11 Ad. & Ell. 594; 3 P. & D. 271.

DESIGNATION, wills. The expression used by a testator, instead of the name of the person or the thing he is desirous to name; for example, a legacy to. the eldest son of such a person, would be a designation of the legatee. Vide 1 Rop. Leg. ch. 2.

2. A bequest of the farm which the testator bought of such a person; or of the picture he owns, painted by such an artist, would be a designation of the thing devised or bequeathed.

DESPACHEURS. The name given, in some countries, to persons appointed to settle cases of average. Ord. Hamh. t. 21, art. 10.

DESPATCHES. Official communications of official Persons, on the affairs of government.

2. In general, the bearer of despatches is entitled to all the facilities that can be given him, in his own country, or in a neutral state; but a neutral cannot, in general, be the bearer of despatches of one of the belligerent parties. 6 C. Rob. 465 see 2 Dodson, 54; Edw. 274.

DESPERATE. Of which there is no hope.

2. This term is used frequently, in making an inventory of a decedent's effects, when a debt is considered so bad that there is no hope of recovering it. It is then called a desperate debt, and, if it be so returned, it will be prima facie, considered as desperate. See Toll. Ex. 248 2 Williams, Ex. 644; 1 Chit. Pr. 580. See Sperate.

DESPITUS. This word signifies, in our ancient law books, a contemptible person. Flet. lib. 4, c. 5, §4. The English word despite is derived from it, which signifies spite or contempt against one's will - defiance with contempt, or contempt of opposition.

DESPOT. This word, in its most simple and original acceptation, signifies master and supreme lord; it is synonymous with monarch; but, taken in bad part, as it is usually employed, it signifies a tyrant. In some states, despot is the title given to the sovereign, as king is given in others. Encyc. Lond.

DESPOTISM, government. That abuse of government, where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not, properly, a form of government. Toull. Dr. Civ. Fr. tit. prel. n. 32; Rutherf Inst. b. 1, c. 20, §1. Vide Tyranny; Tyrant.

DESRENABLE, Law French. Unreasonable. Britt. c. 121.

DESTINATION. The application which the testator directs shall be made of the legacy he gives; for example, when a testator gives to a hospital a sum of money, to be applied in erectiug buildings, he is said to give a destination to the legacy. Destination also signifies the intended application of a thing. Mill stones, for example, taken out of a mill to be picked, and to be returned, have a destination, and are considered as real estate, although detached from the freehold. Heir looms, (q. v.) although personal chattels, are, by their destination, considered real estate and money agreed or directed to be laid out in land, is treated as real property. Newl. on Contr. ch. 8; Fonbl. Eq. B. 1, c. 6, §9; 3 Wheat. R. 577; 2 Bell's Com. 2; Ersk. Inst. 2 §14. Vide Mill.

2. When the owner of two adjoining houses uses, during his life, the property in such a manner as to make one property subject to the other, and devises one property to one person, and the other to another, this is said not to be an easement or servitude, but a destination by the former owner. Lois des Bat. partie 1, c. 4, art. 3, §3; 5 Har. & John. 82. See Dedication.

DESTINATION, com. law. The port at which a ship is to end her voyage is called her port of destination. Pard. n. 600.

DESUETUDE. This term is applied to laws which have become obsolete. (q.v.)

DETAINER. 1. The act of keeping a person against his will, or of keeping goods or property. All illegal detainers of the person amount to false imprisonment, and may be remedied by habeas corpus.

2. - 2. A detainer or detention of goods is either lawful or unlawful; when lawful, the party having possession of them cannot be deprived of it. The detention may be unlawful, although the original taking was lawful; as when goods were distrained for rent, and the rent was -afterwards paid; or when they 'Were pledged, and the money

borrowed, and interest were afterwards paid; in these, and the like cases, the owner should make a demand, (q. v.) and if the possessor refuse to restore them, trover, detinue, or replevin will lie, at the option of the plaintiff.

3. - 3. There may also be a detainer of land and this is either lawful and peaceable, or unlawful and forcible. 1. The detainer is lawful where the entry has been lawful, and the estate is held by virtue of some right. 2. It is unlawful and forcible, where the entry has been unlawful, and with force, and it is retained, by force, against right; or even when the entry has been peaceable and lawful, if the detainer be by force, and against right; as, if a tenant at will should detain with force, after the will has determined, he will be guilty of a forcible detainer. Hawk. P. C. ch. 64, s. 22; 2 Chit. Pr. 288; Com. Dig, B. 2; 8 Cowen, 216; 1 Hall, 240; 4 John. 198; 4 Bibb, 501. A forcible detainer is a distinct offence from a forcible entry. 8 Cowen, 216. See Forcible entry and detainer.

4. - 4. A writ or instrument, issued or made by a competent officer, authorizing the keeper of a prison to keep in his custody a person therein named. A detainer may be lodged against. one within the walls of a prison, on what account soever he is there. Com. Dig. Process, E 3 b.

DETENTION. The act of retaining a person or property, and preventing the removal of such person or property.

2. The detention may be occasioned by accidents, as, the detention of a ship by calms, or by ice; or it may, be hostile, as the detention of persons or ships in a foreign country, by order of the government. In general, the detention of a ship does not change the nature of the contract, and therefore, sailors will be entitled to their wages during the time of the detention. 1 Bell's Com. 517, 519, 5th ed.; Mackel. Man. §210.

3. A detention is legal when the party has a right to the property, and has come lawfully into possession. It is illegal when the taking was unlawful, as is the case of forcible entry and detainer, although the party may have a right of possession; but, in some, cases, the (retention may be lawful, although the taking may have been unlawful. 3 Penn. St. R. 20. When the taking was legal, the detention may be illegal; as, if one borrow a horse, to ride from A to B, and afterwards detain him from the owner, After demand, such detention is unlawful, and the owner may either retake his property, or have an actiqn of replevin or detinue. 1 Chit. Pr. 135. In some cases, the detention becomes criminal although the taking was lawful, as in embezzlement.

DETERMINABLE. What may come to an end, by the happening of a contingency; as a determnable fee. See 2 Bouv. Inst. n. 1695.

DETERMINABLE FEE. Also called a qualified or base fee, is one which has a quality subjoined to it, and which must be determined whenever the qualification annexed to it is at in end. A limitation to a man and his heirs on the part of his father, affords an example of this species of estate. Litt. §254; Co. Litt. 27 a, 220; 1 Prest. on Estates, 449; 2 Bl. Com. 109; Cruise, tit 1, §82; 2 Bouv. Inst; n., 1695.

DETERMINATE. That which is ascertained; what is particularly designated; as, if I sell you my horse Napoleon, the article sold is here determined. This is very different from a contract by which I would have sold you a horse, without a particular designation of any horse. 1 Bouv. Inst. n. 947, 950.

DETERMINATION. The end, the conclusion, of a right or authority; as, the determination of a lease. 1 Com. Dig. Estates by Grant, G 10, 11, and 12.. The determination of an authority is the end of the authority given; the end of the return day of a writ determines the authority of the sheriff; the death of the principal determines the authority of a mere attorney. By determination is also understood the decision or judgment of a court of justice.

DETINET. He detains. Vide Debet et Detinet, and Detinuit.

DETINUE, remedies. The name of an action for the recovery of a personal chattel in specie. 3 Bl. Com. 152; 3 Bouv. Inst. n. 3472; 1 J. J. Marsh. 500.

2. This action may be considered, 1. With reference to the nature of the thing to be recovered. 2. The plaintiff's interest therein. 3. The injury. 4. The pleadings. 5. The judgment.

3.- 1. The goods which it is sought to recover, must be capable of being distinguished from all others, as a particular horse, a cow, &c., but not for a bushel of grain. Com. Dig. Detinue, B, C; 2 Bl. Com. 152; Co. Litt. 286 b; Bro. Det. 51. Detinue cannot be maintained where the property sued for had ceased to exist when the suit was commenced. 2 Dana, 332. See 5 Stew. & Port. 123; 1 Ala. R. 203.

4. - 2. To support this action, the plaintiff must have a right to immediate possession, although he never had actual possession; a reversioner cannot, therefore, maintain it. A bailee, who has only a special property, may nevertheless support it when he delivered the goods to the defendant, or they were taken out of the bailee's custody. 2 Saund. 47, b, c, d Bro. Ab. h. t.; 9 Leigh, R. 158; 1 How. Miss. R. 315; 5 How. Miss. R. 742; 4 B. Munr. 365.

5. - 3. The gist of the action is the wrongful detainer, and not the original taking. The possession must have been acquired by the defendant by lawful means, as by delivery,

bailment, or. finding, and not tortiously. Bro. Abr.])et. 53, 36, 21 1 Misso. R. 749. But a demand is not requisite, except for the purpose of entitling the plaintiff to damages for the detention between the time of the demand and that of the commencement of the action. 1 Bibb, 186; 4 Bibb, 340; 1 Misso. 9; 3 Litt. 46.

6. - 4. The plaintiff may declare upon a bailment or a trover; but the practice, by the ancient common law, was to allege, simply, that the goods came to the hands, &c., of the defendant without more. Bro. Abr. Det. 10, per Littleton; 33 H. VI. 27. The trover, or finding, when alleged, was not traversable, except when the defendant alleged delivery over of a chattel actually found to a third person, before action brought, in excuse of the detinue. Bro. Abr. Det. 1, 2. Nor is the bailment traversable, but the defendant must answer to the detinue. Bro. Abr. Det. 50-1. In describing the things demanded, much certainty is requisite, owing to the nature of the execution. A declaration for "a red cow with a white face," is not supported by proof that the cow was a yellow. or sorrel cow. 1 Scam. R. 206. The general issue is non detinet, and under it special matter may be given in evidence. Co. Litt. 283.

7. - 5. In this action the defendant frequently prayed garnishment of a third person, whom he alleged owned or had an interest in the thing demanded; but this he could not do without confessing the possession of the thing de-manded, and made privity of bailment. Bro. Abr. Garnishment, 1; Interpleader, 3. If the prayer of garnishment was allowed, a sci. fac. issued against the person named as garnishee. If he made default, the plaintiff recovered against, the defendant the chattel demanded, but no damages. If the garnishee appeared and the plaintiff made default, the garnishee recovered. If both appeared, and the plaintiff recovered; he had judgment against the defendant for the chattel demanded, and a distringas in execution and against the garnishee a judgment for damages, and a fi. fa. in execution. The verdict and judgment must be such, that a special remedy may be had for the recovery of the goods detained, or a satisfaction in value for each parcel, in case they, or either of them, cannot be returned. Walker, R. 538 7 Ala. R. 189; 4 Yerg. R. 570 4 Monr. 59; 7 Ala. R., 807.; 5 Miss. R. 489; 6 Monr. 52 4 Dana, 58; 3 B. Munr. 313; 2 Humph. 59. The judgment is in the alternative, that the plaintiff recover the goods or the value thereof, if he cannot have the goods themselves, and his damages. Bro. Abr. Det. 48, 26, 3, 25; 4 Dana, R. 58; 2 Humph. 59; 3 B. Mont. 313, for the detention and full costs. Vide, generally, 1 Chit. Pl. 117; 3 Bl. Com. 152; 2 Reeve's Hist. C. L. 261, 333,336; 3 Id. 66, 74; Bull. N. P. 50. This action has yielded to the more practical and less technical action of trover. 3 Bl. Com. 152.

DETINUIT, practice. He detained.

2. Where an action of replevin is instituted for goods which the defendant had taken, but which he afterwards restored, it is said to be brought in the detinuit; in such case

the judgment is, that the plaintiff recover the damages assessed by the jury for the taking and unjust detention, or for the latter only, where the former was justifiable, and his costs. 4 Bouv. Inst. n. 3562. 3. When the replevin is in the detinet, that he detains the goods, the jury must find in addition to the above, the value of the chattels, (assuming they are still detained, not in a gross sum, but each separate article must be separately valued, for perhaps the defendant may restore some of them, in which case the plaintiff is to recover the value of the remainder. Vide Debet et Detinet.

DEVASTAVIT. A devastavit is a mis-management and waste by an executor, administrator, or other trustee of the estate and effects trusted to him, as such, by which a loss occurs.

2. It takes place by direct abuse, by mal-administration, and by neglect.

3. - §1. By direct abuse. This takes place when the executor, administrator, or trustee, sells, embezzles, or converts to his own use, the goods entrusted to him; Com. Dig. Administration, I 1; releases a claim due to the estate; 8 Bac. Abr. 700; Hob. 266; Cro. Eliz. 43; 7 John. R. 404; 9 Mass. 352; or surrenders a lease below its value. 2 John. Cas. 376; 3 P. Wms. 330. These instances sufficiently show that any wilful waste of the property will be considered as a direct devastavit.

4. - §2. By mal-administration. Devastavit by mal-administration most frequently occurs by the payment of claims which were not due nor owing; or by paying others out of the order in which they ought to be paid; or by the payment of legacies before all the, debts have been satisfied. 4 Serg. & Rawle, 394; 5 Rawle, 266.

5. - §3. By neglect. Negligence on the part of an executor, administrator, or trustee, may equally tend to the waste of the estate, as the direct destruction or mal-administration of the assets, and render him guilty of a devastavit. The neglect to sell the goods at a fair price, within a reasonable time, or, if they are perishable goods, before they are wasted, will be a devastavit. And a neglect to collect a doubtful debt, which by proper exertion might have been collected, will be so considered. Bac. Ab. Executors, L.

6. The law requires from trustees, good faith and due diligence, the want of which is punished by making them responsible for the losses which may be sustained by the property entrusted to them when, therefore, a party has been guilty of a devastavit, he is required to. make up the loss out of his own estate. Vide Com. Dig. Administration, I; 11 Vin. Ab. 306; 1 Supp. to Ves. jr. 209; 1 Vern. 328; 7 East, R. 257 1 Binn. 194; 1 Serg. & Rawle, 241 1 John. R. 396; 1 Caines' Cas. 96 Bac. Ab. Executor, L; 11 Toull. 58, 59, n. 48.

DEVIATION, insurance, contracts. A voluntary departure, without necessity, or any reasonable cause, from the regular and usual course of the voyage insured.

2. From the moment this happens, the voyage is changed, the contract determined, and the insurer discharged from all subsequent responsibility. By the contract, the insurer only runs the risk of the contract agreed upon, and no other; and it is, therefore, a condition implied in the policy, that the ship shall proceed to her port of destination by the. shortest and safest course, and on no account to deviate from that course, but in cases of necessity. 1 Mood. & Rob. 60; 17 Ves. 364; 3 Bing. 637; 12 East, 578.

3. The effect of a deviation is not to vitiate or avoid the policy, but only to determine the liability of the underwriters from the time of the deviation. If, therefore, the ship or goods, after the voyage has commenced, receive damage, then the ship deviates, and afterwards a loss happen, there, though the insurer is discharged from the time of the deviation, and is not answerable for the subsequent loss, yet he is bound to make good the damage sustained previous to the deviation. 2 Lord Raym. 842 2 Salk. 444.

4. But though he is thus disebarged from subsequent responsibility, he is entitled to retain the whole premium. Dougl. 271; 1 Marsh. Ins. 183; Park. Ins. 294. See 2 Phil. Ev. 60, n. (b) where the American cases are cited.

5. What amounts to a deviation is not easily defined, but a departure from the usual course of the voyage, or remaining at places where the ship is authorized to touch, longer than necessary, or doing there what the insured is not authorized to do; as, if the ship have merely liberty to touch at a point, and the insured stay there to trade, or break bulk, it is a deviation. 4 Dall. 274 1 Peters' C. C. R. 104; Marsh. Ins. B. 1, c. 6, s. 2. By the course of the voyage is not meant the shortest course the ship can take from her port of departure to her port of destination, but the regular and customary track, if such there be, which long us usage has proved to be the safest and most convenient. 1 Marsh. Ins. 185. See 3 Johns. Cas. 352; 7 T. R. 162.

6. A deviation that will discharge the insurer, must be a voluntary departure from the usual course of the voyage insured, and not warranted by any necessity. If a deviation can be justified by necessity, it will not affect the contract; and necessity will justify a deviation, though it proceed from a cause not insured against. The cases of necessity which are most frequently adduced to justify a departure from the direct or usual course of the voyage, are, 1st. Stress of weather. 2d. The want of necessary repairs. 3d. Joining convoy. 4th. Succouring ships in distress. 5th. Avoiding capture or detention. 6th. Sickness of the master or mariner. 7th. Mutiny of the crew. See Park, Ins. c. 17; 1 Bouv. Inst. n. 1187, et seq.; 2 John. Cas. 296; 11 Johns. R. 241; Pet. C. C. R. 98; 2 Johns. Rep. 89; 14 Johns. R. 315; 2 Johns. R. 138; 9 Johns. R. 192; 8 Johns. Rep. 491; 13 Mass. 68 13 Mass. 539; Id. 118; 14 Mass. 12 1 Johns. Cas. 313; 11

Johns. R. 241; 3 Johns. R. 352; 10 Johns. R. 83; 1 Johns. R. 301; 9 Mass. 436, 447; 3 Binn. 457 7 Mass. 349; 5 Mass. 1; 8 Mass. 308 6 Mass. 102 121 6 Mass. 122 7 Cranch, 26; Id. 487; 3 Wheat. 159 7 Mass. 365; 10 Mass. 21 Id. 347 7 Johns. Rep. 864; 3 Johns. R. 352; 4 Dall. R. 274 5 Binn. 403; 2 Serg. & Raw. 309; 2 Cranch, 240.

DEVIATION, contracts. When a plan has been adopted for a building, and in the progress of the work a change has been made from the original plan, the change is called a deviation.

2. When the contract is to build a house according to the original plan, and a deviation takes place, the contract shall be traced as far as possible, and the additions, if any have been made, shall be paid for according to the usual rate of charging. 3 Barn. & Ald. 47; and see 1 Ves. jr. 60; 10 Ves. jr. 306; 14 Ves. 413; 13 Ves. 73; Id. 81 6 Johns. Ch. R. 38; 3 Cranch, 270; 5 Cranch, 262; 3 Ves. 693; 7 Ves. 274; Chit. Contr. 168; 9 Pick. 298.

3. The Civil Code of Louisiana, art. 2734, provides, that when an architect or other workman has undertaken the building of a house by the job, according to a plot agreed on between him and the owner of the ground, he cannot claim an increase of the price agreed on, on the plea of the original plot having been changed and extended, unless he can prove that such changes have been made in compliance with the wishes of the proprietor.

DEVISAVIT VEL NON, practice. The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was his will. 7 Bro. P. C. 437; 2 Atk. 424; 5 Barr, 21.

DEVISE. A devise is a disposition of real property by a person's last will and testament, to tale effect after the testator's death.

2. Its form is immaterial, provided the instrument is to take effect after the death of the party; and a paper in the form of an indenture, which is to have that effect, is considered as a devise. Finch. 195 6 Watts, 522; 3 Rawle, 15; 4 Desaus. 617, 313; 1 Mod. 117; 1 Black. R. 345.

3. The term devise, properly and technically, applies only to real estate the object of the devise must therefore be that kind of property. 1 Hill. Ab. ch. 36, n. 62 to 74. Devise is also sometimes improperly applied to a bequest or legacy. (q. v.) Vide 2 Bouv. Inst. n. 2095, et seq; 4 Kent, Com. 489 8 Vin. Ab. 41 Com. Dig. Estates by Devise.

4. In the Year Book, 9 H. VI. 24, b. A. D. 1430, Babington says, the nature of a devise, when lands are devisable, is, that one can devise that his lands shall be sold by executors and this is good. And a devise in such form has always been in use. And so a man may have frank tenement of him who had nothing, in the same manner as one may have fire from a flint, and yet there is no fire in the flint. But it is to perform the last will of the devisor.

DEVISEE. A person to whom a devise has been made.

2. All persons who are in rerum natura, and even embryos, may be devisees, unless excepted by some positive law. In general, he who can acquire property by his labor and industry, may receive a devise. C. & N. 353.

DEVISOR. A testator; one, who devises his real estate.

2. As a general rule all persons who. may sell an estate may devise it. The disabilities of devisors may be classed, in three divisions. 1. Infancy. In some of the United States this disability is partially removed; in Illinois, Maryland, Mississippi and Ohio, an unmarried woman at the age of eighteen years may devise. 2. Coverture. In general, a married woman cannot devise; but in. Connecticut and Ohio she may devise her lands; and in Illinois, her separate estate. In Louisiana, she may devise without the consent of her hushand. Code, art. 132. 3. Idiocy and non sane memory. It is evident that a person non compos can make no devise, because he has no will.

3. The removal of the disability which existed at the time of the devise does, not, of itself, render it valid. For example, when the hushand dies, and the wife becomes a feme sole; when one non compos is restored to his sense; and when an infant becomes of age; these several acts do not make a will good, which at its making was void. 11 Mod. 123, 157; 2 Vern . 475; Comb, 84; 4 Rawle, R. 3.36. Vide. Testament or ill.

DEVOIR. Duty. It is used in the statute of 2 Ric. II., c. 3, in the sense of duties or customs.

DEVOLUTION, eccl. law. The transfer, by forfeiture, of a right and power which a person has to another, on account of some act or negligence of the person who is vested with such right or power: for example, when a person has the right of preseptation, and he does not present within the time prescribed, the right devolves on his next immediate superior. Ayl. Par. 331.

DI COLONNA, mar. contracts. This contract tales place between the owner of a ship, the captain and the mariners, who agree that the voyage shall be for the benefit of all. This is a term used in the Italian law. Targa, oh. 36, 37: Emerigon, Mar. Loans, s. 5.

2. The New England whalers are owned and navigated in this manner, and under this species of contract. The captain and his mariners are all interested in the profits of the voyage in certain proportion, in the same manner as the captain and crew of a privateer, according to the agreement between them. Such agreement, being very common in former times, all the mariners and the masters being interested in the voyage. It is. necessary to know this, in order to understand many of the provisions of the laws of Oleron, Wishuy, the Consolato del Mare, and other ancient codes of maritime and commercial law. Hall on Mar. Loans, 42.

TO DICTATE. To pronounce word for word what is destined to be at the same time written by another. Merlin Rep. mot Suggestion, p. 5 00; Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 5, n. 410.

DICTATOR, civil law. A Magistrate at Rome invested with absolute power. His authority over the lives and fortunes of the citizens was without bounds. His office continued but for six months. Hist. de Ia Jur. h. t.; Dig. l, 2, 18; Id. 1, 1, 1.

DICTUM, practice. Dicta are judicial opinions expressed by the judges on points that do not necessarily arise in the case.

2. Dicta are regarded as of little authority, on account of the manner in which they are delivered; it frequently happening that they are given without much reflection, at the bar, without previous examination. "If," says Huston, J., in Frants v. Brown, 17 Serg. & Rawle, 292, "general dicta in cases turning on special circumstances are to be considered as establishing the law, nothing is yet settled, or can be long settled." "What I have said or written, out of the case trying," continues the learned judge, "or shall say or write, under such circumstances, maybe taken as my opinion at the time, without argument or full consideration; but I will never consider myself bound by it when the point is fairly trying and fully argued and considered. And I protest against any person considering such obiter dicta as my deliberate opinion." And it was considered by another learned judge. Mr. Baron Richards, to be a "great misfortune that dicta are taken down from judges, perhaps incorrectly, and then cited as absolute propositions." 1 Phillim. Rep. 1406; S. C. 1 Eng. Ecc. R. 129; Ram. on Judgm. ch. 5, p. 36; Willes' Rep. 666; 1 H. Bl. 53-63; 2 Bos. & P. 375; 7 T. R. 287; 3 B. & A. 341; 2 Bing. 90. The doctrine of the courts of France on this subject is stated in 11 Toull. 177, n. 133.

3. In the French law, the report of a judgment made by one of the judges who has given it, is called the dictum. Poth. Proc. Civ. partie 1, c. 5, art. 2.

DIES. A day. There are four sorts of days: 1. A natural day; as, the morning and the evening made the first day. 2. An artificial day; that is, from day-break until twilight

in the evening. 3. An astrological day, dies astrologicus, from sun to sun. 4. A legal day, which is dies juridicus, and dies non juridicus. 1. Dies juridici, are all days given in term to the parties in court. Dies non juridici are those which are not appointed to do business in court, as Sundays, and the like. Dies in banco, days of appearance in the English court of common bench. 3 Bl. Com. 276. Vide Day, and 3 Com. Dig. 358.

DIES DATUS, practice. A day or time given to a defendant in a suit, which is in fact a continuance of the cause. It is so called when given before a declaration; when it is allowed afterwards it assumes the name of imparlance. (q. v.)

DIES NON or DIES NON JURIDICI. Non-judicial days. Days during which courts do not transact any business, as Sunday. The entry of judgment upon such a day is void. W . Jones, 156.

DIET. An assembly held by persons having authority to manage the public affairs of the nation. In Germany, such assemblies are known by this name:

DIFFERENCE. A dispute, contest, disagreement, quarrel.

DIGEST, civil law. The name sometimes given to the Pandects of Justinian; it is so called because this compilation is reduced to order, quasi digestiae.

2. It is an abridgment of the decisions of the praetors and the works of the learned, and ancient writers on the law. It was made by order of the emperor Justinian, who, in 530, published an ordinance entitled De Conceptione Digestorum, which was addressed to Tribonian, and by which he was required to select some of the most distinguished lawyers to assist him in composing a collection of the best decisions of the ancient lawyers, and compile them is fifty books, without confusion or contradiction. The work was immediately commenced, and completed on the 16th of December, 533.

3. The Digest is divided in two different ways; the first, into fifty books, each book into several titles, and each title into several laws at the head of each of them is the name of the lawyer from. whose work it was taken.

4. - 1. The first book contains twenty-two titles; the subject of the first is De justicia et jure; of the division of person and things; of magistrates, &c.

5. - 2. The second, divided into fifteen titles, treats of the power of magistrates and their jurisdiction; the manner of commencing suits; of agreements and compromises.

6. - 3. The third, composed of six titles, treats of those who can and those who cannot sue; of advocates and attorneys and syndics; and of calumny.

7. - 4. The fourth, divided into nine titles, treats of causes of restitution of submissions and arbitrations; of minors, carriers by water, innkeepers and those who have the care of the property of others.

8. - 5. In the fifth there are six titles, which. treat of jurisdiction and inofficious testaments.

9. - 6. The subject, of the sixth, in which there are three titles, is actions.

10. - 7. The seventh, in nine titles, embraces whatever concerns usufructs, personal servitudes, babitations, the uses of real estate, and its appurtenances, and of the sureties required of the usufructuary.

11. - 18. The eighth book, in six titles, regulates urban and rural servitudes.

12. - 9. The ninth book, in four titles, explains certain personal actions.

13. - 10. The tenth, in four titles, treats of mixed actions.

14.-11. The object of the eleventh book, containing eight titles, is to regulate interrogatories, the cases of which the judge was to take cognizance, fugitive slaves, of gamblers, of surveyors who made false reports, and of funerals and funeral expenses.

15. - 12. The twelfth book, in seven titles, regulates personal actions in which the plaintiff claims the title of a thing.

16. - 13. The thirteenth, treats of certain particular actions, in seven titles.

17. - 14. This, like the last, regulates certain actions: it has six titles.

18. - 15. The fifteenth, in four titles, treats of actions for which a father or master is liable, in consequence of the acts of his children or slaves, and those to which he is entitled; of the peculium of children and slaves, and of the actions on this right.

19.-16. The sixteenth, in three titles, contains the law. relating to the senatus consultum velleianum, of compensation or set off, and of the action of deposit.

20. - 17. The seventeenth, in two titles, expounds the law of mandates and partnership.

21. - 18. The eigbteenth book, in seven titles, explains the contract of sale.

22. - 19. The nineteenth, in five titles, treats of the actions which arise on a contract of sale.

23. - 20. The law relating to pawns, hypothecation, the preference among creditors, and subrogation, occupy the twentieth book, which contains six titles.

24. - 21. The twenty-first book, explains under three titles, the edict of the ediles relating to the sale of slaves and animals; then what relates to evictions and warranties.

25. - 22. The twenty-second treats of interest, profits and accessories of things, proofs, presumptions, and of ignorance of law and fact. It is divided into six titles.

26. - 23. The twenty-third, in five titles, contains the law of marriage, and its accompanying agreements.

27. - 24. The twenty-fourth, in three titles, regulates donations between hushand and wife, divorces, and their consequence.

28. - 25. The twenty-fifth is a continuation of the subject of the preceding. It contains seven titles.

29. - 26 and 27. These two books, each in two titles, contain the law relating to tutorship and curatorship.

30. - 28. The twenty-eighth, in eight titles, contain's the law on last wills and testaments.

31. - 29. The twenty-ninth, in seven titles, is the continuation of the twenty-eighth book.

32. - 30, 31, and 32. These three books, each divided into two titles, contain the law of trusts and specific legacies.

33. - 33, 34, and 35. The first of these, divided into ten titles; the second, into nine titles; and the last into three titles, treat of various kinds of legacies.

34. - 36. The thirty-sixth, containing four titles, explains the senatus consultum trebellianum, and the time when trusts become due.

35. - 37. This book, containing fifteen titles, has two objects first, to regulate successions; and, secondly, the respect which children owe their parents, and freedmen their patrons.

36. - 38. The thirty-eighth book, in seventeen titles, treats of a variety of subjects; of successions, and of the degree of kindred in successions; of possession; and of heirs.

37. - 39. The thirty-ninth explains the means which the law and the prAEtor take to prevent a threatened iNjury; and donations inter vivos and mortis causa.

38. - 40. The fortieth, in sixteen titles, treats of the state and condition of persons, and of what relates to freedmen and liberty.

39. - 41. The different means of acquiring and losing title to property, are explained in the forty-first book, in ten titles.

40. - 42. The forty-second, in eight titles, treats of the res judicata, and of the seizure and sale of the property of a debtor.

41. - 43. Interdicts or possessory actions are the object of the forty-third book, in three titles.

42.-44. The forty-fourth contains an enumeration of defences which arise in consequence of the resjudicata, from the lapse of time, prescription, and the like. This occupies six titles; the seventh treats of obligations and actions.

43. - 45. This speaks of stipulations, by freedmen, or by slaves. It contains only three titles.

44. - 46. This book, in eight titles, treats of securities, novations, and delegations, payments, releases, and acceptilations.

45. - 47. In the forty-seventh book are explained the punishments inflicted for private crimes, de privates delictis, among which are included larcenies, slander, libels, offences against religion, and public manners, removing boundaries, and other similar offences.

46. - 48. This book treats of public crimes, among which are enumerated those Iaesae majestatis, adultery, murder, poisoning, parricide, extortion, and the like, with rules for procedure in such cases.

47. - 49. The forty-ninth, in eighteen titles, t reats of appeals, of the rights of the public treasury, of those who are in captivity, and of their repurchase.

48. - 50. The last book, in seventeen titles, explains the rights of municipalities. and then treats of a variety of public officers.

49. Besides this division, Justinian made another, in which the fifty books were divided into seven parts: The first contains the first four books; the second, from the fifth to the eleventh book inclusive; the third, from the twelfth to the nineteenth inclusive; the fourth, from title twentieth to the twenty-seventh inclusive; the fifth, from the twenty-eighth to the thirty-sixth inclusive the sixth, commenced with the thirty seventh, and ended with the forty-fourth book; and the seventh or last was composed of the last six books.

50. A third division, which, however, is said not to have been made by Justinian, is in three parts. The first, called digestum vetus, because it was the first printed. It commences with the first book, and. includes the work to the end of the second title of the twenty-fourth book. The second, called digestum infortiatum, because it is supported or fortified by the other two, it being the middle; it commences with the begining of the third title of the twenty-fourth book and ends with the thirty-eighth. The third, which begins with the thirty-ninth book and ends with the work, is called digestum novum, because it was last printed.

51. The Digest, although, compiled in Constantinople, was originally written in Latin, and afterwards translated into Greek.

52. This work was lost to all Europe during a considerable period, as indeed all the law works of Justinian were, except some fragments of the Code and Novels. During the pillage of Amalphi, in the war between the two soi-disant popes Innocent II. and Anaclet II., a soldier discovered an old manuscript, which attracted his attention by its envelope of many colors. It was carried to the emperor, Clothaire II., and proved to be the Pandects of Justinian. The work was arranged in its present order by Warner, a German, whose name, Latinised, is Irnerius, who was appointed professor of Roman law at Bologna, by that emperor. 1 Fournel, Hist. des Avocats, 44, 46, 51.

53. The Pandects contain all whatsoever Justinian drew out of 150,000 verses of the old books of the Roman law. The style of the Digest is very grave and pure, and differs not much from the eloquentist speech that ever the Romans used." The learning of the digest stands rather in the discussing of subtle questions of law, and enumeratious of the variety of opinions of ancient lawyers thereupon, than in practical matters of daily use. The Code of Justinian differs in these respects from, the Digest. It is less methodical, but more practical; the style however, is a barbarous Thracian

phrase Latinised, such as never any mean Latinist spoke. The work is otherwise rude and unskilful. Ridley's View of the Civ. & Ecc. Law, pt. 1, ch. 2, §1, and ch. 1, §2.

54. Different opinions are entertained upon the merits of the Digest, or Pandects, Code, Authentics and Feuds, as a system of jurisprudence. By some it has been severely criticised, and even harshly censured, and by others as warmly defended the one party discovering nothing but defects, and the other as obstinately determined to find nothing but what is good and valuable. See Felangieri della Legislazione, vol. 1, c. 7. It must be confessed that it is not without defects. It might have been comprehended in less extent, and in some parts arranged in better order. It must be confessed also that it is less congenial as a whole, with the principles of free government, than the common law of England. Yet, with all these defects, it is a rich fountain of learning and reason; and of this monument of the high culture and wisdom of the Roman jurists it may be said, as of all other works in which the good so much surpasses the bad.

> Ut plura intent in carmine non ego paucis
> Offendar maculis, quas aut incuria fudit
> Aut humana parum cavit natura.
> HORAT. ART. POETIC, v. 351.

DIGNITIES. English law. Titles of honor.

2. They are considered as incorporeal hereditaments.

3. The genius of our government forbids their admission into the republic.

DILAPIDATION. Literally, this signifies the injury done to a building by taking stones from it; but in its figurative, which is also its technical sense, it means the waste committed or permitted upon a building.

DILATORY. That which is intended for delay. It is a maxim, that delays in law are odious, dilationes in lege sunt odiosae. Plowd. 75.

DILATORY DEFENCE. chancery practice. A dilatory defence is one, the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed.

2. These defences are of four kinds: 1. To the jurisdiction of the court. 2. To the person of the plaintiff or defendant. 3. To the form of proceedings, as that the suit is irregularly brought, or it is defective in its appropriate allegation of the parties; and, 4. To the propriety of maintaining the suit itself, because of the pendancy of another suit

for the same controversy. Montag. Eq. Pl. 88; Story Eq. Pl. §434. Vide Defence: Plea, dilatory.

DILATORY PLEAS. Those which delay the plaintiff's remedy, by questioning, not the cause of action, but the propriety of the suit, or the mode in which the remedy is sought. Vide Plea, dilatory.

DILIGENCE, contracts. The doing things in proper time.

2. It may be divided into three degrees, namely: ordinary diligence, extraordinary diligence, and slight diligence. It is the reverse of negligence. (q. v.) Under that article is shown what degree of negligence, or want of diligence, will make a party to a contract responsible to the other. Vide Story, Bailm. Index h. t.; Ayl. Pand. 113 1 Miles, Rep. 40.

DILIGENCE. In Scotland, there are certain forms of law, whereby a creditor endeavors to make good his payment, either by affecting the person of his debtor, or by securing the subjects belonging to him from alienation, or by carrying the property of these subjects to himself. They are either real or personal.

2. Real diligence is that which is proper to heritable or real rights,. and of this kind there are two sorts: 1. Inhibitions. 2. Adjudication, which the law has substituted in the place of apprising.

3. Personal diligence is that by which the person of the debtor may be secured, or his personal estate affected. Ersk. Pr. L. Scotl. B. 2, t. 11, s. 1.

DIME, money. A silver coin of the United States, of the value of one-tenth part of a dollar or ten cents.

2. It weighs forty-one and a quarter grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. cont. of Story's L. U. S. 2523-4.

DIMINUTION OF THE RECORD, practice. This phrase signifies that the record from an inferior court, sent up to a superior, is incomplete. When this is the case, the parties may suggest a diminution of the record, and pray a writ of/ certiorari to the justices of the court below to certify the whole record. Tidd's Pr. 1109; 1 S. & R. 472; Co. Ent. 232; 8 Vin. Ab. 552; 1 Lilly's Ab. 245; 1 Nels. Ab. 658; Cro. Jac. 597; Cro. Car. 91; Minor, R. 20; 4 Dev. R. 575; 1 Dey. & Bat. 382; 1 Munf. R. 119. Vide Certiorari. DIOCESE, eccl. law. The district over which a bishop exercises his spiritual functions. 1 B1. Com. 111.

DIPLOMA. An instrument of writing, executed by, a corporation or society, certifying that a certain person therein named is entitled to a certain distinction therein mentioned.

2. It is usually, granted by learned institutions to their members, or to persons who have studied in them.

3. Proof of the seal of a medical institution and of the signatures of its officers thereto affixed, by comparison with the seal and signatures attached to a diploma received by the witness from the same institution, has been held to be competent evidence of the genuineness of the instrument, although the witness never saw the officers write their names. 25 Wend. R. 469.

4. This word, which is also written duploma, in the civil law, signifies letters issued by a prince. They are so called, it is supposed, a duplicatis tabellis, to which Ovid is thought to allude, 1 Amor. 12, 2, 27, when he says, Tunc ego vos duplices rebus pro nomine sensi Sueton in Augustum, c. 26. Seals also were called Diplomata. Vicat ad verb.

DIPLOMACY., The science which treats of the relations and interests of nations with nations.

DIPLOMATIC AGENTS. This name has been given to public officers, who have been commissioned, according to law, to superintend and transact the affairs of the government which has employed them, in a foreign country. Vattel, liv. 4, c. 5.

2. These agents are of divers orders, and are known by different denominations. Those of the first order are almost the perfect representatives of the government by which they are commissioned; they are legates, nuncios, internuncios, ambassadors, ministers, plenipotentiaries. Those of the second order do not so fully represent their government; they are envoys, residents, ministers, charges d'affaires, and consuls. Vide these several words.

DIPLOMATICS. The art of judging of ancient charters, public documents or diplomas, and discriminating the true from the false. Encyc. Lond. h. t.

DIRECT. Straight forward; not collateral.

2. The direct line of descents for example, is formed by a series of degrees between persons who descend one from another. Civ. Code of Lo. art. 886.

DIRECTION. The order and government of an institution; the persons who compose the board of directors are jointly called the direction. Direction, in another sense, is nearly synonymous with instruction. (q. v.)

DIRECTION, practice. That part of a bill in chancery which contains the address of the bill to the court; this must of course, contain the appropriate and technical description of the court.

DIRECTOR OF THE MINT. An officer whose duties are prescribed by the Act of Congress of January 18, 18 37, 4 Sharsw. Cont. of Story L. U. S. 2524, as follows: The director shall have the control and management of the mint, the superintendence of the officers and persons employed therein, and the general regulation and supervision of the business of the several branches. And in the month of January of every year he shall make report to the president of the United States of the operation of the mint and its branches for the year preceding. And also to the secretary of the treasury, from time to time, as said secretary shall require, setting forth all the operations of the mint subsequent to the last report made upon the subject.

2. The director is required to appoint, with the approbation of the president, assistants to the assayer, melter and refiner, chief coiner and engraver, and clerks to the director and treasurer, whenever, on representation made by the director to the president, it shall be the opinion of the president that such assistants or clerks are necessary. And bonds may be required from such assistants and clerks in such sums as the director shall determine, with the approbation of the secretary of the treasury. The salary of the director of the mint, for his services, including travelling expenses incurred in visiting the different branches, and all other charges whatever, is three thousand five hundred dollars. DIRECTORS. Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form, the board of directors.

2. They are generally invested with certain powers by the acts of the legislature, to which they owe their existence.

3. In modern corporations, created by statutes, it is generally contemplated by the charter, that the business of the corporation shall be transacted exclusively by the directors. 2 Caines' R. 381. And the acts of such a board, evidenced by a legal vote, are as completely binding upon the corporation, and as complete authority to their agents, as the most solemn acts done under the corporate seal. 8 Wheat. R. 357, 8.

4. To make a legal board of directors, they must meet at a time when, and a place where, every other director has the opportunity of attending to consult and be consuited with; and there must be a sufficient number present to constitute a quorum.

3 L. R. 574; 13 L. R. 527; 6 L. R. 759. See 11 Mass. 288; 5 Litt. R. 45; 12 S. & R. 256; 1 Pet. S. C. R. 46. Vide Dane's Ab. h. t.

5. Directors of a corporation are trustees, and as such are required to use due diligence and attention to its concerns, and are bound to a faithful discharge of the duty which the situation imposes. They are liable to the stockhoders whenever there has been gross negligence or fraud; but not for unintentional errors. 1 Edw. Ch. R. 513; 8 N. S. 80; 3. L. R. 576. See 4 Mann. & Gr. 552.

DIRECTORY. That which points out a thing or course of proceeding; for example, a directory law.

DIRIMANT IMPEDIMENTS, canon law. Those bars to a marriage, which, if consummated, render it null. They differ from prohibitive impediments. (q. v.)

DISABILITY. The want of legal capacity to do a thing.

2. Persons may be under disability, 1. To make contracts. 2. To bring actions.

3. - 1. Those who want understanding; as idiots, lunatics, drunkards, and infants or freedom to exercise their will, as married women, and persons in duress; or who, in consequence of their situation, are forbidden by the policy of the law to enter into contracts, as trustees, executors, administrators, or guardians, are under disabilities to make contracts. See Pa7-ties; Contracts.

4. - 2. The disabilities to sue are, 1. Alienage, when the alien is an enemy. Bac. Ab. Abatement, B 3; Id. Alien, E: Com. Dig. Abatement , K; Co. Litt. 129. 2. Coverture; unless as co-plaintiff with her hushand, a married woman cannot sue. 3. Infancy; unless he appears by guardian or prochein ami. Co. Litt. 135, b; 2 Saund. 117, f, n. 1 Bac. Ab. Infancy, K 2 Conn. 357; 7 John. 373; Gould, Pl. c. 5, §54. 4. That no such person as that named has any existence, is not, or never was, in rerum natura. Com. Dig. Abatement, E 16, 17; 1 Chit. Pl. 435; Gould on Pl. c. 5, §58; Lawes' Pl. 104; 19 John. 308. By the law of England there are other disabilities; these are, 1. Outlawry. 2. Attainder. 3. Praemunire. 4. Popish recusancy. 5. Monachism.

5. In the acts of limitation it is provided that persons lying under certain disabilities, such as being non compos, an infant, in prison, or under coverture, shall have the right to bring actions after the disability shall have been removed.

6. In the construction of this saving in the acts, it has been decided that two disabilities shall not be joined when they occur in different persons; as, if a right of entry accrue to a feme covert, and during the coverture she die, and the right descends to her infant

son. But the rule is otherwise when there are several disabilities in the same person; as, if the right accrues to an infant, and before he has attained his full age, he becomes non compos mentis; in this case he may establish his right after the removal of the last disability. 2 Prest. Abs. of Tit. 341 Shep. To. 31; 3 Tho. Co. Litt. pl. 18, note L; 2 H. Bl. 584; 5 Whart. R. 377. Vide Incapacity.

DISAFFIRMANCE. The act by which a person who has entered into a voidable contract; as, for example, an infant, does disagree to such contract, and declares he will not abide by it.

2. Disaffirmance is express or implied. The former, when the declaration is made in terms that the party will not abide by the contract. The latter, when he does an act which plainly manifests his determination not to abide by it; as, where an infant made a deed for his land, and, on coming of age, be made a deed for the same land to another. 2 Dev. & Bat. 320; 10 Pet. 58; 13 Mass. 371, 375.

TO DISAVOW. To deny the authority by which an agent pretends to have acted as when he has exceeded the bounds of his authority.

2. It is the duty of the principal to fulfil the contracts which have been entered into by his authorized agent; and when an agent has exceeded his authority, he ought promptly to disavow such act, so that the other party may have his remedy against the agent. See Agent; Principal.

DISBURSEMENT. Literally, to take money out of a purse. Figuratively, to pay out money; to expend money; and some times it signifies to advance money.

2. A master of a ship makes dishursements, whether with his own money or that of the owner, when he defrays expenses for the ship.

3. An executor, guardian, trustee, or other accountant, is said to have made dishursements when he expended money on account of the estate which he holds. These, when properly made, are always allowed in the settlement of the accounts.

DISCHARGE, practice. The act by which a person in confinement, under some legal process, or held on an accusation of some crime or misdemeauor, is set at liberty; the writing containing the order for his being so set at liberty, is also called a discharge.

2. The discharge of a defendant, in prison under a ca. sa., when made by the plaintiff, has the operation of satisfying the debt, the plaintiff having no other remedy. 4 T. R. 526. But when the discharge is in consequence of the insolvent laws, or the defendant dies in prison, the debt is not satisfied. In the first place the plaintiff has a remedy

against the property of the defendant, acquired after his discharge, and, in the last case, against the executors or administrators of the debtor. Bac. Ab. Execution, D; Bingh. on Execution, 266.

DISCHARGE OF A CONTRACT. The act of making a contract or agreement null.

2. Contracts may be discharged by, 1. Payment. 2. Accord and satisfaction. 8 Com. Dig. 917; 1 Nels. Abr. 18; 1 Lilly's Reg. 10, 16; Hall's Dig. 7 1 Poth. Ob. 345. 3. Release. 8 Com. Dig. 906; 3 Nels. Ab. 69; 18 Vin. Ab. 294; 1 Vin. Abr. 192; 2 Saund. 48, a; Gow. on Partn. 225, 230; 15 Serg. & Rawle, 441; 1 Poth Ob. 897. 4. Set off. 8 Vin. Ab. 556, Discount; Hall's Dig. 226, 496; 7 Com. Dig. 335, Pleader, 2 G 17; 1 Poth. Ob. 408. 5. The rescission of the contracts. 1 Com. Dig. 289, note x; 8 Com. Dig. 349; Chit. on Contr. 276. 6. Extinguishment. 7 Vin: Abr. 367; 14 Serg. & Rawle, 209, 290; 8 Com. Dig. 394; 2 Nels. Abr. 818; 18 Vin. Abr. 493 to 515; 11 Vin. Abr. 461. 7. Confusion, where the duty to pay and the right to receive unite in the same person. 8 Serg. & Rawle, 24-30 1 Poth. 425. 8. Extinction, or the loss of the subject matter of the contract. Bac. Abr. 48 8 Com. Dig. *349; 1 Poth. Ob. 429. 9. Defeasance. 2 Saund. 47, n. note 1. 10. The inability of one of the parties to fulfil his part. Hall's Dig. 40. 11. The death of the contractor, as where he undertook to teach an apprentice. 12. Bankruptcy. 13. By the act of limitations. 14. By lapse of time. Angell on Adv. Enjoym. passim; 15 Vin. Abr. 52, 99; 2 Saund. 63, n. b; Id. 66, n. 8; Id. 67, n. 10; Gow on Partn. 235; 1, Poth. 443, 449. 15. By neglecting to give notice to the, person charged. Chit. on Bills, 245. 16. By releasing one of two partners. See Receipt. 17. By neglecting to sue the principal at the request of the surety, the latter is discharged. 8 Serg. & Rawle, 110. 18. By the discharge of a defendant, who has been arrested under a capias ad satisfaciendum. 8 Cowen, R. 171. 19. By a certificate and discharge under the bankrupt laws. Act of Congress of August, 1841.

DISCHARGE OF A JURY, practice. The dismissal of a jury who had been charged with the trial of a cause.

2. Questions frequently arise, whether if the court discharge a jury before they render a verdict, in a criminal case, the prisoner can again be tried. In cases affecting life or members, the general rule is that when a jury have been sworn and charged, they cannot be discharged by the court, or any other, but ought to give a verdict. But to this rule there are many exceptions; for example, when the jury are discharged at the request or with the consent of the prisoner and for his benefit, when ill practices have been used; when the prisoner becomes insane, or becomes suddenly ill, so that he cannot defend himself, or instruct others in his defence; when a juror or witness is taken suddenly ill; when a juror has absented himself, or, on account of his intoxication, is incapable to perform his duties as a juror. These and many similar cases, which may be readily imagined, render the discharge of the jury a matter of

necessity, and; under such very extraordinary and striking circumstances, it is impossible to proceed with the trial, with justice to the prisoner or to the state.

3. The exception to the rule, then, is grounded on necessity, and not merely because the jury cannot agree. 6 Serg. & Rawle, 577; 3 Rawle's Rep. 501. In all these cases the court must exercise a just discretion in deciding what is and what is not a case of necessity. This is the law as to the exceptions in Pennsylvania. In other states, and some of the courts of the United States, it has been ruled that the authority of the court to discharge the jury rests in the sound discretion of the court. 4 Wash. C. C. R. 409; 18 Johns. 187; 2 Johns. Cas. 301; 2 Gall. 364; 9 Mass. 494; 1 Johns. Rep. 66; 2 Johns. Cas. 275 2 Gallis. 364; 13 Wend. 55; Mart. & Yerg. 278; 3 Rawle, 498; 2 Dev. & Bat. 162; 6 S. & R. 577; 2 Misso. 166; 9 Leigh, 613; 10 Yerg. 535; 3 Humph. 70. Vide 4 Taunt. 309.

4. A distinction has been made between capital cases and other criminal cases, not capital. In cases of misdemeanors and in civil cases, the right to discharge rests in the sound discretion of the court, which is to be exercised with great caution. 9 Mass. 494; 3 Dev. & Batt. 115. In Pennsylvania this point seems not to be settled. 6 Serg. & Rawle, 599. The reader is referred to the word Jeopardy, and Story on the Const. §1781; 9 Wheat. R. 579; Rawle on the Const. 132, 133; 1 Chit. Cr. Law, 629; 1 Dev. 491; 4 Ala. R. 173; 2 McLean, 114. See Afforce.

DISCHARGED. Released, or liberated from custody. It is not equivalent to acquitted in a declaration for a malicious prosecution. 2 Yeates, 475 2 Term Rep. 231; 1 Strange, 114; Doug. 205 3 Leon. 100.

DISCLAIMER. This word signifies. to abandon, to renounce; also the act by which the renunciation is made. For example, a disclaimer is the act by which a patentee renounces a part of his title of invention,

2. In real actions, a disclaimer of the tenancy or title is frequently added to the plea of non tenure. Litt. §391. If the action be one in which the demandant cannot recover damages, as formedon in the discender, the demandant or plaintiff was bound to pray judgment, &c., and enter, for thereby, he has the effect of his suit, et frustra fit per plura quod fieri potest per pauciora. But, if the demandant can recover damages and is unwilling to waive them, he should answer the disclaimer by averring that the defendant is tenant of the land, or claims to be such as the writ supposes, and proceed to try the question, otherwise he would lose his damages. The same course may be pursued in the action of ejectment, although in Pennsylvania, the formality of such a replication to the disclaimer is dispensed with, and the fact is tried without it. 5 Watts, 70; 3 Barr, 367. Yet, if the plaintiff is willing to waive his claim for damages, there is

no reason why he may not ask for judgment upon the disclaimer without trial, for thereby he has the effect of his suit. Et frustra fit per plura, &c.

DISCLAIMER, chancery pleading. The renunciation of the defendant to all claims to the subject of the demand made by the plaintiff's bill.

2. A disclaimer is distinct in substance from an answer, though sometimes confounded with it, but it seldom can be put in without an answer for if the defendant has been made a party by mistake, having had an interest which be has parted with, the plaintiff may require an answer sufficient to ascertain whether that is the fact or not. Mitf. Pl. 11, 14, 253; Coop. Eq. Pl. 309; Story, Eq. Pl. c. 17, §838 to 844; 4 Bouv. Inst. n. 4211-14.

DISCLAIMER, estates. The act of a party by which be refuses to accept of an estate which has been conveyed to him. Vide Assent; Dissent.

2. It is said, that a disclaimer of a freehold estate must be in a court of record, because a freehold shall not be divested by bare words, in pais. Cruise, Dig. tit. 32, c. 2 6, s. 1, 2.

3. A disclaimer of tenancy is the act of a person in possession, who denies holding the estate from the person claiming to be the owner of it. 2 Nev. & M. 672. Vide 8 Vin.. Ab. 501; Coote, L. & T. 348, 375; F. N. B. 179 k; Bull. N. P. 96; 16 East, R. 99; 1 Man. & Gran. 135; S. C. 39 Eng. C. L. Rep. 380, 385; 10 B. & Cr. 816; ow, N. P. Cas. 180; 2 Nov. & Man. 673; 1 C. M. & R. 398 Co. Litt. 102, a.

DISCONTINUANCE, pleading. A chasm or interruption in the pleading.

2. It is a rule, that every pleading, must be an answer to the whole of what is adversly alleged. Com. Dig. Pleader, E 1, ri 4; 1 Saund. 28, n. 3; 4 Rep. 62, a. If, therefore, in an action of trespass for breaking a close, and cutting three hundred trees, the defendant pleads as to cutting all but two hundred trees, some matter of justifica- tion or title, and as to the two hundred trees says nothing, the plaintiff is entitled to sign judgment, as by nil dicit against him, in respect of the two hundred trees, and to demur, or reply to the plea, as to the remainder of the trespasses. On the other hand, if he demurs or replies to the plea, without signing, judgment for the part not answered, the whole action is said to be discontinued. For the plea, if taken by the plaintiff as an answer to the, whole action, it being, in fact, a partial answer only, is, in contemplation of law, a mere nullity, and a discontinuance takes place. And such discontinuance will amount to error on the record; such error is cured, however, after verdict, by the statute of Jeo fails, 32 H. VIII. c. 80; and after judgment by nil dicit, confession, or non sum informatus, by stat. 4 Ann. c. 16. It is to be observed, that as to

the plaintiff's course of proceeding, there is a distinction between a case like this, where the defendant does not profess to answer the whole, and a case where, by the commencement of his plea, he professes to do so, but, in fact, gives a defective and partial answer, applying to part only. The latter case amounts merely to insufficient pleading, and the plaintiff's course, therefore, is not to sign judgment for the part defectively answered, but to demur to the whole plea. 1 Saund. 28, n.

3. It is to be observed, also, that where the part of pleading to which no answer is given, is immaterial, or such as requires no separate or specific answer for example, if it be mere matter of allegation, the rule does not in that case apply. Id. See Com. Dig. Pleader, W; Bac. Abr. Pleas, P.

DISCONTINUANCE, estates. An alienation made or suffered by the tenant in tail, or other tenant seised in autre droit, by which the issue in, tail, or heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter.

2. The term discontinuance is used to distinguish those cases where the party whose freehold is ousted, can restore it only by action, from those in which he ma restore it by entry. Co. Litt. 325 a 3 Bl. Com. 171; Ad. Ej. 35 to 41; Com. Dig. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; Cruise's Dig. Index, b.. t..5 2 Saund. Index, h. t.

DISCONTINUANCE, practice. This takes place when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day, and time to time, as he ought. 3 Bl. Com. 296. See Continuance. A discontinuance, also, is an entry upon the record that the plaintiff discontinues his action.

2. The plaintiff cannot discontinue his action after a demurrer joined and entered, or after a verdict or a writ of inquiry without leave of court. Cro. Jac. 35 1, Lilly's Abr. 473; 6 Watts & Serg. 1417. The plaintiff is, on discontinuance, generally liable for costs. But in some cases, he is not so liable. See 3 Johns. R. 249; 1 Caines' R. 116; 1 Johns. R. 143; 6 Johns. R. 333; 18 Johns. R. 252; 2 Caines' Rep. 380; Com. Dig. Pleader, W 5; Bac. Abr. Pleas' P.

DISCOUNT, practice. A set off, or defalcation in an action. Vin. Ab. h. t.

DISCOUNT, contracts. An allowance made upon prompt payment in the purchase of goods; it is also the interest allowed in advancing money upon bills of exchange, or other negotiable securities due at a future time And to discount, signifies the act of buying a bill of exchange, or promissory note for a less sum than that which upon its face, is payable.

2. Among merchants, the term used when a bill of exchange is transferred, is, that the bill is sold, and not that it is discounted. See Poth. De l'Usure, n. 128 3 Pet. R. 40.

DISCOVERT. Not covert, unmarried. The term is applied to a woman unmarried, or widow; one not within the bonds of matrimony.

DISCOVERY, intern. law. The act of finding an unknown country.

2. The nations of Europe adopted the principle, that the discovery of any part of America gave title to the government by whose subjects, or by whose authority it was made, against all European governments. This title was to be consummated by possession. 8 Wheat. 543.

DISCOVERY, practice, pleading. The act of disclosing or revealing by a defendant, in his answer to a bill filed against him in a court of equity. Vide Bill of Discovery; 8 Vin. Ab. 537; 8 Com. Dig: 515.

DISCOVERY; rights. The patent laws of the United States use this word as synonymous with invention or improvement of July 4, 1836, s. 6.

TO DISCREDIT, practice, evidence. To deprive one of credit or confidence.

2. In general, a party may discredit a witness called by the opposite party, who testifies against him, by proving that his character is such as not to entitle him to credit or confidence, or any other fact which shows he is not, entitled to belief. It is clearly settled, also, that the party voluntarily calling a witness, cannot afterwards impeach his character for truth and veracity. 1 Moo. & Rob. 414; 3 B. & Cress. 746; S. C. 10 Eng. Com. Law R. 220. But if a party calls a witness, who turns out unfavorable, he may call another to prove the same point. 2 Campb. R. 556 2 Stark. R. 334; S. C. 3 E. C. L. R. 371 1 Nev & Man. 34; 4 B. & Adolph. 193; S. C. 24 E. C. L. R. 47; 1 Phil. Ev. 229; Rosc. Civ. Ev. 96.

DISCREPANCY. A difference between one thing and another, between one writing and another; a variance. (q. v.)

2. Discrepancies are material and immaterial. A discrepancy is immaterial when there is such a difference between a thing alleged, and a thing offered in evidence, as to show they are not substantially the same; as, when the plaintiff in his declaration for a malicious arrest averred, that "the plaintiff, in that action, did not prosecute his said suit, but therein made default," and the record was, that he obtained a rule to discontinue. 4 M. & M. 2 5 3. An immaterial discrepancy is one which does not materially affect the cause as, where a declaration stated that a deed bore date in a

certain year of our Lord, and the deed was simply dated " March 30, 1701." 2 Salk. 658; 19 John. 49 5 Taunt. 707; 2 B. & A. 301; 8 Miss. R. 428; 2 M'Lean, 69; 1 Metc. 59; 21 Pick. 486.

DISCRETION, practice. When it is said that something is left to the discretion of a judge, it signifies that he ought to decide according to the rules of equity, and the nature of circumstances. Louis. Code, art. 3522, No. 13; 2 Inst. 50, 298; 4 Serg. & Rawle, 265; 3 Burr. 2539.

2. The discretion of a judge is said to be the law of tyrants; it is always unkown; it is different in different men; it is casual, and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly, and passion, to which human nature is liable. Optima lex quae minimum relinquit arbitrio judicis: optimus judex qui minimum sibi. Bac. Aph; 1 Day's Cas.. 80, ii.; 1 Pow. Mortg. 247, a; 2 Supp. to Ves. Jr. 391; Toull. liv. 3, n. 338; 1 Lill. Ab. 447.

3. There is a species of discretion which is authorized by express law, and, without which, justice cannot be administered; for example, an old offender, a man of much intelligence and cunning, whose talents render him dangerous to the community, induces a young man of weak intellect to commit a larceny in company with himself; they are both liable to be punished for the offence. The law, foreseeing such a case, has provided that the punishment should be proportioned, so as to do justice, and it has left such apportionment to the discretion of the judge. It is evident that, without such discretion, justice could not be administered, for one of these parties assuredly deserves a much more severe punishment than the other.

DISCRETION, crim. law. The ability to know and distinguish between good and evil; between what is lawful and what is unlawful.

2. The age at which children are said to have discretion, is not very accurately ascertained. Under seven years, it seems that no circumstances of mischievous discretion can be admitted to overthrow the strong presumption of innocence, which is raised by an age so tender. 1 Hale, P. C. 27, 8; 4 Bl. Coin. 23. Between the ages of seven and fourteen, the infant is, prima facie, destitute of criminal design, but this presumption diminishes as the age increases, and even during this interval of youth, may be repelled by positive evidence of vicious intention; for tenderness of years will not excuse a maturity in crime, the maxim in these cases being, malitia supplet aetatem. At fourteen, children are said to have acquired legal discretion. 1 Hale, P. C. 25.

DISCRETIONARY TRUSTS. Those which cannot be duly administered without the application of a certain degree of prudence and judgment; as when a fund is given to trustees to be distributed in certain charities to be selected by the trustees.

DISCUSSION, civil law. A proceeding, on the part of a surety, by which. the property of the principal debtor is made liable before resort can be had to the sureties; this is called the benefit of discussion. This is the law in Louisiana. Civ. Code of Lo. art. 3014 to 3020. See Domat, 3, 4, 1 to 4; Burge on Sur. 329, 343, 348; 5 Toull. p. 544 7 Toull. p. 93; 2 Bouv. Inst. n. 1414.

DISFRANCHISEMENT. The act of depriving a member of a corporation of his right as such, by expulsion. 1 Bouv. Inst. n. 192.

2. It differs from amotion, (q. v.) which is applicable to the removal of an officer from office, leaving him his rights as a member. Willc. on Corp. n. 708; Ang. & Ames on Corp. 237; and see Expulsion.

DISGRACE. Ignominy, shame, dishonor. No witness is required to disgrace himself. 13 How. St. Tr. 17, 334; 16 How. St. Tr. 161. Vide Crimination; To Degrade.

DISHERISON. Disinheritance; depriving one of an inheritance. Obsolete. Vide Disinherison.

DISHERITOR. One who disinherits, or puts another out of his freehold. Obsolete.

TO DISHONOR, contr. This term is applied to the nonfulfilment of commercial engagements. To dishonor a bill of exchange, or a promissory note, is to refuse or neglect to pay it at maturity.

2. The holder is bound to give notice to the parties to such instrument of its dishonor, and his laches will discharge the indorsers. Chit. on Bills, 394, 395, 256 to 278.

DISINHERISON, civil law. The act of depriving a forced heir of the inheritance which the law gives him.

2. In Louisiana, forced heirs may be deprived of their legitime, or legal portion, and of the seisin granted them by law, for just cause. The disinherison must be made in proper form, by name and expressly, and for a just cause, otherwise it is null.

3. The just causes for which parents may disinherit their children, are ten in number. 1. If the child has raised his or her hand to strike the parent, or if he or she has actually struck the parent; but a mere threat is not sufficient. 2. If the child has been guilty,

towards a parent, of cruelty, of a crime, or grievous injury. 3. If the child has attempted to take away the life of either parent. 4. If the child has accused either parent of any capital crime, except, however, that of high treason. 5. If the child has refused sustenance to a parent, having the means to afford it. 6. If the child has neglected to take care of a parent, become insane. 7. If a child has refused to ransom them when detained in captivity. 8. If the child used any act of violence or coercion to hinder a parent from making a will. 9. If the child has refused to become security for a parent, having the means, in order to take him out of prison. 10. If the son. or daughter, being a minor, marries without the consent of his or her parents. Civil Code, art. 1609-1613.

4. The ascendants may disinherit their Iegitimate decendants, coming to their succession for the first nine causes above expressed, when the, acts of ingratitude, there mentioned, have been committed towards them, instead of towards their parents; but they cannot disinherit their descendants for the last cause. Art. 1614.

5. Legitimate children, dying without issue, and leaving a parent,. cannot disinherit him or her, unless for the seven following causes, to wit: 1. If the parent has accused the child of a capital crime, except, however, the crime of high treason. 2. If the parent has attempted to take the child's life. 3. If the parent has, by any violence or force, hindered the child from making a will. 4. If the parent has refused sustenance to the child in necessity, having the means of affording it. 5. If the parent has neglected to take care of the child when in a state of insanity. 6. If the parent has neglected to ransom the child when in captivity. 7. If the father or mother have attempted the life the one of the other, in which case the child or descendant, making a will, may disinherit the one who has attempted the life of the other. Art. 1615.

6. The testator must express in the will for what reason he disinherited his forced heirs, or any of them, and the other heirs of the testator are moreover obliged to prove the facts on which the disinherison is founded, otherwise it is null. Art. 1616. Vide Nov 115 Ayl. Pand. B. 2, t. 29; Swinb. art 7, 22.

DISINHERITANCE. The act by which a person deprives his heir of an inheritance, who, without such act, would inherit.

2. By the common law, any one may give his estate to a stranger, and thereby disinherit his heir apparent. Coop. Justin. 495. 7 East, Rep. 106.

DISINTERESTED WITNESS. One who has no interest in the cause or matter in issue, and who is lawfully competent to testify.

2. In North Carolina and Tennessee, wills to pass lands must be attested by disinterested witnesses. See Attesting Witness; Competent Witness; Credible Witness; Respectable Witness, and Witness.

DISJUNCTIVE TERM. One which is placed between two contraries, by the affirming of one of which, the other is taken away: it is usually expressed by the word or. Vide 3 Ves. 450; 7 Ves. 454; 2 Rop. Leg. 290.; 1 P. Wms. 433; 2 Cox, Rep. 213; 2 P. Wms. 283 2 Atk. 643; 6 Ves. 341; 2 Ves. sr. 67; 2 Str. 1175; Cro. Eliz. 525; Pollexf. 645; 1 Bing. 500; 3 T. R. 470; 1 Ves. sr. 409; 3 Atk. 83, 85; Ayl. Pand. 56; 2 Miles, Rep. 49.

2. In the civil law, when a legacy is given to Caius or Titius, the word or is considered and, and both Caius and Titius are entitled to the legacy in equal parts. 6 Toull. n. 704. See Copulative term; Construction, subdivision, And; Or.. Also, Bac. Ab. Conditions, P 5.

DISMES. Another name for tithes. Dime, (q. v.) a piece of federal money, is sometimes improperly written disme.

TO DISMISS A CAUSE, practice. A term used in courts of chancery for removing a cause out of court without any further hearing.

DISOBEDIENCE. The want of submission to the orders of a superior.

2. In the army, disobedience is a misdemeanor.

3. For disobedience to parents, children may be punished; and apprentices may be imprisoned for disobedience to the lawful commands of their master. Vide Correction.

DISORDERLY HOUSE, crim. law. A house, the inmates of which believe so badly as to become a nuisance to the neighborhood.

2. The keeper of such house may be indicted for keeping a public nuisance. Hardr. 344; Hawk. b. 1, c. 78, s. 1 and 2 Bac. Ab. Inns, A; 1 Russ. on Cr. 298; 1 Wheel. C. C. 290; 1 Serg. & Rawle, 342; 2 Serg. & Rawle, 298; Bac. Ab. Nuisances, A; 4 Chit. BI.. Com. 167, 8, note. The hushand must be joined with the wife in an indictment to suppress a disorderly house. Justice's Case, Law 16; 1 Shaw, 146. Vide Bawdy house; Ill fame.

DISPARAGEMENT. An injury by union or comparison with some person or thing of inferior rank or excellence; as, while the infant was in ward, by the English law, the

guardian had the power of tendering him a suitable match without disparagement. 2 Bl. Com. 70.

TO DISPAUPER, Eng. law. To deprive a person of the privilege of suing in forma pauperis. (q. v.)

2. When a person has been admitted to sue in forma pauperis, and, before the suit is ended, it appears that the party. has become the owner of a sufficient estate real or personal, or has been guilty of some wrong, he may be dispaupered.

DISPENSATION. A relaxation of law for the benefit or advantage of an individual. In the United States, no power exists, except in the legislature, to dispense with law, and then it is not so much a dispensation as a change of the law.

TO DISPONE, Scotch law. This is a technical word, which implies, it is said, a transfer of feudal property by a particular deed, and is not equivalent to the term alienate; but Lord Eldon says, "with respect to the word dispone, if I collect the opinions of a majority of the judgcs rightly, I am of opinion that the word dispone would have the same effect as the word alienate.) (q. v.) Sandford on Entails, 179, note.

DISPOSITION, French law. This word has several accept-ations; sometimes it signifies the effective marks of the will of some person; and at others the instrument containing those marks.

2. The dispositions of man make the dispositions of the law to cease; for example, when a man bequeaths his estate, the disposition he makes of it, renders the legal disposition of it, if he had died intestate, to cease.

DISSEISED pleading. This is a word with a technical meaning, which, when inserted in an indictment for forcible entry and detainer, has all the force of the words expelled or unlawfully, for the last is superfluous, and the first is implied in the word disseised. 8 T. R. 357; Cro. Jac. 32; vide 3 Yeates' R. 39; S. C. 4 Dall. Rep. 212.

DISSEISEE, torts. One who is wrongfully put out of possession of his lands.

DISSEISIN, torts. The privation of seisin. It takes the seisin or estate from one man and places it in another. It is an ouster of the rightful owner from the seisinor estate in the land, and the coinmencement of a new estate in the wrong doer. It may be by abatement, intrusion, discontinuance, or deforcement, as well as by disseisin, properly so called. Every dispossession is not a disseisin. A disseisin, properly so called, requires an ouster of the freehold. A disseisin at election is not a disseisin in fact; 2

Prest. Abs. tit. 279, et seq.; but by admission only of the injured party, for the purpose of trying his right in a real action. Co. Litt. 277; 3 Greenl. 316; 4 N. H. Rep. 371; 5 Cowen, 371; 6 John. 197; 2 Fairf. 309, 2 Greenl. 242; 5 Pet. 402; 6 Pick. 172.

2. Disseisin may be effected either in corporeal inheritances, or incorporeal. Disseisin of things corporcal, as of houses, lands, &c., must be by entry and actual dispossession of the freehold; as if a man enters, by force or fraud, into the house of another, and turns, or at least, keeps him or his servants out of possession. Disseisin of incorporeal hereditaments cannot be an actual dispossession, for the subject itself is neither capable of actual bodily possession nor dispossession. 3 B1. Com. 169, 170. See 15 Mass. 495 6 John. R. 197; 2 Watts, 23; 6 Pick. 172 1 Verm. 155; 11 Pet. R. 41; 10 Pet. R. 414; 14 Pick. 374; 1 Dana's R. 279; 2 Fairf. 408; 11 Pick. 193; 8 Pick. 172; 8 Vin. Ab. 79; 1 Swift's Dig. 504; 1 Cruise, *65; Arch. Civ. Pl. 12; Bac. Ab. h. t.; 2 Supp. to Ves. Jr. 343; Dane's Ab. Index, h. t.; 1 Chit. Pr. 374, note (r.)

DISSEISOR, torts. One who puts another out of the possession of his lands wrongfully.

DISSENT, contracts. A disagreement to something which has been done. It is express or implied.

2. The law presumes that every person to whom a conveyance has been made has given his assent to it, because it is supposed to be for his benefit. To rebut the presumption, his dissent must be expressed. Vide 4 Mason, R. 206; 11 Wheat. R. 78; 1 Binn. R. 502; 2 Binn. R. 174; 6 Binn. R. 338; 12 Mass. R. 456; 17 Mass. R. 552; 3 John. Ch. R. 261; 4 John. Ch. R. 136, 529; and dssent, and the authorities there cited.

DISSOLUTION, contracts. The dissolution of a contract, is the annulling its effects between the contracting parties.

2. This dissolution of a partnership, is the putting an end to the partnership. Its dissolution does not affect contracts made between the. partners and others; so that they are entitled to all their rights, and they are liable on their obligations, as if the partnership had not been dissolved. Vide article Partnership and 3 Kent, Com. 27 Dane's Ab. h. t.; Gow on Partn. Index, h. t.; Wats. on Partn. h. t.; Bouv. Inst. Index, h. t.

DISSOLUTION, practice. The act of rendering a legal proceeding null, or changing its character; as, a foreign attachment in Pennsylvania is: dissolved by entering bail to the action. Injunctions are dissolved by the court.

TO DISSUADE, crim. law. To induce a person not to do an act.

2. To dissuade a witness from giving evidence against a person indicted, is an indictable offence at common law. Hawk. B. 1, c. 2 1, s. 1 5. The mere attempt to stifle evidence, is also criminal, although the persuasion should not succeed, on the general principle that an incitement to commit a crime, is in itself criminal. 1 Russ. on Cr. 44; 6 East, R. 464; 2 East, R. 6, 21; 2 Str. 904; 2 Leach, 925. Vide To Persuade.

DISTRACTED PERSON, This term is used in the statutes of Illinois; Rev. Laws of Ill. 1833, p. 332; and New Hampshire; Dig. Laws of N. H. 1830, p. 339; to express a state of insanity.

TO DISTRAIN. To take an keep any personal chattel in custody, as a distress. (q. v.)

DISTRAINOR. One who makes a distress of goods and chattels to enforce some right.

DISTRESS, remedies. A distress is defined to be, the taking of a personal chattel, without legal process, from the possession of the wrong doer, into the hands of the party grieved, as a pledge for the redress of an injury, the performance of a duty, or the satisfaction of a demand. 3 Bl. Com. 6. It is a general rule, that a man who has an entire duty, shall not split the entire sum and distrain for part of it at one time, and part of it at another time. But if a man seizes for the whole sum that is due him, but mistakes the value of the goods distrained, there is no reason why he should not afterwards complete his execution by making a further seizure. 1 Burr. 589. It is to be observed also, that there is an essential difference between distresses at common law and distresses prescribed by statute. The former are taken nomine penae, (q. v.) as a means of compelling payment; the latter are similar to executions, and are taken as satisfaction for a duty. The former could not be sold the latter might be. Their only similarity is, that both are replevisable. A consequence of this difference is, that averia carucae are distrainable in the latter case, although there be other sufficient distress. 1 Burr. Rep. 588.

2. The remedy by distress to enforce the payment of arrears of rent is so frequently adopted by landlords, (Co. Lit. 162, b,) that a considerable space will be allotted to this article under the following heads: 1. The several kinds of rent for which a distress may be made. 2. The persons who may make it. 3. The goods which may be distrained. 4. The time when a distress may be made. 5. In what place it may be made. 6. The manner of making it, and disposing of the goods distrained. 7. When a distress will be a waiver of a forfeiture of the lease.

3. - §1. Of the rents for which a distress may be made. 1. A distress may generally be taken for any kind of rent in arrear, the detention of which, beyond the day of payment, is an injury to him who is entitled to receive it. 3 Bl. Com. 6. The rent must

be reserved out of a corporeal hereditament, and must be certain in its quantity, extent, and time of payment, or at least be capable of being reduced to certainty. Co. Lit. 96, a.; 13 Serg. & Rawle, 64; 3 Penn. R. 30. An agreement that the lessee pay no rent, provided he make repairs, and the value of the repairs is uncertain, would not authorize the landlord to distrain. Addis. 347. Where the rent is a certain quantity of grain, the landlord may distrain for so many bushels in arrear, and name the value, in order that if the goods should not be replevied, or the arrears tendered, the officer may know what amount of money is to be raised by the sale, and in such case the tenant may tender the arrears in grain. 13 Serg. & Rawle, 52; See 3 Watts & S. 531. But where the tenant agreed, instead of rent, to render " one-half part of all the grain of every kind, and of all hemp, flax, potatoes, apples, fruit, and other produce of whatever kind that should be planted, raised, sown or produced, on or out of the demised premises, within and during the terms,", the landlord cannot, perhaps, distrain at all; he cannot, certainly, distrain for a sum of money, although he and the tenant may afterwards have settled their accounts, and agreed that the half of the produce of the land should be fixed in money, for which the tenant gave his note, which was not paid. 1 3 Serg. & Rawle, 5 2. But in another case it was held, that on a demise of a grist mill, when the lessee is to render one-third of the toll, the lessor may distrain for rent. 2 Rawle, 11.

4. - 2. With respect to the amount of the rent, for which a lessor may in different cases be entitled to make a distress, it may be laid down as a general rule, that whatever can properly be considered as a part of the rent, may be distrained for, whatever be the particular mode in which it is agreed to be paid. So that where a person entered into possession of certain premises, subject to the approbation of the landlord, which was afterwards obtained, by agreeing to pay in advance, rent from the time be came into possession, it was, in England, determined that the landlord might distrain for the whole sum accrued before and after the agreement. Cowp. 784. For on whatever day the tenant agrees that the rent shall be due, the law gives the landlord the power of distraining for it at that time. 2 T. R. 600. But see 13 S. & R. 60. In New York, it was determined, that an agreement that the rent should be paid in advance, is a personal covenant on which an action lies, but not distress. 1 Johns. R. 384. The supreme court of Pennsylvania declined deciding this point, as it was not necessarily before them. 13 Serg. & Rawle, 60. Interest due on rent cannot, in general, be distrained for; 2 Binn. 146; but may be recovered from the tenant by action, unless under particular circumstances. 6 Binn. 159.

5. - §2. Of the persons entitled to make a distress. 1. When the landlord is sole owner of the property out of which rent is payable to him, he may, of course, distrain in his own right.

6. - 2. Joint tenants have each of them an estate in every part of the rent; each may, therefore, distrain alone for the whole, 3 Salk. 207, although he must afterwards account with his companions for their respective shares of the rent. 3 Salk. 17; 4 Bing. 562; 2 Brod. & B. 465; 5 Moore, 297 Y. B. 15 H. VIII, 17, a; 1 Chit. Pr. 270; 1 Tho. Co. Litt. 783, note R; Bac. Ab. Account; 5 Taunt. 431; 2 Chit. R. 10; 3 Chit. Pl. 1297. But one joint tenant cannot avow solely, because the avowry is always upon the right, and the right of the rent is in all of them. Per Holt, 3 Salk. 207. They may all join in making the distress, which is the better way.

7. - 3. Tenants in common do not, like joint tenants, hold by one title and by one right, but by different titles, and have several estates. Therefore they should distrain separately, each for his share, Co. Lit. s. 317, unless the rent be of an entire thing, as to render a horse, in which case, the thing being incapable of division, they must join. Co. Lit. 197, a. Each tenant in common is entitled to receive, from the lessee, his proportion of the rent; and therefore, when a person holding under two tenants in common, paid the whole rent to one of them, after having received a notice to the contrary from the other, it was held, that the party who gave the notice might afterwards distrain. 5 T. R. 246. As tenants in common have no original privity of estate between them, as to their respective shares, one may lease his part of the land to the other, rendering rent, for which a distress may be made, as if the land had been demised to a stranger. Bro. Ab. tit. Distress, pl. 65.

8. - 4. It may be, perhaps, laid down asa general rule, that for rent due in right of the wife, the hushand may distrain alone; 2 Saund. 195; even if it accrue to her in the character of executrix or administratrix. Ld. Raym. 369. With respect to the remedies for the recovery of the arrears of a rent accruing in right of his wife, a distinction is made between rent due for land, in which the wife has a chattel interest, and rent due in land, in which she has an estate of freehold and inheritance. And in some cases, a further distinction must be made between a rent accruing before and rent accruing after the coverture. See, on this subject, Co. Lit. 46, b, 300, a; 351, a; 1 Roll. Abr. 350; stat; 32 Hen. VIII. c. 37, s. 3.

9. - 5. A tenant by the curtesy, has an estate of freehold in the lands of his wife, and in contemplation of law, a reversion on all land of the wife leased for years or lives, and may distrain at common law for all rents reserved thereon.

10. - 6. A woman may be endowed of rent as well as of land; if a hushand, therefore, tenant in fee, make a lease for years, reserving rent, and die, his widow shall be endowed of one-third part of the reversion by metes and bounds, together with a third part of the rent. Co. Litt. 32, a. The rent in this base is apportioned by the act of law, and therefore if a widow be endowed of a third part of a rent in fee, she may distrain

for a third part thereof, and the heir shall distrain for the other part of the rent. Bro. Abr. tit. Avowry, pl. 139.

11. - 7. A tenant for his own life or that of another, has an estate of freehold, and if he make a lease for years, reserving rent, he is entitled to distrain upon the lessee. It may here be proper to remark, that at common law, if a tenant for life made a lease for years, if be should so long live, at a certain rent, payable quarterly, and died before the quarter day, the tenant was discharged of that quarter's rent by the act of God. 10 Rep. 128. But the 11 Geo. II. c. 19, s. 15, gives an action to the executors or administrators of such tenant for life.

12. - 8. By the statute 32 Henry VIII. c. 37, s. 1, "the personal representatives of tenants in fee, tail, or for life, of rent-service, rent-charge, and rents-seek, and fee farms, may distrain for, arrears upon the land charged with the payment, so long as the lands continue in seisin or possession of the tenant in demesne, who ought to have paid the rent or fee farm, or some person claiming under him by purchase, gift or descent." By the words of the statute, the distress must be made on the lands while in the possession of the "tenant in demesne," or some person claiming under him, by purchase, gift or descent; and therefore it extends to the possession of those persons only who claim under the tenant, and the statute does not comprise the tenant in dower or by the curtesy, for they come in, not under the party, but by act of law. 1 Leon. 302.

13. - 9. The heir entitled to the reversion may distrain for rent in arrear which becomes due after the ancestor's death; the rent does not become due till the last minute of the natural day, and if the ancestor die between sunset and midnight, the heir, and not the executor, shall have the rent. 1 Saund. 287. And if rent be payable at either of two periods, at the choice of the lessee, and the lessor die between them, the rent being unpaid, it will go to the heir. 10 Rep. 128, b.

14. - 10. Devisees, like heirs, may distrain in respect of their reversionary estate; for by a devise of the reversion the rent will pass with its incidents. 1 Ventr. 161.

15. - 11. Trustees who have vested in them legal estates, as trustees of a married woman, or assignees of an insolvent, may of course distrain in respect of their legal estates, in the same manner as if they were beneficially interested therein.

16. - 12. Guardians may make leases of their wards' lands in their, own names, which will be good during the minority of the ward. and, consequently, in respect of such leases, they possess the same power of distress as other persons granting leases in their own rights. Cro. Jac. 55, 98.

17. - 13. Corporations aggregate should generally make and accept leases or other conveyances of lands or rent, under their common seal. But if a lease be made by an agent of the corporation, not under their common seal, although it may be invalid as a lease, yet if the tenant hold under it, and pay rent to the bailiff or agent of the corporation, that is sufficient to constitute a tenancy at least from year to year, and to entitle the corporation to distrain for rent. New Rep. 247. But see Corporation.

18. - §3. Of the things which may or may not be distrained. Goods found upon the premises demised to a tenant are generally liable to be distrained by a landlord for rent, whether such goods in fact belong to the tenant or other persons. Coin. Dig. Distress, B 1. Thus it has been held, that a gentleman's chariot, which stood in a coach-house belonging to a common livery stable keeper, was distrainable by the landlord for the rent due him by the livery stable keeper for the coach-house. 3 Burr. 1498. So if cattle are put on the tenant's land by consent of the owners of the beasts, they are distrainable by the landlord immediately after for rent in arrear. 3 Bl. Com. 8. But goods are sometimes privileged from distress, either absolutely or conditionally.

19. First. Those of the first class are privileged, 1. In respect of the owner of 2. Because no one can have property in them. 3. Because they cannot be restored to the owner in the same plight as when taken. 4. Because they are fixed to the freehold. 5. Because it is against the policy of law that they should be distrained. 6. Because they are in the custody of the law. 7. Because they are protected by some special act of the legislature.

20. - 1. The goods of a person who has some interest, in the land jointly with the distrainer, as those of a joint tenant, although found upon the land, cannot be distrained. The goods of executors and administrators, or of the assignee of an insolvent regularly discharged according to law, cannot, in Pennsylvania, be distrained for more than one year's rent. The goods of a former tenant, rightfully on the land, cannot be distrained for another's rent. For example, a tenant at will, if quitting upon notice from his landlord, is entitled to the emblements or growing crops; and therefore even after they are reaped, if they remain on the land for the purpose of hushandry, they cannot be distrained for rent due by the second tenant. Willes, 131. And they are equally protected in the hands of a vendee. Ibid. They cannot be distrained, although the purchaser allow them to remain uncut an unreasonable time after the are ripe. 2 B. & B. 862; 5 Moore, 97, S. C.

21. - 2. As every thing which is distrained is presumed to be the property of the tenant, it will follow that things wherein no man can have an absolute and valuable property, as cats, dogs, rabbits, and all animals ferae naturae, cannot be distrained. Yet, if deer, which are of a wild nature, are kept in a private enclosure, for the purpose of sale or

profit, this so far changes their nature by reducing them to a kind of stock or merchandise, that they may be distrained for rent. 3 B1. Com. 7.

22. - 3. Such things as cannot be restored to the owner in the same plight as when they were taken, as milk, fruit, and the like, cannot be distrained. 3 Bl. Com. 9.

23.- 4. Things affixed or annexed to the freehold, as furnaces, windows, doors, and the like, cannot be distrained, because they are not personal chattels, but belong to the realty. Co. Litt. 47, b. And this rule extends. to such things as are essentially a part of the freehold, although for a time removed therefrom, as a millstone removed to be picked; for this is matter of necessity, and it still remains in contemplation of law, a part of the freehold. For the same reason an anvil fixed in a smith's shop cannot be distrained. Bro. Abr. Distress, pl. 23; 4 T. R. 567; Willis, Rep. 512 6 Price's R. 3; 2 Chitty's R. 167.

24. - 5. Goods are privileged in cases where the proprietor is either compelled, from necessity to place his goods upon the land, or where be does so for commercial purposes. 17 S. & R. 139; 7 W. & S. 302; 8 W. & S. 302; 4 Halst. 110; 1 Bay, 102, 170; 2 McCord, 39; 3 B. & B. 75; 6 J. B. Moore, 243; 1 Bing. 283; 8 J. B. Moore, 254; 2 C. & P. 353; 1 Cr. M. 380. In the first case, the goods are exempt, because the owner has no option; hence the goods of a traveller in an inn are exempt from distress. 7 H. 7, M. 1, p. 1.; Hamm. N. 380, a.; 2 Keny. 439; Barnes, 472; 1 Bl. R. 483; 3 Burr. 1408. In the other, the interests of the community require that commerce should be encouraged, and adventurers will not engage in speculations, if the property embarked is to be made liable for the payment of debts they never contracted. Hence goods landed at a wharf, or deposited in a warehouse on storage, cannot be distrained. 17 Serg. & Rawle, 138; 6 Whart. R. 9, 14; 9 Shepl. 47; 23 Wend. 462. Valuable things in the way of trade are not liable to distress; as, a horse standing in a smith's shop to be shod, or in a common inn; or cloth at a tailor's house to be made into a coat; or corn sent to a mill to be ground, for these are privileged and protected for the benefit of trade. 3 Bl. Com. 8. On the same principle it has been decided, that the goods of a boarder are not liable to be distrained for rent due by the keeper of a boarding house; 5 Whart. R. 9; unless used by the tenant with the boarder's consent, and without that of the landlord: 1 Hill , 565.

25. - 6. Goods taken in execution cannot be distrained. The law in some states gives the landlord the right to claim payment out of the proceeds of an execution for rent, not exceeding one year, and he is entitled to payment up to the day of seizure, though it be in the middle of a quarter 2 Yeates, 274; 5 Binn. 505; but he is not entitled to the day of sale. 5 Binn. 505. See 18 Johns. R. 1. The usual practice is, to give notice to the, sheriff that there is a certain sum due to the landlord as arrears of rent; which notice ought to be given to the sheriff, or person who takes the goods in execution

upon the premises for the sheriff is, not bound to find out whether rent is due, nor is he liable to an action, unless there has been a demand of rent before the removal. 1 Str. 97, 214; 3 Taunt. 400 2 Wils. 140; Com. Dig. Rent, D 8; 11 Johns. R. 185. This notice can be given by the immediate landlord only a ground landlord is not entitled to his rent out of the goods of the under tenant taken in execution. 2 Str. 787. And where there are two executions, the landlord is not entitled to a year's rent on each. See Str. 1024. Goods distrained and replevied may be distrained by another landlord for subsequent rent. 2 Dall. 68.

26.-7. By some special acts of the legislature it is provided that tools of a man's trade, some designated household furniture, school books, and the like, shall be exempted from distress, execution, or sale. And by a recent Act of Assembly of Pennsylvania, April 9, 1849, property to the value of three hundred dollars, exclusive of all wearing apparel of the defendant and his family, and all bibles and school books in use in the family, are exempted from levy and sale on execution, or by distress for rent.

27. - Secondly. Besides the above mentioned goods and chattels, which are absolutely privileged from distress, there are others which are conditionally so, but which may be distrained under certain circumstances. These are, 1. Beasts of the plough, which are exempt if there be a sufficient distress besides on the land whence the rent issues. Co. Litt. 47, a; Bac. Abr. Distress, B. 2. Implements of trade; as, a loom in actual use; and there is a sufficient distress besides. 4 T. R. 565. 3. Other things in actual use,; as, a horse whereon a person is riding, an axe in the hands of. a person cutting wood, and the like. Co. Litt. 4 7, a.

28. - §4. The time when a distress may be made. 1. The distress cannot be made till the rent is due by the terms of the lease; as reat is not due until the last minute of the natural day on which it is reserved, it follows that a distress for rent cannot be made on that day. 1 Saund. 287; Co. Litt. 47, b. n. 6. A previous demand is not generally necessary, although there be a clause in the lease, that the lessor may distrain for rent," being lawfully demanded Bradb. 124; Bac. Abr. Rent, 1; the making of the distress being a demand though it is advisable to make such a demand. But where a lease provides for a special demand; as, if the clause were that if the rent should happen to be behind it should be demanded at a particular place not on the land; or be demanded of the person of the tenant; then such special demand is necessary to support the distress. Plowd. 69 Bac. Abr. Rent, I.

29. - 2 A distress for rent can only be made during the day time. Co. Litt. 142, a.

30. - 3. At common law a distress could not be made after the expiration of the lease to remedy this evil the legislature of Pennsylvania passed an act making it "lawful for any person having any rent in arrear or due upon any lease for life or years or at will,

ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done, if such lease had not been ended: provided, that such distress be made during the continuance of such lessor's title or interest.", Act of March 21, 1772, s. 14, 1 Smith's Laws of Penna. 375. 4. In the city and county of Philadelphia, the landlord may, under certain circumstances, apportion his rent, and distrain before it becomes due. See act of March 25, 1825, s. 1, Pamph. L. 114.

31. - §5. In what place a distress may be made. The distress may be made upon the land, or off the land. 1. Upon the land. A distress generally follows the rent, and is consequently confined to the land out of which it issues. If two pieces of land, therefore, are let by two separate demises, although both be contained in one lease, a joint distress cannot be made for them, for this would be to make the rent of one issue out of the other. Rep. Temp. Hardw. 245; S. C. Str. 1040. But where lands lying in different counties are let together by one demise, at one entire rent, and it does not appear that the lands are separate from each other, one distress may be made for the whole rent. Ld. Raym. 55; S. C. 12 Mod. 76. And, where rent is charged upon land, which is afterwards held by several tenants, the grantee or landlord may distrain for the whole upon the land of any of them; because the whole rent is deemed to issue out of every part of the land. Roll. Abr. 671. If there be a house on the land, the distress may be made in the house; if the outer door or window be open, a distress may be taken out of it. Roll. Abr. 671. And if an outer door be open, an inner door may be broken open for the purpose of taking a distress. Comb. 47; Cas. Temp. Hard. 168. Barges on a river, attached to the leased premises (a wharf) by ropes, cannot be distrained. 6 Bingh. 150; 19 Eng. Com. Law R. 36.

32. - 2. Off the land. By the 5th and 6th sections of the Pennsylvania act of assembly of March 21, 1772, copied from the 11 Geo. II. c. 19, it is enacted, that if any tenant for life, years, at will, or otherwise, shall fraudulently or clandestinely convey his goods off the premises to prevent the landlord from distraining the same, such person, or any person by him lawfully authorized, may, within thirty days after such conveyance, seize the same, wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. Provided, that the landlord shall not distrain any goods which shall have been previously sold, bona fide, and for a valuable consideration, to one not privy to the fraud. To bring a case within the act, the removal must take place after the rent becomes due, and must be secret, not made in open day, for such removal cannot be said to be clandestine within the meaning of the act. 3 Esp. N. P. C. 15; 12 Serg. & Rawle, 217; 7 Bing. 422; 1 Moody & Malkin, 585. It has however been made a question, whether goods are protected that were fraudulently removed on the night before the rent had become due. 4 Camp.

135. The goods of a stranger cannot be pursued; they can be distrained only while they are, on the premises. 1 Dall. 440.

33. - §6. Of the manner of making a distress. 1. A distress for rent may be made either by the person to whom it is due, or, which is the preferable mode, by a constable, or bailiff, or other officer properly authorized by him.

34. - 2. If the distress be made by a constable, it is necessary that he should be properly authorized to make it; for which purpose the landlord should give him a written authority, or; as it is usually called, a warrant of distress; but a subsequent assent and recognition given by the party for whose use the distress has been made, is sufficient. Hamm. N. P. 382.

35. - 3. When the constable is thus provided with the requisite authority to make a distress, he, may distrain by seizing the tenant's goods, or some of them in the name of the whole, and declaring that he takes them as a distress for the sum expressed in the warrant to be due by the tenant to the landlord, and that he takes them by virtue of the said warrant; which warrant he ought, if required, to show. 1 Leon. 50.

36. - 4. When making the distress it ought to be made for the whole rent; but if goods cannot be found at the time, sufficient to satisfy the rent, or the party mistake the value of the thing distrained, he may make a second distress. Bradb. 129, 30; 2 Tr. & H. Pr. 155; supra 1.

37. - 5. As soon as a distress is made, an inventory of the goods distrained should be made, and a copy of it delivered to the tenant, together with a notice of taking such distress, with the cause for taking the same. This notice of taking a distress is not required by the statute to be in writing; and, therefore, parol or verbal notice may be given either to the tenant on the premises, or to the owner of the goods distrained. 12 Mod. 76. And although notice is directed by the act to specify the cause of taking, it is not material whether it accurately state the period of the rent's becoming due; Dougl. 279; or even whether the true cause of taking the goods be expressed therein. 7 T. R. 654. If the notice be not personally given, it should be left in writing at the tenant's house, or according to the directions of the act, at the mansion-house or other most notorious place on the premises charged with the rent distrained for.

38. - 6. The distrainor may leave or impound the distress on the premises for the five days mentioned in the act, but becomes a trespasser after that time. 2 Dall. 69. As in many cases it is desirable for the sake of the tenant that the goods should not be sold as soon as the law permits, it is usual for him to sign an agreement or consent to their remaining on the premises for a longer time, in the custody of the distrainor, or of a person by him appointed for that purpose. While in his possession, the distrainor

cannot use or work cattle distrained, unless it be for the owner's benefit, as to milk a cow, or the like. 5 Dane's Abr. 34.

39. - 7. Before the goods are sold they must be appraised by two reputable free-holders, who shall take an oath or affirmation to be administered by the sheriff, under-sheriff, or coroner, in the words mentioned in the act.

40. - 8. The next requisite is to give six days public notice of the time and place of sale of the things distrained; after which, if they have not been replevied, they may be sold by the proper officer, who may apply the proceeds to the payment and satisfaction of the rent, and the expenses of the distress, appraisement and sale. The over-plus, if any, is to be paid to the tenant.

41. - §7. When a distress will be a waiver of a forfeiture of the lease. On this subject, see 1 B. & Adol. 428. The right of distress, it seems, does not exist in the New England states. 4 Dane's Ab. 126; 7 Pick. R. 105; 3 Griff. Reg 404; 4 Griff. Reg. 1143; Aik. Dig. 357, nor in Alabama, Mississippi, North Carolina, nor Ohio; and in Kentucky, the right is limited to a distress for a pecuniary rent. 1 Hill. Ab. 156. Vide, generally, Bouv. Inst. Index, h . t.; Gilb. on Distr. by Hunt; Bradb. on Distr.; Com. Dig. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; 2 Saund. Index, h. t.; Wilk. on Repl.; 3 Chit. Bl. Com. 6, note; Crabb on R. P. §222 to 250.

DISTRESS INFINITE, English practice. A process commanding the sheriff to distrain a person from time to time, and continually afterwards, by taking his goods by way of pledge, to enforce the performance of something due from the party distrained upon. In this case, no distress can be immoderate, because, whatever its value may be, it cannot be sold, but is to be immediately restored on satisfaction being made. 3 Bl. Com. 231. See Distringas.

DISTRIBUTION. By this term is understood the division of an intestate's estate according to law.

2. The English statute of 22 and 23 Car. II. c. 10, which was itself probably borrowed from the 118th Novel of Justinian, is the foundation of, perhaps, most acts of distribution in the several states. Vide 2 Kent, Com. 342, note; 8 Com. Dig. 522; 11 Vin. Ab. 189, 202; Com. Dig. Administration, H.

DISTRIBUTIVE JUSTICE. That virtue, whose object it is to distribute rewards and punishments to every one according to his merits or demerits. Tr. of Eq. 3; Lepage, El. du Dr. ch. 1, art. 3, §2 1 Toull. n. 7, note. See Justice.

DISTRICT. A certain portion of the country, separated from the rest for some special purposes. The United States are divided into judicial districts, in each of which is established a district court; they are also divided into election districts; collection districts, &c.

DISTRICT ATTORNEYS OF THE UNITED STATES. There shall be appointed, in each judicial district, a meet person, learned in the law, to act as attorney of the United States in such district, who shall be sworn or affirmed to the faithful execution of his office. Act of September 24, 1789, s. 35, 1 Story's Laws, 67.

2. His duty is to prosecute, in such district, all delinquents, for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except in the supreme court, in the district in which that court shall be holden. Ib.

3. Their salaries vary in different districts. Vide Gordon's Dig. art. 403. By the Act of March 3, 1815, 2 Story's L. U. S. 1530, district attorneys are authorized to appoint deputies, in certain cases, to sue in the state courts. See Deputy District Attorney.

DISTRICT COURT. The name of one of the courts of the United States. It is held by a judge, called the district judge. Several courts under the same name have been established by state authority. Vide Courts of the United States.

DISTRICT OF COLUMBIA. The name of a district of country, ten miles square, situate between the states of Maryland and Virginia, over which the national government has exclusive jurisdiction. By the constitution, congress may " exercise exclusive jurisdiction in all cases whatsoever, over such district, not exceeding ten miles square, as may, by, cession of particular states, and the acceptance of congress, become the seat of government of the United States." In pursuance of this authority, the states of Maryland and Virginia, ceded to the United States, a small territory on the banks of the Potomac, and congress, by the Act of July 16, 1790, accepted the same for the permanent seat of the government of the United States. The act provides for the removal of the seat of government from the city of Philadelphia to the District of Columbia, on the first Monday of December, 1800. It is also provided, that the laws of the state, within such district, shall not be affected by the acceptance, until the time fixed for the removal of the government thereto, and until congress shall otherwise by law provide.

2. It seems that the District of Columbia, and the territorial districts of the United States, are not states within the meaning of the constitution, and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat, 91.

3. By the Act of July 11, 1846, congress retroceded the county of Alexandria, part of the District of Columbia, to the state of Virginia.

DISTRINGAS, remedies. A writ directed to the sheriff, commanding him to distrain one of his goods and chattels, to enforce his compliance of what is required of him, as for his appearance in a court on such a day, and the like. Com. Dig. Process, D 7; Chit. Pr. Index, h. t. Sellon's Pr. Index, h. t.; Tidd's Pr. Index, h. t. 11 East, 353. It is also a form of execution in the action of detinue, and assize of nuisance. Registrum Judiciale, 56; 1 Rawle, 44, 48; Bro. Abr. pl. 26; 22; H. VI. 41. This writ is likewise used to compel the appearance of a corporation agregate. 4 Bouv. Inst. n. 4191.

DISTURBANCE, torts. A wrong done to an incorporeal hereditament, by hindering or disquieting the owner in the enjoyment of it. Finch. L. 187; 3 Bl. Com. 235; 1 Swift's Dig. 522; Com. Dig. Action upon the case for a disturbance, Pleader, 3 I 6; 1 Serg. & Rawle, 298.

DIVIDEND. A portion of the principal, or profits, divided among several owners of a thing.

2. The term is usually applied to the division of the profits arising out of bank or other stocks; or to the division, among the creditors, of the elects of an insolvent estate.

3. In another sense, according to some old authorities, it signifies one part of an indenture. T. L.

DIVISIBLE. The susceptibility of being divided.

2. A contract cannot, in general, be divided in such a manner that an action may be brought, or a right accrue, on a part of it. 2 Penna. R. 454. But some contracts are susceptible of division, as when a reversioner sells a part of the reversion to one man, and a part to another, each shall have an action for his share of the rent, which may accrue on a contract, to pay a particular rent to the reversioner. 3 Whart. 404; and see Apportionment. But when it is to do several things, at several times, an action will lie upon every default. 15 Pick. R. 409. See 1 Greenl. R. 316; 6 Mass. 344. See Entire.

DIVISION, Eng. law. A particular and ascertained part of a county. In Lincolnshire, division means what riding does in Yorkshire.

DIVISION OF OPINION. When, in a company or society, the parties having a right to vote are so divided that there is not a plurality of the whole in favor of any particular proposition, or when the voters are equally divided, it is said there. is division of opinion.

2. In such a case, the Roman law, which seems founded in reason and common sense, directs, that when the division relates to the quantity of things included, as in the case of a judgment, if one of three judges votes for condemning a man to a fine of one hundred dollars, another, to one of fifty dollars, and the third to twenty-five, the opinion or vote of; the last shall be the rule for the judgment; because the votes of all the others include that of the lowest; this is the case when unanimity is required. But when the division of opinions does not relate to the quantity of things, then it is always to be in favor of the defendant. It was a rule among the Romans that when the judges were equal in number, and they were divided into two opinions in cases of liberty, that opinion which favored it should prevail; and in other cases, it should be in favor of the defendant. Poth. Pand. liv. L. n. MDLXXIV.

3. When the judges of a court are divided into three classes, each holding a different opinion, that class which has the greatest number shall give the judgment; for example, on a habeas corpus, when a court is composed of four judges, and one is for remanding the prisoner, another is for discharging him on his own recognizance, and two others for discharging him absolutely, the judgment will be, that he be discharged. Rudyard's Case, Bac. Ab. Habeas Corpus, B 10, Court 5.

4. It is provided, by the Act of Congress of April 29, 1802, s. 6, that whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of either party, or their counsel, be stated, under the direction of the judges, and certified, under the seal of the court, to the supreme court, at their next session to be hold thereafter, and shall, by the said court, be finally decided. And the decision of the supreme court, and their order in the premises, shall be, remitted to the circuit court, and be there entered *of record and shall have effect according to the nature of the said judgment and order: Provided, That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits: And Provided, also, That imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment. See 5 N. S. 407.

DIVORCE. The dissolution of a marriage contracted between a man and a woman, by the judgment of a court of competent jurisdiction, or by an act of the legislature. It is so called from the diversity of the minds of those who are married; because such as are divorced go each a different way from the other. Ridley's Civ. & Eccl. Law, pp. 11, 112. Until a decree of divorce be actually made, neither party can treat the other as sole, even in cases where the marriage is utterly null and void for some preexisting cause. Griffiths v Smith, D. C. of Philadelphia, 3 Penn. Law Journal, 151, 153. A decree of divorce must also be made during the lifetime of both the parties. After the

decease of either the marriage will be deemed as legal in all respects. Reeves" Dom. Rel. 204; 1 Bl. Com. 440. See Act of Pennsylvania, March 13, 1815, §5.

2. Divorces are of two kinds; 1. a vinculo matrimonii, (q. v.) which dissolves and totally severs the marriage tie; and, 2. a mensa et thoro, (q. v.) which merely separates the parties.

3. - 1. The divorce a vinculo was never granted by the ecclesiastical law except for the most grave reasons. These, according to Lord Coke, (Co. Litt. 235, a,) are causa praecontractus, causa metus, causa impotentiae, seu frigiditatis, causa affinitatis, et causa consanguinitatis. In England such a divorce bastardizes the issue, and generally speaking, is allowed only on the ground of some preexisting cause. Reeves' Dom. Rel. 204-5; but sometimes by act of parliament for a supervenient cause. 1 Bl. Com. 440. When the marriage was dissolved for canonical causes of impediment, existing previous to its taking place, it was declared void ab initio.

4. In the United States, divorces a vinculo are granted by the state legislatures for such causes as may be sufficient to induce the members to vote in favor of granting them; and they are granted by the courts to which such jurisdiction is given, for certain causes particularly provided for by law.

5. In some states, the legislature never grants a divorce until after the courts have decreed one, and it is still requisite that the legislature shall act, to make the divorce valid. This is the case in Mississippi. In some states, as Wisconsin, the legislature cannot grant a divorce. Const. art. 4, is. 24.

6. The courts in nearly all the states have power to decree divorces a vinculo, for, first, causes which existed and which were a bar to a lawful marriage, as, precontract, or the existence of a marriage between one of the contracting parties and another person, at the time the marriage sought to be dissolved took place; consanguinity, or that degree of relationship forbidden by law; affinity in some states, as Vermont, Rev. Stat. tit. 16, c. 63, s. 1; impotence, (q. v.) idiocy, lunacy, or other mental imbecility, which renders the party subject to it incapable of making a contract; when the contract was entered into in consequence of fraud. Secondly, the marriage may be dissolved by divorce for causes which have arisen since the formation of the contract, the principal of which are adultery cruelty; wilful and malicious desertion for a period of time specified in the acts of the several states; to these are added, in some states, conviction of felony or other infamous crime; Ark. Rev. Stat. c. 50, s. 1, p. 333; being a fugitive from justice, when charged with an infamous crime. Laws of Lo. Act of April 2, 1832. In Tennessee the hushand may obtain a divorce when the wife was pregnant at the time of marriage with a child of color; and also when the wife refuses for two years to follow her hushand, who has gone bonafide to Tennessee to reside. Act of 1819, c. 20,

and Act of 1835, c. 26 Carr. Nich. & Comp. 256, 257. In Kentucky and Maine,, where one of the parties has formed a connexion with certain religionists, whose opinions. and practices are inconsistent with the marriage duties. And, in some states, as Rhode Island and Vermont, for neglect and refusal on the part of the hushand (he being of sufficient ability) to provide necessaries for the subsistence of his wife. In others, habitual drunkenness is a sufficient cause.

7. In some of the states divorces a mensa et thoro are granted for cruelty, desertion, and such like causes, while in others the divorce is a vinculo.

8. When the divorce is prayed for on the ground of adultery, in some and perhaps in most of the states, it is a good defence, 1st. That the other party has been guilty of the same offence. 2. That the hushand has prostituted his wife, or connived at her amours. 3. That the offended party has been reconciled to the other by either express or implied condonation. (q. v.) 4. That there was no intention to commit adultery, as when the party, supposing his or her first hushand or wife dead, married again. 5. That the wife was forced or ravished.

9. The effects of a divorce a vinculo on the property of the wife, are various in the several states. When the divorce is for the adultery or other criminal acts of the hushand, in general the wife's lands are restored to her; when it is caused by the adultery or other criminal act of the wife, the bushand has in general some qualified right of curtesy to her lands; when the divorce is caused by some preexisting cause, as consanguinity, affinity or impotence, in some states, as Maine and Rhode Island, the lands of the wife are restored to her. 1 Hill. Ab. 51, 2. See 2 Ashm. 455; 5 Blackf. 309. At common law, a divorce a vinculo matrimonii bars the wife of dower; Bract. lib. ii. cap. 39, §4; but not a divorce ti mensa et, thoro, though for the crime of adultery. Yet by Stat. West. 1, 3 Ed. I. c. 84, elopement with an adulterer has this effect. Dyer, 195; Co. Litt. 32, a. n. 10; 3 P. Wms. 276, 277. If land be given to a man and his wife, and the heirs of their two bodies begotten, and they are divorced. a vinculo, &c., they shall neither of them have this estate, but he barely tenants for life, notwithstanding the inheritance once vested in them. Co. Litt. 28. If a lease be made to hushand and wife during coverture, and the hushand sows the, land, and afterwards they are divorced a vinculo, &c., the hushand shall have the emblements in that case, for the divorce is the act of law. Mildmay's Case. As to personalty, the rule of the common law is, if one marry a woman who has goods, he may give them or sell them at his pleasure. If they are divorced, the woman shall have the goods back again, unless the hushand has given them away or sold them; for in such case she is without remedy. If the hushand aliened them by collusion, she may aver and prove the collusion, and thereupon recover the goods from the alience. If one be bound in an obligation to a feme sole, and then marry her, and afterwards they are divorced, she may sue her former hushand on the obligation, notwithstanding her action was in

suspense during the marriage. And for such things as belonged to the wife before marriage, if they cannot be known, she could sue for, after divorce, only in the court Christian, for the action of account did not lie, because he was not her receiver to account. But for such things as remain in specie, and may be known, the common law gives her an action of detinue. 26 Hen. VIII. 1.

10. When a divorce a vinculo takes place, it is, in general, a bar to dower; but in Connecticut, Illinois, New York, and, it seems, in Michigan, dower is not barred by a divorce for the fault of the hushand. In Kentucky, when a divorce takes place for the fault of the hushand, the wife is entitled as if he were dead. 1 Hill. Ab. 61, 2.

11. - 2. Divorces a mensa et thoro, are a mere separation of the parties for a time for causes arising since the marriage; they are pronounced by tribunals of competent jurisdiction. The effects of the sentence continue for the time it was pronounced, or until the parties are reconciled. A. divorce a mensa et thoro deprives the hushand of no marital right in respect to the property of the wife. Reeve's Dom. Rel. 204-5. Cro. Car. 462; but see 2 S. & R. 493. Children born after a divorce a mensa et thoro are not presumed to be the hushand's, unless he afterwards cohabited with his wife. Bac. Ab. Marriage, &c. E.

12. By the civil law, the child of parents divorced, is to be brought up by the innocent party, at the expence of the guilty party. Ridley's View, part 1, ch. 3, sect. 9, cites 8th Collation. Vide, generally, 1 Bl. Com. 440, 441 3 Bl. Com. 94; 4 Vin. Ab. 205; 1 Bro. Civ. Law, 86; Ayl. Parerg. 225; Com. Dig. Baron and Feme, C;-Coop. Justin. 434, et seq.; 6 Toullier, No. 294, pa. 308; 4 Yeates' Rep. 249; 5 Serg. & R. 375; 9 S. & R. 191, 3; Gospel of Luke, eh, xvi. v. 18; of Mark, ch. x. vs. 11, 12; of Matthew, ch. v. v. 32, ch. xix. v. 9; 1 Corinth. ch. vii. v. 15; Poynt. on Marr. and Divorce, Index, h. t.; Merl. Rep. h. t.; Clef des Lois Rom. h. t. As to the effect of the laws of a foreign state, where the divorce was decreed, see Story's Confl. of Laws, ch. 7, §200. With regard to the ceremony of divorce among. theJews, see 1 Mann. & Gran. 228; C. 39. Eng. C. L. R. 425, 428. And as to divorces among the Romans, see Troplong, de l'Influence du Christianisme sur le Droit Civil des Romains, ch. 6. p. 205.

DOCKET, practice. A formal record of judicial proceedings.

2. The docket should contain the names of the parties, and a minute of every proceeding in the case. It is kept by the clerk or prothonotary of the court. A sheriff's docket is not a record. 9 Serg. & R. 91. Docket is also said to be a brief writing, on a small piece of paper or parchment, containing the substance of a larger writing.

DOCTORS COMMONS. A building in London used for a college of civilians. Here the judge of the court of arches, the judge of the admiralty, and the judge of the court

of Canterbury, with other eminent civilians, reside. Commons signifies, in old English, pittance or allowance; because it is meant in common among societies, as Universities, Inns of Courts, Doctors Commons, &c. The Latin word is, demensum a demetiendo; dividing every one his part Minsheu. It is called Doctors Commons, because the persons residing there live in a collegiate commoning together.

DOCUMENTS, evidence. The deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact. Among the civilians, by documents is also understood evidence delivered in the forms established by law, of whatever nature such evidence may be, but applied principally to the testimony of witnesses. Savig. Dr. Rom. §165.

2. Public documents are all such records, papers and acts, as are filed in the public offices of the United States or of the several states; as, for example, public statutes, public proclamations, resolutions of the legislature, the journals of either branch of the legislature, diplomatic correspondence communicated by the president to congress, and the like. These are in general evidence of the facts they contain or recite. 1 Greenl. §491.

DOG. A well known domestic animal. In almost all languages this word is, a term or name of contumely or reproach. See 3 Bulst. 226; 2 Mod. 260; 1 Leo. 148; and the title action on the case for defamation in the Digests; Minsheu's Dictionary.

2. A dog is said at common law to have no intrinsic value, and he cannot therefore be the subject of larceny. 4 Bl. Com. 236; 8 Serg. & Rawle, 571. But the owner has such property in him, that he may maintain trespass for an injury to his dog; "for a man may have property in some things which are of so base nature that no felony can be committed of them, as of a bloodhound or mastiff." 12 H. VIII. 3; 18 H. VIII. 2; 7 Co. 18 a; Com. Dig. Biens, F; 2 Bl. Com. 397; Bac. Ab. Trover, D; F. N. B. 86; Bro. Trespass, pl. 407 Hob. 283; Cro. Eliz. 125; Cro. Jac. 463 2 Bl. Rep.

3. Dogs, if dangerous animals, may lawfully be killed, when their ferocity is known to their owner, or in self-defence 13 John. R. 312; 10 John. R. 365; and when bitten by a rabid animal, a dog may be lawfully killed by any one. 13 John. R. 312.

4. When a dog, in consequence of his vicious habits, becomes a common nuisance, the owner may be indicted. And when he commits an injury, if the owner had a knowledge of his mischievous propensity, he is liable to an action on the case. Bull. N. P. 77; 2 Str. 1264; Lord Raym. 110. 1 B. & A. 620; 4 Camp. R. 198; 2 Esp. R. 482; 4 Cowen, 351; 6 S. & R. 36; Addis. R. 215; 1 Scam. 492 23 Wend 354; 17 Wend. 496; 4 Dev. & Batt. 146.

5. A man has a right to keep a dog to guard his premises, but not to put him at the entrance of his house, because a person coming there on lawful business may be injured by him, and this, though there may be another entrance to the house. 4 C. & P. 297; 6 C. & P. 1. But if a dog be chained, and a visitor so incautiously go near him that he is bitten, he has no right of action against the owner. 3 Chit. Bl. 154, n. 7. Vide Animal; Knowledge; Scienter.

DOGMA, civil law. This word is used in the first chapter, first section, of the second Novel, and signifies an ordinance of the senate. See also Dig. 27, 1, 6.

DOLI CAPAX. Capable of deceit, mischief, having knowledge of right and wrong. See Discretion; Criminal law, 2.

DOLLAR, money. A silver coin of the United States of the value of one hundred cents, or tenth part of an eagle.

2. It weighs four hundred and twelve and a half grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, ss. 8 & 9, 4 Sharsw. Cont. of Story's L. U. S. 2523, 4; Wright, R. 162.

3. In all computations at the custom-house, the specie dollar of Sweden and Norway shall be estimated at one hundred and six cents. The specie dollar of Denmark, at one hundred and five cents. Act of May 22, 1846.

DOLUS, civil law. A fraudulent address or trick used to deceive some one; a fraud. Dig. 4, 3, 1; Code, 2, 21.

2. Dolus differs from fault in this, that the latter proceeds from an error of the understanding; while to constitute the former there must be a will or intention to do wrong. Wolff, Inst. §17.

DOMAIN. It signifies sometimes, dominion, territory governed - sometimes, possession, estate - and sometimes, land about the mansion house of a lord. By domain is also understood the right to dispose at our pleasure of what belongs to us.

2. A distinction, has been made between property and domain. The former is said to be that quality which is conceived to be in the thing itself, considered as belonging to such or such person, exclusively of all others. By the latter is understood that right which the owner has of disposing of the thing. Hence domain and property are said to be correlative terms; the one is the active right to dispose, the other a passive quality which follows the thing, and places it at the disposition of the owner. 3 Toull. n. 8 3. But this distinction is too subtle for practical use. Puff. Droit de la Nature et des Gens,

loi 4, c. 4, §2. Vide 1 Bl. Com. 105, 106; 1 Bouv. Inst. n. 456; Clef des Lois Rom. h. t.; Domat, h. t.; 1 Hill. Ab. 24; 2 Hill. Ab. 237; and Demesne as Of fee; Property; Things.

DOME-BOOK, DOOM-BOOK or DOM-BEC A book in which Alfred the Great, of England, after uniting the Saxon heptarchy, collected the various customs dispersed through the kingdom, and digested them into one uniform code. 4 Bl. Com. 411.

DOMESDAY, or DOMESDAY-BOOK. An ancient record made in the time of William the Conqueror, and now remaining in the English exchequer, consisting of two volumes of unequal sizes, containing surveys of the lands in England.

DOMESTICS. Those who reside in the same house with the master they serve the term does not extend to workmen or laborers employed out of doors. 5 Binn. R. 167; Merl. Rep. h. t. The Act of Congress of April 30, 1790, s. 25, uses the word domestic in this sense.

2. Formerly, this word was used to designate those who resided in the house of another, however exalted their station, and who performed services for him. Voltaire, in writing to the French queen, in 1748, says) " Deign to consider, madam, that I am one of the domestics of the king, and consequently yours, lily companions, the gentlemen of the king," &c.

3. Librarians, secretaries, and persons in such honorable employments, would not probably be considered domestics, although they might reside in the house of their respective employers.

4. Pothier, to point out the distinction between a domestic and a servant, gives the following example: A literary man who lives and lodges with you, solely to be your companion, that you may profit by his conversation and learning, is your domestic; for all who live in the same house and eat at the same table with the owner of the house, are his domestics, but they are not servants. On the contrary, your Valet de, chambre, to whom you pay wages, and who sleeps out of your house, is not, properly speaking, your domestic, but your servant. Poth. Proc. Cr. sect. 2, art. 5, §5; Poth. Ob. 710, 828; 9 Toull. n. 314; H. De Pansey, Des Justices de Paix, c. 30, n. 1. Vide Operative; Servant.

DOMICIL. The place where a person has fixed his ordinary dwelling, without a present intention of removal. 10 Mass. 488; 8 Cranch, 278; Ersk. Pr. of Law of Scotl. B. 1, tit. 2, s. 9; Denisart, tit. Domicile, 1, 7, 18, 19; Voet, Pandect, lib. 5, tit. 1, 92, 97; 5 Madd. Ch. R. 379; Merl. Rep. tit. Domicile; 1 Binn. 349, n.; 4 Humph. 346. The law

of domicil is of great importance in those countries where the maxim "actor sequitur forum rei" is applied to the full extent. Code Civil, art. 102, &c.; 1 Toullier, 318.

2. A man cannot be without a domicil, for he is not supposed to have abandoned his last domicil until he has acquired a new one. 5 Ves. 587; 3 Robins. 191; 1 Binn. 349, n.; 10 Pick. 77. Though by the Roman law a man might abandon his domicil, and, until be acquired a. new one, he was without a domicil. By fixing his residence at two different places a man may have two domicils at one and the same time; as, for example, if a foreigner, coming to this country, should establish two houses, one in New York and the, other in New Orleans, and pass one-half of the year in each; he would, for most purposes, have two domicils. But it is to be observed that circumstances which might be held sufficient to establish a commercial domicil in time of war, and a matrimonial, or forensic or political domicil in time of peace, might not be such as would establish a principal or testamentary domicil, for there is a wide difference in applying the law of domicil to contracts and to wills. Phill. on Dom. xx; 11 Pick. 410 10 Mass. 488; 4 Wash. C. C. R. 514.

3. There are three kinds of domicils, namely: 1. The domicil of origin. domicilium originis vel naturale. 2. The domicil by operation of law, or necessary domicil. 3. Domicil of choice.

4. - §1. By domicil of origin is understood the home of a man's parents, not the place where, the parents being on a visit or journey, a child happens to be born. 2 B. & P. 231, note; 3 Ves. 198. Domicil of origin is to be distinguished from the accidental place of birth. 1 Binn. 349.

5. - §2. There are two classes of persons who acquire domicil by operation of law. 1st. Those who are under the control of another, and to whom the law gives the domicil of another. Among these are, 1. The wife. 2. The minor. 3. The lunatic, &c. 2d. Those on whom the state affixes a domicil. Among this class are found, 1. The officer. 2. The prisoner, &c.

6. - 1st. Among those who, being under the control of another, acquire such person's domicil, are, 1. The wife. The wife takes the domicil of her hushand, and the widow retains it, unless she voluntarily change it, or unless, she marry a second time, when she takes the domicil of the second hushand. A party may have two domicils, the one actual, the other legal; the hushand's actual and the wife's legal domicil, are, prima facie, one. Addams' Ecc. R. 5, 19. 2. The domicil of the minor is that of the father, or in Case of his death, of the mother. 5 Ves. 787; 2 W. & S. 568; 3 Ohio R. 101; 4 Greenl. R. 47. 3. The domicil of a lunatic is regulated by the same principles which operated in cases of minors the domicil of such a person may be changed by the direction, or with the assent of the guardian, express or implied. 5 Pick. 20.

7. - 2d. The law affixes a domicil. 1. Public officers, such as the president of the United States, the secretaries and such other officers whose public duties require a temporary residence at the capital, retain their domicils. Ambassadors preserve the domicils which they have in their respective countries, and this privilege extends to the ambassador's family. Officers, soldiers, and marines, in the service of the United States, do not lose their domicils while thus employed. 2. A prisoner does not acquire a domicil where the prison is, nor lose his old. 1 Milw. R. 191, 2.

8. - §3. The domicil of origin, which has already been explained, remains until another has been acquired. In order to change such domicil; there must be an actual removal with an intention to reside in the place to which the party removes. 3 Wash. C. C. R. 546. A mere intention to remove, unless such intention is carried into effect, is not sufficient. 5 Greenl. R. 143. When he changes it, he acquires a domicil in the. place of his new residence, and loses his original domicil. But upon a return with an intention to reside, his original domicil is restored. 3 Rawle, 312; 1 Gallis. 274, 284; 5 Rob. Adm. R. 99.

9. How far a settlement in a foreign country will impress a hostile character on a merchant, see Chitty's Law of Nations, 31 to 50; 1 Kent, Com. 74 to 80; 13 L. R. 296; 8 Cranch, 363; 7 Cranch, 506; 2 Cranch, 64 9 Cranch, 191; 1 Wheat. 46; 2 Wheat 76; 3 Wheat. 1 4 2 Gall. R. 268; 2 Pet. Adm. Dec. 438 1 Gall. R. 274. As to its effect in the administration of the assets of a deceased non-resident, see 3 Rawle's R. 312; 3 Pick. R. 128; 2 Kent, Com. 348; 10 Pick. R. 77. The law of Louisiana relating to the "domicil and the manner of changing the same" will be found in the Civil Code of Louisiana, tit. 2, art. 42 to 49. See, also, 8 M. R. 709; 4 N. S. 51; 6 N. S. 467; 2 L. R. 35; 4 L. R. 69; 5 N. S. 385 5 L. R. 332; 8 L. R. 315; 13 L. R. 297 11 L. R. 178; 12 L. R. 190. See, on the subject generally, Bouv. Inst. Index, h. t. 2 Bos. & Pul. 230, note 1 Mason's Rep. 411; Toullier, Droit Civil Francais, liv. 1, tit. 3, n., 362 a 378; Domat, tome 2, liv. 1, s. 3; Pothier, Introduction Generale aux Coutumes, n. 8 a 20; 1 Ashm. R. 126; Merl. Rep. tit. Domicile 3 Meriv. R. 79; 5 Ves. 786; 1 Crompt. & J. 151; 1 Tyrwh. R. 91; 2 Tyrwh. R. 475; 2 Crompt. & J. 436 3 Wheat. 14 3 Rawle, 312; 7 Cranch, 506 9 Cranch, 388; 5 Pick. 20; 1 Gallis, 274, 545; 10 Mass. 488 11 Mass. 424; 13 Mass. 501 2 Greenl. 411; 3 Greenl 229, 354; 4 Greenl. 47; 8 Greenl. 203; 5 Greenl. 143; 4 Mason, 308; 3 Wash. C. C. R. 546; 4 Wash. C. C. R. 514 4 Wend, 602; 8 Wend. 134; 5 Pick. 370 10 Pick. 77; 11 Pick. 410; 1 Binn. 349, n.; Phil. on Dom. passim.

DOMINANT. estates. In the civil law, this term is used to signify the estate to which a servitude or easement is due from another estate; for example, where the owners of the estate, Blackacre, have a right of way or passage over the estate Whiteacre, the former is called the dominant, and the latter the servient estate. Bouv. Inst. n. 1600.

DOMINION. The right of the owner of a thing to use it or dispose of it at his pleasure. See Domain; 1 White's New Coll. 85; Jacob's Intr. 39.

DOMINIUM, empire, domain. It is of three kinds: 1, Directum dominium, or usufructuary dominion; dominium utile, as between landlord and tenenant; or, 2. It is to full property, and simple property. The former is such as belongs to the cultivator of his own estate; the other is the property of a tenant. 3. Dominion acquired by the law of nations, and dominion acquired by municipal law. By the law of nations, property may be acquired by occupation, by accession, by commixtion, by use or the pernancy of the usufruct, and by tradition or delivery. As to the dominium eminens, the right of the public, in cases of emergency, to seize upon the property of individuals, and convert it to public use, and the right of individuals, in similar cases, to commit a trespass on the persons and properties of others, see the opinion of chief justice McKean in Respublica v. Sparhawk, 1 Dallas, 362, and the case of Vanhorn v. Dorrance, 2 Dall. Rep. 304. See, further, as to dominium eminens, or the right of the community to take, at a fair price, the property of individuals for public use, the supplement of 1802 to the Pennsylvania compromising law, respecting the Wyoming controversy; also, Vattel, l. 1, c. 20, §§244-248; Bynkershoek, lib. 2, c. 15; Rousseau's Social Compact, c. 9; Domat; l. 1, tit. 8, §l, p. 381, fol. ed.; the case of a Jew, whom the grand seignior was compelled by the mufti to purchase out, cited in Lindsay et al. v. The Commissioners, 2 Bay. S. Car. Rep. 41. See Eminent domain.

DOMITAE. Subdued, tame,. not wild; as, animals domitae, which are tame or domestic animals.

DOMO REPARANDO. the name of an ancient writ in favor of a party who was in danger of being injured by the fall, of his neighbor's house.

DONATIO MORTIS CAUSA, contracts, legacies. A gift in prospect of death. When a person in sickness, apprehend ing his dissolution near, delivers, or causes to be delivered to another, the possession of any personal goods, to keep as his own, in case of the donor's decease. 2 Bl. Com. 514 see Civ. Code of Lou. art. 1455.

2. The civil law defines it to be a gift under apprehension of death; as, when any thing is given upon condition that if the donor dies, the donee shall possess it absolutely, or return it if the donor should survive, or should repent of having made the gift, or if the donee should die before the donor. 1 Miles' Rep. 109-117.

3. Donations mortis causa, are now reduced, as far as possible, to the similitude of legacies. Inst. t. 7, De Donationibus. See 2 Ves. jr. 119; Smith v. Casen, mentioned by the reporter at the end of Drury v. Smith, 1 P. Wms. 406; 2 Ves. sen. 434; 3 Binn. 866.

4. With respect to the nature of a donatio mortis causa, this kind of gift so far resembles a legacy, that it is ambulatory and incomplete during the donor's life; it is, therefore, revocable by him; 7 Taunt. 231; 3 Binn. 366 and subject to his debts upon a deficiency of assets. 1 P. Wms. 405. But in the following particulars it differs from a legacy: it does riot fall within an administration, nor require any act in the executors to perfect a title in the donee. Rop. Leg. 26.

5. The following circumstances are required to constitute a good donatio mortis causa. 1st. That the thing given be personal property; .3 Binn. 370 a bond; 3 Binn. 370; 3 Madd. R. 184; bank notes; 2 Bro. C. C. 612; and a check offered for payment during the life of the donor, will be so considered. 4 Bro. C. C. 286.

6. - 2d. That the gift be made by the donor in peril of death, and to take effect only in case the giver die. 3 Binn. 370 4 Burn's Ecc. Law, 110.

7. - 3d. That there be an actual delivery of the subject to, or for the donee, in cases where such delivery can be made. 3 Binn. 370; 2 Ves. jr. 120. See 9 Ves. 1 , 7 Taunt. 224. But such delivery can be made to a third person for the use of the donee. 3 Binn. 370:

8. It is an unsettled question whether such kind of gift appearing in writing, without delivery of the subject, can be supported. 2 Ves. jr. 120. By the Roman and civil law, a gift mortis causa might be made in writing. Dig. lib. 39, t. 6, 1. 28 2 Ves. sen. 440 1 Ves. sen. 314.

9. In Louisiana, no disposition mortis causa, otherwise than by last will and testament, is allowed. Civ. Code, art. 1563. See, in general, 1 Fonb. Tr. Eq. 288, n. (p); Coop. Just. 474, 492; Civ. Code of Lo. B. 3, 2, c. 1 and 6. Vin. Abr. Executors, Z 4; Bac. Abr. Legacies, A; Supp. to Ves. jr. vol. 1, p. 143, 170; vol. 2, 97. 215; Rop. Leg: oh. 1; Swinb. pt. 1, s. 7 1 Miles, 109. &c.

DONATION, contracts. The act by which the owner of a thing, voluntarily transfers the title and possession of the same, from himself to another person, without any consideration; a gift. (q. v.)

2. A donation is never perfected until it is has been accepted, for the acceptance (q. v.) is requisite to make the donation complete. Vide Assent, and Ayl. Pand. tit. 9 Clef des Lois Rom. h. t.

DONATION INTER Vivos, contracts. A contract which takes place by the mutual consent, of the giver, who divests himself of the thing given in order to transmit the

title of it to the donee gratuitously, and the donee, who accepts the thing and acquires a legal title to it.

2. This donation takes place when the giver is not in any immediate apprehension of death, which distinguishes it from a donatio mortis causa. (q. v.) 1 Bouv. Inst. n. 712. And see Civ. Code of Lo. art. 1453 Justin. Inst. lib. 2, tit. 7, §2 Coop. Justin. notes 474-5 Johns. Dig. N. Y. Rep. tit. Gift.

DONEE. He to whom a gift is made, or a bequest given; one who is invested with a power to select an appointee, he is sometimes called an appointer. DONIS, STATUTE DE. The stat. West. 2, namely, 13 Edw. I. , c. 1, called the statute de donis conditionalibus. This statute revives, in some sort, the ancient feudal restraints, which were originally laid on alienations. 2 Bl. Com. 12.

DONOR. He who makes a gift. (q. v.)

DOOM. This word formerly signified a judgment. T. L.

DORMANT PARTNER. One who is a participant in the profits of a firm, but his name being concealed, his interest is not apparent. See Partners,

DOOR. The place of usual entrance in a house, or into a room in the house.

2. To authorize the breach of an outer door in order to serve process, the process must be of a criminal nature; and even then a demand of admittance must first have been refused. 5 Co. 93; 4 Leon. 41; T. Jones, 234; 1 N. H. Rep. 346; 10 John. 263; 1 Root, 83 , 134; 21 Pick. R. 156. The outer door may also be broken open for the purpose of executing a writ of habere facias. 5 Co. 93; Bac. Ab. Sheriff, N. 3.

3. An outer door cannot in general be broken for the purpose of serving civil process; 13 Mass. 520; but after the defendant has been arrested, and he takes refuge in his own house, the officer may justify breaking an outer door to take him. Foster, 320; 1 Roll. R. 138; Cro. Jac. 555.; 10 Wend. 300; 6 Hill, N. Y. Rep. 597. When once an officer is in the house, he may break open an inner door to make an arrest. Kirby, 386 5 John. 352; 17 John. 127, See 1 Toull. n. 214, p. 88.

DOT. This French word is adopted in Louisiana. It signifies the fortune, portion, or dowry, which a woman brings to her hushand by the marriage. 6 N. S. 460. See Dote; Dowry.

DOTAL PROPERTY. By the civil law, and in Louisiana, by this term is understood that property, which the wife brings to the hushand to assist him in bearing the

expenses of the marriage establishment. Civil Code of Lo. art. 2315. Vide Extradotal property.

DOTATION, French law. The act by which the founder of a hospital, or other charity, endows it with property to fulfil its destination.

DOTE, Span. law. The property which the wife gives to the hushand on account of marriage.

2. It is divided into adventitia and profectitia; the former is the dote which the father or grandfather, or other of the ascendants in the direct paternal line, give of their own property to the hushand; the latter (adventitia) is that property which the wife gives to the hushand, or that which is given to him for her by her mother, or her collateral relations, or a stranger. Aso & Man. Inst. B. 1, t. 7, c . 1, §i.

DOTE ASSIGNANDO, Eng. law. The name of a writ which lay in favor of a widow, when it was found by office that the king's tenant was seised of tenements in fee or fee tail at the time of his death, and that he held of the king in chief.

DOTE UNDE NIHIL HABET. The name of a writ of dower which a widow sues against the tenant, who bought land of her hushand in his lifetime, and in which her dower remains, of which he was seised solely in fee simple or fee tail. F. N. B. 147; Booth, Real Act. 166. See Dower unde nihil habet

DOUBLE. Twofold; as, double cost; double insurance; double plea.

DOUBLE COSTS practice. According to the English law, when double costs are given by the statute, the term is not to be understood, according to its literal import, twice the amount of single costs, but in such case the costs are thus calculated. 1. the common costs; and, 2. Half of the common costs. Bac. Ab. Costs, E; 2 Str. 1048. This is not the rule in New York, nor in Pennsylvania. 2 Dunl. Pr. 731; 2 Rawle's R. 201.

2. In all cases where double or treble costs are claimed, the party must apply to the court for them before he can proceed to the taxation, otherwise the proceeding will be set aside as irregular. 4 Wend. R. 216. Vide Costs; and Treble Costs.

DOUBLE ENTRY. A term used among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every thing. The term is used in contradistinction to single entry.

2. Keeping books by double entry is more exact, because, presenting all the active and all the passive property of the merchant, in their respective divisions, there cannot be

placed an article to, an account, which does not pass to some correspondent account elsewhere. It presents a perfect, view of each operation, and, from the relation and comparison of the divers accounts, which always keep pace with each other, their correctness is proved; for every commercial operation is necessarily composed of two interests, which are connected together. The basis of this mode of keeping books, and the only condition required, is to write down every transaction and nothing else; and to make no entry without putting it down to the two agents of the operation. By this means a merchant whose transactions are extensive, comprising a great number of subjects, is able to known not only the general situation of his affairs, but also the situation of each particular operation. For example, when a merchant receives money, his cash account becomes debtor, and the person who has paid it, or the merchandise sold, is credited with it; when he pays money, the cash account, is credited, And the merchandise bought, or the obligation paid, is debited with it. See Single entry.

DOUBLE INSURANCE, contracts. Where the insured makes, two insurances on the same risk, and the same interest. 12 Mass. 214. It differs from re-insurance in this, that it is made by the insured, with a view of receiving a double satisfaction in case of loss; whereas a re-insurance is made by a former insurer, his executors or assigns, to protect himself and his estate from a risk to which they were liable by the first insurance. The two policies are considered as making but one insurance. They are good to the extent of the value of the effects put in risk; but the insured shall not be permitted to recover a double satisfaction. He can sue the underwriters on both the policies, but he can only recover the real amount of his loss, to which all the underwriters on both shall contribute in proportion to their several subscriptions. Marsh. Ins. B. 1, c. 4, s. 4; 5 S. & R. 473; 4 Dall. 348; 1 Yeates, 161; 9 S. & R. 103; 1 Wash . C. C. Rep. 419; 2 Wash. C. C. Rep. 186; 2 Mason, 476.

DOUBLE PLEA. The alleging, for one single purpose, two or more distinct grounds of defence, when one of them would be as effectual in law, as both or all. Vide Duplicity.

DOUBLE VOUCHER. A common recovery is sometimes suffered with double voucher, which occurs when the person first vouched to warranty, comes in and vouches over a third person. See a precedent, 2 Bl. Com. Appx. No. V. p. xvii.; also, Voucher.

2. The neecessity for double voucher arises when the tenant in tail is not the tenant in the writ, but is tenant by warranty; that is, where he is vouched, and comes in and confesses the warranty. Generally speaking, to accomplish this result, a previous conveyance is necessary, by the tenant in tail, to a third person, in order to make such third person tenant to a writ of entry. Preston on Convey. 125-6.

DOUBLE WASTE. When a tenant, bound to repair, suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste. Co. Litt. 53. See Waste.

DOUBT. The uncertainty which exists in relation to a fact, a proposition, or other thing; or it is an equipoise of the mind arising from an equality of contrary reasons. Ayl. Pand. 121.

2. The embarrassing position of a judge is that of being in doubt, and it is frequently the lot of the wisest and most enlightened to be in this condition, those who have little or no experience usually find no difficulty in deciding the most, problematical questions.

3. Some rules, not always infallible, have been adopted in doubtful cases, in order to arrive at the truth. 1. In civil cases, the doubt ought to operate against him, who having it in his power to prove facts to remove the doubt, has neglected to do so. In cases of fraud when there is a doubt, the presumption of innocence (q. v.) ought to remove it. 2. In criminal cases, whenever a reasonable doubt exists as to the guilt of the accused that doubt ought to operate in his favor. In such cases, particularly, when the liberty, honor or life of an individual is at stake, the evidence to convict ought to be clear, and devoid of all reasonable doubt. See Best on Pres. §195; Wils. on Cir. Ev. 26; Theory of Presumptive Proof, 64; 33 How. St. Tr. 506; Burnett, Cr. Law of Scotl. 522; 1 Greenl. Ev. §1 D'Aguesseau, Oeuvres, vol. xiii. p. 242; Domat, liv. 3, tit. 6.

4. No judge is presumed to have any doubt on a question of law, and he cannot therefore refuse to give a judgment on that account. 9 M. R. 355; Merlin, Repert. h. t.; Ayliffe's Pand. b. 2, t. 17; Dig. lib. 34, t. 5; Code, lib. 6, t. 38. Indeed, in some countries; in China, for example, ignorance of the law in a judge is punishable with blows. Penal Laws of China, B. 2, s. 61.

DOVE. The name of a well known bird.

2. Doves are animals ferae naturae, and not the subject of larceny, unless they are in the owner's custody; as, for example, in a dove-house, or when in the nest before they can fly. 9 Pick. 15. See Whelp.

DOWAGER. A widow endowed; one who has a jointure.

2. In England, this is a title or addition given to the widows of princes, dukes, earls, and other noblemen.

DOWER. An estate for life, which the law gives the widow in the third part of the lands and tenements, or hereditaments of which the hushand, was solely seised, at any time during the coverture, of an estate in fee or in tail, in possession, and to which estate in the lands and tenements, the issue, if any, of such widow might, by possibility, have inherited. Watk. Prin. Con. 38; Litt. §36; 7 Greenl. 383. Vide Estate in Dower. This is dower at common law.

2. Besides this, in England there are three other species of dower now subsisting; namely, dower by custom, which is, where a widow becomes entitled to a certain portion of her hushand's lands in consequence of some local or particular custom, thus by the custom of gavelkind, the widow is entitled to a moiety of all the lands and tenements, which her hushand held by that tenure.

3. Dower ad ostium ecclesiae, is, when a man comes to the church door to be married, after troth plighted, endows his wife of a certain portion of his lands.

4. Dower ex assensu patris, was only a species of dower ad ostium ecclesice, made when the hushand's father was alive, and the son, with his consent expressly given, endowed his wife, at the church door, of a certain part of his father's lands.

5. There was another kind, de la plus belle, to which the abolition of military tenures has put an end. Vide Cruise's Dig. t. 6, c. 1; 2 Bl. Com. 129; 15 Serg. & Rawle, 72 Poth. Du Douaire.

6. Dower is barred in various ways; 1. By the adultery of the wife, unless it has been condoned. 2. By a jointure settled upon the wife. 2 Paige, R. 511. 3. By the wife joining her hushand in a conveyance of the estate. 4. By the hushand and wife levying a fine, or suffering a common recovery. 10 Co. 49, b Plowd. 504. 5. By a divorce a vinculo matrimonii. 6. By an acceptance, by the wife, of a collateral satisfaction, consisting of land, money, or other chattel interest, given instead of it by the hushand's will, and accepted after the hushand's death. In these cases she has a right to elect whether to take her dower or the bequest or devise. 4 Monr. R. 265; 5 Monr. R. 58; 4 Desaus. R. 146; 2 M'Cord, Ch. R. 280; 7 Cranch, R. 370; 5 Call, R. 481; 1 Edw. R. 435 3 Russ. R. 192; 2 Dana, R. 342.

7. In some of the United States, the estate which the wife takes in the lands of her deceased hushand, varies essentially from the right of dower at common law. In some of the states, she takes one-third of the profits, or in case of there being no children, one half. In others she takes the same right in fee, when there are no lineal descendants; and in one she takes two-thirds in fee, when there are no lineal ascendauts or descendants, or brother or sister of the whole or half blood. 1 Hill. Ab. 57, 8; see Bouv. Inst. Index, h. t.

DOWER UNDE NIHIL HABET. This is a writ of right in its nature. It lies only against the tenant of the freehold. 12 Mass. 415 2 Saund. 43, note 1; Hen. & Munf. 368 F. N. B. 148. It is a writ of entry, where the widow is deforced of the whole of her dower. Archb. Plead. 466, 7. A writ of right of dower lies for the whole or a part. 1 Rop. on Prop.430; Steph. on Pl. 10. n; Booth, R. A. 166; Glanv. lib. 4. c. 4, 5; 9 S. & R. 367. If the heir is fourteen years of age, the writ goes to him, if not, to his guardian. If the land be wholly aliened, it goes to the tenant, F. N. B. 7, or pernor of the profits, who may vouch the heir. If part only be aliened, the writ goes to the heir or guardian. The tenant cannot impart; 2 Saund. 44, n;. 1 Rop. on Prop. 430; the remedy being speedy. Fleta, lib. 5. o. 25, §8, p. 427. He pleads without defence. Rast. Ent. 232, b. lib. Int. fo. 15; Steph. Pl. 431 Booth, 118; Jackson on Pl. 819.

DOWRESS. A woman entitled to dower.

2. In order to entitle a woman to the rights of a dowress at common law, she must have been lawfully married, her hushand must be dead, he must have been seised, during the coverture, of an estate subject to dower. Although the marriage may be void able, if it is not absolutely void at his death, it is sufficient to support the rights of the dowress. The hushand and wife must have been of sufficient age to consent. 3. At common law an alien could not be endowed, but this rule has been changed in several states. 2 John. Cas. 29; 1 Harr. & Gill, 280.; 1 Cowen, R. 89; 8 Cowen, R. 713.

4. The dowress' right may be defeated when her hushand was not of right seised of an estate of inheritance; as, for example, dower will be defeated upon the restoration of the seisin under the prior title in the case of defeasible estates, as in case of reentry for a condition broken, which abolishes the intermediate seisin. Perk. s. 311, 312, 317.

DOWRY. Formerly applied to mean that which a woman brings to her hushand in marriage; this is now called a portion. This word is sometimes confounded with dower. Vide Co. Litt. 31; Civ. Code of Lo. art. 2317; Dig. 23, 3, 76; Code, 5, 12, 20.

DRAGOMAN. An interpreter employed in the east, and particularly at the Turkish court.

2. The Act of Congress of August 26, 1842, c. 201, s. 8, declares that it shall not be lawful for the president of the United States to allow a dragoman at Constantinople, a salary of more than two thousand five hundred dollars.

DRAIN. Conveying the water from one place to another, for the purpose of drying the former

2. The right of draining water through another map's land. This is an easement or servitude acquired by grant or prescription. Vide 3 Kent, Com. 436 7 Mann. & Gr. 354; Jus aguaeductus; Rain water; Stillicidium.

DRAwhACK, com. law. An allowance made by the government to merchants on the reexportation of certain imported goods liable to duties, which, in some cases, consists of the whole; in others, of a part of the duties which had been paid upon the importation. For the various acts of congress which regulate drawhacks, see Story, L. U. S. Index, h. t.

DRAWEE. A person to whom a bill of exchange is addressed, and who is requested to pay the amount of money therein mentioned.

2. The drawee may be only one person, or there may be several persons. The drawee may be a third person, or a man may draw a bill on himself. 18 Ves. jr. 69; Carth. 509; 1 Show. 163; 3 Burr. 1077.

3. The drawee should accept or refuse to accept the bill at furthest within twenty-four hours after presentment. 2 Smith's R. 243; 1 Ld. Raym. 281 Com. Dig. Merchant, F 6; Marius, 15; but it is said the holder is entitled. to a definite answer if the mail go out in the meantime. Marius' 62. In case the bill has been left with the drawee for his acceptance, he will be considered as having accepted it, if he keep the bill a great length of time, or do any other act which gives credit to the bill, and induces the holder not to protest it; or is intended as a surprise upon him, and to induce him to consider the bill as accepted. Chit. on Bills, 227. When he accepts it, it is his duty to pay it at maturity.

DRAWER, contracts. The party who makes a bill of exchange.

2. The obligations of the drawer to the drawee and every subsequent holder lawfully entitled to the possession, are, that the person on whom he draws is capable of binding himself by his acceptance that he isto be found at the place where he is described to reside, if a description be given in the bill; that if the bill be duly presented to him, he will accept in writing on the bill itself, according to its tenor, and that he will pay it when it becomes due, if presented in proper time for that purpose; and that if the drawee fail to do either, he, the drawer, will pay the amount, provided he have due notice of the dishonor. 3. The engagement of the drawer of a bill is in all its parts absolute and irrevocable. 2 H. Bl. 378; 3 B. & P. 291; Poth. Contr. de Change, n. 58; Chit. Bills, 214, Dane's Ab. h. t.

DRAWING. A representation on paper, card, or other substance.

2. The Act of Congress of July 4, 1836, section 6, requires all persons who apply for letters patent for an invention, to accompany their petitions or specifications with a drawing or drawings of the whole, and written references, when the nature of the case admits of drawings.

DREIT. The same as Droit. (q. v.)

DRIFTWAY. A road or way over which cattle are driven. 1 Taunt. R. 279; Selw. N. P. 1037; Wool. on Ways, 1.

DRIP. The right of drip is an easementt by which the water which falls on one house is allowed to fall upon the land of another.

2. Unless the owner has acquired the right by grant or prescription, he has no right so to construct his house as to let the water drip over his neighbor's land. 1 Roll. Ab. 107. Vide Rain water; Stillicidium; and 3 Kent, Com. 436; Dig. 43, 23, 4 et 6; 11 Ad. & Ell. 40; S. C. 39 E. C. L. R. 21.

DRIVER. One employed in conducting a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals.

2. Frequent accidents occur in consequence of the neglect or want of skill of drivers of public stage coaches, for which the employers are responsible.

3. The law requires that a driver should possess reasonable skill and be of good habits for the journey; if, therefore, he is not acquainted with the road he undertakes to drive; 3 Bingh. Rep. 314, 321; drives with reins so loose that he cannot govern his horses; 2 Esp. R. 533; does not give notice of any serious danger on the road; 1 Camp. R. 67; takes the wrong side of the road; 4 Esp. R. 273; incautiously comes in collision with another carriage; 1 Stark. R. 423; 1 Campb. R. 167; or does not exercise a sound and reasonable discretion in travelling on the road, to avoid dangers and difficulties, and any accident happens by which any passenger is injured, both the driver and his employers will be responsible. 2 Stark. R. 37; 3 Engl. C. L. Rep. 233; 2 Esp. R. 533; 11. Mass. 57; 6 T. R. 659; 1 East, R. 106; 4 B. & A. 590; 6 Eng. C. L. R. 528; 2 Mc Lean, R. 157. Vide Common carriers Negligence; Quasi Offence.

DROIT. A French word, which, in that language, signifies the whole collection of laws, written and unwritten, and is synonymous to our word law. It also signifies a right, il n'existe point de droits sans devoirs, et vice versa. 1 Toull. n. 96; Poth. h. t. With us it means right, jus. Co. Litt. 158. A person was said to have droit droit, plurimum juris, and plurimum possessionis, when he had the freehold, the fee, and the property in him. Id. 266; Crabb's H. Eng. L. 400.

DROIT D'ACCESSION, French civil law. Specificatio. That property which is acquired by making a new species out of the material of another. Modus acquirendi quo quis ex aliena materia suo nomine novam speciem faciens bona fide ejus speciei dominium consequitur. It is a rule of the civil law, that if the thing can be reduced to the former matter, it belongs to the owner of the matter, e. g. a statue made of gold, but if it cannot so be reduced, it belongs to the person who made it, e. g. a statue made of marble. This subject is treated of in the Code Civil de Napoleon, art. 565 to 577; Merlin Repertoire de Surisp. Accession; Malleville's Discussion, art. 565. The Code Napoleon follows. closely the Inst. of Just. lib . 2, tit. 1, §§25, 28.

2. Doddridge, in his English Lawyer, 125-6, states the common law thus: " If a man take, wrongfully, the material which was mine and is permanent, not adding anything thereunto than the form, only by alteration thereof, such thing, so newly formed by an exterior form, notwithstanding, still remaineth mine, and may be seized again by me, and I may take it out of his possession as mine own. But they say, if he add some other matter thereunto; as, of another man's leather doth make shoes or boots, or of my cloth, maketh garments, adding to the accomplishment thereof of his own, he hath thereby altered the property, so that the first owner cannot seize the thing so composed, but is driven to his action to recover his remedy: howheit, he adds, in a case of that nature depending, the court had determined that the first owner might seize the same, notwithstanding such addition. But if the thing be transitory in its nature by the change, as if one take ray corn or meal, and thereof make bread, I cannot, in that case, seize the bread, because, as the civil law speaketh, haec species facta ex materia aliens, in pristinam formam reduci non potest, ergo ei a quo est facta cedit. So some have said, if a man take my barley, and thereof make malt, because it is changed into another nature, it cannot be seized by me; but the rule is: That where the material wrongfully taken away, could not at first, before any alteration, be seized; for that it could not be distinguished. from other things of that kind, as corn, money, and such like; there those things cannot be seized because the property of those things cannot be: distinguished: for, if my money be wrongfully taken away, and he that taketh it do make plate; thereof, or do convert my plate into money, I cannot seize the same for that money is undistinguishable from other money of that coin. But, if a butcher take wrongfully my ox and doth kill it, and bring it into the market to be sold, I may not seize upon the flesh, for it: cannot be known from others of that, kind; but if it be found hanging in the skin, where the mark may appear, I may seize the same, although when it was taken from me it had life, and now is dead. So, if a man cut down my tree, and square it into a beam of timber, I may seize the same, for he bath neither altered the nature thereof, nor added anything but exterior form thereunto; but if he lay the beam of timber into the building of a house, I may not seize the same, for being so set it is become parcel of the house, and so in supposition of law, after a sort,

altered in its nature. See Year Book 12 H. VIII. 9 b, 10 a; Bro. Ab. Property, 45; 5 H. VII. 15; Bro. Ab. Property, 23.

DROITS OF ADMIRALTY. Rights claimed by the government over the property of an enemy. In England, it has been usual, in maritime wars, for the government to seize and condemn, as droits of admiralty, the property of an enemy found in her ports at the breaking out of hostilities. 1 Rob. R. 196; 13 Ves. jr. 71; Edw. R. 60; 3 B. & P. 191.

DROIT D'AUBAINE, jus albinatus. This was a rule by which all the property of a deceased foreigner, whether movable or immovable, was confiscated to the use of the state, to the exclusion of his heirs, whether claiming ab intestato, or under a will of the deceased. The word aubain signifies hospes loci, peregrinus advena, a stranger. It is derived, according to some, from alibi, elsewhere, natus, born, from which the word albinus is said to be formed. Others, as Cujas, derive the word directly from advena, by which word, aubains, or strangers, are designated in the capitularies of Charlemagne. See Du Cange and Dictionaire de Trevoux.

2. As the darkness of the middle ages wore away, and the light of civilization appeared, thing barbarous and inhospitable usage was by degrees discontinued, and is now nearly abolished in the civilized world. It subsisted in France, however, in full force until 1791, and afterwards, in a modified form, until 1819, when it was formally abolished by law. For the gross abuses of this feudal exaction, see Dictionaire de l'Ancien Regime et des abus feodaux. Aubain. See Albinatus jus.

DROIT-CLOSE. The name of an ancient writ directed to the lord of ancient demesne, and which lies for those tenants in ancient demesne who hold their lands and tenements by charter in fee simple, in fee tail, for life, or in dower. F. N. B. 23.

DROITURAL. What belongs of right; relating to right; as, real actions are either droitural or possessory; droitural, when the plaintiff seeks to recover the property. Finch's Law, 257.

DRUNKENNESS. Intoxication with strong liquor.

2. This is an offence generally punished by local regulations, more or less severely.

3. Although drunkenness reduces a man to a temporary insanity, it does not excuse him or palliate his offence, when he commits a crime during a fit of intoxication, and which is the immediate result of it. When the act is a remote consequence, superinduced by the antecedent drunkenness of the party, as in cases of delirium tremens or mania a potu, the insanity excuses the act. 5 Mison's R. 28; Amer. Jurist,

vol. 3, p. 5-20; Martin and Yeager's. R. 133, 147;. Dane's Ab. Index, h. t.; 1 Russ. on Cr. 7; Ayliffe's Parerg. 231 4 Bl. Com. 26.

4. As there must be a will and intention in order to make a contract, it follows, that a man who is in such a state of intoxication as not to know what he is doing, may avoid a contract entered into by him while in this state. 2 Aik. Rep. 167; 1 Green, R. 233; 2 Verm. 97; 1 Bibb, 168; 3 Hayw. R. 82; 1 Hill, R. 313; 1 South. R. 361; Bull. N. P. 172; 1 Ves. 19; 18 Ves. 15; 3 P. Wms. 130, n. a; Sugd. Vend. 154; 1 Stark. 126; 1 South. R. 361; 2 Hayw. 394; but see 1 Bibb, R. 406; Ray's Med. Jur. ch. 23, 24; Fonbl. Eq. B. 2, 3; 22 Am. Jur. 290; 1 Fodere, Med. Leg. §215. Vide Ebriosity; Habitua. drunkard.

DRY. Used figuratively, it signifies that which produces nothing; as, dry exchange; dry rent; rent seek.

DRY EXCHANGE, contracts. A term invented for disguising and covering usury; in which something, was pretended to pass on both sides, when in truth nothing passed on one side, whence it was called dry. Stat. 3 Hen. VII. c. 5 Wolff, Ins. Nat. §657.

DRY RENT, contracts. Rent-seek, was a rent reserved without a clause of distress.

DUCAT. The name of a foreign coin. The ducat of Naples shall be estimated in the computations of customs, at eighteen cents. Act of May 22, 1846.

DUCES TECUM, practice, evidence. Bring with thee. A writ commonly called a subpoena duces tecum, commanding the person to whom it is directed to bring with him some writings, papers, or other things therein specified and described, before the court. 1 Phil. Ev. 886.

2. In general all papers in the possession of the witness must be produced; but to this general rule there are exceptions, among which are the following: 1. That a party is not bound to exhibit his own title deeds. 1 Stark. Ev. 87; 8 C. & P. 591; 2 Stark. R. 203; 9 B. & Cr. 288. 2. One who has advanced money on a lease, and holds it as his security, is not bound to produce it. 6 C. & P. 728. 3. Attorneys and solicitors who hold the papers of their clients cannot be compelled to produce them, unless the client could have been so compelled. 6 Carr. & P. 728. See 5 Cowen, R. 153, 419; Esp. R. 405; 11 Price, R. 455; 1 Adol. & Ell. 31; 1 C. M. & R. 38 1 Hud. & Brooke, 749. On the question how far this clause is obligatory on a witness, see 1 Dixon on Tit. Deeds, 98, 99, 102; 1 Esp. N. P. Cas. 405; 4 Esp. N. P. C. 43; 9 East, Rep. 473.

DUCKING-STOOL, punishment. An instrument used, in dipping women in the water, as a punishment, on conviction of being common scolds. It is sometimes confounded with tumbrel. (q. v.)

2. This barbarous punishment was never in use in Pennsylvania. 12 Serg. & Rawle, 220.

DUCROIRE. This is a French word, which has the same meaning as the Italian phrase del credere. (q. v.) 2 Pard. Dr. Com. n. 564.

DUE. What ought to be paid; what may be demanded. It differs from owing in this, that, sometimes, what is owing is not due; a note, payable thirty days after date, is owing immediately after it is delivered to the payee, but it is not due until the thirty days have elapsed.

2. Bills of exchange, and promissory notes, are not, due until the end of the three days of grace, (q. v.) unless the last of these days happen to fall on a Sunday, or other holyday, when it becomes due on the Saturday before, and not on the Monday following. Story, P. N. §440; 1 Bell's Com. 410 Story on Bills, §283; 2 Hill, N. Y. R. 587; 2 Applet. R. 264.

3. Due also signifies just or proper; as, a due presentment, and demand of payraent, must be made. See 4 Rawle, 307; 3 Leigh, 389; 3 Cranch, 300.

DUE-BILL. An acknowledgment of a debt, in writing, is so called. This instrument differs from a promissory note in many particulars; it is not payable to order, nor is it assignable by mere endorsement. See I 0 U; Promissory notes.

DUELLING, crim. law. The fighting of two persons, one against the other, at an appointed time and place, upon a precedent quarrel. It differs from an array in this, that the latter occurs on a sudden quarrel, while the former is always the result of design.

2. When one of the parties is killed, the survivor is guilty of murder. 1 Russ. on Cr. 443; 1 Yerger's R. 228. Fighting a duel, even where there is no fatal result, is, of itself, a misdemeanor. Vide 2 Com. Dig. 252; Roscoe's Cr. Ev. 610; 2 Chit. Cr. Law, 728; Id. 848; Com. Dig. Battel, B; 3 Inst. 157; 6 East, 464 Hawk. B. 1, c. 31, s. 21; 3 East, R. 581 3 Bulst. 171 4 Bl. Com. 199 Prin. Pen. Law, c. 19, p 245; Const. R. 107; 1 Stew. R. 506; 20 John. 457; 3 Cowen, 686. For cases of mutual combat, upon a sudden quarrel, Vide 1 Russ. on Cr. 495.

DUKE. The title given to those who are in the highest rank of nobility in England.

DUM FUIT INFRA AETATEM. The name of a writ which lies when an infant has made a feoffment in fee of his lands, or for life, of a gift in tail.

2. It may be sued out by him after he comes of full age, and not before; but, in the mean time, he may enter, and his entry remits him to his ancestor's rights. F. N. B. 192; Co. Litt. 247, 337.

DUM SOLA. While single or unmarried. This phrase is applied to single women, to denote that something has been done, or may be done, while the woman is or was unmarried. Example, when a judgment is rendered against a woman dum sola, and afterwards she marries, the scire facias to revive, the judgment must be against both hushand and wife.

DUM NON FUIT COMPOS MENTIS, Eng. law. The name of a writ, which the heirs of a person who was non compos mentis, and who aliened his lands, might have sued out, to restore him to his rights. T. L.

DUMB. One who cannot speak; a person who is mute. See Deaf and dumb, Deaf, dumb, and blind; Mute, standing mute.

DUMB-BIDDING, contracts. In sales at auction, when the amount which the owner of the thing sold is willing to take for the article, is written, and placed by the owner under a candlestick, or other thing, and it is agreed that no bidding shall avail unless equal to that; this is called dumbidding. Babingt. on Auct. 44.

DUNG. Manure. Sometimes it is real estate, and at other times personal property. When collected in a heap, it is personal estate; when spread out-on the land, it becomes incorporated in it, and it is then real estate. Vide Manure.

DUNGEON. A cell under ground; a place in a prison built under ground, dark, or but indifferently lighted. In the prisons of the United States, there are few or no dungeons.

DUNNAGE, mer. law. Pieces of wood placed against the sides and bottom of the hold of a vessel, to preserve the cargo from the effect of leakage, according to its nature and quality. 2 Magens, 101, art. 125, 126 Abbott on Shipp. 227.

DUPEX QUERELA, Eng. eccl. law. A complaint in the nature of an appeal from the ordinary to his next immediate superior. 3 Bl. Com 247.

DUPLICATA. It is the double of letters patent, letters of administration, or other instrument.

DUPLICATE. The double of anything.

2. It is usually applied to agreements, letters, receipts, and the like, when two originals are made of either of them. Each copy has the same effect. The term duplicate means a document, which is essentially the same as some other instrument. 7 Mann. & Gr. 93. In the English law, it also sign ifies the certificate of discharge given to an insolvent debtor, who takes the benefit of the act for the relief of insolvent debtors.

3. A duplicate writing has but one effect. Each duplicate is complete evidence of the intention of the parties. When a duplicate is destroyed, for example, in the case of a will, it is presumed. both are intended to be destroyed; but this presumption possesses greater or less force) owing to circumstances. When only one of the duplicates is in the possession of the testator, the destruction of that is a strong presumption of an intent to revoke both; but if he possessed both, and destroys but one, it is weaker; when he alters one, and afterwards destroys it , retaining the other entire, it has been held that the intention was to revoke both. 1 P. Wms. 346; 13 Ves. 310 but that seems to be doubted. 3 Hagg. Eccl. R. 548.

DUPLICATUM JUS, a twofold or double right. Those words, according to Bracton, lib. 4, c. 3, signify the same as dreit dreit, or droit droit, and are applied to a writ of right, patent, and such other writs of right as are of the same nature, and do, as it were, flow from it, as the writ of right. Booth on Real Actions, 87.

DUPLICITY, pleading. Duplicity of pleading consists in multiplicity of distinct matter to one and the same thing, whereunto several answers are required. Duplicity may occur in one and the same pleading. Double pleading consists in alleging, for one single purpose or object, two or more distinct grounds of defence, when one of them would be as effectual in law, as both or all.

2. This the common law does not allow, because it produces useless prolixity, and always tends to confusion, and to the multiplication of issues. Co. Litt. 304, a; Finch's Law, 393.; 3 Bl. Com. 311; Bac. Ab. Pleas, K 1.

3. Duplicity may be in the declaration, or the subsequent proceedings: Duplicity in the declaration consists in joining, in one and the same count, different grounds of action, of different natures, Cro. Car. 20; or of the same nature, 2 Co. 4 a; 1 Saund. 58, n. 1; 2 Ventr. 198; Steph. Pl. 266; to enforce only a single right of recovery.

4. This is a fault in pleading, only because it tends to useless prolixity and confusion, and is, therefore, only a fault in form. The rule forbidding double pleading "extends," according to Lord Coke, "to pleas perpetual or peremptory, and not to pleas dilatory; for in their time and place a man may use divers of them." Co. Litt. 304, a. But by this

is not meant that any dilatory plea way be double, or, in other words, that it way consist of different matters, or answers to one and the same thing; but merely that, as there are several kinds or classes of dilatory pleas, having distinct offices or effects, a defendant may use "divers of them" successively, (each being in itself single,) in their proper order. Steph. Pl. App. note 56.

5. The inconveniences which were felt in consequence of this strictness were remedied by the statute, 4 Ann. c. 16, s. 4, which provides, that " it shall be lawful for any defendant, or tenant, in any action or suit, or for any plaintiff in replevin, in any court of record, with leave of the court to plead as many several matters thereto as he shall think necessary for his defence."

6. This provision, or a similar one, is in force, probably, in most of the states of the American Union.

7. Under this statute, the defendant may, with leave of court, plead as many different pleas in bar, (each being a single,) as he may think proper; but although this statute allows the defendant to plead several distinct and substantive matters of defence, in several distinct pleas, to the whole, or one and the same part of the plaintiff's demand; yet, it does not authorize him to allege more than one, ground of defence in one plea. Each plea must still be single, as by the rules of the common law. Lawes, Pl. 131; 1 Chit. Pl. 512.

8. This statute extends only to pleas to the declaration, and does not embrace replications, rejoinders, nor any of the subsequent pleadings. Lawes, Pl. 132; 2 chit. Pl. 421; Com. Dig. Pleader, E 2; Story's Pl. 72, 76; 5 Am. Jur. 260-288. Vide) generally, 1 Chit. Pl. 230, 512; Steph. Pl. c. 2, s. 3, rule 1; Gould on Pl. c. 8, p. 1; Archb. Civ. Pl. 191; Doct. Pl. 222; 5 John. 240; 8 Vin. Ab. 183; U. S. Dig. Pleading, II. e and f.

DURANTE. A term equivalent to during, which is used in some law phrases, as durante absentia, during absence; durante minor cetate, during minority; durante bene placito, during our good pleasure.

DURANTE ABSENTIA. When the executor is out of the jurisdiction of the court or officer to whom belongs the probate of wills and granting letters of administration, letters of administration will be granted to another during the absence of the executor; and the person thus appointed is called the administrator durante absentia.

DURANTE MINORE AETATE. During the minority.

2. During his minority, an infant can enter into no contract, except those for his benefit. If he should be appointed an executor, administration of the estate will be granted, durante minore &,tate, to another person. 2 Bouv. Inst. n. 1555.

DURESS. An actual or a threatened violence or restraint of a man's person, contrary to law, to compel him to enter into a contract, or to discharge one. 1 Fairf. 325.

2. Sir William Blackstone divides duress into two sorts: First. Duress of imprisonment, where a man actually loses his liberty. If a man be illegally deprived of his liberty until he sign and seal a bond, or the like, he may allege this duress, and avoid the bond. But, if a man be legally imprisoned, and either to procure his discharge, or on any other fair account, seal a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. 2 Inst. 482; 3 Caines' R. 168; 6 Mass. R. 511; 1 Lev. 69; 1 Hen. & Munf. 350; 5 Shepl. R. 338. Where the proceedings at, law are a mere pretext, the instrument may be avoided. Aleyn, 92; 1 Bl. Com. 136.

3. Second. Duress per minas, which is either for fear of loss of life, or else for fear of mayhem, or loss of limb,; and this must be upon a sufficient reason. 1 Bl. Com. 131. In this case, a man way avoid his own act. Id. Lord Coke enumerates four instances in which a man may avoid his own act by reason of menaces: 1st. For fear of loss of life. 2d. Of member. 3d. Of mayhem. 4th. Of imprisonment. 2 Inst. 483; 2 Roll. Abr. 124 Bac. Ab. Duress; Id. Murder, A; 2 Str. R. 856 Fost. Cr. Law, 322; 2 St. R. 884 2 Ld. Raym. 1578; Sav. Dr. Rom. §114.

4. In South Carolina, duress of goods, under circumstances of great hardship, will avoid a contract. 2 Bay R. 211 Bay, R. 470. But see Hardin, R. 605; 2 Gallis. R. 337.

5. In Louisiana consent to a contract is void if it be produced by violence or threats, and the contract is invalid. Civ. Code of Louis. art. 1844.

6. It is not every degree of violence or any hind of threats, that will invalidate a contract; they must be such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune. The age, sex, state of health; temper and disposition of the party, and 0ther circumstances calculated to give greater or less effect to the violence or threats, must be taken into consideration. Id. art. 1845. The author of Fleta states the rule of the ancient common law thus: "Est autem metus praesentis vel futuri periculi causa mentis trepidatio; est praesertim viri constantis et non cujuslibet vani hominis vel meticulosi et talis debet esse metus qui in se contineat, mortis periculum, vel corporis cruciatura."

7. A contract by violence or threats, is void, although the party in whose favor the contract is made, and not exercise the violence or make the threats, and although he were ignorant of them. Id. 1846.

8. Violence or threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the hushand, the descendants or ascendants of the party are the object of them. Id. 1847. Fleta adds on this subject: "et exceptionem habet si sibi ipsi inferatur vis et metus verumetiam si vis ut filio vel filiae, patri vel fratri, vel sorori et ahis domesticis et propinquis."

9. If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract A just and legal imprisonment, or threats of any measure authorized by law, and the circumstances of the case, are of this description. Id. 1850. See Norris Peake's Evid. 440, and the cases cited also, 6 Mass. Rep. 506, for the general rule at common law.

10. But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; an arrest without cause of action, or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidate a contract made under their pressure. Id. 1851.

11. All the above, articles relate to cases where there may be some other motive besides the violence or threats for making the contract. When, however, there is no other cause for making the contract, any threats, even of slight injury, will invalidate it. Id. 1853. Vide, generally, 2 Watts, 167; 1 Bailey, 84; 6 Mass. 511; 6 N. H. Rep. 508; 2 Gallis. R. 337.

DUTIES. In its most enlarged sense, this word is nearly equivalent to taxes, embracing all impositions or charges levied on persons or things; in its more restrained sense, it is often used as equivalent to customs, (q. v.) or imposts. (q. v.) Story, Const. §949. Vide, for the rate of duties payable on goods and merchandise, Gord. Dig. B. 7, t. 1, c. 1; Story's L. U. S. Index, h. t.

DUTY, natural law. A human action which is, exactly conformable to the laws which require us to obey them.

2. It differs from a legal obligation, because a duty cannot always be enforeed by the law; it is our duty, for example, to be temperate in eating, but we are under no legal obligation to be so; we ought to love our neighbors, but no law obliges us to love them.

3. Duties may be considered in the relation of man towards God, towards himself, and towards mankind. 1. We are bound to obey the will of God as far as we are able to discover it, because he is the sovereign Lord of the universe who made and governs all things by his almighty power, and infinite wisdom. The general name of this duty is piety: which consists in entertaining just opinions concerning him, and partly in such affections towards him, and such, worship of him, as is suitable to these opinions.

4. - 2. A man has a duty to perform towards himself; he is bound by the law of nature to protect his life and his limbs; it is his duty, too, to avoid all intemperance in eating and drinking, and in the unlawful gratification of all his other appetites.

5. - 3. He has duties to perform towards others. He is bound to do to others the same justice which he would have a right to expect them to do to him.

DWELLING: HOUSE. A building inhabited by man. A mansion. (q. v.)

2. A part of a house is, in one sense, a dwelling house; for example, where two or more persons rent of the owner different parts of a house, so as to have among them the whole house, and the owner does not reserve or occupy any part, the separate portion of each will, in cases of burglary, be considered the dwelling house of each. 1 Mood. Cr. bas. 23.

3. At common law, in cases of burglary, under the term dwelling house are included the out-houses within the curtilage or common fence with the dwelling house. 3 Inst. 64; 4 Bl. Com. 225; and vide Russ & Ry. Cr. Cas. 170; Id. 186; 16 Mass. 105; 16 John. 203; 18 John. 115; 4 Call, 109; 1 Moody, Cr. Cas. 274; Burglary; Door; House; Jail; Mansion.

DYING DECLARATIONS. When a man has received a mortal wound or other injury, by which he is in imminent danger of dying, and believes that he must die, and afterwards does die, the statements he makes as to the manner in which he received such injury, and the person who committed it, are called his dying declarations.

2. These declarations are received in evidence against the person thus accused, on the ground that the party making them can have no motive but to tell the truth. The following lines have been put into the mouth of such a man:

> Have I not hideous Death before my view,
> Retaining but a quantity of life,
> Which bleeds away, even as a form of wax
> Resolveth from his figure 'gainst the fire ?
> What in the world should make me now deceive,
> Since I must lose the use of all deceit?

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Why then should I be false, since it is true
That I must die here, and live hence by truth.
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See Death; Deathbed or dying declarations; Declarations.

DYNASTY. A succession of kings in the same line or family; government; sovereignty.

DYSNOMY. Bad legislation; the enactment of bad laws.

DYSPEPSIA, med. jur., contracts. A state of the stomach in which its functions are disturbed, without the presence of other diseases; or when, if other diseases are present, they are of minor importance. Dunglison's Med. Dict. h. t.

2. Dyspepsia is not, in general, considered as a disease which tends to shorten life, so as to make a life uninsurable; unless the complaint has become organic dyspepsia, or was of such a degree at the time of the insurance, as, by its excess, to tend to shorten life. 4 Taunt. 763.

DYVOUR, Scotch law. A bankrupt.

DYVOUR'S HABIT. Scotch law. A habit which debtors, who are set free on a cessio bonorum, are obliged to wear, unless in the summons and process of cessio, it be libelled, sustained, and proved that the bankruptcy proceeds from misfortune. And bankrupts are condemned to submit to the habit, even where no suspicion of fraud lies against them, if they have been dealers in an illicit trade. Ersk. Pr. L. Scot. 4, 3, 13. This practice was bottomed on that of the Roman civil law, which Filangierl says is better fitted to excite laughter than compassion. He adds: " Si conduce il debitore vicino ad una colonna a quest officio destinata, egli l'abbraccia nel mentre, che uno araldo grida Cedo bonis ed un al tro gli abza le vesti, e palesa agli spettatori le sue natiche. Finita questa ceremonia il debitore messo in liberta." Filangieri della legislazione, cap. iv.

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E

E CONVERSO. On the other side or hand; on the contrary.

E PLURIBUS UNUM. One from more. The motto of the arms of the United States.

EAGLE, money. A gold coin of the United States, of the value of ten dollars. It weighs two hundred and fifty-eight grains. Of one thousand parts, nine hundred are of pure gold, and one hundred of all Act of January 18, 1837, 4 Sharsw. Cont. of Story's L. U. S. 2523, 4. Vide Money.

EAR-WITNESS. One who attests to things he has heard himself.

EARL, Eng. law. A title of nobility next below a marquis and above a viscount.

2. Earls were anciently called comites, because they were wont comitari regem, to wait upon the king for counsel and advice. He was also called shireman, because each earl had the civil government of a shire.

3. After the Norman conquest they were called counts, whence the shires obtained the names of counties. They have now nothing to do with the government of counties, which has entirely devolved on the sheriff, the earl's deputy, or vice comes.

EARLDOM. The seigniory of an earl; the title and dignity of an earl.

EARNEST, contracts. The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract.

2. The effect of earnest is to bind the goods sold, and upon their being paid for without default, the buyer is entitled to them. But notwithstanding the earnest, the money must be paid upon taking away the goods, because no other time for payment is appointed; earnest only binds the bargain, and gives the buyer a right to demand, but a demand without payment of the money is void; after earnest given the vendor cannot sell the goods to another, without a default in the vendee, and therefore if the latter does not come and pay, and take the goods, the vendor ought to go and request him, and then if he does not come, pay for the goods and take them away in convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person. 1 Salk. 113: 2 Bl. Com. 447; 2 Kent, Com. 389; Ayl. Pand. 450; 3 Campb. R. 426.

EASEMENTS, estates. An easement is defined to be a liberty privilege or advantage, which one man may have in the lands of another, without profit; it may arise by deed or prescription. Vide 1 Serg. & Rawle 298; 5 Barn. & Cr. 221; 3 Barn. & Cr. 339; 3 Bing. R. 118; 3 McCord, R. 131, 194; 2 McCord, R. 451; 14 Mass. R. 49 3 Pick. R. 408.

2. This is an incorporeal hereditament, and corresponds nearly to the servitudes or services of the civil law. Vide Lilly's Reg. h. t. 2 Bouv. Inst. n. 1600, et seq.; 3 Kent, Com. 344: Cruise, Dig. t. 31, c. 1, s. 17; 2 Hill. Ab. c. 5; 9 Pick. R. 51; 1 Bail. R. 56; 5 Mass. R. 129; 4 McCord's R. 102; Whatl. on Eas. passim; and the article Servitude.

EASTER TERM, Eng. law. One of the four terms of the courts. It is now a fixed term beginning on the 15th of April and ending the 8th of May in every year. It was formerly a movable term.

EAT INDE SINE DIE. Words used on an acquittal, or when a prisoner is to be discharged, that he may go without day, that is, that he be dismissed. Dane's Ab. Index, h. t.

EAVES-DROPPERS, crim. law. Persons as wait under walls or windows or the eaves of a house, to listen to discourses, and thereupon to frame mischievous tales.

2. The common law punishment for this offence is fine, and finding sureties for good behaviour. 4 Bl. Com. 167; Burn's Just. h. t.; Dane's Ab. Index, h. t.; 1 Russ. Cr. 302.

3. In Tennessee, an indictment will not lie for eaves-dropping. 2 Tenn. R. 108.

ECCHYMOSIS, med. jur. Blackness. It is an extravasation of blood by rupture of capillary vessels, and hence it follows contusion; but it may exist, as in cases of scurvy, and other morbid conditions, without the latter. Ryan's Med. Jur. 172.

ECCLESIA. In classical Greek this word signifies any assembly, and in this sense it is used in Acts xix. 39. But ordinarily, in the New Testament, the word denotes a Christian assembly, and is rendered into English by the word church. It occurs thrice only in, the Gospels, viz. in Matt. xvi. 18, and xviii. 17; but very frequently in the other parts of the New Testament, beginning with Acts ii. 47. In Acts xix. 37, the word churches, in the common English version, seems to be improperly used to denote heathen temples. Figuratively, the word church is employed to signify the building set apart for the Christian assemblies; but the word eclesia is not used in the New Testament in that sense.

ECCLESIASTIC. A clergyman; one destined to the divine ministry, as, a bishop, a priest, a deacon. Dom. Lois Civ. liv. prel. t. 2, s. 2, n. 14.

ECCLESIASTICAL. Belonging to, or set apart for the church; as, distinguished from civil or secular. Vide Church.

ECCLESIASTICAL COURTS. English law. Courts held by the king's authority as supreme governor of the church, for matters which chiefly concern religion.

2. There are ten courts which may be ranged under this class. 1. The Archdeacon's Court. 2. The Consistory Court. 3. The Court of Arches. 4. The Court of Peculiars. 5. The Prerogative Court. 6. The Court of Delegates, which is the great court of appeals in all ecclesiastical causes. 7. The Court of Convocation. 8. The Court of Audience. 9. The Court of Faculties. 10. The Court of Commissioners of Review.

ECCLESIASTICAL LAW. By this phrase it is intended to include all those rules which govern ecclesiastical tribunals. Vide Law Canon.

ECCLESIASTICS, canon law. Those persons who compose the hierarchial state of the church. They are regular and secular. Aso & Man. Inst. B. 2, t. 5, c. 4, §1.

ECLAMPSIA PARTURIENTIUM, med. jur. The name of a disease accompanied by apoplectic convulsions, and which produces aberration of mind at childbirth. The word Eclampsia is of Greek origin - Significat splenaorem fulgorem effulgentiam, et emicationem quales ex ocuIis aliquando prodeunt. Metaphorice sumitur de emicatione flammae vitalis in pubertate et aetaeis vigore. Castelli, Lex. Medic.

2. An ordinary person, it is said, would scarcely observe it, and it requires the practised and skilled eye of a physician to discover that the-patient is acting in total unconsciousness of the nature and effect of her acts. There can be but little doubt that many of the tragical cases of infanticide proceed from this cause. The criminal judge and lawyer cannot inquire with too much care into the symptoms of this disease, in order to discover the guilt of the mother, where it exists, and to ascertain her innocence, where it does not. See two well reported cases of this kind in the Boston Medical Journal, vol. 27, No. 10, p. 161.

EDICT. A law ordained by the sovereign, by which he forbids or commands something it extends either to the whole country, or only to some particular provinces.

2. Edicts are somewhat similar to public proclamations. Their difference consists in this, that the former have authority and form of law in themselves, whereas the latter are at most, declarations of a law, before enacted by congress, or the legislature.

3. Among the Romans this word sometimes signified, a citation to appear before a judge. The edict of the emperors, also called constitutiones principum, were new laws which they made of their own motion, either to decide cases which they had foreseen, or to abolish or change some ancient laws. They were different from their rescripts or decrees. These edicts were the sources which contributed to the formation of the Gregorian, Hermogenian, Theodosian, and Justinian Codes. Vide Dig. 1, 4, 1, 1; Inst. 1, 2, 7; Code, 1, 1 Nov. 139.

EDICT PERPETUAL. The title of a compilation of all the edicts. This collection was made by Salvius Julianus, a jurist who was, selected by the emperor Adrian for the purpose, and who performed his task with credit to himself.

EDICTS OF JUSTINIAN. These are thirteen constitutions or laws of that prince, found in most editions of the corpus juris civilis, after the Novels. Being confined to matters of police in the provinces of the empire, they are of little use.

EFFECT. The operation of a law, of an agreement, or an act, is called its effect.

2. By the laws of the United States, a patent cannot be granted for an effect only, but it may be for a new mode or application of machinery to produce effects. 1 Gallis. 478; see 4 Mason, 1; Pet. C. C. R. 394; 2 N. H. R. 61.

EFFECTS. This word used simpliciter is equivalent to property or, worldly substance, and may carry the whole personal estate, when used in a will. 5 Madd. Ch. Rep. 72; Cowp. 299; 15 Ves. 507; 6 Madd. Ch. R. 119. But when it is preceded and connected with words of a narrower import, and the bequest is not residuary, it will be confined to species of property ejusdem generis with those previously described. 13 Ves. 39; 15 Ves. 826; Roper on Leg. 210.

EFFIGY, crim. law. The figure or representation of a person.

2. To make the effigy of a person with an intent to make him the object of ridicule, is a libel. (q. v.) Hawk. b. 1, c. 7 3, s. 2 14 East, 227; 2 Chit. Cr. Law, 866.

3. In France an execution by effigy or in effigy is adopted in the case of a criminal who has fled from justice. By the public exposure or exhibition of a picture or representation of him on a scaffold, on which his name and the decree condemning him are written, he is deemed to undergo the punishment to which he has been sentenced. Since the adoption of the Code Civil, the practice has been to affix the names, qualities or addition, and the residence of the condemned person, together with an extract from the sentence of condemnation, to a post set upright in the ground,

instead of exhibiting a portrait of him on the scaffold. Repertoire de Villargues; Biret, Vo cab.

EFFRACTION. A breach, made by the use of force.

EFFRACTOR. One who breaks through; one who commits a burglary.

EGO. I, myself. This term is used in forming genealogical tables, to represent the person who is the object of inquiry.

EIGNE, persons. This is a corruption of the French word aine, eldest or first born.

2. It is frequently used in our old law books, bastard eigne. signifies an elder bastard when spoken of two children, one of whom was; born before the marriage of his parents, and the other after; the latter is called mulier puisne. Litt. sect. 399.

EIRE, or EYRE, English law. A journey. Justices in eyre, were itinerant judges, who were sent once in seven years with a general commission in divers counties, to hear and determine such causes as were called pleas of the crown. Vide Justices in eyre.

EJECTMENT, remedies. The name of an action which lies for the recovery of the possession of real property, and of damages for the unlawful detention. In its nature it is entirely different from a real action. 2 Term Rep; 696, 700. See 17 S. & R. 187, and, authorities cited.

2. This subject may be considered with reference, 1st. To the form of the, proceedings. 2d. To the nature of the property or thing to be recovered. 3d. To the right to such property. 4th. To the nature of the ouster or injury. 5th. To the judgment.

3. - 1. In the English practice, which is still adhered to in some states, in order to lay the foundation of this action, the party claiming title enters upon the land, and then gives a lease of it to a third person, who, being ejected by the other claimant, or some one else for him, brings a suit against, the ejector in his own name; to sustain the action the lessee must prove a good title in the lessor, and, in this collateral way, the title is tried. To obviate the difficulty of proving these forms, this action has been made, substantially, a fictitious process. The defendant agrees, and is required to confess that a lease was made to the plaintiff, that he entered under it, and has been ousted by the defendant, or, in other words, to admit lease, entry, and ouster, and that he will rely only upon his title. An actual entry, however, is still supposed, and therefore, an ejectment will not lie, if the right of entry is gone. 3 Bl. Com. 199 to 206. In Pennsylvania, New York, Arkansas, and perhaps other states, these fictions have all

been abolished, and the writ of ejectment sets forth the possessionof the plaintiff, and an unlawful entry on the part of the defendant.

4. - 2. This action is in general sustainable only for the recovery of the possession of property upon which an entry might in point of fact be made, and of which the sheriff could deliver actual possession: it cannot, therefore, in general, be sustained for the recovery of property which, in legal consideration, is not tangible; as, for a rent, or other incorporeal heriditaments, a water-course, or for a mere privilege of a landing held in common with other citizens of a town. 2 Yeates, 331; 3 Bl. Com. 206; Yelv. 143; Run. Eject. 121 to 136 Ad. Eject. c. 2; 9 John. 298; 16 John. 284.

5. - 3. The title of the party having a right of entry maybe in fee-simple, fee-tail, or for life or years; and if it be the best title to the property the plaintiff will succeed. The plaintiff must recover on the strength. of his title, and not on the weakness or deficiency of that of the defendant. Addis. Rep. 390; 2 Serg. & Rawle, 65; 3 Serg. & Rawle, 288; 4 Burr. 2487; 1 East, R. 246; Run. Eject. 15; 5 T. R. 110.

6. - 4. The injury sustained must in fact or in point of law have amounted to an ouster or dispossession of the lessor of the plaintiff, or of the plaintiff himself, where the fictions have been abolished; for if there be no ouster, or the defendant be not in possession at the time of bringing the action, the plaintiff must fail. 7 T. R. 327; 1 B. & P. 573; 2 Caines' R. 335.

7. - 5. The judgment is that the plaintiff do recover his term, of and in the tenements, and, unless the damages be remitted, the damages assessed by the jury with the costs of increase. In Pennsylvania, however, and, it is presumable, in all those states where the fictitious form of this action has been abolished, the plaintiff recovers possession of the land generally, and not simply a term of years in the land. See 2 Seam. 251; 4 B. Monr. 210; 3 Harr. 73; 1 McLean, 87. Vide, generally, Adams on Ej.; 4 Bouv. Inst. n., 3651, et seq.; Run. Ej.; Com. Dig. h. t.; Dane's Ab. h. t.; 1 Chit. Pl. 188 to 193; 18 E. C. L. R. 158; Woodf. L. & T. 354 to 417; 2 Phil. Ev. 169.; 8 Vin. Ab. 323; Arch. Civ. Pl. 503; 2 Sell. Pr. 85; Chit. Pr. lndex, h. t.; Bac. Ab. h. t Doct. Pl. 227; Am. Dig. h. t.; Report of the Commissioners to Revise the Civil Code of Pennsylvania, January 16, 1835, pp. 80, 81, 83; Coop. Justinian, 448.

EJUSDEM GENERIS. Of the same kind.

2. In the construction of laws, wills and other instruments, when certain things are enumerated, and then a phrase is used which might be construed to include other things, it is generally confined to things ejusdem generas; as, where an act (9 Ann. C. 20) provided that a writ of quo warranto might issue against persons who should usurp "the offices of mayors, bailiffs, port reeves, and other offices, within the cities, towns,

corporate boroughs, and places, within Great Britain," &c.; it was held that "other offices" meant offices ejusdem generis; and that the word "places" signified places of the same kind; that is, that the offices must be corporate offices, and the places must be corporate Places. 5 T. R. 375,379; 5 B . & C. 640; 8 D. & Ry. 393; 1 B. & C. 237.

3. So, in the construction of wills, when certain articles are enumerated, the terra goods is to be restricted to those ejusdem generis. Bac. Ab. Legacies, B; 3 Rand. 191; 3 Atk. 61; Abr. Eq. 201; 2 Atk. 113.

ELDEST. He or she who has the greatest age.

2. The laws of primogeniture are not in force in the United States; the eldest child of a family cannot, therefore, claim any right in consequence of being the eldest.

ELECTION. This term, in its most usual acceptation, signifies the choice which several persons collectively make of a person to fill an office or place. In another sense, it means the choice which is made by a person having the right, of selecting one of two alternative contracts or rights. Elections, then, are of men or things.

2. - §1. Of men. These are either public elections, or elections by companies or corporations.

3. - 1. Public elections. These should be free and uninfluenced either by hope or fear. They are, therefore, generally made by ballot, except those by persons in their representative capacities, which are viva voce. And to render this freedom as perfect as possible, electors are generally exempted from arrest in all cases, except treason, felony, or breach of the peace, during their attendance on election, and in going to and returning from them. And provisions are made by law, in several states, to prevent the interference or appearance of the military on the election ground.

4. One of the cardinal principles on the subject of elections is, that the person who receives a majority or plurality of votes is the person elected. Generally a plurality of the votes of the electors present is sufficient; but in some states a majority of all the votes is required. Each elector has one vote.

5. - 2. Elections by corporations or companies are made by the members, in such a way its their respective constitutions or charters direct. It is usual in these cases to vote a greater or lesser number of votes in proportion as the voter has a greater or less amount of the stock of the company or corporation, if such corporation or company be a pecuniary institution. And the members are frequently permitted to vote by proxy. See 7 John. 287; 9 John. 147; 5 Cowen, 426; 7 Cowen, 153; 8 Cowen, 387; 6 Wend. 509; 1 Wend. 98.

6. - §2. The election of things. 1. In contracts, when a; debtor is obliged, in an alternative obligation, to do one of two things, as to pay one hundred dollars or deliver one hundred bushels of wheat, he has the choice to do the one or the other, until the time of payment; he has not the choice, however, to pay a part in each. Poth. Obl. part 2, c. 3, art. 6, No. 247; ll John. 59. Or, if a man sell or agree to deliver one of two articles, as a horse or an ox, he has the election till the time of delivery; it being a rule that "in case an election be given of two several things, always be, which is the first agent, and which ought to do the first act, shall have the election." Co. Litt. 145, a; 7 John. 465; 2 Bibb, R. 171. On the failure of the person who has the right to make his election in proper time, the right passes to the opposite party. Co. Litt. 145, a; Viner, Abr. Election, B, C; Poth. Obl. No. 247; Bac. Ab. h. t. B; 1 Desaus. 460; Hopk. R. 337. It is a maxim of law, that an election once made and pleaded, the party is concluded, electio semel facta, et placitum testatum, non patitur regress-um. Co. Litt. 146; 11 John. 241.

7.-2. Courts of equity have adopted the principle, that a person shall not be permitted to claim under any instrument, whether it be a deed or will, without giving full effect to it, in every respect, so far as such person is concerned. This doctrine is called into exercise when a testator gives what does not belong to him, but to some other person, and gives, to that person some estate of his own; by virtue of which gift a condition is implied, either that he shall part with his own estate or shall not take the bounty. 9 Ves. 515; 10 Ves. 609; 13 Ves. 220. In such a case, equity will not allow the first legatee to, insist upon that by which he would deprive another legatee under the same will of the benefit to which he would be entitled, if the first legatee permited the whole will to operate, and therefore compels him to make his election between his right independent of the will, and the benefit under it. This principle of equity does not give the disappointed legatee the right to detain the thing itself, but gives a right to compensation out of something else. 2 Rop. Leg. 378, c. 23, s. 1. In order to impose upon a party, claiming under a will, the obligation of making an election, the intention of the testator must be expressed, or clearly implied in the will itself, in two respects; first, to dispose of that which is not his own; and, secondly, that the person taking the benefit under the will should, take under the condition of giving effect thereto. 6 Dow. P. C. 179; 13 Ves. 174; 15 Ves. 390; 1 Bro. C. C. 492;3 Bro. C. C. 255; 3 P. Wms. 315; 1 Ves. jr. 172, 335; S. C. 2 Ves. jr. 367, 371; 3 Ves. jr. 65; Amb. 433; 3 Bro. P. C. by Toml. 277; 1 B. & Beat. 1; 1 McClel. R. 424, 489, 541. See, generally, on this doctrine, Roper's Legacies, c. 23; and the learned notes of Mr. Swanston to the case Dillon v. Parker, 1 Swanst. R. 394, 408; Com. Dig. Appendix, tit. Election; 3 Desaus. R. 504; 8 Leigh, R. 389; Jacob, R. 505; 1 Clark & Fin. 303; 1 Sim. R. 105; 13 Price, R. 607; 1 McClel. R. 439; 1 Y. & C. 66; 2 Story, Eq. Jur. §1075 to 1135; Domat, Lois Civ. liv. 4, tit. 2, §3, art. 3, 4, 5; Poth. Pand. lib. 30, t. 1, n. 125; Inst. 2, 20, 4; Dig. 30, 1, 89, 7.

8. There are many other cases where a party may be compelled to make an election, which it does not fall within the plan of this work to consider. The reader will easily inform himself by examining the works above referred to.

9. - 3. The law frequently gives several forms of action to the injured party, to enable him to recover his rights. To make a proper election of the proper remedy is of great importance. To enable the practitioner to make the best election, Mr. Chitty, in his valuable Treatise on Pleadings, p. 207, et seq., has very ably examined the subject, and given rules for forming a correct judgment; as his work is in the hands of every member of the profession, a reference to it here is all that is deemed necessary to say on this subject. See also, Hammond on Parties to Actions; Brown's Practical Treatise on Actions at Law, in the 45th vol. of the Law Library; U. S. Dig. Actions IV.

ELECTION OF ACTIONS, practice. It is frequently at the choice of the plaintiff what kind of an action to bring; a skilful practitioner would naturally select that in which his client can most easily prove what is his interest in the matter affected; may recover all his several demands against the defendant; may preclude the defendant from availing himself of a defence, which be might otherwise establish; may most easily introduce his own evidence; may not be embarrassed by making too. many or too few persons parties to the suit; may try it in the county most convenient to himself; may demand bail where it is for the plaintiff's interest; may obtain a judgment with the least expense and delay; may entitle himself to costs; and may demand bail in error. 1 Chit. Pl. 207 to 214.

2. It may be laid down as a general rule, that when a statute prescribes a new remedy, the plaintiff has his election either to adopt such remedy, or proceed at common law. Such statutory remedy is cumulative, unless the statute expressly, or by necessary implication takes away the Common law remedy. 1 S. & R. 32; 6 S. & R. 20; 5 John. 175; 10 John. 389; 16 John. 220; 1 Call, 243; 2 Greenl. 404; 5 Greenl. 38; 6 Harr. & John. 383; 4 Halst. 384; 3 Chit. Pr. 130.

ELECTION OF A DEVISE OR LEGACY. It is an admitted principle, that a person shall not be permitted to claim under any instrument, whether it be a deed or a will, without giving full effect to it in every respect, so far as such person is concerned. When a testator, therefore, gives what belongs to another and not to him, and gives to the owner some estate of his own; this gift is under an implied condition, either that he shall part with his own estate, or not take the bounty. 9 Ves. 615; 10 Ves. 609; 13 Ves. 220; 2 Ves. 697; 1 Suppl. to Ves. jr. 222; Id. 55; Id. 340. If, for example, a testator undertakes to dispose of an estate belonging to B, and devise to B other lands, or bequeath to him a legacy by the same will, B will not be permitted to keep his own estate, and enjoy at the same time the benefit of the devise or bequest made in his favor, but must elect whether he will part with his own estate, and accept the

provisions in the will, or continue in possession of the former and reject the latter. See 2 Vern. 5.81; Forr. 176; 1 Swanst. 436, 447 1 Rro. C. C. 480; 2 Rawle, 168; 17 S. & R. 16 2 Gill, R. 182, 201; 1 Dev. Eq. R. 283; 3 Desaus. 346; 6 John. Ch. R. 33; Riley, Ch. R. 205; 1 Whart. 490; 5 Dana, 345; White's L. C. in Eq. *233.

2. The foundation of the equitable doctrine of election, is the intention, explicit or presumed, of the author of the instrument to which it is applied, and such is the, import of the expression by which it is described as proceeding, sometimes on a tacit, implied, or constructive condition, sometimes on equity. See Cas. temp. Talb. 183; 2 Vern. 582; 2 Ves. 14; 1 Eden, R. 536; 1 Ves. 306. See, generally, 1 Swan. 380 to 408, 414, 425, 432, several very full notes.

3. As to what acts of acceptance or acquiescence will constitute an implied election, see 1 Swan. R. 381, n. a; and the cases there cited.

ELECTOR, government. One who has the right to make choice of public officers one, who has a right to vote.

2. The qualifications of electors are generally the same as those required in the person to be elected; to this, however, there is one exception; a naturalized citizen may be an elector of president of the United States, although he could not constitutionally be elected to that office.

ELECTORS OF PRESIDENT. Persons elected by the people, whose sole duty is to elect a president and vice-president of the U. S.

2. The Constitution provides, Am. art. 12, that "the electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted fur as president, and of all persons voted for as vice-president, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and the house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of, votes for president, shall be the president, if such number be the majority of the whole number of electors appointed; and if no, person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum, for this purpose, shall

consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

3. - 2. "The person having the greatest number of votes as vice-president shall be vice-president, if such number be a majority of the whole number of electors appointed and if no person have a majority, them from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States." Vide 3 Story, Const. §1448 to 1470.

ELEEMOSYNARY. Charitable alms-giving.

2. Eleemosynary corporations are colleges, schools, and hospitals. 1 Wood. Lect. 474; Skinn. 447 1 Lord Raym. 5 2 T. R. 346.

ELEGIT, Eng. practice, remedies. A writ of execution directed to the sheriff, commanding him to make delivery of a moiety of the party's land, and all his goods, beasts of the plough only excepted.

2. The sheriff, on the receipt of the writ, holds an inquest to ascertain the value of the lands and goods he has seized, and then they are delivered to the plaintiff, who retains them until the whole debt and damages have been paid and satisfied; during that term he is called tenant by elegit. Co. Litt. 289. Vide Pow. Mortg. Index, h. t.; Wats. Sher. 206. As to the law of the several states on the subject. of seizing land and extending it. see 1 Hill. Ab. 556-6.

ELIGIBILITY. Capacity to be elected.

2. Citizens are in general eligible to all offices; the exceptions arise from the want of those qualifications which the constitution requires; these are such as regard his person, his property, or relations to the state.

3.- 1. In. general, no person is eligible to any office, until he has attained the full age of twenty-one years; no one can be elected a senator of the United States, who shall not have attained the age of thirty years, been a 'citizen of th e United States nine years and who shall not be an inhabitant of the, state for which he shall be chosen. Const. art. 1, s. 3. No person, except a natural born citizen, or a citizen of the United

States at the time of the adoption of this constitution, is eligible to the office of president, and no person shall be eligible to that office, who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States. Const. art. 2, s. 1.

4. - 2. A citizen may be ineligible in consequence of his relations to the state; for example, holding an office incompatible with the office sought. Vide Ineligibility. Because he has not paid the taxes the law requires; because he has not resided a sufficient length of time in the state.

5. - 3. He may be ineligible for want of certain property qualifications required by some, law.

ELISORS, practice. Two persons appointed by the court to return a jury, when the sheriff and the coroner have been challenged as incompetent; in this case the elisors return the writ of venire directed to them, with a panel of the juror's names, and their return is final, no challenge being allowed to their array. 3 Bl. Com. 355,; 3 Cowen, 296; 1 Cowen, 32.

ELL. A measure of length. In old English the word signifies arm, which sense it still retains in the word elbow. Nature has no standard of measure. The cubit, the ell, the span, palm, hand, finger, (being taken from the individual who uses them) varies. So of the foot, pace, mile, or mille passuum. See Report on Weights and Measures, by the Secretary of State of the United. States, Feb. 22, 1821; Fathom.

ELOIGNE, practice. This word signifies, literally, to remove to a distance; to remove afar off. It is used as a return to a writ of replevin, when the chattels have been removed out of the way of the sheriff. Vide Elongata.

ELONGATA, practice. There turn made by the sheriff to a writ of replevin, when the goods have been removed to places unknown to him. See, for the form of this return, Wats. Sher. Appx. c. 18, .s. 3, p. 454; 3 Bl. Com. 148.

2. On this return the plaintiff is entitled to a capias in withernam. Vide Withernam, and Wats. Sher. 300, 301. The word eloigne, (q. v.) is sometimes used as synonymous with elongata.

ELOPEMENT. This term is used to denote the departure of a married woman from her hushand, and dwelling with an adulterer.

2. While the wife reides with her hushand, and cohabits with him, however exceptionable her conduct may be, yet he is bound to provide her with necessaries,

and to pay for them; but when she elopes, the hushand is no longer liable for her alimony, and is not bound to pay debts of her contracting when the separation is notorious; and whoever gives her credit under these circumstances, does so at his peril. Chit. Contr. 49; 4 Esp. R. 42; 3 Pick. R. 289; 1 Str. R. 647, 706; 6 T. R. 603; 11 John. R. 281; 12 John. R. 293; Bull. N. P. 135; Stark. Ev. part 4, p. 699.

ELOQUENCE OR ORATORY. The act or art of speaking well upon any subject with a view to persuade. It comprehends a good elocution, correct and appropriate expressions uttered. with fluency, animation and suitable action. The principal rules of the art, which must be sought for in other works, are summarily expressed in the following lines:

" Be brief, be pointed; let your matter stand Lucid in order, solid, and at hand; Spend not your words on trifles, but condense; Strike with the mass of thoughts, not drops of sense; Press to the close with vigor once begun, And leave, (how hard the task!) leave off when done; Who draws a labor'd length of reasoning out, Put straws in lines for winds to whirl about; Who draws a tedious tale of learning o'er, Counts but the sands on ocean's boundless shore; Victory in law is gain'd as battle's fought, Not by the numbers, but the forces brought; What boots success in skirmishes or in fray, If rout and ruin following close the day? What worth a hundred Posts maintained with skill, If these all held, the foe is victor still? He who would win his cause, with power must frame Points of support, and look with steady aim: Attack the weak, defend the strong with art, Strike but few blows, but strike them to the heart; All scatter'd fires but end in smoke and noise, The scorn of men, the idle play of boys. Keep, then, this first great precept ever near, Short be your speech, your matter strong and clear, Earnest your manner, warm and rich your style, Severe in taste, yet full of grace the while; So may you reach the loftiest heights of fame, And leave, when life is past, a deathless name."

ELSEWHERE. In another place.

2. Where one devises all his land in A, B and C, three distinct towns, and elsewhere, and had lands of much greater value than those in A, B and C, in another county, the lands in the other county were decreed to pass by the word elsewhere; and by Lord Chancellor King, assisted by Raymond, Ch. J., and other judges, the word elsewhere, was adjudged to be the same as if the testator had said he devised all his lands in the three towns particularly mentioned, or in any other place whatever. 3 P. Wms. 5 6. See also Prec. Chan. 202; 2 Vern. 461; 2 Vern. 560; 3 Atk. 492; Cowp. 860; Id. 808; 2 Barr. 912; 5 Bro. P. C. 496; S. C. 1 East, 456; 1 Vern. 4 n.

3. - 2. As to the effect of the word elsewhere, in the case of lands not purchased at the time of making the will, see 3 Atk. 254; 2 Vent. 351. Vide Alibi.

EMANCIPATION. An act by which a person, who was once in the power of another, is rendered free. B y the laws of Louisiana, minors may be emancipated. Emancipation is express or implied.

2. Express emancipation. The minor may be emancipated by his father, or, if be has no father, by his mother, under certain restrictions. This emancipation takes place by the declaration, to that effect, of the father or mother, before a notary public, in the presence of two witnesses. The orphan minor may, likewise, be emancipated by the judge, but not before he has arrived at the full age of eighteen years, if the family meeting, called to that effect, be of opinion that he is able to administer his property. The minor may be emancipated against the will of his father and mother, when they ill treat him excessively, refuse him support, or give him corrupt example.

3. The marriage of the minor is an implied emancipation.

4. The minor who is emancipated has the full administration of his estate, and may pass all act's which may be confined to such administration; grant leases, receive his revenues and moneys which may be due him, and give receipts for the same. He cannot bind himself legally, by promise or obligation, for any sum exceeding the amount of one year of his revenue. When he is engaged in trade, he is considered as leaving arrived to the age of majority, for all acts which have any relation to such trade.

5. The emancipation, whatever be the manner in. which it may have been effected, may be revoked, whenever the minor contracts engagements which exceed the limits prescribed by law.

6. By the English law, filial emancipation is recognized, chiefly, in relation to the parochial settlement of paupers. See 3 T. R. 355; 6 T. R. 247; 8 T. R. 479; 2 East, 276; 10 East, 88.; 11 Verm. R. 258, 477. See Manumission. See Coop. Justin. 441, 480; 2 Dall. Rep. 57, 58; Civil Code of Louisiana, B. 1, tit. 8, c. 3; Code Civ. B. 1, tit. 10, c. 2; Diet. de Droit, par Ferriere; Diet. de Jurisp. art. Emancipation.

EMBARGO, maritime law. A proclamation, or order of state, usually issued in time of war, or threatened hostilities, prohibiting the departure of ships or goods from some, or all the ports of such state, until further order. 2 Wheat. 148.

2. The detention of ships by an embargo is such an injury to the owner as to entitle him to recover on a policy of insurance against "arrests or detainments." And whether

the embargo be legally or illegally laid, the injury to the owner is the same; and the insurer is equally liable for the loss occasioned by it. Marsh. Ins. B. 1, c. 12, s. 5; 1 Kent, Com. 60 1 Bell's Com. 517, 5th ed.

3. An embargo detaining a vessel at the port of departure, or in the course of the voyage, does not, of itself, work a dissolution of a charter party, or the contract with the seamen. It is only a temporary restraint imposed by authority for legitimate political purposes, which suspends, for a time, the performance of such contracts, and leaves the rights of parties untouched, 1 Bell's Com. 517; 8 T. R. 259; 5 Johns. R. 308; 7 Mass. R. 325, 3 B. & P. 405-434; 4 East, R. 546-566.

EMBEZZLEMENT, crim. law. The fraudulently removing and secreting of personal property, with which the party has been entrusted, for the purpose of applying it to his own use.

2. The Act of April 30, 1790, s. 16, 1 Story, L. U. S. 86, provides, that if any person, within any of the laces under the sole and exclusive jurisdiction of the United States, or upon the high seas, shall take and carry away, with an intent to steal or purloin, the personal goods of another; or if any person or persons, having, at any time hereafter, the charge or custody of any arms, ordnance, munition, shot, powder, or habiliments of war, belonging to the. United States, or of any victuals provided for the victualling of any soldiers, gunners, marines, or pioneers, shall, for any lucre or gain, or wittingly, advisedly, and of purpose to hinder or impede the service of the United States, embezzle, purloin, or convey away, any of the said arms, ordnance, munition, shot or powder, habiliments of war, or victuals, that then, and in every of the cases aforesaid, the persons so offending, their counsellors, aiders and abettors, (knowing of, and privy to the offences aforesaid,) shall, on conviction, be fined, not exceeding the fourfold value of the property so stolen, embezzled or purloined the one moiety to be paid to the owner of the goods, or the United States, as the case may be, and the other moiety to the informer and prosecutor, and be publicly whipped, not exceeding thirty-nine stripes.

3. The Act of April 20, 1818, 3 Story, 1715, directs that wines and distilled spirits shall, in certain cases, be deposited in the public warehouses of the United States, and then it is enacted, s. 5, that if any wines, or other spirits, deposited under the provisions of this act, shall be embezzled, or fraudulently hid or removed, from any store or place wherein they shall have been deposited, they shall be forfeited, and the person or persons so embezzling, hiding, or removing the same, or aiding or assisting therein, shall be liable to the same pains and penalties as if such wines or spirits had been fraudulently unshipped or landed without payment of duty.

4. By the 21st section of the act to reduce into one the several acts establishing and regulating the post-office, passed March 3, 1825, 3 Story, 1991, the offence of embezzling letters is punished with fine and imprisonment. Vide Letter.

5. The act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes, passed March 3, 1825, s. 24, 3 Story, 2006, enacts, that if any of the gold or silver coins which shall be struck or coined at the mint of the United States, shall be debased, or made worse, as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to the several acts relative thereto, through the default or with the connivance of any of the officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise, with a fraudulent intent and if any of the said officers or persons shall embezzle any of the metals which shall, at any time, be committed to their charge for the purpose of being coined; or any of the coins which shall be struck or coined, at the said mint; every such officer, or person who shall commit any, or either, of the said offences, shall be deemed guilty of felony, and shall be sentenced to imprisonment and hard labor for a term not less than one year, nor more than ten years, and shall be fined in a sum not exceeding ten thousand dollars.

6. When an embezzlement of a part of the cargo takes place on board of a ship, either from the fault, fraud, connivance or negligence of any of the crow, they are bound to contribute to the reparation of the loss, in proportion to their wages. When the embezzlement is fixed on any individual, he is solely responsible; when it is made by the crew, or some of the crew, but the particular offender is unknown, and from the circumstances of the case, strong presumptions of guilt apply to the whole crew, all must contribute. The presumption of innocence is always in favor of the crew, and the guilt of the parties must be established, beyond all reasonable doubt, before they can be required to contribute. 1 Mason's R. 104; 4 B. & P. 347; 3 Johns. Rep. 17; 1 Marsh. Ins. 241; Dane's Ab. Index, h. t.; Wesk. Ins. 194; 3 Kent, Com., 151; Hardin, 529.

EMBLEMENTS, rights. By this term is understood the crops growing upon the land. By crops is here meant the products of the earth which grow yearly and are raised by annual expense and labor, or "great manurance and industry," such as grain; but not fruits which grow on trees which are not to be planted yearly, or grass, and the like, though they are annual. Co. Litt. 55, b; Com. Dig. Biens, G; Ham. Part. 183, 184.

2. It is a general rule, that when the estate is terminated by the act of God in any other way than by the death of the tenant for life, or by act of the law, the tenant is entitled to the enablements; and when he dies before harvest time, his executors shall have the emblements, as a return for the labor and expense of the deceased in tilling the ground. 9 Johns. R. 112; 1 Chit. P. 91: 8 Vin. Ab. 364 Woodf. L. & T. 237 Toll. Ex.

book 2, c. 4; Bac. Ab Executors, H 3; Co. Litt. 55; Com. Dig. Biens G.; Dane's Ab. Index, h. t.; 1 Penna. R. 471; 3 Penna. 496; Ang. Wat. Co. 1 Bouv. Inst. Index, h. t.

EMBRACEOR, criminal law. He who, when a matter is on trial between party and party, comes to the bar with one of the parties, and having received some reward so to do, speaks in the case or privily labors the jury, or stands there to survey or overlook them, thereby to put them in fear and doubt of the matter. But persons learned in the law may speak in a case for their clients. Co. Litt. 369; Terms de la Ley. A person who is guilty of embracery. (q. v.)

EMBRACERY, crim. law. An attempt to corrupt or influence a jury, or any way incline them to be more favorable to the one side than to the other, by money, promises, threats, or persuasions; whether the juror on whom such attempt is made give any verdict or not, or whether the Verdict be true or false. Hawk. 259; Bac. Ab. Juries, M 3; Co. Litt. 157, b, 369, a; Hob. 294; Dy. 84, a, pl. 19; Noy, 102; 1 Str. 643; 11 Mod. 111, 118; Com. 601; 5 Cowen, 503.

EMENDALS, Eng. law. This ancient word is said to be used in the accounts of the inner temple, where so much in emendals at the foot of an account signifies so much in bank, in stock, for the supply of emergencies. Cunn. Law Dict.

EMIGRANT. One who quits his country for any lawful reason, with a design to settle elsewhere, and who takes his family and property, if he has any, with him. Vatt. b. 1, c. 19, §224.

EMIGRATION. The act of removing from one place to another. It is sometimes used in the same sense as expatriation, (q. v.) but there is some difference in the signification. Expatriation is the act of abandoning one's country, while emigration is, perhaps not strictly, applied to the act of removing from one part of the country to another. Vide 2 Kent, Com. 36.

EMINENCE; A title of honor given to cardinals.

EMINENT DOMAIN. The right which people or government retain over the estates of individuals, to resume the same for public use.

2. It belongs to the legislature to decide what improvements are of sufficient importance to justify the exercise of the right of eminent domain. See 2 Hill. Ab. 568 1 U. S. Dig. 560; 1 Am. Eq. Dig. 312 3 Toull. n. 30 p. 23; Ersk. hist. B. 2) tit. 1, s. 2; Grotius, h. t. See Dominium.

EMISSARY. One who is sent from one power or government into another nation for the purpose of spreading false rumors and to cause alarm. He differs from a spy. (q. v.)

EMISSION, med. jur. The act by which any matter whatever is thrown from the body; thus it is usual to say, emission of urine, emission of semen, &c.

2. In cases of rape, when the fact of penetration is proved, it may be left to the jury whether emission did or did not take place. Proof of emission would perhaps be held to be evidence of penetration. Addis. R. 143; 2 So. Car. Const. R. 351; 2 Chitty, Crim. Law, 810; 1 Beck's Med. Jur. 140 1 Russ. C. & M. 560; 1 East, P. C. 437.

TO EMIT. To put out; to send forth,

2. The tenth section of the first article of the constitution, contains various prohibitions, among which is the following: No state shall emit bills of credit. To emit bills of credit is to issue paper intended to circulate through the-community for its ordinary purposes, as money, which paper is redeemable at a future day. 4 Pet. R. 410, 432; Story on Const. §1358. Vide Bills of credit.

EMMENAGOGUES, med. jur. The name of a class of medicines which are believed to have the power. of favoring the discharge of the menses. These are black hellebore, savine, (vide Juneperius Sabina,) madder, mercury, polygala, senega, and pennyroyal. They are sometimes used for the criminal purpose of producing abortion. (q. v.) They always endanger the life of the woman. 1 Beck's Medical Jur. 316; Dungl. Med. Diet. h. t.; Parr's Med. Dict. h. t.; 3 Paris and Fonbl. Aled. Jur. 88.

EMOLUMENT. The lawful gain or profit which arises from an office.

EMPALEMENT. A punishment in which a sharp polo was forced up the fundament. Encyc. Lond. h. t.

TO ENPANEL, practice. To make a list or roll, by the sheriff or other authorized officer, of the names of jurors who are summoned to appear for the performance of such service as jurors are required to perform.

EMPEROR, an officer. This word is synonymous with the Latin imperator; they are both derived from the. verb imperare. Literally, it signifies he who commands.

2. Under the Roman republic, the title emperor was the generic name given to the commanders-in-chief in the armies. But even then the application of the word was restrained to the successful commander, who was declared emperor by the

acclamations of the army, and was afterwards honored with the title by a decree of the senate. 3. It, is now used to designate some sovereign prince who bears this title. Ayl. Pand. tit. 23.

EMPHYTEOSIS, civil law. The name of a contract by which the owner of an uncultivated piece of land granted it to another either in perpetuity, or for a long time, on condition that he should: improve it, by building, planting or cultivating it, and should pay for it an annual rent; with a right to the grantee to alienate it, or transmit it by descent to his heirs, and under a condition that the grantor should never re-enter as long as the rent should be paid to him by the grantee or his assigns. Inst. 3, 25, 3. 18 Toull. n. 144.

2. This has a striking resemblance to a ground-tent. (q. v.). See Nouveau Denisart, mot, Emphyteose; Merl. Reper. mot Emphyteose; Faber, De jure emphyt. Definit. 36; Code, 4, 66, 1.

EMPIRE. This word signifies, first, authority or command; it is the power to command or govern those actions of men which would otherwise be free; secondly, the country under the government of an emperor but sometimes it is used to designate a country subject to kingly power, as the British empire. Wolff, Inst. §833.

EMPLOYED. One who is in the service of another. Such a person is entitled to rights and liable to. perform certain duties.

2. He is entitled to a just compensation for his services; when there has been a special contract, to what has been agreed upon; when not, to such just recompense as he deserves.

3. He is bound to perform the services for which he has engaged himself; and for a violation of his engagement he may be sued, but he is not liable to corporal correction. An exception to this rule may be mentioned; on the ground of necessity, a sailor may be punished by reasonable correction, when it is necessary for the safety of the vessel, and to maintain discipline. 1 Bouv. Inst. n. 1001: 2 Id. n. 2296.

EMPLOYEE. One who is authorized to act for another; a mandatory.

EMPLOYMENT. An employment is an office; as, the secretary of the treasury has a laborious and responsible employment; an agency, as, the employment of an auctioneer; it signifies also the act by which one is engaged to do something. 2 Mart. N. S. 672; 2 Harr. Cond. Lo. R. 778.

2. The employment of a printer to publish the laws of the United States, is not an office. 17 S. & R. 219, 223. See Appointment.

EMPLOYER. One who has engaged or hired the services of another. He is entitled to rights and bound to perform duties.

2. - 1. His rights are, to be served according to the terms of the contract. 2. He has a right against third persons for an injury to the person employed, or for harboring him, so as to deprive the employer of his services. 2 Bouv. Inst. n. 2295.

3. His duties are to pay the workman the compensation agreed upon, or if there be no special agreement, such just recompense as he deserves. Vide Hire; Hirer.

EMPTION. The act of buying.

EMPTOR. A buyer; a purchaser.

EN DEMEURE. In default. This term is used in Louisiana. 3 N. S. 574. See Moral in.

ENABLING POWERS. A term used in equity. When the donor of a power, who is the owner of the estate, confers upon persons not seised of the fee, the right of creating interests to take effect out of it, which could not be done by the donee of the power, unless by such authority; this is called an enabling power. 2 Bouv. Inst. n. 1928.

TO ENACT. To establish by law; to perform or effect; to decree. The usual formula in making laws is, Be it enacted.

ENCEINTE, med. jur. A French word, which signifies pregnant.

2. When a woman is pregnant, and is convicted of a capital crime, she cannot lawfully be punished till after her delivery.

3. in the English law, where a widow is suspected to feign herself with child, in order to produce a supposititious heir to the estate, the presumptive heir may have a writ de ventre inspiciendo, to examine whether she be with child or not. Cro. Eliz. 566; 4 Bro. C. C. 90. As to the signs of pregnancy, see 1 Beck's Med. Jur. 157. See, generally, 4 Bl. Com. 894; 2 P. Wms. 591; 1 Cox, C. C. 297 and Pregnancy; Privement enceinte.

ENCLOSURE. An artificial fence put around one's estate. Vide Close.

ENCROACHMENT. An unlawful gaining upon the right or possession of another; as, when a man sets his fence beyond his line; in this case the proper remedy for the party injured is an action of ejectment, or an action of trespass.

ENCUMBRANCE. A burden or charge upon an estate or property, so that it cannot be disposed of without being subject to it. A mortgage, a lien for taxes, are examples of encumbrances.

2. These do not affect the possession of the grantee, and may be removed or extinguished by a definite pecuniary value. See 2 Greenl. R. 22; 5 Greenl. R. 94.

3. There are encumbrances of another kind which cannot be so removed, such as easements for example, a highway, or a preexisting right to take water from, the land. Strictly speaking, however, these are not encumbrances, but appurtenances to estates in other lands, or in the language of the civil law, servitudes. (q. v.) 5 Conn. R. 497; 10 Conn. R. 422 15 John. R. 483; and see 8 Pick. R. 349; 2 Wheat. R. 45. See 15 Verm. R. 683; l Metc. 480; 9 Metc. 462; 1 App. R. 313; 4 Ala. 21; 4 Humph. 99; 18 Pick. 403; 1 Ala. 645; 22 Pick. 447; 11 Gill & John. 472.

ENDEAVOR, crim. law. An attempt. (q. v.) Vide Revolt.

ENDORSEMENT. Vide Indorsement.

ENDOWMENT. The bestowing or assuring of a dower to a woman. It is sometimes used: metaphorically, for the setting a provision for a charitable institution, as the endowment of a hospital.

ENEMY, international law. By this term is understood the whole body of a nation at war with another. It also signifies a citizen or subject of such a nation, as when we say an alien enemy. In a still more extended sense, the word includes any of the subjects or citizens of a state in amity with the United States, who, have commenced, or have made preparations for commencing hostilities against the United States; and also the citizens or subjects of a state in amity with the United States, who are in the service of a state at war with them. Salk. 635; Bac. Ab. Treason, G.

2. An enemy cannot, as a general rule, enter into any contract which can be enforeed in the courts of law; but the rule is not without exceptions; as, for example, when a state permits expressly its own citizens to trade with the enemy; and perhaps a contract for necessaries, or for money to enable the individual to get home, might be enforced. 7 Pet. R . 586.

3. An alien enemy cannot, in general, sue during the war, a citizen of the United States, either in the courts of, the United States, or those of the several states. 1 Kent, Com. 68; 15 John. R. 57 S. C. 16 John. R. 438. Vide Marsh. Ins. c. 2, s. 1; Park. Ins. Index. h. t.; Wesk. Ins. 197; Phil. Ins. Index. h. t.; Chit. Comm. Law, Index, h. t.; Chit. Law of Nations, Index, h. t.

4. By the term enemy is also understood, a person who is desirous of doing injury to another. The Latins had two terms to signify these two classes of persons; the first , or the public enemy, they called hostis, and the latter, or the private enemy, inimicus.

TO ENFEOFF. To make a gift of any corporeal hereditaments to another. Vide Feoffment.

TO ENFRANCHISE. To make free to incorporate a man in a society or body politic. Cunn. L. D. h. t. Vide Disfranchise.

ENGAGEMENT. This word is frequently used in the French law to signify not only a contract, but the obligations arising from a quasi contract. The terms obligations (q. v.) and engagements, are said to be synonymous 17 Toull. n. 1; but the Code seems specially to apply the term engagement to those obligations which the law, imposes on a man without the intervention of any contract, either on the part of the obligor or the obligee. Art. 1370.

ENGLESHIRE. A law was made by Canutus, for the preservation of his Danes, that when a man was killed, the hundred or town should be liable to be amerced, unless it could be proved that the person killed was an Englishman. This proof was called Engleshire. It consisted, generally, of the testimony of two males on the part of the father of him that had been killed, and two females on the part of his mother. Hal. Hist. P . C. 447; 4 Bl. Com. 195; Spelman, Gloss. See Francigena .

TO ENGROSS, practice, conveyancing. To copy the rude draught of an instrument in a fair and large hand. See 3 Bouv. Inst. n, 2421, note.

ENGROSSER. One who purchases large quantities of any commodities in order to have the command of the market, and to sell them again at high prices.

TO ENJOIN. To command; to require; as, private individuals are not only permitted, but enjoined by law to arrest an offender when present at the time a felony is committed or dangerous wound given, on pain of fine and imprisonment if the wrong doer escape through their negligence. 1 Hale, 587; 1 East, P. C. 298, 304; Hawk. B. 2, c. 12, s. 13; R. & M. C. C. 93. 2. In a more technical sense, to enjoin, is to command

or order a defendant in equity to do or not to do a particular thing by writ of injunction. Vide Injunction.

TO ENLARGE. To extend; as, to enlarge a rule to plead, is to extend the time during which a defendant may plead. To enlarge, means also to set at liberty; as, the prisoner was enlarged on giving bail.

ENLARGING. Extending or making more comprehensive; as an enlarging statute, which is one extending the common law.

ENTIA PARS. The part of the eldest. Co. Litt. 166; Bac. Ab. Coparceners, C.

2. When partition is voluntarily made among coparceners in England, the eldest has the first choice, or primer election, (q. v.) and the part which she takes is called enitia pars. This right is purely personal, and descends; it is also said that even her as signee shall enjoy it; but this has also been doubted. The word enitia is said to be derived from the old French, eisne the eldest. Bac. Ab. Coparceners, C; Keilw. 1 a, 49 a; 2 And. 21; Cro. Eliz. 18.

ENJOYMENT. The right which a man possesses of receiving all the product of a thing for his necessity, his use, or his pleasure.

ENLISTMENT. Thc act of making a contract to serve the government in a subordinate capacity, either in the army or navy. The contract so made, is also called an enlistment. See, as to the power of infants to enlist, 4 Binn. 487; .5 Binn. 423; Binn. 255; 1 S. & R. 87; 11 S. & R. 93.

ENORMIA. Wrongful acts. See Alia Enormia.

TO ENROLL. To register; to enter on the rolls of chancery, or other court's; to make a record.

ENROLLMENT, Eng. law. The registering, or entering in the rolls of chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter sessions, of any lawful act; as a recognizance, a deed of bargain and sale, and the like. Jacob, L. D.

TO ENTAIL. To create an estate tail. Vide Tail.

ENTIRE. That which is not divided; that which is whole.

2. When a contract is entire, it must in general be fully performed, before the party can claim the compensation which was to have been paid to him; for example, when a man hires to serve another for one year, he will not be entitled to leave him at any time before the end of the year, and claim compensation for the time, unless it be done by the consent or default of the party hiring. 6 Verm. R. 35; 2 Pick. R. 267; 4 Pick. R. 103 10 Pick. R. 209; 4 McCord's R. 26, 246; 4 Greenl. R. 454; 2 Penna. R. 454; 15 John. R. 224; 4 Pick. R. 114; 9 Pick. R. 298 19 John. R. 337; 4 McCord, 249; 6 Harr. & John. 38. See Divisible.

ENTIRETY, or, ENTIERTIE. This word denotes the whole, in contradistinction to moiety, which denotes the half part. A hushand and wife, when jointly seized of land, are seized by entierties and not "pur mie" as joint tenants are. Jacob's Law Dict.; 4 Kent, 362; 2 Kent, 132; Hartv. Johnson, 3 Penna. Law Journ. 350, 357.

ENTREPOT. A warehouse; a magazine where goods are deposited, and which are again to be removed.

ENTRY. criminal law. The unlawful breaking into a house, in order to commit a crime. In cases of burglary, the least entry with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, is sufficient to complete the offence. 3 Inst. 64.

ENTRY, estates, rights. The taking possession of lands by the legal owner.

2. A person having a right of possession may assert it by a peaceable entry, and being in possession may retain it, and plead that it is his soil and freehold; and this will not break in upon any rule of law respecting the mode of obtaining the possession of lands.

3 Term Rep. B. R. 295. When another person has taken possession of lands or tenements, and the owner peaceably makes an entry thereon, and declares that be thereby takes possession of the same, he shall, by this notorious act of ownership, which is equal to a feodal investiture, be restored to his original right. 3 Bl. Com. 174.
3. A right of entry is not assignable at common law. Co. Litt. 214 a. As to the law on this subject in the United States, vide Buying of titles; 4 Kent, Com. 439 2 Hill. Ab. c. 33, §42 to 52; also,artic le ReEntry; Bac. Ab. Descent, G; 8 Vin. Ab. 441.

4. In another sense, entry signifies the going upon another man's lands or his tenements. An entry in this sense may be justifiably made on another's land or house, first, when the law confers an authority; and secondly, when the party has authority in fact.

5. First, 1. An officer may enter the close of one against whose person or property he is charged with the execution of a writ. In a civil case, the officer cannot open (even by unlatching) the outer inlet to a house, as a door or window opening into the street 18 Edw. IV., Easter, 19, pl. 4; Moore, pl. 917, p. 668 Cooke's case, Wm. Jones, 429; although it has been closed for the purpose of excluding him. Cowp. 1. But in a criminal case, a constable may break open an outer door to arrest one within suspected of felony. 13 Edw. IV., Easter, 4, p. 9. If the outer door or window be open, he may enter through it to execute a civil writ; Palin. 52; 5 Rep. 91; and, having entered, he may, in every case, if necessary, break open an inner door. 1 Brownl. 50.

6. - 2. The lord may enter to distrain, and go into the house for that purpose, the outer door being open. 5 Rep. 91.

7. - 3. The proprietors of goods or chattels may enter the land of another upon which they are placed, and remove them, provided they are there without his default; as where his tree has blown down into the adjoining close by the wind, or his fruit has fallen from a branch which overhung it. 20 Vin. Abr. 418.

8. - 4. If one man is bound to repair bridge, he has a right of entry given him by law for that purpose. Moore, 889.

9. - 5. A creditor has a right to enter the close of his debtor to demand the duty owing, though it is not to be rendered there. Cro. Eliz. 876.

10. - 6. If trees are excepted out of a demise, the lessor has the right of entering, to prune or fell them. Cro. Eliz. 17; 11. Rep. 53.

11. - 7. Every traveller has, by law, the privilege of entering a common inn, at all seasonable times, provided the host has sufficient accommodation, which, if he has not, it is for him to declare.

12.- 8. Ever man may throw down a public nuisance, and a private one may be thrown down by the party grieved, and this before an prejudice happens, but only from the probability that it may happen. 5 Rep, 102 and see 1 Brownl. 212; 12 Mod. 510 Wm. Jones, 221; 1 Str. 683. To this end, the abator has authority to enter the close in which it stands. See Nuisance.

13. - 9. An entry may be made on the land of another, to exercise or enjoy therein an incorporeal right or hereditament to which he is entitled. Hamm. N. P. 172. See general Bouv. Inst. Index, h. t.; 2 Greenl. Ev. §627; License.

ENTRY, commercial law. The act of setting down the particulars of a sale, or other transaction, in a merchant's or tradesman's accouut books; such entries are, in general, prima facie evidence of the sale and delivery, and of work, done; but unless the entry be the original one, it is not evidence. Vide Original entry.

ENTRY AD COMMUNE LEGEM, Eng. law. The name of a writ which lies in favor of the reversioner, when the tenant for term of life, tenant for term of another's life, tenant by the curtesy, or tenant in dower, aliens and dies. T. L.

ENTRY OF GOODS, commercial law. An entry of goods at the custom-house is the submitting to the officers appointed by law, who have the collection of the customs, goods imported. into the United States, together with a statement or description of such goods, and the original invoices of the same. The act of March 2, 1799, s. 36, 1 Story, L. U. S. 606, and the act of March 1, 1823, 3 Story, L. U. S. 1881, regulate the manner of making entries of goods.

ENTRY, WRIT OF. The name of a writ issued for the purpose of obtaining possession of land from one who has entered unlawfully, and continues in possession. This is a mere possessor action, and does not decide the right of property.

2. The writs of entry were commonly brought, where the tenant or possessor of the land entered lawfully; that is, without fraud or force; 13 Edw. I. c. 25; although sometimes they wer6 founded upon an entry made by wrong. The forms of these writs are very various, and are adapted to the, title and estate of the demandant. Booth enumerates and particularly discusses twelve varieties. Real Actions, pp. 175-200. In general they contain an averment of the manner in which the defendant entered. At the common law these actions could be brought only in the degrees, but the Statute of Marlbridge, c. 30; Rob. Dig. 147, cited as c. 29; gave a writ adapted to cases beyond the degrees, called a writ of entry in the post. Booth, 172, 173. The denomination of these writs by degrees, is derived from the circumstance that estates are supposed by the law to pass by degrees from one person to another, either by descent or purchase. Similar to this idea, or rather corresponding with it, are the gradations of consanguinity, indicated by the very common term pedigree. But in reference to the writs of entry, the degrees recognized were only two, and the writs were quaintly termed writs in the per, and writs in the per and cui. Examples of these writs are given in Booth on R. A. pp. 173, 174. The writ in the, per runs thus: " Command A, that be render unto B, one messuage, &c., into which he has not entry except (per) by &c. The writ in the per and cui contains another gradation in the transmission of the estate, and read thus: Command A, that he render, &c., one messuage, into which he hath not entry but (per) by C, (cui) to whom the aforesaid B demised it for a term of years, now expired," &c. 2 Institute, 153; Co. Litt. b, 239, a. Booth, however, makes three degrees, by accounting the estate in the per, the second degree. The difference is not

substantial. If the estate had passed further, either by descent or conveyance, it was said to be out of the degrees, and to such cases the writ of entry on the. statute of Marlbridge, only, was applicable. 3 Bl. Com. 181, 182; Report of Com. to Revise Civil Code of Penna. January 15, 1835, p. 85. Vide Writ of entry.

TO ENURE. To take, or have effect or serve to the use, benefit, or advantage of a person. The word is often written inure. A release to the tenant for life, enures to him in reversion; that is, it has the same effect for him as for the tenant for life. A discharge of the principal enures to the benefit of the surety.

ENVOY, international law. In diplomatic language, an envoy is a minister of the second rank, on whom his sovereign or government has conferred a degree of dignity and respectability, which, without being on a level with an ambassador, immediately follows, and among ministers, yields the preeminence to him alone.

2. Envoys are either ordinary or extraordinary; by custom the latter is held in greater consideration. Vattel, liv. 4, c. 6, §72.

EPILEPSY, med. jur. A discase of the brain, which occurs in paroxysms, with uncertain intervals between them.

2. These paroxysms are characterized by the loss of sensation, and convulsive motions of the muscles. When long continued and violent, this disease is very apt to end in dementia. (q. v.) It gradually destroys the memory, and impairs the intellect, and is one of the causes of an unsound mind. 8 Ves. 87. Vide Dig. 50, 16, 123; Id. 21, 1, 4, 5.

EPISCOPACY, eccl. law. A form of government by diocesan bishops; the office or condition of a bishop.

EPISTLES, civil law. The name given to a species of rescript. Epistles were the answers given by the prince, when magistrates submitted to him a question of law. Vicle Rescripts.

EQUALITY. Possessing the same rights, and being liable to the same duties. See 1 Toull. No. l70, 193, Int.

2. Persons are all equal before the law, whatever adventitious advantages some may possess over others. All persons are protected by the law, and obedience to it is required from all.

3. Judges in court, while exercising their functions, are all upon an equality, it being a rule that inter pares non est potestas; a judge cannot, therefore, punish another judge of the same court for using any expression in court, although the words used might have been a contempt in any other person. Bac. Ab., Of the court of sessions, of justices of the peace.

4. In contracts the law presumes the parties act upon a perfect equality; when, therefore, one party uses any fraud or deceit to destroy this equality, the party grieved may avoid the contract. In case of a grant to two or more persons jointly, without designating what each takes, they are presumed to take in equal proportion. 4 Day, 395.

5. It is a maxim, that when the equity of the parties is equal, the law must prevail. 3 Call, R. 259. And that, as between different creditors, equality is equity. 4 Bouv. Inst. n. 3725; 1 Page, R. 181. See Kames on Eq. 75. Vide Deceit; Fraud.

EQUINOX. The name given to two periods of the year when the days and nights are equal; that is, when the space of time between the rising and setting of the sun is one half of a natural day. Dig. 43, 13, 1, 8. Vide Day.

EQUITABLE. That which is in conformity to the natural law. Wolff, Inst. §83.

EQUITABLE ESTATE. An equitable estate is a right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, requires the aid of such court to make it available.

2. These estates consist of uses, trusts, and powers. See 2 Bouv. Inst. n. 1884. Vide Cestui que trust; Cestui que use.

EQUITABLE MORTGAGE, Eng. law. The deposit of title-deeds, by the owner of an estate, with a person from whom he has borrowed money, with an accompanying agreement to execute a regular mortgage, or by the mere deposit, without even any verbal agreement respecting a regular security. 2 Pow. on Mort. 49 to 61; 1 Mad. Ch. Pr. 537; 4 Madd. R. 249; 1 Bro. C. C. 269; 12 Ves. 197; 3 Younge & J. 150; 1 Rus. R. 141.

2. In Pennsylvania, there is no such thing as an equitable mortgage. 3 P. S. R; 233; 3 Penna. R. 239; 17 S. & R. 70; 1 Penna. R. 447.

EQUITY. In the early history of the law, the sense affixed to this word was exceedingly vague and uncertain. This was owing, in part, to the fact, that the chancellors of those days were either statesmen or ecclesiastics, perhaps not very

scrupulous in the exercise of power. It was then asserted that equity was bounded by no certain limits or rules, and that it was alone controlled by conscience and natural justice. 3 Bl. Com. 43-3, 440, 441.

2. In a moral sense, that is called equity which is founded, ex oequo et bono, in natural justice, in honesty, and in right. In an enlarged. legal view, "equity, in its true and genuine meaning, is the soul and spirit of the law; positive law is construed, and rational law is made by it. In this, equity is made synonymous with justice; in that, to the true and sound interpretation of the rule." 3 Bl. Com. 429. This equity is justly said to be a supplement to the laws; but it must be directed by science. The Roman law will furnish him with sure guides, and safe rules. In that code will be found, fully developed, the first principles and the most important consequences of natural right. "From the moment when principles of decision came to be acted upon in chancery," says Mr. Justice Story, "the Roman law furnished abundant materials to erect a superstructure, at once solid, convenient and lofty, adapted to human wants, and enriched by the aid of human wisdom, experience and learning." Com. on Eq. Jur. §23 Digest, 54.

3. But equity has a more restrained and qualified meaning. The remedies for the redress of wrongs, and for the enforcement of rights, are distinguished into two classes, first, those which are administered in courts of common law; and, secondly, those which are administered in courts of equity. Rights which are recognized and protected, and wrongs which are redressed by the former courts, are called legal rights and legal injuries. Rights which are recognized and protected, and wrongs which are redressed by the latter courts only, are called equitable rights and equitable injuries The former are said to be rights and wrongs at common law, and the remedies, therefore, are remedies at common law; the latter are said to be rights and wrongs in equity, and the remedies, therefore, are remedies in equity. Equity jurisprudence may, therefore, properly be said to be that portion of remedial justice which is exclusively administered by a court of equity, as contradistinguished from that remedial justice, which is exclusively administered by a court of law. Story, Eq. §25. Vide Chancery, and the authiorities there cited; and 3 Chit. Bl. Com. 425 n. 1. Dane's Ab . h. t.; Ayl. Pand. 37; Fonbl. Eq. b. 1, c. 1; Wooddes. Lect. 114 Bouv. Inst. Index, h. t.

EQUITY, COURT OF. A court of equity is one which administers justice, where there are no legal rights, or legal rights, but courts of law do not afford a complete, remedy, and where the complainant has also an equitable right. Vide Chancery.

EQUITY OF REDEMPTION. A right which the mortgagee of an estate has of redeeming it, after it has been forfeited at law by the non-payment at, the time appointed of the money secured by the mortgage to be paid, by paying the amount of the debt, interest and costs.

2. An equity of redemption is a mere creature of a court of equity, founded on this principle, that as a mortgage is a pledge for securing the repayraent of a sum of money to the mortgagee, it is but natural justice to consider the ownership of the land as still vested in the mortgagor, subject only to the legal title of the mortgagee, so far as such legal title is necessary to his security.

3. In Pennsylvania, however, redemption is a legal right. 11 Serg. & Rawle, 223.

4. The phrase equity of redemption is indiscriminately, though perhaps not correctly applied, to the right of the mortgagor to regain his estate, both before and after breach of condition, In North Carolina by statute the former is called a legal right of redemption; and the latter the equity of redemption, thereby keeping a just distinction between these estates. 1 N. C. Rev. St. 266; 4 McCord, 340.

5. Once a mortgage always a mortgage, is a universal rule in equity. The right of redemption is said to be as inseparable from a mortgage, as that of replevying from a distress, and every attempt to limit this right must fail. 2 Chan. Cas. 22; 1 Vern. 33, 190; 2 John. Ch. R. 30; 7 John. Ch. R. 40; 7 Cranch, R. 218; 2 Cowen, 324; 1 Yeates, R. 584; 2 Chan. R. 221; 2 Sumner, R. 487.

6. The right of redemption exists, not only in the mortgagor himself, but in his heirs, and personal representatives, and assignee, and in every other person who has an interest in, or a legal or equitable lien upon the lands; and therefore a tenant in dower, a jointress, a tenant by the curtesy, a remainder-man and a reversioner, a judgment creditor, and every other incumbrancer, unless he be an incumbrancer pendente lite, may redeem. 4 Kent, Com. 156; 5 Pick. R. 149; 9 John. R. 591, 611; 9 Mass. R. 422; 2 Litt. R. 334; 1 Pick. R. 485; 14 Wend. R. 233; 5 John. Ch. R. .482; 6 N. H. Rep. 25; 7 Vin. Ab. 52. Vide, generally, Cruise, Dig. tit. 15, c. 3; 4 Kent, Com. 148; Pow. on Mortg. eh. 10 and 11; 2 Black. Com. 158; 13 Vin. Ab. 458; 2 Supp. to Ves. Jr. 368; 2 Jac. & Walk. 194, n.; 1 Hill. Ab. c. 31; and article Stellionate.

EQUIVALENT. Of the same value. Sometimes a condition must be literally accomplished in forma specifica; but some may be fulfilled by an equivalent, per oequi polens, when such appears to be the intention of the parties; as, I promise to pay you one hundred dollars, and then die, my executor may fulfil my engagement; for it is equivalent to you whether the money be paid to you b me or by him. Roll. Ab. 451; 1 Bouv. Inst. n. 760.

EQUIVOCAL. What has a double sense.

2. In the construction of contracts, it is a general rule that when an expression may be taken in two senses, that shall be preferred which gives it effect. Vide Ambiguity; Construction; Interpretation; and Dig. 22, 1, 4; Id 45, 1, 80; Id. 50, 17, 67.

EQUULEUS. The name of a kind of rack for extorting confessions. Encyc. Lond.

ERASURE, contracts, evidence. The obliteration of a writing; it will render it void or not under the same circumstances as an interlineation. (q. v.) Vide 5 Pet. S. C. R. 560; 11 Co. 88; 4 Cruise, Dig. 368; 13 Vin. Ab. 41; Fitzg. 207; 5 Bing. R. 183; 3 C. & P. 65; 2 Wend. R. 555; 11 Conn. R. 531; 5 M. R. 190; 2 L. R. 291 3 L. R. 56; 4 L. R. 270.

2. Erasures and interlineations are presumed to have been made after the execution of a deed, unless the contrary be proved. 1 Dall. 67; 1 Pet. 169; 4 Bin. 1; 10 Serg. & R. 64, 170, 419; 16 Serg. & R. 44.

EREGIMUS. We have erected. In England, whenever the. right of creating or granting a new office is vested in the king, he must use proper words for the purpose, as eregimus, constituimus, and the like. Bac. Ab. Offices, &c., E.

EROTIC MANIA, med. jur. A name given to a morbid activity of the sexual propensity. It is a disease or morbid affection of the mind, which fills it with a crowd of voluptuous images, and hurries its victim to acts of the grossest licentiousness, in the absence of any lesion of the intellectual powers. Vide Mania.

ERROR. A mistake in judgment or deviation from the truth, in matters of fact and from the law in matters of judgment.

2. - 1 Error of fact. The law has wisely provide that a person shall be excused, if, intending to do a lawful act, and pursuing lawful means to accomplish his object, he commit an act which would be criminal or unlawful, if it were done with a criminal design or in an unlawful manner; for example, thieves break into my house, in the night time, to commit a burglary; I rise out of my bed, and seeing a person with a drawn sword running towards my wife, I take him for one of the burglars, and shoot him down, and afterwards find he was one of my friends, whom, owing to the dimness of the light, I could not recognize, who had lodged with me, rose on the first alarm, and was in fact running towards my wife, to rescue her from the hands of an assassin; still I am innocent, because I committed an error as to a fact, which I could not know, and had, no time to inquire about.

3. Again, a contract made under a clear error is not binding; as, if the seller and purchaser of a house situated in Now York, happen to be in Philadelphia, and, at the

time of the sale, it was unknown to both parties that the house was burned down, there will be no valid contract; or if I sell you my horse Napoleon, which we both suppose to be in my stable, and at the time of the contract he is dead, the sale is void. 7 How. Miss. R. 371 3 Shepl. 45; 20 Wend. 174; 9 Shepl. 363 2 Brown, 27; 5 Conn. 71; 6 Mass. 84; 12 Mass. 36. See Sale.

4. Courts of equity will in general correct and rectify all errors in fact committed in making deeds and contracts founded on good considerations. See Mistake.

5. - 2. Error in law. As the law is, or which is the same thing, is presumed to be certain and definite, every man is bound to understand it, and an error of law will not, in general, excuse a man, for its violation.

6. A contract made under an error in law, is in general binding, for were it not so, error would be urged in almost every case. 2 East, 469; see 6 John. Ch. R. 166 8 Cowen, 195; 2 Jac. & Walk. 249; 1 Story, Eq. Jur. 156; 1 Younge & Coll. 232; 6 B. & C. 671 Bowy. Com. 135; 3 Sav. Dr. Rom. App. viii. But a foreign law will for this purpose be considered as a fact. 3 Shepl. 45; 9 Pick. 112; 2 Ev. Pothier, 369, &c. See, also, Ignorance; Marriage; Mistake.

7. By error, is also understood a mistake made in the trial of a cause, to correct which a writ of error may be sued out of a superior court.

ERROR, WRIT OF. A writ of error is one issued fro a superior to an inferior court, for the purpose of bringing up the record and correcting an alleged error committed in the trial in the court below. But it cannot deliver the body from prison. Bro. Abr. Acc. pl. 45. The judges to whom the writ is directed have no power to return the record nisi judicium inde redditum sit. Nor can it be brought except on the final judgment. See Metcalf's Case, 11 Co. Rep. 38, which is eminently instructive on this subject. Vide Writ of Error.

ESCAPE. An escape is tho deliverance of a person who is lawfully imprisoned, out of prison, before such a person is entitled to such deliverance by law. 5 Mass. 310.

2. It will be proper to consider, first, what is a lawful imprisonment; and, secondly, the different kinds of escapes.

3. When a man is imprisoned in a proper place under the process of a court having jurisdiction in the case, he is lawfully imprisoned, notwithstanding the proceedings may be irregular; but if the court has not jurisdiction the imprisonment is unlawful, whether the process be regular or otherwise. Bac. Ab. Escape. in civil cases, A 1; 13 John. 378; 5 John. 89; 1 Cowen, 309 8 Cowen, 192; 1 Root, R. 288.

4. Escapes are divided into voluntary and negligent; actual or constructive; civil and criminal and escapes on mesne process and execution.

5. - 1. A voluntary escape is the giving to a prisoner, voluntarily, any liberty not authorized by law. 5 Mass . 310; 2 Chipm. 11. Letting a prisoner confined under final process, out of prison for any, even the shortest time, is an escape, although he afterwards return; 2 Bl. Rep. 1048; 1 Roll. Ab. 806; and this may be, (as in the case of imprisonment under a ca. sa.) although an officer may accompany him. 3 Co. 44 a Plowd. 37; Hob. 202; 1 Bos. & Pull. 24 2 Bl. Rep. 1048.

6. The effect of a voluntary escape in a civil case, when the prisoner is confined under final process, is to discharge the debtor, so that he cannot be retaken by the sheriff; but he may be again arrested if he was confined only on mesne process. 2 T. R. 172; 2 Barn. & A. 56. And the plaintiff may retake the prisoner in either case. In a criminal case, on the contrary, the officer not only has a right to recapture his prisoner, but it is his duty to do so. 6 Hill, 344; Bac. Ab. Escape in civil cases, C.

7. - 2. A negligent escape takes place when the prisoner goes at large, unlawfully, either because the building or prison in which he is confined is too weak to hold him, or because the keeper by carelessness lets him go out of prison.

8. The consequences of a negligent escape are not so favorable to the prisoner confined under final process, as they are when the escape is voluntary, because in this case, the prisoner is to blame. He may therefore be retaken.

9. - 3. The escape is actual, when the prisoner in fact gets out of prison and unlawfully regains his liberty.

10. - 4. A constructive escape takes place when the prisoner obtains more liberty than the law allows, although he still remains in confinement The following cases are examples of such escapes: When a man marries his prisoner. Plowd. 17; Bac. Ab. Escape, B 3. If an underkeeper be taken in execution, and delivered at the prison, and neither the sheriff nor any authorized person be there to receive him. 5 Mass. 310. And when the keeper of a prison made one of the prisoners confined for a debt a turnkey, and trusted him with the keys, it was held that this was a constructive escape. 2 Mason, 486.

11. Escapes in civil cases are, when the prisoner is charged in execution or on mesne process for a debt or duty, and not for a criminal offence, and he unlawfully gains his liberty. In this case, we have seen, the prisoner may be retaken, if the escape have not been voluntary; and that he may be retaken by the plaintiff when the escape has taken place without his fault, whether the defendant be confined in execution or not; and

that the sheriff may retake the prisoner, who has been liberated by him, when he was not confined on final process.

12. Escapes in criminal cases take place when a person lawfully in prison, charged with a crime or under sentence, regains his liberty unlawfully. The prisoner being to blame for not submitting to the law, and in effecting his escape, may be retaken whether the escape was voluntary or not. And he may be indicted, fined and imprisoned for so escaping. See Prison.

13. Escape on mesne process is where the prisoner is not confined on final process, but on some other process issued in the course of the proceedings, and unlawfully obtains his liberty, such escape does not make the officer liable, provided that on the return day of the writ, the prisoner is forthcoming.

14. Escape on final process is when the prisoner obtains his liberty unlawfully while lawfully confined, and under an execution or other final decree. The officer is then, in general, liable to the plaintiff for the amount of the debt.

ESCAPE, WARRANT. A warrant issued in England against a person who being charged in custody in the king's bench or Fleet prison, in execution or mesne process, escapes and goes at large. Jacob's L. D. h. t.

ESCHEAT, title to lands. According to the English law, escheat denotes an obstruction of the course of descent, and a consequent determination of the tenure, by some unforeseen contingency; in which case the land naturally results back, by a kind of reversion, to the original grantor, or lord of the fee.. 2 Bl. Com. 244.

2. All escheats, under the English law, are declared to be strictly feudal, and to import the extinction of tenure. Wright on Ten. 115 to 117; 1 Wm. Bl. R. 123.

3. But as the feudal tenures do not exist in this country, there are no private persons who succeed to the inheritance by escheat. The state steps in, in the place of the feudal lord, by virtue of its sovereignty, as the original and ultimate proprietor of all the lands within its jurisdiction. 4 Kent, Com. 420. It seems to be the universal rule of civilized society, that when the-deceased owner has left no heirs, it should vest in the public, and be at the disposal of the government. Code, 10, 10, 1; Domat, Droit Pub. liv. 1, t. 6, s. 3, n. 1. Vide 10 Vin. Ab. 139; 1 Bro. Civ. Law, 250; 1 Swift's Dig. 156; 2 Tuck. Blacks. 244, 245, n.; 5 Binn. R. 375; 3 Dane's Ab. 140, sect. 24; Jones on Land Office Titles in Penna. 5, 6, 93. For the rules of the Roman Civil Law, see Code Justinian, book 10.

ESCHEATOR. The name of an officer whose duties are generally to ascertain what escheats have taken place, and to prosecute the claim of the commonwealth for the purpose of recovering the escheated property. Vide 10 Vin. Ab. 158.

ESCROW, conveyancing, contracts. A conditional delivery of a deed to a stranger, and not to the grantee himself, until certain conditions shall be performed, and then it is to be delivered to the grantee. Until the condition be performed and the deed delivered over, the estate does not pass, but remains in the grantor. 2 Johns. R. 248; Perk. 137, 138.

2. Generally, an escrow takes effect from the second delivery, and is to be considered as the deed of the party from that time; but this general rule does not apply when justice requires a resort to fiction. The relation back to the first delivery, so as to give the deed effect from that time, is allowed in cases of necessity, to avoid injury to the operation of the deed, from events happening between the first and second delivery. For example, when a feme sole makes a deed and delivers it as an escrow, and then marries before the second delivery, the relation back to the time when she was sole, is necessary to render the deed valid. Vide 2 Bl. Com. 307; 2 Bouv. Inst. n. 2024; 4 Kent, Com. 446; Cruise, Dig. t. 32, c. 2, s. 87 to 91; Com. Dig. Fait, A 3; 13 Vin. Ab. 29; 5 Mass. R. 60; 2 Root, R. 81; 5 Conn. R. 113; 1 Conn. R. 375; 6 Paige's R. 314; 2 Mass. R. 452; 10 Wend. R. 310; 4 Green]. R. 20; 2 N. H. Rep. 71; 2 Watts', R. 359; 13 John. R. 285; 4 Day's R. 66; 9 Mass. R. 310 1 John. Cas. 81; 6 Wend. R. 666; 2 Wash. R. 58; 8 Mass. R. 238; 4 Watts, R. 180; 9 Mass. Rep. 310; 2 Johns. Rep. 258-9; 13 Johns. Rep. 285; Cox, Dig. tit, Escrow; Prest. Shep. Touch. 56, 57, 58; Shep. Prec. 54, 56; 1 Prest. Abst. 275; 3 Prest. Ab. 65; 3 Rep. 35; 5 Rep. 84.

ESCUAGE, old Eng. law. Service of the shield. Tenants who hold their land by escuage, hold by knight's service. 1 Tho. Co. Litt. 272; Littl. s. 95, 86 b.

ESNECY. Eldership. In the English law, this word signifies the right which the eldest coparcener of lands has to choose one of the parts of the estate after it has been divided.

ESPLEES. The products which the land or ground yields; as the hay of the meadows, the herbage of the pasture, corn or other produce of the arable, rents and services. Termes de la Ley; see 11 Serg. & R. 2-5; Dane's Ab. Index, h. t.

ESPOUSALS, contracts. A mutual promise between a man and a woman to marry each other, at some other time: it differs from a marriage, because then the contract is completed. Wood's Inst. 57; vide Dig. 23, 1, 1; Code, 5, 1, 4; Novel, 115, c. 3, s. 11; Ayliffe's Parerg. 245 Aso & Man. Inst. B. 1, t. 6, c. 1, §1.

ESQUIRE. A title applied by courtesy to officers of almost every description, to members of the bar, and others. No one is entitled to it by law, and, therefore, it confers, no distinction in law.

2. In England, it is a title next above that of a gentleman, and below a knight. Camden reckons up four kinds of esquires, particularly regarded by the heralds: 1. The eldest sons of knights and their eldest sons, in perpetual succession. 2. The eldest sons of the younger sons of peers, and their eldest sons in like perpetual succession. 3. Esquires created by the king's letters patent, or other investiture, and their eldest sons. 4. Esquires by virtue of their office, as justices of the peace, and others who bear any office of trust under the crown.

ESSOIN, practice. An excuse which a party bound to be in court on a particular day, offers for not being there. 1 Sell. Pr. 4; Lee's Dict. h. t.

2. Essoin day is the day on which the writ is returnable. It is considered for many purposes as the first day of the term. 1 T. R. 183. See 2 T. R. 16 n.; 4 Moore's R. 425. Vide Exoine.

ESTABLISH. This word occurs frequently in the Constitution of the United $tates, and it is there used in different meanings. 1. To settle firmly, to fix unalterably; as, to establish justice, which is the avowed object of the constitution. 2. To make or form as, to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, which evidently does not mean that these laws shall be unalterably established as justice. 3. To found, to create, to regulate; as, congress shall have power to establish post roads and post offices. 4. To found, recognize, confirm or admit; as, congress shall make no law respecting an establishment of religion. 5. To create, to ratify, or confirm; as, we, the people, &c., do ordain and establish this constitution, 1 Story, Const. §454.

ESTADAL, Spanish law. In Spanish America, this was a measure of land of sixteen square varas or yards. 2 White's Coll. 139.

ESTATE. This word his several meanings: 1. In its most extensive sense, it is applied to signify every thing of which riches or, fortune may consist and includes personal and real property; hence we say personal estate, real estate. 8 Ves. 504. 2. In its more limited sense, the word estate is applied to lands, It is so applied in two senses. The first describes or points out the land itself, without ascertaining the extent or nature of the interest therein; as "my estate at A." The second, which is the proper and technical meaning of estate, is the degree, quantity, nature and extent of interest which one has in real property; as, an estate in fee, whether the same be a fee simple or fee tail; or an estate for life or for years, &c. Lord Coke says: Estate signifies such inheritance,

freehold, term of years, tenancy by statute merchant, staple, eligit, or the like, as any man hath in lands or tenements, &c. Co. Lit. §650, 345 a. See Jones on Land Office Titles in Penna. 165-170.

2. In Latin, it is called status, because it signifies the condition or circumstances in which the owner stands with regard to his property..

3. Estates in land may be considered in a fourfold view with regard, 1. To the quantity of interest which the tenant has in the tenement. 2. To the time during which that quantity of interest is to be enjoyed. 3. To the number and connexion of the tenants. 4. To what conditions may be annexed to the estate.

4. - 1. The quantity of interest which the tenant has in his tenement is measured by its duration and extent. An estate, considered in this point of view, is said to be an estate of freehold, and an estate less than freehold.

5.- §1. Freehold estates are of inheritance and not of inheritance. An estate in fee, (q. v.) which is the estate most common in this country, is a freehold estate of inheritance. Estates of freehold not of inheritance, are the following:

6. - 1st. Estates for life. An estate for life is a freehold interest in lands, the duration of which is confined to the life or lives of some particular person or persons, or to the happening or not happening of some uncertain event.

7. Estates for life are divided into conventional or legal estates. The first created by the act of the parties, and the second by operation of law.

8. - 1. Life estates may be created by express words; as, if A conveys land to B, for the term of his natural life; or they may arise by construction of law, as, if A conveys land to B, without specifying the term or duration, and without words of limitation. In the last case, B cannot have an estate in fee, according to. the English law, and according to the law of those parts of the United States which have adopted and not altered the common law in this particular, but he will take the largest estate which can possibly arise from the grant, and that is an estate for life. Co. Litt. 42, a. So a conveyance " to I M, and his generation, to endure as long as the waters of the Delaware should run," passes no more than a life estate. 3 Wash. C. C. Rep. 498. The life estate may be either for a man's own life, or for the life of another person, and in this last case it is termed an estate per autre vie. There are some estates for life, which may depend upon future contingencies, before the death of the person to whom they are granted; for example, an estate given to a woman dum sola fuerit, or durante viduitate, or to a man and woman during coverture, or as long as the grantee shall dwell in a particular house, is determinable upon the happening of the event. In the

same manner, a house usually worth one hundred dollars a year, may be granted to a person still he shall have received one thousand dollars; this will be an estate for life, for as the profits are uncertain, and may rise or fall, no precise time can be fixed for the determination of the estate. On the contrary, where the time is fixed, although it may extend far beyond any life, as a terw for five hundred years, this does not create a life estate.

9. - 2. The estates for life created by operation of law, are, 1st. Estates tail after possibility of issue extinct. 2d. Estates by the curtesy. 3d. Dower. 4th. Jointure. Vide Cruise. Dig. tit. 3; 4 Kent, Com. 23; 1 Brown's Civ. Law, 191; 2 Bl. Com. 103. The estate for life is somewhat similar to the usufruct (q. v.) of the civil law.

10. The incidents to an estate for life, are principally the following: 1. Every tenant for life, unless restrained by covenant or agreement, may of common right take upon the land demised to him reasonable estovers or bote's. Co. Litt. 41.

11. - 2. The tenant for life, or his representatives, shall not be pre-judiced by any sudden determination of his estate, because such determination is contingent or uncertain. Co. Litt. 55.

12. - 3. Under tenants or lessees of an estate for life, have the same, and even greater indulgences than the lessors, the original tenants for life; for when the tenant for life shall not have the emblements, because the estate determines by his own act, the exception shall not reach his lessee, who is a third person. l Roll. Ab. 727 2 Bl. Com. 122.

13. - 2d. Estates by the curtesy. An estate by the curtesy is an estate for life, created by act of law, which is defined as follows: When a man marries a woman, seised at any time during the coverture of an estate of inheritance, in severalty, in coparcenary, or in common, and has issue by her born alive, and which migbt by possibility inherit the same estate as heir to the wife, and the wife dies in the lifetime of the hushand, he holds the lands during, his life by the curtesy of England, and it is immaterial whether the issue be living at the time of the seisin, or at the death of the wife, or whether it was born before or after the seisin. Litt. s. 35; Co. Litt. 29, b; 8 Co. 34. By Act of Asserably of Pennsylvania, the birth of issue is not necessary, in all cases where the issue, if any, would have inherited.

14. There are four requisites indispensably necessary to the existence of this estate: 1. Marriage. 2. Seisin of the wife, which must have been seisin in deed, and not merely seisin in law; it seems, however, that the rigid rules of the common law, have been relayed, in this respect, as to what is sometimes called waste or wild lands. 1 Pet. 505. 3. Issue. 4. Death of the wife.

15. - 1. The marriage must be a lawful marriage; for a void marriage does not entitle the hushand to the curtesy; as if a married man were to marry a second wife, the first being alive, he would not be entitled to the curtesy in such second wife's estate. But if the marriage had been merely voidable, he would be entitled, because no marriage, merely voidable, can be annulled after the death of the parties. Cruise, Dig. tit. 5, c. 1, s. 6.

16. - 2. The seisin of the wife must, according to the English law, be a seisin in deed; but this strict rule has been somewhat qualified by circumstances in this country. Where the wife is owner of wild uncultivated land, not held adversely, she is considered as seised in fact, and the hushand is entitled to his curtesy. 8 John. 262 8 Cranch, 249; 1 Pet. 503 1 Munf. 162 1 Stow. 590. When the wife's state is in reversion or remainder, the hushand is not, in general, entitled to the curtesy, unless the particular estate is elided during coverture. Perk. s. 457, 464; Co. Litt. 20, a; 3 Dev. R. 270; 1 Sumn. 263; but see 3 Atk. 469; 7 Viner, Ab. 149, pl. 11. The wife's seisin must have been such as to enable her to inherit. 5 Cowen, 74.

17. - 3. The issue of the marriage, to entitle the hushand to the curtesy, must possess the following qualifications: 1. Be born alive. 2. In the lifetime of the mother. 3. Be capable of inheriting the estate.

18. - 1st. The issue must be born alive. As to what will be considered life, see Birth; Death; Life.

19. - 2d. The issue must be born in the lifetime of the mother; and if the child be born after the death of the mother, by the performance of the Caesarian operation, the hushand will not be entitled to the curtesy; as there was no issue born at the instant of the wife's death, the estate vests immediately on the wife's death to the child, in ventre sa mere, and the estate being once vested, it cannot be taken from him. Co. Litt. 29, b.; 8 Co. Rep., 35, a. It is immaterial whether the issue be born before or after the seisin of the wife. 8 Co. Rep. 35, b.

20. - 3d. The issue must be capable of inheriting the estate; When, for example, lands are given to a woman and the heirs male of her body, and she has a daughter, this issue will not enable lier hushand to take his curtesy. Co. Litt. 29, a.

21. - 4th. The death of the wife is requisite to make the estate by the curtesy complete.

22. This estate is generally prevalent in the United States; in some of them it has received a modification. In Pennsylvania the right of the hushand takes place although there be no issue of the marriage, in all cases where the issue, if any, would have inherited. In Vermont, the title by curtesy has been laid under the equitable restriction

of existing only in the event that the children of the wife entitled to inherit, died within age and without children in South Carolina, tenancy by the curtesy, eo nomine, has ceased by the provisions of an act passed in 1791, relative to the distribution of intestates estates, which gives to the hushand surviving his wife, the same share of her real estate, as she would have taken out of his, if left a widow, and that is one moiety, or one-third of it in fee, according to circumstances. In Georgia, tenancy by the curtesy does not exist, because, since 1785, all marriages vest the real, equally with the personal estate, in the hushand. 4 Kent, Com. 29. In Louisiana, where the common Iaw has not been adopted in this respect, this estate is unknown.

23. This estate is not peculiar to the English law, as Littleton erroneously supposes; Litt. s. 35; for it is. to be found, with some modifications, in the ancient laws of Scotland, Ireland, Normandy and Germany. In France there were several customs, which gave a somewhat similar estate to the surviving hushand, out of the wife's inheritances. Merlin, Repert. mots Linotte, et Quarte de Conjoint pauvre.

24. - 3d. Estate in dower. Dower is an estate for life which the law gives the widow in the third part of the lands and tenements, or hereditaments of which the hushand was solely seised, at any time during the coverture, of an estate in fee or in tail, in possession, and to which estate in the lands and tenements the issue, if any of such widow, might, by possibility, have inherited. In Pennsylvania, the sole seisin of the. hushand is not necessary. Watk. Prin. Con. 38; Lit. §36; Act of Penna. March 31, 1812.

25. To create a title to the dower, three things are indispensably requisite: 1. Marriage. This must be a marriage not absolutely void, and existing at the death of the hushand; a wife de facto, whose marriage is voidable by decree, as well as a wife de jure, is entitled to it; and the wife shall be endowed, though the marriage be within the age of consent, and the hushand dies within that age. Co. Litt. 33, a; 7 Co. 42; Doct. & Stud. 22; Cruise, Dig. t. 6, c. 2, s, 2, et seq.

26. - 2. Seisin. The hushand must have been seised, some time during the coverture, of the estate of which the wife is dowable. Co. Litt. 31, a. An actual seisin is not indispensable, a seisin in law is sufficient. As to the effect of a transitory seisin, see 4 Kent, Com. 38; 2 Bl. Com. 132; Co. Litt. 31, a.

27. - 3. Death of the hushand. This must be a natural death; though there are authorities which declare that a civil death shall have the same effect. Cruise, Dig. tit. 6, ch. 2, §22. Vide, generally, 8 Vin. Ab. 210; Bac. Ab. Dower; Com. Dig. Dower; Id. App. tit. Dower; 1 Supp. to. Ves. jr. 173, 189; 2 Id. 49; 1 Vern. R. by Raithby, 218, n. 358, n.; 1 Salk. R. 291; 2 Ves. jr. 572; 5 Ves. 130; Arch. Civ. Pl. 469; 2 Sell. Pr. 200;

4 Kent, Com. 35; Amer. Dig. h. t.; Pothier, Traite du Douaire; 1 Swift's Dig. 85; Perk. 300, et seq.

28. - 4th. Estate tail after possibility of issue extinct. By this awkward, but perhaps necessary periphrasis, justified by Sir William Blackstone, 2 Com. 124, is meant the estate which is thus described by Littleton, §32 when tenements are given to a man and his wife in special tail, if one of them die without issue, the survivor is tenant in tail after possibility of issue extinct."

29. This estate though, strictly speaking, not more than an estate for life, partakes in some circumstances of the nature of an estate tail. For a tenant in tail after possibility of issue extinct, has eight qualities or privileges in common with a tenant in tail. 1. He is dispunishable for waste. 2. He is not compellable to attorn. 3. He shall not have aid of the person in reversion. 4. Upon his alienation no writ of entry in consimili casu lies. 5. After his death, no writ of intrusion lies. 6. He may join the mise in a writ of right in a special manner. 7. In a praecipe brought by him he shall not name himself tenant for life. 8. In a praecipe brought against him, he shall not be named barely tenant for life.

30. There are, however, four qualities annexed to this estate, which prove it to be, in fact, only an estate for life. 1. If this tenant makes a feoffment in fee, it is a forfeiture. 2. If an estate tail or in fee descends upon him, the estate tail after possibility of issue extinct is merged. 3. If he is impleaded and makes default, the person in reversion shall be received, as upon default of any other tenant for life. 4. An exchange between this tenant and a bare tenant for life, is good; for, with respect to duration, their. estates are equal. Cruise, Dig. tit. 4; Tho. Co. Litt. B. 2, c. 17; Co. Lit. 28, a.

31. Nothing but absolute impossibility of having issue, can give rise to this estate. Thus if a person gives lands to a man and his, wife, and to the heirs of their two bodies, and they live to a hundred years, without having issue, yet they are tenants in tail; for the law' sees no impossibility of their having issue, until the death of one of them. Co. Litt. 28, a. See Tenant in tail after possibility of issue extinct.

32. - §2. An estate less than freehold is an estate which is not in fee, nor for life; for although a man has a lease for a thousand years, which is much longer than any life, yet it is not a freehold, but a mere estate for years, which is a chattel interest. Estates less than freehold are estates for years, estates at will, and estates at sufferance.

33. - 1. An estate for years, is one which is created by a leas; for years, which is a contract for the posspssion and profits of land for a determinate period, with the recompense of rent; and it is deemed an estate for years, though the number of years should exceed the ordinary limits of human life; and it is deemed an estate for years

though it be limited to less than a single year. It is denominated a term, because its duration is absolutely defined.

34. An estate for life is bigher than an estate for years, though the latter should be for a thousand years. Co. Litt. 46, a; 2 Kent, Com. 278; 1 Brown's Civ. Law, 191; 4 Kent, Com. 85; Cruise's Dig. tit. 8; 4 Rawle's R. 126; 8 Serg. & Rawle, 459; 13 Id. 60; 10 Vin. Ab. 295, 318 to 325.

35. - 3. An estate at will is not bounded by any definite limits with respect to time; but as it originated in mutual agreement, so it depends upon the concurrence of both parties. As it depends upon the will of both, the dissent of either may determine it. Such an estate or interest cannot, consequently, be the subject of conveyance to a stranger, or of transmission to representatives. Watk. Prin. Con. 1; Litt. §68.

36. Estates at will have become infrequent under the operation of judicial decisions. Where no certain term is agreed on, they are now construed to be tenancies from year to year, and each party is bound to give reasonable notice of an intention to terminate the estate. When the tenant holds over by consent given, either expressly or by implication, after the determination of a lease for years, it is held evidence of a new contract, without any definite period, and is construed. to. be a tenancy from year to year. 4 Kent, Com. 210; Cruise, Dig. tit. 9, c . 1.

37.-3. An estate at sufferance. The session of land by lawful title, but holds over by wrong after the determination of his interest. Co. Litt. 57, b. He has a bare naked possession, but no estate which he can transfer or transmit, or which is capable of enlargement by. release, for he stands in no privity to his landlord.

38. There is a material distinction between the case of a person coming to an estate by act of the party, and afterwards holding over, and by act of the law and then holding over. In the first case, he is regarded as a tenant at sufferauce; and in the other, as an intruder, abator, and trespasser. Co. Litt. 57, b; 2 Inst. 134 Cruise, Dig. t. 9, c. 2 4 Kent, Com. 115 13 Serg. & Rawle, 60 8 Serg. & Rawle, 459; 4 Rawle, 459; 4 Rawle's R. 126.

39. - II. As to the time of their enjoyment, estates are considered either in possession, (q. v.) or expectancy. (q. v.) The latter are either remainders, (q. v.) which are created, by the act of the parties, and these are vested or contingent, or reversions, (q, v.) created by act of law.

40. - III. An estate way be holden in a variety of ways the most common of which are, 1. In severalty. 2. In joint tenancy. 3. In common. 4. In coparcenary. These will be separately considered.

41. - 1. dn estate in severally, is where only one tenant holds the estate in his own right, without any other person being joined or connected with him, in point-of interest, during the continuance of his estate.

42. - 2. dn estate in joint tenancy, is where lands or tenements are granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. 2 Bl. Com. 179. Joint tenants always take by purchase, and necessarily have equal shares; while tenants in common, also coparceners, claiming under ancestors in different degrees, may have unequal shares and the proper and best mode of creating an estate in joint tenancy, is to limit to A B and C D, and their assigns, if it be an estate for life; or to A B and C D, and their heirs, if in) fee. Watk. Prin. Con. 86.

43. The creation of the estate depends upon the expression in the deed or devise, by which the tenants hold, for it must be created by the acts of the parties, and does not result from the operation of law. Thus, an estate given to a number of persons, without any restriction or explanation, will be construed a joint tenancy; for every part of the grant can take effect only, by considering the estate equal in all, and the union of their names gives them a name in every respect.

44. The properties of this estate arise from its unities; these are, 1. Unity of title; the estate must have been created and derived from one and the same conveyance. 2. There must be a unity of time; the estate must be created and vested at the same period. 3. There must be a unity of interest; the estate must be for the same duration, and for the same quantity of interest. 4. There must be a unity of possession; all the tenants must possess and enjoy at the same time, for each must have an entire possession of every parcel, as of the whole. One has not possession of one-half, and another of the other half, but each has an undivided moiety of the whole, and not the whole of an undivided moiety.

45. The distinguishing incident of this estate, is the right of survivorship, or jus accrescendi; at common law, the entire tenancy or estate, upon the death of any of the joint tenants, went to the survivors, and so on to the last survivor, who took an estate of inheritance. The right of survivorship, except, perhaps, in estates held in trust, is abolished in Pennsylvania, New York, Virginia, Kentucky, Indiana, Missouri, Tennessee, North and-South Carolina, Georgia, and Alabama. Griffith's Register, h. t. In Connecticut it never was recognized. 1 Root, Rep. 48; 1 Swift's Digest, 102. Joint tenancy may be destroyed by destroying any of its constituent unities, except that of time. 4 Kent, Com. 359. Vide Cruise, Dig. tit. 18; 1 Swift's Dig. 102; 14 Vin. Ab. 470; Bac. Ab. Joint Tenants, &c.; 3 Saund. 319, n. 4; 1 Vern. 353,; Com. Dig. Estates by Grant, K 1; 4 Kent, Com. 353; 2 Bl. Com. 181; 1 Litt. see. 304 2 Woodd. Lect. 127; 2 Preston on Abst. 67; 5 Binn. Rep . 18; Joint tenant; Survivor; Entirety.

46. - 3. An estate in common, is one which is held by two or more persons by unity of possession.

47. They may acquire their estate by purchase, and hold by several and distinct titles, or by title derived at the same time, by the same deed or will; or by descent. In this respect the American law differs from the English common law.

48. This tenancy, according to the common law, is created by deed or will, or by change of title from joint tenancy or coparcenary; or it arises, in many cases, by construction of law. Litt. sec. 292, 294, 298, 302; 2 Bl. Com. 192; 2 Prest. on Abstr. 75.

49. In this country it maybe created by descent, as well as by deed or will. 4 Kent, Com. 363. Vide Cruise, Dig. tit. 20 Com. Dig. Estates by Grant, K 8.

50. Estates in common can be dissolved in two ways only; first, by uniting all the titles and interests in one tenant secondly, by making partition.

51. - 4. An estate in coparcenary, is an estate of inheritance in lands which descend from the ancestor to two or more persons who are called coparceners or parceners.

52. This is usually applied, in England, to cases where lands descend to females, when there are no male heirs.

53. As in the several states, estates generally descend to all the children equally, there is no substantial difference between coparceners and tenants in common. The title inherited by more persons than one, is, in some of the states, expressly declared to be a tenancy in common, as in New York and New Jersey, and where it is not so declared the effect is the same; the technical distinction between coparcenary and estates in common may be considered as essentially extinguished in the United States. 4 Kent, Com. 363. Vide Estates.

54. - IV. An estate upon condition is one which has a qualification annexed to it by which it may, upon the happening or not happening of a particular event, be created, or enlarged, or destroyed. Conditions may be annexed to estates in fee, for life, or for years. These estates are divided into estates upon condition express, or in deed; and upon conditions implied, or in law.

55. Estates upon express conditions are particularly mentioned 'in the contract between the parties., Litt. s. 225; 4 Kent, Com. 117; Cruise, Dig. tit. 13.

56. Estates upon condition in law are such as have a condition impliedly annexed to them, without any condition being specified in the deed or will. Litt. s. 378, 380; Co. Litt. 215, b; 233, b; 234, b.

57. Considered as to the title which may be had in them, estates are legal and equitable. 1. A legal estate is one, the right to which can be enforced in a court of law. 2. An equitable, is a right or interest in land, which not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, require the aid of such a court to, make it available. See, generally, Bouv. Inst. Index, h. t.

ESTER EN JUGEMENT, French law. Stare in judicio. To appear before a tribunal either as plaintiff or defendant.

ESTIMATION OF VALUES. As the value of most things is variable, according to circumstances, the law in many cases determines the time at which the value of a thing should be taken; thus, the value of an advancement, is to be taken at the time of the gift. 1 Serg. & R. 425. Of a gift in frank-marriage, at the time of partition between the parceners, and the bringing of the gift in frank-marriage into hotchpot. But this is a case sui generis. Co. Lit. §273; 1 Serg. & R. 426. Of the yearly value of properties; at the time of partition. Tho. Co. Lit. 820. Of a bequest of so pieces of coin; at the time of the will made. Godolph, 0. L. 273, part 3, chap. 1. §3. Of assets to make lineal warranty a bar; at the time of the descent. Co. Lit. 374, b. Of lands warranted; at the time of the warranty. Beames' Glanv. 75 n.; 2 Serg. & Rawle, 444, see Eviction 2. Of a ship lost at sea; her value is to be taken at the port from which she sailed, deducting one-fifth; 2 Serg. & Rawle, 258; 1 Caines, 572; 2 Condy. Marshall, 545; but different rules prevail on this subject in different nations. 2 Serg. & R. 259. Of goods lost at sea; their value is to be taken at the port of delivery. 2 Serg. & R. 257. The comparative value of a life estate, and the remainder in fee, is one-third for the life and two-thirds for the remainder in fee; and moneys due upon a mortgage of lands devised to one for life, and the remainder in fee to another, are to be apportioned by the same rule. 1 Vern. 70; 1 Chit. Cas. 223, 224, 271; Francis' Max. 3, §12, and note. See Exchange, 3-2.

ESTOPPEL, pleading. An estoppel is a preclusion, in law, which prevents a man from alleging or denying a fact, in consequence o his own previous act, allegation or denial of a contrary tenor. Stepb. Pl. 239. Lord Coke says, " an estoppel is, when a man is concluded by his own act or acceptance, to say the truth." Co. Litt. 352, a. And Blackstone defines "an estoppel to be a special plea in bar, which happens where a man has done some act, or executed some deed, which estops or precludes him from averring any thing to the contrary. 3 Cora. 308. Estoppels are odious in law; 1 Serg. & R. 444; they are not admitted in equity against the truth. Id. 442. Nor can jurors be estopped from saying the truth, because they are sworn to do so, although they are

estopped from finding against the admission of the parties in their pleadings. 2 Rep. 4; Salk. 276; B. N. P. 298; 2 Barn. & Ald. 662; Angel on Water Courses, 228-9. See Co. Litt. 352, a, b, 351, a. notes.

2. An estoppel may, arise either from matter of record; from the deed of the party; or from matter in Pays; that is, matter of fact.

3. Thus, any confession or admission made in pleading, in a court of record, whether it be express, or implied from pleading over without a traverse, will forever preclude the party from afterwards contesting the same fact in any subsequent suit with his adversary. Com. Dig. Estoppel, A 1. This is an estoppel by matter of record.

4. As an instance of an estoppel by deed, may be mentioned the case of a bond reciting a certain fact. The party executing that bond, will be precluded from afterwards denying in any action brought upon that instrument, the fact , so recited. 5 Barn. & Ald. 682.

5. An example of an estoppel by matter in pays occurs when one man Las accepted rent of another. He will be estopped from afterwards. denying, in any action, with that person, that he was, at the time of such acceptance, his tenant. Com. Dig. Estoppel, A 3 Co. Litt. 352, a.

6. This doctrine of law gives rise to a kind of pleading that is neither by way of traverse, nor confession. and avoidance: viz. a pleading, that, waiving any question of fact, relies merely on the estoppel, and, after stating the previous act, allegation, or denial, of the opposite party, prays judgment, if he shall be received or admitted to aver contrary to what he before did or said. This pleading is called pleading by way of estoppel. Steph. 240a

7. Every estoppel ought to be reciprocal, that is, to bind both parties: and this is the reason that regularly a stranger shall neither take advantage or be bound by an estoppel. It should be directly affirmative, and not by inference nor against an estoppel. Co. Lit. 352, a, b; 1 R. 442-3; 9 Serg. & R. 371, 430; 4 Yeates' 38 1 Serg. & R. 444; Corn. Dig. Estoppel, C 3 Johns. Cas. 101; 2 Johns. R. 382; 8 W. & S. 135; 2 Murph. 67; 4 Mont. 370. Privies in blood, privies in estate, and privies in law, are bound by, and may take advantage of estoppels. Co. Litt. 352; 2 Serg. & Rawle, 509; 6 Day, R. 88. See the following cases relating to estoppels by; Matter of record: 4 Mass. R. 625; 10 Mass. R. 155; Munf. R. 466; 3 East, R. 354; 2 Barn. & Ald. 362, 971; 17 Mass. R. 365; Gilm. R. 235; 5 Esp. R. 58; 1 Show. 47; 3 East, R. 346. Matter of writing: 12 Johns. R. 347; 5 Mass. R. 395; Id. 286; 6 Mass. R. 421; 3 John. Cas. 174; 5 John. R. 489; 2 Caines' R. 320; 3 Johns. R. 331; 14 Johns. R. 193; Id. 224; 17 Johns. R. 161; Willes, R. 9, 25; 6 Binn. R. 59; 1 Call, R. 429; 6 Munf. R. 120; 1 Esp.

R. 89; Id. 159; Id. 217; 1 Mass. R. 219. Matter in pays: 4 Mass. R. 181; Id. 273 15 Mass. R. 18; 2 Bl. R. 1259; 1 T. R. 760, n.; 3 T. R. 14; 6 T. R. 62; 4 Munf. 124; 6 Esp. R. 20; 2 Ves. 236; 2 Camp. R. 844; 1 Stark. R. 192. And see, in general, 10 Vin. Abr. 420, tit. Estoppel; Bac. Abr. Pleas, 111; Com. Dig. Estoppel; Id. Pleader, S 5; Arch. Civ. Pl. 218; Doct. Pl. 255; Stark. Ev. pt. 2, p. 206, 302; pt. 4, p. 30; 2 Smith's Lead. Cas. 417-460. Vide Term.

ESTOVERS, estates. The right of taking necessary wood for the use or furniture of a house or farm, from off another's estate. The word bote is used synonymously with the word estovers. 2 Bl. Com. 35; Dane's Ab. Index, h. t.; Woodf. L. & T. 232; 10 Wend. 639; 2 Bouv. Inst. n. 1652 57.

ESTRAYS. Cattle whose owner is unknown.

2. In the United States, generally, it is presumed by local regulations, they are subject to, being sold for the benefit of the poor, of some other public use, of the place where found.

ESTREAT. This term is used to signify a true copy or note of some original writing or record, and specially of flues and amercements imposed by a court, and extracted from the record, and certified to a proper officer or officers authorized and required to collect them. Vide F. N. B. 57, 76.

ESTREPE. This word is derived from the French, estropier, to cripple. It signifies an injury to lands, to the damage of another, as a reversioner. This is prevented by a writ of estrepemeut.

ESTREPEMENT. The name of a writ which lay at common law to prevent a party in possession from committing waste on an estate, the title to which is disputed, after judgment obtained in any real action, and before possession was delivered by the sheriff.

2. But as waste might be committed in some cases, pending the suit, the statute of Gloucester gave another writ of estrepement pendente placito, commanding the sheriff firmly to inhibit the tenant "ne faciat vastum vel strepementum pendente placito dicto indiscusso." By virtue of either of these writs, the sheriff may resist those who commit waste or offer to do so; and he may use sufficient force for the purpose. 3 Bl. Com. 225, 226.

3. This writ is sometimes directed to the sheriff and the party in possession of the lands, in order to make him amenable to the court as for a contempt in case of his disobedience to the injunction of the writ. At common law the process proper to bring

the tenant into court is a venire facias, and thereon an attachment. Upon the defendant's coming in, the plaintiff declares against him. The defendant usually pleads "that he has done no waste contrary to the prohibition of the writ." The issue on this plea is tried by a jury, and in case they find against the defendant, they assess damages which the plaintiff recovers. But as this verdict convicts the defendant of a contempt, the court proceed against him for that cause as in other cases. 2 Co. Inst. 329; Rast. Ent. 317; Brev. Judic. 88; More's Rep. 100; 1 Bos. & Pull. 121; 2 Lilly's Reg. tit. Estrepement; 5 Rep. 119; Reg. Brev. 76, 77.

4. In Pennsylvania, by legislative enactment, the remedy by estrepement is extended for the benefit of any owner of lands leased for years or at will, at any time during the continuance or after the expiration of such demise, and due notice given to the tenant to leave the same, agreeably to law, or for any purchaser at sheriff or coroner's sale of lands. &c., after he has been declared the highest bidder by the sheriff or coroner; or for any mortgagee or judgment creditor, after the lands bound by such judgment or mortgage, shall have been condemned by inquisition, or which may be subject to be sold by a writ of venditioni exponas or levari facias. Vide 10 Vin. Ab. 497; Woodf. Landl. & Ten, 447; Archb. Civ. Pl. 17; 7 Com. Dig. 659.

ET CETERA. A Latin phrase, which has been adopted into English; it signifies. "and the others, and so of the rest," it is commonly abbreviated, &c.

2. Formerly the pleader was required to be very particular in making his defence. (q. v.) B making full defence, he impliedly admitted the jurisdiction of the court, and the competency of the plaintiff to sue; and half defence was used when the defendant intended to plead to the jurisdictions or disability. To prevent the inconveniences which might arise by pleading full or half defence, it became the practice to plead in the following form: " And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says," which was either full or half defence. 2 Saund. 209, c.; Steph. Pl. 432; 2 Chit. Pl. 455.

3. In practice, the &c. is used to supply the place of words which have been omitted. In taking recognizance, for example, it is usual to make an entry on the docket of the clerk of the court, as follows: A B, tent, &c., in the sum of $1000, to answer, &c. 6 S. & R. 427.

ET NON. And not. These words are sometimes employed in pleading to convey a pointed denial. They have the same effect as without this, absque hoe. 3 Bouv. Inst. n. 2981, note.

EUNDO MORANDO, ET REDEUNDO. This Latin phrase signifies going, remaining, and returning. It is employed in cases where a person either as a party, a

witness, or one acting in some other capacity, as an elector, is privileged from arrest, in order to give him that freedom necessary to the performance of his respective obligations, to signify that he is protected from arrest eundo, morando et redeundo. See 3 Bouv. Inst. n. 3380.

EUNOMY. Equal laws, and a well adjusted constitution of government.

EUNUCH. A male whose organs of generation have been so far removed or disorganized, that he is rendered incapable of reproducing his species. Domat, Lois Civ. liv. prel. tit. 2, s. 1, n. 10.

EVASION. A subtle device to set aside the truth, or escape the punishment of the law; as if a man should tempt another to strike him first, in order that he might have an opportunity of returning the blow with impunity. He is nevertheless punishable, because he becomes himself the aggressor in such a case. Wishard, 1 H. P . C. 81 Hawk. P. C. c. 31, §24, 25; Bac. Ab. Fraud, A.

2. An escape from custody.

EVICTION. The loss or deprivation which the possessor of a thing suffers, either in whole or in part, of his right of property in such a thing, in consequence of the right of a third person established before a compenent tribunal. 10 Rep. 128; 4 Kent, Com. 475-7; 3 Id. 464-5.

2. The eviction may be total or partial. It is total, when the possessor is wholly deprived of his rights in the whole thing; partial, when he is deprived of only a portion of the thing; as, if he had fifty acres of land, and a third person recovers by a better title twenty-five; or, of some right in relation to the thing. as, if a stranger should claim and establish a right to some easement over the same. When the grantee suffers a total eviction, and he has a covenant of seisin, he recovers from the seller, the consideration money, with interest and costs, and no more. The grantor has no concern with the future rise or fall of the property, nor with the improvements made by the purchaser. This seems to be the general rule in the United States. 3 Caines' R. 111; 4 John. R. 1; 13 Johns. R. 50; 4 Dall. R. 441; Cooke's Term. R. 447; 1 Harr. & Munf. 202; 5 Munf. R. 415; 4 Halst. R. 139; 2 Bibb, R. 272. In Massachusetts, the measure of damages on a covenant of warranty, is the value of the land at the time of eviction. 3 Mass. R. 523; 4 Mass. R. 108. See, as to other states, 1 Bay, R. 19, 265; 3 Des. Eq. R. 245; 2 Const. R. 584; 2 McCord's R. 413; 3 Call's R. 326.

3. When the eviction is only partial the damages to be recovered under the covenant of seisin, are a rateable part of the original price, and they are to bear the same ratio to the whole consideration, that the value of land to which the title has failed, bears to

the value of the whole tract. The contract is not rescinded, so as to entitle the vendee to the whole consideration money, but only to the amount of the relative value of the part lost. 5 Johns. R. 49; 12 Johns. R. 126; Civ. Code of Lo. 2490; 4 Kent's Com. 462. Vide 6 Bac. Ab. 44; 1 Saund. R. 204: note 2, and 322 a, note 2; 1 Bouv. Inst. n. 656.

EVIDENCE. That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue; 3 Bl. Com. 367; or it is whatever is exhibited to a court or jury, whether it be by matter of record, or writing, or by the testimony of witnesses, in order to enable them to pronounce with certainty; concerning the truth of any matter in dispute; Bac. Ab. Evidence, in pr.; or it is that which is legally submitted to a jury, to enable them to decide upon the questions in dispute or issue, as pointed out by the pleadings and distinguished from all comment or argument. 1 Stark. Ev. 8. 2. Evidence may be considered with reference to, 1. The nature of the evidence. 2. The object of the evidence. 3. The instruments of evidence. 4. The effect of evidence. 1. As to its nature, evidence may be considered with reference to its being 1. Primary evidence. 2. Secondary evidence. 3. Positive. 4. Presumptive. 5. Hearsay. 6. Admissions.

4. - 1. Primary evidence. The law generally requires that the best evidence the case admits of should be given; B. N. P. 293; 1 Stark. Ev. 102, 390; for example, when a written contract has been entered into, and the object is to prove what it was, it is requisite to produce the original writing if it is to be attained, and in that case no copy or other inferior evidence will be received.

5. To this general rule there are several exceptions. 1. As it refers to the quality rather than to the quantity of evidence, it is evident that the fullest proof that every case admits of, is not requisite; if, therefore, there are several eye-witnesses to a fact, it may be sufficiently proved by one only. 2. It is not always requisite, when the matter to be proved has been reduced to writing, that the writing should be produced; as, if the narrative of a fact to be proved has been committed to writing, it may yet be proved by parol evidence. A receipt for the payment of money, for example, will not exclude parol evidence of payment. 14 Esp. R. 213; and see 7 B. & C. 611; S. C. 14 E. C. L. R. 101; 1 Campb. R. 439; 3 B. & A. 566; 6 E. C. L. R. 377.

6. - 2. Secondary evidence. That species of proof which is admissible on the loss of primary evidence, and which becomes by that event the best evidence. 3 Yeates, Rep. 530.

7. It is a rule that the best evidence, or that proof which most certainly exhibits the true state of facts to which it relates, shall be required, and the law rejects secondary or inferior evidence, when it is attempted to be substituted for evidence of a higher or superior nature. This is a rule of policy, grounded upon a reasonable suspicion, that

the substitution of inferior for better evidence arises from sinister motives; and an apprehension that the best evidence, if produced, would alter the case to the prejudice of the party. This rule relates not to the measure and quantity of evidence, but to its quality when compared with some other evidence of superior degree. It is not necessary in point of law, to give the fullest proof that every case may admit of. If, for example, there be several eye witnesses to a fact, it may be proved by the testimony of one only.

8. When primary evidence cannot be had, then secondary evidence will be admitted, because then it is the best. But before such evidence can be allowed, it must be clearly made to appear that the superior evidence is not to be had. The person who possesses it must be applied to, whether he be a stranger or the opposite party; in the case of a stranger, a subpoena and attachment, when proper, must be taken out and served; and, in the case of a party, notice to produce such primary evidence must be proved before the secondary evidence will be admitted. 7 Serg. & Rawle, 116; 6 Binn. 228; 4 Binn. R. 295, note; 6 Binn. R. 478; 7 East, R. 66; 8 East, R. 278 3 B. & A. 296; S. C. 5 E. C. L. R. 291.

9. After proof of the due execution of the original, the contents should be proved by a counterpart, if there be one, for this is the next best evidence; and it seems that no evidence of a mere copy is admissible until proof has been given that the counterpart cannot be produced. 6 T. R. 236. If there be no counterpart, a copy may be proved in evidence. by any witness who knows that it is a copy, from having compared it with the original. Bull. N. P. 254; 1 Keb. 117; 6 Binn. R. 234; 2 Taunt. R. 52; 1 Campb. R. 469 8 Mass. R. 273. If there be no copy, the party may produce an abstract, or even give parol evidence of the contents of a deed. 10 Mod. 8; 6 T. R. 556.

10. But it has been decided that there are no degrees in secondary evidence: and when a party has laid the foundation for such evidence, he may prove the contents of a deed by parol, although it appear that an attested copy is in existence. 6 C. & P. 206; 8 Id. 389.

11. - 3. Positive or direct evidence is that which, if believed, establishes the truth of a fact in issue, and does not arise from any presumption. Evidence is direct and positive, when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses. 1 Phil. Ev. 116 1 Stark. 19. In one sense, there is but little direct or positive proof, or such proof as is acquired by means of one's own sense, all other evidence is presumptive but, in common acceptation, direct and positive evidence is that which is communicated by one who has actual knowledge of the fact.

12. - 4. Presumptive evidence is that which is not direct, but where, on the contrary, a fact which is not positively known, is presumed or inferred from one or more other facts or circumstances which are known. Vide article Presumption, and Rosc. Civ. Ev. 13; 1 Stark. Ev. 18.

13. - 5. Hearsay, is the evidence of those who relate, not what they know themselves, but what they have heard from others.

14. Such mere recitals or assertions cannot be received in evidence, for many reasons, but principally for the following: first, that the party making such declarations is not on oath and, secondly, because the party against whom it operates, has no opportunity of cross-examination. 1 Phil. Ev. 185. See, for other reasons, 1 Stark. Ev. pt. 1, p. 44. The general rule excluding hearsay evidence, does not apply to those declarations to which the party is privy, or to admissions which he himself has made. See Admissions.

15. Many facts, from their very nature, either absolutely, or usually exclude direct evidence to prove them, being such as are either necessarily or usually, imperceptible by the senses, and therefore incapable of the ordinary means of proof. These are questions of pedigree or relationship, character, prescription, custom, boundary, and the like; as also questions which depend upon the exercise of particular skill and judgment. Such facts, some from their nature, and others from their antiquity, do not admit of the ordinary and direct means of proof by living witnesses; and, consequently, resort must be had to the best means of proof which the nature of the cases afford. See Boundary; Custom; Opinion; Pedigree; Prescription.

16. - 6. Admissions are the declarations which a party by himself, or those who act under his authority, make of the existence of certain facts. Vide Admissions.

17.- §2. The object of evidence is next to be considered. It is to ascertain the truth between the parties. It has been discovered by experience that this is done most certainly by the adoption of the following rules, which are now binding as law: 1. The evidence must be confined to the point in issue. 2. The substance of the issue must be proved, but only the substance is required to be proved. 3. The affirmative of the issue must be proved.

18. - 1. It is a general rule, both in civil and criminal cases, that the evidence shall be confined to the point in issue. Justice and convenience require the observance of this rule, particularly in criminal cases, for when a prisoner is charged with an offence, it is of the utmost importance to him that the facts laid before the jury should consist exclusively of the transaction, which forms the subject of the indictment, and, which alone he has come prepared to answer. 2 Russ. on Cr. 694; 1 Phil. Ev. 166.

19. To this general rule, there are several exceptions, and a variety of cases which do not fall within the rule. 1. In general, evidence of collateral facts is not admissible; but when such a fact is material to the issue joined between the parties, it may be given in evidence; as, for example, in order to prove that the acceptor of a bill knew the payee to be a fictitious person; or that the drawer had general authority from him to fill up bills with the name of a fictitious payee, evidence may be given to show that he had accepted similar bills before they could, from their date, have arrived from the place of date. 2 H. Bl. 288.

20. - 2. When special damage sustained by the plaintiff is not stated in the declaration, it is Dot one of the points in issue, and therefore, evidence of it cannot be received; yet a damage which is the necessary result of the defendant's breach of contract, may be proved, notwithstanding it is not in the declaration. 11 Price's Reports, 19.

21. - 3. In general, evidence of the character of either party to a suit is inadmissible, yet in some cases such evidence may be given. Vide article Cha?-acter.

22. - 4. When evidence incidentally applies to another person or thing not included in the transaction in question, and with regard to whom or to which it is inadmissible; yet if it bear upon the point in issue, it will be re-ceived. 8 Bingh. Rep. 376; S. C. 21 Eng. C. L. R. 325 and see 1 Phil. Ev. 158; 2 East, P. C. 1035; 2 Leach, 985; S. C. 1 New Rep. 92; Russ. & Ry. C. C. 376; 2 Yeates, 114; 9 Conn. Rep. 47.

23. - 5. The acts of others, as in the case of conspirators, may be given in evidence against the prisoner, when referable to the issue; but confessions made by one of several conspirators after the offence has been completed, and when the conspirators no longer act in concert) cannot be received. Vide article Confession, and 10 Pick. 497; 2 Pet. Rep. 364; 2 Brec. R. 269; 3 Serg. & Rawle, 9; 1 Rawle, 362, 458; 2 Leigh's R. 745; 2 Day's Cas. 205; 3 Serg. & Rawle, 220; 3 Pick. 33; 4 Cranch, 75; 2 B. & A. 573-4 S. C. 5. E. C. L. R. 381.

24. - 6. In criminal cases, when the offence is a cumulative one, consisting itself in the commission of a number of acts, evidence of those acts is not only admissible, but essential to support the charge. On an indictment against a defendant for a conspiracy, to cause himself, to be believed a man of large property, for the purpose of defrauding tradesmen after proof of a representation to one tradesman, evidence may therefore be given of a representation to another tradesman at a different time. 1 Campb. Rep. 399; 2 Day's Cas. 205; 1 John. R. 99; 4 Rogers' Rec. 143; 2 Johns. Cas. 193.

25. - 7. To prove the guilty knowledge of a prisoner, with regard to the transaction in question, evidence of other offences of the same kind, committed by the prisoner, though not charged in the indictment, is admissible against him. As in the case where

a prisoner had passed a counterfeit dollar, evidence that he had. other counterfeit dollars in his possession is evidence to prove the guilty knowledge. 2 Const. R. 758; Id. 776; 1 Bailey, R. 300; 2 Leigh's R. 745; 1 Wheeler's Cr. Cas. 415; 3 Rogers' Rec. 148; Russ. & Ry. 132; 1 Campb. Rep. 324; 5 Randolph's R. 701.

26. - 2. The substance of the issue joined between the parties must be proved. 1 Phil. Ev. 190. Under this rule will be considered the quantity of evidence required to support particular averments in the declaration or indictment.

27. And, first, of civil cases. 1. It is a fatal variance in a contract, if it appear that a party who ought to have been joined as plaintiff has been omitted. 1 Sauud. 291 b, n.; 2 T. R. 282. But it is no variance to omit a person who might have been joined as defendant, because the non-joinder ought to have been pleaded in abatement. 1 Saund. 291 d, n. 2. The consideration of the contract must be proved but it is not necessary for the plaintiff to set out in his declaration, or prove on the trial, the several parts of a contract consisting of distinct and collateral provisions; it is sufficient to state so much of the contract as contains the entire consideration of the act, and the entire act to be done in virtue of such consideration, including the time, manner, and other circumstances of its performance. 6 East, R. 568; 4 B. & A. 387; 6 E. C. L. R. 455.

28. - Secondly. In criminal cases, it may be laid down, 1. That it is, in general, sufficient to prove what constitutes an offence. It is enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified. 2 Campb. R. 585; 1 Harr. & John. 427. If a man be indicted for robbery, he may be found guilty of larceny, and not guilty of the robbery. 2 Hale, P. C. 302. The offence of which the party is convicted, must, however, be of the same class with that of which he is charged. 1 i Leach, 14; 2 Stra. 1133.

29. - 2. When the intent of the prisoner furnishes one of the ingredients in the offence, and several intents are laid in the indictment, each of which, together with the act done, constitutes an offence, it is sufficient to prove one intent only. 3 Stark. R. 35; 14 E. C. L. R. 154, 163.

30. - 3. When a person or thing, necessary to be mentioned in an indictment, is described with circumstances of greater particularity than is requisite, yet those circumstances must be proved. 3 Rogers' Rec. 77; 3 Day's Cas. 283. For example, if a party be charged with stealing a black horse, the evidence must correspond with the averment, although it was unnecessary to make it. Roscoe's Cr. Ev. 77 4 Ohio, 350.

31. - 4. The name of the prosecutor, or party injured; must be proved as laid, and the rule is the same with reference to the name of a third person introduced into the indictment, as. descriptive of some person or thing.

32. - 5. The affirmative of the issue must be proved. The general rule with regard to the burthen of proving the issue, requires that the party who asserts the, affirmative should prove it. But this rule ceases to operate the moment the presumption of law is thrown into the other scale. When the issue is on the legitimacy of a child therefore, it is incumbent on the party asserting the illegitimacy to prove it. 2 Selw. N. P. 709. Vide Onus Probandi; Presum 2 Gall. R. 485 and 1 McCord, 573.

33. - §3. The consideration of the instruments of evidence will be the subject of this head. These consist of records, private writings, or witnesses.

34. - 1. Records are to be proved by an exemplification, duly authenticated, (Vide Authentication, in all cases where the issue is nul tiel record. In other cases, an examined copy, duly proved, will, in general, be evidence. Foreign laws as proved in the mode pointed out under the article Foreign laws.

35. - 2. Private writings are proved by producing the attesting witness; or in case of his death, absence, or other legal inability to testify, as if, after attesting the paper, he becomes infamous, his handwriting may be proved. When there is no witness to the instrument, it may be proved by the evidence of the handwriting of the party, by a person who has seen him write, or in a course of correspondence has become acquainted with his hand. See Comparison of handwriting, and 5 Binn. R. 349; 10 Serg. & Rawle, 110; 11 Serg. & Rawle, 333 3 W. C. C. R. 31; 11 Serg. & Rawle, 347 6 Serg. & Rawle, 12, 812; 1 Rawle, R. 223; 3 Rawle, R. 312; 1 Ashm. R. 8; 3 Penn. R. 136.

36. Books of original entry, when duly proved, are prima facie evidence of goods sold and delivered, and of work and labor done. Vide original entry.

37. - 3. Proof by witnesses. The testimony of witnesses is called parol evidence, or that which is given viva voce, as contra-distinguished from that which is written or documentary. It is a general rule, that oral evidence shall in no case be received as equivalent to, or as a substitute for, a written instrument, where the latter is required by law; or to give effect to a written instrument which is defective in any particular which by law is essential to its validity; or to contradict, alter or vary a written instrument, either appointed by law, or by the contract of the parties, to be the appropriate and authentic memorial of the particular facts it recites; for by doing so, oral testimony would be admitted to usurp the place of evidence decidedly superior in degree. 1 Serg. & Rawle, 464; Id. 27; Addis. R. 361; 2 Dall. 172; 1 Yeates, 140; 1 Binn. 616; 3 Marsh. Ken. R. 333; 4 Bibb, R. 473; 1 Bibb, R. 271; 11 Mass. R. 30; 13 Mass. R. 443; 3 Conn. 9; 20 Johns. 49; 12 Johns. R. 77; 3 Camp. 57; 1 Esp. C. 53; 1 M. & S. 21; Bunb. 175.

38. But parol evidence is admissible to defeat a written instrument, on the ground of fraud, mistake, &c., or to apply it to its proper subject matter; or, in some instances, as ancillary to such application, to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases, the parol evidence does not usurp the place, or arrogate the authority of, written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect. 1 Murph. R. 426 4 Desaus. R. 211; 1 Desaus. R. 345 1 Bay, R. 247; 1 Bibb, R. 271 11 Mass. R. 30; see 1 Pet. C. C. R. 85 1 Binn. R. 610; 3 Binn. R. 587: 3 Serg. Rawle, 340; Poth. Obl. Pl. 4, c. 2.

39. - §4. The effect of evidence. Under this head will be considered, 1st. The effect of judgments rendered in the United States, and of records lawfully made in this country; and, 2d. The effect of foreign judgments and laws.

40. - 1. As a general rule, a judgment rendered by a court of competent jurisdiction, directly upon the point in issue, is a bar between the same parties: 1 Phil. Ev. 242; and privies in blood, as an heir 3 Mod. 141; or privies in estate 1 Ld. Raym. 730; B. N. P. 232; stand in the same situation. as those they represent; the verdict and judgment may be used for or against them, and is conclusive. Vide Res Judicata.

41. The Constitution of the United States, art. 4, s. 1, declares, that "Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And congress may, by general laws, prescribe the manner in which Such acts, records and proceedings, shall be proved, and the effect thereof." Vide article Authentication and 7 Cranch, 481; 3 Wheat. R. 234 10 Wheat. R. 469; 17 Mass. R. 546; 9 Cranch, 192; 2 Yeates, 532; 7 Cranch, 408; 3 Bibb's R. 369; 5 Day's R. 563; 2 Marsh. Kty. R. 293.

42. - 2. As to the effect of foreign laws, see article Foreign Laws. For the force and effect of foreign judgments, see article Foreign Judgments. Vide, generally, the Treatises on Evidence, of Gilbert, Phillips, Starkie, Roscoe, Swift, Bentham, Macnally, Peake, Greenleaf, and Bouv. Inst. Index, h. t.; the various Digests, h. t.

EVIDENCE, CIRCUMSTANTIAL. The proof of facts which usually attend other facts sought to be, proved; that which is not direct evidence. For example, when a witness testifies that a man was stabbed with a knife, and that a piece of the blade was found in the wound, and it is found to fit exactly with another part of the blade found in the possession of the prisoner; the facts are directly attested, but they only prove circumstances, and hence this is called circumstantial evidence.

2. Circumstantial evidence is of two kinds, namely, certain and uncertain. It is certain when the conclusion in question necessarily follows as, where a man had received a

mortal wound, and it was found that the impression of a bloody left hand had been made on the left arm of the deceased, it was certain some other person than the deceased must have made such mark. 14 How. St. Tr. 1324. But it is uncertain whether the death was caused by suicide or by murder, and whether the mark of the bloody hand was made by the assassin, or by a friendly hand that came too late to the relief of the deceased. Id. Vide Circumstances.

EVIDENCE, CONCLUSIVE. That which, while uncontradicted, satisfies the judge and jury it is also that which cannot be contradicted.

2. The record of a court of common law jurisdiction is conclusive as to the facts therein stated. 2 Wash. 64; 2 H. 55; 6 Conn. 508, But the judgment and record of a prize court is not conclusive evidence in the state courts, unless it had jurisdiction of the subject-matter; and whether it had or not, the state courts may decide. 1 Conn. 429. See as to the conclusiveness of the judgments of foreign courts of admiralty, 4 Cranch, 421, 434; 3 Cranch, 458; Gilmer, 16 Const. R. 381 1 N. & M. 5 3 7.

EVIDENCE, DIRECT. That which applies immediately to the fadum probandum, without any intervening process; as, if A testifies he saw B inflict a mortal wound on C, of which he, instantly died. 1 Greenl. Ev. §13.

EVIDENCE, EXTRINSIC. External evidence, or that which is not contained in the body of an agreement, contract, and the like.

2. It is a general rule that extrinsic evidence cannot be admitted to contradict, explain, vary or change the terms of a contract or of a will, except in a latent ambiguity, or to rebut a resulting trust. 14 John. 1; 1 Day, R. 8; 6 Conn. 270.

EVOCATION, French law. The act by which a judge is deprived of the cognizance of a suit over which he had jurisdiction, for the purpose of conferring on other judges the power of deciding it. This is done with us by writ of certiorari.

EWAGE. A toll paid for water passage. Cowell. The same as aquagium. (q. v.)

EX CONTRACTU. This term is applied to such things as arise from a contract; as an action which arises ex contractu. Vide Action.

EX DELICTO. Those actions which arise in consequence of a crime, misdemeanor, fault, or tort; actions arising ex delicto are case, replevin, trespass, trover. See Action.

EX DOLO MALO. Out of fraud or deceit. When a cause of action arises from fraud or deceit, it cannot be supported: Ex dolo malo, non oritur actio.

EX AEQUO ET BONO. In equity and good conscience. A man is bound to pay money which ex oequo et bono he holds for the use of another.

EX MERO MOTU. Mere motion of a party's own free will. To prevent injustice, the courts will, ex mero motu, make rules and orders which the parties would not strictly be entitled to ask for.

EX MORA. From the delay; from the default. All persons are bound to make amends for damages which arise from their own default.

EX NECESSITATE LEGIS. From the necessity of law.

EX NECESSITATE REI. From the necessity of the thing. Many acts may be done ex necessitate ret, which would not be justifiable without it; and sometimes property is protected, ex necessitate rei, which, under, other circumstances, would not be so. For example, property put upon the land of another from necessity, cannot be distrained for rent. See Distress; Necessity.

EX OFFICIO. By virtue of his office. 2. Many powers are granted and exercised by public officers which are not expressly delegated. A judge, for example, may, ex officio, be a conservator of the peace, and a justice of the peace.

EX PARTE. Of the one part. Many things may be done ex parte, when the opposite party has had notice; an affidavit or deposition is said to be taken ex parte when only one of the parties attends to taking the same. Ex parte paterna, on the side of the father, or property descended to a person from his father; ex parte materna, on the part of the mother.

EX POST FACTO, contracts, crim. law. This is a technical expression, which signifies, that something has been done after another thing, in relation to the latter.

2. An estate granted, may be made good or avoided by matter ex post facto, when an election is given to the party to accept or not to accept. 1 Co . 146.

3. The Constitution of the United States, art. 1, sec. 10, forbids the states to pass any ex post facto law; which has been defined to be one which renders the act punishable in a manner in which it was not punishable when it was committed. 6 Cranch, 138. This definition extends to laws passed after the act, and affecting a person by way of punishment of that act, either in his person or estate. 3 Dall. 386; 1 Blackf. Ind. R. 193 2 Pet. U. S. Rep. 413 1 Kent, Com. 408; Dane's Ab. Index, h. t.

4. This prohibition in the constitution against passing ex post facto law's, applies exclusively to criminal or penal cases, and not to civil cases. Serg. Const. Law, 356. Vide 2 Pick. R. 172; 11 Pick. R. 28; 2 Root, R. 350; 5 Monr. 133; 9 Mass. R. 363; 3 N. H. Rep. 475; 7 John. R. 488; 6 Binn. R. 271; 1 J. J. Marsh, 563; 2 Pet. R. 681; and the article Retrospective.

EX VI TERMINI. By force of the term; as a bond ex vi termini imports a sealed instrument.

EX VISITATIONE DEI. By or from the visitation of God. This phrase is frequently employed in inquisitions by the coroner, where it signifies that the death of the deceased is a natural one.

EX TEMPORE. From the time without premeditation.

EXACTION, torts. A willful wrong done by an officer, or by one who, under color of his office, takes more fee or pay for his services than what the law allows. Between extortion and exaction there is this difference; that in the former case the officer extorts more than his due, when something is due to him; in the latter, he exacts what is not his due, when there is nothing due to him. Wishard; Co. Litt. 368.

EXAMINATION, crim. law. By the common law no one is bound to accuse himself. Nemo tenetur prodere seipsum. In England, by the statutes of Philip and Mary, (1 & 2 P. & M. c. 13; 2 & 3 P. & M. c. 10,) the principles of which have been adopted in several of the United States, the justices before whom any person shall be brought, charged with any of the crimes therein mentioned, shall take the examination of the prisoner, as well is that of the witnesses, in writing, which the magistrates shall subscribe, and deliver to the officer of the court where the trial is to be had. The signature of the prisoner, when not specially required by statute, is not indispensable, though it is proper to obtain it, when it can be obtained. 1 Chit. Cr. Law, 87; 2 Leach, Cr. Cas. 625.

2. It will be proper to consider, 1. The requisites of such examination. 2. How it is to be proved. 3. Its effects.

3. - 1. It is required that it should, 1st. Be voluntarily made, without any compulsion of any kind; and, 2d. It must be reduced to writing. 1st. The law is particularly solicitous to let the prisoner be free in making declarations in his examination; and if the prisoner has not been left entirely free, or did not consider himself to be so, or if he did not feel at liberty wholly to decline any explanation or declaration whatever, the examination is not considered voluntary, and the writing cannot be read in evidence against him, nor can parol evidence be received of what the prisoner said on

the occasion. 5 C. & P. 812; 7 C. & P. 177; 1 Stark. R. 242; 6 Penn. Law Journ. 120. The prisoner, of course, cannot be sworn, and make his statement under oath. Bull. N. P. 242; 4 Hawk. P. C. book 2, c. 46, §37; 4 C. & P. 564. 2a. The statute requires that the examination shall be reduced to writing, or so much as may be material, and the law presumes the magistrate did his duty and took down all that was material. Joy on Conf. 89-92; 1 Greenl. Ev. §227. The prisoner need not sign the examination so reduced to writing, to give it validity; but, if being asked to sign it, he absolutely refuse, it will be considered incomplete. 2 Stark. R. 483; 2 Leach, Cr. Cas. 627, n.

4. - 2. The certificate of the magistrate is conclusive evidence of the manner in which the examination was conducted. 7 C. & P. 177; 9 C. & P. 124; 1 Stark. R. 242. Before it can be given in evidence, its identity must be proved, as well as the identity of the prisoner. When the prisoner has signed the examination, proof of his handwriting is sufficient evidence that he has read it; but if he has merely made his mark, or not signed it at all, the magistrate or clerk must identify the prisoner, and prove that the writing was duly read to him, and that he assented to it. l Greenl. Ev. §520; 1 M. & Rob. 395.

5. - 3. The effect of such an examination, when properly taken and proved, is sufficient to found a conviction. 1 Greenl. Ev. §216.

EXAMINATION, practice. The interrogation of a witness, in order to ascertain his knowledge as to the facts in dispute between parties. When the examination is made by the party who called the witness, it is called an examination in chief. When it is made by the other party, it is known by the name of cross-examination. (q. v.)

2. The examination is to be made in open court, when practicable; but when,: on account of age, sickness, or other cause, the witness cannot be so examined, then it may be made before authorized commissioners. In the examination in chief the counsel cannot ask leading questions, except in particular cases. Vide Cross-examination; Leading question.

3. The laws of the several states require the private examination of a feme covert before a competent officer, in order to pass her title to her own real estate or the interest she has in that of her hushand: as to the mode in which this is to be done, see Acknowledment. See, also, 3 Call, R. 394; 5 Mason's R. 59; 1 Hill, R. 110; 4 Leigh, R. 498; 2 Gill & John. 1; 3 Rand. R. 468 1 Monr. R. 49; 3 Monr. R. 397; 1 Edw. R. 572; 3 Yerg. R. 548 1 Yerg. R. 413 3 J. J. Marsh. R. 241 2 A. K. Marsh. R. 67; 6 Wend. R. 9; 1 Dall. 11, 17; 3 Yeates, R. 471; 8 S. & R. 299; 4 S. & R. 273.

EXAMINED COPY. This phrase is applied to designate a paper which is a copy of a record, public book, or register, and which has been compared with the original. 1 Campb. 469.

2. Such examined copy is admitted in evidence, because of the public inconvenience which would arise, if such record, public book, or register, were removed from place to place, and because any fraud or mistake made in the examined copy would be so easily, detected. 1 Greenl. Ev. §91; 1 Stark. Ev. 189-191. But an answer in chancery, on which the defendant was indicted for perjury, or where the original must be produced in order to identify the party by proof of handwriting, an examined copy would not be evidence. 1 M. & Rob. 189. Vide Copy.

EXAMINERS, practice. Persons appointed to question students of law, in order to ascertain their qualifications before they are admitted to practice. Officers in the courts of chancery whose duty it is to examine witnesses, are also called examiners. Com. Dig. Chancery, P 1. For rules as to the mode of taking examinations, see Gresl. Eq. Ev. pt. 1, c, 3, s. 2.

EXAMPLE. An example is a case put to illustrate a. principle. Examples illustrate, but do not restrain or change the laws: illustrant non restringunt legem. Co. Litt. 24, a.

EXCAMBIATOR. The name of an exchanger of lands; a broker. This term is now obsolete.

EXCAMBIUM. Exchange. (q. v.)

EXCEPTIO REI JUDICATAE, civil law. The name of a plea by which the defendant alleges that the matter in dispute between the parties has been before adjudged. See Res judicata.

EXCEPTION, Eng. Eq. practice. Re-interrogation. 2 Benth. Ev. 208, n.

EXCEPTION, legislation, construction. Exceptions are rules which limit the extent of other more general rules, and render that just and proper, which would be, on account of its generality, unjust and improper. For example, it is a general rule that parties competent may make contracts; the rule that they shall not make any contrary to equity, or contra bonos mores, is the exception.

EXCEPTION, contracts. An exception is a clause in a deed,. by which the lessor excepts something out of that which he granted before by the deed.

2. To make a valid exception, these things must concur: 1. The exception must be by apt words; as, saving and excepting, &c. 2. It must be of part of the thing previously described, and not of some other thing. 3. It must be part of the thing only, and not of all, the greater part, or the effect of the thing granted; an exception, therefore, in a lease, which extends to the whole thing demised, is void. 4. It must be of such thing as is severable from the demised premises, and hot of an inseparable incident. 5. It must be of a thing as he that accepts may have, and which properly belongs to him. 6. It must be of a particular thing out of a general, and not of a particular thing out of a particular thing. 7. It must be particularly described and set forth; a lease of a tract of land, except one acre, would be void, because that acre was not particularly described. Woodf. Landl. and Ten. 10; Co. Litt. 47 a; Touchs. 77; 1 Shepl. R. 337; Wright's R. 711; 3 John. R., 375 8 Conn. R. 369; 6 Pick. R. 499; 6 N. H. Rep. 421. Exceptions against common right and general rules are construed as strictly as possible. 1 Barton's Elem. Conv. 68.

3. An exception differs from a reservation; the former is always a part of the thing granted; the latter is of a thing not in esse but newly created or reserved. An exception differs also from an explanation, which by the use of a videlicet, proviso, &c., is allowed only to explain doubtful clauses precedent, or to separate and distribute generals, into particulars. 3 Pick. R. 272.

EXCEPTION, practice, pleading. This term is used in the civil, nearly in the same sense that the word plea has in the common law. Merl. Repert. h. t.; Ayl. Parerg. 251.

2. In chancery practice, it is the allegation of a party in writing, that some pleading or proceeding in a cause is insufficient. 1 Harr. Ch. Pr. 228.

3. Exceptions are dilatory or peremptory. Bract. lib. 5, tr. 5; Britton, cap. 91, 92; 1 Lilly's Ab. 559. Dilatory exceptions are such as do not tend to defeat the action, but only to retard its progress. Poth. Proc. civ. partie 1, c. 2, s. 2, art. 1; Code of Pract. of Lo. art. 332. Declinatory exceptions have this effect, as well as the exception of discussion opposed by a third possessor, or by a surety in an hypothecary action, or the exception taken in order to call in the warrantor. Id.; 7 N. S. 282; 1 L. R. 38, 420. These exceptions must, in general, be pleaded in limine litis before issue joined. Civ. Code of Lo. 2260; 1 N. S. 703; 2 N. S. 389; 4 L. R. 104; 10 L. R. 546. A declinatory exception is a species of dilatory exception, which merely declines the jurisdiction of the judge before whom the action is brought. Code of Pr. of L. 334.

4. Peremptory exceptions are those which tend to the dismissal of the action. Some relate to forms, others arise from the law. Those which relate to formes, tend to have the cause dismissed, owing to some nullities in the proceedings. These must be pleaded in limine litis. Peremptory exceptions founded on law, are those which,

without going into the merits of the cause, show that the plaintiff cannot maintain his action, either because it is prescribed, or because the cause of action has been destroyed or extinguished. These may be pleaded at any time previous to definitive judgment. Id. art. 343, 346; Poth. Proc. Civ. partie 1, c. 2, s. 1, 2, 3. These, in the French law, are called Fins de. non recevoir. (q. v.)

5. By exception is also meant the objection which is made to the decision of a judge in the course of a trial. See Bill of Exception.

EXCHANGE, com. law. This word has several significations.

2. - 1. Exchange is a negotiation by which one person transfers to another funds which he has in a certain place, either at a price agreed upon, or which is fixed by commercial usage. This transfer is made by means of an instrument which represents such funds, and is well known by the name of a bill of exchange.

3. - 2. The price which is paid in order to obtain such transfer, is also known among merchants by the name of exchange; as, exchange on England is five per cent. See 4 Wash. C. C. R. 307. Exchange on foreign money is to be calculated according to the usual rate at the time of trial. 5 S. & R. 48.

4. - 3. Barter, (q. v.) or the transfer of goods and chattels for other goods and chattels, is also known by the name of exchange, though the term barter is more commonly used.

5. - 4. The French writers on commercial law, denominate the profit which arises from a maritime loan, exchange, when such profit is a per centage on the money lent, considering it in the light of money lent in one place to be returned in another, with a difference in amount in the sum borrowed and that paid, arising from the difference of time and place. Hall on Mar. Loans, 56, n.; and the articles Interest; Maritime; Premium.

6. - 5. By exchange is also meant, the place where merchants, captains of vessels, exchange agents and brokers, assemble to transact their business. Code de Comm. art. 71.

7. - 6. According to the Civil Code of Louisiana, art. 1758, exchange imports a reciprocal contract, by which. the parties enter into mutual agreement. 14 Pet. 133. Vide the articles. Bills of Exchange; Damages on Bills of Exchange and Reexchange. Also Civ. Code of Lo. art. 2630.

EXCHANGE conveyancing. An exchange is a mutual grant of equal interests in land, the one in consideration of the other. 2 Bl. Com. 323; Litt. s. 62; Touchs. 289; Watk. Prin. Con. It is said that exchange, in the United States, does not differ from bargain and sale. 2 Bouv. Inst. n. 2055.

2. There are five circumstances necessary to an exchange. 1. That the estates given be equal. 2. That the word escambium or exchange be used, which cannot be supplied by any other word, or described by circumlocution. 3. That there be an execution by entry or claim in the life of the parties. 4. That if it be of things which lie in grant, it be by deed. 5. That if the lands lie in several counties, it be by deed indented; or if the thing lie in grant, though they be in one county. In practice this mode of conveyancing is nearly obsolete. Vide Cruise, Dig. tit. 32 Perk. ch. 4 10 Vin. Ab. 125; Com. Dig. h. t.; Nels. Ab. h. t.; Co. Litt. 51; Hardin's R. 593 1 N. H. Rep. 65 3 Har. & John. 361; 1 Rolle's Ab. 813 .3 Wils. R. 489. Vide Watk. Prin. Con. b. 2, c. 5; Horsman, 362 and 3 Wood, 243, for forms.

EXCHEQUER R, Eng. law. An ancient court of record set up by William the Conqueror. It is called exchequer from the chequered cloth, resembling a chesshoard, which covers the table there. 3 Bl. Com. 45. It consists of two divisions; the receipt of the exchequer, which manages the royal revenue; and the court, or judicial part of it, which is again divided into a court of equity, and a court of common law. Id. 44.

2. In this court all personal actions may be brought, and suits in equity commenced, the plaintiff in both (fictitiously for the most part) alleging himself to be the king's debtor, in order to give the court jurisdiction of the cause. Wooddes. Lect. 69. But by stat. 2 Will. IV. c. 39, s. 1, a change has been made in this respect.

EXCHEQUER CHAMBER, Eng. law. A court erected by statute 31 Ed. III. c. 12, to determine causes upon writs of error from the common law side of the court of exchequer. 3 Bl. Com. 55. Another court of exchequer chamber was created by the stat. 27 El. c. 8, consisting of the justices of the common bench, and the barons of the exchequer. It has authority to examine by writ of err6r the proceedings of the king's bench, not so generally as that erected by the statute of Edw. III., but in certain enumerated actions.

EXCISES. This word is used to signify an inland imposition, paid sometimes upon the consumption of the commodity, and frequently upon the retail sale. 1 Bl. Com. 318; 1 Tuck. Bl. Com. Appx. 341; Story, Const. §950.

EXCLUSIVE, rights. Debarring one from participating in a thing. An exclusive right or privilege, is one granted to a person to do a thing, and forbidding all others to do the same. A patent right or copyright, are of this kind.

EXCLUSIVE, computation of time. Shut out; not included. As when an act is to be done within a certain time, as ten days from a particular time, one day is to be included and the other excluded. Vide Hob. 139; Cowp. 714; Lofft, 276; Dougl. 463; 2 Mod. 280; Sav. 124; 3]Penna. Rep. 200; 1 Serg. & Rawle, 43; 3 B. & A. 581; Com. Dig. Temps, A; 3 East, 407; Com. Dig. Estates, G 8; 2 Chit. Pr. 69, 147.

EXCOMMUNICATION, eccl. law. An ecclesiastical sentence, pronounced by a spiritual judge against a Christian man, by which he is excluded from the body of the church, and disabled to bring any action, or sue any person in the common law courts. Bac. Ab. h. t.; Co. Litt. 133-4. In early times it was the most frequent and most severe method of executing ecclesiastical censure, although proper to be used, said Justinian, (Nov. 123,) only upon grave occasions. The effect of it was to remove the excommunicated "person not only from the sacred rites but from the society of men. In a certain sense it interdicted the use of fire and water, like the punishment spoken of by Caesar, (lib, 6 de Bell. Gall.). as inflicted by the Druids. Innocent IV. called it the nerve of ecclesiastical discipline. On repentance, the excommunicated person was absolved and received again to communion. These are said to be the powers of binding and loosing the keys of the kingdom of heaven. This kind of punishment seems to have been adopted from the Roman usage of interdicting the use of fire and water. Fr. Duaren, De Sacris Eccles. Ministeriis, lib. 1, cap. 3. See Ridley's View of the Civil. and Ecclesiastical Law, 245, 246, 249.

EXCOMMUNICATIO CAPIENDO, WRIT OF, Eng. eccl. law. A writ issuing out of chancery, founded on a hishop's certificate that the defendant had been excommunicated, which writ is returnable in the king's bench. F. N. B. 62, 64, 65 Bac. Ab. Excommunication, E. See Statutes 3 Ed. I. c. 15; 9 Ed. II. c. 12; 2 & 3 Ed. VI. c. 13; 5 & 6 Ed. VI c. 4; 5 Eliz. c. 23; 1 H. V. c. 5; also Cro. Eliz. 224, 6,80; Cro. Car. 421; Cro. Jac. 567; 1 Vent. 146; 1 Salk. 293, 294, 295.

EXCUSABLE HOMICIDE, crim. law. The killing of a human being, when the party killing is not altogether free from blame, but the necessity which renders it excusable, may be said to be partly induce by his own act. 1 East, P. C. 220.

EXCUSE. A reason alleged for the doing or not doing a thing. This word presents two ideas differing essentially from each other. In one case an excuse may be made in, order to own that the party accused is not guilty; in another, by showing that though guilty, he is less so, than he appears to be. Take, for example, the case of a sheriff who has an execution against an individual, and who in performance of his duty, arrests him; in an action by the defendant against the sheriff, the latter may prove the facts, and this shall be a sufficient excuse for him: this is an excuse of the first kind, or a complete justification; the sheriff was guilty of no offence. But suppose, secondly, that the sheriff has an execution against Paul, and by mistake, and without any

malicious design, be arrests Peter instead of Paul; the fact of his having the execution against Paul and the mistake being made, will not justify the sheriff, but it will extenuate and excuse his conduct, and this will be an excuse of the second kind.

3. Persons are sometimes excused for the commission of acts, which ordinarily are crimes, either because they had no intention of doing wrong, or because they had no power of judging, and therefore had no criminal will (q. v.); or having power, of judging they had no choice, and were compelled by necessity. Among the first class may be placed infants under the age of discretion, lunatics, and married women committing an offence in the presence of their hushands, not malum in se, as treason or murder; 1 Hale's P. C. 44, 45 or in offences relating to the domestic concern or management of the house, as the keeping of a bawdy house. Hawk. b. 1, c. 1, s. 12. Among acts of the second kind may be classed, the beating or killing another in self-defence; the destruction of property in order to prevent a more serious calamity, as the tearing down of a house on fire, to prevent its spreading to the neighboring property, and the like. See Dalloz, Dict. h. t.

EXEAT, eccl. law. This is a Latin term, which is used to express the written permission which a hishop gives to an ecclesiastic to exercise the functions of his ministry in another diocese.

TO EXECUTE. To make, to perform, to do, to follow out. This term is frequently used in the law; as, to execute a deed is to make a deed.

2. It also signifies to perform, as to execute a contract; hence some contracts are called executed contracts, and others are called executory contracts.

3. To execute also means to put to death by virtue of a lawful sentence; as, the sheriff executed the convict.

EXECUTED. Something done; something completed. This word is frequently used in connexion with others to designate a quality of such other words; as an executed contract; an executed estate; an executed trust, &c. It is opposed to executory.

2. An executed contract is one which has been fulfilled; as, where the buyer has paid thrice of the: thing-purchased by him. See Agreement.

3. An executed estate is when there is vested in the grantee a present and immediate right of present or future enjoyment; and in another sense, the term applies to the time of enjoyment; and in that sense, an estate is said to be executed, when it confers a present right of present enjoyment. When the right of enjoyment in possession is to arise at a future period, only, the estate is executed that is, it is merely vested in point

of interest: when the right of immediate enjoyment is annexed to the estate, then only is the estate vested in possession. 1 Prest. on Est. 62.

4. Trusts executed are, when by deed or will, lands are conveyed, or devised, in terms or in effect , to and for the use of one person or several persons, in trust for others, without any direction that the trustees shall make any farther conveyance; so that it does not appear that the author of the trusts had a view to a future instrument for accomplishing his intention. Prest. on Est.188.

EXECUTIO NON. These words occur in the stat. 13 Ed. I. cap. 45, in the following connexion: Et...precipiatur vice comiti quod scire faciat parti... quod sit ad certum diem ostensura si quid sciat dicere quare hujustnodi irrotulata vel in fine contenta executionem habere non debeant. This statute is the origin of the scire facias post annum et diem quare executionem non, etc. To a plea in bar to such a writ, the defendant should conclude that the plaintiff ought not to have or maintain his aforesaid execution thereof against him, which is called the executio non, as in other cases by actio non. (q. v.) 10 Mod. 112; Yelv. 218.

EXECUTION, contracts. The accomplishment of a thing; as the execution of a bond and warrant of attorney, which is the signing, sealing, and delivery of the same.

EXECUTION, crim. law. The putting a convict to death, agreeably to law, in pursuance of his sentence.

EXECUTION, practice. The act of carrying into effect the final judgment of a court, or other jurisdiction. The writ which authorizes the officer so to carry into effect such judgment is also called an execution.

2. A distinction has been made between an execution which is used to make the money due on a judgment out of the property of the defendant, and which is called a final execution; and one which tends to an end but is not absolutely final, as a capias ad satisfaciendum, by virtue of which the body of the defendant is taken, to the intent that the plaintiff shall be satisfied his debt, &c., the imprisonment not being absolute, but until he shall satisfy the same; this is called an execution quousque. 6 Co. 87.

3. Executions are either to recover specific things, or money. 1. Of the first class are the writs of habere facias seisinam.; (q. v.) habere facias possessionem; (q. v.) retorno habendo; (q. v.) distringas. (q. v.) 2. Executions for the recovery of money are those which issue against the body of the defendant, as the capias ad satisfaciendum, (q. v.); an attachment, (q. v.); those which issue against his goods and chattels; namely, the fieri facias, (q. v.); the, venditioni exponas, (q. v.); those which issue against his lands, the levari facias; (q. v.) the liberari facias; the elegit. (q. v.) Vide 10 Vin. Ab. 541; 1

Ves. jr. 430; 1 Sell. Pr. 512; Bac. Ab. h. t.; Com. Dig. h. t.; the various Digests, h. t.; Tidd's Pr. Index, h. t.; 3 Bouv. Inst. n. 3365, et seq. Courts will at any time grant leave to amend an execution so as to make it conformable to the judgment on which it was issued. 1 Serg. & R. 98. A writ of error lies on an award of execution. 5 Rep. 32, a; 1 Rawle, Rep. 47, 48; Writ of Bxecution;

EXECUTION PAREE. By the term execution paree, which is used in Louisiana, is meant a right founded on an authentic act; that is, and passed before a notary, by which the creditor may immediately, without citation or summons, seize and cause to be sold, the property of his debtor, out of the proceeds of which to receive his payment. It imports a confession of judgment, and is not unlike a warrant of attorney. Code of Pr. of Lo. art. 732; 6 Toull. n. 208; 7 Toull. 99.

EXECUTIONER. The name given to him who puts criminals to death, according to their sentence; a hangman.

2. In the United States, executions are so rare that there are no executioners by profession. It is the duty of the sheriff or marshal to perform this office, or to procure a deputy to do it for him.

EXECUTIVE, government. That power in the government which causes the laws to be executed and obeyed: it is usually. confided to the hands of the chief magistrate; the president of the United States is invested with this authority under the national government; and the governor of each state has the executive power in his hands.

2. The officer in whom is vested the executive power is also called the executive.

3. The Constitution of the United States directs that "the executive power shall be vested in a president of the United States of America." Art. 2, s. 1. Vide Story, Const. B. 3, c. 36.

EXECUTOR, trusts. The word executor, taken in its largest sense, has several accep tations. 1. Executor dativus, who is one called an administrator to an intestate. 2. Executor testamentarius, or one appointed to the office by the last will of a testator, and this is what is usually meant by the term.

2. In the civil law, the person who is appointed to perform the duties of an executor as to goods, is called haeres testamentarius; the term executor, it is said, is a barbarism unknown to that law. 3 Atk. 304.

3. An executor, as the term is at present accepted, is the person to whom the execution of a last will and testament of personal estate is , by the testator's appointment,

confided, and who has accepted of the same. 2 Bl. Com. 503; 2 P. Wms. 548; Toller, 30; 1 Will. on Ex. 112 Swinh. t. 4, s. 2, pl. 2.

4. Generally speaking, all persons who are capable of making wills may be executors, and some others beside, as infants and married women. 2 Bl. Corn. 503.

5. An executor is absolute or qualified; his appointment is absolute when he is constituted certainly, immediately, and without restriction in regard to the testator's effects, or limitation in point of time. It may be qualified by limitation as to the time or place wherein, or the subject matters whereon, the office is to be exercised; or the creation of the office may be conditional. It may be qualified. 1st. By limitations in point of time, for the time may be limited when the person appointed shall begin, or when he shall cease to be executor; as if a man be appointed executor upon the marriage of testator's daughter. Swinb. p. 4, s. 17, pl. 4. 2. The appointment may be limited to a place; as, if one be appointed executor of all the testator's goods in the state of Pennsylvania. 3. The power of the executor may be limited as to the subject matter upon which if is to be exercised; as, when a testator appoints. A the executor of his goods and chattels in possession; B, of his choses in action. One may be appointed executor of one thing, only, as of a particular claim or debt due by bond, and the like. Off. Ex. 29; 3 Phillim. 424. But although a testator may thus appoint separate executors of distinct parts of his property, and may divide their authority, yet quoad the creditors of the testator they are all executors, and act as one executor, and may be sued as one executor. Cro. Car. 293. 4. The appointment may be conditional, and the condition may be either precedent or subsequent. Godolph. Orph. Leg. pt. 2, c. 2, s. 1; Off. Ex. 23. 6. An executor derives his interest in the estate of the deceased entirely from the will, and it vests in him from the moment of the testator's death. 1 Will. Ex. 159; Com. Dig. Administration, B 10; 5 B. & A. 745; 2 W. Bl. Rep. 692. He acquires an absolute legal title to the personalty by appointment, but nothing in the lands of the testator, except by devise. He can touch nothing which was not personal at the testator's decease, except by express direction. 9 Serg. & Rawle, 431; Gord. Law Dec. 93. Still his interest in the goods of the deceased is not that absolute, proper and ordinary interest, which every one has in his own proper goods. He is a mere trustee to apply the goods for such purposes as are sanctioned by law. 4 T. R. 645; 9 Co. 88; 2 Inst. 236; Off. Ex. 192. He represents the testator, and therefore may sue and recover all the claims he had at the time of his death and may be sued for all debts due by him. 1 Will. Ex. 508, et seq. By the common law, however, such debts as were not due by some writing could not be recovered against the executors of a deceased debtor. The remedy was only in conscience or by a quo minus in the exchequer. Afterwards an action on the case in banco regis was given. Crom t. Jurisdic. 66, b; Plowd. Com. 183: 11 H. VII. 26.

7. The following are the principal duties of an executor: 1. Within a convenient time after the testator's death, to collect the goods of the deceased, provided he can do so peaceably; when he is resisted, he must apply to the law for redress.

8. - 2. To bury the deceased in a manner suitable to the estate he leaves behind him; and when there is just reason to believe he died insolvent, he is not warranted in expending more in funeral expenses (q. v.) than is absolutely necessary. 2 Will. Ex. 636; 1 Salk. 296; 11 Serg. & Rawle, 204 14 Serg. & Rawle, 64.

9. - 3. The executor should prove the will in the proper office.

10. - 4. He should make an inventory (q. v.) of the goods of the intestate, which should be filed in the office.

11. - 5. He should ascertain the debts and credits of the estate, and endeavor to collect all claims with as little delay as possible, consistently with the interest of the estate.

12. - 6. He should advertise for debts and credits: see forms of advertisements, 1 Chit. Pr. 521.

13. - 7. He should reduce the whole of the goods, not specifically bequeathed into money, with all due expedition.

14.-8. Keep the money of the estate safely, but not mixed with his own, or he may be charged interest on it.

15.-9. Be at all times ready to account, and actually file an account within a year.

16. - 10. Pay the debts and legacies in the order required by law.

17. Co-executors, however numerous, are considered, in law, as an individual person, and; consequently, the acts of any one of them, in respect of the administration of the assets, are deemed, generally, the acts of all. Bac. Ab. Executor, D; Touch. 484; for they have all a joint and entire authority over the whole property Off. Ex. 213; 1 Rolle's Ab. 924; Com. Dig. Administration, B 12. On the death of one or more of several joint executors, their rights and powers survive to the survivors.

18. When there are several executors and all die, the power is in common transferred to the executor of the last surviving executor, so that he is executor of the first testator; and the law is the same when a sole executor dies leaving an executor, the rights are vested in the latter. This rule has been changed, in Pennsylvania, and, perhaps, some other states, by legislative provision; there, in such case, administration

cum testamento annexo must be obtained, the right does not survive to the executor of the executor. Act of Pennsylvania, of March 15 1832. s. 19. In general, executors are not responsible for each other, and they have a right to settle separate accounts. See Joint, Executors.

19. Executors may be classed into general and special; instituted and substituted; rightful and executor de son tort; and executor to the tenor.

20. A general executor is one who is appointed to administer the whole estate, without any limit of time or place, or of the subject-matter.

21. A special executor is one. who is appointed or constituted to administer either a part of the estate, or the whole for a limited time, or only in a particular place.

22. An instituted executor is one who is appointed by the testator without any condition, and who has the first right of acting when there are substituted executors. An example will show the difference between an instituted and substituted executor: suppose a man makes his son his executor, but if he will not act, he appoints his brother, and if neither will act, his cousin; here the son is the instituted executor, in the first degree, the brother is said to be substituted in the second degree, and the cousin in the third degree, and so on. See Heir, instituted, and Swinb. pt. 4, s. 19, pl. 1.

23. A substituted executor is a person appointed executor, if another person who has been appointed refuses to act.

24. A rightful executor is one lawfully appointed by the testator, by his will. Deriving his authority from the will, he may do most acts, before he obtains letters testamentary, but he must be possessed of them before. he can declare in action brought by him, as such. 1 P. Wms. 768; Will. on Ex. 173.

25. An executor de son tort, or of his own wrong, is one, who, without lawful authority, undertakes to act. as executor of a person deceased. To make fin executor de son tort, the act of the party must be, 1. Unlawful. 2. By assertingownership, as taking goods or cancelling a bond, and not committing a mere, trespass. Dyer, 105, 166; Cro. Eliz. 114. 3. An act done before probate of will, or granting letters of administration. 1 Salk. 313. One may be executor de son tort when acting under a forged will, which has been set aside. 3 T. R. 125 . An executor de son tort. The law on this head seems to have been borrowed from the civil law doctrine of pro hoerede gestio. See Heinnec. Antiq. Syntagma, lib. 2, tit., 17, §16, p. 468. He is, in general, held responsible for all his acts, when he does anything which might prejudice the estate, and receives no, advantage whatever in consequence of his assuming the office. He cannot sue a debtor of the estate, but may be sued generally as executor.

See a good reading on the liabilities of executors de son tort, in: Godolph. Orph. Legacy, 91, 93, and 10 Wentw. Pl. 378, for forms of declaring; also, 5 Co. Rep. 50 31 a; Yelv. 137; 1 Brownlow, 103; Salk. 28; Ham. Parties, 273; Imp. Mod. Pl. 94. As to what acts will make a person liable as executor de son tort, see Godolph. O ubi sup.; Gord. Law of Dec. 87, 89; Off. Ex. 181; Bac. Ab. Executor, &c., B 3; 11 Vin. Ab. 215; 1 Dane's Ab. 561; Bull. N. P. 48; Com. Dig. Administration C 3 Ham. on Part. 146 to 156; 8 John. R. 426; 7 John. R. 161; 4 Mass. 654; 3 Penna. R. 129; 15 Serg. & Rawle, 39.

26. - 2. The ussurpation of an office or character cannot confer the rights and privileges of it, although it may charge the usurper with the duties and obligations annexed to it. On this principle an executor de son tort is an executor only for the purpose of being sued, not for the purpose, of suing. In point of form, he is sued as if he were a rightful executor. He is not denominated in the declaration executor (de son tort) of his own wrong. It would be improper to allege that the deceased person with whose estate he has intermeddled died intestate. Nor can he be made a co-defendant with a rightful executor. Ham. Part. 146, 272, 273; Lawes on Plead. 190, note; Com. Dig. Abatement, F 10. If he take out letters of administration, he is still liable to be sued as executor, and in general, it is better to sue him as executor than as administrator. Godolph. 0. Leg. 93, 94, 95, §§2, 3.

27. An executor to the tenor. This phrase is ased in the ecclesiastical law, to denote a person who is not directly appointed by the will an executor, but who is charged with the duties which appertain to one; as, "I appoint A B to discharge all lawful demands against my will." 3 Phill. 116; 1 Eccl. Rep. 374; Swinb. 247 Wentw. Ex. part 4, s. 41 p. 230. Vide. generally, Bouv. Inst. Index, h. t.; 11 Vin. Ab. h. t.; Bac. Ab. h. t.; Rolle, Ab. h. t.; Nelson's Ab. h. t.; Dane's Ab. Index, h. t.; Com. Dig. Administration; 1 Supp. to Ves. jr. 8, 90, 356, 438; 2 Id. 69; 1 Vern. 302-3; Yelv. 84 a; 1 Salk. 318; 18 Engl. C. L. Rep. 185; 10 East, 295; 2 Phil. Ev. 289; 1 Rop. Leg.' 114; American Digests, h. t.; Swinburne, Williams, Lovelass, and Roberts' several treatises on the law of Executors; Off. Ex. per totum; Chit. Pr. Index; h. t. For the various pleas that may be pleaded by executors, see 7 Wentw. Plead. 596, 602; 10 Id. 378; Cowp. 292. For the origin and progress of the law in relation to executors, the reader is referred to 5 Toull. n. 576, note; Glossaire du Droit Francais, par Delauriere, verbo Executeurs Testamentaires, and the same author on art. 297, of the Custom of Paris; Poth. Des Donations Testamen taires.

EXECUTORY. Whatever may be executed; as an executory sentence or judgment, an executory contract.

EXECUTORY DEVISE, estates. An executory devise is a limitation by will of a future contingent interest in lands, contrary to the rules of limitation of contingent

estate is in conveyances at law. When the limitation by will does not depart from those rules prescribed for the government of contingent remainders, it is, in that case, a contingent remainder, and not an executory devise. 4 Kent, Com. 257; 1 Eden's R. 27; 8 T. R. 763.

2. An executory devise differs from a contingent remainder, in three material points. 1. It needs no particular estate to precede and support it; for example, a devise to A B, upon his marriage. 2. A fee may be limited after a fee, as in the case of a devise of land to C D, in fee, and if he dies without issue, or before the age of twenty-one, then to E F, in fee. 3. A term for years may be limited over after a life estate created in the same. 2 Bl. Com. 172, 173.

3. To prevent perpetuities, a rule has been adopted that the contingency must happen during the time of a life or lives in being and twenty-one years after, and the months allowed for gestation in order to reach beyond the minority of a person not in esse at the time of making the executory devise. 3 P. Wms. 258; 7 T. R. 100; 2 Bl. Com. 174; 7 Cranch, 456; 1 Gilm. 194; 2 Hayw. 375.

4. There are several kinds of executory devises; two relative to real estate, and one in relation to personal estate.

5. - 1. When the devisor parts with his whole estate, but upon some contingency, qualifies the disposition of it, and limits an estate on that contingency. For example, when the testator devises to Peter for life, remainder to Paul, in fee, provided that if James should within three months after the death of Peter pay one hundred dollars to Paul, then to James in fee; this is an executory devise to James, and if he dies during the life of Peter, his heir may perform the condition. 10 Mod. 419; Prec. in Ch. 486; 2 Binn. 532; 5 Binn. 252; 7 Cranch, 456; 6 Munf. 187; 1 Desaus. 137, 183; 4 Id. 340, 459; 5 Day, 517.

6. - 2. When the testator gives a future interest to arise upon a contingency, but does not part with the fee in the meantime; as in the case of a devise of the estate to the heirs of John after the death of John; or a devise to John in fee, to take effect six months after the testator's death; or a devise to the daughter of John, who shall marry Robert within fifteen, years. T. Raym. 82; 1 Salk. 226; 1 Lutw. 798.

7. - 3. The executory bequest of a chattel interest is good, even though the ulterior legatee be not at the time in esse, and chattels so limited are protected from the demands of creditors beyond the life of the first taker, who cannot pledge them, nor dispose of them beyond his own life interest in them. 2 Kent, Com. 285; 2 Serg. & Rawle, 59; l Desaus 271; 4 Desaus.340; 1 Bay, 78. But such a bequest, after an indefinite failure of issue, is bad. See 2 Serg. & R. 62; Watk. Prin. Con. 112, 116;

Harg. note, 1 Tho. Co. Litt. 595-6, 515-16. Vide, Com. Dig. Estates by Devise., N 16; Fearne on Rem. 381; Cruise's Dig. Index, h. t.; 4 Kent, Com. 357 to 381; 2 Hill. Ab. c. 43, p. 533.

EXECUTORY PROCESS, via executoria. In Louisiana, this is a process which can be resorted to only in two. cases, namely: 1. When the creditor's right arises-from an act importing a confession of judgment, and which contains a privilege or mortgage in his favor. 2. When the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. Code of Practice, art. 732.

EXECUTORY TRUST. A trust is said to be executory where some further act is requisite to be done by the author of the trust himself or by the trustees, to give it its full, effect; as, in the case of marriage articles; or, as in the case of a will, where, property is vested in trustees in trust to settle or convey.; for, it is apparent in both of these cases, a further act, namely, a settlement or a conveyance, is contemplated.

2. The difference between an executed and an executory trust, is this, that courts of equity in cases of executed trusts will construe the limitations in the same manner as similar legal limit-ations. White's L. C. in Eq. 18. But, in cases of executory trusts, a court of equity is not, as in the case of executed trusts, bound to construe technical expressions with legal strictness, but will mould the trusts according to the intent of the creator of such trusts White's L. C. Eq. 18.

3. When a voluntary trust is executory, and not executed, if it could not be enforced at law, because it is a defective conveyance, it is not helped in equity, in favor of a volunteer. 4 John. Ch. 498, 500; 4 Paige, 305; 1 Dev. Eq. R. 93.

4. But where the trust, though voluntary, has been executed in part, it will be sustained or enforced, in equity. 1 John. Ch. R. 329; 7 Penn. St. R. 175, 178; White's L. C. in Eq. *176; 18 Ves. 140; 1 Keen's R. 551; 6 Ves. 656; 3 Beav. 238.

EXECUTRIX, A woman who has been appointed by. will to execute such will or testament. See Executor.

EXEMPLIFICATION, evidence. A perfect copy of a record, or office book lawfull kept, so far as relates to the matter in question. 3 Bouv. Inst. n. 3107. Vide, generally, 1 Stark. Ev. 151; 1 Phil. Ev. 307; 7 Cranch, 481; 3 Wheat. 234; 10 Wheat. 469; 9 Cranch, 122; 2 Yeates, 532; 1 Hayw. 359; 1 John. Cas. 238. As to the mode of authenticating records of other states, see articles Authentication, and Evidence.

EXEMPTION. A privilege which dispenses with the general rule; for example, in Pennsylvania, and perhaps in all the other staies, clergymen are exempt from serving on juries. Exemptions are generally allowed, not for the benefit of the individual, but for some public advantage.

EXEMPTS. Persons who are not bound by law, but excused from the performance of duties imposed upon others.

2. By the Act of Congress of May 8, 1792, 1 Story, L. U. S. 252, it is provided, §2. That the vice-president of the United States the officers, judicial and executive, of the government of the United States; the members of both houses of congress, and their respective officers; all custom-house officers, with their clerks; all post officers, and stage drivers, who are employed in the care and conveyance of the mail of the post office of the United States; all ferrymen employed at any ferry on the post road; all inspectors of exports; all pilots; all mariners, actually employed in the sea service of any citizen or merchant within the United States; and all persons who now are, or may hereafter be, exempted by the laws of the respective states, Shall be, and are hereby, exempted from militia duty, notwithstanding their being above the age of eighteen, and under the age of forty-five years.

EXEQUATUR, French law. This Latin word was, in the ancient practice, placed at the bottom of a judgment emanating from another tribunal, and was a permission and authority to the officer to execute it within the jurisdiction of the judge who put it below the judgment.

2. We have something of the same kind in our practice. When a warrant for the arrest of a criminal is issued by a justice of the peace of one county, and he flies into another, a justice of the latter county may endorse the warrant and then the ministerial officer may execute it in such county. This is called backing a warrant.

EXEQUATUR, internat. law. A declaration made by the executive of a government near to which a consul has been nominated and appointed , after such nomination and appointment has been notified, addressed to the people, in which is recited the appointment of the foreign state, and that the executive having approved of the consul as such, commands all the citizens to receive, countenance, and, as there may be occasion, favorably assist the consul in the exercise of his place, giving and allowing him all the privileges, immunities, and advantages, thereto belonging. 3 Chit. Com. Law, 56; 3 Maule & Selw. 290; 5 Pardes. 1445.

EXERCITOR. A term in the civil law, to denote the person who fits out, and equips a vessel, whether he be the absolute or qualified owner, or even a mere agent. Emer. on Mar. Loans, c. 1, s. 1.

2. In English, we generally use the word "ship's hushand," but exercitor is generally used to designate and distinguish from among several part owners of a ship, the one who has the immediate care an management of her. Hall on Mar. Loans 142, n. See Dig. 19, 2, 19, 7; Id. 14, 1 1, 15; Vicat, Vocab.; Ship's hushand.

EXHEREDATION, civil law. The act by which a forced heir is deprived of his legitimate or legal portion which the law gives him; disinherison. (q. v.)

EXHIBIT, practice. Where a paper or other writing is on motion, or on other occasion, proved; or if an affidavit to which the paper writing is annexed, refer to it, it is usual to mark the same with a capital letter, and to add, " This paper writing marked with the letter A, was shown to the deponent at the time of his being sworn by me, and is the writing by him referred to in the affidavit annexed hereto." Such paper or other writing, with this attestation, signed by the judge or other person before whom the affidavit shall have been sworn, is called an exhibit. Vide Stra. 674; 2 P. Wms. 410; Gresl. Eq. Ev. 98.

TO EXHIBIT. To produce a thing publicly, so that it may be taken possession of, or seized. Dig. 10, 4, 2. To exhibit means also to file of record; as, it is the practice in England in personal actions, when an officer or prisoner of the king's bench is defendant, to proceed against such defendant in the court in which he is an officer, by exhibiting, that is, filing a bill against him. Stepb. P.I. 52, n. (1); 2 Sell. Pr. 74. In medical language, to. exhibit signifies to ad minist er, to cause a thing to be taken by a patient. Chit. bled. Jur. 9.

EXHIBlTANT. One who exhibits any thing; one who is complainant in articles of the peace. 12 Adol. & Ellis, 599 40 E. C. L. R. 124.

EXHIBITION, Scotch law. An action for compelling the production of writings. In Pennsylvania, a party possessing writings is compelled, to produce them on proper notice being given, in default of which judgment is rendered against him.

EXIGENT, or EXIGI FACIAS, practice. A writ issued in the course of proceedings to out lawry, deriving its name and application from the mandatory words found therein, signifying, "that you cause to be exacted or required; and it is that proceeding in an outlawry which, with the writ of proclamation, issued at the same time, immediately precedes the writ of capias utlagatum. 2 Virg. Cas. 244.

EXIGIBLE. That which may be exacted demandable; requirable.

EXILE, civil law. The: interdiction of all places except one in which the party is foreed to make his residence.

2. This punishment did not deprive the sufferer of his right of citizenship or of his property, unless the exile were perpetual, in which case confiscation not unfrequently was a part of the sentence. Exile was temporary or perpetual. Dig. 48, 22, 4; Code, 10, 59, 2. Exile differs from deportation, (q. v.) and relegation. (q. v.) Vide, 2 Lev. 191; Co. Litt. 133, a.

EXILIUM. By this term is understood that kind of waste which either drove away the inhabitants into a species of exile, or had a tendency to do so; as the prostrating or extirpating of trees in an orchard or avenue, or about any house. Bac. Ab. Waste, A; Bract. lib. 4, c. 18, s. 13; 1 Reeves' Hist. Law, 386.

EXITUS. Issue,, child, or offspring; rents or profits of land. Cowell, h. v. In pleading, it is the issue, or the end, terminaion, or conclusion of the pleadings, and is so called, because an issue brings the pleadngs to a close. 3 Bl. Com. 314.

EXIGENDARY, Eng. law. An officerwho makes out exigents.

EXOINE, French law. An act or instrument in writing, which contains the reasons why a party in a civil suit, or a person accused, who has been summoned, agreeably to the requisitions of a decree, does not appear. Poth. Proced. Crim. s. 3, art. 3. Vide Essoin.

EXONERATION. The taking off a burden or duty.

2. It is a rule in the distribution of an intestate's estate that the debts which he himself contracted, and for which be mortgaged his land as security, shall be paid out of the personal estate in exoneration of the real.

3. But when the real estate is charged with the payment of a mortgage at the time the intestate buys it, and the purchase is made subject to it, the personal. is not in that case to be applied, in exoneration of the real estate. 2 Pow. Mortg. 780; 5 Hayw. 57; 3 Johns. Ch. R. 229.

4. But the rule for exonerating the real estate out of the personal, does not apply against specific or pecuniary legatees, nor the widow's right to paraphernalia, and with reason not against the interest of creditors. 2 Ves. jr. 64; 1 P. Wms. 693; Id. 729; 2 Id. 120,335; 3 Id. 367. Vide Pow. Mortg. Index, h. t.

EXONERATUR, practice. A short note entered on a bail piece, that the bail is exonerated or discharged in consequence of having fulfilled the condition of his obligation, made by order of the court or of a judge upon a proper cause being shown.

2. A surrender is the most usual cause; but an exoneratur may be entered in other cases, as in case of death of the defendant, or his bankruptcy. 1 Arch. Pr. 280, 281, 282; Tidd's Pr. 240.

EXPATRIATION. The voluntary act of abandoning one's country and becoming the citizen or subject of another.

2. Citizens of the United States have the right to expatriate themselves until restrained by congress; but it seems that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law. To be legal, the expatriation must be for a purpose which is not unlawful, nor in fraud of the duties of the emigrant at home.

3. A citizen may acquire in a foreign country commercial privileges attached to his domicil, and be exempted from the operation of commercial acts embracing only persons resident in the United States or under its protection. 2 Cranch, 120. Vide Serg. Const. Law, 318, 2d ed; 2 Kent, Com. 36; Grotius, B. 2, c. 5, s. 24; Puffend. B. 8, c. 11, s. 2, 3 Vattel, B. 1, c. 19, s. 218, 223, 224, 225 Wyckf. tom. i. 117, 119; 3 Dall. 133; 7 Wheat. 342; 1 Pet. C. C. R. 161; 4 Hall's Law Journ. 461; Bracken. Law Misc. 409; 9 Mass. R. 461. For the doctrine of the English courts on this subject, see 1 Barton's Elem. Conveyancing, 31, note; Vaugh, Rep. 227, 281, 282, 291; 7 Co. Rep. 16 Dyer, 2, 224, 298 b, 300 b; 2 P. Wms. 124; 1 Hale, P. C. 68; 1 Wood. 382.

EXPECTANCY, estates. Having a relation to or dependence upon something future.

2. Estates are of two sorts, either in possession, sometimes called estates executed; or in expectancy, which are executory. Expectancies are, first, created by the parties, called a remainder; or by act of law, called a reversion.

3. A bargain in relation to an expectancy is, in general, considered invalid. 2 Ves. 157; Sel. Cas. in Ch. 8; 1 Bro. C. C. 10; Jer. Eq. Jur. 397.

EXPECTANT. Having relation to, or depending upon something; this word is frequently used in connexion with fee, as fee expectant.

EXPECTATION. That which may be expected, although contingent. In the doctrine of life annuities, that share or number of the years of human life which a person of a given age may expect to live, upon an equality of chances.

2. In general, the heir apparent will be relieved from a contract made in relation to his expectancy. See Post Obit.

EXPENSAE LITIS. Expenses of the suit; the costs which are generally allowed to the successful party.

EXPERTS. From the Latin experti,which signifies, instructed by experience. Persons who are selected by the courts or the parties in a cause on account of their knowledge or skill, to examine, estimate, and ascertain things, and make a report of their opinions. Merl. Repert. mot Expert; 2 Lois des Batimens, 253; 2 N. S. 1 5 N.. S. 557; 3 L. R. 350; 11 L. R. 314 11 S. & R. 336; Ray. Med. Jur. Prel. Views, §29; 3 Bouv. Inst. n. 3208.

EXPILATION, civil law. The crime of abstracting the goods of a succession.

2. This is said not to be a theft, because the property no longer belongs to the deceased, nor to the heir before he has taken possession. In the common law, the grant of letters testamentary, or letters of administration, relate back to the time of the death of the testator or intestate, so that the property of the estate is vested in the executor or administrator from that period.

EXPIRATION. Cessation; end. As, the expiration of, a lease, of a contract, or statute.

2. In general, the expiration of a contract puts an end to all the engagements of the parties, except to those which arise from the non-fulfilinent of obligations created during its existence. For example, the expiration of a partnership so dissolves it, that the parties cannot in general create any new liability, but it still subsists, to enable the parties to fulfil engagements in which the partners have engaged, or to compel others to perform their obligations towards them. See Dissolution; Contracts.

3. When a statute is limited as to time, it expires by mere lapse of time, and then it has no force whatever; and, if such a statute repealed or supplied a former statute, the first statute is, i so facto, revived by the expiration of the repealing statute; 6 Whart. 294; 1 Bland, R. 664 unless it appear that such was not the intention of the legislature. 3 East, 212 Bac. Ab. Statute, D.

EXPORTATION, commercial law. The act of sending goods and merchandise from one country to another. 2 Mann. & Gran. 155; 3 Mann. & Gran. 959.

2. In order to preserve equality among the states, in their commercial relations, the constitution provides that " no tax or duty shall be laid on articles exported from any state." Art. 1, s. 9. And to prevent a pernicipus interference with the commerce of the nation, the 10th section of the 1st article of the constitution contains the following prohibition: " No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing

its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress." Vide 12 Wheat. 419; and the article Importation.

EXPOSE' A French word, sometimes applied to a written document, containing the reasons or motives for doing a thing. The word occurs in diplomacy.

EXPOSITION DE PART, French law. The abandonment of a child, unable to take care of itself, either in a public or private place.

2. If the child thus exposed should be killed in consequence of such exposure; as, if it should be devoured by animals, the person thus exposing it would be guilty of murder. Rose. Cr. Ev. 591.

EXPRESS. That which is made known, and not left to implication. The opposite of implied. It is a rule, that when a matter or thing is expressed, it ceases to be implied by law: expressum facit cessare tacitum. Co. Litt. 183; 1 Bouv. Inst. n. 97.

EXPRESSION. The term or use of language employed to explain a thing.

2. It is a general rule, that expressions shall be construed, when they are capable of several significations, so as to give operation to the agreement, act, or will, if it can be done; and an expression is always to be understood in the sense most agreeable to the nature of the contract. Vide Clause; Construction; Equivocal; Interpretation; Words.

EXPROMISSION, civil law. The act by which a creditor accepts a new debtor, who becomes bound instead of the old, the latter being released. It is a species of novation. (q. v.) 1 Bouv. Inst. n. 802. Vide Delegation.

EXPROMMISSOR, civil law. By this term is understood the person who alone becomes bound for the debt of another, whether the latter were obligated or not. He differs from a surety, who is bound together with his principal. Dig. 12, 4, 4; Dig. 16, 1, 13; Id. 24, 3, 64, 4; Id. 38, 1, 37, 8.

EXPULSION. The act of depriving a member of a body politic, corporate, or of a society, of his right of membership therein, by the vote of such body or society, for some violation of hi's. duties as such, or for some offence which renders him unworthy of longer remaining a member of the same.

2. By the Constitution of the United States, art. 1, s. 5, §2, each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with

the concurrence of two-thirds' expel a member. In the case of John Smith, a senator from Ohio, who was expelled from the senate in 1807, the committee made a report which embraces the following points:

3. - 1. That the senate may expel a member for a high misdemeanor, such as a conspiracy to commit treason. Its authority is not confined to an act done in its presence.

4. - 2. That a previous conviction is, not requisite, in order to authorize the senate to expel a member from their body, for a high: offence against the United States.

5. - 3. That although a bill of indictment against a party for treason and misdemeanor has been abandoned, because a previous indictment against the principal party had terminated in an acquittal, owing to the inadmissibility of the evidence upon that indictment, yet the senate may examine the evidence for themselves, and if it be sufficient to satisfy their. minds that the party is guilty of a high misdemeanor it is a sufficient ground of expulsion.

6. - 4. That the 6th and 6th articles of the amendments of the Constitution of the United States, containing the general rights and privileges of the citizen, as to criminal prosecutions, refer only to prosecutions at law, and do not affect the jurisdiction of the senate as to expulsion.

7. - 5. That before a committee of the senate, appointed to report an opinion relative to the honor and privileges of the senate, and the facts respecting the conduct of the member implicated, such member is not entitied to be heard in his defence by counsel, to have compulsory process for witnesses, and to be confronted with his accusers. It is before the senate that the member charged is entitled to be heard.

8. - 6. - In determining on expulsion, the senate is not bound by the forms of judicial proceedings, or the rules of judicial evidence; nor, it seems, is the same degree of proof essential which is required to convict of a crime. The power of expulsion must, in its nature, be discretionary, and its exercise of a more summary character. 1 Hall's Law Journ. 459, 465.

9. Corporations have the right of expulsion in certain cases, as such power is necessary to the good order and government of corporate bodies; and the cases in which the inherent power may be exercised are of three kinds. 1. When an offence is committed which has no immediate relation to a member's corporate duty, but is of so infamous a nature as renders him unfit for the, society of honest men; such as the offences of perjury, forgery, and the like. But before an expulsion is made for a cause of this kind, it is necessary that there should be a previous conviction by a jury,

according to the law of the land. 2. When the offence is against his duty as a corporator, in which case he may be expelled on trial and conviction before the corporation. 3. The third is of a mixed nature, against the member's duty. as a corporator, and also indictable by the law of the land. 2 Binn.448. See, also, 2 Burr., 536.

10. Members of what are called joint stock incorporated companies, or indeed members of any corporation owning property, cannot, without express authority in the charter, be expelled, and thus deprived of their interest in the general fund. Ang. & Ames on Corp. 238. See; generally, Ang. & Ames on Corp. ch. 11; Willcock, on Mun. Cor . 270; 1 Co. 99; 2 Bing. 293.; 5 Day 329; Sty. 478; 6 Conn. R. 532; 6 Serg. & Rawle, 469; 5 Binn. 486.

EXTENSION, comm. law. This term is applied among merchants to signify an agreement made between a debtor and his creditors, by which the latter, in order to enable the former, embarrassed in his circumstances, to retrieve his standing, agree to wait for a definite length of time after their several claims should become due and payable, before they will demand payment.

2. Among the French, a similar agreement is known by the name of atermoiement. Merl. Rep. mot Atermoiement.

EXTENT IN AID, English practice. An exchequer process, formerly much used, and now liable to be abused; it is regulated by 57 Geo. III. o. 117.

EXTENT IN CHIEF, English practice. An execution issuing out of the exchequer at the suit 'of the crown. It is a mere "fiscal writ. See. West on Extents; 2 Tidd. Index.

2. When land was extended at a valuation too low, there was no remedy at common law but to pay the money. 15 H. VII. Nor yet in chancery, unless there was fraud, because the extent was made by the oath of a jury, and deemed reasonable according to the writ of extent for that cause: otherwise every verdict might be examined in a court of chancery. Crompt. on. Jurisdic. 55 a.

EXTENUATION. That which renders a crime or tort less heinous than it would be without it: it is opposed to aggravation. (q. v.)

2. In general, extenuating circumstances go in mitigation of punishment in criminal cases, or of damages in those of a civil nature. See Aggravation; Mitigation.

EXTERRITORIALITY. This term is used by French jurists to signify the immunity of certain persons, who, although in the state, are not amenable to its laws; foreign

sovereigns, ambassadors, ministers plenipotentiary, and ministers from a foreign power, are of this class. Foelix, Droit Intern. Prive, liv. 2, tit. 2, c. 2, s. 4. See Ambassador; Conflict of Laws; Minister.

EXTINCTION OF A THING. When a thing which is the subject of a contract has been destroyed, the contract is of course rescinded as, for example, if Paul sell his horse Napoleon to Peter, and promises to deliver him to the buyer in ten days, and in the mean time the horse dies, the contract is rescinded, as it is impossible to deliver a thing which is not in esse; but if Paul engage to deliver a horse to Peter in ten days, and, for the purpose of fulfilling his contract, he buys a horse and it die, this is no cause for rescinding the contract, because he can buy another and complete it afterwards. When the subject of the contract is an individual, and not generally one of a species, the contract may be rescinded; when it is one of a species which has been destroyed, then, it may still be completed, and it will be enforced. Lec. El. Dr. Rom. §1009.

EXTINGUISHMENT, contracts. The destruction of a right or contract - the act by which a contract is made void.

2. Art extinguishment may be by matter of fact and by matter of law. 1. It is by matter of fact either express, as when one receives satisfaction and full payment of a debt, and the creditor releases the debtor 11 John. 513'; or implied, as when a person hath a yearly rent out of, lands and becomes owner either by descent or purchase, of the estate subject to the payment of the rent, the latter is extinguished 3 Stew. 60; but the person must have as high an estate in the land as in the rent, or the rent will not be extinct. Co. Litt. 147. See Merger.

3. There are numerous cases where the claim is extinguished b operation of law; for example, where two persons are jointly, but not severally liable, for a simple contract debt, a judgment obtained against one is at common law an extinguishment of the claim on the other debtor. Pet. C. C. 301; see 2 John. 213. Vide, generally, Bouv. Inst. Index, h. t.; 2 Root, 492; 3 Conn. 62; 1 Hamm. 187; 11 John. 513; 4 Conn. 428; 6 Conn. 373; 1 Halst. 190 4 N. H. Rep. 251 Co. Litt. 147 b; 1 Roll. Ab. 933 7 Vin. Ab. 367; 11 Vin. Ab. 461; 18 Vin. Ab. 493 to 515 3 Nels. Ab. 818; 14 Serg. & Rawle, 209; Bac. Ab. h. t.; 5 Whart. R. 541. Vide Discharge of a Debt.

EXTORSIVELY. A technical word used in indictments for extortion. In North Carolina, it seems, the crime of extortion may be charged without using this word. 1 Hayw. R. 406.

EXTORTION, crimes. In a large sense it, signifies any oppression, under color of right: but in a more strict sense it means the unlawful taking by any officer, by color

of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due. 4 Bl. Com. 141; 1 Hawk. P. C. c. 68, s. 1; 1 Russ. Cr. *144. To constitute extortion, there must be the receipt of money or something of value; the taking a promissory note, which is void, is. not sufficient to make an extortion. 2 Mass. R. 523; see Bac. Ab. h. t.; Co. Litt. 168. It is extortion and oppression for an officer to take money for the performance of his duty, even though it be in the exercise of a discretionary power. 2 Burr. 927. It differs from exaction. (q. v.) See 6 Cowen, R. 661; 1 Caines, R. 130; 13 S. & R. 426 1 Yeates, 71; 1 South. 324; 3 Penna. R. 183; 7 Pick. 279; 1 Pick. 171.

EXTRA-DOTAL PROPERTY. In Louisiana this term is used to designate that property which forms no part of the dowry of a woman, and which is also called paraphernal property. Civ. Co. Lo. art. 2315. Vide Dotal Property.

EXTRA VIAM. Out of the way. When, in an action of trespass, the defendant pleads a right of way, the defendant may reply extra viam, that the trespass was committed beyond the way, or make a new assignment. 16 East, 343, 349.

EXTRACT. A part of a writing. In general this is not evidence, because the whole of the writing may explain the part extracted, so as to give it a different sense; but sometimes extracts from public books are evidence, as the extracts from the registers of births, marriages and burials, kept according to law, when the whole of the matter has been extracted which relates to the cause or matter in issue.

EXTRADITION, civil law. The act of sending, by authority of law, a person accused of a crime to a foreign jurisdiction where it was committed, in' order that he may be tried there. Merl. Rep. h. t.

2. By the constitution and laws of the United States, fugitives from justice (q. v.) may be demanded by the executive of the one state where the crime has been committed from that of another where the accused is. Const. United States, art. 4, s. 2, 2 3 Story, Com. Const. U. S. §1801, et seq.

3. The government of the United States is bound by some treaty stipulation's to surrender criminals who take refuge within the country, but independently of such conventions, it is questionable whether criminals can be surrendered. 1 Kent. Com. 36; 4 John. C. R. 106; 1 Amer. Jurist, 297; 10 Serg. & Rawle, 125; 22 Amer. Jur. 330; Story's Confl. of Laws, p. 520; Wheat. Intern. Law, 111.

4. As to when the extradition or delivery of the supposed criminal is complete is not very certain. A case occurred in, France of a Mr. Cassado, a Spaniard, who had taken refuge in Bayonne. Upon an application made to the French government, he was

delivered to the Spanish consul who had authority to take him to Spain, and while in the act of removing him with the assistance of French officers, a creditor obtained an execution against his person, and made an attempt to execute it and retain Cassado in France, but the council of state, (conseil d'etat) on appeal, decided that the courts could not interfere, and directed Cassado to be delivered to the Spanish authorities. Morrin, Dict. du Dr. Crim. h.v.

EXTRAJUDICIAL. That which does not belong to the judge or his jurisdiction, notwithstanding which he takes. cognizance of it. Extrajudicial judgments and acts are absolutely void. Vide Coram non judice, and Merl. Repert. mots Exces de Pouvoir.

EXTRAVAGANTES, canon law. This is the name given to the constitutions of the popes posterior to the Clementines; they are thus called quasi vagantes extra corpus juris, to express that they were out of the canonical law, which at first contained only the decrees of Gratian; afterwards the decretals of Gregory IX., the sexte of Boniface. VIII., the Clementines, and at last the extravagantes were added to it. There are the extravagantes of John XXII., and the common 'extravagantes.' The first contain twenty epistles, decretals or constitutions of that pope, divided under fifteen titles, without any subdivision into books. The others are epistles, decretals or constitutions of the popes who occupied the holy see, either before or after John XXII. they are divided into books like the decretals.

EXTREMIS. When a person is sick beyond the hope of recovery, and near death, he is said to be in extremism.

2. A will made in this condition, if made without undue influence, by a person of sound mind, is valid.

3. The declarations of persons in extremis, when made with a full consciousness of approaching death, ate admissible in evidence when the death of the person making them is the subject of the charge, and the circumstances of the death the subject of such declarations. 2 B. & C. 605 S. C. 9 Eng. C. L. Rep..196; and see 15 John. 286; 1 John. Rep. 159; 2 John. R. 31; 7 John. 95; 2 Car. Law. Repos. 102; 5 whart, R. 396-7.

EY. A watery place; water. Co. Litt 6.

EYE-WITNESS. One who saw the act or fact to which he testifies. When an eye-witness testifies, and is a man of intelligence and integrity, much reliance must be placed on his testimony, for he has the means of making known the truth.

EYOTT. A small island arising in a river. Fleta, lib. 3, c. 2, s. b; Bract. lib. 2, c. 2. See lsand.

EYRE. Vide Eire Justiciarii Itinerantes.

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Bouvier's Law Dictionary

1856 Edition

F

F, punishment, English law. Formerly felons were branded and marked with a hot iron, with this letter, on being admitted to the benefit of clergy.

FACIO UT DES. A species of contract in the civil law, which occurs when a man agrees to perform anything for a price, either specifically mentioned or left to the determination of the law to set a value on it. As when a servant hires himself to his master for certain wages or an agreed sum of money. 2 Bl. Com. 445.

FACIO UT FACIAS. A species of contract in the civil law, which occurs when I agree with a man to do his work for him if he will do mine for me. Or if two persons agree to marry together, or to do any other positive acts on both sides. Or it may be to forbear on one side in consideration of something done on the other. 2 Bl. Com. 444.

FACT. An action; a thing done. It is either simple or compound.

2. A fact is simple when it expresses a purely material act unconnected with any moral qualification; for example, to say Peter went into his house, is to express a simple fact. A compound fact contains the materiality of the act, and the qualification which that act has in its connexion with morals and, the law. To say, then, that Peter has stolen a horse, is to express a compound fact; for the fact of stealing, expresses at the same time, the material fact of taking the horse, and of taking him with the guilty intention of depriving the owner of his property and appropriating it to his own use; which is a violation of the law of property.

3. Fact. is also put in opposition to law; in every case which has to be tried there are facts to be established, and the law which bears on those facts.

4. Facts are also to be considered as material or immaterial. Material facts are those which are essential to the right of action or defence, and therefore of the substance of the one or the other - these must always be proved; or immaterial, which are those not essential to the cause of action these need not be proved. 3 Bouv. Inst. n. 3150-53.

5. Facts are generally determined by a jury,; but there are many facts, which, not being the principal matters in issue, may be decided by the court; such, for example, whether a subpoena has or has not been served; whether a party has or has not been summoned, &c. As to pleading material facts, see Gould. Pl. c. 3, s. 28. As to quality

of facts proved, see 3 Bouv. Inst. n. 3150. Vide Eng. Ece. R. 401-2, and the article Circumstances.

FACTO. In fact, in contradistinction to the lawfulness of the thing; it is applied to anything actually done. Vide Expostfacto.

FACTOR, contracts. An agent employed to sell goods or merchandise consigned or delivered to him by, or for his principal, for a compensation commonly called factorage or commission. Paley on Ag. 13; 1 Liverin. on Ag. 68; Story on Ag. §33; Com. Dig. Merchant, B; Mal. Lex Merc. 81; Beawes, Lex Merc. 44; 3 Chit. Com. Law, 193; 2 Kent, Com. 622, note d, 3d. ed.; 1 Bell's Com. 385, §408, 409 2 B. & Ald. 143. He is also called a commission merchaut, or consignee.

2. When he resides in the same state or country with his principal, he is called a home factor; and a foreign factor when he resides in a different state or country. 3 Chit. Com. Law, 193; 1 T. R. 112; 4 M. & S. 576; 1 Bell's Com. 289, §313.

3. When the agent accompanies the ship, taking a cargo aboard, and it is consigned to him for sale, and he is to purchase a return cargo out of the proceeds, such agent is properly called a factor; he is, however, usually known by the name of a supercargo. Beawes, Lex More. 44, 47; Liverm. on Ag. 69, 70; 1 Domat, b. 1, t. 16, §3, art. 2.

4. A factor differs. from a broker, in some important particulars, namely; he may buy and sell for his principal in his own name, as well as in the name of his principal; on the contrary, a broker acting as such should buy and sell in the name of his principal. 3 Chit. Com. Law, 193, 2101 541; 2 B. & Ald. 143, 148; 8 Kent, Com. 622, note d, 3d. ed. Again, a factor is entrusted with the possession, management, disposal, and control of the goods to be bought and sold, and has a special property and a lien on them; the broker, on the contrary, has usually no such possession, management, control, or disposal of the goods, nor any such special property nor lien. Paley on Ag. 13, Lloyd's ed; 1 Bell's Com. 385.

5. Before proceeding further it will be proper to consider the difference which exists in the liability of a home or domestic factor and a foreign factor.

6 . By the usages of trade, or intendment of law, when domestic factors are employed in the ordinary business of buying and selling goods, it is presumed that a reciprocal credit between, the principal and the agent and third persons has been given. When a purchase has been made by such a factor, he, as well as his principal, is deemed liable for the debt; and in case of a sale, the buyer is responsible both to the factor and principal for the purchase money; but this presumption may be rebutted by proof of

exclusive credit. Story, Ag. §§267, 291, 293; Paley, Ag. 243, 371; 9 B. & C. 78; 15 East, R. 62.

7. Foreign factors, or those acting for principals residing in a foreign country, are held personally liable upon all contracts made by them for their employers, whether they describe themselves in the contract as agents or not. In such cases, the presumption is, that the credit is given exclusively to the factor. But this presumption may be rebutted by a proof of a contrary agreement. Story, Ag. §268; Paley, Ag. 248, 373; Bull. N. P. 130; Smith, Merc. Law, 66; 2 Liverm. Ag. 249; 1 B. & P. 398; 15 East, R. 62; 9 B. & C. 78.

8. A factor is liable to duties, which will be first considered; and, afterwards, a statement of his rights will be made.

9. - 1. His duties. He is required to use reasonable skill and ordinary diligence in his vocation; in general, he has a right to sell the goods, but he cannot pawn them. The latter, branch of this rule, however, is altered by statute in some of the states. See Act of Penna. April 14, 1834, §3, 4, 6, postea, 20. He is bound to obey his instructions, but when he has none, he may and ought to act according to the general usages of trade sell for cash, when that is usual, or give credit on sales, when that is customary. He is bound to render a just account to his principal, and to pay him the moneys he may receive for him.

10. - 2. His rights. He has the right to sell the goods in his own name; and, when untrammeled by instructions, he may sell them at such times and for such prices, as, in the exercise of a just discretion, he may think best for his employer. 3 Man. Gran. & Scott, 380. He is, for many purposes, between himself and third persons, to be considered as the owner of the goods. He may, therefore, recover the price of goods sold by him, in his own name, and, consequently, he may receive payment and give receipts, and discharge the debtgor, unless, indeed, notice has been given by the principal to the debtor not to pay. He has a lien on the goods for advances made by him, and for his commissions.

11. Mr. Bell, in his Commentaries, vol. 1, page 265, 5th ed., lays down the following rules with regard to the rights of the principal, in those cases in which the goods in the factor's hands have been changed in the course of his transactions.

12. - 1. When the factor has sold the goods of his principal, and failed before the price of the goods has been paid, the principal is the creditor, and. entitled to a preference over the creditors of the factor. Cook's B. L. 4th ed. p. 400.

13. - 2. When bills have been taken for the price, and are still it the factor's hands, undiscounted at his failure; or where goods have been taken in return for those sold; the principal is entitled to them, as forming no part of the divisible fund. Willes, R. 400.

14. - 3. When the price has been paid in money, coin, bank notes, &c., it remains the property of the principal, if kept distinct as his. 5 T. la. 277; 2 Burr. 1369 5 Ves. Jr. 169; 2 Mont. B. L. 233, notes.

15. - 4. When a bill received for goods, or placed with the factor, has been discounted, or when money coming into his hands has been paid away, the endorsee of the bill, or the person receiving the money, will be free from all claim at the instance of the principal. Vide 1 B. & P. 539, 648.

16. - 5. When the factor sinks the name of the principal entirely; as, where he is employed to sell goods, and receives a del credere commission, for which he engages to guarantee the payment to the principal, it is not the practice to communicate the names of the purchasers to the principal, except where the factor fails. Under these circumstances, the following points have the principal is the creditor of the buyer, and has a direct action against him for the price. Cook's B. L. 400; and vide Bull. N. P. 42 2 Stra. 1 1 82. But persons contracting with the factor in his own name, and bona fide, are entitled to set off the factor's debt to them. 7 T. R. 360. 2. Where the factor is entrusted with the money or property of his principal to buy stock, bills, and the like, and misapplies it, the produce will be the principal's, if clearly distinguishable. 8 M. & S. 562.

17. - 6. When the factor purchases goods for the behalf of his principal, but on his own general, current account, without mention of the principal, the goods vest in the factor, and the principal has only an obligation against the factor's estate. But when the factor, after purchasing the goods, writes to his principal that he has bought such a quantity of goods in consequence of his order, and that they are lying in his warehouse, or elsewhere, the property would seem to be vested in the principal.

18. It may therefore be laid down as a general rule, that when the property remitted by the principal, or acquired for him by his order, is found distinguishable in the hands of the factor, capable of being traced by a clear and connected chain of identity, in no one link of it degenerating from a specific trust into a general debt, the creditors of the factor, who has become bankrupt, have no right to the specific property. Much discrimination is requisite in the application of this doctrine, as may be seen by the case of Ex parte Sayers, 5 Ves. Jr. 169.

19. A factor has no right to barter the goods of his principal, nor to pledge them for the purpose of raising money for himself, or to secure a debt he may owe. See ante, 9-1. But he may pledge them for advances made to his principal, or for the purpose of raising money for him, or in order to reimburse himself to the amount of his own lien. 2 Kent, Com. 3d. ed:, 625 to 628; 4 John. R., 103; Story on Bailm. §325, 326, 327. Another exception to the general rule that a factor cannot pledge the goods of his principal, is, that he may raise money b pledging the goods, for the payment of 'duties, or any other charge or purpose allowed or justified by the usages of trade. 2 Gall. 13; 6 Serg. & Rawle, 386; Paley on Ag. 217; 3 Esp. R. 182.

20. The legislature of Pennsylvania, by an act entitled " An act for the amendment of the law relating to factors passed April 14, 1834, have made the following provisions. This act was prepared by the persons appointed to revise the civil code of that state, and was adopted without alteration by the legislature. It is here inserted, with a belief that it will be found useful to the commercial lawyer of the other states.

21. - §1. Whenever any person entrusted with merchandise, and having authority to sell or consign the same, shall ship, or otherwise transmit tile same to any other person, such other person shall have a lien thereon.

22. - I. For any money advanced, or negotiable security given by him on the faith of such consignment, to or for the use of the person in whose name such merchandise was shipped or transmitted.

23. - II. For any money or negotiable security, received for the use of such consignee, by the person, in whose name such merchandise was shipped or transmitted.

24.- §2. But such lien shall not exist for any of the purposes aforesaid, if such consignee shall have notice by the bill of lading, or otherwise,bef ore the time of such advance or receipt, that the person in whose name such merchandise was shipped or transmitted, is not the actual owner thereof.

25. - §3. Whenever any consignee or factor, having possession of merchandise, with authority to sell the same, or having possession of any bill of lading, permit, certificate, receipt, or order, for the delivery of merchandise, with the like authority, shall deposit or pledge such merchandise, or any part thereof, with any other person, as a security for any money advanced, or negotiable instrument given by him on the faith thereof; such other person shall acquire, by virtue of such contract, the same interest in, and authority over, the said merchandise, as, he would have acquired thereby if such consignee or factor had been the actual owner thereof. Provided, That such person shall not have notice by such document or otherwise, before the time of

such advance or receipt, that the holder of such merchandise or document is not the actual owner of such merchandise.

26. - §4. If any person shall accept or take such merchandise or document from any such consignee or factor, in deposit or pledge for any debt or demand previously due by, or existing against, such consignee or factor, and without notice as aforesaid, and if any person shall accept or take such merchandise or document from any such consignee or factor, in deposit or pledge, without notice or knowledge that the person making such deposit or pledge, is a consignee or factor only, in every such case the person accepting or taking such. merchandise or document in deposit or pledge, shall acquire the same right and interest in such merchandise as was possessed, or could have been enforced, by such consignee or factor against his principal at the time of making such deposit or pledge, and further or other right or interest.

27. - §5. Nothing in this act contained shall be construed or taken:
I. To affect any lien which a. consignee or factor may possess at law, for the expenses and charges attending the shipment, or transmission and care of merchandise consigned, or otherwise intrusted to him.

28. - II. Nor to prevent the actual owner of merchandise from recovering the same from such consignee or factor, before the same shall have been deposited or pledged as aforesaid, or from the assignees or trustees of such consignee or factor, in the event of his insolvency.

29. - III. Nor to prevent such owner from recovering any merchandise, so as aforesaid deposited or pledged, upon tender of the money, or of restoration of any negotiable instrument so advanced, or given to such consignee or factor, and upon tender of such further sum of money, or of restoration of such other negotiable instrument, if any, as may have been advanced or given by such consignee or factor to such owner, or on tender of a sum of money equal to the amount of such instrument.

30. - IV. Nor to prevent such owner from recovering, from the person accepting or taking such merchandise in deposit or pledge, any balance or sum. of money remaining in his hands as the produce of the sale of such merchandise, after deducting the amount of money or the negotiable instrument so advanced or given upon the security thereof as aforesaid.

31. - §6. If any consignee or factor shall deposite or pledge any merchandise or document as aforesaid, consigned or intrusted to him as a security for any money borrowed, or negotiable instrument received by such consignee or factor, and shall apply and dispose of the same to his own use, in violation of good faith, and with intent to defraud the owner of such merchandise, and if any consignee or factor shall,

with the like fraudulent intent, apply or dispose of, to his own use, any money or negotiable instrument, raised or acquired by the sale or other disposition of such merchandise, such consignee or factor shall, in every such case, be deemed guilty of a misdemeanor, and shall be punished by a fine, not exceeding two thousand dollars, and by imprisonment, for a term not exceeding five years.

FACTORAGE. The wages or allowances paid to a factor for his services; it is more usual to call this commissions. 1 Bouv. Inst. n. 1013; 2 Id. n. 1288.

FACTORY, Scotch law. A contract which partakes of a mandate and locatio ad operandum, and which is in the English and American law books discussed under the title of Principal and Agent. 1 Bell's Com. 259.

FACTUM. A deed. a man's own act and deed.

2. When a man denies by his plea that he made a deed on which he is sued, be pleads non estfactum. (q. v.) Vide Deed; Fait.

FACTUM, French law. A memoir which contains summarily the fact on which a contest has happened, the means on which a party founds his pretensions, with the refutation of the means of the adverse party. Vide Brief.

FACULTY, canon law. A license; an authority. For example, the ordinary having the disposal of all seats in the nave of a church, may grant this power, which, when it is delegated, is called a faculty, to another.

2. Faculties are of two kinds; first, when the grant is to a man and his heirs in gross; second, when it is to a person and his heirs, as appurtenant to a house which he holds in the parish. 1 T. R. 429, 432; 12 Co. R. 106.

FACULTY, Scotch law. Equivalent to ability or pow-er. The term faculty is more properly applied to a power founded on the consent of the party from whom it springs, and not founded on property. Kames on Eq. 504.

FAILURE. A total defect; an omission; a non-performance. Failure also signifies a stoppage of payment; as, there has been a failure to-day, some one has stopped payment.

2. According to the French code of commerce, art. 437, every merchant or trader who suspends payment is in a state of failure. Vide Bankruptcy; Insolvency.

FAILURE, OF ISSUE. When there is a want of issue to take an estate limited over by an executory devise.

2. Failure of issue is definite or indefinite. When the precise time for the failure of issue is fixed by the will, as is the case of a devise to Peter, but if he dies without issue living at the time of his death, then to another, this is a failure of issue definite. An indefinite failure of issue is the very converse or opposite of this, and it signifies a general failure of issue, whenever it may happen, without fixing any time, or a certain or definite period, within which it must happen. 2 Bouv. Inst. n. 1849.

FAILURE OF RECORD. The neglect to produce the record after having pleaded it. When a defendant pleads a matter, and offers to prove it by the record, and then pleads nul tiel record, a day is given to the defendant to bring in the record if he fails. to do so, he is said to fail, and there being a failure of record, the plaintiff is entitled to judgment. Termes de lay Ley. See the form of entering it; 1 Saund. 92, n. 3.

FAINT PLEADER. A false, fraudulent, or collusory manner of pleading, to the deception of a third person. 3 E. I., c. 19.

FAIR. A privileged market.

2. In England, fairs are granted by the king's patent.

3. In the United States, fairs are almost unknown. They are recognized in Alabama; Aik. Dig. 409, note; and in North Carolina, where they are regulated by statute. 1 N. C. Rev. St. 282. See Domat, Dr. Public, liv. 1, t. 7, s. 3, n. 1.

FAIR-PLAY MEN. About the year 1769, there was a tract of country in Pennsylvania, situate between Lycoming creek and Pine creek, in which the proprietaries prohibited the making of surveys, as it was doubtful whether it had or had not been ceded by the Indians. Although settlements were forbidden, yet adventurers settled themselves there; being without the pale of ordinary authorities, the inhabitants annually elected a tribunal, in rotation, of three of their number, whom they denominated fair-play men, who had authority to decide all disputes as to boundaries. Their decisions were final, and enforeed by the whole community en masse. Their decisions are said to have been just and equitable. 2 Smith's Laws of Pennsylvania 195; Serg. Land Laws, 77. "

FAlR PLEADER. This is the name of a writ given, by the statute of Marlebridge, 52 H. III., c. ii. Vide Beau Pleader.

FAIT, conveyancing. A deed lawfully executed. Com. Dig . h. t.; Cunn. Dictl. h. t.

FAITH. Probity; good faith is the very soul of contracts. Faith also signifies confidence, belief; as, full faith and credit ought to be given to the acts of a magistrate while acting within his jurisdiction. Vide Bona fide.

FALCIDIAN LAW, civil law, plebiscitum. A statute or law enacted by the people, made during the reign of Augustus, on the proposition of Falcidius, who was a tribune in the year of Rome 714.

2. Its principal provision gave power to fathers of families to bequeath three-fourths of their property, but deprived them of the power to give away the other fourth, which was to descend to the heir.

3. The same rule, somewhat modified, has been adopted in Louisiana; "donations inter vivos or mortis causal" says the Civil Code, art. 1480, "cannot exceed two-thirds of the property of, the disposer, if he leaves at his decease a legitimate child; one-half, if he leaves two children; and one-third, if he leaves three, or a greater number."

4. By the common law, the power of the father to give his property is unlimited. He may bequeath it to his children equally, to, one in preference to another, or to a stranger, in exclusion of the whole of them. Over his real estate, his wife has a right of dower, or a similar right given to her by act of assembly, in, perhaps, all the states.

FALSE Not true; as, false pretences; unjust, unlawful, as, false imprisonment. This his word, is frequently used in composition.

FALSE IMPRISONMENT. torts. Any intentional detention of the person of another not authorized by law, is false imprisonment. 1 Bald. 571; 9 N. H. Rep. 491; 2 Brev. R. 157. It is any illegal imprisonment, without any process whatever, or under color of process wholly illegal, without regard to the question whether any crime has been committed, or a debt due. 1 Chit. Pr. 48; 5 Verm. 588; 3 Blackf. 46; 3 Wend. 350 5 Wend. 298; 9 John. 117; 1 A. K. Marsh. 845; Kirby, 65; Hardin 249.

2. The remedy is, in order to be restored to liberty, by writ of habeas corpus, and to recover damages for the injury, by action of trespass vi et armis. To punish the wrong done to the public, by the false imprisonment of an individual, the offender may be indicted. 4 Bl. Com. 218, 219; 2 Burr. 993. Vide Bac. Ab. Trespass, D 3 Dane's Ab. Index, h. t. Vide 9 N. H. Rep. 491; 2 Brev. R. 157; Malicious Prosecution; Regular and Irregular Process.

FALSE JUDGMENT, Eng. law. The name of a writ which lies when a false judgment has been given in the county court, court baron, or other courts not of record. F. N. B. 17, 18 3 Bouv. Inst. n. 3364.

FALSE PRETENCES, criminal law. False representations and statements, made with a fraudulent design, to obtain " money, goods, wares, and merchandise-" with intent to cheat. 2 Bouv. Inst. n. 2308.

2. This subject may be considered under the following heads:. 1. The nature. of the false pretence. 2. What must be obtained. 3. The intent.

3. - 1. When the false pretence is such as to impose upon a person of ordinary caution, it will doubtless be sufficient. 11 Wend. R. 557. But although it may be difficult to restrain false pretences to such as an ordinarily prudent man may avoid, yet it is not every absurd or irrational pretence which will be sufficient. 2 East, P. C. 828. It is not necessary that all the pretences should be false, if one of them, per se, is sufficient to constitute the offence. 14 Wend. 547. And although other circumstances may have induced the credit, or the delivery of the property, yet it will be sufficient if the false pretences had such an influence that, without them, the credit would not have been given, or the property delivered. 11 Wend. R. 557; 14 Wend. R. 547; 13 Wend. Rep. 87. The false pretences must have been used before the contract was completed. 14 Wend. Rep. 546; 13 Wend. Rep. 311. In North Carolina, the cheat must be effected by means of some token or contrivance adapted to impose on an ordinary mind. 3 Hawks, R. 620; 4 Pick. R. 178.

4. - 2. The wording of the statutes of the several states on this subject is not the same, as to the acts which are indictable. In Pennsylvania, the words of the act are, "every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by any false pretence whatever, obtain from any person any money, personal property or other valuable, things," &c. In Massachusetts, the intent must be to obtain "money, goods, wares, merchandise, or other things." Stat. of 1815, c. 136. In New York, the words are "money, goods, or chattels, or other effects." Under this statute it has been holden that obtaining a signature to a note; 13 Wend. R. 87; or an endorsement on a promissory note; 9 Wend. Rep. 190; fell within the spirit of the statute; and that where credit was obtained by false pretence, it was also within the statute. 12 John. R. 292.

5. - 3. There must be an intent to cheat or defraud same person. Russ. & Ry. 317; 1 Stark. Rep. 396. This may be inferred from a false representation. 13 Wend. R. 87. The intent is all that is requisite; it is not necessary that the party defrauded should sustain any loss. 11 Wend. R. 18; 1 Carr. & Marsh. 516, 537.

FALSE RETURN. A return made by the sheriff, or other ministerial officer, to a writ in which is stated a fact contrary to the truth, and injurious to one of the parties or some one having an interest in it.

2. In this case the officer is liable for damages to the party injured. .2 Esp. Cas. 475. See Falso retorno brevium.

FALSE TOKEN. A false document or sign of the existence of a fact, in general used for the purpose of fraud. Vide Token, and 2 Stark. Ev. 563.

FALSEHOOD. A wilful act or declaration contrary to truth. It is committed either by the wilful act of the party, or by dissimulation, or by words. It is wilful, for example, when the owner of a thing sells it twice, by different contracts to different individuals, unknown to them; for in this the seller must wilfully declare the thing is his own, when he knows that it is not so. It is committed by dissimulation when a creditor, having an understanding with his former debtor, sells the land of the latter, although he has been paid the debt which was due to him.

2. Falsehood by word is committed when a witness swears to what he knows not to be true. Falsehood is usually attendant on crime. Roscoe, Cr. Ev. 362.

3. A slander must be false to entitle the plaintiff to recover damages. But whether a libel be true or false the writer or publisher may be indicted for it. Bul N. P. 9; Selw. N. P. 1047 , note 6; 5 Co. 125; Hawk. B. 1, c. 73, s. 6. Vide Dig. 48, 10, 31; Id. 22, 6, 2; Code, 9, 22, 20.

4. It is a general rule, that if a witness testifies falsely as to any one material fact, the whole of his testimony must be rejected but still the jury may consider whether the wrong statement be of such character, as to entitle the witness to be believed in other respects. 5 Shepl. R. 267. See Lie.

TO FALSIFY, crim. law. To prove a thing to be false; as, " to falsify a record." Tech. Dict.; Co. Litt. 104 b. To alter or make false a record. This is punishable at common law. Vide Forgery.

2. By the Act of Congress of April 30, 1790, s. 15, 1 Story's L. U. S. 86, it is enacted, that if any person shall feloniously steal, take away, alter, falsify, or otherwise avoid, any record, writ, process, or other proceedings in any of the courts of the United States, by means whereof any judgment shall be reversed, made void, or not take effect; or if any person shall acknowledge, or procure to be acknowledged, in any of the courts. aforesaid, any recognizance, bail, or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person, or persons, on conviction thereof, shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding seven years, and be whipped not exceeding thirty-nine stripes'. Provided nevertheless, that this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys, duly admitted, for any

person or persons against whom any such judgment or judgments shall be had or given.

TO FALSIFY, chancery practice. When a bill to open an account has been filed, the plaintiff is sometimes allowed to surcharge and falsify such account; and if any thing has been inserted that is a wrong charge, he is at liberty to show it, and that is a falsification. 2 Ves. 565; 11 Wheat. 237. See Account stated; Surcharge.

FALSO RETORNO BREVIUM, old English law. The name of a writ which might have been sued out against a sheriff, for falsely returning writs. Cunn. Dict.

FAMILY, domestic relations. In a limited sense it signifies the father, mother, and children. In a more extensive sense it comprehends all the individuals who live under the authority of another, and includes the servants of the family. It is also employed to signify all the relations who descend from a common ancestor, or who spring from a common root. Louis. Code, art. 3522, No. 16; 9 Ves. 323.

2. In the construction of wills, the word family, when applied to personal property is synonymous with kindred, or relations. It may, nevertheless, be confined to particular relations by the context of the will, or may be enlarged by it, so that the expression may in some cases mean children, or next of kin, and in others, may even include relations by marriage. 1 Rop. on Leg. 115 1 Hov. Supp. 365, notes, 6 and 7; Brown v. Higgs; 4 Ves. 708; 2 Ves. jr. 110; 3 East, Rep. 172 5 Ves. 156 1,7 Ves. 255 S. 126. Vide article Legatee. See Dig. lib. 50, t. 16, 1. 195, s. 2.

FAMILY ARRANGEMENTS. This term has been used to signify an agreement made between a father and his son, or children; or between brothers, to dispose of property in a different manner to that, which would otherwise take place.

2. In these cases frequently the mere relation, of the parties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67 1 Turn. & Russ. 13.

FAMILY BIBLE. A Bible containing an account of the births, marriages, and deaths of the members of a family.

2 An entry, by the father, made in a Bible, stating that Peter, his eldest son, was born in. lawful wedlock of Maria, his wife, at a time specified, is evidence to prove the legitimacy of Peter. 4 Campb. 401. But the entry, in order to be evidence, must be an original entry, and, when it is not so, the loss of the original must be proved before the copy can be received. 6 Serg. Rawle, 135. See 10 Watts, R. 82.

FAMILY EXPENSES. The sum which it costs a man to maintain a family.

2. Merchants and traders who desire to exhibit the true state of their affairs in their books, keep an exact account of family expenses, which, in case of failure, is very important, and at all times proper.

FAMILY MEETINGS. Family councils, or family meetings in Louisiana, are meetings of at least five relations, or in default of relations of minors or other persons on whose interest they are called upon to deliberate, then of the friends of such minors or other persons.

2. The appointment of the members of the family meeting is made by, the judge. The relations or friends must be selected from among those domiciliated in the parish in which the meeting is held; the relations are selected according to their proximity, beginning with the nearest. The relation is preferred to the connexion in the same degree, and among relations of the same degree, the eldest is preferred. The under tutor must also be present. 6 N. S. 455.

3. The family meeting is held before a justice of the peace, or notary public, appointed by the judge for the purpose. It is called for a fixed day and hour, by citations delivered at least three days before the day appointed for the purpose.'

4. The members of the family meeting, before commencing their deliberations, take an oath before the officer before whom the meeting is held,, to give their advice according to the best of their knowledge, touching the interests of the person on whom they are called upon to deliberate. The officer before whom the family meeting is held, must make a particular process-verbal of the deliberations, cause the members of the family meeting to sign it, if they know how to sign, he must sign it himself, and deliver a copy to the parties that they may have it homologated. Civil Code of Louis. B. 1, tit. 8, c. 1, s. 6, art. 305 to 311; Code Civ. B. 1, tit. 10, c. 2, A. 4.

FAMOSUS LIBELLUS. Among the civilians these words signified that species of injuria which corresponds nearly to libel or slander.

FANEGA, Spanish law. A measure of land, which is not the same in every province. Diccionario de la Acad.; 2 White's Coll. 49. In Spanish America, the fanega consisted of six thousand and four hundred square varas or yards. 2 White's Coll. 138.

FARE. It signifies a voyage or passage; in its modern application, it is the money paid for a passage. 1 Bouv. Inst. n. 1036.

FARM, estates. A portion or tract of land, some of which is cultivated. 2 Binn. 238. In parlance, and for the purpose of description in a deed, a farm means: a messuage with out-buildings, gardens, orchard, yard, and land usually occupied with the same

for agricultural purposes; Plowd. 195 Touch. 93; 1 Tho. Co. Litt. 208, 209, n. N; but in the English law, and particularly in a description in a declaration in ejectment, it denotes a leasehold interest for years in any real property, and means anything which is held by a person who stands in the relation of tenant to a landlord. 6 T. R. 532; 2 Chit. Pl. 879, n. e.

2. By the conveyance of a farm, will pass a messuage, arable land, meadow, pasture, wood, &c., belonging to or used with it. 1 Inst. 5, a; Touch. 93; 4 Cruise, 321; Bro. Grants, 155; Plowd. 167.

3. In a will, the word farm may pass a freehold, if it appear that such was the intention of the testator. 6 T. R. 345; 9 East, 448. See 6 East, 604, n; 8 East, 339.

To FARM LET. These words in a lease have the effect of creating a lease for years. Co. Litt. 45 b; 2 Mod. 250.

FARMER. One who is lessee of a farm. it is said that every lessee for life or years, although it be but of a small house and land, is called farmer. This word implies no mystery except it be that of hushandman. Cunn. Dict. h. t. In common parlance, a farmer is one who cultivates a farm, whether he be the owner of it or not.

FARO, crim. law. There is a species of game called faro-table, or faro-bank, which is forbidden by law in many states; and the persons who keep it for the purpose of playing for money or other valuable thing, may generally be indicted at common law for a nuisance. 1 Roger's Rec. 66. It is played with cards in this manner: a pack of cards is displayed on the table so that the face of each card may be seen by the spectators. The man who keeps the bank, as it is termed, and who is called the banker, sits by the table with another pack of cards, and a bag containing money, some of which is displayed, or sometimes instead of money, chips, or small pieces of ivory or other substance are used. The parties who play with the banker, are called punters or pointeurs. Suppose the banker and A, a punter, wish to play for five dollars, the banker shuffles the pack which he holds in his hand, while A lays his money intended to be bet, say five dollars, on any card he may choose as aforesaid. The banker then runs the cards alternately into two piles, one on the right the other on the left, until he reaches, in the pack, the card corresponding to that on which A has laid his money. If, in this alternative, the card chosen comes on the right hand, the banker takes up the money. If on the other, A is entitled to five dollars from the banker. Several persons are usually engaged at the same table with the banker. 1 Rog. Rec. 66, note; Encycl. Amer. h. t.

FARRIER. One who takes upon himself the public employment of shoeing horses.

2. Like an innkeeper, a common carrier, and other persons who assume a public employment, a farrier is bound to serve the public as far as his employment goes, and an action lies against him for refusing, when a horse is brought to him at a reasonable time for such purpose, if he refuse; Oliph . on Horses, 131 and he is liable for the unskilfulness of himself or servant in performing such work 1 Bl. Com. 431; but not for the malicious act of the servant in purposely driving a nail into the foot of the horse, with the intention of laming him. 2 Salk. 440.

FATHER, domestic relations. He by whom a child is begotten.

2. A father is the natural guardian of his children, and his duty by the natural law consists in maintaining them and educating them during their infancy, and making a necessary provision for their happiness in life. This latter, however, is a duty which the law does not enforce.

3. By law, the father is bound to support his children, if of sufficient ability, even though they have property of their own. 1 Bro. C. C. 387; 4 Mass. R. 97; 2 Mass. R. 415 5 Rawle, 323. But he is not bound, without some agreement, to pay another for maintaining them; 9 C. & P. 497; nor is he bound to pay their debts, unless he has authorized them to be contracted. 38 E. C. L. R. 195, n. See 8 Watts, R. 366 1 Craig. & Phil. 317; Bind; Nother; Parent. This obligation ceases as soon as the child becomes of age, unless he becomes chargeable to the public. 1 Ld. Ray. 699.

4. The rights of the father are authority over his children, to enforce all his lawful commands, and to correct with moderation his children for disobedience. A father may delegate his power over the person of his child to a tutor or instructor, the better to accomplish the purposes of his education. This power ceases on the arrival of the child at the age of twenty-one years. Generally, the father is entitled to the services of his children during their minority. 4 S. & R. 207; Bouv. Inst. Index, h. t.

FATHER-IN-LAW. In latin, socer, is the father of one's wife, or of one's hushand.

FATHER. PUTATIVE. A reputed father. Vide Putative father.

FATHOM. A measure of length, equal to six feet. The word is probably derived from the Teutonic word fad, which signifies the thread or yarn drawn out in spinning to the length of the arm, before it is run upon the spindle. Webster; Minsheu. See Ell. Vide Measure.

FATUOUS PERSON. One entirely destitute of reason; is qui omnino desipit. Ersk. Inst. B. 1, tit. 7, s. 48.

FAUBOURG. A district or part of a town adjoinng the principal city; as, a faubourg of New Orleans. 18 Lo. R. 286.

FAULT, contracts, civil law. An improper act or omission, which arises from ignorance, carelessness, or negligence. The act or omission must not have been meditated, and must have caused some injury to another. Lec. Elcm. §783. See Dolus, Negligence. 1 Miles' Rep. 40.

2. - 1. Faults or negligence are usually divided into, gross, ordinary, and slight: 1. Gross fault or neglect, consists in not observing that care towards others, which a man the least attentive, usually takes of his own affairs. Such fault may, in some cases, afford a presumption of fraud, and in very gross cases it approaches so near, as to be almost undistinguishable from it, especially when the facts seem hardly consistent with an honest intention. But there may be a gross fault without fraud. 2 Str. 1099; Story, Bailm. §18-22; Toullier, 1. 3, t. 3, §231. 2. Ordinary faults consist in the omission of that care which mankind generally pay to their own concerns; that is, the want of ordinary diligence. 3. A slight fault consists in the want of that care which very attentive persons take of their own affairs. This fault assimilates itself, and, in some cases, is scarcely distinguishable, from mere accident, or want of foresight. This division has been adopted by common lawyers from the civil law. Although the civilians generally agree in this division, yet they are not without a difference of opinion. See Pothier, Observation generale, sur le precedent Traite, et sur les suivants; printed at the end of his Traite des Obligations, where he cites Accurse, Alciat, Cujas, Duaren, D'Avezan, Vinnius, and Heineccius, in support of this division. On the other side the reader is referred to Thomasius, tom. 2, Dissertationem, pago 1006; Le Brun, cited by Jones, Bailm. 27; and Toullier, Droit Civil Francais, liv. 3, tit. 3, §231.

3. - 2. These principles established, different rules have been made as to the responsibilities of parties for their faults in relation to their contracts. They are reduced by Pothier to three.

4.- I. In those contracts where the party derives no benefit from his undertaking, he is answerable only for his gross faults.

5.-2. In those contracts where the parties have a reciprocal interest, as in the contract of sale, they are responsible for ordinary neglect.

6. - 3. In those contracts where the party receives the only advantage, as in the case of loan for use, he is answerable for his slight fault. Poth. Observ. Generale; Traite des Oblig. §142; Jones, Bailm. 119 Story, Bailm. 12. See also Ayliffe, Pand. 108. Civ. C. Lou. 3522; 1 Com. Dig. 41 3; 5 Id. 184; Wesk. on Ins. 370.

FAUX, French law. A falsification or fraudulent alteration or suppression of a thing by words, by writings, or by acts without either. Biret, Vocabulaire des Six Codes.

2. The crimen falsi of the civil law. Toullier says, "Le faux s'entend de trois manieres: dans le sons le plus etendre, c'est l'alteration de la verite, avec ou sans mauvaises intentions; il est a peu pres synonyme de mensonge; dans un sens moins etendu, c'est l'alteration de la verite, accompagnee de dol, mutatio veritatis cum dolo facta; enfin, dans le sens etroit, ou plutot legal du mot, quand il s'agit de savoir si le faux est un crime, le faux est I'alteration frauduleuse de la verite, dans les determines et punis par la loi." Tom. 9, n. 188. "Faux may be understood in three ways: in its most extended sense, it is the alteration of truth, with or without intention; it is nearly synonymous with lying; in a less extended sense, it is the alteration of truth, accompanied with fraud, mutatio veritatis cum dolo facta; and lastly, in a narrow, or rather the legal sense of the word, when it is a question to know if the faux be a crime, it is the fraudulent alteration of the truth, in those cases ascertained and punished by the law." See Crimen Falsi.

FAVOR. Bias partiality; lenity; prejudice.

2. The grand jury are sworn to inquire into all offences which have been committed, and of all violations of law, without fear, favor, or affection. Vide Grand Jury. When a juror is influenced by bias or prejudice, so that there is not sufficient ground for a principal challenge, he may nevertheless be challenged for favor. Vide Challenge, and Bac. Ab. Juries, E; Dig. 50, 17, 156, 4; 7 Pet. R. 160.

FEAL. Faithful. This word is not used.

FEALTY. Fidelity, allegiance.

2. Under the feudal system, every owner of lands held them of some superior lord, from whom or from whose ancestors, the tenant had received them. By this connexion the lord became bound to protect the tenant in the enjoyment of the land granted to him; and, on the other hand, the tenant was bound to be faithful to his lord,, and defend him against all his enemies. This obligation was called fidelitas, or fealty. 1 Bl. Com. 366; 2 Bl. Com. 86; Co. Litt. 67, b; 2 Bouv. Inst. n. 1566.

FEAR, crim. law. Dread, consciousness of approaching danger.

2. Fear in the person robbed is one of the ingredients required. to constitute a robbery from the person, and without this the felonious taking of the property is a larceny. It is not necessary that the owner of the property should be in fear of his own person, but fear of violence to the person of his child; 2 East, P. C. 718; or of his property; Id. 731

2 Russ. 72; is sufficient. 2 Russ. 71 to 90. Vide Putting in fear, and Ayl. Pand. tit. 12, p. 106.; Dig. 4, 2, 3 an d 6.

FEASTS. Certain established periods in the Christian church. Formerly, the days of the feasts of saints were used to indicate the dates of instruments, and memorable events. 18 Toull. n. 81. These are yet used in England; there they have Easter term, Hilary term, &c.

FEDERAL, government. This term is commonly used to express a league or compact between two or more states.

2. In the United States the central government of the Union is federal. The constitution was adopted "to form a more perfect union" among the states, for the purpose of self-protection and for the promotion of their mutual happiness.

FEE, FEODUM or FEUDUM, estates. From the French, fief. A fee is an estate which may continue forever. The word fee is explained to signify that the land, or other subject of property, belongs to its owner, and is transmissible, in the case of an individual, to those whom the law appoints to succeed him, under the appellation of heirs; and in the case of corporate bodies, to those who are to take on themselves the corporate function; and from the manner in which the body is to be continued, are denominated successors. 1 Co. Litt. 1, 271, b; Wright's Ten. 147, 150; 2 Bl. Com. 104. 106; Bouv. Inst. Index h. t.

2. Estates in fee are of several sorts, and have different denominations, according to their several natures and respective qualities. They 'may with propriety be divided into, 1. Fees simple. 2 . Fees determinable. 3. Fees qualified. 4. Fees conditional and 5. Fees tail.

3. - 1. A fee simple is an estate inlands or tenements which, in reference to the ownership of individuals, is not restrained to any heirs in particular, nor subject to any condition or collateral determination except the laws of escheat and the canons of descent, by which it may, be qualified, abridged or defeated. In other words, an estate in fee simple absolute, is an estate limited to a person and his heirs general or indefinite. Watk. Prin. Con. 76. And the omission of the word `his' will not vitiate the estate, nor are the words "and assigns forever" necessary to create it, although usually added. Co. Litt. 7, b 9, b; 237, b Plowd. 28, b; 29, a; Bro. Abr. Estates, 4. 1 Co. Litt. 1, b; Plowd. 557 2 Bl. Com. 104, 106 Hale's Analysis, 74. The word fee simple is sometimes used by the best writers on the law as contrasted with estates tail. 1 Co. Litt. 19. In this sense, the term comprehends all other fees as well as the estate, properly, and in strict propriety of technical language, peculiarly' distinguished by this appellation.

4. - 2. A determinable fee is an estate which may continue forever. Plowd. 557; Shep. Touch. 97. It is a quality of this estate while it falls under this denomination, that it is liable to be determined by some act or event, expressed on its limitation, to circumscribe its continuance, or inferred by the law as bounding its extent. 2 Bl. Com. 109. Limitations to a man. and his heirs, till the marriage of such. a person shall take place; Cro. Jac. 593; 10 Vin. Abr. 133; till debts shall be paid; Fearne, 187 until a minor shall attain the age of twenty-one years 3 Atk. 74 Ambler, 204; 9 Mod. 28 10 Vin. Abr. 203. Feariae, 342; are instances of such a determinable fee.

5. - 3. Qualified fee, is an interest given on its, first limitation, to a man and to certain of his heirs, and not to extend to all of them generally, nor confined to the issue of his body. A limitation to a man and his heirs on the part of his father, affords an example of this species of estate. Litt. 254 1 Inst. 27, a 220; 1 Prest. on Estates, 449.

6. - . A conditional fee, in the more general acceptation of the term, is when, to the limitation of an estate a condition is annexed, which renders the estate liable to be defeated. 10 Rep. 95, b. In this application of the term, either a determinable or a qualified fee may at the same time be a conditional fee. An estate limited to a man and his heirs, to commence on the performance of a condition, is also frequently described by this appellation. Prest. on East. 476; Fearne, 9. 7. - 5. As to fee-tail, see Tail.

FEE FARM, Eng. law. A perpetual farm or rent. 1 Tho. Co. Litt. 446, n. 5.

FEE FARM RENT, contracts, Eng. law. When the lord, upon the creation of a tenancy, reserves to himself and his heirs, either the rent for which it was before let to farm, or at least one-fourth part of that farm rent, it is called a fee farm rent, because a farm rent is reserved upon a grant in fee. 2 Inst. 44.

FEES, compensation. Certain perquisites allowed by law to officers concerned in the administration of justice, or in the performance of duties required by law, as a recompense for their labor and trouble. Bac. Ab. h. t.; Latch, 18.

2. The term fees differs from costs in this, that the former are, as above mentioned, a recompense to the officer for his services, and the latter, an indemnification to the, party for money laid out and expended in his suit. 11 S. & R. 248; 9 Wheat. 262; See 4 Binn. 267. Vide Costs; Color of office; Exaction; Extortion.

FEIGNED ACTION, practice. An action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true; it differs from false action, in which case the words of the writ are false. Co. Litt. 361, sect. 689. Vide Fictitious action.

FEIGNED issue, pract. An issue brought by consent of the parties, or the direction of a court of equity, or such courts as possess equitable powers, to determine before a jury some disputed matter of fact, which the court has not the power or is unwilling to decide. 3 Bl. Com. 452; Bouv. Inst. Index, h. t

FELO DE SE, criminal law. A felon of himself; a self-murderer.

2. To be guilty of this offence, the deceased must have had the will and intention of committing it, or else be committed no crime. As he is beyond the reach of human laws, he cannot be punished; the English law, indeed, attempts to inflict a punishment by a barbarous burial of his body, and by forfeiting to the king the property which he owned, and which would belong to his relations. Hawk. P. C. c. 9; 4 Bl. Com. 189. The charter of privileges granted by William Penn to the inhabitants of Pennsylvania, contains the following clause: "If any person, through temptation or melancholy, shall destroy himself, his estate, real and personal, shall, notwithstanding, (descend to his wife and children, or relations, as if he had died a natural death."

FELON, crimes. One convicted and sentenced for a felony.

2. A felon is infamous, and cannot fill any office, or become a witness in any case, unless pardoned, except in cases of absolute necessity, for his own preservation, and defence; as, for example, an affidavit in relation to the irregularity of a judgment in a cause in which he is a party. 2 Salk. R. 461; 2 Str. 1148;. Martin's R. 25; Stark. Ev. part 2, tit. Infamy. As to the effect of a conviction in one state, where the witness is offered in another, see 17 Mass. R. 515 2 Harr. & McHen. R. 120, 378; 1 Harr. & Johns. R. 572. As to the effect upon a copartnership by one of the partners becoming a felon, see 2 Bouv. Inst. n. 1493.

FELONIOUSLY, pleadings. This is a technical word which must be introduced into every indictment for a felony, charging the offence to have been committed feloniously; no other word, nor any circumlocution, will supply its place. Com. Dig. Indictment, G 6; Bac. Ab. Indictment, G 1; 2 Hale, 172, 184; Hawk. B. 2. c. 25, s. 55 Cro. C. C. 37; Burn's Just. Indict. ix.; Williams' Just. Indict. iv.-, Cro. Eliz. 193; 5 Co. 121; 1 Chit. Cr. Law, 242.

FELONY, crimes. An offence which occasions a total forfeiture of. either lands or goods, or both, at common law, to which capital or other punishment may be super-added, according to the degree of guilt. 4 Bl. Com, 94, 5; 1 Russ. Cr. *42; 1 Chit. Pract. 14; Co. Litt . 391; 1 Hawk. P. C. c. 37; 5 Wheat. R. 153, 159.

FEMALE. This term denotes the sex which bears young.

2. It is a general rule, that the young of female animals which belong to us, are ours, nam fetus ventrem sequitur. Inst. 2, 1, 19; Dig. 6, 1, 5, 2. The rule is, in general, the same with regard to slaves; but when a female slave comes into. a free state, even without the consent of her master, and is there delivered of a child, the latter is free. Vide Feminine; Gender; Masculine.

FEME, or, more properly,

FEMME. Woman.

2. This word is frequently used in law. Baron and feme, hushand and wife; feme covert, a. married woman; feme sole, a single woman.

3. A feme covert, is a married woman. A feme covert may sue and be sued at law, and will be treated as a feme sole, when the hushand is civiliter mortuus. Bac. Ab. Baron and Feme, M; see article, Parties to Actions, part 1, section l, §7, n. 3; or where, as it has been decided in England, he is an alien and has left the country, or has never been in it. 2 Esp. R. 554; 1 B. & P. 357. And courts of equity will treat a married woman as a, feme sole, so as to enable her to sue or be sued, whenever her hushand has abjured the realm, been transported for felony, or is civilly dead. And when she has a separate property, she may sue her hushand in respect of such property, with the assist ance of a next friend of her own selection. Story, Eq. Pl. §61; Story, Eq . Jur. §1368; and see article, Parties to a suit in equity, 1, n. 2; Bouv. Inst. Index, h. t.

4. Coverture subjects a woman to some duties and disabilities, and gives her some rights and immunities, to which she would not be entitled as a feme sole. These are considered under the articles, Marriage, (q. v.) and Wife. (q. v.)

5. A feme sole trader, is a married woman who trades and deals on her own account, independently of her hushand. By the custom of London, a feme covert, being a sole trader, may sue and be sued in the city courts, as a feme sole, with reference to her transactions in London. Bac. Ab. Baron and Feme, M. 6. In Pennsylvania, where any mariners or others go abroad, leaving their wives at shop-keeping, or to work for their livelihood at any other trade, all such wives are declared to be feme sole traders, with ability to sue and be sued, without naming the hushands. Act of February 22, 1718. See Poth. De la Puissance du Mari, n. 20.

7. By a more recent act, April 11, 1848, of the same state, it is provided, that in all cases where debts may be contracted for necessaries for the support and maintenance of the family of any married woman, it shall be lawful for the creditor, in such case, to institute suit against the hushand and wife for the price of such necessaries, and after obtaining a judgment, have an execution against the hushand alone and if no property

of the said hushand be found, the officer executing the said writ shall so return, and thereupon an alias execution may be issued, which may be levied upon and satisfied out of the separate property of the wife, secured to her under the provisions of the first section of this act. Provided, That judgment shall not be rendered against the wife, in such joint action, unless it shall have be proved that the debt sued for in such action, was contracted by the wife, or incurred for articles necessary for the support of the family of the said hushand and wife.

FEMININE. What belongs to the female sex.

2. When the feminine is used, it is generally confined to females; as, if a man bequeathed all his mares to his son, his horses would not pass. Vide: 3 Brev. R. 9 Gender; Man; Masculine.

FENCE. A building or erection between two contiguous estates, so as to divide them; or on the same estate, so as to divide one part from another.

2. Fences are regulated by the local laws. In general, fences on boundaries are to be built on the line, and the expense, when made no more expensively than is required by the law, is borne equally between the parties. See the following cases on the subject. 2 Miles, 337, 395; 2 Greenl. 72; 11 Mass. 294; 3 Wend. 142; 2 Metc. 180; 15 Conn. 526 2 Miles, 447; Bouv. Inst. Index, h. t.

3. A partition fence is presumed to be the common property of both owners of the land. 8 B. & C. 257, 259, note a. When built upon the land of one of them, it is his; but if it were built equally upon the land of both, at their joint expense, each would be the owner in severalty of the part standing on his own land. 5 Taunt. 20; 2 Greenl. Ev. 617.

FEOD. The same as fief. Vide Fief or Feud.

FEOFFMENT, conveyancing. A gift of any corporeal hereditaments to another. It operates by transmutation of possession, and it is essential to its completion that the seisin be passed. Watk. Prin. Conv. 183. This term also signifiesthe instrument or deed by which such hereditament is conveyed.

2. This instrument was used as one of the earliest modes of conveyance of the common law. It signified, originally, the grant of a feud or fee; but it came, in time, to signify the grant of a free inheritance in fee, respect being had to the perpetuity of the estate granted, rather than to the feudal tenure. The feoffment was, likewise, accompanied by livery of seisin. The conveyance, by feoffment, with livery of seisin, has become infrequent, if not obsolete, in England; and in this country it has not been

used in practice. Cruise, Dig. t. 32, c. 4. s. 3; Touchs. c. 9; 2 Bl. Corn. 20; Co. Litt. 9; 4 Kent, Com. 467; Perk.. c. 3; Com. Dig. h. t.; 12 Vin. Ab. 167; Bac. Ab. h. t. in pr.; Doct. Plac. 271; Dane's Ab. c. 104, a. 3, s. 4. He who gives or enfeoffs is called the feoffor; and the person enfeoffed is denominated the feoffee. 2 Bl. Com. 20. See 2 Bouv. Inst. n. 2045, note.

FERAE. Wild, savage, not tame.

FERAE BESTIAE. Wild beasts. See Animals; Ferae naturce.

FERAE NATURAE. Of a wild nature.

2. This term is used to designate animals which are not usually tamed. Such animals belong to the person who has captured them only while they are in his power for if they regain their liberty his property in them instantly ceases, unless they have animum revertendi, which is to be known only by their habit of returning. 2 Bl. Com. 386; 3 Binn. 546; Bro. Ab. Propertie, 37; Com. Dig. Biens, F; 7 Co. 17, b; 1 Chit. Pr. 87; Inst. 2, 1, 15; 13 Vin. Ab. 207.

3. Property in animals ferae naturae is not acquired by hunting them and pursuing them; if, therefore, another person kill such animal in the sight of the pursuer, he has a right to appropriate it to his own use. 3 Caines, 175. But if the pursuer brings the animal within his own control, as by entrapping it, or wounding it mortally, so as to render escape impossible, it then belongs to him. Id. Though if he abandons it, another person may afterwards acquire property in the animal. 20 John. 75. The owner of land has a qualified property in animals ferae naturae, when, in consequence of their inability and youth, they cannot go away. See Y. B. 12 H. VIII., 9 B, 10 A 2 Bl. Com. 394; Bac. Ab. Game. Vide Whelp.

FERM or FEARM. By this ancient word is meant land, fundus; (q. v.) and, it is said, houses and tenements may pass by it. Co. Litt. 5 a.

FERRY. A place where persons and things are taken across a river or other stream in boats or other vessels, for hire. 4 N. S. 426; S. C. 3 Harr. Lo. R. 341.

2. In England a ferry is considered a franchise which cannot be set up without the king's license. In most, perhaps all of the United States, ferries are regulated by statute.

3. The termini of a ferry are at the water's edge. 15 Pick. R. 254 and see 8 Greenl. R. 367; 4 John. Ch. R., 161; 2 Porter, R. 296; 7 Pick. R. 448; 2 Car. Law Repos. 69; 2 Dev. R. 403; 1 Murph. 279 1 Hayw. R. 457; Vin. Ab. h. t.; Com. Dig. Piscary B: 6 B.

& Cr. 703; 12 East, R. 333; 1 Bail. R. 469; 3 Watts, R. 219 1 Yeates, R. 167; 9 S. & R. 26.

FERRYMAN. One employed in taking persons across a river or other stream, in boats or other contrivances at a ferry. The owner of a ferry is not considered a ferryman, when it is rented and in the possession of a tenant. Minor, R. 366.

2. Ferrymen are considered as common carriers, and are therefore the legal judges to decide when it is proper to pass over or not. 1 M'Cord, R. 444 Id. 157 1 N. & M. 19; 2 N. & M. 17. They are to regulate how the property to be taken across shall be put in their boats or flats; 1 M'Cord 157; and as soon as the carriage is fairly on the drop or slip of a fat, although driven by the owner's servant, it is in possession of the ferryman, and he is answerable. 1 M'Cord's R. 439.

FESTINUM REMEDIUM. A speedy remedy.

2. This is said of those cases where the remedy for the redress of an injury is given without any unnecessary delay. Bac. Ab. Assise, A. The action of Dower is festinum remedium, and so is Assise.

FETTERS. A sort of iron put on the legs of malefactors, or persons accused of crimes.

2. When a prisoner is brought into court to plead he shall not be put in fetters. 2 Inst. 315; 3 Inst. 34; 2 Hale, 119; Hawk. b. 21 c. 28, s. 1 Kel. 10; 1 Chitty's Cr. Law, 417. An officer having arrested a defendant on a civil suit, or a person accused of a crime, has no right to handcuff him unless it is necessary, or he has attempted to make his escape. 4 B. & C. 596; 10 Engl. C. L. Rep. 412, S. C.

FEUD. This word, in Scotland, signifies a combination of kindred to revenge injuries or affronts done to any of their blood. Vide Fief.

FEUDA. In the early feudal times grants were made, in the first place, only during the pleasure of the grantor, and called muncra; (q. v.) afterwards for life, called beneficia; (q. v.) and, finally, they were extended to the vassal and his sons, and then they acquired the name offeudal. Dalr. Feud. Pr. 199.

FEUDAL. A term applied to whatever concerned a feud; as feudal law: feudal rights.

FEUDAL LAW. By this phrase is understood a political system which placed men and estates under hierarchical and multiplied distinctions of lords and vassals. The principal features of this system were the following.

2. The right to all lands was vested in the sovereign. These were, parcelled out among the great men of the nation by its chief, to be held of him, so that the king had the Dominum directum, and the grantee or vassal, had what was called Dominum utile. It was a maxim nulle terre sans seigneur. These tenants were bound to perform services to the king, generally of a military character. These great lords again granted parts of the lands. they thus acquired, to other inferior vassals, who held under them, and were bound to perform services to the lord.

3. The principles of the feudal law will be found in Littleton's Tenures Wright's Tenures; 2 Blackstone's Com. c. 5 Dalrymple's History of Feudal Property; Sullivan's Lectures; Book of Fiefs; Spellman, Treatise of Feuds and Tenures; Le Grand Coutumier; the Salic Laws; The Capitularies; Les Establissements de St. touis; Assizes de Jerusalem; Poth. Des Fiefs. Merl. Rep. Feodalite; Dalloz, Dict. Feodalit 6; Guizot, Essais sur I'Histoire de France, Essai 5eme.

4. In the United States the feudal law never was in its full vigor, though some of its principles are still retained. "Those principles are so interwoven with every part of our jurisprudence," says Ch. J. Tilghman, 3 S. & R. 447, " that to attempt to eradicate them would be to destroy the whole. They are massy stones worked into the foundation of our legal edifice. Most of the inconveniences attending them, have been removed, and the few that remain can be easily removed, by acts of the legislature." See 3 Kent, Com. 509, 4th ed.

FIAR, Scotch law. He whose property is burdened with a life rent. Ersk. Pr. of L. Scot. B. 2, t. 9, s. 23.

FIAT, practice. An order of a judge, or of an officer, whose authority, to be signified by his signature, is necessary to authenticate the particular acts.

FICTION OF LAW. The assumption that a certain thing is true, and which gives to a person or thing, a quality which is not natural to it, and establishes, consequently, a certain disposition, which, without the fiction, would be repugnant to reason and to truth. It is an order of things which does not exist, but which the law prescribe; or authorizes it differs from presumption, because it establishes as true, something which is false; whereas presumption supplies the proof of something true. Dalloz, Dict. h. t. See 1 Toull. 171, n. 203; 2 Toull. 217, n. 203; 11 Toull. 11, n. 10, note 2; Ferguson, Moral Philosophy, part 5, c. 10, s. 3 Burgess on Insolvency, 139, 140; Report of the Revisers of the Civil Code of Pennsylvania, March 1, 1832, p. 8.

2. The law never feigns what is impossible fictum est id quod factum non est sed fieri potuit. Fiction is like art; it imitates nature, but never disfigures it it aids truth, but it ought never to destroy it. It may well suppose that what was possible, but which is

not, exists; but it will never feign that what was impossible, actually is. D'Aguesseau, Oeuvres, tome iv. page 427, 47e Plaidoyer.

3. Fictions were invented by the Roman praetors, who, not possessing the power to abrogate the law, were nevertheless willing to derogate from it, under the pretence of doing equity. Fiction is the resource of weakness, which, in order to obtain its object, assumes as a fact, what is known to be contrary to truth: when the legislator desires to accomplish his object, he need not feign, he commands. Fictions of law owe their origin to the legislative usurpations of the bench. 4 Benth. Ev. 300.

4. It is said that every fiction must be framed according to the rules of law, and that every legal fiction must have equity for its object. 10 Co. 42; 10 Price's R. 154; Cowp. 177. To prevent, their evil effects, they are not allowed to be carried further than the reasons which introduced them necessarily require. 1 Lill. Ab. 610; Hawk. 320; Best on Pres. §20.

5. The law abounds in fictions. That an estate is in abeyance; the doctrine of remitter, by which a party who has been disseised of his freehold, and afterwards acquires a defective title, is remitted to his former good title; that one thing done today, is considered as done, at a preceding time by the doctrine of relation; that, because one thing is proved, another shall be presumed to be true, which is the case in all presumptions; that the heir, executor, and administrator stand by representation, in the place of the deceased are all fictions of law. "Our various introduction of John Doe and Richard Roe," says Mr. Evans, (Poth. on Ob. by Evans, vol. n. p. 43,) "our solemn process upon disseisin by Hugh Hunt; our casually losing and finding a ship (which never was in Europe) in the parish of St. Mary Le Bow, in the ward of Cheap; our trying the validity of a will by an imaginary, wager of five pounds; our imagining and compassing the king's death, by giving information which may defeat an attack upon an enewy's settlement in the antipodes our charge of picking a pocket, or forging a bill with force and arms; of neglecting to repair a bridge, against the peace of our lord the king, his crown and dignity are circumstances, which, looked at by themselves, would convey an impression of no very favorable nature, with respect to the wisdom of our jurisprudence." Vide 13 Vin. Ab. 209; Merl. Rep. h. t.; Dane's Ab. Index, h. t.; and Rey, des Inst. de I'Angl. tome 2, p. 219, where he severely cesures these fictions as absurd and useless.

FICTITIOUS Pretended; supposed; as, fictitious actions; fictitious payee.

FICTITIOUS ACTIONS, Practice. Suits brought. on pretended rights.

2. They are sometimes brought, usually on a pretended wager, for the purpose of obtaining the opinion of the court on a point of law. Courts of justice were constituted

for the purpose of deciding really existing questions of right between parties, and they are not bound to answer impertinent questions which persons think proper to ask them in the form of an action on a wager. 12 East, 248. Such an attempt has been held to be a contempt of court; and Lord Hardwicke in such a case committed the parties and their attorneys. Rep. temp. Hardw. 237. See also Comb. 425; 1. Co. 83; 6 Cranch, 147-8. Vide Feigned actions.

3. The court of the king's bench fined an attorney forty pounds for stating a special case for the opinion of the court, the greater part of which statement was fictitious. 3 Barn. & Cr. 597; S. C. 10 E. C. L. R. 193.

FICTITIOUS PAYEE, contract. A supposed person; a payee, who has no existence.

2. When the name of a fictitious payee has been used, in making a bill of exchange, and it has been endorsed in such name, it is considered as having the effect of a bill payble to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties who were privy, to the transaction. 2 H. Bl. 178, 288; 3 T. R. 174, 182, 481; 3 Bro. C. C. 238. Vide Bills of Exchange, §1.

FIDEI-COMMISSARY, civil law. One who has a beneficial interest in an estate, which, for a time, is committed to the faith or trust of another. This term has nearly, the same meaning as cestui que trust has in our law. 2 Bouv. Inst. n. 1895, note.

FIDEI-COMMISSUM, civil law. A gift which a man makes to another, through the agency of a third person, who is requested to perform the desire of the giver. For example, when a testator writes, "I institute for my heir, Lucius Titius," he may add, "I pray my heir, Lucius Titius, to deliver, as soon as he shall be able, my succession to Caius Seius: cum igitur aliquis scripserit Lucius Tilius heres esto; potest ajicere, rogo te Luci Titi, ut cum poteris hereditatem meam adire, eam Caio Sceio reddas, restituas. Inst. 2, 23, 2; vide Code 6, 42.

2. Fidei-commissa were abolished in Louisiana by the code. 5 N. S. 302.

3. The uses of the common law, it is said, were borrowed from the Roman fidei-commissum. 1 Cru. Dig. 388; Bac. Read. 19; 1 Madd. Ch. 446-7.

4. The fidei-coimmissa of the civil law, have been supposed to resemble entails, though some writers have declared that the Roman law was a stranger to entails. 2 Bouv. Inst. n. 1708.

FIDE-JUSSIO, civil law. The contract of suretyship.

FIDE-JUSSOR, civil law. One who becomes security for the debt of another, promising to pay it in case the principal does not do so.

2. He differs from co-obligor in this, that the latter is equally bound to a debtor with his principal, while the former is not liable till the principal has failed to fulfil his engagement. Dig. 12, 4, 4; Id. 16, 1, 13; Id. 24, 3, 64; Id. 38, 1, 37; Id. 50, 17, 110, and 14, 6, 20; Hall's Pr. 33; Dunl. Ad. Pr. 300; Clerke's Prax. tit. 63, 4, 5.

3. The obligation of the fide-jussor was an accessory contract, for, if the principal obligation was not previously contracted, his engagement then took the name of mandate. Lec. Elem. §872; Code Nap. 2012.

FIDUCIA, civil law. A contract by which we sell a thing to some one, that is, transmit to him the property of the thing, with the solemn forms of emancipation, on condition that he will sell it back to us. This species of contract took place in the emancipation of children, in testaments, and in pledges. Poth. Pand. h. t.

FIDUCIARY. This term is borrowed from the civil law. The Roman laws called a fiduciary heir, the person who was instituted heir, and who was charged to deliver the succession to a person designated by the testament. Merl. Repert. h. t. But Pothier, Pand. vol. 22, h. t., says that fiduciarius heres properly signifies the person to whom a testator has sold his inheritance, under the condition that he should sell it to another. Fiduciary may be defined to be, in trust, in confidence.

2. A fiduciary contract is defined to be, an agreement by which a person delivers a thing to another, on the condition that he will restore it to him. The following formula was employed:' Ut inter bonos agere opportet, ne propter te fidemque tuam frauder. Cicer. de Offc. lib. 3, cap. 13; Lec. du Dr. Civ. Rom. §237, 238. See 2 How. S. C. Rep. 202, 208; 6 Watts & Serg. 18; 7 Watts, 415.

FIEF, or FEUD. In its origin, a fief was a district of country allotted to one of the chiefs who invaded the Roman empire, as a stipend or reward; with a condition annexed that the possessor should do service faithfully both at home and in the wars, to him by whom it was given. The law of fiefs supposed that originally all lands belonged to lords, who had had the generosity to abandon them to others, from whom the actual possessors derive their rights upon the sole reservation of certain services more or less onerous as a sign of superiority. To this superiority was added that which gives the right of dispensing justice, a right which was originally attached to all fiefs, and conferred upon those who possessed it, the most eminent part of public power. Henrion de Pansey, Pouvoir, Municipal; 2 Bl. Com. 45 Encyclop6die, h. t.; Merl. Rep. h. t.

FIELD. A part of a farra separately enclosed; a close. 1 Chit. Pr. 160. The Digest defines a field to be a piece of land without a house; ager est locus, que sine villa est. Dig. 50, 16, 27.

FIERI FACIAS, practice. The name of a writ of execution. It is so called because, when writs were in Latin, the words directed to the sheriff were, quod fieri facias de bonis et catallis, &c., that you cause to be made of the goods and chattels, &c. Co. Litt. 290 b.

2. The foundation of this writ is a judgment for debt or damages, and the party who has recovered such a judgment is generally entitled to it, unless he is delayed by the stay of execution which the law allows in certain cases after the rendition of the judgment, or by proceedings in error.

3. This subject will be considered with regard to, 1. The form of the writ. 2. Its effects. 3. The manner of executing it.

4.-1. The writ is issued in the name of the commonwealth or of the government, as required by the constitution, and directed to the sheriff, commanding him that of the goods and chattels, and (where lands are liable for the payment of debts, as in Pennsylvania,) of the lands and tenements of the defendant, therein named, in his bailiwick, he cause to be levied as well a certain debt of - dollars, which the plaintiff, (naming him) in the court of - (naming,it,) recovered against him, as - dollars like money which to the said plaintiff was adjudged for his daimages, which he had by the detention of that debt, and that he, (the sheriff,) have that money before the judges of the said court, on a day certain, (being the return day therein mentioned,) to render to the said plaintiff his debt and damages aforesaid, whereof the said defendant is convict. It must be tested in the name of the officer, as directed by the constitution or laws; as, "Witness the honorable John B. Gibson, our chief justice, at Philadelphia, the tenth day of October, in the year of our Lord one thousand eight hundred and forty-eight. It must be signed by the prothonotory, or clerk of the court, and sealed with its seal. The signature of the prothonotary, it has been decided, in Pennsylvania, is not indispensable. The amount of the debt, interest, and costs, must also be endorsed on the writ. This form varies as it is issued on a judgment in debt, and one obtained for damages merely. The execution being founded on the judgment, must, of course, follow and be warranted by it. 2 Saund. 72 h. k; Bing. on Ex. 186. Hence, where there is more than one one plaintiff or defendant, it must be in the name of all the plaintiffs, against all the defendants. 6 T. R. 525. It is either for the plaintiff or the defendant. When it is against an executor or administrator, for a liability of the testator or intestate, it is conformable to the judgment, and must be˜20only against the goods of the deceased, unless the defendant has made himself personally liable by his false

pleading, in which case the judgment is de bonis testatoris si, et si non, de bonis propriis, and the fieri facias must conform to it.

5. - 2. At common law, the writ bound the goods of the defendant or party against whom it was issued, from the test day; by which must be understood that the writ bound the property against the party himself, and all claiming by assingment from, or by, representatives under him; 4 East, B. 538; so that a sale by the defendant, of his goods to a bona fide purchaser, did no protect them from a fieri facias tested before, although not issued or delivered to the sheriff till after the sale. Cro. Eliz. 174; Cro. Jac. 451; 1 Sid. 271. To remedy this manifest injustice, the statute of frauds, 29 Car. II. c. 3, s. 16, was passed. The principles of this statute have been adopted in most of the states. Griff. Law Reg. Answers to No. 38, under No. III. The statue enacts "that no writ of fieri facias, or other writ of execution, shall bind the property of the goods of the party, against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroners, to be executed; and for the better manifestation of the said time, the sheriffs, &c., their deputies or agents, shall, upon the receipt of any such writ, (without fee for doing the sam,) endorse upon the back thereof, the day of the month and year whereon he or they received the same." Vide 2 Binn. R. 174; 2 Serg. & Rawle, 157; 2 Yeates, 177; 8 Johns. R. 446; 12 Johns. R. 320; 1 Hopk. R. 368; 3 Penna. R. 247; 3 Rawle, 401 1 Whart R. 377.

6. - 3. The execution of the writ is made by levying upon the goods and chattels of the defendant, or party against whom it is issued; and, in general, seizing a part of the goods in the name of the whole on the premises, is a good seizure of the whole. Ld. Raym. 725; 2 Serg. & Rawle, 142; 4 Wash. C. C. R. 29; but see 1 Whart. Rep. 377. The sheriff cannot break the outer door of a house for the purpose of executing a fieri facias; 5 do. 92; nor can a window be broken for this purpose. W. Jones, 429. See articles Door; House. He may, however, enter the house, if it be open, and, being once lawfully entered, he may break open an inner door or chest to seize the goods of the defendant, even without any request to open them. 4 Taunt. 619; 3 B. & P. 223; Cowp. 1. Although the sheriff is authorized to enter the house of the party to search for goods, he cannot enter that of a stranger, for that purpose, without being guilty of a trespass, unless the defendant's goods are actually in the house. Com. Dig. Execution, C 5: 1 Marsh. R. 565. The sheriff may break the outer door of a barn 1 Sid. 186; S. C. 1 Keb. 689; or of a store disconnected with the dwelling-house, and forming no part of the curtilage. 16 Johns. R. 287. The fi. fa. may be executed at any time before, and on the return day, but not on Sunday, where it is forbidden by statute. Wats. on Sheriffs, 173 5 Co. 92; Com. Dig. Execution, c. 5. Vide 3 Bouv. Inst. n. 3383, et. seq; Wats. on Sher. ch. 10; Bing. Ex. c. 1, s. 4; Gilb. on Exec. Index, h. t.; Grab. Pr. 321:

Troub. & Hal. Pr. Index, h. t.; Com. Dig. Execution, C 4; Process, F 5, 7; Caines' Pr. Index, h. t.; Tidd's Pr. Index, h. t.; Sell. Pr. Index, h. t.

FIERI FECI, practice. The return which the sheriff, or other proper officer, makes to certain writs, signifying, "I have caused to be made."

2. When the officer has made this return, a rule may be obtained upon him, after the return day, to pay the money into court, and if he withholds payment, an action of debt may be had on the return, or assumpsit for money had and received may be sustained against him. 3 Johns. R. 183.

FIFTEENTH, Eng. law. The name of a tax levied by authority of parliament for the use of the king, which consisted of one-fifteenth part of the goods of those who are subject to it. T. L

FIGURES, Numerals. They are either Roman, made with letters of the Alphabet, for example, MIDCCLXXVI; or they are Arabic, as follows, 1776.

2. Roman figures may be used in contracts and law proceedings, and they will be held valid; but Arabic figures, probably owing to the case with which they may be counterfeited, or. altered, have been holden not to be sufficient to express the sum due on a contract; but, it seems, that if the amount payable and due on a promissory note be expressed in figures or ciphers, it will be valid. Story on Bills, §42, note; Story, Prom. Notes, §21. Indictments have been set aside because the day or year was expressed in figures. 13 Vin Ab. 210; 1 Ch. Rep. 319; S. C. 18 Eng. Com. Law Rep. 95.

3. Bills of exchange, promissory notes, cheeks and agreements of every description, are usually dated with Arabic figures; it is, however, better to date deeds and other formal instruments, by writing the words at length. Vide l Ch. Cr. L. 176; 1 Verm. R. 336; 5 Toull. n. 336; 4 Yeates, R. 278; 2 John. R. 233; 1 How. Mis. 256; 6 Blackf., 533.

FIGURES OF SPEECH. By figures of speech is meant that manner of speaking or writing, which has for its object to give to our sentiments and, thoughts a greater force, more vivacity and agreeableness.

2. This subject belongs more particularly to grammar and rhetoric, but the law has its figures also. Sometimes fictions come in aid of language, when found insufficient by the law; language, in its turn, by means of tropes and figures, sometimeslends to fictions a veil behind which they are hidden; sometimes the same denominations are preserved to things which have ceased to be the same, and which have been changed;

at other times they lend to things denominations which supposed them to have been modified.

3. In this immense subject, it will not be expected that examples should be here given of every kind of figures; the principal only will be noticed. The law is loaded with abstract ideas; abstract in itself, it has often recourse to metaphors, which, as it were, touch our senses. The inventory is faithful, a defect is covered, an account is liquidated, a right is open or closed, an obligation is extinguished, &c. But the law has metaphors which are properly its own; as civil fruits, &c. The state or condition of a man who has been deprived by the law of almost all his social prerogatives or rights, has received the metaphorical name of civil death. Churches being called the houses of God, formerly were considered an asylum, because to seize a person in the house of another was considered a wrong. Mother country, is applied to the country from which people emigrate to a colony; though this pretended analogy is very different in many points, yet this external ornament of the idea soon became an integral part of the idea; and on the faith of this metaphor, this pretended filiation became the source whence flowed the duties which bound the colonies to the metropolis or mother country.

4. In public speaking, the use of figures, when natural and properly selected, is of great force; such Ornaments impress upon the mind of the bearers the ideas which the speaker desires to convey, fix their attention and disposes them to consider favorably the subject of inquiry. See 3 Bouv. Inst. n. 3243.

FILACER, FILAZIER, or FILZER, English law. An officer of the court of common pleas, so called because he files those writs on which he makes out process. FILE, practice. A thread, string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed. for the more safe keeping and ready turning to the same. The papers put together in order, and tied in bundles, are also called a file.

2. A paper is said to be filed, when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin. Ab. 211.

FILIATION, civil law. The descent of son or daughter, with regard to his or her father, mother, and their ancestors.

2. Nature always points out the mother by evident signs, and whether married or not, she is always certain: mater semper certa est, etiamsi vulgo conceperit. There is not the same certainty with regard to the father, and the relation may not know or feign ignorance as to the paternity the law has therefore established a legal presumption to serve as a foundation for paternity and filiation.

3. When the mother is or has been married, her hushand is presumed to be the father of the children born during the coverture, or within a competent time afterwards; whether they were conceived during the coverture or not: pater is est quem nuptice demonstrant.

4. This rule is founded on two presumptions; one on the cohabitation before the birth of the child; and the other that the mother has faithfully observed the vow she made to her hushand.

5. This presumption may, however, be rebutted by showing either that there has been no cohabitation, or some physical or other impossibility that the hushand could be the father. See Access; Bastard; Gestation; Natural children; Paternity; Putative father. 1 Bouv. Inst. n. 302, et seq.

FILIUS. The son, the immediate male descendant. This term is used in making genealogical tables.

FILIUS MULIERATUS. The eldest legitimate son of parents, who, before their marriage, had illegitimate children. Vide Mulier.

FILIUS POPULI. The son of the people; a bastard.

FILLEY. A mare not more than one year old. Russ. & Ry. 416 Id. 494.

FILUM. The middle; the thread of anything; as filum aqua; filum viae.

FILUM AQUAE. The thread or middle of a water course. (q. v.)

2. It is a general rule, that in grants of lands bounded on rivers and streams above tide water, unless otherwise expressed, the grant extends usque ad filum aquae, and that not only the banks, but the bed of the river, and the islands therein, together with exclusive right of fishing, pass to the grantee. 5 Wend. 423.

FILUM VIAE. The thread or middle of the road.

2. Where a law requires travellers meeting each other on, a road to drive their carriages to the right of the middle of the road, the parties are bound to keep ou their side of the worked part of the road, although the whole of the smooth or most travelled path may be upon one side of the filum viae. 7 Wend. 185; 5 Conn. 305.

FIN DE NON RECEVOIR, French law. An exception or plea founded on law, which, without entering into the merits of the action, shows that the plaintiff has no

right to bring it, either because the time during which it ought to have been brought has elapsed, which is called prescription, or that there has been a compromise, accord and satisfaction, or any other cause which has destroyed the right of action which once subsisted. Poth. Proc. Civ. partie 1, c. 2, s. 2, art. 2; Story, Confl. of Laws, §580.

FINAL. That which puts an end to anything.

2. It is used in opposition to interlocutory; as, a final judgment,. is a judgment which ends the coutroversy between the parties litigant. 1 Wheat. 355; 2 Pet. 449. See 12 Wheat. 135; 4 Dall. 22; 9 Pet. 1; 6 Wheat. 448; 3 Cranch, 179; 6 Cranch, 51; Bouv. Inst. Index, h. t.

FINANCIER. A person employed in the economical management and application of public money or finances; one who is employed in the management of money.

FINANCES. By this word is understood the revenue, or public resources or money of the state.

FINDER. One who lawfully comes to the possessiou of another's personal property, which was then lost.

2. The finder is entitled to certain rights and liable to duties which he is obliged to perform. This is a species of deposit, which, as it does not arise ex contractu, may be called a quasi deposit, and it is governed by the same general rules as common deposits. The, finder is required to take the same reasonable care of the property found, as any voluntary depositary ex contractu. Doct. & St. Dial. 2, c. 38; 2 Bulst. 306, 312 S. C. 1 Rolle's R. 125.

3. The finder is not bound to take the goods he finds; yet, when he does undertake the custody, he is required. to exercise reasonable diligence in preserving the property and he will be responsible for gross negligence. Some of the old authorities laid down that "if a man find butler, and by his negligent keeping, it putrify; or, if a man find garments, and by his negligent keeping, they be moth eaten, no action lies." So it is if a man find goods and lose them again; Bac. Ab. Bailment, D; and in support of this position; Leon. 123, 223 Owen, 141; and 2 Bulstr. 21, are cited. But these cases, if carefully examined, will not, perhaps, be found to decide the point as broadly as it is stated in Bacon. A finder would doubtless he held responsible for gross negligence.

4. On the other hand, the finder of an article is entitled to recover all expenses which have necessarily occurred in preserving the thing found; as, it a man were to find an animal, he would be entitled to be reimbursed for his keeping, for advertising in a reasonable manner that he had found it, and to any reward which may have been

offered by the owner for the recovery of such lost thing. Domat, 1. 2, t. 9, s. 2, n. 2. Vide Story, Bailm. §35.

6. And when the owner˜20does not reclaim the goods lost, they belong to the finder. 1 Bl. Com. 296; 2 Kent's Com. 290. The acquisition of treasure by the finder, is evidently founded on the rule that what belongs to none naturally, becomes the property of the first occupant: res nullius naturaliter fit p7imi occupantis. How far the finder is responsible criminally, see 1 Hill, N. Y. Rep. 94; 2 Russ. on Cr. 102 Rosc. Cr. Ev. 474. See Taking.

FINDING, practice. That which has been ascertained; as, the ruding of the jury is conclusive as to matters of fact when confirmed: by a judgment of the court. 1 Day, 238; 2 Day, 12.

FINDING A VERDICT. The act of the jury in agreement upon a verdict.

FINE. This word has various significations. It is employed, 1. To mean a sum of money, which, by judgment of a competent jurisdiction, is required to be paid for the punishment of an offence. 2. To designate the amount paid by the tenant, on his entrance, to the lord. 3. To signify a special kind of conveyance.

FINE, conveyance, Practice. An amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be the right of one of the parties. Co. Litt. 120; 2 Bl. Com. 349; Bac. Abr. Fines and Recoveries. A fine is so called, because it puts an end, not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. Such concords, says Doddridge, (Eng. Lawyer, 84, 85,) have been in use in the civil law, and are called transactions (q. v.) whereof they say thus: Transactiones sunt de eis quae in controversia sunt, a, lite futura aut pendente ad certam compositionem reducuntur, dando aliquid vel accipiendo. Or shorter, thus: Transactio est de re dubia et lite ancipite ne dum ad finem ducta, non gratuita pactio. It is commonly defined an assurance by matter of record, and is founded upon a supposed previously existing right, and upon a writ requiring the party to perform his covenant; although a fine may be levied upon any writ by which lands may be demanded, charged, or bound. It has also been defined an acknowledgment on record of a previous gift or feoffment, and prima facie carries a fee, although it may be limited to an estate for life or in fee tail. Prest. on Convey. 200, 202, 268, 269 2 Bl. Com. 348-9.

2. The stat. 18 E. I., called modus levandi fines, declares and regulates the manner in which they should be levied and carried on and that is as follows: 1. The party to whom the land is conveyed or assured, commences an action at law against the other,

generally an action of covenant, by suing out of a writ of praecipe, called a writ of covenant, that the one shall convey the lands to the other, on the breach of which agreement the action is brought. The suit being thus commenced, then follows,

2. The licentia concordandi, or leave to compromise the suit. 3. The concord or agreement itself, after leave obtained by the court; this is usually an acknowledgment from the deforciants, that the lands in question are the lands of the complainants. 4. The note of the fine, which is only an abstract of the writ of covenant, and the concord naming the parties, the parcels of land, and the agreement. 5. The foot of the fine or the conclusion of it, which includes the whole matter, reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

3. Fines thus levied, are of four kinds. 1. What in law French is called a fine sur cognizance de droit, come ceo que il ad de son done; or a fine upon the acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. This fine is called a feoffment of record. 2. A fine sur cognizance de droit tantum, or acknowledgment of the right merely. 3. A fine sur concessit, is where the cognizor, in order to make an end of disputes, though he acknowledges no precedent right, yet grants to the consignee an estate de novo, usually for life or years, by way of a supposed composition. 4. A fine sur done grant et render, which is a double fine, comprehending the fine sur cognizance de droit come ceo, &c., and the fine sur concessit; and may be used to convey particular limitations of estate, and to persons who are strangers, or not named in the writ of the covenant, whereas the fine sur cognizance de droit come ceo &c., conveys nothing but an absolute estate either of inheritance, or at least of freehold. Salk. 340. In this last species of fines, the cognizee, after the right is acknowledged to be in him, grants back again, or renders to the cognizor, or perhaps to a stranger some other estate in the premises. 2 Bl. Com. 348 to 358. See Cruise on Fines; Vin. Abr. Fine; Sheph. Touch. c. 2; Bac. Ab. Fines and Recoveries; Com. Dig. Fine.

FINE, criminal law. Pecuniary punishment imposed by a lawful tribunal, upon a person convicted of crime or misdemeanor. See Shep. Touchs. 2; Bac. Abr. Fines and Amercements.

2. The amount of the fine is frequently left to the discretion of the court, who ought to proportion the fine to the offence. To prevent the abuse of excessive fines, the Constitution of the United States directs that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Amendm. to the Constitution, art. 8. See Division of opinion.

FINE FOR ALIENATION. During the vigor of the feudal law, a fine for alienation was a sum of money which a tenant by knight's service paid to his lord for permission

to alienate his right in the estate he held, to another, and by that means to substitute a new tenant for himself. 2 Bl. Com. 71, But when the tenant held land of the king, in capite, by socage tenure, he was bound to pay such a fine, as well as in the case of knight service. 2 Bl. Com. 89. These fines are now abolished. In France, a similar demand from the tenant, made by the lord when the former alienated his estate, was called lods et vente. This imposition was abolished, with nearly every feudal right, by the French revolution.

FIRE ACCIDENTAL. One which arises in consequence of some human agency, without any intention, or which happens by some natural cause, without human agency.

2. Whether a fire arises purely by accident, or from any other cause when it becomes uncontrollable and dangerous to the public, a man may, in general, justify the destruction of a house on fire for the protection of the neighborhood, for the maxim salus populi est suprema lex, applies in such case. 11 Co. 13; Jac. Inter. 122, max. 115. Vide Accident; Act of God, and 3 Saund. 422 a, note 2; 3 Co. Litt. 57 a, n. 1; Ham. N. P. 171; 1 Cruise's Dig. 151, 2; 1 Vin. Ab. 215; 1 Rolle's Ab. 1; Bac. Ab. Action on the case, F; 2 Lois des Batim. 124; Newl. on Contr. 323; 1 T. R. 310, 708; Amb. 619; 6 T. R. 489.

3. When real estate is let, and the tenant covenants to pay the rent during the term, unless there are proper exceptions to such covenants, and the premises are afterwards destroyed by fire, during the term, the rent must be paid, although there be no enjoyment; for the common rule prevails, res perit domino. The tenant, by the accident, loses his term, the landlord, the residence. Story, Eq. Jur. §102.

FIREBOTE. Fuel for necessary use; a privilege allowed to tenants to take necessary wood for fuel.

FIRKIN. A measure of capacity equal to nine gallons. The word firkin is also used to designate a weight, used for butter and cheese, of fifty-six pounds avoirdupois.

FIRM. The persons composing a partnership, taken collectively, are called the firm. Sometimes this word is used synonymously with partnership.

2. The name of a firm should be distinct from the names of all other firms. When there is a confusion in this respect, the partners composing one firm May, in some cases, be made responsible for the debts of another. For example, where three persons carried on a trade under the firm of King and Company, and two of those persons, with another, under the same firm, carried on another partnership; a bill under the firm, and which was drawn on account of the one partnership, was made the ground of an action

of assumpsit against the other. Lord Kenyon was of opinion that this company was liable; that the partner not connected with the company that drew the bill, having traded along with the other partner under that firm, persons taking bills under it, thougb without his knowledge, had a right to look to him for payment. Peake's N. P. Cas. 80; and see 7 East, R. 210; 2 Bell's Com. 670, 6th ed.; 3 Mart. N. S. 39. But it would seem, 1st. That any act distinctly indicating credit to be given to one of the partnerships, will fix the election of the creditor to that company; and 2d. That making a claim on either of the firms, or, when they are insolvent, on either of the estates, will have the same effect.

3. When the style of the firm has been agreed upon, for example, John Doe and Company, the partners who sign the name of the firm are required to use such name in the style adopted, and a departure from it may have the double effect of rendering the individual partner who signs it, personally liable not only to third persons, but to his co-partners; Story, Partn. §102, 202 and it will be a breach of the agreement, if the partner sign his own name, and add, "for himself and partners." Colly. Partn. B. 2, c. 2, §2; 2 Jac. & Walk. 266.

4. As a general rule a firm will be bound by the acts of one of the partners in the course of their trade and business, and will be discharged by transactions with a single partner. For example, the payment or satisfaction of a debt by a partner, is a satisfaction and payment by them all; and a release to one partner, is in release to them all. Go. Litt. 232 n; 6 T. R. 525. Vide Partner; Partnership.

5. It not unfrequently happens that the name of the firm is the name of only one of the partners, and that such partner does business in his own name on his private or separate account. In such case, if the contract be entered into for the firm, and there is express or implied proof of that fact, the partnership will be bound by it; but when there is no such proof, the presumption will be that the debt was contracted by the partner on his own separate account, and the firm will not be responsible. Story on Part. §139; Colly. on Partn. Book 3, c. 1, §2; 17 Serg. & Rawle, 165; 5 Mason, 176; 5 Peters, 529; 9 Pick. 274; 2 Bouv. Inst. n. 1442, et seq.

FIRMAN. A passport g ranted by the Great Mogul, to captains of foreign vessels, to trade within the territories over which he has jurisdiction; a permit.

FIRST PURCHASER. In the English law of descent, the first purchaser was he who first acquired an estate in a family, which still owns it. A purchase of this kind signifies any mode of acquiring an estate, except, by descent. 2 BI; Com. 220.

FISC, civil law. The treasury of a prince. The public treasury. Hence to confiscate a thing, is to appropriate it to the fisc. Paillet, Droit Public, 21, n, says that fiscus, in the

Roman law, signified the treasure of the prince, and aerarium, the treasure of the state. But this distinction was not observed in France. See Law 10, ff. De jure Fisci.

FISCAL. Belonging to the fisc, or public treasury.

FISH An animal which inhabits the water, breathes by the means of gills, and swims by the aid of fins, and is oviparous.

2. Fishes in rivers and in the sea, are considered as animals ferae naturae, and consequently no one has any property in them until they have been captured; and, like other wild animals, if having been taken, they escape and. regain their liberty, the captor loses his property in them. Vide Ferae Naturae. The owner of a fishery in the lower part of a stream cannot construct any contrivance by which to obstruct the passage of fish up the stream. 5 Pick. R. 199.

FISHERY, estates. A place prepared for catching fish with nets or hooks. This term is commonly applied to the place of drawing a seine, or net. 1 Whart. R. 131, 2.

2. The right of fishery is to be considered as to tide or navigable waters, and to rivers not navigable. A river where the tide ebbs and flows is considered an arm of the sea. By the common law of England every navigable river within the realm as far as the sea ebbs and flows is deemed a royal river, and the fisheries therein as belonging to the crown by prerogative, yet capable of being granted to a subject to be held or disposed of as private property. The profit of such fisheries, however, when retained by the crown, is not commonly taken and appropriated by the king, unless of extraordinary value, but left free to all the people. Dav. Rep. 155; 7 Co. 16, a: Plowd, 154, a. Within the tide waters of navigable rivers in some of the United States, private or several fisheries were established, during the colonial state, and are still held and enjoyed as such, as in the Delaware. 1 Whart. 145, 5; 1 Baldw. Rep. 76. On the high seas the right of fishing jure gentium is common to all persons, as a general rule. In. rivers, not navigable, that is, where there is no flux or reflux of the tide, the right of fishing is incident to the owner of the soil, over which the water passes, and to the riparian proprietors, when a stream is owned by two or more. 6 Cowen's R. 369; 5 Mason's R. 191; 4 Pick. R. 145; 5 Pick. R. 199. The rule, that the right of fishery, within his territorial limits, belongs exclusively to the riparian owner, extends alike to great and small streams. The owners of farms adjoining the Connecticut river, above the flowing of the tide, have the exclusive right of fishing opposite their farms, to the middle of the river although the public have an easement in the river as a public highway, for passing and repassing with every kind of water craft. 2 Conn. R. 481. The right of fishery may exist, not only in the owner of the soil or the riparian proprietor, but also in another who has acquired it by grant or otherwise. Co. Litt. l22 a, n. 7; Schul. Aq. R. 40 41; Ang. W. C. 184; sed vide 2 Salk. 637.

3. Fisheries have been divided into: 1. Several fisheries. A several fishery is one to which the party claiming it has the right of fishing, independently of all others, as that no person can have a coextensive right with him in the object claimed, but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burr. 2814. A several fishery, as its name imports, is an exclusive property; this, however, is not to be understood as depriving the territorial owner of his right to a several fishery, when he grants to another person permission to fish; for he would continue to be the several proprietor, although he should suffer a stranger to hold a coextensive right with himself. Woolr. on Wat. 96.

4. - 2. Free fisheries. A free fishery is said to be a franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Com. 329. Mr. Woolrych says, that sometimes a free fishery is confounded with a several, sometimes it is said to be synonymous with common, and again treated as distinct from either. Law of Waters, &c. 97.

5. - 3. Common of Fishery. A common of fishery is not an exclusive right, but one enjoyed in common with certain other persons. 3 Kent, Com. 329. A distinction has been made between a common fishery, (commune piscarium,) which may mean for all mankind, as in the sea, and a common of fishery, (communium piscariae,) which is a right, in common with certain other persons, in a particular stream. 8 Taunt. R. 183. Mr. Angell seems to think that common of fishery and free fishery, are convertible terms, Law of Water Courses, c. 6., s. 3, 4.

6. These distinctions in relation to several, free, and common of, fishery, are not strongly marked, and the lines are sometimes scarcely perceptible. "Instead of going into the black letter books, to learn what was a fishery, and a free fishery, and a several fishery," says Huston, J., "I am disposed to regard our own acts, even though differing, from old feudal times." 1 Whart. R. 132. See 14 Mus. R. 488; 2 Bl. Com. 39, 40; 7 Pick. R. 79. Vide, generally, Ang. Wat. Co.; Index, h. t; Woolr. on Wat. Index, h. t; Schul. Aq. R. Index, h. t; 2 Rill. Ab. ch. 18, p. 1,63; Dane's Ab. h. t; Bac. Ab. Prerogative, B 3; 12 John. R. 425; 14 John. R. 255 14 Wend. R. 42; 10 Mass., R. 212; 13 Mass. R. 477; 20 John. R. 98; 2 John. It. 170; 6 Cowen, R. 369; 1 Wend. R. 237; 3 Greenl. R. 269; 3 N. H. Rep. 321; 1 Pick. R. 180; 2 Conn. R. 481; 1 Halst. 1; 5 Harr. and Johns. 195; 4 Mass. R. 527; and the articles Arm of the sea; Creek; Navigable River; Tide.

TO FIX. To render liable.

2. This term is applied to the condition of special bail; when the plaintiff has issued a ca. sa. which has been returned by the sheriff, non est, the bail are said to be fixed,

unless the defendant be surrendered within the time allowed ex gratia, by the practice of the court. 5 Binn. R. 332; Coxe, R. 110; 12 Wheat. R. 604; 4 John. R. 407; 1 Caines, R. 588. The defendant's death after the return is no excuse for not surrendering him during the time allowed ex gratia. See Act of God; Death. In New Hampshire, 1 N. H. Rep. 472, and Massachusetts, 2 Mass. R. 485, the bail are not fixed until judgment is obtained against them on a scire facias, or unless the defendant die after, the return of non est or) the execution against him. In North Carolina, the bail are not fixed till judgment against them. 3 Dev. R. 155. When the bail are fixed, they are absolutely responsible.

FIXTURES, property. Personal chattels annexed to land, and which may be afterwards severed and removed by the party who has annexed them, or his personal representative, against the will of the owner of the freehold.

2. Questions frequently arise as to whether fixtures are to be considered real estate, or a part of the freehold; or whether they are to be treated as personal property. To decide these, it is proper to consider the mode of annexation, the object and customary use of the thing, and the character of the contending parties.

3. - 1. The annexation may be actual or constructive; 1st. By actual connexation or annexation is understood every mode by which a chattel can be joined or united to the freehold. The article must not however be laid upon the ground; it must be fastened, fixed or set into the land, or into some such erection as is unquestionably a part of the realty. Bull. N. P. 34; 8 East, R. 38; 9 East, R. 215; 1 Tauut. 21; Pothier, Traite des Choses, §1. Looks, iron stoves set in brick-work, posts, and window blinds, afford examples of actual annexation. See 5 Rayw. 109; 20 John. 29; 1 Harr. and John. 289; a M'chrd, 553; 9 Conn. 63; 1 Miss. 508, 620; 7 Mass. 432; 15 159; 3 Stew. 314. 2d. Some things have been held to be parcel of the realty, which are not in a real sense annexed, fixed, or fastened to the freehold; for example, deeds or chattels which relate to the title of the, inheritance, go to the heir; Shep. Touch. 469; but loose, movable machinery, not attached nor affixed, which is used in prosecuting any business to which the freehold is adapted, is not considered as part of the real estate, nor as an appurtenance to it. 12 New H. Rep. 205. See, however, 2 Watts,& S. 116, 390. It is also laid down that deer in a park, fish in a pond, and doves in a dove-house, go to the heir and not to the executor, being with keys and heir-looms, constructively annexed to the inheritance. Shepb. Touchs. 90; Pothier, Traite des Choses, §1.

4. - 2. The general rule is, that fixtures once annexed to the freehold, become a part of the realty. But to this rule there are exceptions. These are, 1st. Where there is a manifest intention to use the fixtures in some employment distinct from that of the occupier of the real estate. 2d. Where it has been annexed for the purpose. of carrying on a trade; 3 East, 88; 4 Watts, 330; but the distinction between fixtures for trade and

those for agriculture does not in the United States, seem to have been generally admitted to prevail. 8 Mass. R. 411; 16 Mass. R. 449; 4 Pick. R. 311; and set, 2 Peter's Rep. 137. The fact that it was put up for the purposes of trade indicates an intention that the thing should not become a part of the freehold. See 1 H. B]. 260. But if there be a clear intention that the thing should be annexed to the realty, its being used for the purposes of trade would not perhaps bring the case within one of the exceptions. 1 H. BI, 260.

5. - 3. There is a difference as to what fixtures may or may not be removed, as the parties claiming them stand in one relation or another. These classes of persons will be separately considered.

6. - lst. When the question as to fixtures arises between the executor and the heir. The rule, as between these persons has retained much of its original strictness, that the fixtures belong to the real estate, or the heir i but if the ancestor manifested an intention, which is to be inferred from circumstances, that the things affixed should be considered as personally, they must be so considered, and will belong to the executor. See Bac. Abr. Executors and Administrators; 2 Str. 1141; 1 P. Wms. 94 Bull. N. P. 34.

7. 2d. As between vendor and vendee. The rule is as strict between these persons as between the executor and the heir; and fixtures erected by the vendor for the purpose of trade and manufactures, as pot-ash kettles for manufacturing ashes, pass to the vendee of the land. 6 Cowen, R. 663; 20 Johns. R. 29. Between mortgagor and mortgagee, the rule seems to be the same as that between vendor and vendee. Amos & F. on Fixt. 188; 1 5 Mass. R. 1 5 9; 1 Atk. 477 16 Verm. 124; 12 N. H. Rep. 205.

8. - 3d. Between devisee and executor. On a devise of real estate, things permanently annexed to the realty at the time of the testator's death, will pass to the devisee. His right to fixtures will be similar, to that of the vendee. 2 Barn. & Cresw. 80.

9. - 4th. Between landlord and tenant for years. The ancient rule is relaxed, and the right of removal of fixtures by the tenant is said to be very extensive. 3 East, 38. But his right of removal is held to depend rather upon the question whether the estate will be left in the condition in which he took it. 4 Pick. R. 311.

10. - 5th. In cases between tenants for life or their executors and the remainder-men or reversioners, the right to sever fixtures seems to be the same as that of the tenant for years. It has been held that the steam engines erected in a colliery, by a tenant for life, should belong to the executor and not go to the remainder-man. 3 Atk. R. 1 3.

11. - 6th. In a case between the landlord and a tenant at will, there seems to be no reason why the same privilege of removing fixtures should not be allowed. 4 Pick. R. 511; 5 Pick. R. 487.

12. The time for exercising the right of removal of fixtures is a matter of importance a tenant for years may remove them at any time before he gives up the possession of the premises, although it should be after his term has expired, and he is holding over. 1 Barn. & Cres. 79, 2 East, 88. Tenants for life or at will, having uncertain, interests in the land, may, after the determination of their estates, not occasioned by their own faults, have a reasonable time within which to remove their fixtures. Hence their right to bring an action for them. 3 Atk. 13. In case of their death the right passes to their representatives. See, generally, Vin. Abr. Landlord and Tenant, A; Bac. Abr. Executors, &c. H 3; Com. Dig. Biens, B and C; 2 Chitty's Bl. 281, n. 23 Pothier, Traite des Choses; 4 Co. 63, 64 Co. Litt. 53, a, and note 5, by Hargr.; Moore, 177; Hob. 234; 3 Salk. 368; 1 P. Wins. 94; 1 Atk. 553; 2 Vern. 508; 3 Atk. 13; 1 H. Bl. 259, n Ambl. 113; 2 Str. 1141; 3 Esp. 11; 2 East, 88; 3 East, 38; 9 East, 215; 3 Johns. R. 468; 7 Mass. 432; 6 Cowen, 665; 2 Kent, Com. 280; Ham., Part. 182; Jurist, No. 19, p. 53; Arch. L. & T. 359; Bouv. Inst. Index, h. t.

FLAG OF THE UNITED STATES. By the act entitled, "An act to establish the flag of the United States," passed April 4, 1818, 3 Story's L. U. S., 1667, it is enacted-

2. - §1. That from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white: that the union be twenty stars, white in a blue field.

3. - §2. That, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission.

FLAGRANS CRIMEN. This, among the Romans, signified. that a crime was then or had just been committed for example, when a crime has just been committed and the corpus delictum is publicly exposed; or if a mob take place; or if a house be feloniously burned, these are severally flagrans cri men.

2. The term used in France is flagrant delit. The code of criminal instruction gives the following concise definition of it, art. "Le delit qui se commet actuellement ou qui vient de se coramettre, est un flagrant delit."

FLAGRANTE DELICTO. The act of committing a crime; when a person is arrested flagrante delicto, the only evidence required to convict him, is to prove that fact.

FLEET, punishment, Eng. law, Saxon fleot. A place of running water, where the tide or float comes up. A prison in London, so called from a river or ditch which was formerly there, on the side of which it stood.

FLETA. The title of an ancient law book, supposed to have been written by a judge who was confined in the Fleet prison. It is written in Latin, and is divided into six books. The author lived in the reigns of Ed. II. and Ed. III. See lib. 2, cap. 66, § Item quod nullus; lib. 1, cap. 20, § qui coeperunt, pref. to 10th Rep. Edward II. was crowned, A. D. 1306. Edward III. was crowned 1326, and reigned till A. D. 1377. During this period the English law was greatly improved, and the lawyers and judges were very learned. Hale's Hist. C. L. 173. Blackstone 4 Com. 427, says, of this work, "that it was for the most part law, until the alteration of tenures took place." The same remark he applies to Britton and Hingham.

FLIGHT, crim. law. The evading the course of justice, by a man's voluntarily withdrawing himself. 4 Bl. Com. 387. Vide Fugitive from justice.

FLORIDA. The name of one of the new states of the United States of America. It was admitted into the Union by virtue of the act of congress, entitled An Act for the admission of the states of Iowa and Florida into the Union, approved March 3, 1845.

2. The constitution was adopted on the eleventh day of January, eighteen hundred and thirty-nine. The powers of the government are divided into three distinct branches, namely, the legislative, the executive, and the judicial,

3. - §1. Of the legislative power. 1. The legislative power of this state shall be vested in two distinct branches, the one to be styled the senate, the other the house of representatives, and both together, "The General Assembly of the State of Florida," and the style of the laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened."

4. 2. A majority of each house shall constitute a quorum to do business, but smaller number may adjourn from day to day, and may compel the attendance of absent members in such. manner, and under such penalties, as each house may prescribe.

5. - 3. Each house may determine the rules of its own proceedings, punish its members for disorderly behaviour, and, with the consent of two-thirds, expel a member; but not a second time for the same cause.

6. - 4. Each house, during the session, may punish by imprisonment, any person not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing

any of its proceedings, provided such imprisonment shall not extend beyond the end of the session.

7. - 5. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, and the yeas and nays of, the members of each house shall be taken, and entered upon the journals, upon the final passage of every bill, and may, by any two members, be required upon any other question, and any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public, or an individual, and have the reasons of his dissent entered on the journal.

8. - 6. Senators and representatives shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to, or returning from the same, allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; and for any speech or debate, in either house, they shall not be questioned in any other place.

9. - 7. The general assembly shall make provision, by law, for filling vacancies that may occur in either house, by the death, resignation, (or otherwise,) of any of its members.

10. - 8. The doors of each house shall be open, except on such occasions as, in the opinion of the house, the public safety may imperiously require secrecy.

11. - 9. Neither house shall, without the consent of the other, adjourn for more than three days, nor, to any other place than that in which they may be sitting.

12. - 10. Bills may originate in either house of the general assembly, and all bills passed by one house may be discussed, amended or rejected by the other; but no bill shall have the force of law until, on three several days, it be read in each house, and free discussion be allowed thereon, unless in cases of urgency, four-fifths of the house in which the same shall be depending, may deem it expedient to dispense with the rule; and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses.

13. - 11. Each member of the general assembly shall receive from the public treasury such compensation for his services,as may be fixed by law, but no increase of compensation shall take effect during the term for which the representatives were elected when such law passed.

14. - 12. The sessions of the general assembly shall be annual, and commence on the fourth Monday in November in each year, or at such other time as may be prescribed by law.

15. The senators will be considered with regard, 1. To the qualification of the electors. 2. The qualification of the members. 3. The number of members. 4. The time of their election. 5. The length of service.

16. - 1st. The senators shall be elected by the qualified voters. Const. art. 4, s. 5.

17. - 2d. No man shall be a senator unless be be a white man, a citizen of the United States, and shall have been an inhabitant of Florida two years next preceding his election, and the last year thereof a resident of the district or county for which he shall be chosen, and shall have attained the age of twenty-five years. Const. art. 4, s. 5. And to this there are the following exceptions: All banking officers of any bank in the state are ineligible until after twelve-months after they shall go out of such office. Art. 6, 3. All persons who shall fight, or send, or accept a duel, the probable issue of which may be death, whether committed in or out of the state. Art. 6, s. 5. All collectors or holders of public money. Art. 6, s. 6. All ministers of the Gospel. Art. 6, s. 1 0. All persons who shall have procured their elections by bribery. All members of congress, or persons holding or exercising any, office of profit under the United States, or under a foreign power. Art. 6, s. 18.

18. - 3d. The number of senators may be varied by the general assembly, but it shall never be less. than one-fourth, nor more than one-half of the whole number of the house of representatives. Art. 9, s. 2.

19. - 4th. The time and place of their election is the same as those for the house of representatives. Art. 4, s. 5.

20. - 5th. They are elected for the term of two years. Art. 4, s. 5.

21. The house of representatives will be considered under the same beads.

22. - 1st. Members of the house of representatives shall be chosen by the qualified voters.

23. - 2d. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of the state two years next preceding his election, and the last year thereof a resident of the county for which he shall be chosen, and have attained the age of twenty-one years. Art. 4, s. 4. And the same persons are disqualified, who are disqualified as senators.

24. - 3d. The number of members shall never exceed sixty. Art. 4, s. 18.

25. - 4th. The. time of holding the election is the first Monday of October annually.

26. - 5th. Members of the house of representatives are elected for one year from the day of the commencement of the general election, andno longer. Art. 4, s. 2.

27. - §2. Of the executive. The supreme executive power is vested in a chief magistrate, who is styled the governor of Florida. Art. 3.

28. No person shall be eligible to the office of governor, unless he shall have attained the age of thirty years, shall have been a citizen of the United States ten years, or an inhabitant of Florida at the time of the adoption of the constitution, (being a citizen of the United States,) and shall have resided in Florida at least five years preceding the day of election.

29. The governor shall be elected for four years, by the qualified electors, at the time and place where they shall vote for representatives; and shall remain in office until a successor shall be chosen and qualified, and shall not be eligible to reelection until the expiration of four years thereafter. 30. His general powers are as follows: 1. He is commander-in-chief of the army, navy, and militia of the state. 2. He shall take care that the laws be faithfully executed. 3 . He may require information from the officers of -the executive department. 4. He may convene the general assembly by proclamation upon particular occasions. 5. He shall, from time to time, give information to the general assembly. 6. He may grant pardons, after conviction, in all cases except treason and impeachment, and in these cases, with the consent of the senate; and he may respite the sentence in these cases until the end of the next session of the senate. 7. He, may approve or veto bills.

31. In case of vacancy in the office of governor, the president of the senate shall act in his place, and in case of his default, the speaker of the house of representatives shall fill the office of governor. Art. 3, s. 21.

32. - §3. Of the judicial department. 1. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, courts of chancery, circuit courts, and justices of the peace: Provided, the, general assembly may also vest such criminal jurisdiction as may be deemed necessary in corporation courts; but such jurisdiction shall not extend to capital offences. Art. 5, s. 1.

33. - 2. Justices of the supreme court, chancellors, and judges of the circuit courts, shall be elected by, the concurrent vote of a majority of both houses of the general assembly. Art. 5, s. 11.

34. - 3. The judges of the circuit courts shall, at the first session. of the general assembly to be holden under the constitution, be elected for the term of five years and shall hold their office, for that term, unless sooner removed, under the provisions in the constitution; and at the expiration of five years, the justices of the supreme courts, and the judges of the circuit courts, shall be elected for the term of, and during their good behaviour.

35. Of the supreme court. 1. The powers of the supreme court are vested in, and its duties performed by, the judges of the several circuit courts, and they, or a majority of them, shall hold such session of the supreme court, and at such time and place as may be directed by law. Art. 5, s. 3. But no justice of the supreme court shall sit as judge, or take any part in the appellate court, on the trial or hearing of any case which shall have been decided by him in the court below. Art. 5, s. 18.

36. - 2. The supreme court, except in cases otherwise directed in this constitution, shall have appellate jurisdiction only. Provided, that the said court shall always have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs, as may be necessary to give it a general superintendance and control of all other courts. Art. 5, s. 2 .

37. - 3. The supreme court shall exercise appellate jurisdiction in all cases brought by appeal or writ of error from the several circuit courts, when the matter in controversy exceeds in amount or value fifty dollars.

38. Of the circuit courts. 1. The state is to be divided into circuits, and the circuit courts, held within such circuits, shall have original jurisdiction in all matters, civil and criminal, within the state, not otherwise excepted in this constitution. Art. 5, s. 6.

FLORIN. The name of a foreign coin. In all computations of customs, the florin of the southern states of Germany, shall be estimated at forty cents; the florin of the Austrian empire, and of the city of Augshurg, at forty-eight and one-half cents. Act March 22, 1846. The florin of the United Netherlands is computed at the rate of forty cents. Act of March 2, 1799, §61. Vide Foreign Coins.

FLOTSAM, or FLOTSAN. A name for the goods which float upon the sea when a ship is sunk, in distinction from Jetsam, (q. v.) and Legan. (q. v.) Bract. lib. 2, c. 5; 5 Co. 106; Com. Dig. Wreck, A Bac. Ab. Court of Admiralty, B.

FLUMEN, civ. law. The name of a servitude which consists in the right of turning the rain water, gathered in a spout, on another's land., Ersk. Inst. B. 2, t. 9, n. 9. Vicat, ad vocem. See Stillicidium.

FOEDUS. A league; a compact.

FOENUS NAUTICUS . The name given to marine interest. (q. V.)

2. The amount of such interest is not limited by law, because the lender runs the risk of losing, his principal. Ersk. Inst. B. 4, t. 4, n. 76. See Marine Interest.

FOETICIDE, med. jur. Recently, this term has been applied to designate the act by which criminal abortion is produced. 1 Beck's Med. Jur. 288; Guy, Med. Jur. 133. See Infanticide; Prolicide.

FOETURA, civil law. The produce of animals, and the fruit of other property, which are acquired to the owner of such animals and property, by virtue of his right. Bowy. Mod. C. L. c. 14, p. 81.

FOETUS, med. jur. The unborn child. The name of embryo is sometimes given to it; but, although the terms are occasionally used indiscriminately, the latter is more frequently employed to designate the state of an unborn child during the first three months after conception, and by some until quickening. A foetus is sometimes described by the uncouth phrase of infant in ventre sa mere.

2. It is sometimes of great importance, particularly in criminal law, to ascertain the age of the foetus, or how far it has progressed towards maturity. There are certain signs which furnish evidence on this subject, the principal of which are, the size and weight, and the formation of certain parts as the cartilages, bones, &c. These are not always the same, much of course must depend upon the constitution and health of the mother, and other circumstances which have an influence on the foetus. The average length and weight of the foetus at different periods of gestation, as deduced by Doctor Beck, from various observers, as found by Maygrier, is here given.

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ý,,,,,,,,,,,,,,,,,,®,,,,,,,,,,,,,,,,®,,,,,,,,,,,,,,,,®,,,,,,,,,,,,,,,,* -30 days. -3 to 5 lines. -10 to 12 lines.- -9 to 10 grains.- - 2 Months -2 inches -4 inches. -2 ounces. -5 drachms. - - 3 do. -3€ inches. -6 inches. -2 to 3 ounces. -2€ ounces. - - 4 do. -5 to 6 inches.-8 inches. -4 to 6 ounces. -7 to 8 ounces. - - 5 do. -7 to 9 inches -10 inches. -9 to 10 ounces. -16 ounces. - - 6 do. -9 to 12 inches-12 inches. -1 to 2 pounds. -2 pounds. - - 7 do. -12 to 14 inches.-14 inches. -2 to 3 pounds. -3 pounds. - - 8 do. -16 inches. -16 inches. -3 to 4 pounds. -4 pounds. -
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3. The discordance apparent between them proves that the observations which have been made, are only an approximation to truth.

4. It is proper to remark that the Paris pound poids de marc, which was the weight used by Maygrier, differs from avoirdupois weight used by Dr. Beck. The pouud poids de marc, of sixteen ounces, contains 9216 Paris grains, whilst the avoirdupois contains only 8532.5 Paris grains. The Paris inch is 1.065977 English inch. Vide, generally, 1 Beck's Med. Jur. 239; 2 Dunglison's Human Physiology, 391; Ryauls Med. Jur. 137; 1 Chit. Med. Jur. 403; I Briand, Med. Leg. prem. partie, c. 4, art. 2; and the articles Birth; Dead Born; Foeticide; In ventre sa mere; infanticide; Life; and Quick with child.

FOLCMOTE. The name of a court among the Saxons. It was literally an assembly of the people or inhabitants of the tithing or town, its jurisdiction extended over disputes between neighbors, as to matters of trespass in meadows, corn, and the like.

FOLD-COURSE, Eng. law. By this phrase is understood land used as a sheepwalk; it also signifies land to which the sole right of folding the cattle of others is appurtenant; sometimes it means merely such right of folding. It is also used to denote the right of folding on another's land, which is called common foldage. Co. Litt. 6 a, note 1; W. Jo. 375 Cro. Cal. 432; 2 Vent. 139.

FOLK-LAND, Eng. law. Land formerly held at the pleasure of the lord, and resumed at his discretion. It was held in villenage. 2 Bl. Com. 90.

FOOT. A measure of length, containing one-third of a yard, or twelve inches. See Ell. Figuratively, it signifies the conclusion, the end; as, the foot of the fine, the foot of the account.

FOOT OF THE FINE, estates, conveyancing. The fifth part of the conclusion of a fine. It includes the whole matter, reciting the names of the parties, day, year, and place, and before whom it was acknowledged or levied. 2 Bl. Com. 351.

FOR THAT, pleading. It is a maxim in law, regulating alike every form of action, that the plaintiff shall state his complaint in positive and direct terms, and not by way of recital. "For that," is a positive allegation; "For that whereas," in Latin "quod cum," (q. v.) is a recital. Hamm. N. P. 9.

FORBEARANCE, contracts. The act by which a creditor waits for the payment of the debt due him by the debtor, after it has become due.

2. When the creditor agrees to forbear with his debtor, this is a sufficient consideration to support an assumpsit made by the debtor. 4 John. R. 237; 2. Nott & McCord, 133; 2 Binn. R. 510; Com. Dig. Action upon the case upon assumpsit, B 1; Dane's Ab. Index, h. t.; 1 Leigh's N. P. 31; 1 Penna. R. 385; 4 Wash. C. C. R. 148; 5 Rawle's R. 69.

3. The forbearance must be of some right which can be enforces with effect against the party forborne; if it cannot be so enforced by the party forbearing, he has sustained no detriment, and the party forborne has derived no benefit. 4 East, 455 5 B. & Ald. 123. See 1 B. & A. 605 Burge on Sur. 12, 13. Vide Giving time. FORCE. A power put in motion. It is: 1. Actual; or 2. Implied.

2. - §1. If a person with force break a door or gate for an illegal purpose, it is lawful to oppose force to force; and if one enter the close of another, vi et armis, he may be expelled immediately, without a previous request; for there is no time to make a request. 2 Salk. 641; 8 T. R. 78, 357. And see tit. Battery, §2. When it is necessary to rely upon actual force in pleading, as in the case of a forcible entry, the words "manu forti," or with a strong hand should be adopted. 8 T. R. 357 358. But in other cases, the words "vi et armis," or " with force and arms," is sufficient. Id.

3. - §2. The entry into the ground of another, without his consent, is breaking his close, for force is implied in every trespass quare clausum fregit. 1 Salk. 641; Co. Litt. 257, b; 161, b; 162, a; 1 Saund: 81, 140, n. 4 8 T: R. 78, 358; Bac. Ab. Trespass; this Dict. tit. Close. In the case of false imprisonment, force is implied. 1 N. R. 255. And the same rule prevails where a wife, a daughter or servant, have been enticed away or debauched, though in fact they consented, the law considering them incapable of consenting. See 3 Wils. 18; Fitz. N. B. 89, 0; 5 T. R. 361; 6 East, 387; 2 N. R. 365, 454.

4. In general, a mere nonfeasance cannot be considered as forcible; for where there has been no act, there cannot be force, as in the case of the mere detention of goods without an unlawful taking. 2 Saund. 47, k 1. In general, by force is understood unlawful violence. Co. Litt. 161, b.; Bouv. Inst. Index, h. t. Vide Arms.

FORCE AND ARMS. The same as vi et armis. (q. v.)

FORCED HEIRS. In Louisiana they are those persons whom the testator or donor cannot deprive of the porttion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civ. Code of Lo. art. 1482. As to the portion of the estate they are entitled to, see the article Legitime. As to the causes for which forced heirs may be deprived of this right, see Disinherison.

FORCIBLE ENTRY or DETAINER, crim. law. An offence committed by unlawfully and violently taking or keeping possession of lands and tenements, with menaces, force and, arms, and without the authority of law. Com. Dig. h. t.

2. The proceedings in case of forcible entry or detainer, are regulated by statute in the several states. (q. v.) The offence is generally punished by indictment. 4 Bl. Com. 148 Russ. on Cr. 283. A forcible entry and a forcible detainer, are distinct offences. 1 Serg. & Rawle, 124; 8 Cowen, 226.

3. In the civil and French law, a similar remedy is given for thing offence. The party injured has two actions, a criminal or a civil. The action is called actio interdictum undevie. In French, l'action reintegrande. Poth. Proc. Civ. Partie 2, c. 3, art. 3; 11 Toull. Nos. 123, 134, 135, 137, pp. 179, 180, 182, and, generally, from p. 163. Vide, generally, 3 Pick. 31; 3 Halst. R. 48; 2 Tyler's R. 64; 2 Root's R. 411; Id . 472; 4 Johns. R. 150; 8 Johns. R. 44; 10 Johns. R. 304; 1 Caines' R. 125; 2 Caines' R. 98; 9 Johns. R. 147; 2 Johns. Cas. 400; 6 Johns. R. 334; 2 Johns. R. 27; 3 Caines' R. 104; 11 John. R. 504; 12 John. R. 31; 13 Johns. R. 158; Id. 340; 16 Johns. R. 141; 8 Cowen, 226; 1 Coxe's R. 258; Id. 260; 1 South. R. 125; 1 Halst. R. 396; 3 Id. 48; 4 Id. 37; 6 Id. 84; 1 Yeates, 501; Addis. R. 14, 17, 43, 316, 355; 3 Serg. & Rawle, 418; 3 Yeates, 49; 4 Dall. 212; 4 Yeates, 326; 3 Harr. & McHen. 428; 2 Bay, R. 355; 2 Nott & McCord, 121; 1 Const. R. 325; Cam. & Norw. 337, 340; Com. Dig. h. t.; Vin. &b. h. t.; Bac. Ab. h. t.; 2 Chit. Pr. 281 to 241.

4. The civil law punished even the owner of an estate, in proportion to the violence used, when he forcibly took possession of it, a fortiori, a stranger. Domat, Supp. au Dr. Pub. 1. 3, t. 4, s. 3.

FORECLOSURE, practice. A proceeding in chancery, by which the mortgagor's right of redemption of the mortgaged premises is barred or foreclosed forever.

2. This takes place when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption; in such case the mortgagee may file a bill, calling on the mortgagor, in a court of equity, to redeem his estate presently, or in default thereof, to be forever closed or barred from any right of redemption.

3. In some cases, however, the mortgagee obtains a decree for a sale of the land, under the direction of an officer of the court, in which case the proceeds are applied to the discharge of encumbrances, according to their priority. This practice has been adopted in Indiana, Kentucky, Maryland, South Carolina, Tennessee, and Virginia. 4 Kent, Com., 180. When it is the practice to foreclose without a sale, its severity is mitigated by enlarging the time of redemption from six months to six months, or for shorter

periods, according to the equity arising from the circumstances. Id. Vide 2 John. Ch. R, 100; 6 Pick. R. 418; 1 Sumn. R. 401; 7 Conn. R. 152; 5 N; H. Rep. 30; 1 Hayw. R. 482; 5 Han. R. 554; 5 Yerg. 240; 2 Pick. R. 40; 4 Pick. R. 6; 2 Gallis. 154; 9 Cow n's R. 346; 4 Greenl. R. 495; Bouv. Inst. Index, h. t.

FOREHAND RENT, Eng. law. A species of rent which is a premium given by the tenant at the time of taking the lease, as on the renewal of leases by ecclesiastical corporations, which is considered in the nature of an improved rent. 1 T. R. 486; 3 T. R. 461; 3 Atk. 473; Crabb. on R. P. §155.

FOREIGN. That which belongs to another country; that which is strange. 1 Peters, R. 343.

2. Every nation is foreign to all the rest, and the several states of the American Union are foreign to each other, with respect to their municipal laws. 2 Wash. R. 282; 4 Conn. 517; 6 Conn. 480; 2 Wend. 411 1 Dall. 458, 463 6 Binn. 321; 12 S. & R. 203; 2 Hill R. 319 1 D. Chipm. 303 7 Monroe, 585 5 Leigh, 471; 3 Pick. 293.

3. But the reciprocal relations between the national government and the several states composing the United States are not considered as foreign, but domestic. 9 Pet. 607; 5 Pet. 398; 6 Pet. 317; 4 Cranch, 384; 4 Gill & John. 1, 63. Vide Attachment, for foreign attachment; Bill of exchange, for foreign bills of exchange; Foreign Coins; Foreign Judgment; Foreign Laws; Foreigners.

FOREIGN ATTACHMENT. The name of a writ. By virtue of a foreign attachment, the property of an absent debtor is seised for the purpose of compelling an appearance, and, in default of that, to pay the claim of the plaintiff. Vide Attachment.

FOREIGN COINS, com. law. The money of foreign nations.

2. Congress have, from time to time, regulated the rates at which certain foreign coins should pass. The acts now in force are the following.

3. The act of June 25, 1834, 4 Shaisw. Cont. of Story's L. U. S. 2373, enacts, sec. 1. That from and after the passage of this act, the following silver coins shall be of the legal value and shall pass current as money within the United States, by tale, for the payment of all debts and demands, at the rate of one hundred cents the dollar, that is to say, the dollars of Mexico, Peru, Chili,.and Central America, of not less weight than four hundred and fifteen grains each, and those re-stamped in Brazil of the like weight, of not less fineness than ten ounces, fifteen pennyweights of pure silver, in the troy pound of twelve ounces of standard silver; and five franc pieces of France, when of not less fineness than ten ounces and sixteen pennyweights in twelve ounces troy

weight of standard silver, and weighing not less than three hundred and eighty-four grains each, at the rate of ninety-three cents each.

4. The act of June 28, 1834, 4 Sharsw. Cont. of Story's L. U. S, 2377, enacts) sect. 1. That from and after the thirtyfirst day of July next, the following gold coins shall pass current as money within the United States, and be receivable in all payments, by weight, for the payment of all debts and demands, at the rates following, that is to say: the gold coins of Great Britain and Portugal and Brazil, of not less than twenty-two, carats fine, at the rate of ninety-four cents and eight-tenths of a cent per pennyweight; the gold coins of France nine-tenths fine, at the rate of ninety-three cents and one-tenth of a cent per pennyweight; and the gold coins of Spain, Mexico, and Colombia, of the fineness of twenty carats three. grains and seven-sixteenths, of a grain, at the rates of eighty-nine events and nine-tenths of a cent per pennyweight.

5. By the act of. March 3, 1823, 3 Story's L. U. S. 1923, it is enacted, sect. 1. That from and after the passage of this act, the following gold coins shall be received in all payments on account of public lands, at the several and respective rates following, and not otherwise, viz.: the gold coins of Great Britain and Portugal, and of their present standard, at the rate of one hundred cents for every twenty-seven grains, or eighty-eight cents and eight-ninths per pennyweight; the gold coins of France of their present standard, at the rate of one hundred cents for every twenty-seven and a half grains, or eighty-seven and a quarter cents per pennyweight; and the gold coins of Spain of their present standard, at the rate of one hundred cents for every twenty-eight and a half grains or, eighty-four cents per pennyweight.

6. The act of March 2, 1 799, 1 Story's L. U. S. 573, to regulate the collection of duties on imports and tonnage, sect. 61, p. 626, enacts, That the ad valorem rates of duty upon goods, wares, and merchandise, at the place ofimportation, shall be estimated by adding twenty per cent to the actual costs thereof, if imported from the Cape of Good Hope, or from any place beyond the same; and ten per cent. on the actual cost thereof, if imported from any other place or country, including all charges; commissions, outside packages, and insurance, only excepted. That all foreign coins and currencies shall be estimated at the following rates; each pound sterling of Great Britain, at four dollars and forty-four cents; each livre tournois of France, at eighteen and a half cents; each florin, or guilder of the United Netherlands, at forty cents; each marc-banco of Hamburg, at thirty-three and one-third cents; each rix dollar of Denmark, at one hundred cents: each rial of plate, and each rial o vellon, of Spain, the former at ten cents, the latter at five cents, each; each milree of Portugal, at one dollar and twenty-four cents; each pound sterling of Ireland, at four dollars and ten cents; each tale o China, at one dollar and forty-eight cents; each pagoda of India, at one dollar and ninety four cents; each rupee, of Bengal, at fifty-five cents and one half; and all other denominations of money, in value as nearly as may be to the said rates,

or the intrinsic value thereof, compared with money of the United States: Provided, that it shall be lawful for the president of the United States to cause to be established fit and proper regulations for estimating the duties on goods, wares, and merchandise, imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

7. By the act of July 14 1832, s 16, 4 Sharsw. Cont. of Story's L. U. S. 2326, the law is changed as to the value of the pound sterling, in calculating the rates of dutics. It is thereby enacted, that from and after the said third day of March, one thousand eight hundred and thirty-three, in calculating the rate of duties, the pound sterling shall be considered and taken as of the value of four dollars and eighty cents.

8 . The act of March 3, 1843, provides, That in all computations of the value of foreign moneys of account at the custom houses of the United States, the thaler of Prussia shall be deemed and taken to be of the value of sixty-eight and one-half cents; the mii-reis of Portugal shall be deemed and taken to be of the value of one hundred and twelve cents; the rix dollar of Bremen shall be deemed and taken to be of the value of seventy-eight and three quarter cents; the thaler of Bremen, of seventy-two grotes, shall be deemed and taken to be of the value of seventy-one cents; that the mil-reis of Madeira shall be deemed and taken to be of the value of one hundred cents; the mil-reis of the Azores shall be deemed and taken to be of the value of eighty-three and one-third cents; the marc-banco of Hamburg shall be deemed and taken to be of the value, of thirty-five cents; the rouble of Russia shall be deemed and taken to be of the value of seventy-five cents; the rupee of British India shall be deemed and taken to be of the value of forty-four and one half cents; and all former laws inconsistent herewith are hereby repealed.

9. And the act of May 22, 1846, further directs, That in all computations at the custom-house, the foreign coins and money of account herein specified shall be estimated as follows, to wit: The specie dollar of Sweden and Norway, at one hundred and six cents. The specie dollar of Denmark, at one hundred and five cents. The thaler of Prussia and of the Northern States of Germany, at sixty-nine cents. The florin of the Southern States of Germany, at forty cents. The florin of the Austrian empire, and of the city of Augshurg, at forty-eight and one half cents. The lira of the Lombardo-Venetian Kingdom, and the lira of Tuscany, at sixteen cents. The franc of France, and of Belgium, and the lira of Sardinia, at eighteen cents six mills. The ducat of Naples, at eighteen cents. The ounce of Sicily, at two dollars and forty cents. The pound of the British provinces of Nova Scotia, New Brunswick, Newfoundland, and Canada, at four dollars. And all laws inconsistent with this act are hereby repealed.

FOREIGN JUDGMENT, evidence, remedies. A judgment rendered in a foreign state.

2. In Louisiana it has been decided that a judgment rendered by a Spanish tribunal, under the former governmeut of the country, is not a foreign judgment. 4 M. R. 301 Id. 310.

3. The subject will be considered with regard, 1st. To the manner of proving such judgment; and 2d. Its efficacy.

4. - 1. Foreign judgments are authenticated in various ways; 1. By an exemplification, certified under the great seal of the state or country where it was rendered. 2. By a copy proved to be a true copy. 3. By the certificate of an officer authorized by law, which certificate must, itself, be properly authenticated. 2 Cranch, 238; 2 Caines' R. 155; 5 Cranch, 335; 7 Johns. R. 514 Mass. R. 273 2 Munf. R. 43 4 Camp. R. 28 2 Russ. on Cr. 723. There is a difference between the judgments of courts of common law jurisdiction and courts of admiralty, as to the mode of proof of judgments rendered by them. Courts of admiralty are under the law of nations; certificates of such judgments with their seals affixed, will therefore be admitted in evidence without further proof. 5 Cranch, 335; 3 Conn. R. 171.

5. - 2. A judgment rendered in a foreign country by a court de jure, or even a court defacto, 4 Binn. 371, in a matter within its jurisdiction, when the parties litigant had been notified and have had an opportunity of being heard, either establishing a demand, against the defendant or discharging him from it, is of binding force. 1 Dall. R. 191; 9 Serg. & Rawle, 260; 10 Serg. & Rawle, 240; 1 Pet. C. C. R. 155; 1 Spears, Eq. Cas. 229; 7 Branch, 481. As to the plea of the act of limitation to a suit on a foreign judgment, see Bac. Ab. h. t.; 2 Vern. 540; 5 John. R. 132; 13 Serg. & Rawle, 395; 1 Speer's, Eq. Cas. 219, 229.

6. For the manner of proving a judgment obtained in a sister state, see the article Authentication. For the French law in relation to the force of foreign judgments, see Dalloz, Dict. mot Etranger, art. 6.

FOREIGN LAWS, evidence. The laws of a foreign country. They will be considered with regard to, 1. The manner in which they are to be proved. 2. Their effect when proved.

2. - l. The courts do not judicially take notice of foreign laws, and they must therefore be proved as facts. Cowp. 144; 3 Esp. C. 163 3 Campb. R. 166; 2 Dow & Clark's R. 171; 1 Cranch, 38; 2 Cranch, 187, 236, 237; 6 Cranch, 274; 2 Harr. & John. R. 193; 3 Gill & John. R. 234; 4 Conn. R. 517; 4 Cowen, R. 515, 516, note; Pet. C. C. R. 229; 8

Mass. R. 99; 1 Paige's R. 220 10 Watts, R. 158. The manner of proof varies according to circumstances. As a general rule the best testimony or proof is required, for no proof will be received which pre-supposes better testimony attainable by the party iybo offers it. When the best testimony cannot be obtained, secondary evidence will be received. 2 Cranch, 237.

3. Authenticated copies of written laws and other public documents must be produced when they can be procured but should they be refused by the competent authorities, then inferior proof may be admissible. Id.

4. When our own government has promulgated a foreign law or ordinance of a public nature as authentic, that is held sufficient evidence of its existence. 1 Cranch, 38 1 Dall. 462; 6 Binn. 321 12 Serg. & Rawle, 203.

5. When foreign laws cannot be proved by some mode which the law respects as being of equal authority to an oath, they must be verified by the sanction of an oath.

6. The usual modes of authenticating them are by an exemplification under the great seal of a state; or by a copy proved by oath to be a true copy - or by a certificate of an officer authorized by law, which must, itself, be duly authenticated. 2 Cranch, 238; 2 Wend. 411; 6 Wend. 475; 5 Serg. &. Rawle, 523; 15 Serg. & Rawle, 84: 2 Wash. C. C. R. 175.

7. Foreign unwritten laws, customs and usages, may be proved, and are ordinarily proved by parol evidence; and when such evidence is objected to on the ground that the law in question is a written law, the party objecting must show that fact. 15 Serg. & R. 87; 2 L. R. 154. Proof of such unwritten law is usually made by the testimony of witnesses learned in the law, and competent to state it correctly under oath. 2 Cranch, 237; 1 Pet. C. C. R. 225; 2 Wash. C. C. R. 175; 15 Serg. & R. 84; 4 John. Ch. R. 520; Cowp. 174; 2 Hagg. R. App. 15 to 144.

8. In England certificates of persons in high authority have been allowed as evidence in such cases. 3 Hagg. Eccl. R. 767, 769.

9. The public seal of a foreign sovereign or state affixed to a writing purporting to be a written edict, or law, or judgment, is, of itself, the highest evidence, and no further proof is required of such public seal. 2 Cranch, 238; 2 Conn. R. 85; 1 Wash. C. C. R. 363; 4 Dall. 413, 416; 6 Wend. 475; 9 Mod. 66.

10. But the seal of a foreign court is not, in general, evidence, without further proof, and it must therefore be established by competent testimony. 3 John. R. 310; 2 Harr. & John. 193; 4 Cowen, 526, n.; 3 East, 221.

11. As courts of admiralty are courts under the laws of nations, their seals will be admitted as evidence without further proofs. 5 Cranch, 335; 3 Conn. 171. This is an exception to the general rule.

12. The mode of authenticating the laws and records of the several states of the American Union, is peculiar, and will be found under the article Authentication. It may hereby be observed that the rules prescribed by acts of congress do not exclude every other mode of authentication, and that the courts may admit, proof of the acts of the legislatures of the several, states, although not authenticated under the acts of congress. Accordingly a printed volume, purporting on its face to contain the laws of a sister, state, is admissible, as prima facie evidence; to prove the statute law of that state. 4 Cranch, 384; 12 S. & R. 203; 6 Binn, 321; 5 Leigh, 571.

13. - 2. The effect of such foreign laws, when proved, is properly referable to the court; the object of the proof of foreign laws, is to enable the ourt to instruct the jury what is, in point of law, the result from foreign laws, to be applied to the matters in controversy before them. The court are therefore to decide what is the proper evidence of the laws of a foreign country; and when evidence is given of those laws, the court are to judge of their applicability to the matter in issue. Story, Cont. of L. §638 2 Harr. & John. 193. 219; 4 Conn. R. 517; 3 Harr. & John. 234, 242; Cowp. 174. Vide Opinion.

FOREIGN NATION or STATE. A nation totally independent of the United States of America

2. The constitution authorizes congress to regulate commerce with "foreign nations." This phrase does not include an Indian tribe, situated within the boundaries of a state, and exercising the powers of government and sovereignty. 5 Pet. R. 1. Vide Nation.

FOREIGN PLEA. One which, if true, carries the cause out of the court where it is brought, by showing that the matter alleged is not within its jurisdiction. 2 Lill. Pr. Reg. 374; Carth. 402; Lill. Ent. 475. It must be on oath and before imparlance. Bac. Ab. Abatement, R.

FOREIGNERS. Aliens; persons born in another country than the United States, who have not been naturalized. 1 Pet. R. 349. Vide 8 Com. Dig. 615, and the articles Alien; Citizens.

FOREJUDGED THE COURT. An officer of the court who is expelled the same, is, in the English law, said to be forejudged the court. Cunn. Dict. h. t.

FOREMAN. The title of the presiding member of a grand jury.

FOREST. By the English law, a forest is a circuit of ground properly under the king's protection, for the peaceable living and abiding of beasts of hunting and the chase, and distinguished not only by having bounds and privileges, but also by having courts and offices. 12 do. 22. The signification of forest in the United States is the popular one of an extensive piece of woodland. Vide Purlieu.

FORTSTALLING, crim. law. Every practice or device, by act, conspiracy, words, or news, to enhance the price of victuals or other provisions. 3 Inst. 196; Bac. Ab. h. t.; 1 Russ. Cr. 169; 4 Bl. Com. 158.

2. All endeavors whatever to enhance the common price of any merchandise, and all kinds of practices which have that tendency, whether by spreading false rumors, or buying things in a market before the accustomed hour, are offences at common law, and come under the notion of forestalling, which includes all kind of offences of this nature. Hawk. P. C. b. 1 c. 8 0, s. 1. Vide 13 Vin. Ab. 430; Dane's Ab. Index, h. t.; 4 Com. Dig. 391 1 East, Rep. 132.

FORFEITURE, punishment, torts. Forfeiture is a punishment annexed by law to some illegal act, or negligence, in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they become vested in the party injured, as a recompense for the wrong which he alone, or the Public together with himself, hath sustained. 2 Bl. Com. 267.

2. Lands, tenements and hereditaments, may be forfeited by various means: 1. By the commission of crimes and misdemeanors. 2. By alienation contrary to law. 3. By the non-performance of conditions. 4. By waste.

3. - 1. Forfeiture for crimes. By the Constitution of the United States, art. 3, s. 3, it is declared that no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. And by the Act of April 30, 1790, s. 24, 1 Story's Laws U. S. 88, it is enacted, that no conviction or judgment for any of the offences aforesaid, shall work corruption of blood, or any forfeiture of estate. As the offences punished by this act are of the blackest dye, including cases of treason, the punishment of forfeiture may be considered as being abolished. The forfeiture of the estate for crime is very much reduced in practice in this country, and when it occurs, the stater takes the title the party had, and no more. 4 Mason's R. 174; Dalrymple on Feudal Property, c. 4, p. 145-154; Fost. C. L. 95.

4. - 2. Forfeiture by alienation. By the English law, estates less than a fee may be forfeited to the party entitled to the residuary interest by a breach of duty in the owner of the particular estate. When a tenant for life or years, therefore, by feoffment, fine, or recovery, conveys a greater estate than he is by law entitled to do, he forfeits his

estate to the person next entitled in remainder or reversion. 2 Bl. Com. 274. In this country, such forfeitures are almost unknown, and the more just principle prevails, that the conveyance by the tenant operates only on the interest which he possessed, and does not affect the remainder-man or reversioner. 4 Kent, Com. 81, 82, 424; 1 Hill. Ab. c. 4, s. 25 to 34; 3 Dall. Rep. 486; 5 Ohio, R. 30.

5. - 3. Forfieture by non-performance of conditions. An estate may be forfeited by a breach, or non-performance of a condition annexed to the estate, either expressed in the deed at its original creation, or impliedly by law, from a principle of natural reason. 2 Bl. Com. 281; and see Ad Eject. 140 to 173. Vide article Reentry; 12 Serg. & Rawle, 190.

6. - 4. Forfeiture by waste. Waste is also a cause of forfeiture. 2 Bl. Com. 283. Vide article Waste.

7. By forfeiture is also understood the neglect of an obligor to fulfil his obligation in proper time: as, when one has entered into a bond for a penal sum, upon condition to pay a smaller at a particular day, and he fails to do it, there is then said to be a forfeiture. Again, when a party becomes bound in a certain sum by a recognizance to pay a certain sum, with a condition that he will appear at court to answer or prosecute a crime, and he fails to do it, there is a forfeiture of the recognizance. Courts of equity, and now courts, of law, will relieve from the forfeiture of a bond; and upon a proper case shown, criminal courts will in general relieve from the forfeiture of a recognizance to appear. See 3 Yeates, 93; 2 Wash. C. C. 442 Blackf. 104, 200; Breeze, 257. Vide, generally, 2 Bl. Com. ch. 18; Bouv. Inst. Index, h. t.; 2 Kent's Com; 318; 4 Id. 422; 10 Vin. Ab. 371, 394 13 Vin. Ab. 436; Bac. Ab. Forfeiture Com. Dig. h. t.; Dane's Ab. h. t.; 1 Bro Civ. L. 252 4 Bl. Com. 382; and Considerations on the Law of Forfeiture for High Treason, London ed. l746.

FORFEITURE OF MARRIAGE, Old law. The name of a penalty formerly incurred by a ward in chivalry, when he or she married contrary to the wishes of his or her guardian in chivalry. The latter, who was the ward's lord, had an interest in controlling the marriage of his female wards, and he could exact a price for his consent and, at length, it became customary to sell the marriage of wards of both sexes. 2 Bl. Com . 70.

2. When a male ward refused an equal match provided by his guardian, he was obliged, on coming of age, to pay him the value of the marrriage; that is, as much as he had been bona fide offered for it; or, if the guardian chose, as much as a jury would assess, taking into consideration all the real and personal property of the ward; and the guardian could claim this value, although he might have made no tender of the marriage. Co. Litt. 82 a; 2 Inst. 92 5 Co: 126 b; 6 Co. 70 b.

3. When a male ward between his age of fourteen and twenty-one years, refused to accept an offer of an equal match, and during that period formed an alliance elsewhere, without his permission, he incurred forfeiture of marriage; that is, he became liable to pay double the value of, the, marriage. Co. Litt. 78 b, 82 b.

FORGERY, crim. law. Forgery at common law has been held to be "the fraudulent making and alteration of a writing to the prejudice of another man's right." 4 Bl. Com. 247. By a more modern writer, it is defined, as " a false making; a making malo animo, of any written instrument, for the purpose of fraud and deceit." 2 East, P. C. 852.

2. This offence at common law is of the degree of a misdemeanor. 2 Russel, 1437. There are many kinds of forgery, especially subjected to punishment by statutes enacted by the national and state legislatures.

3. The subject will be considered, with reference, .1. To the making or alteration requisite to constitute forgery. 2. The written instruments in respect of which forgery may be committed. 3. The fraud and deceit to the prejudice of another man's right. 4. The statory provisions under the laws of the United States, on the subject of forgery.

4. - 1. The making of a whole written instrument in the name of another with a fraudulent intent is undoubtedly a sufficient making but a fraudulent insertion, alteration, or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery; and this, although it be afterwards executed by a person ignorant of the deceit. 2 East, P. C. 855.

5. The fraudulent application of a true signature to a false instrument for which it was not intended, or vice ve7-sa, will also be a forgery. For example, it is forgery in an individual who is requested to draw a will for a sick person in a particular way, instead of doing so, to insert legacies of his own head, and then procuring the signature of such sick person to be affixed to the paper without revealing to him the legacies thus fraudulently inserted. Noy, 101; Moor, 759, 760; 3 Inst. 170; 1 Hawk. c. 70, s. 2; 2 Russ. on Cr. 318; Bac. Ab. h. t. A.

6. It has even been intimated by Lord Ellenborough, that a party who makes a copy of a receipt, and adds to such copy material words not in the original, and then offers it in evidence on the ground that the original has been lost, may be prosecuted for forgery. 5 Esp. R. 100.

7. It is a sufficient making where, in the writing, the party assumes the name and character of a person in existence. 2 Russ. 327. But the adoption of a false description

and addition, where a false name is not assumed, and there is no person answering the description, is not a forgery. Russ. & Ry. 405.

8. Making an instrument in a fictitious name, or the name of a non-existing person, is equally a forgery, as making it in the name of au existing person; 2 East, P. C. 957; 2 Russ. on Cr. 328; and although a man may make the instrument in his own name, if he represent it as the instrument of another of the same name, when in fact there is no such person, it will be a forgery in the name of a non-existing person.; 2 Leach, 775; 2 East, P. C. 963; but the correctness of this decision has been doubted. Rosc. Cr. Ev. 384.

9. Though, in general, a party cannot be guilty of forgery by a mere non-feasance, yet, if in drawing a will, he should fraudulently omit a legacy, which he had been directed to insert, and by the omission of such bequest, it would cause a material alteration in the limitation of a bequest to another; as, where the omission of a devise of an estate for life to one, causes a devise of the same lands to another to pass a present estate which would otherwise have passed a remainder only, it would be a forgery. Moor, 760; Noy, 101; 1 Hawk. c. 70, s. 6; 2 East, P. C. 856; 2 Russ. on Cr. 320.

10. It may be observed, that the offence of forgery may be complete without a publication of the forged instrument. 2 East, P. C. 855; 3 Chit. Cr. L. 1038.

11. - 2. With regard to the thing forged, it may be observed, that it has been holden to be forgery at common law fraudulently to falsify, or falsely make records and other matters of a public nature; 1 Rolle's Ab. 65, 68; a parish register; 1 Hawk. c. 70; a letter in the name of a magistrate, the governor of a gaol, directing the discharge of prisoner. 6 Car. & P. 129; S. C. 25 Eng. C. L. R. 3 1 5.

12. With regard to private writings, it is forgery fraudulently to falsify or falsely to make a deed or will; 1 Hawk. b. 1, c. 70, s. 10 or any private document, whereby another person may be prejudiced. Greenl. Rep. 365; Addis. R. 33; 2 Binn. R. 322; 2 Russ. on Or. b. 4, c. 32, s. 2; 2 East, P. C. 861; 3 Chit. Cr. Law, 1022 to 1038.

13. - 3. The intent must be to defraud another, but it is not requisite that any one should have been injured it is sufficient that the instrument forged might have proved prejudicial. 3 Gill & John. 220; 4 W. C. C. R. 726. It has been holden that the jury ought to infer an intent to defraud the person who would have to pay the instrument, if it were genuine, although from the manner of executing the forgery, or from the person's ordinary caution, it would not be likely to impose upon him; and although the object was general to defraud whoever might take the instrument, and the intention of the defrauding in par ticular, the person who would have to pay the instrument, if genuine, did not enter into the contemplation of the prisoner. Russ. & Ry. 291; vide

Russ.. on Cr. b. 4, c. 32, s. 3; 2 East, P. C. 853; 1 Leach, 367; 2 Leach, 775; Rosc. Cr. Ev. 400.

14.- 4. Most, and perhaps all the states in the Union, have passed laws making certain acts to be forgery, and the national legislature has also enacted several on this subject, which are here referred to. Act of March 2, 1803, 2 Story's L. U. S. 888; Act of March 3, 1813, 2 Story's L. U. S. 1304 Act of March 1, 1823, 3 Story's L. U. S. 1889; Act of March 3, 1825, 3 Story's L. U. S. 2003; Act of October 12, 1837, 9 Laws U. S. 696.

15. The term forgery, is also applied to the making of false or counterfeit coin. 2 Virg. Cas. 356. See 10 Pet. 613; 4 Wash. C. C. 733. For the law respecting the forgery of coin, see article Money. And for the act of congress punishing forgery in the District of Columbia, see 4 Sharsw. Cont, of Story's Laws U. S. 2234. Vide, generally, Hawk. b. 1, c. 51 and 70; 3 Chit. Cr. Law, 1022 to 1048; 4 Bl. Com. 247 to 250; 2 East, P. C. 840 to 1003; 2 Russ. on Cr. b. 4, c. 32; 13 Vin. Ab. 459; Com. Dig. h. t.; Dane's Ab. h. t. Williams' Just. h. t. Burn's Just. h. t.; Rose. Cr. Ev. h. t.; Stark. Ev. h. t. Vide article Frank.

FORISFAMILIATION, law of Scotl. By this is understood the act by which a father gives to a child his share of his legitime, and the latter renounces all further claim. From this time, the child who has so received his share, is no longer accounted 4 child in the division of the estate. Ersk. Inst. 655, n. 23; Burt. Man. P. R. part 1, c. 2, s. 3, page 35.

FORM, practice. The model of an instrument or legal-proceeding, containing the substance and the principal terms, to be used in accordance with the laws; or, it is the act of pursuing, in legal proceedings, and in the construction of legal instruments, the order required by law. Form is usually put in contradistinction to substance. For example, by the operation of the statute of 27 Eliz. c. 5, s. 1, all merely formal defects in pleading, except in dilatory pleas, are aided on general demurrer.

2. The difference between matter of form, and matter of substance, in general, under this statute, as laid down by Lord Hobart, is, that " that without which the right doth sufficiently appear to the court, is form;" but that any defect " by reason whereof the right appears not," is a defect in substance. Hob. 233.

3. A distinction somewhat more definite, is, that if the matter pleaded be in itself insufficient, without reference to the manner of pleading it, the defect is substantial; but that if the fault is in the manner of alleging it, the defect is formal. Dougl. 683. For example, the omission of a consideration in a declaration in assumpsit; or of the performance of a condition precedent, when such condition exists; of a conversion of property of the plaintiff, in trover; of knowledge in the defendant, in an action for

mischief done by his dog of malice, in action for malicious prosecution, and the like, are all defects in substance. On the other hand, duplicity; a negative pregnant; argumentative pleading; a special plea, amounting to the general issue; omission of a day, when time is immaterial; of a place, in transitory actions, and the like, are only faults in form. Bac. Ab. Pleas, &c. N 5, 6; Com. Dig. Pleader, Q 7; 10 Co. 95 a; 2 Str. 694 Gould; Pl. c. 9, §17, 18; 1 Bl. Com. 142.

4. At the same time that fastidious objections against trifling errors of form, arising from mere clerical mistakes, are not encouraged or sanctioned by the courts, it has been justly observed, that "infinite mischief has been produced by the facility of the courts in overlooking matters of form; it encourages carelessness, and places ignorance too much upon a footing with knowledge amongst those who practice the drawing of pleadings." 1 B. & P. 59; 2 Binn. Rep. 434. See, generally, Bouv. Inst. Index, h. t.

FORMA PAUPERIS, English law. When a person is so poor that he cannot bear the charges of suing at law or in equity, upon making oath that he is not worth five pounds, and bringing a certificate from a counselor at law, that he believes him to have a just cause, he is permitted to sue informa pauperis, in the manner of a pauper; that is, he is allowed to have original writs and subpoenas gratis, and counsel assigned him without fee. 3 Bl. Com. 400. See 3 John. Ch. R. 65; 1 Paige, R. 588; 3 Paige, R. 273; 5 Paige, R. 58; 2 Moll. R. 475; 1 Beat. R. 54.

FORMALITY. The conditions which must be observed in making contracts, and the words which the law gives to be used in order to render them valid; it also signifies the conditions which the law requires to make regular proceedings.

FORMEDON, old English law. The writ of formedon is nearly obsolete, it having been superseded by the writ of ejectment. Upon an alienation of the tenant in tail, by which the estate in tail is discontinued, and the remainder or reversion is by the failure, of the particular estate, displaced and turned into a mere right, the remedy is by action of formedon, (secundum formam doni,) because the writ comprehends the form of the gift. This writ is in the nature of a writ of right, and the action of formedon is the highest a tenant in tail can have. This writ is distinguished into three species; a formedon in the descender, in the remainder, and in the reverter. 8 Bl. Com. 191 Bac. Ab. h. t.; 4 Mass. 64.

FORMER RECOVERY. A recovery in a former action.

2. It is a general rule, that in a real or personal action, a judgment unreversed, whether it be by confession, verdict or demurrer, is a perpetual bar, and may be pleaded to any

new action of the same or a like nature, for the same cause. Bac. Ab. Pleas, I 12, n. 2; 6 Co. 7; Hob. 4, 5 Ventr. 170.

3. There are two exceptions to this general rule. 1. The case of mutual dealings between the parties, when the defendant omits to set off his counter demand in that case he may recover in a cross action. 2. When the defendant in ejectment neglects to bring forward his title, he may avail himself of a new suit. 1 John Cas. 492, 502, 510. It is evident that in these cases the cause of the second action is not the same as that of, the first, and, therefore, a former recovery cannot be pleaded. In real actions, one is not a bar to an, action of a. higher nature. 6 Co. 7. Vide 12 Mass. 337; Res Judicata; Thing Adjudged.

FORMULARY. A book of forms or precedents for matters of law; the form.

FORNICATION, crim. law. The unlawful carnal knowledge of an unmarried person with another, whether the latter be married or unmarried. When the party is married, the offence, as to him or her, is known by the name of adultery. (q. v.) Fornication is, however, included in every case of adultery, as a larceny is included in robbery. 2 Hale's P. C. 302.

FORPRISE. Taken before hand. This word is sometimes, though but seldom, used in leases and conveyances, implying an exception or reservation. Forprise, in another sense, is taken for any exaction. Cunn. Dict. h. t.

TO FORSWEAR, crim. law, torts. To swear to a falsehood.

2. This word has not the same meaning as perjury. It does not, ex vi termini, signify a false swearing before an officer or court having authority to administer an path, on an issue. A man may be forsworn by making a false oath before an incompetent tribunal, as well as before a lawful court. Hence, to say that a man is forsworn, will or will not be slander, as the circumstances show that the oath was or was not taken before a lawful authority. Cro. Car. 378; Lut. 1292; 1 Rolle, Ab. 39, pl. 7 Bac. Ab. Slander, B 3; Cro. Eliz. 609 13 Johns. R. 80 Id. 48 12 Mass. 496 1 Johns. R. 505 2 Johns. R. 10; 1 Hayw. R, 116.

FORTHWITH. When a thing is to be done forthwith, it seems that it must be performed as soon as by reasonable exertion, confined to that object, it may be done. This is the import of the term; it varies, of course, with every particular case. 4 Tyr. 837; Styles' Register, 452, 3.

FORTIORI or A FORTIORI. An epithet for any conclusion or inference, which is much stronger than another. "If it be so, in a feoffment passing a new right, a fortiori, much more is it for the restitution of an ancient right." Co. Litt. 253, 260.

FORTUITOUS EVENT. A term in the civil law to denote that which happens by a cause which cannot be resisted. Louis. Code, art. 2522, No. 7. Or it is that which neither of the parties has occasioned, or could prevent. Lois des Bat. Pt. 2, c. 2, §1. It is also defined to be an unforeseen event which cannot be prevented. Dict. de Jurisp. Cas fortuit.

2. There is a difference between a fortuitous event or inevitable accident, and irresistible force. By the former, commonly called the act of God, is meant any accident produced by physical causes, which are irresistable; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency, as is, from its nature and power, absolutely uncontrollable. Of this nature are losses occasioned by-the inroads of a hostile army, or by public enemies. Story on Bailm. §25; Lois des Bat. Pt. 2, c. 2, §1.

3. Fortuitous events are fortunate or unfortunate. The accident of finding a treasure is a fortuitous event of the first class. Lois des Bat. Pt. 2, c. 2, §2.

4. Involuntary obligations may arise in consequence of fortuitous events. For example, when, to save a vessel from shipwreck, it is necessary to throw goods overboard, the loss must be borne in common; there arises, in this case, between the owners of the vessel and of the goods remaining on board, an obligation to bear proportionably the loss which has been sustained. Lois desBit. Pt. 2, c. 2, §2. See, in general, Dig. 50, 17, 23; Id. 16, 3, 1; Id. 19, 2, 11; Id. 44, 7, 1; Id. 18, 6, 10 Id. 13, 6, 18; Id. 26, 7, 50; Act of God; Accident; Perils of the Sea.

FORUM. This term signifies jurisdiction, a court of justice, a tribunal.

2. The French divide it into for exterieur, which is the authority which human justice exercises on persons and property, to a greater or lesser extent, according to the quality of those to whom it is entrusted; and for interieur, which is the moral sense of justice which a correct conscience dictates. Merlin, Repert. mot For.

3. By forum res sitae is meant the tribunal which has authority to decide respecting something in dispute, located within its jurisdiction; therefore, if the matter in controversy is land, or other immovable property, the judgment pronounced in the forum res sitae is held to be of universal obligation, as to all matters of right and title on which it professes to decide, in relation to such property. And the same principle

applies to all other cases of proceedings in rem, where the subject is movable property, within the jurisdiction of the court pronouncing the judgment. Story, Const. Laws, §§532, 545, 551, 591, 592; Kaims on Eq. B. 3, c. 8, s. 4 1 Greenl. Ev. §541.

FORWARDING MERCHANT, contracts. A person who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, but who has no concern in the vessels or wagons by which they are transported, and no interest in the freight. Such an one is Dot deemed a common carrier, but a mere warehouseman or agent. 12 Johns. 232; 7 Cowen's R. 497. He is required to use only ordinary diligence in sending the property by responsible persons. 2 Cowen's R. 593.

FOSSA, Eng. law. A ditch full of water, where formerly women who had committed a felony were drowned; the grave. Cowel, Int.

FOUNDATION. This word, in the English law, is taken in two senses, fundatio incipiens, and fundatio perficiens. As to its political capacity, an act of incorporation is metaphorically called its foundation but as to its dotation, the first gift of revenues is called the foundation. 10 Co. 23, a.

FOUNDLING. A new-born child, abandoned by, its parents, who are unknown. The settlement of, such a child is in the place where found.

FOURCHER, English law. A French word, which means to fork. Formerly, when an action was brought against two, who, being jointly concerned, mere not bound to answer till both appeared, and they agreed not to appear both in one day; the appearance of one, excused the other's default, who had a day given him to appear with the other: the defaulter, on the day appointed, appeared; but the first then made default; in this wanner they forked each other, and practiced this for delay. Vide 2 Inst. 250; Booth, R. A. 16.

FRACTION. A part of any thing broken. A combination of numbers, in arithmetic and algebra, representing one or more parts of a unit or integer. Thus, four-fifths is a fraction, formed by dividing a unit into-five equal parts, and taking one part four times. In law, the term fraction is usually applied to the division of a day.

2. In general, there are no fractions in days. Co. Litt. 225 2 Salk. 625; 2 P. A. Browne, 18; II Mass. 204. But in some cases a fraction will be taken into the account, in order to secure a party his rights; 3 Chit. Pr. 111; 8 Ves. 80 4 Campb. R. 197; 2 B. & Ald. 586; Savig. Dr. Rom. §182; Rob. Dig. of Engl. Statutes in force in Pennsylvania, 431-2 and when it is required by a special law. Vide article Date.

FRANC, com. law. The name of a French coin. Five franc pieces, when not of less fineness than ten ounces and sixteen pennyweights in twelve ounces troy weight of standard silver, and weighing not less than three hundred and eighty-four grains each, are made a legal tender, at the rate of ninety-three cents each. Act of June 25, 1834, s. 1, 4 Sharsw. Cont. of Story's L. U. S. 2373.

2. In all computations at the custom house, the franc of France and of Belgium shall be estimated at eighteen cents six. mills. Act of May 22, 1846. See Foreign coins.

FRANCHISE. This word has several significations: 1. It is a right reserved to the people by the constitution; hence we say, the elective franchise, to designate the right of the people to elect their officers. 2. It is a certain privilege, conferred by grant from the government, and Vested in individuals.

2. Corporations, or bodies politic, are the most usual franchises known to our law. They have been classed among incorporeal hereditaments, perhaps improperly, as they have no inheritable quality.

3. In England, franchises are very numerous; they, are said to be royal privileges in the hands of a subject. Vide 3 Kent, Com. 366; 2 Bouv. Inst. n. 1686; Cruise,' Dig. tit. 27; 2 Bl. Com. 37; 15 Serg. & Rawle, 130; Finch, 164.

FRANCIGENA. Formerly, in England, every alien was known by this name, as Franks is the generic name of foreigners in the Turkish dominions.

FRANK. The privilege of sending and receiving letters, through the mails, free of postage.

2. This privilege is granted to various officers, not for their own special benefit, but with a view to promote the public good.

3. The Act of the 3d of March, 1845, s. 1, enacts, That members of congress, and delegates from the territories, may receive letters, not exceeding two ounces in weight, free of postage, during the recess of congress; and the same privilege is extended to the vice-president of the United States.

4. It is enacted, by 3d section, That all printed or lithographed circulars and handbills, or advertisements, printed or lithographed, on quarto post or single cap paper, or paper not larger than single cap, folded, directed, and unsealed, shall be charged with postage, at the rate of two cents for each sheet, and no more, whatever be the distance the same may be sent; and all pamphlets, magazines, periodicals, and every other kind and description of printed or other matter, (except newspapers,) which shall be

unconnected with any manuscript communication whatever, and which it is or may be lawful to transmit by the mail of the United States, shall be charged with postage, at the rate of two and a balf cents for each copy sent, of no greater weight than one ounce, and one cent additional shall be charged for each additional ounce of the weight of every such pamphlet, magazine, matter, or thing, which may be transmitted through the mail, whatever be the distance the tame may be transported and any fractional excess, of not less than one-half of an ounce, in the weight of any such matter or thing, above one or more ounces, shall be charged for as if said excess amounted to a full ounce.

5. And, by the 8th section, That each member of the senate, each member of the house of representatives, and each delegate from a territory of the United States, the secretary of the senate, and the clerk of the house, of representatives, may, during each session of congress, and for a period of thirty days before the commencement, and thirty days after the end of each and every session of congress, Bend and receive through the mail, free of postage, any letter, newspaper, or packet, not exceeding two ounces in weight; and all postage charged upon any letters, packages, petitions memorials, or other matters or things, received during any session of congress, by any senator, member, or delegate of the house of representatives, touching his official or legislative duties, by reason of any excess of weight, above two ounces, on the matter or thing so received, shall be paid out of the contingent fund of the house of which the person receiving the same may be a member. And they shall have the right to frank written letters from themselves during the whole year, as now authorized by law.

6. The 5th section repeals all acts, and parts of acts, granting or conferring upon any person whatsoever the franking privilege.

7. The 23d section enacts, That nothing in this act contained shall be construed to repeal the laws granting the franking privilege to the president of the United States when inoffice, and to all ex-presidents, and the widows of the former presidents, Madison and Harrison.

8. The Act of March 1, 1847, enacts as follows

§3. That all members of Congress, delegates from territories, the vice-president of the United States, the secretary of the senate, and the clerk of the house of representatives, shall have the power to send and receive public documents free of postage during their term of office; and that the said members and delegates shall have the power to send and receive public documents, free of Postage, up to the first Monday of December following the expiration of their term of office.

§4. That the secretary of the senate and clerk of the house of representatives shall have the power to receive, as well as to send, all letters and packages, not weighing over two ounces, free of postage, during their term of office.

§5. That members of congress shall have the power to receive, as well as to send, all letters and packages, not weighing over two ounces, free of postage, up to the first Monday in December following the expiration of their term of office.

FRANK, FREE. This word is used in composition, as frank-almoign, frank-marriage, frank-tenement, &c.

FRANK-ALMOIGN, old English law. This is a French law word, signifying free-alms.

2. Formerly religious corporations, aggregate or sole, held lands of the donor, to them and their successors forever, in frank almoign. The service which they, were bound to render for these lands was not certainly defined; they were, in general, to pray for the souls of the donor; his ancestors, and successors. 2 Bl. Com. 101.

FRANK-MARRIAGE, English law. It takes place, according to Blackstone, when lands are given by one man to another, together with a wife who is daughter or kinswoman of the donor, to hold in frank-marriage. By this gift, though nothing but, the word frank-marriage is expressed, the donees shall have the tenements to them and the heirs of their two bodies begotten that is, they are tenants in special tail. It is called frank or free marriage, because the donees are liable to no service but fealty. This is now obsolete, even in England. 2 Bl. Com. 115.

FRANK-TENEMENT, estates. Same as freehold, (q. v.) or liberum tenementum.

FRATER. A brother. Vide Brother.

FRATRICIDE, criminal law. He who kills his brother or sister. The crime of such a person is also called fratricide.

FRAUD, TO DEFRAUD, torts. Unlawfully, designedly, and knowingly, to appropriate the property of another, without a criminal intent.

2. Illustrations. 1. Every appropriation of the right of property of another is not fraud. It must be unlawful; that is to say, such an appropriation as is not permitted by law. Property loaned may, during the time of the loan, be appropriated to the use of the borrower. This is not fraud, because it is permitted by law. 2. The appropriation must be not only unlawful, but it must be made with a knowledge that the property belongs

to another, and with a design to deprive him of the same. It is unlawful to take the property of another; but if it be done with a design of preserving it for the owners, or if it be taken by mistake, it is not done designedly or knowingly, and, therefore, does not come within the definition of fraud. 3. Every species of unlawful appropriation, not made with a criminal intent, enters into this definition, when designedly made, with a knowledge that the property is another's; therefore, such an appropriation, intended either for the use of another, or for the benefit of the offender himself, is comprehended by the term. 4. Fraud, however immoral or illegal, is not in itself a crime or offence, for want of a criminal intent. It only becomes such in the cases provided by law. Liv. System of Penal Law, 789.

FRAUD, contracts, torts. Any trick or artifice employed by one person to induce another to fall into an error, or to detain him in it, so that he may make an agreement contrary to his interest. The fraud may consist either, first, in the misrepresentation, or, secondly, in the concealment of a material fact. Fraud, force and vexation, are odious in law. Booth, Real Actions, 250. Fraud gives no action, however, without damage; 3 T. R. 56; and in matters of contract it is merely a defence; it cannot in any case constitute a new contract. 7 Vez. 211; 2 Miles' Rep. 229. It is essentially ad hominem. 4 T. R. 337-8.

2. Fraud avoids a contract, ab initio, both at law and in equity, whether the object be to deceive the public, or third persons, or one party endeavor thereby to cheat the other. 1 Fonb. Tr. Equity, 3d ed. 66, note; 6th ed. 122, and notes; Newl. Cont. 352; 1 Bl. R. 465; Dougl. Rep. 450; 3 Burr. Rep. 1909; 3 V. & B. Rep. 42; 3 Chit. Com. Law, 155, 806, 698; 1 Sch. & Lef. 209; Verpl. Contracts, passim; Domat, Lois Civ. p. 1, 1. 4, t. 6, s. 8, n. 2.

3. The following enumeration of frauds, for which equity will grant relief, is given by Lord Hardwicke, 2 Ves. 155. 1. Fraud, dolus malus, may be actual, arising from facts and circumstances of imposition, which is the plainest case. 2. It may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses, and not under delusion, would make on the one hand, and such as no honest and fair man would accept on the other, which are inequitable and unconscientious bargains. 1 Lev. R. 111. 3. Fraud, which may be presumed from the circumstances and condition of the parties contracting. 4. Fraud, which may be collected and inferred in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons, not parties to the fraudulent agreement. 5. Fraud, in what are called catching bargains, (q. v.) with heirs, reversioners) or expectants on the life of the parents. This last seems to fall, naturally, under one or more of the preceding divisions.

4. Frauds may be also divided into actual or positive and constructive frauds.

5. An actual or positive fraud is the intentional and successful employment of any cunning, deception, or artifice, used to circumvent, cheat, or deceive another. 1 Story, Eq. Jur. §186; Dig. 4, 3, 1, 2; Id. 2, 14, 7, 9.

6. By constructive fraud is meant such a contract or act, which, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, yet, by its tendency to deceive or mislead. them, or to violate private or public confidence, or to impair or injure the public interests, is deemed equally reprehensible with positive fraud, and, therefore, is prohibited by law, as within the same reason and mischief as contracts and acts done malo animo. Constructive frauds are such as are either against public policy, in violation of some special confidence or trust, or operate substantially as a fraud upon private right's, interests, duties, or intentions of third persons; or unconscientiously compromit, or injuriously affect, the private interests, rights or duties of the parties themselves. 1 Story, Eq. ch. 7, §258 to 440.

7. The civilians divide frauds into positive, which consists in doing one's self, or causing another to do, such things as induce a belief of the truth of what does not exist or negative, which consists in doing or dis-simulating certain things, in order to induce the opposite party. into error, or to retain him there. The intention to deceive, which is the characteristic of fraud, is here present. Fraud is also divided into that which has induced the contract, dolus dans causum contractui, and incidental or accidental fraud. The former is that which has been the cause or determining motive of the contract, that without which the party defrauded would not have contracted, when the artifices practised by one of the parties have been such that it is evident, without them, the other would not have contracted. Incidental or accidental fraud is that by which a person, otherwise determined to contract, is deceived on some accessories or incidents of the contract; for example, as to the quality of the object of the contract, or its price, so that he has made a bad bargain. Accidental fraud does not, according to the civilians, avoid the contract, but simply subjects the party to damages. It is otherwise where the fraud has been the determining cause of the contract, qui causam dedit contractui; in that case. the contract is void. Toull. Dr. Civ. Fr. Liv. 3, t. 3, c. 2, n. §5, n. 86, et seq. See also 1 Malleville, Analyse de la, Discusssion de Code Civil, pp. 15, 16; Bouv. Inst. Index, h. t. Vide Catching bargain; Lesion; Voluntary Conveyance.

FRAUDS, STATUTE OF. The name commonly given to the statate 29 Car. II., c. 3, entitled " An act for prevention of frauds and perjuries." This statute has been re-enacted in most. of the states of the Union, generally with omissions, amendments, or alterations. When the words of the statute have been used, the construction put upon them has also been adopted. Most of the acts of the different states will be found in

Anthon's Appendix to Shep. Touchst. See also the Appendix to the second edition of Roberts on Frauds.

FRAUDULENT CONVEYANCE. A conveyance of property without any consideration of value, for the purpose of delaying or bindering creditors. These are declared void by the statutes 13 Eliz. c. 6, and 27 Eliz. c. 4, the principles of which have been adopted in perhaps all the states of the American Union. See Voluntary Conveyance.

2. But although such conveyance is void as regards purchasers and creditors, it is valid as between the parties. 6 Watts, 429, 453; 5 Binn. 109; 1 Yeates, 291; 3 W. & S. 255; 4 Iredell, 102; 9 Pick. 93; 20 Pick. 247; 3 Mass. 573, 580; 4 Mass. 354; 1 Hamm. 469; 2 South. 738; 2 Hill, S. C. Rep. 488; 7 John. 161; 1 Bl. 262.

FREE. Not bound to servitude; at liberty to act as one pleases. This word is put in opposition to slave.

2. Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. Const. U. S. art. 1, s. 2. 3. It is also put in contradistinction to being bound as an apprentice; as, an apprentice becomes free on attaining the age of twenty-one years.

4. The Declaration of Independence asserts that all men are born free, and in at sense, the term includes all mankind.

FREE COURSE, Mar. law. Having the wind from a favorable quarter.

2. To prevent collision of vessels, it is the duty of the vessel having a free course to give way to a vessel beating up. to windward and tacking. 3 Hagg. Adm. R. 215, 326. And at sea, it is the duty of such vessel, in meeting another, to go to leeward. 3 Car. & P. 528. See 9 Car. & P. W. Rob. 225; 2 Dodson, 87.

FREE ships. By this is understood neutral vessels. Free ships are sometimes considered as making free goods.

FREE WARREN, Eng. law. A franchise erected for the preservation and custody of beasts and fowls of warren. 2 Bl. Com. 39; Co. Litt. 233.

FREEDMEN. The name formerly given by the Romans to those persons who had been released from a State of servitude. Vide Liberti libertini.

FREEDOM, Liberty; the right to do what is not forbidden by law. Freedom does not preclude the idea of subjection to law; indeed, it presupposes the existence of some legislative provision, the observance of which insures freedom to us, by securing the like observance from others. 2 Har. Cond. L. R. 208.

FREEHOLD, estates. An estate of freehold is an estate in lands or other real property, held by a free tenure, for the life of the tenant or that of some other person; or for some uneertain period. It is called liberum tenementum, frank tenement or freehold; it was formerly described to be such an estate as could only be created by livery of seisin, a ceremony similar to the investiture of the feudal law. But since the introduction of certain modern conveyances, by which an estate of freehold may be created without livery of seisin, this description is not sufficient.

2. There are two qualities essentially requisite to the existence of a freehold estate. 1. Iramobility; that is, the subject-matter must either be land, or some interest issuing out of or annexed to land. 2. A sufficient legal indeterminate duration; for if the utmost period of time to which an estate can last, is fixed and determined, it is not an estate of freehold. For example, if lands are conveyed to a man and his heirs, or for his life, or for the life of another, or until he shall be married, or go to Europe, he has an estate of freehold; but if such lands are limited to a man for one hundred or five hundred years, if he shall so long live, he has not an estate of freehold. Cruise on Real Property t. 1, s. 13, 14 and 15 Litt. 59; 1 Inst. 42, a; 5 Mass. R. 419; 4 Kent, Com. 23; 2 Bouv. Inst. 1690, et seq. Freehold estates are of inheritance or not of inheritance. Cruise, t. 1, s. 42.

FREEHOLDER. A person who is the owner of a freehold estate.

FREEMAN. One who is in the enjoyment of the right to do whatever he pleases, not forbidden by law. One in the possession of the civil rights enjoyed by, the people generally. 1 Bouv. Inst. n. 164. See 6 Watts, 556:

FREIGHT, mar. law, contracts. The sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another; l3 East, 300, note; but in, its more extensive sense it is applied to all rewards or compensation paid for the use of ships. 1 Pet. Adm. R. 206; 2 Boulay-Paty, t. 8, s. 1; 2 B. & P. 321; 4 Dall. R. 459; 3 Johns. R. 335; 2 Johns. R. 346; 3 Pardess, n. 705.

2. It will be proper to consider 1. How the amount of freight is to be fixed. 2. What acts must be done in order to be entitled to freight. 3. Of the lien of the master or owner.

3. - l. The amount of freight is usually fixed by the agreement of the parties, and if there be no agreement, the amount is to be ascertained by the usage of the trade, and the circumstances and reason of the case. 3. Kent, Com. 173. Pothier is of opinion that when the parties agree as to the conveyance of the goods, without fixing a price, the master is entitled to freight at the price usually paid for merchandise of a like quality at the time and place of shipment, and if the prices vary he is to pay the mean price. Charte-part, n. 8. But there is a case which authorizes the master to require the highest price, namelly, when goods are put on board without his knowledge. Id. n. 9. When the merchant hires the whole ship for the entire voyage, he must pay the freight though he does not fully lade the ship; he is of course only bound to pay in proportion to the goods he puts on board, when he does not agree to provide a full cargo. If the merchant agrees to furnish a return cargo, and he furnishes none, and lets the ship return in ballast, he must make compensation to the amount of the freight; this is called dead freight, (q. v.) in contradistinction to freight due for the actual carriage of goods. Roccus, note 72-75; 1 Pet. Adm. R. 207; 10 East, 530; 2 Vern. R. 210.

4. - 2. The general rule is, that the delivery of the goods at the place of destination, in fulfilment of the agreement of the charter party, is required, to entitle the master or owner of the vessel to freight. But to this rule there are several exceptions .

5.- 1. When a cargo consists of live stock, and some of the animals die in the course of the voyage, without any fault or negligence of the master or crew, and there is no express agreement respecting the payment of freight, it is in general to be paid for all that were put on board; but when the contract is to pay for the, transportation of them, then no freight is due for those which die on the voyage. Molloy, b. 2, c. 4, s. 8 Dig. 14, 2, 10; Abb. Ship. 272.

6.-2. An interruption of the regular course of the voyage, happening without the fault of the owner, does not deprive him of his freight if the ship afterwards proceed with the cargo to the place of destination, as in the case of capture and recapture. 3 Rob. Adm. R. 101.

7. - 3. When the ship is foreed into a port short of her destination, and cannot finish the voyage, if the owner of the goods will not allow the master a reasonable time to repair, or to proceed in another ship, the master will be entitled to the whole freight; and, if after giving his consent the master refuse to go on, he is not entitled to freight.

8. - 4. When the merchant accepts of the goods at an intermediate port, it is the general rule of marine law, that freight is to be paid according to the proportion of the voyage performed, and the law will imply such contract. The acceptance must be voluntary, and not, one forced upon the owner by any illegal or violent proceedings, as, from it, the law implies a contract that freight pro rata parte itineris shall be accepted and paid. 2 Burr. 883; 7 T. R. 381; Abb. Shipp. part 3, c. 7, s. 13; 3 Binn. 445; 5 Binn. 525; 2 Serg. & Rawle, 229; 1 W. C. C. R. 530; 2 Johns. R. 323; 7 Cranch, R. 358; 6 Cowen, R. 504; Marsh. Ins. 281, 691; 3 Kent, Com. 182; Com. Dig. Merchant, E 3 a note, pl. 43, and the cases there cited.

9. - 5. When the ship has performed the whole voyage, and has brought only a part-of her cargo to the place of destination; in this case there is a difference between a general ship, and a ship chartered for a specific sum for the whole voyage. In the former case, the freight is to be paid for the goods which may be, delivered at their place of destination; in the latter it has been questioned whether the freight could be apportioned, and it seems, that in such case a partial performance is not sufficient, and that a special payment cannot be claimed except in special cases. 1 Johns. R. 24; 1 Bulstr. 167; 7 T. R. 381; 2 Campb. N. P. R. 466. These are some of the excep tions to the general rule, called for by principles of equity, that a partial performance is not sufficient, and that a partial payment or rateable freight cannot be claimed.

10. - 6. In general, the master has a lien on the goods, and need not part with them until the freight is paid; and when the regulations of the revenue require them to be landed in a public warehouse, the master may enter them in his own name and preserve the lien. His right to retain the goods may, however, be waived either by an express agreement at the time of making the original contract, or by his subsequent agreement or consent. Vide 18 Johns. R. 157; 4 Cowen, R. 470; 1 Paine's R. 358; 5 Binn. R. 392. Vide, generally, 13 Vin. Ab. 501 Com. Dig. Merchant, E 3, a; Bac. Ab. Merchant, D; Marsh. Ins. 91; 10 East, 394 13 East, 300, n.; 3 Kent, Com. 173; 2 Bro. Civ. & Adm. L. 190; Merl. Rep. h. t. Poth. Charte-Partie, h. t.; Boulay-Paty, h. t.; Pardess. Index, Affretement.

FREIGHTER, contracts. He to whom a ship or vessel has been hired. 3 Kent, Com. 173; 3 Pardess. n. 704.

2. The freighter is entitled to the enjoyment of the vessel according to contract, and the vessel hired is the only one that he is bound to take there can, therefore, be no substitution without his consent. When the vessel has been chartered only in part, the freighter is only entitled to the space he has contracted for; and in case of his occupying more room or putting on board a greater weight, he must pay freight on the principles mentioned under the article of freight.

3. The freighter is required to use the vessel agreeably to the provisions of the charter party, or, in the absence of any such provisions, according to the usages of trade he cannot load the vessel with merchandise which would render it liable to condemnation for violating the laws of a foreign state. 3 John. R. 105. The freighter is also required to return the vessel as soon as the time for which he chartered her has expired, and to pay the freight.

FRESH PURSUIT. The act of pursuing cattle which have escaped, or are being driven away from land, when they were liable to be distrained, into other places. 3 Bouv. Inst. n. 2470.

FRESH SUIT, Eng. law. An earnest pursuit of the offender when a robbery has been committed, Without ceasing, until he has been arrested or discovered. Towl. Law Dict. h. t.

FRIBUSCULUM, civil law. A slight dissension between hushand and wife, which produced a momentary separation, without any intention to dissolve the marriage, in which it differed from a divorce. Poth. Pand. lib. 50, s. 106. Vicat, Vocab. This amounted to a separation, (q. v.) in our law.

FRIENDLESS MAN. This name was sometimes anciently given to an outlaw.

FRIGIDITY, med juris. The same as impotence. (q. v.)

FRUCTUS INDUSTRIALES. The fruits or produce of the earth which are obtained by the industry of man, as growing corn.

FRUIT, property. The produce of tree or plant containing the seed or used for food. Fruit is considered real estate, before it is separated from the plant or tree on which it grows; after its separation it acquires the character of personally, and may be the subject of larceny; it then has all the qualities of personal property,

2. The term fruit, among the civilians, signifies not only the production of trees and other plants, but all sorts of revenue of whatever kind they may be. Fruits may be distinguished into two kinds; the first called natural fruits, are those which the earth produces without culture, as bay, the production of trees, minerals, and the like or with culture, as grain and the like. Secondly, the other kind of fruits, known by the name of civil fruits, are the revenue which is not produced by the earth, but by the industry of man, or from animals, from some estate, or by virtue of some rule of law. Thus, the rent of a house, a right of fishing, the freight of a ship, the toll of a mill, are called, by a metaphorical expression, fruits. Domat, Lois Civ. liv. 3, tit. 5, s. 3, n. 3. See Poth. De la Communaute, n. 45.

FUERO JURGO. A Spanish code of laws, said to, be the most ancient in Europe. Barr. on the Stat. 8, note.

FUGAM FECIT, Eng. law. He fled. This phrase, in an inquisition, signifies that a person fled for treason or felony. The effect of this is to make the party forfeit his goods absolutely, and the profits of his lands until he has been pardoned or acquitted.

FUGITIVE. A runaway, one who is at liberty, and endeavors, by, going away, to escape.

FUGITIVE SLAVE. One who has escaped from the service of his master.

2. The Constitution of the United States, art. 4, s. 2, 3, directs that "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any laws or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be clue." In practice summary ministerial proceedings are adopted, and not the ordinary course of judicial investigations, to ascertain whether the claim of ownership be established beyond all legal controversy. Vide, generally, 3 Story, Com. on Const. §1804-1806; Serg. on Const. ch. 31, p. 387; 9 John. R. 62; 5 Serg. & Rawle, 62; 2 Pick. R. 11; 2 Serg. & Rawle, 306; 3 Id. 4; 1 Wash. C. C. R. 500; 14 Wend. R. 507, 539; 18 Wend. R. 678; 22 Amer. Jur. 344.

FUGITIVE, FROM JUSTICE, crim. law. One who, having committed a crime within a jurisdiction, goes into another in order to evade the law, and avoid its punishment.

2. By the Constitution of the United States, art. 4, s. 2, it is provided, that "a person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the same state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." The act of thus delivering up a prisoner, is, by the law of nations, called extradition. (q. v.)

3. Different opinions are entertained in relation to the duty of a nation, by the law of nations, independently of any treaty stipulations, to surrender fugitives from justice when' properly demanded. Vide 1 Kent, Com. 36; 4 John. C. R. 106; 1 Amer. Jurist, 297; 10 Serg. & Rawle, 125; 3 Story, Com. Const. United States, §1801; 9 Wend. R. 218; 2 John. R. 479; 6 Binn. R. 617; 4 Johns. Ch. R. 113; 22 Am. Jur. 351: 24 Am. Jur. 226; 14 Pet. R. 540; 2 Caines, R. 213.

4. Before the executive of the state can be called upon to deliver an individual, it must appear, first, that a proper and formal requisition of another governor has been made; secondly, that the requisition was founded upon an affidavit that the crime was committed by the person charged, or such other evidence of that fact as may be sufficient; thirdly, that the person against whom it is directed, is a fugitive from justice. 6 Law Report, 57.

FULL AGE. A. person is said to have full age at twenty-one years, whether the person be a man or woman. See Age.

FULL COURT. When all the judges are present and properly organized, it -is said there is a full court; a court in banc.

FULL DEFENCE, pleading. A denial of all wrong or injury. It is expressed in the following formula: And the said C D, (the defendant,) by E F, his attorney, comes, and defends the wrong or injury, (or force and injury,) when and where it shall behoove him, and the damages and whatsoever else he ought to defend." Bac. Ab. Pleas, &c. D; Co. Litt. 127 b; Lawes on Pl. 89; 2 Chit. Pl. 409; 2 Saund. 209 c; Gould on Pl. c. 2, §6. See Defence; Et Cetera; Half Defence.

FUNCTION, office. Properly, the occupation of an office; by the performance of its duties, the officer is said to fill his function. Dig. lib. 32, 1. 65, §1.

FUNCTIONARY. One who is in office or in some public employment.

FUNCTUS OFFICIO. This term is applied to something which once had life and power, but which now has no virtue whatsoever; as, for example, a warrant of attorney on which a judgment has been entered, is, functus officio, and a second judgment, cannot be entered by virtue of its authority. When arbitrators cannot agree and choose an umpire, they are said to be functi officio. Watts. on Arb. 94. If a bill of exchange be sent to the drawee, and he passes it to the credit of the holder, it is functus officio, and cannot be further negotiated. 5 Pick., 85. When an agent has completed the business with which he was entrusted,.his agency is functus officio. 2 Bouv. Inst. n. 1382.

FUNDAMENTAL. This word is applied to those laws which are the foundation of society. Those laws by which the exercise of power is restrained and regulated, are fundamental. The Constitution of the United States is the fundamental law of the land. See Wolff, Inst. Nat. §984.

FUNDED DEBT. That part of the national debt for which certain funds are appropriated towards the payment of the interest.

FUNDING SYSTEM, Eng. law. The name given to a plan which provides that on the creation of a public loan, funds shall immediately be formed, and secured by law, for the payment of the interest, until the state shall redeem the whole, and also for the gradual redemption of the capital itself. This gradual redemption of the capital is called the sinking of the debt, and the fund so appropriated is called the sinking fund.

FUNDS. Cash on hands; as, A B is in funds to pay my bill on him; stocks, as, A B has $1000 in the funds. By public funds is understood, the taxes, customs, &c . appropriated by the, government for the discharge of its obligations.

FUNDUS, civil raw. Any portion of land whatever, without considering the use or employ to which it is applied.

FUNERAL EXPENSES. Money expended in procuring the interment of a corpse.

2. The person who orders the funeral is responsible personally for the expenses, and if the estate of the deceased should be insolvent, he must lose the amount. But if there are assets sufficient to pay these expenses, the executor or administrator is bound, upon an implied assumpsit, to pay them. 1 Campb. N. P. R. 298; Holt, 309 Com. on Contr. 529; 1 Hawke's R. 394; 13 Vin. Ab. 563.

3. Frequent questions arise as to the amount which is to be allowed to the executor or administrator for such expenses. It is exceedingly difficult to gather from the numerous cases which have been, decided upon this subject, any certain rule. Courts of equity have taken into consideration the circumstances of each case, and when the executors have acted with common prudence and in obedience to the will, their expenses have been allowed. In a case where the testator directed that his remains should be buried at a church thirty miles distant from the place of his death, the sum of sixty pounds sterling was allowed. 3 Atk. 119. In another case, under peculiar circumstances, six hundred pounds were allowed. Preced. in Ch. 29. In a case in Pennsylvania, where the intestate left a considerable estate, and no children, the sum of two hundred and fifty-eight dollars and seventy-five cents was allowed, the greater part of which had been expended in erecting a tombstone over a vault in which the body was interred. 14 Serg. & Rawle, 64.

4. It seems doubtful whether the hushand can call upon the separate personal estate of his wife, to pay her funeral expenses. 6 Madd. R. 90. Vide 2 Bl. Com. 508; Godolph. p. 2 3 Atk. 249 Off. Ex. 174; Bac. Ab. Executors, &c., L 4; Vin. Ab. h. t.

FUNGIBLE. A term used in the civil, French, and Scotch law, it signifies anything whatever, which consists in quantity, and is regulated by number, weight, or measure; such as corn, wine, or money.. Hein. Elem. Pand. Lib. 12, t. 1, §2;.1 Bell's Com. 225,

n. 2; Ersk. Pr. Scot. Law, B. 3, t. 1, §7; Poth. Pret de Consomption, No. 25; Dict. de Jurisprudence, mot Fongible Story, Bailm, §284; 1 Bouv. Inst. n. 987, 1098.

FURCA. The gallows. 3 Inst. 58.

FURIOSUS. An insane man; a madman; a lunatic.

2. In general, such a man can make no contract, because he has no capacity or will: Furiosus nullum negotium genere potest, quia non intelligit quod agit. Inst. 3, 20, 8. Indeed, he is considered so incapable of exercising a will, that the law treats him as if he were absent: Furiosi nulla voluntas est. Furiosus absentia loco est. Dig. lib. 1, tit. ult. 1. 40, 1. 124, §1. See Insane; Non compos mentis.

FURLINGUS. A furlong, or a furrow oneeighth part of a mile long. Co. Litt. 5. b.

FURLONG. A measure of length, being forty poles, or one-eighth of a mile. Vide Measures.

FURLOUGH. A permission given in the army and-navy to an officer or private to absent himself for a limited time.

FURNITURE. Personal chattels in the use of a family. By the term household furniture in a will, all personal chattels will pass which may contribute to the use or convenience of the householder, or the ornament of the house; as, plate, linen, china, both useful and ornamental, and pictures. Amb. 610; 1 John. Ch. R. 329, 388; 1 Sim. & Stu. 189; S. C. 3 Russ. Ch. Cas. 301; 2 Williams on Ex. 752; 1 Rop. on Leg. 203-4; 3 Ves. 312, 313.

FURTHER ASSURANCE. This phrase is frequently used in covenants, when a covenantor has granted an estate, and it is supposed some further conveyance may be required. He then enters into a covenant for further assurance, that is, to make any other conveyance which may be lawfully required.

FURTHER HEARING, crim. law, practice. Hearing at another time.

2. Prisoners are frequently committed for further hearing, either when there is not sufficient evidence for a final commitment, or because the magistrate has not time, at the moment, to hear the whole of the evidence. The magistrate is required by law, and by every principle of humanity, to hear the prisoner as soon as possible after a commitment for further hearing; and if he neglect to do so within a reasonable time, he becomes a trespasser. 10 Barn. & Cresw. 28; S. C. 5 Man. & Ry. 53. Fifteen days

were held an unreasonable time, unless under special circumstances. 4 Carr. & P. 134; 4 Day, 98; 6 S. & R. 427.

3. In Massachusetts, magistrates may by statute, adjourn the case for ten days. Rev. Laws, 1 3 5, s. 9.

4. It is the practice in England to commit for three days, and then from three days to three days. 1 Chitty's Criminal Law, 74.

FUTURE DEBT. In Scotland this term is applied to a debt which though created is not due, but is to become so at a future day. 1 Bell's Com. 315, 5th ed.

FUTURE STATE, evidence. A state of existence after this life.

2. A witness who does not believe in any future state of existence was formerly inadmissible as a witness. The true test of a witnesses competency, on the ground of his religious principles, is, whether he believes in the existence of a God, who will punish him if he swears falsely; and within this rule are comprehended those who believe future punishments will not be eternal. 2 Watts' & Serg. 263. See the authorities cited under the article Infidel. But it seems now to be settled, that when the witness believes in a God who will reward or punish him, even in this world, he is competent. Willes, 550. Vide Atheist.

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G

GABEL. A tax, imposition, or duty. This word is said to have the same signification that gabelle formerly had in France. Cunn. Dict. h. t. But this seems to be an error for gabelle signified in that country, previously to its revolution, a duty upon salt. Merl. Rep. h. t. Lord Coke says, that gabel or gavel, gablum, gabellum, gabelletum, galbelletum, and gavillettum signify a rent, duty, or service, yielded or done to the king or any other lord. Co. Litt. 142, a.

GAGE, contracts. Personal property placed by a debtor in possession of his creditor, as a security for his debt; a pawn. (q. v.) Hence mortgage is a dead pledge.

GAGER DEL LEY. Wager of law. (q. v.)

GAIN. The word is used as synonymous with profits. (q. v.) See Fruit.

GAINAGE, old Eng. law. It signifies the draft oxen, horses, wain, plough, and furniture for carrying on the work of tillage by the baser sort of soke men and villeins, and sometimes the land itself, or the profits raised by cultivating it. Bract. lib. 1, c. 9.

GALLON, measures. A gallon is a liquid measure, containing two hundred and thirty-one cubic inches, or four quarts.

GALLOWS. An erection on which to bang criminals condemned to death.

GAME. Birds and beasts of a wild-nature, obtained by fowling and hunting. Bac. Ab. h. t.; Animals; Ferae natural.

GAMING. A contract between two or more persons by which they agree to play by certain rules at cards, dice, or other contrivance, and that one shall be the loser, and the other the winner. When considered in itself, and without regard to the end proposed by the player's, there is nothing in it contrary to natural equity, and the contract will be considered as a reciprocal gift, which the parties make of the thing played for, under certain. conditions.

2. There are some games which depend altogether upon skill, others, upon chance, and some others are of a mixed nature. Billiards is an example of the first; lottery of the second; and backgammon of the last.

3. In general, at common law all games are lawful, unless some fraud has been practiced, or such games are contrary to public policy. Each of the parties to the contract must, 1. Have a right to the money or thing played for. 2. He must have given his full and free consent, and not been entrapped by fraud. 3. There must be equality in the play. 4. The play must be conducted fairly. But even when all these rules have been observed, the courts will not countenance gaming by giving too easy a remedy for the recovery of money won at play. Bac. Ab. h. t. A.

4. But when fraud has been practiced, as in all other cases, the contract is void and in some cases, when the party has been guilty of cheating, by playing with false dice, cards and the like, he may be indicted at common law, and fined and imprisoned, according to the heinousness of the offence. 1 Russ. on Cr, 406.

5. Statutes have been passed in perhaps all the states forbidding gaining for money, at certain games, and prohibiting the recovery of money lost at such games. Vide Bac. Ab. h. t.; Dane's Ab. Index, h. t.; Poth. Traite du Jeu; Merlin, Repertoire, mot Jeu; Barbeyrac, Traite du Jeu, tome 1, p. 104, note 4; 1 P. A. Browne's Rep. 171: 1 Overt. R. 360; 3 Pick. 446; 7 Cowen, 496; 1 Bibb, 614; 1 Miss. 635; Mart. & Yerg. 262; 1 Bailey, 315; 6 Rand. 694; 8 Cowen, 139; 2 Blackf. 251; 3 Blackf. 294; and Stakeholder; Wagers.

GAMING HOUSES, crim. law. Houses kept for the purpose of pemitting persons to gamble for money or other valuable thing. They are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices. 1 Russ. on Cr. 299; Roscoe's Cr. Ev. 663; Hawk. B. 1, ch. 75, s. 6; 3 Denio's R. 101; 8 Cowen, 139; This offence is punished in Pennsylvania, an perhaps in most of the states, by statutory provisions.

GANANCIAL, Spanish law. A term which in Spanish signifies nearly the same as acquets. Bienes gananciales are thus defined: " Aquellos que el marido y la muger o cualquiera de los dos adquieren o aumentan durante el matrimonio por compra o otro contrato, 6 mediante su trabajo e industria, como tambien los frutos de los bienos proprios que cada uno elevo al matrimonio, et de los que subsistiendo este adquieran para si por cualquier titulo." 1 Febr. Nov. lib. 1, tit. 2, c. 8, s. 1. This is a species of community; the property of which it is formed belongs in common to the two consorts, and, on the dissolution of the marriage, is divisible between them in equal shares. It is confined to their future acquisition durante el matrimonio, and the frutos, or rents and profits of the other property. 1 Burge on Confl. of Laws, 418, 419; Aso & Man. Inst. B. 1, t. 7, c. 5, §1.

GAOL. A prison or building designated by law or used by the sheriff, for the confinement or detention of those, whose persons are judicially ordered to be kept in

custody., This word, sometimes written jail, is said to be derived from the Spanish jaula, a cage, (derived from caula,) in French geole, gaol. 1 Mann. & Gran. 222, note a. Vide 6 John. R. 22; 14 Vin. Ab. 9; Bac. Ab. h. t.; Dane's Ab. Index, h. t.; 4 Com. Dig. 619; and the articles Gaoler; Prison; Prisoner.

GAOL-DELIVERY, Eng. law. To insure the trial, within a certain time, of all prisoners, a patent in the nature of a letter is issued from the king to certain persons, appointing them his justices, and authorizing them to deliver his goals. Cromp. Jurisd. 125; 4 Inst. 168; 4 Bl. Com. 269; 2 Hale, P. C. 22, 32; 2 Hawk. P. C. 14, 28. In the United States, the judges of the criminal courts are required to cause the accused to be tried within the times prescribed by the local statutes, and the constitutions rcqpire a speedy trial.

GAOLER. The keeper of a gaol or prison, one who has the legal custody of the placo where prisoners are kept.

2. It is his duty to keep the prisoners in safe custody, and for this, purpose he may use all necessary force. 1 Hale, P. C. 601. But any oppression of a prisoner under a pretended necessity will be punished; for the prisoner, whether he be a debtor or a criminal, is entitled to the protection of the laws from oppression.

GARDEN. A piece of ground appropriated to raising plants and flowers.

2. A garden is a parcel of a house and passes with it. Br. Feoffm. de terre, 53; 2 Co. 32; Plowd. 171; Co. Litt. 5 b, 56 a, b. But see Moore, 24; Bac. Ab. Grants, I.

GARNISH, Eng. law. Money paid by a prisoner to his fellow prisoners on his entrance into prison. .

TO GARNSIH. To warn; to garnish the heir, is to warn the heir. Obsolete.

GARNISHEE, practice. A person who has money or property in his possession, belonging to a defendant, which money or property has been attached in his hands, and he has had notice of such attachment; he is so called because he has had warning or notice of the attachment.

2. From the time of the notice of the attachment, the garnishee is bound to keep the property in his hands to answer the plaintiff's claim, until the attachment is dissolved, or he is otherwise discharged. Vide Serg. on Att. 88 to 110; Com. Dig. Attachment, E.

3. There are garnishees also in the action of detinue. They are persons against whom process is awarded, at the prayer of the defendant, to warn them to come in and interplead with the plaintiff. Bro. Abr. Detinue, passim.

GARNISHMENT. A warning to any one for his appearance, in a cause in which he is not a party, for the information of the court, and explaining a cause. For example, in the practice of Pennsylvania, when an attachment issues against a debtor, in order to secure to the plaintiff a claim due by a, third person to such debtor, notice is given to such third person, which notice is a garnishment, and he is called the garnishee.

2. In detinue, the defendant cannot have a sci. fac. to garnish a third person unless he confess the possession of the chattel or thing demanded. Bro. Abr. Garnishment, 1, 5. And when the garnishee comes in, he cannot vary or depart from the allegation of the defendant in his prayer of garnishment. The plaintiff does not declare de novo against the garnishee; but the garnishee, if he appears in due time, may have oyer of the original declaration to which he pleads. See Bro. Abr. Garnishee and Garnishment, pl. 8, and this title, passim.

GAUGER. An officer appointed to examine all tuns, pipes, hogsheads, barrels, and tierces of wine, oil, and other liquids, and to give them a mark of allowance, as containing lawful measure.

GAVEL. A tax, imposition or tribute; the same as gabel. (q. v.)

GAVELKIND. Given to all the kindred, or the hold or tenure of a family, not the kind of tenure. Eng. law. A tenure or custom annexed or belonging to land in Kent, by which the lands of the father are equally divided among all his sons, or the land of the brother among all his brothers, if he have no issue of his own. Litt. s. 210.

GELD, old Eng. law. It signifies a fine or compensation for an offence; also, rent, money or tribute.

GEMOTE. An assembly. Wittena gemote, during the time of the Saxons in England, signified an assembly of wise men. The parliament.

GENDER. That which designates the sexes.

2. As a general rule, when the masculine is used it includes the feminine, as, man (q. v.) sometimes includes women. This is the general rule, unless a contrary intention appears. But in penal statutes, which must be construed strictly, when the masculine is used and not the feminine, the latter is not in general included. 3 C. & P. 225. An instance to the contrary, however, may be found in the construction, 25 Ed. III, st. 5,

c. 2, §1, which declares it to be high treason, "When a man doth compass or imagine the death of our lord the king," &c. These words, "our lord the king," have been construed to include a queen regnant. 2 Inst. 7, 8, 9; H. P. C. 12; 1 Hawk. P. C. c. 17; Bac. Ab. Treason, D.

3. Pothier says that the masculine often includes the feminine, but the feminine never includes the masculine; that according to this rule if a man were to bequeath to another all his horses, his mares would pass by the legacy; but if he were to give all his mares, the horses would not be included. Poth. Introd. au titre 16, des Testaments et Donations Testamentaires, n. 170; 3 Brev. R. 9. In the Louisiana code in the French language, it is provided that the word fils, sons, comprehends filles, daughters. Art. 3522, n. 1. Vide Ayl. Pand. 57; 4 Car. & Payne, 216; S. C. 19 Engl. Com. Law R. 351; Barr. on the Stat. 216, note; Feme; Feme covert; Feminine; Male; Man; Sex; Women; Worthiest of blood.

GENEALOGY. The summary history or table of a house or family, showing how the persons there named are connected together.

2. It is founded on the idea of a lineage or family. Persons descended from the common father constitute a family. Under the idea of degrees is noted the nearness or remoteness, of relationship, in which one person stands with respect to another. A series of several persons, descended from a common progenitor, is called a line. (q. v.) Children stand to each other in the relation either of full blood or half blood, according as they are descended from the same parents, or have only one parent in common. For illustrating descent and relationship, genealogical tables are constructed, the order of which depends on the end in view. In tables, the object of which is to show all the individuals embraced in a fanlily, it is usual to begin with the oldest progenitor, and to put all the persons of the male or female sex in descending, and then in collateral lines. Other tables exhibit the ancestors of a particular person in ascending lines both on the father's and mother's side. In this way 4, 8, 16, 32- &c. ancestors are exhibited, doubling at every degree. Some tables are constructed in the form of a tree, after the. model of canonical law, (arbor consanguinitatis,) in which the progenitor is placed beneath, as if for the root or stem. Vide Branch; Line.

GENER. A son-in-law. Dig. 50, 16, 156.

GENERAL. This word has several meanings, namely: 1. A principal officer, particularly in the army. 2. Something opposed to special; as, a general verdict, the general issue, which expressions are used in contradistinction to special verdict, special issue. 3. Principal, as the general post office. 4. Not select, as a general ship. (q. v.) 5. Not particular, as a general custom. 6. Not limited, as general jurisdiction. 7. This word is sometimes annexed or prefixed to other words to express or limit the

extent of their signification; as Attorney General, Solicitor General, the General Assembly, &c.

GENERAL ASSEMBLY. This name is given in some of the states to the senate and house of representatives, which compose the legislative body.

GENERAL IMPARLANCE, pleading. One granted upon a prayer, in which the defendant reserves to himself no exceptions, and is always from one term to another. Gould on Pl. c. 2, §17.

2. After such imparlance, the defendant cannot plead to the jurisdiction nor in abatement, but only to the action or merits. See Imparlance.

GENERAL ISSUE, pleading. A plea which traverses or denies at once the whole indictment or declaration, without offering any special matter, to evade it. It is called the general issue, because, by importing an absolute and general denial of what is alleged in the indictment or declaration, it amounts at once to an issue. 2 Bl. Com. 305.

2. The general issue in criminal cases, is, not guilty. In civil cases, the general issues are almost as various as the forms of action; in assumpsit, the general issue is non-assumpsit; in debt, nil debet; in detinue, non detinet; in trespass, non cul. or not guilty; in replevin, non cevit, &c.

3. Any matter going to show that a deed or contract, or other instrument is void, may be given in evidevce under the general issue; 10 Mass. 267, 274; 14 Pick. 303, 305; such as usury. 2 Mass. 540; 12 Mass. 26; 15 Mass. 48, 54. See 4 N. Hamp. R. 40; 2 Wend. 246; 6 Mass. 460; 10 Mass. 281. But a right to give evidence under the general issue, any matter which would avail under a special plea does not extend to matters in abatement. 9 Mass. 366: 14 Mass. 273; Gould on Pl. c. 4, pt. 1, §9, et seq.; Special Issue.

GENERAL LAND OFFICE. One of the departments of government of the United St

ates. 2. It was established by the Act of April 25,1812, 2 Story's Laws U. S. 1238; another act was passed March 24, 1824, 3 Story, 1938, which authorized the employment of additional officers. And it was reorganized by the following act, entitled "An act to reorganize the General Land Office," approved July 4, 1836.

3. - §1. Be it enacted, &c. That from and after the passage of this act, the executive duties now prescribed, or which may hereafter be prescribed by law, appertaining to the surveying and sale of the public lands of the United States, or in anywise

respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the government of the United States, shall be subject to the supervision and control of the commissioner of the general land office, under the direction of the president of the United States.

4. - §2. That there shall be appointed in said office, by the president, by and with the advice and consent of the senate, two subordinate officers, one of whom shall be called principal clerk of the public lands, and the other principal clerk on private land claims, who shall perform such duties as may be assigned to them by the commissioners of the general land office; and in case of vacancy in the office of the commissioner of the general land office, or of the absence or sickness of the commissioner, the duties of said office shall devolve upon. and be performed, ad interim, by the principal clerk of the public lands.

5. - §3. That there shall be appointed by the president, by and with the advice and consent of the senate, an officer to be styled the principal clerk of the surveys, whose duty it shall be to direct and superintend the making of surveys, the returns thereof, and all matters relating thereto, which are done through the officers of the surveyor general; and he shall perform such other duties as may be assigned to him by the commissioner of thegeneral land office.

6. - §4. That there shall be appointed by the president, by and with the consent of the senate, a recorder of the general land office, whose duty it shall be, in pursuance of instructions from the commissioner, to certify and affix the seal of the general land office to all patents for public lands, and he shall attend to the correct engrossing and recording and transmission of such patents. He shall prepare alphabetical indexes of the names of patentees, and of persons entitled to patents and he shall. prepare such copies and exemplifications of matters on file, or recorded in the general land office, as the commissioner may from time to time direct.

7.- §5. That there shall be appointed by the president, by and with the advice and consent of the senate, an officer to be called the solicitor of the general land office, with an annual salary of two thousand dollars, whose duty it shall be to examine and present a report to the commissioner, of the state of facts in all cases referred by the commissioner to his attention which shall involve questions of law, or where the facts are in controversy between the agents of government and, individuals, or there are conflicting claims of parties before the department, with his opinion thereon; and, also, to advise the commissioner, when required thereto, on all questions growing out of the management of the public lands, or the title thereto, private land claims, Virginia military scrip, bounty lands, and preemption claims and to render such farther professional services in the business of the department as may be required, and shall be connected with the discharge of the duties theroof.

8.- §6. That it shall be lawful for the president of the United States, by and with the advice and consent of the senate, to appoint a secretary, with a salary of fifteen hundred dollars per annum, whose duty it shall be, under the direction of the president, to sign in his name, and for him, all patents for land sold or granted under the authority of the United States.

9. - §7. That it shall be the duty of the commissioner, to cause to be prepared, and to certify, under the seal of the general land office, such copies of records, books, and papers on file in his office, as may be applied for, to be used in evidence in courts of justice.

10. - §8. That whenever the office of recorder shall become vacant, or in case of the sickness or absence of the recorder, the duties of his office shill be performed, ad interim, by the principal clerk on private land claims.

11. - §9. That the receivers of the land offices shall make to the secretary of the treasury mouthly returns of the moneys received in their several offices, and pay over such money, pursuant to his instructions. And they shall also make to the commissioner of the general land office, like monthly returns, and transmit to him quarterly accounts current of the debits and credits of their several offices with the United States.

12. - §10. That the commissioner of the general land office shall be entitled to receive an annual salary of three thousand dollars; the recorder of the general land office an annual salary of fifteen hundred dollars; the principal clerk of the surveys, an annual salary of eighteen hundred dollars; and each of the said principal clerks an annual salary of eighteen hundred dollars from and: after the date of their respective commissions; and that the said commissioner be authorized to employ, for the service of the general land office, one clerk, whose annual salary shall not exceed fifteen hundred dollars; four clerks, whose annual salary Shall not exceed fourteen hundred dollars each; sixteen clerks, whose annual salary shall not exceed thirteen hundred dollars each; twenty clerks, whose annual salary shall not exceed twelve hundred dollars each; five clerks, whose annual salary shall not exceed eleven hundred dollars each; thirty-five clerks, whose annual salary shall not exceed one thousand dollars each; one principal draughtsman, whose annual salary shall not exceed fifteen hundred dollars;, one assistant draughtsman, whose annual salary shall not exceed twelve hundred dollars; two messengers, whose annual salary shall not exceed seven hundred dollars each; three assistant messengers, whose annual salary shall not exceed three hundred and fifty dollars each and two packers, to make up packages of patents, blank forms, and other things necessary to be transmitted to the district land offices, at a salary of four hundred and fifty dollars each.

13. - §11. That such provisions of the Act of the 25th of April, in the year one thousand eight hundred and twelve, entitled An act for the establishment of a general land office in the department of the treasury, and of all acts amendatory thereof, as are inconsistent with the provisions of this act, be, and the same are hereby repealed.

14. - §12. That from the first day of the month of October, until the first day of the month of April, in each and every ear, the general land office and all the bureaus and offices therein, as well as those in the departments of the treasury, war, navy, state, and general post-office, shall be open for the transaction of the public business at least eight hours in each and every day, except Sundays and the twenty-fifth day of December; and from the first day of April until the first day of October, in each year, Ill the aforesaid offices and bureaus shall be kept open for the transaction of the public business at least ten hours, in each and every day, except Sundays and the fourth day of July.

15. - §13. That if any person shall apply to any register of any land office to enter any land whatever, and the said register shall knowingly and falsely inform the person so applying that the same has already been entered, and refuse to permit the person so applying to enter the same, such register shall be liable therefor, to the person so applying, for five dollars for each acre of land which the person so applying offered to enter, to be recovered by action of debt, in any court of record having jurisdiction of the amount.

16. - §14. That all and every of the officers whose salaries are hereinbefore provided for, are hereby prohibited from directly or indirectly purchasing, or in any way becoming interested in the purchase, of, any of the public land; and in case of a violation of this section by such officer, and on proof thereof being made to the president of the United States, such officer, so offending, shall be, forthwith, removed from office.

GENERAL SHIP. One which is employed by the master or owners, on a particular voyage, and is hired by a number of persons, unconnected with each other, to convey their respective goods to the place of destination.

2. This contract, although usually made with the master, and not with the owners, is considered in law to be made with them also, and that both he and they are separately bound to the performance of it. Abbott on Ship. 112, 215, 216.

GENERAL SPECIAL IMPARLANCE, pleading. One in which the defendant reserves to himself " all advantages and exceptions whatsoever." 2 Chit. Pl. 408.

2. This kind of imparlance allows the defendant not only to plead in abatement and to the action, but also to the jurisdiction of the court. Gould on Pl. c. 2, §19. See Imparlance.

GENERAL TRAVERSE, pleading. One preceded by a general inducement, and denying, in general terms, all that is last before alleged on the opposite side, instead of pursuing the words of the allegations, which it denies. Gould on Pl. vii. 5, 6.

2. Of this sort of traverse, the replication de injuria sua propria, absque tali causa, in answer to a justification, is a familiar example. Bac. Ab. Pleas, H 1 Steph. Pl. 171; Gould, Pl. c. 7, §5 Archb. Civ. Pl. 194. Vide T?-averse; Special Traverse.

GENS. A word used by the Romans to represent race and nation. 1 Tho. Co. Litt. 259, n. 13. In the French law, it is used to signify people or nations, as Droit des Gens, the law of nations.

GENTLEMAN. In the English law, according to Sir Edward Coke, is one who bears a coat of armor. 2 Inst. 667. In the United States, this word is unknown to the law, but in many places it is applied, by courtesy, to all men. See Poth. Proc. Crim. sect. 1, App. §3.

GENTLEWOMAN. This word is unknown to the law in the United States, and is but little used. In England. it was, formerly, a good addition of the state or degree of a woman. 2 Inst. 667.

GENUS. It denotes the number of beings, or objects, which agree in certain general properties, common to them all, so that genus is, in fact, only an abstract idea, expressed by some general name or term; or rather a name or term, to signify what is called au abstract idea. Thus, goods is the generic name, and includes, generally, all personal property; but this word may be restrained, particularly in bequests to such goods as are of the same kind as those previously enumerated. Vide 3 Ves. 311 11 Ves. 657; 1 Eq. Cas. Ab. 201, pl. 14; 2 Ves. sen. 278, 280; Dig. 50, 17, 80; Id. 12, 1, 2, 3.

GEORGIA. The name of one of the original states of the United States of America. George the Second granted a charter to Lord Percival, and twenty others, for the government of the province of Georgia. It was governed under this charter till the year 1751, when it was surrendered to the crown. From that period to the time of the American revolution, the colony was governed as other royal provinces.

2. The constitution of the state, as revised, amended, and compiled by the convention of the state, was adopted at Louisville, on the 30th day of May, 1798. It directs, art. 1,

s. 1, that the legislative, executive, and judiciary departments of government shall be distinct, and each department shall be confided to a separate body of magistracy.

3.-1. The legislative power is vested in two separate and distinct branches, to wit, a senate and house of representatives, styled the General Assembly." 1st. The senate is elected annually, and is composed of one member from each county, chosen by the electors thereof. The senate elect, by ballot, a president out of their own body. 2d. The house of representatives is composed of members from all the counties, according to their respective numbers of free white persons, and including three-fifths of all the people of color. The enumeration is made once in seven years, and any county containing three thousand persons, according to the foregoing plan of enumeration, is entitled to two members; seven thousand to three members; and twelve thousand to four members; but each county shall have at least one, and not more than four members. The representatives are chosen annually. The house of representatives choose their speaker and other officers.

4. - 2. The executive power is vested in a governor, elected by the general assembly, who holds his office for the term of two years. In case of vacancy in his office, the president of the senate acts as governor, until the disability is removed, or until the next meeting of the general assembly.

5. - 3. The judicial powers of the state are, by the 3d article of the constitution, distributed as follows:

§1. The judicial powers of this state shall be vested in a superior court, and in such inferior jurisdictions as the legislature shall, from time to time, ordain and establish. The judges of the superior courts shall be elected for the term of three years, removable by the governor, on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon. The superior court shall have exclusive and final jurisdiction in all criminal cases which shall be tried in the county wherein the crime was committed; and in all cases respecting titles to land, which shall be tried in the county where the land lies; and shall have power to correct errors in inferior judicatories by writs of certiorari, as well as errors in the superior courts, and to order new trials on proper and legal grounds Provided, That such new trials shall be determined, and such errors corrected, in the superior court of the county in which such action originated. And the said court shall also have appellative jurisdiction in such other cases as the legislature may by law direct, which shall in no case tend to remove the cause from the county in which the action originated; and the judges thereof, in all cases of application for new trials, or correction of error, shall enter their opinions on the minutes of the court. The inferior courts shall have cognizance of all civil cases, which shall be tried in the county wherein the defendant resides, except in cases of joint obligors, residing in different counties, which may be

commenced in either county; and a copy of the petition and process served on the party or parties residing out of the county in which the suit may be commenced, shall be deemed sufficient service, under such rules and regulations as the legislature may direct; but the legislature may, by law, to which two-thirds of each branch shall concur, give concurrent jurisdiction to the superior courts. The superior and inferior courts shall sit in each county twice in every year, at such stated times as the legislature shall appoint.

6. - §2. The judges shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office; but shall not receive any other perquisites or emoluments whatever, from parties or others, on account of any duty required of them.

7. - §3. There shall be a state's attorney and solicitors appointed by the legislature, and commissioned by the governor, who shall hold their offices for the term of three years, unless removed by sentence on impeachment, or by the governor, on the address of each branch of the general assembly. They shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office.

8. - §4. Justices of the inferior courts shall be appointed by the general assembly, and be commissioned by the governor, and shall hold their commissions during good behaviour, or as long a they respectively reside in the county for which they shall be appointed, unless revoved by sentence on impeachment, or by the governor, on the address of two-thirds of each branch of the general assembly. They may be compensated for their services in such manner as the legislature may by law direct.

9. - §5. The justices of the peace shall be nominated by the inferior courts of the several counties, and commissioned by the governor; and there shall be two justices of the peace in each captain's district, either or both of whom shall have power to try all cases of a civil nature within their district, where the debt or litigated demand does not exceed thirty dollars, in such manner as the legislature may by law direct. They shall hold their appointments during good behaviour, or until they shall be removed by conviction, on indictment in the superior court, for malpractice in office, or for any felonious or infamous crime, or by the governor, on the address of two-thirds of each branch of the legislature.

10. - §6. The powers of a court of ordinary or register of probates, shall, be invested in the inferior courts of each county; from whose decision there may be an appeal to the superior court, under such restrictions and regulations as the general assembly may by law direct; but the inferior court shall have power to vest the care of the records, and other proceedings therein, in the clerk, or such other person as they may appoint; and

any one or more justices of the said court, with such clerk or other person, may issue citations and grant temporary letters in time of vacation, to hold until the next meeting of the said court; and such clerk or other person may grant marriage licenses.

11. - §7. The judges of the superior courts, or any one of them, shall have power to issue writs of mandamus. prohibi tion, scire facias, and all other writ's which may be necessary for carrying their powers fully into effect.

GERMAN, relations, germanus. Whole or entire, as respects genealogy or descent; thus, "brother-german," denotes one who is brother both by the father and mother's side cousins-germane" those in the first and nearest degree, i. e., children of brothers or sisters. Tech. Dict.; 4 M. & C. 56.

GERONTOCOMI, civil law.. Officers appointed to manage hospitals for poor old persons. Clef des Lois Rom. mot Administrateurs.

GESTATION, med. jur. The time during which a female, who has conceived, carries the embryo or foetus in her uterus. By the common consent of mankind, the term of gestation is considered to be ten lunar months, or forty weeks, equal to nine calendar months and a week. This period has been adopted, because general observation, when it could be correctly made, has proved its correctness. Cyclop. of Pract. Med. vol. 4, p. 87, art. Succession of inheritance. But this may vary one, two, or three weeks. Co. Litt. 123 b, Harg. & Butler's, note 190*; Ryan's Med. Jurisp. 121; Coop. Med. Jur: 18; Civ. Code of Louis. art. 203-211; 1 Beck's Med. Jur. 478. See Pregnancy.

GIFT, conveyancing. A voluntary conveyance; that is, a conveyance not founded on the consideration of money or blood. The word denotes rather the motive of the conveyance; so that a feoffment or grant may be called a gift when gratuitous. A gift is of the same nature as a settlement; neither denotes a form of assurance, but the nature of the transaction. Watk. Prin. 199, by Preston. The operative words of this conveyance are do or dedi. The maker of this instrument is called the donor, and he to whom it is made, the donee. 2 B. Com. 316 Litt. 69; Touchs. ch. 11.

GIFT, contracts. The act by which the owner of a thing, voluntarily transfers the title and possession of the same, from himself to another person who accepts it, without any consideration. It differs from a grant, sale, or barter in this, that in each of these cases there must be a consideration, and a gift, as the definitionstates, must be without consideration.

2. The manner of making the gift may be in writing, or verbally, and, as far as personal chattels are concerned, they are equally binding. Perk. §57; 2 Bl. Com. 441. But real estate must be transferred by deed.

3. There must be a transfer made with an intention of passing the title, and delivering the possession of the thing given, and it must be accepted by the donee. 1 Madd. Ch. R. 176, Am. ed. p. 104; sed vide 2 Barn. & Ald. 551; Noy's Rep. 67.

4. The transfer must be without consideration, for if there be the least consideration, it will change the contract into a sale or barter, if possession be delivered; or if not, into an executory contract. 2 Bl. Com. 440.

5. Gifts are divided into gifts inter vivos, and gifts causa mortis; and also' into simple or proper gifts; that is, such as are to take immediate effect, without any condition; and qualified or improper gifts, or such as derive their force upon the happening, of some condition or contingency; as, for example, a donatio causa mortis. Vide Donatio causa mortis; Gifts inter vivos; and Vin. Ab. h. t.; Com. Dig. Biens, D 2, and Grant; Bac. Ab. Grant; 14 Vin. Ab. 19 3 M. & S. 7 5 Taunt. 212 1 Miles, R. 109.

GIFT INTER Vivos. A gift made from one or more persons, without any prospect of immediate death, to one or more others.

2. These gifts are so called to distinguish them from gifts causa-mortis, (vide Donatio causa mortise,) from which they differ essentially. 1. A gift inter vivos, when completed by delivery, passes the title to the thing so that it cannot be recovered back by the giver; the gift causa mortis is always given upon the implied condition that the giver may, at any time during his life, revoke it. 7 Taunt. 231; 3 Binn. 366. 2. A gift inter vivos may be made by the giver at any time; the donatio causa mortis must be made by the donor while in peril of death. In both cases there must be a delivery. 2 Kent's Com. 354; 1 Beav. R. 605; 1 Miles, R. 109.

GIFTOMAN, Swedish law. He who has a right to dispose of a woman in marriage.

2. This right is vested in the father, if living; if dead, in the mother. They may nominate a person in their place; but for want of such nomination, the brothers german; and for want of them, the consanguine brothers; and in default of the latter, uterine brothers have the right, but they are bound to consult the paternal or maternal grandfather. Swed- Code, tit. of Marriage.

GILL. A measure of capacity, equal to one-fourth of a pint. Vide Measure.

GIRANTEM, mer. law. An Italian word,, which signifies the drawer. It is derived from, girare, to draw, in the same manner as the English verb to murder, is transformed into murdrare in our old indictments. Hall, Mar. Loans, 183, n.

GIRTH., A girth or yard is a measure of length. The word is of Saxon origin, taken from the circumference of the human body. Girth is contracted from girdeth, and signifies as much as girdle. See Ell.

GIST, pleading. Gist of the action is the essential ground or object of it, in point of law, and without which there is no cause of action. Gould on Pl. c. 4, §12. But it is observable that the substance or gist of the action is not always the principal cause of the plaintiff Is complaint in point of fact, nor that on which he recovers all or the greatest part of his damages.

2. It frequently bappens that upon that part of his declaration which contains the substance or gist of the, action, he only recovers nominal damages, and he gets his principal satisfaction on account of matter altogether collateral thereto. A familiar instance of this is the case where a father sues the defendant for a trespass for the seduction of his daughter. The gist of the action is the trespass, and the loss of his daughter's services, but the collateral cause is the injury done to his feelings, for which the principal damages are given. In stating the substance or gist of the action, every thing must be averred which is necessary to be proved at the trial. Vide 1 Vin. Ab. 598; 2 Phil. Ev. 1, note. See Bac. Abr. Pleas, B; Doct. P. 85. See Damages, special, in pleading; 1 Vin. At. 598; 2 Phil. Ev. 1, n.

GIVER, contracts. He who makes a gift. (q. v.) By his gift, the giver always impliedly agrees with the donee that he will not revoke the gift.

GIVING IN PAYMENT. This term is used in Louisiana; it signifies that a debtor, instead of paying a debt he owes in money, satisfies his creditor by giving in payment a movable or immovable. Vide Dation en paiement.

GIVING TIME, contracts. Any agreement by which a creditor gives his debtor a delay or time in paying his debt, beyond that contained in the original agreement. When other persons are responsible to him, either as drawer, endorser, or surety, if such time be given without the consent of the latter, it discharges them from responsibility to him. 1 Gall. Rep. 32; 7 John. R. 332; 10 John. Rep. 180; Id. 587 Kirby, R. 397 3 Binn. R. 523; 2 John. Ch. R. 554; 3 Desaus. Ch. Rep. 604; 2 Desaus. Ch. R. 230, 389 2 Ves. jr. 504; 6 Ves. jr. 805 3 Atk. 91; 2 Bos. & Pull,. 62; 4 M. & S. 232; Bac. Ab. Obligations, D; 6. Dow. P. C. 238; 3 Meriv. R. 272; 5 Barn., & A. 187. Vide 1 Leigh's N . P. 31; 1 B. & P. 652; 2 B. & P. 61; 3 B. & P. 363; 8 East, R. 570; 3 Price, R. 521; 2 Campb. R. 178. 12 East,.R. 38; 5 Taunt. R. 319; S. C. 1 E. C. L. R. 119; Rosc. Civ. Ev. 171; 8 Watts, R. 448; 4 Penn. St. R. 73; 10 Paige, 76; and the article Forbearance.

2. But more delay in suing, without fraud or any agreement with the principal, is not such giving time as will discharge the surety. 1 Gallis. 32; 2 Pick. 581 3 Blackf. 93 7 John. 332. See Surety.

GLADIUS. In our old Latin authors, and in the Norman laws, this word was used to signify supreme jurisdiction, jus gladii.

GLEANING. The act of gathering such grain in a field where it grew, as may, have been left by the reapers after the sheaves were gathered.

2. There is a custom in England, it is said, by which the poor are allowed to enter and glean upon another's land after harvest without being guilty of a trespass. 3 Bl. Com. 212 . But it has been decided that the community are not entitled to claim this privilege as a right. 1 Hen. Bl. 51. In the United States, it is believed, no such right exists. This right seems to have existed in some parts of France. Merl. Rep. mot Glanage. As to whether gleaning would or would not amount to larceny, vide Woodf. Landl. & Ten. 242; 2 Russ. on Cr. 99. The Jewish law may be found in the 19th chapter of Leviticus, verses 9 and 10. See Ruth, ii. 2, 3; Isaiah, xvii. 6.

GLEBE, eccl. law. The land which belongs to a church. It is the dowry of the church. Gleba est terra qua consistit dos ecclesiae. Lind. 254; 9 Cranch, Rep. 329. In the civil law it signified the soil of an inheritance; there were serfs of the glebe, called gleboe addicti. Code, 11, 47, 7 et 21; Nov. 54, c. 1.

GLOSS. Interpretation, comment, explanation, or remark, intended to illustrate the text of an author.

GLOSSATOR. A commentator or annotator of the Roman law. One of the authors of the Gloss.

GLOUCESTER, STATUTE OF. An English statute, passed 6 Edw. I., A. D., 1278; so called, because it was passed at Gloucester. There were other statutes made at Gloucester, which do not bear this name. See stat. 2 Rich. II.

GO WITHOUT DAY. These words have a technical sense. When a party is dismissed the court, he is said to go without day; that is, there is no day appointed for him to appear again.

GOD. From the Saxon god, good. The source of all good; the supreme being. 1. Every man is presumed to believe in God, and he who opposes a witness on the ground of his unbelief is bound to prove it. 3 Bouv. Inst. u. 3180.

2. Blasphemy against the Almighty, by denying his being or providence, was an offence punishable at common law by fine and imprisonment, or other infamous corporal punishment. 4 Bl. Corn. 60; 1 East, P. C. 3; 1 Russ. on Crimes, 217. This offence his been enlarged in Pennsylvania, and perhaps most of the states, by statutory provision. Vide Christianity; Blasphemy; 11 Serg. & Rawle, 394.

3. By article 1, of amendments to the Constitution of the United States, it is provided that "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof." In the United States, therefore, every one is allowed to worship God according to the dictates of his own conscience.

GOD AND MY COUNTRY. When a prisoner is arraigned, he is asked, How will you be tried? he answers, "By God and my country." This practice arose when the prisoner had the right to choose the mode of trial, namely, by ordeal or by jury, and then he elected by God or by his country, that is, by jury. It is probable that originally it was "By God or my country" for the question asked supposes an option in the prisoner, and the answer is meant to assert his innocence by declining neither sort of trial. 1 Chit. Cr. Law, 416; Barr. on the Stat. 73, note.

GOD B0TE, eccl. law. An ecclesiastical or church fine imposed upon an. offender for crimes and offences committed against God.

GOING WITNESS. One who is going out of the jurisdiction of the court, although only into a state or country under the general sovereignty; as, for example, if he is going from one to another of the United States; or, in Great Britain, from England to Scotland. 2 Dick. 454.

GOLD. A metal used in making money, or coin. It is pure when the metal is unmixed with any other. Standard gold, is gold mixed with some other metal, called alloy. Vide Money.

GOOD BEHAVIOUR. Conduct authorized by law. Surety of good behaviour may be demanded from any person who is justly suspected, upon sufficient grounds, of intending to commit a crime or misdemeanor. Surety. for good behaviour is somewhat similar to surety of the peace, but the recognizance is more easily forfeited, and it ought to be demanded with greater caution. 1 Binn. 98, n.; 2 Yeates, 437; 14 Vin. Ab. 21; Dane's Ab. Index, h. t. As to what is a breach of good behaviour, see 2 Mart. N. S. 683; Hawk. b. 1, c. 61, s. 6 Chit. Pr. 676. Vide Surdy of the peace.

GOOD AND LAWFUL MEN, probi et legales homines. The law requires that those who serve on juries shall be good. and lawful men; by which is understood those qualified to serve on juries; that is, that they be of full age, citizens, not infamous nor

non compos mentis, and they must be res ident in the county where the venue is laid. Bac. Ab. Juries, A; Cro. Eliz. 654; 3 Inst. 30; 2 Rolle's R. 82; Cam. & Norw. 38.

GOOD CONSIDERATION, contracts. A good consideration is one which flows from kindred or natural love and affection alone, and is not of a pecuniary.nature. Vin. Ab. Consideration, B; 1 Bouv. Inst. n. 613. Vide Consideration.

GOOD WILL. By this term is meant the benefit which arises from the establishment of particular trades or occupations. Mr. Justice Story describes a good will to be the advantage of benefit which is acquired by an establishment, beyond the mere value of the capital, stocks, funds, or property employed therein, in consequence of the general public patronage and encouragement, which it receives from constant or habitual customers, on account of its local position, or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities, or prejudices. Story, Partn. §99; see 17 Ves. 336; 1 Hoffm. R. 68; 16 Am. Jur. 87.

2. As between partners, it has been held that the good will of a partnership trade survives; 6 Ves. 539; but this appears to be doubtful; 16 Ves. 227; and a distinction, in this respect, has been suggested between commercial and professional partnerships; the advantages of established connexions in the latter being held to survive, unless the benefit is excluded by positive stipulation. 3 Madd. 79. As to the sale, of the good-will of a trade or business, see. 3 Meriv. 452; 1 Jac. & Walk. 689; 2 Swanst. 332; 1 Ves. & Beames, 505; 17 Ves. 346; 2 Madd. 220; Gow on Partn. 428; Collyer on Partn. 172, note; 2 B. & Adolph. 341; 4 Id. 592, 596; 1 Rose, 123; 5 Russ. 29; 2 Watts, 111; 1 Chit. Pr. 868; 1 Sim. & Stu. 74; 2 Russ. R. 170; 1 Jac. & W. 380; 1 Russ. R. 376; 1 P. & W. 184; 2 Mad. R. 198; l T. R. 118. Vide 5 Bos. & Pull. 67; 1 Bro. C. C. 160, as to the effect of a bankrupt's assignment on a good-will; and 16 Amer. Jur. 87.

GOODS, property. For some purposes this term includes money, valuable securities, and other mere personal effects. The term. goods and chattels, includes not only personal property in possession, but also choses in action. 12 Co. 1; 1 Atk. 182. The term chattels is more comprehensive than that of goods, and will include all animate as well as inanimate property, and also a chattel real, as a lease for years of house or land. Co. Litt. 118; 1 Russ. Rep. 376. The word goods simply and without qualification, will pass the whole personal estate when used in a will, including even stocks in the funds. But in general it will be limited by the context of the will. Vide 2 Supp. to Ves. jr. 289; 1 Chit. Pr. 89, 90; 1. Ves. jr. 63; Hamm. on Parties, 182; 3 Ves. 212; 1 Yeates, 101; 2 Dall. 142; Ayl. Pand. 296; Wesk. Ins. 260; 1 Rop. on Leg. 189; 1 Bro. C. C. 128; Sugd. Vend. 493, 497; and the articles Biens; Chattels; Furniture. 2. Goods are said to be of different kinds, as adventitious, such as are given or arise

otherwise than by succession; dotal goods, or those which accrue from a dowry, or marriage portion; vacant goods, those which are abandoned or left at large.

GOODS SOLD AND DELIVERED. This phrase is frequently used in actions of assumpsit, and the sale and delivery of goods are the foundation of the action. When a plaintiff declares for goods sold and delivered, he is required to prove, first, the contract of sale; secondly, the delivery of the goods, or such disposition of them as will be equivalent to it; and, thirdly, their value. 11 . Shepl. 505. These will be separately considered.

2. - 1. The contract of sale may be express, as where the purchaser actually bought the goods on credit, and promised to pay for them at a future time; or implied, where from his acts the defendant manifested an intention to buy them; as, for example, when one takes goods by virtue of a sale made by a person who has no authority to sell, and the owner afterwards affirms the contract, he may maintain an action for goods sold and delivered. 12 Pick. 120. Again, ifthe goods come, to the hands of the defendant tortiously, and are converted by him to his own use, the plaintiff may waive the tort, and recover as for goods sold and delivered. 3 N. H. Rep. 384; 1 Miss. R. 430, 643; 3 Watts, 277; 5 Pick. 285; 4 Binn. 374; 2 Gill & John. 326; 3 Dana, 552; 5 Greenl. 323.
3. - 2. The delivery must be made in accordance with the terms of the sale, for if there has not been such delivery no action can be maintained. 2 Ired. R. 12; 15 Pick. 171; 3 John. 534.

4.- 3. The plaintiff must prove the value of the goods; where there is an express agreement as to their value, be established by evidence, but where there is no such express agreement, the value of the goods at the time of sale must be proved. Coxe, 261. And the purchaser of goods cannot defend, against an action for the purchase money, by showing that the property was of no value. 8 Port. 133.

5. To support an action for goods sold and delivered, it is indispensable that the goods should have been sold for money, and that the credit on which they were sold should have expired. But where the goods have been sold on a credit to be paid for by giving a note or bill, and the purchaser does not give it according to contract, although the seller cannot recover in assumpsit for goods sold and delivered till the credit has expired, yet he may proceed immediately for a breach of the agreement. 21 Wend. 175.

6. When goods have been sold to be paid for partly in money, and partly in goods to be delivered to the vendor, the plaintiff must declare specially, and he cannot recover on the common count for goods sold and delivered. 1 Chit. Pl. 339; 1 Leigh's N. P. 88; 1 H. Bl. 287; Holt, 179.

GOUT, med. jur. contracts. An inflammation of the fibrous and ligamentous parts of the joints.

2. In cases of insurance on lives, when there is warranty of health, it seems that a man subject to the gout, is a life capable of being, insured, if he has no sickness at the time to make it an unequal contract. 2 Park, Ins. 583.

GOVERNMENT, natural and political law. The manner in which sovereignty is exercised in each state.

2. There are three simple forms of government, the democratic, the aristocratic, and monarchical. But these three simple forms may be varied to infinity by the mixture and divisions of their different powers. Sometimes by the word government is understood the body of men, or the individual in the state, to whom is entrusted the executive power. It is taken in this sense when the government is spoken of in opposition to other bodies in the state.

3. Governments are also divided into monarchical and republican; among the monarchical states may be classed empires, kingdoms, and others; in these the sovereignty resides in, a single individual. There are some monarchical states under the name of duchies, counties, and the like. Republican states are those where the sovereignty is in several persons. These are subdivided into aristocracies, where the power is exercised by a few persons of the first rank in the state; and democracies, which are those governments where the common people may exercise the highest powers. 1 Bouv. Inst. n. 20. See Aristocracy; Democracy; Despotism; Monarchy; Theocracy.

4. It should be remembered, however, that governments, for the most part, have not been framed on models. Their parts and their powers grew out of occasional acts, prompted by some urgent expediency, or some private interest, which, in the course of time, coalesced and hardened into usages. These usages became the object of respect and the guide of conduct long before they were embodied in written laws. This subject is philosophically treated by Sir James McIntosh, in his History of England. See vol. 1, p. 71, et seq.

GOVERNOR. The title of the executive magistrate in each state and territory of the United States. Under the names of the particular states, the reader will find some of the duties of the governor of such state.

GRACE. That which a person is not entitled to by law, but which is extended to him as a favor; a pardon, for example, is an act of grace. There are-certain days allowed to

a payer of a promissory note or bill of exchange, beyond the time which appears on its face, which are called days of grace. (q. v.)

GRADUS. This is a Latin word, literally signifying a step; figuratively it is used to designate a person in the ascending or descending line, in genealogy; a degree.

GRAFFER. This word is a corruption of the French word greffier, a clerk, or prothonotary. It signifies a notary or scrivener; vide stat. 5 Hen. VII 1. c. 1.

GRAFT. A figurative term in chancery practice, to designate the right of a mortgagee in premises, to which the mortgagor at the time of making the mortgage had an imperfect title, but who afterwards obtained a good title. In this case the new mortgage is considered a graft into the old stock, and, as arising in consideration of the former title. 1 Ball & Beat. 46; Id. 40; Id. 57; 1 Pow. on Mortg. 190. See 9 Mass. 34. The same principle has obtained by legislative enactment in Louisiana. If a person contracting an obligation towards another, says the Civil Code, art. 2371, grants a mortgage on property of which he is not then the owner, this mortgage shall be valid, if the debtor should ever acquire the ownership of, the property, by whatever right.

GRAIN, weight. The twenty-fourth part of a pennyweight.

2. For scientific purposes the grain only is used, and sets of weights are constructed in decimal progression, from 10,000 grains downward to one hundredth of a grain.

GRAIN, corn. It signifies wheat, rye, barley, or other corn sown in the ground In Pennsylvania, a tenant for a certain term is entitled to the way-going crop. 5 inn. 289, 258; 2 Binn. 487; 2 Serg. & Rawle, 14.

GRAINAGE, Eng. law. The name of an ancient duty collected in London, consisting of one-twentieth part of the salt imported into that city.

GRAMME. A French weight. The gramme is the weight of a cubic centimetre of distilled water, at the temperature of zero. It is equal to 15.4441 grains troy, or 5.6481 drachms avoirdupois. Vide. Measure.

GRAND. An epithet frequently used to denote that the thing. to which it is joined is of more importance and dignity, than other things of the same name; as, grand assize, a writ in a real action to determine the right of property in land; grand cape, a writ used in England, on a plea of land, when the tenant makes default in appearance at the day given for the king to take the land into his hands; grand days, among the English lawyers, are those days in term which are solemnly kept in the inns of court and chancery, namely, Candlemas day, in Hilary term; Ascension day, in Easter term; and

All Saint's day, in Michaelmas term; which days are dies non juridici. Grand distress is the name of a writ so called because of its extent, namely, to all. the goods and chattels of the party distrained within the county; this writ is believed to be peculiar to England. Grand Jury. (q. v.) Grand serjeantry, the name of an ancient English military tenure.

GRAND BILL OF SALE, Eng. law. The name of an instrument used for the transfer of a ship, while she is at sea; it differs from a common bill of sale. (q. v.) See 7 Mart. Lo. R. 318; 1 Harr. Cond. Lo. R. 567.

GRAND COUTUMIER. Two collections of laws bore this title. The one, also called the Coutumier of France, is a collection of the customs, usages, and forms of practice, which had been used from time immemorial in France: the other, called the Coutumier de Normandie, which indeed made a part of the former, with some alterations, was composed about the fourteenth of Henry II., in 1229, and is a collection of the Norman laws not as they stood at the Conquest of England, by William the Conqueror, but some time afterwards, and contains many provisions, probably borrowed from the old:English or Saxon laws. Hale's Hist. C. L. c. 6.

GRAND JURY, practice. A body of men, consisting of not less than twelve nor more than twenty-four, respectively returned by the sheriff of every county to every session of the peace, oyer and terminer and general gaol delivery, to whom indictments are preferred. 4 Bl. Com. 302; 1 Chit. C. L. 310, 1.

2. There is just reason to believe that this institution existed among the Saxons, Crabb's C. L. 35. By the constitutions of Clarendon, enacted 10 H. II. A. D. 1164, it is provided, that "if such men were suspected, whom none wished or dared to accuse, the sheriff, being thereto required by the bishop, should swear twelve men of the neighborhood, or village, to declare the truth" respecting such supposed crime; the jurors being summoned as witnesses or accusers, rather than judges. If this institution did not exist before, it seems to be pretty certain that this statute established grand juries, or recognized them, if they existed before.

3. A view of the important duties of grand juries will be taken, by considering, 1. The organization of the grand jury. 2. The extent of its jurisdiction. 3. The mode of doing business. 4. The evidence to be received. 5. Their duty to make presentments. 6. The secrecy to be observed by the grand jury.

4. - 1. Of the organization of the grand jury. The law requires that twenty-four citizens shall be summoned to attend on the grand jury; but in practice, not more than twenty-three are sworn, because of the inconvenience which else might arise, of having twelve, who are sufficient to find a true bill, opposed to twelve others who might be

against it. 6 Adolph. & Ell. 236; S. C. 33 e. C. L. R. 66; 2 Caines, R. 98. Upon being called, all who present themselves are sworn, as it scarcely ever happens that all who are summoned are in attendance. The grand jury cannot consist of less than twelve, and from fifteen to twenty are usually sworn. 2 Hale, P. C. 161; 7 Sm. & Marsh. 58. Being called into the jurybox, they are usually permitted to select a foreman whom the court appoints, but the court may exercise the right to nominate one for them. The foreman then takes the following oath or affirmation, namely: "You A B, as foreman of this inquest for the body of the _____ of _____, do swear, (or affirm) that you will diligently inquire, and true presentments make, of all such articles, matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service; the commonwealth's counsel, your fellows and yhour own, you shall keep secret; you shall present no one for envy, hatred or malice; nor shall you leave any one unpresented for fear, favor, affection, hope of reward or gain; but shall present all things truly, as they come to your knowledge, according to the best of your understanding, (so help you God.") It will be perceived that this oath contains the substance of the duties of the grand jury. The foreman having been sworn or affirmed, the other grand jurors are sworn or affirmed according to this formula: "You 'and each of you do swear (or affirm) that the same oath (or affirmation) which your foreman has taken on his part, you and every one of you shall well and truly observe on your part." Being so sworn or affirmed, and having received the charge of the court, the grand jury are organized, and may proceed to the room provided for them to transact the business which may be laid before them. 2 Burr. 1088; Bac. Ab. Juries, A. The grand jury constitute a regular body until discharged by the court, or by operation of law, as where they cannot continue by virtue of an act of assembly beyond a certain day. But although they have been formally discharged by the court, if they have not separated, they may be called back, and fresh bills submitted to them; 9 C. & P. 43; S. C. 38 E. C. L. R. 2 8.

5. - 2. The extent of the grand jury's jurisdiction. Their jurisdiction is coextensive with that of the court for which they inquire; both as to the offences triable there, and the territory over which such court has jurisdiction.

6. - 3. The mode of doing business. The foreman acts as president, and the jury usually appoint one of their number to perform the duties of secretary. No records are to be kept of the acts of the grand jury, except for their own use, because, as will be seen hereafter, their proceedings are to be secret. Being thus prepared to enter upon their duties, the grand jury are supplied with bills of indictment by the attorney-general or other officer, representing the state or commonwealth against offenders. On these bills are endorsed the names of the witnesses by whose testimony they are supported. The witnesses are in attendance in another room, and must be called when wanted. Before they are examined as to their knowledge of the matters mentioned in

the indictment, care must be taken that they have been sworn or affirmed. For the sake of convenience, they are generally sworn or affirmed in open court before they are sent to be examined, and when so qualified, a mark to that effect is made opposite their names.

7. In order to save time, the best practice is to find a true bill, as soon as the jury are satisfied that the defendant ought to be put upon his trial. It is a waste of time to examine any other witness after they have arrived at that conclusion. Twelve at least must agree, in order to find a true bill; but it is not required that they should be unanimous. Unless that number consent, the bill must be ignored. When a defendant is to be put upon his trial, the foreman must write on the back of the indictment "a true bill," sign his name as foreman, and date the time of finding. On the. contrary, where there is not sufficient evidence to authorize the finding of the bill, the jury return that they are ignorant whether the person accused committed the offence charged in the bill, which is expressed by the foreman endorsing on the bill "ignoramus," signing his name as before, and dating the time.

8. - 4. Of the evidence to be received. In order to, ascertain the facts which the jury have not themselves witnessed, they must depend upon the statement of those who know them, and who will testify to them. When the witness, from his position and ability, has been in a condition to know the facts about which he testifies, he is deserving of implicit confidence; if, with such knowledge, he has no motive for telling a false or exaggerated story, has intelligence enough to tell what he knows, and give a probable account of the transaction. If, on the other hand, from his position he could not know the facts, or if knowing them, he distorts them, he is undeserving of credit. The jury are the able judges of the credit and confidence to which a witness is entitled.

9. Should any member of the jury be acquainted with any fact on which the grand jury are to act, he must, before he testifies, be sworn or affirmed, as any other witness, for the law requires this sanction in all cases.

10. As the jury are not competent to try the accused, but merely to investigate the case so far as to ascertain whether he ought to be put on his trial, they cannot hear evidence in his favor; theirs is a mere preliminary inquiry; it is when he comes to be tried in court that he may defend himself by examining witnesses in his favor, and showing the facts of the case.

11. - 5. Of presentments. The jury are required to make true presentments of all such matters which may be given to them in charge, or which have otherwise come to their knowledge. A presentment, properly speaking, is the notice taken by the grand jury of any offence from their own knowledge, as of a nuisance, a libel, or the like. In these cases, the authors of the offence should be named, so that they may be indicted,

12. - 6. Of the secrecy to be observed by the grand jury. The oath which they have taken obliges them to keep secret the commonwealth's counsel, their fellows and their own. Although contrary to the general spirit of our institutions, which do not shun daylight, this secrecy is required by law for wise purposes. It extends to the votes given in any case, to the evidence delivered by witnesses, and the communications of the jurors to each other; the disclosure of these facts, unless under the sanction of law, would render the imprudent juror who should make them public, liable to punishment. Giving intelligence toa defendant that a bill has been found against him, to enable him to escape, is so obviously wrong, that no one can for a moment doubt its being criminal. The grand juror who should be guilty of this offence might, upon conviction, be fined and imprisoned. The duration of the secrecy appears not to be definitely settled, but it seems this injunction is to remain as long as the particular circumstances of each case require. In a case, for example, where a witness swears to a fact in open court, on the trial, directly in opposition to what he swore before the grand jury, there can be no doubt the injunction of secrecy, as far as regards this evidence, would be at an end, and the grand juror might be sworn to testify what this witness swore to in the grand jury's room, in order that the witness might be prosecuted for perjury. 2 Russ. Cr.. 616; 4 Greenl. Rep. 439; but see contra, 2 Halst. R. 347; 1 Car. & K. 519. Vide, generally, 1 Chit. Cr. Law, 162; 1 Russ. Cr. 291; 2 Russ. Cr. 616 2 Stark. Ev. 232, n. 1; 1 Hawk. 65, 500 2 Hawk. ch. 25; .3 Story, Const. §1778 2 Swift's Dig. 370; 4 Bl. Com. 402; Archb. Cr. Pl. 63; 7 Sm. Laws Penna. 685.

GRANDCHILDREN, domestic relations. The children of one's children. Sometimes these may claim bequests given in a will to children, though in general they can make no such claim. 6 Co. 16.

GRANDFATHER, domestic relations. The father of one's father or mother. The father's father is called the paternal grandfather; the mother's father is the maternal grandfather.

GRANDMOTHER, domestic relations. The mother of one's father or mother. The father's mother is called the paternal grandmother; the mother's mother is the maternal grandmother.

GRANT, conveyancing, concessio. Technically speaking, grants are applicable to the conveyance of incorporeal rights, though in the largest sense, the term comprehends everything that is granted or passed from one to another, and is applied to every species of property. Grant is one of the usual words in a feoffment, and differs but little except in the subject-matter; for the operative words used in grants are dedi et concessi, "have given and granted."

2. Incorporeal rights are said to lie in grant and not in livery, for existing only in idea, in contemplation of law, they cannot be transferred by livery of possession; of course at common law, a conveyance in writing was necessary, hence they are said to be in grant, and to pass by the delivery of the deed.

3. To render the grant effectual, the common law required the consent of the tenant of the land out of which the rent, or other incorporeal interest proceeded; and this was called attornment. (q. v.) It arose from the intimate alliance between the lord and vassal existing under the feudal tenures., The tenant could not alien the feud without the consent of the lord, nor the lord part with his seigniory without the consent of the tenant. The necessity of attornment has been abolished in the United States. 4 Kent, Com. 479. He who makes the grant is called the grantor, and he to whom it is made the grantee. Vide Com. Dig. h. t.; 14 Vin. Ab. 27; Bac. Ab. h. t. 4 Kent, Com. 477; 2 Bl. Com. 317, 440; Perk. ch. 1; Touchs. c. 12; 8 Cowen's R. 36.

4. By the word grant, in a treaty, is meant not only a formal grant, but any concession, warrant, order, or permission to survey, possess or settle; whether written or parol, express, or presumed from possession. Such a grant may be made by law, as well as by a patent pursuant to a law., 12 Pet. R. 410. See, generally, 9 A. & E. 532; 5 Mass. 472; 9 Pick. 80.

GRANT, BARGAIN, AND SELL. - By the laws of the states of Pennsylvania, Delaware, Missouri, and Alabama, it is declared that the words grant, bargain, and sell) shall amount to a covenant that the grantor was seised of an estate in fee, freed from encumbrances done or suffered by him, and for quiet enjoyment as against all his acts. These words do not amount to a general warranty, but merely to a covenant that the grantor has not done any acts nor created any, encumbrance, by which the estate may be defeated. 2 Binn. R. 95 3 Penna. R. 313; 3 Penna., R. 317, note; 1 Rawle, 377; 1 Misso. 576. Vide 2 Caines R. 188; 1 Murph. R. 343; Id. 348; Ark. Rev. Stat, ch. 31, s. 1; 11 S. & R. 109.

GRANTEE. He to whom a grant is made.

GRANTOR. He by whom a grant is made.

GRASSHEARTH, old Engl. law. The name of an ancient customary service of tenants doing one day's work for their landlord.

GRATIFICATION. A reward given voluntarily for some service or benefit rendered, without being requested so to do, either expressly or by implication.

GRATIS. Without reward or consideration.

2. When a bailee undertakes to perform some act or work gratis, he is answerable for his gross negligence, if any loss should be sustained in consequence of it; but a distinction exists between non-feasance and misfeasance; between a total omission to do an act which one gratuitously promises to do, and a culpable negligence in the execution of it; in the latter case he is responsible, while in the former he would not, in general, be bound to perform his contract. 4 Johns. R. 84; 5 T. 143; 2 Ld. Raym. 913.

GRATIS DICTUM. Assaying not required; a statement voluntarily made without necessity.

GRATUITOUS CONTRACT, civ. law. One, the object of which is for the benefit of the person with whom it is made, without any profit, received or promised, as a consideration for it as, for example, a gift. 1 Bouv. Inst. n. 709.

GRAVAMEN. The grievance complained of; the substantial cause, of the action. See Greenl. Ev. §66.

GRAVE. A place where a dead body is interred.

2. The violation of the grave, by taking up the dead body, or stealing the coffin or grave clothes, is a misdemeanor at common law. 1 Russ. on. Cr. 414. A singular case, illustrative of this subject, occurred in Louisiana. A son, who inherited a large estate from his mother, buried her with all her jewels, worth $2000; he then made a sale of all he inherited from his mother, for $30,000. After this, a thief broke the grave and stole the jewels, which, after his conviction, were left with the clerk of the court, to be delivered to the owner. The son claimed them, and so did the purchaser of the inheritance; it was held that the jewels, although buried with the mother, belonged to the son, and, that they passed to the purchaser by a sale of the whole inheritance. 6 Robins. L. R. 488. See Dead Body.

3. In New York, by statutory enactment, it is provided, that every person who shall open a grave, or other place of interment, with intent, 1. To remove the dead body of any human being, for the purpose of selling the same, or for the purpose of dissection; or, 2. To steal the coffin, or any part thereof, or the vestments or other articles interred with any dead body, shall, upon conviction, be punished by imprisonment, in a state prison, not exceeding two years, or in a county gaol, not exceeding six months, or by fine not, exceeding two hundred and fifty dollars, or by both such fine and imprisonment. Rev. Stat. part 4, tit. 5, art. 3, §15.

GREAT CATTLE. By this, term, in the English law, is, meant all manner of beasts except sheep and yearlings. 2 Rolle's Rep. 173.

GREAT CHARTER. The name of the charter granted by the English King John, securing to the English people their principal liberties; magna charta. (q. v.)

GREAT LAW. The name of an act of the legislature of Pennsylvania, passed at Chester, immediately after the arrival of William Penn, December 7th, 1682. Serg. Land Laws of Penn. 24, 230.

GREE, obsolete. It signified satisfaction; as, to make gree to the parties, is, to agree with, or satisfy them for, an offence done.

GREEN WAX, Eng. law. The name of the estreats of fines, issues, and amerce ments in the exchequer, delivered to the sheriff under the seal of that court, which is made with green wax.

GROS BOIS, or GROSSE BOIS. Such wood as, by the common law or custom, is reputed timber. 2 hist. 642.

GROSS. Absolute; entire, not depending on another. Vide Common.

GROSS ADVENTURE. By this term the French lay writers signify a maritime loan, or bottomry. (q, v.) It is so called because the lender exposes his money to the perils of the sea; and contributes to the gross or general average. Poth. h. t.; Pard. Dr. Com . h. t.

GROSS AVERAGE, mar. law. That kind of average which falls on the ship, cargo, and freight, and. is distinguished from particular average. See Average.

GROSS NEGLIGENCE. Lata culpa, or, as the Roman lawyers most accurately call it) dolo proxima, is, in practice, considered as equivalent to dolus or fraud itself, and consists, according to the best interpreters, in the omission of that care which even inattentive and thoughtless men never fail to take of their own property. Jones on Bailments, 20. It must not be confounded, however, with fraud, for it may exist consistently with good faith and honesty of intention, according to common law authorities.

GROSS WEIGHT. The total weight of goods or merchandise, with the chests, bags, and the like, from which. are to be deducted tare and tret.

GROUND RENT, estates. In Pennsylvania, this term is used to signify a perpetual rent issuing out of some real estate. This rent is redeemable where there is a covenant in the deed that, before the expiration of a period therein named, it may be redeemed by the payment of a certain sum of money; or it is irredeemable, when there is no such

agreement; and, in the latter case, it cannot be redeemed without the consent of both parties. See 1 Whart. R. 837; 4 Watts, R. 98; Cro. Jac. 510; 6 Halst. 262; 7 Wend. 463; 7 Pet. 596; 2 Bouv. Inst. n. 1659, and note, and Emphyteosis.

GROUNDAGE, mar. law. The consideration paid for standing a ship in a port. Jacobs, Dict. h. t., Vide Demurrage.

GUARANTEE, contracts. He lo whom a guaranty is made.

2. The guarantee is entitled to receive payment, in the first place, from the debtor, and, secondly, from the guarantor. He must be careful not to give time beyond that stipulated in the original agreement, to the debtor, without the consent of the guarantor; the guarantee should, at the instance of the guarantor, bring an action against the principal for the recovery of the debt. 2 Johns. Oh. R. 554; 17 Johns. R. 384; 8 Serg. & Rawle, 116; 10 Serg. & Rawle, 33; 2 Bro. C. C. 579, 582; 2 Ves. jr. 542. But the mere omission of the guarantee to sue the principal debtor will not, in general, discharge the guarantor. 8 Serg. & Rawle, 112; 3 Yeates, R. 157; 6 Binn. R. 292, 300.

GUARANTOR, contracts. He who makes a guaranty.

2. The guarantor is bound to fulfil the engagement he has entered into, provided the principal debtor does not. He is bound only to the extent that the debtor is, and any payment made by the latter, or release of him by the creditor, will operate as a release of the guarantor; 3 Penna. R. 19; or even if the guarantee should give time to the debtor beyond that contained in the agreement, or substitute a new agreement, or do any other act by which the guarantor's situation would be worse, the obligation of the latter would be discharged. Smith on Mer. Law, 285.

3. A guarantor differs from a surety in this, that the former cannot be sued until a failure on the part of the principal, when sued; while the latter may be sued at the same time with the principal. 10 Watts, 258.

GUARANTY, contracts. A promise made upon a good consideration, to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person, who is, in the first instance, liable to such payment or performance. 1 Miles' Rep. 277.

2. The English statute of frauds, 29 Car. II. c. 3, which, with modification, has been adopted in most of the states; 3 Kent's Com. 86 requires, that "upon any special promise to answer for the debt, default, or miscarriage of another person, the agreement, Or some memorandum, or note thereof, must be in writing, and signed by

the party to be charged therewith, or some other thereunto by him lawfully authorized." This clause of the statute is not in force in Pennsylvania. To render this statute valid, under the statute, its form must be in writing; it must be made upon a sufficient consideration; and it must be to fulfil the engagement of another.

3. - 1. The agreement must be in writing, and signed by the party to be bound, or some one authorized by him. It should substantially contain the names of the party promising, and of the person on whose behalf the promise is made; the promise itself, and the consideration for it.

4. - 2. The word agreement in the statute includes the consideration for the promise, as well as the promise itself; if, therefore, the guaranty be for a subsisting, debt, or engagement of another person, not only the engagement, but the consideration for it, must appear in the writing. 5 East, R. 10. This has been the construction which has been given in Eugland, and which has been followed in New York and South Carolina, though it has been rejected in several other states. 3 John. R. 210; 8 John. R. 29; 2 Nott & McCord, 372, note; 4 Greenl. R. 180, 387; 6 Conn..R. 81; 17 Mass. R. 122. The decisions have all turned upon the force of the word agreement; and where by statute the word promise has been introduced, by requiring the promise or agreement to be in writing, as in Virginia, the construction has not been so strict. 5 Cranch's R. 151, 2.

5. - 3. The guaranty must be to answer for the debt or default of another. The term debt implies, that the liability of the principal debtor had been previously incurred; but a default may arise upon an executory contract, and a promise to pay for goods to be furnished to another, is a collateral promise to pay on the other's default, provided the credit was given, in the first instance, solely to the other. It is a general rule, that when a promise is made by a third person, previous to the sale of goods, or other credit given, or other liability incurred, it conies within the statute, when it is conditional upon the default of another, who is solely liable in the first instance, otherwise not; the only inquiry to ascertain this, is, to whom was it agreed, that the vendor or creditor should look in. the first instance ? Many nice distinctions have been made on this subject. 1st. When a party actually purchases goods himself, which are to be delivered to a third person, for, his sole use, and the latter was not to be responsible, this is not a case of guaranty, because the person to whom the goods were furnished, never was liable. 8 T. R. 80. 2d. Where a person buys goods, or incurs any other liability, jointly with another, but for the use of that other, and this fact is known to the creditor, the guaranty must be in writing. 8 John. R. 89. 3d. A person may make himself liable, in the third place, by adding his credit to that of another, but conditionally only, in case of the other's default. This species of promise comes immediately within the meaning of the statute, and in the cases is sometimes termed a collateral promise.

6. Guaranties are either special or for a particular transaction, or they are continuing guaranties; that is, they are to be valid for other transactions, though not particularly mentioned. 2 How. U. S. 426; 1 Metc. 24; 7 Pet. 113; 12 East, 227; 6 M. & W. 612; 6 Sc. N. S. 549; 2 Campb. 413; 3 Campb. 220,; 3 M. & P. 573; S, C. 6 Bing. 244 2 M. & Sc. 768; S. C. 9 Bing. 618 3 B. & Ald. 593; 1 C. & M. 48; S. C. 1 Tyr. 164. Vide, generally, Fell on Mercantile Guaranties; Bouv. Inst. Index, h. t.; 3 Kent's Com. 86; Theob. P. & S. c. 2 & 3; Smith on Mer. Law, c. 10; 3 Saund. 414, n., 5; Wheat. Dig. 182 14 Wend. 231. The following authorities refer to cases of special guaranties of notes. 6 Conn. 81; 20 John. 367; 1 Mason 368; 8 Pick. 423; 2 Dev. & Bat. 470; 14 Wend. 231. Of absolute guaranties. 2 Har. & J. 186; 3 Fairf. 193 1 Mason, 323; 12 Pick. 123. Conditional guaranties. 12 Conn. 438. To promises to guaranty. 8 Greenl. 234; 16 John. 67.

GUARDIANS, domestic relations. Guardians are divided into, guardians of the person, in the civil law called tutors; and guardians of the estate, in the sam law are known by the name of curators. For the distinction between them, vide article Curatorship; 2 Kent, Com. 186 1 Bouv. Inst. n. 336, et. seq.

2. - 1. A guardian of the person is one who has been lawfully invested with the care of the person of an infant, whose father is dead.

3. The guardian must be properly appointed he must be capable of serving; he must be appointed guardian of an infant; and after his appointment he must perform the duties imposed on him by his office.

4. - 1st. In England, and in some of the states where the English law has been adopted in this respect, as in Pennsylvania; Rob. Dig. 312, by Stat. 12 Car. If. c. 24; power is given to the father to appoint a testamentary guardian for his children, whether born or unborn. According to Chancellor Kent, this statute has been adopted in the state of New York, and probably throughout this country. 2 Kent, Com. 184. The statute of Connecticut, however, is an exception; there the father cannot appoint a testamentary guardian. 1 Swift's Dig. 48.

5. All other kinds of guardians, to be hereafter noticed, have been superseded in practice by guardians appointed by courts having jurisdiction of such matters. Courts of chancery, orphans courts, and courts of a similar character having jurisdiction of testamentary matters in the several states, are, generally, speaking, invested with the power of appointing guardians.

6. - 2d. The person appointed must be capable of performing the duties; an idiot, therefore, cannot be appointed guardian.

7. - 3d. The person over whom a guardian is appointed, must be an infant; for after the party has attained his full age, he is entitled to all his rights, if of sound mind, and, if not, the person appointed to take care of him is called a committee. (q. v.) No guardian of the person can be appointed over an infant whose father is alive, unless the latter be non compos mentis, in which case one may be appointed, as if the latter were dead.

8. - 4th. After his appointment, the guardian of the person is considered as standing in the place of the father, and of course the relative powers and duties of guardian and ward correspond, in a great measure, to those of parent and child; in one prominent matter they are different. The father is entitled to the services of his child, and is bound to support him; the guardian is not entitled to the ward's services, and is not bound to maintain him out of his own estate.

9. - 2. A guardian of the estate is one who has been lawfully invested with the power of taking care and managing the estate of an infant. 1 John. R. 561; 7 John. Ch. R. 150. His appointment is made in the same manner, as that of a guardian of a person. It is the duty of the guardian to take reasonable and prudent care of the estate of the ward, and manage it in the most advantageous manner; and when the guardianship shall expire, to account with the ward for the administration of the estate.

10. Guardians have also been divided into guardians by nature; guardian's by nurture; guardians in socage; testamentary guardians; statutory guardians; and guardians ad litem.

11. - 1. Guardian by nature, is the father, and, on his death, the mother; this guardianship extends only to the custody of the person; 3 Bro. C. C. 186; 1 John. Ch. R. 3; 3 Pick. R. 213; and continues till the child shall acquire the age of twenty one years. Co. Litt. 84 a.

12. - 2. Guardian by nurture, occurs only when the ifant is without any other guardian, and the right belongs exclusively to the parents, first to the father, and then to the mother. It extends only to the person, and determines, in males and females, at the age of fourteen. This species of guardianship has become obsolete.

13. - 3. Guardian in socage, has the custody of the infant's lands as well as his person. The common law gave this guardianship to the next of blood to the child to whom the inheritance could not possibly descend. This species of guardianship has become obsolete, and does not perhaps exist in this country; for the guardian must be a relation by blood who cannot possibly inherit, and such a case can rarely exist. 2 Wend. 153: 15 Wend. 631; 6 Paige, 390; 7 Cowen, 36; 5 John.66.

14. - 4. Testamentary guardians; these are appointed under the stat. 12 Car. II., above mentioned; they supersede the claims of any other guardian, and extend to the person, an real and personal estate of the child, and continue till the ward arrives at full age.

15. - 5. Guardians appointed by the courts, by virtue of statutory authority. The distinction of guardians by nature, and by socage, appear to have become obsolete, and have been essentially superseded in practice by the appointment of guardians by courts of chancery, orphans' courts, probate courts, and such other courts as have jurisdiction to, make such appointments. Testamentary guardians might, as those of this class, be considered as statutory guardians, inasmuch as their appointment is authorized by a statute.

16. - 6. Guardian ad litem, is pointed for the infant to defend him in an action brought against him. Every court, when an infant is sued in a civil action, has power to appoint a guardian ad litem when he has no guardian, for as the infant cannot appoint an attorney, he would be without assistance if such a guardian-were not appointed. The powers and duties of a guardian ad litem are confined to the defence of the suit. F. N. B. 27; Co. Litt. 88 b, note 16; Id. 135 b, note 1; see generally Bouv. Inst. Index, h. t.; Coop. Inst. 445 to 455.

GUARDIANS OF THE POOR. The name given to officers whose duties are very similar to those of overseers of the poor, (q. v.) that is, generally to relieve the distresses of such poor persons who are unable to take care of themselves.

GUARDIANSHIP, persons. The power or protective authority given by law, and imposed on an individual who is free and in the enjoyment of his rights, over one whose weakness on account of his age, renders him unable to protect himself. Vide Tutor.

GUBERNATOR, civil law. A pilot or steersman of a ship. 2 Pet. Adm. Dec. Appx. lxxxiii.

GUEST. A traveller who stays at an inn or tavern-with the consent of the keeper: Bac. Ab. Inns, C 5; 8 Co. 32. And if, after having taken lodgings at an inn, he leaves his horse there, and goes elsewhere to lodge, he is still to be considered a guest. But not if he merely leaves goods for which the landlord receives no compensation. 1 Salk. 888; 2 Lord Raym. 866; Cro. Jac. 188. The length of time a man is at an inn makes no difference, whether he stays a day, or a week, or a month, or longer, so always, that, though not strictly transiens, he retains his character as a traveller. But if a person comes upon a special contract to board and sojourn at an inn, he is not in the sense of the law a guest, but a boarder. Bac. Ab. Inns, C. 5; Story, Bailm. §477.

2. Inkeepers are generally liable for all goods belonging to the guest, brought within the inn. It is not necessary that the goods should have been in the special keeping of the innkeeper to make him liable. This rule is founded on principles of public utility, to which all private considerations ought to yield. 2 Kent, Com. 459; 1 Hayw. N. C. Rep. 40; 14 John. R. 175; Dig. 4, 9, 1. Vide 8 Barb. & Ald. 283; 4 Maule & Selw. 306; 1 Holt's N. P. 209; 1 Salk. 387; S. C. Carth. 417; 1 Bell's Com. 469 Dane's Ab. Index, h. t.; Yelv. 67, a; Smith's Leading Cases, 47; 8 Co. 32.

GUIDON DE LA MER, (LE). The name of a treatise on maritime law, written in Rouen, then Normandy, in 1671, as is supposed. it was received on the continent of Europe almost as equal in authority to one of the ancient codes of maritime law. The author of this work is unknown. This tract or treatise is contained in the Collection de Lois Maritimes," by J. M. Pardessus. vol. 2, p. 371, et seq.

GUILD. A fraternity or company. Guild hall, the place of meeting of guilds. Beame's, Glanville, 108 (n).

GUILT, crim. law. That quality which renders criminal and liable to punishment; or it is that disposition to violate the law, which has manifested itself by some act already done. The opposite of innocence. Vide Rutherf. Inst. B. 1, c. 18, s. 10.

2. In general everyone is presumed innocent until guilt has been proved; but in some cases the presumption of guilt overthrows that of innocence; as, for example, where a party destroys evidence to which the opposite party is entitled. The spoliation of papers, material to show the neutral character of a vessel, furnishes strong presumption against the neutrality of the ship. 2 Wheat. 227. Vide Spoliation.

GUILTY. The state or condition of a person who has committed a crime, misdemeanor or offence.

2. This word implies a malicious intent, and must be applied to something universally allowed to be a crime. Cowp. 275.

3. In pleading, it is a plea by which a defendant who is charged with a crime, misdemeanor or tort, admits or confesses it. In criminal proceedings, when the accused is arraigned, the clerk asks him,: How say you, A B, are you guilty or not guilty?" His answer, which is given ore tenus, is called his plea; and when he admits the charge in the indictment he answers or pleads guilty.

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Bouvier's Law Dictionary

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H

HABEAS CORPORA, English practice. A writ issued out of the C. P. commending the sheriff to compel the appearance of a jury in the cause between the parties. It answers the same purpose in that court as the Distringas juratores answers in the K. B. For a form, see Bootes Suit at Law, 151.

HABEAS CORPUS, remedies A writ of habeas corpus is an order in writing, signed by the judge who grants the same, and sealed with the seal of the court of he is a judge, issued in the name of the sovereign power where it is granted, by such a court or a judge thereof, having lawful authority to issue the same, directed to any one having a person in his custody or under his restraint, commanding him to produce, such person at a certain time and place, and to state the reasons why he is held in custody, or under restraint.

2. This writ was it common law considered as a remedy to remove the illegal restraint on a freeman. But anterior to the 31 Charles II. its benefit was, in a great degree, eluded by time-serving judges, who awarded it only in term time, and who assumed a discretionary power of awarding or refusing it. 3 Bulstr. 23. Three or four years before that statute was passed there had been two very great cases much agitated in Westminster Hall, upon writs of habeas corpus for private custody, viz: the cases of Lord Lei-ah: 2 Lev; 128; and Sir Robert Viner, Lord Mayor.of London. 3 Keble, 434, 447, 470, 504; 2 Lev. 128; Freem. 389. But the court has wisely drew the line of distinction between civil constitutional liberty, as opposed to the power of the crown, and liberty as opposed to the violence and power of private persons. Wilmot's Opinions, 85, 86.

3. To secure the full benefit of it to the subject the statute 81 Car. II. c. 2, commonly calfed the habeas corpus act, was passed. This gave to the. writ the vigor, life, and efficacy requisite for the due protection of the liberty of the subject. In England this. is considered as a high prerogative writ, issuing out of the court of king's bench, in term time or vacation, and running into every part of the king's dominions. It is also grantable as a matter of right, ex debito justitae, upon the application of any person.

4. The interdict De homine libero exhibendo of the Roman law, was a remedy very similar to the writ of habeas corpus. When a freeman was restrained by another,

contrary to good faith, the praetor ordered that such person should be brought before him that he might be liberated. Dig.43, 29, 1.

5. The habeas corpus act has been substantially incorporated into the jurisprudance of every state in the Union, and the right to the writ has been secured by most of the constitutions of the states, and of the United States. The statute of 31 Car. II. c. 2, provides that the person imprisoned, if he be not a prisoner convict, or in execution of legal process, or committed for treason or felony, plainly expressed in the warrant, or has not neglected wilfully, by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, may apply by any one in his behalf, in vacation time, to a judicial officer for the writ of habeas corpus, and the officer, upon view of the copy of the warrant of commitment, or upon proof of denial of it after due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And, in term time, any of the said prisoners may obtain his writ of habeas corpus, by applying to the proper court.

6. By the habeas corpus law of Pennsylvania, (the Act of February 18, 1785,) the benefit of the writ of habeas corpus is given in "all cases where any person, not being committed or detained for any criminal, or supposed criminal matter," Who "shall be confined or restrained of his or her liberty, under any color or pretence whatsoever." A similar provision is contained in the habeas corpus act of New York. Act of April 21, 1818, sect. 41, ch. 277.

7. The Constitution of the United State art. 1, s. 9, n. 2, provides, that " the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it and the same principle is contained in many of the state constitutions. In order still more to secure the citizen the benefit of this great writ, a heavy penalty is inflicted upon the judges who are bound to grant it, in case of refusal.

8. It is proper to consider, 1. When it is to be granted. 2. How it is to be served. 3. What return is to be made to it. 4. The bearing. 5. The effect of the judgment upon it.

9. - 1. The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, as in Pennsylvania and New York, in all cases where he is confined or restrained of his liberty, under any color or pretence whatsoever. But persons discharged on bail will not be considered as restrained of their liberty so as to be entitled to, a writ of habeas corpus, directed to their bail. 3 Yeates, R. 263; 1 Serg & Rawle, 356.

10. - 2. The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at the gaol or prison with any of the under officers, under

keepers, or deputy of the said officers or keepers. In Louisiana, it is provided, that if the person to whom it is addressed shall refuse to receive the writ, he who is charged to serve it, shall inform him of its contents; if he to whom the writ is addressed conceal himself, or refuse admittance to the person charged to serve it on him, the latlat shall affix the order on the exterior of the place where the person resides, or in which the petitioner is so confined. Lo. Code of Pract. art. 803. The service is proved by the oath of the party making it.

11. - 3. The person to whom the writ is addressed or directed, is required to make a return to it, within the time prescribed; he either complies, or he does not. If, he complies, he must positively answer, 1. Whether he has or has not in his power or custody the person to be set at liberty, or whether that person is confined by him; if he return that he has not and has not had him in his power or custody, and the return is true, it is evident that a mistake was made in issuing the writ; if the return is false, he is liable to a penalty, and other punishment, for making such a, false return. If he return that he has such person in his custody, then he must show by his return, further, by what authority, and for what cause, he arrested or detained him. If he does not comply, he is to be considered in contempt of the court under whose seal the writ has been issued, and liable to a severe penalty, to be recovered by the party aggrieved.

12. - 4. When the prisoner is brought, before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and Papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody. In the case of wives, children, and wards, all the court does, is to see that they ire under no illegal restraint. 1 Strange, 445; 2. Strange, 982; Wilmot's Opinions, 120.

13. For those offences which are bailable, when the prisoner offers sufficient bail, he is to be bailed.

14. He is to be remanded in the following cases: 1. When it appears he, is detained upon legal process, out of some court having jurisdiction of criminal matters, 2. When he is detained by warrant, under the hand and seal of a magistrate, for some offence for which, by law, the prisoner is not bailable. 3. When he is a convict in execution, or detained in execution by legal civil process. 4. When he is detained fora contempt, specially and plainly charged in the commitment, by some existing court, having authority to commit for contempt. 5. When he refuses or neglects to give the requisite bail in a case bailable of right. The judge is not confined to the return, but he is to

examine into the causes of the imprisonment, and then he is to discharge, bail, or remand, as justice shall require. 2 Kent, Com. 26; Lo. Code of Prac. art. 819.

15. - 5. It is provided by the habeas corpus act, that a person set at liberty by the writ, shall not again be imprisoned for the same offence, by any person whomsoever, other than by the legal order and process of such court wherein he shall be bound by recognizance to appear, or other court having jurisdiction of the cause. 4 Johns. R. 318; 1 Binn. 374; 5 John. R.282.

16. The habeas corpus can be suspended only by authority of the legislature. The constitution of the United States provides, that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion and rebellion, the public safety may require it. Whether this writ ought to be suspended depends on political considerations, of which the legislature, is to decide. 4 Cranch, 101. The proclamation of a military chief, declaring martial law, cannot, therefore, suspend the operation of the law. 1 Harr. Cond. Rep. Lo. 157, 159 3 Mart. Lo. R. 531.

17. There are various kinds of this writ; the principal of which are explained below.

18. Habeas corpus ad deliberandum et recipiendum, is a writ which lies to remove a prisoner to take his trial in the county where the offence was committed. Bac. Ab. Habeas Corpus, A.

19. Habeas corpus ad faciendum et recipiendum, is a writ which issues out of a court of competent jurisdiction, when a person is sued in an inferior court, commanding the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer, (whence this writ is frequently denominated habeas corpus cum causa) to do and receive whatever the court or the judge issuing the writ shall consider in that behalf. This writ may also be issued by the bail of a prisoner, who has been taken upon a criminal accusation, in order to surrender him in his own discharge; upon. the return of this writ, the court will cause an exoneretur to be entered on the bail piece, and remand the prisoner to his former custody. Tidd's Pr. 405; 1 Chit. Cr. Law, 182.

20. Habeas corpus ad prosequendum, is a writ which issues for the purpose of removing a prisoner in order to prosecute. 3 Bl. Com. 130.

21. Habeas corpus ad respondendum, is a writ which issues at the instance of a creditor, or one who has a cause of action against a person who is confined by the process of some inferior court, in order to remove the prisoner and charge him with this new action in the court above. 2 Mod.198; 3 Bl. Com. 107.

22. Habeas corpus ad satisfaciendum, is a writ issued at the instance of a plaintiff for the purpose of bringing up a prisoner, against whom a judgment has been rendered, in a superior court to charge him with the process of execution. 2 Lill. Pr. Reg. 4; 3 Bl. Com. 129, 130.

23. Habeas corpus ad subjiciendum, by way of eminence called the writ of habeas corpus, (q. v.) is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. 3 Bl. Com. 131; 3 Story, Const. §1333.

24. Habeas corpus ad testificandum, a writ issued for the purpose of bringing a prisoner, in order that he may testify, before the court. 3 Bl. Com. 130.

25. Habeas corpus cum causa, is a writ which may be issued by the bail of a prisoner, who has been taken upon a criminal accusation, in order to render him in their own discharge. Tidd's Pr. 405. Upon the return of this writ the court will cause an exoneretur to be entered on the bail piece, and remand the defendant to his former custody. Id. ibid.; 1 Chit. Cr. Law132. Vide, generally, Bac. Ab. h. t.; Vin. Ab. h. t.; Com. Dig. h. t.; Nels. Ab. h. t.; the various American Digests, h. t.; Lo. Code of Prac. art. 791 to 827; Dane's Ab. Index, h. t.; Bouv. Inst. Index, h. t.

HABENDUM, conveyancing. This is a Latin word, which signifies to have.

2. In conveyancing, it is that part of a deed which usually declares what estate or interest is granted by it, its certainty, duration, and to what use. It sometimes qualifies the estate, so that the general implication of the estate, which, by construction of law, passes in the premises, may by the habendum be controlled; in which case the habendum may enlarge the estate, but not totally contradict, or be repugnant to it. It may abridge the premises. Perk. §170 , 176; Br. Estate, 36 Cont. Co. Litt. 299. It may explain the premises. More, 43; 2 Jones, 4. It may enlarge the premises Co. Litt. 299; 2 Jones, 4. It may be frustrated by the premises, when they are general; Skin. 544 but it cannot frustrate the premises, though it may restrain them. Skin. 543. Its proper office is not to give anything, but to limit or define the certainty of the estate to the feoffee or grantee, who should be previously named in the premises of the deed, or it is void. Cro. Eliz. 903. In deeds and devises it is sometimes construed distributively, reddendo singula singulis. 1 Saund. 183-4, notes 3 and 4; Yelv. 183, and note 1.

3. The habendum commences in our common deeds, with the words "to have and to hold." 2 Bl. Com. 298.; 14 Vin. Ab. 143; Com. Dig. Fait, E 9; 2 Co.55 a; 8 Mass. R. 175; 1 Litt. R. 220; Cruise, Dig. tit. 32, c. 20, s. 69 to93; 5 Serg. & Rawle, 375; 2

Rolle, Ab. 65; Plowd. 153; Co. Litt. 183; Martin's N. C. Rep. 28; 4 Kent, Com. 456; 3 Prest. on Abstr. 206 to 210; 5 Barnw. & Cres. 709; 7 Greenl. R. 455; 6 Conn. R. 289; 6 Har. & J. l32; 3 Wend. 99.

HABERDASHER. A dealer in miscellaneous goods and merchandise.

HABERE. To have. This word is used in composition.

HABERE FACIAS POSSESSIONEM, Practice, remedies. The name of a writ of execution in the action of ejectment.

2. The sheriff, is commanded by this writ that, without delay, he cause the plaintiff to have possession of the land in dispute which is therein described; a fi. fa. or ca. sa. for costs may be included in the writ. The duty of the sheriff in the execution and return of that part of the writ, is the same as on a common fi. fa. or ca. sa. The sheriff is to execute this writ by delivering a full and, actual possession of the premises to the plaintiff. For this purpose he may break an outer or inner door of the house, and, should he be violently opposed, he may raise the posse comitatus. Wats. on Sher. 60, 215; 5 Co. 91 b.; 1 Leon. 145; 3 Bouv. Inst. n. 3375.

3. The name of this writ is abbreviated hab. fa. poss. Vide 10 Vin. Ab.14; Tidd's Pr. 1081, 8th Engl. edit.; 2 Arch. Pr. 58; 3 Bl. Com. 412; Bing. on Execut. 115, 252; Bac. Ab. h. t.

HABERE FACIAS SEISINAM, practice, remedies. The name of a writ of execution, used in most real actions, by which the sheriff is directed that he cause the demandant to have seisin of the lands which he has recovered.3 Bouv. Inst. n. 3374.

2. This writ may be taken out at any time within a year and day after judgment. It is to be executed nearly in the same manner as the writ of habere facias possessionem, and, for this purpose, the officer may break open the outer door of a house to deliver seisin to the demandant. 5 Co. 91 b; Com. Dig. Execution, E; Wats. Off. of Sheriff, 238. The name of this writ is abbreviated hab. fac. seis. Vide Bingh. on Exec. 115, 252; Bac. Ab. h. t.

HABERE FACIAS VISUM, practice. The name of a writ which lies when a view is to be taken of lands and tenements., F. N. B. Index, verbo View.

HABIT. A disposition or condition of the body or mind acquired by custom or a frequent repetition of the same act. See 2 Mart. Lo. Rep. N. S. 622.

2. The habit of dealing has always an important bearing upon the construction of commercial contracts. A ratification will be inferred from the mere habit of dealing between the parties; as, if a broker has been accustomed to settle losses on policies in a particular manner, without any objection being made, or with the silent approbation of his principal, and he should afterward settle other policies in the same manner, to which no objection should be made within a reasonable time, a just presumption would arise of an implied ratification; for if the principal did not agree to such settlement he should have declared his dissent. 2 Bouv. Inst. 1313-14.

HABITATION, civil law. It was the right of a person to live in the house of another without prejudice to the property.

2. It differed from a usufruct in this, that the usufructuary might have applied the house to any purpose, as, a store or manufactory; whereas the party having the right of habitation. could only use it for the residence of himself and family. 1 Bro. Civ. Law, 184 Domat. l. 1, t. 11, s. 2, n. 7.

HABITATION, estates. A dwelling-house, a home-stall. 2 Bl. Com. 4;4 Bl. Com. 220. Vide House.

HABITUAL DRUNKARD. A person given to ebriety or the excessive use of intoxicating drink, who has lost the power or the will, by frequent indulgence, to control his appetite for it.

2. By the laws of Pennsylvania an habitual drunkard is put nearly upon the same footing with a lunatic; he is deprived of his property, and a committee is appointed by the court to take care of his person and estate. Act of June 13, 1836, Pamph. p. 589. Vide 6 Watts' Rep. 139; 1 Ashm. R. 71.

3. Habitual drunkenness, by statutory provisions in some of the states, is a sufficient cause for divorce. 1 Bouv. Inst. n. 296.

HABITUALLY. Customarily, by habit. or frequent use or practice, or so frequently, as to show a design of repeating the same act. 2 N. S. 622: 1 Mart. Lo. R. 149.

2. In order to found proceedings in lunacy, it is requisite that the insanity should be habitual, yet it is not necessary that it should be continued. 1 Bouv. Inst. n. 379.

HAD BOTE, Engl. law. A recompense or amends made for violence offered to a person in holy olders.

HAEREDES PROXIMI. The children or descendants of the deceased. Dalr. Feud. Pr. 110; Spellm. Remains.

HAEREDES REMOTIORES. The kinsmen other than children or descendants; Dalr. Feud. Pr. 110; Spellm. Remains.

HAEREDITAS. An inheritance, or an estate which descends to one by succession. At common law an inheritance never ascends, haereditas nunquam ascendit. But in many of the states of the Union provision is made by statute in favor of ascendants.

HAEREDITAS JACENS. This is said of an inheritance which is not taken by the heirs, but remains in abeyance.

HAERES civil law. An heir, one who succeeds to the whole inheritance.

2. These are of various kinds. 1. Haeres natus, an heir born; the heir at law: he is distinguished from, 2. Haeres factus, or an heir created by will, a testamentary heir, to whom the whole estate of the testator is given. 3. Haeres fiduciarius, an heir to whom the estate is given in trust for another. Just. 2, 23, 1, 2. Haeres-legitimus, a lawful heir; this is one who is manifested by the marriage of his parents; haeres legitimus est quem nuptiae demonstrant; haeres suus, one's own heir, a proper heir; descendants. Just. 3, 1, 4, 5.

HALF. One equal part of a thing divided into two parts, either in fact or in contemplation. A moiety. This word is used in composition; as, half cent, half dime, &c.

HALF-BLOOD, parentage, kindred. When persons have only one parent in common, they are of the half-blood. For example, if John marry Sarah and has a son by that marriage, and after Sarah's death he marry Maria, and has by her another son, these children are of the half-blood; whereas two of the children of John and Sarah would be of the whole blood.

2. By the English common law, one related to an intestate of the half-blood only, could never inherit, upon the presumption that he is not of the blood of the original purchaser; but this rule has been greatly modified by the 3 and 4 Wm. IV. c. 106.

3. In this country the common law principle on this subject may be considered as not in force, though in some states some distinction is still preserved between the whole and the half-blood. 4 Kent, Com. 403, n.; 2 Yerg. 115; 1 M'Cord, 456; Dane's Ab. Index, h. t.; Reeves on Descents, passim. Vide Descents.

HALF-BROTHER AND HALF-SISTER. Persons who have the same father but different mothers; or the same mother but different fathers.

HALF CENT, money. A copper coin of the United States, of the value of one two-hundredth part of a dollar, or five mills. It weighs eighty-four grains. Act of January 18, 1837, s. 12, 4 Sharswood's cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF DEFENCE, pleading. It is the peculiar form of a defence, which is as follows, "venit et defendit vim et injuriam, et dicit," &c. It differs from full defence. Vide Defence; Et cetera;

HALF DIME, money. A silver coin of the United States, of the value of one-twentieth part of a dollar, or five cents. It weighs twenty grains and five-eighths of a grain. Of one thousand parts, nine hundred are of pure silver, and one hundred are of alloy. Act of January 18, 1837, s. 8 and 9,4 Sharswood's cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF DOLLAR, money. A silver coin of the United States of the value of fifty cents. It weighs two hundred and six and one-fourth grains. Of one thousand parts, nine hundred are of pure silver, and one hundred of alloy. Act of January 18, 1837, S. 8 and 9, 4 Sharsw. cont. of Story's L. U. S.2523, 4. Vide Money.

HALF EAGLE, money. A gold coin of the United States, of the value of five dollars. It weighs one hundred and twenty-nine grains. Of one thousand parts, nine hundred are of pure gold, and one hundred of alloy. Act of January 18, 1837, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide Money.

HALF PROOF, semiplena probatio, civil law. Full proof is that which is sufficient to end the controversy, while half proof is that which is insufficient, as the foundation of a sentence or decree, although in itself entitled to some credit. Vicat, voc. Probatio.

HALF SEAL. A seal used in the English chancery for the sealing of commissions to delegates appointed upon any appeal, either in ecclesiastioal or marine causes.

HALF YEAR, In the computation of time, a half year consists of one hundred and eighty-two days. Co. Litt. 135 b; Rev. Stat., of N. Y. part 1, c. 19, t. 1. §3.

HALL. A public building used either for the meetings of corporations, courts, or employed to some public uses; as the city hall, the town hall. Formerly this word denoted the chief mansion or habitation.

HALLUCINATION, med. jur. It is a species of mania, by which "an idea reproduced by the memory is associated and embodied by the imagination." This state of mind is sometimes called delusion or waking dreams.

2. An attempt has been made to distinguish hallucinations from illusions; the former are said to be dependent on the state of the intellectual organs and, the latter, on that of those of sense. Ray, Med. Jur. §99; 1 Beck, med. Jur. 538, note. An instance is given of a temporary hallucination in the celebrated Ben Johnson, the poet. He told a friend of his that he had spent many a night in looking at his great toe, about which he had seen Turks and Tartars, Romans and Carthagenians, fight, in his imagination. 1 Coll. on Lun. 34. If, instead of being temporary, this affection of his mind had been permanent, he would doubtless have been considered insane. See, on the subject of spectral illusions, Hibbert, Alderson and Farrar's Essays; Scott on Demonology, &c.; Bostock's Physiology, vol. 3, p. 91, 161;1 Esquirol, Maladies Mentales, 159.

HALMOTE. The name of a court among the Saxons. It had civil and criminal jurisdiction.

HAMESUCKEN, Scotch law. The crime of hamesucken consists in "the felonious seeking and invasion of a person in his dwelling house." 1 Hume,312; Burnett, 86; Alison's Princ. of the Cr. Law of Scotl. 199.

2. The mere breaking into a house, without personal violence, does not constitute the offence, nor does the violence without an entry with intent to, commit an assault. It is the combination of both which completes the crime. 1. It is necessary that the invasion of the house should have proceeded from forethought malice; but it is sufficient, if, from any illegal motive, the violence has been meditated, although it may not have proceeded from the desire of wreaking personal revenge, properly so called.2. The place where the assault was committed must have been the proper dwelling house of the party injured, and not a place of business, visit, or occasional residence. 3. the offence maybe committed equally in the day as in the night, and not only by effraction of the building by actual force but by an entry obtained by fraud, with the intention of inflicting personal violence, followed by its perpetration. 4. But unless the injury to the person be of a grievous and material, character, it is not hamesucken, though the other requisites to the crime have occurred. When this is the case, it is immaterial whether the violence be done lucri causä, or from personal spite. 5. The punishment of hamesucken in aggravated cases of injury, is death in cases of inferior atrocity, an arbitrary punishment. Alison's Pr. of Cr. Law of Scotl. ch. 6; Ersk. Pr. L. Scotl. 4, 9, 23. This term wag formerly used in England instead of the now modern term burglary. 4 Bl. Com. 223.

HAMLET, Eng. law. A small village; a part or member of a vill.

HANAPER OFFICE, Eng.law. This is the name of one of the offices belonging to the English court of chancery. 3 Bl. Com. 49.

HAND. That part of the human body at the end of the arm.

2. Formerly the hand was considered as the symbol of good faith, and some contracts derive their names from the fact that the hand was used in making them; as handsale, (q. v.) mandatum, (q. v.) which comes from ä manu datä. The hand is still used for various legal or forensic purposes. When a person is accused of a crime and he is arraigned, and he is asked to hold up his right hand; and when one is sworn as a witness, he is required to lay his right hand on the Bible, or to hold it up.

3. Hand is also the name of a measure of length used in ascertaining the height of horses. It is four inches long. See Measure: Ell.

4. In a figurative sense, by hand is understood a particular form of writing; as if B writes a good hand. Various kinds of hand have been used, as, the secretary hand, the Roman hand, the court hand, &c. Wills and contracts may be written in any of these, or any other which is intelligible.

HANDBILL. A printed or written notice put up on walls, &c., in order to inform those concerned of something to be done.

HANDSALE, contracts. Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain; a custom still retained in verbal contracts; a sale thus made was called handsale, venditio per mutuam manum complexionem. In process of time the same word was used to signify the price or earnest which was given immediately after the shaking of hands, or instead thereof. In some parts of the country it is usual to speak of hand money as the part of the consideration paid or to be paid at the execution of a contract of sale. 2 Bl. Com. 448. Heineccius, de Antique Jure Germanico, lib. 2, §335; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 2, n.33.

HANDWRITING, evidence. Almost every person's handwriting has something whereby it may be distinguished from the writing of others, and this difference is sometimes intended by the term.

2. It is sometimes necessary to prove that a certain instrument or name is in the handwriting of a particular person; that is done either by the testimony of a witness, who saw the paper or signature actually written, or by one who has by sufficient means, acquired such a knowledge of the general character of the handwriting of the party, as will enable him to swear to his belief, that the handwriting of the person is the handwriting in question. 1 Phil. Ev. 422; Stark. Ev. h. t.; 2 John. Cas. 211; 5 John.

R. 144; 1 Dall. 14; 2 Greenl. R. 33; 6 Serg. & Rawle, 668; 1 Nott & M'Cord,554; 19 Johns. R. 134; Anthon's N. P. 77; 1 Ruffin's R. 6; 2 Nott & M'Cord,400; 7 Com. Dig. 447; Bac. Ab. Evidence, M; Dane's Ab. Index, h. t.

HANGING, punishment. Death by the halter, or the suspending of a criminal, condemned to suffer death, by the neck, until life is extinct. A mode of capital punishment.

HANGMAN. The name usually given to a man employed by the sheriff to put a man to death, according to law, in pursuance of a judgment of a competent court, and lawful warrant. The same as executioner. (q. v.)

HAP. An old word which signifies to catch; as, "to hap the rent," to hap the deed poll." Techn. Dict. h. t.

HARBOR. A place where ships may ride with safety; any navigable water protected by the surrounding country; a haven. (q. v.) It is public property. 1. Bouv. Inst. n. 435.

To HARBOR, torts. To receive clandestinely or without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person, shall be deprived of the same; for example, the harboring of a wife or an apprentice, in order to deprive the hushand or the master of them; or in a less technical sense, it is the reception of persons improperly. 10 N. H. Rep. 247; 4 Scam. 498.

2. The harboring of such persons will subject the barborer to an, action for the injury; but in order to put him completely in the wrong, a demand should be made for their restoration, for in cases where the harborer has not committed any other wrong than merely receiving the plaintiff's wife, child, or apprentice, he may be under no obligation to return them without a demand. 1 Chit. Pr. 564; Dane's Ab. Index, h. t.; 2 N. Car. Law Repos.249; 5 How. U. S. Rep. 215, 227.

HARD LABOR, punishment. In those states where the penitentiary system has been adopted, convicts who are to be imprisoned, as part of their punishment, are sentenced to perform hard labor. This labor is not greater than many freemen perform voluntarily, and the quantity required to be performed is not at all unreasonable. In the penitentiaries of Pennsylvania it consists in being employed in weaving, shoemaking, and such like employments.

HART. A stag or male deer of the forest five years old complete.

HAT MONEY, mar. law. The name of a small duty paid to the captain and mariners of a ship, usually called primage. (q. v.)

TO HAVE. These words are used in deeds for the conveyance of land, in that clause which usually declared for what estate the land is granted. The same as Habendum. (q. v.) Vide Habendum; Tenendum.

HAVEN. A place calculated for the reception of ships, and so situated, in regard to the surrounding land, that the vessel may ride at anchor in it in safety. Hale, de Port. Mar. c. 2; 2 Chit. Com. Law, 2; 15 East, R. 304, 5. Vide Creek; Port; Road.

HAWKERS. Persons going from place to place with goods and merchandise for sale. To prevent impositions they are generally required to take out licenses, under regulations established by the local laws of the states.

HAZARDOUS CONTRACT, civil law. When the performance of that which is one of its objects, depends on an uncertain event, the contract is said to be hazardous. Civ. Co. of Lo. art. 1769 1 Bouv. Inst. n. 707.

2. When a contract is hazardous, and the lender may lose all or some part of his principal, it is lawful for him to charge more than lawful interest for the use of his money. Bac. Ab. Usury D; 1 J. J. Marsh, 596; 3 J. J. Marsh, 84.

HEAD BOROUGH, English law. Formerly he was a chief officer of a borough, but now he is an officer subordinate to constable. St. Armand, Hist. Essay on the Legisl. Power of Eng. 88.

HEALTH. Freedom from pain or sickness; the most perfect state of animal life. It may be defined, the natural agreement and concordant dispositions of the parts of the living body.

2. Public health is an object of the utmost importance and has attracted the attention of the national and state legislatures.

3. By the act of Congress of the 25th of February, 1799, 1 Story's L. U. S. 564, it is enacted: 1. That the quarantines and other restraints, which shall be established by the laws of any state, respecting any vessels arriving in or bound to any port or district thereof, whether coming from a foreign port or some other part of the United States, shall be observed and enforced by all officers of the United States, in such place. Sect. 1. 2. In times of contagion the collectors of the revenue may remove, under the provisions of the act, into another district. Sect. 4. 3. The judge of any district court may, when a contagious disorder prevails in his district, cause the removal of persons confined in prison under the laws of the United States, into another district. Sect. 5. 4. In case of the prevalence of a contagious disease at the seat of government, the president of the United States may direct the removal of any or all public offices to a

place of safety. Sect. 6. 5. In case of such contagious disease, at the seat of government, the chief justice, or in case of his death or inability, the senior associate justice of the supreme court of the United States, may issue his warrant to the marshal of the district court within which the supreme court is by law to be holden, directing him to adjourn the said session of the said court to such other place within the same or adjoining district as he may deem convenient. And the district judges may, under the same circumstances, have the same power to adjourn to some other part of their several districts. Sect. 7.

3. Offences against the provisions of the health laws are generally punished by fine and imprisonment. These are offences against public health, punishable by the common law by fine and imprisonment, such for example, as selling unwholesome provisions. 4 Bl. Com. 162; 2 East's P. C.822; 6 East, R.133 to 141; 3 M. & S. 10; 4 Campb. R. 10.

4. Private injuries affecting a man's health arise upon a breach of contract, express or implied; or in consequence of some tortions act unconnected with a contract.

5. - 1. Those injuries to health which arise upon contract are, 1st. The misconduct of medical men, when, through neglect, ignorance, or wanton experiments, they injure their patients. 1 Saund. 312, n. 2. 2d. By the sale of unwholesome food; though the law does not consider a sale to be a warranty as to the goodness or quality of a personal chattel, it is otherwise with regard to food and liquors. 1 Rolle's Ab. 90, pl. 1, 2.

6.-2. Those injuries which affect a man's health, and which arise from tortious acts unconnected with contracts, are, 1st. Private nuisances. 2d. Public nuisances. 3d. Breaking quarantine. 4th. By sudden alarms, and frightening; as by raising a pretended ghost. 4 Bl. Com. 197, 201, note 25;1 Hale, 429; Smith's Forens. Med. 37 to 39; 1 Paris & Fonbl. 351, 352. For private injuries affecting his health a man may generally have an action on the case.

HEALTH OFFICER. The name of an officer invested with power to enforce the health laws. The powers and duties of health officers are regulated by local laws.

HEARING, chwncery practice. The term, hearing is given to the trial of a chancery suit.

2. The hearing is conducted as follows. When the cause is called on in court, the pleadings on each side are opened in a brief manner to the court by the junior counsel for the plaintiff; after which the plaintiff's leading counsel states the plaintiff's case, and the points in issue, and submits to the court his arguments upon them. Then the

depositions (if any) of the plaintiff's witnesses, and such parts of the defendant's answer as support the plaintiff's case are read by the plaintiff's solicitor; after which the rest of the plaintiff's counsel address the court; then the same course of proceedings is observed on the other side, excepting that no part of the defendant's answer can be read in his favor, if it be replied to; the leading counsel for the plaintiff is then heard in reply; after which the court pronounces the decree, Newl. Pr. 153, 4; 14 Vin. Ab. 233; Com. Dig. Chancery, T. 1, 2, 3.

HEARING, crim. law. The examination of a prisoner charged with a crime or misdemeanor, and of the witnesses for the accuser.

2. The magistrate should examine with care all the witnesses for the prosecution, or so many of them as will satisfy his mind that there is sufficient ground to believe the prisoner guilty, and that the case ought to be examined in court and the prisoner ought to be tried. If, after the hearing of all such witnesses, the offence charged is not made out, or, if made out, the matter charged is not criminal, the magistrate is bound to discharge the prisoner.

3. When the magistrate cannot for want of time, or on account of the absence of a witness, close the hearing at one sitting, he may adjourn the case to -another day, and, in bailable offences, either take bail from the prisoner for his appearance on that day, or commit him for a further hearing. See Further hearing.

4. After a final hearing, unless the magistrate discharge the prisoner, it is his duty to take bail in bailable offences, and he is the sole judge of the amount of bail to be demanded this, however, must not be excessive. He is the sole judge, also, whether the offence be bailable or not. When the defendant can give the bail required, he must be discharged; when not, he must be committed to the county prison, to take his trial, or to be otherwise disposed of according, to law. See 1 Chit. Cr. Law, 72, ch. 2.

HEARSAY EVIDENCE. The evidence of those who relate, not what they know themselves, but what they have heard from others.

2. As a general rule, hearsay evidence of a fact is not admissible. If any fact is to be substantiated against a person, it ought to be proved in his presence by the testimony of a witness sworn or affirmed to speak the truth.

3. There are, however, exceptions to the rule. 1. Hearsay is admissible when it is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question, when it is a part of the res gestae. 1 Phil. Ev. 218; 4 Wash. C. C. R. 729; 14 Serg. & Rawle, 275; 21 How. St. Tr. 535; 6 East, 193.

4. - 2. What a witness swore on a former trial, between the same parties, and where the same point was in issue as in the second action, and he is since dead, what he swore to is in general, evidence. 2 Show. 47; 11 John. R. 446; 2 Hen. & Munf. 193; 17 John. R. 176; But see 14 Mass. 234; 2 Russ. on Cr. 683, and the notes.

5. - 3. The dying declarations of a person who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence under certain circumstances. Vide Declarations, and 15 John. R. 286; 1 Phil. Ev. 215; 2 Russ. on Cr. 683.

6. - 4. In questions concerning public rights, common reputation is admitted to be evidence.

7. - 5. The declarations of deceased persons in cases where they appear to have been made against their interest, have been admitted.

8. - 6. Declarations in cases of birth and pedigree are also to be received in evidence.

9. - 7. Boundaries may be proved by hearsay evidence, but, it seems, it must amount to common tradition or repute. 6 Litt. 7; 6 Pet. 341; Cooke, R142; 4 Dev. 342; 1 Hawks 45; 4 Hawks, 116; 4 Day, 265. See 3 Ham. 283; 3 Bouv. Inst. n. 3065, et seq. 10. There are perhaps a few more exceptions which will be found in the books referred to below. 2 Russ. on Cr. B. 6, c.3; Phil. Ev. ch. 7, s. 7; 1 Stark. Ev. 40; Rosc. Cr. Ev. 20; Rosc. Civ. Ev.19 to 24; Bac. Ab. Evidence, K; Dane's Ab. Index, h. t. Vide also, Dig. 39,3, 2, 8; Id. 22, 3, 28. see Gresl. Eq. Ev. pt. 2, c. 3, s. 3, p. 218, for the rules in courts of equity, as to receiving hearsay evidence 20 Am. Jur.68.

HEDGE-BOTE. Wood used for repairing hedges or fences. 2 Bl. Com. 35; 16 John. 15.

HEIFER. A young cow, which has not had a calf. A beast of this kind two years and a half old, was held to be improperly described in the indictment as a cow. 2 East, P. C. 616; 1 Leach, 105.

HEIR. One born in lawful matrimony, who succeeds by descent, and right of blood, to lands, tenements or hereditaments, being an estate of inheritance. It is an established rule oflaw, that God alone can make an heir. Beame's Glanville, 143; 1 Thomas, Co. Lit. 931; and Butler's note, p.938. Under the word heirs are comprehended the heirs of heirs in infinitum.1 Co. Litt. 7 b, 9 a, 237 b; Wood's Inst. 69. According to many authorities, heir may be nomen collectivuum, as well in a deed as in a will, and operate in both in the same mannar, as heirs in the plural number. 1 Roll. Abr. 253; Ambl. 453; Godb. 155; T. Jones, 111; Cro, Eliz.313; 1 Burr. 38; 10

Vin. Abr. 233, pl. 1; 8 Vin. Abr. 233; sed vide 2 Prest. on, Est. 9, 10. In wills, in order to effectuate the intention of the testator, the word heirs is sometimes construed to mean next of kin; 1 Jac. & Walk. 388; and children, Ambl. 273. See further, as to the force and import of this word, 2 Vent. 311; 1 P. Wms. 229; 3 Bro. P. C. 60, 454; 2 P. Wms. 1, 369; 2 Black. R. 1010; 4 Ves. 26, 766, 794; 2 Atk. 89, 580; 5 East Rep. 533; 5 Burr. 2615; 11 Mod. 189; 8 Vin. Abr. 317; 1 T. R. 630; Bac. Abr. Estates in fee simple, B.

2. There are several kinds of heirs specified below.

3. By the civil law, heirs are divided into testamentary or instituted heirs legal heirs, or heirs of the blood; to which the Civil Code of Louisiana has added irregular heirs. They are also divided into unconditional and beneficiary heirs.

4. It is proper here to notice a difference in the meaning of the word heir, as it is understood by the common and by, the civil law. By the civil law, the term heirs was applied to all persons who were called to the succession, whether by the act of the party or by operation of law. The person who was created universal successor by a will, was called the testamentary heir; and the next of kin by blood was, in cases of intestaby, called the heir at law, or heir by intestacy. The executor of the common law is, in many respects, not unlike the testamentary heir of the civil law. Again, the administrator ln many respects corresponds with the heir by intestacy. By the common law, executors unless expressly authorized by the will and administrators, have no right, except to the personal estate of the deceased; whereas, the heir by the civil law was authorized to administer both the personal and real estate. 1 Brown's Civ. Law, 344; Story, Confl. of Laws, §508.

5. All free persons, even minors, lunatics, persons of insane mind or the like, may transmit their estates as intestate ab intestato, and inherit from others. Civ. Code of Lo., 945; Accord, Co. Lit. 8 a.

6. The child in its mother's womb, is considered as born for all purposes of its own interest; it takes all successions opened in its favor, after its conception, provided it be capable of succeeding at the moment of its birth. Civ. Code of Lo. 948. Nevertheless, if the child conceived is reputed born, it is only in the hope of its birth; it is necessary then that the child be born alive, for it cannot be said that those who are born dead ever inherited. Id. 949. See In ventre sa mere.

HEIR. APPARENT. One who has an indefeasible right to the inheritance, provided he outlive the ancestor. 2 Bl. Com. 208.

HEIR, BENEFICIARY. A term used in the civil law. Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made. Civ. Code of Lo. art. 879. If the heir apprehend that the succession-will be burdened with debts beyond its value, he accepts with benefit of inventory, and in that case he is responsible only for the value of the succession. See inventory, benefit of.

HEIR, COLLATERAL. A collateral heir is one who is not of the direct line of the deceased, but comes from a collateral line; as, a brother, sister, an uncle and aunt, a nephew, niece, or cousin of the deceased.

HEIR, CONVENTIONAL, civil law. A conventional heir is one who takes a succession by virtue of a contract; for example, a marriage contract, which entitles the heir to the succession.

HEIR, FORCED. Forced heirs are those who cannot be disinherited. This term is used among the civilians. Vide Forced heirs

HEIR, GENERAL. Heir at common in the English law. The heir at common law is he who, after his father or ancestor's death has a right to, and is introduced into all his lands, tenements and hereditaments. He must be of the whole blood, not a bastard, alien, &c. Bac. Abr. Heir, B 2; Coparceners; Descent.

HEIR, IRREGULAR. In Louisiana, irregular heirs are those who are neither testamentary nor legal, and who have been established by law to take the succession. See Civ. Code of Lo. art. 874. When the deceased has left neither lawful descendants nor ascendants, nor collateral relations, the law calls to his inheritance either the surviving hushand or wife, or his or her natural children, or the state. Id. art., 911. This is called an irregular succession.

HEIR AT LAW. He who, after his ancestor's death intestate, has a right to all lands, tenements, and hereditaments, which belonged to him, or of which he was seised. The same as heir general. (q. v.)

HEIR, LEGAL, civil law. A legal heir is one who is of the same blood of the deceased, and who takes the succession by force of law; this is different from a testamentary or conventional heir, who takes the succession in virtue of the disposition of man. See Civil, Code of Louis. art. 873, 875; Dict. de Jurisp., Heritier legitime. There are three classes of legal heirs, to wit; the children and other lawful descendants; the fathers and mothers and other lawful ascendants; and the collateral kindred. Civ. Code of Lo. art. 883.

HEIR LOOM, estates. This word seems to be compounded of heir and loom, that is, a frame, viz. to weave in. Some derive the word loom from the Saxon loma, or geloma, which signifies utensils or vessels generally. However this may be, the word loom, by time, is drawn to a more general signification, than it, at the first, did bear, comprehending all implements of household; as, tables, presses, cupboards, bedsteads, wainscots, and which, by the custom of some countries, having belonged to a house, are never inventoried after the decease of the owner, as chattels, but accrue to the heir, with the house itself minsheu. The term heir looms is applied to those chattels which are considered as annexed and necessary to the enjoyment of an inheritance.

2. They are chattels which, contrary to the nature of chattels, descend to the heir, along with the inheritance, and do not pass to the executor of the last proprietor. Charters, deeds, and other evidences of the title of the land, together with the box or chest in which they are contained; the keys of a house, and fish in a fish pond, are all heir looms. 1 Inst. 3 a; Id. 185 b; 7 Rep. 17 b; Cro. Eliz. 372; Bro. Ab. Charters, pl. 13; 2 Bl. Com. 28; 14 Vin. Ab. 291.

HEIR PRESUMPTIVE. A presumptive heir is one who, in the present circumstances, would be entitled to the inheritance, but whose rights may be defeated by the contingency of some nearer heir being born. 2 B1 Com.208. In Louisiana, the presumptive heir is he who is the nearest relation of the deceased, capable of inheriting. This quality is given to him before the decease of the person from whom he is to inherit, as well as after the opening of the succession, until he has accepted or renounced it. Civ. Code of Lo. art. 876.

HEIR, TESTAMENTARY, civil law. A testamentary heir is one who is constituted heir by testament executed in the form prescribed by law. He is so called to distinguish him from the legal heirs, who are called to the succession by the law; and from conventional heirs, who are so constituted by a contract inter vivos. See Haeres factus; Devisee.

HEIR, UNCONDITIONAL. A term used in the civil law, adopted by the Civil Code of Louisiana. Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit. Civ. Code of Lo. art. 878.

HEIRESS. A female heir to a person having an estate of inheritance. When there is more than one, they are called co-heiresses, or co-heirs. HEPTARCHY, Eng. law. The name of the kingdom or government established by the Saxons, on their establishment in Britain so called because it was composed of seven kingdoms, namely, Kent, Essex, Sussex, Wessex, East Anglia, Mercia, and Northumberland.

HERALDRY, civil and canon law. The art or office of a herald. It is the art, practice, or science of recording genealogies, and blazoning arms or ensigns armorial. It also teaches whatever relates to the marshaling of cavalcades, processions, and other public ceremonies. Encyc.; Ridley's View of the Civil and Canon Law, pt. 2, c. 1, §6.

HERBAGE, English Law, A species of easement, which consists in the right to feed one's cattle on another man's ground.

HEREDITAMENTS, estates. Anything capable of being inherited, be it corporeal or incorporeal, real, personal, or mixed and including not only lands and everything thereon, but also heir looms, and certain furniture which, by custom, may descend to the heir, together with the land. Co. Litt. 5 b; 1 Tho. Co. Litt. 219; 2 Bl. Com. 17. By this term such things are denoted, as may be the subject-matter of inheritance, but not the inheritance itself; it cannot therefore, by its own intrinsic force, enlarge an estate, prima facie a life estate, into a fee. 2 B. & P. 251; 8 T. R. 503; 1 Tho. Co. Litt. 219, note T.

2. Hereditaments are divided into corporeal and incorporeal. Corporeal hereditaments are confined to lands. (q. v.) Vide Incorporeal hereditaments, and Shep. To. 91; Cruise's Dig. tit. 1, s. 1; Wood's Inst.221; 3 Kent, Com. 321; Dane's Ab. Index, h.t.; 1 Chit. Pr. 203-229; 2 Bouv. Inst. n. 1595, et seq.

HEREDITARY. That which is inherited.

HERESY, Eng. law. The adoption of any erroneous religious tenet, not warranted by the established church.

2. This is punished by the deprivation of certain civil rights, and by fine and imprisonment. 1 East, P. C. 4.

3. In other countries than England, by heresy is meant the profession, by Christians, of religious opinions contrary to the dogmas approved by the established church of the respective countries. For an account of the origin and progress of the laws against heresy, see Giannoni's Istoria di Napoli, vol. 3, pp, 250, 251, &c.

4. in the United State, happily, we have no established religion; there can, therefore, be no legal heresy. Vide Apostacy; Christianity.

HERISCHILD. A species of English military service, or knight's fee.

HERIOTS, Eng. law. A render of the best beast or other goods, as the custom may be, to the lord, on the death of the tenant. 2 Bl. Com. 97.

2. They are usually divided into two sorts, heriot service, and heriot custom; the former are such as are due upon a special reservation in the grant or lease of lands, and therefore amount to little more than a mere rent; the latter arise upon no special reservation whatsoever, but depend merely upon immemorial usage and custom. These are defined to be a customary tribute of goods and chattels, payable to the lord of the fee, on the decease of the owner of the land. 2 Bl. Com. 422. Vide Com. Dig. Copyhold, K 18; Bac. Ab. h. t.; 2 Saund. lndex, h. t.; 1 Vern. 441.

HERITAGE. By this word is understood, among the civilians, every species of immovable which can be the subject of property, such as lands, houses, orchards, woods, marshes, ponds, &c., in whatever mode they may have been acquired, either by descent or purchase. 3 Toull. 472. It is something that can be inherited. Co. Litt. s. 731.

HERMAPHRODITES. Persons who have in the sexual organs the appearance of both sexes. They are adjudged to belong to that which prevails in them. Co. Litt. 2, 7; Domat, Lois Civ. liv. 1, t. 2, s. 1, n.. 9.

2. The sexual characteristics in the human species are widely separated, and the two sexes are never, perhaps, united in the same individual. 2 Dunglison's Hum. Physiol. 304; 1 Beck's Med. Jur. 94 to 110.

3. Dr. William Harris, in a lecture delivered to the Philadelphia Medical Institute, gives an interesting account of a supposed hermaphrodite who came under his own observation in Chester county, Pennsylvania. The individual was called Elizabeth, and till the age of eighteen, wore the female dress, when she threw it off, and assumed the name of Rees, with the dress and habits of a man; at twenty-five, she married a woman, but had no children. Her clitoris was five or six inches long, and in coition, which she greatly enjoyed, she used this instead of the male organ. She lived till she was sixty years of age, and died in possession of a large estate, which she had acquired by her industry and enterprise. Medical Examiner, vol. ii. p, 314. Vide 1 Briand, M´d. L´g. c. 2, art. 2 , §2, n. 2; Dict. des Sciences M´d. art. Hypospadias, et art. Impuissance; Guy, Med. Jur. 42,47.

HIDE, measures. In England, a hide of land, according to some ancient-manuscripts, contained one hundred and twenty acres. Co. Litt. 5; Plowd. 167; Touchst. 93.

HIERARCHY, eccl. law. A hierarchy signified, originally, power of the priest; for in the beginning of societies, the priests were entrusted with all the power but, among the priests themselves, there were different degrees of power and authority, at the summit of which was the sovereign pontiff, and this was called the hierarchy. Now it signifies, not so much the power of the priests as the border of power.

HIGH. This word has various signifcations: 1. Principal or chief, as high constable, high sheriff. 2. Prominent, in a bad sense, as high treason. 3. Open, not confined, as high seas.

HIGH CONSTABLE. An officer appointed in some cities bears this name. His powers are generally Iimited to matters of police, and are not more extensive in these respects than those of constables. (q. v.)

HIGH COURT OF DELEGATES, English law. The name of a court esthlished by stat. 25 Hen. VIII. c. 19, s. 4. No permanent judges are appointed, but in every case of appeal to this court, there issues a special commission, under the great seal of Great Britain, directed to such persons as the lord chancellor, lord keeper, or lords commissioners of the great seal, for the time being, shall think fit to appoint to bear and determine the same. The persons usually appointed, are three puisne judges, one from each court of common law, and three or more civilians; but in special cases, a fuller commission is sometimes issued, consisting of spiritual and temporal peers, judges of the common law, and civilians, three of each description. In case of the court being equally divided, or no common law judge forming part of the majority, a commission of adjuncts issues, appointing additional judges of the same description. 1 Hagg. Eccl. R. 384; 2 Hagg. Eccl. R. 84; 3 Hagg. Ecel. R. 471; 4 Burr. 2251.

HIGH SEAS. This term, which is frequently used in the laws of the United States signifies the unenclosed waters of the ocean, and also those waters on the sea coast which are without the boundaries of low water mark. 1 Gall. R. 624; 5 Mason's R. 290; 1 Bl. Com. 110; 2 Haze. Adm. R. 398; Dunl. Adm. Pr. 32, 33.

2. The Act of Congress of April 30 1790, s. 8, 1 Story'S L. U. S. 84, enacts, that if any person shall commit upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular state, murder, &c., which, if committed within the body of a county, would, by the laws of the United States, be punishable with death, every such offender, being thereof convicted, shall suffer death and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought. See 4 Dall. R. 426; 3 Wheat. R. 336; 5 Wheat 184, 412; 3 W. C. C. R. 515; Serg. Const. Law, 334;13 Am. Jur. 279 1 Mason, 147, 152; 1 Gallis. 624.

HIGH TREASON, English law. Treason against the king, in contradistinction with petit treason, which is the treason of a servant towards his master; a wife towards her hushand; a secular or religious man against his prelate. See Petit treason; Treason.

HIGH WATER MARK. That part of the shore of the sea to which the waves ordinarily reach when he tide is at its highest. 6 Mass. R. 435; 1 Pick. R.180; 1 Halst. R. 1; 1 Russ. on Cr. 107; 2 East, P. C. 803. Vide Sea shore; Tide.

HIGHEST BIDDER, contracts. He who, at an auction, offers the greatest price for the property sold.

2. The highest bidder is entitled to have the article sold at his bid, provided there has been no unfairness on his part. A distinction has been made between the highest and the best bidder. In judicial sales, where the highest bidder is unable to pay, it is said the sheriff may offer the property to the next highest, who will pay, and he is considered the highest best bidder. 1 Dall. R. 419.

HIGHWAY. A passage or road through the country, or some parts of it, for the use of the people. 1 Bouv. Inst. n. 442. The term highway is said to be a generic name for all kinds of public ways. 6 Mod R, 255.

2. Highways are universally laid out by public authority and repaired at the public expense, by direction of law. 4 Burr. Rep. 2511.

3. The public have an easement over a highway, of which the owner of the land cannot deprive them; but the soil and freehold still remain in the owner, and he may use the land above and below consistently with the easement. He may, therefore, work a mine, sink a drain or water course, under the highway, if the easement remains unimpaired. Vide Road; Street; Way; and 4 Vin. Ab. 502; Bac. Ab. h. t.; Com. Dig. Chemin; Dane's Ab. Index, h. t.; Egremont on Highways; Wellbeloved on Highways; Woolrych on Ways; 1 N. H. Rep. 16; 1 Conn. R. 103; 1 Pick. R. 122; 1 M'Cord's R. 67; 2 Mass. R. 127; 1 Pick. R. 122; 3 Rawle, R. 495; 15 John. R. 483; 16 Mass. R.33; 1 Shepl. R. 250; 4 Day, R. 330; 2 Bail. R. 271; 1 Yeates, Rep. 167.

4. The owners of lots on opposite sides of a highway, are prima facie owners, each of one half of the highway,, 9 Serg. & Rawle, 33; Ham. Parties, 275; Bro. Abr. Nuisance, pl. 18 and the owner may recover the possession in ejectment, and have it delivered to him, subject to the public easement. Adams on Eject. 19, 18; 2 Johns. Rep. 357; 15 Johns. Rep.447; 6 Mass. 454; 2 Mass. 125.

5. If the highway is impassable, the public have the right to pass over the adjacent soil; but this rule does not extend to private ways, without an express grant. Morg. Vad. Mec. 456-7; 1 Tho. Co. Lit. 275; note 1 Barton, Elem. Conv. 271; Yelv. 142, note 1.

HIGHWAYMAN. A robber on the highway.

HILARY TERM, Eng. law. One of the four terms of the courts, beginning the11th and ending the 31st day of January in each year.

HIGLER, Eng. law. A person who carries from door to door, and sells by retail, small articles of provisions, and the like.

HIRE, contracts. A bailment, where a compensation is to be given for the use of a thing, or for labor or services about it. 2 Kent's Com. 456; 1 Bell's Com. 451; Story on Bailim. §369; see 1 Bouv. Inst. n. 980, et seq; Pothier, Contrat de Louage, ch. 1, n. 1; Domat, B. 1, tit. 4 §1, n. 1 Code Civ. art.. 1709, 1710; Civ. Code of Lo., art. 2644, 2645. See this Dict. Hirer; Letter.

2. The contract of letting and hiring is usually divided into two kinds; first, Locatio, or Locatio conductio rei, the bailment of a thing to be used by the hirer, for a compensation to be paid by him.

3. Secondly, Locatio operis, or the hire of the labor and services of the hirer, for a compensation to be paid by the letter.

4. And this last kind is again subdivided into two classes: 1. Locatio operis faciendi, or the hire of labor and work to be done, or care and attention to be bestowed on the goods let by the hirer, for a compensation; or,

5. - 2. Locatio operis mercium vehendarum, or the hire and carriage of goods from one place to another, for a compensation. Jones' Bailm. 85, 86,90, 103, 118; 2 Kent's Com. 456; Code Civ. art. 1709, 1710, 1711.

6. This contract arises from the principles of natural law; it is voluntary, and founded in consent; it involves mutual and reciprocal obligations; and it is for mutual benefit. In some respects it bears a strong resemblance to the contract of sale, the principal difference between them being, that in cases of sale, the owner, parts with the whole proprietary interest in the thing; and in cases of hire, the owner parts with it only for a temporary use and purpose. In a sale, the thing itself is the object of the contract; in hiring, the use of the thing is its object. Vinnius, lib. 3, tit. 25, in pr.; Pothier, Louage, n. 2, 3, 4; Jones Bdilm. 86; Story on Bailm. §371.

7. Three things are of the essence of the contract: 1. That there should be a thing to be let. 2. A price for the hire. 3. A contract possessing a legal obligation. Pothier, Louage, n. 6; Civ. Code of Lo. art. 2640.

8. There is a species of contract in which, though no price in money be paid, and which, strictly speaking, is not the contract of hiring, yet partakes of its nature.

According to Pothier, it is an agreement which must be classed with contracts do ut des. (q. v.) It frequently takes place among poor people in the country. He gives the following example: two poor neighbors, each owning a horse, and desirous to plough their respective fields, to do which two horses are required, one agrees that he will let the other have his horse for a particular time, on condition that the latter will let the former have his horse for the same length of time. Du Louage n. 458. This contract is not a hiring, strictly speaking, for want of a price; nor is it a loan for use, because there is to be a recompense. It has been supposed to be a partnership; but it is different from that contract, because there is no community of profits. This contract is, in general, ruled by, the same principles which govern the contract of hiring.19 Toull. n. 247.

9. Hire also, means the price given for the use of the thing hired; as, the hirer is bound to pay the hire or recompense. Vide Domat. liv. 1, tit.4; Poth. Contrat de Louage; Toull. tomes 18, 19, 20; Merl. R´pert. mot Louage; Dalloz, Dict. mot Louage; Argou, Inst. liv. 3, c. 27.

HIRER, contracts. Called, in the civil law, conductor, and, in the French law conducteur, procureur, locataire, is he who takes a thing from another, to use it, and pays a compensation therefor. Wood's Inst. B. 3, c. 5, p.236; Pothier, Louage, n. 1; Domat, B. 1, tit. 4, §1, n. 2; Jones' Bailm. 70; see this Dict. Letter.

2. There is, on the part of the hirer, an implied obligation, not only to use the thing with due care and moderation but not to apply it to any other use than that for which it is hired; for example, if a horse is hired as a saddle, horse; the hirer has no right to use the horse in a cart, or to carry loads, or as a beast of burden. Pothier Louage, n. 189; Domat, B.1, tit. 4, §2, art. 2, 3; Jones' Bailm. 68, 88; 2 Saund. 47 g, and note; 1 Bell's Com. 454; 1 Cowen's R. 322; 1 Meigs, R. 459. If a carriage and horses are hired to go from Philadelphia to New York, the hirer has no right to go with them on a journey to Boston. Jones' Bailm. 68; 2 Ld. Raym.915. So, if they are hired for a week, he has no right to use them for a month, Jones' Bailm. 68; 2 Ld. Raym. 915; 5 Mass. 104. And if the thing be used for a different purpose from that which was intended by the parties, or in a different manner, or for a longer period, the hirer is not only responsible for all damages, but if a loss occur, although by inevitable casualty, he will be responsible therefor. 1 Rep. Const. C. So. Car. 121; Jones' Bailm. 68, 121; 2 Ld. Raym. 909, 917. In short, such a misuser is deemed a conversion of the property, for which the hirer is deemed responsible. Bac. Abr. Bailment, C; Id. Trover, C, D, E; 2 Saund. 47 g; 2 Bulst. 306, 309.

3. The above rules apply to cases where the hirer has the possession as well as the use of the thing hired when the owner or his agents retain the possession, the hirer is not in general responsible for an injury done to it. For example, when the letter of a

carriage and a pair of horses sent his driver with them and an injury occurred, the hirer was held not to be responsible. 9 Watts, R. 556, 562; 5 Esp. R. 263; Poth. Louage n. 196; Jones, Bailm. 88; Story., Bailm. §403. But see 1 Bos. & P. 404, 409; 5 Esp. N. P. c 35; 10 Am. Jur. 256.

4. Another implied obligation of the hirer is to restore the thing hired, when the bailment, is determined. 4 T. R. 260; 3 Camp. 5, n.; 13 Johns. R.211.

5. The time, the place, and the mode of restitution of the thing hired, are governed by the circumstances of each case depend and depend upon rules of presumption of the intention of the parties, like those in other cases of bailment. Story on Bailm. §415

6. There is also an implied obligation on the part of the hirer, to pay the hire or recompense. Pothier, Louage, n. 134; Domat, B. 2, tit. 2, §2, n. 11 Code Civ; art. 1728. See, generally, Bouv. Inst. Index, h. t.; Employer; Letter.

HIS EXCELLENCY. A title given by the constitution of Massaebusetts to the governor of that commonwealth. Const. part 2, c. 2, s. 1, art. 1. This title is customarily given to the governors of the other states, whether it be the official designation in their constitutions and laws or not.

HIS HONOR. A title given by the constitution of Massachusetts to the lieu- tenant governor of that commonwealth. Const. part 2, c. 2, s. 2, art.1. It, is also customarily given to some inferior magistrates, as the mayor of a city.

HISTORY, evidence. The recital of facts written and given out for true.

2. Facts stated in histories may be read in evidence, on the ground of their notoriety. Skin. R. 14; 1 Ventr. R. 149. But these facts must be of a public nature, and the general usages and customs of the country. Bull. P.248; 7 Pet. R. 554; 1 Phil. & Am. Ev. 606; 30 Howell's St. Tr. 492. Histories are not admissible in relation to matters not of a public nature, such as the custom of a particular town, a descent, the boundaries of a county, and the like. 1 Salk. 281; S. C. Skin. 623; T. Jones, 164; 6 C. & P. 586, note. See 9 Ves. 347; 10 Ves. 354; 3 John. 385; 1 Binn. 399; and Notoriety.

HODGE-PODGE ACT. A name given to a legislative act which embraces many subjects. Such acts, besides being evident proofs of the ignorance of the makers of them, or of their want of good faith, are calculated to create a confusion which is highly prejudicial to the interests of justice. Instances of this wretched legislation are everywhere to be found. See Barring on the Stat. 449. Vide Title; Legislation.

HOERES FACTUS, civil law. An heir instituted by testament; one made an heir by the testator. Vide Heir.

HOERES NATUS, civil law. An heir by intestacy; he on whom an estate descends by operation of law. Vide Heir.

HOGSHEAD. A measure of wine, oil, and the like, containing half a pipe; the fourth part of a tun, or sixty-three gallons.

TO HOLD. These words are now used in a deed to express by what tenure the grantee is to have the land. The clause which commences with these words is called the tenendum. Vide Habendum; Tenendum.

2. To hold, also means to decide, to adjudge, to decree; as, the court in that case held that the hushand was not liable for the contract of the wife, made without his express or implied authority.

3. It also signifies to bind under a contract, as the obligor is held and firmly bound. In the constitution of the United States, it is provided, that no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service or labor may be due. Art. 4, sec. 3, §3; 2 Serg. & R. 306; 3 Id. 4; 5 Id. 52; 1 Wash. C. C. R. 500; 2 Pick. 11; 16 Pet. 539, 674.

HOLDER. The holder of a bill of exchange is the person who is legally in the possession of it, either by endorsement or delivery, or both, and entitled to receive payment either from the drawee or acceptor, and is considered as an assignee. 4 Dall. 53. And one who endorses a promissory note for collection, as an agent, will be considered the holder for the purpose of transmitting notices. 2 Hall, R. 112; 6 How. U. S. 248; 20 John.372. Vide Bill of Exchange.

HOLDING OVER. The act of keeping possession by the tenant, without the consent of the landlord of premises which the latter, or those under whom he claims, had leased to the former, after the term has expired.

2. When a proper notice has been given, this injury is remedied by, ejectment, or, under local regulations, by summary proceedings. Vide 2 Yeates' R. 523; 2 Serg. & Rawle, 486; 5 Binn. 228; 8 Serg. & Rawle, 459; 1 Binn. 334, a.; 5 Serg. & Rawle 174; 2 Serg. & Rawle, *50; 44 Rawle, 123.

HOLOGRAPH. What is written by one's own hand. The same as Olograph. Vide Olograph.

HOMAGE, Eng. law. An acknowledgment made by the vassal in the presence of his lord, that he is his man, that is, his subject or vassal. The form in law French was, Jeo deveigne vostre home.

2. Homage was liege and feudal. The former was paid to the king, the latter to the lord. Liege, was borrowed from the French, as Thaumas informs us, and seems to have meant a service that was personal and inevitable. Houard, Cout. Anglo Norman, tom. 1, p. 511; Beames; Glanville, 215, 216,218, notes.

HOME PORT. The port where the owner of a ship resides; this is a relative term.

HOMESTALL. The mansion-house.

HOMESTEAD. The place of the house or home place. Homestead farm does not necessarily include all the parcels of land owned by the grantor, though lying and occupied together. This depends upon the intention of the parties when the term is mentioned in a deed, and is to be gathered from the context. 7 N. H. Rep. 241; 15 John. R. 471. See Manor; Mansion.

HOMICIDE, crim. law. According to Blackstone, it is the killing of any human creature. 4 Com. 177. This is the most extensive sense of this word, in which the intention is not considered. But in a more limited sense, it is always understood that the killing is by human agency, and Hawkins defines it to be the killing of a man by a man. 1 Hawk. c. 8, s. 2. See Dalloz, Dict. h. t. Homicide may perhaps be described to be the destruction of the life of one human being, either by himself, or by the act, procurement, or culpable omission of another. When the death has been intentionally caused by the deceased himself, the offender is called felo de se; when it is caused by another, it is justifiable, excusable, or felonious.

2. The person killed must have been born; the killing before birth is balled foeticide. (q. v.)

3. The destruction of human life at any period after birth, is homicide, however near it may be to extinction, from any other cause.

4. - 1. Justifiable homicide is such as arises, 1st. From unavoidable necessity, without any will, intention or desire, and without any inadvertence in the party killing, and therefore without blame; as, for instance, the execution, according to law, of a criminal who has been lawully sentenced to be hanged; or, 2d. It is committed for the

advancement of public justice; as if an officer, in the lawful execution of his office, either in a civil or criminal case, should kill a person who assaults and resists him. 4 Bl. Com. 178-1 80. See Justifiable Homicide.

5. - 2. Excusable homicide is of two kinds 1st. Homicide per infortunium. (q. v.) or, 2d. Se defendendo, or self defence. (q. v.) 4 Bl. Com. 182, 3.

6. - 3. Felonious homicide, which includes, 1. Self-murder, or suicide;2. Man-slaughter, (q. v.); and , 3. Murder. (q. v.) Vide, generally, 3 Inst. 47 to 57; 1 Hale P. C. 411 to 602; 1 Hawk. c. 8; Fost. 255 to 837; 1 East, P. C. 214 to 391; Com. Dig. Justices, L. M.; Bac. Ab. Murder and Homicide; Burn's Just. h. t.; Williams' Just. h. t.; 2 Chit. Cr. Law, ch.9; Cro. C. C. 285 to 300; 4 Bl. Com. to 204; 1 Russ. Cr. 421 to 553; 2 Swift's Dig. 267 to 292.

HOMINE CAPTO IN WITHERNAM, Engl. law.. The name of a writ directed to the sheriff, and commanding him to take one who has taken any bondsman, and conveyed him out of the country, so that he cannot be replevied. Vide Withernam; Thesaurus, Brev. 63.

HOMINE ELIGENDO, English law. The name of a writ directed to a corporation, requiring the members to make choice of a new man, to keep the one part of a seal appointed for statutes merchant. Techn. Dict. h. t.

HOMINE REPLEGIANDO. When a man is unlawfully in custody, he may be restored to his liberty by writ de hominereplegiando, upon giving bail; or by a writ of habeas, corpus, which is the more usual remedy. Vide Writ de homine replegiando.

HOMO. This Latin word, in its most enlarged sense, includes both man and woman. 2 Inst. 45. Vide Man.

HOMOLOGATION, civil law. Approbation, confirmation by a court of justice, a judgment which orders the execution of some act; as, the approbation of an award, and ordering execution on the same. Merl. Rep´rt. h. t.; Civil Code of Louis. Index, h. t.; Dig. 4, 8; 7 Toull. n. 224. To homologate, is to say the like, similiter dicere. 9 Mart. L. R. 324.

HONESTY. That principle which requires us to give every one his due. Nul ne doit slenrichir aux de ens du droit d'autrui.

2. The very object of social order is to promote honesty, and to restrain dishonesty; to do justice and to prevent injustice. It is no less a maxim of law than of religion, do unto others as you wish to be done by.

HONOR. High estimation. A testimony of high estimation. Dignity. Reputation. Dignified respect of character springing from probity, principle, or moral rectitude. A duel is not justified by any insult to our honor. Honor is also employed to signify integrity in a judge, courage in a soldier, and chastity in a woman. To deprive a woman of her honor is, in some cases, punished as a public wrong, and by an action for the recovery of damages done to the relative rights of a hushand or a father. Vide Criminal conversation.

2. In England, when a peer of parliament is sitting judicially in that body, his pledge of honor is received instead of an oath; and in courts of equity, peers, peeresses, and lords of parliament, answer on their honor only. But the courts of common law know no such distinction. It is needless to add, that as we are not encumbered by a nobility, there is no such distinction in the United States, all persons being equal in the eye of the law.

HONOR, Eng. law. The seigniory of a lord paramount. 2 Bl. Com. 9f.

TO HONOR, contr. To accept a bill of exchange; to pay a bill accepted, or a promissory note, on the day it becomes due. 7 Taunt. 164; 1 T. R. 172. Vide To Dishonor.

HONORARIUM. A recompense for services rendered. It is usually applied only to the recompense given to persons whose business is connected with science; as the fee paid to counsel.

2. It is said this honorarium is purely voluntary, and differs from a fee, which may be recovered by action. 5 Serg. & Rawle, 412; 3 Bl. Com. 28;1 Chit. Rep. 38; 2 Atk. 332; but see 2 Penna. R. 75; 4 Watts' R. 334. Vide Dalloz, Dict. h. t., and Salary. See Counsellor at law.

HORS DE SON FEE, pleading in the ancient English law. These words signify out of his fee. A plea which was pleaded, when a person who pretended to be the lord, brought an action for rent services, as issuing out of his land: because if the defendant could prove the land was out of his fee, the action failed. Vide 9 Rep. 30; 2 Mod. 104; 1 Danvers' Ab. 655; Vin. Ab. h. t.

HORSE. Until a horse has attained the age of four years, he is called a colt. (q. v.) Russ. & Ry. 416. This word is sometimes used as a generic name for all animals of the horse kind. 3 Brev. 9. Vide Colt; Gender; and Yelv. 67, a.

HOSTAGE. A person delivered into the possession of a public enemy in the time of war, as a security for the performance of a contract entered into between the belligerents.

2. Hostages are frequently given as a security for the payment of a ransom bill, and if they should die, their death would not discharge the contract. 3 Burr. 1734; 1 Kent, Com. 106; Dane's Ab. Index, h. t.

HOSTELLAGIUM, Engl. law. A right reserved to the lords to be lodged and entertained in the houses of their tenants.

HOSTILITY. A state of open enmity; open war. Wolff, Dr. de la Rat. §1191. Hostility, as it regards individuals, may be permanent or temporary; it is permanent when the individual is a citizen or subject of the government at war, and temporary when he happens to be domiciliated or resident in the country of one of the belligerents; in this latter case the individual may throw off the national character he has thus acquired by residence, when he puts himself in motion, bona fide, to quit the country sine animo revertendi. 3 Rob. Adm. Rep. 12; 3 Wheat. R. 14.

2. There may be a hostile character merely as to commercial purposes, and hostility may attach only to the person as a temporary enemy, or it may attach only to the property of a particular description. This hostile character in a commercial view, or one limited to certain intents and purposes only, will attach in, consequence of having possessions in the territory of the enemy, or by maintaining a commercial establishment there, or by a personal residence, or, by particular modes of traffic, as by sailing under the enemy's flag of passport. 9 Cranch, 191 5 Rob. Adm. Rep.21, 161; 1 Kent Com. 73; Wesk. on Ins. h. t.; Chit. Law of Nat. Index, h. t.

HOTCHPOT, estates. This homely term is used figuratively to signify the blending and mixing property belonging to different persons, in order to divide it equally among those entitled to it. For example, if a man seised of thirty acres of land, and having two children, should, on the marriage of one of them, give him ten acres of it, and then die intestate seised of the remaining twenty; now, in order to obtain his portion of the latter, the married child, must bring back the ten acres he received, and add it to his father's estate, when an equal division of the whole will take place, and each be entitled to fifteen acres. 2 Bl. Com. 190. The term hotchpot is also applied to bringing together all the personal estate of the deceased, with the advancements he has made to his children, in order that the same may be divided agreeably to the provisions of the statute for the distribution of intestate's estates. In bringing an advancement into hotchpot, the donee is not required to account for the profits of the thing given; for example, he is not required to bring into hotchpot the produce of negroes, nor the interest of money. The property must be accounted for at its value

when given. 1 Wash. R. 224; 17 Mass. 358; 2 Desaus. 127.; 3 Rand. R. 117; 3 Pick. R. 450; 3 Rand. 559; Coop. Justin. 575.

2. In Louisiana the term collation is used instead of hotchpot. The collation of goods is the supposed or real return to the mass of the succession, which an heir makes of property which he received in advance of his share or otherwise, in order that such property maybe divided, together with the other effects of the succession. Civ. Code of Lo. art. 1305; and vide from that article to article 1367. Vide, generally, Bac. Ab. Coparceners, E; Bac. Ab. Executors, &c., K; Com. Dig. Guardian, G 2, Parcener, C 4; 8 Com. Dig. App. tit. Distribution, Statute of, III. For the French law, see Merl. Rep´rt. mots Rapport a succession.

HOUR measure of time. The space of sixty minutes, or the twenty-fourth part of a natural day. Vide Date; Fraction; and Co. Litt. 135; 3 Chit. Pr.110.

HOUSE, estates. A place for the habitation and dwelling of man. This word has several significations, as it is applied to different things. In a grant or demise of a house, the curtilage and garden will pass, even without the words "with the appurtenances," being added. Cro. Eliz. 89; S. C.; 3 Leon. 214; 1 Plowd. 171; 2 Saund. 401 note 2; 4 Penn. St. R; 93.

2. In a grant or demise of a house with the appurtenaces, no more, will pass, although other lands have been occupied with the house. 1 P. Wms.603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 d.; Id. 36 a. b.; 2 Saund. 401, note 2.

3. If a house, originally entire, be divided into several apartments, with an outer door to each apartment and no communication with each other subsists, in such case the several apartments are considered as distinct houses. 6 Mod. 214; Woodf. Land. & Ten. 178.

4. In cases of burglary, the mansion or dwelling-house in which the burglary might be committed, at common law includes the outhouses, though not under the same roof or adjoining to the dwelling-house provided they were within the curtilage, or common fence, as the dwelling or mansion house. 3 Inst. 64;1 Hale, 558; 4 Bl. Com. 225; 2 East, P. C. 493; 1 Hayw. N. C. Rep. 102, 142; 2 Russ. on Cr. 14.

5. The term house, in case of arson, includes not only the dwelling but all the outhouses, as in the case of burglary. It is a maxim in law that every man's house is his castle, and there he is entitled to perfect security; this asylum cannot therefore be legally invaded, unless by an officer duly authorized by legal process; and this process must be of a criminal nature to authorize the breaking of an outer door; and even with it, this cannot be done, until after demand of admittance and refusal. 5 Co. 93; 4 Leon.

41; T. Jones, 234. The house may be also broken for the purpose of executing a writ of habere facias. 5 Co. 93; Bac. Ab. Sheriff, N3.

6. The house protects the owner from the service of all civil process in the first instance, but not if he is once lawfully arrested and he takes refuge in his own house; in that case, the officer may pursue him and break open any door for the purpose. Foster, 320; 1 Rolle, R. 138; Cro. Jac. 555; Bac. Ab. ubi sup. In the civil law the rule was nemo de domo sua extrahi debet. Dig. 50, 17, 103. Vide, generally, 14 Vin. Ab. 315; Yelv. 29 a, n.1; 4 Rawle, R. 342; Arch. Cr. Pl. 251; and Burglary.

7. House is used figuratively to signify a collection of persons, as the house of representatives; or an institution, as the house of refuge; or a commercial firm, as the house of A B & Co. of New Orleans; or a family, as, the house of Lancaster, the house of York.

HOUSE OF COMMONS, Eng. law. The representatives of the people, in contradistinction to the nobles, taken collectively are called the house of commons.

2. This house must give its consent to all bills before they acquire the authority of law, and all laws for raising revenue must originate there.

HOUSE OF CORRECTIONS. A prison where offenders of a particular class are confined. The term is more common in England than in the United States.

HOUSE OF LORDS. Eng. law. The English lords, temporal and spiritual, when taken collectively and forming a branch of the parliament, are called the House of Lords.

2. Its assent is required to all laws. As a court of justice, it tries all impeachments.

HOUSE OF REFUGE, punishment. The name given to a prison for juvenile delinquents. These houses are regulated in the United Statees on the most humane principles, by special local laws.

HOUSE OF REPRESENTATIVES, government. The popular branch of the legislature.

2. The Constitution of the United States, art. 1, s. 2, 1, provides, that "the house of representatives shall be composed of members chosen every second year by the people of, the several states; and the electors of each state, shall have the qualifications requisite for electors of the most numerous branch of the state legislature."

3. The general qualifications of electors of the assembly, or most numerous branch of the legislature, in the several state governments, are, that they be of the age of twenty-one years and upwards, and free resident citizens of the state in which they vote, and have paid taxes: several of the state constitutions have prescribed the same or higher qualifications, as to property, in the elected, than in the electors.

4. The constitution of the United States, however, requires no evidence of property in the representatives, nor any declarations as to his religious belief. He must be free from undue bias or dependence, by not holding any office under the United States. Art. 1, s. 6, 2.

5. By the constitutions of the several states, the most numerous branch of the legislature generally bears the name of the house of representatives. Vide Story on Constitution of the United States, chap. 9 1 Kent's Com. 228.

6. By the Act of June 22, 1842, c. 47, it is provided, §1. That from and after the third day of March, one thousand eight hundred and forty-three, the house of representatives shall be composed of members elected agreeably to a ratio of one representative for every seventy thousand six hundred and eighty persons in each state, and ofone additional representative for each state having a fraction greater than one moiety of the said ratio, computed according to the rule prescribed by the constitution of the United States; that is to say: within the state of Maine, seven; within the state of New Hampshire, four; within the state of Massachusetts, ten; within the state of Rhode Island, two within the state of Connecticut, four; within the state of Vermont, four; within the state of New York, thirty-four; within the state of New Jersey, five; within the state of Pennsylvania, twenty-four; within the state of Delaware, one; within the state of Maryland, six; within the state of Virginia, fifteen; within the state of North Carolina, nine; within the state of South Carolina, seven; within the state of Georgia, eight; within the state of Alabama, seven; within state of Louisiana, four; within the state of Mississippi, four; within the state of Tennessee, eleven; within the state of Kentucky, ten; within the state of Ohio, twenty-one; within the state of Indiana, ten; within the state of Illinois, seven; within the state of Missouri, five; within the state of Arkansas, one; within the State of Michigan, three.

7.- §2. That in every case where a state is entitled to more than one representative, the number to which each state shall be entitled under this apportionment shall be elected by districts. composed of contiguous territory, equal in number to the number of representatives to which said state may be entitled, no one district electing more than one representative.

8. For the constitutions of the houses of representatives in the several states, the reader is referred to the names of the states in this work. Vide Congress.

HOUSE-BOTE. An allowance of necessary timber out of the landlord's woods, for the repairing and support of a house or tenement. This belongs of common-right to any lessee for years or for life. House-bote is said to be of two kinds, estoveriam aedificandi et ardendi. Co. Litt. 41.

HOUSEKEEPER. One who occupies a house.

2. A person who occupies every room in the house, under a lease, except one, which is reserved for his landlord, who pays all the taxes, is not a housekeeper. 1 Chit. Rep. 502. Nor is a person a housekeeper, who takes a house, which be afterwards underlets to another, whom the landlord refuses to accept as his tenant; in this case, the under-tenant aid the, taxes and let to the tenant the, first floor of the house, and the rent was paid for the whole house to the tenant, who paid it to the landlord. Id. note.

3. In order to make the party a house-keeper, he must be in actual possession of the house; 1 Chit. Rep. 288 and must occupy a whole house. 1 Chit. Rep. 316. See 1 Barn. & Cresw. 178; 2 T. R. 406; 1 Bott, 5; 3 Petersd, Ab. 103, note; 2 Mart. Lo. R. 313.

HOVEL. A place used by hushandmen to set their ploughs, carts, and other farming utensils, out of the rain and sun. Law Latin Dict. A shed; a cottage; a mean house.

HOYMAN. The master or captain of a hoy.

2. Hoymen are liable as common carriers. Story, Bailm. §496.

HUE AND CRY, Eng. law. A mode of pursuing felons, or such as have dangerously wounded any person, or assaulted any one with intent to rob him, by the constable, for the purpose of arresting the offender. 2 Hale, P. C. 100.

HUEBRA, Spanish law. An acre of land or as much as can be ploughed in a day by two oxen. Sp. Dict.; 2 White's Coll. 49.

HUISSIER. An usher of a court. In France, an officer of this name performs many of the duties which in this country devolve on the sheriff or constable. Dalloz, Dict. h. t. See 3 Wend. 173.

HUNDRED, Eng. law. A district of country originally comprehending one hundred families. In many cases, when an offence is committed within the -hundred, the inhabitants tire civilly responsible to the party injured.

2. This rule was probably borrowed from the nations of German origin, where it was known. Montesq. Esp. des Lois,]iv. 30, c. 17. It was established by Clotaire, among the Franks. 11 Toull. n. 237.

3. To make the innocent pay for the guilty, seems to be contrary to the first principles of justice, and can be justified only by necessity. In some of the United States laws have been passed making cities or counties responsible for, the destruction of property by a mob. This can be justified only on the ground that it is the interest of every one that property should be protected, and that it is for the general good such laws should exist.

HUNDRED GEMOTE. The name of a court among the Saxons. It was holden every month, for the benefit of the inhabitants of the hundred.

HUNDREDORS. In England they are inhabitants of a local division of a county, who, by several statutes, are held to be liable in the cases therein specified, to make good the loss sustained by persons within the hundred, by robbery or other violence, therein also specified. The principal of these statutes are, 13 Edw. I. st. 2, c. 1, s. 4; 28 Edw. III. c. 11; 27 Eliz. c. 13; 29 Car. II. c. 7; 8 Geo. II. c. 16; 22 Geo. II. c.24.

HUNGER. The desire for taking food. Hunger is no excuse for larceny. 1 Hale, P. C. 54; 4 Bl. Com. 31. But it is a matter which applies itself strongly to the consciences of the judges in mitigation of the punishment.

2. When a person has died, and it is suspected he has been starved to death, an examination of his body ought to be made, to ascertain whether or not he died of hunger. The signs which usually attend death from hunger are the following: The body is much emaciated, and a foetid, acrid odor exhales from it, although death may have been very recent. The eyes are red and open, which is not usual in other causes of death. The tongue and throat are dry, even to aridity, and the stomach and intestines are contracted and empty. The gall bladder is pressed with bile, and this fluid is found scattered over the stomach and intestines, so as to tinge them very extensively. The lungs are withered, but all the other organs are generally in a healthy state. The blood vessels are usually empty. Foder´, tom. ii. p. 276, tom. iii. p. 231; 2 Beck's Med. Jur. 52; see Eunom. Dial. 2, §47, p. 142, and the note at p. 384.

HUNTING. The act of pursuing and taking wild animals; the chase.

2. The chase gives a kind of title by occupancy, by which the hunter acquires a right or property in the game which he captures. In the United States, the right of hunting is universal, and limited only so far as to exclude hunters from committing injuries to

private property or to the public; as, by shooting on public roads. Vide Feroe naturae; Occupancy.

HURDLE, Eng. law. A species of sledge, used to draw traitors to execution.

HUshAND, domestic relations. A man who has a wife.

2. The hushand, as such, is liable to certain obligations, and entitled to certain rights, which will be here briefly considered.

3. First, of his obligations. He is bound to receive his wife at his home, and should furnish her with all the necessaries and conveniences which his fortune enables him to do, and which her situation requires; but this does not include such luxuries as, according to her fancy, she deems necessaries; vide article Cruelty, where this matter is considered. He is bound to love his wife, and to bear with her faults, and, if possible, by mild means to correct them and he is required to fulfil towards her his marital promise of fidelity, and can, therefore, have no carnal connexion with any other woman, without a violation of his obligations. As he is bound to govern his house properly, he is liable for its misgovernment, and he may be punished for keeping a disorderly house, even where his wife had the principal agency, and he is liable for her torts, as for her slander or trespass. He is also liable for the wife's debts, incurred before coverture, provided they are recovered from him during their joint lives; and generally for such as are contracted by her after coverture, for necessaries, or by his authority, express or implied. See 5 Whart. 395; 5 Binn. 235; 1 Mod. 138; 5 Taunt. 356; 7 T. R. 166; 3 Camp. 27; 3 B. & Cr. 631; 5 W. & S. 164.

4. Secondly, of his rights. Being the head of the family, the hushand has a right to establish himself wherever he may please, and in this he cannot be controlled by his wife; he may manage his affairs his own way; buy and sell all kinds of personal property, without any control, and he may buy any real estate he may deem proper, but, as the wife acquires a right in the latter, he cannot sell it, discharged of her dower, except by her consent, expressed in the manner prescribed by the laws of the state where such lands lie. At common law, all her personal property, in possession, is vested in him, and he may dispose of it as if he had acquired it by his own contract this arises from the principle that they are considered one person in law; 2 Bl. Com. 433 and he is entitled to all her property in action, provided he reduces it to possession during her life. Id. 484. He is also entitled to her chattels real, but these vest in him not absolutely, but sub modo; as, in the case of a lease for years, the hushand is entitled to receive the rents and profits of it, and may, if he pleases, sell, surrender, or dispose of it during the coverture, and it is liable to be taken in execution for his debts and, if he survives her, it is, to all intents and purposes, his own. In case his wife survives him, it is considered as if it had never been transferred from her, and it belongs to her alone.

In his wife's freehold estate, he has a life estate, during the joint lives of himself and wife; and, at common law, when he has a child by her who could inherit, he has an estate by the curtesy. But the rights of a hushand over the wife's property, are very much abridged in some of the United States, by statutes. See Act of Pennsylvania, passed April 11, 1848.

5. The laws of Louisiana differ essentially from those of the other states, as to the rights and duties of hushand and wife, particularly as it regards their property. Those readers, desirous of knowing, the legislative regulations on this subject, in that state, are referred to the Civil Code of Louis. B. 1, tit. 4; B. 3, tit. 6. Vide, generally, articles Divorce; Marrriage; Wife; and Bac. Ab. Baron and Feme; Rop. H. & W.; Prater ou H. & W.; Clancy on the Rights, Duties and Liabilities of Hushand and Wife Canning on the Interest of Hushand and Wife, &c.; 1 Phil. Ev. 63; Woodf. L. & T. 75; 2 Kent, Com. 109; 1 Salk. 113 to 119ù; Yelv. 106a, 156a, 166a; Vern. by Raithby, 7, 17, 48, 261; Chit. Pr. Index, h. t. Poth. du Contr. de Mar. n. 379; Bouv. Inst. Index, h. t.

HUshAND, mar. law. The name of an agent who is authorized to make the necessary repairs to a ship, and to act in relation to the ship, generally, for the owner. He is usually called ship's hushand. Vide Ship's Hushand.

HUshRECE, old Eng. law. The, ancient name of the offence now called burglary.

HUSTINGS, Engl. law. The name of a court held before the lord mayor and aldermen of London; it is the principal and supreme court of the city., See 2 Inst. 327; St. Armand, Hist. Essay on the Legisl. Power of England, 75.

HYDROMETER. An instrument for measuring the density of fluids; being immersed in fluids, as in water, brine, beer, brandy, &c., it determines the proportion of their densities, or their specific gravities, and thence their qualities.

2. By, the Act of Congress of January 12, 1825, 3 Story's' Laws U. S. 1976, the secretary of the treasury is authorized, under the direction of the president of the United States, to adopt and substitute such hydrometer as he may deem best calculated to promote the public interest, in lieu of that now prescribed by law, for the purpose of ascertaining the proof of liquors; and that after such adoption and substitution, the duties imposed by law upon distilled spirits shall be levied, collected and paid, according to the proof ascertained by any hydrometer so substituted and adopted.

HYPOBOLUM, civ. law. The name of the bequest or legacy given by the hushand to his wife, at his death, above her dowry. Techn. Dict. h. t.

HYPOTHECATION, civil law. This term is used principally in the civil law; it is defined to be a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold, in order to be paid his claim out of the proceeds.

2. There are two species of hypothecation, one called pledge, pignus, and, the other properly denominated hypothecation. Pledge is that species , of hypothecation which is contracted by the delivery of the debtor to the creditor, of the thing hypothecated. Hypothecation, properly so called, is that which is contracted without delivery of the thing hypothecated. 2 Bell's Com. 25, 5th ed.

3. Hypothecation is further divided into general and special when the debtor hypothecates to his creditor all his estate and property, which he has, or may have, the hypothecation is general; when the hypothecation is confined to a particular estate, it is special.

4. Hypothecations are also distinguished into conventional, legal, and tacit. 1. Conventional hypothecations are those which arise by the agreement of the parties. Dig. 20, 1, 5.

5. - 2. Legal hypothecation is that which has not been agreed upon by any contract, express or implied; such as arises from the effect of judgments and executions.

6. - 3. A tacit, which is also a legal hypothecation, is that which the law gives in certain cases, without the consent of the parties, to secure the creditor; such as, 1st. The lien which the public treasury has over the property of public debtors. Code, 8, 15, 1. 2d. The landlord has a lien on the goods in the house leased, for the payment of his rent. Dig. 20, 2, 2; Code, 8, 15, 7, 3d. The builder has a lien, for his bill, on the house he has built. Dig. 20, 1. 4th, The pupil has a lien on the property of the guardian for the balance of his account. Dig. 46, 6, 22; Code, 6, 37, 20. 5th. There is hypothecation of the goods of a testator for the security of a legacy he has given. Code, 6, 43, 1.

7. In the common law, cases of hypothecation, in the strict sense of the civil law, that is, of a pledge of a chattel, without possession by the pledgee, are scarcely to be found; cases of bottomry bonds and claims for seamen's wages, against ships are the nearest approach to it; but these are liens and privileges rather than hypothecations. Story, Bailm. §288. It seems that chattels not in existence, though they cannot be pledged, can be hypothecated, so that the lien will attach, as soon as the chattel has been prodced. 14 Pick. R. 497. Vide, generally, Poth. de l'Hypoth´que; Poth. Mar. Contr. translated by Cushing, note. 26, p. 145; Commercial Code of France, translated by Rodman, note 52, p. 351; Merl. R´pertoire, mot Hypoth´que, where the subject is

fully considered; 2 Bro. Civ. Law, 195; Ayl. Pand. 524; 1 Law Tracts, 224; Dane's Ab. h. t.; Abbott on Ship. Index, h. t.; 13 Ves. 599; Bac. Ab. Merchant, &c. G; Civil Code of Louis. tit. 22, where this sort of security bears the name of mortgage. (q. v.)

HYPOTHEQUE, French law. Properly, the right acquired by the creditor over the immovable property which has been assigned to him by his debtor, as security for his debt, although he be not placed in possession of it. The hypotheque might arise in two was. 1. By the express agreement of the debtor, which was the conventional hypotheque. 2. By disposition of law, which was the implied or Iegal hypotheque. This was nothing but a lien or privilege which the creditor enjoyed of being first paid out of the land subjected to this incumbrance. For example, the landlord had hypotheque on the goods of his tenant or others, while on the premises let. A mason had the same on the house he built. A pupil or a minor on the land of his tutor or curator, who had received his money. Domat, Loix Civiles, 1. 3, & 1; 2 Bouv. Inst. 1817.

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I

IBIDEM. This word is used in references, when it is intended to say that a thing is to be found in the same place, or that the reference has for its object the same thing, case, or other matter. IOU, contracts. The memorandum IOU, (I owe you), given by merchants to each other, is a mere evidence of the debt, and does not amount to a promissory note. Esp. Cas. N. A. 426; 4 Carr. & Payne, 324; 19 Eng. Com. L. Rep. 405; 1 Man. & Gran. 46; 39 E. C. L. R. 346; 1 Campb. 499; 1 Esp. R. 426; 1 Man. Gr. & So. 543; Dowl. & R. N. P. Cas. 8.

ICTUS ORBIS, med. jurisp. A maim, a bruise, or swelling; any hurt without cutting the skin. When the skin is cut, the injury is called a wound. (q. v.) Bract. lib. 2, tr. 2, c. 5 and 24.

2. Ictus is often used by medical authors in the sense of percussus. It is applied to the pulsation of the arteries, to any external lesion of the body produced by violence also

to the wound inflicted by a scorpion or venomous reptile. Orbis is used in the sense of circlo, circuit, rotundity. It is applied also to the eye balls. Oculi dicuntur orbes. Castelli Lexicon Medicum.

IDEM SONANS. Sounding the same.

2. In pleadings, when a name which it is material to state, is wrongly spelled, yet if it be idem sonans with that proved, it is sufficient, as Segrave for Seagrave, 2 Str. R. 889; Keen for Keene, Thach. Cr. Cas. 67; Deadema for Diadema, 2 Ired. 346; Hutson for Hudson, 7 Miss. R. 142; Coonrad for Conrad, 8 Miss. R. 291. See 5 Pike, 72; 6 Ala. R. 679; vide also Russ. & Ry. 412; 2 Taunt. R. 401, In the following cases the variances there mentioned were declared to be fatal. Russ. & Ry. 351; 10 East, R. 83; 5 Taunt. R. 14; 1 Baldw. R. 83; 2 Crom. & M. 189; 6 Price, R. 2; 1 Chit. R. 659; 13 E. C. L. R. 194. See, generally, 8 Chit. Pr. 231, 2; 4 T. R. 611; 3 B. & P. 559; 1 Stark. R. 47; 2 Stark. R. 29; 3 Camp. R. 29; 6 M. & S. 45; 2 N. H. Rep. 557; 7 S. & R. 479; 3 Caines, 219; 1 Wash. C. C. R. 285; 4 Cowen, 148 and the article Name.

IDENTITATE NOMINIS, Engl. law. The name of a writ which lies for a person taken upon a capias or exigent and committed to prison, for another man of the same name; this writ directs the sheriff to inquire whether he be the same person against whom the action was brought, and if not, then to discharge him. F. N. B. 267. In practice, a party in this condition would be relieved by habeas corpus.

IDENTITY, evidence. Sameness.

2. It is frequently necessary to identify persons and things. In criminal prosecutions, and in actions for torts and on contracts, it is required to be proved that the defendants have in criminal actions, and for injuries, been guilty of the crime or injury charged; and in an action on a contract, that the defendant was a party to it. Sometimes, too, a party who has been absent, and who appears to claim an inheritance, must prove his identity and, not unfrequently, the body of a person which has been found dead must be identified: cases occur when the body is much disfigured, and, at other times, there is nothing left but the skeleton. Cases of considerable difficulty arise, in consequence of the omission to take particular notice; 2 Stark. Car. 239 Ryan's Med. Jur. 301; and in consequence of the great resemblance of two persons. 1 Hall's Am. Law Journ. 70; 1 Beck's Med. Jur. 509; 1 Paris, Med. Jur, 222; 3 Id. 143; Trail. Med. Jur. 33; Foder«, Med. Leg. ch. 2, tome 1, p. 78-139.

3. In cases of larceny, trover, replevin, and the like, the things in dispute must always be identified. Vide 4 Bl. Com. 396.

4. M. Briand, in his Manuel Complet de M«dicine L«gale, 4eme partie, ch. 1, gives rules for the discovery of particular marks, which an individual may have had, and also the true color of the hair, although it may have been artificially colored. He also gives some rules for the purpose of discovering, from the appearance of a skeleton, the sex, the age, and the height of the person when living, which he illustrates by various examples. See, generally, 6 C. & P 677; 1 C. & M. 730; 3 Tyr. 806; Shelf. on Mar. & Div. 226; 1 Hagg. Cons. R. 189; Best on Pres. Appx. case 4; Wills on Circums. Ev. 143, et seq.

IDES, NONES and CALENDS, civil law. This mode of computing time, formerly in use among the Romans, is yet used in several chanceries in, Europe, particularly in that of the pope. Many ancient instruments bear these dates; it is therefore proper to notice them here. These three words designate all the days of the month.

2. The calends were the first day of every month, and were known by adding the names of the months; as calendis januarii, calendis februarii, for the first days of the months of January and February. They designated the following days by those before the nones. The fifth day of each month, except those of March, May, July, and October; in those four months the nones indicated the seventh day; nonis martii, was therefore the seventh day of March, and so of the rest. In those months in which the nones indicated the fifth day, the second was called quarto nonas or 4 nonas, that is to say, quarto die ante nonas, the fourth day before the nones. The words die and ante, being understood, were usually suppressed. The third day of each of those eight months was called tertio, or 3 nonas. The fourth, was pridie or 2 nonas; and the fifth was nonas. In the months of March, May, July and October, the second day of the months was called sexto or 6 nonas; the third, quinto, or 5 nonas; the fourth, quarto, or 4 nonas; the fifth, tertio, or 3 nonas; the sixth, pridie, usually abridged prid. or pr. or 2 nonas; and the seventh, nones. The word nonae is so applied, it is said, because it indicates the ninth day before the ides of each month.

3. In the months of March, May, July and October, the fifteenth day of the months was the Ides. These are the four mouths, as above mentioned, in which the nones were on the seventh day. In the other eight months of the year the nones were the fifth of the month, and the ides the thirteenth in each of them the ides indicated the ninth day after the nones. The seven days between the nones and the ides, which we count 8, 9, 10, 11, 12, 13, and 14, in March, May, July and October, the Romans counted octave, or 8 idus; septimo, or 7 idus; sexto, or 6 idus; quinto, or 5 idus; quarto, or 4 idus; tertio, or 3 idus; pridie, or 2, idus; the word ante being understood as mentioned above. As to the other eight mouths of the year, in which the nones indicated the fifth day of the month, instead of our 6, 7, 8, 9, 10, 11, and 12, the Romans counted octavo idus, septimo, &c. The word is said to be derived from the Tuscan, iduare, in Latin dividere, to divide, because the day of ides divided the month into equal parts. The

days from the ides to the end of the month were computed as follows; for example, the fourteenth day of January, which was the next day after the ides, was called decimo nono, or 19 kalendas, or ante kalendas febrarii; the fifteenth, decimo octavo, or 18 kalindas februarii, and so of the rest. Counting in a, retrograde manner to pridie or 2 kalendas februarii, which was the thirty-first day of January.

4. As in some months the ides indicate the thirteenth, and in some the fifteenth of the month, and as the months have not an equal number of days, it follows that the decimo nono or 19 kalendas did not always happen to be the next day after the Ides, this was the case only in the months of January, August and December. Decimo sexto or the 16th in Fedruary; decimo septimo or 17, March, May, July and October; decimo octave or 18, in April, June, September, and November. Merlin, R«pertoire de Jurisprudence, mots Ides, Nones et Calendes.

A Table of the Calends of the Nones and the Ides.

	Jan., Aug., Dec.	March, May,	April, June,	February 28,
	31 days.	July, Oct.,	Sept., Nov.,	bissextile,
		31 days.	30 days.	29 days.
1	Calendis.	Calendis.	Calendis.	Calendis.
2	Nonas.	Nonas	Nonas	Nonas
3	Nonas.	Nonas	Nonas	Nonas
4	Prid. Non.	Nonas	Prid. Non.	Prid. Non.
5	Nonis	Nonas	Nonis	Nonis
6	8 Idus	Prid. Non.	8 Idus	8 Idus
7	7 Idus	Nonis	7 Idus	7 Idus
8	6 Idus	8 Idus	6 Idus	6 Idus
9	5 Idus	7 Idus	5 Idus	5 Idus
10	4 Idus	6 Idus	4 Idus	4 Idus
11	3 Idus	5 Idus	3 Idus	3 Idus
12	Prid. Idus	4 Idus	Prid. Idus	Prid. Idus
13	Idibus	3 Idus	Idibus	Idibus
14	19 Cal.	Prid. Idus	18 Cal.	16 Cal.
15	18 Cal.	Idibus	17 Cal.	15 Cal.
16	17 Cal.	17 Cal.	16 Cal.	14 Cal.
17	16 Cal.	16 Cal.	15 Cal.	3 Cal.

18	15 Cal.	15 Cal.	14 Cal.	12 Cal.
19	14 Cal.	14 Cal.	13 Cal.	11 Cal.
20	18 Cal.	13 Cal.	12 Cal.	10 Cal.
21	12 Cal.	12 Cal.	11 Cal.	9 Cal.
22	11 Cal.	11 Cal.	10 Cal.	8 Cal.
23	10 Cal.	10 Cal.	9 Cal.	7 Cal.
24	9 Cal.	9 Cal.	8 Cal.	6 Cal.*
25	8 Cal.	9 Cal.	7 Cal.	5 Cal.
26	7 Cal.	7 Cal.	6 Cal.	4 Cal.
27	6 Cal.	6 Cal.	5 Cal.	3 Cal.
28	5 Cal.	5 Cal.	4 Cal.	Prid. Cal.
29	4 Cal.	4 Cal.	3 Cal.	
30	3 Cal.	3 Cal.	Prid. Cal.	
31	Prid. Cal.	Prid. Cal.		

* If February is bissextile, Sexto Calencas (6 Cal.) it is counted twice, viz: for the 24th and 25th of the month, Hence the word bis-sextile.

IDIOCY, med. jur. That condition of mind, in which the reflective, or all or a part of the affective powers, are either entirely wanting, or are manifested to the least possible extent.

2. Idiocy generally depends upon organic defects. The most striking physical trait, and one seldom wanting, is the diminutive size of the head, particularly of the anterior superior portions, indicating a deficiency of the anterior lobes of the brain. According to Gall, whose observations on this subject are entitled to great consideration, its circumference, measured immediately over the orbiter arch, and the most prominent part of the occipital bone, is between 11¥ and 14¥ inches. Gall, sur les Fonctions, p. 329. In the intelligent adult, it usually measures from 21 to 22 inches. Chit. Med. Jur. 248. See, ou this subject, the learned work of Dr. Morton, of Philadelphia*, entitled Crania Americana. The brain of an idiot equals that of a new born infant; that is, about one-fourth, one-fifth, or one-sixth of the cerebral mass of an adult's in the enjoyment of his faculties. The above is the only constant character. observed in the heads of idiots. In other respects their forms are as various as those of other persons. When idiocy supervenes in early infancy, the head is sometime remarkable for immense size. This unnatural enlargement arises from some kind of morbid action preventing

the development of the cerebral mass, and producing serous cysts, dropsical effusions, and the like.

3. In idiocy the features are irregular; the forehead low, retreating, and narrowed to a point; the eyes are unsteady, and often squint the lips are. thick, and the mouth is generally open; the gums are spongy, and the teeth are defective; the limbs are crooked and feeble. The senses are usually entirely wanting; many are deaf and dumb, or blind and others are incapable of perceiving odors, and show little or no discrimination in their food for want of taste. Their movements are constrained and awkward, they walk badly, and easily fall, and are not less awkward with their hands, dropping generally what is given to them. They are seldom able to articulate beyond a few sounds. They are generally affected with rickets, epilepsy, scrofula, or paralysis. Its subjects seldom live beyond the twenty-fifth year, and are incurable, as there is natural deformity which cannot be remedied. Vide Chit. Med. Jur. 345; Ray's Med. Jur. c. 2; 1 Beck's Med. Jur. 571 Shelf. on Lun. Index, h. t.; and Idiot.

IDIOT, Persons. A person who has been without understanding from his nativity, and whom the law, therefore, presumes never likely to attain any. Shelf. on Lun. 2.

2. It is an imbecility or sterility of mind, and not a perversion of the understanding. Chit. Med. Jur. 345, 327, note s; 1 Russ. on Cr. 6; Bac. Ab. h. t. A; Bro. Ab. h. t.; Co. Litt. 246, 247; 3 Mod. 44; 1 Vern. 16; 4 Rep. 126; 1 Bl. Com. 302. When a man cannot count or number twenty, nor tell his father's or mother's name, nor how old he is, having been frequently told of it, it is a fair presumption that, he is devoid of understanding. F. N. B. 233. Vide 1 Dow, P. C. now series, 392; S. C. 3 Bligh, R. new series, 1. Persons born deaf, dumb, and blind, are, presumed to be idiots, for the senses being the only inlets of knowledge, and these, the most important of them, being closed, all ideas and associations belonging to them are totally excluded from their minds. Co. Litt. 42 Shelf. on Lun. 3. But this is a mere presumption, which, like most others, may be rebutted; and doubtless a person born deaf, dumb, and blind, who could be taught to read and write, would not be considered an idiot. A remarkable instance of such an one may be found in the person of Laura Bridgman, who has been taught how to converse and even to write. This young woman was, in the year 1848, at school at South Boston. Vide Locke on Human Understanding, B. 2 c. 11, 12, 13; Ayliffe's Pand. 234; 4 Com. Dig. 610; 8 Com. Dig. 644.

3. Idiots are incapable of committing crimes, or entering into contracts. They cannot of course make a will; but they may acquire property by descent. Vide, generally, 1 Dow's Parl. Cas. new series, 392; 3 Bligh's R. 1; 19 Ves. 286, 352, 353; Stock ou the Law of Non Compotes Mentis; Bouv. Inst. Index, h. t.

IDIOTA INQUIRENDO, WRIT DE. This is the name of an old writ which directs the sheriff to inquire whether a man be an idiot or not. The inquisition is to be made by a jury of twelve men. Fitz. N. B. 232.

IDLENESS. The refusal or neglect to engage in any lawful employment, in order to gain a livelihood.

2. The vagrant act of 17 G. II. c. 5, which, with some modifications, has been adopted, in perhaps most of the states, describes idle persons to be those who, not having wherewith to maintain themselves, live idle, without employment, and refuse to work for the usual and common, wages. These are punishable according to the difrerent police regulations, with fine and imprisonment. In Pennsylvania, vagrancy is punished, on a conviction before a magistrate, with imprisonment for one mouth.

IGNIS JUDICIUM, Eng. law. The name of the old judicial trial by fire.

IGNOMINY. Public disgrace, infamy, reproach, dishonor. Ignominy is the opposite of esteem. Wolff, 145. See Infamy.

IGNORAMUS, practice. We are ignorant. This word, which in law means we are uninformed, is written on a bill by a grand jury, when they find that there is not sufficient evidence to authorize their finding it a true bill. Sometimes, instead of using this word, the grand jury endorse on the bill, "Not found." 4 Bl. Com. 305. Vide Grand Jury.

IGNORANCE. The want of knowledge.

2. Ignorance is distinguishable from error. Ignorance is want of knowledge; error is the non-conformity or opposition of our ideas to the truth. Considered as a motive of our actions, ignorance differs but little from error. They are generally found together, and what is said of one is said of both.

3. Ignorance and error, are of several kinds. 1. When considered as to their object, they are of law and of fact. 2. When examined as to their origin, they are voluntary or involuntary, 3. When viewed with regard to their influence on the affairs of men, they are essential or non-essential.

4. - 1. Ignorance of law and fact. 1. Ignorance of law, consists in the want of knowledge of those laws which it is our duty to understand, and which every man is presumed to know. The law forbids any one to marry a woman whose hushand is living. If any man, then, imagined he could marry such a woman, he would be ignorant of the law; and, if he married her, he would commit an error as to a matter of

law. How far a party is bound to fulfil a promise to pay, upon a supposed liability, and in ignorance of the law, see 12 East, R. 38; 2 Jac. & Walk. 263; 5 Taunt. R. 143; 3 B. & Cresw. R. 280; 1 John. Ch. R. 512, 516; 6 John. Ch. R. 166; 9 Cowen's R. 674; 4 Mass. R. 342; 7 Mass. R. 452; 7 Mass. R. 488; 9 Pick. R. 112; 1 Binn. R. 27. And whether he can be relieved from a contract entered into in ignorance or mistake of the law. 1 Atk. 591; 1 Ves. & Bea. 23, 30; 1 Chan. Cas. 84; 2 Vern. 243; 1 John. Ch. R. 512; 2 John. Ch. R. 51; 1 Pet. S. C. R. 1; 6 John. Ch. R. 169, 170; 8 Wheat. R. 174; 2 Mason, R. 244, 342.

5. - 2. Ignorance of fact, is the want of knowledge as to the fact in question. It would be an error resulting from ignorance of a fact, if a man believed a certain woman to be unmarried and free, when in fact, she was a married woman; and were he to marry her under that belief, he would not be criminally responsible. Ignorance of the laws of a foreign government, or of another state; is ignorance of a fact. 9 Pick. 112. Vide, for the difference between ignorance of law and ignorance of fact, 9 Pick. R. 112; Clef. des Lois Rom. mot Fait; Dig. 22, 6, 7.

6. - 2. Ignorance is either voluntary or involuntary. 1. It is voluntary when a party might, by taking reasonable pains, have acquired the necessary knowledge. For example, every man might acquire a knowledge of the laws which have been promulgated, a neglect to become acquainted with them is therefore voluntary ignorance. Doct. & St. 1, 46; Plowd. 343.

7. - 2. Involuntary ignorance is that which does not proceed from choice, and which cannot be overcome by the use of any means of knowledge known to him and within his power; as, the ignorance of a law which has not yet been promulgated.

8. - 3. Ignorance is either essential or non-essential. 1. By essential ignorance is understood that which has for its object some essential circumstance so intimately connected with the: matter in question, and which so influences the parties that it induces them to act in the business. For example, if A should sell his horse to B, and at the time of the sale the horse was dead, unknown to the parties, the fact of the death would render the sale void. Poth. Vente, n. 3 and 4; 2 Kent, Com. 367.

9. - 2. Non-essential or accidental ignorance is that which has not of itself any necessary connexion with the business in question, and which is not the true consideration for enteting into the contract; as, if a man should marry a woman whom he believed to be rich, and she proved to be poor, this fact would not be essential, and the marriage would therefore be good. Vide, generally, Ed. Inj. 7; 1 Johns. h. R. 512; 2 Johns. Ch. R. 41; S. C. 14 Johns. R 501; Dougl. 467; 2 East, R. 469; 1 Campb. 134: 5 Taunt. 379; 3 M. & S. 378; 12 East, R. 38; 1 Vern. 243; 3 P. Wms. 127, n.; 1 Bro. C. C. 92; 10 Ves. 406; 2 Madd. R. 163; 1 V. & B. 80; 2 Atk. 112, 591; 3 P. Wms. 315;

Mos. 364; Doct. & Stud. Dial. 1, c. 26, p. 92; Id. Dial. 2, ch. 46, p. 303; 2 East, R. 469; 12 East, R. 38; 1 Fonbl. Eq. B. 1, ch. 2, 7, note v; 8 Wheat. R. 174; S. C. 1 Pet. S. C. R. 1; 1 Chan. Cas. 84; 1 Story, Eq. Jur. 137, note 1; Dig. 22, 6; Code, 1, 16; Clef des Lois Rom. h. t.; Merl. R«pert. h. t.; 3 Sav. Dr. Rom. Appendice viii., pp. 337 to 444.

ILL FAME. This is a technical expression, that which means not only bad character as generally understood, but every person, whatever may be his conduct and character in life, who visits bawdy houses, gaming houses, and other places which are of ill fame, is a person of ill fame. 1 Rogers' Recorder, 67; Ayl. Par. 276; 2 Hill, 558; 17 Pick. 80; 1 Hagg. Eccl. R. 720; 2 Hagg. Cons. R. 24; 1 Hagg. Cons. R. 302, 303; 1 Hagg. Eccl. R. 767; 2 Greenl. Ev. 44.

ILLEGAL. Contrary to law; unlawful.

2. It is a general rule, that the law will never give its aid to a party who has entered into an illegal contract, whether the same be in direct violation of a statute, against public policy, or opposed to public morals. .Nor to a contract which is fraudulent, which affects the defendant or a third person.

3. A contract in violation of a statute is absolutely void, and, however disguised, it will be set aside, for no form of expression can remove the substantial defect inherent in the nature of the transaction; the courts will investigate the real object of the contracting parties, and if that be repugnant to the law, it will vitiate the transaction.

4. Contracts against the public policy of the law, are equally void as if they were in violation of a public statute; a contract not to marry any one, is therefore illegal and void. See Void.

5. A contract against the purity of manners is also illegal; as, for example, a agreement to cohabit unlawfully with another, is therefore void; but a bond given for past cohabitation, being considered as remuneration for past injury, is binding. 4 Bouv. Inst. n. 3853.

6. All contracts which have for their object, or which may in their consequences, be injurious to third persons, altogether unconnected with them, are in general illegal and void. Of the first, an example may be found in the case where a sheriff's officer received a sum of money from a defendant for admitting to bail, and agreed to pay the bail, part of the money which was so exacted. 2 Burr. 924. The case of a wager between two persons, as to the character of a third, is an example of the second class. Cowp. 729; 4 Camp. 152; 1 Rawle, 42; 1 B. & A. 683. Vide lllicit; Unlawful.

ILLEGITIMATE. That which is contrary to law; it is usually applied to children born out of lawful wedlock. A bastard is sometimes called an illegitimate child.

ILLEVIABLE. A debt or duty that cannot or ought not to be levied. Nihil set upon a debt is a mark for illeviable.

ILLICIT. What is unlawful what is forbidden by the law. Vide Unlawful.

2. This word is frequently used in policies of insurance, where the assured warrants against illicit trade. By illicit trade is understood that "which is made unlawful by the laws of the country to which the object is bound." The assured having entered into this warranty, is required to do no act which will expose the vessel to be legally condemned. 2 L. R. 337, 338. Vide Insurance; Trade; Warranty.

ILLICITE. Unlawfully.

2. This word has a technical meaning, and is requisite in an indictment where the act charged is unlawful; as, in the case of a riot. 2 Hawk. P. C. 25, 96.

ILLINOIS. The name of one of the United States of America. This state was admitted into the Union by virtue of a "Resolution declaring the admission of the state of Illinois into the Union," passed December 3, 1818, in the following words: Resolved, &c.;That, whereas, in pursuance of an Act of Congress, passed on the eighteenth day of April, one thousand eight hundred and eighteen, entitled "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states," the people of said territory did, on the twenty-sixth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and States in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven: Resolved, &c.;That the state of Illinois shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

2. A constitution for this state, was adopted in convention held at Kaskaskia, on the 26th day of August, 1818, which continued in force until the first day of April; 1848. A convention to revise the constitution assembled at Springfield, June 7, 1847, in pursuance of an act of the general assembly of the state of Illinois, entitled "An act to provide for the call of a convention: On the first day of August, 1848, this convention adopted a constitution of the state of Illinois, and by the 13th section of the schedule

thereof it provided that this constitution shall be the supreme law of the land from and after the first day of April, A. D. 1848.

3. It will be proper to consider, 1. The rights of citizens to vote at elections. 2. The distribution of the powers of government.

4. - 1. The sixth article directs that, 1. In all elections, every white male citizen above the age of twenty-one years, having resided in the state one year next preceding any election, shall be entitled to vote at such election; and every white male inhabitant of the age aforesaid, who may be a resident of the state' at the time of the adoption of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entititled to vote, except in the district or county in which he Shall actually reside lit the time of such election.

2. All votes shall be given by ballot.

5. No elector loses his residence in the state by reason of his absence on business of the United States, or this state.

6. No soldier, seaman or mariner of the United States, is deemed a resident of the state, in consequence of being stationed within the state.

5. The second article distributes the powers of the government as follows:

1. The powers of the government of the state of Illinois shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

2. No person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of, the others, except as hereinafter expressly directed or permitted; and all acts in contravention of this section shall be void. These will be separately considered.

6. The legislative department will be considered by taking a view, 1. Of those parts of the constitution which relate to the general assembly. 2. Of the senate. 3. Of the house of representatives.

7. - 1st. Of the general assembly. The third article of the constitution provides as follows

1. The legislative authority of this state shall be vested in a general assembly; which shall consist of a senate and house of representatives, both to be elected by the people.

2. The first election for senators and representatives shall be held on the Tuesday after the first Monday in November, one thousand eight hundred and forty-eight; and thereafter, elections for members of the general assembly shall be held once in two years, on the Tuesday next after the first Monday in November, in each and every county, at such places therein as may be provided by law.

7. No person elected to the general sembly shall receive any civil appointment within this state, or to the senate of the United States, from the governor, the governor and senate, or from the general assembly, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member for any such office or appointment, shall be void; nor shall any member of the general assembly be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the time for which he shall have been elected, or during one year after the expiration thereof.

12. The senate and house of representatives, when assembled, shall each choose a speaker and other officers, (the speaker of the senate excepted.) Each house shall judge of the qualifications and election of its own members, and sit upon its own adjournments. Two-thirds of each house shall constitute a quorum but a smaller number may adjourn from day to day, and compel the attendance of absent members.

13. Each house shall keep a journal of its proceedings, and publish them. The yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journals.

14. Any two members of either house shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public, or to any individual, and have the reasons of their dissent entered on the journals.

15. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds of all the members elected, expel a member, but not a second time for the same cause; and the reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

16. When vacancies shall happen in either house, the govenor, or the person exercising the powers of governor, shall issue writs of election to fill such vacancies.

17. Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same and for any speech or debate in either house, they shall not be questioned in any other place.

18. Each house may punish, by imprisonment during its session, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence: Provided, such imprisonment shall not, at any one time, exceed twenty-four hours.

19. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

8. - 2d Of the senate. The senate will be considered by taking a view of, 1. The qualification of senators. 2. Their election. 3. By whom elected. 4. When elected. 5. Number of senators. 6. The duration of their office.

9. First. Art. 3, s. 4, of the Constitution, directs that "No person shall be a senator who shall not have attained the age of thirty years; who shall not be a citizen of the United States, five years an inhabitant of this state, and one year in the county or district in which he shall be chosen, immediately preceding his election, if such county or district shall have been so long erected; but if not, then within the Iimits of the county or counties, district or districts, out of which the same shall have been taken unless he shall have been absent on the public business of the United States, or of this state, and shall not, moreover, have paid a state or county tax."

10. Secondly. The senators at their first session herein provided for, shall be divided by lot, as near as can be, into two classes. The seats of the first class shall be vacated at the expiration of the second year, and those of the second class at the expiration of the fourth year; so that one-half thereof, as near as possible, may be biennially chosen forever thereafter. Art. 31 s. 5.

11. Thirdly. The senators are elected by the people.

12. Fourthly. The first election shall be held on the Tuesday after the first Monday in November, 1848; and thereafter the elections shall be on the Tuesday after the first Monday in November, once in two years. Art. 3, s. 2.

13. Fifthly. The senate shall consist of twenty-five members, and the house of representatives shall consist of seventy-five members, until the population of the state

shall amount to one million. of souls, when five members may be added to the house, and five additional members for every five hundred thousand inhabitants thereafter, until the whole number of representatives shall amount to one hundred; after which, the number shall neither be increased nor diminished; to be apportioned among the several counties according to the number of white inhabitants. In all future apportionments, where more than one county shall be thrown into a representative district, all the representatives to which said counties may be entitled shall be elected by the entire district. Art. 3, s. 6.

14. Sixthly. The senators at their first session herein provided for shall be divided by lot, as near as can be, into two classes. The seats of the first class shall be vacated at the expiration of the second year, and those of the second class at the expiration of the fourth year, so that one-half thereof, as near as possible, may be biennially chosen forever thereafter. Art. 3, s. 5.

15. - 3. The house of representatives. This will be considered in the same order which has been observed in relation to the senate.

16. First. No person shall be a representative who shall not have attained the age of twenty-five years; who shall not be a citizen of the United States, and three years an inhabitant of this state; who shall not have resided within the limits of the county or district in which he shall be chosen twelve months next preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; and who, moreover, shall not have paid a state or county tax. Art. 3, s. 3.

17. Secondly. They are elected biennially.

18. Thirdly. Representatives are elected by the people.

19. Fourthly. Representatives are elected at the same time that senators are elected.

20. Fifthly. The house of representatives shall consist of seventy-five members. See ante, No. 16.

21. Sixthly. Their office continues for two years.

22. - 2. The executive department. The executive power is vested in a governor. Art. 4, s. 1. It will be proper to consider, 1. His qualifications. 2. His election: 3. The duration of his office. 4. His authority and duty.

23. First. No person except a citizen of the United States shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been ten years a resident of this state; and fourteen years a citizen of the United States. Art. 4 s. 4.

24. Secondly. His election is to be on the Tuesday next after the first Monday in November. The first election in 1848, and every fourth year afterwards.

25. Thirdly. He remains in office for four years. The first governor is to be installed on the first Monday of January, 1849, and the others every fourth; year thereafter.

26. Fourthly. His authority and duty. He may give information and recommend measures to the legislature, grant reprieves, commutations and pardons, except in cases of treason and impeachment, but in these cases he may suspend execution of the sentence until the meeting of the legislature - require information from the officers of the executive department, and take care that the laws be faithfully executed - on extraordinary occasions, convene the general assembly by proclamation be commander-in-chief of the army and navy of the state, except when they shall be called into the service of the United States - nominate, and, by and with the consent and advice of the senate, appoint all officers whose offices are established by the constitution, or which may be created by law, and whose appointments - are not otherwise provided for - in case of disagreement between the two houses with respect to the time of adjournment, adjourn the general assembly to such time as he thinks proper, provided it be not to a period beyond a constitutional meeting of the same. Art. 4. He has also the veto power.

27. A lieutenant governor shall be chosen at every election of governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor. Art. 4, s. 14. The following are his principal powers and duties

15. The lieutenant governor shall, by virtue of his office, be speaker of the senate, have a right, when in committee of the whole, to debate and vote on all subjects, and, whenever the senate are equally divided, to give the casting vote.

16. Whenever the government shall be administered by the lieutenant- governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own, number as speaker for that occasion; and if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from his office, refuse to qualify, or resign, or die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government.

17. The lieutenant governor, while he acts as speaker of the senate, shall receive for his service the same compensation which, shall, for the same period, be allowed to the speaker of the house of representatives, and no more.

18. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a speaker.

19. In case of the impeachment of the governor, his absence from the, state, or inability to discharge the duties of his office, the powers, duties, and emoluments of the office shall devolve upon the lieutenant governor and in case of his death, resignation, or removal, then upon the speaker of the senate for the time being, until the governor, absent or impeached, shall return or be acquitted; or until the disqualification or inability shall cease; or until a new governor shall be elected and qualified.

20. In case of a vacancy in the office of governor, for any other cause than those herein enumerated, or in case of the death of the governor elect before he is qualified, the powers, duties, and emoluments of the office devolve upon the lieutenant governor, or speaker of the senate, as above provided, until a new governor be elected and qualified.

28. - 3. The judiciary department. The judicial power is vested in one supreme court, in circuit courts, in county courts, and in justices of the peace; but inferior local courts, of civil and criminal jurisdiction, may be established by the general assembly in the cities of the state but such courts shall have a uniform organization and jurisdiction in such cities. Art. 5, s. 1. These will be separately considered.

29. - 1st. Of the supreme court, its organization and jurisdiction. 1. Of its organization. 1st. The judges must be citizens of the United States; have resided in the state five years previous to their respective elections; and two years next preceding their election in the division, circuit, or county in which they shall respectively be elected; and not be less than thirty-five years of age at the time of their election. 2d. The judges are elected each one in a particular district, by the people. But the legislature may change the mode of election. 3d. The supreme court consists of a chief justice and three associates, any two of whom form a quorum; and a concurrence of two of said judges is necessary to a decision. 4th. They hold their office for nine years. After the first election, the judges are to draw by lot, and one is to go out of office in three, one in six, and the other in nine years. And one judge is to be elected every third year. 2. Of thejurisdiction of the supreme court. This court has original jurisdiction in cases relative to the, revenue, in cases of mandamus, habeas corpus, and in such cases of

impeachment as may be by law directed to be tried before it, and it has appellate jurisdiction in all other cases.

30. - 2d. Of the circuit courts, their organization and jurisdiction. 1st. Of their organization. The state is divided into nine judicial districts, in each of which a circuit judge, having the same qualifications as the supreme judges, except that he may be appointed at the age of thirty years, is elected by the qualified electors, who holds his office for six years and until his successor shall be commissioned and qualified; but the legislature may increase the number of circuits. 2d. Of their jurisdiction. The circuit courts have jurisdiction in all cases at law and equity, and in all cases of appeals from all inferior courts.

31. - 3d. Of the county courts. There is in each county a court to be called a county court. It is composed of one judge, elected by the people, who holds his office for four years. Its jurisdiction extends to all probate and such other jurisdiction as the general assembly may confer in civil cases, and in such criminal eases as may be prescribed by law, when the punishment is by fine only, not exeeeding one hundred dollars. The county judge, with such justices of the peace in each county as may be designated by law, shall hold terms for the transaction of county business, and shall perform such other duties as the general assembly shall prescribe; Provided, the general assembly may require that two justices, to be chosen by the qualified electors of each county, shall sit with the county judge in all cases; and there shall be elected, quadrennially, in each county, a clerk of the county court, who shall be ex officio recorder, whose compensation shall be fees; Provided, the general assembly may, by law, make the clerk of the circuit court ex officio recorder, in lieu of the county clerk.

32. - 4th. Of justices of the peace. There shall be elected in each county in this state, in such districts as the general assembly may direct, by the qualified electors thereof, a competent number of justices of the peace, who shall hold their offices for the term of four years, and until their successors shall have been elected and qualified, and who shall perform such duties, receive such compensation, and exercise such jurisdiction as may be prescribed by law.

ILLITERATE. This term is applied to one unacquainted with letters.

2. When an ignorant man, unable to read, signs a deed or agreement, or makes his mark instead of a signature, and he alleges, and can provide that it was falsely read to him, he is not bound by it, in consequence of the fraud. And the same effect would result, if the deed or agreement were falsely read to a blind man, who could have read before he lost his sight, or to a foreigner who did not understand the language. For a plea of "laymen and unlettered," see Bauer v. Roth, 4 Rawle, Rep. 85 and pp. 94, 95.

3. To induce an illiterate man, by false representations and false reading, to sign a note for a greater amount than that agreed on, is indictable as a cheat. 1 Yerg. 76. Vide, generally, 2 Nels. Ab. 946; 2 Co. 3; 11 Co. 28; Moor, 148.

ILLUSION. A species of mania in which the sensibility of the nervous system is altered, excited, weakened or perverted. The patient is deceived by the false appearance of things, and his reason is not sufficiently active and powerful to correct the error, and this last particular is what distinguishes the sane from the insane. Illusions are not unfrequent in a state of health, but reason corrects the errors and dissipates them. A square tower seen from a distance may appear round, but on approaching it, the error is corrected. A distant mountain may be taken for a cloud, but as we approach, we discover the truth. To a person in the cabin of a vessel under sail, the shore appears to move; but reflection and a closer examination soon destroy this illusion. An insane individual is mistaken on the qualities, connexions, and causes of the impressions he actually receives, and he forms wrong judgments as to his internal and external sensations; and his reason does not correct the error. 1 Beck's Med. Jur. 538; Esquirol, Maladies Mentales, pr«m. partie, III., tome 1, p. 202. Dict. des Sciences M«dicales, Hallucination, tome 20, p. 64. See Hallucination.

ILLUSORY APPOINTMENT, chancery practice. Such an appointment or disposition of property under a power as is merely nominal and not substantial.

2. Illusory appointments are void in equity. Sugd. Pow. 489; 1 Vern. 67; 1 T. R. 438, note; 4 Ves. 785; 16 Ves. 26; 1 Taunt. 289; and the article Appointment.

TO IMAGINE, Eng. law. In cases of treason the law makes it a crime to imagine the death of the king. In order to complete the offence there must, however, be an overt act the terms compassing and imagining being synonymous. It. has been justly remarked that the words to compass and imagine are too vague for a statute whose penalty affects the life of a subject. Barr. on the Stat. 243, 4. Vide Fiction.

IMBECILITY, med. jur. A weakness of the mind, caused by the absence or obliteration of natural or acquired ideas; or it is described to be an abnormal deficiency either in those faculties which acquaint us with the qualities and ordinary relations of things, or in those which furnish us with the moral motives that regulate our relations and conduct towards our fellow men. It is frequently attended with excessive activity. of one or more of the animal propensities.

2. Imbecility differs from idiocy in this, that the subjects of the former possess some intellectual capacity, though inferior in degree to that possessed by the great mass of mankind; while those of the latter are utterly destitute of reason. Imbecility differs also from stupidity. (q. v.) The former consists in a defect of the mind, which renders

it unable to examine the data presented to it by the senses, and therefrom to deduce the correct judgment; that is, a defect of intensity, or reflective power. The latter is occasioned by a want of intensity, or perceptive power.

3. There are various degrees of this disease. It has been attempted to classify the degrees of imbecility, but the careful observer of nature will perhaps be soon satisfied that the shades of difference between one species and another, are almost imperceptible. Ray, Med. Jur. ch. 3; 2 Beck, Med. Jur. 550, 542; 1 Hagg. Ecc. R. 384; 2 Philm. R. 449; 1 Litt. R. 252, 5 John. Ch. R. 161; 1 Litt. R. 101; Des Maladies mentales, consider«es dans leurs rapports avec la legislation civille et criminelle, 8; Georget, Discussion medico-l«gale sur la folie, 140.

IMMATERIAL. What is not essential; unimportant what is not requisite; what is informal; as, an immaterial averment, an immaterial issue.

2. When a witness deposes to something immaterial, which is false, although he is guilty of perjury in foro conscientiae, he cannot be punished for perjury. 2 Russ. on Cr. 521; 1 Hawk. b. 1, c. 69, s. 8; Bac. Ab. Perjury, A.

IMMATERIAL AVERMENT. One alleging with needless particularity or unnecessary circumstances, what is material and requisite, and which, properly, might have been stated more generally, or without such circumstances or particulars; or, in other words, it, is a statement of unnecessary particulars, in connexion with, and as descriptive of, what is material. Gould on Pl. c. 3, 186.

2. It is highly improper to introduce immaterial averments, because, when they are made, they must be proved; as, if, a plaintiff declare for rent on a demise which is described as reserving a certain annual rent, payable "by four even and equal quarterly payments," &c.; and on the trial it appears that there was no stipulation with regard to the time or times of payment of the rents, the plaintiff cannot recover. The averment as to the time, though it need not have been made, yet it must be proved, and the plaintiff having failed in this, he cannot recover; as there is a variance between the contract declared upon and the contract proved. Dougl. 665.

3. But when the immaterial averment is such that it may be struck out of the declaration, without striking out at the same time the cause of action, and when there is no variance between the contract as, laid in the declaration and that proved, immaterial averments then need not be proved. Gould on Pl. C. 3, 188.

lMMATERIAL ISSUE. One taken on a point not proper to decide the action; for example, if in an action of debt on bond, conditioned for the payment of ten dollars and fifty cents at a certain day, the defend ant pleads the payment of ten dollars

according to the form of the condition, and the plaintiff, instead of demurring, tenders issue upon the payment, it is manifest that, whether this issue be found for the plaintiff or the defendant, it will remain equally uncertain whether the plaintiff is entitled to maintain his action, or not; for, in an action for the penalty of a bond, conditioned to pay a certain sum, the only material question is, whether the exact sum were paid or not, and the question of payment of a part is a question quite beside the legal merits. Hob. 113; 5 Taunt. 386.

IMMEDIATE. That which is produced directly by the act to which it is ascribed, without the intervention or agency of any distinct intermediate cause.

2. For immediate injuries the remedy is trespass; for those which are consequential, an action on the case. 11 Mass. R. 59, 137, 525; 1 & 2 Ohio R. 342; 6 S. & R. 348; 18 John. 257; 19 John. 381; 2 H. & M. 423; 1 Yeates, R. 586; 12 S & R. 210; Coxe, R. 339; Harper's R. 113; 6 Call's R . 44; 1 Marsh. R. 194.

3. When an immediate injury is caused by negligence, the injured party may elect to regard the negligence as the immediate cause of action, and declare in case; or to consider the act itself as the immediate injury, and sue in trespass. 14 John. 432; 6 Cowen, 342; 3 N. H. Rep. 465; sed vide 3 Conn. 64; 2 Bos. & Pull. New Rep. by Day, 448, note. See Cause.

IMMEMORIAL. That which commences beyond the time of memory. Vide Memory, time of. IMMEMORIAL POSSESSION. In Louisiana, by this term is understood that of which no man living has seen the beginning, and the existence of which he has learned from his elders. Civ. Code of Lo. art. 762; 2 M. R. 214; 7 L. R. 46; 3 Toull. p. 410; Poth. Contr. de Societ«, n. 244; 3 Bouv. Inst. n. 3069, note.

IMMIGRATION. The removing into one place from another. It differs from emigration, which is the moving from one place into another. Vide Emigration.

IMMORAL CONSIDERATION. One contrary to good morals, and therefore invalid. See Moral obligation.

IMMORALITY. that which is contra bonos mores. In England, it is not punishable in some cases, at the common law, on, account of the ecclesiastical jurisdictions: e. g. adultery. But except in cases belonging to the ecclesiastical courts, the court of king's bench is the custom morum, and may punish delicto contra bonos mores. 3 Burr. Rep. 1438; 1 Bl. Rep. 94; 2 Strange, 788. In Pennsylvania, and most, if not all the United States, all such cases come under one and the same jurisdiction.

2. Immoral contracts are generally void; an agreement in consideration of future illicit cohabitation between the parties; 3 Burr. 1568; S. C. 1 Bl. Rep. 517; 1 Esp. R. 13; 1 B. & P. 340, 341; an agreement for the value of libelous and immoral pictures, 4 Esp. R. 97; or for printing a libel, 2 Stark. R. 107; or for an immoral wager, Chit. Contr. 156, cannot, therefore, be enforced. For whatever arises from an immoral or illegal consideration, is void: quid turpi ex causa promissum est non valet. Inst. 3, 20, 24.

3. It is a general rule, that whenever an agreement appears to be illegal, immoral, or against public policy, a court of justice leaves the parties where it finds them; when the agreement has been executed, the court will not rescind it; when executory, the count will not help the execution. 4 Ohio R. 419; 4 John. R. 419; 11 John. R. 388; 12 John. R. 306; 19 John. R. 341; 3 Cowen's R. 213; 2 Wils. R. 341.

IMMOVABLES, civil law. Things are movable or immovable. Immovables, res immobiles, are things in general, such as cannot move themselves or be removed from one place to another. But this definition, strictly speaking, is applicable only to such things as are immovable by their own nature, and not to such as are so only by the destination of the law.

>2. There are things immovable by their nature, others by their destination, and others by the objects to which they are applied.

3. - 1. Lands and buildings or other constructions, whether they have their foundations in the soil or not, are immovable by their nature. By the common law, buildings erected on the land are not considered real estate, unless they have been let into, or united to the land, or to substances previously connected therewith. Ferard on Fixt. 2.

4. - 2. Things, which the owner of the land has placed upon it for its service and improvement, are immovables by destination, as seeds, plants, fodder, manure, pigeons in a pigeon-house, bee-hives, and the like. By the common. law, erections with or without a foundation, when made for the purpose of trade, are considered personal estate. 2 Pet. S. C. Rep. 137; 3 Atk. 13; Ambl. 113

5. - 3. A servitude established on real estate, is an instance of an immovable, which is so considered in consequence of the object to which it is applied. Vide Civil Code of Louis. B. 2, t. 1, c. 2, art. 453-463; Poth. Des Choses, 1; Poth. de la Communante, n. 25, et seq; Clef des Lois Romaines, mot Immeubles.

IMMUNITY. An exemption from serving in an office, or performing duties which the law generally requires other citizens to perform. Vide Dig. lib. 50, t. 6; 1 Chit. Cr. L. 821; 4 Har. & M'Hen. 341.

IMMUTABLE. What cannot be removed, what is unchangeable. The laws of God being perfect, are immutable, but no human law can be so considered.

IMPAIRING THE OBLIGATION OF CONTRACTS. The Constitution of the United States, art. 1, s. 9, cl. 1, declares that no state shall "pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

2. Contracts, when considered in relation to their effects, are executed, that is, by transfer of the possession of the thing contracted for; or they are executory, which gives only a right of action for the subject of the contract. Contracts are also express or implied. The constitution makes no distinction between one class of contracts and the other. 6 Cranch, 135; 7 Cranch, 164. 3. The obligation of a contract here spoken of is a legal, not a mere moral obligation; it is the law which binds the party to perform his undertaking. The obligation does not inhere or subsist in the contract itself, proprio vigore, but in the law appli- cable to the contract. 4 Wheat. R. 197; 12 Wheat. R. 318; and. this law is not the universal law of nations, but it is the law of the state where the contract is made. 12 Wheat. R. 213. Any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. 12 Wheat. 256; Id. 327; 3 Wash. C. C. Rep. 319; 8 Wheat. 84; 4 Wheat. 197.

4. The constitution forbids the states to pass any law impairing the obligation of contracts, but there is nothing in that instrument which prohibits Congress from passing such a law. Pet. C. C. R. 322. Vide, generally, Story on the Const. 1368 to 1891 Serg. Const. Law, 356; Rawle on the Const. h. t.; Dane's Ab. Index, h. t.; 10 Am. Jur. 273-297.

TO IMPANEL, practice. The writing the names of a jury on a schedule, by the sheriff or other officer lawfully authorized.

IMPARLANCE, pleading and practice. Imparlance, from the French, parler, to speak, or licentia loquendi, in its most general signification, means time given by the court to either party to answer the pleading of his opponent, as either, to plead, reply, rejoin, &c., and is said to be nothing else but the continuance of the cause till a further day. Bac. Abr. Pleas, C. But the more common signification of the term is time to plead. 2 Saund. 1, n. 2; 2 Show. 3 10; Barnes, 346; Lawes, Civ. Pl. 93, 94.

2. Imparlances are of three descriptions: First. A common or general imparlance. Secondly. A special imparlance. Thirdly. A general special imparlance.

3. - 1. A general imparlance is the entry of a general prayer. and allowance of time to plead till the next term, without reserving to the defendant the benefit of any

exception; so that, after such an imparlance, the defendant cannot object to the jurisdiction of the court, or plead any matter in abatement. This kind of imparlance is always from one term to another.

4.-2. A special imparlance reserves to the defendant all exception to the writ, bill, or count; and, therefore, after it, the defendant may plead in abatement, though not to the jurisdiction of the court.

5. - 3. A general special imparlance contains a saving of all exceptions whatsoever, so that the defendant, after this, may plead, not only in abatement, but he may also plead a plea which affects the jurisdiction of the court, as privilege. He cannot, however, plead a tender, and that he was always ready to pay, because, by craving time, he admits he is not ready, and so falsifies his plea. Tidd's Pr. 418, 419. The last two kinds of imparlances are, it seems, sometimes from one day to another in the same term. See, in general, Com. Dig Abatement, I 19, 20, 21; 1 Chit. Pl. 420; Bac. Abr. Pleas, C; 14 Vin. Abr. 335; Com. Dig. Pleader, D; 1 Sell. Pr. 265; Doct. Pl. 291; Encycl. de M. D'Alembert, art. Delai (Jurisp.)

IMPEACHMENT, const. law, punishments. Under the constitution and laws of the United States, an impeachment may be described to be a written accusation, by the house of representatives of the United States, to the senate of the United States, against an officer. The presentment, written accusation, is called articles of impeachment.

2. The constitution declares that the house of representatives shall have the sole power of impeachment art. 1, s. 2, cl. 5 and that the senate shall have the sole power to try all impeachments. Art. 1, s. 3, cl. 6.

3. The persons liable to impeachment are the president, vice-president, and all civil officers of the United States. Art. 2, s. 4. A question arose upon an impeachment before the senate, in 1799, whether a senator was a civil officer of the United States, within the purview of this section of the constitution, and it was decided by the senate, by a vote of fourteen against eleven, that he was not. Senate Journ., January 10th, 1799; Story on Const. 791; Rawle on Const. 213, 214 Serg. Const. Law, 376.

4. The offences for which a guilty officer may be impeached are, treason, bribery, and other high crimes and misdemeanors. Art. 2, s. 4. The constitution defines the crime of treason. Art. 3, s. 3. Recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by "other high crimes and misdemeanors," resort, it is presumed, must be had to parliamentary practice, and the common law, in order to ascertain what they are. Story, 795.

5. The mode of proceeding, in the institution and trial of impeachments, is as follows: When a person who may be legally impeached has been guilty, or is supposed to have been guilty, of some malversation in office, a resolution is generally brought forward by a member of the house of representatives, either to accuse the party, or for a committee of inquiry. If the committee report adversely to the party accused, they give a statement of the charges, and recommend that he be impeached; when the resolution is adopted by the house, a committee is appointed to impeach the party at the bar of the senate, and to state that the articles of impeachment against him will be exhibited in due time, and made good before the senate, and to demand that the senate take order for the appearance of the party to answer to the impeachment. The house then agree upon the articles of impeachment, and they are presented to the senate by a committee appointed by the house to prosecute the impeachment; the senate then issues process, summoning the party to appear at a given day before them, to answer to the articles. The process is served by the sergeant-at-arms of the senate, and a return is made of it to the senate, under oath. On the return-day of the process, the senate resolves itself into a court of impeacmment, and the senators are sworn to do justice, according to the constitution and laws. The person impeached is called to answer, and either appears or does not appear. If he does not appear, his default is recorded, and the senate may proceed ex parte. If he does appear, either by himself or attorney, the parties are required to form an issue, and a time is then assigned for the trial. The proceedings on the trial are conducted substantially as they are upon common judicial trials. If any debates arise among the senators, they are conducted in secret, and the final decision is given by yeas and nays; but no person can be convicted without the concurrence of two-thirds of the members present. Const. art. 1, s. 2, cl. 6.

6. When the president is tried, the chief justice shall preside. The judgment, in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. Proceedings on impeachments under the state constitutions are somewhat similar. Vide Courts of the United States.

IMPEACHMENT, evidence. An allegation, supported by proof, that a witness who has been examined is unworthy of credit.

2. Every witness is liable to be impeached as to his character for truth; and, if his general character is good, he is presumed, at all times, to be ready to support it. 3 Bouv. Inst. n. 3224, et seq.

IMPEACHMENT OF WASTE. It signifies a restraint from committing waste upon lands or tenements; or a demand of compensation for waste done by a tenant who has but a particular estate in the land granted, and, therefore, no right to commit waste.

2. All tenants for life, or any less estate, are liable to be impeached for waste, unless they hold without impeachment of waste; in the latter case, they may commit waste without being questioned, or any demand for compensation for the waste done. 11 Co. 82.

IMPEDIMENTS, contracts. Legal objections to the making of a contract. Impediments which relate to the person are those of minority, want of reason, coverture, and the like; they are sometimes called disabilities. Vide Incapacity.

2. In the civil law, this term is used to signify bars to a marriage. These impediments are classed, as they are applied to particular persons, into absolute and relative; as they relate to the contract and its validity, they are dirimant (q. v.) and prohibitive. (q. v.) 1. The absolute impediments are those which prevent the person subject to them from marrying at, all, without either the nullity of marriage, or, its being punishable. 2. The relative impediments are those which regard only certain persons with regard to each other; as, the marriage of a brother to a sister. 3. The dirimant impediments are those which render a marriage void; as, where one of the contracting parties is already married to another person. 4. Prohibitive impediments are those which do not render the marriage null, but subject the parties to a punishment. Bowy. Mod. Civ. Law, 44, 45.

IMPERFECT. That which is incomplete.

2. This term is applied to rights and obligations. A man has a right to be relieved by his fellow-creatures, when in distress; but this right he cannot enforce by law; hence it is called an imperfect right. On the other hand, we are bound to be grateful for favors received, but we cannot be compelled to perform such imperfect obligations. Vide Poth. Ob. arc. Pr«liminaire; Vattel, Dr. des Gens, Prel. notes, 17; and Obligations.

IMPERIUM. The right to command, which includes the right to employ the force of the state to enforce the laws; this is one of the principal attributes of the power of the executive. 1 Toull. n. 58.

IMPERTINENT, practice, pleading. What does not appertain, or belong to; id est, qui ad rem non pertinet.

2. Evidence of facts which do not belong to the matter in question, is impertinent and inadmissible. In general, what is immaterial is impertinent, and what is material is, in general, not impertinent. 1 McC. & Y. 337. See Gresl. Ev. Ch. 3, s. 1, p. 229. Impertinent matter, in a declaration or other pleading is that which does not belong to the subject; in such case it is considered as mere surplusage, (q. v.) and is rejected.

Ham. N. P. 25. Vide 2 Ves. 24; 5 Madd. R. 450; Newl. Pr. 38; 2 Ves. 631; 5 Ves. 656; 18 Eng. Com. Law R. 201; Eden on Inj. 71.

3. There is a difference between matter merely impertinent and that which is scandalous; matter may be impertinent, without being scandalous; but if it is scandalous, it must be impertinent.

4. In equity a bill cannot, according to the general practice, be referred for impertinence after the defendant has answered or submitted to answer, but it may be referred for scandal at any time, and even upon the application of a stranger to the suit. Coop. Eq. Pl. 19; 2 Ves. 631; 6 Ves. 514; Story, Eq. Pl. 270. Vide Gresl. Eq. Ev. p. 2, c. 3, s, 1; 1 John. Ch. R. 103; 1 Paige's R. 555; I Edw. R. 350; 11 Price, R. 111; 5 Paige's R. 522; 1 Russ. & My. 28; Bouv. Inst. Index, h. t.; Scandal.

IMPETRATION. The obtaining anything by prayer or petition. In the ancient English statutes, it signifies a pre-obtaining of church benefices in England from the church of Rome, which belonged to the gift of the king, or other lay patrons. TO IMPLEAD, practice. To sue or prosecute by due course of law. 9 Watts, 47.

IMPLEMENTS. Such things as are used or employed for a trade, or furniture of a house.

IMIPLICATA, mar. law. In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures on freight at so much per cent, to which they are entitled at all events, even if the adventure be lost. This is what the Italians call implicata. Targa, chap. 34 Emer. Mar. Loans, s. 5.

IMPLICATION. An inference of something not directly declared, but arising from what is admitted or expressed.

2. It is a rule that when the law gives anything to a man, it gives him by implication all that is necessary for its enjoyment. It is also a rule that when a man accepts an office, he undertakes by implication to use it according to law, and by non-user he may forfeit it. 2 B1. Com. 152.

3. An estate in fee simple will pass by implication; 6 John.. R. 185; IS John. R. 31; 2 Binn. R. 464, 532; such implication must not only be a possible or probable one, but it must be plain and necessary that is, so strong a probability of intention that an intention contrary to that imputed to the testator cannot be supposed. 1 Ves. & B. 466; Willes, 141; 1 Ves. jr. 564; 14 John. R. 198. Vide, generally, Com. Dig. Estates by Devise, N 12, 13; 2 Rop. Leg. 342; 14 Vin. Ab. 341; 5 Ves. 805; 5 Ves. 582; 3 Ves. 676.

IMPORTATION, comm. law. The act of bringing goods and merchandise into the United States from a foreign country. 9 Cranch, 104, 120; 5 Cranch, 368; 2 Mann. & Gr. 155, note a.

2. To prevent the mischievous interference of the several states with the national commerce, the constitution of the United States, art. 1, s. 10, provides as follows: "No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress."

3. This apparently plain provision has received a judicial construction. In the year 1821, the legislature of Maryland passed an act requiring that all importers of foreign articles, commodities, &c., by the bale or package, of wine, rum, &c., and other persons selling the same by wholesale, bale or package, hogshead, barrel or tierce, should, before they were authorized to sell, take out a license for which they were to pay fifty dollars, under certain penalties. A question arose whether this act was or was not a violation of the constitution of the United States, and particularly of the above clause, and the supreme court decided against the constitutionality of the law. 12 Wheat. 419.

4. The act of congress of March 1, 1817, 3 Story, L. U. S. 1622, provides:

5. - 1. That, after the 30th day of September next, no goods, wares, or merchandise, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly or wholly belong to the citizens or subjects of that country of which the goods are the growth, production or manufacture; or from which such goods, wares or merchandise, can only be or most usually are, first shipped for transportation: Provided, nevertheless, That this regulation shall not extend to the vessels of any foreign nation which has not adopted, and which shall not adopt a similar regulation.

6. - 2. That all goods, wares or merchandise, imported into the United States contrary to the true intent and meaning of this act, and the ship or vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States and such goods, wares, or merchandise, ship, or vessel, and cargo, shall be liable to be seized, prosecuted, and condemned, in like manner, and under the same regulations, restrictions, and provisions, as have been heretofore established for the recovery, collection, distribution, and remission, of forfeitures to the United States by the several revenue laws.

7. - 4. That no goods, wares, or merchandise, shall, be imported, under penalty of forfeiture thereof, from one port of the United States to another port of the United States, in a vessel belonging wholly or in part to a subject of any foreign power; but this clause shall not be construed to prohibit the sailing of any foreign vessel from one to another port of the United States, provided no goods, wares, or mere other than those imported in such vessel from some foreign port, and which shall not have been unladen, shall be carried from one port or place to another in the United States.

8. - 6. That after the 30th day of September next, there shall be paid upon every ship or vessel of the United States, which shall be entered in the United States from any foreign port or place, unless the officers, and at least two-thirds of the crew thereof, shall be proved citizens of the United States, or persons not the Subjects of any foreign prince or state, to the satisfaction of the collector, fifty cents per ton: And provided also, that this section shall not extend to ships or vessels of the United States, which are now on foreign voyages, or which may depart from the United States prior to the first day of May next, until after their return to some port of the United States.

9.- 7. That the several bounties and remissions, or abatements of duty, allowed by this act, in the case of vessels having a certain proportion of seamen who are American citizens, or persons not the subjects of any foreign power, shall be allowed only, in the case of vessels having such proportion of American seamen during their whole voyage, unless in case of sickness, death or desertion, or where the whole or part of the crew shall have been taken prisoners in the voyage. Vide article Entry of goods at the Custom-house.

IMPORTS. Importations; as no state shall lay any duties on imports or exports. Const. U. S. Art. 1, s. 10; 7 How. U. S. Rep. 477.

IMPORTUNITY. Urgent solicitation, with troublesome frequency and pertinacity.

2. Wills and devises are sometimes set aside in consequence of the importunity of those who have procured them. Whenever the importunity is such as to deprive the devisor of the freedom, of his will, the devise becomes fraudulent and void. Dane's Ab. ch. 127, a. 14, s. 5, 6, 7; 2 Phillim. R. 551, 2.

IMPOSITIONS. Imposts, taxes, or contributions.

IMPOSSIBILITY. The character of that which. cannot be done agreeably to the accustomed order of nature.

2. It is a maxim that no one is bound to perform an impossibility. A l'impossible nul n'est tenu. 1 Swift's Dig. 93; 6 Toull. n. 121, 481.

3. As to impossible conditions in contracts, see Bac. Ab. Conditions, M; Co. Litt. 206; Roll. Ab. 420; 6 Toull. n. 486, 686; Dig. 2, 14, 39; Id. 44, 7, 31; Id. 50, 17, 185; Id. 45, 1, 69. On the subject of impossible conditions in wills, vide 1 Rop. Leg. 505; Swinb. pt. 4, s. 6; 6 Toull. 614. Vide, generally, Dane's Ab. Index, h. t.; Clef des Lois Rom. par Fieff« Lacroix, h. t.; Com. Dig. Conditions, D 1 & 2; Vin. Ab. Conditions, C a, D a, E a.

IMPOSTS. This word is sometimes used to signify taxes, or duties, or impositions; and, sometimes, in the more restrained sense of a duty on imported goods and merchandise . The Federalist, No. 30; 3 Elliott's Debates, 289; Story, Const. 949.

>2. The Constitution of the United States, art. 1, s. 8, n. 1, gives power to congress "to lay and collect taxes, duties, imposts and excises." And art. 1, s. 10, n. 2, directs that "no state shall, without the consent of congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." See Bac. Ab. Smuggling, B; 2 Inst. 62; Dy. 165 n.; Sir John Davis on Imposition.

IMPOTENCE, med. jur. The incapacity for copulation or propagating the species. It has also been used synonymously with sterility.

2. Impotence may be considered as incurable, ourable, accidental or temporary. Absolute or incurable impotence, is that for which there is no known relief, principally originating in some malformation or defect of the genital organs. Where this defect existed at the time of the marriage, and was incurable, by the ecclesiastical law and the law of several of the American states, the marriage may be declared void ab initio. Com. Dig. Baron and Feme, C 3; Bac. Ab. Marriage, &c., E 3; 1 Bl. Com. 440; Beck's Med. Jur. 67; Code, lib. 5, t. 17, l. 10; Poynt. on Marr. and Div. ch. 8; 5 Paige, 554; Merl. R«p. mot Impuissance. But it seems the party naturally impotent cannot allege that fact for the purpose of obtaining a divorce. 3 Phillim. R. 147; S. C. 1 Eng. Eccl. R. 384. See 3 Phillim. R. 325; S. C. 1 Eng. Eccl. R. 408; 1 Chit. Med. Jur. 877; 1 Par. & Fonbl. 172, 173. note d; Ryan's Med. Jur. 95. to 111; 1 Bl. Com. 440; 2 Phillm. R. 10; 1 Hagg. R. 725. See, as to the signs of impotence, 1 Briand, M«d. L«g. c. 2, art. 2, 2, n. 1; Dictionnaire des Sciences M«dicales, art. Impuissance; and, generally, Trebuchet, Jur. de la. Med. 100, 101, 102; 1 State Tr. 315; 8 State Tr. App. No. 1, p. 23; 3 Phillm. R. 147; 1 Hagg. Eccl. R. 523; Foder«, M«d. L«g. 237.

IMPRESCRIPTIBILITY. The state of being incapable of prescription.

2. A property which is held in trust is imprescriptible; that is the trustee cannot acquire a title to it by prescription; nor can the borrower of a thing get a right to it by any lapse of time, unless he claims an adverse right to it during the time required by law.

IMPRIMATUR. A license or allowance to one to print.

2. At one time, before a book could be printed in England, it was requisite that a permission should be obtained that permission was called an imprimatur. In some countries where the press is liable to censure, an imprimatur is required.

IMPRIMERY. In some of the ancient English statutes this word is used to signify a printing-office, the art of printing, a print or impression.

IMPRIMIS. In the first place; as, imprimis, I direct my just debts to be paid. See Item.

IMPRISONMENT. The restraint of a person contrary to his will. 2 Inst. 589; Baldw. Rep. 239, 600. Imprisonment is either lawful or unlawful; lawful imprisonment is used either for crimes or for the appearance of a party in a civil suit, or on arrest in execution.

2. Imprisonment for crimes is either for the appearance of a person accused, as when he cannot give bail; or it is the effect of a sentence, and then it is a part of the punishnient.

3. Imprisonment in civil cases takes place when a defendant on being sued on bailable process refuses or cannot give the bail legally demanded, or is under a capias ad satisfaciendum, when he is taken in execution under a judgment. An unlawful imprisonment, commonly called false imprisonment, (q. v.) meaus any illegal imprisonment whatever, either with or without process, or under color of process wholly illegal, without regard to any question whether any crime has been committed or a debt due.

4. As to what will amount to an imprisonment, the most obvious modes are confinement in a prison or a private house, but a forcible detention in the street, or the touching of a person by a peace officer by way of arrest, are also imprisonments. Bac. Ab. Trespass, D 3; 1 Esp. R. 431, 526. It has been decided that lifting up a person in his chair, and carrying him out of the room in which he was sitting with others, and excluding him from the room, was not an imprisonment; 1 Chit. Pr. 48; and the merely giving charge of a person to a peace officer, not followed by any actual apprehension of the person, does not amount to an imprisonment, though the party to avoid it, next day attend at a police; 1 Esp. R. 431; New Rep. 211; 1 Carr. & Pavn.

153; S. C. II Eng. Com. Law, R. 351; and if, in consequence of a message from a sheriff's officer holding a writ, the defendant execute and send him a bail bond, such submission to the process will not constitute an arrest. 6 Bar. & Cres. 528; S. C. 13 Eng. Com. Law Rep. 245; Dowl. & R. 233. Vide, generally, 14 Vin. Ab. 342; 4 Com. Dig. 618; 1 Chit. Pr. 47; Merl. R«pert. mot Emprisonment; 17 Eng. Com. L. R. 246, n.

IMPROBATION. The act by which perjury or falsehood is proved. Techn. Dict. h. t.

IMPROPRIATION, eccl. law. The act, of employing the revenues of a church living to one's own use; it is also a parsonage or ecclesiastical living in the hands of a layman, or which descends by inheritance. Techn. Dict. h. t.

IMPROVEMENT, estates. This term is of doubtful meaning It would seem to apply principally to buildings, though generally it extends to amelioration of every description of property, whether real or personal; it is generally explained by other words.

2. Where, by the terms of a lease, the covenant was to 1eave at the end of the term a water-mill with all the fixtures, fastenings, and improvements, during the demise fixed, fastened, or set up on or upon the premises, in good plight and condition, it was held to include a pair of new millstones set up by the lessee during the term, although the custom of the country in general authorized the tenant to remove them. 9 Bing. 24; 3 Sim. 450; 2 Ves. & Bea. 349. Vide 3 Yeates, 71; Addis. R. 335; 4 Binn. R. 418; 5 Binn. R. 77; 5 S. & R. 266; 1 Binn. R. 495; 1 John. Ch. R. 450; 15 Pick. R. 471. Vide Profits. 2 Man. & Gra. 729, 757; S. C. 40 Eng. C. L. R. 598, 612.

3. Tenants in common are not bound to pay for permanent improvements, made on the common property, by one of the tenants in common without their consent. 2 Bouv. Inst. n. 1881.

IMPROVEMENT, rights. An addition of some useful thing to a machine, manufacture or composition of matter.

2. The patent law of July 4, 1836, authorizes the granting of a patent for any new and useful improvement on any art, machine manufacture or composition of matter. Sect. 6. It is often very difficult to say what is a new and useful improvement, the cases often approach very near to each other. In the present improved state of machinery, it is almost impracticable not to employ the same elements of motion, and in some particulars, the same manner of operation, to produce any new effect. 1 Gallis. 478; 2 Gallis. 51. See 4 B. & Ald. 540; 2 Kent, Com. 370.

IMPUBER, civil law. One who is more than seven years old, or out of infancy, and who has not attained the age of an adult, (q. v.) and who is not yet in his puberty that is, if a boy, till he has attained his full age of fourteen years, and, if a girl, her full age of twelve years. Domat, Liv. Prel. t. 2, s. 2, n. 8.

IMPUNITY. Not being punished for a crime or misdemeanor committed. The impunity of crimes is one of the most prolific sources whence they arise. lmpunitas continuum affectum tribuit delinquenti. 4 Co. 45, a; 5 Co. 109, a.

IMPUTATION. The judgment by which we declare that an agent is the cause of his free action, or of the result of it, whether good or ill. Wolff, 3.

IMPUTATION OF PAYMENT. This term is used in Louisiana to signify the appropriation which is made of a payment, when the debtor owes two debts to the creditor. Civ. Code of Lo. art. 2159 to 2262. See 3 N. S. 483; 6 N. S. 28; Id. 113: Poth. Ob. n. 539, 565, 570; Durant. Des Contr. Liv. 3, t. 3, 3, n. 191; 10 L. R. 232, 352; 7 Toull. n. 173, p. 246.

IN ALIO LOCO. In another place. Vide Cepit in alio loco.

IN ARTICULO MORTIS. In the article of death; at the point of death. As to the effect of this condition on wills, see Nuncupative; as to the testimony of such person, see Dying declarations.

IN AUTRE DROIT. In another's right. An executor, administrator or trustee, is said to have the property confided to him in such character, in autre droit.

IN BLANK. This is generally applied to indorsements, as, indorsements in blank, which is one not restricted, made by the indorser simply writing his name. See Indorsement.

IN CHIEF. Evidence is said to be in chief when it is given in support of the case opened by the leading counsel. Vide To Open - Opening. The term is used to distinguish evidence of this nature from evidence obtained on a cross-examination. (q. v.) 3 Chit. 890. By evidence in chief is sometimes meant that evidence, which is given in contradistinction to evidence which is obtained on the witness voir dire.

2. Evidence in chief should be confined to such matters as the pleadings and the opening warrant, and a departure from this rule, will be sometimes highly inconvenient, if not fatal. Suppose, for example, that two assaults have been committed, one in January and the other. in February, and the plaintiff prove his cause of action to have been the assault in January, he cannot abandon that, and afterwards

prove another committed in February unless the pleadings and openings extend to both. 1 Campb R. 473. See also, 6 Carr. & P. 73; S. C. 25 E. C. L. R. 288; 1 Mood. & R. 282.

IN COMMENDAM. The state or condition of a church living, which is void or vacant, and it is commended to the care of some one. In, Louisiana, there is a species of partnership called a partnership in commendam. Vide Commendam.

IN CUSTODIA LEGIS. In the custody of the law. In general, when things are in custodia legis, they cannot be distrained, nor otherwise interfered with by a private person.

IN ESSE. In being. A thing in existence. It is used in opposition to enposse. A child in ventre sa mere is a thing in posse; after he is born, he is in esse. Vide 1 Supp. to Ves. jr. 466; 2 Suppl. to Ves. jr. 155, 191. Vide Posse.

IN EXTREMIS. This phrase is used to denote the end of life; as, a marriage in extremis, is one made at the end of life. Vide Extremis.

IN FACIENDO. In doing, or in feasance. 2 Story, Eq. Jurisp. 1308.

IN FAVOREM LIBERTATIS. In favor of liberty.

IN FAVOREM VITAE. In favor of life.

IN FIERI. In the course of execution; a thing commenced but not completed. A record is said to be in fieri during the term of the court, and, during that time, it may be amended or altered at the sound discretion of the court. See 2 B. & Adol. 971.

IN FORMA PAUPERIS. In the character or form of a pauper. In England, in some cases, when a poor person cannot afford to pay the costs of a suit as it proceeds, he is exempted from such payment, having obtained leave to sue in forma pauperis.

IN FORO CONSCIENTIAE. Before the tribunal of conscience; conscientiously. This term is applied in opposition, to the obligations which the law enforces.

2. In the sale of property, for example, the concealment of facts by the vendee which may enhance the price, is wrong in foro conscientiae, but there is no legal obligation on the part of the vendee to disclose them, and the contract will be good if not vitiated by fraud. Poth. Vent. part 2, c. 2, n. 233; 2 Wheat. 185, note c. 20

IN FRAUDEM LEGIS. In fraud of the law. Every thing done in fraudem legis is void in law. 2 Ves. sen. 155, 156 Bouv. Inst. n. 585, 3834.

IN GREMIO LEGIS. In the bosom of the law. This is a figurative expression, by which is meant, that the subject is under the protection of the law; as, where land is in abeyance.

IN GROSS. At large; not appurtenant or appendant, but annexed to a man's per son: e. g. Common granted to a man and his heirs by deed, is common in gross; or common in gross may be claimed by prescriptive right. 2 Bl. Com. 34.

IN INVITUM. Against an unwilling party; against one who has not given his consent. See Invito domino.

IN JUDICIO. In the course of trial; a course of legal proceedings.

IN JURE. In law; according to law, rightfully. Bract. fol. 169, b.

IN LIMINE. In or at the beginning. This phrase is frequently used; as, the courts are anxious to check crimes in limine.

IN LITEM, ad litem. For a suit; to the suit. Greenl. Ev. 348.

IN LOCO PARENTIS. In the place of a parent; as, the master stands towards his apprentice in loco parentis.

IN MITIORI SENSU, construction. Formerly in actions of slander it was a rule to take the expression used in mitiori sensu, in the mildest acceptation; and ingenuity was, upon these occasions, continually exercised to devise or discover a meaning which by some remote possibility the speaker might have intended; and some ludicrous examples of this ingenuity may be found. To say of a man who was making his livelihood by buying and selling merchandise, he is a base, broken rascal, he has broken twice, and I'll make him break a third time, was gravely asserted not to be actionable - "ne poet dar porter action, car poet estre intend de burstness de belly," Latch, 114. And to call a man a thief was declared to be no slander for this reason, "perhaps the speaker might mean he had stolen a lady's heart."

2. The rule now is to construe words agreeably to the meaning usually attached to them. 1 Nott & McCord, 217; 2 Nott & McCord, 511; 8 Mass. R. 248; 1 Wash. R. 152; Kirby, R. 12; 7 Serg. & Rawle, 451; 2 Binn. 34; 3 Binn. 515.

IN MORA. In default. Vide mora, in.

IN NUBIBUS. In the clouds. This is a figurative expression to signify a state of suspension or abeyance. 1 Co. 137.

IN NULLO EST ERRATUM, pleading. A plea to errors assigned on proceedings in error, by which the defendant in error affirms there is no error in the record. As to the effect of, such plea, see 1 Vent. 252; 1 Str. 684; 9 Mass. R. 532; 1 Burr. 410; T. Ray. 231. It is a general rule that the plea in nullo est erratum confesses the fact assigned for error; Yelv. 57; Dane's Ab. Index, h. t.; but not a matter assigned contrary to the record. 7 Wend. 55; Bac. Ab. Error; G.

IN ODIUM SPOLIATORIS. In hatred of a despoiler. All things are presumed against a despoiler or wrong doer in odium spoliatoris omnia praesumuntur.

IN PARI CAUSA. In an equal cause. It is a rule that when two persons have equal rights in relation to a particular thing, the party in possession is considered as having the better right: in pari causa possessor potior est. Dig. 50; 17, 128; 1 Bouv. Inst. n. 952.

IN PARI DELICTO. In equal fault; equal in guilt. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand in pari delicto. The law leaves them where it finds them, according to the maxim, in pari delicto potior est conditio defendentis et possidendis. 1 Bouv. Inst. n. 769.

IN PARI MATERIA. Upon the same matter or subject. Statutes in pari materia are to be construed together.

IN PERPETUAM REI MEMORIAM. For the perpetual memory or remembrance of a thing. Gilb. For. Rom. 118.

IN PERSONAM, remedies. A remedy in personam, is one where the proceedings are against the person, in contradistinction to those which are against specific things, or in rem. (q. v.) 3 Bouv. Inst. n. 2646.

IN POSSE. In possibility; not in actual existence; used in contradistinction to in esse.

IN PRAESENTI. At the present time; used in opposition to in futuro. A marriage contracted in words de praesenti is good; as, I take Paul to be my hushand, is a good marriage, but words de futuro would not be sufficient, unless the ceremony was followed by consummation. 1 Bouv. Inst. n. 258.

IN PRINCIPIO. At the beginning this is frequently used in citations; as Bac. Ab. Legacies, in pr.

IN PROPRIA PERSONA. In his own person; himself; as the defendant appeared in propria persona; the plaintiff argued the cause in propria persona.

IN RE. In the matter; as in re A B, in the matter of A B.

IN REBUS. In things, cases or matters.

IN REM, remedies. This technical term is used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions which are said to be in personam. Proceedings in rem include not only judgments of property as forfeited, or as prize in the admiralty, or the English exchequer, but also the decisions of other courts upon the personal status, or relations of the party, such as marriage, divorce, bastardy, settlement, or the like. 1 Greenl. Ev. 525, 541.

2. Courts of admiralty enforce the performance of a contract by seizing into their custody the very subject of hypothecation; for in these case's the parties are not personally bound, and the proceedings are confined to the thing in specie. Bro. Civ. and Adm. Law, 98; and see 2 Gall. R. 200; 3 T. R. 269, 270.

3. There are cases, however, where the remedy is either in personam or in rem. Seamen, for example, may proceed against the ship or cargo for their wages, and this is the most expeditious mode; or they may proceed against the master or owners. 4 Burr. 1944; 2 Bro. C. & A. Law, 396. Vide, generally, 1 Phil. Ev. 254; 1 Stark. Ev. 228; Dane's Ab. h. t.; Serg. Const. Law, 202, 203, 212.

IN RERUM NATURA. In the nature of things; in existence.

IN SOLIDO. A term used in the civil law, to signify that a contract is joint.

2. Obligations are in solido, first, between several creditors; secondly, between several debters. 1. When a person contracts the obligation of one and the same thing, in favor of several others, each of these is only creditor for his own share, but he may contract with each of them for the whole when such is the intention of the parties, so that each of the persons in whose favor the obligation is contracted, is creditor for the whole, but that a payment made to any one liberates the debtor against them all. This is called solidity of obligation. Poth. Obl. pt. 2, c. 3, art. 7. The common law is exactly the reverse of this, for a general obligation in favor of several persons, is a joint obligation to them all, unless the nature of the subject, or the particularity of the expression lead

to a different conclusion. Evans' Poth. vol. 2, p. 56. See tit. Joint and Several; Parties to action.

3. - 2. An obligation is contracted in solido on the part of the debtors, when each of them is obliged for the whole, but so that a payment made by one liberates them all. Poth. Obli. pt. 2, c. 3, art. 7, s 1. See 9 M. R. 322; 5 L. R. 287; 2 N. S. 140; 3 L. R. 352; 4 N. S. 317; 5 L. R. 122; 12 M. R. 216; Burge on Sur. 398-420.

IN STATU QUO. In the same situation; in the same place; as, between the time of the submission and the time when the award was rendered, things remained in statu quo.

IN TERROREM. By way of threat, terror, or warning. For example, when a legacy is given to a person upo condition not to dispute the validity or the dispositions in wills and testaments, the conditions are not in general obligatory, but only in terrorem; if, therefore, there exist probabilis causa litigandi, the non-observance of the conditions will not be a forfeiture. 2 Vern. 90; 1 Hill. Ab. 253; 3 P. Wms. 344; 1 Atk. 404. But when the acquiescence of the legatee appears to be a material ingredient in the gift, the bequest is only quousque the legatee shall refrain from disturbing the will. 2 P. Wms. 52; 2 Ventr. 352. For cases of legacies given to a wife while she shall continue unmarried, see 1 Madd. R. 590; 1 Rop. Leg. 558.

IN TERROREM POPULI. To the terror of the people. An indictment for a riot is bad, unless it conclude in terrorem populi. 4 Carr. & Payne, 373.

IN TOTIDEM VERhis. In just so many words; as, the legislature has declared this to be a crime in totidem verhis.

IN TOTO. In the whole; wholly; completely; as, the award is void in toto. In the whole the part is contained: in toto et pars continetur. Dig. 50, 17, 123.

IN TRANSITU. During the transit, or removal from one place to another.

2. The transit continues until the goods have arrived at their place of destination, and nothing remains to be done to complete the delivery; or until the goods have been delivered, before reaching their place of destination, and the person entitled takes an actual or symbolical possession. Vide Stoppage in transitu; Transitus.

IN VADIO. In pledge; in gage.

IN VENTRE SA MERE. In his mother's womb.

2. - 1. In law a child is for all beneficial purposes considered as born while in ventre sa mere. 5 T. R. 49; Co. Litt. 36; 1 P. Wms. 329; Civ. Code of Lo. art. 948. But a stranger can acquire no title by descent through a child in ventre sa mere, who is not subsequently born alive. See Birth; Dead Born.

3. - 2. Such a child is enabled to have an estate limited to his use. 1. Bl. Com. 130.

4. - 3. May have a distributive share of intestate property. 1 Ves. 81.

5. - 4. Is capable of taking a devise of lands. 2 Atk. 117; 1 Freem. 224, 298.

6. - 5. Takes under a marriage settlement a provision made for children living at the death of the father. 1 Ves. 85.

7. - 6. Is capable of taking a legacy, and is entitled to a share in a fund bequeathed to children under a general description, of "children," or of "children living at the testator's death." 2 H. Bl. 399; 2 Bro. C. C. 320; S. C. 2 Ves. jr. 673; 1 Sim. & Stu. 181; 1 B. & P. 243; 5 T. R. 49. See, also, 1 Ves. sr. 85; Id. 111; 1 P. Wms. 244, 341; 2 Bro. C. C. 63; Amb. 708, 711; 1 Salk. 229; 2 P. Wms. 446; 2 Atk. 114; Pre. Ch. 50; 2 Vern. 710; 3 Ves. 486; 7 T. R. 100; 4 Ves. 322; Bac. Ab. Legacies, &c., A; 1 Rop. Leg. 52, 3; 5 Serg. & Rawle, 40.

8. - 7. May be appointed executor. Bac. Ab. Infancy, B.

9. - 8. A bill may be brought in its behalf, and the court will grant an injunction to stay waste. 2 Vern. 710 Pr. Ch. 50.

10. - 9. The mother, of a child in ventre sa mere may detain writings on its behalf. 2 Vern. 710.

11. - 10. May have a guardian assigned to it. 1 Bl. Com. 130.

12. - 11. The destruction of such a child is a high misdemeanor. 1 Bl. Com. 129, 130.

13. - 12. And the birth of a posthumous child amounts, in Pennsylvania, to the revocation of a will previously executed, so far as regards such child. 3 Binn. 498. See Coop. Just. 496. See, as to the law of Virginia on this subject, 3 Munf. 20. Vide Foetus.

IN WITNESS WHEREOF. These words, which, when conveyancing was in the Latin language, were in cujus rei testimonium, are the initial words of the concluding

clause in deeds. " In witness whereof the said parties have hereunto set their hands," &c.

INADEQUATE PRICE. This term is applied to indicate the want of a sufficient consideration for a thing sold,or such a price as, under ordinary circumstances, would be considered insufficient.

2. Inadequacy of price is frequently connected with fraud, gross misrepresentations, or an intentional concealment of the defects in the thing sold. In these cases it is clear the. vendor cannot compel the buyer to fulfil the contract. 1 Lev. 111; 1 Bro. P. C. 187; 6 John. R. 110; 3 Cranch, 270; 4 Dall. R. 250; 3 Atk. 283; 1 Bro. C. C. 440.

3. In general, however, inadequacy of price is not sufficient ground to avoid a contract, particularly' when the property has been sold by auction. 7 Ves. jr. 30; 3 Bro. C. C. 228; 7 Ves. jr. 35, note. But if an uncertain consideration, as a life annuity, be given for an estate, and the contract be executory, equity, it seems, will enter into the adequacy of the consideration. 7 Bro. P. C. 184; 1 Bro. C. C. 156. Vide. 1 Yeates, R. 312; Sugd. Vend. 189 to 199; 1 B. & B. 165; 1 M'Cord's Ch. R. 383, 389, 390; 4 Desaus. R. 651. Vide Price.

INADMIISSIBLE. What cannot be received. Parol evidence, for example, is inadmissible to contradict a written agreement.

INALIENABLE. This word is applied to those things, the property of which cannot be lawfully transferred from one person to another. Public highways and rivers are of this kind; there are also many rights which are inalienable, as the rights of liberty, or of speech.

INAUGURATION. This word was applied by the Romans to the ceremony of dedicating some temple, or raising some man to the priesthood, after the augurs had been consulted. It was afterwards applied to the installation (q. v.) of the emperors, kings, and prelates, in imitation of the ceremonies of the Romans when they entered into the temple of the augurs. It is applied in the United States to the installation of the chief magistrate of the republic, and of the governors of the several states.

INCAPACITY. The want of a quality legally to do, give, transmit, or receive something.

2. It arises from nature, from the law, or from both. From nature, when the party has not his senses, as, in the case of an idiot; from the law, as, in the case of a bastard who cannot inherit from nature and the law; as, in the case of a married woman, who cannot make contracts or a will.

3. In general, the incapacity ceases with the cause which produces it. If the idiot should obtain his senses, or the married woman's hushand die, their incapacity would be at an end.

4. When a cause of action arises during the incapacity of a person having the right to sue, the act of limitation does not, in general, commence to run till the incapacity has been removed. But two incapacities cannot be joined in order to come within the statute.

INCENDIARY, crim. law. One who maliciously and wilfully sets another person's house on fire; one guilty of the crime of arson.

2. This offence is punished by the statute laws of the different states according to their several provisions. The civil law punished it with death, Dig. 47, 9, 12, 1, by the offender being cast into the fire. Id. 48, 19, 28, 12; Code, 9, 1, 11. Vide Dane's Ab. Index, h. t.

INCEPTION. The commencement; the beginning. In making a will, for example, the writing is its inception. 3 Co. 31 b; Plowd. 343. Vide Consummation; Progression.

INCEST. The carnal copulation of a man and a woman related to each other in any of the degrees within which marriage is prohibited by law. Vide Marriage. It is punished by fine and imprisonment, under the laws of the respective states., Vide 1 Smith's Laws of Pennsylv. 26; Dane's Ab. Index, h. t.; Dig. 23, 2, 68; 6 Conn. R. 446; Penal Laws of China, B. 1, s. 2, 10; Sw. part 2 17, p. 103.

INCH. From the Latin uncia. A measure of length, containing one-twelfth part of a foot.

INCHOATE. That which is not yet completed or finished. Contracts are considered inchoate until they are executed by all the parties who ought to have executed them. For example, a covenant which purports to be tripartite, and is executed by only two of the parties, is incomplete, and no one is bound by it. 2 Halst. 142. Vide Locus paenitentiae.

INCIDENT. A thing depending upon, appertaining to, or following another, called the princinal.

2. The power of punishing for contempt is incident to a court of record; rent is incident to a reversion; distress to rent; estovers of woods to a tenancy for a life or years. 1 Inst. 151; Noy's Max. n. 13; Vin. Ab. h.. t.; Dane's Ab. h. t.; Com. Dig. h. t., and the references there; Bro. Ab. h. t.; Roll's Ab. 75.

INCIPITUR, practice. This word, which means "it is begun," signifies the commencement of the entry on the roll. on signing judgment, &c.

INCLUSIVE. Comprehended in computation. In computing time, as ten days from a particular time, one day is generally to be included and one excluded. Vide article Exclusive, and the authorities there cited.

INCOME. The gain which proceeds from property, labor, or business; it is applied particularly to individuals; the income of the government is usually called revenue.

2. It has been holden that a devise of the income of land, is in effect the same as a devise of the land itself. 9 Mass. 372; 1 Ashm. 136.

INCOMPATIBILITY. offices, rights. This term is used to show that two or more things ought not to exist at the same time in the same person; for example, a man cannot at the same time be landlord and tenant of the same land; heir and devise of the same thing; trustee and cestui que trust of the same property.

2. There are offices which are incompatible with each other by constitutional provision; the vice-president of tho United States cannot act as such when filling the office of president; Const. art. 1, s. 3, n. 5; and by the same instrument, art . 1, s. 6, n. 2, it is directed that "no senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house, during his continuance in office."

3. Provisions rendering offices incompatible are to be found in most of the, constitutions of the states, and in some of their laws. In Pennsylvania, the acts of the 12th of February, 1802, 3 Smith's Laws of Pa. 485; and 6th of March, 1812, 5 Sm. L. Pa. 309, contain various provisions, making certain offices incompatible, with each other. At common law, offices subordinate and interfering with each other have been considered incompatible; for example, a man cannot be at once a judge and prothonotary or clerk of the same court. 4 Inst. 100. Vide 4 S. & R. 277; 17 S. & R. 219; and the article Office.

INCOMPETENCY, French law. The state of a judge who cannot take cognizance of a dispute brought before him; it implies a want of jurisdiction.

2. Incompetency is material, ratione materia, or personal, ratione personae. The first takes place when a judge takes cognizance of a matter over which another judge has

the sole jurisdiction, and this cannot be cured by the appearance or agreement of the parties.

3. The second is, when the matter in dispute is within the jurisdiction of the judge, but the parties in the case are not; in which case they make the judge competent, unless they make their objection before they. take defence. See Peck, 374; 17 John. 13; 12 Conn. 88; 3 Cowen, Rep. 724; 1 Penn. 195; 4 Yeates, 446. When a party has a privilege which exempts him from the jurisdiction, he may waive the privilege. 4 McCord, 79; Wright, 484; 4 Mass. 593; Pet. C. C. R. 489; 5 Cranch, 288; 1 Pet. R. 449; 4 W. C. C. R. 84; 8 Wheat. 699; Merl. R«p. mot Incompet«nce.

4. It is a maxim in the common law, aliquis non debet esse judex in propriŠ causa. Co. Litt. 141, a; see 14 Vin. Abr. 573; 4 Com. Dig. 6. The greatest delicacy, is constantly observed on the part of judges, so that they never act when there could be the possibility of doubt whether they could be free from bias, and even a distant degree of relationship has induced a judge to decline interfering. 1 Knapp's Rep. 376. The slightest degree of pecuniary interest is considered as an insuperable objection. But at common law, interest forms the only ground for challenging a judge. It is not a ground of challenge that he has given his opinion before. 4 Bin. 349; 2 Bin. 454. See 4 Mod. 226; Comb. 218; Hard. 44; Hob. 87; 2 Binn. R. 454; 13 Mass. R. 340; 5 Mass. R. 92; 6 Pick. 109; Peck, R. 374; Coxe, Rep. 190; 3 Ham. R. 289; 17 John. Rep. 133; 12 Conn. R. 88; 1 Penning R. 185; 4 Yeates, R. 466; 3 Cowen, R. 725; Salk. 396; Bac. Ab. Courts, B; and the articles Competency; Credibility; Interest; Judge; Witness.

INCOMPETENCY, evidence. The want of legal fitness, or ability in a witness to be heard as such on the trial of a cause.

2. The objections to the competency (q. v.) of a witness are four-fold. The first ground is the want of understanding; a second is defect of religious principles; a third arises from the conviction of certain crimes, or infamy of character; the fourth is on account of interest. (q. v.) 1 Phil. Ev. 15.

INCONCLUSIVE. What does not put an end to a thing. Inconclusive presumptions are those which may be overcome by opposing proof; for example, the law presumes that he who possesses personal property is the owner of it, but evidence is allowed to contradict this presumption, and show who is the true owner. 3 Bouv. Inst. in. 3063.

INCONTINENCE Impudicity, the indulgence in unlawful carnal connexions. Wolff, Dr. de la Nat. 862.

INCORPORATION. This term is frequently confounded, particularly in the old books, with corporation. The distinction between them is this, that by incorporation is

understood the act by which a corporation is created; by corporation is meant the body thus created. Vide Corporation.

INCORPORATION, civil law. The union of one domain to another.

INCORPOREAL. Not consisting of matter.

2. Things incorporeal. are those which are not the object of sense, which cannot be seen or felt, but which we can easily, conceive in the understanding, as rights, actions, successions, easements, and the like. Dig. lib. 6, t. 1; Id. lib. 41, t. 1, l. 43, 1; Poth. Traite des Choses, 2.

INCORPOREAL HEREDITAMENT, title, estates. A right issuing out of, or annexed unto a thing corporeal.

2. Their existence is merely in idea and abstracted contemplation, though their effects and profits may be frequently the objects of our bodily senses. Co Litt. 9 a; Poth. Traite des Choses, 2. According to Sir William Blackstone, there are ten kinds of incorporeal hereditamenta; namely, 1. Advowsons. 2. Tithes. 3. Commons. 4. Ways. 5. Offices. 6. Dignities. 7. Franchises. 8. Corodies. 9. Annuities. 10. Rents. 2 Bl. Com. 20.

3. But, in the United States, there, are no advowsons, tithes, dignities, nor corodies. The other's have no necessary connexion with real estate, and are not hereditary, and, with the exception of annuities, in some cases, cannot be transferred, and do not descend.

INCORPOREAL PROPERTY, civil law. That which consists in legal right merely; or, as the term is, in the common law, of choses in actions. Vide Corporeal property.

TO INCULPATE. To accuse one of a crime or misdemeanor.

INCUMBENT, eccles. law. A clerk resident on his benefice with cure; he is so called because he does, or ought to, bend the whole of his studies to his duties. In common parlance, it signifies one who is in the possession of an office, as, the present incumbent.

INCUMBRANCE. Whatever is a lien upon an estate.

2. The right of a third person in the land in question to the diminution of the value of the land, though consistent with the passing of the fee by the deed of conveyance, is an incumbrance; as, a public highway over the land. 1 Appl. R. 313; 2 Mass. 97; 10

Conn. 431. A private right of way. 15 Pick. 68; 5 Conn. 497. A claim of dower. 22 Pick. 477; 2 Greenl. 22. Alien by judgment or mortgage. 5 Greenl. 94; 15 Verm. 683. Or any outstanding, elder, and better title, will be considered as incumbrances, although in strictness some of them are rather estates than incumbrances. 4 Mass. 630; 2 Greenl. 22; 22 Pick. 447; 5 Conn. 497; 8 Pick. 346; 15 Pick. 68; 13 John. 105; 5 Greenl. 94; 2 N. H. Rep. 458; 11 S. & R. 109; 4 Halst. 139; 7 Halst. 261; Verm. 676; 2 Greenl. Ev. 242.

3. In cases of sales of real estate, the vendor is required to disclose the incumbrances, and to deliver to the purchaser the instruments by which they were created, or on which the defects arise; and the neglect of this will be considered as a fraud. Sugd. Vend, 6; 1 Ves. 96; and see 6 Ves. jr. 193; 10 Ves. jr. 470; 1 Sch. & Lef. 227; 7 Serg. & Rawle, 73.

4. Whether the tenant for life, or the remainder-man, is to keep. down the interest on incumbrances, see Turn. R. 174; 3 Mer. R. 566; 6 Ves. 99; 4 Ves. 24. See, generally, 14 Vin. Ab. 352; Com. Dig. Chancery, 4 A 10, 4 I. 3; 9 Watts, R. 162.

INDEBITATUS ASSUMPSIT, remedies, pleadings. That species of action of assumpsit, in which the plaintiff alleges in his declaration, first a debt, and then a promise in consideration of the debt, that the defendant, being indebted, he promised the plaintiff to pay him. The promise so laid is, generally, an implied one only. Vide 1 Chit. Pl. 334; Steph. Pl. 318; Yelv. 21; 4 Co. 92 b. For the history of this form of action, see 3 Reeves' Hist. Com. Law; 2 Comyn on Contr. 549 to 556; 1 H. Bl. 550, 551; 3 Black Com. 154; Yelv. 70. Vide Pactum Constituae Pecuniae.

INDEBITI SOLUTIO, civil law. The payment to one of what is not due to him. If the payment was made by mistake, the civilians recovered it back by an action called condictio indebiti; with us, such money may be recovered by an action of assumpsit.

INDEBTEDNESS. The state, of being in debt, without regard to the ability or inability of the party to pay the same. See 1 Story, Eq. 343; 2 Hill. Ab. 421.

2. But in order to create an indebtedness, there must be an actual liability at the time, either to pay then or at a future time. If, for example, a person were to enter and become surety for another, who enters into a rule of reference, he does not thereby become a debtor to the opposite party until the rendition of the judgment on the award. 1 Mass. 134. See Creditor; Debt; Debtor.

INDECENCY. An act against good behaviour and a just delicacy. 2 Serg. & R. 91.

2. The law, in general, will repress indecency as being contrary to good morals, but, when the public good requires it, the mere indecency of disclosures does not suffice to exclude them from being given in evidence. 3 Bouv. Inst. n. 3216.

3. The following are examples of indecency: the exposure by a man of his naked person on a balcony, to public view, or bathing in public; 2 Campb. 89; or the exhibition of bawdy pictures. 2 Chit. Cr. Law, 42; 2 Serg. & Rawle, 91. This indecency is punishable by indictment. Vide 1 Sid. 168; S. C. 1 Keb. 620; 2 Yerg. R. 482, 589; 1 Mass. Rep. 8; 2 Chan. Cas. 110; 1 Russ. Cr. 302; 1 Hawk. P. C. c. 5, s. 4; 4 Bl. Com. 65, n.; 1 East, P. C. c. 1, s. 1; Burn's Just. Lewdness.

INDEFEASIBLE. That which cannot be defeated or undone. This epithet is usually applied to an estate or right which cannot be defeated.

INDEFENSUS. One sued or impleaded, who refuses or has nothing to answer.

INDEFINITE. That which is undefined; uncertain.

INDEFINITE FAILURE OF ISSUE, executory devise. A general failure of issue, whenever it may happen, without fixing a time, or certain or definite period, within which it must take place. The issue of the first taker must be extinct, and the issue of the issue ad infinitum, without regard to the time or any particular event. 2. Bouv. Inst. n. 1849.

INDEFINITE, NUMBER. A number which may be increased or diminished at pleasure.

2. When a corporation is composed of an indefinite number of persons, any number of them consisting of a majority of those present may do any act unless it be otherwise regulated by the charter or by-laws. See Definite number.

INDEFINITE PAYMENT, contracts. That which a debtor who owes several debts to a creditor, makes without making an appropriation; (q. v.) in that case the creditor has a right to make such appropriation.

INDEMNITY. That which is given to a person to prevent his suffering damage. 2 McCord, 279. Sometimes it signifies diminution; a tenant who has been interrupted in the enjoyment of his lease may require an indemnity from the lessor, that is, a reduction of his rent.

2. It is a rule established in all just governments that, when private property is required for public, use, indemnity shall be given by the public to the owner. This is the case in the United States. See Code Civil, art. 545. See Damnification.

3. Contracts made for the purpose of indemnifying a person for doing an act for which he could be indicted, or an agreement to, compensate a public officer for doing an act which is forbidden by law, or omitting to do one which the law commands, are absolutely void. But when the agreement with an officer was not to induce him to neglect his duty, but to test a legal right, as to indemnify him for not executing an execution, it was held to be good. 1 Bouv. Inst. n. 780.

INDENTURE, conveyancing. An instrument of writing containing a conveyance or contract between two or more persons, usually indented or cut unevenly, or in and out, on the top or, side.

2. Formerly it was common to make two instruments exactly alike, and it was then usual to write both on the same parchment, with some words or letters written between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave one-half of the word on one part, and half on the other. The instrument usually commences with these words, "This indenture," which were not formerly sufficient, unless the parchment or paper was actually indented to make an indenture 5 Co. 20; but now, if the form of indenting the parchment be wanting, it may be supplied by being done in court, this being mere form. Besides, it would be exceedingly difficult with even the most perfect instruments, to out parchment or paper without indenting it. Vide Bac. Ab. Leases, &c. E 2; Com. Dig. Fait, C, and note d; Litt. sec. 370; Co. Litt. 143 b, 229 a; Cruise, Dig t. 32, c. 1, s. 24; 2 Bl. Com. 294; 1 Sess. Cas. 222.

INDEPENDENCE. A state of perfect irresponsibility to any superior; the United States are free and independent of all earthly power.

2. Independence may be divided into political and natural independence. By the former is to be understood that we have contracted no tie except those which flow from the three great natural rights of safety, liberty and property. The latter consists in the power of being able to enjoy a permanent well-being, whatever may be the disposition of those from whom we call ourselves independent. In that sense a nation may be independent with regard to most people, but not independent of the whole world. Vide on of Independence.

INDEPENDENT CONTRACT. One in which the mutual acts or promises have no relation to each other, either as equivalents or considerations. Civil Code of Lo. art. 1762; 1 Bouv. Inst. n. 699.

INDETERMINATE. That which is uncertain or not particularly designated; as, if I sell you one hundred bushels of wheat, without stating what wheat. 1 Bouv. Inst. n. 950.

INDIAN TRIBE. A separate and distinct community or body of the aboriginal Indian race of men found in the United States.

2. Such a tribe, situated within the boundaries of a state, and exercising the powers of government and, sovereignty, under the national government, is deemed politically a state; that is, a distinct political society, capable of self-government; but it is not deemed a foreign state, in the sense of the constitution. It is rather a domestic dependent nation. Such a tribe may properly be deemed in a state of pupilage and its relation to the United States resembles that of a ward to a guardian. 5 Pet. R. 1, 16, 17; 20 John. R. 193; 3 Kent, Com. 308 to 318; Story on Const. 1096; 4 How. U. S. 567; 1 McLean, 254; 6 Hill, 546; 8 Ala. R. 48.

INDIANS. The aborigines of this country are so called.

2. In general, Indians have no political rights in the United States; they cannot vote at the general elections for officers, nor hold office. In New York they are considered as citizens and not as aliens, owing allegiance to the government and entitled to its protection. 20 John. 188, 633. But it was ruled that the Cherokee nation in Georgia was a distinct community. 6 Pet. 515. See 8 Cowen, 189; 9 Wheat. 673; 14 John. 181, 332 18 John. 506.

INDIANA. The name of one of the new states of the United States. This state was admitted into the Union by virtue of the "Resolution for admitting the state of Indiana into the Union," approved December 11, 1816, in the following words: Whereas, in pursuance of an act of congress, passed on the nineteenth day of April, one thousand eight hundred and sixteen, entitled "An act to enable the people of the Indiana territory to from a constitution and state government, and for the admission of that state into the Union," the people of the said territory did, on the twenty-ninth day of June, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity with the principles of the articles of compact between the original states and the people and states in the territory north-west of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven.

2. Resolved, That the state of Indiana shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

3. The first constitution of the state was adopted in the -year eighteen hundred and sixteen, and has since been superseded by the present constitution, which was adopted in the year eighteen hundred and fifty-one. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, including the administrative, to another; and those which are judicial to a third. Art. III.

4. - 1st. The legislative authority of the state is vested in a general assembly, which consists of a senate and house of representatives, both elected by the people.

5. The senate is composed of a number of persons who shall not exceed fifty. Art. 2. The number shall be fixed by law. Art. IV. 6. A senator shall 1. Have attained the age of twenty-five years. 2. Be a citizen of the United States. 3. Have resided, next preceding his election, two years in this state, the last twelve months of which must have been in the county or district in which he may be elected. Senators shall be elected for the term of four years, and one-half as nearly as possible shall be elected every two years.

6. - 2. The number of representatives is to be fixed by law. It shall never exceed one hundred members. Art. IV. s. 2, 5.

7. To be qualified for a representative, a person must, 1. Have attained the age of twenty-one year's. 2. Be a Citizen, of the United States. 3. Have been for two years next preceding his election an inhabitant of this state, and for one year next proceding his election, an inhabiant of the county or district whence he may be chosen. Art. IV. s. 7. Representatives are elected for the term of two years from the day next after their general election. Art. IV. s. 3. And they shall be chosen by the respective electors of the counties. Art. IV. s. 2. .

8. - 2d, The exeutive power of this state is vested in a governor. And, under certain circumstances, this power is exercised by the lieutenant-governor.

9. - 1. The governor is elected at the time and place of choosing members of the general assembly. Art. V. s. 3. The person having the highest number of votes for governor shall be elected; but, in case to or more persons shall have an equal and the highest number of votes for the office, the general assembly shall, by joint vote, forthwith proceed to elect one of the said persons governor. He shall hold his office during four years, and is not eligible more than four years in any period of eight years. The official term of the governor shall commence on the second Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day every fourth year thereafter. His requisite quali- fications are, that he shall, 1. Have been a

citizen of the United States for five years. 2. Be at least thirty years of age. 3. Have resided in the state five years next preceding his election. 4. Not hold any office under the United States, or this state. He is commander-in-chief of the army and navy of the state, when not in the service of the United States, and may call out such forces, to execute the laws, to suppress insurrection, or to repel invasion. He shall have the power to remit fines and forfeitures; grant reprieves and pardons, except treason and cases of impeachments; and to require information from executive officers. When, during a recess of the general assembly, a vacancy shall happen in any office, the appointment of which is vested in the general assembly, or when at any time a vacancy shall have happened in any other state office, or in the office of judge of any court, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualifled. He shall take care that the laws be faithfully executed. Should the seat of government become dangerous, from disease or at common enemy, he may convene the general assembly at any other place. He is also invsted with the veto power. Art. V.

10. - 2. The lieutenant-governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor. He shall, by virtue of his office, be president of the senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote. In case of the removal of the governor from office, death, resignation, or inability to discharge the duties of the office, the lieutenant-governor shall exercise all the powers and authority appertaining to the office of governor. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And the general assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the governor and lieutenant-governor, declaring what office r shall then act as governor; and such officer shall act accordingly, until the disability be removed, or a governor be elected. The lieutenant-governor, while he acts as president of the senate, shall receive for his services the same compensation as the speaker of the house of representatives. The lieutenant-governor shall not be eligible to any other office during the term for which he shall have been elected.

11. - 3. The judicial power of the state is vested by article VII of the Constitution as follows:

1. The judicial power of this state shall be vested in a supreme court, in circuit courts, and in such other inferior courts as the general assembly may direct and establish.

12. - 2. The supreme court shall consist of not less than three nor more than five judges, a majority of whom form a quorum, which shall have jurisdiction co-extensive with the limits of the state, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law, shall also have such original jurisdiction as the general assembly may confer. And upon the decision of every case, shall give a statement, in writing, of each question arising in the record of such case, and the decision of the court thereon.

13. - 3. The circuit courts shall each consist of one judge. The state shall, from time to time, be divided into judicial circuits. They shall have such civil and criminal jurisdiction as may be prescribed by law. The general assembly may provide by law, that the judge of one circuit may hold the court of another circuit in case of necessity or convenience; and in case of temporary inability of any judge, from sickness or other cause, to hold the courts in his circuit, provision shall be made by law for holding such courts.

14. - 4. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred on other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or court.

15. - 5. The judges of the supreme court, the circuit and other inferior courts, shall hold their offices during the term of six years, if they shall so long behave well, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

16. - 6. All judicial officers shall be conservators of the peace in their respective jurisdiction.

17. - 7. The state shall be divided into as many districts as there ate judges of the supreme court; and such districts shall be formed of contiguous territory, as nearly equal in population, as without dividing a county the same can be made. One of said judges shall be elected from each district, and reside therein; but said judges shall be elected by the electors of the state at large.

18. - 8. There shall be elected by the voters of the state, a clerk of the supreme court, who shall hold his office four years, and whose duties shall be prescribed by law.

19. - 9. There shall be elected in each judicial circuit by the voters thereof, a prosecuting attorney, who shall hold his office for two years.

20. - 10. A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office four years, and their powers and duties shall be prescribed by law.

21. - 11. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.

INDICIA, civil law. Signs, marks. Example: in replevin, the chattel must possess indicia, or earmarks, by which it can be distinguished from all others of the same description. 4 Bouv. Inst. n. 3556. This term is very nearly synonymous with the common law phrase, "circumstantial evidence." It was used to designate the facts giving rise to the indirect inference, rather than the inference itself; as, for example, the possession of goods recently stolen, vicinity to the scene of the crime, sudden change in circumstances or conduct, &c. Mascardus, de Prob. lib. 1, quaest. 15; Dall. Dict. Compet«nce Criminelle, 92, 415; Morin, Dict. du Droit Criminal, mots Accusation, Chambre du Conseil.

2. Indicia may be defined to be conjectures, which result from circumstances not absolutely necessary and certain, but merely probable, and which may turn out not to be true, though they have the appearance of truth. Denisart, mot Indices. See Best on Pres. 13, note f.

3. However numerous indicia may be, they only show that a thing may be, not that it has been. An indicium, can have effect only when a connexion is essentially necessary with the principal. Effects are known by their causes, but only when the effects can arise only from the causes to which they. are attributed. When several causes may have produced one and the same effect, it is, therefore, unreasonable to attribute it to any one of such causes. A combination of circumstances sometimes conspire against an innocent person, and, like mute witnesses, depose against him. There is danger in such cases, that a jury may be misled; their minds prejudiced, their indignation unduly excited, or their zeal seduced. Under impressions thus produced, they may forget their true relation to the accused, and condemn a man whom they would have acquitted had they required that proof and certainty which the law demands. See D'Aguesseau, Oeuvres, vol. xiii. p. 243. See Circumstances.

INDICTED, practice. When a man is accused by a bill of indictment preferred by a grand jury, he is said to be indicted.

INDICTION, computation of time. An indiction contained a space of fifteen years.

2. It was used in dating at Rome and in England. It began at the dismission of the Nicene council, A. D. 312. The first year was reckoned the first of the first indiction,

the second, the third, &c., till fifteen years afterwards. The sixteenth year was the first year of the second indiction, the thirty-first year was the first ar of the third indiction, &c.

INDICTMENT, crim. law, practice. A written accusation of one or more persons of a crime or misdemeanor, presented to, and preferred upon oath or affirmation, by a grand jury legally convoked. 4 Bl. Com. 299; Co. Litt. 126; 2 Hale, 152; Bac. Ab. h. t.; Com. Dig. h. t. A; 1 Chit. Cr. L. 168.

2. This word, indictment, is said to be derived from the old French word inditer, which signifies to indicate; to show, or point out. Its object is to indicate the offence charged against the accused. Rey, des Inst. l'Angl. tome 2, p. 347.

3. To render an indictment valid, there are certain essential and formal requisites. The essential requisites are, 1st. That the indictment be presented to some court having jurisdiction. of the offence stated therein. 2d. That it appear to have been found by the grand jury of the proper county or district. 3d. That the indictment be found a true bill, and signed by the foreman of the grand jury. 4th. That it be framed with sufficient certainty; for this purpose the charge must contain a certain description of the crime or misdemeanor, of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation. Cowp. 682, 3; 2 Hale, 167; 1 Binn. R. 201; 3 Binn. R; 533; 1 P. A. Bro. R. 360; 6 S. & R. 398 4 Serg. & Rawle, 194; 4 Bl. Com. 301; Yeates, R. 407; 4 Cranch, R. 167. 5th. The indictment must be in the English language. But if any document in a foreign language, as a libel, be necessarily introduced, it should be set out in the original tongue, and then translated, showing its application. 6 T. R. 162.

4. Secondly, formal requisites are, 1st. The venue, which, at common law should always be laid in the county where the offence has been committed, although the charge is in its nature transitory, as a battery. Hawk. B. 2, c. 25, s. 35. The venue is stated in the margin thus, "City and county of _____ to wit." 2d. The presentment, which must be in the present tense, and is usually expressed by the following formula, "the grand inquest of the commonwealth of _____ inquiring for the city and county aforesaid, upon their oaths and affirmations present." See, as to the venue, 1 Pike, R. 171; 9 Yerg. 357. 3d. The name and addition of the defendant; but in case an error has been made in this respect, it is cured by the plea of the defendant. Bac. Ab. Misnomer, B; Indictment, G 2; 2 Hale, 175; 1 Chit. Pr. 202. 4th. The names of third persons, when they must be necessarily mentioned in the indictment, should be stated with certainty to a common intent, so as sufficiently to inform the defendant who are his accusers. When, however, the names of third persons cannot be ascertained, it is sufficient, in some cases, to state " a certain person or persons to the jurors aforesaid unknown." Hawk. B. 2, c. 25, s. 71; 2 East, P. C. 651, 781; 2 Hale, 181; Plowd. 85;

Dyer, 97, 286; 8 C. & P. 773. See Unknown. 5th. The time when the offence was committed, should in general be stated to be on a specific year and day. In some offences, as in perjury, the day must be precisely stated; 2 Wash. C. C. Rep. 328; but although it is necessary that a day certain should be laid in the indictment, yet, in general, the prosecutor may give evidence of an offence committed on any other day previous to the finding of the, indictment. 5 Serg. & Rawle, 316. Vide 11 Serg. & Rawle, 177; 1 Chit. Cr. Law, 217, 224; 1 Ch. Pl. Index, tit. Time. See 17 Wend. 475; 2 Dev. 567; 5 How. Mis. 14; 4 Dana. 496; C. & N. 369; 1 Hawks, 460. 6th. The offence should be properly described. This is done by stating the substantial circumstances necessary to show the natue of the crime and, next, the formal allegations and terms of art required by law. 1. As to the substantial circumstances. The whole of the facts of the case necessary to make it appear judicially to the court that the indictors have gone upon sufficient premises, should be set forth; but there should be no unnecessary matter or any thing which on its face makes the indictment repugnant, inconsistent, or absurd. Hale, 183; Hawk. B. 2, c. 25, s. 57; Ab. h. t. G 1; Com. Dig. h. t. G 3; 2 Leach, 660; 2 Str. 1226. All indictments ought to charge a man with a particular offence, and not with being an offender in general: to this rule there are some exceptions, as indictments against a common barrator, a common scold, and the keeper of a common bawdy house; such persons may be indicted by these general words. 1 Chit. Cr. Law, 230, and the authorities there cited. The offence must not be stated in the disjunctive, so as to leave it uncertain on what it is intended to rely as an accusation; as, that the defendant erected or caused to be. erected a nuisance. 2 Str. 900; 1 Chit. Cr. Law, 236.

2. There are certain terms of art used, so appropriated by the law to express the precise idea which it entertains of the offence, that no other terms, however synonymous they may seem, are capable of filling the same office: such, for example, as traitorously, (q. v.) in treason; feloniously, (q. v.) in felony; burglariously, (q. v.) in burglary; maim, (q. v.) in mayhem, &c. 7th. The conclusion of the indictment should conform to the provision of the constitution of the state on the subject, where there is such provision; as in Pennsylvania, Const. art. V., s. 11, which provides, that " all prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude against the peace and dignity of the same." As to the necessity and propriety of having several counts in an indictment, vide 1 Chit. Cr. Law, 248; as to. joinder of several offences in the same indictment, vide 1 Chit. Cr. Law, 253; Arch. Cr. Pl. 60; several defendants may in some cases be joined in the same indictment. Id. 255; Arch. Cr. Pl. 59. When an indictment may be amended, see Id. 297 .Stark. Cr. Pl. 286; or quashed, Id. 298 Stark. Cr. Pl. 831; Arch. Cr. 66. Vide; generally, Arch. Cr. Pl. B. 1, part 1, c. 1; p. 1 to 68; Stark. Cr. Pl. 1 to 336; 1 Chit. Cr. Law, 168 to 304; Com. Dig. h. t.: Vin. Ab. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Nels. Ab. h. t.; Burn's Just. h. t.; Russ. on Cr. Index, h. t.,

5. By the Constitution of the United States, Amendm. art. 5, no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger.

INDICTOR. He who causes another to be indicted. The latter is sometimes called the indictee.

INDIFFERENT. To have no bias nor partiality. 7 Conn. 229. A juror, an arbitrator, and a witness, ought to be indifferent, and when they are not so, they may be challenged. See 9 Conn. 42.

INDIRECT EVIDENCE. That proof which does not prove the fact in question, but proves another, the certainty of which may lead to the discovery of the truth of the one sought.

INDIVISIBLE. That which cannot be separated.

2. It is important to ascertain when a consideration or a contract, is or is not indivisible. When a consideration is entire and indivisible, and it is against law, the contract is void in toto. 11 Verm. 592; 2 W. & S. 235. When the consideration is divisible, and part of it is illegal, the contract is void only pro tanto.

3. - To ascertain whether a contract is divisible or indivisible, id to ascertain whether it may or may not be enforced, in part, or paid in part, without the consent of the other party. See 1 Bouv. Inst. n. 694, and articles Divisible; Entire.

INDIVISUM. That which two or more persons hold in common without partition; undivided. (q. v.)

TO INDORSE. To write on the back. Bills of exchange and promissory notes are indorsed by the party writing his name on the back; writing one's name on the back of a writ, is to indorse such writ. 7 Pick. 117. See 13 Mass. 396.

INDORSEE, contracts. The person in whose favor an indorsement is made,

2. He is entitled to all the rights of the indorser, and, if the bill or note have been indorsed over to him before it became due, he may be entitled to greater rights than the payee and indorser would have had, had he retained it till it became due, as none of the parties can make a set-off, or inquire into the consideration of the bill which he then holds. If he continues to be the holder (q. v.) when the bill becomes due, he ought

to make a legal demand, and give notice in case of non-acceptance or non-payment. Chitty on Bills, passim.

INDORSEMENT, crin. law, practice. When a warrant for the arrest of a person charged with a crime has been issued by a justice of the peace of one county, which is to be executed in another county, it is necessary in some states, as in Pennsylvania, that it should be indorsed by a justice of the county where it is to be executed: this indorsement is called backing. (q. v.) INDORSEMENT, contracts. In its most general acceptation, it is what is written on the back of an instrument of writing, and which has relation to it; as, for example, a receipt or acquittance on a bond; an assignment on a promissory note.

2. Writing one's name on the back of a bill of exchange, or a promissory note payable to order, is what is usually called, an indorsement. It will be convenient to consider, 1. The form of an indorsement; and, 2. Its effect.

3. - 1. An indorsement is in full, or in blank. In full, when mention is made of the name of the indorsee; and in blank, when the name of the indorsee is not mentioned. Chitty on Bills, 170; 13 Serg. & Rawle, 315. A blank indorsement is made by writing the name of the indorser on the back; a writing or assignment on the face of the note or bill would, however, be considered to have the force and effect of an indorsement. 16 East, R. 12. when an indorsement has been made in blank any after attempt to restrain the negotiability of the bill will be unavailing. 1 E.N. P. C. 180; 1 Bl. Rep. 295; Ham. on Parties 104.

4. Indorsements may also be restrictive conditional, or qualified. A restrictive indorsement may restrain the negotiability of a bill, by using express words to that effect, as by indorsing it "payable to J. S. only," or by using other words clearly demonstrating his intention to do so. Dougl. 637. The indorser may also make his indorsement conditional, and if the condition be not performed, it will be invalid. 4 Taunt. Rep. 30. A qualified indorsement is one which passes the property in the bill to the indorsee, but is made without responsibility to the indorser; 7 Taunt. R. 160; the words commonly used are, sans recours, without recourse. Chit. on Bills, 179; 3 Mass. 225; 12 Mass. 14, 15.

5. - 2. The effects of a regular indorsement may be considered, 1. As between the indorser and the indorsee. 2. Between the indorser and the acceptor. And, 3. Between the indorser and future parties to the bill.

6. - 1. An indorsment is sometimes an original engagement;as, when a man draws a bill payable to his own order, and indorses it; mostly, however, it operates as an assignment, as when the bill is perfect, and the payee indorses it over to a third

person. As an assignment, it carries with it all the rights which the indorsee had, with a guaranty of the solvency of the debtor. This guaranty is, nevertheless, upon condition that the holder will use due diligence in making a demand of payment from the acceptor, and give notice of non-acceptance or non-payment. 13 Serg. Rawle, 311.

7.-2. As between the indorsee and the acceptor, the indorsement has the effect of giving to the former all the rights which the indorser had against the acceptor, and all other parties liable on the bill, and it is unnecessary that the acceptor or other party should signify his consent or knowledge of the indorsement; and if made before the bill is paid, it conveys all these rights without any set-off, as between the antecedent parties. Being thus fully invested with all the rights in the bill, the indorsee may himself indorse it to another when he becomes responsible to all future patties as an indorser, as the others were to him.

8. - 3. The indorser becomes responsible by that act to all persons who may afterwards become party to the bill. Vide Chitty on Bills, ch. 4; 3 Kent, Com. 58; Vin. Abr. Indorsement; Com. Dig. Fait, E 2; 13 Serg. & Rawle, 311; Merl. R«pert. mot Endossement Pard. Droit Com. 344-357; 7 Verm. 356; 2 Dana, R. 90; 3 Dana, R. 407; 8 Wend. 600; 4 Verm. 11; 5 Harr. & John. 115; Bouv. Inst. Index, h. t.

INDORSER, contracts. The person who makes an indorsement.

2. The indorser of a bill of exchange, or other negotiable paper, by his indorsement undertakes to be responsible to the holder for the amount of the bill or note, if the latter shall make a legal demand from the payer, and, in default of payment, give proper notice thereof to the indorser. But the indorser may make his indorsement conditional, which will operate as a transfer of the bill, if the condition be performed; or he may make it qualified, so that he shall not be responsible on non-payment by the payer. Chitty on Bills, 179,180.

3. To make an indorser liable on his indorsement, the instrument must be commercial paper, for the indorsement of a bond or single bill.will not, per se, create a responsibility. 13 Serg. & Rawle, 311. But see Treval v. Fitch, 5 Whart. 325; Hopkins v. Cumberland Valley R. R. Co., 3 Watts & Serg. 410.

4. When there are several indorsers, the. first in point of time is generally, but not always, first-responsible; there may be circumstances which may cast the responsibility, in the first place, as between them, on a subsequent indorsee. 5 Munf. R. 252.

INDUCEMENT, pleading. The statement of matter which is introductory to the principal subject of the declaration or plea, &c., but which is necessary to explain and

elucidate it; such matter as is not introductory to or necessary to elucidate the substance or gist of the declaration or plea, &c. nor is collaterally applicable to it, not being inducement but surplusage. Inducement or conveyance, which. are synonymous terms, is in the nature of a preamble to an act of assembly, and leads to the Principal subject of the declaration or plea, &c. the same as that does to the purview or providing clause of the act. For instance, in an action for a nuisance to property in the possession of the plaintiff, the circumstance of his being possessed of the property should be stated as inducement, or byway of introduction to the mention of the nuisance. Lawes, Pl. 66, 67; 1 Chit. Pl. 292; Steph. Pl. 257; 14 Vin. Ab. 405; 20 Id. 845; Bac. Ab. Pleas. &c. I 2.

INDUCEMENT, contracts, evidence. The moving cause of an action.

2. In contracts, the benefit.which the obligor is to receive is the inducement to making them. Vide Cause; Consideration.

3. When a person is charged with a crime, he is sometimes induced to make confessions by the flattery of hope, or the torture of fear. When such confessions are made in consequence of promises or threats by a person in authority, they cannot be received in evidence. In England a distinction has been made between temporal and spiritual inducements; confessions made under the former are not receivable in evidence, while the latter may be admitted. Joy on Conf. ss. 1 and 4.

INDUCLAE LEGALES, Scotch law. The days between the citation of the defendant, and the day of appearance. Bell's Scotch Law Dict. h. t. The days between the test and the return day of the writ.

INDUCTION, eccles. law. The giving a clerk, instituted to a benefice, the actual possession of its temporalties, in the nature of livery of seisin. Ayl. Parerg. 299.

INDUTLGENCE. A favor granted.

2. It is a general rule that where a creditor gives .indulgence, by entering into a binding contract with a principal debtor, by which the surety is or may be damnified, such surety is discharged, because the creditor has put it out of his power to enforce immediate payment; when the surety would have a right to require him to do so. 6 Dow, P. C. 238; 3 Meriv. 272; Bac. Ab. Oblig. D; and see Giving Time.

3. But mere inaction by the creditor, if he do not deprive himself of the right to sue the principal, does not in general discharge the surety. See Forbearance.

INELIGIBILITY. The incapacity to be lawfully elected.

2. This incapacity arises from various, causes, and a person may be incapable of being elected to one office who may, be elected to another; the incapacity may also be perpetual or temporary.

3. - 1. Among perpetual inabilities may be reckoned, 1. The inability of women to be elected to a public office. 2. Of citizens born in a foreign country to be elected president of the United States.

4. - 2. Among the temporary inabilities may be mentioned, 1. The holding of an office declared by law to be incompatible with the one sought. 2. The non-payment of the taxes required by law. 3. The want of certain property qualifications required by the constitution. 4. The want of age, or being over the age required. Vide Eligibility. Incompatibility.

INEVITABLE ACCIDENT. A term used in the civil law, nearly synonymous with fortuitous. event. (q. v.) 2 Sm. & Marsh. 572. In the common law commonly called the ad of God. (q. v.) 2 Smed. & Marsh. Err. & App. 572.

INFAMIS. Among the Romans was of a general rule, and not by virtue of an arbitrary decision of the censors, lost his political rights, but preserved his civil rights. Sav. Dr. Rom 79.

INFAMY, crim. law, evidence. That state which is produced by the conviction of crime and the loss of honor, which renders the infamous person incompetent as a witness.

2. It is to be considered, 1st. What crimes or punishment incapacitate a witness. 2d. How the guilt is to be proved. 3d. How the objection answered. 4th. The effect of infamy.

3. - 1. When a man is convicted of an offence which is inconsistent with the common principles of honesty and humanity, the law considers his oath to be of no weight, and excludes his testimony as of too doubtful and suspicious a nature to be admitted in a court of justice to deprive another of life, liberty or property. Gilb. L. E. 256; 2 Bulst. 154; 1 Phil. 23; Bull. N. P. 291. The crimes which render a person incompetent, are treason; 5 Mod. 16, 74; felony; 2 Bulst. 154; Co. Litt. 6; T. Raym. 369; all offences founded in fraud, and which come within the general. notion of the crimen falsi of the Roman law; Leach, 496; as perjury and forgery; Co. Litt. 6; Fort. 209; piracy 2 Roll. Ab. 886; swindling, cheating; Fort. 209; barratry; 2 Salk. 690; and the bribing a witness to absent himself from a trial, in order to get rid of his evidence. Fort. 208. It is the crime and not the punisshment which renders the offender unworthy of belief. 1 Phill. Ev. 25.

4. - 2. In order to incapacitate the party, the judgment must be proved as pronounced by a court possessing competent jurisdiction. 1 Sid. 51; 2 Stark. C. 183; Stark. Ev. part 2, p. 144, note 1; Id. part 4, p. 716. But it has been held that a conviction of an infamous crime in another country, or another of the United States, does not render the witness incompetent on the ground of infamy. 17 Mass. 515. Though this doctrine appears to be at variance with the opinions entertained by foreign jurists, who maintain that the state or condition of a person in the place of his domicil accompanies him everywhere. Story, Confl. 620, and the authorities there cited; Foelix, Trait« De Droit Intern. Priv«, 31; Merl. R«pert, mot Loi, 6, n. 6.

5. - 3. The objection to competency may be answered, 1st. By proof of pardon. See Pardon. And, 2d. By proof of a reversal by writ of error, which must be proved by the production of the record.

6. - 4. The judgment for an infamous crime, even for perjury, does not preclude the party from making an affidavit with a view to his own defence. 2 Salk. 461 2 Str. 1148; Martin's Rep. 45. He may, for instance, make an affidavit in relation to the irregularity of a judgment in a cause in which he, is a party, for otherwise he would be without a remedy. But the rule is confined to defence, and he cannot be heard upon oath as complainant. 2 Salk. 461 2 Str. 1148. When the witness becomes incompetent from infamy of character, the effect is the same as if he were dead and if he has attested any instrument as a witness, previous to his conviction, evidence may be given of his handwriting. 2 Str. 833; Stark. Ev. part. 2, sect. 193; Id. part 4, p. 723.

7. By infamy is also understood the expressed opinion of men generally as to the vices of another. Wolff, Dr. de la Nat. et des Gens, 148.

INFANCY. The state or condition of a person under tho age of twenty-one years. Vide Infant.

INFANT, persons. One under the age of twenty-one years. Co. Litt. 171.

2. But he is reputed to be twenty-one years old, or of full age, the first instant of the last day of the twenty-first year next before the anniversary of his birth; because, according to the civil computation of time, which differs from the natural computation, the last day having commenced, it is considered as ended. Savig. Dr. Rom. 182. If, for example, a person were born at any hour of the first day of January, 1810, (even a few minutes before twelve o'clock of the night of that day,) he would be of full age at the first instant of the thirty-first of December, 1831, although nearly forty-eight hours before he had actually attained the full age of twenty-one years, according to years, days, hours and minutes, because there is, in this case, no fraction

of a day. 1 Sid. 162; S. C. 1 Keb. 589; 1 Salk. 44; Raym. 84; 1 Bl. Com. 463, 464, note 13, by Chitty; 1 Lilly's, Reg. 57; Com. Dig. Enfant, A; Savig. Dr. Rom. 383, 384.

3. A curious case occurred in England of a young lady who was born after the house clock had struck, while the parish clock was striking, and before St. Paul's had begun to strike twelve on the night of the fourth and fifth of January, 1805, and the question was whether she was born on the fourth or fifth of January. Mr. Coventry gives it as his opinion that she was born on the fourth, because the house clock does not regulate anything but domestic affairs, that the parochial clock is much better evidence, and that a metropolitan clock ought to be received with "implicit acquiescence." Cov. on Conv. Ev. 182-3. It is conceived that this can only be prima facie, because, if the fact were otherwise, and the parochial and metropolitan clocks should both have been wrong, they would undoubtedly have had no effect in ascertaining the age of the child.

4. The sex makes no difference, a woman is therefore an infant until she has attained her age of twenty-one years. Co. Litt. 171. Before arriving at full infant may do many acts. A male at fourteen is of discretion, and may consent to marry; and at that age he may disagree to and annul a marriage he may before that time have contracted he may then choose a guardian and, if his discretion be proved, may, at common law, make a will of his personal estate; and may act as executor at the age of seventeen years. A female at seven may be betrothed or given in marriage; at nine she is entitled to dower; at twelve may consent or disagree to marriage; and, at common law, at seventeen may act as executrix.

5. Considerable changes of the common law have probably taken place in many of the states. In Pennsylvania, to act as an executor, the party must be of full age. In general, an infant is not bound by his contracts, unless to supply him for necessaries. Selw. N. P. 137; Chit. Contr. 31; Bac. Ab. Infancy, &c. I 3; 9 Vin. Ab. 391; 1 Com. Contr. 150,.151; 3 Rawle's R. 351; 8 T. R. 335; 1 Keb. 905, 913; S. C. 1 Sid. 258; 1 Lev. 168; 1 Sid. 129; 1 Southard's R. 87. Sed vide 6 Cranch, 226; 3 Pick. 492; 1 Nott & M'Cord, 197. Or, unless he is empowered to enter into a contract, by some legislative provision; as, with the consent of his parent or guardian to put himself apprentice, or to enlist in the service of the United States. 4 Binn. 487; 5 Binn. 423.

6. Contracts made with him, may be enforced or avoided by him on his coming of age. See Parties to contracts; Voidable. But to this general rule there is an exception; he cannot avoid contracts for necessaries, because these are for his benefit. See Necessaries. The privilege of avoiding a contract on account of infancy, is strictly personal to the infant, and no one can take advantage of it but himself. 3 Green, 343; 2 Brev. 438. When the contract has been performed, and it is such as he would be compellable by law to perform, it will be good and bind him. Co. Litt. 172 a. And all the acts of an infant, which do not touch his interest, but take effect from an authority

which he has been trusted to execute, are binding. 3 Burr. 1794; Fonbl. Eq., b. 1, c. 2, 5, note c.

7. The protection which the law gives an infant is to operate as a shield to him, to protect him from improvident contracts, but not as a sword to do injury to others. An infant is therefore responsible for his torts, as, for slander, trespass, and the like; but he cannot be made responsible in an action ex delicto, where the cause arose on a contract. 3 Rawle's R. 351; 6 Watts' R. 9; 25 Wend. 399; 3 Shep. 233; 9 N. H. Rep. 441; 10 Verm. 71; 5 Hill, 391. But see contra, 6 Cranch, 226; 15 Mass. 359; 4 M'Cord, 387.

8. He is also punishable for a crime, if of sufficient discretion, or doli capax. 1 Russ. on Cr. 2, 3. Vide, generally, Bouv. Inst. Index, h. t.; Bingh. on Infancy; 1 Hare & Wall. Sel. Dec. 103, 122; the various Abridgments and Digests, tit. Enfant, Infancy; and articles Age; Birth; Capax Doli; Dead born; Faetus; In ventre sa mere.

INFANTICIDE, med. juris. The murder of a new born infant, Dalloz, Dict. Homicide, 4; Code Penal, 300. There is a difference between this offence and those known by the name of prolicide, (q. V.) and foeticide. (q. v.)

2. To commit infanticide the child must be wholly born; it is not. Sufficient that it was born so far as the head and breathed, if it died before it was wholly born. 5 Carr. & Payn. 329; 24 Eng. C. L. Rep. 344; S. C. 6 Carr: & Payn. 349; S. C. 25 Eng. C. L. Rep. 433.

3. When this crime is to be proved from circumstances, it is proper to consider whether the child had attained that size and maturity by which it would have been enabled to maintain an independent existence; whether it was born alive; and, if born alive, by what means it came to its death. 1 Beck's Med. Jur. 331 to 428, where these several questions are learnedly considered. See also 1 Briand, M«d L«g. pr«m. part. c. 8 Cooper's Med. Jur. h. t. Vide Ryan's Med. Jur. 137; Med. Jur. 145, 194; Dr. Cummin's Proof of Infanticide considered L«cieux, Considerations M«dico-l«gales sur l'Infanticide; Duvergie, M«dicine L«gale, art. Infanticide.

INFEOFFMENT, estates. The act or instrument of feoffment. (q. v.) In Scotland it is synonymous with saisine, meaning the instrument of possession; formerly it was synonymous with investiture, Bell's Sc. L. Dict. h. t.

INFERENCE. A conclusion drawn by reason from premises established by proof.

2. It is the province of the judge who is to decide upon the facts to draw the inference. When the facts are submitted to the court, the judges draw the inference; when they

are to be ascertained by a jury, it is their duty to do so. The witness is not permitted as a general rule to draw an inference, and testify that to the court or jury. It is his duty to state the facts simply as they occurred. Inferences differ from presumptions. (q. v.)

INFERI0R. One who in relation to another has less power and is below him; one who is bound to obey another. He who makes the law is the superior; he who is bound to obey it, the inferior. 1 Bouv. Inst. n. 8.

INFERIOR COURTS. By this term are understood all courts except the supreme courts. An inferior court is a court of limited jurisdiction, and it must appear on the face of its proceedings tliat it has jurisdiction, or its proceedings. will be void. 3 Bouv. Inst. n. 2529.

INFIDEL, persons, evidence. One who does not believe in the existence of a God, who will reward or punish in this world or that which is to come. Willes' R. 550. This term has been very indefinitely applied. Under the name of infidel, Lord Coke comprises Jews and heathens; 2 Inst 506; 3 Inst. 165; and Hawkins includes among infidels, such as do not believe either in the Old or New Testament. Hawk. P. C. b 2, c. 46, s. 148.

2. It is now settled that when the witness believes in a God who will reward or punish him even in this world he is competent. See willes, R. 550. His belief may be proved from his previous declarations and avowed opinions; and when he has avowed himself to be an infidel, he may show a reform of his conduct, and change of his opinion since the declarations proved when the declarations have been made for a very considerable space of time, slight proof will suffice to show he has changed his opinion. There is some conflict in the cases on this subject, some of theni are here referred to: 18 John. R. 98; 1 Harper, R. 62; 4 N. Hamp. R. 444; 4 Day's Cas. 51; 2 Cowen, R. 431, 433 n., 572; 7 Conn. R. 66; 2 Tenn. R. 96; 4 Law Report, 268; Alis. Pr. Cr. Law, 438; 5 Mason, 16; 15 mass. 184; 1 Wright, 345; So. Car. Law Journ. 202. Vide Atheist; Future state.

INFIRM. Weak, feeble.

2. When a witness is infirm to an extent likely to destroy his life, or to prevent his attendauce at the trial, his testimony de bene esge may be taken at any age. 1 P. Will. 117; see Aged witness.; Going witness.

INFLUENCE. Authority, credit, ascendance.

2. Influence is proper or improper. Proper influence is that which one person gains over another by acts of kindness and, attention, and by correct conduct. 3 Serg. &

Rawle, 269. Improper influence is that dominion acquired by any person over a mind of sanity for general purposes, and of sufficient soundness and discretion to regulate his affairs in general, which prevents the exercise of his di scretion, and destroys his free will. 1 Cox's Cas. 355. When the former is used to induce a testator to make a will, it will not vitiate it; but when the latter is the moving cause, the will cannot stand. 1 Hagg. R. 581; 2 Hagg. 142; 5 Serg. & Rawle, 207; 13 Serg. & Rawle, 323; 4 Greenl. R. 220; 1 Paige, R. 171; 1 Dow. & Cl. 440; 1 Speers, 93.

3. A contract to use a party's influeuce to induce a person in authority to exercise his power in a particular way, is void, as being against public policy. 5 Watts & Serg. 315; 5 Penn. St. Rep. 452; 7 Watts, 152.

INFORMALITY. The waut of those forms required by law. Informality is a good ground for a plea in abatement. Com. Dig. Abatement, H 1, 6; Lawes, Pl. 106; Gould, Pl. c. 5, part 1, 132.

INFORMATION. An accusation or complaint made in writing to a court of competent jurisdiction, charging some person with a specific violation of some public law. It differs in nothing from an indictment in its form and substance, except that it is filed at the discretion of the proper law officer of the government, ex officio, without the intervention or approval of a grand jury. 4 Bl. Com. 308, 9.

2. In the French law, the term information is used to signify the act or instrument which contains the depositions of witnesses against the accused. Poth. Proc. Cr. sect. 2, art. 5 .

3. Informations have for their object either to punish a crime or misdemeanor, and these have,.perhaps, never been resorted to in the United States or to recover penalties or forfeitures, which are quite common. For the form and requisites of an information for a penalty, see 2 Chit. Pr. 155 to 171. Vide Blake's Ch. 49; 14 Vin. Ab. 407; 3 Story, Constitution, 1780 3 Bl. Com. 261.

4. In summary proceedings before justices of the peace, the complaint or accusation, at least when the proceedings relate to a penalty, is called an information, and it is then taken down in writing and sworn to. As the object is to limit the informer to a certain charge, in order that the defendant may know what he has to defend, and the justice may limit the evidence and his subsequent adjudication to the allegations in the information, it follows that the substance of the particular complaint must be stated and it must be sufficiently formal to contain all material averments. 8 T. R. 286; 5 Barn. & Cres. 251; 11 E. C. L. R. 217; 2 Chit. Pr. 156. See 1 Wheat. R. 9.

INFORMATION IN THE NATURE OF A WRIT OF QUO WARRANTO, remedies. The name of a proceeding against any one who usurps a franchise or office.

2. Informations of this kind are filed in the highest courts of ordinary jurisdiction in the several states, either by the attorney-general, of his own authority, or by the prosecutor, who is entitled, pro forma, to use his name, as the case may be. 6 Cowen, R. 102, n.; 10 Mass. 290; 2 Dall. 112; 2 Halst. R. 101; 1 Rep Const. Ct. So. Car. 86; 3 Serg. & Rawle, 52; 15 Serg. & Rawle, 127: Though, in form, these informations are criminal, they are, in their nature, but civil proceedings. 3 T. R. 484; Kyd on Corp. 439. They are used to try a civil right, or to oust a wrongful possessor of an office. 3 Dall. 490; 1 Serg. & Rawle. 385, For a full and satisfactory statement of the law on this subject, the reader is referred to Angell on Corp. ch. 20. p. 469. And see Quo Warranto.

INFORMATUS NON SUM, pleading, practice. I am not informed; a formal answer made in court, or put upon record by an attorney when he has nothing to say in defence of his client. Styles Reg. 372.

INFORMER. A person who informs or prefers an accusation against another, whom he suspects of the violation of some penal statute.

2. When the informer is entitled to the penalty or part of the penalty, upon the conviction of an offender, he is or is not a competent witness, accordingly as the statute creating the penalty has or has not made him so. 1 Phil. Ev. 97; Rosc. Cr. Ev. 107; 5 Mass. R. 57; 1 Dall. 68; 1 Saund. 262, c. Vide articles Prosecutor; Rewards.

INFORTIATUM, civil law. The second part of the Digest or Pandects of Justinian, is called infortiatum: see Digest. This part, which commences with the third title of the twenty-fourth book, and ends with the thirty-eighth book, was thus called because it was the middle part, which, it was said, was supported and fortified by the two others. Some have supposed that this name was given to it, because it treats of successions, substitutions, and other important matters, and being, more used than the others, produced greater fees to the lawyers.

INFRA, Latin. Below, under, beneath, underneath. The opposite of supra, above. Thus we say primo gradu est supra, pater, mater; infra, filius, filia. In the first degree of kindred in the ascending line; above, is the father and the mother; below, in the descending line, the son and daughter. Inst. 3, 6, l.

2. In another, sense, this word signifies within; as, infra corpus comitatus, within the body of the county; infra proesidia, within the guards.

3. It also signifies during; as infra furorem during the madness.

INFRA ATATEM. Under age that is, during infancy, or before arriving at the full age of twenty-one years.

INFRA CORPUS COMITATUS. Within the body of the countt.

2. The common law courts have jurisdiction infra corpus comitatus; the admiralty, on the contrary, has no such jurisdiction, unless, indeed, the tide water may extend within such county. 5 Howard's U. S. Rep. 441, 451.

INFRA DIGNITATEM CURAE. Below the dignity of the court. Example, in equity a demurrer will lie to a bill on the ground of the triviality of the matter in dispute, as being below the dignity of the court. See 4 John. Ch. 183; 4 Paige, 364; 4 Bouv. Inst. n. 4237.

INFRA HOSPITIUM. Within the inn when once a traveller's baggage comes infra hospitium, that is, in the care and under the charge of the innkeeper, it is at his risk. See Guest; Innkeeper.

INFRA PRAESIDIA. This term is used in relation to prizes, to signify that they have been brought completely in the power of the captors, that is, within the towns, camps, ports or fleet of the captors. Formerly, the rule was, and perhaps still in some countries is, that the act of bringing a prize infra praesidia, changed the property but the rule now established is, that there must be a sentence of condemnation to effect this purpose. 1 Rob. Adm. R. 134; 1 Kent's Com. 104; Chit. Law of Nat. 98; Abb. Sh. 14; Hugo, Droit Romain, 90.

INFRACTION. The breach of a law or agreement; the violation of a compact. In the French law this is the generic expression to designate all actions which are punishable by the code of France.

INFUSION, med. jur. A pharmaceutical operation, which consists in pouring a hot or cold fluid upon a substance, whose medical properties it is desired to extract. Infusion is also used for the product of this operation. Although infusion differs from decoction, (q. v.) they are said to be ejusdem generis; and in the case of an indictment which charged the prisoner with giving a decoction, and the evidence was that he had given an infusion, the difference was held to be immaterial. 8 Camp. R. 74.

INGENUI, civ. law. Those freemen who were born free. Vicat, vocab.

2. They were a class of freemen, distinguished from those who, born slaves, had afterwards legally obtained their freedom the latter were called at various periods, sometimes liberti, sometimes libertini. An unjust or illegal servitude did not prevent a man from being ingenuus.

INGRATITUDE. The forgetfulness of a kindness or benefit.

2. In the civil law, ingratitude on the part of a legatee, was sufficient to defeat a legacy in his favour. In Louisiana, donations inter vivos are liable to be revoked or dissolved on account of the ingratitude of the donee; but the revocation on this account can, take place only, in the three following cases: 1. if the donee has attempted to take the life of the donor. 2. If he has been guilty towards him of cruel treatmeut, crimes or grievous injuries. 3. If he has refused him food when in distress. Civ. Code of Lo. art. 1546, 1547; Poth. Donations Entrevifs, s. 3, art. 1, 1. There are no such rules in the common law. Ingratitude is not punishable by law.

INGRESS, EGRESS AND REGRESS. These words are frequently used in leases to express the right of the lessee to enter, go upon, and return from the lands in question.

INGRESSU. An ancient writ of entry, by which the plaintiff or complainant sought an entry into his lands. Techn. Dict. h. t.

INGROSSING, practice. The act of copying from a rough draft a writing in order that it may be executed; as, ingrossing a deed.

INHABITANT. One who has his domicil in a place is an inhabitant of that place; one who has an actual fixed residence in a place.

2. A mere intention to remove to a place will not make a man an inhabitant of such place, although as a sign of such intention he may have sent his wife and children to reside there. 1 Ashm. R. 126. Nor will his intention to quit his residence, unless consummated, deprive him of his right as an inhabitant. 1 Dall. 480. Vide 10 Ves. 339; 14 Vin. Ab. 420; 1 Phil. Ev. Index, h. t.; Const. of Mass., part 2, c. 1, s. 2, a. 1; Kyd on Corp. 321; Anal. des Pand. de Poth. mot Habitans; Poth. Pand. lib. 50, t. 1, s. 2; 6 Adolph. & Ell. 153; 33 Eng. Common Law Rep. 31.

3. The inhabitants of the United States may be classed into, 1. Those born within the country; and, 2. Those born out of it.

4. - 1. The natives consist, 1st. Of white persons, and these are all citizens of the United States, unless they have lost that right. 2d. Of the aborigines, and these are not in general, citizens of the United States nor do they possess any political power. 3d.

Of negroes, or descendants of the African race, and these generally possess no political authority whatever, not being able to vote, nor to hold any office. 4th. Of the children of foreign ambassadors, who are citizens or subjects as their fathers are or were at the time of their birth.

5. - 2. Persons born out of the jurisdiction of the United States, are, 1st. children of citizens of the United States, or of persons who have been such; they are citizens of the United States, provided the father of such children shall have resided within the same. Act of Congress of April 14, 1802, 4. 2d. Persons who were in the country at the time of the adoption of the constitution; these have all the rights of citizens. 3d. Persons who have become naturalized under the laws of any state before the passage of any law on the subject of naturalization by Congress, or who have become naturalized under the acts of congress, are citizens of the United States, and entitled to vote for all officers who are elected by citizens, and to hold any office except those of president and vice-president of the United States. 4th. Children of naturalized citizens, who were under the age of twenty-one years, at the time of their parent's being so naturalized or admitted to the rights of citizen-ship, are, if then dwelling in the United States, considered as citizens of the United States, and entitled to the same rights as their respective fathers. 5th. Persons who resided in a territory which was annexed to the United States by treaty, and the territory became a state; as, for example, a person who, born in France, moved to Louisiana in 1806, and settled there, and remained in the territory until it was admitted as a state, it was held, that although not naturalized under the acts of congress, he was a citizen of the United States. Deshois' Case, 2 Mart. Lo. R. 185. 6th. Aliens or foreigners, who have never been naturalized, and these are not citizens of the United States, nor entitled to any political rights whatever. See Alien; Body politic; Citizen; Domicil; Naturalization.

INHERENT POWER. An authority possessed without its being derived from another. It is a right, ability or faculty of doing a thing, without receiving that right, ability or faculty from another.

INHERITANCE, estates. A perpetuity in lands to a man and his heirs; or it is the right to succeed to the estate of a person who died intestate. Dig. 50, 16, 24. The term is applied to lands.

2. The property which is inherited is called an inheritance.

3. The term inheritance includes not only lands and tenements which have been acquired by descent, but also every fee simple or fee tail, which a person has acquired by purchase, may be said to be an inheritance, because the purchaser's heirs may inherit it. Litt. s. 9.

4. Estates of inheritance are divided into inheritance absolute, or fee simple; and inheritance limited, one species of which is called fee tail. They are also divided into corporeal, as houses and lands and incorporeal, commonly called incorporeal hereditaments. (q. v.) 1 Cruise, Dig. 68; Sw. 163; Poth. des Retraits, n. 2 8.

5. Among the civilians, by inheritance is understood the succession to all the rights of the deceased. It is of two kinds, 1 . That which arises by testament, when the testator gives his succession to a particular person; and, 2. That which arises by operation of law, which is called succession ab intestat. Hein. Lec. El. 484, 485.

INHIBITION, Scotch law,. A personal prohibition which passes by letters under the signet, prohibiting the party inhibited to contract any debt, or do . any deed, by which any part of the lands may be aliened or carried off, in prejudice of the creditor inhibiting. Ersk. Pr. L. Scot. B. 2, t. 11, s. 2. See Diligences.

2. In the civil law, the probibition which the law makes, or a judge ordains to an individual, is called inhibition.

INHIBITION, Eng. law. The name of a writ which forbids a judge from further proceeding in a cause depending before him; it is in the nature of a prohibition. T. de la Ley; F. N. B. 39.

INIQUITY. Vice; contrary to equity; injustice.

2. Where, in a doubtful matter, the judge is required to pronounce, it is his duty to decide in such a manner as is the least against equity.

INITIAL. Placed at the beginning. The initials of a man's name are the first letters of his Dame; as, G. W. for George Washington. When in a will the legatee is described by the initials of his name only, parol evidence may be given to prove his identity. 3 Ves. 148. And a signature made simply with initials is binding. 1 Denio, R. 471. But see Ersk. Inst. B. 3, t. 2, n. 8.

INITIALIA TESTIMONII, Scotch law. Before a witness can be examined in chief, he may be examined with regard to his disposition, whether he bear good or ill will towards either of the parties whether he has been prompted what to say whether he has received a bribe, and the like. This previous examination, which somewhat resembles our voir dire, is called initialia testimonii.

INITIATE. A right which is incomplete. By the birth of a child, the hushand becomes tenant by the curtesy initiate, but his estate is not consummate until the death of the wife. 2 Bouv. Inst. n. 1725.

INITIATIVE, French law. The name given to the important prerogative given by the charte constitutionelle, art. 16, to the late king to propose through his ministers projects of laws. 1 Toull. n. 39. See Veto.

INJUNCTION, remedies, chancery, practice. An injunction is a prohibitory writ, specially prayed for by a bill, in which the plaintiff's title is set forth, restraining a person from committing or doing an act (other than criminal acts) which appear to be against equity and conscience. Mitf. Pl. 124; 1 Madd. Ch. Pr. 126.

2. Injunctions are of two kinds, the one called the writ remedial, and the other the judicial writ.

3. - 1st. The former kind of injunction, or remedial writ, is in the nature of a prohibition, directed to, and controlling, not the inferior court, but the party. It is granted, when a party is doing or is about to do an act against equity or good conscience, or litigious or vexatious; in these cases, the court will not leave the party to feel the mischief or inconvenience of the wrong, and look to the courts of common law for redress, but will interpose its authority to restrain such unjustifiable proceedings.

4. Remedial injunctions are of two kinds common or special. 1. It is common when it prays to stay proceedings at law, and will be granted, of course; as, upon an attachment for want of an appearance, or of an answer; or upon a dedimus obtained by the defendant to take his answer in the country; or upon his praying for time to answer, &c. Newl. Pr. 92; 13 Ves, 323. 2. A special injunction is obtained only on motion or petition, with notice to the other party, and is applied for, sometimes on affidavit before answer, but more frequently upon the merits disclosed in the defendant's answer. Injunctions before answer are granted in cases of waste and other injuries of so urgent a nature, that mischief would ensue if the plaintiff were to wait until the answer were put in; but the court will not grant an injunction during the pendency of a plea or demurrer to the bill, for until that be argued, it does not appear whether or not the court has jurisdiction of the cause. The injunction granted in this stage of the suit, is to continue till answer or further order; the injunction obtained upon the merits confessed in the answer, continues generally till the hearing of the cause.

5. An injunction is generally granted for the purpose of preventing a wrong, or preserving property in dispute pending a suit. Its effect, in general, is only in personam, that is, to attach and punish the party if disobedient in violating the injunction. Ed. Inj. 363; Harr. Ch. Pr. 552.

6. The principal injuries which may be prevented by injunction, relate to the person, to personal property, or to real property. These will be separately considered.

7. - 1. With respect to the person, the chancellor may prevent a breach of the peace, by requiring sureties of the peace. A court of chancery has also summary and extensive jurisdiction for the protection of the relative rights of persons, as between hushand and wife, parent and child, and guardian and ward; and in these cases, on a proper state of facts, an injunction will be granted. For example, an injunction may be obtained by a parent to prevent the marriage of his infant son. 1 Madd. Ch. Pr. 348; Ed. Inj. 297; 14 Ves. 206; 19 Ves. 282; 1 Chitt. Pr. 702.

8. - 2. Injunctions respecting personal property, are usually granted, 1st. To restrain a partner or agent from making or negotiating bills, notes or contracts, or doing other acts injurious to the partner or principal. 3 Ves. jr. 74; 3 Bro. C. C. 15; 2 Campb. 619; 1 Price, R. 503; 1 Mont. on Part. 93; 1 Madd. Ch. Pr. 160; Chit. Bills, 58, 61; 1 Hov. Supp. to Ves. jr. *335; Woodd. Lect. 416.

9. - 2d. To restrain the negotiation of bills or notes obtained by fraud, or without consideration. 8 Price, R. 631; Chit. Bills, 31 to 41; Ed. Inj. 210; Blake's Ch. Pr. 838; 2 Anst. 519; 3 Anst. 851; 2 Ves. jr. 493; 1 Fonb. Eq. 43; 1 Madd. Ch. Pr. 154. 3d. To deliver up void or satisfied deeds. 1 V. & B. 244; 11 Ves. 535; 17 Ves. 111. 4th. To enter into and deliver a proper security. 1 Anst, 49. 5th. To prevent breaches of covenant or contract, and enjoin the performance of others. Ed. Inj. 308. 6th. To prevent a breach of confidence or good faith, or to prevent other loss as, for example, to restrain the disclosure of secrets, which came to the defendant's knowledge in the course of any confidential employment. 1 Sim. R. 483 and see 1 Jac. & W. 394. An injunction will be granted to prevent the publication of private letters without the authors consent. Curt. on Copyr. 90; 2 Atk. 342; Ambl. 137; 2 Swanst. 402, 427; 1 Ball & Beat. 207; 2 Ves. & B. 19; 1 Mart. Lo. R. 297; Bac. Ab. Injunction A. But the publication will be allowed when necessary to the defence of the character of the party who received them. 2 Ves. & B. 19. 7th. To prevent improper sales, payments, or conveyances. Chit. Eq. Dig. tit. Practice, xlvii. 8th. To prevent loss or inconvenience; this can be obtained on filing a bill quia timet. (q. v.) 1 Madd. Ch. Pr. 218 to 225. 9th. To prevent waste of property by an executor or administrator. Ed. Inj. 300; 1 Madd. Ch. Pr.; 160, 224. 10th. To restrain the infringement of patents; Ed. Inj. ch. 12; 14 Ves. 130; 1 Madd. Ch. Pr. 137; or of copyrights; Ed. Inj. c. 13; 8 Ares. 225; 17 Ves. 424. 11th. To stay proceedings in a court of law. These proceedings will be stayed when justice cannot be done in consequence of accident; 1 John. Cas. 417: 4 John. Ch. R. 287,194; Latch, 24, 146, 148; 1 Vern. 180, 247; 1 Ch. C. 77, 120; 1 Eq. Cas. Ab. 92; or mistake; 1 John. Ch. R. 119, 607; 2 John. Ch. R. 585; 4 John. Ch. R. 85; Id. 144; 2 Munf. 187; 1 Day's Cas. Err. 139; 3 Ch. R. 55; Finch., 413; 2 Freem. 16; Fitzg. 18; or fraud. 1 John. Ch. R. 402; 2 John. Ch. R. 512; 4 John. Ch. R. 65. But no

injunction will be granted to stay proceedings in a criminal case. 2 John. Ch. R. 387; 6 Mod. 12; 2 Ves. 396.

9. - 3. Injunctions respecting real property, may be obtained, 1st. To prevent wasteful trespasses or irreparable damages, although the owner may be entitled to retake possession, if he can do so, without a breach of the peace. 1 Chit. Pr. 722. 2d. To compel the performance of lawful works in the least, injurious manner. 1 Turn. & Myl. 181. 3d. To prevent waste. 3 Tho. Co. Litt. 241, M; 1 Madd. Ch. Pr. 138; Ed. Inj. ch. 8, 9, and 10; 1 John. Ch. R. 11; 2 Atk. 183. 4th. To prevent the creation of a nuisance, either private or public. 1. Private nuisance; for example, to restrain the owner of a house from making any erections or improvements, so as materially to darken or obstruct the ancient lights and windows of an adjoining house. 2 Russ. R. 121. 2. Public nuisances. Though usual to prosecute the parties who create nuisances, by indictment, yet, in some cases, an injunction may be had to prevent the creating of such nuisance. 5 Ves. 129; 1 Mad. Ch. 156; Ed. Inj. ch. 11. 10. - 2d An injunction of the second kind, called the judicial writ, issues subsequently to a decree. It is a direction to yield up, to quit, or to continue possession of lands, and is properly described as being in the nature of an execution. Ed. Inj. 2. 11. Injunctions are also divided into temporary and perpetual. 1. A temporary injunction is one which is granted until some stage of the suit shall be reached; as, until the defendant shall file his answer; until the bearing; and the like. 2. A perpetual injunction is one which is issued when, in the opinion of the court, at the hearing the plaintiff has established a case, which entitles him to an injunction; or when a bill, praying for an injunction, is taken pro confesso; in such cases a perpetual injunction will be decreed. Ed. Inj. 253.

12. The interdict (q. v.) of the Roman law resembles, in many respects, our injunction. It was used in three distinct, but cognate senses. 1. It was applied to signify the edicts made by the proctor, declaratory of his intention to give a remedy in certain cases, chiefly to preserve or to restore possession; this interdict was called edictal; edictale, quod praetoriis edictis proponitur, ut sciant omnes ea forma posse implorari. 2. It was used to signify his order or decree, applying the remedy in the given case before him, and then was called decretal; decretale, quod praetor re nata implorantibus decrevit. It is this which bears a strong resemblance to the injunction of a court of equity. 3. It was used, in the last place, to signify the very remedy sought in the suit commenced under the proctor's edict; and thus it became the denomination of the action itself. Livingston on the Batture case, 5, Am. Law Jour. 271; 2 Story, Eq. Jur. 865; Analyse des Pandectes de Pothier, h.t.; Dict. du Dig. h.t.; Clef des Lois Rom. h. t.; Heineccii, Elem. Pand. Ps. 6, 285, 28 Vide, generally, Eden on Injunctions; 1 Madd. Ch. Pr. 125 to 165; Blake's Ch. Pr. 330 to 344; 1 Chit. Pr. 701 to 731; Coop. Eq. Pl. Index, h. t.; Redesd. Pl. Index, h. t.; Smith's Ch. Pr. h. t.; 14 Vin. Ab. 442; 2 Hov. Supp. to Ves. jr. 173, 434, 442; Com. Dig. Chancery, D 8; Newl. Pr. o. 4, s. 7; Bouv. Inst. Index, h. t.

INJURIA ABSQUE DAMNO. Injury without damage. Injury without damage or loss will not bear an action. The following, cases illustrate this principle. 6 Mod. Rep. 46, 47, 49; 1 Shower, 64; Willes, Rep. 74, note; 1 Lord Ray. 940, 948; 2 Bos. & Pull. 86; 9 Rep. 113; 5 Rep. B. N. P. 120. 72

INJURIOUS WORDS. This phrase is used, in Louisiana, to signify slander, or libelous words. Code, art. 3501.

INJURY. A wrong or tort. Injuries are divided into public and private; and they affect the. person, personal property, or real property.

3. - 1. They affect the person absolutely or relatively. The absolute injuries are, threats and menaces, assaults, batteries, wounding, mayhems; injuries to health, by nuisances or medical malpractices. Those affecting reputation are, verbal slander, libels, and malicious prosecutions; and those affecting personal liberty are, false imprisonment and malicious prosecutions. The relative injuries are those which affect the rights of a hushand; these are, abduction of the wife, or harboring her, adultery and battery those which affect the rights of a parent, as, abduction, seduction, or battery of a child; and of a master, seduction, harboring and battery of his apprentice or servant. Those which conflict with the rights of the inferior relation, namely, the wife, child, apprentice, or servant, are, withholding conjugal rights, maintenance, wages, &c.

4. - 2. Injuries to personal property, are, the unlawful taking and detention thereof from the owner; and other injuries are, some damage affecting the same while in the claimant's possession, or that of a third person, or injuries to his reversionary interests.

5. - 3. Injuries to real property are, ousters, trespasses nuisances, waste, subtraction of rent, disturbance of right of way, and the like.

6. Injuries arise in three ways. 1. By nonfeasance, or the not doing what was a legal obligation, or. duty, or contract, to perform. 2. Misfeasance, or the performance, in an improper manner, of an act which it was either the party's duty, or his contract, to perform. 3. Malfeasance, or the unjust performance of some act which the party had no right, or which he had contracted not to do.

7. The remedies are different, as the injury affects private individuals, or the public. 1. When the injuries affect a private right and a private individual, although often also affecting the public, there are three descriptions of remedies: 1st. The preveative, such as defence, resistance, recaption, abatement of nuisance, surety of the peace, injunction, &c. 2d. Remedies for compensation, which may be by arbitration, suit, action, or summary proceedings before a justice of the peace. 3d. Proceedings for punishment, as by indictment, or summary Proceedings before a justice. 2. When the

injury is such as to affect the public, it becomes a crime, misdemeanor, or offence, and the party may be punished by indictment or summary conviction, for the public injury; and by civil action at the suit of the party, for the private wrong. But in cases of felony, the remedy by action for the private injury is generally suspendid until the party particularly injured has fulfilled his duty to the public by prosecuting the offender for the public crime; and in cases of homicide the remedy is merged in the felony. 1 Chit. Pr. 10; Ayl. Pand. 592. See 1 Miles' Rep. 316, 17; and article Civil Remedy.

8. There are many injuries for which the law affords no remedy. In general, it interferes only when there has been a visible bodily injury inflicted by force or poison, while it leaves almost totally unprotected the whole class of the most malignant mental injuries and sufferings unless in a few cases, where, by descending to a fiction, it sordidly supposes some pecuniary loss, and sometimes, under a mask, and contrary to its own legal principles, affords compensation to wounded feelings. A parent, for example, cannot sue, in that character, for an injury inflicted on his child and when his own domestic happiness has been destroyed, unless the fact will sustain the allegation that the daughter was the servant of her father, and that, by, reason of such seduction, he lost the benefit of her services. Another instance may be mentioned: A party cannot recover damages for verbal slander in many cases; as, when the facts published are true, for the defendant would justify and the party injured must fail. A case of this kind, remarkably bard, occurred in England. A young nobleman had seduced a young woman, who, after living with him some time, became sensible of the impropriety of her conduct. She left him secretly, and removed to an obscure place in the kingdom, where she obtained a situation, and became highly respected in consequence of her good conduct she was even promoted to a better and more public employment when she was unfortunately discovered by her seducer. He made proposals to her to renew their illicit intercourse, which were rejected; in order to, force her to accept them, he published the history of her early life, and she was discharged from her employment, and lost the good opinion of those on whom she depended for her livelihood. For this outrage the culprit could not be made answerable, civilly or criminally. Nor will the law punish criminally the author of verbal slander, imputing even the most infamous crimes, unless done with intent to extort a chattel, money, or valuable thing. The law presume, perhaps unnaturally enough, that a man is incapable of being alarmed or affected by such injuries to his feelings. Vide 1 Chit. Med. Jur. 320. See, generally, Bouv. Inst. Index, h. t.

INJURY, civil law, In the technical sense of the term it is a delict committed in contempt, or outrage of any one, whereby his body, his dignity, or his reputation, is. maliciously injured. Voet, Com. ad Pand. lib. 47, t. 10, n. 1.

2. Injuries may be divided into two classes, With reference to the means used by the wrong doer, namely, by words and by acts. The first are called verbal injuries, the latter real.

3. A verbal injury, when directed against a private person, consists in the uttering contumelious words, which tend to expose his character, by making him little or ridiculous. Where the offensive words are uttered in the beat of a dispute, and spoken to the person's face, the law does not presume any malicious intention in the utterer, whose resentment generally subsides with his passion;, and yet, even in that case, the truth of the injurious words seldom absolves entirely from punishment. Where the injurious expressions have a tendency to blacken one's moral character, or fix some particular guilt upon him, and are deliberately repeated in different companies, or banded about in whispers to confidants, it then grows up to the crime of slander, agreeably to the distinction of the Roman law, 1. 15, 12, de injur.

4. A reat injury is inflicted by any fact by which a person's honor or dignity is affected; as striking one with a cane, or even aiming a blow without striking; spitting in one's face; assuming a coat of arms, or any other mark of distinction proper to another, &c. The composing and publish in defamatory libels maybe reckoned of this kind. Ersk. Pr. L. Scot. 4, 4, 45.

INJUSTICE. That which is opposed to justice.

2. It is either natural or civil. 1. Natural injustice is the act of doing harm to mankind, by violating natural rights. 2. Civil injustice, is the unlawful violation of civil rights.

INLAGARE. To admit or restore to the benefit of law.

INLAGATION. The restitution of one outlawed to the protection of the law. Bract. lib. 2, c. 14.

INLAND. Within the same country.

2. It seems not to be agreed whether the term inland applies to all the United States or only to one state. It has been holden in Now York that a bill of exchange by one person in one state, on another person in another, is an inland bill of exchange; 5 John. Rep. 375; but a contrary opinion seems to have been held in the circuit court of the United States for Pennsylvania. Whart. Dig. tit. Bills of Exchange, E, pl. 78. Vide 2 Phil. Ev. 36, and Bills of Exchange.

INMATE. One who dwells in a part of another's house, the latter dwelling, at the same time, in the said house. Kitch. 45, b; Com. Dig. Justices of the Peace, B 85; 1 B.

& Cr. 578; 8 E. C. L. R. 153; 2 Dowl. & Ryl. 743; 8 B. & Cr. 71; 15 E. C. L. R. 154; 2 Mann. & Ryl. 227; 9 B. & Cr. 176; 17 E. C. L. R. 385; 4 Mann. & Ryl. 151; 2 Russ. on Cr. 937; 1 Deac. Cr. L. 185; 2 East, P. Cr. 499, 505; 1 Leach's Cr. L. 90, 237, 427; Alcock's Registration Cases, 21; 1 Mann. & Gran. 83; 39 E. C. L. R. 365. Vide Lodger.

INN. A house where a traveller is furnished with every thing he has occasion for while on his way. Bac. Ab. Inns. B; 12 Mod. 255; 3 B. & A. 283; 4 Campb. 77; 2 Chit. Rep. 484; 3 Chit. Com. Law, 365, n. 6.

2. All travellers have a lawful right to enter an inn for the purpose of being accommodated. It has been held that an innkeeper in a town'through which lines of stages pass, has no right to, exclude the driver of one of these lines from his yard and the common public rooms, where travellers are usually placed, who comes there at proper hours, and in a proper manner, to solicit passengers for his coach, and without doing any injury to the innkeeper. 8 N. H. R. 523; Hamm. N. P. 170. Vide Entry; Guest.

INNAVIGABLE. Not capable of being navigated.

INNINGS, estates. Lands gained from the sea by draining. Cunn. L. Dict. h. t.; Law of Sewers, 31.

INNKEEPER. He is defined to be the keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants, for a reasonable compensation. Bac. Ab. Inns, &c.; Story, Bailm. 475. But one who entertains strangers occasionally, although he may receive compensation for it, is not an innkeeper. 2 Dev. & Bat. 424.

2. His duties will be first considered and, secondly, his rights.

3. - 1. He is bound to take in and receive all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper diligence. He is liable only for the goods which are brought within the inn. 8 Co. 32; Jones' Bailm. 91. A delivery of the goods into the custody of the innkeeper is not, however, necessary, in order to make him responsible; for although he may not know anything of such goods, he is bound to pay for them if they are stolen or carried away, even by an unknown person; 8 Co. 32; Hayw. N. C. R. 41; 14 John. R. 175; 1 Bell's Com. 469; and if he receive the guest, the custody of the goods may be considered as an* accessory to the principal contract; and the money paid for the apartments as extending to the care of the box and portmanteau. Jones' Bailm. 94; Story, Bailm. 470; 1 Bl. Com. 430; 2 Kent, Com. 458 to 463. The

degree of care which the innkeeper is bound to take is uncommon care, and he will be liable for a slight negligence. He is responsible for the acts of his domestics and servants, as well as for the acts of his other guests, if the goods are stolen or lost; but he is not responsible for any tort or injury done by his servants or others, to the, person of his guest, without his own cooperation or consent. 8 Co. 32. The innkeeper will be excused whenever the loss has occurred through the fault of the guest. Story, Bailm. 483: 4 M. & S. 306; S. C. 1 Stark. R. 251, note 2 Kent, Com. 461; 1 Yeates' R. 34.

4. - 2. The innkeeper is entitled to a just compensation for his care and trouble in taking care of his guest and his property; and to enable him to obtain this, the law invests him with some peculiar privileges, giving him alien upon the goods, of the guest, brought into the inn, and, it is said, upon the person of his guest, for his compensation. 3 B. & Ald. 287; 8 Mod. 172; 1 Shower, Rep. 270; Bac. Ab. Inns, &c., D. But the horse of the guest can be detained only for his own keeping, and not for the boarding and personal expenses of the guest. Bac. Ab. h. t. The landlord may also bring an action for the recovery of his compensation. Vide, generally, 1 Vin. Ab. 224; 14 Vin. Ab. 436; Bac. Ab. h. t.; Yelv. 67, a, 162, a; 2 Kent, Com. 458; Ayl. Pand. 266; 9 Pick. 280; 21 Wend. 285; 1 Yeates, 35: Oliph. on the Law of Horses, 125; Bouv. Inst. Index, h. t.

INNOCENCE, The absence of guilt.

2. The law presumes in favor of innocence, even against another presumption of law: for example, when a woman marries a second hushand within the space of twelve months after her hushand had left the country, the presumption of innocence preponderates over the presumption of the continuance of life. 2 B. & A. 386 3 Stark. Ev. 1249. An exception to this rule respecting the presumption of innocence has been made in the case of the publication of a libel, the principal being presumed to have authorized the sale, when a libel is sold by his agent in his usual place of doing business. 1 Russ. on Cr. 341; 10 Johns. R. 443; Bull. N. P. 6; Greenl. Ev. 36. See 4 Nev. & M. 341; 2 Ad. & Ell. 540; 5 Barn. & Ad. 86; 1 Stark. N. P. C. 21; 2 Nov. & M. 219.

INNOCENT CONVEYANCES. This term is used in England, technically, to signify those conveyances made by a tenant of his leasehold, which do not occasion a forfeiture these are conveyances by lease and release, bargain and sale, and a covenant to stand seised by a tenant for life. 1 Chit. Pr. 243, 244.

2. In this country forfeitures for alienation of a greater right than the tenant possesses, are almost unknown. The more just principle prevails that the conveyance by the tenant, whatever be its form, operates only on his interest. Vide Forfeiture,

INNOMINATE CONTRACTS, civil law. Contracts which have no particular names, as permutation and transaction, are so called. Inst. 2, 10, 13. There are many innominate contracts, but the Roman lawyers reduced thein to four classes, namely, do ut des, do ut facias, facio ut des, and facio ut facias. (q. v.) Dig. 2, 14, 7, 2.

INNOTESCIMUS, English law. An epithet used for letters-patent, which are always of a charter of feoffment, or some other instrument not of record, concluding with the words Innotescimus per praesentes, &c. Tech. Dict. h. t.

INNOVATION. Change of a thing established for something new.

2. Innovations are said to be dangerous, as likely to unsettle the common law. Co. Litt. 370, b; Id. 282, b. Certainly no innovations ought to be made by the courts, but as every thing human, is mutable, no legislation can be, or ought to be immutable; changes are required by the alteration of circumstances; amendments, by the imperfections of all human institutions but laws ought never to be changed without great deliberation, and a due consideration of the reasons on which they were founded, as of the circumstances under which they were enacted. Many innovations have been made. in the common law, which philosophy, philanthropy and common sense approve. The destruction of the benefit of clergy; of appeal, in felony; of trial by battle and ordeal; of the right of sanctuary; of the privilege to abjure the realm; of approvement, by which any criminal who could, in a judicial combat, by skill, force or fraud kill his accomplice, secured his own pardon of corruption of blood; of constructive treason; will be sanctioned; by all wise men, and none will desire a return to these barbarisms. The reader is referred to the case of James v. the Commo wealth, 12 Serg. & R. 220, and 225 to 2 Duncan, J., exposes the absurdity of some ancient laws, with much sarcasm.

INNOVATION, Scotch law. The exchange of one obligation for another, so that the second shall come in the place of the first. Bell's Scotch Law Dict. h. t. The same as Novation. (q. v.)

INNS OF COURT, Engl. law. The name given to the colleges of the English professors and students of the common law. 2. The four principal Inns of Court are the Inner Temple and Middle Temple, (formerly belonging to the Knights Templars) Lincoln's Inn, and Gray's Inn, (ancient belonging to the earls of Lincoln and ray.) The other inns are the two Sergeants' Inns. The Inns of Chancery were probably so called because they were once inhabited by such clerks, as chiefly studied the forming of writs, which regularly belonged to the cursitors, who are officers of chancery. These are Thavie's Inn, the New Inn, Symond's Inn, Clement's Inn, Clifford's Inn,' Staple's Inn, Lion's Inn, Furnival's Inn and Barnard's Inn. Before being called to the bar, it is necessary to be admitted to one of the Inns of Court.

INNUENDO, pleading. An averment which explains the defendoant's meaning by reference to antecedent matter. Salk. 513; 1 Ld. Raym. 256; 12 Mod. 139; 1 Saund. 243. The innuendo is mostly used in actions for slander. An innuendo, as, "he the said plaintiff meaning," is only explanatory of some matter expressed; it serves to apply the slander to the precedent matter, but cannot add or enlarge, extend, or change the sense of the previous words, and the matter to which it alludes must always appear from the antecedent parts of the declaration or indictment. 1 Chit. Pl. 383; 3 Caines' Rep. 76; 7 Johns. R. 271; 5 Johns. R. 211; 8 Johns. R. 109; 8 N. H. Rep. 256.

3. It is necessary only when the intent may be mistaken, or when it cannot be collected from the libel or slander itself. Cowp. 679; 5 East, 463.

4. If the innuendo materially enlarge the sense of the words it will vitiate the declaration or indictment. 6 T. R. 691; 5 Binn. 218; 5 Johns. R. 220; 6 Johns. R. 83; 7 Johns. Rep. 271. But when the new matter stated in an innuendo is not necessary to support the action, it may be rejected as surplusage. 9 East, R. 95; 7 Johns. R. 272. Vide, generally, Stark. on Slan. 293; 1 Chit. Pl. 383; 3 Chit. Cr. Law, 873; Bac. Ab. Slander, R; 1 Saund. 243, n. 4; 4 Com. Dig. 712; 14 Vin. Ab. 442; Dane's Ab. Index, h. t.; 4 Co. 17.

INOFFICIOUS, civil law. This word is frequently used with others; as, inofficious testament, inofficiosum testamentum; inofficious gift, donatio inofficiosa. An inofficious testament is one not made according to the rules of piety; that is, one made by which the testator has unlawfully omitted or disinherited one of his heirs. Such a disposition is void by the Roman civil law. Dig. 5, 2, 5; see Code, 3, 29; Nov. 115; Ayl. Pand. 405; Civil Code of Lo. art. 3522, n. 21.

INOPS CONSILII. Destitute or without counsel. In the construction of wills a greater latitude is given, because the testator is supposed to have been inops consilii.

INQUEST. A body of men appointed by law to inquire into certain matters; as, the inquest examined into the facts connected with the alleged murder; the grand jury, is sometimes called the grand inquest. The judicial inquiry itself is also called an inquest. The finding of such men, upon an investigation, is also called an inquest or an inquisition.

2. An inquest of office was bound to find for the king upon the direction of the court. The reason given is that the inquest coucluded no man of his right, but only gave the king an opportunity to enter so that he could have his right tried. Moore, 730; Vaughan, 135; 3 H. VII. 10; 2 H. IV. 5; 3 Leon. 196.

INQUIRY, WRIT OF. A writ of inquiry is one issued where a judgment has been entered in a case sounding in damages, without any particular amount being ascertained; this writ is for the purpose of ascertaining the amount to which the plaintiff is entitled. Vide Writ Of Inquiry.

INQUISITION, practice. An examination of certain facts by a jury impannelled by the sheriff for the purpose; the instrument of writing on which their decision is made is also called an inquisition. The sheriff or coroner and the jury who make the inquisition, are called the inquest.

2. An inquisition on an untimely death, if omitted by the coroner, may be taken by justices of gaol delivery and oyer and terminer. or of the peace, but it must be done publicly and openly, otherwise it will be quashed. Inquisitions either of the coroner, or of the other jurisdictions, are traversable. 1 Burr. 18, 19.

INQUISITOR. A designation of sheriffs, coroners, super visum corporis, and the like, who have power to inquire into certain matters.

2. The name, of an officer, among ecclesiastics, who is authorized to inquire into heresies, and the like, and to punish them. An ecclesiastical judge.

INROLLMENT. The act of putting upon a roll. Formerly, the record of a suit was kept on skins of parchment, which, best to preserve them, were kept upon a roll or in the form of a roll; what was written upon them was called the inrollment. After, when such records came to be kept in books, the making up of the record retained the old name of inrollment.

INSANE. One deprived of the use of reason, after he has arrived at the age when he ought to have it, either by a natural defect or by accident. Domat, Lois Civ. Lib. prel. tit. 2, s. 1, n. ll.

INSANITY, med. jur. A continued impetuositv of thought, which, for the time being, totally unfitsga man for judging and acting in relation to the matter in question, with the composure requisite for the maintenance of the social relations of life. Various other definitions of this state have been given, but perhaps the subject is not susceptible of any satisfactory definition, which shall, with, precision, include all cases of insanity, and exclude all others. Ray, Med. Jur. 24, p. 50.

2. It may be considered in a threefold point of view: 1. A chronic disease, manifested by deviations from the healthy and natural state of the mind, such deviations consisting in a morbid perversion of the feelings, affections and habits. 2. Disturbances of the intellectual faculties, under the influence of which the

understanding becomes susceptible of hallucinations or erroneous. impressions of a particular kind. 3. A state of mental incoherence or constant hurry and confusion of thought. Cyclo. Practical Medicine, h. t.; Brewster's Encyclopaedia, h. t.; Observations on the Deranged Manifestations of the Mind, or Insanity, 71, 72; Merl. R«pert. mots Demenoe, Folie, Imbecilite; 6 Watts & Serg. 451.

3. The diseases included under the name of insanity have been arranged under two divisions, founded on two very different conditions of the brain. Ray, Med. Jur. ch. 1, 33.

4. - 1. The want of, or a defective development of the faculties. 1st. Idiocy, resulting from, 1. Congenital defect. 2. An obstacle to the development of the faculties, supervening in infancy. 2d. Imbecility, resulting from, 1. Congenital defects. 2. An obstacle to the development of the faculties, supervening in infancy.

5. - 2. The lesion of the faculties subsequent to their development. In this division may be classed, 1st. Mania, which is, 1. Intellectual, and is general or partial. 2. Affective and is general or, partial. 2d. Dementia, which is, 1. Consecutive to mania, or injuries of the brain. 2. Senile, or peculiar to old age.

6. - There is also a disease which has acquired the name of Moral insanity. (q. v.)

7. Insanity is an excuse for the commission of acts which in others would be crimes, because the insane man has no intention; it deprives a man also from entering into any valid contract. Vide Lunacy; Non compos mentis, and Stock on the Law of Non Compotes Mentis; 1 Hagg. Cons. R. 417; 3 Addams, R. 90, 91, 180, 181; 3 Hagg. Eccl. R. 545, 598, 600; 2 Greenl. Ev. 369, 374; Bouv. Inst. Index, h. t.

INSCRIPTION, civil law. An engagerment which a person, who makes a solemn accusation of a crime against another, enters into, that he will suffer the same punishment, if he has accused, the other falsely, which would have been inflicted upon him had he been guilty. Code, 9, 1, 10; Id. 9, 2, 16 and 17.

INSCRIPTION, evidence. Something written or engraved.

2. Inscriptions upon tombstones and other proper places, as rings, and the like, are held to be evidence of pedigree. Bull. N. P. 233 Cowp. 591; 10 East, R. 120 13 Ves. 145 Vin. Ab. Ev. T. b. 87: 3 Stark. Ev. 116.

INSCRIPTIONES. The name given by the old English law to any written instrument by which anything was granted. Blount.

INSENSIBLE. In the language of pleading, that which is unintelligible is said to be insensible. Stepb. Pl. 378.

INSIDIATORES VIARUM. Persons who lie in wait, in order to commi some felony or other misdemeanor.

INSMUL. Together; jointly. This word is used in composition; as, insimulcomputassent; non tenent insimul.

INSIMUL COMPUTASSENT, practice, actions. They accounted together.

2. When an account has been stated, and a balance ascertained between the parties, they are said to have computed together, and the amouut due may be recovered in an action of assumpsit, which could not have been done, if the defendant had been the mere bailiff or partner of the plaintiff, and there had been no settlement made; for in that case, the remedy would be an action of account render, or a bill in chancery. It is usual in actions of assumpsit, to add a count commonly called insimul computassent, or an account stated. (q. v.) Lawes on Pl. in Ass. 488.

INSINUATION, civil law. The transcription of an act on the public registers, like our recording of deeds. It was not necessary in any other alienation, but that appropriated to the purpose of donation. Inst. 2, 7, 2; Poth. Traite des Donations, entre vifs, sect. 2, art. 3, 3; Encyclopedie; 8 Toull. n. 198.

INSOLVENCY. The state or condition of a person who is insolvent. (q. v.) .

2. Insolvency may be simple or notorious. Simple insolvency is the debtor's inability to pay his debts; and is attended by no legal badge of notoriety, or promulgation. Notorious insolvency is that which is designated by some public act, by which it becomes notorious and irretrievable, as applying for the benefit of the insolvent laws, and being discharged under the same.

3. Insolvency is a term of more extensive signification than bankruptcy, and includes all kinds of inability to pay a just debt. 2 Bell's Commentaries, 162, 6th ed.

INSOLVENT. This word has several meanings. It signifies a person whose estate is not sufficient to pay his debts. Civ. Code of Louisiana, art. 1980.. A person is also said to be insolvent, who is under a present inability to answer, in the ordinary course of business, the responsibility which his creditors may enforce, by recourse to legal measures, without reference to his estate proving sufficient to pay all his debts, when ultimately wound up. 3 Dowl. & Ryl. Rep. 218; 1 M aule & Selw. 338; 1 Campb. it. 492, n.; Sugd. Vend. 487, 488. It signifies the situation of a person who has done

some notorious act to divest himself of all his property, as a general assignment, or an application for relief, under bankrupt or insolvent laws. 1 Peters' R. 195; 2 Wheat. R. 396; 7 Toull. n. 45; Domat, liv. 4, t. 5, n. 1 et 2; 2 Bell's Com. 162, 5th ed.

2. When an insolvent delivers or offers to deliver up all his property for the benefit of his creditors, he is entitled to be discharged under the laws of the, several states from all liability to be arrested. Vide 2 Kent, Com. 321 Ingrah. on Insolv. 9; 9 Mass. R. 431; 16 Mass. R. 53.

3. The reader will find the provisions made by the national legislature on this subject, by a reference to the following acts of congress, namely: Act of March 3, 1797, 1 Story, L. U. S. 465; Act of March 2, 1799; 1 Story, L. S. 630; Act of March 2, 1831, 4 Sharsw. Cont. of Story, L. U. S. 2236; Act of June 7, 1834, 4 Sharsw. Cont. of Story, L. U. S. 2358; Act of March 2, 1837, 4 Sharsw. Cont. of Story, L. U. S. 2536. See Bankrupt.

INSPECTION, comm. law. The examination of certain articles made by law subject to such examination, so that they may be declared fit for commerce. The decision of the inspectors is not final; the object' of the law is to protect the community from fraud, and to preserve the character of the merchandise abroad. 8 Cowen, R. 45. See 1 John. 205; 13 John. R. 331; 2 Caines, R. 312; 3 Caines, R. 207.

INSPECTION, practice. Examination. 2. The inspection of all public records is free to all persons who have an interest in them, upon payment of the usual fees. 7 Mod. 129; 1 Str. 304; 2 Str. 260, 954, 1005. But it seems a mere stranger who has no such interest, has no right, at common law. 8 T. R. 390. Vide Trial by insection.

INSPECTOR. The name given to certain officers whose duties are to examine and inspect things over which they have jurisdiction; as, inspector of bark , one who is by law authorized to examine bark for exportation, and to approve or disapprove of its quality. Inspectors of customs are officers appointed by the general government: as to their duties, see Story's L. U. S. vol. 1, 590, 605, 609, 610, 612, 619, 621, 623, 650; ii. 1490, 1516; iii. 1650, 1790.

INSPEXIMUS. We have seen. A word sometimes used in letters-patent, reciting a grant, inspeximus such former grant, and so reciting it verbatim; it then grants such further privileges as are thought convenient. 5 Co. 54.

INSTALLATION or INSTALMENT. The act by which an officer is put in public possession of the place he is to fill. The president of the United States, or a governor, is installed into office, by being sworn agreeably to the requisition of the constitution and laws. Vide Inavguration.

INSTALMENT, contracts. A part of a debt due by contract, and agreed to be paid at a time different from that fixed for the, payment of the other part. For example, if I engage to pay you one thousand dollars, in two payments, one on the first clay of January, and the other on the first day of July, each of these payments or obligations to pay will be an instalment .

2. In such case each instalment is a separate debt so far that it may be tendered at any time, or the first may be sued for although the other shall not be due. Dane's Ab. vol. iii. ch. 93, art. 3, s. 11, page 493, 4; 1 Esp. R. 129; Id. 226; 3 Salk. 6, 18: Esp. R. 235; 1 Maule & Selw. 706. 3. A debtor who by failing to pay three instalments of rent due on a lease would forfeit his estate, may, in order to save it, tender one instalment to prevent the forfeiture, although there may be two due at the time, and he is not bound to tender both. 6 Toull. n. 688.

INSTANCE, civil and French law. It signifies, generally, all sorts of actions and judicial demands. Dig. 44, 7, 58.

INSTANCE COURT, Eng. law. The English court of admiralty is divided into two distinct tribunals; the one having, generally, all the jurisdiction of the admiralty, except in prize cases, is called the instance court; the other, acting under a special commission, distinct from the usual commission given to judges of the admiralty, to enable the judge in time of war to assume the jurisdiction of prizes, and' called Prize court.

2. In the United States, the district courts of the U. S. possess all the powers of courts of admiralty, whether considered as instance or prize courts. 3 Dall. R. 6. Vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 4 & 5; 1 Kent, Com. 355, 378. Vide Courts of the United States; Prize Court.

INSTANT. An indivisible space of time.

2. Although it cannot be actually divided, yet by intendmeent of law, it may be applied to several purposes; for example, he who lays violent hands upon himself, commits no felony till he is dead, and when he is dead he is not in being so as to be termed a felon; but he is so adjudged in law, eo instante, at the very instant this fact is done. Vin. Ab. Instant, A, pl. 2; Plowd. 258; Co. Litt. 18; Show. 415.

INSTANTER. Immediately; presently. This term, it is said, means that the act to which it applies, shall be done within twenty-four hours but a doubt has been suggested by whom is the account of the hours to be kept, and whether the term instanter as applied to the subject-matter may not be more properly taken to mean "before, the rising of the court," when the act is to be done in court; or, "before the

shutting of the office the same night," when the act is to be done there. 1 Taunt. R. 343; 6 East, R. 587, n. e; Tidd's Pr. 3d ed. 508, n.; 3 Chit. Pr. 112. Vide, 3 Burr. 1809; Co. Litt. 157; Styles' Register, 452.

INSTAR. Likeness; resemblance; equivalent as, instar dentium, like teeth; instar omnium, equivalent to all.

INSTIGATION. The act by which one incites another to do something, as to injure a third person, or to commit some crime or misdemeanor, to coramence a suit or to prosecute a criminal. Vide Accomplice.

INSTITOR, civ. law. A clerk in a store an agent.

2. He was so called because he watched over the business with which he was charged; and it is immaterial whether he was employed in making a sale in a store, or whether charged with any other business. Institor appellatus est ex eo, quod negotio gerendo instet; nec multum facit tabernae sit praepositus, an cuilibet alii negotiationi. Dig. lib. 14, tit. 3, l. 3. Mr., Bell says, that the charge given to a clerk to manage a store or shop, is called institorial power. 1 Bell's Com. 479, 6th ed.; Ersk. Inst. B. 3, t. 3, 46; 1 Stair's Inst. by Brodie, B. 1, tit. 11, 12, 18, 19; Story on Ag. 8.

INSTITUTE, Scotch law. The person first called in the tailzie; the rest, or the heirs of tailzie, are called substitutes. Ersk. Pr. L. Scot. 3, 8, 8. See Tailzie, Heir of; Substitutes.

2. In the civil law, an inastitute is one who is appointed heir by testament, and is required to give the estate devised to another person, who is called the substitute.

TO INSTITUTE. To name or to make an heir by testament. Dig. 28, 5, 65. To make an accusation; to commence an action.

INSTITUTES. The principles or first elements of jurisprudence.

2. Many books have borne the title of Institutes. Among the most celebrated in the common law, are the Institutes of Lord Coke, which, however, on account of the want of arrangement and the diffusion with which his books are written, bear but little the character of Institutes; in the, civil law the most generally known are those of Caius, Justinian, and Theophilus.

3. The Institutes of Caius are an abridgment of the Roman law, composed by the celebrated lawyer Caius or Gaius, who lived during th e reign of Marcus Aurelius.

4. The Institutes of Justinian, so called, because they are, as it were, masters and instructors to the. ignorant, and show an easy way to the obtaining of the knowledge of the law, are an abridgment of the Code and of the Digest, composed by order of that emperor: his intention in this composition was to give a summary knowledge of the law to those persons not versed in it, and particularly to merchants. The lawyers employed to make this book, were Tribonian, Theophilus, and Dorotheus. The work was first published in the year 533, and received the sanction of statute law, by order of the emperor. The Institutes of Justinian are divided into four books: each book is divided into two titles, and each title into parts. The first part is called principium, because it is the commencement of the title; those which follow are numbered and called paragraphs. The work treats of the rights of persons, of things, and of actions. The first book treats of persons; the second, third, and the first five titles of the fourth book, of things; and the remainder of the fourth book, of actions. This work has been much admired on account of its order and Scientific arrangement, which presents, at a single glance, the whole jurisprudence of the Romans. It is too little known and studied. The late Judge Cooper, of Pennsylvania, published an edition with valuable notes.

5. The Institutes of Theophilus are a paraphrase of those of Justinian, composed in Greek, by a lawyer of that name, by order of the emperor Phocas. Vide 1 Kent, Com. 538; Profession d'Avocat tom. ii. n. 536, page 95; Introd. a l'Etude du Droit Romain, p. 124; Dict. de Jurisp. h. t.; Merl. R«pert. h. t.; Encyclop«die de d'Alembert, h. t.

INSTITUTION, eccl. law. The act by which the ordinary commits the cure of souls to a person presented to a benefice.

INSTITUTION, political law. That which has been established and settled by law for the public good; as, the American institutions guaranty to the citizens all privileges and immunities essential to freedom.

INSTITUTION, practice. The commencement of an action; as, A B has instituted a suit against C D, to recover damages for a trespass.

INSTITUTION OF HEIR, civil law. The act by which a testator nominates one or more persons to succeed him in all his rights, active and passive. Poth. Tr. des Donations Testamentaires, c. 2, s. 1, 1; Civ. Code of Lo. art. 1598; Dig. lib. 28, tit. 5, l. 1; and lib. 28, tit. 6, l. 2, 4.

INSTRUCTION, French law. This word signifies the meaus used and formality employed to prepare a case for trial. it is generally applied to criminal cases, and is then called criminal, instruction; it is then defined the acts and proceedings which tend

to prove positively a crime or delict, in order to inflict on the guilty person the punishment which he deserves.

INSTRUCTIONS, com. law, Contracts. Orders given by a principal to his agent in relation to the business of his agency.

2. The agent is bound to obey the instructions he has received and when he neglects so to do, he is responsible for the consequences, unless he is justified by matter of necessity. 4 Binn. R. 361; 1 Liverm. Agency, 368.

3. Instructions differ materially from authority, as regards third persons. When a written authority is known to exist, or, by the nature of the transaction, it is presupposed, it is the duty of persons dealing with an agent to ascertain the nature and extent of his authority; but they are not required to make inquiry of the agent as to any private instructions from his principal, for the obvious reason that they may be presumed to be secret and of a confidential nature, and therefore not to be communicated to third persons. 5 Bing. R. 442.

4. Instructions are given as applicable to the usual course of things, and are subject to two qualifications which are naturally, and perhaps necessarily implied in every mercantile agency. 1. As instructions are applicable only to the ordinary course of affairs, the agent will be justified, in cases of extreme necessity and unforeseen emergency, in deviating from them; as, for example, when goods on hand are perishable and perishing, or when they are accidentally injured and must be sold to prevent further loss; or if they are in imminent danger of being lost by the capture of the port where they are, they may be transferred to another port. Story on Ag. 85, 118, 193; 3 Chit. Com. Law, 218; 4 Binn. 361; 1 Liverm. on Ag. 368. 2. Instructions must be lawful; if they are given to perform an unlawful act, the agent is not bound by them. 4 Campb. 183; Story on Ag. 195. But the lawfulness of such instruction does not relate to the laws of foreign countries. Story, Confl. of Laws, 245; 1 Liverm. on Ag. 15-19. As to the construction of letters of instruction, see 3 Wash. C. C. R. 151; 4 Wash. C. C. R. 551; 1 Liv. on Ag. 403; Story on Ag. 74; 2 Wash. C. C. R. 132; 2 Crompt. & J. 244; 1 Knapp,, R. 381.

INSTRUCTIONS, practice. The statements of a cause of action, given by a client to his attorney, and which, where such is the practice, are sent to his pleader to put into legal form of a declaration. Warr. Stud. 284.

2. Instructions to counsel are their indemnity for any aspersions they may make on the opposite party; but attorneys who have a just regard to their own reputation will be cautious, even under instructions, not to make any unnecessary attack upon a party or

witness. For such unjustifiable conduct the counsel will be held responsible. Eunom. Dial. 2, 43, p. 132. For a form of instructions, see 3 Chit. Pr. 117, and 120 n.

INSTRUMENT, contracts. The writing which contains some agreement, and is so called because it has been prepared as a memorial of what has taken place or been agreed upon. The agreement and the instrument in which it is contained are very different things, the latter being only evidence of the existence of the former. The instrument or form of the contract may be valid, but the contract itself may be void on account of fraud. Vide Ayl. Parerg. 305; Dunl. Ad. Pr. 220.

INSTRUMENTA. This word is properly applied to designate that kind of evidence, which consists of writings not under seal, as court rolls, accounts, and the like. 3 Tho. Co. Litt. 487.

INSULA, Latin. An island. In the Roman law the word is applied to a house not connected with other houses, but separated by a surrounding space of ground. Calvini Lex; Vicat, Vocab. ad voc.

INSUFFICIENCY. What is not competent; not enough.

INSUPER, Eng. law. The balance due by an accountant in the exchequer, as apparent by his account. The auditors in settling his account say there remains so much insuper to such accountant.

INSURABLE INTEREST. That right of property which may be the subject of an insurance.

2. The policy of commerce, and the various complicated rights which different persons may have in the same thing, require that not only those who have an absolute property in ships or goods, but those also who, have a qualified property in them, may be at liberty to insure them. For example, when a ship is mortgaged, and the mortgage has become absolute, the owner of the legal estate has an insurable interest, and the mortgagor, on account of his equity, has also an insurable interest. 1 Burr. 489. See 20 Pick. 259; 1 Pet. 163.

INSURANCE, contracts. It is defined to be a contract of indemnity from loss or damage arising upon an uncertain event. 1 Marsh. Ins. 104. It is more fully defined to be a contract by which one of the parties, called the insurer, binds himself to the other, called the insured, to pay him a sum of money, or otherwise indemnify him in case of the happening of a fortuitous event, provided for in a general or special manner in the contract, in consideration of a premium which the latter pays, or binds himself to pay him. Pardess. part 3, t. 8, n. 588; 1 Bouv. Inst. n. 1174.

2. The instrument by which the contract is made is denominated a policy; the events or causes to be insured against, risks or perils; and the thing insured, the subject or insurable interest.

3. Marine insurance relates to property and risks at sea; insurance of property on shore against fire, is called fire insurance; and the various contracts in such cases, are fire policies. Insurance of the lives of individuals are called insurances on lives. Vide Double Insurance; Re-Insurance.

INSURANCE AGAINST FIRE. A contract by which the insurer, in consequence of a certain premium received by him, either in a gross sum or by annual *payments, undertakes to indemnify the insured against all loss or damage which he may sustain to a certain amount, in his house or other buildings, stock, goods, or merchandise, mentioned in the policy, by fire, during the time agreed upon. 2 Marsh. Ins. B. 4, p. 784; 1 Stuart's L. C. R. 174; Park. Ins. c. 23, p., 441.

2. The risks and losses insured against, are "all losses or damage by fire," during the time of the policy, to the houses or things insured.

3. - 1. There must be an actual fire or ignition to entitle the insured to recover; it is not sufficient that there has been a great and injurious increase of heat, while nothing has taken fire, which ought not to be on fire. 4 Campb. R. 360.

4. - 2. The loss must be within the policy, that is, within the time insured. 5 T. R. 695; 1 Bos. & P. 470; 6 East, R. 571.

5. - 3. The insurers are liable not only for loss by burning, but for all damages and injuries, and reasonable charges attending the removal of articles though never touched by the fire. 1 Bell's Com. 626, 7, 5th ed.

6. Generally there is an exception in the policy, as to fire occasioned "by invasion, foreign enemy, or any military, or usurped power whatsoever," and in some there is a further exception of riot, tumult, or civil commotion. For the Construction of these provisoes, see the articles Civil Commotion and Usurped Power.

INSURANCE, MARINE, contracts. Marine insurance is a contract whereby one party, for a stipulated premium, undertakes to indemnify the other against certain perils or sea risks, to which his ship, freight, or cargo, or some of them may be exposed, during a certain voyage, or a fixed period of time. 3 Kent, Com. 203; Boulay-Paty, Dr. Commercial, t. 10.

2. This contract is usually reduced to writing; the instrument is called a policy of insurance. (q. v.)

3. All persons, whether natives, citizens, or aliens, may be insured, with the exception of alien enemies.

4. The insurance may be of goods on a certain ship, or without naming any, as upon goods on board any ship or ships. The subject insured must be an insurable legal interest.

5. The contract requires the most perfect good faith; if the insured make false representations to the insurer, in order to procure his insurance upon better terms, it will avoid the contract, though the loss arose from a cause unconnected with the misrepresentation, or the concealment happened through mistake, neglect, or accident, without any fraudulent intention. Vide Kent, Com. Lecture, 48; Marsh. Ins. c. 4; Pardessus, Dr. Com. part 4, t. 5, n. 756, et seq.; Boulay-Paty, Dr. Com. t. 10.

INSURANCE ON LIVES, contracts. The insurance of a life is a contract whereby the insurer, in consideration of a certain premium, either in a gross sum or periodical payments, undertakes to pay the person for whose benefit the insurance is made, a stipulated sum, or an annuity equivalent thereto, upon the death of the person whose life is insured, whenever this shall happen, if the insurance be for the whole life, or in case this shall happen within a certain period if the insurance be for a limited time. 2 Marsh. Ins. 766; Park on Insurance, 429.

2. The insured is required to make a representation or declaration, previous to the policy being issued, of the age and state of health of the person whose life is insured and the party making it is bound to the truth of it. Park, Ins. 650; Marsh. Ins. 771; 4 Taunt. R. 763.

3. In almost every life policy there are several exceptions, some of them applicable to all cases, others to the case of insurance of one's life. The exceptions are, 1. Death abroad, or at sea. 2. Entering into the naval or military service without the previous consent of the insurers. 3. Death by suicide. 4. Death by duelling. 5. Death by the hand of justice. The last three are not understood to be excepted when the insurance is on another's life. 1 Bell's Com. 631, 5th ed. See 1 Beck's Med. Jur. 518.

INSURED, contracts. The person who procures an insurance on his property.

2. It is the duty of the insured to pay the premium, and to represent fully and fairly all the circumstances relating to the subject-matter of the insurance, which may influence the determination of the underwriters in undertaking the risk, or estimating the

premium. A concealment of such facts amounts to a fraud, which avoids the contract. 1 Marsh. Ins. 464; Park, Ins. h. t.

INSURER, contracts. One who has obliged himself to insure the safety of another's property, in consideration of a premium paid, or secured to be paid, to hi.m. It is his duty to pay any loss which has arisen on the property insured. Vide Marsh. Ins. Index,.h. t.; Park. Ins. Index, h. t. Phill. Ins. h. t.; Wesk. Ins. h. t.; Pardess. Index, art. Assureur.

INSURGENT. One who is concerned in an insurrection. He differs from a rebel in this, that rebel is always understood in a bad sense, or one who unjustly opposes the constituted authorities; insurgent may be one who justly opposes the tyranny of constituted authorities. The colonists who opposed the tyranny of the English government were insurgents, not rebels.

INSURRECTION. A rebellion of citizens or subjects of a country against its government.

2. The Constitution of the United States, art. 1, s. 8. gives power to congress " to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."

3. By the act of Congress of the 28th of February, 1795, 1 Story's L. U. S. 389, it is provided: 1. That whenever the United States shall be invaded, or be in imminent danger of invasion, from any foreign nation or Indian tribe, it shall be lawful for the president of the United States to call forth such number, of the militia of the state, or states, most convenient to the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders, for that purpose, to such officer or officers of the militia as be shall think proper. And in case of an insurrection in any state, against the government thereof, it shall be lawful for the president of the United States, on application of the legislature of such state, or of the executive, (when the legislature cannot be convened,) to call forth such number of the militia of any other state or states, as may be applied for, as he may judge sufficient to suppress such insurrection.

4. - 2 That, whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of militia so to

be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of congress.

5. - 3. That whenever it may be necessary, in the judgment of the president, to use the military force hereby directed to be called forth, the president shall forthwith, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time.

INTAKERS, Eng. law. The time given to receivers of goods stolen in Scotland, who take them to England. 9 H. V. c. 27.

INTEGER. Whole, untouched. Res integra means a question which is new and undecided. 2 Kent, Com. 177.

INTENDED TO BE RECORDED. This phrase is frequently used in conveyancing, in deeds which recite other deeds which have not been recorded. In Pennsylvania, it has been construed to be a covenant, on the part of the grantor, to procure the deed to be recorded in a reasonable time. 2 Rawle's Rep. 14.

INTENDANT. One who has the charge, management, or direction of some office, department, or public business.

INTENDMENT OF LAW. The true meaning, the correct understanding, or intention of the law; a presumption or inference made by the courts. Co. Litt. 78. 2. It is an intendment of law that every man is innocent until proved guilty, vide Innocence; that every one will act for his own advantage, vide Assent; Fin. Law, 10, Max. 54; that every officer acts in his office with fidelity that the children of a married woman, born during the coverture, are the children of the hushand, vide Bastardy; many things are intended after verdict, in order to support a judgment, but intendment cannot supply the want of certainty in a charge in an indictment for a crime. 5 Co. 1 21; vide Com. Dig. Pleader, C 25, and S 31; Dane's Ab. Index, h. t.; 14 Vin. Ab. 449; 1 Halst. 132; 1 Harris. 133.

INTENTION. A design, resolve, or determination of the mind.

2. Intention is required in the commission of crimes and injuries, in making contracts, and wills.

3. - 1. Every crime must have necessarily two constituent parts, namely, an act forbidden by law, and an intention. The act is innocent or guilty just as there was or was not an intention to commit a crime; for example, a man embarks on board of a ship, at New York, for the purpose of going to New Orleans; if he went with an

intention to perform a lawfull act, he is perfectly innocent; but if his intention was to levy war against the United States, he is guilty of an overt act of treason. Cro. Car. 332; Fost. 202, 203; Hale, P. C. 116. The same rule prevails in numerous civil cases; in actions founded on malicious injuries, for instance, it is necessary to prove that the act was accompanied, by a wrongful and malicious intention. 2 Stark. Ev. 739. 4. The intention is to be proved, or it is inferred by the law. The existence of the intention is usually matter of inference; and proof of external and visible acts and conduct serves to indicate, more or less forcibly, the particular intention. But, in some cases, the inference of intention necessarily arises from the facts. Exteriora acta indicant interiora animi secreta. 8 Co. 146. It is a universal rule, that a man shall be taken to intend that which he does, or which is the necessary and immediate consequence of his act; 3 M. & S. 15; Hale, P. C. 229; in cases of homicide, therefore, malice will generally be inferred by the law. Vide Malice' and Jacob's Intr. to the Civ. Law, Reg. 70; Dig. 24, 18.

5. But a bare intention to commit a crime, without any overt act towards its commission, although punishable in foro, conscientiae, is not a crime or offence for which the party can be indicted; as, for example, an intention to pass counterfeit bank notes, knowing them to be counterfeit. 1 Car. Law Rep. 517.

6. - 2. In order to make a contract, there must, be an intention to make it a person non compos mentis, who has no contracting mind, cannot, therefore, enter into any engagement which requires an intention; for to make a contract the law requires a fair, and serious exercise of the reasoning faculty. Vide Gift; Occupancy.

7. - 3. In wills and testaments, the intention of the testator must be gathered from the whole instrument; 3 Ves. 105; and a codicil ought to be taken as a part of the will; 4 Ves. 610; and when such intention is ascertained, it must prevail, unless it be in opposition to some unbending rule of law. 6 Cruise's Dig. 295; Rand. on Perp. 121; Cro. Jac. 415. " It is written," says Swinb. p. 10, " that the will or meaning of the testator is the queen or empress of the testament; because the will doth rule the testament, enlarge and restrain it, and in every respect moderate and direct the same, and is, indeed, the very efficient cause. thereof. The will, therefore, and meaning of the testator ought, before all things, to be sought for diligently, and, being found, ought to be observed faithfully." 6 Pet. R. 68. Vide, generally, Bl. Com. Index, h. t.; 2 Stark. Ev. h. t.; A 1. Pand. 95; Dane's Ab. Index h. t.; Rob. Fr. Conv. 30. As to intention in changing a residence, see article Inhabitant.

INTER. Between, among; as, inter vivos, between living persons; inter alia, among others.

INTER ALIA. Among other things; as, "the said premises, which inter alia, Titius granted to Caius."

INTER ALIOS. Between other parties, who are strangers to the proceeding in question.

INTERCOMMONING, Eng. law. Where the commons of two manors lie together, and the inhabitants, or those having a right of common of both, have time out of mind depastured their cattle, without any distinction, this is called intercommoning.

INTER CANEM ET LUPUM. Literally, between the dog and the wolf. Metaphorically, the twilight; because then the dog seeks his rest, and the wolf his prey. 3 Inst. 63.

INTER PARTES. This, in a technical sense, signifies an agreement professing in the outset, and before any stipulations are introduced, to be made between such and such persons as, for example, " This Indenture, made the _____ day of _____ 1848, between A B of the one part, and C D of the other." It is true that every contract is in one sense inter partes, because to be valid there must be two parties at least; but the technical sense of this expression is as above mentioned. Addis. on Contr. 9.

2. This being a solemn declaration, the effect of such introduction. is to make all the covenants, comprised in a deed to be covenants between the parties and none others; so that should a stipulation be found in the body of a deed by which "the said A B covenants with E F to pay him one hundred dollars," the words "with E F" are inoperative, unless they have been used to denote for whose benefit the stipulation may have been made, being in direct contradiction with what was previously declared, and C D alone can sue for the non-payment; it being a maxim that where two opposite intentions are expressed in a contract, the first in order shall prevail. 8 Mod. 116; 1 Show. 58; 3 Lev. 138; Carth. 76; Roll. R. 196; 7 M. & IV. 63; But this rule does not 'apply to simple contracts inter partes. 2 D . & R. 277; 3 D. & R. 273 Addis. on Contr. 244, 256.

3. When there are more than two sides to a contract inter partes, for example, a deed; as when it is made between A B, of the first part; C D, of the second; and E F, of the third, there is no objection to one covenanting with another in exclusion of the third. See 5 Co. 182; 8 Taunt. 245; 4 Ad. & Ell. N. S. 207; Addis. on Contr. 267.

INTER SE INTER SESE. Among themselves. Story on Part 405.

INTER VIVOS. Between living persons; as, a gift inter vivos, which is a gift made by one living person to another; see Gifts inter vivos. It is a rule that a fee cannot pass

by grant or transfer, inter vivos, without appropriate words of inheritance. 2 Prest. on Est. 64.

INTERCOURSE. Communication; commerce; connexion by reciprocal dealings between persons or nations, as by interchange of commodities, treaties, contracts, or letters.

INTERCHANGEABLY. Formerly when deeds of land were made, where there Were covenants to be performed on both sides, it was usual to make two deeds exactly similar to each other, and to exchange them; in the attesting clause, the words, In witness whereof the parties have hereunto interchangeably set their hands," &c., were constantly inserted, and the practice has continued, although the deed is, in most cases, signed by the grantor only. 7 Penn. St. Rep. 320.

INTERDICT, civil Among the Romans it was an ordinance of the praetor, which forbade or enjoined the parties in a suit to do something particularly specified, until it should be decided definitely who had the right in relation to it. Like an injunction, the interdict was merely personal in its effects and it had also another similarity to it, by being temporary or perpetual. Dig. 43, 1, 1, 3, and 4. See Story, E Jur. 865; Halif. Civ. Law, ch. 6 Vicat, Vocab. h. v.; Hein. Elem. Pand. Ps. 6, 285. Vide Injunction.

INTERDICT, OR INTERDICTION, eccles. law. An ecclesiastical censure, by which divine services are prohibited either to particular persons or particular places. These tyrannical edicts, issued by ecclesiastical powers, have never been in force in the United States.

INTTERDICTED OF FIRE AND WATER. Formerly those persons who were banished for some crime, were interdicted of fire and water; that is, by the judgment order was given that no man should receive them into his house, but should deny them fire and water, the two necessary elements of life.

INTERDICTION, civil law. A legal restraint upon a person incapable of managing his estate, because of mental incapacity, from signing any deed or doing any act to his own prejudice, without the consent of his curator or interdictor.

2. Interdictions are of two kinds, voluntary or judicial. The first is usually executed in the form of an obligation by which the obligor binds himself to do no act which may affect his estate without the consent of certain friends or other persons therein mentioned. The latter, or judicial interdiction, is imposed by a sentence of a competent tribunal, which disqualifies the party on account of imbecility, madness, or prodigality, and deprives the person interdicted of the right to manage his affairs and receive the rents and profits of his estate.

3. The Civil Code of Louisiana makes the following provisions on this subject: Art. 382. No person above the age of majority, who is subject to an habitual state of madness or insanity, shall be allowed to take charge of his own person or to administer his estate, although such person shall, at times, appear to have the possession of his reason.

4. - 383. Every relation has a right to petition for the interdiction of a relation; and so has every hushand a right to petition for the interdiction of his wife, and every wife of her hushand.

5.- 384. If the insane person has no relations and is not married, or if his relations or consort do not act, the interdiction may be solicited by any stranger, or pronounced ex officio by the judge, after having heard the counsel of the person whose interdiction is prayed for, whom it shall be the, duty of the judge to name, if one be not already named, by the party.

385. Every interdiction shall be pronounced by the judge of the parish of the domicil or residence of the person to be interdicted.

386. The acts of madness, insanity or fury, must be proved to the satisfaction of the judge, that he may be enabled to pronounce the interdiction, and this proof may be established, as well by written as by parol evidence and the judge may moreover interrogate or cause to be interrogated by any other person commissioned by him for that purpose, the person whose interdiction is petitioned for, or cause such person to be examined by pbysicians, or other skilful persons, in order to obtain their report upon oath on the real situation of him who is stated to be of unsound mind.

387. Pending the issue of the petition for interdiction the judge may, if he deems it proper, appoint for the preservation of the movable, and for the administration of the immovable estate of the defendant, an administrator pro tempore.

388. Every judgment, by which an interdiction is renounced, shall be provisionally executed, notwithstanding the appeal.

389. In case of appeal, the appellate court may, if they deem it necessary, proceed to the hearing of new proofs, and question or cause to be questioned, as above provided, the person whose interdiction is petitioned for, in order to ascertain the state of his mind.

390. On every petition for interdiction, the cost shall be paid out of the estate of the defendant, if he shall be interdicted, and by the petitioner, if the interdiction prayed for shall not be pronounced.

391. Every sentence of interdiction shall be published three times, in at least two of the newspapers printed in New Orleans, or made known by advertisements at the door of the court-house of the parish of the domicil of the person interdicted, both in the French and English languages; and this duty is imposed upon him who shall be appointed curator of the person interdicted, and shall be performed within a month after the date of the interdiction, under the penalty of being answerable for all damages to such persons as may, through ignorance, have contracted with the person interdicted.

392. No petition for interdiction, if the same shall have once been rejected, shall be acted upon again, unless new facts, happening posterior to the sentence, shall be alleged.

393. The interdiction takes place from the day of presenting the petition for the same.

394. All acts done by the person interdicted, from the date of the filing the petition for interdiction until the day when the same is pronounced, are null.

395. No act anterior to the petition for the interdiction, shall be annulled except where it shall be proved that the cause of such interdiction notoriously existed at the time when the deeds, the validity of which is contested, were made, or that the party who contracted with the lunatic or insane person, could not have been deceived as to the situation of his mind. Notoriously, in this article, meaus that the insanity was generally known by the persons who saw and conversed with the party.

396. After the death of a person, the validity of acts done by him cannot be contested for cause of insanity, unless his interdiction was pronounced or petitioned for, previous to the death of such person, except in cases in which mental alienation manifested itself within ten days previous to the decease, or in which the proof of the want of reason results from the act itself which is contested.

397. Within a month, to reckon from the date of the judgment of interdiction, if there has been no appeal from the same, or if there has been an appeal, then within a month from the confirmative sentence, it shall be the duty of the judge of the palish of the doimcil or residence of the person interdicted, to appoint a curator to his person and estate.

398. This appointment is made according to the same forms as the appointment to the tutorship of minors. After the appointment of the curator to the person interdicted, the duties of the administrator, pro tempore, if he shall not have been appointed curator, are at an end and he shall give an account of his administration to the curator.

399. The married woman, who is interdicted, is of course under the curatorship of her hushand. Nevertheless, it is the duty of the hushand, in such case, to cause to be appointed by the judge, a curator ad litem; who may appear for the wife in every case when she may have an interest in opposition to the interest of her hushand, or one of a nature to be pursued or defended jointly with his.

400. The wife may be appointed curatrix to her hushand, if she has, in other respects, the necessary qualifications. She is not bound to give security.

401. No one, except the hushand, with respect to his wife, or wife with respect to her hushand, the relations in the ascending line with respect to the relations in the descending line, and vice versa, the relations in the descending line with respect to the relations in the ascending line, can be compelled to act as curator to a person interdicted more than ten years, after which time the curator may petition for his discharge.

402. The person interdicted is, in every respect, like the minor who has not arrived at the age of puberty, both as it respects his person and estate; and the rules respecting the guardianship of the minor, concerning the oath, the inventory and the security, the mode of administering the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the guardianship, mode of rendering the accounts, and the other obligations, apply with respect to the person interdicted.

403. When any of the children of the person interdicted is to be married, the dowry or advance of money to be drawn from his estate is to be regulated by the judge, with the advice of a family meeting.

404. According to the symptons of the disease, under which the person interdicted labors, and according to the amount of his estate, the judge may order that the interdicted person he attended in his own house, or that he be placed in a bettering-house, or indeed, if he be so deranged as to be dangerous, he may order him to be confined in safe custody.

>405. The income of the person interdicted shall be employed in mitigating his sufferings, and in accelerating his cure, under the penalty against the curator of being removed in case of neglect.

406. He who petitions for the interdiction of any person, and fails in obtaining such interdiction, may be prosecuted for and sentenced to pay damages, if he shall have acted from motives of interest or passion.

407. Interdiction ends with the cause which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights, until after the definite judgment by which a repeal of the interdiction is pronounced.

408. Interdiction can only be revoked by the same solemnities which were observed in pronouncing it.

6. - 409. Not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to certain infirmities, are incapable of taking care of their persons and administering their estates.

7. Such persons shall be placed under the care of a curator, who shall be appointed and shall administer in conformity with the rules contained in the present chapter.

8. - 410. The person interdicted cannot be taken out of the state without a judicial order, given on the recommendation of a a family meeting, and on the opinion delivered under oath of at least two physicians, that they believe the departure necessary to the health of the person interdicted .

9. - 411. There shall be appointed by the judge a superintendent to the person interdicted whose duty it shall be to inform the judge, at least once in three months, of the state of the health of the person interdicted, and of the manner in which he is treated.

10. To this end, the superintendent shall have free access to the person interdicted, whenever he wishes to see him.

11. - 412. It is the duty of the judge to visit the person interdicted, whenever, from the information he receives, he shall deem it expedient.

12. This visit shall be made at times when the curator is not present.

13. - 413. Interdiction is not allowed on account of profligacy or prodigality. Vide Ray's Med. Jur. chap. 25; 1 Hagg. Eccl. Rep. 401; Committee; Habitual Drunkard.

INTERESSE TERMINI, estates. An interest in the term. The demise of a term in land does not vest any estate in the lessee, but gives him a mere right of entry on the land, which right is called his interest in the term, or interesse termini. Vide Co. Litt. 46; 2 Bl. Com. 144; 10 Vin. Ab. 348; Dane's Ab. Index, h. t.; Watk. Prin. Com. 15.

INTEREST, estates. The right which a man has in a chattel real, and more particularly in a future term. It is a word of less efficacy and extent than estates,

though, in legal understanding, an interest extends to estates, rights and titles which a man has in or out of lands, so that by a grant of his whole interest in land, a reversion as well as the fee simple shall pass. Co. Litt. 345.

INTEREST, contracts. The right of property which a man has in a thing, commonly called insurable interest. It is not easy to give all accurate definition of insurable interest. 1 Burr. 480; 1 Pet. R. 163; 12 Wend. 507 16 Wend. 385; 16 Pick. 397; 13 Mass. 61, 96; 3 Day, 108; 1 Wash. C. C. Rep. 409.

2. The policy of commerce and the various complicated. rights which different persons may have in the same thing, require that not only those who have an absolute property in ships and goods, but those also who have a qualified property therein, may be at liberty to insure them. For example, when a ship is mortgaged, after, the mortgage becomes absolute, the owner of the legal estate has an insurable interest, and the mortgagor, on account of his equity, has also an insurable interest. 2 T. R. 188 1 Burr. 489; 13 Mass. 96; 10 Pick. 40 and see 1 T. R. 745; Marsh. Ins. h. t.; 6 Meeson & Welshy, 224.

3. A man may not only insure his own life for the benefit of his heirs or creditors, and assign the benefit of this insurance to others having thus or otherwise an interest in his life, but be may insure the life of another in which he may be interested. Marsh. Ins. Index, h. t.; Park, Ins. Index, h. t.; 1 Bell's Com. 629, 5th ed.; 9 East, R. 72. Vide Insurance.

INTEREST, evidence. The benefit which a person has in the matter about to be decided and which is in issue between the parties. By the term benefit is here understood some pecuniary or other advantage, which if obtained, would increase the, witness estate, or some loss, which would decrease it.

2. It is a general rule that a party who has an interest in the cause cannot be a witness. It will be proper to consider this matter by taking a brief view of the thing or subject in dispute, which is the object of the interest; the quantity of interest; the quality of interest; when an interested witness can be examined; when the interest must exist; how an interested witness can be rendered competent.

3. - 1. To be disqualified on the ground of interest, the witness must gain or lose by the event of the cause, or the verdict must be lawful evidence for or against him in another suit, or the record must be an instrument of evidence for or against him. 3 John. Cas. 83; 1 Phil. Ev. 36; Stark. Ev. pt. 4, p. 744. But an interest in the question does not disqualify the witness. 1 Caines, 171; 4 John. 302; 5 John. 255; 1 Serg. & R. 82, 36; 6 Binn. 266; 1 H. & M. 165, 168.

4. - 2. The magnitude of the interest is altogether immaterial, even a liability for the most trifling costs will be sufficient. 5 T. R. 174; 2 Vern. 317; 2 Greenl. 194; 11 John. 57.

5. - 3. With regard to the quality, the interest must be legal, as contradistinguished from mere prejudice or bias, arising from relationship, friendship, or any of the numerous motives by which a witness may be supposed to be influenced. Leach, 154; 2 St. Tr. 334, 891; 2 Hawk. ch. 46, s. 25. It must be a present, certain, vested interest, and not uncertain and contingent. Dougl. 134; 2 P. Wms. 287; 3 S. & R. 132; 4 Binn. 83; 2 Yeates, 200; 5 John. 256; 7 Mass. 25. And it must have been acquired without fraud. 3 Camp. 380; l M. & S. 9; 1 T. R. 37.

6. - 4. To the general rule that interest renders a witness incompetent, there are some exceptions. First. Although the witness may have an interest, yet if his interest is equally strong on the other side, and no more, the witness is reduced to a state of neutrality by an equipoise of interest, and the objection to his testimony ceases. 7 T. R. 480, 481, n.; 1 Bibb, R. 298; 2 Mass. R. 108; 2 S. & R. 119; 6 Penn. St. Rep. 322.

7. Secondly. In some instances the law admits the testimony of one interested, from the extreme necessity of the case; upon this ground the servant of a tradesman is admitted to prove the delivery of goods and the payment of money, without any release from the master. 4 T. R. 490; 2 Litt. R. 27.

8. - 5. The interest, to render the witness disqualified, must exist at the time of his examination. A deposition made at a time when the witness had no interest, may be read in evidence, although he has afterwards acquired an interest. 1 Hoff. R. 21.

9. - 6. The objection to incompetency on the ground of interest may be removed by an extinguishment of that interest by means of a release, executed either by the witness, when he would receive an advantage by his testimony, or by those who have a claim upon him when his testimony would be evidence of his liability. The objection may also be removed by payment. Stark. Ev. pt. 4, p. 757. See Benth. Rationale of Jud. Ev. 628-692, where he combats the established doctrines of the law, as to the exclusion on the ground of interest; and Balance.

INTEREST FOR MONEY, contracts. The compensation which is paid by the borrower to the lender or b the debtor to the creditor for its use.

2. It is proposed to consider, 1. Who is bound to pay iuterest. 2. Who is entitled to receive it. 3. On what claim it is allowed. 4. What interest is allowed. 5. How it is computed. 6. When it will be barred. 7. Rate of interest in the different states.

3. 1. Who is bound to pay interest 1. The contractor himself, who has agreed, either expressly or by implication, to pay interest, is of course bound to do so.

4. - 2. Executors, administrators, assignees of bankrupts or of insolvents, and trustees, who have kept money an unreasonable length of time, and have made or who might have made it productive, are chargeable with interest. 2 Ves. 85; 1 Bro. C. C. 359; Id. 375; 2 Ch. Co. 235; Chan. Rep. 389; 1 Vern. 197; 2 Vern. 548; 3 Bro. C. C. 73; Id. 433; 4 Ves. 620; 1 Johns. Ch. R. 508; Id. 527, 535, 6; Id. 620; 1 Desaus. Ch. R. 193, n; Id. 208; 1 Wash. 2; 1 Binn. R. 194; 3 Munf. 198, Pl. 3: Id. 289, pl. 16; 1 Serg. & Rawle, 241, 4 Desaus. Ch. Rep. 463; 5 Munf. 223, pl. 7, 8; 1 Ves. jr. 236; Id. 452; Id. 89; 1 Atk. 90; see 1 Supp. to Ves. jr. 30; 11 Ves. 61; 15 Ves. 470; 1 Ball & Beat. 230; 1 Supp. to Ves. jr. 127, n. 3; 1 Jac. & Wall. 140; 3 Meriv. 43; 2 Bro. C.C. 156: 5 Ves. 839; 7 Ves. 152; 1 Jac. & Walk. 122; 1 Pick. 530; 13 Mass. R. 232; 3 Call, 538; 4 Hen. & Munf. 415; 2 Esp. N. P. C. 702; 2 Atk. 106; 2 Dall. 182; 4 Serg. & Rawle, 116; 1 Dall. 349; 3 Binn. 121. As to the distinction between executors and trustees, see Mr. Coxes note to Fellows v. Mitchell, 1 P. Wms. 241; 1 Eden, 857, and the cases there collected.

5. - 3. Tenant for life must pay interest on encumbrances on the estate. 4 Ves. 33; 1 Vern. 404, n. by Raithby. In Pennsylvania the heir at law is not bound to pay interest on a mortgage given by his ancestor.

6. - 4. In Massachusetts a bank is liable, independently of the statute of 1809, c. 87, to pay interest on their bills, if not paid when presented for payment. 8 Mass. 445.

7. - 5. Revenue officers must pay interest to the United States from the time of receiving the money. 6 Binney's Rep. 266.

8. - 1 Who are entitled to receive interest. 1. The lender upon an express or implied contract.

9. - 2. An executor was not allowed interest in a case where money due to his testatrix was out at interest, and before money came to his hands, he advanced his own in payment of debts of the testatrix. Vin. Ab. tit. Interest, C. pl. 13.

10. In Massachusetts a trustee of property placed in his hands for security, who was obliged to advance money to protect it, was allowed interest at the compound rate. 16 Mass. 228.

11. - 3. On what claims allowed. First. On express contracts. Secondly. On implied contracts. And, thirdly. On legacies.

12. First. On express contracts. 1. When the debtor expressly undertakes to pay interest, he or his personal representatives having assets are bound to pay it. But if a party has accepted the principal, it has been determined that he cannot recover interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 220. See 1 Camp. 50; 1 Dall. 315; Stark. Ev. pt. iv. 787; 1 Hare & Wall. Sel. Dec. 345.

13. Secondly. On implied contracts. 1. On money lent, or laid out for another's use. Bunb. 119; 2 Bl. Rep. 761; S. C. 3 Wils. 205; 2 Burr. 1077; 5 Bro. Parl. Ca 71; 1 Ves. jr. 63; 1 Dall. 349; 1 Binn. 488; 2 Call, 102; 2 Hen. & Munf. 381; 1 Hayw. 4; 3 Caines' Rep. 226, 234, 238, 245; see 3 Johns. Cas. 303; 9 Johns. 71; 3 Caines' Rep. 266; 1 Conn. Rep. 32; 7 Mass. 14; 1 Dall. 849; 6 Binn. R. 163; Stark. Ev. pt. iv. 789, n. (y), and (z); 11 Mass. 504; 1 Hare & Wall. Sel. Dec. 346.

14. - 2. For goods sold and delivered, after the customary or stipulated term of credit has expired. Doug. 376; 2 B. & P. 337; 4 Dall. 289; 2 Dall. 193; 6 Binn. 162; 1 Dall. 265, 349.

15. - 3. On bills and notes. If payable at a future day certain, after due; if payable on demand, after. a demand made. Bunb. 119; 6 Mod. 138; 1 Str. 649; 2 Ld. Raym. 733; 2 Burr. 1081; 5 Ves. jr. 133; 15 Serg. & R. 264. Where the terms of a promissory note are, that it shall be payable by instalments, and on the failure of any instalment, the whole is to become due, interest on the whole becomes payable from the first default. 4 Esp. 147. Where, by the terms of a bond, or a promissory note, interest is to be paid annually, and the principal at a distant day, the interest may be recovered before the principal is due. 1 Binn. 165; 2 Mass. 568; 3 Mass. 221.

16. - 4. On an account stated, or other liquidated sum, whenever the debtor knows precisely what he is to pay, and when he is to pay it. 2 Black. Rep. 761; S. C. Wils. 205; 2 Ves. 365; 8 Bro. Parl. C. 561; 2 Burr. 1085; 5 Esp. N. P. C. 114; 2 Com. Contr. 207; Treat. Eq. lib. 5, c. 1, s. 4; 2 Fonb. 438; 1 Hayw. 173; 2 Cox, 219; 1 V. & B. 345; 1 Supp. to Ves. jr. 194; Stark. Ev. pt. iv. 789, n. (a). But interest is not due for unliquidated damages, or on a running account where the items are all on one side, unless otherwise agreed upon. 1 Dall. 265; 4 Cowen, 496; 6 Cowen, 193; 5 Verm. 177; 2 Wend. 501; 1 Spears, 209; Rice, 21; 2 Blackf. 313; 1 Bibb, 443.

17. - 5. On the arrears of an annuity secured by a specially. 14 Vin. Ab. 458, pl. 8; 3 Atk. 579; 9 Watts, R. 530.

18. - 6. On a deposit by a purchaser, which he is entitled to recover back, paid either to a principal, or an auctioneer. Sugd. Vend. 327.; 3 Campb. 258; 5 Taunt. 625. Sed vide 4 Taunt. 334, 341.

19. - 7. On purchase money, which has lain dead, where the vendor cannot make a title. Sugd. Vend. 327.

20. - 8. On purchase money remaining in purchaser's hands to pay off encumbrances. 1 Sch. & Lef 134. See 1 Wash. 125; 5 Munf. 342; 6 Binn. 435.

21. - 9. On judgment debts. 14 Vin. Abr. 458, pl. 15; 4 Dall. 251; 2 Ves. 162; 5 Binn. R. 61; Id. 220; 1 Harr. & John. 754; 3 Wend. 496; 4 Metc. 317; 1 Hare & Wall. Sel. Dec. 350. In Massachusetts the principal of a judgment is recovered by execution; for the interest the plaintiff must bring an action. 14 Mass. 239.

22. - 10. On judgments affirmed in a higher court. 2 Burr. 1097; 2 Str. 931; 4 Burr. 2128; Dougl. 752, n. 3; 2 H. Bl. 267; Id. 284; 2 Camp. 428, n.; 3 Taunt. 503; 4 Taunt. 30.

23. - 11. On money obtained by fraud, or where it has been wrongfully detained. 9 Mass. 504; 1 Camp. 129; 3 Cowen, 426.

24. - 12. On money paid by mistake, or recovered on a void execution. 1 Pick. 212; 9 Berg. & Rawle, 409

25. - 13. Rent in arrear due by covenant bears interest, unless under special circumstances, which may be recovered in action; 1 Yeates, 72; 6 Binn. 159; 4 Yeates, 264; but no distress can be made for such interest. 2 Binn. 246. Interest cannot, however, be recovered for arrears of rent payable. in wheat. 1 Johns. 276. See 2 Call, 249; Id. 253; 3 Hen. & Munf. 463; 4 Hen. & Munf. 470; 5 Munf. 21.

26. - 14. Where, from the course of dealing between the parties, a promise to pay interest is implied. 1 Campb. 50; Id. 52 3 Bro. C. C. 436; Kirby, 207.

27. Thirdly, Of interest on legacies. 1. On specific legacies. Interest on specific legacies is to be calculated from the date of the death of testator. 2 Ves. sen. 563; 6 Ves. 345 5 Binn. 475; 3 Munf. 10.

28. - 2. A general legacy, when the time of payment is not named by the testator, is not payable till the end of one year after testator's death, at which time the interest commences to run. 1 Ves. jr. 366; 1 Sch. & Lef. 10; 5 Binn. 475; 13 Ves. 333; 1 Ves. 308 3 Ves. & Bea. 183. But where only the interest is given, no payment will be due till the end of the second year, when the interest will begin to run. 7 Ves. 89.

29. - 3. Where a general legacy is given, and the time of payment is named by the testator, interest is not allowed before the arrival of the appointed period of payment,

and that notwithstanding the legacies are vested. Prec. in Chan. 837. But when that period arrives, the legatee will be entitled, although the legacy be charged upon a dry reversion. 2 Atk. 108. See also Daniel's Rep. in Exch. 84; 3 Atk. 101; 3 Ves. 10; 4 Ves. 1; 4 Bro. C. C. 149, n.; S. C. 1 Cox, l33. Where a legacy is given payable at a future day with interest, and the legatee dies before it becomes payable, the arrears of the interest up to the time of his death must be paid to his personal representatives. McClel. Exch. Rep. 141. And a bequest of a sum to be paid annually for life bears interest from the death of testator. 5 Binn. 475.

30. - 4. Where the legatee is a child of the testator, or one towards whom he has placed himself in loco parentis, the legacy bears interest from the testator's death, whether it be particular or residuary; vested, but payable It a future time, or contingent, if the child have no maintenance. In that case the court will do what, in common presumption, the father would have done, provide necessaries for the child. 2 P. Wms. 31; 3 Ves. 287; Id. 13; Bac. Abr. Legacies, K 3; Fonb. Eq. 431, n. j.; 1 Eq. Cas. Ab. 301, pl. 3; 3 Atk. 432; 1 Dick. Rep. 310; 2 Bro. C. C. 59; 2 Rand. Rep. 409. In case of a child in ventre sa mire, at the time of the father's decease, interest is allowed only from its birth. 2 Cox, 425. Where maintenance or interest is given by the will, and the rate specified, the legatee will not, in general, be entitled to claim more than the maintenance or rate specifled. 3 Atk. 697, 716 3 Ves. 286, n. and see further, as to interest in cases of legacies to children, 15 Ves. 363; 1 Bro. C. C,. 267: 4 Madd. R. 275; 1 Swanst. 553; 1 P. Wms. 783; 1 Vern. 251; 3 Vesey & Beames, 183.

81. - 5. Interest is not allowed by way of maintenance to any other person than the legitimate children of the testator; 3 Ves. 10; 4 Ves. 1; unless the testator has put himself in loco parentis. 1. Sch. & Lef. 5, 6. A wife; 15 Ves. 301; a niece; 3 Ves. 10; a grandchild; 15 Ves. 301; 6 Ves. 546; 12 Ves. 3; 1 Cox, 133; are therefore not entitled to interest by way of maintenance. Nor is a legitimate child entitled to such interest if he have a maintenance; although it may be less than the amount of the interest of the legacy. 1 Scho. & Lef. 5: 3 Ves. 17. Sed vide 4 John. Ch. Rep. 103; 2 Rop. Leg. 202.

32. - 6. Where an intention though not expressed is fairly inferable from the will, interest will be allowed. 1 Swanst. 561, note; Coop. 143.

33. - 7. Interest is not allowed for maintenance, although given by immediate bequest for maintenance, if the parent of the legatee, who is under moral obligation to provide for him, be of sufficient ability, so that the interest will accumulate for the child's benefit, until the principal becomes payable. 3 Atk. 399; 3 Bro. C. C. 416; 1 Bro. C. C. 386; 3 Bro. C. C. 60. But to this rule there are some exceptions. 3 Ves. 730; 4 Bro. C. C. 223; 4 Madd. 275, 289; 4 Ves. 498.

34. - 8. Where a fund, particular or residuary, is given upon a contingency, the intermediate interest undisposed of, that is to say, the intermediate interest between the testator's death, if there be no previous legatee for life, or, if there be, between the death of the previous taker and the happening of the contingency, will sink into the residue for the benefit of the next of kin or executor of the testator, if not bequeathed by him; but if not disposed of, for the benefit of his residuary legatee. 1 Bro. C. C. 57; 4 Bro. C. C. 114; Meriv. 384; 2 Atk. 329; Forr. 145; 2 Rop. Leg. 224.

85. - 9. Where a legacy is given by immediate bequest whether such legacy be particular or residuary, and there is a condition to divest it upon the death of the legatee under twenty-one, or upon the happening of some other event, with a limitation over, and the legatee dies before twenty-one, or before such other event happens, which nevertheless does take place, yet as the legacy was payable at the end, of a year after the testator's death, the legatee's representatives, and not the legatee over, will be entitled to the interest which accrued during the legatee's life, until the happening of the event which was to divest the legacy. 1 P. Wms. 500; 2 P. Wms. 504; Ambl. 448; 5 Ves. 335; Id. 522.

36. - 10. Where a residue is given, so as to be vested but not payable at the end of the year from the testator's death, but upon the legatee's attaining twenty-one, or upon any other contingency, and with a bequest over divesting the legacy, upon the legatee's dying under age, or upon the happening of the contingency, then the legatee's representatives in the former case, and the legatee himself in the latter, shall be entitled to the interest that became due, during the legatee's life, or until the happening of the contingency; 2 P. Wms. 419; 1 Bro. C. C. 81; Id. 335; 3 Meriv. 335.

37. - 11. Where a residue of personal estate is given, generally, to one for life with remainder over, and no mention is made by the testator respecting the interest, nor any intention to the contrary to be collected from the will, the rule appears to be now settled that the person taking for life is entitled to interest from the death of the testator, on such part of the residue, bearing interest, as is not necessary for, the payment of debts. And it is immaterial whether the residue is only given generally, or directely to be laid out, with all convenient speed, in funds or securities, or to be laid out in lands. See 6 Ves. 520; 9 Ves. 549, 553; 2 Rop. Leg. 234; 9 Ves. 89.

38. - 12. But where a residue is directed to be laid out in land, to be settled on one for life, with remainder over, and the testator directs the interest to accumulate in the meantime, until the money is laid out in lands, or otherwise invested on security, the accumulation shall cease at the end of one year from the testator's death, and from that period. the tenant for life shall be to the interest. 6 Ves. 520; 7 Ves. 95; 6 Ves. 528; Id. 529; 2 Sim. & Stu. 396.

39. - 13. Where no time of payment is mentioned by the testator, annuities are considered as commencing from the death of the testator; and consequently the first payment will be due at the end of the year from that event if, therefore, it be not made then, interest, in those cases wherein it is allowed at all, must be computed from that period. 2 Rop. Leg. 249; 5 Binn. 475. See 6 Mass. 37; 1 Hare & Wall. Sel. Dec. 356.

40. - 4. As to the quantum or amount of interest allowed. 1. During what time. 2. Simple interest. 3. Compound interest. 4. In what cases given beyond the penalty of a bond. 5. When foreign interest is allowed.

41. First. During what time. 1. In actions for money had and received, interest is allowed, in Massachusetts, from the time of serving the writ. 1 Mass. 436. On debts payable on demand, interest is payable only from the demand. Addis. 137. See 12 Mass. 4. The words "with interest for the same," bear interest from date. Addis. 323-4; 1 Stark. N. P. C. 452; Id. 507.

42. - 2. The mere circumstance of war existing between two nations, is not a sufficient reason for abating interest on debts due by the subjects of one belligerent to another. 1 Peters' C. C. R. 524. But a prohibition of all intercourse with an enemy, during war, furnishes a sound reason for the abatement of interest until the return of peace. Id. See,, on this subject, 2 Dall. 132; 2 Dall. 102; 4 Dall. 286; 1 Wash. 172; 1 Call 194; 3 Wash. C. C. R. 396; 8 Serg. & Rawle, 103; Post. 7.

43. Secondly. Simple interest. 1. Interest upon interest is not allowed except in special cases 1 Eq. Cas. Ab. 287; Fonbl. Eq. b. 1, c. 4, note a; U. S. Dig. tit. Accounts, IV.; and the uniform current of decisions is against it, as being a hard, oppressive exaction, and tending to usury. 1 Johns. Ch. R. 14; Cam. & Norw. Rep. 361. By the civil law, interest could not be demanded beyond the principal sum, and payments exceeding that amount, were applied to the extinguishment of the principal. Ridley's View of the Civil, &c. Law, 84; Authentics, 9th Coll.

44. Thirdly. Compound interest. 1. Where a partner has overdrawn the part nership funds, and refuses, when called upon to account, to disclose the profits, recourse would be had to compound interest as a substitute for the profits he might reasonably be supposed to have made. 2 Johns. Ch. R. 213.

45. - 2. When executors, administrators, or trustees, convert the trust money to their own use, or employ it in business or trade, they are chargeable with compound interest. 1 Johns. Ch. R. 620.

46. - 3. In an action to recover the annual interest due on a promissory note, interest will be allowed on each year's interest until paid. 2 Mass. 568; 8 Mass. 455. See, as to

charging compound interest, the following cases: 1 Johns. Ch. Rep. 550; Cam. & Norw. 361; 1 Binn. 165; 4 Yeates' 220; 1 Hen. & Munf. 4; 1 Vin. Abr. 457, tit. Interest, C; Com. Dig. Chancery, 3 S 3; 3 Hen. & Munf. 89; 1 Hare & Wall. Sel. Dec. 371. An infant's contract to pay interest on interest, after it has accrued, will be binding upon him, when it is for his benefit. 1 Eq. Cas. Ab. 286; 1 Atk. 489; 3 Atk. 613. Newl. Contr. 2.

47. Fourthly. When given beyond the Penalty of a bond. 1. It is a general rule that the penalty of a bond limits the amount of the recovery. 2 T. R. 388. But, in some cases, the interest is recoverable beyond the amount of the penalty. The recovery depends on principles of law, and not on the arbitrary discretion of a jury. 3 Caines' Rep. 49.

48. - 2. The exceptions are, where the bond is to account for moneys to be received 2 T. R. 388; where the plaintiff is kept out of his money by writs of error; 2 Burr. 1094; 2 Evans' Poth. 101-2 or delayed by injunction; 1 Vern. 349; 16 Vin. Abr. 303; if the recovery of the debt be delayed by the obligor; 6 Ves. 92; 1 Vern. 349; Show. P. C. 15; if extraordinary emoluments are derived from holding the money; 2 Bro. P. C. 251; or the bond is taken only as a collateral security; 2 Bro. P. C. 333; or the action be on a judgment recovered on a bond. 1 East, R. 486. See, also, 4 Day's Cas. 30; 3 Caines' R. 49; 1 Taunt. 218; 1 Mass. 308; Com. Dig. Chancery, 3 S 2; Vin. Abr. Interest, E.

49. - 3. But these exceptions do not obtain in the administration of the debtor's assets, where his other creditors might be injured by allowing the bond to be rated beyond the penalty. 5 Ves. 329; See Vin. Abr. Interest, C, pl. 5.

50. Fifthly. When foreign interest is allowed. 1. The rate of interest allowed by law where the contract is made, may, in general, be recovered; hence, where a note was given in China, payable eighteen months after date, without any stipulation respecting interest, the court allowed the Chinese interest of one per cent. per mouth from the expiration of the eighteen months. 1 Wash. C. C. R. 253.

51. - 2. If a citizen of another state advance money there, for the benefit of a citizen of the state of Massachusetts, which the latter is liable to reimburse, the former shall recover interest, at the rate established by the laws of the place where he lives. 12 Mass. 4. See, further, 1 Eq. Cas. Ab. 289; 1 P. Wms. 395; 2 Bro. C. C. 3; 14 Vin. Abr. 460, tit. Interest, F.

52. - 5. How computed. 1. In casting interest on notes, bonds, &c., upon which partial payments have been made, every payment is to be first applied to keep down the interest, but the interest is: never allowed to form a part of the principal so as to carry interest. 17 Mass. R. 417; 1 Dall. 378.

53. - 2. When a partial payment exceeds the amount of interest due when it is made, it is correct to compute the interest to the time of the first, payment, add it to the principal, subtract the payment, cast interest on the remainder to the time of the second payment, add it to the remainder, and subtract the second payment, and in like manner from one payment to another, until the time of judgment. 1 Pick. 194; 4 Hen. & Munf. 431; 8 Serg. & Rawle' 458; 2 Wash. C. C. R. 167. See 3 Wash. C. C. R. 350; Id. 396.

54. - 3. Where a partial payment is made before the debt is due, it cannot be apportioned, part to the debt and part to the interest. As, if there be a bond for one hundred dollars, payable in one year, and, at the expiration of six months fifty dollars be paid in. This payment shall not be apportioned part to the principal and part to the interest, but at the end of the year, interest shall be charged on the whole sum, and the obligor shall receive credit for the interest of fifty dollars for six mouths. 1 Dall. 124.

55.- 6. When interest will be barred. 1. When the money due is tendered to the person entitled to it, and he refuses to receive it, the interest ceases. 3 Campb. 296. Vide 8 East, 168; 3 Binn. 295.

56. - 2. Where the plaintiff was absent in foreign parts, beyond seas, evidence of that fact may be given in evidence to the jury on the plea of payment, in order to extinguish the interest during such absence. 1 Call, 133. But see 9 Serg. & Rawle, 263.

57. - 3. Whenever the law prohibits the payment of the principal, interest, during the prohibition, is not demandable. 2 Dall. 102; 1 Peters' C. C. R. 524. See, also, 2 Dall. 132; 4 Dall. 286.

58. - 4. If the plaintiff has accepted the principal, he cannot recover the interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 229. See 14 Wend. 116.

59.- 7. Rate of interest allowed by law in the different states. Alabama. Eight per centum per annum is allowed. Notes not exceeding one dollar bear interest at the rate of one hundred per centum per annum. Some of the bank charters prohibit certain banks from charging more than six per cent. upon bills of exchange, and notes negotiable at the bank, not having more than six months to run; and, over six and under nine, not more than seven per cent. and over nine months, to charge not more than eight per cent. Aikin's Dig. 236.

60. Arkansas. Six per centum per annum is the legal rate of interest; but the parties may agree in writing for the payment of interest not exceeding ten per centum per annum, on money due and to become due on any contract, whether under seal or not.

Rev. St. c. 80, s. 1, 2. Contracts where a greater amount is reserved are declared to be void. Id. s. 7. But this provision will not affect an innocent endorsee for a valuable consideration. Id. s. 8.

61. Connecticut. Six per centum is the amount allowed by law.

62. Delaware. The legal amount of interest allowed in this state is at the rate of six per centum per annum. Laws of Del. 314.

63. Georgia. Eight per centum per annum interest is allowed on all liquidated demands. 1 Laws of Geo. 270; 4 Id. 488; Prince's Dig. 294, 295.

64. Illinois. Six per centum per annum is the legal interest allowed when there is no contract, but by agreenment the parties may fix a greater rate. 3 Griff. L. Reg. 423.

65. Indiana. Six per centum per annum is the rate fixed by law, except in Union county. On the following funds loaned out by the state, namely, Sinking, Surplus, Revenue, Saline, and College funds, seven per cent.; on the Common School Fund, eight per cent. Act of January 31, 1842.

66. Kentucky. Six per centum per annum is allowed by law. There is no provision in favor of any kind of loan. See Sessions Acts, 1818, p. 707.

67. Louisiana. The Civil Code provides, art. 2895, as follows: Interest is either legal or conventional. Legal interest is fixed at the following, rates, to wit: at five per cent. on all sums which are the object of a judicial demand, whence this is called judicial interest; and Rums discounted by banks, at the rate established by their charters. The amount of conventional interest cannot exceed ten per cent. The same must be fixed in writing, and the testimonial proof of it is not admitted. See, also, art. 1930 to 1939.

68. Maine. Six per centum per annum is the legal interest, and any contract for more is voidable as to the excess, except in case of letting cattle, and other usages of a like nature, in practice among farmers, or maritime contracts among merchants, as bottomry, insurance, or course of exchange, as has been heretofore practiced. Rev. St. 4, c. 69, 1, 4.

69. Maryland. Six per centum per annum, is the. amount limited by law, in all cases.

70. Massachusetts. The interest of money shall continue to be at the rate of dollars, and no more, upon one hundred dollars for a year; and at the same rate for a greater or less sum, and for a longer or shorter time. Rev. Stat. c. 35, s. 1.

71. Michigan. Seven per centum is the legal rate of interest; but on stipulation in writing, interest is allowed to any amount not exceeding ten per cent. on loans of money, but only on such loans. Rev. St. 160, 161.

72. Mississippi. The legal interest is six per centum; but on all bonds, notes, or contracts in writing, signed by the debtor for the bona fide loan of money, expressing therein the rate of interest fairly agreed on between the parties for the use of money so loaned, eight per cent. interest is allowed. Laws of 1842.

73. Missouri. When no contract is made as to interest, six per centum per annum is allowed. But the parties may agree to pay any higher rate, not exceeding ten per cent. Rev. Code, 1, p. 383.

74. New Hampshire. No person shall take interest for the loan of money, wares, or merchandise, or any other personal estate whatsoever, above the value of six pounds for the use or forbearance of one hundred pounds for a year, and after that rate for a greater or lesser sum, or for a longer or shorter time. Act of February 12, 1791, s. 1. Provided, that nothing in this act shall extend to the letting of cattle, or other usages of a like nature, in practice among farmers, or to maritime contracts among merchants as bottomry, insurance, or course of exchange, as hath been heretofore used. Id. s. 2.

75. New Jersey. Six per centum per annum is the interest allowed by law for the loan of money, without any exception. Statute of December 5, 1823, Harr. Comp. 45.

76. New York. The rate is fixed at seven per centum per annum. Rev. Stat. part 2, c. 4, t. 3, s. 1. Moneyed institutions, subject to the safety-fund act, are entitled to receive the legal interest established, or which may thereafter be established by the laws of this state, on all loans made by them, or notes, or bills, by them severally discounted or received in the ordinary course of business; but on all notes or bills by them discounted or received in the ordinary course of business, which shall be matured in sixty-three days from the time of such discount, the said moneyed corporations shall not take or receive more than at the rate of six per centum per annum in advance. 2 Rev. Stat. p. 612.

77. North Carolina. Six per centum per annum is the interest allowed by law. The banks are allowed to take the interest off at the time of making a discount.

78. Ohio. The legal rate of interest on all contracts, judgments or decrees in chancery, is six per centum. per annum, and no more. 29 Ohio Stat. 451; Swan's Coll. Laws, 465. A contract to pay a higher rate is good for principal and interest, and void for the excess. Banks are bound to pay twelve per cent. interest on all their notes during a

suspension of specie payment. 37 Acts 30, Act of February 25, 183,9, Swan's Coll. 129.

79. Pennsylvania. Interest is allowed at the rate of six per centum per annum for the loan or use of money or other commodities. Act of March 2, 1723. And lawful interest is allowed on judgments. Act of 1700, 1 Smith's L. of Penn. 12. See 6 Watts, 53; 12 S. & R. 47; 13 S. & R. 221; 4 Whart. 221; 6 Binn. 435; 1 Dall. 378; 1 Dall. 407; 2 Dall. 92; 1 S. & R. 176; 1 Binn. 488; 2 Pet. 538; 8 Wheat. 355.

80. Rhode Island. Six per centum is allowed for interest on loans of money. 3 Griff. Law Reg. 116.

81. South Carolina. Seven per centum per annum, or at that rate, is allowed for interest. 4 Cooper's Stat. of S. C. 364. When more is reserved, the amount lent and interest may be recovered. 6 Id. 409.

82. Tennessee. The interest allowed by law is six per centum per annum. When more is charged it is not recoverable, but the principal and legal interest may be recovered. Act of 1835, c. 50, Car. & Nich. Comp. 406, 407.

83. Vermont. Six per centum per annum is the legal interest. If more be charged and paid, it may be recovered back in an action of assumpsit. But these provisions do not extend "to the letting of cattle and other, usages of a like nature among farmers, or maritime contracts, bottomry or course of exchange, as has been customary." Rev. St. c. 72, ss. 3, 4, 5.

84. Virginia. Interest is allowed at the rate of six per centum per annum. Act of Nov. 22 1796, 1 Rev. Code. ch. 209. Vide 1 Hare & Wall. Sel. Dec. 344, 373.

INTEREST, MARITIME. By maritime interest is understood the profit of money lent on bottomry or respondentia, which is allowed to be greater than simple interest because the capital of the lender is put in jeopardy. There is no limit by law as to the amount which may be charged for maritime interest. It is fixed generally by the agreement of the parties.

2. The French writers employ a variety of terms in order to distinguish if according to the nature of the case. They call it interest, when it is stipulated to be paid by the month, or at other stated periods. It is a premium, when a gross sum is to be paid at the end of the voyage, and here the risk is the principal object they have in view. When the sum is a per centage on the money lent, they call it exchange, considering it in the light of money lent at one place to be returned in another, with a difference in amount between the sum borrowed and that which is paid, arising from the difference

of time and place. When they intend to combine these various shades into one general denomination, they make use of the term maritime profit, to convey their meaning. Hall on Mar. Loans, 56, n.

INTERIM. In the mean time; in the meanwhile. For example, one appointed between the time that a person is made bankrupt, to act in the place of the assignee until the assignee shall be appointed, is an assignee ad interim. 2 Bell's Com. 355.

INTERLINEATION, contracts, evidence. Writing between two lines.

2. Interlineations are made either before or after the execution of an instrument. Those made before should be noted previously to its execution; those made after are made either by the party in whose favor they are, or by strangers.

3. When made by the party himself, whether the interlineation be material or immaterial, they render the deed void; 1 Gall. Rep. 71; unless made with the consent of the opposite party. Vide 11 Co. 27 a: 9 Mass. Rep. 307; 15 Johns. R. 293; 1 Dall. R. 57; 1 Halst. R. 215; but see 1 Pet. C. C. R. 364; 5 Har. & John; 41; 2 L. R. 290; 2 Ch. R. 410; 4 Bing. R. 123; Fitzg. 207, 223; Cov. on Conv. Ev. 22; 2 Barr. 191.

4. When the interlineation is made by a stranger, if it be immaterial, it will not vitiate the instrument, but if it be material, it will in general avoid it. Vide Cruise, Dig. tit. 32, c. 26, s. 8; Com. Dig. Fait, F 1.

5. The ancient rule, which is still said to be in force, is, that an alteration shall be presumed to have been made before the execution of the instrument. Vin. Ab. Evidence, Q, a 2; Id. Faits, U; 1 Swift's Syst. 310; 6 Wheat. R. 481; 1 Halst. 215. But other cases hold the presumption to be that a material interlineation was made after the execution of an instrument, unless the contrary be proved. 1 Dall. 67. This doctrine corresponds nearly with the rules of the canon law on this subject. The canonists have examined it with care. Vide 18 Pick. R. 172; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, n. 115, and article Erasure.

INTERLOCUTORY. This word is applied to signify something which is done between the commencement and the end of a suit or action which decides some point or matter, which however is not a final decision of the matter in issue; as, interlocutory judgments, or decrees or orders. Vide Judgment, interlocutory.

INTERLOPERS. Persons who interrupt the trade of a company of merchants, by pursuing the same business with them in the same place, without lawful authority.

INTERNATIONAL. That which pertains to intercourse between nations. International law is that which regulates the intercourse between, or the relative rights of nations.

INTERNUNCIO. A minister of a second order, charged with the affairs of the court of Rome, where that court has no nuncio under that title.

INTERRELATION, civil law. The act by which, in consequence of an agreement, the party bound declares that he will not be bound beyond a certain time. Wolff, Inst. Nat. 752.

2. In the case of a lease from year to year, or to continue as long as both parties please, a notice given by one of them to the other of a determination to put an end to the contract, would bear the name of interpelation.

INTERPLEADER, practice. Interpleaders may be had at law and in equity.

2. An interpleader at law a proceeding in the action of detinue, by which the defendant states the fact that the thing sued for is in his hands, and that it is claimed by a third person, and that whether such person or the plaintiff is entitled to it, is unknown to the defendant, and thereupon the defendant prays, that a process of garnishment may be issued to compel such third person, so claiming, to become defendant in his stead. 3 Reeves, Hist. of the Eng. Law, ch. 23; Mitford, Eq. Pl. by Jeremy, 141; Story, Eq. Jur. 800, 801, 802. Interpleader is allowed to avoid inconvenience; for two parties claiming adversely to each other, cannot be entitled to the same thing. Bro. Abr. Interpleader, 4. Hence the rule which requires the defendant to allege that different parties demand the same thing. Id. pl. 22.

3. If two persons sue the same person in detinue for the thing, and both action; are depending in the same court at the same time, the defendant may plead that fact, produce the thing (e. g. a deed or charter in court, and aver his readiness to deliver it to either as the court shall adjudge; and thereupon pray that they may interplead. In such a case it has been settled that the plaintiff whose writ bears the earliest teste has the right to begin the interpleading, and the other will be compelled to answer. Bro. Abr. Interpl. 2.

4. In equity, interpleaders are common. Vide Bill of Interpleader, and 8 Vin. Ab. 419; Doct. Pl. 247; 3 Bl. Com. 448; Com. Dig. Chancery, 3 T; 2 Story, Eq. Jur. 800.

INTERPRETATION. The explication of a law, agreement, will, or other instrument, which appears obscure or ambiguous.

2. The object of interpretation is to find out or collect the intention of the maker of the instrument, either from his own words, or from other conjectures, or both. It may then be divided into three sorts, according to the different means it makes use of for obtaining its end.

3. These three sorts of interpretations are either literal, rational, or mixed. When we collect the intention of the writer from his words only, as they lie before us, this is a literal interpretation. When his words do not express his intention perfectly, but either exceed it, or fall short of it, so that we are to collect it from probable or rational conjectures only, this is rational interpretation and when his words, though they do express his intention, when rightly understood, are in themselves. of doubtful meaning, and we are forced to have recourse to like conjectures to find out in what sense he used them this sort of interpretation is mixed; it is partly literal, and partly rational.

4. According to the civilians there are three sorts of interpretations, the authentic, the usual, and the doctrinal.

5. - 1. The authentic interpretation is that which refers to the legislator himself, in order to fix the sense of the law.

6. - 2. When the judge interprets the law so as to accord with prior decisions, the interpretation is called usual.

7. - 3. It is doctrinal when it is made agreeably to rules of science. The Commentaries of learned lawyers in this case furnish the greatest assistance. This last kind of interpretation is itself divided into, three distinct classes. Doctrinal interpretation is extensive, restrictive, or declaratory. 1st. It is extensive whenever the reason of the law has a more enlarged sense than its terms, and it is consequently applied to a case which had not been explained. 2d. On the contrary, it is restrictive when the expressions of the law have a greater latitude than its reasons, so that by a restricted interpretation, an exception is made in a case which the law does not seem to have embraced. 3d. When the reason of the law and the terms in which it is conceived agree, and it is only necessary to explain them to have the sense complete, the interpretation is declaratory. 8. The term interpretation is used by foreign jurists in nearly the same sense that we use the word construction. (q. v.)

9. Pothier, in his excellent treatise on Obligations, lays down the following rules for the interpretation of contracts:

10. - 1. We ought to examine what was the common, intention of the contracting parties rather than the grammatical sense of the terms.

11. - 2. When a clause is capable of two significations, it should be understood in that which will have some operation rather than, that in which it will have none.

12. - 3. Where the terms of a contract are capable of two significations, we ought to understand them in the sense which is most agreeable to the nature of the contract.

13. - 4. Any thing, which may appear ambiguous in the terms of a contract, may be explained by the common use of those terms in the country where it is made.

14. - 5. Usage is of so much authority in the interpretation of agreements, that a contract is understood to contain the customary clauses although they are not expressed; in contractibus tacite veniunt ea quae sunt moris et consuetudinis.

15. - 6. We ought to interpret one clause by the others contained in the same act, whether they precede or follow it.

16. - 7. In case of doubt, a clause ought to be interpreted against the person who stipulates anything, and in discharge of the person who contracts the obligation.

17. - 8. However general the terms may be in which an agreement is conceived, it only comprises those things respecting which it appears that the contracting parties proposed to coutract, and not others which they never thought of.

18. - 9. When the object of the agreement is to include universally everything of a given nature, (une universalite de choses) the general description will comprise all particular articles, although they may not have been in the knowledge, of the parties. We may state, as an example of this rule, an engagement which I make with you to abandon my share in a succession for a certain sum. This agreement includes everything which makes part of the succession, whether known or not; our intention was to contract for the whole. Therefore it is decided, that I cannot object to the agreement, under pretence that considerable property has been found to belong to the succession of which we had not any knowledge.

19. - 10. When a case is expressed in a contract on account of any doubt which there may be whether the engagement resulting from the contract would. extend to such case, the parties are not thereby understood to restrain the extent which the engagement has of right, in respect to all cases not expressed.

20. - 11. In contracts as well as in testaments, a clause conceived in the plural may be frequently distributed into several particular classes.

21. - 12. That which is at the end of a phrase commonly refers to the whole phrase, and not only to that which immediately precedes it, provided it agrees in gender and number with the whole phrase.

>22. For instance, if in the contract for sale of a farm, it is said to be sold with all the corn, small grain, fruits and wine that have been got this year, the terms, that have been got this year, refer to the whole phrase, and not to the wine only, and consequently the old corn is not less excepted than the old wine; it would be otherwise if it had been said, all the wine that has been got this year, for the expression is in the singular, and only refers to the wine and not to the rest of the phrase, with which it does not agree in number. Vide 1 Bouv. Inst. n. 86, et seq.

INTERPRETER. One employed to make a translation. (q v.)

2. An interpreter should be sworn before he translates the testimony of a witness. 4 Mass. 81; 5 Mass. 219; 2 Caines' Rep. 155.

3. A person employed between an attorney and client to act as interpreter, is considered merely as the organ between them, and is not bound to testify as to what be has acquired in those confidential communications. 1 Pet. C. C. R.. 356; 4 Munf. R. 273; 1 Wend. R. 337. Vide Confidential Communications.

INTERREGNUM, polit. law. In an established government, the period which elapses between the death of a sovereign and the election of another is called interregnum. It is also understood for the vacancy created in the executive power, and for any vacancy which occurs when there is no government.

INTERROGATOIRE, French law. An act, or instrument, which contains the interrogatories made by the judge to the person accused, on the facts which are the object of the accasation, and the answers of the accused. Poth. Proc. Crim. s. 4, art. 2, 1. Vide Information.

INTERROGATORIES. Material and pertinent questions, in writing, to necessary points, not confessed, exhibited for the examination of witnesses or persons who are to give testimony in the cause.

2. They are either original and direct on the part, of him who produces the witnesses, or cross and counter, on behalf of the adverse party, to examine witnesses produced on the other side. Either party, plaintiff or defendant, may exhibit original or cross interrogatories.

3. The form which interrogatories assume, is as various as the minds of the persons who propound them. They should be as distinct as possible, and capable of a definite answer; and they should leave no loop-holes for evasion to an unwilling witness. Care must be observed to put no leading questions in original interrogatories, for these always lead to inconvenience; and for scandal or impertinence, interrogatories will, under certain Circumstances, be suppressed. Vide Will. on Interrogatories, passim; Gresl. Ea. Ev pt. 1, c. 3, s. 1; Vin. Ab. h. t.; Hind's Pr. 317; 4 Bouv. Inst. n. 4419, et seq.

INTERRUPTION. The effect of some act or circumstance which stops the course of a prescription or act of limitation's.

2. Interruption of the use of a thing is natural or civil. Natural interruption is an interruption in fact, which takes place whenever by some act we cease truly to possess what we formerly possessed. Vide 4 Mason's Rep. 404; 2 Y. & Jarv. 285. A right is not interrupted by: mere trespassers, if the trespasser's were unknown; but if they were known, and the trespasses frequent, and no legal proceeding instituted in consequence of them, they then become legitimae interruptiones, of which Bracton speaks, and are converted into adverse assertions of right, and if not promptly and effectually litigated, they defeat the claim of rightful prescription; and mere threats of action for the trespasses, without following them up, will have no effect to preserve the right. Knapp, R. 70, 71; 3 Bar. & Ad. 863; 2 Saund. 175, n. e; 1 Camp. 260; 4 Camp. 16; 5 Taunt. 125 11 East, 376.

3. Civil interruption is that which takes place by some judicial act, as the commencement of a suit to recover the thing in dispute, which gives notice to the possessor that the thing which he possesses does not belong to him. When the title has once been gained by prescription, it will not be lost by interruption of it for ten or twenty years. 1 Inst. 113 b. A simple acknowledgment of a debt by the debtor, is a sufficient interruption to prevent the statute from running. Indeed, whenever an agreement, express or implied, takes place between the creditor and the debtor, between the possessor and the owner, which admits the indebtedness or the right to the thing in dispute, it is considered a civil conventional interruption which prevents the statute or the right of prescription from running. Vide 3 Burge on the Confl. of Lalys, 63.

INTERVAL. A space of time between two periods. When a person is unable to perform an act at any two given periods, but in the interval he has performed such act, as when a man is found to be insane in the months of January and March, and he enters into a contract or makes a will in the interval, in February, he will be presumed to have been insane at that time; and the onus will lie to show his sanity, on the person who affirms such act. See Lucid interval.

INTERVENTION, civil law. The act by which a third party becomes a party in a suit pending between other persons.

2. The intervention is made either to be joined to the plaintiff, and to claim the same thing he does, or some other thing connected with it or, to join the defendant, and with him to oppose the claim of the plaintiff, which it-is his interest to defeat. Poth. Proced. Civ. lere part. ch. 2, s. 6, 3. In the English ecclesiastical courts, the same term is used in the same sense.

3. When a third person, not originally a party to the suit or proceeding, but claiming an interest in the subject-matter in dispute, may, in order the better to protect such interest, interpose his claim, which proceeding is termed intervention. 2 Chit. Pr. 492; 3 Chit. Com. Law, 633; 2 Hagg. Cons. R. 137; 3 Phillim. R. 586; 1 Addams, R. 5; Ought. tit. 14; 4 Hagg. Eccl. R. 67 Dual. Ad. Pr. 74. The intervener may come in at any stage of the cause, and even after judgment, if an appeal can be allowed on such judgment. 2 Hagg. Cons. R. 137: 1 Eng. feel. R. 480; 2 E.g. Eccl. R. 13.

INTESTACY. The state or condition of dying without a will.

INTESTABLE. One who cannot law fully make a testament.

2. An infant, an insane person, or one civilly dead, cannot make a will, for want of capacity or understanding; a married woman cannot make such a will without some special authority, because she is under the power of her hushand. They are all intestable.

INTESTATE. One who, having lawful power to make a will, has made none, or one which is defective in form. In that case, he is said to die intestate, and his estate descends to his heir at law. See Testate.

2. This term comes from the Latin intestatus. Formerly, it was used in France indiscriminately with de-confess; that is, without confession. It was regarded as a crime, on account of the omission of the deceased person to give something to the church, and was punished by privation of burial in consecrated ground. This omission, according to Fournel, Hist. des Avocats, vol. 1, p. 116, could be repaired by making an ampliative testament in the name of the deceased. See Vely, tom. 6, page 145; Henrion De Pansey, Authorite Judiciare, 129 and note. Also, 3 Mod. Rep. 59, 60, for the Law of Intestacy in England.

INTIMATION, civil law. The name of any judicial act by which a notice of a legal proceeding. is given to some one; but it is more usually understood to mean the notice

or summons which an appellant causes to be given to the opposite party, that the sentence will be reviewed by the superior judge.

2. In the Scotch law, it is an instrument, of writing, made under the hand of a notary, and notified to a party, to inform him of a right which a third person had acquired; for example, when a creditor assigns a claim against his debtor, the assignee or cedent must give an intimation of this to the debtor, who, till then, is justified in making payment to the original creditor. Kames' Eq. B. 1, p. 1, s. 1.

INTRODUCTION. That part of a writing in which are detailed those facts which elucidate the subject. In chancery pleading, the introduction is that part of a bill which contains the names and description of the persons exhibiting the bill. In this part of the bill are also given the places of abode, title, or office, or business, and the character in which they sue, if it is in autre droit, and such other description as is required to show the jurisdiction of the court. 4 Bouv. Inst. n. 4156.

INTROMISSION Scotch law. The assuming possession of property belonging to another, either on legal grounds, or without any authority; in the latter case, it is called vicious intromission. Bell's S. L. Dict. h. t.

INTRONISATION, French eccl. law. The installation of a hishop in his episcopal see. Clef des Lois Row. h. t. Andre.

INTRUDER. One who, on the death of the ancestor, enters on the land, unlawfully, before the heir can enter.

INTRUSION, estates, torts. When an ancestor dies seised of an estate of inheritance expectant upon an estate for life, and then the tenant dies, and between his death and the entry of the heir, a stranger unlawfully enters upon the estate, this is called an intrusion. It differs from an abatement, for the latter is an entry into lands void by the death of a tenant in fee, and an intrusion, as already stated, is an entry into land void by the death of a tenant for years. F. N. B. 203 3 Bl. Com. 169 Archb. Civ. Pl. 12; Dane's Ab. Index, h. t.

INTRUSION, remedies. The name of a writ, brought by the owner of a fee simple, &c., against an intruder. New Nat. Br. 453.

INUNDATION. The overflow of waters by coming out of their bed.

2. Inundations may arise from three causes; from public necessity, as in defence of a place it may be necessary to dam the current of a stream, which will cause an inundation to the upper lands; they may be occasioned by an invincible force, as by

the accidental fall of a rock in the stream; or they may result from the erections of works on the stream. In the first case, the injury caused by the inundation is to be compensated as other injuries done in war; in the second, as there was no fault of any one, the loss is to be borne by the unfortunate owner of the estate; in the last, when the riparian. proprietor is injured by such works as alter the level of the water where it enters or where it leaves the property on which they are erected, the person injured may recover damages for the injury thus caused to his property by the innundation. 9 Co. 59; 4 Day's R. 244; 17 Serg. & Rawle, 383; 3 Mason's R. 172; 7 Pick. R. 198; 7 Cowen, R. 266; 1 B. & Ald. 258; 1 Rawle's R. 218; 5 N. H. Rep. 232; 9 Mass. R. 316; 4 Mason's R. 400; 1 Sim. & Stu. 203; 1 Come's R. 460. Vide Schult. Aq. R. 122; Ang. W. C. 101; 5 Ohio, R. 322, 421; and art. Dam.

TO INURE. To take effect; as, the pardon inures.

INVALID. In a physical sense, it is that which is wanting force; in a figurative sense, it signifies that which has no effect.

INVASION. The entry of a country by a public enemy, making war.

2. The Constitution of the United States, art. 1, s. 8, gives power to congress "to provide for calling the militia to execute the laws of the Union, suppress insurrections, and repel invasions." Vide Insurrection.

INVENTION. A contrivance; a discovery. It is in this sense this word is used in the patent laws of the United States. 17 Pet. 228; S. C. 1 How. U. S. 202. It signifies not something which has been found ready made, but something which, in consequence of art or accident, has been formed; for the invention must relate ot some new or useful art, machine, manufacture, or composition of matter, not before known or used by others. Act of July 4, 1836, 4 Sharsw. continuation of Story's L. U.S. 2506; 1 Mason, R. 302; 4 Wash. C. C. R. 9. Vide Patent. By invention, the civilians understand the finding of some things which had not been lost; they must either have abandoned, or they must have never belonged to any one, as a pearl found on the sea shore. Lec. Elem 350.

INVENTIONES. This word is used in some ancient English charters to signify treasure-trove.

INVENTOR. One who invents or finds out something.

2. The patent laws of the United States authorize a patent to be issued to the original inventor; if the invention is suggested by another, he is not the inventor within the meaning of those laws; but in that case the suggestion must be of the specific process

or machine; for a general theoretical suggestion, as that steam might be applied to the navigation of the air or water, without pointing out by what specific process or machine that could be accomplished, would not be such a suggestion as to deprive the person to whom it had been made from being considered as the inventor. Dav. Pat. Cas. 429; 1 C. & P. 558; 1 Russ. & M. 187; 4 Taunt. 770; B ut see 1 M. G. & S. 551; 3 Man. Gr. & Sc. 97.

3. The applicant for a patent must be both the first and original inventor. 4 Law Report. 342.

INVENTORY. A list, schedule, or enumeration in writing, containing, article by article, the goods and chattels, rights and credits, and, in some cases, the lands and tenements, of a person or persons. In its most common acceptation, an inventory is a conservatory act, which is made to ascertain the situation of an intestate's estate, the estate of an insolvent, and the like, for the purpose of securing it to those entitled to it.

2. When the inventory is made of goods and estates assigned or conveyed in trust, it must include all the property conveyed.

3. In case of intestate estates, it is required to contain only the personal property, or that to which the administrator is entitled. The claims due to the estate ought to be separated; those which are desperate or had ought to be so returned. The articles ought to be set down separately, as already mentioned, and separately valued.

4. The inventory is to be made in the presence of at least two of the creditors of the deceased, or legatees or next of kin, and, in their default and absence, of two honest persons. The appraisers must sign it, and make oath or affirmation that the appraisement is just to the best of their knowledge. Vide, generally, 14 Vin. Ab. 465; Bac. Ab. Executors, &c., E 11; 4 Com. Dig. 14; Ayliffe's Pand. 414; Ayliffe's Parerg. 305; Com. Dig. Administration, B 7; 3 Burr. 1922; 2 Addams' Rep. 319; S. C. 2 Eccles. R. 322; Lovel. on Wills; 38; 2 Bl. Com. 514; 8 Serg. & Rawle, 128; Godolph. 150, and the article Benefit of Inventory.

TO INVEST, contracts. To lay out money in such a manner that it may bring a revenue; as, to invest money in houses or stocks; to give possession.

2. This word, which occurs frequently in the canon law, comes from the Latin word investire, which signifies to clothe or adorn and is used, in that system of jurisprudence, synonymously with enfeoff. Both words signify to put one into the possession of, or to invest with a fief, upon his taking the oath of fealty or fidelity to the prince or superior lord.

INVESTITURE, estates. The act of giving possession of lands by actual seisin When livery of seisin was made to a person by the common law he was invested with the whole fee; this, the foreign feudists and sometimes 'our own law writers call investiture, but generally speaking, it is termed by the common law writers, the seisin of the fee. 2 Bl. Com. 209, 313; Feame on Rem. 223, n. (z).

2. By the canon law investiture was made per baculum et annulum, by the ring and crosier, which were regarded as symbols of the episcopal jurisdiction. Ecclesiastical and secular fiefs were governed by the same rule in this respect that previously to investiture, neither a hishop, abbey or lay lord could take possession of a fief. conferred upon them previously to investiture by the prince.

3. Pope Gregory VI. first disputed the right of sovereigns to give investiture of ecclesiastical fiefs, A. D. 1045, but Pope Gregory VII. carried. on the dispute with much more vigor, A. D. 1073. He excommunicated the emperor, Henry IV. The Popes Victor III., Urban II. and Paul II., continued the contest. This dispute, it is said, cost Christendom sixty-three battles, and the lives of many millions of men. De Pradt.

INVIOLABILITY. That which is not to be violated. The persons of ambassadors are inviolable. See Ambassador.

INVITO DOMINO, crim. law. Without the consent of the owner.

2. In order to constitute larceny, the property stolen must be taken invito domino; this is the very essence of the crime. Cases of considerable difficulty arise when the owner has, for the purpose of detecting thieves, by himself or his agents, delivered the property taken, as to whether they are larcenies or not; the distinction seems to be this, that when the owner procures the property to be taken it is not larceny; and when he merely leaves it in the power of the defendant to execute his original purpose of taking it, in the latter case it will be considered as taken invito domino. 2 Bailey's Rep. 569; Fost. 123; 2 Russ. on Cr. 66, 105; 2 Leach, 913; 2 East, P. C. 666; Bac. Ab. Felony, C.; Alis. Prin. 273; 2 Bos. & Pull. 508; 1 Carr. & Marsh. 217; article, Taking.

INVOICE, commerce. An account of goods or merchandise sent by merchants to their correspondents at home or abroad, in which the marks of each package, with other particulars, are set forth. Marsh. Ins. 408; Dane's Ab. Index, h. t. An invoice ought to contain a detailed statement, which should indicate the nature, quantity, quality, and price of the things sold, deposited, &c. 1 Pardess. Dr. Com. n. 248. Vide Bill of Lading; and 2 Wash. C. C. R. 113; Id. 155.

INVOICE BOOK, commerce, accounts. One in which invoices are copied.

INVOLUNTARY. An involuntary act is that which is performed with constraint, (q. v.) or with repugnance, or without the will to do it. An action is involuntary then, which is performed under duress. Wolff, 5. Vide Duress.

IOWA. The name of one of the new states of the United States of America.

2. This state was admitted into the Union by the act of congress, approved the 3d day of March, 1845.

3. The powers of the government are divided into three separate departments, the legislative, the executive, and judicial and no person charged with the exercise of power properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in cases provided for in the constitution.

4. - I. The legislative authority of this state is vested in a senate and house of representatives , which are designated the general assembly of the state of Iowa.

5. - 1. Of the senate. This will be considered with reference, 1. To the qualifications of the electors. 2. The qualifications of the members. 3. The length of time for which they are elected. 4. The time of their election. 5. The number of senators.

6. - 1. Every white. male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county, in which he claims his vote twenty days, shall be entitled to vote at all elections which are how or hereafter may be authorized by law. But with this exception, that no person in the military, naval, or marine service of the United States, shall be considered a resident of this state, by being stationed in any garrison, barrack, military or naval place or station within this state. And no idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector. Art. 3.

7. - 2. Senators must be twenty-five years of age, be free white male citizens of the United States, and have been inhabitants of the state or territory one, year next preceding their election; and, at the time of their elections have an actual residence of thirty days in the county or district they may be chosen to represent. Art. 4, s. 5.

8. - 3. The senators are elected for four years. They are so classed that one-half are renewed every two years. Art. 4, s. 5.

9.-4. They are chosen every second year, on the first Monday in August. Art. 4, B. 3.

10. - 5. The number of senators; is not less than one-third, nor more than one-half the representative body. Art. 4, s. 6.

11.- 2. Of the house of representatives. This will be considered in the same order which has been observed with regard to the senate.

12. - 1. The electors qualified to vote for senators are electors of members of the house of representatives.

13. - 2. No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years; be a free male white citizen of the United States, and have been an inhabitant of the state or territory one year next preceding his election; and at the time of his election have an actual residence of thirty days in the county or district he may be chosen to represent. Art. 4, s. 4.

14. - 3. Members of the house of representatives are chosen, for two years. Art. 4, s. 3.

15.-4. They are elected at the same time that senators are elected.

16.-5. The number of representatives is not limited.

17. The two houses have respectively the following power's. Each house has power - To choose its own officers, and judge of the qualification of its members. To sit upon its adjournments; keep a journal of its proceedings and publish the same; punish members for disorderly behaviour, and, with the consent of two-thirds, expel a member but not a second time for the same offence; and shall have all other power necessary for a branch of the general assembly of a free and independent state.

18. The house of representatives has the power of impeachment, and the senate is a court for the trial of persons impeached.

>19. - II. The supreme executive power is vested in a chief magistrate, who is called the governor of the state of Iowa. Art. 5, s. 1.

20. The governor shall be elected by the qualified electors, at the time and place of voting for members of the general assembly, and hold his office for four years from the time of his installation, and until his successor shall be duly qualified. Art. 5, s. 2.

21. No person shall be eligible to the office of governor, who is not a citizen of the United States, a resident of the state two years next preceding his election, and attained the age of thirty-five years at the time of holding said election. Art. 5, s. 3.

22. Various powers are conferred on the governor among others, he shall be commander-in-chief of the militia, army, and navy of the state; transact executive business with the officers of the government; see that the laws are faithfully executed; fill vacancies by granting temporary commissions on extraordinary occasions convene the general assembly by proclamation; communicate by message with the general assembly at every session adjourn the two houses when they cannot agree upon the time of an adjournment; may grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment shall be keeper of the great seal; and sign all commissions. He is also invested with the veto power.

23. When there is a vacancy in the office of governor, or in case of his impeachment, the duties of his office shall devolve on the secretary of state; on his default, on the president of the senate and if the president cannot act, on the speaker of the house of representatives.

24. - III. The judicial power shall be vested in a supreme court, district courts, and such inferior courts as the general assembly may, from time to time, establish. Art. 6, s. 1.

25. - 1. The supreme court shall consist of a chief justice and two associates, two of whom shall be a quorum to hold court. Art. 6, s. 2.

26. The judges of the supreme court shall be elected by joint ballot of both branches of the general assembly, and shall hold their courts at such time and place as the general assembly may direct, and hold their office for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected Art. 6, s. 3.

27. The supreme court shall have appellate jurisdiction only in all eases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as tho general assembly may by law prescribe. It shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the judges of the supreme court shall be conservators of the peace throughout the state. Art. 6, s. 3.

28. - 2. The district court shall consist of a judge who shall be elected by the qualified electors of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is duly elected and qualified, and shall be ineligible to any other office during the term for which he may be elected.

29. The district court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall

be prescribed by law. The judges of the district courts shall be conservators of the peace in their respective districts. The first general assembly shall divide the state into four districts, which may be increased as the exigencies require. Art. 6, s. 4.

IPSE. He, himself; the very man.

IPSO FACTO. By the fact itself.

2. This phrase is frequently employed to convey the idea that something which has been done contrary to law is void. For example, if a married man, during the life of his wife, of which he had knowledge, should marry another woman, the latter marriage would be void ipsofacto; that is, on that fact being proved, the second marriage would be declared void ab initio.

IPSO JURE. By the act of the law itself, or by mere operation of law.

IRE AD LARGUM. To go at large; to escape, or be set at liberty. Vide Ad largum.

IRONY, rhetoric. A term derived from the Greek, which signifies dissimulation. It is a refined species of ridicule, which, under the mask of honest simplicity or ignorance, exposes the faults and errors of others, by seeming to adopt or defend them.

2. In libels, irony may convey imputations more effectually than direct assertion, and render the publication libelous. Hob. 215; Hawk. B. 1, c. 73, s. 4; 3 Chit. Cr. Law, 869, Bac. Ab. Libel, A 3.

IRREGULAR. That which is done contrary to the common rules of law; as, irregular process, which is that issued contrary to law and the common practice of the court. Vide Regular and. Irregular Process.

IRREGULAR DEPOSIT. This name is given to that kind of deposit, where the thing deposited need not be returned; as, where a man deposits, in the usual way, money in bank for safe keeping, for in this case the title to the identical money becomes vested in the bank, and he receives in its place other money.

IRREGULARITY, practice. The doing or not doing that in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done.

2. A party entitled to complain of irregularity, should except to it previously to taking any step by him in the cause; Lofft. 323, 333; because the taking of any such step is a waiver of any irregularity. 1 Bos. k Pbil. 342; 2 Smith's R. 391; 1 Taunt. R. 58; 2 Taunt. R. 243; 3 East, R. 547; 2 New R. 509; 2 Wils. R. 380.

3. The court will, on motion, set aside proceedings for irregularity. On setting aside a judgment and execution for irregularity, they have power to impose terms on the defendant, and will restrain him from bringing an action of trespass, unless a strong case of damage appears. 1 Chit. R. 133, n.; and see Baldw. R. 246. Vide 3 Chit. Pr. 509; and Regular and Irregular Process.

4. In the canon law, this term is used to signify any impediment which prevents a man from taking holy orders.

IRRELEVANT EVIDENCE. That which does not support the issue, and which) of course, must be excluded. See Relevant.

IRREPLEVISABLE, practice. This term is applied to those things which cannot legally be replevied. For example, in Pennsylvania no goods seized in execution or for taxes, can be replevied.

IRRESISTIBLE FORCE. This term is applied to such an interposition of human agency, as is, from its nature and power, absolutely uncontrollable; as the inroads of a hostile army. Story on Bailm. 25; Lois des Batim. pt. 2. c. 2, 1. It differs from inevitable accident; (q. v.) the latter being the effect of physical causes, as, lightning, storms, and the like.

IREVOCABLE. That which cannot be revoked.

2. A will may at all times be revoked by the same person who made it, he having a disposing mind; but the moment the testator is rendered incapable to make a will he can no longer revoke a former will, because he wants a disposing mind. Letters of attorney are generally revocable; but when made for a valuable consideration they become irrevocable. 7 Ves. jr. 28; 1 Caines' Cas. in Er. 16; Bac. Ab. Authority, E. Vide duthority; License; Revocation.

IRRIGATION. The act of wetting or moist ening the ground by artificial means.

2. The owner of land over which there is a current stream, is, as such, the proprietor of the current. 4 Mason's R. 400. It seems the riparian proprietor may avail himself of the river for irrigation, provided the river be not thereby materially lessened, and the water absorbed be imperceptible or trifling. Ang. W. C. 34; and vide 1 Root's R. 535; 8 Greenl. R. 266; 2 Conn. R. 584; 2 Swift's Syst. 87; 7 Mass. R. 136; 13 Mass. R. 420; 1 Swift's Dig. 111; 5 Pick. R. 175; 9 Pick. 59; 6 Bing. R. 379; 5 Esp. R. 56; 2 Conn. R. 584; Ham. N. P. 199; 2 Chit. Bl. Com. 403, n. 7; 22 Vin. Ab. 525; 1 Vin. Ab. 657; Bac. Ab. Action on the case, F. The French law coincides with our own. 1 Lois des BŠtimens, sect. 1, art. 3, page 21.

IRRITANCY. In Scotland, it is the happening of a condition or event by which a charter, contract or other deed, to which a clause irritant is annexed, becomes void. Ersk. Inst. B. 2, t. 5, n. 25. Irritancy is a kind of forfeiture. It is legal or conventional. Burt. Man. P. R. 29 8.

ISLAND. A piece of land surrounded by water.

2. Islands are in the sea or in rivers. Those in the sea are either in the open sea, or within the boundary of some country.

3. When new islands arise in the open sea, they belong to the first occupant: but when they are newly formed so near the shore as to be within the boundary of some state, they belong to that state.

4. Islands which arise in rivets when in the middle of the stream, belong in equal parts to the riparian proprietors when they arise. mostly on one side, they will belong to the riparian owners up to the middle of the stream. Bract. lib. 2, c. 2; Fleta, lib. 3, c. 2, s. 6; 2 Bl. 261; 1 Swift's Dig. 111; Schult. Aq. R. 117; Woolr. on Waters: 38; 4 Pick. R. 268; Dougl. R. 441; 10 Wend. 260; 14 S. & R. 1. For the law of Louisiana, see Civil Code, art. 505, 507.

5. The doctrine of the common law on this subject, founded on reason, seems to have been borrowed from the civil law. Vide Inst. 2, 1, 22; Dig. 41, 1, 7; Code, 7; 41, 1.

ISSINT. This is a Norman French word which signifies thus, so. It has given the name to a part of a plea, because when pleas were in that language this word was used. In actions founded on deeds, the defendant may, instead of pleading non est factum in the common form, allege any special matter which admits the execution of the writing in question, but which, nevertheless, shows that it is not in law his deed; and may conclude with and so it is not his deed; as that the writing was delivered to A B as an escrow, to be de-livered over on certain conditions, which have not been complied with, "and so it is not his act;" or that at, the time of making the writing, the defendant was a feme covert,: and so it is not her act." Bac. Ab. Pleas, H 3, I 2; Gould on Pl. c. 6, part 1, 64.

2. An example of this form of plea which is sometimes called the special general issue, occurs in 4 Rawle, Rep. 83, 84.

ISSUABLE, practice. Leading or tending to an issue. An issuable plea is one upon which the plaintiff can take issue and proceed to trial.

ISSUE, kindred. This term is of very extensive import, in its most enlarged signification, and includes all persons who have descended from a common ancestor. 17 Ves. 481; 19. Ves. 547; 3 Ves. 257; 1 Rop. Leg. 88 and see Wilmot's Notes, 314, 321. But when this word is used in a will, in order to give effect to the testator's intention it will be construed in a more restricted sense than its legal import conveys. 7 Ves. 522; 19 Ves. 73; 1 Rop. Leg. 90. Vide Bac. Ab. Curtesy of England, D; 8 Com. Dig. 473; and article Legatee, II. 4.

ISSUE, pleading. An issue, in pleading, is defined to be a single, certain and material point issuing out of the allegations of the parties, and consisting, regularly, of an affirmative and negative. In common parlance, issue also signifies the entry of the pleadings. 1 Chit. Pl. 630.

2. Issues are material when properly formed on some material point, which will decide the question in dispute between the parties; and immaterial, when formed on some immaterial fact, which though found by the verdict will not determine the merits of the cause, and would leave the court at a loss how to give judgment. 2 Saund. 319, n. 6.

3. Issues are also divided into issues in law and issues in fact. 1. An issue in law admits all the facts and rests simply upon a question of, law. It is said to consist of a single point, but by this it must be understood that such issue involves, necessarily, only a single rule or principle of law, or that it brings into question the legal sufficiency of a single fact only. It is meant that such an issue reduces the whole controversy to the single question, whether the facts confessed by the issue are sufficient in law to maintain the action or defence of the party who alleged them. 2. An issue in fact, is one in which the parties disagree as to their existence, one affirming they exist, and the other denying it. By the common law, every issue in fact, subject to some exceptions, which are noticed below, must consist of a direct affirmative allegation on the one side, and of a direct negative on the other. Co. Litt. 126, a; Bac. Ab. Pleas, &c. G 1; 5 Pet. 149; 2 Black. R. 1312; 8 T. R. 278. But it has been holden that when the defendant pleaded that he was born in France, and the plaintiff replied that he was born in England, it was sufficient to form a good issue. 1 Wils. 6; 2 Str. 1177. In this case, it will be observed, there were two affirmatives, and the ground upon which the issue was holden to be good is that the second affirmative is so contrary to the first, that the first cannot in any degree be true. The exceptions above mentioned to the rule that a direct affirmative and a direct negative are required, are the following: 1st. The general issue upon a writ of right is formed by two affirmatives: the demandant, on one side, avers that he has greater right than the tenant; and, on the other, that the tenant has a greater right than the demandant. This issue is called the mise. (q. v.) Lawes, Pl. 232; 3 Chit. Pl. 652: 3 Bl. Com. 195, 305. 2d. In an action of dower, the court merely demands the third part of acres of land,

&c., as the dower of the demandant of the endowment of A B, heretofore the hushad, &c., and the general issue is, that A B was not seised of such estate, &c., and that he could not endow the demandant thereof, &c. 2 Saund. 329, 330. This mode of negation, instead of being direct, is merely argumentative, and argumentativeness is not generally allowed in pleading.

4. Issues in fact are divided into general issues, special issues, and common issues.

5. The general issue denies in direct terms the whole declaration; as in personal actions, where the defendant pleads nil debet, that he owes the plaintiff nothing; or non culpabilis, that he is not guilty of the facts alleged in the declaration; or in real actions, where the defendant pleads nul tort, no wrong done - or nul disseisin, no disseisin committed. These pleas, and the like, are called general issues, because, by importing an absolute and general denial of all the matters alleged in the declaration, they at once put them all in issue.

6. Formerly the general issue was seldom pleaded, except where the defendant meant wholly to deny the charge alleged against him for when he meant to avoid and justify the charge, it was usual for him to set forth the particular ground of his defence as, a special plea, which appears to have been necessary' to apprize the court and the plaintiff of the particular nature and circumstances of the defendant's case, and was originally intended to keep the law and the fact distinct. And even now it is an invariable rule, that every defence which cannot be, specially pleaded, may be given in evidence at the trial upon the general issue, so the defendant is in many cases obliged to plead the particular circumstances of his defence specially, and cannot give them in evidence on that general plea. But the science of special pleading having been frequently perverted to the purposes of chicane and delay, the courts have in some instances, and the legislature in others, permitted the general issue to be pleaded, and special matter to be given in evidence under it at the trial, which at once includes the facts, the equity, and the law of the case. 3 Bl. Com. 305, 6; 3 Green. Ev. 9.

7. The special issue is when the defendant takes issue upon anly one substantial part of the declaration, and rests the weight of his case upon it; he is then said to take a special issue, in contradistinction to tho general issue, which denies and puts in issue the whole of the declaration. Com. Dig. Pleader, R 1, 2.

8. Common issue is the name given to that which is formed on the single plea of non est factum, when pleaded to an action of covenant broken. This is so called, because to an action of covenant broken there can properly be no general issue, since the plea of non est fadum, which denies the deed only, and not the breach, does not put the whole declaration in issue. 1 Chit. Pl. 482; Lawes on Pl. 113; Gould, Pl. c. 6, part 1, 7 and 10, 2.

9. Issues are formal and informal.

10. A formal issue is one which is formed according to the rules required by law, in a proper and artificial manner.

11. An informal issue is one which arises when a material allegation is traversed in an improper or artificial manner. Ab. Pleas, &c., G 2, N 5; 2 Saund. 319, a, n. 6. The defect is cured by verdict., by the statute of 32 H. VIII. c. 30.

12. Issues are also divided into actual and feigned issues.

13. An actual issue is one formed in an action brought in the regular manner, for the purpose of trying a question of right between the parties.

14. A feigned issue is one directed by a court, generally by a court exercising equitable powers, for the purpose of trying before a jury a matter in dispute between the parties. When in a court of equity any matter of fact is strongly contested, the court usually directs the matter to be tried by a jury, especially such important facts as the validity of a will, or whether A is the heir at law of B.

15. But as no jury is summoned to attend this court, the fact is usually directed to be tried in a court of law upon a feigned issue. For this purpose an action is brought in which the plaintiff by a fiction dares that he laid a wager for a sum of money with the defendant, for example, that a certain paper is the last will and testament of A; then avers it is his will, and therefore demands the money; the defendant admits the wager but avers that, it is not the will of A, and thereupon that. issue is joined, which is directed out of chancery to be tried; and thus the verdict of the jurors at law determines the fact in the court of equity. 16. These feigned issues are frequently used in the courts of law, by consent of the parties, to determine some disputed rights without the formality of pleading, and by this practice much time and expense are saved in the decision of a cause. 3 Bl. Com. 452. The consent of the court must also be previously obtained; for the trial of a feigned issue without such consent is a contempt, which will authorize the court to order the proceeding to be stayed, and punish the parties engaged. 4 T. R. 402. See Fictitious action. See, generally Bouv. Inst. Index, h. t.

ISSUE ROLL, Eng. law. The name of a record which contains an entry of the term of which the demurrer book, issue or paper book is entitled, and the, warrants of attorney supposed to have been given by the parties at the commencement of the cause, and then proceeds with the transcript of the declaration and subsequent pleadings, continuances, and award of the mode of the decision as contained in the demurrer,

issue or paper book. Steph. Pl. 98, 99. After final judgment, the issue roll is no longer called by that name, but assumes that of judgment roll. 2 Arch. Pr. 206.

ISSUES, Eng. law. The goods and profits of the lands of a defendant against whom a writ of distringas or distress infinite has been issued, taken by virtue of such writ, are called issues. 3 Bl. Com. 280; 1 Chit. Cr. Law, 351.

ISTHMUS. A tongue or strip of land between two seas. Glos. on Law, 37, book 2, tit. 3, of the Dig.

ITA EST. These words signify so it is. Among the civilians when a notary dies, leaving his register, an officer who is authorized to make official copies of his notarial acts, writes instead of the deceased notary's name, which is required, when he is living, ita est,

ITA QUOD. The name or condition in a submission which is usually introduced by these words "so as the award be made of and upon the premises," which from the first word is called the ita quod.

2. When the submission is with an ita guod, the arbitrator must make an award of all matters. submitted to him of which he had notice, or the award will be entirely void. 7 East, 81; Cro. Jac. 200; 2 Vern. 109; 1 Ca. Chan. 86; Roll. Ab. Arbitr. L. 9.

ITEM. Also; likewise; in like manner.; again; a second time. These are the various meanings of this Latin adverb. Vide Construction.

2. In law it is to be construed conjunctively, in the sense. of and, or also, in such a manner as to connect sentences. If therefore a testator bequeath a legacy to Peter payable out of a particular fund, or charged upon a particular estate, item a legacy to James, James' legacy as well as Peter's will be a charge upon the same property. 1 Atk. 436; 3 Atk. 256 1 Bro. C. C. 482; 1 Rolle's Ab. 844; 1 Mod. 100; Cro. Car. 368; Vaugh. 262; 2 Rop. on Leg. 849; 1 Salk. 234. Vide Disjunctive.

ITER. A foot way. Vide Way.

ITINERANT. Travelling or taking a journey. In England there were formerly judges called Justices itinerant, who were sent with commissions into certain counties to try causes.

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J

JACTITATION. OF MARRIAGE, Eng. eccl. law. The boasting by an individual that he or she has married another, from which it may happen that they will acquire the reputation of being married to each other.

2. The ecclesiastical courts may in such cases entertain a libel by the party injured; and, on proof of the facts, enjoin the wrong-doer to perpetual silence; and, as a punishment, make him pay the costs. 3 Bl. Com. 93; 2 Hagg. Cons. R. 423 Id. 285; 2 Chit. Pr. 459.

JACTURA. The same as jettison. (q. v.) 1 Bell's Com. 586, 5th ed.

JAIL. A prison; a place appointed by law for the detention of prisoners. A jail is an inhabited dwelling-house within the statute of New York, which makes the malicious burning of an inhabited dwelling-house to be arson. 8 John. 115; see 4 Call, 109. Vide Gaol; Prison.

JEOFAILE. This is a law French phrase, which signifies, "I am in an error; I have failed." There are certain statutes called statutes of amendment and jeofails because, where a pleader perceives any slip in the form of his proceedings, and acknowledges the error, (jeofaile,) he is at liberty by those statutes to amend it. The amendment, however, is seldom made, but the benefit is attained by the court's overlooking the exception. 3 Bl. Com. 407; 1 Saund. 228, n. 1; Doct. Pl. 287; Dane's Ab. h. t.

JEOPARDY. Peril, danger. 2. This is the meaning attached to this word used in the act establishing and regulating the post office department. The words of the act are, "or if, in effecting such robbery of the mail the first time, the offender shall wound the person having the custody thereof, or put his life in jeopardy by the use of dangerous weapons, such offender shall suffer death." 3 Story's L. U. S. 1992. Vide Baldw. R. 93-95.

3. The constitution declares that no person shall "for the same offence, be twice put in jeopardy of life and limb." The meaning of this is, that the party shall, not be tried a

second time for the same offence after he has once been convicted or acquitted of the offence charged, by the verdict of a jury, and judgment has passed thereon for or against him; but it does not mean that he shall not be tried for the offence, if the jury have been discharged from necessity or by consent, without giving any verdict; or, if having given a verdict, judgement has been arrested upon it, or a new trial has been granted in his favor; for, in such a case, his life and limb cannot judicially be said to have been put in jeopardy. 4 Wash. C. C. R. 410; 9 Wheat. R. 579; 6 Serg. & Rawle, 577; 3. Rawle, R. 498; 3 Story on the Const. §1781. Vide 2 Sumn. R. 19. This great privilege is secured by the common law. Hawk. P. C., B. 2, 35; 4 Bl. Com. 335.

4. This was the Roman law, from which it has been probably engrafted upon the common law. Vide Merl. Rep. art. Non bis in idem. Qui de crimine publico accusationem deductus est, says the Code, 9, 2, 9, ab alio super eodem crimine deferri non potest. Vide article Non bis in idem.

JERGUER, Engl. law. An officer of the custom-house, who oversees the waiters. Techn. Dict. h. t.

JETTISON, or JETSAM. The casting out of a vessel, from necessity, a part of the lading; the thing cast out also bears the same name; it differs from flotsam in this, that in the latter the goods float, while in the former they sink, and remain under water; it differ; also from ligan. (q. v.)

2. The jettson must be made for sufficient cause, and not from groundless timidity. In must be made in a case of extremity, when the ship is in danger of perishing by the fury of a storm, or is laboring upon rocks or shallows, or is closely pursued by pirates or enemies.

3. If the residue of the cargo be saved by such sacrifice, the property saved is bound to pay a: proportion of, the loss. In ascertaining such average. loss, the goods lost and saved are both to be valued at the price they would have brought at the place of delivery, on the ship's arrival there, freight, duties and other charges being deducted. Marsh. Ins. 246; 3 Kent, Com. 185 to 187; Park. Ins., 123; Poth. Chartepartie, n. 108, et suiv; Boulay-Paty, Dr. Com. tit. 13; Pardessus, Dr. Com. n. 734; 1 Ware's R. 9.

JEUX DE BOURSE, French law. This is a kind of gambling or speculation, which consists of sales and purchase's, which bind neither of the parties to deliver the things which are the object of the sale, and which are settled by paying the difference in the value of the things sold between the day of the sale, and that appointed for delivery of such things. 1 Pard. Dr. Com. n. 162.

JEWS. See De Judaismo Statutum.

JOB. By this term is understood among workmen, the whole of a thing which is to be done. In this sense it is employed in the Civil Code of Louisiana, art. 2727; "to build by plot, or to work by the job," says that article, "is to undertake a building for a certain stipulated price." See Durant. du Contr. de Louage, liv. 8, t. 8, n. 248, 263; Poth. Contr. de Louage, n. 392, 394 and Deviation.

JOBBER, commerce. One who buys end sells articles for others. Stock jobbers are those who buy, and sell stocks for others; this term is also applied to those who speculate in stocks on their own account.

JOCALIA. Jewels; this term was formerly more properly applied to those ornaments which women, although married, call their own. When these jocalia are not suitable to her degree, they are assets for the payment of debts. 1 Roll. Ab. 911. Vide Paraphernalia.

JOINDER OF ACTIONS, practice. The putting two or more causes of action in the same declaration.

2. It is a general rule, that in real actions there can never be but one count. 8 Co. 86, 87; Bac. Ab. Action, C; Com. Dig. Action, G. A count in a real, and a count in a mixed action, cannot be joined in the same declaration; nor a count in a mixed action, and a count in a personal action; nor a count in a mixed action with a count in another, as ejectment and trespass.

3. In mixed actions, there may be two counts in the same declaration; for example, waste lies upon several leases, and ejectment upon several demises and ousters. 8 Co. 87 b Poph. 24; Cro. Eliz. 290; Ow. 11. Strictly, however, ejectment at common law, is a personal action, and a count in trespass for an assault and battery, may be joined with it; for both sound in trespass, and the same judgment is applicable to both.

4. In personal actions, the use of several counts in the same declaration is quite common. Sometimes they are applied to distinct causes of actions, as upon several promissory notes; but it more frequently happens that the various counts introduced, do not really relate to different claims, but are adopted merely as so many different forms of propounding the same demand. The joinder in action depends on the form of action, rather than on the subject-matter of it; in an action against a carrier, for example, if the plaintiff declare in assumpsit, he cannot join a count in trover, as he may if he declare against him in case. 1 T. R. 277 but see 2 Caines' R. 216; 3 East, R. 70. The rule as to joinder is, that when the same plea may be pleaded, and the same judgment given on all the counts of the declaration, or when the counts are all of the same nature, and the same judgment is to be given upon them all, though the pleas be different, as in the case of debt upon bond and simple contract, they may be joined. 2

Saund. 117, c. When the same form of action may be adopted, th may join as many causes of action as he may choose, though he acquired the rights affected by different titles; but the rights of the plaintiffs, and the liabilities of the defendant, must be in his own character, or in his representative capacity, exclusively. A, plaintiff cannot sue, therefore, for a cause of, action in his own right, and another cause in his character as executor, and join them; nor can he sue the defendant for a debt due by himself, and another due, by him as executor.

5. In criminal case s, different offences may be joined in the same indictment, if of the same nature, but an indictment may be quashed, at the discretion of the court, when the counts are joined in such a manner as will confound the evidence. 1 Chit. Cr. Law, 253-255. In Pennsylvania, it has been decided that when a defendant was indicted at one session of the court for a conspiracy to cheat a third person, and at another session of the same court he was indicted for another conspiracy to cheat another person, the two bills might be tried by the same jury against the will of the defendant, provided he was not thereby deprived of any material right, as the right to challenge; whether he should be so tried or not seems to be a matter of discretion with the court. 5 S. & R. 59 12 S. R. 69. Vide Separate Trial. Vide, generally, 2 Saund. 117, b. to 117, c.; Com. Dig. Action, G; 2 Vin. Ab. 38; Bac. Ab. Actions in General, C; 13 John. R. 462; 10 John. R. 240; 11 John. R. 479; 1 John. R. 503; 3 Binn. 555; 1 Chit Pl. 196 to 205; Arch. Civ. Pl. 172 to 176; Steph. Pl. Index, h. t. Dane's Ab. h. t.

JOINDER IN DEMURRER. When a demurrer is offered by one party, the adverse party joins with him in demurrer, and the answer which he makes is called a joinder in demurrer. Co. Litt. 71 b. But this is a mere formality.

JOINDER OF ISSUE, pleadings. The act by which the parties to a cause arrive at that stage of it in their pleadings, that one asserts a fact to be so, and the other denies it. For example, when one party denies the fact pleaded by his antagonist, who has tendered the issue thus, "And this he prays may be inquired of by the country," or, "And of this he puts himself upon the country," the party denying the fact may immediately subjoin, "And the said A B does the like;" when the issue is said to be joined.

JOINDER OF PARTIES TO ACTIONS. It is a rule in actions ex contractu that all who have a legal interest in the contract, and no others, must join in action founded on a breach of such contract; whether the parties are too many or too few, it is equally fatal. 8 S. & R. 308: 4 Watts, 456; 1 Breese, 286; 6 Pick. 359. 6 Mass. 460; 2 Conn. 697; 6 Wend. 629; 2 N. & M. 70; 1 Bailey, 13; 5 Verm. 116; 3 J. J. Marsh. 165; 16 John. 34; 19 John. 213; 2 Greenl. 117; 2 Penn. 817.

2. In actions ex contractu all obligors jointly and not severally liable, and no others, must be made defendants. 1 Saund. 153, note 1; 1 Breese, 128; 11 John. 101; J. J. Marsh. 38; 2 John. 213.

3. In actions ex. delicto, when an injury is done to the property of two or more joint owners, they must join in the action. 1 Saund. 291, g; 11 Pick. 269; 12 Pick. 120; 7 Mass. 135; 13 John. 286.

4. When a tort is of such a nature that it may be committed by several, they may all be joined in an action ex delicto, or they may be sued severally. But when the tort cannot be committed jointly, as, for example, slander, two or more persons cannot be sued jointly, although they may have uttered the same words. 6 John. 32. See, generally, 3 Bouv. Inst. n. 2648, et seq.

JOINT. United, not separate; as, joint action, or one which is brought by several persons acting together; joint bond, a bond given by two or more obligors.

JOINT CONTRACT. One in which the contractors are jointly bound to perform the promise or obligation therein contained, or entitled to receive the benefit of such promise or obligation.

2. It is a general rule that a joint contract survives, whatever may be the beneficial interests of the parties under it; where a partner, covenantor, or other person entitled, having a joint interest in a contract not running with the land, dies, the right to sue survives in the other partner, &c. 1 Dall. 65, 248; Addis. on Contr. 285. And when the obligation or promise is to perform something jointly by the obligor or promissors, and one dies, the action must be brought against the survivor. Ham. on Part. 156.

3. When all the parties interested in a joint contract die, the action must be brought by the executors or administrators of the last surviving, obligee, against the executors or administrators of the last surviving obligor. Addis. on Contr. 285. See Contracts; Parties to Actions; Co-obligor.

JOINT EXECUTORS. It is proposed to consider, 1. The interest which they have in the estate of the deceased. 2. How far they are liable for each other's acts. 3. The rights of the survivor.

2. - §1. Joint executors are considered in law as but one person, representing the testator, and, therefore, the acts of any one of them, which relate either to the delivery, gift, sale, payment, possession or release of the testator's goods, are deemed, as regards the persons with whom they contract, the acts of all. Bac. Abr. h. t.; 11 Vin. Abr. 358; Com. Dig. Administration, B 12; 1 Dane's Abr. 583; 2 Litt. (Kentucky) R.

315; Godolph. 314; Dyer, 23, in marg. 16 Serg. & Rawle, 337. But an executor cannot, without the knowledge of his co-executor, confess a judgment for a claim, part of which was barred by the act of limitations, so as to bind the estate of the testator. 6 Penn. St. Rep. 267.

3. - §2. As a general rule, it may be laid down that each, executor is liable for his own wrong, or devastavit only, and not for that of his colleague. He may be rendered liable, however, for the misplaced confidence which he may have reposed in his coexecutor. As, if he signs a receipt for money, in conjunction with another executor, and he receives no part of the money, but agrees that the other, executor shall retain it, and apply it to his own use, this is his own misapplication, for which he is responsible. 1 P. Wms. 241, n. 1; 1 Sch. & Lef. 341; 2 Sch. & Lef. 231; 7 East, R. 256; 11 John. R. 16; 11 Serg. & Rawle, 71; Hardr. 314; 5 Johns. Ch. R. 283; and see 2 Bro. C. C. 116; 3 Bro. C. C. 112; 2 Penn. R. 421; Fonb. Eq. B. 2, c. 7, s. 5, n. k.

4. - §3. Upon the death of one of several joint executors, the right of administering the estate of the testator devolves upon the survivor. 3 Atk. 509 Com. Dig. Administration, B 12; Hamm. on Parties, 148.

5. In Pennsylvania, by legislative enactment, it is provided, "that where testators may devise their estates to their executors to be sold, or direct such executors to sell and convey such estates, or direct such real estate to be sold, without naming, or declaring who shall sell the same, if one or more of the executors die, it shall or may be lawful for the surviving executor to bring actions for the recovery of the possession thereof, and against trespassers thereon; to sell and "convey such real estate, or manage the same for the benefit of the persons interested therein." Act of March 12, 1800, 3 Sm. L. 433.

JOINT STOCK BANKS. In England they are a species of quasi corporations, or companies regulated by deeds of settlement; and, in this respect, the stand in the same situation as other unincorporated bodies. But they differ from the latter in this, that they are invested by certain statutes with powers and privileges usually incident to corporations. These enactments provide for the continuance of the partnership, notwithstanding a change of partners. The death, bankruptcy, or the sale by a partner of his share, does not affect the identity of the partnership; it, continues the same body, under the same name, by virtue of the act of parliament, notwithstanding these changes. 7 Geo. IV., c. 46, s. 9.

JOINT TENANTS, estates. Two or more persons to whom are granted land's or tenements to hold in fee simple, fee tail, for life, for years, or at will. 2 Black. Com. 179. The estate which they, thus hold is called an estate in joint tenancy. Vide Estate in joint tenancy; Jus accrescendi; Survivor.

JOINT TRUSTEES. Two or more persons who are entrusted with property for the benefit of one or more others.

2. Unlike joint executors, joint trustees cannot act separately, but must join both in conveyances and receipts, for one cannot sell without the others, or receive more of the consideration money, or be more a trustee than his partner. The trust having been given to the whole, it requires their joint act to do anything under it. They are not responsible for money received by their co-trustees, if the receipt be given for the mere purposes of form. But if receipts be given under circumstances purporting that, the money, though not received by both, was under the control of both, such a receipt shall charge, and the consent that the other shall misapply the money, particularly where he has it in his power to secure it, renders him responsible. 11 Serg. & Rawle, 71. See 1 Sch. & Lef. 341; 5 Johns. Ch. R. 283; Fonbl. Eq. B. 2, c. 7, s. 5; Bac. Abr. Uses and Trusts, K; 2 Bro. Ch. R. 116; 3 Bro. Ch. R. 112. In the case of the Attorney General v. Randall, a different doctrine was held. Id. pl. 9.

JOINTRESS or JOINTURESS. A woman who has an estate settled on her by her hushand, to hold during her life, if she survive him. Co. Litt. 46.

JOINTURE, estates.. A competent livelihood of freehold for the wife, of lands and tenements; to take effect in profit or possession, presently after the death of the hushand, for the life of the wife at least.

2. Jointures are regulated by the statute of 27 Hen. VIII. o. 10, commonly called the statute of uses.

3. To make a good jointure, the following circumstances must concur, namely; 1. It must take effect, in possession or profit, immediately from the death of the hushand. 2. It must be for the wife's life, or for some greater estate. 3. It must be limited to the wife herself, and not to any other person in trust for her. 4. It must be made in satisfaction for the wife's whole dower, and not of part of it only. 5. The estate limited to the wife must be expressed or averred to be, in satisfaction of her whole dower. 6. It must be made before marriage. A jointure attended with all these circumstances is binding on the widow, and is a complete bar to the claim of dower; or rather it prevents its ever arising. But there are other. modes of limiting an estate to a wife, which, Lord Coke says, are good jointures within the statute, provided the wife accepts of them after the death of the hushand. She may, however, reject them, and claim her dower. Cruise, Dig. tit. 7; 2 Bl. Com. 137; Perk. h. t. In its more enlarged sense, a jointure signifies a joint estate, limited to both hushand and. wife. 2 131. Com. 137. Vide 14 Vin. Ab. 540; Bac. Ab. h. t.; 2 Bouv. Inst. n. 1761, et seq.

JOUR. A French word, signifying day. It is used in our old law books, as, tout jours, for ever. It is also frequently employed in the composition of words, as, journal, a day book; journeyman, a man 'who works by the day; journeys account. (q. v.)

JOURNAL, mar. law. The book kept on board of a ship or other vessel, which contains an account of the ship's course, with a short history of every occurrence during the voyage. Another name for logbook. (q. v.) Chit. Law of Nat. 199. **JOURNAL,** common law. A book used among merchants, in which the contents of the waste-book are separated every month, and entered on the debtor and creditor side, for more convenient posting in the ledger.

JOURNAL, legislation. An account of the proceedings of a legislative body.

2. The Constitution of the United States, art. 1, s. 5, directs that "each house shall keep a journal of its proceedings; and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy." Vide 2 Story, Const., 301.

3. The constitutions of the several states contain similar provisions.

4. The journal of either house is evidence of the action of that house upon all matters before it. 7 Cowen, R. 613 Cowp. 17.

JOURNEYS ACCOUNT, Eng. practice. When a writ abated without any fault of the plaintiff, he was permitted to sue out a new writ, within as little time as he possibly could after abatement of the first writ, which was quasi a continuance of the first writ, and placed him in a situation in which he would have been, supposing he had still, proceeded on that writ. This was called journeys account.

2. This mode of proceeding has fallen into disuse, the practice now being to permit that writ to be quashed, and torque out another. Vide Termes de la Ley, h. t.; Bac. Ab. Abatement, Q; 14 Vin. Ab. 558; 4 Com. Dig. 714; 7 Mann. & Gr. 762.

JUDEX. This word has several significations: 1. The judge, one who declares the law, quijus dicit; one who administers justice between the parties to a cause, when lawfully submitted to him. 2. The judicial power, or the court. 3. Anciently, by judex was also understood a juror. Vide Judge.

JUDEX A Quo. A judge from whom an appeal may be taken; a judge of a court below. See A quo; 6 Mart. Lo. Rep. 520.

JUDEX AD OUEM. A judge to whom an appeal may be taken: a superior judge.

JUDGE. A public officer, lawfully appointed to decide litigated questions according to law. This, in its most extensive sense, includes all officers who are appointed to decide such questions, and not only judges properly so called, but also justices of the peace, and jurors, who are judges of the facts in issue. See 4 Dall. 229; 3 Yeates, IR. 300. In a more limited sense, the term judge signifies an officer who is so named in his commission, and who presides in some court.

2. Judges are appointed or elected, in a variety of ways, in the United States they are appointed by the president, by and with the consent of the senate; in some of the states they are appointed by the governor, the governor and senate, or by the legislature. In the United States, and some of the states, they hold their offices during good behaviour; in others, as in New York, during, good behaviour, or until they shall attain a certain age and in others for a limited term of years.

3. Impartiality is the first duty of a judge; before he gives an opinion, or sits in judgment in a cause, he ought to be certain that he has no bias for or against either of the parties; and if he has any (the slightest) interest in the cause, he is disqualified from sitting as judge; aliquis non debet esse judex in propria causa; 8 Co. 118; 21 Pick. Rep. 101; 5 Mass. 92; 13 Mass. 340; 6 Pick. R. 109; 14 S. & R. 157-8; and when he is aware of such interest, he ought himself to refuse to sit on the case. It seems it is discretionary with him whether he will sit in a cause in which he has been of counsel. 2 Marsh. 517; Coxe, 164; see 2 Binn. 454. But the delicacy which characterizes the judges in this country, generally, forbids their sitting in such a cause.

4. He must not only be impartial, but he must follow and enforce the law, whether good or bad. He is bound to declare what the law is , and not to make it; he is not an arbitrator, but an interpreter of the law. It is his duty to be patient in the investigation of the case, careful in considering it, and firm in his judgment. He ought, according to Cicero, "never to lose sight that he is a man, and that he cannot exceed the power given him by his commission; that not only power, but public confidence has been given to him; that he ought always seriously to attend not to his wishes but to the requisitions of law, of justice and religion." Cic. pro. Cluentius. A curious case of judicial casuistry is stated by Aulus Gellius Att. Noct. lib: 14, cap. 2, which may be interesting to the reader.

5. While acting within the bounds of his jurisdiction, the judge is hot responsible for any error of judgment, nor mistake he may commit as a judge. Co. Litt. 294; 2 Inst. 422; 2 Dall. R. 160; 1 Yeates, R. 443; N. & M'C. 168; 1 Day, R. 315; 1 Root, R. 211; 3 Caines, R. 170; 5 John. R. 282; 9 John. R. 395; 11 John. R. 150; 3 Marsh. R. 76; 1 South. R. 74; 1 N. H. Rep. 374; 2 Bay, 1, 69; 8 Wend. 468; 3 Marsh. R. 76,. When he acts corruptly, he may be impeached. 5 John. R. 282; 8 Cowen, R. 178; 4 Dall. R. 225.

6. A judge is not competent as a witness in a cause trying before him, for this, among other reasons, that he can hardly be deemed capable of impartially deciding on the admissibility of his own testimony, or of weighing. it against that of another. a Martln's R, N. S. 312. Vide, Com. Dig. Courts, B 4, C 2, E 1, P 16 justices, 1 1, 2, and 3; 14 Vin. Ab. 573; Bac. Ab. Courts, &c., B; 1 Kent, Com. 291; Ayl. Parerg. 309; Story, Const. Index, h. t. See U. S. Dig. Courts, I, where will be found an abstract of various decisions relating to the appointment and powers of judges in different states. Vide Eguality; Incompetency.;

JUDGE ADVOCATE. An officer who, is a member of a court martial. 2. His duties are to prosecute in the name of the United States, but he shall so far consider himself as counsel for the prisoner, after the prisoner shall have made his plea, as to object to leading questions to any of the witnesses, or any question to the prisoner, the answer to which might tend to criminate himself. He is further to swear the members of the court before they proceed upon any trial. Rules and Articles of War, art. 69, 2 Story, L. U. S. 1001; Lid. Jud. Adv. passim.

JUDGE'S NOTES. They are short statements, made by a judge on the trial of a cause, of what transpires in the course of such trial. They usually contain a statement of the testimony of witnesses; of documents offered or admitted in evidence; of offers of evidence and whether it has been received or rejected, and the like matters.

2. In general judge's notes are not evidence of what transpired at a former trial, nor can they be read to prove what a deceased witness swore to on such former trial, for they are no part of the record, and he is not officially bound to make them. But in chancery, when a new trial is ordered of an issue sent out of chancery to a court of law, and it is suggested that some of the witnesses in the former trial are of an advanced age, an order may be made that, in the event of death or inability to attend, their testimony may be read from the judge's notes. 1 Greenl. Ev. §166.

JUDGMENT, practice. The decision or sentence of the law, given by a court of justice or other competent tribunal, as the result of proceedings instituted therein, for the redress of an injury.

2. The language of judgments, therefore, is not that "it is decreed," or " resolved," by the court; but " it is considered," (consideratum est per curiam) that the plaintiff recover his debt, damages, or possession, as the case may require, or that the defendant do go without day. This implies that the judgment is not so much the decision of the court, as the sentence of the law pronounced and decreed by the court, after due deliberation and inquiry.

3. To be valid, a judicial judgment must be given by a competent judge or court, at a time and place appointed by law, and in the form it requires. A judgment would be null, if the judge had not jurisdiction of the matter; or, having such jurisdiction, he exercised it when there was no court held, or but of his district; or if be rendered a judgment before the cause was prepared for a hearing.

4. The judgment must confine itself to the question raised before the court, and cannot extend beyond it. For example, where the plaintiff sued for an injury committed on his lands by animals owned and kept carelessly by defendant, the judgment may be for damages, but it cannot command the defendant for the future to keep his cattle out of the plaintiff's land. That would be to usurp the power of the legislature. A judgment declares the rights which belong to the citizen, the law alone rules future actions. The law commands all men, it is the same for all, because it is general; judgments are particular decisions, which apply only to particular persons, and bind no others; they vary like the circumstances on which they are founded.

5. Litigious contests present to the courts facts to appreciate, agreements to be construed, and points of law to be resolved. The judgment is the result of the full examination of all these.

6. There are four kinds of judgments in civil cases, namely: 1. When the facts are admitted by the parties, but the law is disputed; as in case of judgment upon demurrer. 2. When the law is admitted, but the facts are disputed; as in, case of judgment upon a verdict. 3. When both the law and the facts are admitted by confession; as, in the case of cognovit actionem, on the part of the defendant; or nolle prosequi, on the part of the plaintiff. 4. By default of either party in the course of legal proceedings, as in the case of judgment by nihil disit, or non sum informatus, when the defendant has omitted to plead or instruct his attorney to do so, after a proper notice or in cases of judgment by non pros; or, as in case of nonsuit, when the plaintiff omits to follow up his proceedings.

7. These four species of judgments, again, are either interlocutory or final. Vide 3 Black. Com. 396; Bingh. on Judgm. 1. For the lien of judgment in the several estates, vide Lien.

8. A list of the various judgments is here given.

9. Judgment in assumpsit is either in favor of the plaintiff or defendant; when in favor of the plaintiff, it is that he recover a specified sum, assessed by a jury, or on reference to the prothonotary, or other proper officer, for the damages which he has sustained, by reason of the defendant's non-performance of his promises and undertakings, and

for full costs of suit. 1 Chit. Pl. 100. When the judgment is for the defendant, it is that he recover his costs.

10. Judgment in actions on the case for torts, when for the plaintiff, is that he recover a sum of money ascertained by a jury for his damages occasioned by the committing of the grievances complained of, and the costs of suit. 1 Ch. Pl. 147. When for the defendant, it is for costs.

11. Judgment of cassetur breve, or billa, is in cases of pleas in abatement where the plaintiff prays that his "writ" or " bill" "may be quashed, that he may sue or exhibit a better one." Steph. Pl. 130, 131, 128 Lawes, Civ. PI.

12. Judgment by confession. When instead of entering a plea, the defendant chooses to confess the action; or, after pleading; he does, at any time before trial, both confess the action and withdraw his plea or other allegations; the judgment against him, in these two cases, is called a judgment by confession or by confession relicta verificatione. Steph. Pl. 130.

13. Contradictory judgment. By this term is understood, in the state of Louisiana, a judgment which has been given after the parties have been heard, either in support of their claims, or in their defence. Code of Pract. art. 535; 11 L. R. 366, 569. A judgment is called contradictory to distinguish it from one which is rendered by default.

14. Judgment in covenant; when for the plaintiff, is that he recover an ascertained sum for his damages, which he has sustained by reason of the breach or breaches of the defendant's covenant, together with costs of suit. 1 Chitty's Plead. 116, 117. When for the defendant, the judgment, is for costs.

15. Judgment in the action of debt; when for the plaintiff, is that he recover his debt, and in general, nominal damages for the detention thereof; and in cases under the 8 and 9 Wm. III. c. 11, it is also awarded, that the plaintiff have execution for the damages sustained by the breach of a bond, conditioned for the performance of covenants; and that plaintiff recover full costs of suit. 1 Chitty's Pl. 108, 9.

16. In some penal and other particular actions the plaintiff does not, however, always recover costs. Espinasse on Pen. Act. 154: Hull. on Costs, 200; Bull. N. P. 333; 5 Johns. R. 251.

17. When the judgment is for the defendant, it is generally for costs. In some penal actions, however, neither party can recover costs, 5 Johns. R. 251.

18. Judgment by default, is a judgment rendered in consequence of tho non-appearance of the defendant, and is either by nil dicit; vide Judgment by nil dicit, or by non sum informatus; vide Judgment by non sum informatus.

19. This judgment is interlocutory in assumpsit, covenant, trespass, case, and replevin, where the sole object of the action is damages; but in debt, damages not being the principal object of the action, the plaintiff usually signs final judgment in the first instance. Vide Com. Dig. Pleader, B 11 and 12, E 42; 7 Vin. Ab. 429; Doct. Pl. 208; Grah. Pr, 631 Dane's Ab. Index, h. t.; 3 Chit. Pr. 671 to 680; Tidd's Pr. 563; 1 Lillv's Reg. 585; and article Default.

20. Judgment in the action of detinue; when for the plaintiff, is in the alternative, that he recover the goods, or the value thereof, if he cannot have the goods themselves, and his damage for the detention and costs. 1 Ch. Pl. l21, 2; 1 Dall. R. 458.

2l. Judgment in error, is a judgment rendered by a court ot error, on a record sent up, from an inferior court. These judgments are of two kinds, of affirmance and reversal. When the judgment is for the defendant in error, whether the errors assigned be in law or in fact, it is "that the former judgment be affirmed, and stand in full force and effect, the said causes and matters assigned for error notwithstanding, and that the defendant in error recover $____ for his damages, charges and costs which he hath sustained," &c. 2 Tidd's Pr. 1126; Arch. Forms, 221. When it is for the plaintiff in error, the judgment is that it be reversed or recalled. It is to be reversed for error in law, in this form, that it be reversed, annulled and altogether holden for nought." Arch. Forms, 224. For error in fact the, judgment is recalled, revocatur. 2 Tidd, Pr. 1126.

22. A final judgment is one which puts an end to the suit.

23. When the issue is one in fact, and is tried by a jury, the jury at the time that they try the issue, assess the damages, and the judgment is final in the first instance, and is that the plaintiff do recover the damages assessed.

24. When an interlocutory judgment has been rendered, and a writ of inquiry has issued to ascertain the damages, on the return of the inquisition the plaintiff is entitled to a final judgment, namely, that he recover the amount of damages so assessed. Steph. Pl. 127, 128.

25. An interlocutory judgment, is one given in the course of a cause, before final judgment. When the action sounds in damages, and the issue is an issue in law, or when any issue in fact not tried by a jury is decided in favor of the plaintiff, then the judgment is that the plaintiff ought to recover his damages without specifying their

amount; for, as there has been no trial by jury in the case, the amount of damages is not yet ascertained. The judgment is then said to be interlocutory.

26. To ascertain such damages it is the practice to issue a writ of inquiry. Steph. Pl. 127. When the action is founded on a promissory note, bond, or other writing, or any other contract by which the amount due may be readily computed, the practice is, in some courts, to refer it to the prothonotary or clerk to assess the damages.

27. There is one species of interlocutory judgment which establishes nothing but the inadequacy of the defence set up this is the judgment for the plaintiff on demurrer to a plea in abatement, by which it appears that the defendant has mistaken the law on a point which does not affect the merits of his case; and it being but reasonable that he should offer, if he can, a further defence, that judgment is that he do answer over, in technical language, judgment of respondeat ouster. (q. v.) Steph. Plead, 126; Bac. Ab. Pleas, N. 4; 2 Arch. Pr. 3.

28. Judgment of nil capiat per breve or per billam. When an issue arises upon a declaration or peremptory plea, and it is decided in favor of the defendant, the judgment is, in general, that, the plaintiff take nothing by his writ, (or bill,) and that the defendant go thereof without day, &c. This is called a judgment of nil capiat per breve, or per billam. Steph. Pl. 128.

29. Judgment by nil dicit, is one rendered against a defendant for want of a plea. The plaintiff obtains a rule on the defendant to plead within a time specified, of which he serves a notice on the defendant or his attorney; if the defendant neglect to enter a plea within the time specified, the plaintiff may sign judgment against him.

30. Judgment of nolle prosequi, is a judgment entered against the plaintiff, where, after appearance and before judgment, he says, "he will not further prosecute his suit." Steph. Pl. 130 Lawes Civ. Pl. 166.

31. Judgment of non obstante veredicto, is a judgment rendered in favor of the plaintiff, without regard to the verdict obtained by the defendant.

32. The motion for such judgment is made where after a pleading by the defendant in confession and avoidance, as, for example, a plea in bar, and issue joined thereon, and verdict found for, the defendant, the plaintiff on retrospective examination of the record, conceives that such plea was bad in substance, and might have been made the subject of demurrer on that ground. If the plea was itself substantially bad in law, of course the verdict, which merely shows it to be true in point of fact, cannot avail to entitle the defendant to judgment; while on the other hand the plea being in confession and avoidance, involves a confession of the plaintiff's declaration, and shows that he

was entitled. to maintain his action. In such case, therefore, this court will give judgment for the plaintiff, without regard to the verdict; and this, for the reasons above explained, is called a judgment upon confession. Sometimes it may be expedient for the plaintiff to move for judgment non obstante, &c., even though the verdict be in his own favor; for, if in such case as above described, he takes judgment as upon the verdict, it seems that such judgment would be erroneous, and that the only safe course is to take it as upon confession. 1 Wils. 63; Cro. Eliz, 778 2 Roll. Ab. 99. See also, Cro. Eliz. 2 1 4 6 Mod. 1 0; Str. 394; 1 Ld. Raym. 641; 8 Taunt. 413; Rast. Ent. 622; 1 Wend. 307; 2 Wend. 624; 5 Wend. 513; 4 Wend. 468; 6 Cowen, R. 225. See this Dict. Repleader, for the difference between a repleader and a judgment non obstante veredicto.

33. Judgment by non sum informatus, is one which is rendered, when instead of entering a plea, the defendant's attorney says he is not informed of any answer to be given to the action. Steph. Pl. 130.

34. Judgment of non pros. (from non prosequitur,) is one given against the plaintiff, in any class of actions, for not declaring, or replying, or surrejoining, &c., or for not entering the issue.

35. Judgment of nonsuit, Practice, is one against the plaintiff, which happens when, on trial by jury, the plaintiff, on being called or demanded, at the instance of the defendant, to be present while the jury give their verdict, fails to make his appearance.

36. In this case, no verdict is given, but the judgment of nonsuit passes against the plaintiff. So if, after issue be joined, the plaintiff neglect to bring such issue on to be tried in due time, as limited by the practice of the court, in the particular case, judgment will be also given against him for this default; and it is called judgment as in case of nonsuit. Stepb. Pl. 131.

37. After suffering a nonsuit, the plaintiff may commence another action for the same cause for which the first had been instituted.

38. In some cases, plaintiffs having obtained information in what manner the jury had agreed upon their verdict before it was delivered in court, have, when the jury were ready to give in such verdict against them, suffered a nonsuit for the purpose of commencing another action and obtaining another trial. To prevent this abuse, the legislature of Pennsylvania have provided, by the Act of March 28, 1814, 6:Reed's L. 208, that "whenever on the trial of any cause, the jury shall be ready to give in their verdict, the plaintiff shall not be called, nor shall he then be permitted to suffer a nonsuit."

39. Judgment quod computet. The name of an interlocutory judgment in an action of account render that the defendant do account, quod computet. Vide 4 Wash. C. C. R. 84; 2 Watts, R. 95; 1 Penn. R. 138.

40. Judgment quod recuperet. When an issue in law, other than one arising on a dilatory plea, or an issue in fact, is decided in favor of the plaintiff, the judgment is, that the plaintiff do recover, which is called a judgment guod recuperet. Steph. Pl. 126; Com. Dig. Abatement, I 14, I 15; 2 Arch. Pr. 3. This judgment is of two kinds, namely, interlocutory or final.

41. Judgment in replevin, is either for the plaintiff or defendant.

42. - §1. For the plaintiff. 1. When the declaration is in the detinuit, that is, where the plaintiff declares, that the chattels "were detained until replevied by the sheriff," the judgment is that he recover the damages assessed by the jury for the taking and unjust detention, or for the latter only, where the former was justifiable, as also his costs. 5 Serg. & Rawle, 133 Ham. N. P. 488.

43. - 2. If the replevin is in the detinet, that is, where the plaintiff declares that the chattels taken are " yet detained," the jury must find, 'in addition to the above, the value of the chattels, (assuming that they are still detained,) not in a gross sum, but each separate article; for tho defendant, perhaps, will restore some, in which case the plaintiff is to recover the value of the remainder. Ham. N. P. 489; Fitz. N. B. 159, b; 5 Serg. & Rawle, 130.

44. - §2. For the defendant. 1. If the replevin be abated, the judgment is, that the writ or plaint abate, and that the defendant (having avowed) have a return of the chattels.

46. - 2. When the plaintiff is nonsuited) the judgment for the defendant, at common law, is, that the chattels be restored to him, and this without his first assigning the purpose for which they were taken, because, by abandoning his suit, the plaintiff admits that he had no right to dispossess the defendant by prosecuting the replevin. The form of this judgment. is simply " to have a return, " without adding the words " to hold irreplevisable." Ham. N. P. 490.

46. As to the form of judgments in cases of nonsuit, under the 21 Hen. VIII. c. 19, and 17 Car. II. c. 7, see Ham. N. P. 490, 491; 2 Ch. Pleacd. 161; 8 Wentw. Pl. 116; 5 Serg. & Rawle, 132; 1 Saund. 195, n. 3; 2 Saund. 286, n. 5. It is still in the defendant's option in these cases, to take his judgment pro retorno habendo at common law. 5 Serg. & Rawle, 132; 1 Lev. 265; 3 T. R. 349.

47. - 3. When tho avowant succeeds upon the merits of his case, the common law judgment is, that he "have return irreplevisable," for it is apparent that he is by law entitled to keep possession of the goods. 5 Serg. & Rawle, 135; Ham. N. P. 493; 1 Chit. Pl. 162. For the form of judgments in favor of the avowant, under the last mentioned statutes, gee Ham. N. P. 494-5.

48. Judgment of respondeat ouster. When there is an issue in law, arising on a dilatory plea, and it is decided in favor of the plaintiff, the judgment is only that the defendant answer over, which is called a judgment of respondeat ouster. The pleading is accordingly resumed, and the action proceeds. Steph. Pl. 126; see Bac. Abr. Pleas, N 4; 2 Arch. Pr. 3.

49. Judgment of retraxit, is one where, after appearance and before judgment, the, plaintiff enters upon the record that he "withdraws his suit;" in such case judgment is given against him. Stepb. Pl. 130.

50. Judgment in an action on trespass, when for the plaintiff, is, that he recover the damages assessed by the jury, and the costs. For the defendant, that he recover the costs.

51. Judgment in action on the case for trover, when for the plaintiff, is, that he recover damages and costs. 1 Ch. Pl. 157, For the defendant, the judgment is, that he recover his costs.

52. Judgment of capiatur. At common law, on conviction, in a civil action, of a forcible wrong, alleged to have been committed vi et armis, &c., the defendant was obliged to pay a fine to the king, for the breach of the peace implied in the act, and a judgment of capiatur pro fine was rendered against him, under which he was liable to be arrested, and imprisoned till the fine was paid. But by the 5 W. & M. c. 12, the judgment of capiatur pro fine was abolished. Gould on Pl. §38, 82; Bac. Ab. Fines and Amercements, C 1; 1 Ld. Raym. 273, 4; Style, 346. See Judgment of misericordia,

53. Judgment of misericordia. At common law, the party to, a suit who did not prevail was punished for his unjust vexation, and therefore judgment was given against him, quod sit in misericordia pro falso clamore. Hence, when the plaintiff sued out a writ, the sheriff was obliged to take pledges of prosecution before he returned it, which when fines and amercements were considerable, were real and responsible persons, and answerable for those amercements; but now they are never levied, and the pledges are merely formal, namely, John Doe and Richard Roe. Bac. Ab. Fines, &c., C 1 1 Lord Ray. 273, 4.

54. In actions where the judgment was against the defendant, it was entered at common law, with a misericordia or a capiatur. With a misericordia in actions on contracts, with a capiatur in actions of trespass, or other forcible wrong, alleged to have been committed vi et armis. See Judgment of capiatur; Gould on Pl. c. 4, §§38, 82, 83.

55. Judgment quod partitio fiat, is a judgment, in a writ of partition, that partition be made; this is not a final judgment. The final judgment is, quod partitio facta firma et stabilis in perpetuum teneatur. Co. Litt. 169; 2 Bl. Rep. 1159.

56. Judgment quod partes replacitent. The name of a judgment given when the court award a repleader.

57. When issue is joined on an immaterial point, or a point on which the court cannot give a judgment determining the right, they award a repleader or judgment quod partes replacitent. See Bac. Ab. Pleas, &c., M; 3 Hayw. 159; Peck's R. 325. See, generally, Bouv. Inst. Index, h. t.

JUDGMENT, ARREST OF, practice. This takes place when the court withhold judgment from the plaintiff on the ground that there is some error appearing on the face of the record, which vitiates the proceedings. In consequence of such error, on whatever part of the record it may arise, from the commencement of the suit to the time when the motion in arrest of judgment is made, the court are bound to arrest the judgment.

2. It is, however, only with respect to objections apparent on the record, that such motions can be made. They cannot, in general, be made in respect to formal objections. This was formerly otherwise, and judgments were constantly arrested for matters of mere form; 3 Bl. Corn. 407; 2 Reeves, 448; but this abuse has been long remedied by certain statutes passed at different periods, called the statutes of amendment and jeofails, by the effect of which, judgments, cannot, in general, now be arrested for any objection of form. Steph. Pl. 117; see 3 Bl. Com. 393; 21 Vin. Ab. 457; 1 Sell. Pr. 496.

JUDGMENT POLL, Eng. law. A record made of the issue roll, (q. v.) which, after final judgment has been given in the cause, assumes this name. Steph. Pl. 133. Vide Issue Roll.

JUDICATURE. The state of those employed in the administration of justice, and in this sense it is nearly synonymous with judiciary. This term is also used to signify a tribunal; and sometimes it is employed to show the extent of jurisdiction, as, the

judicature is upon writs of error, &c. Com. Dig. Parliament, L 1; and see Com. Dig. Courts, A.

JUDICES PEDANEOS. Among the Romans, the praetors, and other great magistrates, did not themselves decide the actions which arose between private individuals these were submitted to judges chosen by the parties, and these judges were called judices pedaneos. In choosing them, the plaintiff had the right to nominate, and the defendant to accept or reject those nominated. Heinnee. Antiq. lib. 4, tit. b, n. 40 7 Toull. n. 353.

JUDICIAL. Belonging, or emanating from a judge, as such.

2. Judicial sales, are such as are ordered by virtue of the process of courts. 1 Supp. to Ves. jr., 129, 160; 2 Ves. jr., 50.

3. A judicial writ is one issued in the progress of the cause, in contradistinction to an original writ. 3 Bl. Com. 282.

4. Judicial decisions, are the opinions or determinations of the judges in causes before them. Hale, H. C. L. 68; Willes' R. 666; 3 Barn. & Ald. 122 4 Barn. & Adol. 207 1 H. B1. 63; 5 M. & S. 185.

5. Judicial power, the authority vested in the judges. The constitution of the United States declares, that "the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish." Art. 3, s. 1. 6. By the constitutions of the several states, the judicial power is vested in such courts as are enumerated in each respectively. See the names Of, the several states. There is nothing in the constitution of the United States to forbid or prevent the legislature of a state from exercising judicial functions; 2 Pet. R. 413; and judicial acts have occasionally been performed by the legislatures. 2 Root, R. 350; 3 Greenl. R. 334; 3 Dall. R. 386; 2 Pet. R. 660; 16 Mass. R. 328; Walk. R. 258; 1 New H. Rep. 199; 10 Yerg. R. 59; 4 Greenl. R. 140; 2 Chip., R. 77; 1 Aik. R. 314. But a state legislature cannot annul the judgments, nor determine the jurisdiction of the courts of the United States; 5 Cranch, It. 116; 2 Dall. R. 410; nor authoritatively declare what the law is, or has been, but what it shall be. 2 Cranch, R. 272; 4 Pick. R. 23. Vide Ayl. Parerg. 27; 3 M. R. 248; 4 M. R. 451; 9 M. R. 325; 6 M. R. 668; 12 M. R. 349; 3 N. S. 551; 5 N. S. 519; 1 L. R. 438 7 M. R. 325; 9 M. R. 204; 10 M. R. 1.

JUDICIAL ADMISSIONS. Those which are generally made in writing in court by the attorney of the party; they appear upon the record, as in the pleadings and the like.

JUDICIAL CONFESSIONS, criminal law. Those voluntarily made before a magistrate, or in a court, in the due course of legal proceedings. A preliminary examination, taken in writing, by a magistrate lawfully authorized, pursuant to a statute, or the plea of guilty, made in open court to an indictment, are sufficient to found a conviction upon them.

JUDICIAL CONVENTIONS. Agreements entered into in consequence of an order of court; as, for example, entering into a bond on taking out a writ of sequestration. 6 N. S. 494.

JUDICIAL MORTGAGE. In Louisiana, it is the lien resulting from judgments, whether these be rendered on contested cases, or by default, whether they be final or provisional, in favor of the person obtaining them. Civ. Code of Lo. art. 3289.

JUDICIAL SALE. A sale by authority of some competent tribunal, by an officer authorized by law for the purpose.

2. The officer who makes the sale, conveys all the rights of the defendant, or other person against whom the process has been issued, in the property sold. Under such a sale there is no warranty, either express or implied, of the thing sold. 9 Wheat. 616. When real estate is sold by the sheriff or marshal, the sale is subject to the confirmation of the court, or it may be set aside. See 4 Wash. C. C. R. 45 Wallace, 128; 4 Wash. C. C. R. 322.

JUDICIAL WRITS, Eng. practice. The capias and all other writs subsequent to the original writ not issuing out of chancery, but from the court into which the original was returnable, and being grounded on what had passed in that court in consequence of the sheriff's return, were called judicial writs, in contradistinction to the writs issued out of chancery, which were called original writs. 3 Bl. Com. 282.

JUDICIARY. That which is done while administering justice; the judges taken collectively; as, the liberties of the people are secured by a wise and independent judiciary. See Courts; and 3 Story, Const. B. 3, c. 3 8.

JUDICIUM DEI. The judgment of God. The English law formerly impiously called the judgments on trials by ordeal, by battle, and the like, the judgments of God.

JUICIO DE CONCURSO. This term is Spanish, and is used in Louisiana. It is the name of an action brought for the purpose of making a distribution of an insolvent's estate. It differs from all other actions in this important particular, that all the parties to it except the insolvent, are at once plaintiffs and defendant. Each creditor is plaintiff against the failing debtor, to recover the amount due by him, and against the co-

creditors, to diminish the amount they demand from his estate, and each is, of necessity, defendant against the opposition made by the other creditors against his demand. From the peculiar situation in which the parties are thus placed, many distinct and separate suits arise, and are decided during the pendancy of the main one, by the insolvent in which they originate. 4 N. S. 601, 3 Harr. Cond. Lo. R. 409.

JUNIOR. Younger.

2. This has been held to be no part of a man's name, but an addition by use, and a convenient distinction between a father and son of the same name. 10 Mass. R. 203 10 Paige, 170; 1 Pick. R. 388; 7 John . It. 549; 2 Caines, 164 1 Pick. 388 15 Pick. 7; 17 Pick. 200 3 Metc. 330.

3. Any matter that distinguishes persons renders the addition of junior or senior unnecessary. 1 Mod. Ent. 35; Salk. 7. But if father and son have both the same name, the father shall be, prima facie, intended, if junior be not added, or some other matter of distinction. Salk, 7; 6 Rep. 20 11 Rep. 39; Hob. 330. If father and son have the same name and addition, and the former sue the latter, the writ is abateable unless the son have the further addition of junior, or the younger. But if the father be the defendant and the son the plaintiff, there is no need of the further addition of senior, or the elder, to the name of the father. 2 Hawk. 187; Laws of Women, 380.

JUNIPERUS SABINA, med. jur. This plant is commonly called savine.

2. It is used for lawful purposes in medicine, but too frequently for the criminal intent of producing abortion, generally endangering the life of the woman. It is usually administered in powder or oil. The dose of oil for lawful purposes, for a grown person, is from two to four drops. Parr's Med. Dictionary, article Sabina. Fodere mentions a case where a large dose of powdered savine had been administered to an ignorant girl, in the seventh month of her pregnancy, which had no effect on the foetus. It was, however, near taking the life of the girl. Fodere, tome iv. p. 431. Given in sufficiently large doses, four or six grains in the form of powder, kills a dog in a few hours, and even its insertion into a wound has tho same effect. Orfila, Traite des Poisons, tome iii. p. 42. For or a form of indictment for administering savine to a woman quick with child, see 3 Chit. Cr. Law, 798. Vide 1 Beck's Med. Jur. 316,

JURA PERSONARUM. The rights and duties of persons are so called.

JURA RERUM. The rights which a man may acquire in and to such external things as are unconnected with. his person, are called jura rerum. 2 Bl. Com. 1.

JURA SUMMA IMPERII. Rights of sovereignty or supreme dominion.

JURAMENTAE CORPORALIA. Corporal oaths. These oaths are so called, because the party making oath must touch the Bible, or other thing by which he swears.

JURAMENTUM JUDICIALE. A term in the civil law. The oath called juramentum judiciale is that which the judge, of his wwn accord, defers to either of the parties.

2. It is of two kinds. 1st. That which the judge defers for the decision of the cause, and which is understood by the general name juramentum judiciale, and is sometimes called suppletory oath, juramentum suppletorium.

3. - 2d. That which the judge defers in order to fix and determine the amount of the condemnation which he ought to pronounce, and which is called juramentum in litem. Poth. on Oblig. P. 4, s. 3, art. 3.

JURAT Practice. That part of an affidavit where the officer certifies that the same was "sworn" before him.

2. The jurat is usually in the following form, namely "Sworn and subscribed before me, on the ____ day of _____, 1842, J. P. justice of the peace."

3. In some cases it has been holden that it was essential that the officer should sign the jurat, and that it should contain his addition and official description. 3 Caines, 128. But see 6 Wend. 543; 12 Wend. 223; 2 Cowen. 552 2 Wend. 283; 2 John. 479; Harr. Dig. h. t.; Am. Eq. Dig.

JURATA. A certificate placed at the bottom of an affidavit, declaring that the witness has been sworn or affirmed to the truth of the facts therein alleged. Its usual form is,: Sworn (or affirmed) before me, the ____ day of ____, 10 __." The Jurat. (q. v.)

JURATS, officers. In some English corporations, jurats are officers who have much the same power as aldermen in others. Stat. 1 Ed. IV. Stat. 2 & 3 Ed. VI. c. 30; 13 Ed. I., c. 26.

JURE. By law; by right; in right; as, jure civilis, by the civil law; jure gentium, by the law of nations; jure representationis, by right of representation; jure uxoris, in right of a wife.

JURIDICAL. Signifies used in courts of law; done in conformity to the laws of the country, and the practice which is there observed.

JURIDICAL DAYS. Dies juridici. Days in court on which the law is administered.

JURIS ET DE JURE. A phrase employed to denote conclusive presumptions of law, which cannot be rebutted by evidence. The words signify of law and from law. Best on Presumption, §17.

JURISCONSULT. One well versed in jurisprudence; a jurist: one whose profession it is to give counsel on questions of law.

JURISDICTION, Practice. A power constitutionally conferred upon a judge or magistrate, to take cognizance of, and decide causes according to law, and to carry his sentence into execution. 6 Pet. 591; 9 John. 239. The tract of land or district within which a judge or magistrate has jurisdiction, is called his territory, and his power in relation to his territory is called his territorial jurisdiction.

2. Every act of jurisdiction exercised by a judge without his territory, either by pronouncing sentence or carrying it into execution, is null. An inferior court has no jurisdiction beyond what is expressly delegated. 1 Salk. 404, n.; Gilb. C. P. 188; 1 Saund. 73; 2 Lord Raym. 1311; and see Bac. Ab. Courts, &c., C, et seq; Bac. Ab. Pleas, E 2.

3. Jurisdiction is original, when it is conferred on the court in the first instance, which is called original jurisdiction; (q. v.) or it is appellate, which is when an appeal is given from the judgment of another court. Jurisdiction is also civil, where the subject-matter to be tried is not of a criminal nature; or criminal, where the court is to punish crimes. Some courts and magistrates have both civil and criminal jurisdiction. Jurisdiction is also concurrent, exclusive, or assistant. Concurrent jurisdiction is that which may be entertained by several courts. It is a rule that in cases of concurrent jurisdictions, that which is first seized of the case shall try it to the exclusion of the other. Exclusive jurisdiction is that which has alone the power to try or determine the Suit, action, or matter in dispute. assistant jurisdiction is that which is afforded by a court of chancery, in aid of a court of law; as, for example, by a bill of discovery, by the examination of witnesses de bene esse, or out of the jurisdiction of the court; by the perpetuation of the testimony of witnesses, and the like.

4. It is the law which gives jurisdiction; the consent of, parties, cannot, therefore, confer it, in a matter which the law excludes. 1 N. & M. 192; 3 M'Cord, 280; 1 Call. 55; 1 J. S. Marsh. 476; 1 Bibb, 263; Cooke, 27; Minor, 65; 3 Litt. 332; 6 Litt. 303; Kirby, 111; 1 Breese, 32; 2 Yerg. 441; 1 Const. R. 478. But where the court has jurisdiction of the matter, and the defendant has some privilege which exempts him from the jurisdiction, he may wave the privilege. 5 Cranch, 288; 1 Pet. 449; 8 Wheat. 699; 4 W. C. C. R. 84; 4 M'Cord, 79; 4 Mass. 593; Wright, 484. See Hardin, 448; 2 Wash. 213.

5. Courts of inferior jurisdiction must act within their jurisdiction, and so it must appear upon the record. 5 Cranch, 172 Pet. C. C. R. 36; 4 Dall. 11; 2 Mass. 213; 4 Mass. 122; 8 Mass. 86; 11 Mass. 513; Pr. Dec. 380; 2 Verm. 329; 3 Verm. 114; 10 Conn. 514; 4 John. 292; 3 Yerg. 355; Walker, 75; 9 Cowen, 227; 5 Har. & John. 36; 1 Bailey, 459; 2 Bailey, 267. But the legislature may, by a general or special law, provide otherwise. Pet. C. C. R. 36. Vide 1 Salk. 414; Bac. Ab. Courts, &c., C. D; Id. Prerogative, E 6; Merlin, Rep. h. t.; Ayl. Pat. 317, and the art. Competency. As to the force of municipal law beyond the territorial jurisdiction of the state, see Wheat. Intern. Law, part a, c. 2, §7, et seq.; Story, Confl. of Laws, c. 2; Huberus, lib. 1, t. 3; 13 Mass. R. 4 Pard. Dr. Com. part. 6, t. 7, c. 2, §1; and the articles Conflict of Laws; Courts of the United States. See generally, Bouv. Inst. Index, h. t.

JURISDICTION CLAUSE. That part of a bill in chancery which is intended to give jnrisdiction of the suit to, the court, by a general averment that the' acts complained of are contrary to equity, and tend to the injury of the plaintiff, and that. he has no remedy, or not a complete remedy, without the assistance of a court of equity, is called the jurisdiction clause. Mitf. Eq. Pl. by Jeremy, 43.

2. This clause is unnecessary, for if the court appear from the bill, to have jurisdiction, the bill will be sustained without this clause; and if the court have not jurisdiction, the bill will be dismissed though the clause may be inserted. Story, Eq. Pl. §34.

JURISPRUDENCE. The science of the law. By science here, is understood that connexion of truths which is founded on principles either evident in themselves, or capable of demonstration; a collection of truths of the same kind, arranged in methodical order. In a more confined sense, jurisprudence is the practical science of giving a wise interpretation to the laws, and making a just application of them to all cases as they arise. In this sense, it is the habit of judging the same questions in the same manner, and by this course of judgments forming precedents. 1 Ayl. Pand. 3 Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 1, 12, 99; Merl. Rep. h. t.; 19 Amer. Jurist, 3.

JURIST. One well versed in the science of the law. The term i's usually applied to students and practitioners of law.

JUROR, practice. From juro, to swear; a man who is sworn or affirmed to serve on a jury.

2. Jurors are selected from citizens, and may be compelled to serve by fine; they generally receive a compensation for their services while attending court they are privileged from arrest in civil cases.

JURY. A body of men selected according to law, for the purpose of deciding some controversy.

2. This mode of trial by jury was adopted soon after the conquest of England, by William, and was fully established for the trial of civil suits in the reign of Henry II. Crabb's C. L. 50, 61. In the old French law they are called inquests or tourbes of ten men. 2 Loisel's Instit. 238, 246, 248.

3. Juries are either grand juries, (q. v.) or petit juries. The former having been treated of elsewhere, it will only be necessary to consider the latter. A petit jury consists of twelve citizens duly qualified to serve on juries, impanneled and sworn to try one or more issues of facts submitted to them, and to give a judgment respecting the same, which is called a verdict.

4. Each one of the citizens so impanneled and sworn is called a juror. Vide Trial.

5. The constitution of the United States directs, that "the trial of all crimes, except in cases of impeachment, shall be by jury;" and this invaluable institution is also, secured by the several state constitutions. The constitution of the United States also provides that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. Amendm. VII.

6. It is scarcely practicable to give the rules established in the different states to secure impartial juries; it may, however, be stated that in all, the selection of persons who are to serve on the jury is made by disinterested officers, and that out of -the lists thus made out, the jurors are selected by lot.

JURY BOX. A place set apart for the jury to sit in during the trial of a cause. **JURY LIST.** A paper containing the names of jurors impanneled to try a cause, or it contains the names of all the jurors summoned to attend court.

JUS. Law or right. This term is applied in many modern phrases. It is also used to signify equity. Story, Eq. Jur. §1; Bract, lib. 1, c. 4, p. 3; Tayl. Civ. Law, 147; Dig. 1, 1, 1.

2. The English law, like the Roman, has its jus antiquum and jus novum and jus novissimum. The jus novum may be supposed to have taken its origin about the end of the reign of Henry VII. A. D. 1509. It assumed a regular form towards the end of the reign of Charles II. A. D. 1685, and from that period the jus novissimum may be dated. Lord Coke, who was born 40 years after the death of Henry VII. is most advantageously considered as the connecting link of the jus antiquum and jus novissimum of English law. Butler's Remin.

JUS ABUTENDI. The right to abuse. By this phrase is understood the right to abuse property, or having full dominion over property. 3 Toull. n. 86.

JUS ACCRESCENDI. The right of survivorship.

2. At common law, when one of several joint tenants died, the entire tenancy or estate went to the survivors, and so on to the last survivor, who took an estate of inheritance. This right, except in estates held in trust, has been abolished by statute in Alabama, Delaware, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri Mississippi, New York, North Carolina, Pennsylvania, South-Carolina, Tennessee, and Virginia. Griff. Reg. h. t.; 1 Hill. Ab. 439, 440. In Connecticut, 1 Root, Rep. 48; 1 Swift's Dig. 102. In Louisiana, this right was never recognized. See 11 Serg. & R. 192; 2 Caines, Cas. Err. 326; 3 Verm. 543; 6 Monr. R. 15; Estate in common; Estate in joint tenancy.

JUS AD REM. property, title. This phrase is applied to designate the right a man has in relation to a thing; it is not the right in the thing itself, but only against the person who has contracted to deliver it. It is a mere imperfect or inchoate right. 2 Bl. Com. 312 Poth. Dr. de Dom. de Propriete, ch. prel. n. 1. This phrase is nearly equivalent to chose in action. 2 Wooddes. Lect. 235. See, 2 P. Wms. 491; 1 Mason, 221 1 Story, Eq. Jur. 506; 2 Story, Eq. Jur. §1215; Story, Ag. §352; and Jus in re.

JUS AQUAEDUCTUS, CIV. law. The name of a servitude which Lives to the owner of land the right to bring down water through or from the land of another, either from its source or from any other place.

2. Its privilege may be limited as to the time when it may be exercised. If the source fails, the servitude ceases, but revives when the water returns. If the water rises in, or naturally flows through the land, its proprietor cannot by any grant divert it so as to prevent it flowing to the land below. 2 Roll. Ab. 140, l. 25; Lois des Bat. part. 1, c. 3, s. 1, art. 1. But if it had been brought. into his land by artificial means, it seems it would be, strictly his property, and that it would be in his power to grant it. Dig. 8, 3, 1 & 10; 3 Burge on the Confl. of Laws, 417. Vide Rain water.; River; Water-course.

JUS CIVILE. Among the Romans by jus civile was understood the civil law, in contradistinction to the public law, or jus gentium. 1 Savigny, Dr. Rom. c. 1, §1.

JUS CIVITATIS. Among the Romans the collection of laws which are to be observed among all the members of a nation were so called. It is opposed to jus gentium, which is the law which regulates the affairs of nations among themselves. 2 Lepage, El. du Dr. ch. 5, page l.

JUS CLOACAE, civil law. The name of a servitude which requires the paity who is subject to it, to permit his neighbor to conduct the waters which fall on his grounds over those of the servient estate.

JUS DARE. To give or to make the law. Jus dare belongs to the legislature; jus dicere to the judge.

JUS DICERE. To declare the law. This word is used to explain the power which the court has to expound the law; and not to make it, jus dare.

JUS DELIBERANDI. The right of deliberating, which in some countries, where the heir may have benefit of inventory, (q. v.) is given to him to consider whether he will accept or renounce the succession.

2. In Louisiana he is allowed ten days before he is required to make his election. Civ. Code, art. 1028.

JUS DISPONENDI. The right to dispose of a thing.

JUS DUPLICATUM, property, title. When a man has the possession as well as the property of anything, he is said to have a double right, jus duplicatum. Bract. 1. 4, tr. 4, c. 4 2 Bl. Com. 199.

JUS FECIALE. Among the Romans it was that species of international law which had its foundation in the religious belief of different nations, such as the international law which now exists among the Christian people of Europe. Sav. Dr. Rom. ch. 2,

JUS FIDUCIARUM, Civil law. A right to something held in trust; for this there was a remedy in conscience. 2 Bl. Com. 328.

JUS GENTIUM. The law of nations. (q. v.) Although the Romans used these words in the sense we attach to law of nations, yet among them the sense was much more extended. Falck, Encyc. Jur. 102, n. 42.

2. Some modern writers have made a distinction between the laws of nations which have for their object the conflict between. the laws of different nations, which they call jus gentium privatum, or private international law; and those laws of nations which regulate those matters which nations, as such, have with each other, which is de nominated jus gentium publicum, or public international law. Foelix, Droit Interm. Prive, n. 14.

JUS GLADII. Supreme jurisdiction. The right to absolve from, or condemn a man to death.

JUS HABENDI. The right to have and enjoy a thing.

JUS INCOGNITUM. An unknown law. This term is applied by the civilians to obsolete laws, which, as Bacon truly observes, are unjust, for the law to be just must give warning before it strikes. Bac. Aphor. 8, s. 1: Bowy. Mod. Civ. Law, 33. But until it has become obsolete no custom can prevail against it. Vide Obsolete.

JUS LEGITIMUM, civil law. A legal right which might have been enforced by due course of law.. 2 Bl. Com. 328.

JUS MARITI, Scotch law. The right of the hushand to administer, during the marriage, his wife's goods and the rents of her heritage.

2. In the common law, by jus mariti is understood the rights of the hushand; as, jus mariti cannot attach upon a bequest to the wife, although given during coverture, until the executor has assented to the legacy. 1 Bail. Eq. R. 214.

JUS MERUM. A simple or bare right; a right to property in land, without possession, or the right of possession.

JUS PATRONATUS, eccl. law. A commission from the bishop, directed usually to his chancellor and others of competent learning, who are required to summon a jury composed of six clergymen and six laymen, to inquire into and examine who is the rightful patron. 3 Bl. Com. 246.

JUS PERSONARUM. The right of persons.

2. A branch of the law which embraces the theory of the different classes of men who exist in a state which has been formed by nature or by society; it includes particularly the theory of the ties of families, and the legal form and juridical effects of the relations subsisting between them. The Danes, the English, and the learned in this country, class under this head the relations which exist between men in a political point of view. Blackstone, among others, has adopted this classification. There seems a confusion of ideas when such matters are placed under this head. Vide Bl. Com. Book 1.

JUS PRECARIUM, civil law. A right to a thing held for another, for which there was no remedy. 2 Bl. Com. 328.

JUS POSTLIMINII, property, title. The right to claim property after re-capture. Vide, Postliminy; Marsh. Ins. 573; 1 Kent, Com. 108. Dane's Ab. Index, h. t.

JUS PROJICIENDI, Civil law. The name of a servitude; it is the right which the owner of a building has of projecting a part of his building towards the adjoining house, without resting on the latter. It is extended merely over the ground. Dig. 50, 16, 242, 1; Dig. 8, 2, 25; Dig. 8, 5, 8, 5.

JUS PROTEGENDI, civil law. The name of a servitude; it is a right by which a part of the roof or tiling of one house is made to extend over the adjoining house. Dig. 50, 16, 242, 1 Dig. 8, 2, 25; Dig. 8, 5, 8, 5.

JUS QUAESITUM. A right to ask or recover; for example, in an obligation there is a binding of the obligor, and a jus quaesitum in the obligee. 1 Bell's Com. 323, 5th ed.

JUS IN RE, property, title. The right which a man has in a thing by which it belongs to him. It is a complete and full right. Poth. Dr. de Dora. de Prop. n. 1.

2. This phrase of the civil law conveys the same idea as thing, in possession does with us. 4 Wooddes. Lect. 235; vide 2 P. Wins. 491; 1 Mason, 221; 1 Story, Eq. Jur. §506; 2 Story, Eq. Jur. §1215; Story, Ag. §352; and Jus ad rem.

JUS RELICTA, Scotch law. The right of a wife, after her hushand's death, to a third of movables, if there be children; and to one-half, if there be none.

JUS RERUM. The right of things. Its principal object is to ascertain how far a person can have a permanent dominion over things, and how that dominion is acquired. Vide Bl. Com. Book 2.

JUS STRICTUM. A Latin phrase, which signifies law interpreted without any modification, and in its utmost rigor.

JUS UTENDI. The right to use property, without destroying its substance. It is employed in contradistinction to the jus abutendi. (q. v.) 3 Toull. n. 86.

JUST. This epithet is applied to that which agrees with a given law which is the test of right and wrong. 1 Toull. prel. n. 5 Aust. Jur. 276, n. It is that which accords with the perfect rights of others. Wolff, Inst. §83; Swinb. part 1, s. 2, n. 5, and part 1, §4, n. 3. By just is also understood full and perfect, as a just weight Swinb. part 1, s. 3, U. 5.

JUSTICE. The constant and perpetual disposition to render every man his due. Just. Inst. B. 1, tit. 1. Toullier defines it to be the conformity of our actions and our will to

the law. Dr. Civ. Fr. tit. prel. n. 5. In the most extensive sense of the word, it differs little from virtue, for it includes within itself the whole circle of virtues. Yet the common distinction between them is that that which considered positively and in itself, is called virtue, when considered relatively and with respect to others, has the name of justice. But justice being in itself a part of virtue, is confined to things simply good or evil, and consists in a man's taking such a proportion of them as he ought.

2. Justice is either distributive or commutative. Distributive justice is that virtue whose object is to distribute rewards and punishments to each one according to his merits, observing a just proportion by comparing one person or fact with another, so that neither equal persons have unequal things, nor unequal persons things equal. Tr. of Eq. 3, and Toullier's learned note, Dr. Civ. Fr. tit. prel. n. 7, note.

3. Commutative justice is that virtue whose object it is to render to every one what belongs to him, as nearly as may be, or that which governs contracts. To render commutative justice, the judge must make an equality between the parties, that no one may be a gainer by another's loss. Tr. Eq. 3.

4. Toullier exposes the want of utility and exactness in this division of distributive and commutative justice, adopted in the compendium or abridgments of the ancient doctors, and prefers the division of internal and external justice; the first being a conformity of our will, and the latter a conformity of our actions to the law: their union making perfect justice. Exterior justice is the object of jurisprudence; interior justice is the object of morality. Dr. Civ. Fr. tit. prel. n. 6 et 7.

5. According to the Frederician code, part 1, book 1, tit. 2, s. 27, justice consists simply in letting every one enjoy the rights which he has acquired in virtue of the laws. And as this definition includes all the other rules of right, there is properly but one single general rule of right, namely, Give every one his own. See, generally, Puffend. Law of Nature and Nations, B. 1, c. 7, s. 89; Elementorum Jurisprudentiae Universalis, lib. 1, definito, 17, 3, 1; Gro. lib. 2, c. 11, s. 3; Ld. Bac. Read. Stat. Uses, 306; Treatise of Equity, B. 1, c. 1, s. 1.

JUSTICES. Judges. Officers appointed by a competent authority to administer justice. They are so called, because, in ancient times the Latin word for judge was justicia. This term is in common parlance used to designate justices of the peace.

JUSTICES IN EYRE. They were certain judges established if not first appointed, A. D. 1176, 22 Hen. II. England was divided into certain circuits, and three justices in eyre, or justices itinerant, as they were sometimes called, were appointed to each district, and made the circuit of the kingdom once in seven years for the purpose of trying causes. They were afterwards directed by Magna Charta, c. 12, to be sent into

every county once a year. The itinerant justices were sometimes mere justices of assize or dower, or of general gaol delivery, and the like. 3 Bl. Com. 58-9; Crabb's Eng. Law, 103-4. Vide Eire.

JUSTICES OF THE PEACE. Public officers invested with judicial powers for the purpose of preventing breaches of the peace, and bringing to punishment those who have violated the law.

2. These officers, under the Constitution of the United States and some of the states, are appointed by the executive in others, they are elected by the people, and commissioned by the executive. In some states they hold their office during good behaviour, in others for a limited period.

3. At common law, justices of the peace have a double power in relation to the arrest of wrong doers; when a felony or breach of the peace has been committed in their presence, they may personally arrest the offender, or command others to do so; and in order to prevent the riotous consequences of a tumultuous assembly, they may command others to arrest affrayers, when the affray has been committed in their presence. If a magistrate be not present when a crime is committed, before he can take a step to arrest the offender, an oath or affirmation must be made by some person cognizant of the fact that the offence has been committed, and that the person charged is the offender, or there is probable cause to believe that he has committed the offence.

4. The Constitution of the United States directs, that "no warrants shall issue, but upon probable cause, supported by oath or affirmation." Amendm. IV. After his arrest, the person charged is brought before the justice of the peace, and after bearing he is discharged, held to bail to answer to the complaint, or, for want of bail, committed to prison.

5. In some, perhaps all the United States, justices of the peace have jurisdiction in civil cases, given to them by local regulations. In Pennsylvania, their jurisdiction in cases of contracts, express or implied, extends to one hundred dollars. Vide, generally, Burn's Justice; Graydon's Justice Baches Manual of a Justice of the Peace Com. Dig. h. t.; 15 Vin. Ab. 3; Bac. Ab. h. t.; 2 Sell. Pr. 70; 2 Phil. Ev. 239; Chit. Pr. h. t.; Amer. Dig. h. t.

JUSTICIAR, or JUSTICIER. A judge, or justice the same as justiciary.

JUSTICIARII ITINERANTES, Eng. law. They were formerly justices, who were so called because they went from county to county to administer justice. They were

usually called justices in eyre, (q. v.) to distinguish them from justices residing at Westminster, who were called justicii residentes. Co. Litt. 293. Vide Itinerant.

JUSTICIARII RESIDENTES, Eng. law. They were justices or judges, who usually resided in Westminster; they were so called to distinguish them from justices in eyre. Co. Litt. 293. Vide Justiciarii Itinerantes.

JUSTICIARY, officer. Another name for a judge. In Latin, he was called justiciciarius, and in French, justicier. Not used. Bac. Ab. Courts and their Jurisdiction, A.

JUSTICIES, Eng. law. The name of a writ which acquires its name from the mandatory words which it contains, "that you do A B justice."

2. The county court has jurisdiction in cases where damages are claimed, only to a certain amount; but sometimes suits are brought there, when greater damages are claimed. In such cases, an original writ, by this name, issues out of chancery, in order to give the court jurisdiction. See 1 Saund. 74, n. 1.

JUSTIFIABLE HOMICIDE. That which is committed with the intention to kill, or to do a grievous bodily injury, under circumstances which the law holds sufficient to exculpate the person who commits it.

2. It is justifiable, 1. When a judge or other magistrate acts in obedience to the law. 2. When a ministerial officer acts in obedience to a lawful warrant, issued by a competent tribunal. 3. When a subaltern officer, or soldier, kills in obedience to the lawful commands of his superior. 4. When the party kills in lawful self-defence.

3. - §1. A judge who, in pursuance of his duty, pronounces sentence of death, is not guilty of homicide; for it is evident, that as the law prescribes the punishment of death for certain offences, it must protect those who are entrusted with its execution. A judge, therefore, who pronounces sentence of death, in a legal manner, on a legal indictment, legally brought before him, for a capital offence committed within his jurisdiction, after a lawful trial and conviction, of the defendant, is guilty of no offence.

4. - 2. Magistrates, or other officers entrusted with the preservation of the public peace, are justified in committing homicide, or giving orders which lead to it, if the excesses of a riotous assembly cannot be otherwise be repressed.

5 - §2. An officer entrusted with a legal warrant, criminal or civil, and lawffully commanded by a competent tribunal to execute it, will be justified in committing

homicide, if, in the course of advancing to discharge his duty, he be brought into such perils that, without doing so, he cannot either save his life, or discharge the duty which he is commanded by the warrant to perform. And when the warrant commands him to put a criminal to death, he is justified in obeying it.

6. - §3. A soldier on duty is justified in committing homicide, in obedience to the command of his officer, unless the command was something plainly unlawful.

7. - §4. A private individual will, in many cases, be justified in committing homicide, while acting in self-defence. See Self-defence. Vide, generally, 1 East, P. C. 219; Hawk. B. 1, c. 28, s. 1, n. 22; Allis. Prin. 126-139; 1 Russ. on Cr. 538; Bac. Ab. Murder, &c., E; 2 Wash. C. C. 515; 4 Mass. 891; 1 Hawkes, 210; 1 Coxes R. 424; 5 Yerg. 459; 9 C. & P. 22; S. C. 38 Eng. C. L. R. 20.

JUSTIFICATION. The act by which a party accused shows and maintains a good and legal reason in court, why he did the thing he is called upon to answer.

2. The subject will be considered by examining, 1. What acts are justifiable. 2. The manner of making the justification. 3. Its effects.

3. - §1. The acts to be justified are those committed with a warrant, and those committed without a warrant. 1. It is a general rule, that a warrant or execution, issued by a court haviug jurisdiction, whether the same be right or wrong, justifies the officer to whom it is directed and who is by law required to execute it, and is a complete justification to the officer for obeying its command. But when the warrant is not merely voidable, but is absolutely void, as, for want of jurisdiction in the court which issued it, or by reason of the privilege of the defendant, as in the case of the arrest of an ambassador, who cannot waive his privilege and immunities by submitting to be arrested on such warrant, the officer is no longer justified. 1 Baldw. 240; see 4 Mass. 232; 13 Mass. 286, 334; 14 Mass. 210. 2. A person may justify many acts, while acting without any authority from a court or magistrate. He may justifiably, even, take the life of an aggressor, while acting in the defence of himself, his wife, children, and servant, or for the protection of his house, when attacked with a felonious intent, or even for the protection of his personal property. See Self-defence. A man may justify what would, otherwise, have been a trespass, an entry on the land of another for various purposes; as, for example, to demand a debt due to him by the owner of the land to remove chattels which belong to him, but this entry must be peaceable; to exercise an incorporeal right; ask for lodging's at an inn. See 15 East, 615, note e; 2 Lill. Ab. 134; 15 Vin. Ab. 31; Ham. N. P. 48 to 66; Dane's Ab. Index, h. t.; Entry. It is an ancient principle of the common law, that a trespass may be justified in many cases. Thus: a man may enter on the land of another, to kill a fox or otter, which are beasts against the common profit. 11 H. VIII. 10. So, a house may be pulled down if

the adjoining one be on fire, to prevent a greater destruction. 13 H. VIII. 16, b. Tua res agitur paries cum proximus ardet. So, the suburbs of a city may be demolished in time of war, for the good of the commonwealth. 8 Ed. IV. 35, b. So, a man may enter on his neighbor to make a bulwark in defence of the realm. 21 H. VIII. b. So, a house may be broken to arrest a felon. 13 Ed. IV. 9, a; Dodd. Eng. Lawy. 219, 220. In a civil action, a man may justify a libel, or slanderous words, by proving their truth, or because the defendant had a right, upon the particular occasion, either to write and publish the writing, or to utter the words; as, when slanderous words are found in a report of a committee of congress, or in an indictment, or words of a slanderous nature are uttered in the course of debate in the legislature by a member, or at the bar, by counsel, when properly instructed by his client on the subject. See Debate; Slander; Com. Dig. Pleader, 2 L 3 to 2 L 7.

4.- §2. In general, justification must be specially pleaded, and it cannot be given in evidence under the plea of the general issue.

5. - §3. When the plea of justification is supported by the evidence, it is a complete bar to the action. Vide Excuse.

JUSTIFICATORS. A kind of compurgators, or those who, by oath, justified the innocence or oaths of others, as in the case of wagers of law.

JUSTIFYING BAIL, practice. The production of bail in court, who there justify themselves Against the exception of the plaintiff.

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KENTUCKY. The name of one of the new states of the United States of America. 2. This state was formerly a part of Virginia, and the latter state, by an act of the legislature, passed December 18, 1789, "consented that the district of Kentucky,

within the jurisdiction of the said commonwealth, and according to its actual boundaries at the time of passing the act aforesaid, should be formed into a new state." By the act of congress of February. 4, 1791, 1 Story's L. U. S. 168, congress consented that, after the first day of June, 1792, the district of Kentucky should be formed into a new state, separate from and independent of the commonwealth of Virginia. And by the second section it is enacted, that upon the aforesaid first day of June, 1792, the said new state, by the name and style of the state of Kentucky shall be received and admitted into the Union, as a new and entire member of the United States of America.

3. The constitution of this state was adopted August 17, 1799. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

4. - 1. The legislative power is vested in two distinct branches; the one styled the house of representatives, and the other the senate; and both together, the general assembly of the commonwealth of Kentucky. 1. The house of representatives is elected yearly, and consists of not less than fifty-eight, nor more than one hundred members. 2. The members of the senate are elected for four years. The senate consists of twenty-four members, at least, and for every three members above fifty-eight which shall be added to the house of representatives, one member shall be added to the senate.

5. - 2. The executive power is vested in a chief magistrate, who is styled the governor of the commonwealth of Kentucky. The governor is elected for four years. He is commander-in-chief of the army and navy of the commonwealth, except when called into actual service of the United States. He nominates, and, with the consent of the senate, appoints all officers, except those whose appointment is otherwise provided for. He is invested with the pardoning power, except in certain cases, as impeachment and treason. A lieutenant-governor is chosen at every election of governor, in the same manner, and to continue in office for the same time as the governor. He is ex officio, speaker of the senate, and acts as governor when the latter is impeached, or removed from office, or dead, or refuses to qualify, resigns, or is absent from the state.

6. - 3. The judicial power, both as to matters of law and equity, is vested in one supreme court, styled the court of appeals, and in such inferior courts as the general assembly may, from time to time, erect and establish. The judges hold their office during good behaviour.

KEY. An instrument made for shutting and opening a lock.

2. The keys of a house are considered as real estate, and descend to the heir with the inheritance. But see 5 Blackf. 417.

3. When the keys of a warehouse are delivered to a purchaser of goods locked up there, with a view of effecting a delivery of such goods, the delivery is complete. The doctrine of the civil law is the same. Dig. lib. 41, t. 1, 1. 9, 6; and lib. 18, t. 1, 1. 74.

KEY, estates. A wharf at which to land goods from, or to load them in a vessel. This word is now generally spelled Quay, from the French, quai.

KEYAGE. A toll paid for loading and unloading merchandise at a key or wharf.

KEELAGE. The right of demanding money for the bottom of ships resting in a port or harbor. The money so paid is also called keelage.

KEELS. This word is applied, in England, to vessels employed in the carriage of coals. Jacob, L. D.

KIDNAPPING. The forcible and unlawful abduction and conveying away of a man, woman, or child, from his or her home, without his or her will or consent, and sending such person away, with an intent to deprive him or her of some right. This is an offence at common law.

KILDERKIN. A measure of capacity equal to eighteen gallons. See Measure.

KINDRED. Relations by blood.

2. Nature has divided the kindred of every one into three principal classes. 1. His children, and their descendants. 2. His father, mother, and other ascendants. 3. His collateral relations; which include, in the first place, his brothers and sisters, and their descendants and, secondly, his uncles, cousins, and other relations of either sex, who have not descended from a brother or sister of the deceased. All kindred then are descendants, ascendants, or collaterals. A hushand or wife of the deceased, therefore, is not his or her kindred. 14 Ves. 372. Vide Wood's Inst. 50; Ayl. Parerg. 325; Dane's Ab. h. t.; Toll. Ex. 382, 8; 2 Chit. Bl. Com. 16, n. 59 Poth. Des Successions, c. 1, art. 3.

KING. The chief magistrate of a kingdom, vested usually with the executive power. 2. The following table of the reigns of English and British kings and queens, commencing with the Reports, is added, to assist the student in many points of chronology.

Henry III.	1216
Edward I.	1272
Edward II.	1307
Edward III.	1307
Richard II.	1377
Henry IV.	1399
Henry V.	1413
Henyv VI.	1422
Edward IV.	1461
Edward V.	1483
Richard III.	1483
Henry VII.	1485
Henry VIII.	1509
Edward VI.	1547
Mary.	1553
Elizabeth.	1558
James I.	1603
Charles I.	1625
Charles II.	1660'
James II.	1685
William III.	1689
Anne.	1702
George I.	1714
George II.	1727
George III.	1760
George IV.	1820
William IV.	1830
Victoria.	1837

Vide article Reports.

KING'S BENCH. The name of the supreme court of law in England. It is so called because formerly the king used to sit there in person, the style of the court being still coram ipso rege, before the king himself. During the reign of a queen, it is called the Queen's Bench, and during the protectorate of Cromwell, it was called the Upper Bench. It consists of a chief justices and three other judges, who are, by their office, the principal coroners and conservators of the peace. 3 Bl. Com. 41.

2. This court has jurisdiction in criminal matters, in civil causes, and is a supervisory tribunal to keep other jurisdictions within their proper bounds.

3. - 1. Its criminal jurisdiction extends over all offenders, and not only over an capital offences but also over another misdemeanors of a public nature; it being considered the custos morum of the realm. Its jurisdiction is so universal that an act of parliament appointing that all crimes of a certain denomination shall be tried before certain judges, does not exclude the jurisdiction of this court, without negative words. It may also proceed on indictments removed into that court out of the inferior courts by certiorari.

4. - 2. Its civil jurisdiction is against the officers or ministers of the court entitled to its privilege. 2 Inst. 23; 4 Inst. 71; 2 Bulstr. 123. And against prisoners for trespasses. In these last cases a declaration may be filed against them in debt, covenant or account: and this is done also upon the notion of a privilege, because the common pleas could not obtain or procure the prisoners of the king's bench to appear in their court.

5. - 3. Its supervisory powers extend, 1. To issuing writs of error to inferior jurisdictions, and affirming or reversing their judgments. 2. To issuing writs of mandamus to compel inferior officers and courts to perform the duties required of them by law. Bac. Ab. Court of King's Bench.

KINGDOM. A country where an officer called a king exercises the powers of government, whether the same be absolute or limited. Wolff, Inst. Nat. 994. In some kingdoms the executive officer may be a woman, who is called a queen.

KINTLIDGE, merc. law. This term is used by merchants and seafaring men to signify a ship's ballast. Mere. Dict.

KIRBY'S QUEST. An ancient record remaining with the remembrancer of the English Exchequer, so called from being the inquest of John De Kirby, treasurer to Edward I.

KISSING. Kissing the bible is a ceremony used in taking the corporal oath, the object being, as the canonists say, to denote the assent of the witness to the oath in the form it is imposed. The witness kisses either the whole bible, or some portion of it; or a cross in some countries. See the cerermony explained in Oughton's Ord. Tit. Consitt. on Courts, part 3, sect. 1, 3 Junkin on the Oath, 173, 180; 2 Evan's Pothier, 234.

KNAVE. A false, dishonest, or deceitful person. This signification of the word has arisen by a long perversion of its original meaning.

2. To call a man a knave has been held to be actionable. 1 Rolle's Ab. 52; 1 Freem. 277.,

KNIGHT'S FEE, old Eng. law. An uncertain measure of land, but, according to some opinions it is said to contain six hundred and eighty acres. Co. Litt. 69, a.

KNIGHT'S SERVICE, Eng. law. It was, formerly, a tenure of lands. Those who held by knight's service were called: milites qui per loricas terras suas defendunt;: soldiers who defend the country by their armor. The incidents of knight's service were. homage, fealty, warranty, wardship, marriage, reliefs, heriots, aids, escheats, and forfeiture. Vide Socage.

KNOWINGLY, pleadings. The word knowingly," or "well knowing," will supply the place of a positive averment in an indictment or declaration, that the defendant knew the facts subsequently stated; if notice or knowledge be unnecessarily stated, the allegation may be rejected as surplusage. Vide Com. Dig. Indictment, G 6; 2 Stra. 904; 2 East, 452; 1 Chit. Pl. *367; Vide Scienter.

KNOWLEDGE. Information as to a fact. 2. Many acts are perfectly innocent when the party performing them is not aware of certain circumstances attending them for example, a man may pass a counterfeit note and be guiltless, if he did not know it was so he may receive stolen goods if he were not aware of the fact that they were stolen. In these and the like cases it is the guilty knowledge which makes the crime. See, as to the manner of proving guilty knowledge, Archb. Cr. Pl. 110, 111. Vide Animal. Dog; Evidence ignorance; Scienter .

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LABEL. A narrow slip of paper or parchment, affixed to a deed or writing hanging at or out of the same. This name is also given to an appending seal.

LABOR. Continued operation; work.

2. The labor and skill of one man is frequently used in a partnership, and valued as equal to the capital of another.

3. When business has been done for another, and suit is brought to recover a just reward, there is generally contained in the declaration, a count for work and labor.

4. Where penitentiaries exist, persons who have committed crimes are condemned to be imprisoned therein at labor.

LACHES. This word, derived from the French lecher, is nearly synonymous with negligence.

2. In general, when a party has been guilty of laches in enforcing his right by great delay and lapse of time, this circumstance will at common law pre-judice, and sometimes operate in bar of a remedy which it is discretionary and not compulsory in the court to afford. In courts of equity, also delay will generally prejudice. 1 Chit. Pr. 786, and the cases there cited; 8 Com. Dig. 684; 6 Johns. Ch. R. 360.

3. But laches may be excused from, ignorance of the party's rights; 2 Mer. R. 362; 2 Ball & Beat. 104; from the obscurity of the transaction; 2 Sch. & Lef. 487; by the pendency of a suit; 1 Sch. & Lef. 413; and where the party labors under a legal disability, as insanity, coverture, infancy, and the like. And no laches can be imputed to the public. 4 Mass. Rep. 522; 3 Serg. & Rawle, 291; 4 Henn. & Munf. 57; 1 Penna. R. 476. Vide 1 Supp. to Ves. Jr. 436; 2 Id. 170; Dane's Ab. Index, h. t.; 4 Bouv. Inst. n. 3911.

LADY'S FRIEND. The name of a functioner in the British house of commons. When the husband sues for a divorce, or asks the passage of an act to divorce him from his wife, he is required to make a provision for her before the passage of the act; it is the duty of the lady's friend to see that such a provision is made. Macq. on H. & W. 213. **LAGA.** The law; Magna Carta; hence Saxon-lage, Mercen-lage, Dane-lage, &c.

LAGAN. Goods tied to a buoy and cast into the sea are so called. The same as Ligan. (q.v.)

LAIRESITE. The name of a fine imposed upon those who committed adultery or fornication. Tech. Dict. h. t.

LAITY. Those persons who do not make a part of the clergy. In the United States the division of the people into clergy and laity is not authorized by law, but is, merely conventional.

LAMB. A ram, sheep or ewe, under the age of one year. 4 Car. & P. 216; S. C. 19 Eng. Com. Law Rep. 351.

LAND. This term comprehends any found, soil or earth whatsoever, as meadows, pastures, woods, waters, marshes, furze and heath. It has an indefinite extent upwards as well as downwards; therefore land, legally includes all houses and other buildings

standing or built on it; and whatever is in a direct line between the surface and the centre of the earth, such as mines of metals and fossils. 1 Inst. 4 a; Wood's Inst. 120; 2 B1. Com. 18; 1 Cruise on Real Prop. 58. In a more confined sense, the word land is said to denote "frank tenement at the least." Shepp. Touch. 92. In this sense, then, leaseholds cannot be said to be included under the word lands. 8 Madd. Rep. 635. The technical sense of the word land is farther explained by Sheppard, in his Touch. p. 88, thus: "if one be seised of some lands in fee, and possessed of other lands for years, all in one parish, and he grant all his lands in that parish (without naming them) in fee simple or for life; by this grant shall pass no, more but the lands he hath in fee simple." It is also said that land in its legal acceptation means arable land. 11 Co. 55 a. See also Cro. Car. 293; 2 P. Wms. 458, n.; 5 Ves. 476; 20 Vin. Ab. 203.

2. Land, as above observed, includes in general all the buildings erected upon it; 9 Day, R. 374; but to this general rule there are some exceptions. It is true, that if a stranger voluntarily erect buildings on another's land, they will belong to the owner of the land, and will become a part of it; 16 Mass. R. 449; yet cases are, not wanting where it has been decided that such an erection, under peculiar circumstances, would be considered as personal property. 4 Mass. R. 514; 8 Pick. R. 283, 402; 5 Pick, R. 487; 6 N. H. Rep. 555; 2 Fairf. R. 371; 1 Dana, R. 591; 1 Burr. 144.

LAND MARK. A monument set up in order to ascertain the boundaries between two contiguous estates. For removing a land mark an action lies. 1 Tho. Co. Litt. 787. Vide Monuments.

LAND TENANT. He who actually possesses the land. He is technically called the terre-tenant. (q. v.)

LANDLORD. He who rents or leases real estate to another.

2. He is bound to perform certain duties and is entitled to certain rights, which will here be briefly considered. 1st. His obligations are, 1. To perform all the express covenants into which he has entered in making the lease. 2. To secure to the tenant the quiet enjoyment of the premises leased; but a tenant for years has no remedy against his landlord, if he be ousted by one who has no title, in that case the law leaves him to his remedy against the wrong doer. Y. B. 22 H. VI. 52 b, and 32 H. VI. 32 b; Cro. Eliz. 214; 2 Leon. 104; and see Bac. Ab. Covenant, B. But the implied covenant for quiet enjoyment may be qualified, and enlarged or narrowed according to the particular agreement of the parties; and a general covenant for quiet enjoyment does not extend to wrongful evictions or disturbances by a stranger. Y. B. 26 H. VIII. 3 b. 3. The landlord is bound by his express covenant to repair the premises, but unless he bind himself by express covenant the tenant cannot compel him to repair. 1 Saund. 320; 1 Vent. 26, 44; 1 Sed. 429; 2 Keb. 505; 1 T. R. 812; 1 Sim. R. 146.

3. His rights are, 1. To receive the rent agreed upon, and to enforce all the express covenants into which the tenant may have entered. 2. To require the lessee to treat the premises demised in such manner that no injury be done to the inheritance, and prevent waste. 3. To have the possession of the premises after the expiration of the lease. Vide, generally, Com. L. & T., B. 3, c. 1; Woodf. L. & T. ch. 10; 2 Bl. Com. by Chitty, 275, note; Bouv. Inst. Index, h. t.; 1 Supp. to Ves. Jr. 212, 246, 249; 2 Id. 232, 403; Com. Dig. Estate by Grant, G 1; 5 Com. Dig. tit. Nisi Prius Dig. page 553; 8 Com. Dig. 694; Whart. Dig. Landlord & Tenant. As to frauds between landlord and tenant, see Hov. Pr. c. 6, p. 199 to 225.

LANGUAGE. The faculty which men possess of communicating their perceptions and ideas to one another by means of articulate sounds. This is the definition of spoken language; but ideas and perceptions may be communicated without sound by writing, and this is called written language. By conventional usage certain sounds have a definite meaning in one country or in certain countries, and this is called the language of such country or countries, as the Greek, the Latin, the French or the English language. The law, too, has a peculiar language. Vide Eunom. Dial. 2; Technical.

2. On the subjugation of England by William the Conqueror, the French Norman language was substituted in all law proceedings for the ancient Saxon. This, according to Blackstone, vol. iii. p. 317, was the language of the records, writs and pleadings, until the time of Edward III. Mr. Stephen thinks Blackstone has fallen into an error, and says the record was, from the earliest period to which that document can be traced, in the Latin language. Plead. Appx. note 14. By the statute 36 Ed. III. st. 1, c. 15, it was enacted that for the future all pleas should be pleaded, shown, defended, answered, debated and judged in the English tongue; but be entered and enrolled in Latin. The Norman or law French, however, being more familiar as applied to the law, than any other language, the lawyers continued to employ it in making their notes of the trial of cases, which they afterwards published, in that barbarous dialect, under the name of Reports. After the enactment of this statute, on the introduction of paper pleadings, they followed in the language, as well as in other respects, the style of the records, which were drawn up in Latin. This technical language continued in use till the time of Cromwell, when by a statute the records were directed to be in English; but this act was repealed at the restoration, by Charles II., the lawyers finding it difficult to express themselves as well and as concisely in the vernacular as in the Latin tongue; and the language of the law continued as before till about the year 1730, when the statute of 4 Geo. II. c. 26, was passed. It provided that both the pleadings and the records should thenceforward be framed in English. The ancient terms and expressions which had been so long known in French and Latin were now literally translated into English. The translation of such terms and phrases were found to be

exceedingly ridiculous. Such terms as nisi prius, habeas corpus, fieri facias, mandamus, and the like, are not capable of an English dress with any degree of seriousness. They are equally absurd in the manner they are employed in Latin, but use and the fact that they are in a foreign language has made the absurdity less apparent.

3. By statute of 6 Geo. II., c. 14, passed two years after the last mentioned statute, the use of technical words was allowed to continue in the usual language, which defeated almost every beneficial purpose of the former statute. In changing from one language to another, many words and technical expressions were retained in the new, which belonged to the more ancient language, and not seldom they partook of both; this, to the unlearned student, has given an air of confusion, and disfigured the language of the law. It has rendered essential also the study of the Latin and French languages. This perhaps is not to be regretted, as they are the keys which open to the ardent student vast stores of knowledge. In the United States, the records, pleadings, and all law proceedings are in the English language, except certain technical terms which retain their ancient French and Latin dress.

4. Agreements, contracts, wills and other instruments, may be made in any language, and will be enforced. Bac. Ab. Wills, D 1. And a slander spoken in a foreign language, if understood by those present, or a libel published in such language, will be punished as if spoken or written in the English language. Bac. Ab. Slander, D 3; 1 Roll. Ab. 74; 6 T. R. 163. For the construction of language, see articles Construction; Interpretation; and Jacob's Intr. to the Com. Law Max. 46.

5. Among diplomatists, the French language is the one commonly used. At an early period the Latin was the diplomatic language in use in Europe. Towards the end of the fifteenth century that of Spain gained the ascendancy, in consequence of the great influence which that country then exercised in Europe. The French, since the age of Louis XIV. has become the almost universal diplomatic idiom of the civilized world, though some states use their national language in treaties and diplomatic correspondence. It is usual in these cases to annex to the papers transmitted, a translation in the language of the opposite party; wherever it is understood this comity will be reciprocated. This is the usage of the Germanic confederation, of Spain, and of the Italian courts. When nations using a common language, as the United States and Great Britain, treat with each other, such language is used in their diplomatic intercourse.

Vide, generally, 3 Bl. Com. 323; 1 Chit., Cr. Law, *415; 2 Rey, Institutions Judiciaires de l'Angleterre, 211, 212.

LANGUIDUS, practice. The name of a return made by the sheriff, when a defendant whom he has taken by virtue of process is so dangerously sick that to remove him would endanger his life or health. In that case the officer may and ought unquestionably to abstain from removing him, and may permit him to remain even in his own house, in the custody of a follower, though not named in the warrant, he keeping the key of the house in his possession the officer ought to remove him as soon is sufficiently recovered. If there be a doubt as to the state of health of the defendant, the officer should require the attendance and advice of some respectable medical man, and require him, at the peril of the consequences of misrepresentation, to certify in writing whether it be fit to remove the party, or take him to prison within the county. 3 Chit. Pr. 358. For a form of the return of languidus, see 3 Chit. P. 249; T. Chit. Forms, 53.

LAPSE, eccl. law. The transfer, by forfeiture, of a right or power to present or collate to a vacant benefice, from, a person vested with such right, to another, in consequence of some act of negligence of the former. Ayl. Parerg. 331.

LAPSED LEGACY. One which is extinguished. The extinguishment may take place for various reasons. See Legacy, Lapsed.

2. A distinction has been made between a lapsed devise of real estate and a lapsed legacy of personal estate. The real estate which is lapsed does not fall into the residue, unless so provided by the will, but descends to the heir at law; on the contrary, personal property passes by the residuary clause where it is not otherwise disposed of. 2 Bouv. Inst. 2154-6.

LARCENY, crim. law. The wrongful and fraudulent taking and carrying away, by one person, of the mere personal goods, of another, from any place, with a felonious intent to convert them to his, the taker's use, and make them his property, without the consent of the owner. 4 Wash. C. C. R. 700.

2. To constitute larceny, several ingredients are necessary. 1. The intent of the party must be felonious; he must intend to appropriate the property of another to his own use; if, therefore, the accused have taken the goods under a claim of right, however unfounded, he has not committed a larceny.

3. - 2. There must be a taking from the possession, actual or implied, of the owner; hence if a man should find goods, and appropriate them to his own use, he is not a thief on this account. Mart. and Yerg. 226; 14 John. 294; Breese, 227.

4. - 3. There must be a taking against the will of the owner, and this may be in some cases, where he appears to consent; for example, if a man suspects another of an intent

to steal his property, and in order to try him leaves it in his way, and he takes it, he is guilty of larceny. The taking must be in the county where the criminal is to be tried. 9 C. & P. 29; S. C. 38 E. C. L. R. 23; Ry. & Mod. 349. But when the taking has been in the county or state, and the thief is caught with the stolen property in another county than that where the theft was committed, he may be tried in the county where arrested with the goods, as by construction of law, there is a fresh taking in every county in which the thief carries the stolen property.

5. - 4. There must be an actual carrying away, but the slightest removal, if the goods are completely in the power of the thief, is sufficient to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair, is a sufficient asportation or carrying away.

6. - 5. The property taken must be personal property; a man cannot commit larceny of real estate, or of what is so considered in law. A familiar example will illustrate this; an apple, while hanging on the tree where it grew, is real estate, having never been separated from the freehold; it is not larceny, therefore, at common law, to pluck an apple from the tree, and appropriate it to one's own use, but a mere trespass; if that same apple, however, had been separated from the tree by the owner or otherwise, even by accident, as if shaken by the wind, and while lying on the ground it should be taken with a felonious intent, the taker would commit a larceny, because then it was personal property. In some states there are statutory provisions to punish the felonious taking of emblements or fruits of plants, while the same are hanging by the roots, and there the felony is complete, although the thing stolen is not, at common law, strictly personal property. Animals ferae naturae, while in the enjoyment of their natural liberty, are not the subjects of larceny; as, doves; 9 Pick. 15; Bee. 3 Binn. 546. See Bee; 5 N. H. Rep. 203. At common law, choses in action are not subjects of larceny. 1 Port. 33.

7. Larceny is divided in some states, into grand and petit larceny this depends upon the value of the property stolen. Vide 1 Hawk, 141 to 250, ch. 19; 4 Bl. Com. 229 to 250; Com. Dig. Justices, O 4, 5, 6, 7, 8; 2 East's P. C. 524 to 791; Burn's Justice, Larceny; Williams' Justice, Felony; 3 Chitty's Cr. Law, 917 to 992; and articles Carrying Away; Invito Domino; Robbery; Taking; Breach, 6.

LARGE. Broad; extensive; unconfined. The opposite of strict, narrow, or confined. At large, at liberty.

LAS PARTIDAS. The name of a code of Spanish law; sometimes called las siete partidas, or the seven parts, from the number of its principal divisions. It is a compilation from the civil law, the customary law of Spain, and the canon law. Such of its provisions is are applicable are in force in Louisiana, Florida, and Texas.

LASCIVIOUS CARRIAGE, law of Connecticut. An offence, ill defined, created by statute, which enacts that every person who shall be guilty of lascivious carriage and behaviour, and shall be thereof duly convicted, shall be punished by fine, not exceeding ten dollars, or by imprisonment in a common gaol, not exceeding two months, or by fine and imprisonment, or both, at the discretion of the court. This law was passed at a very early period. Though indefinite in its terms, it has received a construction so limiting it, that it may be said to punish those wanton acts between persons of different sexes, who are not married to each other, that flow from the exercise of lustful passions, and which are not otherwise punished as crimes against chastity and public decency. 2 Swift's Dig. 343; 2 Swift's Syst. 331.

2. Lascivious carriage may consist not only in mutual acts of wanton and indecent familiarity between persons of different sexes, but in wanton and indecent actions against the will, and without the consent of one of them, as if a man should forcibly attempt to pull up the clothes of a woman. 5 Day, 81.

LAST RESORT. A court of last resort, is one which decides, definitely, without appeal or writ of error, or any other examination whatever, a suit or action, or some other matter, which has been submitted to its judgment, and over which it has jurisdiction.

2. The supreme court is a court of last resort in all matters which legally come before it; and whenever a court possesses the power to decide without appeal or other examination whatever, a subject matter submitted to it, it is a court of last resort; but this is not to be understood as preventing an examination into its jurisdiction, or excess of authority, for then the judgment of a superior does not try and decide so much whether the point decided has been so done according to law, as to try the authority of the inferior court.

LAST SICKNESS. That of which a person died.

2. The expenses of this sickness are generally entitled to a preference, in payment of debts of an insolvent estate. Civ. Code of Lo. art. 3166; Purd. Ab. 393.

3. To prevent impositions, the statute of frauds requires that nuncupative wills shall be made during the testator's last sickness. Rob. on Frauds, 556; 20 John. R. 502.

LATENT, construction. That which is concealed; or which does not appear; for example, if a testator bequeaths to his cousin Peter his white horse; and at the time of making his will and at his death he had two cousins named Peter, and he owned two white horses, the ambiguity in this case would be latent, both as respects the legatee, and the thing bequeathed. Vide Bac. Max. Reg. 23, and article Ambiguity. A latent

ambiguity can only be made to appear by parol evidence, and may be explained by the same kind of proof. 5 Co. 69.

LATITAT, Eng. law. He lies hid. The name of a writ calling a defendant to answer to a personal action in the king's bench; it derives its name from a supposition that the defendant lurks and lies hid, and cannot be found in the county of Middlesex, (in which the said court is holden,) to be taken there, but is gone into some other county, and therefore requiring the sheriff to apprehend him in such other county. Fitz. N. B. 78.

LAUNCHES. Small vessels employed to carry the cargo of a large one to and from the shore; lighters. (q. v.)

2. The goods on board of a launch are at the risk of the insurers till landed. 5 N. S. 887. The duties and rights of the master of a launch are the same as those of the master of a lighter.

LAW. In its most general and comprehensive sense, law signifies a rule of action; and this term is applied indiscriminately to all kinds of action; whether animate or inanimate, rational or irrational. 1 Bl. Com. 38. In its more confined sense, law denotes the rule, not of actions in general, but of human action or conduct. In the civil code of Louisiana, art. 1, it is defined to be "a solemn expression of the legislative will." Vide Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 4; 1 Bouv. Inst. n. 1-3.

2. Law is generally divided into four principle classes, namely; Natural law, the law of nations, public law, and private or civil law. When considered in relation to its origin, it is statute law or common law. When examined as to its different systems it is divided into civil law, common law, canon law. When applied to objects, it is civil, criminal, or penal. It is also divided into natural law and positive law. Into written law, lex scripta; and unwritten law, lex non scripta. Into law merchant, martial law, municipal law, and foreign law. When considered as to their duration, laws are immutable and arbitrary or positive; when as their effect, they are prospective and retrospective. These will be separately considered.

LAW, ARBITRARY. An arbitrary law is one made by the legislator simply because he wills it, and is not founded in the nature of things; such law, for example, as the tariff law, which may be high or low. This term is used in opposition to immutable.

LAW, CANON. The canon law is a body of Roman ecclesiastical law, relative to such matters as that church either has or pretends to have the proper jurisdiction over:

2. This is compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of the holy see. All which lay in the same confusion and disorder as the Roman civil law, till about the year 1151, when one Gratian, an Italian monk, animated by the discovery of Justinian's Pandects, reduced the ecclesiastical constitutions also into some method, in three books, which he entitled Concordia discordantium canonum, but which are generally known by the name of Decretum Gratiani. These reached as low as the time of Pope Alexander III. The subsequent papal decrees to the pontificate of Gregory IX., were published in much the same method, under the auspices of that pope, about the year 1230, in five books, entiled Decretalia Gregorii noni. A sixth book was added by Boniface VIII., about the year 1298, which is called Sextus decretalium. The Clementine constitution or decrees of Clement V., were in like manner authenticated in 1317, by his successor, John XXII., who also published twenty constitutions of his own, called the Extravagantes Joannis, all of which in some manner answer to the novels of the civil law. To these have since been added some decrees of the later popes, in five books called Extravagantes communes. And all these together, Gratian's Decrees, Gregory's Decretals, the Sixth Decretals, the Clementine Constitutions, and the Extravagants of John and his successors, form the Corpus juris canonici, or body of the Roman canon law. 1 Bl. Com. 82; EncyclopÇdie, Droit Canonique, Droit Public Ecclesiastique; Dict. de Jurispr. Droit Canonique; Ersk. Pr. L. Scotl. B. 1, t. 1, s. 10. See, in general, Ayl. Par. Jur. Can. Ang.; Shelf. on M. & D. 19; Preface to Burn's Eccl. Law, by Thyrwhitt, 22; Hale's Hist. C. L. 26-29; Bell's Case of a Putative Marriage, 203; Dict. du Droit Canonique; Stair's Inst. b. 1, t. 1, 7.

LAW, CIVIL. The term civil law is generally applied by way of eminence to the civil or municipal law of the Roman empire, without distinction as to the time when the principles of such law were established or modified. In another sense, the civil law is that collection of laws comprised in the institutes, the code, and the digest of the emperor Justinian, and the novel constitutions of himself and some of his successors. Ersk. Pr. L. Scotl. B. 1, t. l, s. 9; 6 L. R. 494.

2. The Institutes contain the elements or first principles of the Roman law, in four books. The Digests or Pandects are in fifty books, and contain the opinions and writings of eminent lawyers digested in a systematical method, whose works comprised more than two thousand volumes, The new code, or collection of imperial constitutions, in twelve books; which was a substitute for the code of Theodosius. The novels or new constitutions, posterior in time to the other books, and amounting to a supplement to the code, containing new decrees of successive emperors as new questions happened to arise. These form the body of the Roman law, or corpus juris civilis, as published about the time of Justinian.

3. Although successful in the west, these laws were not, even in the lifetime of the emperor universally received; and after the Lombard invasion they became so totally neglected, that both the Code and Pandects were lost till the twelfth century, A. D. 1130; when it is said the Pandects were accidentally discovered at Amalphi, and the Code at Ravenna. But, as if fortune would make an atonement for her former severity, they have since been the study of the wisest men, and revered as law, by the politest nations.

4. By the term civil law is also understood the particular law of each people, opposed to natural law, or the law of nations, which are common to all. Just. Inst. l. 1, t. 1, §1, 2; Ersk. Pr. L. Scot. B. 1, t. 1, s. 4. In this sense it, is used by Judge Swift. See below.

5. Civil law is also sometimes understood as that which has emanated from the secular power opposed to the ecclesiastical or military.

6. Sometimes by the term civil law is meant those laws which relate to civil matters only; and in this sense it is opposed to criminal law, or to those laws which concern criminal matters. Vide Civil.

7. Judge Swift, in his System of the Laws of Connecticut, prefers the term civil law, to that of municipal law. He considers the term municipal to be too limited in its signification. He defines civil law to be a rule of human action, adopted by mankind in a state of society, or prescribed by the supreme power of the government, requiring a course of conduct not repugnant to morality or religion, productive of the greatest political happiness, and prohibiting actions contrary thereto, and which is enforced by the sanctions of pains and penalties. 1 Sw. Syst. 37. See Ayl. Pand. B. 1, t. 2, p. 6.

See, in general, as to civil law, Cooper's Justinian the Pandects; 1 Bl. Com. 80, 81; EncyclopÇdie, art. Droit Civil, Droit Romain; Domat, Les Loix Civiles; Ferriere's Dict.; Brown's Civ. Law; Halifax's Analys. Civ. Law; Wood's Civ. Law; Ayliffe's Pandects; Heinec. Elem. Jur.; Erskine's Institutes; Pothier; Eunomus, Dial. 1; Corpus Juris Civilis; Taylor's Elem. Civ. Law.

LAW, COMMON. The common law is that which derives its force and authority from the universal consent and immemorial practice of the people. It has never received the sanction of the legislature, by an express act, wbich is the criterion by which it is distinguished from the statute law. It has never been reduced to writing; by this expression, however, it is not meant that all those laws are at present merely oral, or communicated from former ages to the present solely by word of mouth, but that the evidence of our common law is contained in our books of Reports, and depends on the general practice and judicial adjudications of our courts.

2. The common law is derived from two sources, the common law of England, and the practice and decision of our own courts. In some states the English common law has been adopted by statute. There is no general rule to ascertain what part of the English common law is valid and binding. To run the line of distinction, is a subject of embarrassment to courts, and the want of it a great perplexity to the student. Kirb. Rep. Pref. It may, however, be observed generally, that it is binding where it has not been superseded by the constitution of the United States, or of the several states, or by their legislative enactments, or varied by custom, and where it is founded in reason and consonant to the genius and manners of the people.

3. The phrase "common law" occurs in the seventh article of the amendments of the constitution of the United States. "In suits at common law, where the value in controversy shall not exceed twenty dollar says that article, "the right of trial by jury shall be preserved. The "common law" here mentioned is the common law of England, and not of any particular state. 1 Gallis. 20; 1 Bald. 558; 3 Wheat. 223; 3 Pet. R. 446; 1 Bald. R. 554. The term is used in contradistinction to equity, admiralty, and maritime law. 3 Pet. 446; 1 Bald. 554.

4. The common law of England is not in all respects to be taken as that of the United States, or of the several states; its general principles are adopted only so far as they are applicable to our situation. 2 Pet, 144; 8 Pet. 659; 9 Cranch, 333; 9 S. & R. 330; 1 Blackf 66, 82, 206; Kirby, 117; 5 Har. & John. 356; 2 Aik. 187; Charlt. 172; 1 Ham. 243. See 5 Cow. 628; 5 Pet. 241; 1 Dall. 67; 1 Mass. 61; 9 Pick. 532; 3 Greenl. 162; 6 Greenl. 55; 3 Gill & John. 62; Sampson's Discourse before the Historical Society of New York; 1 Gallis. R. 489; 3 Conn. R. 114; 2 Dall. 2, 297, 384; 7 Cranch, R. 32; 1 Wheat. R. 415; 3 Wheat. 223; 1 Blackf. R. 205; 8 Pet. R. 658; 5 Cowen, R. 628; 2 Stew. R. 362.

LAW, CRIMINAL. By criminal law is understood that system of laws which provides for the mode of trial of persons charged with criminal offences, defines crimes, and provides for their punishments.

LAW, FOREIGN. By foreign laws are understood the laws of a foreign country. The states of the American Union are for some purposes foreign to each other, and the laws of each are foreign in the others. See Foreign laws.

LAW, INTERNATIONAL. The law of nature applied to the affairs of nations, commonly called the law of nations, jus gentium; is also called by some modern authors international law. Toullier, Droit Francais, tit. rel. §12. Mann. Comm. 1; Bentham. on Morals, &c., 260, 262; Wheat. on Int. Law; Foelix, Du Droit Intern. PrivÇ, n. 1.

LAW, MARTIAL Martial law is a code established for the government of the army and navy of the United States.

2. Its principal rules are to be found in the articles of war. (q. v.) The object of this code, or body of regulations is to, maintain that order and discipline, the fundamental principles of which are a due obedience of the several ranks to their proper officers, a subordination of each rank to their superiors, and the subjection of the whole to certain rules of discipline, essential to their acting with the union and energy of an organized body. The violations of this law are to be tried by a court martial. (q. v.)

3. A military commander has not the power, by declaring a district to be under martial law, to subject all the citizens to that code, and to suspend the operation of the writ of habeas corpus. 3 Mart. (Lo.) 531. Vide Hale's Hist. C. L. 38; 1 Bl. Com. 413; Tytler on Military Law; Ho. on C. M.; M'Arth. on C. M.; Rules and Articles of War, art. 64, et seq; 2 Story, L. U. S. 1000.

LAW, MERCHANT. A system of customs acknowledged and taken notice of by all commercial nations; and those customs constitute a part of the general law of the land; and being a part of that law their existence cannot be proved by witnesses, but the judges are bound to take notice of them ex officio. See Beawes' Lex Mercatoria Rediviva; Caines' Lex Mercatoria Americana; Com. Dig. Merchant, D; Chit. Comm. Law; Pardess. Droit Commercial; Collection des Lois Maritimes antÇrieure au dix hutiäme siäcle, par Dupin; Capmany, Costumbres Maritimas; II Consolato del Mare; Us et Coutumes de la Mer; Piantandia, Della Giurisprudenze Maritina Commerciale, Antica e Moderna; Valin, Commentaire sur l'Ordonnance de la Marine, du Mois d'Aoñt, 1681; Boulay-Paty, Dr. Comm.; Boucher, Institutions au Droit Maritime.

LAW, MUNICIPAL. Municipal law is defined by Mr. Justice Blackstone to be "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." This definition has been criticised, and has been perhaps, justly considered imperfect. The latter part has been thought superabundant to the first; see Mr. Christian's note; and the first too general and indefinite, and too limited in its signification to convey a just idea of the subject. See Law, civil. Mr. Chitty defines municipal law to be "a rule of civil conduct, prescribed by the supreme power in a state, commanding what shall be done or what shall not be done." 1 Bl. Com. 44, note 6, Chitty's edit.

2. Municipal law, among the Romans, was a law made to govern a particular city or province; this term is derived from the Latin municipium, which among them signified a city which was governed by its own laws, and which had its own magistrates.

LAW OF NATIONS. The science which teaches the rights subsisting between nations or states, and the obligations correspondent to those rights. Vattel's Law of Nat. Prelim. §3. Some complaints, perhaps not unfounded, have been made as to the want of exactness in the definition of this term. Mann. Comm. 1. The phrase "international law" has been proposed, in its stead. 1 Benth. on Morals and Legislation, 260, 262. It is a system of rules deducible by natural reason from the immutable principles of natural justice, and established by universal consent among the civilized inliabitants of the world; Inst. lib. 1, t. 2, §1; Dig. lib. 1, t. 1, l. 9; in order to decide all disputes, and to insure the observance of good faith and justice in that intercourse which must frequently occur between them and the individuals belonging to each or it depends upon mutual compacts, treaties, leagues and agreements between the separate, free, and independent communities.

2. International law is generally divided into two branches; 1. The natural law of nations, consisting of the rules of justice applicable to the conduct of states. 2. The positive law of nations, which consist of, 1. The voluntary law of nations, derived from the presumed consent of nations, arising out of their general usage. 2. The conventional law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts. 3. The customary law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts between themselves. Vattel, Law of Nat. Prel.

3. The various sources and evidence of the law of nations, are the following:

1. The rules of conduct, deducible by reason from the nature of society existing among independent states, which ought to be observed among nations. 2. The adjudication of international tribunals, such as prize courts and boards of arbitration. 3. Text writers of authority. 4. Ordinances or laws of particular states, prescribing rules for the conduct of their commissioned cruisers and prize tribunal's. 5. The history of the wars, negotiations, treaties of peace, and other matters relating to the public intercourse of nations. 6. Treaties of peace, alliance and commerce, declaring, modifying, or defining the pre-existing international law. Wheat. Intern. Law, pt. 1, c. 1, §14.

4. The law of nations has been divided by writers into necessary and voluntary; or into absolute and arbitrary; by others into primary and secondary, which latter has been divided into customary and conventional. Another division, which is the one more usually employed, is that of the natural and positive law of nation's. The natural law of nations consists of those rules, which, being universal, apply to all men and to all nations, and which may be deduced by the assistance of revelation or reason, as being of utility to nations, and inseparable from their existence. The positive law of nations consists of rules and obligations, which owe their origin, not to the divine or natural

law, but to human compacts or agreements, either express or unplied; that is, they are dependent on custom or convention.

5. Among the Romans, there were two sorts of laws of nations, namely, the primitive, called primarium, and the other known by the name of secundarium. The primarium, that is to say, primitive or more ancient, is properly the only law of nations which human reason suggests to men; as the worship of God, the respect and submission which children have for their parents, the attachment which citizens have for their country, the good faith which ought to be the soul of every agreement, and the like. The law of nations called secundarium, are certain usages which have been established among men, from time to time, as they have been felt to be necessary. Ayl. Pand. B. 1, t. 2, p. 6.

As to the law of, nations generally, see Vattel's Law of Nations; Wheat. on Intern. Law; Marten's Law of Nations; Chitty's Law of Nations; Puffend. Law of Nature and of Nations, book 3; Burlamaqui's Natural Law, part 2, c. 6; Principles of Penal Law, ch. 13; Mann. Comm. on the Law of Nations; Leibnitz, Codex Juris Gentium Diplomaticus; Binkershoek, Quaestionis Juris Publici, a translation of the first book of which, made by Mr. Duponceau, is published in the third volume of Hall's Law Journal; Kuber, Droit des Gens Modeme de I'Europe; Dumont, Corps Diplomatique; Mably, Droit Public de l'Europe; Kent's Comm. Lecture 1.

LAW OF NATURE. The law of nature is that which God, the sovereign of the universe, has prescribed to all men, not by any formal promulgation, but by the internal dictate of reason alone. It is discovered by a just consideration of the agreeableness or disagreeableness of human actions to the nature of man; and it comprehends all the duties which we owe either to the Supreme Being, to ourselves, or to our neighbors; as reverence to God, self-defence, temperance, honor to our parents, benevolence to all, a strict adherence to our engagements, gratitude, and the like. Erskines Pr. of L. of Scot. B. 1, t. 1, s. 1. See Ayl. Pand. tit. 2, p. 5; Cicer. de Leg. lib. 1.

2. The primitive laws of nature may be reduced to six, namely: 1. Comparative sagacity, or reason. 2. Self-love. 3. The attraction of the sexes to each other. 4. The tendemess of parents towards their children. 5. The religious sentiment. 6. Sociability.

3. - 1. When man is properly organized, he is able to discover moral good from moral evil; and the study of man proves that man is not only an intelligent, but a free being, and he is therefore responsible for his actions. The judgment we form of our good actions, produces happiness; on the contrary the judgment we form of our bad actions produces unhappiness.

4. - 2. Every animated being is impelled by nature to his own preservation, to defend his life and body from injuries, to shun what may be hurtful, and to provide all things requisite to his existence. Hence the duty to watch over his own preservation. Suicide and duelling are therefore contrary to this law; and a man cannot mutilate himself, nor renounce his liberty.

5. - 3. The attraction of the sexes has been provided for the preservation of the human race, and this law condemns celibacy. The end of marriage proves that polygamy, (q. v.) and polyendry, (q. v.) are contrary to the law of nature. Hence it follows that the husband and wife have a mutual and exclusive right over each other.

6. - 4. Man from his birth is wholly unable to provide for the least of his necessities; but the love of his parents supplies for this weakness. This is one of the most powerful laws of nature. The principal duties it imposes on the parents, are to bestow on the child all the care its weakness requires, to provide for its necessary food and clothing, to instruct it, to provide for its wants, and to use coercive means for its good, when requisite.

7. - 5. The religious sentiment which leads us naturally towards the Supreme Being, is one of the attributes which belong to humanity alone; and its importance gives it the rank of the moral law of nature. From this sentiment arise all the sects and different forms of worship among men.

8. - 6. The need which man feels to live in society, is one of the primitive laws of nature, whence flow our duties and rights; and the existence of society depends upon the condition that the rights of all shall be respected. On this law are based the assistance, succors and good offices which men owe to each other, they being unable to provide each every thing for himself.

LAW, PENAL. One which inflicts a penalty for a violation of its enactment.

LAW, POSITIVE. Positive law, as used in opposition to natural law, may be considered in a threefold point of view. 1. The universal voluntary law, or those rules which are presumed to be law, by the uniform practice of nations in general, and by the manifest utility of the rules themselves. 2. The customary law, or that which, from motives of convenience, has, by tacit, but implied agreement, prevailed, not generally indeed among all nations, nor with so permanent a utility as to become a portion of the universal voluntary law, but enough to have acquired a prescriptive obligation among certain states so situated as to be mutually benefited by it. 1 Taunt. 241. 3. The conventional law, or that which is agreed between particular states by express treaty, a law binding on the parties among whom such treaties are in force. 1 Chit. Comm. Law, 28.

LAW, PRIVATE. An act of the legislature which relates to some private matters, which do not concern the public at large.

LAW, PROSPECTIVE. One which provides for, and regulates the future acts of men, and does not interfere in any way with what has past.

LAW, PUBLIC. A public law is one in which all persons have an interest.

LAW, RETROSPECTIVE. A retrospective law is one that is to take effect, in point of time, before it was passed.

2. Whenever a law of this kind impairs the obligation of contracts, it is void. 3 Dall. 391. But laws which only vary the remedies, divest no right, but merely cure a defect in proceedings otherwise fair, are valid. 10 Serg. & Rawle, 102, 3; 15 Serg. & Rawle, 72. See Ex post facto.

LAW, STATUTE. The written will of the legislature, solemnly expressed according to the forms prescribed by the constitution; an act of the legislature. See Statute.

LAW, UNWRITTEN, or lex non scripta. All the laws which do not come under the definition of written law; it is composed, principally, of the law of nature, the law of nations, the common law, and customs.

LAW, WRITTEN, or lex scripta. This consists of the constitution of the United States the constitutions of the several states the acts of the different legislatures, as the acts of congress, and of the legislatures of the several states, and of treaties. See Statute.

LAWFUL. That which is not forbidden by law. Id omne licitum est, quod non est legibus prohibitum, quamobrem, quod, lege permittente, fit, poenam non meretur. To be valid a contract must be lawful.

LAWLESS. Without law; without lawful control.

LAWS EX POST FACTO. Those which are made to punish actions committed before the existence of such laws, and which had not been declared crimes by preceding laws. Declar. of Rights, Mass. part 1, s. 24 Declar. of Rights, Maryl. art. 15. By the constitution of the United States and those of the several states, the legislatures are forbidden to pass ex post facto laws. Const. U. S. art. 1, s. 10, subd. 1.

2. There is a distinction between ex post facto laws and retrospective laws; every ex post facto law must necessarily be retrospective, but every retro-spective law is not an ex post facto law; the former only are prohibited.

3. Laws under the following circumstances are to be considered ex post facto laws, within the words and intents of the prohibition 1st. Every law that makes an act done before the passing of the law, and which was innocent when done, criminal, and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. 4th. Every law that alters the legal rules of evidence and receives less, or different testimony, than the law required at the time of the commission of the offence, in order to convict the offender. 3 Dall. 390.

4. The policy, the reason and humanity of the prohibition against passing ex post facto laws, do not extend to civil cases, to cases that merely affect the private property of citizens. Some of the most necessary acts of legislation are, on the contrary, founded upon the principles that private rights must yield to public exigencies. 3 Dall. 400; 8 Wheat. 89; see 1 Cranch, 109; 1 Gall. Rep. 105; 9 Cranch, 374; 2 Pet. S. C. R. 627; Id. 380; Id. 523.

LAWS OF THE TWELVE TABLES. Laws of ancient Rome composed in part from those of Solon, and other Greek legislators, and in part from the unwritten laws or customs of the Romans. These laws first appeared in the year of Rome 303, inscribed on ten plates of brass. The following year two others were added, and the entire code bore the name of the Laws of the Twelve Tables. The principles they contained became the source of all the Roman law, and serve to this day as the foundation of the jurisprudence of the greatest part of Europe.

See a fragment of the Law of the twelve Tables in Coop. Justinian, 656; Gibbon's Rome, c. 44.

LAWS OF THE HANSE TOWNS. A code of maritime laws known as the laws of the Hanse towns, or the ordinances of the Hanseatic towns, was first published in German, at Lubec, in 1597. In an assembly of deputies from the several towns held at Lubec, these laws were afterwards, May 23, 1614, revised and enlarged. The text of this digest, and a Latin translation, are published with a commentary by Kuricke; and a French translation has been given by Cleirac.

LAWS OF OLERON, maritime law. A code of sea laws of deserved celebrity. It was originally promulgated by Eleonor, duchess of Guienne, the mother of Richard the First of England. Returning from the Holy Land, and familiar with the maritime

regulations of the Archipelago, she enacted these laws at Oleron in Guienne, and they derive their title from the place of their publication. The language in which they were originally written is the Gascon, and their first object appears to have been the commercial operations of that part of France only. Richard I., of England, who inherited the dukedom of Guienne from his mother, improved this code, and introduced it into England. Some additions were made to it by King John; it was prormulgated anew in the 50th year of Henry III., and received its ultimate confirmation in the 12th year of Edward III. Brown's Civ. and Adm. Law, vol. ii. p. 40.

2. These laws are inserted in the beginning of the book entitled "Us et Coutumes de la Mer," with a very excellent commentary on each section by Clairac, the learned editor. A translation is to be found in the Appendix to 1 Pet. Adm. Dec.; Marsh. Ins. B. 1, c. 1, p. 16. See Laws of Wisbuy: Laws of the Hanse Towns; Code

LAWS OF WISBUY, maritime law. A code of sea laws established by "the merchants and masters of the magnificent city of Wisbuy." This city was the ancient capital of Gothland, an island in the Baltic sea, anciently much celebrated for its commerce and wealth, now an obscure and inconsiderable place. Malyne, in his collection of sea laws, p. 44, says that the laws of Oleron were translated into Dutch by the people of Wisbuy for the use of the Dutch coast. By Dutch probably means German, and it cannot be denied that many of the provisions contained in the Laws of Wisbuy, are precisely the same as those which are found in the Laws of Oleron. The northern writers pretend however that they are more ancient than the Laws of Oleron, or than even the Consolato del Mare. Clairac treats this notion with contempt, and declares that at the time of the promulgation of the laws of Oleron, in 1266, which was many years after they were compiled, the magnificent city of Wisbuy had not yet acquired the denomination of a town. Be this as it may, these laws were for some ages, and indeed still remain, in great authority in the northern part of Europe. "Lex Rhodia navalis," says Grotius, "pro jure gentium, in illo mare Mediteraneo vigebat; sicut apud Gallium leges Oleronis, et apud omnes transrhenanos, leges Wisbuenses." Grotius de Jure bel. lib. 2, c. 3.

A translation of these laws is to be found in 1 Peter's Adm. Dee. Appendix. See Code; Laws of Oleron.

LAWS, RHODIAN, maritime. law. A code of laws adopted by the people of Rhodes, who had, by their commerce and naval victories, obtained the sovereignty of the sea, about nine hundred. years before the Christian era. There is reason to suppose this code has not been transmitted to posterity, at least not in a perfect state. A collection of marine constitutions, under the denomination of Rhodian Laws, may be seen in

Vinnius, but they bear evident marks of a spurious origin. See Marsh. Ins. B. 1, c. 4, p. 15; this Dict. Code; Laws of Oleron; Laws of Wisbuy; Laws of the Hanse Towns.

LAWYER. A counsellor; one learned in the law. Vide dttorney.

LEGACY. A bequest or gift of goods or chattels by testament. 2 Bl. Com. 512; Bac. Abr. Legacies, A. See Merlin, RÇpertoire, mot Legs, s. 1; Swinb. 17; Domat, liv. 4, t. 2, §1, n. 1. This word, though properly applicable to bequests of personal estate only, has nevertheless been extended to property not technically within its import, in order to effectuate the intention of the testator, so as to include real property and annuities. 5 T. R. 716; 1 Burr. 268; 7 Ves. 522; Id. 391; 2 Cain. R. 345. Devise is the term more properly applied to gifts of real estate. Godolph. 271.

2. As the testator is presumed at the time of making his will to be inops concilii, his intention is to, be sought for, and any words which manifest the intention to give or create a legacy, are sufficient. Godolph. 281, pt. 3, c. 22, s. 21; Com. Dig. Chancery, 3 Y 4; Bac. Abr. Legacies, B 1.

3. Legacies are of different kinds; they may be considered as general, specific, and residuary. 1. A legacy is general, when it is so given as not to amount to a bequest of a specific part of a testator's personal estate; as of a sum of money generally, or out of the testator's personal estate, or the like. 1 Rop. Leg. 256; Lownd. Leg. 10. A general legacy is relative to the testator's death; it is a bequest of such a sum or such a thing at that time, or a direction to the executors, if such a thing be not in the testator's possession at that time, to procure it for the legatee. Cas. Temp. Talb. 227; Ambl. 57; 4 Ves. jr. 675; 7 Ves. jr. 399.

4. - 2. A specific legacy is a bequest of a particular thing, or money specified and distinguished from all other things of the same kind; as of a particular horse, a particular piece of plate, a particular term of years, and the like, which would vest immediately, with the assent of the executor. 1 Rop. Leg. 149; Lownd. Leg. 10, 11; 1 Atk. 415. A specific legacy has relation to the time of making the will; it is a bequest of some particular thing in the testator's possession at that time, if such a thing should be in the testator's possession at the time of his death. If it should not be in the testator's possession, the legatee has no claim. There are legacies of quantity in the nature of specific legacies, as of so much money with reference to a particular fund for their payment. Touchst. 433; Amb. 310; 4 Ves. 565; 3 Ves. & Bea. 5.

5. This kind of legacy is so far general, and differs so much in effect from a specific one, that if the funds be called in or fail, the legatees will not be deprived of their legacies, but be permitted to receive them out of the general assets; yet the legacies

are go far specific, that they will not be liable to abate with general legacies upon a deficiency of assets. 2 Ves. jr. 640; 5 Ves. jr. 206; 1 Meriv. 178.

6. - 3. A residuary legacy is a bequest of all the testator's personal estate, not otherwise effectually disposed of by his will. Lownd. Leg, 10; Bac. Abr. Legacies, I.

7. As to the interest given, legacies may be considered, as absolute, for life, or in remainder. 1. A legacy is absolute, when it is given without condition, and is to vest immediately. See 2 Vern. 181; Ambl. 750; 19 Ves. 86; Lownd. 151; 2 Vern. 430; 1 Vern. 254; 5 Ves. 461; Com. Dig. Appendix, Chancery IX.

8. - 2. A legacy for life is sometimes given, with an executory limitation after the death of the tenant for life to another person; in this case, the tenant for life is entitled to the possession of the legacy, but when it is of specific article's, the first legatee must sign and deliver to the second, an inventory of the chattels expressing that they are in his custody for life only, and that afterwards they are to be delivered and remain to the use and benefit of the second legatee. 3 P. Wms. 336; 1 Atk. 471; 2 Atk. 82; 1 Bro. C. C. 279; 2 Vern. 249. See 1 Rop. Leg. 404, 5, 580. It seems that a bequest for life, if specific of things quo ipso usu consumuntur, is a gift of the property, and that there cannot be a limitation over, after a life interest in such articles. 3 Meriv. 194.

9. - 8. In personal property there cannot be a remainder in the strict sense of the word, and therefore every future bequest of personal property, whether it be preceded or not by any particular bequest, or limited on a certain or uncertain event, is an executory bequest, and falls under the rules by which that mode of limitation is regulated. Fearne, Cont. R. 401, n. An executory bequest cannot be prevented or destroyed by any alteration whatsoever, in the estate, out of which, or after, which it is limited. Id. 421; 8 Co. 96, a; 10 Co. 476. And this privilege of executory bequests, which exempts them from being barred or destroyed, is the foundation of an invariable rule, that the event on which an interest of this sort is permitted to take effect, is such as must happen within a life or lives in being, and twenty-one years, and the fraction of another year, allowing for the period of gestation afterwards. Fearne, Cont. R. 431.

10. As to the right acquired by the legatee, legacies may be considered as vested and contingent. 1. A vested legacy is one;, by which a certain interest, either present or future in possession, passes to the legatee. 2. A contingent legacy is one which is so given to a person, that it is uncertain whether any interest will ever vest in him.

11. A legacy may be lost by abatement, ademption, and lapse. I. Abatement, see Abatement of Legacies. 2. Ademption, see, Ademption. 3. When the legatee dies before the testator, or before the condition upon which the legacy is given be performed, or before the time at which it is directed to vest in interest have arrived,

the legacy is lapsed or extinguished. See Bac. Abr. Legacies, E; Com. Dig. Chancery, 3 Y. 13; 1 P. Wms. 83; Lownd. Leg. ch. 12, p. 408 to 415; 1 Rop. Leg. ch. 8, p. 319 to 341.

12. In Pennsylvania, by legislative enactment, no legacy in favor of a child or other lineal descendant of any testator, shall be deemed or held to lapse or become void, by reason of the decease of such devisee or legatee, in the lifetime of the testator, if such devisee or legatee shall leave issue surviving the testator, but such devise or legacy shall be good and available, in favor of such surviving issue, with like effect, as if such devisee or legatee had survived the testator. The testator may however, intentionally exclude such survlving issue, or any of them. Act of March 19, 1810, 5 Smith's L. of Pa. 112.

13. As to the payment of legacies, it is proper to consider out of what fund they are to be paid; at what time; and to whom. 1. It is a general rule, that the personal estate is the primary fund for the payment of legacies. When the real estate is merely charged with those demands, the personal assets are to be applied in the first place towards their liquidation. 1 Serg. & Rawle, 453; 1 Rop. Leg. 463.

14. - 2. When legacies are given generally to persons under no disability to receive them, the payments ought to be made at the end of a year next after the testator's decease. 5 Binn. 475. The executor is not obliged to pay them sooner although the testator may have directed them to be discharged within six months after his death, because the law allows the executor one year from the demise of the testator, to ascertain and settle his testator's affairs; and it presumes that at the expiration of that period, and not before, all debts due by the estate have been satisfied, and the executor to be then able, properly to apply the residue among the legatees according to their several rights and interests.

15. When a legacy is given generally, and is subject to a limitation over upon a subsequent event, the divesting contingency will not prevent the legatee from receiving his legacy at the end of the year after the testator's death, and he is under no obligation to give security for re-payment of the money, in case the event shall happen. The principle seems to be, that as the testator has entrusted him without requiring security, no person has authority to require it. 1 Ves. Jr. 97; 18 Ves. 131; Lownd. on Legacies, 403.

16. As to the persons to whom payment to be made, see, where the legacy is given to an infant 1 Rop. Leg. 589 ;1 P. Wms. 285; 1 Eq. Cas. Abr. 300; 3 Bro. C. C. 97, edit. by Belt; 2 Atk. 80; 2 Johns. C. R. 614; where the legacy is given to a married woman; 1 Rop. Leg. 595; Lownd. Leg 399; where the legacy is given to a lunatic, 1 Rop. Leg. 599; where it is given to a bankrupt; Id. 600; 2 Burr. 717.; where it is given to a

person abroad, who has not been heard of for a long time. Id. 601 Finch, R. 419; 3 Bro. C. C. 510; 5 Ves. 458; Lownd. Leg. 398. See, generally, as to legacies; Roper on Legacies; Lowndes on Legacies; Bac. Abr. Legacy; Com. Dig. Administration, C 3, 5; Id. Chancery, 3 A; 3 G; 8 Y 1; Id. Prohibition, G 17; Vin. Abr. Devise; Id. Executor; Swinb. 17 to 44; 2 Salk. 414 to 416.

17. By the Civil Code of Louisiana, legacies are divided into universal legacies, legacies under an universal title, and particular legacies. 1. An universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves; at his decease. Civ. Code of Lo. art. 1599.

18. - 2. The legacy under an universal title, is that by which a testator bequeaths a certain proportion of the effects of which the law permits him to dispose, as a half, a third, or all his immovables, or all his movables, or a fixed proportion of all his immovables, or of all his movables. Id. 1604.

19. - 3. Every legacy not included in the definition given of universal legacies, and legacies under a universal title, is a legacy under a particular title. Id. 1618. Copied from Code Civ. art. 1003 and 1010. See Toullier, Droit Civil Francais, tome 5, p. 482, et seq.

LEGACY, ACCUMULATIVE. An accumulative legacy is a second bequest given by the same testator to the same legatee, whether it be of the same kind of thing, as money, or whether it be of different things, as, one hundred dollars, in one legacy, and a thousand dollars in another, or whether the sums are equal or whether the legacies are of a different naturer 2 Rop. Leg. 19.

LEGACY, ADDITIONAL. An additional legacy is one which is given by a codicil, besides one before given by the will; or it is an increase by a codicil of a legacy before given by the will. An additional legacy is generally subject to the same qualities and conditions as the original legacy. 6. Mod. 31; 2 Ves. jr. 449; 3 Mer. 154; Ward on Leg. 142.

LEGACY, ALTERNATIVE. One where the testator gives one of two things to the legatee without designating which of them; as, one of my two horses. Vide Election.

LEGACY, CONDITIONAL. A bequest which is to take effect upon the happening or, not happening of a certain event. Lownd. Leg. 166; Rop. Leg. Index, tit. Condition.

LEGACY, DEMONSTRATIVE. A demonstrative legacy is a bequest of a certain sum of money; intended for the legatee at all events, with a fund particularly referred

to for its payment; so that if the estate be not the testator's property at his death, the legacy will not fail: but be payable out of general assets. 1 Rop. Leg. 153; Lownd. Leg 85; Swinb. 485; Ward on Leg. 370.

LEGACY, INDEFINITE. A bequest of things which are not enumerated or ascertained as to numbers or quantities; as, a bequest by a testator of all his goods, all his stocks in the funds. Lownd. on Leg. 84; Swinb. 485; Amb. 641; 1 P. Wms. 697.

LEGACY, LAPSED. A legacy is said to be lapsed or extinguished, when the legatee dies before the testator, or before the condition upon which the legacy is given has been performed, or before the time at which it is directed to vest in interest has arrived. Bac. Ab. Legacy, E; Com. Dig. Chancery, 3 Y 13; 1 P. Wms. 83. Lownd. Leg. 408 to 415; 1 Rop. Leg. 319 to 341. See, as to the law of Pennsylvania in favor of lineal descendants, 5 Smith's Laws of Pa. 112. Vide, generally, 8 Com. Dig. 502-3; 5 Toull. n. 671.

LEGACY, M0DAL. A modal legacy is a bequest accompanied with directions as to the mode in which it should be applied for the legatee's benefit; for example, a legacy to Titius to put him an apprentice. 2 Vern. 431; Lownd. Leg. 151.

LEGACY, PECUNIARY, A pecuniary legacy is one of money; pecuniary legacies are most usually general legacies, but there may be a specific pecuniary legacy; for example, of the money in a certain bag. 1 Rop. Leg. 150, n.

LEGACY, RESIDUARY. That which is of the remainder of an estate after the payment of all the debts and other legacies. Madd. Ch. P. 284.

LEGAL. That which is according to law. It is used in opposition to equitable, as the legal estate is, in the trustee, the equitable estate in the cestui que trust. Vide Powell on Mortg. Index, h. t.

2. The party who has the legal title, has alone the right to seek a remedy for a wrong to his estate, in a court of law, though he may have no beneficial interest in it. The equitable owner, is he who has not the legal estate, but is entitled to the beneficial interest.

3. The person who holds the legal estate for the benefit of another, is called a trustee; he who has the beneficiary interest and does not hold the legal title, is called the beneficiary, or more technically, the cestui que trust.

4. When the trustee has a claim, he must enforce his right in a court of equity, for he cannot sue any one at law, in his own name; 1 East, 497; 8 T. R. 332; 1 Saund. 158, n. 1; 2 Bing. 20; still less can he in such court sue his own trustee. 1 East, 497.

LEGAL ESTATE. One, the right to which may be enforced in a court of law. It is distinguished from an equitable estate, the rights to which can be established only in a court of equity. 2 Bouv. Inst. n. 1688.

LEGALIZATION. The act of making lawful.

2. By legalization, is also understood the act by which a judge or competent officer authenticates a record, or other matter, in order that the same may be lawfully read in evidence. Vide Authentication.

LEGATES. Legates are extraordinary ambassadors sent by the pope to catholic countries to represent him, and to exercise his jurisdiction. They are distinguished from the ambassadors of the pope who are sent to other powers.

2. The canonists divide them into three kinds, namely: 1. Legates A latere. 2. Legati missi. 3. Legati nati.

3. - 1. Legates latere hold the first rank among those who are honored by a legation; they are always chosen from the college of cardinals, and are called a latere, in imitation of the magistrates of ancient Rome, who were taken from the court, or side of the emperor.

4. - 2. The legati missi are simple envoys.

5. - 3. The legati nati, are those who are entitled to be legates by birth.

LEGATEE. A legatee is a person to whom a legacy is given by a last will and testament.

2. It is proposed to consider, 1. Who may be a legatee. 2. Under what description legatees may take.

3. - 1. Who may be a legatee. In general, every person may be a legatee. 2 Bl. Com. 512. But a person civilly dead cannot take a legacy.

II. Under what description legatees may take.

4. - §1. Of legacies to legitimate children. 1. When it appears from express declaration, or a clear inference arising upon the face of the will, that a testator in

giving a legacy to a class of individuals generally, intended to apply the terms used by him to such persons only as answered the description at the date of the instrument, those individuals alone will be entitled, although if no such intention had been expressed, or appeared in the will, every person failing within that class at the testator's death, would have been included in the terms of the bequest. 1 Meriv. 320; and see 3 Ves. 611; Id. 609; 15 Ves. 363; Ambl. 397; 2 Cox, 291; 4 Bro. C. C. 55; 3 Bro. C. C. 148; 2 Cox, 384.

5. - 2. Where a legacy is given to a class of individuals, as to children, in general terms, and no period is appointed for the distribution of it, the legacy is due at the death of the testator; the payment of it being merely postponed to the end of a year after that event, for the convenience of the executor or administrator in administering the assets. The rights of the legatees are finally settled, and determined at the testator's decease. 1 Ball & B. 459; 2 Murph. 178. Upon this principal, is founded the well established rule that children in existence at that period, or legally considered so to be, are alone entitled to participate in the bequest. 1 Bro. C. C. 532, n.; 2 Bro. C. C. 658; 2 Cox, 190.; 1 Dick. 344; 14 Ves. 576; 1 Ves. jr. 405; 1 Cox, 68; 3 Bro. C. C. 391; Amb. 448; 1 Ves. sen. 485; 5 Binn. 607.

6. - 3. A child in ventre sa mere takes a share in a fund bequeathed to children, under the general description of "children," or of "children living at the testator's death." 1 Ves. sen. 85; and see 1 P. Wms. 244, 341; 2 Bro. C. C. 63; 1 Salk. 229; 2 Cox, 425; 5 Serg. & Rawle, 38. See tit. In ventre sa mere.

7. - 4. When legacies are given to a class of individuals, generally, payable at a future period, as to the children of B, when the youngest shall attain the age of twenty-one, or to be divided among them upon the death of C; any child who can entitle itself under the description, at the time when the fund is to be divided, may claim a share, viz: as well children living at the period of distribution, although not born till after the testator's death, as those born before, and living at the happening of that event. 1 Supp. to Ves. jr. 115, note 3, to Hill v. Chapman; 2 Supp. to Ves. jr. 157, note 1, to Lincoln v. Pelham. This general rule may be divided into two branches. First, when the division of the fund is postponed until a child or children attain a particular age; as, when a legacy is given to the children of A, at the age of twenty-one; in that case, so soon as the eldest arrives at that period, the fund is distributable among so many as are in existence at that time; and no child born afterwards can be admitted to a share, because the period of division fixes the number of legatees. Distribution is then made, and nothing remains for future partition. 1 Ball & Beat. 459; 3 Bro. C. C. 402; 5 Binn. 607; 2 Ves. jr. 690; 3 Ves. 730; 3 Bro. C. C. 352, ed. by Belt; 14 Ves. 256; 6 Ves. 345; 10 Ves. 152; 11 Ves. 238. Second, when the distribution of the fund is deferred during the life of a person in esse. In these cases, when the enjoyment of the thing given, is by the testator's express declaration not to be immediate by those, among

whom it is to be finally divided, but is postponed to a particular period, as the death of A, then the children or individuals who answer the general description at that time, when distribution is to be made, are entitled to take, in exclusion of those afterwards coming in esse. 1 Ves. sen. 111; 1 Bro. C. C. 386; Id. 530; Id. 582; Id. 537; 1 Atk. 509; 2 Atk. 329; 5 Ves. 136; 3 Bro. C. C. 417; 1 Cox, 327; 8 Ves. 375; 15 Ves. 122; 1 Madd. R. 290; 1 Ball & Beat. 449.

8. - 5. The word "children " does not, ordinarily and properly speaking, comprehend grandchildren or issue generally; these are included in that term only in two cases, namely, 1. From necessity, which occurs where the will would remain inoperative unless the sense of the word "children" were extended beyond its natural import; and, 2. Where the testator has shown by other words, that he did not intend to use the term children in its proper and actual meaning, but in a more extended sense. 1 Supp. to Ves. jr. 202, note 2, to Bristow v. Ward. In the following cases, the word children was extended beyond its natural import from necessity. 6 Rep. 16; 10 Ves. 201; 2 Desauss. 123, in note. The following are instances where by using the words children and issue, indiscriminately, the testator showed his intention to use the former term in the sense of issue so as to entitle grandchildren, &c. to take. 1 Ves. sen. 196; S. C. Ambl. 555; 3 Ves. 258; 3 Ves. & Bea. 68; 4 Ves. 437; 2 Supp. to Ves. jr. 158. There is another class of cases wherein it was determined that grandchildren, &c. were not included in the word children. 2 Vern. 107; 4 Ves. 692; 10 Ves. 195; 3 Ves. & Bea. 59; see 2 Desauss. 308.

9. - §2. Of legacies to natural children. 1. Natural children unborn at the date of the will, cannot take under a bequest to the children generally, or to the illegitimate children of A B by Mary C; because a natural child cannot take as the issue of a particular person, until it has acquired the reputation of being the child of that person, which cannot be before its birth. Co, Litt. 3, b.

10. - 2. Natural children, unborn at the date of the will and described as children of the testator or another man, to be born of a particular woman, cannot take under such a description. 1 Peere, Wms. 529; 18 Ves. 288.

11. - 3. A legacy to an illegitimate child in ventre sa mere, described as the child of the testator or of another man, will fail, since whether the testator or such person were or were not in truth the father, is a fact which can only be ascertained by evidence that public policy forbids to be admitted. 1 Meriv. 141 to 152.

12. - 4. A child in ventre sa mere described merely as a child with which the mother is enceinte, without mentioning its putative father; or if the testator express a belief that the child is his own, and provide for it under that impression, regardless of the chance of being mistaken; then the child will in the first place be capable of taking and in the

second, as presumed, be also, entitled in consequence of the testator's intent to provide for it, whether he be the father or not. 1 Meriv. 148, 152.

13. - 5. Natural children in existence, having acquired by reputation the name and character of children of a particular person, prior to the date of the will, are capable of taking under the name of children. 1 P. Wms. 529; 1 Ves. & Bea. 467. But the term child, son, issue, and every other word of that species, is to be considered as prima facie to mean legitimate child, son, or issue. Id.

14. - 6. Whether such children take or not depends upon the evidence of the testator's intention, manifested by the will, to include them in the term children; these cases are instances where the evidence of such intention was deemed insufficient. 5 Ves. 530; 1 Ves. & Bea. 454; 6 Ves. 43, 48; 1 Ves. & Bea. 4619; and see 1 Ves. & Bea. 456; 2 East, 530, 542. In the following, the evidence of intention was held to be sufficient. 1 Ves. & Bea. 469; Blundell v. Dunn, cited in 1 Madd. 433; Beachcroft v. Beachcroft, cited in 1 Madd. 430; 2 Meriv. 419.

15. - §3. Of legacies of personal estate to a man and his heirs. 1. A legacy to A and his heirs, is an absolute legacy to A, and the whole interest of the money vests in him for his use. 4 Mad. 361. But when no property in the bequest is given to A, and the money is bequeathed to his heirs, or to him with a limitation to his heirs, if he die before the testator, and the contingency happens, then if there be nothing in the will showing the sense in which the testator made use of the word heirs, the next of kin of A, are entitled to claim under the description, as the only persons appointed by law to succeed to personal estate. 5 Ves. 403; 4 Ves. 649; 1 Jac. & Walk. 388.

16. - 2. A bequest to the heirs of an individual, without addition or explanation, will belong to the next of kin; the rule, however, is subject to, alteration by the intention of the testator. If then the contents of the will show, that by the word heirs the testator meant other persons than the next of kin, those persons will be entitled. Ambl. 273; 1 P. Wms. 432; Forrest, 56; 2 Atk. 89; See, also, 1 Ves. jr. 145; 4 Madd. 361; 14 Ves. 488; 1 Car. Law R. 484.

17. - §4. Legacies to issue. 1. The term issue, is of very extensive import, and when used as a word of purchase, and unconfined by any indication of intention, will comprise all persons who can claim as descendants from or through the person to whose issue the bequest is made; and in order to restrain the legal sense of the term, a clear intention must appear upon the will. 3 Ves. 257; Id. 421; 1 Meriv. 434; 13 Ves. 344.

18. - 2. Where it appears clearly to be a testator's meaning to provide for a class of individuals living at the date of his will, and he provides against a lapse by the death

of any of them in his lifetime, by the substitution of their issue; in such case, although the word will include all the descendants of the designated legatees, yet if any person who would have answered the description of an original legatee when the will was made, be then dead, leaving issue, that issue will be excluded, because the issue of those individuals only who were capable of taking original shares, at the date of the will, were intended to take by substitution; so that as the person who was dead when the will was made, could never have taken an original share, there is nothing for his issue to take in his place. 1 Meriv. 320.

19. - 3. When it can be collected from the will that a testator in using the word issue, did not intend it should be understood in its common acceptation, the import of it will be confined to the persons whom it was intended to comprehend. 7 Ires. 531; 3 Ves. 383; 7 Ves. 522; 1 Ves. jr. 143.

20. - §5. Of legacies to relations. 1. Under a bequest to relations, none are entitled but those, who in the case of intestacy, could have claimed under the statute of distribution. Forrest. 251; 4 Bro. C. C. 207; 1 Bro. C. C. 31; 3 Bro. C. C. 234; 5 Ves. 529; Ambl. 507; Dick. 380; 1 P. Wms. 327; 2 Ves. sen. 527; 19 Ves. 403; 1 Taunt. 263; 1 T. R. 435; n. See the following cases where the bequests were to "poor relations;" 1 P. Wms. 327; 8 Serg. & Rawle, 45; 1 Scho. & Lef. 111; "most necessitous relations;" Ambl. 636.

21. - 2. To this general rule there are several exceptions, namely, first, when the testator has delegated a power to an individual to distribute the fund among the testator's relations according to his discretion; in such an instance whether the bequest be made to "relations" generally, or to "poor," or "poorest," or "most necessitous" relations, the person may exercise his discretion in distributing the property among the testator's kindred although they be not within the statute of distributions. 1 Scho. & Lef. 111, and 16 Ves. 43; 1 T. R. 485, n.; Ambl. 708; 16 Ves. 27, 43. Secondly. Another exception occurs where a testator has fixed ascertain test, by which the number of relatives intended by him to participate in his property, can be ascertained; as if a legacy be given to such of the testator's relations as should not be worth a certain sum, in such case, it seems, all the testator's relatives answering the description would take, although not within the degrees of the statute of distributions. Ambl. 798. Thirdly. Another exception to the general rule is, where a testator has shown an intention in his will, to comprehend relations more remote than those entitled nuder the statute; in that case his intention will prevail. 1 Bro. C. C. 32, n., and see 1 Cox, 235 .

22. - 3. The word "relation" or "relations," may be so qualified as to exclude some of the next of kin from participating in the bequest; and this will also happen when the terms of the bequest are to my "nearest relations;" 19 Ves. 400; Coop. 275; 1 Bro. C.

C. 293; and see 1 Ves. sen. 337; Ambl. 70; to testator's relations of his name 1 Ves. sen. 336; or stock, or blood; 15 Ves. 107.

23. - 4. The word relations being governed by the statute of distributions, no person can regularly answer the description but those who are of kin to the testator by blood, consequently relatives by marriage are not included in a bequest to relations generally. 1 Ves. sen. 84; 3 Atk. 761; 1 Bro. C. C. 71, 294.

24. - §6. Legacies to next of kin. 1. When a bequest is made to testator's next of kin, it is understood the testator means such as are related to him by blood. But it is not necessary that the next of kin should be of the whole blood, the half blood answering the description of next of kin, are equally entitled with the whole, and if nearer in degree, will exclude the whole blood. 1 Ventr. 425; Alleyn, 36; Styl. 74.

25 - 2. Relations by marriage are in general excluded from participating in a legacy given to the next of kin. 18 Ves. 53; 14 Ves. 376, 381, 386; and, see 3 Ves. 244; 18 Ves. 49. But this is only a prima facie construction, which may be repelled by the contrary intention of a testator. 14 Ves. 382.

26. - 3. A testator is to be understood to mean by the expression "next of kin," when he does not refer to the statute, or to a distribution of the property as if he had died intestate, those persons only who should be nearest of kin to him, to the exclusion of others who might happen to be within the degree limited by the statute. 3 Bro. C. C. 69; 19 Ves. 404; 14 Ves. 385. See 3 Bro. C. C. 64.

27. - 4. Nearest of kin will alone be entitled under a bequest to the next of kin in equal degree. 12 Ves. 433; 1 Madd. 36.

28. - §7. Legacies to legal personal representatives or to personal representatives. 1. Where there is nothing on the face of the will to manifest a different intention, the legal construction of the words "personal representatives," or "legal personal representatives," is executors or administrators of the person described. 6 Ves. 402; 6 Mead. 159. A legacy limited to the personal or legal personal representatives of A, unexplained by anything in the will, will entitle A's executors or administrators to it, not as representing A, or as part of his estate, or liable to his debts, but in their own right as personae designated by the law. 2 Mad. 155.

29. - 2. In the following cases the executors or administrators were held to be entitled under the designation of personal, or legal personal representatives. 3 Ves. 486; Anstr. 128.

30. - 3. The next of kin and not the executors or administrators, were, in the following cases, held to be entitled under the same designation. 3 Bro. C. C. 224, approved by Lord Rosslyn in 3 Ves. 486; 3 Ves. 146; 19 Ves. 404.

31. - 4. The same words were held to mean children, grandchildren, &c. to the exclusion of those persons who technically answer the description of "personal representatives." 3 Ves. 383.

32. - 5. A husband or wife may take as such, if there is a manifest intention in the will that they should and if either be clothed with the character of executor or administrator of the other, the prima facie legal title attaches to the office, which will prevail, unless an intention to the contrary be expressed or clearly apparent in the instrument. See 14 Ves. 382; 18 Ves. 49; 3 Ves. 231; 2 Ves. sen. 84; 3 Atk. 758; 1 Rop. Husb. and Wife, 326; 2 Rop. Husb. and. Wife, 64.

33. - §8. The construction of bequests when limited to executors and administrators. 1. Where personal estate is given to B, his executors and administrators, the law transfers to B the absolute interest in the legacy. 15 Ves. 537; 2 Mad. 155.

34. - 2. If no interest were given to B, and the bequest were to his executors and administrators, it should seem that the individual answering the description would be beneficially entitled as personal designatae, in analogy to the devise of real estate to the heir of B, without a previous limitation to B, whose heir would take by purchase in his own right, and not by force of the word "heir" considered as a term of limitation. 2 Mad. 155. See 8 Com. Dig. Devise of Personal Property, xxxvi.

35: - §9. Legacies to descendants. 1. A legacy to the descendants of A, will comprehend all his children, grandchildren, &c.; and if the will direct the bequest to be divided equally among them, they are entitled to the fund per capita. Ambl. 97; 3 Bro. C. C. 369.

36. - §10. Legacies to a family. 1. The word family, when applied to personal property, is synonymous with "kindred," or "relations;" see 9 Ves. 323. This being the ordinary acceptation of the word family, it may nevertheless be confined to particular relations by the context of the will; or the term may be enlarged by it, so that the expression may, in some cases, mean children, or next of kin, and in others may even include relations by marriage. See 8 Ves. 604; Dy. 333; 5 Ves. 166; Hob. 33; Coop. 122; 5 M. & S. 126; 17 Ves. 263; 1 Taunt. 266; 14 Ves. 488; 9 Ves. 319; 3 Meriv. 689.

37. - §11. Legacies to servants. 1. To entitle himself to a bequest "to servants," the relation of master and servant must have arisen out of a contract by which the

claimant must have formed an engagement which entitled the master to the service of the individual during the whole period, or each and every part of the time for which he contracted to, serve. 12 Ves. 114; 2 Vern. 546.

38. - 2. To claim as a servant, the legatee must in general be in the actual service of the testator at the time of his death. Still a servant may be considered by a testator as continuing in his employment, and be intended to take under the bequest, although he quitted the testator's house previous to his death, so as to answer the description in the instrument; and to establish which fact declarations of the testator upon the subject cannot be rejected; but testimony that the testator meant a servant notwithstanding his having left the testator's service, to take a legacy bequeathed only to servants in his employment at his death, cannot be received as in direct opposition to the will. 16 Ves. 486, 489.

39. - §12. The different periods of time at which persons answering the descriptions of next of kin, family relations, issue, heirs, descendants and personal representatives, (to whom legacies are given by those terms generally, and without discrimination,) were required to be in esse, for the purpose of participating in the legatory fund. 1. When the will expresses or clearly shows that a testator in bequeathing to the relations, &c. of a deceased individual, referred to such of them as were in existence when the will was made, they only will be entitled; as if the bequest was, "I give ú1000 to the descendants of the late A B, now living," those descendants only in esse at the date of the will can claim the legacy. Ambl. 397.

40. - 2. But, in general, a will begins to speak at the death of the testator, and consequently in ordinary cases, relations, next of kin, issue, descendants, &c., living at that period will alone divide the property bequeathed to them by those words. See 1 Ball &. Beat. 459; 1 Bro. C. C. 532; 3 Bro. C. C. 224; 5 Ves. 399; 1 Jac. & Walk, 388, n.; 3 Meriv. 689; 5 Binn. 607; 2 Murph. 178.

41. - 3. If a testator express, or his intention otherwise appear from his will, that a bequest to his relations, &c., living at the death of a person, or upon the happening of any other event, should take the fund, his next of kin only in existence at the period described, will be entitled, in exclusion of the representatives of such of them as happened to be then dead. 3 Ves. 486; 9 Ves. 325; 1 Atk. 469; 15 Ves. 27; 4 Vin. Abr. 485, pl. 16; 8 Ves. 38; 5 Binn. 606; see 6 Munf. 47.

42. - §13. When the fund given to legatees, by the description of "family," "relations" "next in kin," &c., is to be divided among them either per capita, or per stirpes, or both per stirpes et capita. 1. Where the testator gives a legacy to his relations generally, if his next of kin be related to him in equal degree, as brothers, there being no children of a deceased brother, the brothers will divide the fund among them in

equal shares, or per capita; each being entitled in his own right to an equal share. So it would be if all the brothers had died before the testator, one leaving two children, another three, &c., all the nephews and nieces would take in equal shares, per capita, in their own rights, and not as representing their parents; because they are sole next of kin, and related to the testator in equal degree. Pre. Ch. 54; and see 1 P. Wms. 595; 1 Atk. 454; 3 P. Wms. 50. But if the testator's next of kin happen not to be related to him in equal degrees, as a brother, and the children of a deceased brother, so as that under the statute the children would take per stirpes as representing their parent, namely, the share he would have taken had he been living; yet if the testator has shown au intention that his next of kin shall be entitled to his property in equal shares, i. e. per capita, the distribution by the statute will be superseded. This may happen where the bequest is to relations, next of kin, &c., to be equally divided among them; or by expressions of like import. Forrest. 251; and see 1 Bro. C. C. 33; 8 Serg. & Rawle, 43; 11 Serg. & Rawle 103; 1 Murph. 383.

43. - 2. Where a bequest is to relations, &c., those persons only who are next of kin are entitled, and the statute of distributions is adopted, not only to ascertain the persons who take, but also the proportions and manner in which the property is to be divided; the will being silent upon the subject, if the next of kin of the person described be not related to him in equal degree, those most remote can only claim per stirpes, or in right of those who would have been entitled under the statute if they had been living. Hence it appears that taking per stirpes, always supposes an inequality in relation-ship. For example, where a testator bequeaths a legacy to his "relations," or "next of kin," and leaves at his death two children, and three grandchildren, the children of a deceased child; the grandchildren would take their parents' share, that is, one-third per stirpes under the statute, as representing their deceased parent. 1 Cox, 235.

44. - 3. Where a testator bequeaths personal estate to several persons as tenants in common, with a declaration that upon all or any of their deaths before a particular time, their respective shares shall be equally divided among the issue or descendants of each of them, and they die before the arrival of the period, some leaving children, others grandchildren, and great grandchildren, and other grandchildren and more remote descendants in such case the issue of each deceased person will take their parents share per stirpes; and such issue, whether children only, or children and grandchildren, &c., will divide each parent's share among them equally per capita. 1 Ves. sen. 196.

45. - §14. The effect of a mistake in the names of legatees. 1. Where the name has been mistaken in a will or deed, it will be corrected from the instrument, if the intention appear in the description of the legatee or donee, or in other parts of the will or deed. For example, if a testator give a bequest to Thomas second son of his brother

John, when in fact John had no son named Thomas, and his second son was called William; it was held William was entitled. 19 Ves. 381; Coop. 229; and see Ambl. 175; Co. Litt. 3, a; Finch's R. 403; 3 Leon, 18. When a bequest is made to a class of individuals, nomin-atim, and the name or christian name of one of them is omitted, and the name or christian name of another is repeated; if the context of the will sbow that the repetition of the name was error, and the name of the person omitted was intended to have been inserted, the mistake will be corrected. As where a testator gave his residuary estate to his six grandchildren, by their christian names. The name of Ann, one of them, was repeated, and the name of Elizabeth, another of them, was omitted. The context of the will clearly showed the mistake which had occurred, and Elizabeth was admitted to an equal share in the bequest. 1 Bro. C. C. 30; see 2 Cox, 186. And is to cases where parol evidence will be received to prove the mistakes in the names or additions of legatees, and to ascertain the proper person, see 3 B. & A. 632 to 642; 6 T. R. 676; 2 P. Wms. 137; 1 Atk. 410: 1 P. Wms. 421; 5 Rep. 68, b; 6 Ves. 42; 7 East, 302; Ambl. 75.

46. - §15. The effect of mistakes in the descriptions of legatees, and the admission of parol evidence in those cases. 1. Where the description of the legatee is erroneous, the error not having been occasioned by any fraud practiced upon the testator, and there is no doubt as to the person who was intended to be described, the mistake will not disappoint the bequest. Hence if a legacy be given to a person by a correct name, but a wrong description or addition, the mistaken description will not vitiate the bequest, but be rejected; for it is a maxim that veritas nominis tollit errorem demonstrationis. Ld. Bac. Max. reg. 25; and see 2 Ves. jr. 589; Ambl. 75; 4 Ves. 808; Plowd. 344; 19 Ves. 400.

47. - 2. Wherever a legacy is given to a person under a particular description and character which he himself has falsely assumed; or, where a testator, induced by the false representations of third persons to regard the legatee in a relationship which claims his bounty, bequeaths him a legacy according with such supposed relationship, and no motive for such bounty can be supposed, the law will not, in either case, permit the legatee to avail himself of the description, and therefore he cannot demand his legacy. See 4 Ves. 802; 4 Bro. C. C. 20.

48. - 3. The same principle which has establisbed the admissibility of parol evidence to correct errors in naming legatees, authorizes its allowance to rectify mistakes in the description of them. Ambl. 374; 1 Ves. jr. 266; 1 Meriv. 184.

49. - 4. If neither the will nor extrinsic evidence is sufficient to dispel the ambiguity arising from the attempt to apply the description of the legatee to the person intended by the testator, the legacy must fail from the uncer-tainty of its object. 7 Ves. 508; 6 T. R. 671.

50. - §16. The consequences of imperfect descriptions of, or reference to legatees, appearing upon the face of wills, and when parol evidence is admissible. These cases occur, 1. When a blank is left for the Christian name of the legatee. 2. When the whole name is omitted. 3. When the testator has merely written the initials of the name; and, 4. When legatees have been once accurately described, but in a subsequent reference to one of them, to take an additional bounty, the person intended is doubtful, from ambiguity in the terms.

51. - 1. When a blank is left for the Christian name of the legatee, evidence is admissible to supply the omission. 4 Ves. 680.

52. - 2. When the omission consists of the entire name of the legatee, parol evidence cannot be admitted to supply the blank. 2 Ch. Ca. 51.; 2 Atk. 239; 3 Bro. C.C. 311.

53. - 3. When a legatee is described by the initials of his name only, parol evidence may be given to prove his identity. 3 Ves. 148. When a patent ambiguity arises from an imperfect reference to one of two legatees correctly described in a prior part of the will, parol evidence is admitted to show which of them was intended, so that the additional legacy intended for the one will depend upon the removal of the obscurity by a sound interpretation of the whole will. 3 Atk. 257 and see 2 Ves. 217; 2 Eden, 107.

See further, upon this subject, Lownd on Leg. ch. 4; 1 Roper on Leg. ch. 2; Com. Dig. Chancery, 3 Y; Bac. Abr. h.. t. Vin. Abr. h. t.; Nels. Abr. h. t.; Whart. Dig. Wills, G. P.; Hamm. Dig. 756; GrimkÇ on Exec. ch. 5; Toll. on Executors, ch. 4.

LEGALIS HOMO. A person who stands rectus in curia, who possesses all his civil rights. A lawful man. One who stands rectus in curia, not outlawed nor infamous. In this sense are the words probi et legates homines.

LEGANTINE CONSTITUTIONS. The name of a code of ecclesiastical laws, enacted in national synods under Pope Gregory IX., and Pope Clement IV., about the years from 1220 to 1230.

LEGATARY. One to whom anything is bequeathed; a legatee. This word is sometimes though seldom used to designate a legate or nuncio.

LEGATION. An embassy; a mission.

2. All persons attached to a foreign legation, lawfully acknowledged by the government of this country, whether they are ambassadors, envoys, winisters, or attaches, are protected by the act of April 30, 1790, 1 Story's L. U. S. 83, from

violence, arrest or molestation. 1 Dall. 117; 1 W. C. C. R. 232; 11 Wheat. 467; 2 W. C. C. Rep. 435; 4 W. C. C. R. 531; 1 Miles, 366; 1 N & M. 217; 1 Bald. 240; Wheat. Int. Law, 167. Vide Ambassador; Envoy; Minister.

LEGATORY, dead man's part or share. (q. v.) The third part of a freeman's personal estate, which by the custom of London, in case he had a wife and children, the freeman might always have disposed of by will. Bac. Ab. Customs of London, D 4.

LEGISLATIVE POWER. The authority under the constitution to make laws and to alter or repeal them.

LEGISLATOR. One who makes laws.

2. In order to make good laws, it is necessary to understand those which are in force; the legislator ought therefore, to be thoroughly imbued with a knowledge of the laws of his country, their advantages and defects; to legislate without this previous knowledge is to attempt to make a beautiful piece of machinery with one's eye shut. There is unfortunately too strong a propensity to multiply our laws and to change them. Laws must be yearly made, for the legislatures meet yearly but whether they are always for the better may be well questioned. A mutable legislation is always attended with evil. It renders the law uncertain, weakens its effects, hurts credit, lessens the value of property, and as they are made frequently, in consequence of some extraordinary case, laws sometimes operate very unequally. Vide 1 Kent, Com. 227 and Le Magazin Universel, tome ii. p. 227, for a good article against excessive legislation; Matter, De l'Influence des Lois sur les Moeurs, et de l'Influence des Moeurs sur les Lois.

LEGISLATURE, government. That body of men in the state which has the power of making laws.

2. By the Constitution of the United States, art. 1, s. 1, all legislative powers granted by it are vested in a congress of the United States, which shall consist of a senate and house of representatives.

3. It requires the consent of a majority of each branch of the legislature in order to enact a law, and then it must be approved by the president of the United States, or in case of his refusal, by two-thirds of each house. Const. U. S. art. 1, s. 7, 2.

4. Most of the constitutions of the several states, contain provisions nearly similar to this. In general, the legislature will not exercise judicial functions; yet the use of supreme power upon particular occasions, is not without example. Vide Judicial.

LEGITIMACY. The state of being born in wedlock; that is, in a lawful manner.

2. Marriage is considered by all civilized nations as the only source of legitimacy; the qualities of husband and wife must be possessed by the parents in order to make the offspring legitimate; and furthermore the marriage must be lawful, for if it is void ab initio, the children who may be the offspring of such marriage are not legitimate. 1 Phil. Ev. Index, h. t.; Civ. Code L. art. 203 to 216.

3. In Virginia, it is provided by statute of 1787, "that the issue of marriages deemed null in law, shall nevertheless be legitimate." 3 Hen. & Munf. 228, n.

4. A conclusive, presumption of legitimacy arises from marriage and cohabitation; and proof of the mother's irregularities will not destroy this presumption: pater est quem nuptiae demonstrant. To rebut this presumption, circumstances must be shown which render it impossible that the husband should be the father, as impotency and the like. 3 Bouv. Inst. n. 300-2. Vide Bastard; Bastardy; Paternity; Pregnancy.

LEGITIMATE. That which is according to law; as, legitimate children, are lawful children, born in wedlock, in contradistinction to bastards; legitimate autbority, or lawful power, in opposition to usurpation.

LEGITIMATION. The act of giving the character of legitimate cbildren to those who were not so born.

2. In Louisiana, the Civil Code, art. 217, enacts that "children born out of marriage, except those who are born of an incestuous or adulterous connexion, may be legitimated by the subsequent marriage of their father and mother whenever the latter have legally acknowledged them for their children, either before their marriage, or by the contract of marriage itself."

3. In most of the other states the character of legitimate children is given to those who are not so, by special acts of assembly. In Georgia, real estate may descend from a mother to her illegitimate children and their representatives, and from such child, for want of descendants, to brothers and sisters, born of the same mother, and their representatives. Prince's Dig. 202. In Alabama, Kentucky, Mississippi, Vermont and Virginia, subsequent marriages of parents, and recognition by the father, legitimatize an illegitimate child and in Massachusetts, for all purposes except inheriting from their kindred. Mass. Rev. St. 414.

4. The subsequent marriage of parents legitimatizes the child in Illinois, but he must be afterwards acknowledged. The same rule seems to have been adopted in Indiana and Missouri. An acknowledgment of illegitimate children, of itself, legitimatizes in

Ohio, and in Michigan and Mississippi marriage alone between the reputed parents has the same effcct. In Maine, a bastard inherits to one who is legally adjudged, or in writing owns himself to be the father. A bastard may be legitimated in North Carolina, on application of the putative father to court, either where he has married the mother, or she is dead, or married another or lives out of the state. In a number of the states, namely, in Alabama, Connecticut, Illinois, Indiana, Kentucky, Maine, Massachusetts, Michigan, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, and Virginia, a bastard takes by descent from his mother, with modifications regulated by the laws of these states. 2 Hill, Ab. s. 24 to 35, and the authori-ties there referred to. Vide Bastard; Bastardy; Descent.

LEGITIME, civil law. That portion of a parent's estate of which he cannot disinherit his children, without a legal cause. The civil code of Louisiana declares that donations inter vivos or mortis causa cannot exceed two-thirds of the property of the disposer if he leaves at his decease a legitimate child; one half if he leaves two children; and one-third if he leaves three or a greater number. Under the name of children are included descendants of wbatever degree they may be; it must be understood that they are only counted for the child they represent. Civil. Code of Lo. art. 1480.

3. Donation inter vivos or mortis causa, cannot exceed two-thirds of the property if the disposer having no children have a father, mother, or both. Id. art. 1481. Where there are no descendants, and in case of the previous decease of the father and mother, donations inter vivos and mortis causa, may, in general, be made of the whole amount of the property of the disposer. Id. art. 1483. The Code Civil makes nearly similar previsions. Code Civ. L. 3, t. 2, c. 3, s. 1, art. 913 to 919.

4. In Holland, Germany, and Spain, the principles of the Falcidian law, more or less limited, have been generally adopted. Coop. Just. 616.

5. In the United States, other than Louisiana and in England, there is no restriction on the right of bequeathing. But this power of bequeathing did not originally extend to all a man's personal estate; on the contrary, by the common law, as it stood in the reian of Henry II, a man's goods were to be divided into three equal parts, one of which went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children; and so e converso if he had no children, the wife was entitled to one moiety, and he might bequeath the other; but if he died without either wife or issue, the whole was at his own disposal. Glanv. 1. 2, c. 6;, Bract. 1. 2, c. 26. The shares of the wife and children were called their reasonable part. 2 Bl. Comm. 491-2. See Death's part; Falcidian law.

LENDER, contracts. He from whom a thing is borrowed.

2. The contract of loan confers rights, and imposes duties on the lender. 1. The lender has the right to revoke the loan at his mere pleasure; 9 Cowen, R. 687; 8 Johns. Rep. 432; 1 T. R. 480; 2 Campb. Rep. 464; and is deemed the owner or proprietor of the thing during the period of the loan; so that au action for a trespass or conversion will lie in favor of the lender against a stranger, who has obtained a wrongful possession, or has made a wrongful conversion of the thing loaned; as mere gratuitous permission to a third person to use a chattel does not, in contemplation of the common law, take it out of the possession of the owner. 11 Johns. Rep. 285; 7 Cowen, Rep. 753; 9 Cowen, Rep. 687; 2 Saund. Rep. 47 b; 8 Johns. Rep. 432; 13 Johns. Rep. 141, 661; Bac. Abr. Trespass, c 2; Id. Trover, C 2. And in this the Civil agrees with the common law. Dig. 13, 6, 6, 8; Pothier, PrÇt Ö, Usage, ch. 1, §1, art. 2, n. 4; art. 3, n. 9; Ayliffe's Pand. B. 4, t. 16, p. 517; Domat, B. 1, t. 5, §1, n. 4; and so does the Scotch law. Ersk. Pr. Laws of Scotl. B. 3, t. 1 §8.

3. - 2. In the civil law, the first obligation on the part of the lender, is to suffer the borrower to use and enjoy the thing loaned during the time of the loan, according to the original intention. Such is not the doctrine of the common law. 9 Cowen, Rep. 687. The lender is obliged by the civil law to reimburse the borrower the extraordinary expenses to which he has been put for the preservation of the thing lent. And in such a case, the borrower would have a lien on the thing, and may detain it, until these extraordinary expenses are paid, and the lender cannot, even by an abandonment of the thing to the borrower, excuse himself from re-payment, nor is he excused by the subsequent loss of the thing by accident, nor by a restitution of it by the borrower, without insisting upon repayment. Pothier, PrÇt Ö Usage, ch. 3, n. 82, 83; Dig. 13, 6, 18, 4; Ersk. Pr. Laws of Scotl. B. 3, t. 1, §9. What would be decided at common law does not seem very clear. Story on Bailm. §274. Another case of implied obligation on the part of the lender by the civil law is, that he is bound to give notice to the borrower of the defects of the thing loaned; and if he does not and conceals them, and any injury occurs to the borrower thereby, the lender is responsible. Dig. 13, 6, 98, 3; Poth. PrÇt Ö Usage, n. 84; Domat, Liv. 1, t. 5, s. 3, n. 3. In the civil law there is also an implied obligation on the part of the lender where the thing has been lost by the borrower, and after he has paid the lender the value of it, the thing has been restored to the lender; in such case the lender must return to the borrower either the price or thing. Dig. 13, 6, 17, 5; Poth. Id. n. 85. "The common law seems to recognize the same principles, though," says Judge Story, Bailm. §276, "it would not perhaps be easy to cite a case on a gratuitous loan directly on the point." See Borrower; Commodate; Story, Bailm. ch. 4; Domat. Liv. 2, tit. 5; 1 Bouv. Inst. n. 1078, et seq.

LESION, contracts. In the civil law this term is used to signify the injury suffered, in consequence of inequality of situation, by one who does not receive a full equivalent for what he gives in a commutative contract.

2. The remedy given for this injury, is founded on its being the effect of implied error or imposition; for in every commutative contract, equivalents are supposed to be given and received. Louis. Code, 1854. Persons of full age, however, are not allowed in point of law to object to their agreements as being injurious, unless the injury be excessive. Poth. Oblig. P. 1, c. 1, s. 1, art. 3, §4. But minors are admitted to restitution, not only against any excessive inequality, but against any inequality whatever. Poth. Oblig. P. 1, c. 1, s. 1, art. 3, §5; Louis. Code, art. 1858.

3. Courts of chancery relieve upon terms of redemption and set aside contracts entered into by expectant heirs dealing for their expectancies, on the ground of mere inadequacy of price. 1 Vern. 167; 2 Cox, 80; 2 Cas. in Ch. 136; 1 Vern. 141; 2 Vern. 121; 2 Freem. 111; 2 Vent. 359; 2 Vern. 14; 2 Rep. in Ch. 396; 1 P. W. 312; 1 Bro. C. C. 7; 3 P. Wms. 393, n.; 2 Atk. 133; 2 Ves. 125; 1 Atk. 301; 1 Wils. 286; 1 Wils. 320; 1 Bro. P. 6. ed. Toml. 198; 1 Bro. C. C. 1; 16 Ves. 512; Sugd. on Vend. 231, n. k.; 1 Ball & B. 330; Wightw. 25; 3 Ves. & Bea. 117; 2 Swanst. R. 147, n.; Fonb. notes to the Treatise of Equity, B, 1, c. 2, s. 9. A contract cannot stand where the party has availed himself of a confidential situation, in order to obtain some selfish advantage. Note to Crowe v. Ballard. 1 Ves. jun. 125; 1 Hov. Supp. 66, 7. Note to Wharton v. May. 5 Ves. 27; 1 Hov. Supp. 378. See Catching bargain; Fraud; Sale.

LESSEE. He to whom a lease is made. The subject will be considered by taking a view, 1. Of his rights. 2. Of his duties.

2. - 1. He has a right to enjoy the premises leased for the term mentioned in the lease, and to use them for the purpose agreed upon. He may, unless, restrained by the covenants in the lease, either assign it, or underlet the premises. 1 Cruise, Dig. 174. By an assignment of the lease is meant the transfer of all the tenant's interest in the estate to another person; on the contrary, an underletting is but a partial transfer of the property leased, the lessee retaining a reversion to himself.

3. - 2. The duties of the lessee are numerous. First, he is bound to fulfil all express covenants he has entered into in relation to the premises leased; and, secondly, he is required to fulfil all implied covenants, which the relation of lessee imposes upon him towards the lessor. For example, he is bound to put the premises to no other use than that for which it was hired; when a farm is let to him for common farming purposes, he cannot open a mine and dig ore which may happen to be in the ground; but if the mine has been opened, it is presumed both parties intended it should be used, unless the lessee were expressly restrained; 1 Cruise, Dig. 132. He is required to use the property in a tenant-like and proper manner; to take reasonable care of it and to restore it at the end of his term, subject only to the deterioration produced by ordinary wear and the reasonable use for which it was demised. 12 M. & W. 827. Although he is not bound, in the absence of an express covenant, to rebuild in case of destruction

by fire or other accident, yet he must keep the house in a habitable state if he received it in good order. See Repairs. The lessee is required to restore the property to the lessor at the end of the term.

4. The lessee remains chargeable, after an assignment of his term, as before, unless the lessor has accepted the assignee; and even then he continues liable in covenant on an express covenaut, as for repairs, or to pay rent; 2 Keb. 640; but not for the performance of an implied one, or, as it is usually termed, a covenant in law. By the acceptance, he is discharged from debt for arrears of future rent. Cro. Jac. 309, 334; Ham. on Parties, 129, 130. Vide Estate for years; Lease;, Notice to quit: Tenant for years; Underlease.

LESSOR. contr. He who grants a lease. Civ. Code of L. art. 2647.

LESTAGE, Eng: law. Duties paid for unlading goods in port. Harg. L. Tr. 75.

LET. Hinderance, obstacle, obstruction; as, without let, molestation or hinderance.

TO LET. To hire, to lease; to grant the use and possession of something for a compensation.

2. This term is applied to real estate and the words to hire are more commonly used when speaking of personal estate. See Hire, Hirer, and Letter.

3. Letting is very similar to selling; the difference consists, in this; that instead of selling the thing itself, the letter sells only the use of it.

LETTER, com. law, Crim. law. An epistle; a despatch; a written message, usually on paper, which is folded up and sealed, sent by one person to another.

2. A letter is always presumed to be sealed, unless the presumption be rebutted. 1 Caines, R. 682. 1

3. This subject will be considered by 1st. Taking a view of the law relating to the transmission of letters through the post office; and, 2. The effect of letters in making contracts. 3. The ownership of letters sent and received.

4. - §1. Letters are, commonly sent through the post office, and the law has carefully provided for their conveyance through the country, and their delivery to the persons to whom they are addressed. The act to reduce into one the several acts establishing and regulating the post office department, section 21, 3 Story's Laws United States, 1991, enacts, that if any person employed in any of the departments of the post office

establishment, shall unlawfully detain, delay, or open, any letter, packet, bag, or mail of letters, with which he shall be entrusted, or which shall have come to his possession, and which are intended to be conveyed by post or, if any such person shall secrete, embezzle, or destroy, any letter or packet entrusted to such person as aforesaid, and which shall not contain any security for, or assurance relating to money, as hereinafter described, every such offender, being thereof duly convicted, shall, for every such offence, be fined, not exceeding three hundred dollars, or imprisoned, not exceeding six months, or both, according to the circumstances and aggravations of the offence. And if any person, employed as aforesaid, shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters, with which he or she shall be entrusted, or which shall have come to his or her possession, and are intended to be conveyed by post, containing any bank nots, or bank post bill, bill of exchange, warrant of the treasury of the United States, note of assignment of stock in the funds, letters of attorney for receiving annuities or dividends, or for, selling stock in the funds, or for receiving the interest thereof, or any letter of credit, or note for, or relating to, payment of moneys or any bond, or warrant, draft, bill, or promissory note, covenant, contract, or agreement whatsoever, for, or relating to, the payment of money, or the delivery of any article of value, or the performance of any act, matter, or thing, or any receipt, release, acquittance, or discharge of, or from, any debt; covenant, or demand, or any part thereof, or any copy of any record of any judgment or decree, in any court of law or chancery, or any execution which way may have issued thereon; or any copy of any other record, or any other article of value, or any writing representing the same or if any such person, employed as aforesaid, shall steal, or take, any of the same out of any letter, packet, bag, or mail of letters, that shall come to his or her possession, such person shall, on conviction for any such offence, be imprisoned not less than ten years, nor exceeding twenty-one years; and if any person who shall have taken charge of the mails of the United States, shall quit or desert the same before such person delivers it into the post office kept at the termination of the route, or some known mail carrier, or agent of the general post office, authorized to receive the same, every such person, so offending, shall forfeit and pay a sum not exceeding five hundred dollars, for every such offence; and if any person concerned in carrying the mail of the United States, shall collect, receive, or carry any letter, or packet, or shall cause or procure the same to be done, contrary, to this act, every such offender shall forfeit and pay for every such offence a sum, not exceeding fifty dollars.

5. - §2. Most contracts may be formed by correspondence; and cases not unfrequently arise where it is difficult to say whether the concurrence of the will of the contracting parties took place or not. In order to form a contract both parties must concur at the same time, or there is no agreement. Suppose, for example, that Paul of Philadelphia, is desirous of purchasing a thousand bales of cotton, and offers by letter to Peter of

New Orleans, to buy them from him at a certain price; but on the next day he changes his mind, and then he writes to Peter that he withdraws his offer; or on the next day he dies; in either case, there is no contract, because Paul did not continue in the same disposition to buy the cotton, at the time that his offer was accepted. The precise moment when the consent of both parties is perfect, is, in strictness, when the person who made the offer becomes acquainted with the fact that it has been accepted. But this may be presumed from circumstances. The acceptance must be of the same precise terms without any variance whatever. 4 Wheat. 225; see 1 Pick. 278; 10 Pick. 326; 6 Wend. 103.

6. - §3. A letter received by the person to whom it is directed, is the qualified property of such person: but where it is of a private nature, the receiver has no right to publish it without the consent of the writer, unless under very extraordinary circumstances; as, for example, when it is requisite to the defence of the character of the party who received it. 2 Ves. & B. 19; 2 Atk. 542; Amb. 737; 1 Ball. & B. 207; 1 Mart. (Lo.) R. 297; Denisart, verbo Lettres Missives. Vide Dead Letter; Jeopardy; Mail; Newspaper; Postage; Post Master General.

LETTER, contracts. In the civil law, locator, and in the French law, locateur, loueur, or bailleur, is he who, being the owner of a thing, lets it out to another for hire or compensation. See Hire; Locator; Conductor; Story on Bailm. §369.

2. According to the French and civil law, in virtue of the contract, the letter of a thing to hire impliedly engages that the hirer shall have the full use and enjoyment of the thing hired, and that he will fulfil his own engagements and trusts in respect to it, according to the original intention of the parties. This implies an obligation to deliver the thing to the hirer; to refrain from every obstruction to the use of it by the hirer during the period of the bailment; to do no act which shall deprive the hirer of the thing; to warrant the title and possession to the hirer, to enable him to use the thing or to perform the service; to keep the thing in suitable order and repair for the purpose of the bailment; and finally to warrant the thing from from any fault inconsistent with the use of it. These are the main obligations deduced from the nature of the contract, and they seem generally founded on unexceptionable reasoning. Pothier, Louage, n. 53; Id. n. 217; Domat, B. 1, tit. 4, §3 Code Civ. of L. tit. 9, c. 2, s. 2. It is difficult to say how far (reasonable as they are in a general sense) these obligations are recognized in the common law. In some respects the common law certainly differs. See Repairs; Dougl. 744, 748; 1 Saund. 321, 32e, and ibid. note 7; 4 T. R. 318; 1 Bouv. Inst. n. 980 et seq.

LETTER, civil law. The answer which the prince gave to questions of law which had been submitted to him by magistrates, was called letters or epistles. See Rescripts.

LETTER OF ADVICE. comm. law. A letter containing information of any circumstances unknown to the person to whom it is written; generally informing him of some act done by the writer of the letter.

2. It is usual and perfectly proper for the drawer of a bill of exchange to write a letter of advice to the drawee, as well to prevent fraud or alteration of the bill, as to let the drawee know what provision has been made for the payment of the bill. Chitt. Bills 185. (ed. of 1836.)

LETTER OF ATTORNEY, practice. A written instrument under seal, by which one or more persons, called the constituents, authorize one or more other persons called the attorneys, to do some lawful act by the latter, for or instead, and in the place of the former. 1 Moody, Cr. Cas. 52, 70.

2. The authority given in the lettor of attorney is either general, as to transact all the business of the constituent; or special, as to do some special business, particularly named; as, to collect a debt.

3. It is revocable or irrevocable; the former when no interest is conveyed to the attorney, or some other person. It is irrevocable when the constituent conveys a right to the attorney in the matter which is the subject of it; as, when it is given as part security. 2 Esp. R. 565. Civil Code of Lo: art. 2954 to 2970.

LETTER BOOK, commerce. A book containing the copies of letters written by a merchant or trader to his correspondents.

2. After notice to the plaintiff to produce a letter which he admitted to have received from the defendant, it was held that an entry by a deceased clerk, in a letter book professing to be a copy of a letter from the defendant to the plaintiff of the same date, was admissible evidence of the contents, proof having been given, that according to the course of business, letters of business written by the plaintiff were copied by this clerk and then sent off by the post. 3 Campb. R. 305. Vide 1 Stark Ev. 356; Bouv. Inst. n. 3139.

LETTER CARRIER. A person employed to carry letters from the post office to the persons to whom they are addressed.

2. The act of congress of March 3, 1851, Statutes at Large of U. S. by Minot, 591, directs, §10, That it shall be in the power of the postmaster general, at all post offices where the postmaster's are appointed by the president of the United States, to establish post routes within the cities or towns, to provide for conveying letters to the post office by establishing suitable and convenient places of deposit, and by employing

carriers to receive and deposit them in the post office; and at all such offices it shall be in his power to cause letters to be delivered by suitable carriers, to be appointed by him for that purpose, for which not exceeding one or two cents shall be charged, to be paid by the person receiving or sending the same, and all sums so received shall be paid into the post office department: Provided, The amount of compensation allowed by the postmaster general to carriers shall in no case exceed the amount paid into the treasury by each town or city under the provisions of this section.

3. It is further enacted by c. xxi. s. 2, That the postmaster general shall be, and he is hereby, authorized to appoint letter carriers for the delivery of letters from any post office in California or Oregon, and to allow the letter carriers who may be appointed at any such post office to demand and receive such sum for all letters, newsapers, or other mailable matter delivered by them, as may be recommended by the postmaster for whose office such letter carrier may be appointed, not exceeding five cents for every letter, two cents for every newspaper, and two cents for every ounce of other mailable matter and the postmaster general shall be, and he is hereby, authorized to empower the special agents of the post office department in California and Oregon to appoint such letter carriers in their districts respectively, and to fix the rates of their compensation within the limits aforesaid, subject to, and until the final action of, the postmaster general thereon. And such appointments may be made, and rates of compensation modified from time to time, as may be deemed expedient and the rates of compensation may be fixed, and graduated in respect to the distance of the place of delivery from the post office for which such carriers are appointed, but the rate of compensation of any such letter carrier shall not be changed after his appointment, except by the order of the postmaster general; and such letter carriers shall be subject to the provisions of the forty-first section of the act entitled "An Act to change the organization of the post office, department, and to provide more effectually for the settlement of the accounts thereof," approved July second, eighteen hundred and thirty-six, except in cases otherwise provided for in this act.

LETTER OF CREDENCE, international law. A written instrument addressed by the sovereign or chief magistrate of a state, to the sovereign or state to whom a public minister is sent, certifying his appointment as such, and the general objects of his mission, and requesting that full faith and credit may be given to what he shall do and say ou the part of his court.

2. When it is given to an ambassador, envoy, or minister accredited to a sovereign, it is addressed to the sovereign or state to whom the minister is delegated in the case of a chargÇ d'affaires, it is addressed by the secretary or minister of state charged with the department of foreign affairs to the minister of foreign affairs of the other government. Wheat. International Law, pt. 3, c. 1, §7; Wicquefort, de l'Ambassadeur, l. 1, §15.

LETTER OF CREDIT, contracts. An open or sealed letter, from a merchant in one place, directed to another, in another place or country, requiring him that if a person therein named, or the bearer of the letter, shall have occasion to buy commodities, or to want money to any particular or unlimited amount, either to procure the same, or to pass his promise, bill, or other engagement for it, the writer of the letter undertaking to provide him the money for the goods, or to repay him by exchange, or to give him such satisfaction as he shall require, either for himself or the bearer of the letter. 3 Chit Com. Law, 336; and see 4 Chit. Com. Law, 259, for a form of such letter.

2. These letters are either general or special; the former is directed to the writer's friends or correspondents generally, where the bearer of the letter may happen to go; the latter is directed to some particular person. When the letter is presented to the person to whow it is addressed, he either agrees to comply with the request, in which case he immediately becomes bound to fulfil all the engagements therein mentioned; or he refuses in which case the bearer should return it to the giver without any other proceeding, unless, indeed, the merchant to whom the letter is directed is a debtor of the merchant who gave the letter, in which case he should procure the letter to be protested. 3 Chit. Com. Law, 337; Malyn, 76; 1 Beaw. Lex Mer. 607; Hall's Adm. Pr. 14; 4 Ohio R. 197; 1 Wllc. R. 510.

3. The debt which arises on such letter, in its simplest form, when complied with, is between the mandator and the mandant; though it may be so conceived as to raise a debt also against the person who is supplied by the mandatory. 1. When the letter is purchased with money by the person wishing for the foreign credit; or, is granted in consequence of a check on his cash account, or procured on the credit of securities lodged with the person who granted it; or in payment of money due by him to the payee; the letter is, in its effects, similar to a bill of exchange drawn on the foreign merchant. The payment of the money by the person on whom the letter is granted raises a debt, or goes into account between him and the writer of the letter; but raises no debt to the person who pays on the letter, against him to whom the money is paid. 2. When not so purchased, but truly an accommodation, and meant to raise a debt on the person accommodated, the engagement, generally is, to see paid any advances made to him, or to guaranty any draft accepted or bill discounted and the compliance with the mandate, in such case, raises a debt, both against the writer of the letter, and against the person accredited. 1 Bell's Com. 371, 6th ed. The bearer of the letter of credit is not considered bound to receive the money; he may use the letter as he pleases, and he contracts an obligation only by receiving the money. Poth. Contr. de Change, 237.

LETTER OP LICENSE, contracts. An instrument or writing made by creditors to their insolvent debtor, by which they bind themselves to allow him a longer time than

he had a right to, for the payment of his debts and that they will not arrest or molest him in his person or property till after the expiration of such additional time.

LETTER OF MARQUE AND REPRRISAL, War. A commission granted by the government to a private individual, to take the property of a foreign state, or of the citizens or subjects of such state, as a reparation for an injury committed by such state, its citizens or subjects. A vessel loaded with merchandise, on a voyage to a friendly port, but armed for its own defence in case of attack by an enemy, is also called a letter of marque. 1 Bouly-Paty, tit. 3, s. 2, p. 300.

2. By the constitution, art. 1, s. 8, cl. 11, congress has power to grant letters of marque and reprisal. Vide Chit. Law of Nat. 73; 1 Black. Com. 251; Vin. Ab. Prerogative, N a; Com. Dig. Prerogative, B 4; Molloy, B. 1, c. 2, s. 10; 2 Wooddes. 440; 6 Rob. Rep. 9; 5 Id. 360; 2 Rob. Reb. 224. And vide Reprisal.

LETTER missive, Engl. law. After a bill has been filed against a peer or peeress, or lord of parliament, a petition is presented to the lord chancellor for his letter, called a letter missive, which requests the defendant to appear and answer to the bill. A neglect to attend to this, places the defendant, in relation to such suit, on the same ground as other defendants, who are not peers, and a subpoena may then issue. Newl. Pr. 9; 2 Madd. Ch. Pr. 196; Coop. Eq. Pl. 16.

LETTER of RECFALL. A written document addressed by the executive of one government to the executive of another, informing the latter that a minister sent by the former to him, has been recalled.

LETTER OF RECOMMENDATION, com. law. An instrument given by one person to another, addressed to a third, in which the bearer is represented as worthy of credit. 1 Bell's Com. 371, 6th, ed.; 9 T. R. 51; 7 Cranch, Rep. 69; Fell on Guar. c. 8; 6 Johns. R. 181; 13 Johns. R. 224; 1 Day's Cas. Er 22; and the article Recommendation.

LETTER OF RECREDENTIALS. A document delivered to a minister, by the secretary of state of the government to which he was accredited. It is addressed to the executive of the minister's country. This is in reply to the letter of recall.

LETTERS CLOSE, Engl. law. Close letters are grants, of the king, and being of private concern, they are thus distinguished from letters patent.

LETTERS AD COLLIGENDUM BONA DE FUNCTI, practice. In default of the representatives and creditors to administer to the estate of an intestate, the officer entitled to grant letters of administration, may grant to such person as he approves, letters to collect the goods of the deceased, which neither make him executor nor

administrator; his only busness being to collect the goods and keep them in his safe custody. 2 Bl. Com. 505.

LETTERS PATENT. The name of an instrument granted by the government to convey a right to the patentee; as, a patent for a tract of land; or to secure to him a right which he already possesses, as a patent for a new invention or discovery; Letters patent are a matter of record. They are so called because they are not sealed up, but are granted open. Vide Patent.

LETTERS OF REQUEST, Eng. eccl. law, An instrument by which a judge of an inferior court waives or remits his own jurisdiction in favor of a court of appeal immediately superior to it.

2. Letters of request, in general, lie only where an appeal would lie, and lie only to the next immediate court of appeal, waiving merely the primary jurisdiction to the proper appellate court, except letters of request from the most inferior ecclesiastical court, which may be direct to the court of arches, although one or two courts of appeal may, by this, be ousted of their jurisdiction as courts of appeal. 2 Addams, R. 406. The effect of letters of request is to give jurisdiction to the appellate court in the first instance. Id. See a form of letters of request in 2 Chit. Pr. 498, note.

LETTERS ROGATORY. A letter rogatory is an instrument sent in the name and by the authority of a judge or court to another, requesting the latter to cause to be examined, upon interrogatories filed in a cause depending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed. In letters rogatory there is always an offer on the part of tbe court whence they issued, to render a similar service to the court to which they may be directed whenever required. Pet. C. C. Rep. 236.

2. Though formerly used in England in the courts of common law, 1 Roll. Ab. 530, pl. 13, they have been superseded by commissions of Dedimus potestatem, which are considered to be but a feeble substitute. Dunl. Pr. 223, n.; Hall's Ad. Pr. 37. The courts of admiralty use these letters, which are derived from the civil law, and are recognized by the law of nations. See Foelix, Dr. Intern. liv. 2, t. 4, p. 800; Denisart, h. t.

LETTERS TESTAMENTARY, AND OF ADMINISTRATION. It is proposed to consider, 1. Their different kinds. 2. Their effect.

2. - §1. Their different kinds. 1. Letters testamentary. This is an instrument in writing, granted by the judge or officer having jurisdiction of the probate of wills, under his hand and official seal, making known that on the day of the date of the said letters, the last will of the testator, (naming him,) was duly proved before him; that the testator

left goods, &c., by reason, whereof, and the probate of the said will, he certifies "that administration of all and singular, the goods, chattels, rights and credits of the said deceased, any way concerning his last will and testament, was committed to the executor, (naming him,) in the said testament named." 2. Letters of administration may be described to be an instrument in writing, granted by the judge or officer having jurisdiction and power of granting such letters, thereby giving the administrator, (naming him,)," full power to administer the goods, chattels, rights and credits, which were of the said deceased, in the county or, district in which the said judge or officer has jurisdiction; as also to ask, collect, levy, recover and receive the credits whatsoever, of the said deceased, which at the time of his death were owing, or did in any way belong to him, and to pay the debts in which the said deceased stood obliged, so far forth as the said goods and chattels, rights and credits will extend, according, to the rate and order of law." 3. Letters of administration pendente lite, are letters granted during the pendency of a suit in relation to a paper purporting to be the last will and testament of the deceased. 4. Letters of administration de bonis non, are granted, where the former executor or administrator did not administer all the personal estate of the deceased, and where he is dead or has been discharged or dismissed. Letters of administration, durante minori aetate, are granted where the testator, by his will, appoints an infaut executor, who is incapable of acting on account of his infancy. Such letters remain in force until the infant arrives at an age to take upon himself the execution of the will. Com. Dig. Administration, F; Off. Ex. 215, 216. And see 6 Rep. 67, b; 5 Rep. 29, a; 11 Vin. Abr. 103; Bac. Ab. h. t. 6. Letters of administration durante absentia, are granted when the executor happens to be absent at the time when the testator died, and it is necessary that some person should act immediately in the management of the affairs of the estate.

3. - §2. Of their eltect. 1. Generally. 2. Of their effect in the different states, when granted out of the state in which legal proceedings are instituted.

4. - 1. Letters testamentary are conclusive as to personal property, while they remain unrevoked; as to realty they are merelly primÉ facie evidence of right. 3 Binn. 498; Gilb. Ev. 66;. 6 Binn. 409; Bac. Abr. Evidence, F. See 2 Binn. 511. Proof that the testator was insane, or that the will was forged, is inadmissible. 16 Mass. 433; 1 Lev. 236. But if the nature of his plea allow the defendant to enter into such proof, he may show that the seal of the supposed probate has been forged, or that the letters have been obtained by surprise; 1 Lev. 136; or been revoked; 15 Serg. & Rawle, 42; or that the testator is alive. 15 Serg. & Rawle, 42; 3 T. R. 130.

5. - 2. The effect of letters testametary, and of administration granted, in some one of the United States, is different in different states. A brief view of the law on this subject will here be given, taking the states in alphabetical order.

6. Alabama. Administrators may sue upon letters of administration granted in anothor state, where the intestate had no known place of residence in Alabama at the time of his death, and no representative has been appointed in the state; but before rendition of the judgment, he must produce to the court his letters of administration, authenticated according to the laws of the United States, and the certificate of the clerk of some county court in this state, that the letters have been recorded in his office. Before he is entitled to the money on the judgment, he must also give bond, payable to the judge of the court where the judgment is rendered, for the faithful administration of the money received. Aiken's Dig. 183 Toulm. Dig. 342.

7. Arkansas. When the deceased had no residence in Arkansas, and he devised lands by will, or where the intestate died possessed of lands, letters testa-mentary or of administration shall be granted in the county where the lands lie, or of one of them, if they lie in several counties; and if the deceased had no such place of residence and no lands, such letters may be granted in the county in which the testator or intestate died, or where the greater part of his estate may be. Rev. Stat. c. s. 2.

8. Connecticut. Letters testamentary issued in another state, are not available in this. 3 Day 303. Nor are letters of administration. 3 Day, 74; and see 2 Root, 462.

9. Delaware. By the act of 1721, 1 State Laws, 82, it is declared in substance, that when any person shall die, leaving bona notabilia, in several counties in the state and in Pennsylvania or elsewhere; and, any person not residing in the state, obtains letters of administration out of the state, the deceased being indebted to any of the inhabitants of the state, for a debt contracted within the same to the value of ú20, then, and in such case, such administrator, before he can obtain any judgment in any court of record within the state against any inhabitant thereof, by virtue of such letters of administration, is obliged to file them with some of the registers in this state; and must enter into bonds with sufficient sureties, who have visible estates here, with condition to pay and satisfy all such debts as were owing by the intestate at the time of his death to any person residing in this state, so far as the effects of the deceased in this state will extend. By the act of June 16, 1769, 1 State Laws, 448, it is enacted in substance that any will in writing made by a person residing out of the state, whereby any lands within the state are devised, which shall be proved in the chancery in England, Scotland, Ireland, or any colony, plantation, or island in America, belonging to the king of Great Britain, or in the hustings, or mayor's court, in London, or in some manor court, or before such persons as have power or authority at the time of proving such wills, in the places aforesaid, to take probates of wills, shall be good and available in law for granting the lands devised, as well as of the goods and chattels bequeathed by such will. The copies of such will, and of the bill, answer, depositions and decree, where proved in any court of chancery, or copies of such wills and the probate thereof, where proved in any other court, or in any office as aforesaid, being

transmitted to this state, and produced under the public or common-seal of the court or office where the probate is taken, or under the great seal of the kingdom, colony, plantation or island, within which such will is proved (except copies of such wills and probates as shall appear to be revoked), are declared to be matter of record, and to be good evidence in an any court of law or equity in this state, to prove the gift or devise made in such will; and such probates are declared to be sufficient to enable executors to bring their actions within any court within this state, as if the same probates or letters testamentary were granted here, and produced under the seal of any of the registers offices within this state. By the 3d section of the act, it is declared that the copies of such wills and probates so produced, and given in evidence, shall not be returned by the court to the persons producing them, but shall be recorded in the office of the recorder of the county where the same are given in evidence, at the expense of the party producing the same.

10. Florida. Copies of all wills, and letters testamentary and of administration, heretofore recorded in any public office of record in the state, when duly certified by the keeper of said records, shall be received in evidence in all courts of record in this state and the probate of wills granted in any of the United States or of the territories thereof, in any foreign country or state, duly authenticated and certified according to the laws of the state or territory, or of the foreign country or state, where such probate may have been granted, shall likewise be received in evidence in all courts of record in this state.

11. Georgia. To enable executors and administrators to sue in Georgia, the former must take out letters testamentary in the county where the property or debt is; and administrators, letters of administration. Prince's Dig. 238; Act of 1805, 2 Laws of Geo. 268.

12. Illinois. Letters testamentary must be taken out in this state, and when the will is to be proved, the original must be produced; administrators of other states must take out letters in Illinois, before they can maintain an action in the courts of the state. 3 Griff. L. R. 419.

13. Indiana. Executors and administrators appointed in another state may maintain actions and suits and do all other acts coming within their powers, as such, within this state, upon producing authenticated copies of such letters and filing them with the clerk of the court in which such suits are to be brought. Rev. Code, c. 24, Feb. 17, 1838, sec. 44.

14. Kentucky executors and administrators appointed in other states may sue in Kentucky "upon filing with the clerk of the court where the suit is brought, an authenticated copy of the certificate of probate, or orders granting letters of

administration of said estate, given in such non-resident's state." 1 Dig. Stat. 536; 2 Litt. 194; 3 Litt. 182.

15. Louisiana. Executors or administrators of other states must take out letters of curatorship in this state. Exemplifications of wills, and testaments are evidence. 4 Griff. L. R. 683; 8 N. S. 586.

16. Maine. Letters of administration must be taken from some court of probate in this state. Copies of wills which have been proved in a court of probate in any of the United States, or in a court of probate of any other state or kingdom, with a copy of the probate thereof, under the seal of the court where such wills have been proved, may be filed and recorded in any probate court in this state, which recording shall be of the same force as the recording and proving the original will. Rev. Stat. T. 9, c. 107 §20; 3 Mass, 514; 9 Mass. 337; 11 Mass. 256; 1 Pick. 80; 3 Pick. 128.

17. Maryland. Letters testamentary or of administration granted out of Maryland have no effect in this state, except only such letters issued in the District of Columbia, and letters granted there authorize executors or administrators to claim and sue in this state. Act of April 1813, chap. 165. By the act of 1839, chap. 41, when non-resident owners of any public or state of Maryland stocks, or stocks of the city of Baltimore, or any other corporation in this state die, their executors or administrators constituted under the authority of the state, district, territory or country, where the deceased resided at his death, have the same power as to such stocks, as if they were appointed by authority of the state of Maryland. But, before they can transfer the stocks, they must, during three months, give notice to two newspapers published in Baltimore, of the death of the testator or intestate, and of the "amount and description of the stock designed to be transferred." Administration must be granted in this state, in order to recover a debt due here to a decedent, or any of his property, with the exceptions above noticed.

18. Massachusetts. When any person shall die intestate in any other state or country, leaving estate to be administered within this state, administration thereof shall be granted by the judge of probate of any county, in which there is any estate to be administered; and the administration, which shall be first lawfully granted shall extend to all the estate of the deceased within the state, and shall exclude the jurisdiction of the probate court in every other county. Rev. Stat., ch. 64, s. 3. See 3 Mass. 514; 5 Mass. 67; 11 Mass. 256 Id. 314; 1 Pick. 81.

19. Michigan. Letters testamentary or letters of administration granted out of the state are not of any validity in it. In order to collect the debts or to obtain the property a deceased person who was not a resident of the state, it is requisite to take out letters testamentary or letters of administration from a probate court of this stafe, within

whose jurisdiction the property lies, which letters operate over all the state, and then sue in the name of the executor or administrator so appointed. Rev. Stat. 280. When the deceased leaves a will executed according to the laws of this state, and the same is admitted to proof and record where he dies, a certified transcript of the will and probate thereof, may be proved and recorded in any county in this state, where the deceased has property real or personal, and letters testamentary may issue thereon. Rev. Stat. 272, 273.

2O. Mississippi. Executors or administrators in another state or territory cannot as such, sue nor be sued in this state. In order to recover a debt due to a deceased person or his property, there must be taken out in the state, letters of administration or letters with the will annexed, as the case may be. These may be taken out from the probate court of the county where the proprty is situated, by a foreign as well as a local creditor, or any person interested in the estate of the deceased, if properly qualified in other respects. Walker's R. 211.

21. Missouri. Letters testamentary or of administration granted in another state have no validity in this; to maintain a suit, the executors or adminis-trators must be appointed under the laws of this state. Rev. Code, §2, pt 41.

22. New Hampshire. One who has obtained letters of administrition; Adams' Rep. 193, or letters testamentary under the authority of another state, cannot maintain an action in New Hampshire by virtue of such letters. 3 Griff. L. R. 41.

23. New Jersey. Executors having letter testamentary, and administrators letters of administration granted in another state, cannot sue thereon in New Jersey, but must obtain such letters in that state as the law prescribes. 4 Griff. L R. 1240. By the act of March 6, 1828, Harr. Comp. 195, when a will has been admitted to probate in any state or territory of the United States, or foreign nation, the surrogate of any county or this state is authorized, on applicaton of the executor or any person interested, on filing a duly exemplified copy of the will, to appoint a time not less than thirty days, and not more than six-months distant, of which notice is to be given as he shall direct, and if at such time, no sufficient reason be shown to the contrary, to a omit such will to probate, and grant letters testamentary or of administration cum testamento annexo, which shall have the same effect as though the original will had been produced and proved under form. If the person to whom such letters testamentary or of administration be granted, is not a resident of this state, he is required to give security for the faithful administration of the estate. By the statute passed February 28, 1838, Elmer's Dig. 602, no instrument of writing can be admitted to probate under the preceding act unless it be signed and published by the testator as his will. See Saxton's Ch. R. 332.

24. New York. An executor or administrator appointed in another state has no authority to sue in New York. 6 John. Ch. Rep. 353; 7 John. Ch. Rep. 45; 1 Johns. Ch. Rep. 153. Whenever an intestate, not being an inhabitant of this state, shall die out of the state, leaving assets in several counties, or assets shall after his death come in several counties, the surrogate of any county in which assets shall be, shall have power to grant letters of administration on the estate of such intestate; but the surrogate, who shall first grant letters of administration on such estate, shall be deemed thereby to have acquired sole and exclusive jurisdiction over such estate, and shall be vested with the powers incidental thereto. Rev. Stat. part 2, c. 6. tit. 2, art. 2, s. 24; 1 R. L. 455 §3; Laws, of 1823, p. 62, s. 2, 1824, p. 332.

25. North Carolina. It was decided by the court of conference, then the highest tribunal in North Carolina, that letters granted in Georgia were insufficient. Conf. Rep. 68. But the supreme court have since held that letters testamentary granted in South Carolina, were sufficient to enable an executor to sue in North Carolina. 1 Car. Law Repos. 471. See 1 Hayw. 364.

26. By the revised statutes, ch. 46, s. 6, it is provided, that "where a testator or testatrix shall appoint any person, residing out of this state, executor or executrix of his or her last will and testament, it shall be the duty of the court of pleas and quarter sessions, before which the said will shall be offered for probate, to cause the executor or executrix named therein, to enter into bond with good and sufficient security for his or her faithful administration of the estate of the said testator or testatrix and for the distribution thereof in the manner prescribed by law; the penalty of said bond shall be double the supposed amount of the personal estate of the said testator or testatrix; and until the said executor or executrix shall enter into such bond, he or she shall have no power nor authority to intermeddle with the estate of the said testator or testatrix; and the court of the county in which the testator or testatrix had his or her last usual place of resi-dence, shall proceed to, grant letters of administration with the will annexed, which shall continue in force until the said executor or executrix shall enter into bond as aforesaid. Provided nevertheless, and it is hereby declared, that the said executor or executrix shall enter into bond as by this act directed within the space of one year after the death of the said testator, or testatrix, and not afterwards."

27. Ohio. Executors and administrators appointed under the authority of another state, may, by virtue of such appointment, sue in this. Ohio Stat. vol. 38, p. 146; Act. of March 23, 1840, which, went into effect the first day of November following; Swan's Coll. 184.

28. Pennsylvania. Letters testamentary or of administration, or otherwise purporting to authorize any person to intermeddle with the estate of a decedent, granted out of the commonwealth, do not in general confer on any such person any of the powers, and

authorities possessed by an executor or administrator, under letters granted within the state. Act of March 15, 1832 s. 6. But by the act of April 14, 1835, s. 3, this rule is declared not to apply to any public debt or loan of this commonwealth; but such public debt or loan shall pass and be transferable, and the dividends thereon accrued and to accrue, be receivable in like manner and in all respects and under the same and no other regulations, powers and authorities as were used and practiced before the passage of the above mentioned act. And the act of June 16, 1836, s. 3, declares that the above act of March 15, 1832, s. 6, shall not apply to shares of stock in any bank or other incorporated company, within this commonwealth, but such shares of stock shall pass and be transferable, and the dividends thereon accrued and to accrue, be receivable in like manner in all respects, and under the same regulations, powers and authorities as were used and practiced with the loans or public debts of the United States and were used and practiced with the loans or public debt of this commonwealth, before the passage of the, said act of March 15, 1832, s. 6, unless the by-laws, rules and regulations of any such bank or corporation, shall, otherwise provide and declare. Executors and administrators who had been lawfully appointed in some other of the United States, might, by virtue of their letters duly authenticated by the proper officer, have sued in this state. 4 Dall. 492; S. C. 1 Binn. 63. But letters of administration granted by the archbishop of York, in England, give no authority to the administrator in Pennsylvania. 1 Dall. 456.

29. Rhode Island. It does not appear to be settled whether executors and administrators appointed in another state, may, by virtue of such appointment, sue in this. 3 Griff. L. R. 107, 8.

30. South Carolina. Executors and administrators of other states, cannot, as such, sue in South Carolina; they must take out letters in the state. 3 Griff. L. R. 848.

31. Tennessee. §1. Where any person or persons may obtain, administration on the estate of any intestate, in any one of the United States, or territory thereof, such person or persons shall be enabled to prosecute suits in any court in this state, in the same manner as if administration had been granted to such person or persons by any court in the state of Tennessee. Provided, that such person or persons shall, produce a copy of the letters of administration, authenticated in the manner which has been prescribed by the congress of the United States, for authenticating the records or judicial acts of any one state, in order to give them validity in any other state and that such letters of administration had been granted in pursuance of, and agreeable to the laws of the state or territory in which such letters of administration were granted.

32. § 2. When any executor or executors may prove the last will and testament of any deceased person, and take on him or themselves the execution of said will in any state in the United States, or in any territory thereof, such person or persons shall be

enabled to prosecute suits in any court in this state, in the same manner as if letters testamentary had been granted to him or them, by any court within the state of Tennessee. Provided, That such executor or executors shall, produce a certified copy of the letters testa-mentary under the hand and seal of the clerk of the court where the same were obtained, and a certificate by the chief justice, presiding judge, or chairman of such court, that the clerk's certificate is in due form, and that such letters testamentary had been granted in pursuance of, and agreeable to, the laws of the state or territory in which such letters testamentary were granted. Act of 1839, Carr. & Nich. Comp. 78.

33. Vermont. If the deceased person shall, at the time of his death, reside in any other state or country, leaving estate to be administered in this state, administration thereof shall be granted by the probate court of the district in which there shall be estate to administer; and the administration first legally granted, shall extend to all the estate of the deceased in this state, and shall exclude the jurisdiction of the probate court of every other district. Rev. Stat. tit. 12, c. 47, s. 2.

34. Virginia. Authenticated copies of wills, proved according to the laws of any of the United States, or of any foreign country, relative to any estate in Virginia, may be offered for probate in the general court, or if the estate lie altogether in any other county or corporation, in the circuit, county or corporation court of such county or corporation. 3 Griff. L. R. 345. It is understood to be the settled law of Virginia, though there is no statutory provision on the subject, that no probate of a will or grant of administration in another state of the Union, or in a foreign country, and no qualification of an executor or administrator, elsewhere than in Virginia, give any such executor or administrator any right to demand the effects or debts of the decedent, which may happen to be within the jurisdiction of the state. There must be a regular probate or grant of administration and qualification of the executor or administrator in Virginia, according to her laws. And the doctrine prevails in the federal courts held in Virginia, as well as in the state courts. 3 Graff. L. R. 348.

LEVANT ET COUCHANT. This French phrase, which ought perhaps more properly to be couchant et levant, signifies literally rising and lying down. In law, it denotes that space of time which cattle have been on the land in which they have had time to lie down and rise again, which, in general, is held to be one night at least. 3 Bl. Com. 9; Dane's Ab. Index, h. t; 2 Lilly's Ab. 167; Wood's Inst. 190; 2 Bouv. Inst. n. 1641.

LEVARI FACIAS, Eng. law. A writ of execution against the goods and chattels of a clerk. Also the writ of execvtion on a judgment at the suit of the crown. When issued against an ecclesiastic, this writ is in effect the writ of fieri facias directed to the bishop of the diocese, commanding him to cause execution to be made of the goods

and chattels of the defendant in his diocese. The writ also recites, that the sheriff had returned that the defendant had no lay fee, or goods or chattels whereof he could make a levy, and that the defendant was a beneficed clerk; &c. See 1, Chit. R. 428; Id. 589, for cases when it issues at the suit of the crown. This writ is also used to recover the plain-tiff's debt; the sheriff is commanded to levy, such debt on the lands and goods of the defendant, in virtue of which he may seize his goods, and receive the rents and profits of his lands, till satisfaction be made to the plain-tiff. 8 Bl. Com. 417; Vin. Ab. 14; Dane's Ab. Index, h. t.

2. In Pennsylvania, this writ is used to sell lands mortgaged after a judgment has been obtained by the mortgagee, or his assignee, against the mortgagor, under peculiar. proceeding authorized by statute. 3 Bouv. Inst. n. 3396.

LEVITICAL DEGREES. Those degrees of 'kindred set forth' in the eighteenth chapter of Leviticus, within which persons are prohibited to marry. Vide Branch; Descent; Line.

LEVY, practice. A seizure (q. v.) the raising of the money for which an execution has been issued.

2. ln order to make a valid levy on personal property, the sheriff must have it within his power and control, or at least withn his view, and if, having it so, he makes a levy upon it, it will be good if followed up afterwards within a reasonable time, by his takikng possession in such manner as to apprize everybody of the fact of its having been taken into execution. 3 Rawle R. 405-6; 1 Whart. 377; 2 S. & R. 142; 1 Wash C. C. R. 29; 6 Watts, 468; 1 Whart. 116. The usual mode of making levy upon real estate, is to describe the land which has been seised under the execution, by metes and bounds, as in a deed of conveyance. 3 Bouv. Inst. n. 3391.

3. It is a general rule, that hwen a sufficient levy has been made, the officer cannot make a second. 12 John. R. 208; 8 Cowen, R. 192. LEVYING WAR, crim. law. The assembling of a body of men for the purpose of effecting by force a treasonable object; and all who perform any part however minute, or however remote from the scene of action, and who are leagued in the general conspiracy, are considered as engaged in levying war, within the meaning of the constitution. 4 Cranch R. 473-4; Const. art. 3, s. 3. Vide Treason; Fries'Trial; Pamphl. This is a technical term, borrowed from the English law, and its meaning is the same as it is when used in stat. 25 Ed. III.; 4 Cranch's R. 471; U. S. v. Fries, Pamphl. 167; Hall's Am. Law Jo. 351; Burr's Trial; 1 East, P. C. 62 to 77; Alis. Cr. Law of Scotl. 606; 9 C. & P. 129.

LEX. The law. A law for the government of mankind in society. Among the ancient Romans, this word was frequently used as synonymous with right, jus. When put absolutely, lex meant the Law of the Twelve Tables.

LEX FALCIDIA, civ. law. The name of a law which permitted a testator to dispose of three-fourtbs of his property, but he could not deprive his heir of the other fourth. It was made during the reign of Augustus, about the year of Rome 714, on the requisition of Falcidius, a tribune. Inst. 2, 22; Dig. 35, 2; Code, 6, 50;. and Nov. 1 and 131. Vide article Legitime, and Coop. Just. 486; Rob. Frauds, 290, note 113.

LEX FORI, practice. The law of the court or forum.

2. The forms of remedies, the modes of proceeding, and the execution of judgments, are to be regulated solely and exclusively, by the laws of the place where the action is instituted or as the civilians uniformly express it, according to the lex fori. Story, Confl. of Laws, §550; 1 Caines' Rep. 402; 3 Johns. Ch. R. 190; 5 Johns. R. 132; 2 Mass. R. 84; 7 Mass. R. 515; 3 Conn. R. 472; 7 M. R. 214; 1 Bouv. Inst. n. 860.

LEX LOCI CONTRACTUS, contracts. The law of the place where an agreement is made.

2. Generally, the validity of a contract is to be decided by the law of the place where, the contract is made; if valid, there it is, in general, valid everywhere. Story, Confl. of Laws, §242, and the cases there cited. And vice versa if void or illegal there, it is generally void everywhere. Id §243; 2 Kent Com. 457; 4 M. R. 584; 7 M. R. 213; 11 M. R. 730; 12 M. R. 475; 1 N. S. 202; 5 N. S. 585; 6 N. S. 76; 6 L. R. 676; 6 N. S. 631; 4 Blackf. R. 89.

3. There is an exception to the rule as to the universal validity of contracts. The comity of nations, by virtue of which such contracts derive their force in foreign countries, cannot prevail in cases where it violates the law of our own country, the law of nature, or the law of God. 2 Barn. & Cresw. 448, 471. And a furthIer exeeption may be mentioned, namely, that no nation will regard or enforce the revenue laws of another country. Cas. Tem. 85, 89, 194.

4. When the contract is entered into in one place, to be executed in another, there are two loci contractus; the locus celebrate contractus, and the locus solutionis; the former governs in everything which relates to the mode of construing the contract, the meaning to be attached to the expressions, and the nature and validity of the engagement; but the latter governs the performance of the agreement. 8 N. S. 34. Vide 15 Serg. & Rawle 84; 2 Mass. R. 88; 1 Nott & M'Cord, 173; 2 Harr. & Johns. 193,

221; 2 N. H. Rep. 42; 5 Id. 401; 2 John. Cas. 355; 5 Pardes. n. 1482; Bac. Abr. Bail in Civil Causes, B 5; Com. Dig. 545, n.; 1 Supp. to Ves. jr. 270; 8 Ves. 198; 5 Ves. 750.

LEX LONGOBARDORUM. The name of an ancient code in force among the Lombards. It contains many evident traces of feudal policy. It survived the destruction of the ancient government of Lombardy by Charlemagne, and is said to be still partially in force in some districts of Italy.

LEX MERCATORIA. That system of laws which is adopted by all commercial nations, and which, therefore, constitutes a part of the law of the land. Vide Law Merchant.

LEX TALIONIS. The law of retaliation an example of which is given in the law of Moses, an eye for an eye, a tooth for a tooth, &c.

2. Jurists and writers on international law are divided as to the right of one nation punishing with death, by way of retaliation, the citizen's or subjects of another nation; in, the United States no example of such barbarity has ever been witnessed but, prisoners have been kept in close confinement in retaliation for the same conduct towards American prisoners. Vide Rutherf. Inst. b. 2, c. 9; Mart. Law of Nat. b. 8, c. 1, s. 3, note 1 Kent, Com. 93.

3. Writers on the law of nations have divided retaliation into vindictive and amicable: By the former are meant those acts of retaliation which amount to a war; the latter those acts of retaliation which correspond to the acts of the other nation under similar circumstances. Wheat. Intern. Law, pt. 4, c. 1, §1.

LEX TERAE. The law of the land. The phrase is used to distinguisb this from the civil or Roman law.

2. By lex terrae, as used in Magna Charta, is meant one process of law, namely, proceeding by indictment or presentment of good and lawful men. 2 Inst. 50; 19 Wend. 659; 4 Dev. R. 15. in the constitution of Tennessee, the words "the law of the land" signify a general and public law, operating equally upon every member of the community. 10 Yerg. 71.

LEY. This word is old French, a corruption of loi, and signifies law; for example, Termes de la Ley, Terms of the Law. In another, and an old technical sense, ley signifies an oath, or the oath with compurgators; as, il tend sa ley aiu pleyntiffe. Brit. c. 27.

LEY-GAGER. Wager of Law. (q. v.)

LIABILITY. Responsibility; the state of one who is bound in law and justice to do sometbing which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed.

2. The liabilities of one man are not in general transferred to his representative's further than to reach the estate in his hands. For example, an executor is not responsible for the liabilities of his testator further than the estate of the testator which has come to his hands. See Hamm. on Pait. 169, 170.

3. The husband is liable for his wife's contracts made dum sola, and for those made during coverture for necessaries, and for torts committed either while she was sole or since her marriage with him; but this liability continues only during the coverture; as to her torts, or even her contracts made before marriage; for the latter, however, she may be sued as her executor or administiator, when she assumes that character.

4. A master is liable for the acts of his servant while in his employ, performed in the usual course of his business, upon the presumption that they have been authorized by him; but he is responiible only in a civil point of view and not criminally, unless the acts have been actually authorized by him. See Bouv. Inst. Index, h. t.; Driver; Quasi Offence; Servant.

LIBEL, practice. A libel has been defined to be "the plaintiff's petition or allegation, made and exhibited in a judicial process, with some solemnity of law;" it is also, said to be "a short and well ordered writing, setting forth in a clear manner, as well to the judge as to the defendant, the plaintiff's or accuser's intention in judgment." It is a written statement by a plaintiff, of his cause of action, and of the relief he seeks to obtain in a suit. Law's Eccl. Law, 147; Ayl. Par. 346; Shelf. on M. & D. 506; Dunf Adm. Pr. 111; Betts. Pr. 17; Proct. Pr. h. t.; 2 Chit. Pr. 487, 533.

2. The libel should be a narrative, specious, clear, direct, certain, not general, nor alternative. 3 Law's Eccl. Law. 147. It should contain, substantially, the following requisites: 1. The name, description, and addition of the plaintiff, who makes his demand by bringing his action. 2 The name, description, and addition of the defendant. 3. The name of the judge with a respectful designation of his office and court. 4. The thing or relief, general or special, which is demanded in the suit. 5. The grounds upon which the suit is founded. All these things are summed up in Latin, as follows;

Quis, quid, coram quo, quo jure petitur, et a quo, Recte compositus quique libellus habet:

which has been translated,

Each plaintiff and defendant's name, and eke the judge who tries the same, The thing demanded and the right whereby You urge to have it granted instantly: He doth a libel write and well compose, Who forms the same, emitting none of those.

3. The form of a libel is either simple or articulate. The simple form is, when the cause of action is stated in a continuous narration, when the cause of action can be briefly set forth. The articulate form, is when the cause of action is stated in distinct allegations, or articles. 2 Law's Ecel. Law, 148; Hall's Adm. Pr. 123; 7 Cranch, 349. The material facts should be stated in distinct articles in the libel, with as much exactness and attention to times and circumstances, as in a declaration at common law. 4 Mason, 541. Pompous diction and strong epithets are out of place in a legal paper designed to obtain the admission of the opposite party of the averments it contains, or to lay before the court the facts which the actor will prove.

4. Although there is no fixed formula for libels and the court will receive such an instrument from the party in such form as his own skill or that of his counsel may enable him to give it, yet long usage has sanctioned forms, which it may be most prudent to adopt. The parts and arrangement of libels commonly employed are,

5. - 1. The address to the court; as, To the Honorable John K. Kane, Judge of the district court of the United States, within and for the eastern district of Pennsylvania.

6. - 2. The names and descriptions of the parties. Persons competent to sue at common law may be parties libellants, and similar regulations obtain in the admiralty courts and the common law courts, respecting those disqualified from suing in their own right or name. Married women prosecute by their husbands, or by prochein ami, when the husband has an adverse interest to hers; minors, by guardians, tutors, or prochein ami; lunatics and persons non compos mentis, by tutor, guardian ad litem, or committee; the rights of deceased persons are prosecuted by executors or administrators; and corporations are represented, and proceeded against as at common law.

7. - 3. The averments or allegations setting forth the cause of action should be conformable to the truth, and so framed as to correspond with the evidence. Every fact requisite to establish the libellant's right should be clearly stated, so that it may be directly met by the opposing party by admission, denial or avoidance; this is the more necessary because no proof can be given, or decree rendered, not covered by and conformable to the allegations. 1 Law's Eccl. Laws, 150; Hall's Pr. 126; Dunl. Adm. Pr. 113; 7 Cranch, 394.

8. - 4. The conclusion, or prayer for relief and process; the prayer should be for the specific relief desired; for general relief, as is usual in bills in chancery; the

conclusion should also pray for general, or particular process. Law's Eccl. Law, 149; and see 3 Mason, R. 503. Interrogatories are sometimes annexed to the libel; when this is the case, there is usually a special prayer, that the defendant may be required to answer the libel, and the interrogatories annexed and propounded. This, however, is a dangerous practice, because it renders the answers of the defendant evidence, which must be disproved by two witnesses, or by one witness, corroborated by very strong circumstances.

9. The libel is the first proceeding in a suit in admiralty in the courts of the United States. 3 Mason, R., 504. It is also used in some other courts. Vide, generally, Dunl. Adm. Pr. ch. 3; Bett's Adm. Pr. s. 3; Shelf. on. M. & D. 606; Hall's Adm. Pr. Index, h. t.; 3 Bl. Com. 100; Ayl. Par. Index, h. t.; Com. Dig. Admiralty, E; 2 Roll. &b. 298.

LIBEL, libellus, criminal law. A malicious defamation expressed either in printing or writing, or by signs or pictures, tending to blacken the memory of one who is dead, with intent to provoke the living; or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule. Hawk. b. 1, c. 73, s. 1; Wood's Inst, 444; 4 Bl. Com. 150; 2 Chitty, Cr. Law, 867; Holt on Lib. 73; 5 Co. 125; Salk. 418; Ld. Rgym. 416; 4. T. R. 126; 4 Mass. R. 168; 9 John. 214; 1 Den. Rep. 347; 2 Pick. R. 115; 2 Kent, Com. 13. It has been defined perhaps with more precision to be a censorious or ridiculous writing, picture or sign made with a malicious or mischievous intent, towards government magistrates or individuals. 3 John. Cas. 354; 9 John. R. 215; 5 Binn. 340.

2. In briefly considering this offence, we will inquire, 1st. By what mode of expression a libel may be conveyed. 2d. Of what kind of defamation it must consist. 3d. How plainly it must be expressed. 4th. What mode of publication is essential.

3. - 1. The reduction of the slanderous matter to writing, or printing, is the most usual mode of conveying it. The exhibition of a picture, intimating that which in print would be libelous, is equally criminal. 2 Camp. 512; 5 Co. 125; 2 Serg. & Rawle 91. Fixing a gallows at a man's door, burning him in effigy, or exhibiting him in any ignominious manner, is a libel. Hawk. b. 1, c. 73, s. 2,; 11 East, R. 227.

4. - 2. There is perhaps no branch of the law which is so difficult to reduce to exact, principles, or to compress within a small compass, as the requisites of a libel. All publications denying the Christian religion to be true; 11 Serg. & Rawle, 394; Holt on Libels, 74; 8 Johns. R. 290; Vent. 293; Keb. 607; all writings subversive of morality and tending to inflame the passions by indecent language, are indictable at common law. 2 Str. 790; Holt on Libels, 82; 4 Burr. 2527. In order to constitute a libel, it is not necessary that anything criminal should be imputed to the party injured; it is enough if the writer has exhibited him in a ludicrous point of view; has pointed him out as an

object of ridicule or disgust; has, in short, done that which has a natural tendency to excite him to revenge. 2 Wils. 403; Bacon's Abr. Libel, A 2; 4 Taunt. 355; 3 Camp. 214; Hardw. 470; 5 Binn. 349. The case of Villars v. Monsley, 2 Wils. 403, above cited, was grounded upon the following verses, which were held to be libelous, namely:

"Old-Villers, so strong of brimstone you smell,
As if not long since you had got out of hell,
But this damnable smell I no longer can bear,
Therefore I desire you would come no more here;
You, old stinking; old nasty, old itchy, old toad,
If you come any more you shall pay for your board,
You'll therefore take this as a warning from me,
And never enter the doors, while they belong to J. P.
Wilncot, December 4, 1767."

5. Libels against the memory of the dead which have a tendency to create a breach of the peace by inciting the friends and relatives of the deceased to avenge the insult of the fanlily, render their authors liable to legal animadversion. 5 co. 123; 5 Binn. 281; 2 Chit. Cr. Law, 868; 4 T. R. 186.

6. - 3. If the matter be understood as scandalous, and is calculated to excite ridicule or abhorrence against the party intended, it is libelous, however it may be expressed. 5 East, 463; 1 Price, 11, 17; Hob. 215; Chit. Cr. Law, 868; 2 Campb. 512.

7. - 4. The malicious reading of a libel to one or more persons, it being on the shelves in a bookstore, as other books, for sale; and where the defendant directed the libel to be printed, took away some and left others; these several acts have been held to be publications. The sale of each copy; where several copies have been sold, is a distinct publication, and a fresh offence. The publication must be malicious; evidence of the malice may be either express or implied. Express proof is not necessary: for where a man publishes a writing which on the face of it is libelous, the law presumes he does so from that malicious intention which constitutes the offence, and it is unnecessary, on the part of the prosecution, to prove any circumstance from which malice may be inferred. But no allegation, however false and malicious, contained in answers to interrogatories, in affidavits duly made, or any other proceedings, in courts of justice, or petitions to the legislature, are indictable. 4 Co. 14; 2 Burr. 807; Hawk. B. 1, c. 73, s. 8; 1 Saund. 131, n. 1; 1 Lev. 240; 2 Chitty's Cr. Law, 869; 2 Serg. & Rawle, 23. It is no defence that the matter published is part of a document printed by order of the house of commons. 9 A. &E. 1.

8. The publisher of a libel is liable to be punished criminally by indictment; 2 Chitty's Cr. Law, 875; or is subject to an action on the case by the party grieved. Both remedies may be pursued at the same time. Vide) generally, Holt on Libels; Starkie on Slander; 1 Harr. Dig. Case, I.; Chit. Cr. L. Index, h. t.; Chit. Pr. Index, h. t.

LIBEL OF ACCUSATION. A term used in Scotland to designate the instrument which contains the charge against a person accused of a crime. Libels are of two kinds, namely, indictments and crimiual letters.

2. Every libel assumes the form of what is termed in logic, a syllogism. It is first stated that some partioular kind of act is criminal; as, that "theft is a crime of a heinous nature, and severely punishable." This proposition is termed the major. It is next stated that the person accused is guilty, of the crime so named, "actor, or art and part." This, with the narrative of the manner in which, and the time when the offence was committed, is called the, minor proposition of the libel. The conclusion is that all or part of the facts being proved, or admitted by confession, the panel "ought to be punished with the pains of the law, to deter others from committing the like crime in all time coming." Burt Man. Pub. L. 300, 301.

LIBELLANT. The party who fires a libel in a chancery or admiralty case, correspondes to the plaintiff in actions in the common law courts, is called the libellant.

LIBELLEE. A party against whom a libel has been filed in chancery proceedings, or in admiralty, corresponding to the defendant in a common law suit.

LIBER. A book; a principal subdivision of a literary work: thus, the Pandects, or Digest of the Civil Law, is divided into fifty books.

LIBER ASSISARUM. The book of assizes, or pleas of the crown; being the fifth part of the Year Books. (q. v.)

LIBER FEUD RUM. A code of the feudal law, which was compiled by direction of the emperor Frederick Barbarossa, and published in Milan, in 1170. It was called the Liber Feudorum, and was divided into five books, of which the first, second, and some fragments of the other's still exist and are printed at the end of all the modern editions of the Corpus Juris Civilis. Giannone, B. 13, c, 3; Cruise's Dig. Prel. Diss. c. 1, §31.

LIBER HOMO. A freeman lawfully competent to act as a juror. Raym. 417; Keb. 563.

LIBERATE, English practice. A writ which issues on lands, tenements, and chattels, being returned under an extent on a statute staple, commanding the sheriff to deliver them to the plaintiff, by the extent aud appraisement mentioned in the writ of extent, and in the sheriff's return thereto. See Com dig. Statute Staple, D 6.

LIBERATION, civil law. This term is synonymous with payment. Dig. 50, 16, 47. It is the extinguishment of a contract by which he who was bound become's free, or liberated. Wolff, Dr. de la Nat. § 749.

LIBERTI, LIBERTINI. These two words were, at different times, made to express among the Romans, the condition of those who, having been slaves, had been made free. 1 Brown's Civ. Law, 99. There is some distinction between these words. By libertus, was understood the freedman, when considered in relation to his patron, who had bestowed liberty upon him and he was called libertinus, when considered in relation to the state he occupied in society since his manumission. Lec. El. Dr. Rom. §93.

LIBERTY. Freedom from restraint. The power of acting as one thinks fit, without any restraint or control, except from the laws of nature.

2. Liberty is divided into civil, natural, personal, and political.

3. Civil liberty is the power to do whatever is permitted by the constitution of the state and the laws of the land. It is no other than natural lib-erty, so far restrained by human laws, and no further, operating equally upon all the citizens, as is necessary and expedient for the general advantage of the public. 1 Black. Com. 125; Paley's Mor. Phil. B. 6, c.5; Swifts Syst. 12

4. That system of laws is alone calculated to maintain civil liberty, which leaves the citizen entirely master of his own conduct, except in those points in which the public good requires some direction and restrant. When a man is restrained in his natural liberty by no municipal laws but those which are requisite to prevent his violating the natural law, and to promote the greatest moral and physical welfare of the community, he is legally possessed of the fullest enjoyment of his civil rights of individual liberty. But it must not be inferred that individuals are to judge for themselves how far the law may justifiably restrict their individual liberty; for it is necessary to-the welfare of the commonwealth, that the law should be obeyed; and thence is derived the legal maxim, that no man may be wiser than the law.

5. Natural liberty is the right which nature gives to all mankind, of diposing of their persons and property after the manner they judge most consonant to their happiness, on condition of their acting within the limits of the law of nature, and that they do not

in any way abuse it to the prejudice of other men. Burlamaqui, c. 3, s. 15; 1 Bl. Com. 125.

6. Personal liberty is the independence of our actions of all other will than our own. Wolff, Ins. Nat. §77. It consists in the power of locomotion, of changing situation, or removing one's person to whatever place one's inclination may direct, without imprisonment or restraint, unless by due course of law. 1 Bl. Com. 134.

7. Political liberty may be defined to be, the security by which, from the constitution, form and nature of the established government, the citizens enjoy civil liberty. No ideas or definitions are more distinguishable than those of civil aud political liberty, yet they are generally confounded. 1 Bl. Com. 6, 125. The political liberty of a state is based upon those fundamental laws which establish the distribution of legislative and executive powers. The political liberty of a citizen is that tranquillity of mind, which is the effect of an opinion that he is in perfect security; and to insure this security, the government must be such that one citizen shall not fear another.

8. In the English law, by liberty is meant a privilege held by grant or prescription, by which some men enjoy greater benefits than ordiuary subjects. A liberty is also a territory, with some extraordinary privilege.

9. By liberty or liberties, is understood a part of a town or city, as the Northern Liberties of the city of Philadelphia. The same as Faubourg. (q. V.)

LIBERTY OF THE PRESS. The right to print and publish the truth, from good motives, and for justifiable ends. 3 Johns. Cas. 394.

2. This right is secured by the constitution of the United States. Amendments, art. 1. The abuse of the right is punished criminally, by indictment; civilly, by action. Vide Judge Cooper's Treatise on the Law of Libel, aud the Liberty of the Press, passim; and article Libel.

LIBERTY OF SPEECH. The right given by the constitution and the laws to public support in speaking facts or opinions.

2. In a republican government like ours, liberty of speech cannot be extended too far, when its object is the public good. It is, therefore, wisely provided by the constitution of the United States, that members of congress shall not be called to account for anything said in debate; and similar provisions are contained in the constitutions of the several states in relation to the members of their respective legislatures. This right, however, does not extend beyond the mere speaking; for if a member of congress were to reduce his speech to writing and cause it to be printed, it would no longer bear

a privileged character and he might be held responsible for a libel, as any other individual. Bac. Ab. Libel, B.* See Debate.

3. The greatest latitude is allowed by the common law to counsel; in the discharge of his professional duty he may use strong epithets, however derogatory to other persons they may be, if pertinent to the cause, and stated in his instructions, whether the thing were true or false. But if he were maliciously to travel out of his case for the purpose of slandering another, he would be liable to an action, and amenable to a just and often more efficacious punishment inflicted by public opinion. 3 Chit. Pr. 887. No respectable counsel will indulge himself with unjust severity; and it is doubtless the duty of the court to prevent any such abuse.

LIBERUM TENEMENTUM, pleading. The name of a plea in an action of trespass, by which the defendant claims the locus in quo to be his soil and freehold, or the soil and freehold of a third person, by whose command he entered. 2 Salk. 453; 7 T. R. 355; 1 Saund. 299, b, note.

LIBERUM TENEMENTUM, estate. The same as, freehold, (q. v.) or frank tenement. 2 Bouv. Inst. n. 1690.

LICENSE, contracts. A right given by some competent authority to do an act, which without such authority would be illegal. The instrument or writing which secures this right, is also called a license. Vide Ayl. Parerg, 353; 15 Vin. Ab. 92; Ang. Wat. Co. 61, 85.

2. A license is express or implied. An express license is one which in direct terms authorizes the performance of a certain act; as a license to keep a tavern given by public authority.

3. An implied license is one which though not expressly given, may be presumed from the acts of the party having a right to give it. The following are examples of such licenses: 1. When a man knocks at another's door, and it is opened, the act of opening the door licenses the former to enter the house for any lawful purpose. See Hob. 62. A servant is, in consequence of his employment, licensed to admit to the house, those who come on his master's business, but only such persons. Selw. N. P. 999; Cro. Eliz. 246. It may, however, be inferred from circumstances that the servant has authority to invite whom he pleases to the house, for lawful purposes. See 2 Greenl. Ev. §427; Entry.

4. A Iicense is either a bare authority, without interest, or it is coupled with an interest. 1. A bare license must be executed by the party to whom it is given in person, and cannot be made over or assigned by him to another; and, being without consideration,

may be revoked at pleasure, as long as it remains executory; 39 Hen. VI. M. 12, page 7; but when carried into effect, either partially or altogether, it can only be rescinded, if in its nature it will admit of revocation, by placing the other side in the same situation in which he stood before he entered on its execution. 8 East, R. 308; Palm. 71; S. C. Poph. 151; S. C. 2 Roll. Rep. 143, 152.

5. - 2. When the license is coupled with an interest the authority conferred is not properly a mere permission, but amounts to a grant, which cannot be revoked, and it may then be assigned to a third person. 5 Hen. V., M. 1, page 1; 2 Mod. 317; 7 Bing. 693; 8 East, 309; 5 B. & C. 221; 7 D. & R. 783; Crabb on R. P. §521 to 525; 14 S. & R 267; 4 S. & R. 241; 2 Eq. Cas. Ab. 522. When the license is coupled with an interest, the formalities essential to confer such interest should be observed. Say. R. 3; 6 East, R. 602; 8 East, R. 310, note. See 14 S. & R. 267; 4 S. & R. 241; 2 Eq. Cas. Ab. 522; 11 Ad. & El. 34, 39; S. C. 39 Eng, C. L. R. 19.

LICENSE, International law. An authority given by one of two belligerent parties, to the citizens or subjects of the other, to carry on a specified trade.

2. The effects of the license are to suspend or relax the rules of war to the extent of the authority given. It is the assumption of a state of peace to the extent of the license. In the country which grants them, licenses to carry on a pacific commerce are stricti juris, as being exceptions to the general rule; though they are not to be construed with pedantic accuracy, nor will every small deviation be held to vitiate the fair effect of them. 4 Rob. Rep. 8; Chitty, Law of Nat. 1 to 5, and 260; 1 Kent, Com. 164, 85.

LICENSE, pleading. The name of a plea of justification to an action of trespass. A license must be specially pleaded, and cannot, like liberum tenementum, be given in evidence under the general issue. 2. T. R. 166, 108

LICENSEE. One to whom a license has been given. 1 M. Q. & S. 699 n.

LICENTIA CONCORDANDI, estates, conveyancing, practice. When an action is brought for the purpose of levying a fine, the defendant, knowing himself to be in the wrong, is supposed to make overtures of accommodation to the plaintiff, who accepts them; but having given pledges to prosecute his suit, applies to the court, upon the return of the writ of covenant, for leave to make the matter up; this, which is readily granted, is called the, licentia concordandi. 5 Rep. 39; Cruise, Dig. tit. 35, c. 2, 22.

LICENTIA LOQUENDI. Imparlance. (q. v.)

LICENTIOUSNESS. The doing what one pleases without regard to the rights of others; it differs from liberty in this, that the latter is restrained by natural or positive

law, and consists in doing whatever we please, not inconsistent, with the rights of others, whereas the former does not respect those rights. Wolff, Inst. §84.

LICET SAEPIUS REQUISITUS, pleading. practice. Although often requested. It is usually alleged in the declaration that the defendant, licet saepius requisitus, &c., he did not perform the contract, the violatioin of which is the foundation of the action. The allegation is generally sufficient when a request is not parcel of the contract. Indeed, in such cases it is unneccssary even to lay a general request, for the bringing of the suit is itself a sufficient request. 1 Saund. 33, n. 2; 2 Saund, 118 note 3; Plowd. 128; 1 Wils. 33; 2 H. BI. 131; 1 John. Cas. 99, 319; 7 John. R. 462; 18 John. R. 485; 3 M. & S. 150. Vide Demand.

LICET. It is lawful; not forbidden by law. Id omne licitum est, quod non est legibus prohibitum; quamobrem, quod, lege permittente, fit, poenam non meretur.

LICITATION. A sale at auction; a sale to the highest bidder.

LIDFORD LAW. Vide Lynch Law.

TO LIE. That which is proper, is fit; as, an action on the case lies for an injury committed without force; corporeal hereditaments lie in livery, that is, they pass by livery; incorporeal hereditaments lie in grant, that is, pass by the force of the grant, and without any livery. Vide Lying in grant.

LIEGE, from the Latin, ligare, to bind. The bond subsisting between the subject and chief, or lord and vassal, binding the one to protection and just government, the other to tribute and due subjection. The prince or chief is called liege lord; the subjects liege men. The word is now applied as if the liegance or bond were only to attach the people to the prince. Stat. 8 Hen. VI. c. 10; 14 Hen. VIII. c. 2; 1 Bl. Com. 367.

LIEGE POUSTIE, Scotch law. The condition or state of a person who is in his ordinary health and capacity, and not a minor, nor cognosced as an idiot or madman, nor under interdiction. He is then said to be in Iiege poustie, or in legitima potestati, and he has full power of disposal of his property. 1 Bell's Com. 85, 5th ed.; 6 Clark & Fin. 540. Vide Sui juris.

LIEN, contracts. In its most extensive signification, this term includes every case in which real or personal property is charged with the payment of any debt or duty; every such charge being denominated a lien on the property. In a more limited sense it is defined to be a right of detaining the property of another until some claim be satisfied. 2 East 235; 6 East 25; 2 Campb. 579; 2 Meriv. 494; 2 Rose, 357; 1 Dall. R. 345.

2. The right of lien generally arises by operation of law, but in some cases it is created by express contract.

3. There are two kinds of lien; namely, particular and general. When a person claims a right to retain property, in respect of money or labor expended on such particular property, this is a particular lien. Liens may arise in three ways: 1st. By express contract. 2d. From implied contract, as from general or particular usage of trade. 3d. By legal relation between the parties, which may be created in three ways; When the law casts an obligation on a party to do a particular act, and in return for which, to secure him payment, it gives him such lien; 1 Esp. R. 109; 6 East, 519; 2 Ld. Raym. 866; common carriers and inn keepers are among this number. 2. When goods are delivered to a tradesman or any other, to expend his labor upon, he is entitled to detain those goods until he is remunerated for the labor which he so expends. 2 Roll. Ab. 92; 3 M. & S. 167; 14 Pick. 332; 3 Bouv. Inst. n. 2514. 3. When goods have been saved from the perils of the sea, the salvor may detain them until his claim for salvage is satisfied; but in no other case has the finder of goods, a lien. 2 Salk. 654; 5 Burr. 2732; 3 Bouv. Inst. n. 2518. General liens arise in three ways; 1. By the agreement of the parties. 6 T. R.14; 3 Bos. & Pull. 42. 2. By the general usage of trade. 3. By particular usage of trade. Whitaker on Liens 35; Prec. Ch. 580; 1 Atk. 235; 6 T. R. 19.

4. It may be proper to consider a few, general principles: 1. As to the manner in which a lien may be acquired. 2. To what claims liens properly attach. 3. How they may be lost. 4. Their effect.

5. - 1. How liens may be acquired. To create a valid lien, it is essential, 1st. That the party to whom or by whom it is acquired should have the absolute property or ownership of the thing, or, at least, a right to vest it. 2d. That the party claiminig the lien should have an actual or constructive, possession, with the assent of the party against whom the claim is made. 3 Chit. Com. Law, 547; Paley on Ag. by Lloyd, 137; 17 Mass. R. 197; 4 Campb. R. 291; 3 T. R. 119 and 783; 1 East, R. 4; 7 East, R. 5; 1 Stark. R. 123; 3 Rose, R. 955; 3 Price, R. 547; 5 Binn. R. 392. 3d. That the lien should arise upon an agreement, express or implied, and not be for a limited or specific purpose inconsistent with the express terms, or the clear, intent of the contract; 2 Stark. R. 272; 6 T. R. 258; 7 Taunt. 278;. 5 M. & S. 180; 15 Mass. 389, 397; as, for example, when goods are deposited to be delivered to a third person, or to be transported to another place. Pal. on Ag. by Lloyd, 140.

6. - 2. The debts or claims to which liens properly attach. 1st. In general, liens properly attach on liquidated demands, and not on those which sound only in damages; 3 Chit. Com. Law, 548; though by an express contract they may attach even in such a case as, where the goods are to be held as an indemnity against a future contingent claim or damages. Ibid. 2d. The claim for which the lien is asserted, must

he due to the party claiming it in his own right, and not merely as agent of a third person. It must be a debt or demand due from the very person for whose benefit the party is acting, and not from a third person, although the goods may be claimed through him. Pal. Ag. by Lloyd, 132.

7. - 3. How a lien may be lost. 1st. It may be waived or lost by any act or agreement between the parties, by which it is surrendered, or becomes inaplicable. 2d. It may also be lost by voluntarily parting with the possession of the goods. But to this rule there are some exceptions; for example, when a factor by lawful authority sells the goods of his principal, and parts with the possession under the sale he is not, by this act, deemed to lose his lien, but it attaches to the proceeds of the sale in the hands of hte vendee.

8. - 4. The effect of liens. In general, the right of the holder of the lien is confined to the mere right of retainer. But when the creditor has made advances on the goods of a factor, he is generally invested with the right to sell. Holt's N P. Rep. 383; 3 Chit. Com. Law, 551; 2 Liverm. Ag. 103; 2 Kent's Com. 642, 3d ed. In some cases where the lien would not confer power to sell, a court of equity would decree it. 1 Story Eq. Jur. §566; 2 Story, Eq. Jur. §1216; Story Ag. §371. And courts of admiralty will deeree a sale to satisfy maritime liens. Abb. Ship. pt. 3, c10. §2; Story, Ag. §371.

9. Judgments rendered in courts of record are generally liens on the real estate of the defendants or parties against whom such judgments are given. In Alabama, Georgia and Indiana, judgment is a lien; in the last mentioned state, it continues for ten years from January 1, 1826, if it was rendered from that time; if, after ten years from the rendition of the judgment, and when the proceedings are stayed by order of the court, or by an agreement recorded, the time of its suspension is not reckoned in the ten years. A judgment does not bind lands in Kentucky, the lien commences by the delivery of execution to the sheriff, or officer. 4 Pet. R. 366; 1 Dane's R. 360. The law seems to be the same in Mississippi. 2 Hill. Ab. c. 46, s. 6., In New Jersey, the judgments take priority among themselves in the order the executions on them have been issued. The lien of a judgment and the decree of a court of chancery continue a lien in New York for ten years, and bind after acquired lands. N. Y. Stat. part 3, t. 4, s. 3. It seems that a judgment is a lien in North Carolina, if an elegit has been sued out, but this is perhaps not settled. 2 Murph. R. 43. The lien of a judgment in Ohio is confined to the county, and continues only for one year, unless revived. It does not, per se, bind after acquired lands. In Pennsylvania, it commences with the rendering of judgment, and continues five years from the return day of that term. It does not, per se, bind after acquired lands. It may be revived by scire facias, or an agreement of the parties, and terre tenants, written and filed. In South CaroIina and Tennessee a judgment is also a lien. In the New England states, lands are attached by mesne process or on the writ, and a lien is thereby created. See 2 Hill. Ab. c. 46.

10. Liens are also divided into legal and equitable. The former are those which may be enforeed iu a court of law; the latter are valid only in a court of equity. The lien which the vendor of real estate has on the estate sold, for the purchase money remaining unpaid, is a familiar example of an equitable lien. Math. on Pres. 392. Vide Purchase money. Vide, generally, Yelv. 67, a; 2 Kent, Com. 495; Pal Ag. 107; Whit. on Liens; Story on Ag. ch. 14, §351, et seq: Hov. Fr. 35.

11. Lien of mechanics and material men. By virtue of express statutes in several of the states, mechanics and material men, or persons who furnish materials for the erection of houses or other buildings, are entitled to a lien or preference in the payment of debts out of the houses and buildings so erected, and to the land, to a greater or lessor extent, on which they are erected. A considerable similarity exists in the laws of the different states which have legislated on this subject.

12. The lien generally attaches from the commencement of the work or the furnishing of materials, and continues for a limited period of time. In some states, a claim must be filed in the office of the clerk or prothonotary of the court, or a suit brought within a limited time. On the sale of the building these liens are to be paid pro rata. In some states no lien is created unless the work done or the goods furnished amount to a certain specified sum, while in others there is no limit to the amount. In general, none but the original contractors can claim under the law; sometimes, however, sub-coutractors have the same right.

13. The remedy is various; in some states, it is by scire facias on the lien, in others, it is by petition to the court for an order of sale: in some, the property is subject to foreclosure, as on a mortgage; in others, by a common action. See 1 Hill. Ab. ch. 40, p. 354, where will be found an abstract of the laws of the several states, except the state of Louisiana; for the laws of that state, see Civ. Code of Louis. art. 2727 to 2748. See generally, 5 Binn. 585; 2 Browne, R. 229, n. 275; 2 Rawle R. 316; Id. 343; 3 Rawle, R. 492; 5 Rawle R. 291; 2 Whart. R. 223; 2 S. & R. 138; 14 S. & R. 32; 12 S. & R. 301; 3 Watts, R. 140, 141; Id. 301; 5 Watts, R. 487; 14 Pick. P,. 49; Serg. on Mech. Liens.

LIEU, place. Iu lieu of, instead, in the place of.

LIEUTENANT. This word has now a narrower meaning than it formerly had; its true meaning is a deputy, a substitute, from the French lieu, (place or post) and tenant (holder). Among civil officers we have lieutenant governors, who in certain cases perform the duties of governors; (vide, the names of the several states,) lieutenants of police, &c. Among military men, lieutenant general was formerly the title of a commanding general, but now it signifies the degree above major general. Lieutenant colonel, is the officer between the colonel and the major. Lieutenant simply signifies

the officer next below a captain. In the navy, a lieutenant is the second officer next in command to the captain of a ship.

LIFE. The aggregate of the animal functions which resist death. Bichat.

2. The state of animated beings, while they possess the power of feeling and motion. It commences in contemplation of law generally as soon as the infant is able to stir in the mother's womb; 1 Bl. Com. 129; 3 Inst. 50; Wood's Inst. 11; and ceases at death. Lawyers and legislators are not, however, the best physiologists, and it may be justly suspected that in fact life commences before the mother can perceive any motion of the feotus. 1 Beck's Med. Jur. 291.

3. For many purposes, however, life is considered as begun from the moment of conception in ventre sa mere. Vide Foetus. But in order to acquire and transfer civil rights the child must be born alive. Whether a child is born alive, is to be ascertained from certain signs which are always attendant upon life. The fact of the child's crying is the most certain. There may be a certain motion in a new born infant which may last even for hours, and yet there may not be complete life. It seems that in order to commence life the child must be born with the ability to breathe, and must actually have breathed. 1 Briand, MÇd. LÇg. 1ere partie, c. 6, art. 1.

4. Life is presumed to continue at least till one hundred years. 9 Mart. Lo. R. 257 See Death; Survivorship.

5. Life is considered by the law of the utmost importance, and its most anxious care is to protect it. 1 Bouv. Inst. n. 202-3.

LIFE ANNUITY. An annual income to be paid during the continuance of a particular life.

LIFE-ASSURANCE. An insurance of a life, upon the payment of a premium; this may be for the whole life, or for a limited time. On the death of the person whose life has been insured, during the time for which it is insured, the insurer is bound to pay to the insured. the money agreed upon. See 1 Bouv. Inst. n. 1231.

LIFE-ESTATE. Vide Estate for life, and 3 Saund. 338, h. note; 2 Kent Com. 285; 4 Kent, Com. 23.; 1 Hov. Suppl. to Ves. jr. 371, 381; 2 Id. 45, 249, 330, 340, 398, 467; 8 Com. Dig. 714.

LIFE-RENT, Scotch law. A right to use and enjoy a thing during life, the substance of it being preserved. A life-rent cannot, therefore, be constituted upon things which perish in the use; and though it may upon subjects which gradually wear out by time,

as household furniture, &c., yet it is generally applied to heritable subjects. Life-rents are divided into conventional and legal.

2. - 1. The conventional are either simple or by reservation. A simple life- rent, or by a separate constitution, is that which is granted by the proprietor in favor of another. A life-rent by reservation is that which a proprietor reserves to himself, in the same writing by which he conveys the fee to another.

3. - 2. Life-rents, by law, are the terce and the courtesy. See Terce; Courtesy.

LIGAN or LAGAN. Goods cast into the sea tied to a buoy, so that they may be found again by the owners, are so denominated. When goods are cast into the sea in storms or shipwrecks, and remain there without coming to land, they are distinguished by the barbarous names of jetsam, (q. v.) flotsam, (q. v.) and ligan. 5 Rep. 108; Harg. Tr. 48; 1 Bl. Com. 292.

LIGEANCE. The true and faithful obedience of a subject to his sovereign, of a citizen to his government. It signifies also the territory of a soverqign. See Allegiance.

LIGHTERMAN. The owner or manager of a lighter. A lighterman is considered as a common Carrier. See Lighters.

LIGHTERS, commerce. Small vessels employed in loading and unloading larger vessels.

2. The owners of lighters are liable, like other common carriers for hire; it is a term of the contract on the part of the carrier or lighterman, implied by law, that his vessel is tight and fit for the purpose or employments for which he offers and holds it forth to the public; it is the immmediate foundation and substratum of the contract that it is so: the law presumes a promise to that effect on the part of the carrier without actual proof, and every principle of sound policy and public convenience requires it should be so. 5 East, 428; Abbott on Sh. 225; 1 Marsh. on Ins. 254; Park on Ins. 23; Wesk. on Ins. 328.

LIGHTS. Those openings in a wall which are made rather for the admission of light, than to look out of. 6 Moore, C. B. 47; 9 Bingh. R. 305; 1 Lev. 122; Civ. Code of Lo. art. 711. See Ancient Lights; Windows.

LIMBS. Those members of a man which may be useful to him in flight, and the unlawful deprivation of which by another amounts to a mayhem at common law. 1 Bl. Com. 130. If a man, se defendendo, commit homicide, he will be excused; and if he

enter into an apparent contract, under a well-grounded apprehension of losing his life or limbs, he may afterwards avoid it. 1 Bl. 130.

LIMITATION, estates. When an estate is so expressly confined and limited by the words of its creation, that it cannot endure for a longer time than till the contingency shall happen, upon which the estate is to fail, this is denom-inated a limitation; as, when land is granted to a man while he continues unmarried, or until the rents and profits shall have made a certain sum, and the like; in these cases the estate is limited, that is, it does not go beyond the happening of the contingency. 2 Bl. Com. 155; 10 Co. 41; Bac. Ab. Conditions, H; Co. Litt. 236 b; 4 Kent. Com. 121; Tho. Co. Litt. Index, h. t.; 10 Vin. Ab. 218; 1 Vern. 483, n. 4; Ves. Jr. 718.

2. There is a difference between a limitation and a condition. When a thing is given until an event shall arrive, this is called a limitation; but when it is given generally, and the gift is to be defeated upon the happening of an uncertain event, then the gift is conditional. For example, when a man gives a legacy to his wife, while, or as long as, she shall remain his widow, or until she shall marry, the estate is given to her only for the time of her widowhood and, on her marriage, her right to it determines. Bac. Ab. Conditions, H. But if, instead of giving the legacy to the wife, as above mentioned, the gift had been to her generally with a proviso, or on condition that she should not marry, or that if she married she should forfeit her legacy, this would be a condition, and such condition being in restraint of marriage, would be void.

LIMITATION, remedies. A bar to the alleged right of a plaintiff to recover in an action, caused by the lapse of a certain time appointed by law; or it is the end of the time appointed by law, during which a party may sue for and recover a right. It is a maxim of the common law, that a right never dies and, as far as contracts were concerned, there was no time of limitation to actions on such contracts. The only limit there was to the recovery in cases of torts was the death of one of the parties; for it was a maxim actio personalis moritur cum persona. This unrestrained power of commencing actions at any period, however remote from the original cause of action, was found to encourage fraud aud injustice; to prevent which, to assure the titles to land, to quiet the possession of the owner, and to prevent litigation, statutes of limitation were passed. This was effected by the statutes of 32 Hen. VIII. c. 2, and 21 Jac, I. c. 16. These statutes were adopted and practiced upon in this country, in several of the states, though they are now in many of the states in most respects superseded by the enactments of other acts of limitation.

2. Before proceeding to notice the enactments on this subject in the several states, it is proper to call the attention of the reader to the rights of the government to sue untrammeled by any statue of limitations, unless expressly restricted, or by necessary implication included. It has therefore been decided that the general words of a statute

ought not to include the government, or affect its rights, unless the construction be clear and indisputable upon the text of the act; 2 Mason's R. 314; for no laches can be imputed to the government. 4 Mass. R. 528; 2 Overt. R. 352; 1 Const. Rep. 125; 4 Henn. & M. 53; 3 Serg. & Rawle, 291; 1 Bay's R. 26. The acts of limitation passed by the several states are not binding upon the government of the United States, in a suit in the courts of the United States. 2 Mason's R. 311.

3. For the following abstract of the laws of the United States and of the several states, regulating the limitations of actions, the author has been much assisted by the appendix of Mr. Angell's excellent treatise on the Limitation of Actions.

4. United States. 1. On contracts. All suits on marshals' bonds shall be commenced and prosecuted within six years after the right of action shall have accrued, and not after; saving the rights of infants, femes covert, and persons non compos mentis, so that they may sue within three years after disability removed. Act of April 10, 1806, s. 1.

5. - 2. On legal proceedings. Writs of error must be brought within five years after judgment or decree complained of; saving in cases of disability the right to bring them five years after its removal. Act of September 24, 1789, s. 22. And the like limitation is applied to bills of review. 10 Wheat. 146.

6. - 3. Penalties. Prosecutions under the revenue laws, must be commenced within three years. Act of March 2, 1799, Act of March 1, 1823. Suits for penalties respecting copyrights, within two years. Act of April 29, 1802, s. 3. Suits in violation of the provisions of the act of 1818, respecting the slave trade, must be commenced within five years. Act of April 20, 1818, s. 9.

7. - 4. Crimes. Offences punishable by a court martial must be proceeded against within two years unless the person by reason of having absented himself, or some other manifest impediment, has not been amenable to justice within that period. The act of April 30, 1790, s. 31, limits the prosecution and trial of treason or other capital offence, wilful murder or forgery excepted, to three years next after their commission; and for offences not capital to two years, unless the party has fled from justice. 2 Cranch, 336.

8. Alabama. 1. As to real estate. 1. After twenty years after title accrued, no entry can be made into lands. 2. No action for the recovery of land can be maintained, if commenced after thirty vears after title accrued. 3. Actions on claims by virtue of any title which has not been confirmed by either of the boards of commissioners of the United States, for adjusting land claims &c., and not recognized or confirmed by any

act of congress, are barred after three years; there is a proviso as to lands formerly in West Florida, and in favor of persons under disabilities.

9. - 2. As to personal actions. 1. Actions of trespass, quare clausum fregit; trespass; detinue; trover; replevin for taking away of goods and chattels; of debt, founded on any lending or contract, without specialty, or for arrearages of rent on a parol demise of account and upon the case, (except actions for slander, and such as concern the trade of merchandise between merchant and merchant, their factors or agents, are to be commenced within six years next after the cause of action accrued, and not after.

10. - 2. Actions of trespass for assaults, menace, battery, wounding and imprisonment, or any of them, are limited to two years.

11. - 3. Actions for words to one year.

12. - 4. Actions of debt or covenant for rent or arrearages of rent, founded upon any lease under seal, or upon any single or penal bill for the payment of money only, or on any obligation with condition for the payment of money only, or upon any award under the hands and seals of arbitrators, are to be commenced within sixteen years after the cause of action accrued, and not after; but if any payment has been made on the same at any time, then sixteen years from the time of such payment.

13. - 5. Judgments cannot be revived after twenty years.

14. - 6. A new action must be brought within one year when the former has been reversed on error, or the judgment has been arrested.

15. - 7. Actions on book accounts must be commenced within three years, except in the case of trade or merchandise between merchant and merchant, their factors or agents.

16. - 8. Writs of error must be sued out within three years after final judgment.

17. Arkansas. 1. As to lands. No action for the recovery of any lands or tenements, or for the recovery of the possession thereof, sball be maintained, unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seised or possessed of the promises in question within ten years before the commencement of such suit. Act of March 3, 1838, s. 1. Rev. Stat. 527. No entry upon lands or tenements shall be deemed sufficient or valid as a claim, unless an action be commenced thereon within one year after such entry, and within ten years from the time when the right to make such entry descended and accrued. Id. s. 2. The right of any person to the possession of any lands

or tenements, shall not be impaired or affected by a descent cast in consequence of the death of any person in possession of such estate. Id. s. 3.

18. The savings are as follows: If any person entitled to commence any action in the preceding sections specified, or to make an entry, be, at the time such title shall first descend or accrue; first, within the age of twenty-one years; second, insane; third, beyond the limits of the state; or, fourth, a married woman; the time during which such disabilities shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such suit, or the making of such entry; but such person may bring such action, or make such entry, after the time so limited, and within five years after such disability is removed, but not after that period. Id. S. 4. If any person entitled to commence any such action, or make such entry, die during the continuance of such disability specified in the preceding section, and no determination or judgment be had of the title, right, or action to him accrued, his heirs may commence such action, or make such entry, after the time in this act limited for that purpose, and within five years after his death, and not after that period. Id. s. 5, Rev. Stat. 527.

19. - 2. As to personal actions. 1. The following actions shall be commenced within three years after the cause of action shall accrue: first, all actions founded upon any contract, obligation, or liability, (not under seal,) excepting such as are brought upon the judgment or decree of some court of record of the United States, of this, or some other state; second, all actions upon judgments rendered in any court not being a court of record; third, all actions for arrearages of rent, (not reserved by some instrument under seal); fourth, all actions of account, assumpsit, or on the case, founded on any contract or liability, expressed or implied; fifth, all actions of trespass on lands, or for libels; sixth, all actions for taking or injuring any goods or, chattels. Id. s. 6, Rev. Stat. 527, 528.

20. - 2. The following actions shall be commenced within one year after the cause of action shall accrue, and not after: first, all special actions on the case for criminal conversation, assault and battery and false imprisonment; second, all actions for words spoken, slandering the character of another; third, all words spoken whereby special damages are sustained. Id. s. 7.

21. - 3. All actions against sheriffs or other officers, for the escape of any person imprisoned on civil process, shall be commenced within one year from the time of such escape, and not after. Id. s. 8.

22. - 4. All actions against sheriffs and coroners, upon any liability incurred by them, by doing any act in their official capacity, or by the omission of any official duty,

except for escapes, shall be brought within two years after the cause of action shall have accrued, and not thereafter. Id. s. 9.

23. - 5. All actions upon penal statutes where the penalty or any part thereof, goes to the state, or any county, or person suing for the same, shall be commenced within two years after the offence shall have been committed, or the cause of action shall have accrued. Id. s. 10.

24. - 6. All actions not included in the foregoing provisions, shall be commenced within five years after the cause of action shall have accrued. Id. s. 11.

25. - 7. In all actions of debt, account or assumpsit, brought to recover any balance due upon a mutual, open account current, the cause of action shall be deemed to have accrued from the time of the last item proved in such account Id. s. 12.

26. The savings are as follows: 1. If any person entitled to bring any action in the preceding seven sections mentioned, except in actions against sheriffs for escapes, and actions of slander, shall, at the time of action accrued, be either within the age of twenty-one years, or insane, or beyond the limits of this state, or a married woman, such person shall be at liberty to bring such action within the time specified in this act, after such disability is removed. Id. s. 13.

27. - 2. If any person entitled to bring an action in the preceding provisions of this act specified, die before the expiration of the time limited for the commencement of such suit, and such cause of action shall survive to his representatives, his executors or administrators may, after the expiration of such time, and within one year after such death, commence such suit, but not after that period. Id. s. 19.

28. - 3. If at any time when any cause of action specified in this act accrues against any person, he be out of the state, such action may be commenced within the times herein respectively limited, after the return of such person into the state; and if, after such cause of action shall have accrued, such person depart from, and reside out of the state, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action. Id. s. 20. If any person, by leaving the county absconding or concealing himself, or any other improper act of his own, prevent the commencement of any action in this act specified, such action may be commenceed within the times respectively limited, after the commencement of such action shall have ceased to be so prevented. Id. s. 26.

29. - 4. None of the provisions of this act shall apply to suit's brought to enforced payment on bills, notes, or evidences of debt issued by any bank, or moneyed corporation. Id. s. 18.

30. Connecticut. 1. As to lands. No person can make an entry into lands after fifteen years next after his right or title first accrued to the same; and no such entry is valid unless an action is afterwards commenced thereupon, and is prosecuted with effect within one year next after the making thereof; there is a proviso in favor of disabled persons, who may sue within five years after the disability has been removed.

31. - 2. As to personal actions. 1. In actions on specialties and promissory notes, not negotiable, the limitation is seventeen years, with a saving that "persons legally incapable to bring an action on such bond or writing at the accruing of the right of action, may bring the same within four years after becoming legally capable."

32. - 2. Actions of account, of debt on book, on simple contract, or assumpsit, founded on an implied contract, or upon any contract in writing, not under seal, (except promissory notes not negotiable,) within six years, saving as above three years.

33. - 3. In trespass on the case, six years, but no savings.

34. - 4. Actions founded upon express contracts not reduced to writing; upon trespass; or upon the case for word; three years and no savings.

35. - 5. Actions founded on penal statutes one year after the commission of the offence.

36. - 6. A new suit must be commenced within one year after reversal of the former, or when it was arrested.

37. Delaware. 1. As to lands. Twenty years of adverse possession of land is a bar. The general principles of the English law on this subject, have been adopted in this state.

38. - 2. As to personal actions. All actions of trespass quare clausum fregit; of detinue; trover and replevin, for taking away goods or chattels; upon account and upon the case; (other than actions between merchant and merchant, their factors and servants, relating to merchandise;) upon the case for words; of debt grounded upon any lending or contract without specially; of debt for arrearages of rent; and all actions of trespass, assault, battery, menace, wounding or imprisonment, shall be commenced and sued within three years next after the cause of such action or suit accrues, and not after.

39. The 2d section of the same act contains a saving, in favor of persons who, at the time of the cause of action accrued, are within the age of twenty-one years; femes covert; persons of insane memory, or imprisoned. Such persons must bring their actions within one year next after the removal of such disability as aforesaid.

40. In the 3d section of the same act, provision is made, that no person not keeping a day book, or regular book of accounts, shall be admitted to prove or require payment of any account of longer standing than one year against the estate of any person dying within the state, or if it consist of many particulars, unless every charge therein shall have accrued within three years next before the death of the deceased, and unless the truth and justice thereof shall be made to appear by one, sufficient witness; and in case of a regular book of accounts, unless such account shall have accrued or arisen within three years before the death of the deceased person.

41. In section 6th, there is a saving of the rights or demands of infants, femes covert, persons of insane memory, or imprisoned, so their accounts be proved and their claims prosecuted within one year after the removal of such disability.

42. By a supplementary act, it is declared, that nothing contained in this act, shall extend to any intercourse between merchant and merchant, according to the usual course of mercantile business nor to any demands founded on mortgages: bonds, bills, promissory notes, or settlements under the hands of the parties concerned.

43. All actions upon administration, guardian and testamentary bonds, must be commenced within six years after passing the said bonds; and actions on sheriff's recognizances, within seven years after the entering into such recognizances, and not after; saving in all these cases, the rights of infants, femes covert, persons of insane memory, or imprisoned, of bringing such actions on administration, guardian or testamentary bonds, within three years after the removal of the disability, and on sheriff's recognizances within one year after such disability removed.

44. No appeal can be taken from any interlocutory order, or final decrees of the chancellor, but within one year next after making and signing the final decree, unless the person entitled to such appeal be an infant, feme covert, non compos mentis, or a prisoner.

45. No writ of error, can be brought upon any judgment, but within five years after the confessing, entering or rendering thereof, unless the person entitled to such writ, be an infant, feme covert, non compos mentis, or a prisoner, and then within five years exclusive of the time of such disabi- lity. Constitution, article 5, s. 13.

46. There is no saving in favor of foreigners or citizens of other states. The courts of this state have adopted the general principles of the English law.

47. Florida. 1. As to lands. Writs of formedon in descender, remainder, or reverter, must be brought within twenty years. Act of Nov. 10, 1828, sec. 1, Duval; 154. Infants, femes covert, persons non compos mentis, or prisoners, may. sue within ten

years after disability is removed. Id. s. 2. A writ of right on seisin of ancestor or predecessor within fifty years; other possessory action on seisin of ancestor or predecessor, within forty years; real action on plaintiff's possession or seisin within thirty years. Id. sec. 3.

48. - 2. As to personal actions. All actions upon the case, other than for slander, actions for accounts, for trespass, debt, detinue, and replevin for goods and chattels, and actions of trespass quare clausum fregit, within five years. Actions of trespass, assault, battery, wounding and imprisonment, or any of them, within three years; and actions for words within one year. Id. s. 4. There is a saving in favor of infants, femes covert, persons non compos mentis, imprisoned, or beyond seas, or out of the country, who may bring suit within the same time after the disability has been removed. All actions on book accounts shall be brought within two years.

49. - 3. As to crimes. All offences not punishable with death, shall be prosecuted within two years. Act of Feb. 10, 1882, s. 78. All actions, suits and presentments upon penal acts of the general assembly, shall be prosecuted within one year. Act of Nov. 19, 1828, s. 18.

50. Georgia. 1. As to lands. Seven years' adverse possession of lands is a bar, with a saving in favor of infants, femes covert, persons non compos mentis, imprisoned or beyond seas.

51. - 2. As to personal actions. Twenty years is a bar in personal actions, on bonds under seal; other obligations not under seal, six years; trespass quare clausum fregit, three years trespass, assault and battery, two years; slander and qui tam actions, six months. There are savings in favor of infants, femes covert, persons non composmentis, imprisoned and beyond seas.

52. No other savings in favor of citizens of other states or foreigners.

53. As to crimes. In cases of murder there is no limitation. In all other criminal cases where the punishment is death or perpetual imprisonment, seven years; other felonies, four years; cases punishable by fine and imprisonment, two years. Prince's Dig. 573-579. Acts of 1767, 1813, and 1833. See 1 Laws of Geo. 33; 2 Id. 344; 3 Id. 30; Pamphlet Laws, 1833, p. 143.

54. Illinois. 1. As to lands. No statute on this subject.

55. - 2. As to personal actions. All actions of trespass quare clausum fregit; all actions of trespass, detinue, actions sur trover, and replevin for taking away goods and chattels, all actions of account, and upon the case, other than such accounts as concern

the trade of merchandise between merchant and merchant, their factors and servants; all actions of debt, grounded upon any lending or contract without specialty; all actions of debt for arrearages of rent; all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought, shall be commenced within the following times, and not after actions upon the case, other than for slander; actions of account, and actions of trespass, debt, detinue and replevin for goods and chattels, and actions of trespass quare clausum fregit, within five years next after the cause of action or suit, and not after; and the actions of trespass for assault, battery, wounding, imprisonment, or any of them, within three years next after cause of action or suit, and not after; and actions for slander, within one year next after the words spoken. There are no savings, by the statute, in favor of citizens of other states, or foreigners.

56. Indiana. 1. As to lands. "No action of ejectment shall be commenced for the recovery of lands or tenements against any person or persons who may have been in the quiet and peaceable possession of the same under an adverse title for twenty years, either in his own right, or the right of any other person or persons under whom he claims; and any action of ejectment commenced against the provisions of this act shall be dismissed at the cost of the party commencing the same. Provided, however, that this act shall not be so construed as to affect any person who may be a feme covert, non compos mentis, a minor, or any person beyond the seas, within five years after such disability is removed." Rev. Code, c. 36, see. 3, January 13, 1831.

57. - 2. As to personal actions. "All actions of debt on simple contract, and for rent in arrear, action on the case, (other than slander,) actions of account, trespass quare clausum fregit, detinue, and replevin for goods and chattels, shall be commenced within five years after the cause of action accrued, and not after. All actions of trespass, for assault and battery, and for wounding and imprisonment, shall be commenced within three years, and not after." Rev. Code, 6. 81, sec. 12, January 29, 1831.

58. - 3. Crimes. "All criminal prosecutions for offences, the affixed penalty of which is three dollars, or less, shall be commenced within thirty days," &c. "All prosecutions for offences, except those the fixed penalties of which do not exceed three dollars, and except treason, murder, arson, burglary, man stealing, horse stealing, and forgery, shall be instituted within two years, &c." Revised Code, c. 26, Feb. 10, 1831.

59. - 4. Penal actions. "All actions upon any act of assembly, now or hereafter to be made, when the right is limited to the party aggrieved, shall be commenced within two years, &c., and all actions of slander shall be commenced within one year, &c., saving the right of infants, femes covert, persons non compos mentis, or without the

jurisdiction of the United States, until one year after their several disabilities are removed." Sec. 12.

60. - 5. Savings. Provided, that no statute of limitation shall ever be pleaded as a bar, or operate as such on an instrument or contract in writing, whether the same be sealed or unsealed, nor to running accounts between merchant and merchant. Rev. Code, eh. 81, s. 12.

61. And provided further, that on all contracts made in this state, if the defendant shall be without the same when the cause of action accrued, said action shall not be barred until the times above limited shall have expired, after the defendant shall have come within the jurisdiction thereof, and on all contracts made without the state, if the defendant shall have left the state or territory when the same was made, and come within the jurisdiction of this state before the cause of action accrued thereon, the plaintiff shall not be barred his right of action, until the time above limited after the said demand shall have been brought within the jurisdiction of this state. Rev. Code, ch. 81, s. 12.

62. Kentucky. 1. As to lands. The act of limitation takes effect in a writ of right or other possessory action, in thirty years from the seisin of the demandant or his ancestors. In ejectment, in twenty years. See 1 Litt. 380, and Sessions Acts 1838-9, page 330. In the action of ejectment, there is a saving in favor of infants; persons insane or imprisoned; femes covert, to whom lands have descended during the coverture, when their cause of action ac- crued. These persons may sue within three years after the removal of the disability. 5 Litt. 90; Id. 97. There is no saving, in favor of non-residents or absent persons. 5 Litt. 90; 4 Bibb, 561. But when the possession has been held for seven years under a connected title in law or equity deducible of record from the commonwealth, claiming title under an adverse entry, survey or patent, no writ of ejectment or other possessory action can be commenced. In this case there is a saying in favor of infants, &c., as above, and of persons out of the United States, in the service of the United States, or of this state, who may bring actions seven years after the removal of the disability. 4 Litt. 55.

63. - 2. As to personal actions. The act of limitation operates on simple contracts (except store accounts) in five years. Torts to the person, three years. Torts, except torts to the person, five years. Slander, one year. Store accounts, one year from the delivery of each article; except in cases of the death of the creditor or debtor before the expiration of one year, when the further time of one year is allowed after such death.

64. Savings in such actions of simple contracts, tort, slander, and upon store accountt, in favor of infants, femes covert, persons imprisoned or insane at the time such action

accrued, who have the full time aforesaid after the removal of their respective disabilities to commence their suit. But if the defendant, in any of said personal actions, absconds, or conceals himself by removal out of the country or county where he resides when the cause of action accrues, or by any other indirect ways or means defeats or obstructs the bringing of such suit or action, such defendant shall not be permitted to plead the act of limitations. 1 Litt. 380. There is no saving in favor of non-residents or persons absent. Act of 1823, s. 3, Session Acts, p. 287.

65. Louisiana. The Civil Code, book 3, title 23, chapter 1, section 3, provides as follows:

66. - §I. Of the prescription of one year. Art. 3499. The action of justices of the peace and notaries, and persons performing their duties, as well as constables, for the fees and emoluments which are due to them in their official capacity that of muters and instructors in the arts and sciences, for lessons which they give by the month; that of innkeepers and such others, on account of lodging and board which they furnish; that of retailers of provisions and liquors; that of workmen, laborers, and servants, for the payment of their wages; that for the payment of the freight of ships and other vessels, the wages of the officers, sailors, and others of the crew; that for the supply of wood and other things necessary for the construction, equipment, and provisioning of ships and other vessels, are prescribed by one year.

67. - 3500. In the cases mentioned in the preceding article, the prescription takes place, although there may have been a regular coutinuauce of supplies, or of labor, or other service. It only ceases, from the time when there has been an account acknowledged, a note or bond, or a suit instituted. However, with respect to the wages of officers, sailors, and others of the crew of a ship, this prescription runs only from the day when the voyage is completed.

68. - 3501. The actions for injurious words, whether verbal or written, and that for damages caused by slaves or animals, or resulting from offences or quasi offences; that which a possessor may institute, to have himself main-tained or restored to his possession, when he has been disturbed or evicted; that for the delivery of merchandise or other effects, shipped on board any kind of vessels; that for damage sustained by merchandise on board ships, or which may have happened by ships running foul of each other, are prescribed by one year.

69.- 3502. The prescription mentioned in the preceding article, runs, with respect to the merchandise injured or not delivered from the day of the arrival of the vessel, or that on which she ought to have arrived; and in the other cases, from that on which the injurious words, disturbance, or damage were sustained.

70. - §II. Of the prescription of three years. Art. 3503. The action for arrearages of rent charge, annuities and alimony, or of the hire of movables or immovables; that for the payment of money lent; for the salaries of overseers, clerks, secretaries, and of teachers of the sciences, for lessons by the year or quarter; that of physicians, surgeons, and apothecaries, for visits, opera- tions, and medicines: that of parish judges sheriffs, clerks, and attorneys, for their fees and emoluments, are prescribed by three years, unless there be an account acknowledged, a note or bond given, or an action commenced before that time.

71. - 3504. The action of parties against their attorneys for the return of papers delivered to them for the interest of their suits, is prescribed also by three years, reckoning from the day when judgment was rendered in the suit, or from the revocation of the powers of the attorneys.

72. - §III. Of the prescription of five years. Art. 3505. Actions on bills of exchange, notes payable to order or bearer, except bank notes, those on all effects negotiable or transferable by endorsement or delivery, are prescribed by five years, reckoning from the day when these engagements were payable.

73. - 3506. The prescription mentioned in the preceding article, and those described above in the paragraphs, I. and II., run against minors and interdicted persons, reserving, however, to them their recourse against their tutors or curators. They run also against persons residing out of the state.

74. - 3507. The action of nullity or rescission of contracts, testaments, or other acts; that for the reduction of excessive donations; that for the rescission of partitions and guaranty of the portions, are prescribed by five years when the person entitled to exercise them is in the state, and ten years if he be out of it. This prescription only commences against minors after their majority.

75. - §IV. Of the prescription of ten years. Art. 3508. In general, all personal actions, except those above enumerated, are prescribed by ten years, if the creditor be present, and by twenty years, if he be absent.

76. - 3509. The action against an undertaker or architect, for defect of construction of buildings of brick or stone, is prescribed by ten years.

77. - 3610. If a master suffer a slave to enjoy his liberty for ten years, during his residence in the state, or for twenty years while out of it, he shall lose all right of action to recover possession of the slave, unless the slave be a runaway or fugitive.

78. - 3511. The rights of usufruct, use and habitation, and services, are lost, by non-use for ten years, if the person having a right to enjoy them, be in the state, and by twenty years, if he be absent.

79. - §V. Of the prescription of thirty years. Art. 3512. All actions for immovable property, or for an entire estate as a succession, are prescribed by thirty years, whether the parties be present, or absent from the state.

80. - 3513. Actions for the revindication of slaves are prescribed by fifeen years, in the same manner as in the preceding article.

81. - §VI. Of the rules relative to the prescription operating a discharge from debts. Art. 3514. In cases of prescription releasing debts, one may prescribe against a title created by himself, that is, against an obligation which be has contracted.

82. - 3515. Good faith not being required on the part of the person pleading this prescription, the creditor cannot compel him or his heirs to swear whether the debt has or has not been paid, but can only blame himself for not having taken his measures within the time directed by law; and it may be that the debtor may not be able to take any positive oath on the subject.

83. - 3516. The prescription releasing debts is interrupted by all such causes as interrupt the prescription by which property is acquired, and which have been explained in the first section of this chapter. It is also interrupted by the causes explained in the following articles.

84. - 3517. A citation served upon one joint debtor or his acknowledgment of the debt, interrupts the prescription with regard to all the others and, even their heirs. A citation served on one of the heirs of a joint debtor, or the acknowledgment of such heir, does not interrupt the prescription with regard to the other heirs, even if the debt was by mortgage, if the obligation be not indivisible. This citation or acknowledgment does not interrupt the prescription, with regard to the other co-debtors, except for that portion for which such heir is bound. To interrupt this prescription for the whole, with regard to the other co-debtors, it is necessary, either that the citations be served on all, or the acknowledgment be made by all the heirs.

85. - 3518. A citation served on the principal debtor, or his acknowledgment, interrupts the prescription on the part of the surety.

86. - 3519. Prescription does not run against minors and persons under interdiction, except in the cases specified above.

87. - 3520. Prescription runs against the wife, even although she be not separated of property by marriage contract or by authority of law, for all such credits as she brought in marriage to her husband, or for whatever has been promised to her in dower; but the husband continues responsible to her.

88. Maine. 1. As to real actions. The writ of right is limited to thirty years writ of ancestral seisin, twenty-five years writ of entry on party's own seisin, twenty years. Stat. of Maine, eh. 62, §1, 2, 3. But by the revised statutes, all real actions are limited to twenty years, from the time the right accrues. They took effect on the first day of April, 1843. Rev. Stat. T. 10, ch. 140, §1. And writs of right and of formedon are abolished after that time. Rev. Stat. ch. 145, §1.

89. - 2. As to personal actions. When founded on simple contract, they are limited after six years; Rev. Stat. T. 10, ch. 146, §1; on specialties, twenty years. Id. §11. Personal actions founded on torts are limited to six years, except trespass for assault and battery, false imprisonment, slanderous words and libels, which are limited to two years. Id. §1.

90. - 3. As to penal actions. When brought by individuals having an interest in the penalty or forfeiture, they are limited to one year; Rev. Stat. T. 10, c. 146, §15; when prosecuted by the state, two years. Id. §16.

91. - 4. As to crimes. Prosecutions for crimes must be commenced within six years when the party charged has publicly resided within the state, except in cases of treason, murder, arson, and manslaughter. Rev. Stat. T. 12, c. 167, 15.

92. Maryland. 1. As to lands. The statute of 21 Jac. I. c. 16, is in force in this state.

93. - 2. As to personal actions. By the Act of Assembly, 1715, c. 23, actions of account; upon the case; or simple contract; or book debt or account; and of debt not of specialty; detinue and replevin for taking away goods and chattels; and trespass quare clausum fregit; must be brought within three years ensuing the cause of action, and not after; other actions of trespass, of assault, battery, wounding and imprisonment, within one year from the time of the cause of action accruing; from these provisions are excepted, however, such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants which are not resident within this [province] state. This statute also enacts, that no bill, bond, judgment, or recognizance, statute merchant or of the staple, or other specialty whatsoever, (except such as shall be taken in the name or for the use of our sovereign the king, &c.) shall be "good and pleadable, or admitted in evidence" against any person of this [province] state, after the principal debtor and creditor have both been dead twelve years, or the debt or thing in action above twelve years standing.

94. Persons laboring under the impediments of infancy, coverture, insanity or imprisonment, are not barred until five years after the disability has been removed. And when a personal action abates by the death of the defendant, the plaintiff may at any time renew his suit, provided it be commenced without delay after letters testamentary have been granted.

95. Defendants, when absent from the state at the time the cause of action accrued, cannot compute the time of their absence in order to bar the plaintiff, but the latter may prosecute the same after the presence in the state of the persons liable thereto, within the time or times limited by the acts of limitation in such actions.

96. Massachusetts. By the Revised Statutes, ch. 120, it is provided as follows, to wit:

97. - §1. The following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards

98. First, all actions of debt, founded upon any contract, or liability not under seal, except such as are brought upon the judgment or decree of some court of record of the United States, or of this, or some other of the United States:

99. Secondly, all actions upon judgments rendered in any court, not being a court of record:

100. Thirdly, all actions for arrears of rent:

101. Fourthly, all actions of assumpsit, or upon the case, founded on any contract or liability, express or implied:

102. Fifthly, all actions for waste and for trespass upon land:

103. Sixthly, all actions of replevin and all other actions for taking, detaining or injuring goods or chattels:

104. Seventhly, all other actions on the case, except actions for slanderous words and for libels.

105. - §2. All actions for assault and battery, and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years next after the cause of action shall accrue, and not afterwards.

106. - §3. All actions against sheriffs, for the misconduct or negligence of their deputies, shall be commenced within four years next after the cause of action shall accrue, and not afterwards.

107. - §4. None of the foregoing provisions shall apply to any action brought upon a promissory note, which is signed in the presence of an attesting witness, provided the action be brought by the original payee, or by his executor or administrator, nor to an action brought upon any bills, notes, or other evidences of debt, issued by any bank.

108. - §5. In all actions of debt or assumpsit brought to recover the bal-ance due upon a mutual and open account current, the cause of action shall be deemed to have accrued, at the time of the last item proved in such account.

109. - §6. If any person entitled to bring any of the actions before mentioned in this chapter shall, at the time when the cause of action accrues, be within the age of tweuty-one years, or a married woman, insane, imprisoned, or absent from the United States, such person may bring the said actions within the times in this chapter respectively limited, after the disability shall be removed, or within six years after the disability mentioned in the preceding section.

110. - §7. All personal actions on any contract, not limited by the foregoing sections, or by any other law of this commonwealth, shall be brought within twenty years after the accruing of the cause of action.

lll. - §8. When any person shall be disabled to prosecute an action in the courts of this commonwealth, by reason of his being an alien subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods, herein Iimited for the commencement of any of the actions before mentioned.

112. - §9. If, at the time when any cause of action, mentioned in this chapter, shall accrue against any person, he shall be out of the state, the action may be commenced within the time herein limited therefor, after such person shall come into the state and if after any cause of action shall have accrued, the person against whom it has accrued shall be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

113. - §10. If any person, entitled to bring any of the actions, before mentioned in this chapter, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at anytime

within two years after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

114. - §11. If, in any action duly commenced within the time in this chapter limited and allowed therefor, the writ shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commnence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

115. - §12. If any person, who is liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced, at any time within six years after the person who is entitled to bring the same, shall discover that he has such cause of action, and not afterwards.

116. Michigan. 1. As to lands. Sec. 1. In all real actions the statute of limitation takes effect as follows, to wit: In all actions for the recovery of land the statute runs after twenty years from the time the cause of action accrued, or within twenty-five years after the plaintiff or those from, by or under whom he claims, shall have been seised or possessed of the premises, except as specified below.

117. - Sec. 2. If the right or title accrued to an ancestor or predecessor of the person who brings the action or makes the entry upon the land, or to any other person from, by or under whom he claims, the said twenty-five years shall be computed from the time when the right or title so first accrued to such ancestor, predecessor or other person.

118. - Sec. 3. The right to bring an action for the recovery of land or to make an entry thereon shall be deemed first to accrue when any person is disseised, at the time of such disseisin.

119. When any person claims as heir or devisee of one who died seised, his right shall be deemed to have accrued at the time of such death; unless there is a tenancy by the curtesy or other estate, intervening after the death of such ancestor or devisor, in which case the right shall be deemed to accrue when such intermediate estate shall expire, or when it would have expired by its own limitation.

120. When there is such an intermediate estate, and in all other cases when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limi-tation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time; but if the person claims by reason of any forfeiture or breach of the condition, the statute runs from the time when the forfeiture was incurred or the condition was broken.

121. In all other cases not otherwise provided for, the right shall be deemed to accrue when the claimant or the person under whom he claims first became entitled to the possession of the premises, under the title upon which the entry or action is founded.

122. - Sec. 4. If any minister or other sole corporation shall be disseised, any of his successors may enter upon the premises, or bring an action for the recovery thereof at any time within five years after death, resignation or removal of the person so disseised, notwithstanding the twenty-five years after such disseisin shall have expired.

123. - Sec. 5. If the person first entitled to make such entry or bring such action shall die within the age of twenty-one years, or be a married woman, insane, imprisoned in the state prison, or absent from the United States, and no determination or judgment shall have been had of or upon the title, right or action which accrued to him, the entry may be made or the action brought by his heirs, or any other person claiming from, by or under him, at any time within ten years after his death, notwithstanding the said twenty-five years shall have expired.

124.- Sec. 6. No person shall be deemed to have been in possession of any lands within the meaning of the foregoing provisions merely by reason of having made an entry thereon, unless he shall have continued open and peaceable possession of the premises for the space of one year next after such entry, or unless an action shall be commenced upon such entry and seisin within one year after he shall be ousted or dispossessed of the premises. R. S., p. 573 and 574.

125. No actions for the recovery of an estate sold by an executor or administrator shall be maintained by the heir or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale. And no actions for any estate sold by a guardian shall be maintained by the ward or any other person claiming under him, unless it be commenced within five years after the termination of the guardianship. Except that persons out of the state and minors and others under any legal disability to sue at the time when the right of action shall first accrue, may commence such action at any time within five years after the disability is removed, or after their return to the state. R. S., p. 317, see. 35.

126. - 2. As to personal actions. The following actions shall be commenced within six years next after the cause of action shall accrue and not afterwards, to wit:

127. - 1st. All actions of debt founded upon any contract or liability not under seal, except such as are brought upon the judgment or decree of some court of record, or of general equity jurisdiction of the United States, or of this or some other of the United States.

128. - 2d. All actions upon judgments rendered in any court other than those above excepted.

129. - 3rd. All actions for arrears of rent.

130. - 4th. All actions of assumpsit or upon the case founded on any contract or liability express or implied.

131. - 6th. All actions for waste.

132. - 6th. All actions of replevin and trover and all other actions for taking, detaining, or injuring goods and chattels.

133. - 7th. All other actions on the case, except actions for slanderous words or for libels.

134. - Sec. 2. All actions for trespass upon land or for assault and battery, and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years next after the cause of action shall, accrue and]lot afterwards.

135. - Sec. 3. All actions against sheriffs for the misconduct or neglect of their deputies shall be commenced within four years next after the cause of action shall accrue and not afterwards.

136. - Sec. 4. None of the foregoing provisions shall apply to any action brought, upon any bills, notes or other evidence of debt issued by any bank.

137. - Sec. 5. ln all actions of debt or assumpsit brought to recover the balance due upon mutual and open account current the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

138 .- Sec. 6. If any person entitled to bring any of the actions before mentioned in this chapter shall, at the time when the cause of action accrues, be within the age of twenty-one years, or a married woman, insane, imprisoned in the state prison, or

absent from the United States, such person may bring the said actions within the time in this chapter respectively limited after the disability shall be removed.

139. - Sec. 7. All personal actions or any contract not limited by the foregoing sections or by an other laws of this state shall be brought within twenty years after the accruing of the cause of action.

140. - Sec. 8. When any person shall be disabled to prosecute an action in the courts of this state by reason of his being an alien subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective period herein limited for the commencement of an of the actions before mentioned.

141. - Sec. 9. If at the time when a cause of action mentioned in this chapter shall accrue against any person, he shall be out of the state, the action may be commenced within the time herein limited therefor after such person shall come into this state. And if, after any cause of action shall have accrued, the person against whom it has accrued shall be absent from, and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

142. - Sec. 10. If any person entitled to bring any of the actions before mentioned shall die before the expiration of the time herein limited or within thirty days after the expiration of the said time, and if the cause of action does by law survive; the action may be commenced by or against the executor or administrator of the deceased person as the case may be, at any time within two years after the granting of the letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

143. - Sec. 11. If in any action, duly commenced within the time limited in this chapter and allowed therefor, the writ shall fail of a sufficient service or return, by an unavoidable accident or by any default or neglect of the officer to whom it is committed, or if the suit shall be abated, or the action otherwise avoided or defeated by the death of any party thereto, or for any other matter of form, or if after a verdict for the plaintiff the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause at any time within one year after the abatement or other determination of the original suit or after the reversal of the judgment therein. And if the cause of action does by law survive, the executor or administrator may in case of his death commence such action within said one year.

144. - Sec. 12. ln case of the fraudulent concealment of the right of action, such action may be commenced at any time within six years after the person entitled to the same shall discover that he has such cause of action. R. S., p. 576, 577 and 578.

145. - Sec. 21. All actions and suits for any penalty or forfeiture on any penal statute brought by any person to whom the penalty or forfeiture is given in the whole or in part, shall be commenced within one year next after the offence was committed, and not afterwards.

146. - Sec. 22. If the penalty or forfeiture is given in whole or in part to the state, a suit therefor may be commenced by or in behalf of the state at any time within two years after the offence was committed and not afterwards. Rev. Stat., p. 579.

147. - 3. As to crimes. The statute of limitations in criminal cases takes effect after six years from the time the offence was committed; but any period during which the party charged was not usually and publicly resident within this state shall not be reckoned as a part of the six years. In case of murder, however, there is no limitation. Rev. Stat., p. 666, sec. 15.

148. Mississippi. 1. As to lands. Real, possessory, ancestral and mixed actions for lands, tenements, or hereditaments must be instituted within twenty years next after the right or title thereto, or cause of action accrued. How. & Hutch. page 568, ch. 43, sec. 88 , L. 1822. Right or title of entry is barred after twenty years. Id. sec. 89, L. 1822. Fifty years actual possession uninterruptedly continued by occupancy, descent, conveyance or otherwise, vests a complete title in the occupier. Id. sec. 90, L. 1822. Real estate, which may have escheated to the state, must be claimed within two years next after the inquisition, or it will be sold. How. & Hutch. page 263, ch. 34, sec. 84, L. 1822. If real estate escheat to the state and be sold, the moneys arising from such sale may be claimed within twelve years next from the day of such sale; Id. sec. 87, L. 1822; and moneys arising from sale of personal estate, escheated, may be claimed within six years next after the sale thereof. Ib. All persons claiming real estate escheated, either by descent or otherwise, must appear and traverse the office of inquest within twelve years from the date thereof, and in case of personal estate, within six years, or they will be forever barred of their claim. Id. sec. 88, L. 1822.

149. - 2. As to personal actions. 1st. On contracts. These are, 1. Actions on simple contracts must be commenced and sued within six years next after the cause of action accrued. Except such actions as concern the trade or merchan-dise between merchant and merchant, their factors, agents and servants where there are mutual dealings and mutual credits. How. & Hutch. page. 569, ch. 43, sec. 91, L. 1822 How. Rep. 2, 786.

150. Actions founded upon any account for goods, wares or merchandise, sold and delivered, or for any articles charged in any store account, must be commenced and sued within three years next after cause of action accrued. Post-dating any article in such account is highly penal. How. & Hutch. page 570, ch. 43, sec. 98, L. 1822.

151. - 2. Actions on specialties must be commenced and sued within sixteen years next after cause of action accrued. How. & Hutch. page 569, ch. 43, sec. 95, L. 1822.

152. Judgments recovered in any court of record as well without as within this state, may be revived by scire facias, or an action of debt brought thereon within twenty years next after the date of such judgment. How. & Hutch. pages 570 and. 574, ch. 43, sec. 96 and 111, Laws 1822 and 1830. This extends to decrees of the chancery court. How. Rep. 4, 31.

153. - 3. Suits on bonds, or recognizances against sureties for public officers must be commenced and sued within five years next after cause of action accrued. Id. sec. 97, page 570, L. 1822.

154. - 2d. On torts. Actions for torts affecting the person must be sued within two years next after cause accrued. How. & Hutch. page 569, ch. 43, sec. 92, L. 1822. Actions of slander for words spoken or written must be sued within one year. Id. sec. 93, L. 1822; How. Rep. 2, 698. Actions of trespass quare clausum fregit; trespass; detinue; trover; replevin, for taking away goods and chattels, actions on the case, must be sued within six years next after cause of action accrued. Id. How. & Hutch. page 569, ch. 43, sec. 91, L. 1822.

155. - 3. As to penal actions. Penal actions are limited to twelve months from the time of incurring the fine or forfeiture. (Persons absconding or fleeing from justic are excepted:) How. & Hutch 49, see. 19, L. 1822.

156. - 4. As to crimes. Indictments, presentments or informations for offences (crimes) must be found or exhibited within one year next after the offence committed, (except for wilful murder, arson, forgery, counterfeiting and larceny; as to which there is no limitation.) How. & Hutch. p. 668, ch. 49; sec. 19, L. 1822.

157. Missouri. 1. As to lands. That from henceforth no person or persons whatsoever shall make entry into any lands, tenements or hereditaments, after the expiration of twenty years next after his, her or their right or title to the same first descended or accrued; nor shall any person or persons whatsoever have or maintain any writ of right, or any other real or possessory writ or action for any lands, tenements, or hereditaments of the seisin or possession of him, her or them, his, her or their ancestors or predecessors, nor declare or allege any other seisin or possession of him,

her or them, his, her or their ancestors or predecessors, than within twenty years next before such writ, action, or suit, so hereafter to be sued, commenced or brought. Act of 1848. Infants, femes covert, persons of unsound memory, imprisoned, beyond seas, or without the jurisdiction of the United States, may sustain such actions commenced within twenty years after the disability has been removed.

158. - 2. As to personal actions. In all actions upon the case (other than for slander;) actions for accounts, (other than such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants;) actions for debt, grounded upon any lending or contract without specialty, or of debt for arrearages of rent; and actions of trespass quare clausum fregit, shall be brought within five years after the cause of action shall accrue.

159. All actions upon accounts for goods, wares and merchandise sold and delivered, or for any article in any store account; all actions of trespass vi et armis, assault and battery, and imprisonment, shall be brought within two years after the cause of action shall accrue.

160. Actions on the case for words, one year after the words spoken; and writs of error shall be brought within five years after the judgment or order of complaint shall be rendered and not after. Act of July 4, 1807.

161. The plaintiff may within one year commence a new suit when a former judgment has been reversed, or the plaintiff has suffered a nonsuit.

162. - 3. As to criminal actions. Actions, suits, indictments, or informations, (if the punishment be fine and imprisonment,) must be brought within two years after the offence has been committed, and not after.

163. New Hampshire. 1. As to lands. No action can be maintained for the recovery of lands, unless upon a seisin within twenty years, except by persons under disability, that is, by those under twenty-one years of age, femes covert, non compos mentis, imprisoned, or without the limits of the United States, who may sue within five years after the disability has been removed.

164. - 2. As to personal actions. Actions in general are limited to be brought within six years after they have accrued; but actions of trespass, assault and battery, are limited to three years and actions of slander to two. Infants, femes covert, persons imprisoned, or beyond sea, without the Iimits of the United States, or non compos mentis, may bring an action within the same time, after the disability has been removed. When the defendant has left the state before the action accrued, and left no property there which could have been attached, then the whole time is allowed after his return.

165. New Jersey. 1. As to lands. By the act of June 5, 1787, it was enacted,

166. - §1. At the aforesaid date, that sixty years actual possession of lands, tenements or other real estate uninterruptedly continued by occupancy, descent, conveyance or otherwise, in whatever way or manner such possession might have commenced or been continued, shall vest a full and complete right and title in every actual possessor or occupier of such lands, tenements or other real estate, and shall be a good and sufficient bar to all claims that may be made or actions commenced, by any person or persons whatsoever for the recovery of such lands, &c.

167. - §2. And that thirty years' actual possession of lands, &c. uninterruptedly continued as aforesaid, wherever such possession commenced or is founded upon a proprietory right duly laid thereon, and recorded in the surveyor general's office of the division in which such location was made, or in the secretary's office, agreeably to law; or, wherever such possession was obtained by a fair bona fide purchase of such land, &c. of any person in possession, and supposed to have a legal right and title thereto, or of the agent or agents of such person or persons, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances or claims whatever, not followed by actual possession as aforesaid, and shall vest an absolute right and title in the actual possessor or occupier of all such lands, &c.

168. Provided, That if any person or persons having a right or title to lands, &c. shall, at the time of the said right or title first descended or accrued, be within twenty-one years of age, feme covert, non compos, imprisoned, or without the United States, then such person or persons, and his heir or heirs may, notwithstanding the aforesaid times are expired, be en-titled to his or their action for the same, so as such person or persons, or his or their heirs, commence or sue forth his or their actions within five years, after his or their full age, discoverture, coming of sound mind, enlargement out of prison, or coming within any of the United States, and at no other time.

169. And provided that any citizens of this, or any of the United States, and his or their heirs, having such right, &c. may, notwithstanding the aforesaid times expired, commence his or their action for such lands, &c., at any time within five years next after the passing of this act, and not afterwards.

170. By the act of February 7, 1799, s. 9, it is enacted, that no person who now hath, or hereafter may have, any right or title of entry, into lands, tenements or hereditaments, shall make entry therein, but within twenty years next after such right or title shall accrue, and such person shall be barred from any entry afterwards.

171. Provided, That the time during which the person who hath or shall have such right or title of entry shall have been under the age of twenty-one years, feme covert, or insane, shall not be computed as part of the said limited period of twenty years.

172. By section 10, of the same act, from and after the first day of January, 1803, every real, possessory, ancestral, mixed or other action for any lands, tenements or hereditaments, shall be brought or instituted within twenty years next after the, right or title thereto or cause of such action shall accrue, and not after.

173. Provided, That the time during which the person who hath or shall have such right or title or cause of action, shall have been under the age of twenty-one years, feme covert, or insane, shall not be computed as part of the said twenty years.

174. - Section 11. That if a mortgagee and those under him be in possession, of lands, &c. contained in the mortgage or any part thereof, for twenty years after default of payment, then the right or equity of redemption therein, shall be barred, forever.

175. - Section 13. That no person or persons, bodies politic or corporate, shall be sued or impleaded by the state of New Jersey, for any land, &c. or any rents, revenues, or profits thereof, but within twenty years after the right, title or cause of action to the same shall accrue and not after.

176. - 2. As to personal actions. It is enacted that all actions of trespass quare clausum fregit; trespass; detinue; trover; replevin; debt, founded on any lending or contract without specialty, or for arrearages of rent due on a parol demise; of account, (except such actions as concern the trade of merchandise between merchant and merchant, their factors, agents and servants;) and on the case, (except actions for slander,) shall be commenced and sued within six years next after the cause of such actions shall have accrued, and not after. That all actions of trespass for assault, menace, battery, wounding and imprisonment, or any of them, shall be commenced and sued within four years next after the cause of such actions shall have accrued and not after. That every action upon the case for words, shall be commenced and sued within two years next after the words spoken, and not after. Persons within the age of twenty-one years, femes covert or insane, may institute such actions within such time as is before limited after his or her coming to or being of full age, discoverture, or sane memory,

177. The act of February 7, 1799, s. 6, provides that every action of debt, or covenant for rent, or arrearages of rent, founded upon lease under seal; debt on any bill or obligation for the payment of money only, or upon any award, under the hands and seals of arbitrators, for the payment of money only, shall be commenced and sued within sixteen years next after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, specialty or award,

within or after the said period of sixteen years, then an action, instituted on such lease, specialty or award, within sixteen years after such payment, shall be effectual in law, and not after. Provided, That the time during which the person, who is or shall be entitled to any of the actions specified in this section, shall have been within the age of twenty-one years, feme covert, or insane, shall not be taken or computed as part of the said limited period of sixteen years.

178. As to crimes. By the statute passed February 17,1829, Harr. Comp. 243, all indictments for offences punishable with death, (except murder,) must be found within three years, and all offences not punishable with death, must be brought within two years; except, as to both, where the offender flies.

179. - 4. As to penal actions. By the statute of February 7, 1799, Rev. Laws, 410, all popular and qui tam actions, and also all actions on penal statutes by the party grieved, must be brought within two years.

180. New York. The provisions limiting the time of commencing actions, are contained in the Revised Statutes, part 3, chapter 4, tit. 2, and are substantially as follows:

181. - 1. As to lands. The people of this state will not sue or implead any person for, or in respect to any lands, tenements, or hereditaments, or for the issues or the profits thereof, by reason of any right or title of the said people to the same, unless, 1. Such right shall have accrued within twenty years before any suit, or other proceeding for the same shall have been commenced; or unless, 2. The said people or those from whom they claim, shall have received the rents and profits of such real estate, or some part thereof, within the said space of twenty years. Grantees of the state cannot recover, if the state could not; and when patents granted by the state are declared void for fraud, a suit may be brought at any time within twenty years thereafter.

182. No action for the recovery of any lands, tenements, or hereditaments, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seised or possessed of the premises in question within twenty years before the commencement of such action.

183. No avowry or cognizance of title of real estate, or to any rents or services, shall be valid, unless it appear that the person making the avowry, or the person in whose right the cognizance is made, or the ancestor, pre- decessor, or grantor of such person, was seised or possessed of the premises in question, within twenty years before committing the act, in defence of which the avowry or cognizance is made.

184. No entry upon real estate shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within twenty years from the time when, the right of making such entry accrued.

185. All writs of scire facias upon fines, heretofore levied, of any manors, lands, tenements, or hereditaments, shall be sued out within twenty years next after the title or cause of action first descended or fallen, and not after that period.

186. If any person entitled to commence any action as above specified, or to make any entry, avowry, or cognizance, be at the time such title shall first descend or accrue, either, 1. Within the age of twenty-one years or, 2. Insane; or, 3. Imprisoned on any criminal charge or in execution upon some con- viction of a criminal offence for any term less than for life; or, 4. A married woman; the time during which such disability shall continue shall not be deemed any portion of the time above limited, for the commencement of such suit, or the making such entry, avowry, or cognizance; but such person may bring such action, or make such entry, avowry, or cognizance, after the said time so limited, and within ten years after such disability removed and not after. In case of the death of the person entitled to such action, &c., before any determination or judgment in the case, his heirs may institute the same within ten years after his death, but not after. Rev. Statutes, part 3, c. 4, tit. 2, article 1.

187. The 68th section of the act "to simplify and abridge the practice, pleadings and proceedings of the courts of this state," (New York,) passed the 12th of April 1848, known as the Code of Procedure, enacts that the provisions of the Revised Statutes, contained in the article entitled, "Of the time of commencing actions relating property," shall, until otherwise provided by statute, continue in force, and be applicable to actions for the recovery of real property.

188. - 2. Other actions than for the recovery of real property, and actions already commenced, or cases where the right of action has accrued, to which the statutes in force when the said act was passed shall be applicable, according to the subject of the action, and without regard to the form, must be commenced within the times as provided for in part 2, t. 2, c. 3 and 4, of the code of procedure in the following sections, namely:

§70. Within twenty years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States. 2. An action upon a sealed instrument.

§ 71. Within six years:

1. An action upon a contract, obligation or liability, express or implied; excepting those mentioned in section seventy.

2. An action upon a liability created by statute, other than a penalty or forfeiture.

3. An action for trespass upon real property.

4. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.

5. An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated.

6. An action for relief, on the ground of fraud; the cause of action in such case not to be deemed to have accrued, until the discovery by the aggrieved party, of the facts constituting the fraud.

§72. Within three years:

1. An action against a sheriff or coroner, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty; including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statue, for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the people of this state, except where the statute imposing it prescribes a different limitation.

§73. Within two years:

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a statute, for a forfeiture or penalty to the people of this state.

§74. Within one year:

1. An action against a sheriff or other officer, for the escape of a prisoner arrested, or imprisoned on civil process.

§75. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item in the account, on the adverse side.

§76. An action upon a statute for a penalty or forfeiture, given in whole or in part to any person who will prosecute for the same, must be commenced with-in one year after the commission of the offence, and if the action be not commenced within the year, by a private party, it may be commenced within two years thereafter, in behalf of the people of this state, by the attorney-general, or the district attorney of the county where the offence was committed.

§77. An action for relief, not hereinbefore provided for, must be commenced within ten years after the cause of action shall have accrued.

§78. The limitations prescribed in this title shall apply to actions brought in the name of the people of this state or for their benefit, in the same manner as to actions by private parties.

§79. An action shall not be deemed commenced, within the meaning of this title, unless it appear:

1. That the summons or other process therein was duly served upon the defendants, or one of them; or

2. That the summons was delivered, with the intent that it should be actually served, to the sheriff of the county in which the defendants, or one of them, usually or last resided; or, if a corporation be defendant, to the sheriff of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business.

§ 80. If, when the cause of action shall accrue against a person, he be out of the state, the action may be commenced within the term herein limited, after his return to the state; and if, after the cause of action shall have accrued, he depart from and reside out of the state, the time of his absence shall not be part of the time limited for the commencement of the action.

§81. If a person entitled to bring an action, except for a penalty or forfeiture, or against a sheriff or other officer for an escape be at the time the cause of action accrued, either:

1. Within the age of twenty-one years; or,

2. Insane; or,

3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than his natural life; or,

4. A married woman: The time of such disability shall not be part of the time limited for the commencement of the action.

§82. If a person entitled to bring an action, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, his representatives may commence the action, after the expiration of that time, and within one year from his death.

§83. When a person shall be an alien, subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be part of the period limited for the commencement of the action.

§84. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed, on appeal, the plain-tiff, or if be die and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

§85. When the commencement of an action shall be stayed by injunction, the time of the continuance of the injunction shall not be part of the time limited for the commencement of the action.

§86. No person shall avail himself of a disability, unless it existed when his right of action accrued.

§87. When two or more disabilities shall exist, the limitation shall not attach until they all be removed.

§88. This title shall not affect actions to enforce the payment of bills, notes, or other evidences of debt issued by moneyed corporations, or issued or put in circulation as money.

§89. This title shall not affect actions against directors or stockholders of a moneyed corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by the second title of the chapter of the Revised Statutes, entitled "Of Incorporations;" but such actions must be brought within six years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

§90. Where the time for commencing an action arising on contract shall have expired, the cause of action shall not be deemed revived by an acknowledgment or new promise, unless the same be in writing, subscribed by the party to be charged thereby.

189. North Carolina. By the Revised Statutes, chapter 65, it is provided as follows, to wit:

190. 1. As to lands. 1. That no person or persons nor their heirs, which hereafter shall have any right or title to any lands, tenements, or hereditaments, shall thereunto enter or make any claim, but within seven years next after his, her, or their right or title descended or accrued, and in default thereof, such person or persons, so not entering or making claim, shall be utterly excluded and disabled from any entry or claim thereafter to be made: Provided, nevertheless, that if any person or persons, that is or hereafter shall be entitled to any right or claim of lands, tenements or hereditaments, shall be, at the time the said right or title first descended, accrued, come or fallen, within the age of twenty-one years, feme covert, non compos mentis, imprisoned or beyond seas, that then such person or persons shall and may, notwithstanding the said seven years be expired, commence his, her or their suit, or make his, her, or their entry, as he, she, or they might have done before this act, so as such person or persons shall, within three years next after full age, discoverture, coming of sound mind, enlargement out of prison, or persons beyond seas, within eight years after the title or claim becomes due, take benefit and sue for the same, and at no time after the times or limitations herein specified; but that all possessions, held without suing such claim as aforesaid, shall be a perpetual bar against all, and all manner of persons whatsoever, that the expectation of heirs may not, in a short time, leave much land unpossessed, and titles so perplexed, that no man will know of whom to take or buy land. Provided also, that if in any action of ejectment for the recovery of any lands, tenements or hereditaments, judgment be given for the plaintiff, and the same be reversed for error, or a verdict pass for the plaintiff, and, upon matter alleged in arrest of judgment, the judgment be given against the plaintiff that he take nothing by his plaint, writ or bill, or a verdict be given against the plaintiff, in all such cases the party plaintiff, his heirs or executors, as the case shall require, may commence a new action or suit from time to time, within one year after such judgment reversed, or judgment given against the plaintiff.

191. - §2. Where any person or persons, or the person or persons under whom he, she, or they claim, shall have been, or shall continue to be, in possession of any lands, tenements or hereditaments whatsoever, under titles derived from sales, made either by creditors, executors or administrators of any person deceased, or by husbands and their wives, or by endorsement of patents or other colorable title, for the space of twenty-one years, all such possessions of lands, tenements or, hereditaments, under such title, shall be and are hereby ratified, confirmed and declared to be a good and legal bar, against the entry of any person or persons, under the right or claim of the state, to all intents and purposes whatsoever; Provided, nevertheless, that the

possession so set up shall have been ascertained and identified under known and visible lines or boundaries.

192. - 2. As to personal actions. §3. All actions of trespass, detinue, actions sur trover and replevin for taking away of goods and chattels, all actions of account and upon the case, all actions of debt for arrearages of rent, all actions of debt grounded upon any lending or contract without specialty, and all actions of assault, menace, battery, wounding, and imprisonment, or any of tbem, which shall be sued or brought, shall be commenced or brought within the time and limitation in this act expressed, and not after; that is to say, actions of account render, actions upon the case, ac- tions of debt for arrearages of rent, actions of debt upon simple contract, actions of detinue, replevin, and trespass either for goods and chattels or quare clausum fregit, within three years next after the cause of such action or suit, and not after; except such accounts as concern the trade of merchandise, between merchant and merchant, and their factors, or servants; and the said actions of trespass, of assault and battery, wounding, imprisonment, or any of them, within one year after the cause of such action or suit, and not after; and the said actions upon the case for words, within six months after the words spoken, and not after.

193. - §4. Provided, nevertheless, that if, on any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill; or if any of the said actions shall be brought by original writ, and the defendant cannot be attached or legally served with process, in all such cases, the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or till the defendant can be attached or served with the process, so as to compel him to appear and answer. And provided further, that if any person or persons, that is or shall be entitled to any such action or trespass, detinue, action sur trover, replevin, actions of accompt and upon the case, actions of debt for arrearages of rent, actions of debt grounded upon any lending or contract without specialty, actions of assault, menace, battery, wounding, and imprisonment, actions of trespass quare clausum fregit, actions upon the case for slanderous words, be, or shall be, at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, feme covert, non compos mentis, imprisoned or beyond the seas, then such person or persons shall be at liberty to bring the same actions, so as they bring the same within such times as are before limited, after their coming to or being of full age, discovert, of sound memory, at large or returned from beyond seas, as other persons having no such impediment might have done. And provided further, that when any person or persons, against whom there is cause of action, shall be beyond

sea at the time of such cause of action given or accrued, fallen or come, the person, who shall have such cause of action, may bring his action against them within such time or times as are hereinbefore limited, for bringing such actions after their return.

194. - §5. The limitation of actions shall apply to all bonds, bills, and other securities made transferable by law, after the assignment or endorsement thereof, in the same manner as it operates against promissory notes.

195. - 3. As to penal Actions. §6. All actions and suits to be brought on any penal act of the general assembly, for the recovery of the penalty therein set forth, shall be brought within three years after the cause of such action or suit shall or may have accrued, and not after: Provided, that this act shall not affect the time of bringing suit on any penal act of the general assembly, which hath a time limited therein for bringing the same.

196. Ohio. 1. As to lands. Twenty-one years adverse possession of lands operates a bar, with a saving in favor of infants, femes covert, persons insane, imprisoned or beyond the sea, when the right of action accrues. And if a person shall have left the state, and remain out of the same at the time the cause of action accrued; or shall have left the state or county at any time during the period of limitation, (that is, after the right of action has accrued,) and remain out of the same in a place unknown to the person having the right of action, suit may be brought at any time within the period of limitation, after the return of such person to the state or county.

197. - 2. As to personal actions. 1st. Actions upon the case, covenant and debt founded upon a specialty, or any agreement, contract or promise in writing, may be brought within fifteen years after the cause of action shall have accrued.

198. - 2d. Actions upon the case and debt founded upon any simple contract, not in writing, and actions on the case for consequential damages, within six years.

199. - 3d. Actions of trespass upon property, real or personal, detinue, trover and replevin, within four years.

200. - 4th. Actions of trespass for any injury done to the person, actions of slander for words spoken, or for a libel, actions for malicious prosecution, and for false imprisonment; actions against officers for malfeasance or nonfeasance in office, and actions of debt qui tam, within one year.

201. - 5th. Actions for forcible entry and detainer, or forcible detainer only, within two years.

202. - 6th. All other actions within four years; and all penalties and forfeitures given by statute and limited by the statute, within the times so limited.

203. - 7th. Infants, femes covert, persons insane or imprisoned, entitled to an action of ejectment, may, after the twenty-one years have elapsed, bring their actions within ten years after such disability removed. They may bring all other actions, within the respective times Iimited for bringing such actions, after the disability removed.

204. - 8th. Actions, founded on contracts between persons resident at the time of the contract without this state, which are barred by the laws of the country where the contract was made, are barred in the courts of this state.

205. - 9th. In all actions on contracts express or implied, in case of payment of an part, principal or interest, acknowledgment of an existing liability, debt or claim, or any promise to pay the same, within the time herein limited, the action may be commenced within the time limited after such payment, acknowledgment or promise.

206. - 10th. If judgment be arrested or reversed, the suit abate or the plaintiff become nonsuit, and the time limited shall have expired, the plain-tiff may bring a new action within one year after such arrest, reversal, abatement or nonsuit.

207. - 11th. A person who has left the state, or resides out of it, or whose place of residence is unknown although in the state, at the time the cause of action accrues, may be sued within the time limited by the act, after his return or to removal the state, or his place of residence, if in the state, becomes known. O. Stat. vol. 29, 214; Act of Feb. 18, 1831. Took effect, June 1, 1831. Swan's Col. Laws, 553, 4, 5, 6.

208. This act only operates upon causes of action accruing after the act took effect, and all causes of action previously subsisting are governed by the statutes (and there have been several) in force when the respective causes of action accrued, none of the statutes being retrospective in their operation. 7 O. R. p. 2, 235, West's Adm'r. v. Hymer; Id. 153, Hazlett et al. v.Critchfield et al.; 6 Id. 96, Bigelow's Ex'r. v. Bigelow's Adm'r.

209. - 3. As to penal actions. Prosecutions for any forfeitures under a penal statute, must be instituted within two years, unless otherwise specially provided for.

210. Pennsylvania. 1. As to lands. From henceforth no person or persons whatsoever, shall make entry into any manors, lands, tenements or hereditaments, after the expiration of twenty-one years next after his, her or their right or title to the same first descended or accrued; nor shall any person or persons whatsoever have or maintain any writ of right, or any other real or possessory writ or action, for any manor, lands,

tenements or hereditaments, of the seisin or possession of him, her or themselves, his, her, or their ancestors, or predecessors, nor declare or allege any other seisin or possession of him, her or themselves, his, her or their ancestors or predecessors, than within twenty-one years next before such writ, action, or suit so hereafter to be sued, commenced or brought. Act of March 26, 1785, s. 2, 2 Smith's Laws Pa. 299.

211. Section 4, provides, that if any person or persons having such right or title be, or shall be at the time such right or title first descended or accrued, within the age of twenty-one years, feme covert, non compos mentis, imprisoned or beyond the seas, or from and without the United States of America, then such person or persons, and the heir or heirs of such person or persons, shall and may, notwithstanding the said twenty-one years be expired, bring his or their action, or make his or their entry, as he, she or, they might have done, before the passing of this act, so as such person or persons, or the heir or heirs of such person or persons, shall within ten years next after attaining full age, discoverture, soundness of mind, enlargement out of prison, or coming into the said United States, take benefit of or sue for the same, and no time after the said ten years; and in case such person or persons shall die within the said term of ten years, under any of the disbilities aforesaid, the heir or heirs of such person or persons shall have the same benefit, that such person or persons could or might have had; by living until the disabilities should, have ceased or been removed; and if any abatement happen in any proceeding or proceedings upon such right or title, such proceeding or proceedings may be renewed and continued, within three years from the time of such abatement, but not afterward.

212. By the act of March 11, 1815, the provision above contained, so far as the same relates to persons beyond the seas, and from and without the United States of America, is repealed.

213. - 2. As to personal actions. All actions of trespass quare clausum fregit, all actions of detinue, trover and replevin, for taking away goods and cattle, all actions upon account, and upon the case, (other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants,) all actions of debt, grounded upon any lending or con- tract without specialty, all actions of debt for arrearages of rent, except the proprietaries' quit rents, and all actions of trespass, of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time after the five and twentieth day of April, which shall be in the year of our Lord one thousand seven hundred and thirteen, shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say, the said actions upon the case, other than for slander, and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or chattels, and the said actions of trespass quare clausum fregit, within six years next after the cause of such actions or suit, and not after. And the said actions of trespass,

of assault, menace, battery, wounding, imprisonment, or any of them, within two years next after the cause of such actions or suit, and not after. And the said actions upon the case for words, within one year next after the words spoken, and not after. Act. of March 27, 1713, s. 1.

214. If in any of the said actions or suits, judgment be given for the plaintiff and the same be reversed by error, or a verdict passed for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, then and in every such case, the party plaintiff, his heirs, executors, or administrators, as the case may require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or given against the plaintiff, as aforesaid, and not after. Id. s. 2.

215. In all actions upon the cause, for slanderous words, to be sued or prosecuted by any person or persons, in any court within this province, after the said twenty-fifth day of April next, if the jury upon trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed do amount unto without any further increase of the same. Id. s. 4.

216. Provided nevertheless, that if any person or persons who is or shall be entitled to any such action or trespass, detinue, trover, replevin, actions of account, debt, actions for trespass, for assault, menace, battery, wounding or imprisonment, actions upon the case for words, be, or, at the time of any cause of such action given or accrued, fallen, or come, shall be within the age of twenty-one years, feme covert, non compos mentis, imprisoned or beyond the sea, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are hereby before limited, after their coming to or being of full age, discoverture, of sound memory, at large, or returning into this province as other persons. id. s. 5.

217.-3. As to penal actions. All actions, suits, bills, indictments or information, which shall be brought for any forfeiture upon any penal act of assembly made or to be made, whereby the forfeiture is or shall be limited to the commonwealth only, shall hereafter be brought within two years after the offence was committed, and at no time afterwards, and all actions, suits, bills, or informations which shall be brought for any forfeiture upon any penal act of assembly made or to be made, the benefit and suit whereof is or shall be by the said act limited to the commonwealth, and to any person or persons that shall prosecute in that behalf, shall be brought by any person or persons that may lawfully sue for the same, within one year next after the offence was committed; and in default of such pursuit, then the same shall be brought for the commonwealth, any time within one year after that year ended; and if any action, suit,

bill, indictment or information shall be brought after the time so Iimited, the same shall be void, and where a shorter time is limited by any act of assembly, the prosecution shall be within that time. Act of March 26, 1785, s. 6.

218. Rhode Island. 1. As to lands. It is enacted that where any person or persons, or others from whom he or they derive their titles, either by themselves, tenants or lessees, shall have been for the space of twenty years, in the uninterrupted, quiet, peaceable and actual seisin and possession of any lands, tenements or hereditaments in the, state, during the said time, claiming the same as his, her or their proper, sole and rightful estate in fee simple, such actual seisin and possession shall be allowed to give and make a good and rightful title to such person or persons, their heirs and assigns, forever; saving and excepting however, the rights and claims of persons under age, non compos mentis, feme covert, and persons imprisoned, or beyond seas, they bringing their suits for the recovery of such lands, &c., within the space of ten years next after the removal of such impediment saving also, the rights and claims of any person or persons, having any estate in reversion or remainder, expectant or dependent on any lands, &c., after the determination of the estate for years, life, &c.; such person or persons pursuing his or their title by due course of law, within ten years after his or their right of action shall accrue.

219. - 2, As to personal actions. It provides that all actions upon the case, (except actions for slander,) all actions of account, (except such as concern trade and merchandise between merchant and merchant, their actors or servants,) all actions of detinue, replevin and trover, all actions of debt founded upon any contract without specialty, and all actions of debt for arrearages of rents, must be commenced within six years next after the accruing of the cause of said actions, and not after. That all actions of trespass for breaking enclosures, and all other actions of trespass for any assault, battery, wounding and imprisonment, must be commenced within four years next after the accruing of such cause of action, and not after. And that actions upon the case for words spoken, must be commenced within two years next after the words spoken, and not after. If the person against whom there is any such cause of action, at the time the same accrued, was without the limits of the state, and did not leave property or estate therein, that could, by common and ordinary process of law be attached, in that case, the person who is entitled to such action, may commence the same, within the respective periods limited in the preceding clause, after such person's return into the state. If a person, entitled to any of the before described actions, is at the time any such cause of action accrues, within the age of twenty-one, feme covert, non compos mentis, imprisoned, or beyond sea, such person may commence the same within the times respectively, limited as above, after being of full age, discovert, of sane memory, at large, or returned from beyond sea.

220. - South Carolina. 1. As to lands. By the act of 1712, s. 2, it is enacted, that if any person or persons to whom any right or title to lands, tenements or hereditaments within this province, shall hereafter descend or come, do not prosecute the same within five years after such right or title accrued, that then he or they, and all claiming under him or them, shall be forever barred to recover the same.

221. By section 5, that not only the persons who have not made claim within the time limited shall be barred, but also all persons that shall come under such as have lost their claim.

222. And by section 2, that any person or persons beyond the seas, or out of the limits of this province, feme covert, or imprisoned, shall be allowed the space of seven years to prosecute their right or title, or claim to any lands, tenements, or hereditaments in this province, after such right and title accrued to them or any of them, and at no time after the said seven years; and also, any person or persons that are under the age of twenty-one years, shall be allowed to prosecute their claims at any time within two years after they come of age, and if beyond the seas, three years." But a subsequent act, in 1778; Pub. L. 455, s. 2; as to persons under twenty-one, allows five years to prosecute their right to lands, after coming to twenty-one.

223. - 2. As to personal actions. By the act of 1712, s. 6, actions of account, and upon the case, (other than case for slander, and upon such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants;) of debt grounded upon any lending or contract without specialty, or for arrearages of rent reserved by indenture; of covenant; of trespass, and trespass quare clausum fregit; of detinue, and of replevin for taking away of goods and chattels; must be commenced within four years next after the cause of such action or suits, and not after. Actions of trespass, of assault and battery, wounding, imprisonment, or any of them, within one year next after the cause of action; and actions on the case for words, within six months next after the words spoken, and not after.

224. There are various minute provisions in the savings, in favor of persons under age, insane, beyond seas, imprisoned, and of femes covert.

225. When the defendant is beyond seas at the time any personal action accrues, the plaintiff may sue, after his return, within such times as is limited for bringing such action. Act of 1712, s. 6.

226. Tennessee. 1. As to lands. The act of Nov. 16, 1819, c. 28, 2 Scott, 482, enacts in substance: §l. That any persons, their heirs or assigns, who shall, at the passing of the act, or at any time after, have had seven years possession of any lands, tenements, or hereditaments, which have been granted by this state, or the state of North Carolina,

holding or claiming the same under a deed or deeds of conveyance, devise, grant, or other assurance, purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted shall have been set up, or made to said land, &c., within the aforesaid time, in that case, the persons, or their heirs or assigns, so holding possession, shall be entitled to keep and hold in possession, such quantity of land as shall be specified and described in his or their deed, of conveyance, devise, grant, or other assurance, as aforesaid, in preference to and against all and all manner of persons whatsoever; and any persons or their heirs, who shall neglect or have neglected, for the said term of seven years, to avail themselves of any title legal or equitable which they may have had to any lands, &c., by suit in law or equity, effectually prosecuted against the persons in possession, shall be for ever barred; and the persons so holding, their heirs. or assigns, for the term aforesaid, shall have an indefeasible title in fee simple to such lands. See 3 Am. Jur. 255.

227. - §2. That no persons, or their heirs, shall maintain any action in law or equity for any lands, &c., but within seven years next after his, her, or their right to commence, have, or maintain such suit, shall have come, fallen, or accrued; and that all suits in law or equity shall be commenced and sued within seven years next after the title or cause of action accrued or fallen, and at no time after the said seven years shall have passed.

228. Persons who, when title first accrued, were within twenty-one years of age, femes covert, non compos mentis, imprisoned, or beyond the limits of the United States, or the territories thereof, may bring their action at any time, so as such suit is commenced within three years next after his, her, or their respective disabilities or death, and not after; and it is further provided, that in the construction of the savings, no cumulative disability shall prevent the bar.

229. - §3. That if, in any of the said actions or suits, judgment is given for the plaintiff and is reversed for error, or verdict pass for the plain-tiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing, &c.; or, if the action be commenced by original writ, and the defendant cannot be legally attached, or served with process, in such case the plaintiff, his heirs, executors, or administrators, as the case is, may commence a new action, from time to time, within a year after such judgment reversed or given against the plaintiff, or until the defendant can be attached, or served with process, so as to compel him, her, or them to appear and answer.

230. - §4. Provided, that this act shall have no bearing on the lands reserved for the use of schools.

231. - 2. As to personal actions. Actions of account render; upon the case; debt for arrearages of rent; detinue; replevin; and trespass quare clausum fregit; must be brought within three years next after the cause of such action, and not after: except such accounts as concern the trade of mer- chandise, between merchant and merchant, and their factors or servants. Actions of trespass, assault and battery, wounding, and imprisonment, or any of them, within one year after the cause of such action, and not after: and actions of the case for words, within six months after the words spoken, and not after. Act of 1715, c. 27, s. 5. Persons who, at the time the cause of action accrued, are within the age of twenty-one years, femes covert, non compos mentis, imprisoned, or beyond seas, may bring their actions within the time above limited, after the removal of the disability.. Id. s. 9.

232. The act of 1756, c. 4, 1 Scott, 89, contains the following enactment: 1. Where the plaintiff founds his demand upon a book account for goods, wares, and merchandise, sold and delivered, or work done, and solely relies for proof of delivery of the articles upon his oath, such oath shall not be admitted to prove the delivery of any articles in the book, of longer standing than two years.

233. - 2. And no such book of accounts, although proved by witnesses, shall be received in evidence for goods, &c., sold, or work done, above five years before action brought, except of persons being out of the government, or where the account shall be settled and signed by the parties.

234. - 3. Creditors of any deceased person, residing in the state, shall, within two years, and out of the state, within three years, from the qualifi-cation of the executors or administrators, make demand of their respective accounts, debts, and demands, of every kind whatsoever, to such executors, and administrators, and on failure to make the demand, and bring suit within those times, shall be for ever barred; saving to infants, non compotes, and femes covert, one year to sue, after the disability removed. But if any creditor, after making demand of his debt, &c., of the executor or administrator, shall delay his suit at their special request, then the demand shall not be barred during the time of indulgence.

235. Vermont. 1. Criminal cases. Sect. 1. All actions, suits, bills, complaints, informations, or indictments, for any crime or misdemeanor, other than theft, robbery, burglary, forgery, arson, and murder, shall be brought, had, commenced, or prosecuted within three years next after the offence was committed, and not after.

236. - Sect. 2. All complaints and prosecutions for theft, robbery, burglary and forgery, shall be commenced and prosecuted within six years next after the commission of the offence, and not after.

237. - Sect. 3. If any action, suit, bill, complaint, information, or indictment, for any crime or misdemeanor, other than arson and murder, shall be brought, had, commenced, or prosecuted, after the time limited by the two preceding sections, such proceedings shall be void, and of no effect.

238. - Sect. 4. All actions and suits, upon any statute, for any penalty or forfeiture, given in whole or in part to any person who will prosecute for the same, shall be commenced within one year after the offence was committed, and not after.

239. - Sect. 5. If the penalty is given in whole or in part to the state, or to any county or town, or to the treasury thereof, a suit therefor may be commenced by or in behalf of the state, county, town or treasury, at any time within two years after the offence was committed, and not afterwards,

240. - Sect. 6. All actions upon any statute, for any penalty or forfeiture, given in whole or in part to the party aggrieved, shall be commenced within four years after the offence was committed, and not after.

241. - Sect. 7. The six preceding sections shall not apply to any bill, complaint, information, indictment or action, which is or shall be limited by any statute, to be brought, had, commenced or prosecuted within a shorter or longer time than is prescribed in these six sections; but such bill, complaint, information, indictment or other suit, shall be brought and prosecuted within the time that may be limited by such statute.

242. - Sect. 8. When any bill, complaint, information or indictment shall be exhibited in any of the cases mentioned in this chapter, the clerk of the court, or magistrate, to whom it shall be exhibited, shall, at the time of exhibiting, make a minute thereon, in writing, under his official signature, of the true day, month and year, when the same was exhibited.

243. - Sect. 9. When any action shall be commenced, in any of the cases men- tioned in this chapter, the clerk or magistrate, signing the writ, shall enter upon it a true minute of the day, month and year, when the same was signed.

244. - Sect. 10. Every bill, complaint, information, indictment or writ, on which a minute of the day, month and year, shall not be made, as provided by the two preceding sections, shall, on motion, be dismissed.

245. - Sect. 11. None of the provisions of this chapter shall apply to suits against moneyed corporations, or against the directors or stockholders thereon to recover any penalty or forfeiture imposed, or to enforce any liability created by the act of

incorporation or any other law; but all such suits shall be brought within six years after the discovery, by the aggrieved party, of the facts upon which such penalty or forfeiture attached, or by which such liability was created.

246. - 2. Real and personal actions and rights of entry. Sec. 1. No action for the recovery of any lands, or for the recovery of the possession thereof, shall be maintained, unless such action is commenced within fifteen years next after the cause of action first accrued to the plaintiff, or those under whom he claims.

247. - Sect. 2. No person having right or title of entry into houses or lands, shall tbereinto enter, but within fifteen years next after such right of entry shall accrue.

248. - Sect. 3. The right of any person to the possession of any real estate shall not be impaired or affected, by a descent being hereafter cast in consequence of the death of any person in possession of such estate.

249. - Sect. 4. The first two sections of this chapter, so far as they relate to or affect lands granted, given, sequestered or appropriated to any public, pious or charitable use, shall take effect from and after the first day of January, in the year of our Lord eighteen hundred and forty-two, and, until that day, the laws now in force relating to such lands, shall continue in operation.

250 . - Sect. 5. The following actions shall be commenced within six years next after the cause of action accrued, and not after:

First. All actions of debt founded upon any contract, obligation or liabili-ty, not under seal, excepting such as are brought upon the judgment or decree of some court of record of the United States, or of this or some other state:

Second. All actions upon judgments rendered in any court not being a court of record:

Third. All actions of debt for arrearages of rent:

Fourth. All actions of account, assumpsit or on the case, founded on any contract or liability, express or implied:

Fifth. All actions of trespass upon land:

Sixth. All actions of replevin, and all other actions for taking, detaining or injuring goods or chattels:

Seventh. All other actions on the case, except actions for slanderous words, and for libels.

251. Sect. 6. All actions for assault and battery, and for false imprisonment, shall be commenced within three years next after the cause of action shall accrue, and not afterwards.

252. - Sect. 7. All actions for slanderous words, and for libels, shall be commenced within two years next after the cause of action shall accrue, and not after.

253. - Sect. 8. All actions against sheriffs, for the misconduct or negligence of their deputies, shall be commenced within four years next after the cause of action shall accrue, and not afterwards.

254.-Sect. 9. None of the foregoing provisions shall apply to any action brought upon a promissory note, which is signed in the presence of an attesting witness but the action, in such case, shall be commenced within fourteen years next after the cause of action shall accrue thereon, and not after- wards.

255. - Sect. 10. All actions of debt or scire facias on judgment shall be brought within eight years, next after the rendition of such judgment, and all actions of debt on specialties within eight years after the cause of action accrued, and not afterwards.

256. - Sect. 11. All actions of covenant, other than the covenants of warranty, and seisin, contained in deeds of conveyance of lands, shall be brought within eight years next after the cause of action shall accrue, and not after.

257. - Sect. 12. All actions of covenant, brought on any covenant of warranty contained in any deed of conveyance of land, shall be brought within eight years next after there shall have been a final decision against the title of the covenantor in such deed; and all actions of covenant brought on any covenant of seisin, contained in any such deed, shall be brought within fifteen years next after the cause of action shall accrue, and not after.

258.-Sect. 13. When any person shall be disabled to prosecute an action in the courts of this state, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods herein limited for the commencement of any of the actions before mentioned.

259. - Sect. 14. If, at the time when any cause of action of a personal nature, mentioned in this chapter, shall accrue against any person, he shall be out of the state,

the action may be commenced, within the time herein Iimited therefor, after such person shall come into the state; and if, after any cause of action shall have accrued, and before the statute has run, the person against whom it has accrued, shall be absent from and reside out of the state, and shall not have, known property within this state, which could, by the common and ordinary process of law, be attached, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

260. - Sect. 15. If any person, entitled to bring any of the actions, before mentioned in this chapter, or liable to any such acion, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of the said time, and if the cause of action does by law sur- vive, the action may be commenced, by the executor or administrator, within two years after such death, or against the administrator or executor of the deceased person, or the same may be presented to the commissioners on said estate, as the case may be, at any time within two years after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter; provided, however, if the commissioners on such estate are required to make their report to the probate court before, the, expiration of said two years, the claim against the deceased shall be presented to the commisioners within the time allowed other creditors to present their claims.

261. - Sect. 16. If, in any action, duly commenced within the time in this chapter limited and allowed therefor, the writ shall fail of a sufficient service, or return, by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ shall be abated, or the action otherwise defeated or avoided, by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of, error, or on exceptions, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year; or, if no executor or administrator be appointed within that time, then within one year after letters testamentary or of administration shall have been granted to him.

262. - Sec. 17. Whenever the commencement of any suit shall be stayed by an injunction of any court of equity, the time, during which such injunction shall be in force, shall not be deemed any portion of the time in this chapter limited, for the commencement of suit.

263. - Sect. 18. If any person entitled to bring any action in this chapter specified, shall, at the time when the cause of action accrues, be a minor or a married woman,

insane or imprisoned, such person. may bring the said action, within the times in this chapter respectively limited, after the disability shall be removed.

264. - Sect. 19. None of the provisions of this chapter shall apply to suits brought to enforce payment on bills, notes or other evidences of debt, issued by moneyed corporations.

265. - Sect. 20. All, the provisions of this chapter shall apply to the case of a debt or contract, alleged by way of set-off; and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor, at the time when the plaintiff's action was commenced.

266. - Sect. 21. The limitations herein before prescribed for the commencement of actions, shall apply to the same actions, when brought in the name of the state, or in the name of any officer, or otherwise, for the benefit of the state, in the same manner as to actions brought by citizens.

267. - Sect. 22. In actions of debt or upon the case founded on any contract, no acknowledgment or promise shall be evidence of a new or continuing contract, whereby to take any case out of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing, signed by the party chargeable thereby.

268. - Sect. 23. If there are two or more joint contractors, or joint executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any acknowledgment or promise, made or signed by any other or others of them.

269. - Sect. 24. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial, or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom he is entitled to recover, and for the other defendant. or defendants against the plaintiff.

270. - Sect. 25. If, in any action on contract, the defendant shall plead in abatement, that any other person ought to have been, jointly sued, and issue be joined on that plea, and it shall appear on the trial, that the action was, by reason of the provisions of this chapter, barred against the person so named in the plea, the said issue shall be found for, the plaintiff.

271. - Sect. 26. Nothing, contained in the four preceding sections, shall alter, take away or lessen the effect of a payment of any principal or interest, made by any person.

272. - Sect. 27. If there are two or more joint contractors or joint executors or administrators of any contractor, no one of them shall lose the benefits of the provisions of this chapter, so as to be chargeable by reason only of any payment, made by any other or others of them.

273. - Sect. 28. None of the provisions of this chapter, respecting the acknowledgment of a debt, or a new promise to pay it, shall apply to any such acknowledgment or promise, made before the first day of January, in the year of our Lord eighteen hundred and forty-two, but every such last mentioned acknowledgment or promise, although not made in writing, shall have the same effect as if no provisions, relating thereto, had been herein contained.

274. - Sect. 29. The provisions of this chapter which alter or vary the law now in force relative to the limitation of actions shall not apply to any case where the cause of action accrues before this chapter shall take effect, and go into operation; and in all cases, where the cause of action accrues before this chapter takes effect, the laws now in force limiting the time for the commencement of suits thereon, shall continue in operation.

275. Virginia. 1. As to lands. All writs of formedon in descender, remainder, or reverter, of any lands, tenements or hereditaments, shall be sued out within twenty years next after the title or cause of action accrued, and not afterwards: and no person having any right or title of entry into any lands, &c. shall make any entry but within twenty years next after such right or title accrued. Persons entitled to such writ or right or title of entry, who are under twenty-one years of age, femes covert, non compos mentis, imprisoned, or not within the commonwealth, at the time such right or title accrues, may themselves or their heirs, notwithstanding the said twenty years have expired, bring and maintain his action, or make his entry, within ten years next after such disabilities removed, or the death of the person so disabled.

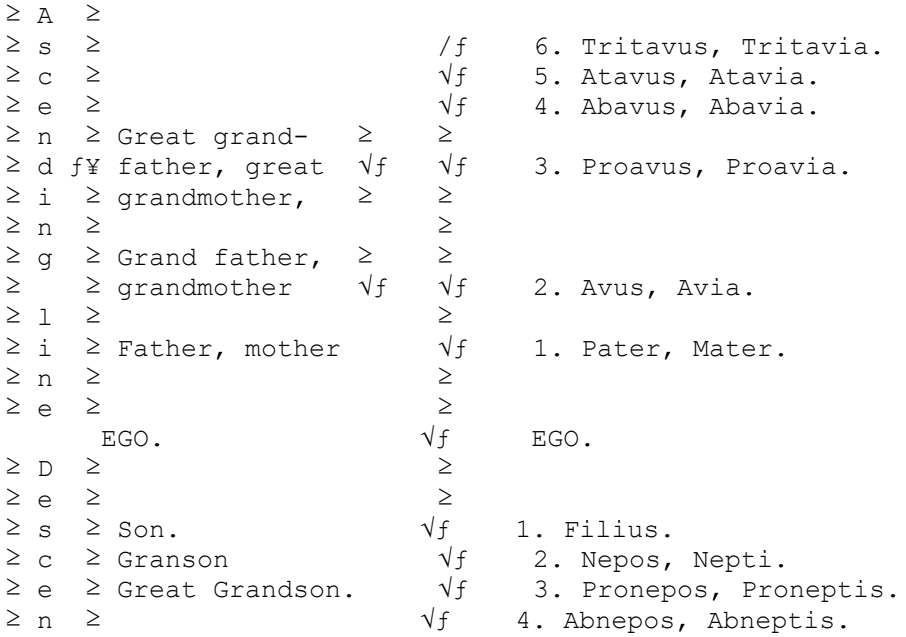
276. In all writs of right, and other actions possessory, any person may maintain a writ of right upon the possession or seisin of his ancestor or predecessor within fifty years, or any other possessory action upon the possession or seisin of his ancestor or predecessor, within forty years; but no person shall maintain a real action upon his own possession or seisin, but within thirty years next before the teste of the writ.

277. - 2. As to personal actions. The provisions in relation to personal actions are as follows: 1. Upon all actions upon the case, (other than for slander,) actions of account

or assumpsit, (other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants,) debt grounded upon any lending or contract without specialty, debt for arrears of rent, trespass, detinue, trover, or replevin for goods and chattels, and trespass quare clausum fregit, five years: 2. Upon actions of assault, battery, wounding, or imprisonment, three years: 3. Upon actions of slander, one year. Infants, femes covert, persons non compos mentis, imprisoned, beyond seas, or out of the country, are allowed full time to bring all such actions, except that of slander, after the disability has been removed.

278. All actions or suits, founded upon any account for goods, sold and delivered, or for articles charged in any store account, must be commenced within one year next after the cause of action, or the delivery of the goods, and not after; except that, in the case of the death of the creditors or debtors, before the expiration of the said term of one year, the farther time of one year, from the death of such creditor or debtor, shall be allowed. In suits in the name of any person residing beyond the seas, or out of this country, for recovery of any debt due for goods actually sold and delivered here by his factor or factors, the saving in favor of persons beyond the seas at the time their causes of action accrued, is not to be allowed; but, if any factor shall happen to die before the expiration of the time in which suit should have been brought, his principal shall be allowed two years from his death, to bring suit for any debt due on account of any contract or dealing with such factor. 1 Rev. Code, 489-491.

LINE, descents. The series of persons who have descended from a common ancestor, placed one under the other, in the order of their birth. It connects successively all the relations by blood to each other. Vide Consanguinity; Degree.



≥ d ≥ √ƒ 5. Adnepos, Adneptis.
≥ i ≥ √ƒ 6. Trinepos, Trineptis.
≥ n ≥
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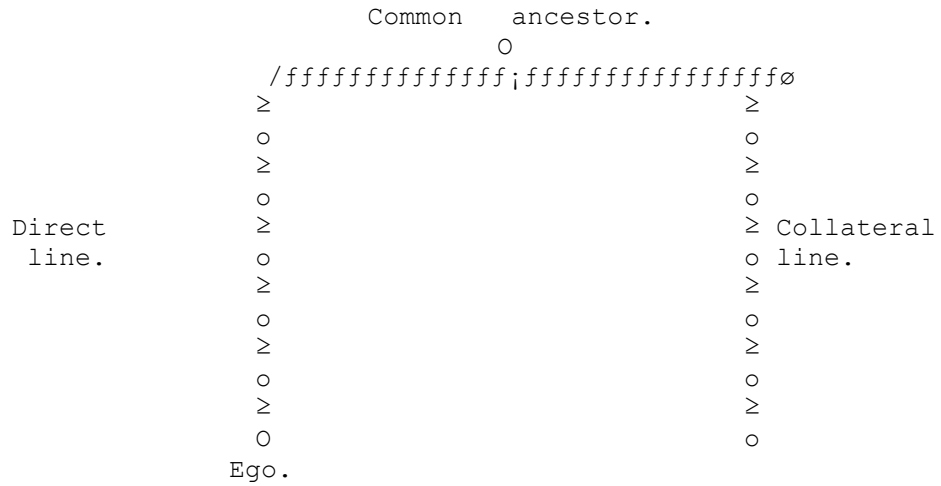
2. The line is either direct or collateral. The direct line is composed of all the persons who are descended from each other. If, in the direct line, any one person is assumed §the propositus, in order to count from him upwards and downwards, the line will be divided into two parts, the ascending and descending lines. The ascending line is that, which counting from the proposi-tus, ascends to his ancestors, to his father, grandfather, great-grandfather, &c. The descending line, is that which, counting from the same person, descends to his children, grandchildren, great-grand-children, &c. The preceding table is an example.

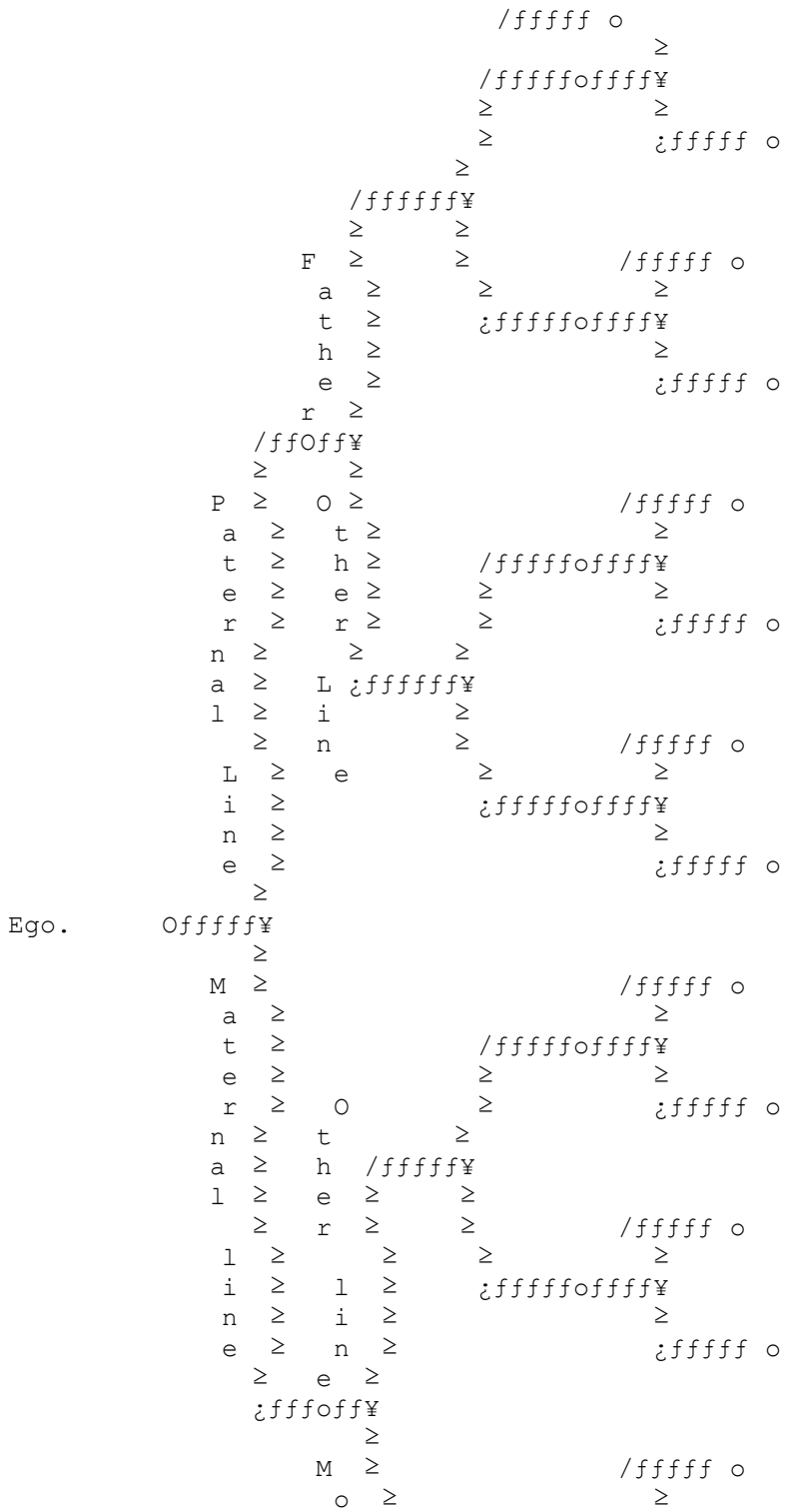
3. The collateral line considered by itself, and in relation to the common ancestor, is a direct line; it becomes collateral when placed along side of another line below the common ancestor, in whom both lines unite for example:

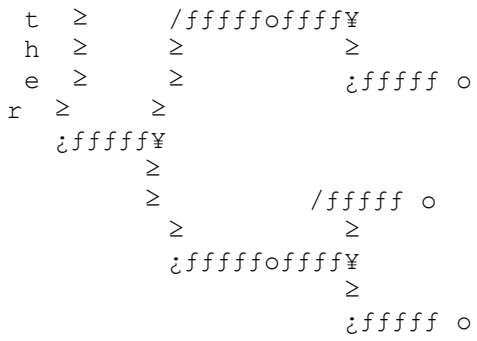


4. These two lines are independent of each other; they have no connexion, except by their union in the person of the common ancestor. This reunion is what forms the relation among the persons composing the two lines.

5. A line is also paternal or maternal. In the examination of a person's ascending line, the line ascends first to his father, next to his paternal grandfather, his paternal great-grandfather, &c. so on from father to father; this is called the paternal line. Another line will be found to ascend from the same person to his mother, his maternal

grandmother, and so from mother to mother; this is the maternal line. These lines, however, do not take in all the ascendants, there are many others who must be imagined. The number of ascendants is double at each degree, as is shown by the following table:





Vide 2 Bl. Com. 200, b. 2, c. 14; Poth. Des Successions, ch. 1, art. 3, § 2; and article Ascendants.

LINE, measures. A line is a lineal measure containing the one twelfth part of a on inch.

LINE, estates. The division between two estates. Limit; border; boudary.

2. When a line is mentioned in a deed as ending at a particular monument, (q. v.) it is to be extended in the direction called for, without regard to distance, until it reach the boundary. 1 Taylor, 110, 303 2 Hawks, 219; 3 Hawks, 21; 2 Taylor, 1. And a marked line is to be adhered to although it depart from the course. 7 Wheat. 7; 2 Overt. 304; 3 Call, 239; 7 Monr. 333; 2 Bibb, 261; 4 Bibb, 503; 4 Monr. 29; see further, 2 Dana, 2; 6 Wend. 467; 1 Bibb, 466; 1 Marsh. 382; 3 Marsh. 382; 3 Murph. 82; 13 Pick. 145; 13 Wend. 300; 5 J. J. Marsh. 587.

3. Where a number of persons settle simultaneously or at short intervals in the same neighborhood, and their tracts, if extended in certain directions, would overlap each other, the settlers sometimes by agreement determine upon dividing lines, which are called consentible lines. These lines, when fairly agreed upon, have been sanctioned by the courts; and such agreements are conclusive upon all persons claiming under the parties to them with notice, but not upon bona fide purchasers for a valuable consideration without notice, actual or constructive. 5 S. & R. 273; 9 W. & S. 66; 3 S & R. 323; 5 Binn. 129; 10 Watts, 324; 17 S. &. R. 57; Jones, L. 0. T.

4. Lines fixed by compact between nations are binding on their citizens and subjects. 11 Pet. 209; 1 Overt. 269; 1 Ves. sen., Rep. 450; 1 Atk. R. 2; 1 Ch. Cas. 85; 1 P. Wms. 723727; 2 Atk. R. 592; 1 Vern. 48; 1 Ves. 19; 2 Ves. 284; 3 S. & R. 331.

LINEAGE. Properly speaking lineage is the relationship of persons in a direct line; as the grandfather, the father, the son, the grandson, &c.

LINEAL. That which comes in a line. Lineal consanguinity is that which subsists between persons, one of whom is descended in a direct line from the other. Lineal descent, is that which takes place among lineal kindred.

LINEAL WARRANTY, old English law. A warranty by the heir, when he derived title to the land warranted, either from or through, the ancestor who made the warranty. See Warranty.

LIQUIDATED. That which is made clear, certain, and manifest; as, liquidated damages, ascertained damages liquidated debt, an ascertained debt, as to amount. A debt is liquidated when it is certain what is due, and how much is due, cum certum est an et quantum debeatur; for although it may appear that something is due, if it does not also appear how much is due, the debt is not liquidated. An unliquidated claim is one which one of the parties to the contract cannot alone render certain. 5 M. R. 11; 1 N. S. 130; 6 N S. 715; 6 N. S. 10, 13 L. R. 275; 7 L. R. 134, 599. Such a claim cannot be set off. 2 Dall. 237; S. C. 1 Yeates' R. 571; 10 Serg. & Rawle, 14; see Poth. Ob. n. 628; Dig. 50, 17, 24; Id. 42, 1, 64; Id. 1, 45, 112; Id. 46, 5, 11; Code, 7, 47. Dom. Lois Civ. l. 4, t. 2, s. 2, n. 2; Arg. Inst. 1. 4, c. 7; 7 Toull. n. 369; 6 Duv. Dr. Civ. Fr. n. 304.

LIQUIDATED DAMAGES. By this term is understood the fixed amount which a party to an agreement promises to pay to the other, in case he shall not fulfil some primary or principal engagement into which he has entered by the same agreement it differs from a penalty. (q. v.) Vide Damages liquidated.

2. The damages will be considered as liquidated in the following cases: 1. When the damages are uncertain, and not capable of being ascertained by any satisfactory or known rule; whether the uncertainty lies in the nature of the subject itself, or in the particular circunstances of the case. 2 T. R. 32 1 Ale. & N. 389; 2 Burr. 2225 10 Ves. 429; 7 Cowen, 307; 4 Wend. 468. 2. When, from the nature of the case, and the tenor of the agreement, it is clear, that the damages have been the subject of actual and fair calculation and ad-ustment between the parties. 2 Greenl. Ev. §259; 2 Story, Eq. §1318; 3 C. & P. 240; 10 Mass. 450, 462; 6 Bro. P. C. 436; 3 Taunt. 473; 7 John. 72; 4 Mass. 433; 3 Conn. 58; 1 Bouv. Inst. n. 655, 765.

LIQUIDATION. A fixed and determinate valuation of things which before were uncertain.

LIRA. The name of a foreign coin. In all computations at the custom house, the lira of Sardinia shall be estimated at eighteen cents and six mills. Act of March 22, 1846. The lira of the Lombardo-Venitian Kingdom, and the lira of Tuscany, at sixteen cents. Act of March 22, 1846.

LIS. A suit; an action; a controversy in court; a dispute.

LIS MOTA. The cause of the suit or action. By this term is understood the commencement of the controversy, and the beginning of the suit. 4 Campb. R. 417; 6 Carr. & P. 552, 561; 2 Russ. & My. 161; Greenl. Ev. §131, 132.

LIS PENDENS. The pendancy of a suit; the time between which it is instituted and finally decided.

2. It has been decided that the mere serving of a subpoena in chancery, unless a bill be also filed, is not a sufficient lis pendens, but the bill being filed, the lis pendens commences from the service of the subpoena, although that may not be returnable till the following term 1 Vern. 318; and after a decree, final in its nature, there remains no lis pendens. 1 Vern. 459.

3. It is a general rule, that Iis pendens is a general notice of an equity to all the world. 3 Atk. 343; 2 P. Wms. 282; Amb. 676; 1 Vern. 286. Vide 2 Fonbl. Eq. 152, note; 1 Supp. to Ves. jr. 284; 3 Rawle, R. 14; Pow. Mortg. index, h. t.; 1 John. Ch. R. 566; 2 John. Ch. R. 158; 4 John. Ch. Rep. 83; 2 Rand. Rep. 93; 1 M'Cord, Ch. R. 264; Harp. Eq. R. 224; 1 Bibb, R. 314; 5 Ham. Rep. 462; 4 Cowen, R. 667; 1 Wend. R. 583; 1 Desaus. R. 167, 170; 2 Edw. R. 115; 1 Hogan, R. 69; 6 Har. & John. 21; 2 Dana, R. 480; Jac. R. 202; 1 Russ. & My. 617 Corn. Dig. Chancery, 4 C 3; 2 Bell's Com. 152, 5th ed.; 1 Bail. Eq. R. 479; 7 Dana, R. 110; 7 J. J. Marsh. 529; 1 Clarke, R. 560, 584; 14 Ohio, 109, 323.

4. When a defendant is arrested pending a former suit or action, in which he was held to bail, he will not, in general, be held to bail, if the second suit be for the same cause of action. Grah. Prac. 98; Troub. & Haly's Prac. 44; 4 Yeates' R. 206. But under special circumstances, he may be held to bail twice, and of these circumstances the court will judge. 2 Miles, Rep. 99, 100, 142. See 14 John. R. 347. When such a second action is commenced, the first ought to be discontinued and the costs paid; but, it seems, it is sufficient if they are paid before the replication of nul tiel record to a plea of autre action pendant. in the second suit. Grab. Pr. 98; and see 1 John. Cas. 397; 7 Taunt. 151; 1 Marsh. R. 395; Merl. Rep. Litispendance; 5 Ohio R. 462; 6 Ohio R. 225; 1 Blackf. R. 53; Id. 315; Autre action pendent; Bail; Litigiosity.

LIST. A table of cases arranged for trial or argument; as, the trial list, the argument list. See 3 Bouv. Inst. n. 3031.

LISTERS. This word is used in some of the states to designate the persons appointed to make lists of taxables. See Verm. Rev. Stat. 538.

LITERAL CONTRACT, civil law. A contract, the whole of the evidence of which is reduced to writing. This contract is perfected by the writing, and binds the party who subscribed it, although he has received no consideration. Leg. Elem. §887.

LITERARY PROPERTY. This name has been given to the right which authors have in their works. This is secured to them by copyright. (q. v.) Vide 2 Bl. Com. 405-6; 4 Vin. Ab. 278; Bac. Ab. Prorogation, F 5; 2 Kent, Com. 306 to 315; 1 Supp. to Ves. jr. 360, 376; 2 Id. 469; Nicklin on Literary Property; Dane's Ab. Index, b. t.; 1 Chit. Pr. 98; 2 Amer. Jur. 248; 10 Amer. Jur. 62; 1 Law Intell. 66; Curt. on Copyr. 11; 1 Bell's Com. B. 1, part 2, c. 4, s. 2, p. 115; 1 Bouv. Inst. n. 508, et seq. Vide Copyright.

LITIGANT. One engaged in a suit; one fond of litigation.

LITIGATION. A contest authorized by law, in a court of justice, for the purpose of enforcing a right.

2. In order to prevent injustice, courts of equity will restrain a party from further litigation, by a writ of injunction; for example, after two verdicts on trials at bar, in favor of the plaintiff, a perpetual injunction was decreed. Str. 404. And not only between two individuals will a court of equity grant this relief, as in the above case of several ejectments, but also, when one general-legal right, as a right of fishery, is claimed against several, distinct persons, in which case there would be no end of bringing actions, since each action would only bind the particular right in question, between the plaintiff and defendant in such action, without deciding the general right claimed. 2 Atk. 484; 2 Ves. jr. 587. Vide Circuity of Actions.

LITIGI0SITY, Scottish law. The pendency of a suit; it is an implied prohibition of alienation to the disappointment of an action, or of diligence, the direct object of which is to obtain possession, or to acquire the property of a particular subject. The effect of it is analogous to that of inhibition. (q. v.) 2 Bell's Com. 152, 5th ed. Vide Lis Pendens.

LITIGIOUS. That which is the subject of a suit or action; that which is contested in a court of justice. In another sense, litigious signifies a disposition to sue; a fondness for litigation.

LTTIGIOUS RIGHTS, French law. Those which are or may be contested either in whole or in part, whether an action has been commenced, or when there is reason to apprehend one. Poth. Vente, n. 584; 9 Mart. R. 183; Troplong, De la Vente, n. 984 a 1003; Civ. Code of Lo. art. 2623; Id. 3522, n. 22. Vide Contentious jurisdiction.

LITIS CONTESTATIO, civil law. "Contestari." It is when each party to a suit (uterque reus) says "Teste estote." It was therefore, so called, because persons were called on by the parties to the suit "to bear witness," "to be witnesses." It is supposed that this contestatio was the usual termination of certain acts before the magistratus or in jure, of which the persons called to be witnesses were at some future time to bear record before the judex, in judicio. The Iis contestata, in the system of Justinian, consisted in the statements made by. the parties to a suit before the magistrate respecting the claim or demand, and the answer or defence to it. When this was done, the cause was ready for hearing. Savig. Traite de Droit Romain, tom. vi. § cclviii.; Smith, Dict. Gr. & Rom. Antiq. h. v. The contesting of the suit, or pleading the general issue. Vide 2 Bro. Civ. and Adm. Law, 358.

LITISPENDENCE. The part of an action being depending and undetermined; the time during which an action is pending. See Lis pendens.

LITRE. A French measure of capacity. It is of the size of a decimetre, or one-tenth part of a cubic metre. It is equal to 61.028 cubic inches. Vide Measure.

LIVERY, Engl. law. 1. The delivery of possession of lands to those tenants who hold of the king in capite, or knight's service. 2. Livery was also the name of a writ which lay for the heir of age, to obtain the possession of seisin of his lands at the king's hands. F. N. B. 155. 3. It signifies, in the third place, the clothes given by a nobleman or gentleman to his servant.

LIVERY OF SEISIN, estates. A delivery of possession of lands, tenements, and hereditaments, unto one entitled to the same. This was a ceremony used in the common law for the conveyance of real estate; and the livery was in deed, which was performed by the feoffor and the feoffee going upon the land, and the latter receiving it from the former; or in law, where the game was not made on the land, but in sight of it. 2 Bl. Com. 315, 316.

2. In most of the states, livery of seisin is unnecessary, it having been dispensed with either by express law or by usage. The recording of the deed has the same effect. In Maryland, however, it seems that a deed cannot operate as a feoffment, without livery of seisin. 5 Harr. & John. 158. Vide 4 Kent, Com. 381 2 Hill, Ab. c. 26, s. 4; 1 Misso. R. 553; 1 Pet. R. 508; 1 Bay's R. 107; 5 Har. & John. 158; Fairf. R. 318; Dane's Abridgment, h. t.; and the article Seisin.

LIVRE TOURNOIS, com. law. A coin used in France before the revolution. It is to be computed in the ad valorem duty on goods, &c., at eighteen and a half cents. Act of March 2, 1798, s. 61, 1 Story's L. U. S. 626. Vide Foreign Coins.

LOADMANAGE, maritime law, contracts. The pay to loadsmen; that is, persons who sail or row before ships, in barks or small vessels, with instruments for towing the ship, and directing her course, in order that she may escape the dangers in her way. Poth. Des Avaries, n. 147; Guidon de la Mer, ch. 14; Bac. Ab. Merchant and Merchandise, F.

LOAN, contracts. The act by which a person lets another have a thing to be used by him gratuitously, and which is to be returned, either in specie or in kind, agreeably to the terms of the contract. The thing which is thus transferred is also called a loan. 1 Bouv. Inst. n. 1077.

2. A loan in general implies that a thing is lent without reward; but, in some cases, a loan may be for a reward; as, the loan of money. 7 Pet. R. 109.

3. In order to make a contract usurious, there must be a loan; Cowp. 112, 770; 1 Ves. jr. 527; 2 Bl. R. 859; 3 Wils. 390 and the borrower must be bound to return the money at all events. 2 Scho. & Lef. 470. The purchase of a bond or note is not a loan ; 3 Scho. & Lef. 469; 9 Pet. R 103; but if such a purchase be merely colorable, it will be considered as a loan. 2 John. Cas. 60; Id. 66; 12 S. & R. 46; 15 John. R. 44.

LOAN FOR CONSUMPTION, or, MUTUTUM. (q. v.) A contract by which the owner of a personal chattel, called the lender, delivers it to another, known as the borrower, by which it is agreed that the borrower shall consume the chattel loaned, and return at the time agreed upon, another chattel, of the same quality, kind, and number, to the lender, either gratuitously or for a con- sideration; as, if Peter lends to Paul one bushel of wheat, to be used by the latter, so that it shall not be returned to Peter, but instead of which Paul will return to Peter another bushel of wheat of the same kind and quality, at a time agreed upon.

2. It is evident that this contract differs essentially from a loan for use. In the latter, the property of the thing lent remains with the lender, and, if it be destroyed without the fault or negligence of the borrower, it is his loss, and the thing to be returned is the identical thing lent; but in the loan for consumption, the property passes to the borrower, and in case of its destruction, he must bear the loss, and the identical property is never to be returned, but other property of the like kind, quality, and number. This contract bears a nearer resemblance to a barter or exchange; in a loan for consumption the borrower agrees to exchange with the lender a bushel of wheat, which he has not, but expects to obtain, for another bushel of wheat which the lender now has, and with which he is willing to part; or a more familiar example may be given: Debtor borrows from Creditor, one hundred dollars to use as he shall deem best, and he promises to return to Creditor another hundred dollars at a future time.

3. In cases of loan for consumption, the lender may charge for the use of the thing loaned or not; as, if I lend one thousand dollars to a friend for a month, I may charge interest or not but a loan for use is always gratuitous when anything is charged for the use, it becomes a hiring. See Hire; and also Mutuum.

LOAN FOR USE, or COMMODATUM, contracts. A bailment, or loan of an article for a certain time, to be used by the borrower, without paying for it. 2 Kent's Com. 446, 447. Sir William Jones defines it to be a bailment of a thing for a certain time, to be used by the borrower, without paying for it. Jones' Bailm. 118. According to the Louisiana Code, art. 2864, it is an agreement by which a person delivers a thing to another, to use it according to its natural destination, or according to the agreement, under an obligation on the part of the borrower, to return it after he shall have done using it. This loan is essentially gratuitous. The Code Civil, art. 1875, defines it in nearly the same words. Lord Holt has defined this bailment to be, when goods or chattels, that are useful, are lent to a friend gratis, to be used by him: and it is called commodatum, he adds, because the thing is to be restored in specie. 2 Ld. Ray. 909, 913.

2. The loan for use resembles somewhat a gift, for the lender, as in a gift, gives something to the borrower; but it differs from the latter, because there the property of the thing given is transferred to the donee; instead of which, in the loan for use, the thing given is only the use, and the property in the thing lent remains in the lender. This contract has also some analogy to the mutuum, or loan for consumption; but they differ in this, that in the loan for use the lender retains the property in the thing lent, and it must be returned in individuo; in the loan for consumption, on the contrary, the things lent are to be consumed, such as money, corn, oats, grain, cider, &c., and the property in them is transferred to the borrower, who becomes a debtor to the lender for the same quantity of like articles. Poth. Pret a. Usage, n. 9, 10.

3. Several things are essential to constitute this contract; first, there must be a thing which is lent; and this, according to the civil law, may be either a thing movable, as a horse, or an immovable, as a house or land, or goods, or even a thing incorporeal. But in our law, the contract seems confined entirely to goods and chattels, or personal property, and not to extend to real estate. It must be a thing lent, in contradistinction to a thing deposited or sold, or entrusted to another for the purpose of the owner. Story on Bailm. § 223.

4. Secondly. It must be lent gratuitously, for if any compensation is to be paid in, any manner whatsoever, it falls under Another denomination, that of hire. Ayliffe's Pand. B. 4, tit. 16, n. 516; Louis. Code, art. 2865; Pothier, Pret a Usage, c. 1, art. 1, n. 1, c. 2, art., 3, n. 11.

5. Thirdly. It must be lent for use, and for the use of the borrower. It is not material whether the use be exactly that which is peculiarly appropriate to the thing lent, as a loan of a bed to lie on, or a loan of a horse to ride; it is equally a loan, if the thing is lent to the borrower for any other purpose; as, to pledge as a security on his own account. Story on Bailm. §225. But the rights of the borrower are strictly confined to the use actually or impliedly agreed to by the lender, and cannot be lawfully exceeded. Poth. Pret a Usage, c. 1, §1, art. l, n. 5. The use may be for a limited time, or for an indefinite time.

6. Fourthly. The property must be lent to be specifically returned to the lender at the determination of the bailment; and, in this respect it differs from a mutuum, or loan for consumption, where the thing borrowed, such as corn, wine, and money, is to be returned in kind and quantity. See Mutuum. It follows, that a loan for use can never be of a thing which is to be consumed by use; as, if wine is lent to be drunk at a feast, even if no return in kind is intended, unless, perhaps, so far as it is not drunk; for, as to, all the rest, it is strictly a gift.

7. In general, it may be said that the borrower has the right to use the thing during the time and for the purpose which was intended between the parties. But this right is strictly confined to the use, expressed or implied in the particular transaction; and the borrower, by any excess, will make himself responsible. Jones' Bailm. 68; Cro. Jac. 244; 2 Ld. Raym. 909,916; 1 Const. Rep. So. Car. 121; Louis. Code: art. 2869; Code Civil, art. 1881; 2 Bulst. 306.

8. The obligations of the borrower are to take proper care of the thing borrowed, to use it according to the intention of the lender, to restore it in proper time, and to restore it in proper condition. Story on Bailm. §236; Louis. Code, art. 2869; Code Civ. 1880.

9. By the common law, this bailment may always be terminated at the pleasure of the lender. (q. v.) Vin. Abr. Bailment, D; Bac. Abr. Bailment, D.

10. The property in the thing lent in a loan for use, remains in the lender, Story on Bailment, §283; Code Civil, art. 1877; Louis. Code, art. 2866.

11. It is proper to remark that the loan for use must be lawful; a loan by Peter to Paul of a ladder to enable him to commit a larceny, or of a gun, to commit a murder, is not a loan for use, but Peter by this act becomes an accomplice of Paul. 17 Duv. n. 503; 6 Duverg. n. 32.

LOCAL. Pertaining to a place; something annexed to the freehold or tied to a certain place; as, local courts, or courts whose jurisdiction is limited to a particular place;

local allegiance, or allegiance due while you are in a particular place or country; local taxes, or those which are collected for particular districts.

LOCAL ACTION, practice, pleadings. An action is local when the venue must be laid in the county where the cause of action arose. 1 Chit. PI'. 271; 21 Vin. Ab. 79; 3 Bl. Com. 294; Bac. Ab. Actions, Local, &c.; Dane's Ab. Index, h. t.; 15 Mass. 284; 1 Brock. 203; 1 Greenl. 246. Vide Action; Venue.

LOCALITY, Scotch law. This name is given to a life rent created in marriage contracts in favor of the wife, instead of leaving her to her legal life rent of terce. 1 Bell's Com. 55. See Jointure.

LOCATIO. Hire; a letting out.

LOCATIO CONDUCTIO, Civil law. Location conduction is a consensual contract, by which a person becomes bound to deliver to another the use of a thing for a certain time, or to do work at. a certain price. 1 Bouv. Inst. n. 984.

LOCATIO MERCIUM VEHENDARUM, contracts. A term used in the civil law to signify the carriage of goods for hire.

2. In respect to contracts of this sort entered into by private persons, not exercising the business of common carriers, there does not seem to be any material distinction varying the rights, obligations and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence, and a reasonable exercise of skill; and of course he is not responsible for any losses not occasioned by ordinary negligence unless he has expressly, by the terms of his contract, taken upon himself such risk. 2 Ld. Raym. 909, 917, 918; 4 Taunt. 787; 6 Taunt. 577; 2 Marsh. 293,; Jones' Bailm. 103, 106, 121; 2 Bos. & Pull. 1l7; 1 Bouv. Inst. n. 1020. See Common Carrier.

LOCATIO OPERIS, contracts. A term used in the civil law, to signify the hiring of labor and services. It is a contract by which one of the parties gives a certain work to be performed by the other, who binds himself to do it for the price agreed between them, which he who gives the work to be done promises to pay to the other for doing it. Poth. Louage, n. 392. This is divided into two branches, first, Locatio operis faciendi; and, secondly, Locatio mercium vehendarum. See these words.

LOCATIO OPERIS FACIENDI, contracts. A term used in the civil law. There are two kinds, first, the location operis faciendi, strictly so called, or the hire of labor and services; such as the hire of tailors to make clothes, and of jewelers to set gems, and of watchmakers to repair watches. Jones' Bailm. 90, 96, 97. Secondly, Locatio

custodiae, or the receiving of goods on deposit for a reward, which is properly the hire of care and attention about the goods. Story on Bailm. 422, 442; 1 Bouv. Inst. n. 994.

2. In contracts for work, it is of the essence of the contract, first, that there should be work to be done; secondly, for a price or reward; and, thirdly, a lawful contract between parties capable and intending to contract. Pothier, Louage, n. 395 to 403.

LOCATIO REI, contracts. A term used in the civil law, which signifies the hiring of a thing. It is a contract by which one of the parties obligates himself to, give to the other the use and enjoyment, of a certain thing for a period of time agreed upon between them, and in consideration of a price which the latter binds himself to pay in return. Poth. Contr. de Louage, n. l. See Bailment; Hire; Hirer; Letter.

LOCATION, contracts. A contract by which the temporary use of a subject, or the work or service of a person, is given for an ascertained hire. 1 Bell's Com. B. 2, pt. 3, c. 2, s. 4, art. 2, §1, page 255. Vide Bailment; Hire.

LOCATION, estates. Among surveyors, who are authorized by public authority to lay out lands by a particular warrant, the act of selecting the land designated in the warrant and surveying it, is called its location. In Pennsylvania, it is an application made by any person for land, in the office of the secretary of the late land office of Pennsylvania, and entered in the books of said office, numbered and sent to the surveyor general's office. Act June 25, 1781, §2, 2 Sm. Laws, 7.

LOCATOR, civil law. He who leases or lets a thing to hire to another. His duties are, 1st. To deliver to the hirer the thing hired, that he may use it. 2d. To guaranty to the hirer the free enjoyment of it. 3d. To keep the thing hired in good order in such manner that the hirer may enjoy it. 4th. To warrant that the thing hired has not such defects as to destroy its use. Poth. Du. Contr. de Louage, n. 53.

LOCK-UP HOUSE. A place used, temporarily as a prison.

LOCO PARENTIS. In the place of a parent.

2. It is frequently important in cases of devises and bequests, to ascertain whether the testator did or did not stand towards the devisee or legatee, in loco parentis. In general, those who assume the parental character may be considered as standing in that relation but this character must clearly appear.

3. The fact of his so standing may be shown by positive proof, or the express declarations of the testator in his will, or by circumstances; as, when a grandfather; 2 Atk. 518; a brother; 1 B. & Beat. 298; or an uncle; 2 A. 492; takes an orphan child

under his care, or supports him, he assumes the office of a parent. The law places a master in loco parentis in relation to bis apprentice. See 2 Ashm. R. 178, 207; 2 Bouv. Inst. n. 2216.

LOCUM TENENS. He who holds the place of another, a deputy; as A B, locum tenens of C D, mayor of the city of Philadelphia.

LOCUS. The place where a thing is done.

LOCUS CONTRACTUS. The place of the contract. In general, the law of the place where the contract is made, governs in everything which relates to the mode of construing it. Vide Lex loci contractus.

LOCUS DELICTI. The place where the tort, offence, or injury bas been committed.

LOCUS POENITENTIAE. contracts, crim. law. Literally this signifies a place of repentance; in law, it is the opportunity of withdrawing from a projected contract, before the parties are finally bound; or of abandoning the intention of committing a crime, before it has been completed, 2 Bro. C. R. 569; Ersk. Laws of Scotl. 290. Vide article Attempt.

LOCUS IN QUO. The place in which. In pleadings it is the place where any- thing is alleged to have been done. 1 Salk. 94.

LOCUS REI SITAE. The place where a thing is situated. In proceedings in rem, in real actions in the civil law, or: those which have for their object the recovery of a thing; and in real actions in the common law, or those for the recovery of land, the proper forum is the locus rei sitae. 2 Gall. R. 191.

LOCUS SIGILLI. The place of the seal. 2. In many of the states, instead of sealing deeds, writs, and other papers or documents requiring it, a scroll is made in which the letters L. S. are printed or written, which is an abbreviation of Locus Sigilli. This in some of the states has all the efficacy of a seal, but in others it has no such effect. See Scroll.

LODGER. One who has a right to inhabit another man's house. He has not the same right as a tenant; and is not entitled to the same notice to quit. Woodf. L. &_T. 177. See 7 Mann. & Gr. 87; S. C. 49 E. C. L. R. 85, 151, and article Inmate.

LODGINGS. Habitation in another's house, in which the owner dwells; the oc- cupier being termed a lodger.

LOG BOOK. A ship's journal. It contains a minute account of the ship's course, with a short history of every occurrence during the vovage. 1 Marsh. Ins. 408. When a log books required by law to be kept, it is an official register so far as regards the transactions required by law to be entered in it, but no further. Abbott on Shipp. by Story, 468, n. 1; 1 Summ. R. 373 2 Summ. 19, 78; 4 Mason, R. 544; 1 Esp. R. 427.

LOQUELA, practice. An imparlance. Loquela sine die, a respite in law to an indefinite time. Formerly by loquela was meant the allegations of fact mutually made on either side, now denominated the pleadings. Steph. PI. 29.

LORD. In England, this is a title of honor. Fortunately in the U. S. no such titles are allowed.

LORD'S DAY. The same as Sunday. (q. v.) Dies Dominicus non est juridicus. Co. Litt. 135; Noy's Max. 2.

LOSS, contracts. The deprivation of something which one had, which was either advantageous, agreeable or commodious.

2. In cases of partnership, the losses are in general borne by the partners equally, unless stipulations or circumstance's manifest a different intention. Story, Partn. §24. But it is not essential that the partners should all share the losses. They may agree, that if there shall be no profits, but a loss, that the loss shall be borne by one or more of the partners exclusively, and that the others shall, inter se, be exempted from all liabilities for losses. Colly. Partn. 11; Gow, Partn. 9; 3 M. & Wels. 357; 5 Barn. & Ald. 954 Story, Partn. §23.

3. When a thing sold is lost by an accident, as by fire, the loss falls on the owner, res perit domino, and questions not unfrequently arise, as to whether the thing has been delivered and passed to the purchaser, or whether it remains still the property of the seller. See, on this subject, Delivery.

LOSS IN INSURANCE, contracts. A loss is the injury or damage sustained by the insured in consequence of the happening of one or more of the accidents or misfortunes against which the insurer, in consideration of the premium, has undertaken to indemnify the insured. 1 Bouv. Inst. n. 1215.

2. These accidents or misfortunes, or perils, as they are usually denom-inated, are all distinctly enumerated in the policy. And no loss, however great or unforeseen, can be a loss with the policy, unless it be the direct and immediate consequence of one or more of these perils, Marsh. Ins. B, 1, c. 12. As to the risks which are within the common policy, see Marsh. Ins. c. 7, s. 2.

3. Every loss is either total or partial.

4. The term total loss is understood in two different senses; natural and legal. In its natural sense it signifies the complete and absolute destruction of the thing inured. In its legal sense, it means, not merely the entire de-struction or deprivation of the thing insured, but also such damage to it, though it specifically remain, as renders it of little or no value to the owner. A loss is also deemed total, if, by the happening of any of the perils or misfortunes insured against, the voyage be lost, or be not worth pursuing, and the projected adventure be frustrated; or if the value of what he saved, be less than the freight. See Dougl. 231; 1 T. R. 608; Id. 187; Str. 1065; 13 East, R. 323; 2 M. & S 374 1 N. R. 236; 1 Wils. 191; 4 T. R. 785 9 East, R. 283; 3 B. & P. 388; Marsh. Ins. B. 1, c. 12; 1 T. R. 187.

5. A partial loss, is any loss or damage short of, or not amounting to a total loss, for if it be not the latter it must be the former. See 4 Mass. 374; 6 Mass. 102; Id, 122; Id. 317; 7 Mass. 349; 9 Mass. 20; 12 Mass. 170; 12 Mass. 288; 6 Mass. 479; 8 Mass. 494; 10 Johns. Rep. 487; 8 Johns. 237; 5 Binn. 595; 2 Serg. & Rawle, 553.

6. Partial losses are sometimes denominated average losses, because they are often in the nature of those losses which are the subject of average contributions; and they are distinguished into general and particular averages. See tit. Average.

7. Losses are occasioned in a variety of ways but most usually by the following: 1. By perils of the sea. See tit. Perils of the Sea. 2. By collision, as where one ship drives against, or runs foul of another. Marsh. Ins. B. 1, c. 12, s. 2. 3. By fire. Marsh. B. 1, c. 12, s. 3. 4. By capture. See tit. Capture; Marsh. Ins. B. 1. c. 12, s. 4; 2 Caines' C. Err. 158; 7 Johns. R. 449; 13 Johns. R. 161; 14 Johns. R. 227; 3 Wheat. 183; 4 Cranch, 43; 6 Mass. 197. 5. By detention of princes. By the terms of the policy, the insurer is liable for all loss occasioned by "arrest or detainments of all kings, princes, and people, of what nation, condition, or quality soever." Under these words, the insurers are liable for all losses occasioned by arrests or detention of the ship, or goods insured, by the authority of any prince or public body claiming to exercise sovereign power, under what pretence soever. Marsh. Ins. B. 1, c. 12, s. 5. See Embargo; People. 6. By Barratry. Marsh. Ills. B. 1, c. 12, s. 6. See tit. Barratry; 2 Caines' R. 67; Id. 222; 3 Caines' Rep. 1; 1 Johns. R. 229; 8 Johns. R. 209, 2d edit.; 5 Day, 1; 11 Johns. Rep. 40; 13 Johns. Rep. 451; 2 Binn. 574; 2 Dall. 137; 8 Cranch, 39; 3 Wheat. 168. 7. By average by contribution. See Marsh. Ins. B. 1, c. 12, s. 7; this Dict. tit. Average. 8., By salvage. See tit. Salvage; Marsh. Ins. B. 1, c. 12, s. 8. 9. By the death of animals. If animals, such as horses, cattle, or beasts or birds of curiosity, be insured in their passage by sea, their death, occasioned by tempests, by the shot of an enemy, by jettison in a storm, or by any other extraordinary accident, occasioned by the perils enumerated in the policy, is a loss for which the underwriters are liable. Not so, if it be

occasioned by mere disease or natural death. Marsh. Ins. B. 1, c. 12, s. 10. 10. By fraud. Marsh. Ins. B. 1, c. 12, s. 11. See, generally, Com. Dig. Merchant, E 9, n; Bac. Abr. Merchant, 1. 5

LOST. What was once possessed and cannot now be found.

2. When a bond or other deed was lost, formerly the obligee or plaintiff was compelled to go into equity to seek relief, because there was no remedy a law, the plaintiff being required to make profert in his declaration. 1 Chan. c. 7T. But in process of time courts of law dispensed with profert in such cases, and thereby obtained concurrent jurisdiction with the courts of chancery, so that now the loss of any paper, other than a negotiable note, will not prevent the plaintiff from recovering at law as well as in equity. 3 Atk. 214; 1 Ves. 341; 5 Ves. 235; 6 Ves. 812, 7 Ves. 19; 3 V. & B. 54.

3. When a negotiable note has been lost, equity will grant relief. In such case the claimant must tender an indemnity to the debtor, and file a bill in chancery to compel payment. 7 B. & C. 90; Ryan & Mo. 90; 4 Taunt. 602; 2 Ves. sen. 327; 16 Ves. 430.

LOST PAPERS. When a paper containing an agreement between parties, a will, and the like, has been so mislaid, that after a diligent search it cannot be found, it is said to be lost.

2. When such a document has been lost, and it is required to prove its contents, the party must prove that he has made diligent search, and, in good faith, exhausted all sources of information accessible to him. For this purpose bis own affidavit is sufficient. 1 Atk. 446; 1 Greenl. Ev. §349. On being satisfied of this, the court will allow secondary evidence to be given of its contents. See Evidence.

3. Even a will proved to be lost, may be admitted to probate, upon secondary evidence. 1 Greenl. Ev. §84, 509, 575; 2 Greenl. Ev. §668, a, 2d ed. But the fact of the loss must be proved by the clearest evidence, because it may have been destroyed by the testator animo revocandi. 8 Mete. 487; 2 Addams, 223; 6 Wend. 173; 1 Hagg. Eccl. R. 115; 3 Pick. 67; 5 B. Munroe, 58; 2 Curt. 913.

LOST OR NOT LOST. These words are sometimes inserted in policies of marine insurance. They are used when the underwriter undertakes that if the ship or goods should be lost at the time of the insurance, still the underwriter is liable, provided there is no fraud. Moll. B. 2, c. 7, s. 5; Hildy. on Mar. Ins. 10.

LOT. Anything on which depends the accidental determination of a right by which we acquire or lose something; or it is that which fortuitously deter-mines what we are

to acquire. When it can be certainly known what are our rights, we ought never to resort to a decision by lot; but when it is impossible to tell what actually belong to us, as if an estate is divided into three parts and one part given to each of three persons, the proper way to ascertain each one's part is to draw lots. Wolff, Dr. &c., de la Nat. §669.

LOT OF GROUND. A small piece of land in a town or city usually employed for building, a yard, a garden or such other urban use. Lots are in-lots, or those within the boundary of the city or town, and out-lots, those which are out of such boundary, and which are used by some of the inhabitants of such town or city.

LOTTERY. A scheme for the distribution of prizes by chance.

2. In most, if not all of the United States, lotteries not specially authorized by the legislatures of the respective states are prohibited, and the persons concerned in establishing them are subjected to a heavy penalty. This is the case in Alabama, Connecticut Delaware, Georgia, Kentucky, Maryland, Massachusetts, Mississippi, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont and Virginia. ln Louisiana, a license is granted to sell tickets in a lottery not authorized by the legislature of that state, on the payment of $5000, and the license extends only to one lottery. In many of the states, the lotteries authorized by other states, are absolutely prohibited Encycl. Amer. h. t.

LOUISIANA. The name of one of the new states of the United States of America. This state was admitted into the Union by the act of congress, entitled "An act for the admission of the state of Louisiana into the Union, and to extend the laws of the United States to the said state," approved April 8, 1812, 2 Story's L. U. S. 1224; the preamble of which recites and the first section enacts as follows, namely:

2. Whereas the representatives of the people of all that part of the territory or country ceded, under the name of "Louisiana," by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits; that is to say: beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude; thence, due north, to the northernmost part of the thirty-third degree of north latitude, thence, along the said parallel of latitude, to the river Mississippi; thence, down the said river, to the river Iberville; and from thence, along the middle of the said river, and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence, bounded by the said gulf, to the place of beginning; including all islands within three leagues of the coast; did, on the twenty-second day of January, one thousand eight hundred and twelve, form for themselves a constitution and state government, and give to the said state the name of the state of Louisiana, in

pursuance of an act of congress, entitled "An act to enable the people of the territory of Orleans to form a constitution and state government, and for the admission of the said state into the Union, on an equal footing with the original states, and for other purposes: And the said constitution having been transmitted to congress, and by them being hereby approved; therefore,

3. - §1. Be it enacted, &c. That the said state shall be one, and is hereby declared to be one of the United Staies of America and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana: Provided, That it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said state as to the inhabitants of other states, and the territories of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said state; and that the above condition, and also all other the conditions and terms contained in the third section of the act, the title whereof is hereinbefore recited, shall be considered, deemed, and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union. See 11 M. R. 309.

4. By the present constitution of the state of Louisiana, which was adopted in 1845; the powers of the government of the state of Louisiana, are divided into three distinct departments, each of them confined to a separate body of magistracy, to wit: The legislative to one, the executive to another, and the judicial to a third. Title I.

5.-1st. The legislative power is vested in a general assembly, which consists of a senate and house of representatives.

6. - §1. The senate will be considered with reference to the qualification of the electors; the qualification of the members the length of time for which they are elected and the time of their election. 1. In all elections by the people, every free white male, who has been two years a citizen of the United States, who has attained the age of twenty-one years, and resided in the state two consecutive years next preceding the election, and the last year thereof in the parish in which he offers to vote, shall have the right of voting: Provided, That no person shall be deprived of the right of voting, who, at the time of the adoption of this constitution, was entitled to that right under the constitution of 1812. Absence from the state for more than ninety conse- cutive days, shall interrupt the acquisition of the residence required in the preceding section, unless the person absenting himself shall be a housekeeper, or shall occupy a tenement for carrying on business, and his dwelling house or tenements for carrying on business, be actually occupied during his absence, by his family or servants, or some portion thereof, or by some one employed by him. No soldier, seaman, or

marine in the army or navy of the United States, no pauper, no person under interdiction, nor under conviction of any crime punishable by hard labor, shall be entitled to vote at any election in this state. 2. No person shall be a senator, who, at the time of bis election, has not been a citizen of the United States ten years, and who has not attained the age of twenty-seven years and resided in the state four years next preceding his election, and the last year thereof, in the district in which he may be chosen. The number of senators shall be thirty-two. 3. The members of the senate shall be chosen for the term of four years. 4. Their election takes place on the first Monday in November, every two years, so that one half of their number are elected every two years, and a perpetual rotation thereby kept up.

7. - §2. The house of representatives will be treated of in the same manner as that of the senate. 1. The electors are qualified in the same manner as those of the senate. 2. No person shall be a representative, who, at the time of his election, is not a free white male, and has not been for three years a citizen of the United States, and has not attained the age of twenty-one years, and resided in the state for three years next preceding the election, and the last year thereof in the parish for which he may be chosen. The number of representatives shall not be more than one hundred, nor less than seventy. 3. They are chosen every two years. 4. Their election is on the first Monday in November, every two years. Title II.

8. - 2d. The supreme executive power of the state shall be vested in a chief magistrate, who shall be styled the governor of the state of Louisiana. He is elected by the qualified electors at the time and place of voting for representatives; the person having the greatest number of votes, shall be declared elected. But if two or more persons shall be equal in the highest number of votes polled, one of them shall immediately be chosen governor by the joint vote of the members of the general assembly. 2. No person shall be eligible to the office of governor, who shall not have attained the age of thirty-five years, been fifteen years a citizen of the United States, and a resident within the state for the same space of time next preceding his election. 3. He shall hold his office during the term of four years, but shall be ineligible for the succeeding four years after its termination. 4. His principal functions are as follows: He shall be commander-in-chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States. He shall take care that the laws be faithfully executed. From time to time give to the general assembly information respecting the situation of the state, and recommend to their consideration such measures as he may deem expedient. Shall have power to grant reprieves for all offences against the state. With the consent of the senate, have power to grant pardons and remit fines and forfeitures, after conviction, except in cases of impeachment. In cases of treason, may grant reprieves until the end of the next session of the general assembly, in which the pardoning power shall be vested. Shall

nominate, and by and with the advice and consent of the senate, appoint all officers established by this constitution, whose mode of appointment is not otherwise prescribed by the constitution, nor by the legislature. Have power to fill vacancies during the recess of the senate, provided he appoint no one whom the senate have rejected for the same office. May, on extraordinary occasions convene the general asserably at the seat of government, or at a different place, if that should have become dangerous from an enemy or from an epidemic; and in case of disagreement between the two houses as to the time of adjournment, he may adjourn them to such time as he may think proper, not exceeding four months. He shall have the veto power. Title III.

9. - 3d. The judicial power is vested by title IV of the constitution, as follows:

10. - §1. The judicial power shall be vested in a supreme court, in district courts, and in justices of the peace.

11. - §2. The supreme court, except in cases hereinafter provided, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases when the matter in dispute shall exceed three hundred dollars, and to all cases in which the constitutionality or legality of any tax, toll, or impost of any kind or nature soever, shall be in contestation, whatever may be the amount thereof; and likewise to all fines, forfeitures, and penalties imposed by municipal corporations, and in criminal cases on questions of law alone, whenever the punishment of death or hard labor may be inflicted, or when a fine exceeding three hundred dollars is actually imposed.

12. - §3. The supreme court shall be composed of one chief justice, and of three associate justices, a majority of whom shall constitute a quorum. The chief justice shall receive a salary of six thousand dollars, and each of the associate judges a salary of five thousand five hundred dollars annually. The court shall appoint its own clerks. The judges shall be appointed for the term of eight years.

13. - §4. When the first appointments are made under this constitution, the chief justice shall be appointed for eight years, one of the associate judges for six years, one for four years, and one for two years and in the event of the death, resignation, or removal of any of said judges before the expiration of the period for which he was appointed, his successor shall be appointed only for the remainder of his term; so that the term of service of no two of said judges shall expire at the same time.

14. - §5. The supreme court shall hold its sessions in New Orleans, from the first Monday of the month of November, to the end of the month of June, inclusive. The legislature shall have power to fix the sessions elsewhere during the rest of the year; until otherwise provided, the sessions shall be held as heretofore.

15. - §6. The supreme court, and each of the judges thereof, shall have power to issue writs of habeas corpus, at the instance of all persons in actual custody under process, in all cases in which they may have appellate jurisdiction.

16. - §7. In all cases in which the judges shall be equally divided in opinion, the judgment appealed from shall stand affirmed; in which case each of the judges shall give his separate opinions in writing.

17. - §8. All judges, by virtue of their office, shall be conservators of the peace throughout the state. The style of all processes shall be, "The State of Louisiana." All prosecutions, shall be carried on in the name and by the authority of the state of Louisiana, and conclude, against the peace and dignity of the same.

18. - §9. The judges of all the courts within this state shall, as often as it may be possible so to do, in every definite judgment, refer to the particular law in virtue of which such judgment may be rendered, and in all cases adduce the reasons on which their judgment is founded.

19. - §10. No court or judge shall make any allowance by way of fee or compensation in any suit or proceedings, except for the payment of such fees to ministerial officers as may be established by law.

20. - §11. No duties or functions shall ever be attached by law to the supreme or district courts, or to the several judges thereof, but such as are judicial; and the said judges are prohibited from receiving any fees of office or other compensation than their salaries for any civil duties performed by them.

21. - §12. The judges of all courts shall be liable to impeachment; but for any reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them on the address of three-fourths of the members present of each house of the general assembly. In every such case the cause or causes for which such removal may be required, shall be stated at length in the address, and inserted in the journal of each house.

22. - §13. The first legislature assembled under this constitution shall divide the state into judicial districts, which shall remain unchanged for six years, and be subject to reorganization every sixth year thereafter. The number of districts shall not be less than twelve, nor more than twenty. For each district one judge, learned in the law, shall be appointed, except in the districts in which the cities of New Orleans and Lafayette are situated, in which the legislature may establish as many district courts as the public interest may require.

23. - §14. Each of the said judges shall receive a salary to be fixed by law, which shall not be increased or diminished during his term of office, and shall never be less than two thousand five hundred dollars annually. He must be a citizen of the United States, over the age of thirty years, and have resided in the state for six years next preceding his appointment, and have practised law therein for the space of five years.

24. - §15. The judges of the district courts shall hold their offices for the term of six years. The judges first appointed shall be divided by lot into three classes, as nearly equal as can be, and the term of office of the judges of the first class shall expire at the end of two years, of the second class at the end of four years, and of the third class at the end of six years.

25. - §16. The district courts shall have original jurisdiction in all civil cases when the amount in dispute exceeds fifty dollars, exclusive of interest. In all criminal cases, and in all matters connected with successions, their jurisdiction shall be unlimited.

26. - §17. The jurisdiction of justices of the peace shall never exceed, in civil cases, the sum of one hundred dollars, exclusive of interest, subject to appeal to the district court in such cases as shall be provided for by law. They shall be elected by the qualified voters of each parish for the term of two years, and shall have such criminal jurisdiction as shall be provided for by law.

LOW WATER MARK. That part of the shore of the sea to which the waters re- cede when the tide is the lowest. Vide High Water Mark; River; Sea Shore; Dane's Ab. h. t.; 1 Halst. R. 1.

LOYAL. Legal; according to law; as, loyal matrimony, a lawful marriage; at- tached to the existing law.

LOYALTY. That which adheres to the law, that which sustains an existing government. See Penal Laws of China, 3.

LUCID INTERVAL, med. jur. That space of time between two fits of insanity, during which a person non compos mentis is completely restored to the perfect enjoyment of reason upon every subject upon which the mind was previously cognizant. Shelf. on Lun. 70; Male's Elem. of Forensic Medicine, 227; and see Dr. Haslam on Madness, 46; Reid's Essays on Hypochondriasis, 317 Willis on Mental Derangement, 151.

2. To ascertain whether a partial restoration to sanity is a lucid interval, we must consider the nature of the interval and its duration. 1st. Of its nature.: "It must not," says D'Aguesseau, "be a superficial tranquillity, a shadow of repose, but on the

contrary, a profound tranquillity, a real repose; it must not be a mere ray of reason, which only makes its absence more apparent when it is gone, not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal, not a glimmering which unites night to the day; but a perfect light, a lively and continued lustre, a full and entire day, interposed between two separate nights of the fury which precedes and follows it; and to use another image, it is not a deceitful and faithless stillness, which follows or forebodes a storm, but a sure and steady tranquillity for a time, a real calm, a perfect serenity; without looking for so many metaphors to represent an idea, it must not be a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked, as in every respect to resemble the restoration of health." 2d, Of its duration. "As it is impossible," he continues, "to judge in a moment of the qualities of an interval, it is requisite that there should be a sufficient length of time for giving a perfect assurance of the temporary reestablishment of reason, which it is not possible to define in general, and which depends upon the different kinds of fury, but it is certain there must be a time, and a considerable time." 2 Evan's Poth. on Oblig. 668, 669.

3. It is the duty of the party who contends for a lucid interval to prove it; for a person once insane is presumed so, until it is shown that he has a lucid interval or has recovered. Swinb. 77; Co. Litt. by Butler, n. 185; 3 Bro. C. C. 443; 1 Rep. Con. Ct. 225; 1 Pet. R. 163; 1 Litt. R. 102. Except perhaps the alleged insanity was very long ago, or for a very short con- tinuance. And the wisdom of a testament, when it is proved that the party framed it without assistance, is a strong presumption of the sanity of a testator. 1 Phill. R. 90;1 Hen. & Munf. 476.

4. Medical men have doubted of the existence of a lucid interval, in which the mind was completely restored to its sane state. It is only an abatement of the symptoms, they say, and not a removal of the cause of the disease; a degree of irritability of the brain remains behind which renders the patient unable to withstand any unusual emotion, any sudden provocation, or any unexpected pressing emergency. Dr. Combe, Observations on Mental Derangement, 241; Halsam, Med. Jur. of Insanity, 224; Fodere, De Medecine Legale, tom, 1 , p. 205, 140; Georget, Des Maladies Mentales, 46; 2 Phillim. R. 90; 2 Hagg. Eccl. R. 433; 1 Phillim. Eccl. R. 84.

See further, Godolph. 25; 3 Bro. C. C. 443; 11 Ves. 11; Com. Dig. Testi-moigne, A 1; 1 Phil. Ev. 8; 2 Hale, 278; 10 Harg. State Tr. 478; Erskine's Speeches, vol. 5, p. l; 1 Fodere, Med. Leg. § 205.

LUCRE. Gain, profit. Cl. des Lois Rom. h. t.

LUCRI CAUSA. This is a Latin expression, which signifies that the thing to which it applies is done for the sake of gain.

2. It was supposed that when a larceny was committed the taking should have been lucri causa; but it has been considered that it is not necessary the taking should be lucri causa, if it be fraudulenter, with intent to wholly deprive the owner of the property. Russ. & Ry. 292; 2 RUSS.' on Cr. 92. 1 Car. & K. 532. Vide Inst. lib. 4, t. 1, s. 1.

LUGGAGE. Such things as are carried by a traveller, generally for his personal accommodation; baggage. In England this word is generally used in the same sense that baggage is used in the United States. See Baggage.

LUNACY, med. jur. A disease of the mind, which is differently defined as it applies to a class of disorders, or only to one species of them. As a general term it includes all the varieties of mental, disorders, not fatuous.

2. Lunacy is adopted as a general term, on account of its general use as such in various legislative acts and legal proceedings, as commissions of lunacy, and in this sense it seems to be synonymous with non compos mentis, or of unsound mind.

3. In a more restricted sense, lunacy is the state of one who has bad understanding, but by discase, grief, or other accident, has lost the use of reason. 1 Bl. Com. 304.

4. The following extract from a late work, Stock on the Law of Non Compotes Mentis, will show the difficulties of discovering what is and what is not lunacy. "If it be difficult to find an appropriate definition or comprehensive name for the various species of lunacy," says this author, page 9, "it is quite as difficult to find anything approximating to a positive evidence of its presence. There are not in lunacy, as in fatuity, external signs not to be mistaken, neither is there that similarity of manner and conduct which enables any one, who has observed instances of idiocy or imbecility, to detect their presence in all subsequent cases, by the feebleness of perception and dullness of sensibility common to them all. The varieties of lunacy are as numerous as the varieties of human nature, its excesses commensurate with the force of human passion, its phantasies coextensive with the range of human intellect. It may exhibit every mood from the most serious to the most gay, and take every tone from the most sublime to the most ridiculous. It may confine itself to any trifling feeling or opinion, or overcast the whole moral and mental conformation. It may surround its victim with unreal persons and events, or merely cause him to regard real persons and events with an irrational favor or dislike, admiration or contempt. It may find satisfaction in the most innocent folly, or draw delight from the most atrocious crime. It may lurk so deeply as to elude the keenest search, or obtrude so openly as to attract the most careless notice. It may be the fancy of an hour, or the distraction of a whole life. Such being the fact, it is not surprising that many scientific and philosophical men have vainly exhausted their observation and ingenuity to find out some special quality,

some peculiar mark or characteristic common to all cases of lunacy, which might serve at least as a guide in deciding on its absence or presence in individual instances. Being hopeless of a definition, they would willingly have contented themselves with a test, but even this the obscurity and difficulty of the subject seem to forbid.

5. Lord Erskine, who, in his practice at the bar, had his attention drawn this way, from being engaged in some of the most remarkable trials of his time involving questions of lunacy, has given as his test, "a delusive image, the inseparable companion of real insanity," (Ersk. Misc. Speeches) and Dr. Haslam, whose opportunities of observation have surpassed most other persons, has proposed nearly the same, by saying that "false belief is the essence of insanity." (Haslam on Insanity.) Sir John Nicholl, in his admirable judgment in the case of Dew v. Clark, thus expresses himself: "The true criterion is, where there is delusion of mind there is insanity; that is, when persons believe things to exist, which exist only, or at least, in that degree exist only in their own imagimation, and of the non-existence of which neither argment nor proof can convince them; they are of unsound mind; or as one of the counsel accurately expressed it, it is only the belief of facts, which no rational person could have believed, that is insane delusion." (Report by Haggard, p. 7.) Useful as these several remarks are, they are not absolutely true. It is indeed beyond all question that the great majority of lunatics indulge in some "delusive image," entertain some "false belief." They assume the existence of things or persons which do not exist, and so yield to a delusive image, or they come to wrong conclusions about persons and things which do exist, and so fall into a false belief. But there is a class of cases where lunacy is the result of exclusive indulgence in particular trains of thought or feeling, where these tests are sometimes wholly wanting, and yet where the entire absorption of the faculties in one pedominant idea, the devotion of all the bodily and mental powers to one useless or injurious purpose, prove that the mind has lost its equilibrium. With some passions, indeed, such as self-esteem and fear, what was at first an engrossing sentiment, will often go on to a positive delusion; the self-adoring egotist grows to fancy himself a sovereign or a deity; the timid valetudinarian becomes the prey of imaginary diseases, the victim of unreal persecutions. But with many other passions, such as desire, avarice or revenge, the neglect and forgetfulness of all things save one, the insensibility to all restraints of reason, morality, or prudence, often proceed to such an extent as to justify holding an individual as a lunatic, incapable of all self-restraint, although, strictly speaking, not possessed by any delusive image or false belief. Much less do these tests apply to many cases of irresistible propensity to acts wholly irrational, such as to murder or to steal without the smallest assignable motive, which, rare as they are, certainly occur from time to time, and cannot but be held as an example of at least partial and temporary lunacy. It is to cases where no false belief or image can be detected, that the remark of Lord Erskine is more particularly applicable; "they frequently mock the wisdom of the wisest in judicial trials," (Ersk.

Misc. Speeches,) and were not the paramount object of all legal punishment the benefit of the community, which makes it inexpedient to spare offenders against the law, if insanity be the ground of their de-fence, except upon the clearest proof, lest skilful dissemblers should thereby be led to hope for impunity, very subtle questions might no doubt be raised as to the degree of moral responsibility and mental sanity attaching to the perpetrators of many atrocious acts, seeing that they often commit them tinder temptations quite inadequate to allure men of common prudence, or under passions so violent as to suspend altogether the operations of reason or free will. For as it is impossible to obtain an accurate definition of lunacy, so it is manifestly so, to draw the line correctly between it and its opposite rationality, or, to borrow the words of Chief Justice Hale, (1 Hale's P. C. p. 30,) "Doubtless most persons that are felons, of themselves and others, are under a degree of partial insanity when they commit those offences. It is very difficult to define the indivisible line that divides perfect and partial, insanity; but it must rest on circumstances duly to be weighed and considered both by the judge and jury, lest on one side there be a kind of inhumanity towards the defects of human nature, or on the other side too great an indulgence given to great crimes."

LUNAR. That which belongs to the moon; relating to the moon as a lunar month. See Month.

LUNATIC, persons. One who has had an understanding, but who, by disease, grief, or other accident, has lost the use of his reason. A lunatic is properly one who has had lucid intervals, sometimes enjoying his senses, and sometimes not. 4 Co. 123; 1 Bl. Com. 304; Bac. Abr. Idiots, &c., A; 1 Russ. on Crimes, 8; Shelf. on Lun. 4; Merlin, mot Demence; Fonbl. Eq. Index, h. t.; 15 Vin. Ab. 131; 8 Com. Dig. 721; 1 Supp. to Ves. jr. 94, 130, 369, 404; 2 Supp. to Ves. jr. 51, 106, 151, 360; 1 Vern. 9, 137, 262; Louis. Code, tit. 9, c. 1; and articles Lucid Interval; Lunacy.

LYING IN GRANT. Incorporeal rights and things which cannot be transferred by livery of possession, but which exist only in idea, in contemplation of law, are said to lie in grant, and pass by the mere delivery of the deed. Vide Grant; Livery of Seisin; Seisin.

LYING IN WAIT. Being in ambush for the purpose of murdering another.

2. Lying in wait is evidence of deliberation and intention.

3. Where murder is divided into degrees, as in Pennsylvania, lying in wait is such evidence of malice, that it makes the killing, when it takes place, murder in the first degree. Vide. Dane's Ab. Index, h. t.

LYNCH-LAW. A common phrase used to express the vengeance of a mob, inflicting an injury, and committing an outrage upon a person suspected of some offence. In England this is called Lidford Law. Toml.L. Dict. art. Lidford Law.

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M

M. When persons were convicted of manslaughter in England, they were formerly marked with this letter on the brawn of the thumb.

2. This letter is sometimes put on the face of treasury notes of the United States, and signifies that the treasury note bears interest at the rate of one mill per centum, and not one per centum interest. 13 Peters, 176.

MACE-BEARER, Eng. law. An officer attending the court of session.

MACEDONIAN DECREE, civil law. A decree of the Roman senate, which derived its name from that of a certain usurer who was the cause of its being made, in consequence of his exactions. It was intended to protect sons who lived under the paternal jurisdiction, from the unconscionable contracts which they sometimes made on the expectations after their fathers' deaths; another, and perhaps, the principle object, was to cast odium on the rapacious creditors. It declared such contracts void. Dig. 14, 6, 1; Domat, Lois, Civ. liv. 1, tit. 6, §4; Fonbl. Eq . B. 1, c. 2, §12, note. Vide Catching bargain; Post obit.

MACHINATION. The act by which some plot or conspiracy is set on foot.

MACHINE. A contrivance which serves to apply or regulate moving power; or it is a tool more or less complicated, which is used to render useful natural instruments, Clef. des Lois Rom. h. t.

2. The act of congress gives to inventors the right to obtain a patent right for any new and useful improvement on any art, machine, manufacture, &c. Act of congress, July 4, 1836, s. 6. See Pet. C. C. 394; 3 Wash. C. C. 443; 1 Wash. C. C. 108; 1 Wash. C. C. 168; 1 Mason, 447; Paine, 300; 4 Wash. C. C. 538; 1 How. U. S., 202; S. C. 17 Pet. 228; 2 McLean, 176.

MADE KNOWN. These words are used as a return to a scire facias, when it has been served on the defendant.

MAGISTER. A master, a ruler, one whose learning and position makes him superior to others, thus: one who has attained to a high degree, or eminence, in science and literature, is called a master; as, master of arts.

MAGISTER AD FACULTATES, Eng. eccl. law. The title of an officer who grants dispensations; as, to marry, to eat flesh on days prohibited, and the like. Bac. Ab. Eccles. Courts, A 5.

MAGISTER NAVIS. The master of a ship; a sea captain. **MAGISTER SOCIETATIS**, Civil law. The principal manager of the business of a society or partnership.

MAGISTRACY, mun. law. In its most enlarged signification, this term includes all officers, legislative, executive, and judicial. For example, in most of the state constitutions will be found this provision; "the powers of the government are divided into three distinct departments, and each of these is confided to a separate magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another." In a more confined sense, it signifies the body of officers whose duty it is to put the laws in force; as, judges, justices of the peace, and the like. In a still narrower sense it is employed to designate the body of justices of peace. It is also used for the office of a magistrate.

MAGISTRATE, mun. law. A public civil officer, invested with some part of the legislative, executive, or judicial power given by the constitution. In a narrower sense this term includes only inferior judicial officers, as justices of the peace.

2. The president of the United States is the chief magistrate of this nation; the governors are the chief magistrates of their respective states.

3. It is the duty of all magistrates to exercise the power, vested in them for the good of the people, according to law, and with zeal and fidelity. A neglect on the part of a magistrate to exercise the functions of his office, when required by law, is a

misdemeanor. Vide 15 Vin. Ab. 144; Ayl. Pand. tit. 22; Dig. 30, 16, 57; Merl. Rep. h. t.; 13 Pick. R. 523

MAGNA CHARTA. The great charter. The name of an instrument granted by King John, June 19, 1215, which secured to the English people many liberties which had before been invaded, and provided against many abuses which before rendered liberty a mere name.

2. It is divided into thirty-eight chapters,: 1. To the which relate as follows, namely: freedom of the church and ecclesiastical persons. 2. To the nobility, knights' service, &c. 3. Heirs and their being in ward. 4. Guardians for heirs within age, who are to commit no waste. 5. To the land and other property of heirs, and the delivery of them up when the heirs are of age. 6. The marriage of heirs. 7. Dower of women in the lands of their husbands. 8. Sheriffs and their bailiffs. 9. To the ancient liberties of London and other cities. 10. To distress for rent. 11. The court of common pleas, which is to be located. 12. The assise on disseisin of lands. 13. Assises of darein presentments, brought by ecclesiastics. 14. The amercement of a freeman for a fault. 15. The making of bridges by towns. 16. Provisions for repairing sea banks and sewers. 17. Forbids sheriffs and coroners to hold pleas of the crown. 18. Prefers the king's debt when the debtor dies insolvent. 19. To the purveyance of the king's house. 20. To the castleguard. 21. To the manner of taking property for public use. 22. To the lands of felons, which the king is to have for a year and a day, and afterwards the lord of the fee. 23. To weirs which are to be put down in rivers. 24. To the writ of praecipe in capite for lords against tenants offering wrong, &c. 25. To measures. 26. To inquisitions of life and member, which are to be granted freely. 27. To knights' service and other ancient tenures. 28. To accusations, which must be under oath. 29. To the freedom of the subject. No freeman shall be disseised of his freehold, imprisoned and condemned, but by judgment of his peers, or by the law of the land. 30. To merchant strangers, who are to be civilly treated. 31. To escheats. 32. To the power of selling land by a freeman, which is limited. 33. To patrons of abbeys, &c. 34. To the right of a woman to appeal for the death of her husband. 35. To the time of holding courts. 36. To mortmain. 37. To escuage and subsidy. 88. Confirms every article of the charter. See a copy of Magna Charta in 1 Laws of South Carolina; edited by Judge Cooper, p. 78. In the Penny Magazine for the year 1833, page 229, there is a copy of the original seal of King John, affixed to this instrument, and a specimen of a facsimile of the writing of Magna Charta, beginning at the passage, Nullus liber homo capietur vel imprisonetur, &c. A copy of both may be found in the Magazin Pittoresque, for the year 1834, p. 52, 53. Vide 4 Bl. Com. 423.

MAIDEN. The name of an instrument formerly used in Scotland for beheading criminals.

MAIL. This word, derived from the French malle, a trunk, signifies the bag, valise, or other contrivance used in conveying through the post office, letters, packets, newspapers, pamphlets, and the like, from place to place, under the authority of the United States. The things thus carried are also called the mail.

2. The laws of the United States have provided for the punishment of robberies or wilful injuries to the mail; the act of March 3, 1825, 3 Story's Laws U. S. 1985, provides-

§22. That if any person shall rob any carrier of the mail of the United States, or other person entrusted, therewith, of such mail, or of part thereof, such offender or offenders shall, on conviction, be imprisoned not less than five years, nor exceeding ten years; and, if convicted a second time of a like offence, he or they shall suffer death; or if, in effecting such robbery of the mail, the first time, the offender shall wound the person having the custody thereof, or put his life in jeopardy, by the use of dangerous weapons, such offender or offenders shall suffer death. And if any person shall at- tempt to rob the mail of the United States, by assaulting the person having custody thereof, shooting at him, or his horse or mule, or, threatening him with dangerous weapons, and the robbery is not effected, every such offender, on conviction thereof, shall be punished by imprisonment, not less than two years, nor exceeding ten years. And, if any person shall steal the mail, or shall steal or take from, or out of, any mail, or from, or out of, any post office, any letter or packet; or, if any person shall take the mail, or any letter or packet therefrom, or from any post office, whether with or without the consent of the person having custody thereof, and shall open, embezzle, or destroy any such; mail, letter, or packet, the same containing any articles of value, or evidence of any debt, due, demand, right, or claim, or any release, receipt, acquittance, or discharge, or any other articles, paper, or thing, mentioned and described in the twenty-first section of this act; or, if any person shall, by fraud or deception, obtain from any person having custody thereof, any mail, letter, or packet, containing any article of value, or evidence thereof, or either of the writings referred to, or next above mentioned, such offender, or offenders, on conviction thereof, shall be imprisoned not less than two, nor exceeding ten years. And if any person shall take any letter, or packet, not containing any article of value, or. evidence thereof, out of a post office, or shall open any letter or packet, which shall have been in a post office, or in custody of a mail carrier, before it shall have been de-livered to the person to whom it is directed, with a design to obstruct the correspondence, to pry into another's business or secrets; or shall secrete, embezzle, or destroy, any such mall, letter, or packet, such offender, upon conviction, shall pay, for every such offence, a sum not exceeding five hundred dollars, and be imprisoned not exceeding twelve months.

3. - §23. That, if any person shall rip, cut, tear, burn, or otherwise injure, any valise, portmanteau, or other bag used, or designed to be used, by any person acting under the

authority of the postmaster general, or any person in whom his powers are vested in a conveyance of any mail, letter packet, or newspaper, or pamphlet, or shall draw or break any staple, or loosen any part of any lock, chain, or strap, attached to, or belonging to any such valise, portmanteau, or bag, with an intent to rob, or steal any mail, letter, packet, newspaper, or pamphlet, or to render either of the same insecure, every such offender, upon conviction, shall, for every such offence, pay a sum, not less than one hundred dollars, nor exceeding five hundred-dollars, or be imprisoned not leas than one year, nor exceeding three years, at the discretion of the court before whom such conviction is had.

4. - §24. That every person who, from and after the passage of this act, shall procure, and advise, or assist, in the doing or perpetration of any of the acts or crimes by this act forbidden, shall be subject to the same pen-alties and punishments as the persons are subject to, who shall actually do or perpetrate any of the said acts or crimes, according, to the provision of this act.

5.- §25. That every person who shall be imprisoned by a judgment of court, under and by virtue of the twenty-first, twenty-second, twenty-third, or, twenty-fourth sections of this act, shall be kept at hard labor during the period of such imprisonment.

MAILE, ancient English law. A small piece of money; it also signified a rent, because the rent was paid with maile.

MAIM, pleadings. This is a technical word necessary to be introduced into all indictments for mayhem; the words "feloniously did maim," must of necessity be inserted, because no other word, or any circumlocution, will answer the same purpose. 4 Inst. 118; Hawk. B. 2, c. 23, s. 17, 18, 77; Hawk. B. 2, c. 25, s, 55; 1 Chit. Cr. Law, *244.

TO MAIM, crim. law. To deprive a person of such part of his body as to ren- der him less able in fighting or defending himself than he would have otherwise been. Vide Mayhem.

MAINE. One of the new states of the United State's of America. This state was admitted into the Union by the Act of Congress of March 3, 1820, 3 Story's L. U . S. 1761, from and after the fifteenth day of March, 1820, and is thereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

2. The constitution of this state was adopted October 29th, 1819. The powers of the government are vested in three distinct departments, the legislative, executive and judicial.

3. - 1. The legislative power is vested in two distinct branches, a house of representatives and senate, each to have a negative on the other, and both to be styled The legislature of Maine. 1. The house of representatives is to consist of not less than one hundred, nor more than two hundred members; to be apportioned among the counties according to law; to be elected by the quali-fied electors for one year from the next day preceding the annual meeting of the legislature. 2. The senate consists of not less than twenty, nor more than thirty-one members, elected at the same time, and for the same term, as the representatives, by the qualified electors of the districts into which the state shall, from time to time, be divided. Art. 4, part 2, s. 1. The veto power is given to the governor, by art. 4, part 3, s. 2.

4. - 2. The supreme executive power of the state is vested in a governor, who is elected by the qualified electors, and holds his office one year from the first Wednesday of January in each year. On the first Wednesday of January annually, seven persons, citizens of the United States, and resident within the state, are to be elected by joint ballot of the senators and representatives in convention, who are called the council. This council is to advise the governor in the executive part of government, art. 5, part 2, s. 1 and 2.

5. - 3. The judicial power of the State is distributed by the 6th article of the constitution as follows:

6. - §1. The judicial power of this state shall be vested in a supreme judicial court, and such other courts as the legislature shall, from time to time, establish.

7. - §2. The justices of the supreme judicial court shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

8. - §3. They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the governor, council, senate, or house of representatives.

9. - §4. All judicial officers; except justices of the peace, shall hold their offices during good behaviour, but not beyond the age of seventy years.

10. - §5. Justices of the peace and notaries public shall hold their offices during seven years, if they so long behave themselves well, at the expiration of which term, they may be re-appointed, or others appointed, as the public interest may require.

11. - §6. The justices of the supreme judicial court shall bold no office under the United States, nor any state, nor any other office under this state, except that of justice of the peace. For a history of the province of Maine, see 1 Story on the Const. §82.

MAINOUR, crim. law. The thing stolen found in the hands of the thief who has stolen it; hence when a man is found with property which he has stolen, he is said to be taken with the mainour, that is, it is found in his hands.

2. Formerly there was a distinction made between a larceny, when the thing stolen was found in the hands of the criminal, and when the proof depended upon other circumstances not quite so irrefragable; the former properly was termed pris ove maynovere, or ove mainer, or mainour, as it is generally written. Barr. on the Stat. 315, 316, note:

MAINPERNABLE. Capable of being bailed; one for whom bail may be taken; bailable.

MAINPERNORS, English law. Those persons to whom a man, is delivered out of custody or prison, on their becoming bound for his appearance.

2. Mainpernors differ from bail: a man's bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are merely sureties for his appearance at the day; bail are only sureties that the party be answerable for all the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever. 3. Bl. Com. 128; vide Dane's Index, h. t.

MAINPRISE, Engl. law. The taking a man into friendly custody, who might otherwise be committed to prison, upon security given for his appearance at a time and place assigned. Wood's Inst. B. 4, c. 4.

2. Mainprise differs from bail in this, that a man's mainpernors are barely his sureties, and cannot imprison him themselves to secure his appearance, as his bail may, who are looked upon as his gaolers, to whose custody he is committed.. 6 Mod. 231; 7 Mod. 77, 85, 98; Ld. Raym. 606; Bac. Ab. Bail in Civil Cases; 4 Inst. 180. Vide Mainpernors. Writ of Mainprise; and 15 Vin. Ab. 146; 3 Bl. Com. 128.

MAINTENANCE, crimes. A malicious, or at least, officious interference in a suit in which the offender has no interest, to assist one of the parties to it against the other, with money or advice to prosecute or defend the action, without any authority of law. 1 Russ. Cr. 176.

2. But there are many acts in the nature of maintenance, which become justifiable from the circumstances under which they are done. They may be justi-fied, 1. Because the party has an interest in the thing in variance; as when he has a bare contingency in the lands in question, which possibly may never come in esse. Bac. Ab. h. t. 2. Because the party is of kindred or affinity, as father, son, or heir apparent, or husband or wife. 3. Because the relation of landlord and tenant or master and servant subsists between the party to the suit and the person who assists him. 4. Because the money is given out of charity. 1 Bailey, S. C. Rep. 401. 5. Because the person assisting the party to the suit is an attorney or counsellor: the assistance to be rendered must, however, be strictly professional, for a lawyer is not more justified in giving his client money than another man. 1 Russ. Cr. 179. Bac. Ab Mainte-nance: Bro. Maintenance. This offence is punishable by fine and imprisonment. 4 Black Com. 124; 2 Swift's Dig. 328; Bac. Ab. h. t. Vide 3 Hawks, 86; 1 Greenl. 292; 11 Mass. 553 , 6 Mass. 421; 5 Pick. 359; 5 Monr. 413; 6 Cowen, 431; 4 Wend. 806; 14 John. R. 124; 3 Cowen, 647; 3 John. Ch. R. 508 7 D. & R. 846; 5 B. & C. 188.

MAINTENANCE, quasi contracts. The support which one person, who is bound by law to do so, gives to another for his living; for example, a father is bound to find maintenance for his children; and a child is required by law to main-tain his father or mother when they cannot support themselves, and he has ability to maintain them. 1 Bouv. Inst. n. 284-6.

MAINTAINED, pleadings. This is a technical word, indispensable in an indict- ment for maintenance, which no other word or circumlocution will supply. 1 Wils. 325.

MAINTAINORS, criminal law. Those who maintain or support a cause depending between others, not being retained as counsel or attorney. For this they may be fined and imprisoned. 2 Swift's Dig. 328; 4 Bl. Com. 124; Bac. Ab. Barrator.

MAISON DE DIEU. House of God. In England the term, borrowed from the French, signified formerly a hospital, an almshouse, a monastery. 39 Eliz. c. 5.

MAJESTY. Properly speaking, this term can be applied only to God, for it signifies that which surpasses all things in grandeur and superiority. But it is used to kings and emperors, as a title of honor. It sometimes means power, as when we say, the majesty of the people. See, Wolff, 998.

MAJOR, persons. One who has attained his full age, and has acquired all his civil rights; one who is no longer a minor; an adult.

MAJOR. Military language. The lowest of the staff officers; a degree higher than captain.

MAJOR GENERAL. A military officer, commanding a division or number of regiments; the next in rank below a lieutenant general.

MAJORES. The male ascendant beyond the sixth degree were so called among the Romaus, and the term is still used in making genealogical tables.

MAJORITY, persons. The state or condition of a person who has arrived at full age. He is then said to be a major, in opposition to minor, which is his condition during infancy.

MAJORITY, government. The greater number of the voters; though in another sense, it means the greater number of votes given in which sense it is a mere plurality. (q. v.)

2. In every well regulated society, the majority has always claimed and exercised the right to govern the whole society, in the manner pointed out by the fundamental laws and the minority are bound, whether they have assented or not, for the obvious reason that opposite wills cannot prevail at the same time, in the same society, on the same subject. 1 Tuck. Bl. Com. App. 168, 172; 9 Dane's Ab. 37 to 43; 1 Story, Const. 330.

3. As to the rights of the majority of part owners of vessels, vide 3 Kent, Com. 114 et seq. As to the majority of a church, vide 16 Mass. 488.

4. In the absence of all stipulations, the general rule in partnerships is, that each partner has an equal voice, and a majority acting bonafide, have the right to manage the partnership concerns, and dispose of the partnership property, notwithstanding the dissent of the minority; but in every case when the minority have a right to give an opinion, they ought to be notified. 2 Bouv. Inst. n. 1954.

5. As to the majorities of companies or corporations, see Angel, Corp. 48, et seq.; 3 M. R. 495. Vide, generally, Rutherf. Inst. 249; 9 Serg. & Rawle, 99; Bro. Corporation, pl. 63; 15 Vin. Abr. 183, 184; and the article Authority; Plurality; Quorum.

TO MAKE. English law. To perform or execute; as to make his law, is to per- form that law which a man had bound himself to do; that is, to clear himself of an action commenced against him, by his oath, and the oaths of his neighbors. Old Nat. Br. 161. To make default, is to fail to appear in proper time. To make oath, is to swear according to the form prescribed by law.

MAKER. This term is applied to one who makes a promissory note and promises to pay it when due. He who makes a bill of exchange is called the drawer, and frequently in common parlance and in books of Reports we find the word drawer inaccurately applied to the maker of a promissory note. See Promissory note.

MAKING HIS LAW. A phrase used to denote the act of a person who wages his law. Bac. Ab. Wager of law, in pr.

MALA FIDES. Bad faith. It is opposed to bona fides, good faith.

MALA PRAXIS, crim. law. A Latin expression, to signify bad or unskilful practice in a physician or other professional person, as a midwife, whereby the health of the patient is injured.

2. This offence is a misdemeanor (whether it be occasioned by curiosity and experiment or neglect) because, it breaks the trust which the patient has put in the physician, and tends directly to his destruction. 1 Lord Raym. 213. See forms of indictment for mala praxis, 3 Chitty Crim. Law, 863; 4 Wentw. 360; Vet. Int. 231; Trem. P. C. 242. Vide also, 2 Russ. on Cr. 288; 1 Chit. Pr. 43; Com. Dig. Physician; Vin. Ab. Physician.

3. There are three kinds of mal practice. 1. Wilful mal practice, which takes place when the physician purposely administers medicines or performs an operation which he knows and expects will result in danger or death to the individual under his care; as, in the case of criminal abortion.

4. - 2. Negligent mal practice, which comprehends those cases where there is no criminal or dishonest object, but gross negligence of that attention which the situation of the patient requires: as if a physician should administer medicines while in a state of intoxication, from which injury would arise to his patient.

5. - 3. Ignorant mal practice, which is the administration of medicines, calculated to do injury, which do harm, and which a well educated and scientific medical man would know were not proper in the case. Besides the public remedy for mal practice, in many cases the party injured may bring a civil action. 5 Day's R. 260; 9 Conn. 209. See M. & Rob. 107; 1 Saund. 312, n. 2; l Ld. Raym. 213; 1 Briand, Med. Leg. 50; 8 Watts, 355; 9 Conn. 209.

MALA PROHIBITA. Those things which are prohibited by law, and therefore unlawful.

2. A distinction was formerly made in respect of contracts, between mala prohibita and mala in se; but that distinction has been exploded, and, it is now established that when the provisions of an act of the legislature have for their object the protection of the public, it makes no difference with respect to contracts, whether the thing be prohibited alsolutely or under a penalty. 5 B. & A 5, 340; 10 B. & C. 98; 3 Stark. 61; 13 Pick. 518; 2 Bing. N. C. 636, 646.

MALE. Of the masculine sex; of the sex that begets young; the sex opposed to the female. Vide Gender; Man; Sex; Worthiest of blood.

MALEDICTION, Eccles. law. A curse which was anciently annexed to donations of lands made to churches and religious houses, against those who should violate their rights.

MALEFACTOR. He who bas been guilty of some crime; in another sense, one who has been convicted of having committed a crime.

MALEFICIUM, civil law. Waste, damage, torts, injury. Dig. 5, 18, 1.

MALFEASANCE, contracts, torts. The unjust performance of some act which the party had no right, or which he had contracted not to do. It differs from mis- feasance, (q. v.) and nonfeasance. (q. v.) Vide 1 Chit. Pr. 9; 1 Chit. Pl. 134.

MALICE, crim. law. A wicked intention to do an injury. 4 Mason, R. 115, 505: 1 Gall. R. 524. It is not confined to the intention of doing an injury to any particular person, but extends to an evil design, a corrupt and wicked notion against some one at the time of committing the crime; as, if A intended to poison B, conceals a quantity of poison in an apple and puts it in the way of B, and C, against whom he had no ill will, and who, on the contrary, was his friend, happened to eat it, and die, A will be guilty of murdering C with malice aforethought. Bac. Max. Reg. 15; 2 Chit. Cr. Law, 727; 3 Chit. Cr. Law,. 1104.

2. Malice is express or implied. It is express, when the party evinces an intention to commit the crime, as to kill a man; for example, modern duelling. 3 Bulstr. 171. It is implied, when an officer of justice is killed in the discharge of his duty, or when death occurs in the prosecution of some unlawful design.

3. It is a general rule that when a man commits an act, unaccompanied by any circumstance justifying its commission, the law presumes he has acted advisedly and with an intent to produce the consequences which have ensued. 3 M. & S. 15; Foster, 255; 1 Hale, P. C. 455; 1 East, P. C. 223 to 232, and 340; Russ. & Ry. 207; 1 Moody, C. C. 263; 4 Bl. Com. 198; 15 Vin. Ab. 506; Yelv. 105 a; Bac. Ab. Murder and Homicide, C 2. Malice aforethought is deliberate premedi-tation. Vide Aforethought.

MALICE, torts. The doing any act injurious to another without a just cause.

2. This term, as applied to torts, does not necessarily mean that which must proceed from a spiteful, malignant, or revengeful disposition, but a conduct injurious to

another, though proceeding from an ill-regulated mind not sufficiently cautious before it occasions an injury to another. 11 S. & R. 39, 40.

3. Indeed in some cases it seems not to require any intention in order to make an act malicious. When a slander has been published, therefore, the pro-per question for the jury is, not whether the intention of the publication was to injure the plaintiff, but whether the tendency of the matter published, was so injurious. 10 B. & C. 472: S. C. 21 E. C. L. R. 117.

4. Again, take the common case of an offensive trade, the melting of tallow for instance; such trade is not itself unlawful, but if carried on to the annoyance of the neighboring dwellings, it becomes unlawful with respect to them, and their inhabitants may maintain an action, and may charge the act of the defendant to be malicious. 3 B. & C. 584; S. C. 10 E. C. L. R. 179.

MALICE AFORETHOUGHT, pleadings. In an indictment for murder, these words, which have a technical force, must be used in charging the offence; for without them, and the artificial phrase murder, the indictment will be taken to charge manslaughter only. Fost. 424; Yelv. 205; 1 Chit. Cr. Law, *242, and the authorities and cases there cited.

2. Whenever malice aforethought is necessary to constitute the offence, these words must be used in charging the crime in the indictment. 2 Chit. Cr. Law, *787; 1 East, Pl. Or. 402. 2 Mason, R. 91.

MALICIOUS. With bad, and unlawful motives; wicked.

MALICIOUS ABANDONMENT. The forsaking without a just cause a husband by the wife, or a wife by her husband. Vide Abandonment, Malicious.

MALICIOUS MISCHIEF, This expression is applied to the wanton or reckless de-struction of property, and the wilful perpetration of injury to the person. Alis. Prin. 448; 3 Dev. & Batt. 130; 8 Leigh, 719; 5 Ired. R. 364; 8 Port. 447; 2 Metc. 21; 3 Greenl. 177.

MALICIOUS PROSECUTION, or MALICIOUS ARREST, torts, or remedies. These terms import a wanton prosecution or arrest, made by a prosecutor in a criminal proceeding, or a plaintiff in a civil suit, without probable cause, by a regular process and proceeding, which the facts did not warrant, as appears by the result.

2. This definition will be analysed by considering, 1. The nature of the prosecution or arrest. 2. Who is liable under it. 3. What are malice and probable cause. 4. The proceedings. 5. The result of the prosecution and afterwards, 6. The remedy.

3. - 1. Where the defendant commenced a criminal prosecution wantonly and in other respects against law, he will be responsible. Addis. R. 270; 12 Conn. 219. The prosecution of a civil suit, when malicious, is a good cause of action, even when there has been no arrest. 1 P. C. C. 210; 11 Conn. 582; 1 Wend. 345. But no action lies for commencing a civil action, though without sufficient cause. 1 Penns. R. 235.

4. - 2. The action lies against the prosecutor and even against a mere informer, when the proceedings are malicious. 5 Stew. & Port. 367. But grand jurors are not liable to an action for a malicious prosecution, for information given by them to their fellow jurors, on which a prosecution is founded. Hardin, 556. Such action lies against a plaintiff in a civil action who ma- liciously sues out the writ and prosecutes it; 16 Pick. 453; but an action does not lie against an attorney at law for bringing the action, when regularly employed. 16 Pick. 478. See 6 Pick. 193.

5. - 3. There must be malice and want of probable cause. 1 Wend. 140, 345; 7 Cowen, 281; 2 P. A. Browne, Appx. xlii; Cooke, 90; Litt. Sel. Cas. 106; 4 Litt. 334; 3 Gil. & John. 377; 1 N. & M. 36; 12 Conn. 219; 3 Call. 446; 2 Hall, 315; 3 Mason, 112, 2 N. & M. 54,143. See Malice; Probable cause.

6. - 4. The Proceedings under which the original prosecution or action was held, must have been regular, in the ordinary course of justice, and before a tribunal having power to ascertain the truth or falsity of the charge, and to punish the supposed offender, the now plaintiff. 3 Pick. 379, 383. When the proceedings are irregular, the prosecutor is a trespasser. 3 Blackf. 210 . See Regular and irregular process.

7. - 5. The malicious prosecution or action must be ended, and the plain-tiff must show it was groundless, either by his acquittal or by obtaining a final judgment in his favor in a civil action. 1 Root, R. 553; 1 N. & M. 36; 2 N. & M. 54, 143; 7 Cowen, 715; 2 Dev. & Bat. 492.

8. - 6. The remedy for a malicious prosecution is an action on the case to recover damages for the injury sustained. 5 Stew. & Porter, 367; 2 Conn. 700; 11 Mass 500; 6 Greenl. 421; 3 Gill. & John. 377. See Case; Regular and irregular process.

See, generally, Bull. N. P. 11; 1 Saund. 228; 12 Mod. 208; 1 T. R. 493 to 551; Bac. Ab. Actions on the case, H; Bouv. Inst. Index, h. t.

MALUM IN SE. Evil in itself.

2. An offence malum in se is one which is naturally evil, as murder, theft, and the like; offences at common law are generally mala in sese.

3. An offence malum prohibitum, on the contrary, is not naturally an evil, but becomes so in consequence of its being forbidden; as playing at games, which being innocent before, have become unlawful in consequence of being forbidden. Vide Bac. Ab. Assumpsit, A, note; 2 Rolle's Ab. 355.

MALVEILLES. Ill-will. In some ancient records this word signifies malicious practices, or crimes and misdemeaners.

MALVERSATION, French law. This word is applied to all punishable faults committed in the exercise of an office, such as corruptions, exactions, extortions and larceny. Merl. Repert. b. t.

MAN. A human being. This definition includes not only the adult male sex of the human species, but women and children; examples: "of offences against man, some are more immediately against the king, other's more immediately against the subject." Hawk. P. C. book 1, c. 2, s. 1. Offences against the life of man come under the general name of homicide, which in our law signifies the killing of a man by a man." Id. book 1, c. 8, s. 2.

2. In a more confined sense, man means a person of the male sex; and sometimes it signifies a male of the human species above the age of puberty. Vide Rape. It was considered in the civil or Roman law, that although man and person are synonymous in grammar, they had a different acceptation in law; all persons were men, but all men, for example, slaves, were not persons, but things. Vide Barr. on the Stat. 216, note.

MANAGER. A person, appointed or elected to manage the affairs of another, but the term is more usually applied to those officers of a corporation who are authorized to manage its affairs. 1 Bouv. Inst. n. 190.

2. In banking corporations these officers are commonly called directors, and the power to conduct the affairs of the company, is vested in a board of directors. In other private corporations, such as railroad companies, canal, coal companies, and the like, these officers are called managers. Being agents, when their authority is limited, they have no power to bind their principal beyond such authority. 17 Mass. R. 29; 1 Greenl. R. 81.

3. The persons appointed on the part of the house of representatives to prosecute impeachments before the senate, are called managers.

MANBOTE. In a barbarous age, when impunity could be purchased with money, the compensation which was paid for homicide was called manbote.

MANCIPATIO, civil law. The act of transferring things called res mancipi. (q. v.) This is effected in the presence of not less than five witnesses, who must be Roman citizens and of the age of puberty, and also in the presence of another person of the same condition, who holds a pair of brazen scales, and hence is called Libripens. The purchaser (qui mancipio accipit) taking hold of the thing, says I affirm that this slave (homo) is mine, ex jure quiritium, and he is purchased by me with this piece of money (sas) and brazen scales. He then strikes the scales with the piece of money and gives it to the seller as a symbol of the price (quasi pretii loco.) The purchaser or person to whom the mancipatio was made did not acquire the possession of the mancipatio; for the acquisition of possession was a separate act. Gaius. 1, 119; Id. iv. 181.

Both mancipatio and in jure cessio existed before the twelve tables. Frag. Vat. 50. Mancipation no longer existed in the code of Justinian, who took away all distinction between res mancipi and nec mancipi. Smith's Dict. Gr. & Rom. Antiq. Verb. Mancipium; Coop. Jus. 442.

MANDAMUS, practice. The name of a writ, the principal word of which when the proceedings were in Latin, was mandamus, we command.

2. It is a command issuing in the name of the sovereign authority from a superior court having jurisdiction, and is directed to some person, corporation, or, inferior court, within the jurisdiction of such superior court, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the superior court has previously determined, or at least supposes to be consonant to right and justice. 20 Pick. 484; 21 Pick. 258; Dudley, 37; 4 Humph. 437.

3. Mandamus is not a writ of right, it is not consequently granted of course, but only at the discretion of the court to whom the application for it is made; and this discretion is not exercised in favor of the applicant, unless some just and useful purpose may be answered by the writ. 2 T. R. 385; 1 Cowen's R. 501; 11 Shepl. 151; 1 Pike, 11.

4. This writ was introduced io prevent disorders from a failure of justice; therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one. 3 Burr. R. 1267; 1 T. R. 148, 9.; 2 Pick. 414; 4 Pick. 68; 10 Pick. 235, 244; 7 Mass; 340; 3 Binn. 273; 5 Halst. 57; Cooke, 160; 1 Wend. 318; 5 Pet. 190; 1 Caines, R. 511; John. Cas. 181; 12 Wend. 183; 8 Pet. 291; 12 Pet. 524; 2 Penning. 1024; Hardin, 172; 7 Wheat. 534; 5 Watts. 152; 2 H. & M. 132; 3 H. & M. 1; 1 S. & R. 473; 5 Binn. 87; 3 Conn. 243; 2 Virg. Cas. 499; 5 Call. 548. Mandamus will not lie where the law has given another

specific remedy. 1 Wend. 318; 10 John. 484; 1 Cow. 417; Coleman, 117; 1 Pet. 567; 2 Cowen, 444; 2 M'Cord, 170; Minor, 46; 2 Leigh, 165; Const. Rep. 165, 175, 703.

5. The 13th section of the act of congress of September, 24, 1789, gives the supreme court power to issue writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed or persons holding office, under the authority of the United States. The issuing of a mandamus to courts, is the exercise of an appellate jurisdiction, and, therefore constitutionally vested in the supreme court; but a mandamus directed to a public officer, belongs to original jurisdiction, and by the constitution, the exercise of original jurisdiction by the supreme court is restricted to certain specified cases, which do not comprehend a mandamus. The latter clause of the above section, authorizing this writ to be issued by the supreme court, to persons holding office under the authority of the United States, is, therefore, not warranted by the constitution, and void. 1 Cranch, R. 175.

6. The circuit courts of the United States may also issue writs of mandamus, but their power in this particular, is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. 7 Cranch, R. 504; 8 Wheat. R. 598; 1 Paine's R. 453. Vide, generally, 3 Bl. Com. 110; Com. Dig. h. t; Bac. Ab. h. t.; Vin. Ab. h. t.; Selw. N. P. h. t.; Chit. Pr. h. t.; Serg. Const. Index, h. t.; Ang. on Corp. Index, h. t.; 3 Chit. Bl. Com. 265 n. 7; 1 Kent. Com. 322; Dane's Ab. Index, h. t.; 6 Watts & Serg. 386, 397; Bouv. Inst. Index, h. t.; and the article "Courts of the United States."

MANDANT. The principal in the contract of mandate is so called. Story, Ag. 337.

MANDATARIUS. One who is entrusted with and undertakes to perform a mandate. This word is used by the civilians in the same sense that we use mandatary. Poth. du Mandat, n. 1.

MANDATARY, contracts. One who undertakes to perform a mandate. Jones' Bailm. 53; Story on Bailm. 38. Dr. Halifax calls him mandatee. Halif. Anal. Civ. Law, 70, 16, 17.

2. It is the duty of a mere mandatory, it is said, to take ordinary care of the property entrusted to him. Vide Negligence. But it has been held that he is liable only for gross negligence. 14 S. & R. 275; 2 Hawks, R. 145; 2 Murph. R. 373; 3 Dana, R. 205; 3 Mason, R. 132; 11 Wend, R. 25; Wright, R. 598; 1 Bouv. 1st. n. 1073.

MANDATE, practice. A judicial command or precept issued by a court or magistrate, directing the proper officer to enforce a judgment, sentence or decree. Jones'. Bailm. 52; Story on Bailm. 137.

MANDATE. **Mandatum or commission, contracts. Sir William Jones defines a mandate** to be a bailment of goods without reward, to be carried from place to place, or to have some act performed about them. Jones' Bailm. 52; 2 Ld. Raym. 909, 913. This seems more properly an enumeration of the various sorts of mandates than a definition of the contract. According to Mr. Justice Story, it is a bailment of personal property, in regard to which the bailee engages to do some act without reward. Bailm. 137. And Mr. Chancellor Kent defines it to be when one undertakes, without recompense, to do some act for the other in respect to the thing bailed. Comm. 443. See, for other definitions, Story on Bailm. 137; Pothier, Pand. lib. 17, tit. 1; Wood's Civ. Law, B. 3, c. 5, p. 242; Halifaz's Anal. of the Civ. Law, 70,; Code of Louis. art. 2954; Code Civ. art. 1984; 1 Bouv. Inst. n. 1068.

2. From the very term of the definition, three things are necessary to create a mandate. First, that there should exist something which should be the matter of the contract; secondly, that it should be done gratuitously; and thirdly, that the parties. should voluntarily intend to enter into the contract. Poth. Pand. Lib. 17, tit. 1, p. 1, 1; Poth. Contr. de Mandat, c. 1, 2.

3. There is no particular form or manner of entering into the contract of mandate, prescribed either by the common law, or by the civil law, in order to give it validity. It may be verbal or in writing; it may be express or implied it may be in solemn form or in any other manner. Story on Bailm. 160. The contract may be varied at the pleasure of the parties. It may be absolute or conditional, general or special, temporary or permanent. Wood's Civ. Law, 242; 1 Domat, B. 1. tit. 15, 1, 6, 7, 8; Poth. Contr. de Mandat, c. 1, 3, n. 34, 35, 36.

4. As to the degree of diligence which the mandatory is bound to exercise, see Mandatory; Negligence; Pothier, Mandat, h. t; Louis. Code, tit. 15 Code Civ. t. 13, c. 2 Story on Bailm. 163 to 195; 1 Bouv. Inst. n. 1073.

5. As to the duties and obligations of the mandator, see Story on Bailm. 196 to 201; Code Civ. tit. 13, c. 3; Louis. Code, tit. 15, c. 4; 1 Bouv. Inst. n. 1074.

6. The contract of mandate may be dissolved in various ways: 1. It may be dissolved by the mandatary at any time before he has entered upon its execution; but in this case, as indeed in all others, where the contract is dissolved before the act is done which the parties intended, the property bailed is to be restored to the mandator.

7. - 2. It may be dissolved by the death of the mandatory; for, being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But this principally applies to cases where the mandate remains wholly unexecuted; for if it be in part executed, there may in some

cases, arise a personal obligation on the part of the representatives to complete it. Story on Bailm. 202.; 2 Kent's Com. 504, 4; Pothier, Mandat, c. 4, 1, n. 101.

8. Whenever the trust is of a nature which requires united, advice, confidence and skill of all, and is deemed a joint personal trust to all, the death of one joint mandatary dissolves the contract as to all. See Story on Bailm. 202; Co. Litt. 112, b; Id. 181, b; Com. Dig. Attorney, C 8; Bac. Abr. Authority, C; 2 Kent's Com. 504 7 Taunt. 403.

9. The death of the mandator, in like manner, puts an end to the contract. See 2 Mason's R. 342; 8 Wheat. R. 174; 2 Kent's Com. 507; 1 Domat, B. 1, tit. 15, 4, n. 6, 7, 8; Pothier, Contract de Mandat, c. 4, 2, n. 103. But although an unexecuted mandate ceases with the death of the mandator, yet, if it be executed in part at that time, it is binding to that extent, and his representatives must indemnify the mandatory. Story on Bailm. 204, 205.

10. - 3. The contract of mandate may be dissolved by a change in the state of the parties; as if either party becomes insane, or, being a woman, marries before the execution of the mandate. Story on Bailm. 206; 2 Roper, Husb. and Wife, 69, 73; Salk. 117; Bac. Abr. Baron and Feme, E; 2 Kent's Com. 506,

11. - 4. It may be dissolved by a revocation of the authority, either by operation of law, or by the act of the mandator.

12. It ceases by operation of law when the power of the mandator ceases over the subject-matter; as, if he be a guardian, it ceases, as to his ward's property, by the termination of the guardianship. Pothier, Contract de Mandat, c. 4, 4, n. 112.

13. So, if the mandator sells the property, it ceases upon the sale, if it be made known to the mandatory. 7 Ves. jr. 276; Story on Bailm. 207.

14. By the civil law the contract of mandate ceases by the revocation of the authority. Story on Bailm. 208; Code Civ. art. 2003 to 2008; Louis, Code, art. 2997.

15. At common law, the party giving an authority is generally entitled to revoke it. See 5 T. R. 215; Wallace's R. 126; 5 Binn. 316. But, if it be given as a part of a security, as if a letter of attorney be given to collect a debt, as a security for money advanced, it is irrevocable by the party, although revoked by death. 2 Mason's R. 342; 8 Wheat. 174; 2 Esp. R. 365; 7 Ves. 28; 2 Ves. & Bea. 51; 1 Stark. R. 121; 4 Campb. 272.

MANDATE, civil law. Mandates were the instructions which the emperor addressed to public functionaries, which were to serve as rules for their conduct. 2. These

mandates resembled those of the pro-consuls, the mandata jurisdictio, and were ordinarily binding on the legates or lieutenants of the emperor of the imperial provinces, and, there they had the authority of the principal edicts. Sav. Dr. Rom. ch. 3, 24, n. 4

. **MANDATOR,** contracts. The person employing another to perform a mandate. Story on Bailm. 138; 1 Brown, Civ. Law, 382; Halif. Anal. Civ. Law, 70.

MANDAVI BALLIVO, English law. The return made by a sheriff, when he has committed the execution of a writ to a bailiff of a liberty, who has the right to execute the writ.

MANHOOD. The ceremony of doing homage by the vassal to his lord was denominated homagium or manhood, by the feudists. The formula used was devenio vester homo, I become you Com. 54. See Homage.

MANIA, med. jur. This subject will be considered by examining it, first, in a medical point of view; and, secondly, as to its legal consequences.

2. - 1. Mania may be divided into intellectual and moral.

1. Intellectual mania is that state of mind which is characterised by certain hallucinations, in which the patient is impressed with the reality of facts or events which have never occurred, and acts in accordance with such belief; or, having some notion not altogether unfounded, carries it to an ex- travagant and absurd length. It may be considered as involving all or most of the operations of the understanding, when it is said to be general; or as be-ing confined to a particular idea, or train of ideas, when it is called partial.

3. These will be separately examined. 1st. General intellectual mania is a disease which presents the most chaotic confusion into which the human mind, can be involved, and is attended by greater disturbance of the functions of the body than any other. According to Pinel, Traite d'Alienation Mentale, p. 63, "The patient sometimes keeps his head elevated and his looks fixed on. high; he speaks in a low voice, or utters cries and vociferations without any apparent motive; he walks to and fro, and sometimes arrests his steps as if fixed by the sentiment of admiration, or wrapt up in profound reverie. Some insane persons display wild excesses of merriment, with immoderate bursts of laughter. Sometimes also, as if nature delighted in contrasts, gloom and taciturnity prevail, with involuntary showers of tears, or the anguish of deep sorrow, with all the external signs of acute mental suffering. In certain cases a sudden reddening of the eyes and excessive loquacity give presage of a speedy explosion of violent madness and the urgent necessity of a strict confinement. One

lunatic, after long intervals of calmness, spoke at first with volubility, uttered frequent shouts of laughter, and then shed a torrent of tears; experience had taught the necessity of shutting him up immediately, for his paroxysms were at such times of the greatest violence. "Sometimes, however, the patient is not altogether devoid of intelligence; answers some questions very appropriately, and is not destitute of acuteness and ingenuity. The derangement in this form of mania is not confined to the intellectual facul-ties, but not unfrequently extends to the moral powers of the mind.

4. - 2d. Partial intellectual mania is generally known by the name of monomania. (q. v.) In its most usual and simplest form, the patient has conceived some single notion contrary to common sense and to common experience, generally dependent on errors of sensation; as, for example, when a person believes that he is made of glass, that animals or men have taken their abode in his stomach or bowels. In these cases the understanding is frequently found to be sound on all subjects, except those connected with the hallucination. Sometimes, instead of being limited to a single point, this disease takes a wider range, and there is a class of cases, where it involves a train of morbid ideas. The patient then imbibes some notions connected with the various relations of persons, events, time, space, &c., of the most absurd and unfounded nature, and endeavors, in some measure, to regulate his conduct accordingly; though, in most respects, it is grossly inconsistent with his delusion.

5. Moral mania or moral insanity, (q. v.) is divided into, first, general, where all the moral faculties are subject to a general disturbance and secondly, partial, where one or two only of the moral powers are perverted.

6. These will be briefly and separately examined. 1st. It is certain that many individuals are living at large who are affected, in a degree at least, by general moral mania. They are generally of singular habits, wayward temper, and eccentric character; and circumstances are frequently attending them which induce a belief that they are not altogether sane. Frequently there is a hereditary tendency to madness in the family; and, not seldom, the individual himself has at a previous period of life sustained an attack of a decided character: his temper has undergone a change, he has become an altered man, probably from the time of the occurrence of something which deeply affected him, or which deeply affected his bodily constitution. Sometimes these alterations are imperceptible, at others, they are sudden and immediate. Individuals afflicted with this disease not unfrequently "perform most of the common duties of life with propriety, and some of them, indeed, with scrupulous exactness, who exhibit no strongly marked features of either temperament, no traits of superior or defective mental endowment, but yet take violent an- tipathies, harbor unjust suspicions, indulge strong propensities, affect singularity in dress, gait, and phraseology; are proud, conceited, and ostentatious; easily excited and with difficulty appeased; dead to sensi- bility, delicacy, and refinement; obstinately riveted to the

most absurd opinions; prone to controversy, and yet incapable of reasoning; always the hero of their own tale, using hyperbolic, high flown language to express the most simple ideas, accompanied by unnatural gesticulation, inordinate ac- tion, and frequently by the most alarming expression of countenance. On some occasions they suspect sinister intentions on the most trivial grounds; on others are a prey to fear and dread from the most ridiculous and imaginary sources; now embracing every opportunity of exbibiting romantic courage and feats and hardihood, then indulging themselves in all manner of excesses. Persons of this description, to the casual observer, might appear actuated by a bad heart, but the experienced physician knows it is the head which is defective. They seem as if constantly affected by a greater or less degree of stimulation from intoxicating liquors, while the expression of countenance furnishes an infallible proof of mental disease. If subjected to moral re- straint, or a medical regimen, they yield with reluctance to the means proposed, and generally refuse and resist, on the ground that such means are unnecessary where no disease exists; and when, by the system adopted, they are so far recovered, as to be enabled to suppress the exhibition of their former peculiarities, and are again fit to be restored to society, the physician, and those friends who put them under the physician's care, are generally ever after objects of enmity, and frequently of revenge." Cox, see cases of this Pract. Obs. on Insanity, kind of madness cited in Ray, Med. Jur. 112 to 119; Combe's Moral Philos. lect. 12.

7 .- 2d. Partial moral mania consists in the derangement of one or a few of the affective faculties, the moral and intellectual constitution in other respects remaining in a sound state. With a mind apparently in full possession of his reason, the patient commits a crime, without any extraordinary temptation, and with every inducement to refrain from it, he appears to act without a motive, or in opposition to one, with the most perfect consciousness of the impropriety, of his conduct, and yet he pursues perseveringly his mad course. This disease of the mind manifests itself in a variety of ways, among which may be mentioned the following: 1. An irresistible propensity to steal. 2. An inordinate propensity to lying. 3. A morbid activity of the sexual propensity. Vide Erotic Mania. 4. A morbid propensity to commit arson. 5. A morbid activity of the propensity to destroy. Ray, Med. Jur. ch. 7.

8. - 2. In general, persons laboring under mania are not responsible nor bound for their acts like other persons, either in their contracts or for their crimes, and their wills or testaments are voidable. Vide Insanity; Moral Insanity. 2 Phiilim. Ecc. R. 69; 1 Hagg. Cons: R. 414; 4 Pick. R. 32; 3 Addams, R. 79; 1 Litt. R. 371.

MANIA A POTU. Insanity arising from the use of spirituous liquors. Vide Delirium Tremens.

MANIFEST, com. law. A written instrument containing a true account of the cargo of a ship or commercial vessel.

2. The Act of March 2, 1799, s. 23, requires that when goods, wares, or mer- chandise, shall be brought into the United States, from any foreign port or place, in any ship or vessel, belonging, in whole or in part to a citizen or inhabitant of the United States, the manifest shall be in writing, signed by the master of the vessel, and that it shall contain the names of the places where the goods in such manifest mentioned, shall have been respectively taken on board, and the places within the United States, for which they are respec tively consigned, particularly noticing the goods destined for each place, respectively; the name, description, and build of such vessel, and her true admeasurement or tonnage, the place to which she belongs, with the name of each owner, according to her register, the name of her master, and a just and particular account of the goods so laden on board, whether in package or stowed loose, of any kind whatsoever, with the marks and numbers on each package, the numbers and descriptions of the packages in words at length, whether leaguer, pipe, butt, puncheon, hogshead, barrel, keg, case, bale, pack, truss, chest, box, bandbox, bundle, parcel, cask, or package of any kind, describing each by its usual denomination; the names of the persons to whom they are respectively consigned, agreeably to the bills of lading, unless when the, goods are consigned to order, when it shall be so expressed; the names of the several passengers on; board, distinguishing whether cabin or steerage passengers, or both, with their baggage, specifying the number and description of packages belonging to each, respectively; together with an account of the remaining sea stores, if any. And if any merchandise be imported, destined for different districts, or ports, the quantities and packages thereof shall be inserted in successive order in the manifest; aud all spirits, wines aud teas, constituting the whole or any part of the cargo of any vessel, shall be inserted in successive order, distinguishing the ports to which they may be destined, and the kinds, qualities and quantities thereof; and if merchandise be imported by citizens or inhabitants of the United States, in vessels other than of the United States, the manifests shall be of the form and shall contain the particulars aforesaid, except that the vessel shall be specially described as provided by a form in the act. 1 Story's Laws, 593, 594.

3. The want of a manifest, where one is required, or when it is false, is severely punished.

MANIFEST, evidence. That which is clear and requires no proof; that which is noto- rious. See Notoriety.

MANIFESTO. A solemn declaration, by the constituted authorities of a nation, which contains the reasons for its public acts towards another.

2. On the declaration of war, a manifesto is usually issued in which the nation declaring the war, states the reasons for so doing. Vattel, liv. 3, c. 4, 64; Wolff, 1187. See Anti-Manifesto.

MANKIND. Persons of the male sex; but in a more general sense, it includes persons of both sexes; for example, the statute of 25 Hen. VIII., c. 6, makes it felony to commit, sodomy with mankind or beast. Females as well as males axe included under the term mankind. Fortesc. 91; Bac. Ab. Sodomy. See Gender.

MANNER AND FORM, pleading. After traversing any allegation in pleading, it is usual to say "in manner and form as he has in his declaration in that behalf alleged," which is as much as to include in the traverse, not only the mere fact opposed to it, but that in the manner and form in which it is stated by the other party. These words, however, only put in issue the substantial statement of the manner of tho fact traversed, and do not extend to the time, place, or other circumstances attending it, if they were not originally material and necessary to be proved as laid. 3 Bouv. Inst. p. 297. See Modo et forma.

MANNOPUS. An ancient word which signifies goods taken in the hands of an apprehended thief.

MANOR, estates. This word is derived from the French manoir, and signifies, a house, residence, or habitation. At present its meaning is more enlarged, and includes not only a dwelling-house, but also lands. Vide Co. Litt. 58, 108; 2 Roll. Ab. 121 Merl. Repert. mot Manoir. See Serg. Land Laws of Pennsyl. 195.

2. By the English law, a manor is a tract of land originally granted by the king to a person of rank, part of which was given by the grantee to his followers, and the rest lie retained under the name of his demesnes; that which remained uncultivated was called the lord's waste, and served for public roads and common of pasture for the lord and his tenants.

MANSION. This term is synonymous with house. (q. v.) 1 Chit. Pr. 167; 2 T. R. 502; 1 Tho. Co. Litt. 215, n. 35; 9 B. & C. 681; S. C. 17 E. C. L. R. 472, and the cases there cited; Com. Dig. Justices, P 5; 3 Serg. & Rawle, 199. A portion only of a building may come under the description of a mansion-house. 1 Leach, 89, 428; 1 East, P. C. C. 15, s. 19. 2 Bouv. Inst. n. 1571, note.

MANSLAUGHTER, crim. law. The unlawful killing of another without malice either express or implied. 4 Bl. Com. 190 1 Hale, P. C. 466. The distinctions between manslaughter and murder, consists in the following. In the former, though the act which occasions the death be unlawful, or likely to be attended with bodily mischief,

yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting in manslaughter. 1 East, P. C. 218 Foster, 290.

2. It also differs from murder in this, that there can be no accessaries before the fact, there having been no time for premeditation. 1 Hale, P. C. 437; 1 Russ. Cr. 485. Manslaugbter is voluntary, when it happens upon a sudden heat; or involuntary, when it takes place in the commission of some unlawful act.

3. The cases of manslaughter may be classed as follows those which take place in consequence of, 1. Provocation. 2. Mutual combat. 3. Resistance to public officers, &c.

4. Killing in the prosecution of an unlawful or wanton act. 5. Killing in the prosecution of a lawful act, improperly performed, or performed without lawful authority.

4. - 1. The provocation which reduces the killing from murder to manslaughter is an answer to the presumption of malice which the law raises in every case of homicide; it is therefore no answer when express malice is proved. 1 Russ. Cr, 440; Foster, 132; 1 East, P. C. 239; and to be available the provocation must have been reasonable and recent, for no words or slight provocation will be sufficient, and if the party, has had time to cool, malice will be inferred.

5. - 2. In cases of mutual combat, it is generally manslaughter only when one of the parties is killed. When death ensues from duelling the rule is different, and such killing is murder.

6. - 3. The killing of an officer by resistance to him while acting under lawful authority is murder; but if the officer be acting under a void or illegal authority, or out of his jurisdiction, the killing is manslaughter, or excusable homicide, according to the circumstances of the case. 1 Moody, C. C. 80, 132; 1 Hale, P. C. 458; 1 East, P. C. 314; 2 Stark. N. P. C. 205; S. C. 3 E. C. L. R. 315.

7. - 4. Killing a person while doing an act of mere wantonness, is manslaughter as, if a person throws down stones in a coal-pit, by which a man is killed, although the offender was only a trespasser. Lewin, C. C. 179.

8. - 5. When death ensues from the performance of a lawful act, it may, in consequence of the negligence of the offender, amount to manslaughter. For instance, if the death has been, occasioned by negligent driving. 1 East, P. C. 263; 1 C. & P. 320 S. C. 9 E. C. L. R. 408; 6 C. & P. 629; S. C. 25 E. C. L. R. 569. Again, when

death ensues, from the gross negligence of a medical or surgical practitioner, it is manslaughter. 1 Hale, P. C. 429; 3 C. & P. 632; S. C. 14 E, C. L. R. 495.

MANSTEALING. This word is sometimes used synonymously with kidnapping. The latter is more technical. 4 Bl. Com. 219.

MANU FORTI. With strong hand. (q. v.) This term is used in pleading in cases of forcible entry, and no other words are of equal import. Dane's Ab. ch. 132, a. 6; ch. 203, a. 12.

MANU OPERA. This has the same meaning with mannopus. (q. v.)

MANUAL. That which is employed or used by the hand, of which a present profit may be made. Things in the manual occupation of the owner cannot be distrained for rent. Vide Tools.

MANUCAPTIO, practice. In the English law it is a writ which lies for a man taken on suspicion of felony and the like, who cannot be admitted to bail by the sheriff, or others having power to let to mainprise. F. N. B. 249.

MANUCAPTORS. The same as mainpernors. (q. v.)

MANUFACTURE. **This word is used in the English and American patent laws. This term i**ncludes two classes of things; first, all machinery which is to be used and is not the object of sale; and, secondly, substances (such, for example, as medicines) formed by chemical processes, when the vendible substance is the thing produced, and that which operates preserves no permanent form. In the first class, the machine, and, in the second the substance produced, is the subject of the patent. 2 H. Bl. 492. See 8 T. R. 99; 2 B. & A. 349; Day. Pat. Cas. 278; Webst. on Pat. 8; Phil. on Pat. 77; Perp. Manuel des Inv. c. 2, s. 1; Renouard, c. 5, s. 1; Westminster Review, No. 44, April 1835, p. 247; 1 Bell's Com., B. 1, part 2, c. 4, s. 1, p. 110, 6th ed.

MANUMISSION, contracts. The agreement by which the owner or master of a slave sets him free and at liberty; the written instrument which contains this agreement is also called a manumission.

2. In the civil law it was different from emancipation, which, properly speaking, was applied to the liberation of children from paternal power. Inst. liv. 1, t. 5 & 12; Co. Litt. 137, a; Dane's Ab. h. t.

MANURE, Dung. When collected in a heap, it is considered as personal property, but, when spread, it becomes a part of the land and acquires the character of real estate. Alleyn, 31; 2 Ired. R. 326.

MANUS. Anciently signified the person taking an oath as a compurgator. The use of this word probably came from the party laying his hand on the New Testament. Manus signifies, among the civilians, power, and is frequently used as synonymous with potestas. Lec. El. Dr. Rom. 94.

MANUSCRIPT. A writing; a writing which has never been printed.

2. The act of congress securing to authors a copyright passed February 3, 1831, sect. 9, protects authors in their manuscripts, and renders any person who shall unlawfully publish a manuscript liable to an action, and authorizes the courts to enjoin the publisher. See Copyright. The right of the author, to his manuscripts, at common law, cannot be contested. 4 Burr. 2396; 2 Eden, Ch. R. 329; 2 Story, R. 100; 2 Atk. 342; Ambl. 694; 2 B. & A. 290; 2 Story, Eq. Jur. 943; Eden, Inj. 322; 2 B. & A. 298; 2 Bro. P. C. (Toml ed.) 138; 4 Vin. Ab. 278; 2 Atk. 342; 2 Ves. & B. 23. These rights will be considered as abandoned if the author publishes his manuscripts, without securing the copyright under the acts of congress. See Bouv. Inst. Index, h. t.; Copyright.

MARAUDER. One who, while employed in the army as a soldier, commits a larceny or robbery in the neighborhood of the camp, or while wandering away from the army. Merl. Repert. h. t.

MARC-BANCO. **The name of a coin. The marc-banco of Hamburg, as money of** account, at the custom-house, is deemed and taken to be of the value of thirty-five cents. Act of March 3, 1843.

MARCHES, Eng. law. This word signifies the limits, or confines, or borders. Bac. Law Tracts, tit. Jurisdiction of the. Marches, p. 246. It was applied to the limits between England and Wales or Scotland. In Scotland the term marches is applied to the boundaries between private properties.

MARETUM. Marshy ground overflowed by the sea or great rivers. Co. Litt. 5.

MARINARIUS. An ancient word which signified a mariner or seaman; in England marinarius capitaneus, was the admiral or warden of the ports.

MARINE. Whatever concerns the navigation of the sea, and forms the naval power of a nation is called its marine.

MARINE CONTRACT. One which relates to business done or transacted upon the sea and in sea ports, and over which the courts of admiralty have jurisdiction concurrent with the courts of common law; such contracts include according to civilians and jurists among other things, charter parties, affreightments, marine hypothecations, contracts for the marine service in the building, re-pairing, supplying and navigating ships; contracts and quasi contracts respec- ting averages, contributions and jettisons, and policies of insurance. 2 Gall. R. 398, where Judge Story gave a very learned opinion on the subject.

MARINE INSURANCE, contracts. A contract by which one party, for a stipulated premium, undertakes to indemnify the other, against all perils or sea risks, to which his ship; freight or cargo, or some of them, may be exposed, during a certain voyage or fixed period of time. 1 Bouv. Inst. n. 1175, et seq. See Insurance Marine.

MARINE INTEREST, contracts. A compensation paid for the use and risk of money loaned on respondentia and bottomry; provided the money be loaned and put in risk, there is no limit as to the amount which may be lawfully charged by the lender. 2 Marsh. Ins. 749; Hall on Mar. Loans; Pothier, Pret a. la Grosse, n. 19; 1 Stuart's (L. C.) R. 130.

MARINE LEAGUE. A measure equal to the twentieth part of a degree. Bouch. Inst. n. 1845, not. Vide Cannon Shot; Sea.

MARINER. One whose occupation is to navigate vessels on the sea. Vide Seamen Shipping articles.

2. By act of congress, 1 Story, Laws of U. S., ch. 56, s. 4, p. 109, it is provided, that no sum exceeding one dollar shall be recovered from any seaman or mariner (in the merchant service,) by any person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged, shall be ended.

MARITAGIUM. Anciently that portion which was given with a daughter in marriage.

2. During the existence of the feudal law, it was the right which the lord of the fee had, under certain tenures, to dispose of the daughters of his vassal in marriage. By this word was also understood marriage. Beames' Glanv. 138, n; Bract. 21 a; Spelm. Gl. ad voc.; 2 Bl. Com. 69; Co. Litt. 21 b, 76 a.

MARITAL. That which belongs to marriage; as marital rights, marital duties.

2. Contracts made by a feme sole with a view to deprive her intended husband of his marital rights, with respect to her property, are a fraud upon him, and may be set aside in equity. By the marriage, the husband assumes the duty of paying her debts, contracted previous to the coverture, and of supporting her during its existence; and he cannot, therefore, be fraudulently deprived, by the intended wife, of those rights which enable him to perform the duties which attach to him. 2 Cha. R. 42; Newl. Contr. 424; 1 Vern. 408; 2 Vern. 17; 2 P. Wms. 357, 674; 2 Bro. C. C. 345; 1 Ves. jr. 22; 2 Cox, R. 28; 2 Beav. 528; 2 Ch. R. 81; White's. L. C. in Eq. *277; 1 Hill, Ch. R. 1, 4; 13 Maine, R. 124; 1 McMull. Eq. R. 237 3 Iredell's Eq. R. 487; 4 Wash. C. C. R. 224.

MARITAL PORTION. In Louisiana, this name is given to that part of a deceased husband's estate, to which the widow is entitled. Civil Code, 334, art. 55; 3 Mart. N. S. 1.

MARITIME. That which belongs to or is connected with the sea.

MARITIME CAUSE. Maritime causes are those arising from maritime contracts, whether made at sea or on land, that is, such as relate to the commerce, business or navigation of the sea; as, charter parties, affreightments, marine loans, hypothecations, contracts for maritime service in building, repairing, supplying and navigating ships, contracts and quasi contracts respecting averages, contributions and jettisons; contracts relating to marine insurance, and those between owners of ships. 3 Bouv. Inst. n. 2621.

2. There are maritime causes also for torts and injuries committed at sea.

3. In general, the courts of admiralty have a concurrent jurisdiction with courts of law, of all maritime causes: and in some cases they have exclusive jurisdiction.

MARITIME CONTRACT. One which relates to the navigation of the sea.

2. The admiralty has jurisdiction in case of the breach of such contract, whether it has been entered into on land or at sea. 4 Wash. C. C. R. 453; see 2 Gallis. 465; 2 Sumn. 1; Gilp. 529.

MARITIME LAW. That system of law which relates to the affairs of the sea, such as seamen, ships, shipping, navigation, and the like.

MARITIME LOAN. A contract or agreement by which one, who is the lender, lends to another, who is the borrower, a certain sum of money, upon condition that if the thing upon which the loan has been made, should be lost by any peril of the sea, or vis

major, the lender shall not be repaid, unless what remains shall be equal to the sum borrowed; and if the thing arrive in safety, or in case it shall not have been injured, but by its own defects or the fault of the master or mariners, the borrower shall be bound to return the sum borrowed, together with a certain sum agreed upon as the price of the hazard incurred. Emer. Mar. Loans, c. 1, s. 2; Poth. h. t. Vide Bottomry; Gross Adventure; Interest, maritime; Respondentia.

MARITIME PROFIT, mar. law. The French writers use the term maritime profit to signify any profit derived from a maritime lean. Vide Interest maritime.

MARK. This term has several acceptations. 1. It is a sign traced on paper or parchment, which stands in the place of a signature, usually made by persons who cannot write. 2 Cart. R. 324; M. & M. 516; 12 Pet. 150; 7 Bing. 457; 2 Ves. 455; 1 V. & B. 362; 1 Ves., jr. 11. A mark is now held to be a good signature, though the party was able to write. 8 Ad. & El. 94; 3 Nev. & Per. 228; 3 Curt. 752; 5 John. 144. Vide Subscription.

2. - 2. It is the sign, writing or ticket put upon manufactured goods to distinguish them from others. Poph. R. 144; 3 B & C. 541; 2 Atk. R. 485; 2 V. & B. 218; 3 M. & C. 1; Ed. Inj. 814. Vide Trade Marks.

3. - 3. Mark or marc, denotes a weight used in several parts of Europe, and for several commodities, especially gold and silver. When gold and silver are sold by the mark, it is divided into twenty-four carats.

4. - 4. Mark is also in England a money of accounts, and in some other countries a coin. The English marc is two-thirds of a pound sterling, or 13s. 4d., and the Scotch mark is of equal value in Scotch money of account. Encyc. Amer. h. t.

MARKET. A public place appointed by public authority, where all sorts of things necessary for the subsistence, or for the conveniences of life, are sold.

2. Markets are generally regulated by local laws.

3. By the term market is also understood the demand there is for any particular article; as, the cotton market in Europe is dull. Vide 15 Vin. Ab. 42; Com. Dig. h. t.

MARKET OVERT, Engl. law. Market overt is an open or public market; that is, a place appointed by law or custom for the sale of goods and chattels at stated times in public.

2. In London, every day except Sunday, is market day. In the country, particular days are fixed for market days. 2 Bl. Com. 449.

3. It is a general rule that sales of vendible articles made in market overt, are good not only between the parties, but are also binding on all those who have any property or right therein. Id. 2 Chitt. Com. Law, 148 to 154; Com. Dig. Market, E; Bac. Abr. Fairs and Market, E; 5 B. & A. 624; Dane's Abr. chap. 45, a 2.

4. There is no law recognizing the effect of a sale in market overt in Pennsylvania. 3 Yeates R. 347; 5 Serg. & Rawle, 130; in New York; 1 Johns, 480; in Massachusetts; 8 Mass. R. 521; 14 Mass. R. 500; in Ohio; 5 Ohio, R. 203; nor in Vermont. 1 Tyl. R. 341; nor indeed in any of the United States. 10 Pet. 161.

MARLEBRIDGE, STATUTE OF. The name of a statute passed the 52 Hen. III, A. D. 1267, so called because it was enacted at Marlebridge. Barr. on Stat. 58.

MARQUE AND REPRISAL. The name given to a commission granted by the supreme power of a state to a private person for the purpose of seizing the property of a foreign state or its subjects. Wheat. Law of Nations, 340. Vide Letters of Marque.

MARRIAGE. A contract made in due form of law, by which a free man and a free woman reciprocally engage to live with each other during their joint lives, in the union which ought io exist between husband and wife. By the terms freeman and freewoman in this definition are meant, not only that they are free and not slaves, but also that they are clear of all bars to a lawful marriage. Dig. 23, 2, 1; Ayl. Parer. 359; Stair, Inst. tit. 4, s. 1; Shelford on Mar. and Div. c. 1, s. 1.

2. To make a valid marriage, the parties must be willing to contract, Able to contract, and have actually contracted.

3. - 1. They must be willing to contract. Those persons, therefore, who have no legal capacity in point of intellect, to make a contract, cannot legally marry, as idiots, lunatics, and infant; males under the age of fourteen, and females under the age of twelve, and when minors over those ages marry, they must have the consent of their parents or guardians.

4. There is no will when the person is mistaken in the party whom he intended to marry; as, if Peter intending to marry Maria, through error or mistake of person, in fact marries Eliza; but an error in the fortune, as if a man marries a woman whom he believes to be rich, and he finds her to be poor; or in the quality, as if he marry a woman whom he took to be chaste, and whom he finds of an opposite character, this

does not invalidate the marriage, because in these cases the error is only of some quality or accident, and not in the person. Poynt. on Marr. and Div. ch. 9.

5. When the marriage is obtained by force or fraud, it is clear that there is no consent; it is, therefore, void ab initio, and may be treated as null by every court in which its validity may incidentally be called in question. 2 Kent, Com. 66; Shelf. on Marr. and Div. 199; 2 Hagg. Cons. R. 246; 5 Paige, 43.

6. - 2. Generally, all persons who are of sound mind, and have arrived to years of maturity, are able to contract marriage. To this general rule, however, there are many exceptions, among which the following may be enumerated.

7. - 1. The previous marriage of the party to another person who is still living.

8. - 2. Consanguinity, or affinity between the parties within the prohibited degree. It seems that persons in the descending or ascending line, however remote from each other, cannot lawfully marry; such marriages are against nature; but when we come to consider collaterals, it is not so easy to fix the forbidden degrees, by clear and established principles. Vaugh. 206; S. C. 2 Vent. 9. In several of the United States, marriages within the limited degrees are made void by statute. 2 Kent, Com. 79; Vide Poynt. on Marr. and Div. ch. 7.

9. - 3. Impotency, (q. v.) which must have existed at the time of the marriage, and be incurable. 2 Phill. Rep. 10; 2 Hagg. Rep. 832.

10. - 4. Adultery. By statutory provision in Pennsylvania, when a person is convicted of adultery with another person, or is divorced from her husband, or his wife, he or she cannot afterwards marry the partner of his or her guilt. This provision is copied from the civil law. Poth. Contr. de Mariage, part 3, c. 3, art. 7. And the same provision exists in the French code civil, art. 298. See 1 Toull. n. 555.

11. - 3. The parties must not only be willing and able, but must have actually contracted in due form of law.

12. The common law requires no particular ceremony to the valid celebration of marriage. The consent of the parties is all that is necessary, and as marriage is said to be a contract jure gentium, that consent is all that is needful by natural or public law. If the contract be made per verba de presenti, or if made per verba de futuro, and followed by consummation, it amounts to a valid marriage, and which the parties cannot dissolve, if otherwise competent; it is not necessary that a clergyman should be present to give validity to the marriage; the consent of the parties may be declared before a magistrate, or simply before witnesses; or subsequently confessed or

acknowledged, or the marriage may even be inferred from continual cohabitation, and reputation as husband and wife, except in cases of civil actions for adultery, or public prosecutions for bigamy. 1 Silk. 119; 4 Burr. 2057; Dougl. 171; Burr. Settl. Cas. 509; 1 Dow, 148; 2 Dow, 482; 4 John. 2; 18 John. R. 346; 6 Binn, 405; 1 Penn. R. 452; 2 Watts, R. 9. But a promise to marry at a future time, cannot, by any process of law, be converted into a marriage, though the breach of such promise will be the foundation of an action for damages.

13. In some of the states, statutory regulations have been made on this subject. In Maine and Massachusetts, the marriage must be made in the presence, and with the assent of a magistrate, or a stated or ordained minister of the gospel. 7 Mass. Rep. 48; 2 Greenl. Rep. 102. The statute of Connecticut on this subject, requires the marriage to be celebrated by a clergyman or magistrate, and requires the previous publication of the intention of marriage, and the consent of parents; it inflicts a penalty on those who disobey its regulations. The marriage, however, would probably be considered valid, although the regulations of the statutes had not been observed. Reeve's Dom. Rel. 196, 200, 290. The rule in Pennsylvania is, that the marriage is valid, although the directions of the statute have not been observed. 2 Watts, Rep. 9; 1 How. S. C. R. 219. The same rule probably obtains in New Jersey; 2 Halsted, 138; New Hampshire; 2 N. H. Rep. 268; and Kentucky. 3 Marsh. R. 370. In Louisiana, a license must be obtained from the parish judge of the parish in which at least one of the parties is domiciliated, and the marriage must be celebrated before a priest or minister of a religious sect, or an authorized justice of the peace; it must be celebrated in the presence of three witnesses of full age, and an act must be made of the celebration, signed by the person who celebrated the marriage, by the parties and the witnesses. Code, art. 101 to 107. The 89th article of the Code declares, that such marriages only are recognized by law, as are contracted and solemnized according to the rules which it prescribes. But the Code does not declare null a marriage not preceded by a license, and not evidenced by an act signed by a certain number of witnesses and the parties, nor does it make such an act exclusive evidence of the marriage. The laws relating to forms and ceremonies are directory to those who are authorized to celebrate marriage. 6 L. R. 470.

14. A marriage made in a foreign country, if good there, would, in general, be held good in this country, unless when it would work injustice, or be contra bonos mores, or be repugnant to the settled principles and policy of our laws. Story, Confl. of Laws, 87; Shelf. on M. & D. 140; 1 Bland. 188; 2 Bland. 485; 3 John. Ch. R. 190; 8 Ala. R. 48.

15. Marriage is a contract intended in its origin to endure till the death of one of the contracting parties. It is dissolved by death or divorce.

16. In some cases, as in prosecutions for bigamy, by the common law, an actual marriage must be proved in order to convict the accused. See 6 Conn. R. 446. This rule is much qualified. See Bigamy.

17. But for many purposes it may be proved by circumstances; for example, cohabitation; acknowledgment by the parties themselves that they were married; their reception as such by their friends and relations; their correspondence, on being casually separated, addressing each other as man and wife; 2 Bl. R. 899; declaring, deliberately, that the marriage took place in a foreign country; 2 Moo. & R. 503; describing their children, in parish registers of baptism, as their legitimate offspring; 2 Str. 1073; 8 Ves. 417; or when the parties pass for husband and wife by common reputation. 1 Bl. R. 639; S. C. 4 Burr. 2057; Dougl. 174; Cowp. 594; 3 Swans. R. 400; 8 S. & R. 159; 2 Hayw. R. 3; 1 Taylor, R. 121; 1 H. & McH. 152; 2 N. & McC. 114; 5 Day, R. 290; 4 R. & M. 507; 9 Mass. R. 414; 4 John. 52; 18 John. 346. After their death, the presumption is generally conclusive. Cowp. 591; 6 T. R. 330.

18. The civil effects of marriage are the following: 1. It confirms all matrimonial agreements between the parties.

19. - 2. It vests in the husband all the personal property of the wife, that which is in possession absolutely, and choses in action, upon the condition that he shall reduce them to possession; it also vests in the husband right to manage the real estate of the wife, and enjoy the profits arising from it during their joint lives, and after her death, an estate by the curtesy when a child has been born. It vests in the wife after the husband's death, an estate in dower in the husband's lands, and a right to a certain part of his personal estate, when he dies intestate. In some states, the wife now retains her separate property by statute.

20. - 3. It creates the civil affinity which each contracts towards the relations of the other.

21. - 4. It gives the husband marital authority over the person of his wife.

22. - 5. The wife acquires thereby the name of her husband, as they are considered as but one, of which he is the head: erunt duo in carne una.

23. - 6. In general, the wife follows the condition of her husband.

24. - 7. The wife, on her marriage, loses her domicil and gains that of her husband.

25. - 8. One of the effects of marriage is to give paternal power over the issue.

26. - 9. The children acquire the domicil of their father.

27. - 10. It gives to the children who are the fruits of the marriage, the rights of kindred not only with the father and mother, but all their kin.

28. - 11. It makes all the issue legitimate.

Vide, generally, 1 Bl. Com. 433; 15 Vin. Ab. 252; Bac. Ab. h. t.; Com. Dig. Baron and Feme, B; Id. Appx. b. t.; 2 Sell. Pr. 194; Ayl. Parergon, 359; 1 Bro. Civ. Law, 94; Rutherf. Inst. 162; 2 Supp. to Ves. jr. 334; Roper on Husband & Wife; Poynter on Marriage and Divorce; Merl. Repert. h. t.; Pothier, Traite du Contrat de Marriage; Toullier, h. t.; Chit. Pract. Index, h. t.; Dane's Ab. Index, h. t., Burge on the Confl. of Laws, Index, h. t.; Bouv. Inst. Index, h. t.

MARRIAGE BROKAGE. By this expression is meant the act by which a person interferes, for a consideration to be received by him, between a man and a woman, for the purpose of promoting a marriage between them. The money paid for such service is also known by this name.

2. It is a doctrine of the courts of equity that all marriage brokage contracts are utterly void, as against public policy; and are, therefore, incapable of confirmation. 1 Fonb. Eq. B. 1, ch. 4, s. 10, note a; 1 Story, Eq. Jur. 263; Newl. on Contr. 469.

MARRIAGE PORTION. That property which is given to a woman on her marriage. Vide Dowry.

MARRIAGE, PROMISE OF. A promise of marriage is a contract entered into between a man and woman that they will marry each other.

2. When the promise is made between persons competent to contract matrimony, an action lies for a breach of it. Vide Promise of Marriage.

MARRIAGE SETTLEMENT. An agreement made by the parties in contemplation of marriage by which the title to certain property is changed, and the property to some extent becomes tied up, and is rendered inalienable. Rice's Eq. R. 315. See 2 Hill, Ch. R. 3; Ril. Ch. Cas. 76; 8 Leigh, 29; 1 Dev. & Bat. Eq. 389; 2 Dev. & Bat. Eq. 103; 1 Bald. 344; 15 Mass. 106; 1 Yeates, 221; 7 Pet. 348; 4 Bouv. Inst. n. 3947. Vide Settlement, Contracts.

MARSHAL. An officer of the United States, whose duty it is to execute the process of the courts of the United States. His duties are very similar to those of a sheriff.

2. It is enacted by the act to establish the judicial courts of the United States, 1 Story's L. U. S. 53, as follows:

27. That a marshal shall be appointed, in and for each district, for the term of four years, but shall be removable from office at pleasure whose duty it shall be to attend the district and circuit courts, when sitting therein, and also the supreme court in the district in which that court shall sit: and to execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint, as there shall be occasion, one or more deputies, who shall be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either. And before he enters on the duties of his office, he shall become bound for the faithful performance of the same, by himself and by his deputies, before the judge of the district court, to the United States jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of twenty thousand dollars, and shall take before said judge, as shall also his deputies, before they enter on the duties of their appointment, the following oath of office: "I, A B, do solemnly swear or affirm, that I will faithfully execute alI lawful precepts directed to the marshal of the district of_____under the authority of the United States, and true returns make; and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of _____ during my continuance in said office, and take only my lawful fees. So help me God."

3. - 28. That in all causes wherein the marshal, or his deputy, shall be a party, the writs and precepts therein shall be directed to such disinterested person, as the court, or any justice or judge thereof may appoint, and the person so appointed is hereby authorized to execute and return the same. And in case of the death of any marshal, his deputy or deputies, shall continue in office unless otherwise specially removed; and shall execute the same in the name of the deceased, until another marshal shall be appointed and sworn: And the defaults, or misfeasances in office of such deputy or deputies in the mean time, as well as before, shall be adjudged a breach of the condition of the bond given, as before directed, by the marshal who appointed them; and the executor or administrator of the deceased marshal, shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life, and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal, or his deputy, when removed from office, or when the term for which the marshal is appointed shall expire, shall have power, notwithstanding, to execute all such precepts as may be in their hands, respectively, at the time of such

removal or expiration of office; and the marshal shall be held answerable for the delivery to his successors of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody, until his successor shall be appointed, and qualified as the law directs.

4. By the act making certain alterations in the act for establishing the judicial courts, &c. passed June 9, 1794, 1 Story's L. U. S. 865, it is enacted,

7. That so much of the act to establish the judicial courts of the United States, as is, or may be, construed to require the attendance of the marshals of all the districts at the supreme court, shall be, and the same is hereby repealed: And that the said court shall be attended, during its session, by the marshal of the district only, in which the court shall sit, unless the attendance of the marshals of other districts shall be required by special order of the said court.

5. The act of February 28, 1795, 1 Story's L. U. S. 391, directs,

9. That the marshals of the several districts, and their deputies, shall have the same powers, in executing the laws of the United States, as sheriffs and their deputies, in the several states, have by law in executing the laws of the respective states.

6. There are various other legislative provisions in relation to the duties and rights of marshals, which are here briefly noticed with reference to the laws themselves.

7. - 1. The act of May 8, 1792, s. 4, provides for the payment of expenses incurred by the marshal in holding the courts of the United States, the payment of jurors, witnesses, &c.

8. - 2. The act of April 16, 1817, prescribes the duties of the marshal in relation to the proceeds of prizes captured by the public armed ships of the United States and sold by decree of court.

9. - 3. The resolution of congress of March 3, 1791; the act of February 25, 1799, s. 5; and the resolution of March 3, 1821; all relate to the duties of marshals in procuring prisons, and detaining and keeping prisoners.

10. - 4. The act of April 10, 1806, directs how and for what, marshals shall give bonds for the faithful execution of their office.

11. - 5. The act of September 18, 1850, s. 5, prescribes the duties of the marshal in relation to obeying and executing all warrants and precepts issued under the

provisions of this act, and the penalties he shall incur for refusing to receive and execute the said warrants when rendered, and for permitting the fugitive to escape after arrest, Vide Story's L. U. S. Index, h. t.; Serg. Const. Law, ch. 25; 2 Dall. 402; United States v. Burr, 365; Mason's R. 100; 2 Gall. 101; 4 Cranch, 96; 7 Cranch, 276; 9 Cranch, 86, 212; 6 Wheat. 194; 9 Wheat. 645; Minot, Stat. U. S. Index, h. t.

MARSHALLING SECURITIES, equity. When a party has two funds by which his debt is secured, and another creditor has a claim only on one of these funds, a court of equity will compel the creditor having a double security to resort to that fund which will leave the other creditor his security, this is called marshalling assets. 4 Bouv. Inst. n. 3788; 1 Story, Eq. Jur. 633 Amb. 91; 8 Ves. 389; 9 Ves. 209.

2. Marshalling of assets respects two different funds, and two different sets of parties, where one set can resort to either fund, the other only to one. It is grounded on obvious equity. It does no prejudice to anybody, and it effectuates the testator's intent. It takes place in favor of simple contract creditors, and of legatees, devisees and heirs, and in a few other cases, but not in favor of the next of kin. 4 Bro. C. C. 411; 1 P. Wms. 680.

3. The cases in which a court of equity marshals real and personal assets for the payment of simple contract debts and legacies, may be classed as follows: 1. Where there are specialty and simple contract debts and legacies and lands left to descend. In this case if the specialty creditors take a satisfaction for their debts out of the personal estate, the simple contract creditors first, and then the legatees, shall stand in the place of the specialty creditors, for obtaining satisfaction out of the lands, to the amount of so much as was received by the specialty creditors out of the personal estate.

4. - 2. Where there are specialty and simple contract debts, and lands are specifically devised. In this case if the creditors take a satisfaction for their debts out of the personal estate, the simple contract creditors shall stand in the place of the specialty creditors for obtaining a satisfaction out of the lands to the amount of so much as was received by the specialty creditors out of the personal estate, but then there can be no relief for the legatees, because there is as much equity to support the, specific devise of the lands, as to support the bequest of the legatees.

5. - 3. Where the debts are charged upon the lands. Here the legatees shall have the personal estate towards their satisfaction, and if the creditors take it in payment or towards the discharge of their debts, the legatees shall stand in their place pro tanto to have a discharge out of the lands.

6. - 4. When simple contract debts and legacies are both charged on the land. In this case the land shall be sold and all paid equally. 1 Madd. Ch. Pr. 617.

MARSHALSEA, English law. The name of a prison belonging to the court of the king's bench.

MARTIAL LAW. Vide Law Martial.

MARYLAND. One of the original states of the United States of America. The province of Maryland was included in the patent of the Southern or Virginia company; and upon the dissolution of that company, it reverted to the crown. Charles the First, on the 20th of June, 1632, granted it by patent to Lord Baltimore. Under this charter Maryland continued to be governed, with some short intervals of interruption, down to the period of the American Revolution, by the successors of the original proprietor. 1 Chalmer's Annals, 203.

2. Upon the revolution of 1688, the government of Maryland was seised into the hands of the crown, and was not again restored to the proprietary until 1716; from that period no alteration occurred until the American Revolution. Bacon's Laws of Maryland, 1692, 1716.

3. The original constitution of this state was adopted on the 14th day of August, 1776. The present constitution was adopted in 1851.

4. The powers of the government are distributed into the legislative, the executive, and the judicial.

5. - 1st. The legislature shall consist of two distinct branches, a senate and a house of delegates, which shall be styled "The general assembly of Maryland." Art. III. s. 1.

6. - 2. The general assembly shall meet on the first Wednesday of January, 1852, on the same day, in the year 1853, and on the same day, 1854, and on the same day in every second year thereafter, and at no other time, unless convened by the proclamation of the governor. Art. III. s. 7.

7. - 3. The senate will be considered with reference to the qualification of the electors; the qualification of the members; the length of time for which they are elected; and the time of their election. 1. Every free white male person of twenty-one years of age or upwards, who shall have been one year next preceding the election a resident of the state, and for six months a resident of the city of Baltimore, or of any county in which he may offer to vote, and being at the time of the election, a citizen of the United States, shall be entitled to vote in the ward or election district in which he re-sides, in all elections hereafter to be held; an& at all such elections the vote shall be taken by ballot. And in case any county or city shall be so divided as to form portions of different electoral districts for the election of congressmen, senator, delegate or other

officer or officers, then to en-title a person to vote for such officer, he must have been a resident of that part of the county or city which shall form a part of the electoral district in which he offers to vote for six months next preceding the election: but a person who shall have acquired a residence in such county or city, entitling him to vote at any such election, shall be entitled to vote in the election district from which he remoted, until he shall have acquired a residence in the part of the county or city to which he has removed. Art. I. s. 1. 2. No person shall be eligible as a senator who at the time of his election is not a citizen of the United States, and who bas not resided at least three years next preceding the day of his election, in this state, and the last year thereof in the county or city which he may be chosen to represent, if such county or city shall have been so long established, and if not, then in the county from which, in whole or in part, the same may have been formed; nor shall any person be eligible as a senator unless he shall have attained the age of twenty-five years. No member of congress, or person bolding any civil or military office under the United States, shall be eligible as a senator; and if any person, after his election as a senator, be elected to congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat. No minister or preacher of the gospel of any denomination, and no person holding any civil office of profit or trust under the state, except justices of the peace, shall be eligible as senator. Art. III. ss. 9, 10, 11. 3. Every county of the state, and the city of Baltimore, shall be entitled to elect one senator, who shall serve for four years from the day of their election. The first election shall take place on the first Wednesday of November, 1851, and an election for one-half the senators, as nearly as practicable, shall be held on the same day every second year thereafter. Art. III. 2, 3, 4, 5.

8. - 4. The house of delegates will be treated of in the same manner which has been observed in considering the senate. 1. The electors are qualified in the same manner as the electors of the senate. 2. No person shall be a delegate who shall not have attained the age of twenty-one years; the other qualifications are the same as those for a senator. 3. The whole number of delegates shall never exceed eighty, nor be less than sixty-five, and shall be apportioned among the several counties according to the population of each, the city of Baltimore to have four more delegates than the most populous county; no county to have less than two delegates, the apportionment to be made after the returns of the national census in 1860 are published, and in like manner after each subsequent census. They are to serve two years from the day of their election, which takes place on the same day as that for senators.

9. - 1. The executive power of the state shall be vested in a governor, whose term of office shall commence on the second Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified.

10. - 2. The first election for governor under this constitution shall be held on the first Wednesday of November, in the year eighteen hundred and fifty-three, and on the same day and month in every fourth year thereafter, at the places of voting for delegates to the general assembly, and every person qualified to vote for delegates shall be qualified, and entitled to vote for governor; the election to be held in the same manner as the election of dele-gates, and the returns thereof, under seal, to be addressed to the speaker of the house of delegates, and enclosed and transmitted to the secretary of state, and delivered to the said speaker at the commencement of the session of the legislature next ensuing said election.

11. - 3. The speaker of the house of delegates shall then open the said returns in the presence of both houses, and the person having the highest number of votes, and being constitutionally eligible, shall be the governor, and shall qualify in the manner herein prescribed, on the second Wednesday of January next ensuing his election, or as soon thereafter as may be practicable.

12. - 4. If two or more persons shall have the highest and an equal number of votes, one of them shall be chosen governor by the senate and house of delegates; and all questions in relation to the eligibility of governor, and to the returns of said election, and to the number and legality of votes therein given, shall be determined by the house of delegates. And if the person or persons having the highest number of votes be ineligible, the governor shall be chosen by the senate and house of delegates. Every election of governor, by the legislature, shall be determined by a joint majority of the senate and house of delegates, and the vote shall be taken viva voce. But if two or more persons shall have the highest and an equal number of votes, then a second vote shall be taken, which shall be confined to the persons having an equal number; and if the votes should again be equal, then the election of governor shall be determined by lot between those who shall have the highest and an equal number on the first vote.

13. - 5. The state shall be divided into three districts. St. Mary's, Charles, Calvert, Prince George's, Anne Arundle, Montgomery, and Howard counties, and the city of Baltimore to be the first; the eight counties of the Eastern shore to be the second; and Baltimore, Harford, Frederick, Washington, Allegany, and Carroll counties, to be the third. The governor, elected from the third district in October last, shall continue in office during the term for which he was elected. The governor shall be taken from the first district, at the first election of governor under this constitution; from the second district at the second election, and from the third district at the third election, and in like manner, afterwards, from each district, in regular succession.

14. - 6. A person to be eligible to the office of governor, must have attained the age of thirty years, and been for five years a citizen of the United States, and for five years

next preceding his election a resident of the state, and for three years a resident of the district from which he was elected.

15. - 7. In case of the death or resignation of the governor, or of his removal from the state, the general assembly, if in session, or if not, at their next session, shall elect some other qualified resident of the same district, to be the governor for the residue of the term for which the said governor had been elected.

16. - 8. In case of any vacancy in the office of governor during the recess of the legislature, the president of the senate shall discharge the duties of said office till a governor is elected as herein provided for; and in case of the death or resignation of said president, or of his removal from the state, or of his refusal to serve, then the duties of said office shall, in like manner, and for the same interval, devolve upon the speaker of the house of dele-gates, and the legislature may provide by law for the case of impeachment or inability of the governor, and declare what person shall perform the executive duties during such impeachment or inability; and for any vacancy in said office, not herein provided for, provision may be made by law, and if such vacancy should occur without such provision being made, the legislature shall be convened by the secretary of state for the purpose of filling said vacancy.

17. - 9. The governor shall be commander-in-chief of the land and naval forces of the state, and may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws; but shall not take the command in person without the consent of the legislature.

18. - 10. He shall take care that the laws be faithfully executed.

19. - 11. He shall nominate, and by and with the advice and consent of the senate, appoint all civil and military officers of the state, whose appointment or election is not otherwise herein provided for, unless a different mode of appointment be prescribed by the law creating the office.

20. - 12. In case of any vacancy during the recess of the senate, in any office which the governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force till the end of the next session of the legislature, or till some other person is appointed to the same office, whichever shall first occur, and the nomination of the person thus a pointed during the recess, or of some other person in his place, shall be made to the senate within thirty days after the next meeting of the legislature.

21. - 13. No person, after being rejected by the senate, shall be again nominated for the same office at the same seision, unless at the request of the senate; or be appointed to the same office during the recess of the legislature.

22. - 14. All civil officers appointed be the governor and senate shall be nominated to the senate within fifty days from the commencement of each regular session of the legislature; and their term of office shall commence on the first Monday of May next ensuing their appointment, and continue for two years (unless sooner removed from office) and until their successors, respectively, qualify according to law.

23. - 15. The governor may suspend or arrest any military officer of the state for disobedience of orders, or other military offence, and may remove him in pursuance of the sentence of a court-martial; and may remove for incompetency or misconduct, all civil officers, who receive appointments from the executive for a term not succeeding two years.

24. - 16. The governor may convene the legislature, or the senate alone, on extraordinary occasions; and whenever, from the presence of an enemy or from any other cause, the seat of government shall become an unsafe place for the meeting of the legislature, he may direct their sessions to be held at some other convenient place.

25. - 17. It shall be the duty of the governor semi-annually, and oftener if he deem it expedient, to examine the bankbook, account books, and official proceedings of the treasurer anA comptroller of the state.

26. - 18. He shall, from time to time, inform the legislature of the condition of the state, and recommend to their consideration such measures as he may judge necessary and expedient.

27. - 19. He shall have power to grant reprieves and pardons, except in cases of impeachment, and in cases in which he is prohibited by other articles of this constitution, and to remit fines and forfeitures for offences against the state; but shall not remit the principal or interest of any debt due to the state, except in cases of fines and forfeitures; and before granting a nolle prosequi, or pardon, he shall give notice, in one or more newspapers, of the application made for it, and of the day on or after which his decision will be given; and in every case in which he exercises this power, he shall report to either branch of the legislature. Whenever required, the petitions, recommendations and reasons which influence his decision.

28. - 20. The governor shall reside at the seat of government, and shall receive for his services an annual salary of thirty-six hundred dollars.

29. - 21. When the public interest requires it, he shall have power to employ counsel, who shall be entitled to such compensation as the legislature may allow in each case after the services of such counsel shall have been performed.

29. - 22. A secretary of state shall be appointed by the governor, by and with the advice and consent of the senate, who shall continue in office, unless sooner removed by the governor, till the end of the official term of the governor from whom he received his appointment, and shall receive an annual salary of one thousand dollars.

30. - 23. He shall carefully keep and preserve a record of all official acts an proceedings (which may, at all times, be inspected by a committee of either branch of the legislature,) and shall perform such other duties as may be prescribed by law or as may properly belong to his office.

31. - 3d. The judicial power of this state shall be vested in a court of appeals, in circuit courts, in such courts for the city of Baltimore as may be hereinafter prescribed, and in justices of the peace.

32. - 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state. It shall consist of a chief justice and three associate justices, any three of whom shall form a quorum, whose judgment shall be final and conclusive in all cases of appeals; and who shall have the jurisdiction which the present court of appeals of this state now has, and such other appellate jurisdiction as hereafter may be provided for by law. And in every case decided, an opinion, in writing, shall be filed, and provision shall be made, by law, for publishing reports of cases argued and determined in the said court. The governor, for the time being, by and with the advice and consent of the senate, shall designate the chief justice, and the court of appeals shall hold its sessions at the city of Annapolis, on the first Monday of June, and the first Monday of December, in each and every year.

33. - 3. The state shall be divided into four judicial districts: Allegany, Washington, Frederick, Carroll, Baltimore, and Harford counties, shall compose the first; Montgomery, Howard, Anne Arundel, Calvert, St. Mary's, Charles and Prince George's, the second; Baltimore city, the third; and Cecil, Kent, Queen Anne's, Talbot, Caroline, Dorchester, Somerset, ana Worcester, shall compose the fourth district. And one person from among those learned in the law having been admitted to practice in this this state at least, five years, and above the age of thirty years at the time of his election, and a resident of the judicial district, shall be elected from each of said districts by the legal and qualified voters therein, as a judge of the said court of appeals, who shall hold his office for the term of ten years from the time of his election, or until he shall have attained the age of seventy years, whichever may first happen, and be reeligible thereto until he shall have attained the age of seventy years,

and not after, subject to removal for incompetency, wilful neglect of duty, or misbehaviour in office, on conviction in a court of law, or by the governor upon the address of the general assembly, two-thirds of the members of each house concurring in such address; and the salary of each of the judges of the court of appeals shall be two thousand five hundred dollars annually, and shall not be increased or diminished during their continuance in office; and no fees or perquisites of any kind, shall be allowed by law to any of the said judges.

34. - 4. No judge of the court of appeals shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or when he shall have been of counsel in said case; when the court of appeals, or any of its members shall be thus disqualified to bear and determine any case or cases in said court, so that by reason thereof no judgment can be rendered in said court, the same shall be certified to the governor of the state, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of said case or cases.

35. - 5. All judges of the court of appeals, of the circuit courts, and of the courts for the city of Baltimore, shall, by virtue of their offices, be conservator's of the peace throughout the state.

36. - 6. All public commissions and grants shall run thus: "The State of Maryland," &c., and shall be signed by the governor, with the seal of the state annexed; all writs and process shall run in the same style, and be tested, sealed and signed as usual; and all indictments shall conclude "against the peace, government and dignity of the state."

37. - 7. The state shall be divided into eight judicial circuits, in manner and form following, to wit; St. Mary's, Charles, and Prince George's counties shall be the first: Anne, Arundel, Howard, Calvert and Montgomery counties shall be the second; Frederick and Carroll counties shall be the third; Washington and Allegany counties shall be the fourth; Baltimore city shall be the fifth; Baltimore, Harford and Cecil counties shall be the sixth; Kent, Queen Anne's, Talbot and Caroline counties shall be the seventh; and Dorchester, Somerset and Worcester counties shall be the eighth; and there shall be elec-ted, as hereinafter directed, for each of the said judicial circuits, except the fifth, one person from among those learned in the law, having been admitted to practice in this state, and who shall have been a citizen of this state at least five years, and above the age of thirty years at the time of his election, and a resident of the judicial circuit, to be judge thereof; the said judges shall be styled circuit judges, and shall respectively hold a term of their courts at least twice in each year, or oftener if required by law, in each county composing their respective circuits; and the said courts shall be called circuit courts for the county in which they may be held, and

shall have and exercise in the several counties of this state, all the power, authority and jurisdiction which the county courts of this state now have and exercise, or which may hereafter be prescribed by law, and the said judges in their re-spective circuits, shall have and exercise all the power, authority and jurisdiction of the present court of chancery of Maryland; provided, nevertheless, that Baltimore county court may hold its sittings within the limits of the city of Baltimore, until provision shall be made by law for the location of a county seat within the limits of the said county proper, and the erection of a court house and all other appropriate buildings, for the convenient administration of justice in said court.

38. - 8. The judges of the several judicial circuits shall be citizens of the United States, and shall have resided five years in this state, and two years in the judicial circuit for which they may be respectively elected, next before the time of their election, and shall reside therein while they continue to act as judges; they shall be taken from among those who, having the other qualifications herein prescribed, are most distinguished for integrity, wisdom and sound legal knowledge, and shall be elected by the qualified voters of the said circuits, and shall hold their offices for the term of ten years, removable for misbehaviour, on conviction in a court of law or by the governor, upon the address of the general assembly, provided that two-thirds of the members of each house shall concur in such address, and the said judges shall each receive a salary of two thousand dollars a year, and the same shall not be increased or diminished during the time of their continuance in office; and no judge of any court in this state, shall receive any perquisite, fee, commission or reward, in addition thereto, for the performance of any judicial duty.

39. - 9. There shall be established for the city of Baltimore one court of law, to be styled "the court of common pleas," which shall have civil jurisdiction in all suits where the debt or damage claimed shall be over one hundred dollars, and shall not exceed five hundred dollars; and shall, also, have jurisdiction in all cases of appeal from the judgment of justices of the peace in the said city, and shall have jurisdiction in all applications for the benefit of the insolvent laws of this state, and the supervision and control of the trustees thereof.

40. - 10. There shall also be established, for the city of Baltimore, another court of law, to be styled the superior court of Baltimore city, which shall have jurisdiction over all suits where the debt or damage claimed shall exceed the sum of five hundred dollars, and in case any plaintiff or plain-tiffs shall recover less than the sum or value of five hundred dollars, he or they shall be allowed or adjudged to pay costs in the discretion of the court. The said court shall also have jurisdiction as a court of equity within the limits of the said city, and in all other civil cases which have not been heretofore assigned to the court of common pleas.

41. - 11. Each of the said two courts shall consist of one judge, who shall be elected by the legal and qualified voters of the said city, and shall bold his office for the term of ten years, subject to the provisions of this constitution, with regard to the election and qualification of judges and their removal from office, and the salary of each of the said judges shall be twenty-five hundred dollars a year; and the legislature shall, wherever it may think the same proper and expedient, provide, by law, another court for the city of Baltimore, to consist of one judge to be elected by the qualified voters of the said city, who shall be subject to the same constitutional provisions, hold his office for the same term of years, and receive the same compensation as the judge of the court of common pleas of the said city, and the said court shall have such jurisdiction and powers as may be prescribed by law.

42. - 12. There shall also be a criminal court for the city of Baltimore, to be styled the criminal court of Baltimore, which shall consist of one judge, who shall also be elected by the legal and qualified voters of the said city, and who shall have and exercise all the jurisdiction now exercised by Baltimore city court, and the said judge shall receive a salary of two thousand dollars a year, and shall be subject, to the provisions of this constitution with regard to the election and qualifications of judges, term of office, and removal therefrom.

43. - 13. The qualified voters of the city of Baltimore, and of the several counties of the state, shall, on the first, Wednesday of November, eighteen hundred and fifty-one, and on the same day of the same month in, every fourth year forever thereafter, elect three men to be judges of the orphans' court of said city and counties respectively, who shall be citizens of the state of Maryland, and citizens of the city or county for which they may be severally elected at the time of their eiection. They shall have all the powers now vested in the orphans' courts of this state, subject to such changes therein as the legislature may prescribe, and each of said judges shall be paid at a per diem rate, for the time they are in session, to be fixed by the legislature, and paid by the said counties and city respectively.

44. - 14. The legislature, at its first session after the adoption of this constitution, shall fix the number of justices of the peace and constables for each ward of the city of Baltimore, and for each election district in the several counties, who shall be elected by the legal and qualified voters thereof respectively, at the next general election for delegates thereafter, and shall hold their offices for two years from the time of their election, and until their successors in office are elected and qualified; and the legislature may, from time to time, increase or diminish the number of justices of the peace and constables to be elected in the several wards and election districts, as the wants and interests of the people may require. They shall be, by virtue of their offices, conservators of the peace in the said counties and city respectively, and shall have such duties and compensation as now exist, or may be provided for by law. In the

event of a vacancy in the office of a justice of the peace, the governor shall appoint a person to serve as justice of the peace, until the next regular election of said officers, and in case of a vacancy in the office of constable, the county commissioners of the county, in which a vacancy may occur, or the mayor and city council of Baltimore, as the case may be, shall appoint a person to serve as constable until the next regular election thereafter for said officers. An appeal shall lie in all civil cases from the judgment of a justice of the peace to the circuit court, or, to the court of common pleas of Baltimore city, as the case way be, and on all such appeals, either party shall be entitled to a trial by jury, according to the laws now existing, or which way be hereafter enacted. And the mayor and city council may provide, by ordinance, from time to time, for the creation and government of such temporary additional police, as they may deem necessary to preserve the public peace.

45. - 15. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consan-guinity, within such degrees as may be prescribed by law, or where he shall have been of counsel in the case and whenever any of the judges of the circuit courts, or of the courts for Baltimore city, shall be thus disqualified, or whenever, by reason of sickness, or any other cause, the said judges, or any of them, may be unable to sit in any cause, the parties may, by consent, appoint a proper person to try the said cause, or the judges, or any of them, shall do so when directed by law.

46. - 16. The present chancellor and the register in chancery, and, in the event of any vacancy in their respective offices, their successors in office respectively, who are to be appointed as at present, by the governor and senate, shall continue in office, with the powers and compensation as at present established, until the expiration of two years after the adoption of this constitution by the people, and until the, end of the session of the legislature next thereafter, after which the said offices of chancellor and register shall be abolished. The legislature shall, in the mean time, provide by law for the recording, safe-keeping, or other disposition, of the records, decrees and other proceedings of the court of chancery, and for the copying and attestation thereof, and for the custody and use of the great seal of the state, when required, after the expiration of the said two years, and for transmitting to the said counties, and to the city of Baltimore, all the cases and proceedings in said court then undisposed of and unfinished, in such manner, and under such regulations as may be deemed necessary and proper: Provided, that no new business shall originate in the said court, nor shall any cause be removed to the same from any other court, from and after the ratification of this constitution.

47. - 17. The first election of judges, clerks, registers of wills, and all other officers, whose election by the people is provided for in this article of the constitution, except

justices of the peace and constables, shall take place throughout the state on the first Wednesday of November next after the ratification of this constitution by the people.

48. - 18. In case of the death, resignation, removal, or other disqualification of a judge of any of the courts of law, the governor, by and with the advice and consent of the senate, shall thereupon appoint a person, duly quali-fied, to fill said office until the next general election for delegates thereafter; at which time an election shall be held as hereinbefore prescribed, for a judge, who shall hold the said office for ten years, according to the provisions of this constitution.

49. - 19. In case of the death, resignation, removal, or other disqualification of the judge of an orphans' court, the vacancy shall be filled by the appointment of the governor, by and with the advice and consent of the senate.

50. - 20. Whenever lands lie partly in one county, and partly in another or partly in a county and partly in the city of Baltimore, or whenever persons proper to be made defendants to proceedings in chancery, reside some in one county and some in another, that court shall have jurisdiction in which proceedings shall have been first commenced, subject to such rules, regulations and alterations as may be prescribed by law.

51. - 21. In all suits or actions at law, issues from the orphans' court or from any court sitting in equity, in petitions for freedom, and in all pre-sentments and indictments now pending, or which may be pending at the time of the adoption of this constitution by the people, or which may hereafter be instituted in any of the courts of law of this state, having jurisdiction thereof, the judge or judges thereof, upon suggestion in writing, if made by the state's attorney, or the prosecutor for the state, or upon suggestion in writing, supported by affidavit, made by any of the parties thereto, or other proper evidence, that a fair and impartial trial cannot be had in the court where such suit or action at law, issues or petitions, or presentment and indictment is depending, shall order and direct the record of proceedings in such suit or action, issues or petitions, presentment or indictment, to be transmitted to the court of any adjoining county; provided, that the removal in all civil causes be confined to an adjoining county within the judicial circuit, except as to the city of Baltimore, where the removal may be to an adjoining county, for trial, which court shall hear and determine the same in like manner as if such suit or action, issues or petitions, presentment or indictment, had been originally instituted therein; and provided also, that such suggestion shall be made as aforesaid, before or during the term in which the issue or issues may be joined in said suit or action, issues or petition, presentment or indictment, and that such further remedy in the premises may be provided by law, as the legislature shall from time to time direct and enact.

52. - 22. All election of judges, and other officers provided for by this constitution, shall be certified, and the returns made by the clerks of the respective counties to the governor, who shall issue commissions to the different persons for the offices to which they shall have been respectively elected; and in all such elections, the person having the greatest number of votes, shall be declared to be elected.

53. - 23. If, in any case of election for judges, clerks of the courts of law and registers of wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the governor to order a new election; and in case of any contested election, the governor shall send the returns to the house of delegates, who shall judge of the election and qualification of the candidates at such election.

MASCULINE. That which belongs to the male sex.

2. The masculine sometimes includes the feminine, vide an example under the article Man, and see also the articles Gender, Worthiest of blood; Poth. Intr. au titre 16, des Testamens et Donations Testamentaires, n. 170; Ayl, Pand. 57; 4 C. & P. 216; S. C. 19 E. C. L. R. 551 3 Fred. Code, pr. 1, b. 1, t. 4, s. 3; 3 Brev. R. 9.

MASSACHUSETTS. One of the original states of the United States of America. The colony or province of Massachusetts was included in a charter granted by James the First, by which its territories were extended in breadth from the 40th to the 48th degree of north latitude, and in length by all the breadth aforesaid throughout the mainland from sea to sea. This charter continued until 1684. Holmes' Annals, 412; 1 Story, Const. 71. In 1691 William and Mary granted a new charter to the colony, and henceforth it became known as a province, and continued to act under this charter till after the Revolution. 1 Story, Const. 71.

2. The constitution of Massachusetts was adopted by a convention begun and held at Cambridge, on the first of September, 1779, and continued, by adjournment, to the second of March, 1780.

3. The style and name of the state is The Commonwealth of Massachusetts. The government is distributed into a legislative, executive and judicial power.

4. - 1st. The department of legislation is formed by two branches, a senate and house of representatives, each of which has a negative on the other, and both are styled The General Court of Massachusetts. Part 2, c. 1, s. 1.

5. - 1. The senate is elected by the qualified electors, and is composed of forty persons to be counsellors and senators for the year ensuing their election. Part 2, c. 1, s. 2, art. 1.

6. - 2. The House of representatives is composed of an indefinite number of persons elected by the towns in proportion to their population. Part 2, c. 1, s. 3, art. 2.

7. - 2d. The executive power is vested in a governor, lieutenant governor and council.

8. - 1. The supreme executive magistrate is styled The Governor of the Commonwealth of Massachusetts. He is elected yearly by the qualified electors. Part 2, c. 2, s. 1. He is invested with the veto power. Part 2, c. 1, s. 1, art. 2.

9. - 2. The electors are required to elect annually a lieutenant governer. When the office of governor happens to be vacant he acts as governor, and at other times he is a member of the council. Part 2, c. 2, s. 2, art. 2 and 3.

10. - 3. The council consists of nine persons chosen annually by the general court; they mast be taken from those returned for counsellors and senators, unless they will not accept the said office, when they shall be chosen from the people at large. The council shall advise the governor in the executive part of the government. Part 2, c. 2, s. 3, art. 1 and 2.

11. - 3d. The judicial power. The third chapter of part second of the constitution makes the following provisions in relation to the judiciary:
Art. 1. The tenure that all commissioned officers shall, by law, have in their office, shall be expressed in their respective commissions; all judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behaviour; excepting such concerning whom there is different provision made in this constitution; Provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

12. - 2. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

13. - 3. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of jus-tices of the peace shall expire and become void in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the commonwealth.

14. - 4. The judges of probates of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people may require; and the legislature shall, from time to time hereafter, appoint such

times and places: until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

15. - 5. All causes of marriage, divorce, and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

MASTER. This word has several meanings. 1. Master is one who has control over a servant or apprentice. A master stands in relation to his apprentices, in loco parentis, and is bound to fulfil that relation, which the law generally enforces. He is also entitled to be obeyed by his apprentices, as if they were his children. Bouv. Inst. Index, h. t.

2. - 2. Master is one who is employed in teaching children, known generally as a schoolmaster; as to his powers, see Correction.

3. - 3. Master is the name of an officer: as, the ship Benjamin Franklin, whereof A B is master; the master of the rolls; master in chancery, &c.

4. - 4. By master is also understood a principal who employs another to perform some act or do something for him. The law having adopted the maxim of the civil law, qui facit per alium facit per se; the agent is but an instrument, and the master is civilly responsible for the act of his agent, as if it were his own, when he either commands him to do an act, or puts him in a condition, of which such act is a result, or by the absence of due care and control, either previously in the choice of his agent, or immediately in the act itself, negligently suffers him to do an injury. Story, Ag. 454, note; Noy's Max. c. 44; Salk. 282; 1 East. R. 106; 1 Bos. & Pul. 404; 2 H. Bl. 267; 5 Barn. & Cr. 547; 2 Taunt. R. 314; 4 Taunt. R. 649; Mass. 364, 385; 17 Mass. 479, 509; 1 Pick. 47 5; 4 Watts, 222; 2 Harr. & Gill, 316; 6 Cowen, 189; 8 Pick. 23; 5 Munf. 483. Vide Agent; Agency; Driver; Servant.

MASTER AT COMMON LAW, Engl. law. An officer of the superior courts of law, who has authority for taking affidavits sworn in court, and administering a variety of oaths; and also empowered to compute principal and interest on bills of exchange and other engagements, on which suit has been brought; he has also the power of an examiner of witnesses going abroad, and the like.

MASTER IN CHANCERY. An officer of the court of chancery.

2. The origin of these officers is thus accounted for. The chancellor from the first found it necessary to have a number of clerks, were it for no other purpose, than to perform the mechanical part of the business, the writing; these soon rose to the

number of twelve. In process of time this number being found insufficient, these clerks contrived to have other clerks under them, and then, the original clerks became distinguished by the name of masters in chancery. He is an assistant to the chancellor, who refers to him interlocu-tory orders for stating accounts, computing damages, and the like. Masters in chancery are also invested with other powers, by local regulations. Vide Blake's Ch. Pr. 26; 1 Madd. Pr. 8 1 Smith's Ch. Pr. 9, 19.

3. In England there are two kinds of masters in chancery, the ordinary, and the extraordinary..

4. - 1. The masters in ordinary execute the orders of the court, upon ref-erences made to them, and certify in writing in what manner they have executed such orders. 1 Sm. Ch. Pr. 9.

5. - 2. The masters extraordinary perform the duty of taking affidavits touching any matter in or relating to the court of chancery, taking the acknowledgment of deeds to be enrolled in the said court, and taking such recognizances, as may by the tenor of the order for entering them, be taken before a master extraordinary. 1 Sm. Ch. Pr. 19. Vide, generally, 1 Harg. Law Tr. 203, a Treatise of the Maister of the Chauncerie.

MASTER OF THE ROLLS. Eng. law. An officer who bears this title, and who acts as an assistant to the lord chancellor, in the court of chancery.

2. This officer was formerly one of the clerks in chancery whose duty was principally confined to keeping the rolls; and when the clerks in chancery became masters, then this officer became distinguished as master of the rolls. Vide Master in Chancery.

MASTER OF A SHIP, mar. law. The commander or first officer of a ship; a captain. (q. v.)

2. His rights and duties have been considered under the article Captain. Vide also, 2 Bro. Civ. Adm. Law, 133; 3 Kent, Com. 121; Wesk. Ins. 360; Park. on Ins. Index, h. t.; Com. Dig. Navigation, I 4.

MATE. The second officer on board of a merchant ship or vessel.

2. He has the right to sue in the admiralty as a common mariner for wages. 1. Pet. Adm. Dee. 246.

3. When, on the death of the master, the mate assumes the command, he succeeds to the rights and duties of the principal officer. 1 Sumn. 157; 3 Mason, 161; 4 Mason, 196; See 7 Conn. 239; 4 Mason, 641 4 Wash. C. C. 838.

MATER FAMILIAS, civil law. The mother of a family, and, by extension, the mistress of a family.

MATERIAL MEN. This name is given to persons who furnish materials for the purpose of constructing or erecting ships, houses, and other buildings.

2. By the common law material men have a lien on a foreign ship for supplies of materials furnished for such ship, which may be recovered in the admiralty. 9 Wheat. 409. But they have no lien for furnishing materials for repairs of domestic ships. Wheat. 438.

3. In several of the states, laws have been enacted giving material men a lien on houses and other buildings when they have furnished materials for constructing the same.

MATERIALITY. That which is important; that which is not merely of form but of substance.

2. When a bill for discovery has been filed, for example, the defendant must answer every material fact which is charged in the bill, and the test in these cases seems to be that when, if the defendant should answer in the affirmative, his answer would be of use to the plaintiff, the answer would be mate-rial, and it must be made. 4 Price, R. 364; 13 Price, R. 291; 2 Y. & J. 385.

3. In order to convict a witness of a perjury, it is requisite to prove that the matter he swore to was material to the question then depending. Vide 3 Chit. Pr. 233; 3 Dowl. 104; 10 Bing. 340; Perjury.

MATERIALS. Everything of which anything is made.

2. When materials are furnished to a workman he is bound to use them according to his contract, as a tailor is bound to employ the cloth I furnish him with, to make me a coat that shall fit me, for if he so make it that I cannot wear it, it is not a proper employment of the materials. But if the undertaker use ordinary skill and care, he will not be responsible, although the mate-rials may be injured; as, if a gem be delivered to a jeweler, and it is broken without any unskilfulness, negligence or rashness of the artisan, he will not be liable. Poth. Louage, n. 428.

3. The workman is to use ordinary diligence in the care of the materials entrusted with him, or to exercise that caution which a prudent man takes of his own affairs, and he is also bound to preserve them from any unexpected danger to which they may be exposed. 1 Gow. R. 30; 1 Camp. 138.

4. When there is no special contract between the parties, and the materials perish while in the possession of the workman or undertaker, without his default, either by inevitable casualty, by internal defect, by superior force, by robbery or by any peril not guarded against by ordinary diligence, he is not responsible. This is the case only when the material belongs to the em-ployer and the workman only undertakes to put his work upon it. But a distinction must be observed in the case when the employer has engaged a workman to make him an article out of his own materials, for in that case the employer has no property in it, until the work be completed, and the article be deli-vered to him; if, in the mean time, the thing perishes, it is the loss of the workman, who is wholly its owner, according to the maxim res perit domino. In the former case the employer is the owner; in the latter the workman; in the first case it is a bailment, in the second a sale of the thing in futuro. Domat. B. 1, t. 4, 7, n. 3; Id. B. 1, t. 4, 8, n. 10.

5. Another distinction must be made in the case when the thing given by the employer was to become the property of the workman, and an article was to be made out of similar materials, and before its completion it perished. In this case the title to the thing having passed to the workman, the loss must be his. 1 Blackf. 353; 7 Cowen, 752, 756, note; 21 Wend. 85; 3 Mason, 478; Dig. 19, 2, 31; 1 Bouv. Inst. 1006-7.

6. In some of the states by their laws persons who furnish materials for the construction of a building, have a lien against such building for the payment of the value of such materials. See Lien of Mechanics.

MATERNA MATERNIS. This expression is used in the French law to signify that in a succession the property coming from the mother of a deceased person, descends to his maternal relations.

MATERNAL. That which belongs to, or comes from the mother: as, maternal authority, maternal relation, maternal estate, maternal line. Vide Line.

MATERNAL PROPERTY. That which comes from the mother of the party, and other ascendants of the maternal stock. Domat, Liv. Prel. tit. 3, s. 2, n. 12. **MATERNITY.** The state or condition of a mother.

2. It is either legitimate or natural. The former is the condition of the mother who has given birth to legitimate children, while the latter is the condition of her who has given birth to illegitimate children. Maternity is always certain, while the paternity (q. v.) is only presumed.

MATERTERA. Maternal aunt; the sister of one's mother. Inst. 3, 4, 3; Dig. 38, 10, 10, 14.

MATHEMATICAL EVIDENCE. That evidence which is established by a demonstration. It is used in contradistinction to moral evidence. (q. v.)

MATRICULA, civil law. A register in which are inscribed the names of persons who become members of an association or society. Dig. 50, 3, 1. In the ancient church there was matricula clericorum, which was a catalogue of the officiating clergy; and matricula pauperum, a list of the poor to be relieved; hence to be entered in the university is to be matriculated.

MATRIMONIAL CAUSES. In the English ecclesiastical courts there are five kinds of causes which are classed under this head. 1. Causes for a malicious jactitation. 2. Suits for nullity of marriage, on account of fraud, incest, or other bar to the marriage. 2 Hagg. Cons. Rep. 423. 3. Suits for restitution of conjugal rights. 4. Suits for divorces on account of cruelty or adultery, or causes which have arisen since the marriage. 5. Suits for alimony.

MATRIMONIUM. By this word is understood the inheritance descending to a man, ex parti matris. It is but little used.

2. Among the Romans this word was employed to signify marriage; and it was so called because this conjunction was made with the design that the wife should become a mother. Inst. 1, 9, 1.

MATRIMONY. See Marriage.

MATRINA. A godmother.

MATRON. A married woman, generally an elderly married woman.

2. By the laws of England, when a widow feigns herself with child, in order to exclude the next heir, and a supposititious birth is expected, then, upon the writ de ventre inspiciendo, a jury of women is to be, impanneled to try the question, whether with child or not. Cro, Eliz. 566. So when a woman was sentenced to death, and she declared herself to be quick with child, a jury of matrons is impanneled to try whether she be or be not with child. 4 Bl. Com. 395. See Pregnancy; Quick with child.

MATTER. Some substantial or essential thing, opposed to form; facts.

MATTER IN PAYS. Literally, matter in the country; matter of fact, as distinguished from matter of law, or matter of record. Steph. Pl. 197. Vide Country.

MATTER IN DEED. Matter in deed is such matter as may be proved or established by a deed or specialty. In another sense it signifies matter of fact, in contradistinction to matter of law. Co. Litt. 320; Steph. Pl. 197.

MATTER OF FACT, pleading. Matter which goes in denial of a declaration, and Dot in avoidance of it. Bac. Ab. Pleas, &c. G 3; Hob. 127.

MATTER OF LAW, pleading. That which goes in avoidance of a declaration or other pleading, on the ground that the law does not authorize them. It does not deny the matter or fact contained in such pleading, but admitting them avoids them. Bac. Ab. Pleas, &c. G 3. Matter of law, is that which is referred to the decision of the court; matter of fact that which is submitted to the jury.

MATTER OF RECORD. Those facts which may be proved by the production of a record. It differs from matter in deed, which consists of facts which may be proved by specialty. Vide Estoppel.

MATTER, IMPERTINENT, Equity pleading. That which is altogether irrelevant to the case, that does not appertain or belong to it; id est, qui ad rem non pertinet. 4 Bouv. Inst. n. 4163 . See Impertinent.

MATTER, SCANDALOUS, equity pleading. A false and malicious statement of facts, not relevant to the cause. But nothing which is positively relevant, however harsh or gross the charge may be, can be considered scandalous. 4 Bouv. Inst. n. 4163.

2. A bill cannot by the general practice, be referred for impertinence after the defendant has answered, or submitted to answer, but it may be referred for scandal at any time, and even upon the application of a stranger to the suit, for he has the right to prevent the records of the court from being made the vehicle of spreading slanders against himself. Id. n. 41f 64.

MATURITY. The time when a bill or note becomes due. In order to bind the endorsers such note or bill must be protested, when not paid, on the last day of grace. See Days of grace.

MAXIM. An established principle or proposition. A principle of law universally admitted, as being just and consonant With reason.

2. Maxims in law are somewhat like axioms in geometry. 1 Bl. Com. 68. They are principles and authorities, and part of the general customs or common law of the land; and are of

the same strength as acts of parliament, when the judges have determined what is a maxim; which belongs to the judges and not the jury. Terms do Ley; Doct. & Stud. Dial. 1, c. 8. Maxims of the law are holden for law, and all other cases that may be applied to them shall be taken for granted. 1 Inst. 11. 67; 4 Rep. See 1 Com. c. 68; Plowd. 27, b.

3. The application of the maxim to the case before the court, is generally the only difficulty. The true method of making the application is to ascertain bow the maxim arose, and to consider whether the case to which it is applied is of the same character, or whether it is an exception to an apparently general rule.

4. The alterations of any of the maxims of the common law are dangerous. 2 Inst. 210. The following are some of the more important maxims.

A communi observantia non est recedendum. There should be no departure from common observance or usage. Co. Litt. 186.

A l'impossible nul n'est tenu. No one is bound to do what is impossible. 1 Bouv. Inst. n. 601.

A verbis legis non est recedendum. From the words of the law there must be no departure. Broom's Max. 268; 5 Rep. 119; Wing. Max. 25.

Absentia ejus qui reipublicae causa abest, neque ei, neque alii damnosa esse debet. The absence of him who is employed in the service of the state, ought not to be burdensome to him nor to others. Dig. 50, 17, 140.

Absoluta sentetia expositore non indiget. An absolute unqualified sentence or proposition, needs no expositor. 2 Co. Inst. 533.

Abundans cautela non nocet. Abundant caution does no harm. 11 Co. 6.

Accessorius sequit naturam sui principalis. An accessary follows the nature of his principal. 3 Co. Inst. 349.

Accessorium non ducit sed sequitur suum principale. The accessory does not lead, but follow its principal. Co. Ltt 152.

Accusare nemo debet se, nisi coram Deo. No one ought to accuse himself, unless before God. Hard. 139.

Actio exteriora indicant interiora secreta. External actions show internal secrets. 8 Co. R. 146.

Actio non datur non damnificato. An action is not given to him who has received no damages.

Actio personalis moritur cum persona. A personal action dies with the person. This must be understood of an action for a tort only.

Actor qui contra regulam quid adduxit, non est audiendus. He ought not to be heard who advances a proposition contrary to the rules of law.

Actor sequitur forum rei. The plaintiff must follow the forum of the thing in dispute.

Actore non probante reus absolvitur. When the plaintiff does not prove his case, the defendant is absolved.

Actus Dei nemini facit injuriam. The act of God does no injury; that is, no one is responsible for inevitable accidents. 2 Blacks. Com. 122. See Act of God.

Actus incaeptus cujus perfectio pendet, ex voluntate partium, revocari potest; si autem pendet ex voluntate tertia personae, vel ex contingenti, revocari non potest. An act already begun, the completion of which depends upon the will of the parties, may be recalled; but if it depend on the consent of a third person, or of a contingency, it cannot be recalled. Bacon's Max. Reg. 20.

Actus me invito factus, non est meus actus. An act done by me against my will, is not my act.

Actus non reum facit, nisi mens sit rea. An act does not make a person guilty, unless the intention be also guilty. This maxim applies only to criminal cases; in civil matters it is otherwise. 2 Bouv. Inst. n. 2211.

Actus legitimi non recipiunt modum. Acts required by law to be done, admit of no qualification. Hob. 153.

Actus legis nemini facit injuriam, The act of the law does no one an injury. 5 Co. 116.

Ad proximum antecedens fiat relatio, nisi impediatur sententia. The antecedent bears relation to what follows next, unless it destroys the meaning of the sentence.

Ad quaestiones facti non respondent judices; ad quaestione legis non respondent juratores. The judges do not answer to questions of fact; the jury do not answer to questions of law. Cu. Litt. 295.

Aestimatio praeteriti delicti ex postremo facto nunquam crescit. The estimation of a crime committed never increased from a subsequent fact. Bac. Max. Reg. 8.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. A hidden ambiguity of the words is supplied by the verification, for whatever ambiguity arises concerning the deed itself is removed by the verification of the deed. Bacon's Max. Reg. 23.

Aqua cedit solo. The water yields or accompanies the soil. The grant of the soil or land carries the water.

Aqua curit et debet currere. Water runs and ought to run. 3 Rawle, 84, 88.

Aequitas agit in personam. Equity acts upon the person. 4 Bouv. Inst. n. 3733.

Aequilas sequitier legem. Equity follows the law. 1 Story, Eq. Jur. §64.; 3 Wooddes. Lect. 479, 482.

Aequum et bonum, est lex legum. What is good and equal, is the law of laws. Hob. 224.

Affirmati, non neganti incumbit probatio. The proof lies upon him who affirms, not on him who denies.

Aliud est celare, aliud tacere. To conceal is one thing, to be silent another.

Alternatica petitio non est audienda. An alternate petition is not to be heard. 5 Co. 40.

Animus ad se omne jus ducit. It is to the intention that all law applies.

Animus moninis est anima scripti. The intention of the party is the soul of the instrument. 3 Bulstr. 67.

Apices juris non sunt jura. Points of law are not laws. Co. Litt. 304; 3 Scott, N. P. R. 773.

Arbitrium est judicium. An award is a judgment. Jenk Cent. 137.

Argumentum a majori ad minus negative non valet; valet e converso. An argument from the greater to the less is of no force negatively; conversely it is. Jenk. Cent. 281.

Argumentum a divisione est fortissimum in jure. An argument arising from a division is most powerful in law. 6 Co. 60.

Argumentum ab inconvenienti est validum in lege; quia lex non permittit aliquod inconveniens. An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience. Co. Litt. 258.

Argumentum ab impossibili plurmum valet in lege. An argument deduced from authority great avails in law. Co. Litt. 92.

Argumentum ab authoritate est fortissimum in lege. An argument drawn from authority is the strongest in law. Co. Litt. 254.

Argumentum a simili valet in lege. An argument drawn from a similar case, or analogy, avails in law. Co. Litt. 191.

Augupia verforum sunt judice indigna. A twisting of language is unworthy of a judge. Hob. 343.

Bona fides non patitur, ut bis idem exigatur. Natural equity or good faith do no allow us to demand twice the payment of the same thing. Dig. 50, 17, 57.

Boni judicis est ampliare jurisdictionem. It is the part of a good judge to enlarge his jurisdiction; that, his remedial authority. Chan. Prec. 329; 1 Wils 284; 9 M. & Wels. 818.

Boni judicis est causas litium derimere. It is the duty of a good judge to remove the cause of litigation. 2 Co. Inst. 304.

Bonum defendentis ex integra causa, malum ex quolibet defectu. The good of a defendant arises from a perfect case, his harm from some defect. 11 Co. 68.

Bonum judex secundum aequum et bonum judicat, et aequitatem stricto juri praefert. A good judge decides according to justice and right, and prefers equity to strict law. Co. Litt. 24.

Bonum necessarium extra terminos necessitatis non est bonum. Necessary good is not good beyond the bounds of necessity. Hob. 144.

Casus fortuitus non est sperandus, et nemo tenetur devinare. A fortuitous event is not to be foreseen, and no person is held bound to divine it. 4 Co. 66.

Casus omissus et oblivione datus dispositioni communis juris relinquitur. A case omitted and given to oblivion is left to the disposal of the common law. 5 Co. 37.

Catalla juste possessa amitti non possunt. Chattels justly possessed cannot be lost. Jenk. Cent. 28.

Catalla repuntantur inter minima in lege. Chattels are considered in law among the minor things. Jenk Cent. 52.

Causa proxima, non remota spectatur. The immediate, and not the remote cause, is to be considered. Bac. Max. Reg. 1.

Caveat emptor. Let the purchaser beware.

Cavendum est a fragmentis. Beware of fragments. Bacon, Aph. 26.

Cessante causa, cessat effectus. The cause ceasing, the effect must cease.

C'est le crime qui fait la honte, et non pas l'echafaud. It is the crime which causes the shame, and not the scaffold.

Charta de non ente non valet. A charter or deed of a thing not in being, is not valid. Co. Litt. 36.

Chirographum apud debitorem repertum praesumitur solutum. A deed or bond found with the debtor is presumed to be paid.

Circuitus est evitandus. Circuity is to be avoided. 5 Co. 31.

Clausula inconsuetae semper indicunt suspicionem. Unusual clauses always induce a suspicion. 3 Co. 81.

Clausula quae abrogationem excludit ab initio non valet. A clause in a law which precludes its abrogation, is invalid from the beginning. Bacon's Max. Reg. 19, p. 89.

Clausula vel dispositio inutilis per praesumptionem remotam vel causam, ex post facto non fulcitur. A useless clause or disposition is not supported by a remote presumption, or by a cause arising afterwards. Bacon's Max. Reg. 21.

Cogitationis poenam nemo patitur. No one is punished for merely thinking of a crime.

Commodum ex injuria sua non habere debet. No man ought to derive any benefit of his own wrong. Jenk. Cent. 161.

Communis error facit jus. A common error makes law. What was af first illegal, being repeated many times, is presumed to have acquired the force of usage, and then it would be wrong to depart from it. The converse of this maxim is communis error no facit just. A common error does not make law.

Confessio facta in judicio omni probatione major est. A confession made in court is of greater effect than any proof. Jenk. Cent. 102; 11 Co. 30.

Confirmare nemo potest priusquam just ei acciderit. No one can confirm before the right accrues to him. 10 Co. 48.

Confirmatio est nulla, ubi donum praecedens est invalidum. A confirmation is null where the preceding gift is invalid. Co. Litt. 295.

Conjunctio mariti et faeminae est de jure naturae. The union of a man and a woman is of the law of nature.

Consensus non concubitus facit nuptiam. Consent, not lying together, constitutes marriage.

Consensus facit legem. Consent makes the law. A contract is a law between the parties, which can acquire force only by consent.

Consensus tollit errorem. Consent removes or obviates a mistake. Co. Litt. 126.

Consentientes et agentes pari poena plectentur. Those consenting and those perpetrating are embraced in the same punishment. 5 Co. 80.

Consequentiae non est consequentia. A consequence ought not to be drawn from another consequence. Bacon, De Aug. Sci. Aph. 16.

Consilii, non fraudulenti, nulla est obligatio. Advice, unless fraudulent, does not create an obligation.

Constructio contra rationem introducta, potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought rather to be called an usurpation than a custom. Co. Litt. 113.

Construction legis non facit injuriam. The construction of law works not an injury. Co. Litt. 183; Broom's Max. 259.

Consuetudo debet esse certa. A custom ought to be certain. Dav. 33.

Consuetudo est optimus interpres legum. Custom is the best expounder of the law. 2 Co. Inst. 18; Dig. 1, 3, 37; Jenk. Cent. 273.

Consuetudo est altera lex. Custom is another law. 4 Co. 21.

Consuetudo loci observanda est. The custom of the place is to be observed. 6 Co. 67.

Consuetudo praescripta et legitima vincit legem. A prescriptive and legitimate custom overcomes the law. Co. Litt. 113.

Consuetudo semel reprobata non potest amplius induci. Custom once disallowed cannot again be produced. Dav. 33.

Consuetudo voluntis ducit, lex nolentes trahit. Custom leads the willing, law, law compels or draws the unwilling. Jenk. Cent. 274.

Contestio litis eget terminos contradictaris. An issue requires terms of contradiction; that is, there can be no issue without an affirmative on one side and a negative on the other.

Contemporanea expositio est optima et fortissima in lege. A contemporaneous exposition is the best and most powerful in the law. 2 Co. Inst. 11.

Contra negantem principia non est disputandum. There is no disputing against or denying principles. Co. Litt. 43.

Contra non volentem agere nulla currit praescriptio. No prescription runs against a person unable to act. Broom's Max. 398.

Contra veritatem lex numquam aliquid permittit. The law never suffers anything contrary to truth. 2 Co. Inst. 252. But sometimes it allows a conclusive presumption in opposition to truth. See 3 Bouv. Inst. n. 3061.

Contractus legem ex conventione accipiunt. The agreement of the parties makes the law of the contract. Dig. 16, 3, 1, 6.

Contractus ex turpi causa, vel contra bonos mores nullus est. A contract founded on a base and unlawful consideration, or against good morals, is null. Hob. 167; Dig. 2, 14, 27, 4.

Conventio vincit legem. The agreement of the parties overcomes or prevails against the law. Story, Ag. § See Dig. 16, 3, 1, 6.

Copulatio verborum indicat acceptionem in eodem sensu. Coupling words together shows that they ought to be understood in the same sense. Bacom's Max. in Reg. 3.

Corporalis injuria non recipit aestimationem de futuro. A personal injury does no receive satisfaction from a future course of proceding. Bacon's Max. in Reg. 6.

Cuilibet in arte sua herito credendum est. Every one should be believed skilful in how own art. Co. Litt. 125. Vide Experts; Opinion.

Cujus est commodum ejus debet esse incommodum. He who receives the benefit should also bear the disadvantage.

Cujus est dare ejus est disponere. He who has a right to give, has the right to dispose of the gift.

Cujus per errorem dati repetitio est, ejus consulto dati donatio est. Whoever pays by mistake what he does not owe, may recover it back; but he who pays, knowing he owes nothing; is presumed to give.

Cujus est solum, ejus est usque ad caelum. He who owns the soil, owns up to the sky. Co. Litt. 4 a; Broom's Max. 172; Shep. To. 90; 2 Bouv. Inst. n. 15, 70.

Cujus est divisio alterius est electio. Which ever of two parties has the division, the other has the choice. Co. Litt. 166.

Cujusque rei potissima pars principium est. The principal part of everything is the beginning. Dig. 1, 2, 1; 10 Co. 49.

Culpa tenet suos auctores. A fault finds its own.

Culpa est immiscere se rei ad se non pertinenti. It is a fault to meddle with what does not belong to or does not concern you. Dig. 50, 17, 36.

Culpa paena par esto. Let the punishment be proportioned to the crime.

Culpa lata aequiparatur dolo. A concealed fault is equal to a deceit.

Cui pater est populus non habet ille patrem. He to whom the people is father, has not a father. Co. Litt. 123.

Cum confitente sponte mitius est agendum. One making a voluntary confession, is to be dealt with more mercifully. 4 Co. Inst. 66.

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est. When two things repugnant to each other are found in a will, the last is to be confirmed. Co. Litt. 112.

Cum legitimae nuptiae factae sunt, patrem liberi sequuntur. Children born under a legitimate marriage follow the condition of the father.

Cum adsunt testimonia rerum quid opus est verbis. When the proofs of facts are present, what need is there of words. 2 Buls. 53.

Curiosa et captiosa intepretatio in lege reprobatur. A curious and captious interpretation in the law is to be reproved. 1 Buls. 6.

Currit tempus contra desides et sui juris contemptores. Time runs against the slothful and those who neglect their rights.

Cursus curiae est lex curiae. The practice of the court is the law of the court. 3 Buls. 53.

De fide et officio judicis non recipitur quaestio; sed de scientia, sive error sit juris sive facti. Of the credit and duty of a judge, no question can arise; but it is otherwise respecting his knowledge, whether he be mistaken as to the law or fact. Bacon's max. Reg. 17.

De jure judices, de facto juratores, respondent. The judges answer to the law, the jury to the facts.

De minimis non curat lex. The law does not notice or care for trifling matters. Broom's Max. 333; Hob. 88; 5 Hill, N.Y. Rep. 170.

De morte hominis nulla est cunctatio longa. When the death of a human being may be the consequence, no delay is long. Col Litt. 134. When the question is on the life or death of a man, no delay is too long to admit of inquiring into facts.

De non apparentibus et non existntibus eadem est ratio. The reason is the same respecting things which do not appear, and those which do not exist.

De similibus ad similia eadem ratione procedendum est. From similars to similars, we are to proceed by the same rule.

De similibus idem est judicium. Concerning similars the judgment is the same. 7 Co. 18.

Debet esse finis litium. There ought to be an end of law suits. Jenk. Cent. 61.

Debet qui juri subjacere ubi delinquit. Every one ought to be subject to the law of the place where he offends. 3 Co. Inst. 34.

Debile fundamentum, fallit opus. Where there is a weak foundation, the work falls. 2 Bouv. Inst. n. 2068.

Debita sequuntur personam debitoris. Debts follow the person of the debtor. Story, Confl. of Laws, §362.

Debitor non praesumitur donare. A debtor is not presumed to make a gift. See 1 Kames' Eq. 212; Dig. 50, 16, 108.

Debitum et contractus non sunt nullius loci. Debt and contract are of no particular place.

Delegata potestas non potest delegari. A delegated authority cannot be again delegated. 2 Co. Inst. 597; 5 Bing. N. C. 310; 2 Bouv. Inst. n. 1300.

Delegatus non potest delegare. A delegate or deputy cannot appoint another. 2 Bouv. Inst. n. 1936; Story, Ag. §33.

Derativa potestas non potest esse major primitiva. The power which is derived cannot be greater than that from which it is derived.

Derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur. To derogate from a law is to enact something contrary to it; to abrogate a law, is to abolish it entirely. Dig. 50, 16, 102. See 1 Bouv. Inst. n. 91.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. The appointment or designation of one is the exclusion of another; and that expressed makes that which is implied cease. Co. Litt. 210.

Dies dominicus non est juridicus. Sunday is not a day in law. Co. Litt. 135 a; 21 Saund. 291. See Sunday.

Dies inceptus pro completo habetur. The day of undertaking or commencement of the business is held as complete.

Dies incertus pro conditione habetur. A day uncertain is held as a condition.

Dilationes in lege sunt odiosae. Delays in law are odious.

Disparata non debent jungi. Unequal things ought not to be joined. Jenk. Cent. 24. ,

Dispensatio est vulnus, quod vulnerat jus commune. A dispensation is a wound which wounds a common right. Dav. 69.

Dissimilum dissimiles est ratio. Of disimilars the rule is dissimilar. Co. Litt. 191.

Divinatio non interpretatio est, quae omnino recedit a litera. It is a guess not interpretation which altogether departs from the letter. Bacon's Max. in Reg. 3, p. 47.

Dolosus versatur generalibus. A deceiver deals in generals. 2 Co. 34.

Dolus auctoris non nocet successori. The fraud of a possessor does not prejudice the successor.

Dolus circuitu non purgator. Fraud is not purged by circity. Bacon's Max. in Reg. 1.

Domus sua cuique est tutissimum refugium. Every man's house is his castle. 5 Rep. 92.

Domus tutissimum cuique refugium atque receptaculum. The habitation of each one is an inviolable asylum for him. Dig. 2, 4, 18.

Donatio perficitur possesione accipientis. A gift is rendered complete by the possession of the receiver. See 1 Bouv. Innt. n. 712; 2 John. 52; 2 Leigh, 337.

Donatio non praesumitur. A gift is not presumed.

Donatur nunquam desinit possidere antequam donatarius incipiat possidere. He that gives never ceases to possess until he that receives begins to possess. Dyer, 281.

Dormiunt aliquando leges, nunquam moriuntur. The laws sometimes sleep, but neyer die. 2 Co. Inst. 161.

Dos de dote peti non debet, Dower ought not to be sought from dower. 4 Co. 122.

Duas uxores eodem tempore habere non potest. It is not lawful to have two wives at one time. Inst. 1, 10, 6.

Duo non possunt in solido unam rem possidere. Two cannot possess one thing each in entirety. Co. Litt. 368.

Duplicationem possibilitatis lex non patitur. It is not allowed to double a possibility. 1 Roll. R. 321.

Ea est accipienda interpretation, qui vitio curet. That interpretation is to be received, which will not intend a wrong. Bacon's Max. Reg. 3, p. 47.

Ei incumbit probatio qui dicit, non qui negat. The burden of the proof lies upon him who affirms, not he who denies. Dig. 22, 3, 2; Tait on Ev. 1; 1 Phil. Ev. 194; 1 Greenl. Ev. §74; 3 Louis. R. 83; 2 Dan. Pr. 408; 4 Bouv Inst. n. 4411.

Ei nihil turpe, cui nihil satis. To whom nothing is base, nothing is sufficient. 4 Co. Inst. 53.

Ejus est non nolle, qui potest velle. He who may consent tacitly, may consent expressly. Dig. 50, 17, 8.

Ejus est periculum cujus est dominium aut commodum. He who has the risk has the dominion or advantage.

Electa una via, non datur recursus ad alteram. When there is concurrence of means, he who has chosen one cannot have recourse to another. 10 Toull. n. 170.

Electio semel facta, et placitum testatum, non patitur regressum. Election once made, and plea witnessed, suffers not a recall. Co. Litt. 146.

Electiones fiant rite et libere sine interruptione aliqua. Elections should be made in due form and freely, without any interruption. 2 Co. Inst. 169.

Enumeratio infirmat regulam in casibus non enumeratis. Enumeration affirms the rule in cases not enumerated. Bac. Aph. 17.

Equality is equity. Francis' Max., Max. 3; 4 Bouv. Inst. n. 3725.

Equity suffers not a right without a remedy. 4 Bouv. Inst. n. 3726.

Equity looks upon that as done, which ought to be done. 4 Bouv. Inst. n. 3729; 1 Fonbl. Eq. b. 1, ch. 6, s. 9, note; 3 Wheat. 563.

Error fucatus nuda veritate in multis est probabilior; et saepenumero rationibus vincit veritatem error. Error artfully colored is in many things more probable than naked truth; and frequently error conquers truth and reasoning. 2 Co. 73.

Error juris nocet. Error of law is injurious. See 4 Bouv. Inst. n. 3828.

Error qui non resistitur, approbatur. An error not resisted is approved. Doct. & Stud. c. 70.

Error scribentis nocere non debet. An error made by a clerk ought not to injure; a clerical error may be corrected.

Errores ad sua principia referre, est refellere. To refer errors to their origin is to refute them. 3 Co. Inst. 15.

Est autem vis legem simulans. Violence may also put on the mask of law.

Est boni judicis ampliare jurisdictionem. It is the part of a good judge to extend the jurisdiction.

Ex antecedentibus et consequentibus fit optima interpretatio. The best interpration is made from antecedents and consequents. 2 Co. Inst. 317.

Ex diuturnitate temporis, amnia praesumuntur solemniter esse acta. From length of time, all things are presumed to have been done in due form. Co. Litt. 6; 1 Greenl. Ev. §20.

Ex dolo malo non oritur action. Out of fraud no action arises. Cowper, 343; Broom's Max. 349.

Ex facto jus oritur. Law arises out of fact; that is, its application must be to facts.

Ex malificio non oritur contractus. A contract cannot arise out of an act radically wrong and illegal. Broom's Max. 851.

Ex multitudine signorum, colligitur identitas vera. From the great number of signs true identity may be ascertained. Bacon's Max. in Reg. 25.

Ex nudo pacto non oritur action. No actions arises on a naked contract without a consideration. See Nudum Pactum.

Ex tota materia emergat resolutio. The construction or resolution should arise out of the whole subject matter.

Ex turpi causa non oritur action. No action arises out of an immoral consideration.

Ex turpi contractu non oritur actio. No action arises on an immoral contract.

Ex uno disces omnes. From one thing you can discern all.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. A wrong in capital cases is excused or palliated which would not be so in civil matters. Bacon's Max. Reg. 7.

Exceptio ejus rei cujus petitiur dissolutio nulla est. There can be no plea of that thing of which the dissolution is sought. Jenk. Cent. 37.

Exceptio falsi omnium ultima. A false plea is the basest of all things.

Exceptio firmat regulam in contrarium. The exception affirms the rule in contrary cases. Bac. Aph. 17.

Exceptio firmat regulam in casibus non exceptis. The exception affirms the rule in cases not excepted. Bac. Aph. 17.

Exceptio nulla est versus actionem quae exceptionem perimit. There can be no plea against an action which entirely destroys the plea. Jenk. Cent. 106.

Exceptio probat regulam de rebus non exceptio. An exception proves the rule concerning things not excepted. 11 Co. 41.

Exceptio quoque regulam declarat. The exception also declares the rule. Bac. Aph. 17.

Exceptio semper ultima ponenda est. An exception is always to be put last. 9 Co. 53.

Executio est finis et fructus legis. An execution is the end and the first fruit ofthe law. Co. Litt. 259.

Executio juris non habet injuriam. The execution of the law causes no injury. 2 Co. Inst. 482; Broom's Max. 57.

Exempla illustrant non restringunt legem. Examples illustrate and do not restrict the law. Co. Litt. 24.

Expedit reipublicae ut sit finis litium. It is for the public good that there be an end of litigation. Co. Litt. 303.

Expressa nocent, non expressa non nocent. Things expressed may be prejudicial; things not expressed are not. See Dig. 50, 17, 195.

Expressio eorum quae tacite insunt nihil operatur. The expression of those things which are tacitly implied operates nothing.

Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another.

Expressum facit cessare tacitum. What is expressed renders what is implied silent.

Extra legem positus est civiliter mortuus. One out of the pale of the law, (an outlaw,) is civilly dead.

Extra territorium jus dicenti non paretur impune. One who exercises jurisdiction out of his territory is not obeyed with impunity.

Facta sunt potentiora verbis. Facts are more powerful than words.

Factum a judice quod ad ujus officium non spectat, non ratum est. An act of a judge which does not relate to his office, is of no force. 10 Co. 76.

Factum negantis nulla probatio. Negative facts are not proof.

Factum non dictur quod non perseverat. It cannot be called a deed which does not hold out or persevere. 5 Co. 96.

Factum unius alteri nocere non debet. The deed of one should not hurt the other. Co. Litt. 152.

Facultas probationum non est angustanda. The faculty or right of offering proof is not to be narrowed. 4 Co. Inst. 279.

Falsa demonstratio non nocet. A false or mistaken description does not vitiate. 6T. R. 676; see 2 Story's Rep. 291; 1 Greenl. Ev. § 301.

Falsa ortho graphia, sive falsa grammatica, non vitiat concessionem. False spelling or false grammar do not vitiate a grant. 9 Co. 48; Sheph. To. 55.

Falsus in uno, falsus in omnibus. False in one thing, false in everything. 1 Sumn. 356.

Fiat justitia ruat coelum. Let justice be done, though the heavens should fall.

Felonia implicatur in quolibet proditione. Felony is included or implied in every treason. 3 Co. Inst. 15.

Festinatio justitiae est noverca infortunii. The hurrying of justice is the stepmother of misfortune. Hob. 97.

Fiat prout, fieri consuerit, nil temere novandum. Let it be done as formerly, let nothing be done rashly. Jenk. Cent. 116.

Fictio est contra veritatem, sed pro veritate habetur. Fiction is against the truth, but it is to have truth.

Finis rei attendendus est. The end of a thing is to be attended to. 3 Co. Inst. 51.

Finis finem litibus imponit. The end puts an end to litigation. 3 Inst. 78.

Finis unius diei est principium alterius. The end of one day is the beginning of another. 2 Buls. 305.

Firmior et potentior est operatio legis quam dispositio hominis. The disposition of law is firmer and more powerful than the will of man. Co. Litt. 102.

Flumina et protus publica sunt, ideoque jus piscandi omnibus commune est. Rivers and ports are public, therefore the right of fishing there is common to all.

Faemina ab omnibus officiis civilibus vel publicis remotae sunt. Women are excluded from all civil and public charges or offices. Dig. 50, 17, 2.

Forma legalis forma essentialis. Legal form is essential form. 10 Co. 100.

Forma non observata, inferiur adnullatio actus. When form is not observed a nullity of the act is inferred. 12 Co. 7.

Forstellarius est pauperum depressor, et totius communitatis et patriae publicus inimicus. A forestaller is an oppressor of the poor, and a public enemy to the whole community and the country. 3 Co. Inst. 196.

Fortior est custodia legis quam hominis. The custody of the law is stronger than that of man. 2 Roll. R. 325.

Fortior et potentior est dispositio legis quam hominis. The disposition of the law is stronger and more powerful than that of man. Co Litt. 234.

Fraus est celare fraudem. It is a fraud to conceal a fraud. 1 Vern. 270.

Fraus est odiosa et non praesumenda. Fraud is odious and not to be presumed. Cro. Car. 550.

Fraus et dolus nemini patrocianari debent. Fraud and deceit should excuse no man. 3 Co. 78.

Fraus et jus numquam cohabitant. Fraud and justice never agree together. Wing. 680.

Fraus latet in generalibus. Fraud lies hid in general expressions.

Fraus meretur fraudem. Fraud deserves fraud. Plow. 100. This is very doubtful morality.

Fructus pendentes pars fundi videntur. Hanging fruits make part of the land. Dig. 6, 1, 44; 2 Bouv. Inst. n. 1578. See Larceny.

Fructus perceptos villae non esse constat. Gathered fruits do not make a part of the house. Dig. 19, 1, 17, 1; 2 Bouv. Inst. n. 1578.

Frustra est potentia quae numcquam venit in actum. The power which never comes to be exercised is vain. 2 Co. 51.

Frustra feruntur legis nisi subditis et obedientibus. Laws are made to no purpose unless for those who are subject and obedient. 7 Co. 13.

Frustra legis auxilium quaerit qui in legem committit. Vainly does he who offends against the law, seek the help of the law.

Frustra petis quoa statim alteri reddere cogeris. Vainly you ask that which you will immediately be compelled to restore to another. Jenk. Cent. 256.

Frustra probatur quod probatum non relevat. It is vain to prove that which if proved would not aid the matter in question.

Furiosus absentis loco est. The insane is compared to the absent. Dig. 50, 17, 24, 1.

Furiosus solo furore punitur. A madman is punished by his madness alone. Co. Litt. 247.

Furtum non est ubi initium habet detentionis per dominum rei. It is not theft where the commencement of the detention arises through the owner of the thing. 3 Co. Inst. 107.

Generale tantum valet in generalibus, quanium singulare singulis. What is general prevails or is worth as much among things general, as what is particular among things particular. 11 Co. 59.

Generale dictum generaliter est interpretandum. A general expression is to be construed generally. 8 co. 116.

Generale nihil certum implicat. A general expression implies nothing certain. 2 Co. 34.

Generalia sunt praeponenda singularibus. General things are to be put before particular things.

Generalia verba sunt generaliter intelligenda. General words are understood in a general sense. 3 Co. Inst. 76.

Generalis clausula non porrigitur ad ea quae antea specialiter sunt comprehensa. A general clause does not extend to those things which are previously provided for specially. 8 Co. 154.

Haeredem Deus facit, non homo. God and not man, make the heir.

Haeredem est nomen collectivum. Heir is a collective name.

Haeris est nomen juris, filius est nomen naturae. Heir is a term of law, son one of nature.

Haeres est aut jure proprietatis aut jure representationis. An heir is either by right of property or right of representation. 3 Co. 40.

Haeres est alter ispe, et filius est pars patris. An heir is another self, and a son is a part of the father.

Haeres est eadem persona cum antecessore. The heir is the same person with the ancestor. Co. Litt. 22.

Haeres haeredis mei est meus haeres. The heir of my heir is my heir.

Haeres legitimus est quem nuptiae demonstrant. He is the lawful heir whom the marriage demonstrates.

He who has committed iniquity, shall not have equity. Francis' Max., Max. 2.

He who will have equity done to him, must do equity to the same person. 4 Bouv. Inst. n. 3723.

Hominum causa jus constitutum est. Law is established for the benefit of man.

Id quod nostrum est, sine facto nostro ad alium transferi non potest. What belongs to us cannot be transferred to another without our consent. Dig. 50, 17, 11. But this must be understood with this qualification, that the government may take property for public use, paying the owner its value. The title to property may also be acquired, with the consent of the owner, by a judgment of a competent tribunal.

Id certum est quod certum reddi potest. That is certain which may be rendered certain. 1 Bouv. Inst. n. 929; 2 Bl. Com. 143; 4 Kernt com. 462; 4 Pick 179.

Idem agens et patiens esse non potest. One cannot be agent and patient, in the same matter. Jenk. Cent. 40.

Idem est facere, et nolle prohibere cum possis. It is the same thing to do a thing as not to prohibit it when in your power. 3 Co. Inst. 178.

Idem est non probari et non esse; non deficit jus, sed probatio. What does not appear and what is not is the same; it is not the defect of the law, but the want of proof.

Idem est nihil dicere et insufficienter dicere. It is the same thing to say nothing and not to say it sufficiently. 2 Co. Inst. 178.

Idem est scire aut scire debet aut potuisse. To be able to know is the same as to know. This maxim is applied to the duty of every one to know the law.

Idem non esse et non apparet. It is the same thing not to exist and not to appear. Jenk. Cent. 207.

Idem semper antecedenti proximo refertur. The same is always referred to its next antecedent. Co. Litt. 385.

Identitas vera colligitur ex multitudine signorum. True identity is collected from a number of signs.

Id perfectum est quod ex omnibus suis partibus constat. That is perfect which is complete in all its parts. 9 Co. 9.

Id possumus quod de jure possumus. We may do what is allowed by law. Lane, 116.

Ignorantia excusatur, non juris sed facti. Ignorance of fact may excuse, but not ignorance of law. See Ignorance.

Ignorantia legis neminem excusat. Ignorance of fact may excuse, but not ignorance of law. 4 Bouv. Inst. n. 3828.

Ignorantia facti excusat, ignorantia juris non excusat. Ignorance of facts excuses, ignorance of law does not excuse. 1 Co. 177; 4 Bouv. Inst. n 3828. See Ignorance.

Ignorantia judicis est calamitas innocentis. The ignorance of the judge is the misforture of the innocent. 2 Co. Inst. 591.

Ignorantia terminis ignoratur et ars. An ignorance of terms is to be ignorant of the art. Co. Litt. 2.

Illud quod alias licitum non est necessitas facit licitum, et necessitas inducit privilegium quod jure privatur. That which is not otherwise permitted, necessity allows, and necessity makes a privilege which supersedes the law. 10 Co. 61.

Imperitia culpae annumeratur. Ignorance, or want of skill, is considered a negligence, for which one who professes skill is responsible. Dig. 50, 17, 132; 1 Bouv. Inst. n. 1004.

Impersonalitas non concludit nec ligat. Impersonality neither concludes nor binds. Co. Litt. 352.

Impotentia excusat legem. Impossibility excuses the law. Co. Litt. 29.

Impunitas continuum affectum tribuit delinquenti. Impunity offers a continual bait to a delinquent. 4 Co. 45.

In alternativis electio est debitoris. In alternatives there is an election of the debtor.

In aedificiis lapis male positus non est removendus. A stone badly placed in a building is not to be removed. 11 Co. 69.

In aequali jure melior est conditio possidentis. When the parties have equal rights, the condition of the possessor is the better. Mitf. Eq. Pl. 215; Jer. Eq. Jur. 285; 1 Madd. Ch. Pr. 170; Dig. 50, 17, 128. Plowd. 296.

In commodo haec pactio, ne dolus praestetur, rata non est. If in a contract for a loan there is inserted a clause that the borrower shall not be answerable for fraud, such clause is void. Dig. 13, 6, 17.

In conjunctivis oportet utramque partem esse veram. In conjunctives each part ought to be true. Wing. 13.

In consimili casu consilile debet esse remedium. In similar cases the remedy should be similar. Hard. 65.

In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est. In contracts, the interpretation or construction should be liberal; in wills, more liberal; in restitutions, more liberal. Co. Litt. 112.

In conventibus contrahensium voluntatem potius quam verba spectari placuit. In the agreements of the contracting parties, the rule is to regard the intention rather than the words. Dig. 50, 16, 219.

In criminalibus, probationes bedent esse luce clariores. In criminal cases, the proofs ought to be clearer than the light. 3 Co. inst. 210.

In criminalibus sufficit generalis malitia intentionis cum facto paris gradus. In criminal cases a general intention is sufficient, when there is an act of equal or corresponding degree. Bacon's Max. Reg. 15.

In disjunctivis sufficit alteram partem esse veram. In disjunctives, it is sufficient if either part be true. Wing. 15.

In dubiis magis dignum est accipiendum. In doubtful cases the more worthy is to be taken. Branch's Prin. h.t.

In dubiis non praesumitur pro testamento. In doubtful cases there is no presumption in favor of the will. Cro. Car. 51.

In dubio haec legis constructio quam verba ostendunt. In a doubtful case, that is the construction of the law which the words indicate. Br. Pr. h. t.

In dubio pars melior est sequenda. In doubt, the gentler course is to be followed.

In dubio, sequendum quod tutius est. In doubt, the safer course is to be adopted.

In eo quod plus sit, semper inest et minus. The less is included in the greater. 50, 17, 110.

In facto quod se habet ad bonum et malum magis de bono quam de malo lex intendit. In a deed which may be considered good or bad, the law looks more to the good than to the bad. Co. Litt. 78.

In favorabilibus magis attenditur quod prodest quam quod nocet. In things favored what does good is more regarded than what does harm. Bac. Max. in Reg. 12.

In fictione juris, semper subsistit aequitas. In a fiction of law, equity always subsists. 11 Co. 51.

In judiciis minori aetati sucuritur. In judicial proceedings, infancy is aided or favored.

In judicio non creditur nisi juratis. In law none is credited unless he is sworn. All the facts must when established, by witnesses, be under oath or affirmation. Cro. Car. 64.

In jure non remota causa, sed proxima spectatur. In law the proximate, and not the remote cause, is to be looked to. Bacon's Max. REg. 1.

In majore summa continetur minor. In the greater sum is contained the less. 5 Co. 115.

In maleficio ratihabitio mandato comparatur. He who ratifies a bad action is considered as having ordered it. Dig. 50, 17, 152, 2.

In mercibus illicitis non sit commercium. NO commerce should be in illicit goods. 3 Kent, Com. 262, n.

In maxima potentia minima licentia. In the greater power is included the smaller license. Hob. 159.

In obscuris, quod minimum est, sequitur. In obscure cases, the milder course ought to be pursued. Dig. 50, 17, 9.

In odium spoliatoris omnia praesumuntur. All things are presumed in odium of a despoiler. 1 Vern. 19.

In omni re nascitur res qua ipsam rem exterminat. In everything, the thing is born which destroys the thing itself. 2 Co. Inst. 15.

In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur. In every contract, whether nominate or innominate, there is implied a consideration.

In omnibus quidem, maxime tamen in jure, aequitas spectanda sit. In all affairs, and principally in those which concern the administration of justice, the rules of equity ought to be followed. Dig. 50, 17, 90.

In omnibus obligationibus, in quibus dies non ponitar, praesenti die debutur. In all obligations when no time is fixed for the payment, the thing is due immediately. Dig. 50, 17, 14.

In praesentia majoris potestatis, minor potestas cessat. In the presence of the superior power, the minor power ceases. Jenk. Cent. 214.

In pari causa possessor potior haberi debet. When two parties have equal rights, the advantage is always in favor of the possessor. Dig. 50, 17, 128.

In pari causa possessor potior est. In an equal case, better is the condition of the possessor. Dig. 50, 17, 128; Poth. Vente, n. 320; 1 Bouv. Inst. n. 952.

In pari delicto melior est conditio possidentis. When the parties are equally in the wrong, the condition of the possessor is better. 11 Wheat. 258; 3 Cranch 244; Cowp. 341; Broom's Max. 325; 4 Bouv. Inst. n. 3724.

In propria cuusa nemo judex. No one can be judge in his own cuase.

In quo quis delinquit, in eo de jure est puniendus. In whatever thing on offends, in that he is rightfully to be punished. Co. Litt. 233.

In repropria iniquum admodum est alicui licentiam tribuere sententiae. It is expremely unjust that any one should be judge in his own cause.

In re dubia magis inficiato quam affirmatio intelligenda. In a doubtful matter, the negative is to be understood rather than the affirmative. Godb. 37.

In republica maxime conservanda sunt jura belli. In the state the laws of war are to be greatly preserved. 2 Co. Inst. 58.

In restitutionem, non in paenam haeres succedit. The heir succeeds to the restitution not the penalty. 2 Co. Inst. 198.

In restitutionibus benignissima interpretatio facienda est. The most favorable construction is made in restitutions. Co. Litt. 112.

In suo quisque negotio hebetior est quam in alieno. Every one is more dull in his own business than in that of another. Co. Litt. 377.

In toto et pars continetur. A part is included in the whole. Dig. 50, 17, 113.

In traditionibus scriptorum non quod dictum est, sed quod gestum est, inscpicitur. In the delivery of writing, not what is said, but what is done is to be considered. 9 co. 137.

Incerta pro nullius habentur. Things uncertain are held for nothing Dav. 33.

Incerta quantitas vitiat acium. An uncertain quantity vitiates the act. 1 Roll. R. 465.

In civile est nisi tota sententia inspectu, de aliqua parte judicare. It is improper to pass an opinion on any part of a sentence, without examining the whole. Hob. 171.

Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. 11 Co. 58.

Incommodum non solvit argumentum. An inconvenience does not solve an argument.

Indefinitum aequipolet universali. The undefined is equivalent to the whole. 1 Ventr. 368.

Indefinitum supplet locum universalis. The undefined supplies the place of the whole Br. Pr. h. t.

Independenter se habet assecuratio a viaggio vanis. The voyage insured is an independent or distinct thing from the voyage of the ship. 3 Kent, Com. 318, n.

Index animi sermo. Speech is the index of the mind.

Inesse potest donationi, modus, conditio sive causa; ut modus est; si conditio; quia causa. In a gift there may be manner, condition and cause; as, (ut), introduces a manner; if, (si), a condition; because, (quia), a cause. Dy. 138.

Infinitum in jure reprobatur. That which is infinite or endless is reprehensible in law. 9 Co. 45.

Iniquum est alios permittere, alios inhibere mercaturam. It is inequitable to permit some to trade, and to prohibit others. 3 Co. Inst. 181.

Iniquum est aliquem rei sui esse judicem. It is against equity for any one to be judge in his own cause. 12 Co. 13.

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem. It is against equity to deprive freeman of the free disposal of their own property. Co. Litt. 223. See 1 Bouv. Inst. n. 455, 460.

Injuria non praesumitur. A wrong is not presumed. Co. Litt. 232.

Injuria propria non cadet in beneficium facientis. One's own wrong shall not benefit the person doing it.

Injuria fit ei cui convicium dictum est, vel de eo factum carmen famosum. It is a slander of him who a reproachful thing is said, or concerning whom an infamous song is made. 9 Co. 60.

Intentio caeca, mala. A hidden intention is bad. 2 Buls. 179.

Intentio inservire debet legibus, non leges intentioni. Intentions ought to be subservient to the laws, not the laws to intentions. Co. Litt. 314.

Intentio mea imponit nomen operi meo. My intent gives a name to my act. Hob. 123.

Interest reipublicae ne maleficia remaneant impunita. It concerns the commonwealth that crimes do not remain unpunished. Jenk. Cent. 30, 31.

Interest reipublicae res judicatas non rescindi. It concerns the common wealth that things adjudged be not rescinded. Vide Res judicata.

Interest reipublicae quod homines conserventur. It concerns the commonwealth that we be preserved. 12 Co. 62. Interest reipublicae ut qualibet re sua bene utatur. it concerns the commonwealth that every one use his property properly. 6 Co. 37.

Interest reipublicae ut carceres sint in tuto. It concerns the commonwealth that prisons be secure. 2 Co. Inst. 589.

Interest reipublicae suprema hominum testamenta rata haberi. It concerns the commonwealth that men's last wills be sustained. Co. Litt. 236.

Interest reipublicae ut sit finis litium. In concerns the commonwealth that there be an end of law suits. Co. Litt. 303.

Interpretare et concordare leges legibus est optimus interpretandi modus. To interpret and reconcile laws so that they harmonize is the best mode of construction. 8 Co. 169.

Interpretatio fienda est ut res magis valeat quam pereat. That construction is to be made so that the subject may have an effect rather than none. Jenk. Cent. 198.

Interpretatio talis in ambiguis semper fienda, ut evitetur inconveniens et absurdum. In ambiguous things, such a construction is to be made, that what is inconvenient and absurd is to be avoided. 4 Co. Inst. 328.

Interruptio multiplex non tollit praescriptionem semel obtentam. Repeated interruptions do not defeat a prescription once obtained. 2 Co. Inst. 654.

Inutilis labor, et sine fructu, non est effectus legis. Useless labor and without fruit, is not the effect of law. Co. Lit. 127.

Invito beneficium non datur. No one is obligedto accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.

Ipsae legis cupiunt ut jure regantur. The laws themselves require that they should be governed by right. Co. Litt. 174.

Judex ante occulos aequitatem semper habere debet. A judge ought always to have equity before his eyes. Jenk. Cent. 58.

Judex aeuitatem semper spectare debet. A judge ought always to regard equity. Jenk. Cent. 45.

Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticae voluntatis, sed juxta legis et jura pronunciet. A good judge should do nothing from his own judgment, or from the dictates of his private wishes; but he should pronounce according to law and justice. 7 co. 27.

Judex debet judicare secundum allegata et probata. The judge ought to decide according to the allegation and the proof.

Judex est lex loquens. The judge is the speaking law. 7 co. 4.

Judex non potest esse testis in propria causa. A judge cannot be a witness in his own cause. 4 Co. Inst. 279.

Judex non potest injuriam sibi datum punire. A judge cannot punish a wrong done to himself. 12 Co. 113.

Judex damnatur cum nocens absolvitur. The judge is condemned when the guilty are acquitted.

Judex non reddat plus quam quod petens ipse requireat. The judge does demand more than the plaintiff demands. 2 Inst. 286.

Judici officium suum excedenti non paretur. To a judge who exceeds his office or jurisdiction no obedience is due. Jenk. Cent. 139.

Judici satis paena est quod Deum habet ultorem. It is punishment enough for a judge that he is responsible to God. 1 Leon. 295.

Judicia in deliberationibus crebro naturescunt, in accelerato processu nunquam. Judgments frequently become matured by deliberation, never by hurried process. 3 Co. Inst. 210.

Judicia posteriora sunt in lege fortiora. The latter decisions are stronger in law. 8 Co. 97.

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur. Judgments are, as it were, the dicta or sayings of the law, and are received as truth. 2 Co. Inst. 573.

Judiciis posterioribus fides est adhibenda. Faith or credit is to be given to the last decisions. 13 Co. 14.

Judicis est in pronuntiando sequi regulam, exceptione non probata. The judge in his decision ought to follow the rule, when the exception is not made apparent.

Judicis est judicare secudnum allegata et probata. A judge ought to decide according to the allegations and proofs. Dyer. 12.

Judicium a non suo judice datum nullius est momenti. A judgment given by an improper judge is of no moment. 11 Co. 76.

Judicium non debet esse illusorium, suum effectum habere debet. A judgment ought not to be illusory, it ought to have its consequence. 2 Inst. 341.

Judicium redditur in invitum, in praesumptione legis. In presumption of law, a judgment is given against inclination. Co. Litt. 248.

Judicium semper pro veritate accipitur. A judgment is always taken for truth. 2 Co. Inst. 380.

Jura sanguinis nullo jure civili dirimi possunt. The right of blood and kindred cannot be destroyed by any civil law. Dig. 50, 17, 9; Bacon's Max. Reg. 11.

Jura naturae sunt immutabilia. The laws of nature are unchangeable.

Jura eodem modo distruuntur quo constituuntur. Laws are abrogated or repealed by the same means by which they are made.

Juramentum est indivisibile, et non est admittendum in parte verum et in parte falsam. An oath is indivisible, it cannot be in part true and in part false.

Jurato creditur in judicio. He who makes oath is to be believed in judgment.

Jurare est Deum in testum vocare, et est actus divini cultus. To swear is to call God to witness, and is an act of religion. 3 Co. Inst. 165. Vide 3 Bouv. Inst. n. 3180, note; 1 Benth. Rat. of Jud. Ev. 376, 371, note.

Juratores sunt judices facti. Juries are the judges of the facts. Jenk. Cent. 58.

Juris effectus in executione consistit. The effect of a law consists in the execution. Co. Litt. 289.

Jus accrescendi inter mercatores locum non habet, pro beneficio commercii. The right of survivorship does not exist among merchants for the benefit of commerce. Co. Litt. 182; 1 Bouv. Inst. n. 682.

Jus accrescendi praefertur oneribus. The right of survivorship is preferred to incumbrances. Co. Litt. 185.

Jus accrescendi praefertur ultimae voluntati. The right of survivorship is preferred to a last will. Co. Litt. 1856.

Jus descendit et non terra. A right descends, not the land. Co. Litt. 345.

Jus est ars boni et aequi. Law is the science of what is good and evil. Dig. 1, 1, 1, l.

Jus et fraudem numquam cohabitant. Right and fraud never go together.

Jus ex injuria non oritur. A right cannot arise from a wrong. 4 Bing. 639.

Jus publicum privatorum pactis mutari non potest. A public right cannot be changed by private agreement.

Jus respicit aequitatem. Law regards equity. Co. Litt. 24.

Jus superveniens auctori accressit successors. A right owing to a possessor accrues to a successor.

Justicia est virtus excellens et Altissimo complacens. Justice is an excellent virtue and pleasing to the Most high. 4 inst. 58.

Justitia nemine neganda est. Justice is not to be denied. Jenk. Cent. 178.

Justitia non est neganda, non differenda. Justice is not to be denied nor delayed. Jenk. Cent. 93.

Justitia non novit patrem nec matrem, solum veritatem spectat justitia. Justice knows neither father nor mother, justice looks to truth alone. 1 Buls. 199.

La conscience est la plus changeante des regles. Conscience is the most changeable of rules.

Lata culpa dolo aequiparatur. Gross negligence is equal to fraud.

Le contrat fait la loi. The contract makes the law.

Legatos violare contra jus gentium est. It is contrary to the law of nations to violate the rights of ambassadors.

Legatum morte testatoris tantum confirmatur, sicut donatio inter vivos traditione sola. A legacy is confirmed by the death of the testator, in the same manner as a gift from a living person is by delivery alone. Dyer, 143.

Leges posteriores priores contrarias abrogant. Subsequent laws repeal those before enacted to the contrary. 2 Rol. R. 410; 11 Co. 626, 630.

Leges humanae nascuntur, vivunt et moriuntur. Human laws are born, live and die. 7 co. 25.

Leges non verbis sed regus sunt impositae. Laws, not words, are imposed on things. 10 Co. 101.

Legibus sumptis disinentibus, lege naturae utendum est. When laws imposed by the state fail, we must act by the law of nature. 2 Roll. R. 298.

Legis constructio non facit injuriam. The construction of law does no wrong. Co. Litt. 183.

Legis figendi et refigendi consuetudo periculosissima est. The custom of fixing and refixing (making and annulling) laws is most dangerous. 4 Co. Ad. Lect.

Legis interpretatio legis vim obtinet. The construction of law obtains the force of law.

Legislatorum est viva vox, rebus et non verbis, legem imponere. The voice of legislators is a living voice, to impose laws on things and not on words. 10 Co. 101.

Legis minister non tenetur, in executione officii sui fugere aut retrocedere. The minister of the law is not bound, in the execution of his office, neither to fly nor retreat. 6 Co. 68.

Legitime imperanti parere necesse est. One who commands lawfully must be obeyed. Jenk. Cent. 120.

Les fictions naissent de la loi, et non la loi des fictions. Fictions arise from the law, and not law from fictions.

Lex aliquando sequitur aequitatem. The law sometimes follows equity. 3 Wils. 119.

Lex aequitate guadet; appetit perfectum; est norma recti. The law delights in equity; it covets perfection; it is a rule of right. Jenk. Cent. 36.

Lex beneficialis rei consimili remedium praestat. A beneficial law affords a remedy in a similar case. 2 Co. Inst. 689.

Lex citius tolerare vult privatum damnum quam publicum malum. The law would rather tolerate a private wrong than a public evil. Co. Litt. 152.

Lex de futuro, judex de praeterito. The law provides for the future, the judge for the past.

Lex deficere non potest in justitia exhibendaa. The law ought not to fail in dispensing justice. Co. Litt. 197.

Lex dilationes semper exhorret. The law always abhors delay. 2 Co. Inst. 240.

Lex est ab aeterno. The law is from everlasting.

Lex est dictamen rationis. Law is the dictate of reason. Jenk. Cent. 117.

Lex est norma recti. Law is a rule of right.

Lex est ratio summa, quae jubet quae sunt utilia et necessaria, et contraria prohibet. Law is the perfection of reason, which commands what is useful and necessary and forbids the contrary. Co. Litt. 319.

Lex est sanctio sancta, jubens honesta, et prohibens contraria. Law is a scared sanction, commanding what is right and prohibiting the contrary. 2 Co. Inst. 587.

Lex favet doti. The law favors dower.

Lex fingit ubi subsistit aequitas. Law feigns where equity subsists. 11 Co. 90.

Lex intendit vicinum vicini facta scire. The law presumes that one neighbor knows the actions of another. Co. Litt. 78.

Lex judicat de rebus necessario faciendis quasire ipsa factis. The law judges of things which must necessarily be done, as if actually done.

Lex necessitatis est lex temporis, i.e. instantis. The law of necessity is the law of time, that is, time present. Hob. 159.

Lex neminem cogit ad vana seu inutilia peragenda. The law forces no one to do vain or useless things.

Lex nemini facit injuriam. The law does wrong to no one. Lex nemini operatur iniquum, nemini facit injuriam. The law never works an injury, or does him a wrong. Jenk. Cent. 22.

Lex nil facit frustra, nil jubet frustra. The law does nothing and commands nothing in vain. 3 Buls. 279; Jenk. Cent. 17.

Lex non cogit impossibilia. The law requires nothing impossible. Co. Litt. 231, b; 1 Bouv. Inst. n. 951.

Lex non curat de minimis. The law does not regard small matters. Hob. 88.

Lex non cogit ad impossibilia. The law forces not to impossibilities. Hob. 96.

Lex non praecipit inutilia, quia inutilis labor stultus. The law commands not useless things, because useless labor is foolish. Co. Litt. 197.

Lex non deficit in justitia exibenda. The law does not fail in showing justice.

Lex non intendit aliquid impossibile. The law intends not anything impossible. 12 Co. 89.

Lex non requirit verificare quod apparet curiae. The law does not require that to be proved, which is apparent to the court. 9 Co. 54.

Lex plus laudatur quando ratione probatur. The law is the more praised when it is consonant to reason.

Lex prospicit, non respicit. The law looks forward, not backward.

Lex punit mendacium. The law punishes falsehood.

Lex rejicit superflua, pugnantia, incongrua. The law rejects superfluous, contradictory and incongruous things.

Lex reprobat moram. The law dislikes delay.

Lex semper dabit remedium. The law always gives a remedy. 3 Bouv. Inst. n. 2411.

Lex spectat naturae ordinem. The law regards the order of nature. Co. Litt. 197.

Lex succurit ignoranti. The laws succor the ignorant.

Lex semper intendit quod convenit ratione. The law always intends what is agreeable to reason. Co. Litt. 78.

Lex uno ore omnes alloquitur. The law speaks to all with one mouth. 2 Inst. 184.

Libertas inaestimabilis res est. Liberty is an inestimable good. Dig. 50, 17, 106.

Liberum corpus aestimationem non recipit. The body of a freeman does not admit of valuation.

Licet dispositio de interesse furture sit inutilis, tamen potest fieri declaratio praecedens quae fortiatur effectum interveniente novo actu. Although the grant of a future interest be inoperative, yet a declaration precedent may be made, which may take effect, provided a new act intervene. Bacon's Max. Reg. 14.

Licita bene miscentur, formula nisi juris obstet. Things permitted should be well contrived, lest the form of the law oppose. Bacon's Max. Reg. 24.

Linea recta semper praefertur transversali. The right line is always preferred to the collateral. Co. Litt. 10.

Locus contractus regit actum. The place of the contract governs the act.

Longa possessio est pacis jus. Long possession is the law of peace. Co. Litt. 6.

Longa possessio parit jus possidendi, et tollit actionem vero domino. Long possession produces the right of possession, and takes away from the true owner his action. Co. Litt. 110.

Longum tempus, et longus usus qui excedit memoria hominum, sufficit pro jure. Long time and long use, beyond the memory of man, suffices for right. Co. Litt. 115.

Loquendum ut vulgus, sentiendum ut docti. We speak as the common people, we must think as the learned. 7 Co. 11.

Magister rerum usus; magistra rerum experientia. Use is the master of things; experience is the mistress of things. Co. Litt. 69, 229.

Manga negligentia culpa est, magna culpa dolus est. Gross negligence is a fault, gross fault is a fraud. Dig 50, 16, 226.

Magna culpa dolus est. Great neglect is equivalent to fraud. Dig. 50, 16, 226; 2 Spears, R. 256; 1 Bouv. Inst. n. 646.

Maihemium est inter crimina majora minimum et inter minora maximum. Mayhem is the least of great crimes, and the greatest of small. Co. Litt. 127.

Mahemium est homicidium inchoatum. Mayhem is incipient homicide. 3 Inst. 118.

Major haeriditas venit unicuique nostrum a jure et legibus quam a parentibus. A greater inheritance comes to every one of us from right and the laws than from parents. 2 Co. Inst. 56.

Major numerus in se continet minorem. The greater number contains in itself the less.

Majore poena affectus quam legibus statuta est, non est infamis. One affected with a greater punishment than is provided by law, is not infamous. 4 Co. Inst. 66.

Majori continet in se minus. The greater includes the less. 19 Vin. Abr. 379.

Majus dignum trahit in se minus dignum. The more worthy or the greater draws to it the less worthy or the lesser. 5 Vin. Abr. 584, 586.

Majus est delictum seipsum occidare quam alium. It is a greater crime to kill one's self than another.

Mala grammatica non vitiat chartam; sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. Bad grammar does not vitiate a deed; but in the construction of instruments, bad grammar, as far as it can be done, is to be avoided. 6 Co. 39.

Maledicta est expositio quae corrumpit textum. It is a bad construction which corrupts the text. 4 Co. 35.

Maleficia non debent remanere impunita, et impunitas continuum affectum tribuit delinquenti. Evil deeds ought not to remain unpunished, for impunity affords continual excitement to the delinquent. 4 Co. 45.

Malificia propositus distinguuntur. Evil deeds are distinguished from evil purposes. Jenk. Cent. 290.

Malitia est acida, est mali animi affectus. Malice is sour, it is the quality of a bad mind. 2 Buls. 49.

Malitia supplet aetatem. Malice supplies age. Dyer, 104. See Malice.

Malum hominun est obviandum. The malice of men is to be avoided. 4 Co. 15.

Malum non praesumitur. Evil is not presumed. 4 Co. 72.

Malum quo communius eo pejus. The more common the evil, the worse.

Malus usus est abolendus. An evil custom is to be abolished. Co. Litt. 141.

Mandata licita recipiunt strictam interpretationem, sed illicita latam et extensam. Lawful commands receive a strict interpretation, but unlawful, a wide or broad construction. Bacon's Max. Reg. 16.

Mandatarius terminos sobi positos transgredi non potest. A mandatory cannot exceed the bounds of his authority. Jenk. Cent. 53.

Mandatum nisi gratuitum nullum est. Unless a mandate is gratuitous it is not a mandate. Dig. 17, 1, 4; Inst. 3, 27; 1 Bouv. Inst. n. 1070.

Manifesta probatione non indigent. Manifest things require no proof. 7 Co. 40.

Maris et faeminae conjunctio est de jure naturae. The union of husband and wife is founded on the law of nature. 7 Co. 13.

Matrimonia debent esse libera. Marriages ought to be free.

Matrimonium subsequens tollit peccatum praecedens. A subsequent marriage cures preceding criminality.

Maxime ita dicta quia maxima ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur. A maxim is so called because its dignity is chiefest, and its authority most certain, and because universally approved by all. Co. Litt. 11.

Maxime paci sunt contraria, vis et injuria. The greatest enemies to peace are force and wrong. Co. Litt. 161.

Melior est justitia vere praeveniens quam severe pumens. That justice which justly prevents a crime, is better than that which severely punishes it.

Melior est conditio possidentis et rei quam actoris. Better is the condition of the possessor and that of the defendant than that of the plaintiff. 4 Co. Inst. 180.

Melior est causa possidentis. The cause of the possessor is preferable. Dig. 50, 17, 126, 2,.

Melior est conditio possidentis, ubi neuter jus habet. Better is the condition of the possessor, where neither of the two has a right. Jenk. Cent. 118.

Meliorem conditionem suum facere potest minor, deteriorem nequaquam. A minor can improve or make his condition better, but never worse. Co. Litt. 337.

Melius est omnia mala pati quam malo concentire. It is better to suffer every wrong or ill, than to consent to it. 3 Co. Inst. 23.

Melius est recurrere quam malo currere. It is better to recede than to proceed in evil. 4 Inst. 176.

Melius est in tempore occurrere, quam post causam vulneratum remedium quaerere. It is better to restrain or meet a thing in time, than to see a remedy after a wrong has been inflicted. 2 Inst. 299.

Mens testatoris in testamentis spectanda est. In wills, the intention of the testator is to be regarded. Jenk. Cent. 277.

Mentiri est contra mentem ire. To lie is to go against the mind. 3 Buls. 260.

Merx est quidquid vendi potest. Merchandise is whatever can be sold. 3 Metc. 365. Vide Merchandise.

Mercis appellatio ad res mobiles tantum pertinet. The term merchandise belongs to movable things only. Dig. 50, 16, 66.

Minima paena corporalis est major qualibet pecuniaria. The smallest bodily punishment is greater than any pecuniary one. 2 Inst. 220.

Minime mutanda sunt quae certam habuerent interpretationem. Things which have had a certain interpretation are to be altered as little as possible. Co. Litt. 365.

Minor ante tempus agere non potest in casu proprietatis, nec etiam convenire. A minor before majority cannot act in a case of property, nor even agree. 2 Inst. 291.

Minor minorem custodire non debet, alios enim praesumitur male regere qui seipsum regere nuscit. A minor ought not to be guardian of a minor, for he is unfit to govern others who does not know how to govern himself. Co. Litt. 88.

Misera est servitus, ubi jus est vagum aut incertum. It is a miserable slavery where the law is vague or uncertain. 4 Co. Inst. 246.

Mitius imperanti melius paretur. The more mildly one commands the better is he obeyed. 3 Co. Inst. 24.

Mibilia personam sequuntur, immobilia situm. Movable things follow the person, immovable their locality.

Modica circumstantia facti jus mutat. The smallest circumstance may change the law.

Modus et conventio vincunt legem. Manner and agreement overrule the law. 2 Co. 73.

Modus legel dat donationi. The manner gives law to a gift. Co. Litt. 19 a.

Moneta est justum medium et mensura rerum commutabilium, nam per meduim monetae fit omnium rerum conveniens, et justa aestimatio. Money is the just medium and measure of all commutable things, for, by the medium of money, a convenient and just estimation of all things is made. Dav. 18. See 1 Bouv. Inst. n. 922.

Mora reprobatur in lege. Delay is disapproved of in law.

Mors dicitur ultimum supplicium. Death is denominated the extreme penalty. 3 Inst. 212.

Mortuus exitus non est exitus. To be dead born is not to be born. Co. Litt. 29. See 2 Paige, 35; Domat, liv. prel. t. 2, s. 1, n. 4, 6; 2 Bouv. Inst. n. 1721 and 1935.

Multa conceduntur per obliquum quae non conceduntur de directo. Many things are conceded indirectly which are not allowed directly. 6 co. 47. Multa in jure communi contra rationem disputandi pro communi ultilitate introducta sunt. Many things have been introduced into the common law, with a view to the public good, whic are inconsistent with sound reason. Co. Litt. 70; Broom's Max. 67; 2 Co. R. 75. See 3 T. R. 146; 7 T. R. 252.

Multa multo exercitatione facilius quam regulis percipies. You will perceive many things more easily by practice than by rules. 4 Co. Inst. 50.

Multa non vetat lex. quae tamen tacite damnavit. The law forbids many things, which yet it has silently condemned.

Multa transeunt cum universitate quae non per se transeunt. Many things pass as a whole which would not pass separately.

Multi multa, non omnia novit. Many men know many things, no one knows everything. 4 Co. Inst. 348.

Multiplex et indistinctum parit confusionem; et questiones quo simpliciores, eo lucidiores. Multiplicity and indistinctness produce confusion; the more simple questions are the more lucid. Hob. 335.

Multiplicata transgressione crescat paenae inflictio. The increase of punishment shouldbe in proportion to the increase of crime. 2 Co. Inst. 479.

Multitudo errantium non parit errori patrocinium. The multitude of those who err is no excuse for error. 11 Co. 75.

Multitudo imperitorum perdit curiam. A multitude of ignorant practitioners destroys a court. 2 Co. Inst. 219.

Natura appetit perfectum, ita et lex. Nature aspires to perfection, and so does the law. Hob. 144.

Natura non facit saltum, ita nec lex. Nature makes no leap, nor does the law. Co. Litt. 238.

Natura no facit vacuum, nec lex supervacuum. Nature makes no vacuum, the law no supervacuum. Co. Litt. 79.

Naturae vis maxima, natura bis maxima. The force of nature is greatest; nature is doubly great. 2 Co. Inst. 564.

Necessarium est quod non potest aliter se habere. That is necessity which cannot be dispensed with.

Necessitas est lex temporis et loci. Necessity is the law of a particular time and place. 8 Co. 69; H. H. P. C. 54.

Necessitaas excusat aut extenuat delicium in capitalibus, quod non operatur idem in civilibus. Necessity excuses or extentuates delinquency in capital cases, but not in civil. Vide Necessity.

Necessitas facit licitum quod alias non est licitum. Necessity makes that lawful which otherwise is unlawful. 10 Co. 61.

Necessitas inducit privililegium quoad jura privata. Necessity gives a preference with regard to private rights. Bacon's Max. REg. 5.

Necessitas non habet legem. Necessity has no law. Plowd. 18. See Necessity, and 15 Vin. Ab. 534; 22 Vin. Ab. 540.

Necessitas publica major est quam private. Public necessity is greater than private. Bacon's Max. in REg. 5.

Necessitas quod cogit, defendit. Necessity defends what it compels. H. H. P. C. 54.

Necessitas vincit legem. Necessity overcomes the law. Hob. 144.

Negatio conclusionis est error in lege. The negative of a conclusion is error in law. Wing. 268.

Negatio destruit negationem, et ambae faciunt affirmativum. A negative destroys a negative, and both make an affirmative. Co. Litt. 146.

Negatio duplex est affirmatio. A double negative is an affirmative.

Negligentia semper habet infortuniam comitem. Negligence has misfortune for a companion. Co. Litt. 246.

Neminem oportet esse sapientiorem legibus. No man ought to be wiser than the law. Co. Litt. 97.

Nemo admittendus est inhabilitare seipsum. No one is allowed to incapacitate himself. Jenk. Cent. 40. Sed vide "To stultify," and 5 Whart. 371.

Nemo agit in seipsum. No man acts against himself; Jenk. Cent. 40; therefore no man can be a judge in his own cause.

Nemo allegans suam turpitudinem, audiendus est. No one alleging his own turpitude is to be heard as a witness. 4 Inst. 279.

Nemo bis punitur por eodem delicto. No one can be punished twice for the same crime or misdemeanor. See Non bis in idem.

Nemo cogitur rem suam vendere, etiam justo pretio. No one is bound to sell his property, even for a just price. Sed vide Eminent Domain.

Nemo contra factum suum venire potest. No man can contradict his own deed. 2 Inst. 66.

Nemo damnum facit, nisi qui id fecit quod facere jus non habet. No one is considered as committing damages, unless he is doing what he has no right to do. Dig. 50, 17, 151.

Nemo dat qui non habet. No one can give who does not possess. Jenk. Cent. 250.

Nemo de domo sua extrahi debet. A citizen cannot be taken by force from his house to be conducted before a judge or to prison. Dig. 50, 17. This maxim in favor of Roman liberty is much the same as that "every man's house is his castle."

Nemo debet esse judex in propria causa. No one should be judge in his own cause. 12 Co. 113.

Nemo debet ex aliena jactura lucrari. No one ought to gain by another's loss.

Nemo debet immiscere se rei alienae ad se nihil pertinenti. No one should interfere in what no way concerns him.

Nemo debet rem suam sine facto aut defectu suo amittere. No one should lose his property without his act or negligence. Co. Litt. 263.

Nemo est haeres viventes. No one is an heir to the living. 2 Bl. Com. 107; 1 Vin. Ab. 104, tit. Abeyance; Merl. Rep. verbo Abeyance; Co. Litt. 342; 2 Bouv. Inst. n. 1694, 1832.

Nemo ex suo delicto melioroem suam conditionem facere potest. No one can improve his condition by a crime. Dig. 50, 17, 137.

Nemo ex alterius facto praegravari debet. No man ought to be burdened in consequence of another's act.

Nemo ex consilio obligatur. No man is bound for the advice he gives.

Nemo in propria causa testis ese debet. No one can be a witness in his own cause. But to this rule there are many exceptions.

Nemo inauditus condemnari debet, si non sit contumax. No man ought to be condemned unheard, unless he be contumacious.

Nemo nascitur artifex. No one is born an artist. Co. LItt. 97.

Nemo patriam in qua natus est exuere, nec ligeantiae debitum ejurare possit. No man can renounce the country in which he was born, nor abjure the obligation of his allegiance. Co. LItt. 129. Sed vide Allegiance; Expatriation; Naturalization.

Nemo plus juris ad alienum transfere potest, quam ispe habent. One cannot transfer to another a right which he has not. Dig. 50, 17, 54; 10 Pet. 161, 175.

Nemo praesens nisi intelligat. One is not present unless he understands. See Presence.

Nemo potest contra recordum verificare per patriam. No one can verify by the country against a record. The issue upon a record cannot be tried by a jury.

Nemo potest esse tenes et dominus. No man can be at the same time tenant and landlord of the same tenement.

Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do by himself.

Nemo potest sibi devere. No one can owe to himself. See Confusion of Rights.

Nemo praesumitur alienam posteritatem suae praetulisse. No one is presumed to have preferred another's posterity to his own.

Nemo praesumitur donare. No one is presumed to give.

Nemo praesumitur esse immemor suae aeternae salutis, et maxime in articulo mortis. No man is presumed to be forgetful of his eternal welfare, and particularly at the point of death. 6 Co. 76.

Nemo praesumitur malus. No one is presumed to be bad.

Nemo praesumitru ludere in extremis. No one is presumed to trifle at the point of death.

Nemo prohibetur plures negotiationes sive artes exercere. No one is restrained from exercising several kinds of business or arts. 11 Co. 54.

Nemo prohibetur pluribus defensionibus uti. No one is restrained from using several defences. Co. Litt. 304.

Nemo prudens punit ut praeterita revocentur, sed ut futura praeveniantur. No wise one punishes that things done may be revoked, but that future wrongs may be prevented. 3 Buls. 173.

Nemo punitur pro alieno delicto. No one is to be punished for the crime or wrong of another.

Nemo punitur sine injuria, facto, seu defalto. No one is punished unless for some wrong, act or default. 2 Co. Inst. 287.

Nemo, qui condemnare potest, absolvere non potest. He who may condemn may acquit. Dig. 50, 17, 37.

Nemo tenetur seipsum accusare. No one is bound to accuse himself.

Nemo tenetur ad impossibile. No one is bound to an impossibility.

Nemo tenetur armare adversarum contra se. No one is bound to arm his adversary.

Nemo tenetur divinare. No one is bound to foretell. 4 Co. 28.

Nemo tenetur informare qui nescit, sed quisquis scire quod informat. No one is bound to inform about a thing he knows not, but he who gives information is bound to know what he says. Lane, 110.

Nemo tenetur jurare in suam turpitudinem. No one is bound to testify to his own baseness.

Nemo tenetur seipsam infortunis et periculis exponere. No one is bound to expose himself to misfortune and dangers. Co. Litt. 253.

Nemo tenetur seipsum accusare. No man is bound to accuse himself.

Nemo videtur fraudare eos qui sciunt, et consentiunt. One cannot complain of having been deceived when he knew the fact and gave his consent. Dig. 50, 17, 145.

Nihil dat qui non habet. He gives nothing who has nothing.

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. Nothing accrues to him, who, when the right accrues, has nothing in the subject matter. Co. Litt. 188.

Nihil facit error nominis cum de corpore constat. An error in the name is nothing when there is certainty as to the person. 11 Co. 21.

Nihil habet forum ex scena. The court has nothing to do with what is not before it.

Nihil infra regnum subditos magis conservat in tranquilitate et concordia quam debita legum administratio. Nothing preserves in tranquility and concord those who are subjected to the same government better than a due administration of the laws. 2 Co. Inst. 158.

Nihil in lege intolerabilius est, eandem rem diverso jure censeri. Nothing in law is more intolerable than to apply the law differently to the same cases. 4 Co. 93.

Nihil magis justum est quam quod necessarium est. Nothing is more just that what is necessary. Dav. 12.

Nihil perfectum est dum aliquid restat agendum. Nothing is perfect while something remains to be done. 2 co. 9.

Nihil possumus contra veritatem. We can do nothing against truth. Doct. & Stu. Dial. 2, c. 6.

Nihil quod est contra rationem est licitum. Nothing against reason is lawful. Co. Litt. 97.

Nihil quod inconveniens est licitum est. Nothing inconvenient is lawful.

Nihil simul inventum est et perfectum. Nothing is invented and perfected at the same moment. Co. Litt. 230.

Nihil tam naturale est, quam eo genere quidque dissolvere, quo colligatum est. It is very natural that an obligation should not be dissolved but by the same principles which were observed in contracting it. Dig. 50, 17, 35. See 1 Co. 100; 2 Co. Inst. 359.

Nihil tam conveniens est naturali aequitati, quam voluntatem domini voluntis rem suam in alium transferre, ratam haberi. Nothing is more conformable to natural equity, than to confirm the will of an owner who desires to transfer his property to another. Inst. 2, 1, 40; 1 Co. 100.

Nil tamere novandum. Nothing should be rashly changed. Jenk. Cent. 163.

Nil facit error nominis, si de corpore constat. An error in the name is immaterial, if the body is certain.

Nimia subtilitas in jure reporbatur. Too much subtlety is reprobated in law.

Nimium altercando veritas amiltitur. By too much altercation truth is lost. Hob. 344.

No man is presumed to do anything against nature. 22 Vin. Ab. 154.

No man shall take by deed but parties, unless in remainder.

No man can hold the same land immediately of two several landlords. Co. Litt. 152.

No man shall set up his infamy as a defence. 2 W. Bl. 364.

Necessity creates equity.

No one may be judge in his own cause.

Nobiliores et beniginores presumptiones in dubiis sunt praeferendae. When doubts arise the most generous and benign presumptions are to be preferred.

Nomen est quasi rei notamen. A name is, as it were, the note of a thing. 11 Co. 20.

Nomen non sufficit si res non sit de jure aut de facto. A name does not suffice if there be not a thing by law or by fact. 4 Co. 107.

Nomina si nescis perit cognitio rerum. If you know not the names of things, the knowledge of things themselves perishes. Co. Litt. 86.

Nomina sunt notae rerum. Names are the notes of things. 11 Co. 20.

Nomina sunt mutabilia, res autem immobiles. Names are mutable, but things immutable. 6 Co. 66.

Nomina sunt symbola rerum. Names are the symbols of things.

Non accipi debent verba in demonstrationem falsam, quae competunt in limitationem veram. Words ought not to be accepted to import a false demonstration which have effect by way of true limitation. Bacons' Max. REg. 13.

Non alio modo puniatur aliquis, quam secundum quod se habet condemnatio. A person may not be punished differntly than according to what the sentence enjoins. 3 Co. Inst. 217.

Non concedantur citationes priusquam exprimatur super qua ne fieri debet citatio. Summonses or citations should not be granted before it is expressed under the circumstances whether the summons ought to be made. 12 Co. 47.

Non auditor perire volens. One who wishes to perish ought not to be heard. Best on Evidence, §385.

Non consentit qui errat. He who errs does not consent. 1 Bouv. Inst. n. 581.

Non debet, cui plus licet, quod minus est, non licere. He who is permitted to do the greater, may with greater reason do the less. Dig. 50, 17, 21.

Non decipitur qui scit se decipi. He is not deceived who knows himself to be deceived. 5 co. 60.

Non definitur in jure quid sit conatus. What an attempt is, is not defined in law. 6 Co. 42.

Non differunt quae concordant re, tametsi non in verbis iisdem. Those things which agree in substance though not in the same words, do not differ. Jenk. Cent. 70.

Non effecit affectus nisi sequatur effectus. The intention amounts to nothing unless some effect follows. 1 Roll. R. 226.

Non est arctius vinculum inter homines quam jusjurandum. There is no stronger link among men than an oath. Jenk. Cent. 126.

Non est disputandum contra principia negantem. There is no disputing against a man denying principles. Co. Litt. 343.

Non est recedendum a communi abservantia. There is no departing from a common observance. 2 Co. 74.

Non est regula quin fallat. There is no rule but what may fail. Off. Ex. 212.

Non est certandum de regulis juris. There is no disputing about rules of law.

Non faciat malum, ut inde veniat bonum. You are not to do evil that good may come of it. 11 Co. 74.

Non impedit clausula derogatoria, quo minus ab eadem potestate res dissolvantur a quibus constitutuntur. A derogatory clause does not prevent things or acts from being dissolved by the same power, by which they were originally made. Bacon's Max. Reg. 19.

Non in legendo sed in intelligendo leges consistunt. The laws consist not in being read, but in being understood. 8 co. 167.

Non licet quod dispendio licet. That which is permitted only at a loss, is not permitted to be done. Co. Litt. 127.

Non nasci, et natum mori, pari sunt. Not to be born, and to be dead born, is the same.

Non obligat lex nisi promulgata. A law is not obligatory unless it be promulgated.

Non observata forma, infertur adnullatio actus. When the form is not observed, it is inferred that the act is annulled. 12 Co. 7.

Non omne quod licet honestum est. Everything which is permitted is not becoming. Dig. 50, 17, 144.

Non omne damnum inducit injuriam. Not every loss produces an injury. See 3 Bl. Com. 219; 1 Smith's Lead. Cas. 131; Broom's Max. 93; 2 Bouv. Inst. n. 2211.

Non omnium quae a majoribus nostris constituta sunt ratio reddit potest. A reason cannot always be given for the institutions of our ancestors. 4 Co. 78.

Non potest adduci exception ejusdem rei cujus petitur dissolutio. A plea of the same matter, the dissolution of which is sought by the action, cannot be brought forward. Bacon's Max. Reg. 2. When an action is brought to annul a proceeding, the defendant cannot plead such proceeding in bar.

Non praestat impedimentum quod de jure non sortitur effectum. A thing which has no effect in law, is not an impediment. Jenk. Cent. 162.

Non quod dictum est, sed quod factum est, inspicitur. Not what is said, but what is done, is to be regarded. Co. Litt. 36.

Non refert an quis assensum suum praefert verbis, an rebus ipsis et factis. It is immaterial whether a man gives his assent by words or by acts and deeds. 10 Co. 52.

Non refert quid ex aequipolentibus fiat. What may be gathered from words of tantamount meaning, is of no consequence when omitted. 5 Co. 122.

Non refert quid notum sit judice si notum non sit in forma judici. It matters not what is known to the judge, if it is not known to him judicially. 3 Buls. 115.

Non refert verbis an factis fit revocatio. It matters not whether a revocation be by words or by acts. Cro. Car. 49.

Non solum quid licet, sed quidest conveniens considerandum, quia nihil quod inconveniens est licitum. Not only what is permitted, but what is proper, is to be considered, because what is improper is illegal. Co. Litt. 66.

Non sunt longa ubi nihil est quod demere possis. There is no prolixity where nothing can be omitted. Vaugh. 138.

Non temere credere, est nervus sapientae. Not to believe rashly is the nerve of wisdom. 5 Co. 114.

Non videtur quisquam id capere, quod ei necesse est alii restituere. One is not considered as acquiring property in a thing which he is bound to restore. Dig. 50, 17, 51.

Non videntur qui errant consentire. He who errs is not considered as consenting. Dig. 50, 17, 116.

Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutavit. He does not appear to have retained his consent, if he have changed anything through the means of a party threatening. Bacon's Max. Reg. 33.

Novatio non praesumitur. A novation is not presumed. See Novation.

Novitas non tam utilitate prodest quam novitate perturbat. Novelty benefits not so much by its utility, as it disturbs by its novelty. Jenk. Cent. 167.

Novum judicium non dat novum jus, sed declarat antiquum. A new judgment does not make a new law, but declares the old. 10 Co. 42.

Nul ne doit s'enrichir aux depens des autres. No one ought to enrich himself at the expense of others.

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong.

Nulla impossibilia aut inhonesta sunt praesumenda. Impossibilities and dishonesty are not to be presumed. Co. Litt. 78.

Nulle regle sans faute. There is no rule without a fault.

Nulli enim res sua servit jure servitutis. No one can have a servitude over his own property. Dig. 8, 2, 26; 17 Mass. 443; 2 Bouv. Inst. n. 1600.

Nullum exemplum est idem omnibus. No example is the same for all purposes.

Nullum iniquum praesumendum in jure. Nothing unjust is presumed in law. 4 Co. 72.

Nullum simile est idem. No simile is the same. Co. Litt. 3.

Nullus commodum capere potest de injuria sua propria. No one shall take advantage of his own wrong. Co. Litt. 148.

Nullus recedat e curia concellaria sine remedio. No one ought to depart out of the court of chancery without a remedy.

Nunquam fictio sine lege. There is no fiction without law.

Nuptias non concubitas, sed consensus facit. Cohabitation does not make the marriage, it is the consent of the parties. Dig 50, 17, 30; 1 Bouv. Inst. n. 239; Co. Litt. 33.

Obedientia est legis essentia. Obedience is the essence of the law. 11 Co. 100.

Obtemperandum est consuetudini rationabili tanquam legi. A reasonable custom is to be obeyed like law. 4 Co. 38.

Officers may not examine the judicial acts of the court.

Officia magistratus non debent esse venalia. The offices of magistrates ought not to be sold. Co. Litt. 234.

Officia judicialia non concedantur antequam vacent. Judicial offices ought not to be granted before they are vacant. 11 Co. 4.

Officit conatus si effectus sequatur. The attempt becomes of consequence, if the effect follows.

Officium nemini debet esse damnosum. An office ought to be injurious to no one.

Omissio eorum quae tacite insunt nihil operatur. The omission of those things which are silently expressed is of no consequence.

Omne actum ab intentione agentis est judicandum. Every act is to be estimated by the intention of the doer.

Omne crimen ebrietas et incendit et detegit. Drunkenness inflames and produces every crime. Co. Litt. 247.

Omne magis dignum trahit ad se minus dignum sit antiquius. Every worthier thing draws to it the less worthy, though the latter be more ancient. Co. Litt. 355.

Omne magnum exemplum habet aliquid ex iniquio, quod publica utilitate compensatur. Every great example has some portion of evil, which is compensated by its public utility. Hob. 279.

Omne majus continet in se minus. The greater contains in itself the less. Co. Litt. 43.

Omne majus minus in se complecitur. Always the greater is embraced in the minor. Jenk. Cent. 208.

Omne testamentum morte consummatum est. Every will is consummated by death. 3 Co. 29.

Omne sacramentum debet esse de certa scientia. Every oath ought to be founded on certain knowledge. 4 Co. Inst. 279.

Omnia delicta in aperto leviora sunt. All crimes committed openly are considered lighter. 8 co. 127.

Omnia praesumuntur contra spoliatorem. All things are presumed against a wrong doer.

Omnia praesumuntur legitime facta donec probetur in contrarium. All things are presumed to be done legitimately, until the contrary is proved. Co. Litt. 232.

Omnia praesumuntur rite esse acta. All things are presumed to be done in due form.

Omnia praesumuntur solemniter esse acta. All things are presumed to be done solemnly. Co. Litt. 6.

Omnia quae sunt uxoris sunt ipsius viri. All things which are of the wife, belong to the husband. Co. Litt. 112.

Omnis actio est loquela. Every action is a complaint. Co. Litt. 292.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris praemissis et dictis juratorem. Every conclusion of a good and true judgment arises from good and true premises, and the sayings of jurors. Co. Litt. 226.

Omnis consensus tollit errorem. Every consent removes error. 2 Inst. 123.

Omnis definitio in jure periculosa est; parum est enim ut non subverti posset. Every devinition in law is perilous, and but a little may reverse it. Dig. 50, 17, 202.

Omnis exceptio est ipsa quoque regula. An exception is, in itself, a rule.

Omnis innovatio plus novitate perturbat quam utilitate prodest. Every innovation disturbs more by its novelty than it benefits by its utility.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. The interpretation of instruments is to be made, if they will admit of it, so that all contradictions may be removed. Jenk. Cent. 96.

Omnis interpretatio vel declarat, vel extendit, vel restringit. Every interpretation either declares, extends or restrains.

Omnis regula suas patitur exceptiones. All rules of law are liable to exceptions.

Omnis privatio praesupponit habitum. Every privation presupposes former enjoyment. Co. Litt. 339.

Omnis ratihabitio retro trahitur et mandato aequiparatur. Every consent given to what has already been done, has a retrospective effect and equals a command. Co. Litt. 207.

Once a fraud, always a fraud. 13 Vin. Ab. 539.

Once a mortgage always a mortgage.

Once a recompense always a recompense. 19 Vin. Ab. 277.

One should be just before he is generous.

One may not do an act to himself.

Oportet quod certa res deducatur in judicium. A thing, to be brought to judgment, must be certain or definite. Jenk. Cent. 84.

Oportet quod certa sit res venditur. A thing, to be sold, must be certain or definite.

Optima est lex, quae minimum relinquit arbitrio judicis. That is the best system of law which confides as little as possible to the discretion of the judge. Bac. De Aug. Sci. Aph. 46.

Optimam esse legem, quae minimum relinquit arbitrio judicis; id quod certitudo ejus praestat. That law is the best which leaves the least discretion to the judge; and this is an advantage which results from certainty. Bacon, De Aug. Sc. Aph. 8.

Optimus judex, qui minimum sibi. He is the best judge who relies as little as possible on his own discretion. Bac. De Aug. Sci. Aph. 46.

Optimus interpretandi modus est sic legis interpretare ut leges legibus accordant. The best mode of interpreting laws is to make them accord. 8 Co. 169.

Optimus interpres rerum usus. Usage is the best interpreter of things. 2 Inst. 282.

Optimus legum interpres consuetudo. Custom is the best interpreter of laws. 4 Inst. 75.

Ordine placitandi servato, servatur et jus. The order of pleading being preserved, the law is preserved. Co. Litt. 363.

Origo rei inspici debet. The origin of a thing ought to be inquired into. 1 Co. 99.

Paci sunt maxime contraria, vis et injuria. Force and wrong are greatly contrary to peace. Co. Litt. 161.

Pacta privata juri publico derogare non possunt. Private contracts cannot derogate from the public law. 7 Co. 23.

Pacto aliquod licitum est, quid sine pacto non admittitur. By a contract something is permitted, which, without it, could not be admitted. Co. Litt. 166.

Par in parem imperium non habet. An equal has no power over an equal. Jenk. Cent. 174. Example: One of two judges of the same court cannot commit the other for contempt.

Paria copulantur paribus. Things unite with similar things.

paribus sententiis reus absolvitur. When opinions are equal, a defendant is acquitted. 4 Inst. 64.

Parte quacumque integranta sublata, tollitur totum. An integral part being taken away, the whole is taken away. 3 Co. 41.

Partus ex legitimo thoro non certius noscit matrem quam genitorem suam. The offspring of a legitimate bed knows not his mother more certainly than his father. Fortes. c. 42.

Partus sequitur ventrem. The offspring follow the condition of the mother. This is the law in the case of slaves and animals; 1 Bouv. Inst. n. 167, 502; but with regard to freemen, children follow the condition of the father.

Parum differunt quae re concordant. Thing differ but little which agree in substance. 2 Buls. 86.

Parum est latam esse sententiam, nisi mandetur executioni. It is not enough that sentence should be given unless it is put in execution. Co. Litt. 289.

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum. It avails little to know what ought to be done, if you do not know how it is to be done. 2 Co. Inst. 503.

Patria potestas in pietate debet, non in atrocitate consistere. Paternal power should consist in affection, not in atrocity.

Pater is est quem nuptiae demonstrant. The father is he whom the marriage points out. 1 Bl. Com. 446; 7 mart. N. S. 548, 553; Dig. 2, 4, 5; 1 Bouv. Inst. n. 273, 304, 322.

Peccata contra naturam sunt gravissima. Offences against nature are the heaviest. 3 Co. Inst. 20.

Peccatum peccato addit qui culpae quam facit patrocinium defensionis adjungit. He adds one offence to another, who, when he commits a crime, joins to it the protection of a defence. 5 Co. 49.

Per rerum naturam, factum negantis nulla probatio est. It is in the nature of things that he who denies a fact is not bound to prove it.

Per varius actus, legem experientia facit. By various acts experience framed the law. 4 Co. Inst. 50.

Perfectum est cui nihil deest secundum suae perfectionis vel naturae modum. That is perfect which wants nothing in addition to the measure of its perfection or nature. Hob. 151.

Periculosum est res novas et inusitatas inducere. It is dangerous to introduce new and dangerous things. Co. Litt. 379.

Periculum rei venditae, nondum traditae, est emptoris. The purchaser runs the risk of the loss of a thing sold, though not delivered. 1 Bouv. Inst. n. 939; 4 B. & C. 941; 4 B. & C. 481.

Perpetua lex est, nullam legem humanum ac positivam perpetuam esse; et clausula quae abrogationem excludit initio non valet. It is a perpetual law that no human or positive law can be perpetual; and a clause in a law which precludes the power of abrogation is void ab initio. Bacon's Max. in Reg. 19.

Perpetuities are odious in law and equity.

Persona conjuncta aequiparatur interesse proprio. A person united equal one's own interest. Bacon's Max. Reg. 18. This means that a personal connexion, as nearness of blood or kindred, may in some cases, raise a use.

Perspicua vera non sunt probanda. Plain truths need not be proved. Co. Litt. 16.

Pirata est hostis humani generis. A pirate is an enemy of the human race. 3 Co. Inst. 113.

Pluralis numerus est duobus contentus. The plural number is contained in two. 1 Roll. R. 476.

Pluralities are odious in law.

Plures cohaeredes sunt quasi unum corpus, propter unitatem juris quod habent. Several co-heirs are as one body, by reason of the unity of right which they possess. Co. Litt. 163.

Plures participes sunt quasi unum corpus, in eo quod unum jus habent. Several partners are as one body, by reason of the unity of their rights. Co. Litt. 164.

Plus exempla quam peccata nocent. Examples hurt more than offences.

Plus peccat auctor quam actor. The instigator of a crime is worse than he who perpetrates it. 5 Co. 99.

Plus valet unus oculatus testis, quam auriti de cem. One eye witness is better than ten ear ones. 4 Inst. 279.

Paena ad paucos, metus ad omnes perveniat. A punishment inflicted on a few, causes a dread to all. 22 Vin. Ab. 550.

Paena non potest, culpa perennis erit. Punishment may have an end, crime is perpetual. 21 Vin. Ab. 271.

Paena ad paucos, metus ad omnes. Punishment to few, dread or fear to all.

Paenae potius molliendae quam exasperendae sunt. Punishments should rather be softened than aggravated. 3 Co. Inst. 220.

Posito uno oppositorum negatur alterum. One of two opposite positions being affirmed, the other is denied. 3 Ro..l R. 422.

Possessio est quasi pedis positio. Possession is, as it were, the position of the foot. 3 Co. 42.

Possession of the termer, possession of the reversioner.

Possession is a good title, where no better title appears. 20 Vin. Ab. 278.

Possessor has right against all men but him who has the very right.

Possibility cannot be on a possibility.

Posteriora derogant prioribus. Posterior laws derogate former ones. 1 Bouv. Inst. n. 90.

Potentia non est nisi ad bonum. Power is not conferred, but for the public good.

Potentia debet sequi justiciam, non antecedere. Power ought to follow, not to precede justice. 3 Buls. 199.

Potentia inutilis frustra est. Useless power is vain.

Potest quis renunciare pro se, et suis, juri quod pro se introductum est. A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83.

Potestas stricte interpretatur. Power should be strictly interpreted.

Postestas suprema seipsum dissolvare potest, ligare non potest. Supreme power can dissolve, but cannot bind itself.

Potior est conditio defendentis. Better is the condition of the defendant, than that of the plaintiff.

Potior est conditio possidentis. Better is the condition of the possessor.

Praepropera consilia, raro sunt prospera. Hasty counsels are seldom prosperous. 4 Inst. 57.

Praestat cautela quam medela. Prevention is better than cure. Co. Litt. 304.

Praesumptio violenta, plena probatio. Strong presumption is full proof.

Praesumptio violenta valet in lege. Strong presumption avails in law.

Praetextu liciti non debet admitti illicitum. Under pretext of legality, what is illegal ought not to be admitted. 10 Co. 88.

Praxis judicim est interpres legum. The practice of the judges is the interpreter of the laws. Hob. 96.

Precedents that pass sub silentio are of little or no authority. 16 Vin. 499.

Precedents has as much law as justice.

Praesentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis. The presence of the body cures the error in the name; the truth of the name cures an error in the description. Bacon's Max. Reg. 25.

Pretium succedit in locum rei. The price stands in the place of the thing sold. 1 Bouv. Inst. n. 939.

Prima pars aequitatis aequalitas. The radical element of justice is equality.

Principia data sequuntur concomitantia. Given principles follow their concomitants.

Principia probant, non probantur. Principles prove, they are not proved. 3 Co. 40. See Principles.

Principiorum non est ratio. There is no reasoning of principles. 2 Buls. 239. See Principles.

Principium est potissima pars cujusque rei. The principle of a thing is its most powerful part. 10 Co. 49.

Prior tempore, potior jure. He who is before in time, is preferred in right.

Privatorum conventio juri publico non derogat. Private agreements cannot derogate from public law. Dig. 50, 17, 45, 1.

Privatum incommodum publico bono peusatur. Private inconvenience is made up for by public benefit.

Privilegium est beneficium personale et extinguitur cum persona. A privilege is a personal benefit and dies with the person. 3 Buls. 8.

Privilegium est quasi privata lex. A privilege is, as it were, a private law. 2 Buls. 8.

Probandi necessitas incumbit illi ui agit. The necessity of proving lies with him who makes the charge.

Probationes debent esse evidentes, id est, perspicuae et faciles intelligi. Proofs ought to be made evident, that is, clear and easy to be understood. Co. Litt. 283.

Probatis extremis, praesumitur media. The extremes being proved, the intermediate proceedings are presumed. 1 Greenl. Ev. §20.

Processus legis est gravis vexatio, executio legis coronat opus. The process of the law is a grievous vexation; the execution of the law crowns the work. Co. Litt. 289.

Prohibetur ne quis faciat in suo quod nocere possit alieno. It is prohibited to do on one's own property that which may injure another's. 9 co. 59.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem. He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote, him who is more remote. co. Litt. 10.

Proprietas verborum est salus proprietatum. The propriety of words is the safety of property.

Protectio trahit subjectionem, subjectio projectionem. Protection draws to it subjection, subjection, protection. Co. Litt. 65.

Proviso est providere praesentia et futura, non praeterita. A proviso is to provide for the present and the future, not the past. 2 Co. 72.

Proximus est cui nemo antecedit; supremus est quem nemo sequitur. He is next whom no one precedes; he is last whom no one follows.

Prudentur agit qui praecepto legis obtemperat. He acts prudently who obeys the commands of the law. 5 Co. 49.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum. Children are of the blood of their parents, but the father and mother are not the blood of their children. 3 Co. 40.

Purchaser without notice not obliged to discover to his own hurt. See 4 Bouv. Inst. n. 4336.

Quae ab hostibus capiuntur, statim capientium fiunt. Things taken from public enemies immediately become the property of the captors. See Infra praesidia.

Quae ad unum finem loquuta sunt; non debent ad alium detorqueri. Words spoken to one end, ought not to be perverted to another. 4 Co. 14.

Quae cohaerent personae a persona separari nequeunt. Things which belong to the person ought not to be separated from the person. Jenk. Cent. 28.

Quae communi legi derogant stricte interpretantur. Laws which derogate from the common law ought to be strictly construed. Jenk. Cent. 231.

Quae contra rationem juris introducta sunt, non debent trahi in consequentiam. Things introduced contrary to the reason of the law, ought not to be drawn into precedents. 12 Co. 75.

Quae dubitationis causa tollendae inseruntur communem legem non laedunt. Whatever is inserted for the purpose of removing doubt, does not hurt or affect the common law. Co. Litt. 205.

Quae incontinenti vel certo fiunt inesse videntur. Whatever is done directly and certainly, appears already in existence. Co. Litt. 236.

Quae in auria acta sunt rite agi praesummuntur. Whatever is done in court is presumed to be rightly done. 3 Buls. 43.

Quae in partes dividi nequeunt solida, a singulis praestantur. Things which cannot be divided into parts are rendered entire severally. 6 Co. 1.

Quae inter alios acta sunt nemini nocere debent, sed prodesse possunt. Transactions between strangers may benefit, but cannot injure, persons who are parties to them. 6 Co. 1.

Quae malasunt inchoata in principio vex bono peragantur exitu. Things bad in the commencement seldom end well. 4 Co. 2.

Quae non valeant singula, juncta juvant. Things which do not avail singly, when united have an effect. 3 Buls. 132.

Quae praeter consuetudinem et morem majorum fiunt, neque placent, necque recta videntur. What is done contrary to the custom of our ancestors, neither pleases nor appears right. 4 Co. 78.

Quae rerum natura prohibentur, nulla lege confirmata sunt. Whatis prohibited in the nature of things, cannot be confirmed by law. Finch's Law, 74.

Quaecumque intra rationem legis inveniuntur, intra legem ipsam esse judicantur. Whatever appears within the reason of the law, ought to be considered within the law itself. 2 Co. Inst. 689.

Quaelibet concessio fortissime contra donatorem interpretanda est. Every grant is to be taken most strongly against the grantor. Co. Litt. 183.

Quaelibet jurisdictio cancellos suos habet. Every jurisdiction has its bounds.

Qualibet paena corporalis, quam vis minima, major est qualibet paena pecuniaria. Every corporal punishment, although the very least, is greater than pecuniary punishment. 3 Inst. 220.

Quaeras de dubiis, legem bene discere si vis. Inquire into them, is the way to know what things are really true. Litt. §443.

Qualitas quae inesse debet, facile praesumitur. A quality which ought to form a part, is easily presumed.

Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum. What is reasonable time, the law does not define; it is left to the discretion of the judges. Co. Litt. 56. See 11 Co. 44.

Quamvis aliquid per se non sit malum, tamen si sit mali exemple, non est faciendum. Although, in itself, a thing may not be had, yet, if it holds out a bad example, it is not to be done. 2 Co. Inst. 564.

Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione et ipsa cessat. Although the law speaks generally, it is to be restrained when the reason on which it is founded fails. 4 Co. Inst. 330.

Quando abest provisio partis, adest provisio legis. A defect in the provision of the party is supplied by a provision of the law. 6 Vin. Ab. 49.

Quando aliquid prohibetur ex directo, prohibetur et per obliquum. When anything is prohibited directly, it is prohibited indirectly. Co. Litt. 223.

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quae clausulae generali sunt constnanea interpretanda est charta secundum verba specialia. When a deed contains a general clause, and afterwards descends to special words, consistent with the general clause, the deed is to be construed according to the special words. 8 Co. 154.

Quando do una et eadem re, duo onerabiles existunt, unus, pro insufficientia alterius, de integro onerabitur. When two persons are liable on a joint obligation, if one makes default the other must bear the whole. 2 Co. Inst. 277.

Quando dispositio referri potest ad duas res, ita quod secundum relationem unam vitiatur et secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio. When a disposition may be made to refer to two things, so that according to one reference, it would be vitiated, and by the other it would be made effectual, such a reference must be made to the disposition which is to have effect. 6 co. 76.

Quando diversi considerantur actus ad aliquem statum perficiendum, plus respicit lex acium originalem. When two different acts are required to the formation of an estate, the law chiefly regards the original act. 10 Co. 49.

Quando duo juro concurrunt in und persona, aequum est ac si essent in diversis. When two rights concur in one person, it is the same as if they were in two separate persons. 4 Co. 118.

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest. When the law gives anything, it gives the means of obtaining it. 5 Co. 47.

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur. When the law gives anything, it gives tacitly what is incident to it. 2 Co. Inst. 326; Hob. 234.

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. When the law is special, but its reason is general, the law is to be understood generally. 2 co. Inst. 83; 10 Co. 101.

Quando licet id quod majus, videtur licere id quod minus. When the greate is allowed, the less seems to be allowed also.

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est. When more is done than ought to be done, that shall be considered as performed, which should have been performed; as, if a man having a power to make a lease for ten years, make one for twenty years, it shall be void for the surplus. Broom's Max. 76; 8 Co. 85.

Quando verba et mens congruunt, non est interpretationi locus. When the words and the mind agree, there is no place for interpretation.

Quem admodum ad quaestionem facti non respondent judices, ita ad quaestionem juris non respondent juratores. In the same manner that judges do not answer to questions of fact, so jurors do not answer to questions of law. Co. Litt. 295.

Qui accusat integrae famae sit et non criminosus. Let him who accuses be of a clear fame, and not criminal. 3 Co. Inst. 26.

Qui adimit medium, dirimit finem. He who takes away the means, destroys the end. Co. Litt. 161.

Qui aliquid staruerit parte inaudita altera, aequum licet dixerit, haud aequum facerit. He who decides anything, a party being unheard, though he should decide right, does wrong. 6 Co. 52.

Qui bene interrogat, bene docet. He who questions well, learns well. 3 Buls. 227.

Qui bene distinguit, bene docet. He who distinguishes well, learns well. 2 Co. Inst. 470.

Qui concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit. He who grants anything, is considered as granting that, without which his grant would be idle, without which the thing itself could not exist. 11 Co. 52.

Qui confirmat nihil dat. He who confirms does not give. 2 Bouv. Inst. n. 2069.

Qui contemnit praeceptum, contemnit praecipientem. He who contemns the precept, contemns the party giving it. 12 Co. 96.

Qui cum alio contrahit, vel est, vel debet esse non ignarus conditio ejus. He who contracts, knows, or ought to know, the quality of the person with whom he contracts, otherwise he is not excusable. Dig. 50, 17, 19; 2 Hagg. Consist. Rep. 61.

Qui destruit medium, destruit finem. He who destroys the means, destroys the end. 11 Co. 51; Shep. To. 342.

Qui doit inheritoer al pere, doit inheriter al fitz. He who ought to inherit from the father, ought to inherit from the son.

Qui ex damnato coitu nascuntur, inter liberos non computantur. He who is born of an illicit union, is not counted among the children. Co. Litt. 8. See 1 Bouv. Inst. n. 289.

Qui evertit causam, evertit causatum futurum. He who overthrows the cause, overthrows its future effects. 10 Co. 51.

Qui facit per alium facit per se. He who acts by or through another, acts for himself. 1 Bl. Com. 429; Story, Ag. §440; 2 Bouv. Inst. n. 1273, 1335, 1336; 7 Man. & Gr. 32, 33.

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi. He who has jurisdiction to loosen, has jurisdiction to bind. 12 Co. 59.

Qui haeret in litera, haeret in cortice. He who adheres to the letter, adheres to the bark. Co. Litt. 289.

Qui ignorat quantum solvere debeat, non potest improbus videre. He who does not know what he ought to pay, does not want probity in not paying. Dig. 50, 17, 99.

Qui in utero est, pro jam nato habetur quoties de ejus commodo quaeritur. He who is in the womb, is considered as born, whenever it is for his benefit.

Qui jure suo utitur, nemini facit injuriam. He who uses his legal rights, harms no one.

Qui jussu judicis aliquod fuerit non videtur dolo malo fecisse, quia parere necesse est. He who does anything by command of a judge, will not be supposed to have acted from an improper motive, because it was necessary to obey. 10 Co. 76.

Qui male agit, odit lucem. He who acts badly, hates the light. 7 Co. 66.

Qui melius probat, melius habet. He who proves most, recovers most. 9 Vin. Ab. 235.

Qui molitur insidias in patriam, id facit quod insanusnauta perforans navem in qua vehitur. He who betrays his country, is like the insane sailor who bores a hole in the ship which carries him. 3 Co. Inst. 36.

Qui nascitur sine legitimo matrimonio, matrem sequitur. He who is born out of lawful matrimony, follows the condition of the mother.

Qui non cadunt in constantem virem, vani timores sunt astinandi. Those are vain fears which do not affect a man of a firm mind. 7 Co. 27.

Qui non libere veritatem pronunciat, proditor est verilatis. He who does not willingly speak the truth, is a betrayer of the truth.

Qui non obstat quod obstare potest facere videtur. He who does not prevent what he can, seems to commit the thing. 2 Co. Inst. 146.

Qui non prohibit quod prohibere potest assentire videtur. He who does not forbid what he can forbid, seems to assent. 2 Inst. 305.

Qui non propulsat injuriam quando potest, infert. He who does not repel a wrong when he can, induces it. Jenk. Cent. 271.

Que obstruit aditum, destruit commodum. He who obstructs an entrance, destroys a convenience. Co. Litt. 161.

Qui omne dicit, nihil excludit. He who says all, excludes nothing. 4 Inst. 81.

Qui parcit nocentibus, innocentibus punit. He who spares the guilty, punishes the innocent.

Qui peccat ebuius, luat sobrius. He who offends drunk, must be punished when sober. Car. R. 133.

Qui per alium facit per seipsum facere videtur. He who does anything through another, is considered as doing it himself. Co. Litt. 258.

Qui per fraudem agit, frustra agit. He who acts fraudulently acts in vain. 2 Roll. R. 17.

Qui potest et debet vetare, jubet. He who can and ought to forbid, and does not, commands.

Qui primum peccat ille facit rixam. He who first offends, causes the strife.

Qui prior est tempore, potior est jure. He who is first or before in time, is stronger in right. Co. Litt. 14 a; 1 Story, Eq. Jur. §64 d; Story Bailm. §312; 1 Bouv. Inst. n. 952; 4 Bouv. Inst. n. 3728.

Qui providet sibi, providet haredibus. He who provides for himself, provides for his heirs.

Qui rationem in omnibus quarunt, rationem subvertunt. He who seeks a reason for everything, subverts reason. 2 Co. 75.

Qui semel actionem renunciaverit, amplius repetere non potest. He who renounces his action once, cannot any more repeat it. 8 Co. 59. See Retraxit.

Qui semel malus, semper prasumitur esse malus in eodem genere. He who is once bad, is presumed to be always so in the same degree. Cro. Car. 317.

Que sentit commodum, sentire debet et onus. He who derives a benefit from a thing, ought to feel the disadvantages attending it. 2 Bouv. Inst. n. 1433.

Qui tacet consentire videtur. He who is silent appears to consent. Jenk. Cent. 32.

Qui tardius solvit, minus solvit. He who pays tardily, pays less than he ought. Jenk. Cent. 38.

Qui timent, cavent et vitant. They who fear, take care and avoid. Off. Ex. 162.

Qui vult decipi, decipiatur. Set him who wishes to be deceived, be deceived.

Quicpuid acquiritur servo, acquiritur domino. Whatever is acquired by the servant, is acquired for the master. 15 Bin. Ab. 327.

Quicquid plantatur solo, solo cedit. Whatever is affixed to the soil belongs to it. Went. Off. Ex. 145.

Quicquid plantatur solo, solo cedit. Whatever is affixed to the soil or the realty, thereby becomes a parcel. See Amb: 113; 3 East, 51; and article Fixtures.

Qnicquid est contra normam recti est injuria. Whatever is against the rule of right, is a wrong. 3 Buls. 313.

Quicquid in excessu actum est, lege prohibitur. Whatever is done in excess is prohibited by law. 2 Co. Inst. 107.

Quicquid judicis auctoritati subjictur, novitati nonsubjiclur. Whatever is subject to the authority of a judge, is not subject to novelty. 4 Co. Inst 66.

Quicquid solvitur, solvitur secundum modum solventis. Whatever is paid, is paid according to the manner of the payor. 2 Vern. 606. See Appropriation.

Quilibet potest renunciare juri pro se inducto. Any one may renounce a law introduced for his own benefit. To this rule there are some exceptions. See 1 Bouv. Inst. n. 83.

Qusquis est qui velit juris consultus haberi, continuet studium, velit a quocunque doceri. Whoever wishes to be a lawyer, let him continually study, and desire to be taught everything.

Quod ab initio non valet, in tractu temporis non convalescere. What is not good in the beginning cannot be rendered good by time. Merl. Rep. verbo Regle de Droit. This, though true in general, is not universally so.

Quod ad jus naturale attinet, omnes homenes aequales sunt. All men are equal before the natural law. Dig. 50, 17, 32.

Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum efficitur. What is otherwise good and just, if sought by force or fraud, becomes bad and unjust. 3 Co. 78.

Quod constat clare, non debet verificari. What is clearly apparent need not be proved.

Quod constat curiae opere testium non indiget. What appears to the court needs not the help of witnesses. 2 Inst. 662.

Quod contra legem fit, pro infecto habetur. What is done contrary to the law, is considered as not done. 4 Co. 31. No one can derive any advantage from such an act.

Quod contra juris rationem receptum est, non est producendum ad consequentias. What has been admitted against the spirit of the law, ought not to be heard. Dig. 50, 17, 141.

Quod demonstrandi causa additur rei satis demonstratae, frusta fit. What is added to a thing sufficiently palpable, for the purpose of demonstration, is vain. 10 Co. 113.

Quod dubitas, ne feceris. When you doubt, do not act.

Quod est ex necessitate nunquam introducitor, nisi quando necessarium. What is introduced of necessity, is never introduced except when necessary. 2 Roll. R. 512.

Quod est inconveniens, aut contra rationem non permissum est in lege. What is inconvenient or contrary to reason, is not allowed in law. Co. Litt. 178.

Quod est necessarium est licitum. What is necessary is lawful.

Quod factum est, cum in obscuro sit, ex affectione cujusque capit interpretationem. Doubtful and ambigious clauses ought to be construed according to the intentions of the parties. Dig. 50, 17, 168, 1.

Quod fieri non debet, factum valet. What ought not to be done, when done, is valid. 5 Co. 38.

Quod inconsulto fecimus, consultius revocemus. What is done without consideration or reflection, upon better consideration we should revoke or undo.

Quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori. What avails in the less, will avail in the greater; and what will not avail in the greater, will not avail in the less. Co. Litt. 260.

Quod in uno similium valet, valebit in altere. What avails in one of two similar things, will avail in the other. co. Litt. 191.

Quod initio vitiosum est, non potest tractu temporis convalescere. Time cannot render valid an act void in its origin. Dig. 50, 17, 29.

Quod meum est sine me auferri non potest. What is mine cannot be taken away without my consent. Jenk. Cent. 251. Sed vide Eminent Domain.

Quod necessarie intelligitur id non deest. What is necessarily understood is not wanting. 1 Buls. 71.

Quod necessitas cogit, defendit. What necessity forces, it justifies. Hal. Pl. Cr. 54.

Quod non apparet non est, et non apparet judicialiter ante judicium. What appears not does not exist, and nothing appears judicially before judgment. 2 Co. Inst. 479.

Quod non habet principium non habet finum. What has no beginning has no end. Co. Litt. 345.

Quod non legitur, non creditor. What is not read, is not believed. 4 Co. 304.

Quod non valet in principalia, in accessoria seu consequentia non valebit; et quod non valet in magis propinquo, non valebit in magis remoto. What is not good in its principle, will not be good as to accessories or consequences; and what is not of force as regards things near, will not be of force as to things remote. 8 co. 78.

Quod nullius est id ratione naturali occupanti conceditur. What belongs to no one, naturally belong to the first occupant. Inst. 2, 1, 12; 1 Bouv. Inst. n. 491.

Quod nullius esse potest, id ut alicujus fieret nulla obligatio valet efficere. Those things which cannot be acquired as property, cannot be the object of an agreement. Dig. 50, 17, 182.

Quod pendet, non est pro eo, quasi sit. What is in suspense is considered as not existing. Dig. 50, 17, 169, 1.

Quod per me non possum, nec per alium. What I cannot do in person, I cannot do by proxy. 4 Co. 24.

Quod per recordum probatum, non debet esse negatum. What is proved by the record, ought not to be denied.

Quod populus postremum jussit, id just ratum esto. What the people have last enacted, let that be the established law.

Quod prius est verius est; et quod prius est tempore potius est jure. What is first is truest; and what comes first in time, is best in law. Co. Litt. 347.

Quod pro minore licitum est, et pro majore licitum est. What is lawful in the less, is lawful in the greater. 8 Co. 43.

Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire. He who suffers a damage by his own fault, has no right to complain. Dig. 50, 17, 203.

Quod quisquis norat in hoc se exerceat. Let every one employ himself in what he knows. 11 Co. 10.

Quod remedio destituitur ipsa re valet si culpa absit. What is without a remedy is valid by the thing itself. Bacon's Max. Reg. 9.

Quod semel meum est amplius meum esse non potest. Co. Litt. 49; Shep To. 212.

Quod sub certa forma concessum vel reservatum est, non trahitur advalorem vel compensationem. That which is granted or reserved under a certain form, is not to be drawn into a valuation. Bacon's Max. Reg. 4.

Quod solo inaedificatur solo cedit. Whatever is built on the soil is an accessory of the soil. Inst. 2, 1, 29; 16 Mass. 449; 2 Bouv. Inst. n. 1571.

Quod taciti intelligitur deessee non videtur. What is tacitly understood does not appear to be wanting. 4 Co. 22.

Quod vanum et inutile est, lex non requirit. The law does not require what is vain and useless. Co. Litt. 319.

Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit. Whenever there is a doubt between liberty and slavery, the decision must be in favor of liberty. Dig. 50, 17, 20.

Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba fienda est. When there is no ambiguity in the words, then no exposition contrary to the words is to be made. Co. Litt. 147.

Ratihabitiio mandato aequiparatur. Ratification is equal to a command. Dig. 46, 3, 12, 4.

Ratio est formalis causa consueetudinis. Reason is the formal cause of custom.

Ratio est legis anima, mutata legis ratione mutatur et lex. Reason is the soul of the law; the reason of the law being changed, the law is also changed.

Ratio est radius divini luminis. Reason is a ray of divine light. Co. Litt. 232.

Ratio et auctoritas duo clarisima mundi limina. Reason and authority are the two brightest lights in the world. 4 Co. Inst. 320.

Ratio in jure aequitas integra. Reason in law is perfect equity.

Ratio legis est anima legis. The reason of the law is the soul of the law.

Ratio non clauditur loco. Reason is not confined to any place.

Ratio potest allegari deficiente lege, sed vera et legalis et non apparens. Reason may be alleged when the law is defective, but it must be true and legal reason, and not merely apparent. 6 Co. Litt. 191.

Re, verbis, scripto, consensu, traditione, junctura vestes, sumere pacta solent. Compacts are accustomed to be clothed by thing itself, by words, by writing, by consent, by delivery. Plow. 161.

Receditur a placitis juris, potius quam injuriae et delicta maneant impunita. Positive rules of law will be receded from, rather than crimes and wrongs should remain unpunished. Bacon's Max. Reg. 12. This applies only to such maxims as are called placita juris; these will be dispensed with rather than crimes should go unpunished, quia salus populi suprema lex, because the public safety is the supreme law.

Recorda sunt vestigia vetustatis et veritatis. Records are vestiges of antiquity and truth. 2 Roll. R. 296.

Recurrendum est ad extraordinarium quando non valet ordinarium. We must have recourse to what is extraordinary, when what is ordinary fails.

Regula pro lege, si deficit lex. In default of the law, the maxim rules.

Regulariter non valet pactum dare mea non alienanda. Regularly a contract not to alienate my property is not binding. Co. Litt. 223.

Rei turpis nullum mandatum est. A mandate of an illegal thing is void. Dig. 17, 1, 6, 3.

Reipublicae interest voluntates defunctorum effectum sortiri. It concerns the state that the wills of the dead should have their effect.

Relatio est fictio juris et intenta ad unum. Reference is a fiction of law, and intent to one thing. 3 Co. 28.

Relatio semper fiat ut valeat dispositio. Reference should always be had in such a manner that a disposition in a will should avail. 6 Co. 76.

Relation never defeats collateral acts. 18 Vin. Ab. 292.

Relation shall never make good a void grant or devise of the party. 18 Vin. Ab. 292.

Relatiorum cognito uno, cognoscitur et alterum. Of things relating to each other, one being known, the other is known. Cro. Jac. 539.

Remainder can depend upon no estate but what beginneth at the same time the remainder doth.

Remainder must vest at the same instant that the particular estate determines.

Remainder to a person not of a capacity to take at the time of appointing it, is void. Plowd. 27.

Remedies ought to be reciprocal.

Remedies for rights are ever favorably extended. 18 Vin. Ab. 521.

Remisus imperanti melius paretur. A man commanding not too strictly is best obeyed. 3 Co. Inst. 233.

Remoto impedimento, emergit actio. The impediment begin removed the action arises. 5 Co. 76.

Rent must be reserved to him from whom the state of the land moveth. Co. Litt. 143.

Repellitur a sacramento infamis. An infamous person is repelled or prevented from taking an oath. Co. Litt. 158.

Reprobata pecunia liberat solventum. Money refused liberates the debtor. 9 Co. 79. But this must be understood with a qualification. See Tender.

Reputatio est vulgaris opinio ubi non est veritas. Reputation is a vulgar opinion where there is no truth. 4 Co. 107. But see, Character.

Rerum ordo confunditur, si unicuique jurisdictio non servetur. The order of things is confounded if every one preserves not his jurisdiction. 4 Co. Inst. Proem.

Rerum progressus ostendunt multa, quae in initio praecaveri seu praevideri non possunt. The progress of time shows many things, which at the beginning could not be guarded against, or foreseen. 6 Co. 40.

Rerum suarum quilibet est moderator et arbiter. Every one is the manager and disposer of his own. Co. Litt. 233.

Res denominator a principaliori parte. A thing is named from its principal part. 5 Co. 47.

Res est misera ubi jus est vagam et invertum. It is a miserable state of tings where the law is vague and uncertain. 2 Salk. 512.

Res, generalem habet significationem, quia tam corporea, quam incorporea, cujuscunque sunt generis, naturae sive speciei, comprehendit. The word things has a general significaiton, which comprehends corporeal and incorporeal objects, of whatever nature, sort or specie. 3 Co. Inst. 482; 1 Bouv. Inst. n. 415.

Res inter alios acta alteri nocere non debet. Things done between strangers ought not to injure those who are not parties to them. Co. Litt. 152.

Res judicata pro veritate accipitur. A thing adjudged must be taken for truth. Co. Litt. 103; Dig. 50, 17, 207. See Res judicata.

Res judicata facit ex albo nigrum, ex nigro album, ex curvo rectum, ex recto curvum. A thing adjudged makes what was white, black; what was black, white; what was crooked straight; what was straight, crooked. 1 Bouv. Inst. n. 840.

Res per pecuniam aestimatur, et non pecunia per res. The value of a thing is estimated by its worth in money, and the value of money is not estimated by reference to one thing. 9 Co. 76; 1 Bouv. Inst. n. 922.

Res perit domino suo. The destruction of the thing is the loss of its owner. 2 Bouv. Inst. n. 1456, 1466.

Reservatio non debet esse de proficuis ipsis quia ea conceduntur, sed de redditu nova extra proficua. A reservation ought not to be of the profits themselves, because they are granted, but from the new rent out of the profits. Co. Litt. 142.

Resignatio est juris porprii spontanea refutatio. Resignation is the spontaneous relinquishment of one's own right. Godb. 284.

Respondeat superior. Let the principal answer. 4 Co. Inst. 114; 2 Bouv. Inst. n. 1337; 4 Bouv. Inst. n. 3586.

Responsio unius non omnino auditur. The answer of one witness shall not be heard at all. 1 Greenl. Ev. §260. This is a maxim of the civil law, where everything must be proved by two witnesses.

Rights never die.

Reus laesae majestatis punitur, ut pereat unus ne pereant omnes. A traitor is punished, that by the death of one, all may not perish. 4 Co. 124.

Sacramentum habet in se tres comites, varitatem, justitiam et judicium; veritas habenda est in jurato; justitia et justicium in judice. An oath has in it three component parts - truth, justice and judgment; truth in the party swearing; justice and judgment in the judge administering the oath. 3 Co. Inst. 160.

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium. A foolish oath, though false, makes not perjury. 2 Co. Inst. 167.

Saepe viatorim nova non vetus orbita fallit. Often it is the new road, not the old one, which deceives the traveller. 4 Co. Inst. 34.

Saepenumero uvb proprietas verboem attenditur, sensus veritatis amittitur. Frequently where the propriety of words is attended to, the meaning of truth is lost. 7 Co. 27.

Salus populi est suprema lex. The safety of the people is the supreme law. Bacon's Max. in Reg. 12; Broom's Max. 1.

Salus ube multi consiliarii. In many counsellors there is safety. 4 Co. Inst. 1.

Sapiens incipit a fine, et quod primum est in intentione, ultimum est in executione. A wise man begins with the last, and what is first in intention is last in execution. 10 Co. 25.

Sapiens omnia agit cum consilio. A wise man does everything advisedly. 4 Co. Inst. 4.

Sapientia legis nummario pretio non est aestemanda. The wisdom of law cannot be valued by money.

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum. A wise man should consider as much what he premises as what he commits and believes. 4 Co. Inst. 193.

Satisfaction should be made to that fund which has sustained the loss. 4 Bouv. Inst. n. 3731.

Satius est petere fontes quam sectari rivulos. It is better to search the fountain than to cut rivulets. 10 Co. 118. It is better to drink at the fountain than to sip in the streams.

Scientia sciolorum est mixta ignorantia. The knowledge of smatterers is mixed ignorance. 8 Co. 159.

Scientia et volunti non fit injuria. A wrong is not done to one who knows and wills it.

Scientia utrimque per pares contrahentes facit. Equal knowledge on both sides makes the contracting parties equal.

Scire leges, non hoc est verba eorum tenere, sed vim et potestatem. To know the laws, is not to observe their mere words, but their force and power. Dig. 1, 3, 17.

Scire proprie est, rem ratione et per causam cognoscere. To know properly is to know the reason and cause of a thing. Co. Litt. 183.

Scire debes cum quo contrahis. You ought to know with whom you deal.

Scribere est agere. To write is to act. 2 Roll. R. 89.

Scriptae obligationes scriptis tolluntur, et nude consensus obligatio, contrario consensu dissolvitur. Written obligations are dissolved by writing, and obligations of naked assent by similar naked assent.

Secundum naturam est, commoda cujusque rei eum sequi, quem sequentur incommoda. It is natural that he who bears the charge of a thing, should receive the profits. Dig. 50, 17, 10.

Securius expediuntur negotia commissa pluribus, et plus vident oculi quam oculus. Business entrusted to several speeds best, and several eyes see more than one eye. 4 Co. 46.

Semel malus semper praesumitur esse malus in eodem genere. Whatever is once bad, is presumed to be so always in the same degree. Cro. Car. 317.

Semper ita fiat relatio ut valeat dispositio. Let the reference always be so made that the disposition may avail. 6 Co. 76.

Semper necessitas probandi incumbit qui agit. The claimant is always bound to prove: the burden of proof lies on him.

Semper praesumitur pro legitimatione puerorem, et filiatio non potest probari. Children are alwasy presumed to be legitimate, for filiation cannot be proved. Co. Litt. 126. See 1 Bouv. Inst. n. 303.

Semper praesumitur pro sententia. Presumption is always in favor of the sentence. 3 Buls. 43.

Semper specialia generalibus insunt. Special clauses are always comprised in general ones. Dig. 50, 17, 147.

Sensus verborum est anima legis. The meaning of words is the spirit of the law. 5 Co. 2.

Sensus verborum ex causa dicendi accipiendus est, et sermones semper accipiendi sunt secundum subjectam materiam. The sense of words is to be taken from the occasion of speaking them, and discourses are always to be interpreted according to the subject-matter. 4 Co. 14.

Sententia facit jus, et legis interpretatio legis vim obtinet. The sentence gives the right, and the interpretation has the force of law.

Sententia interlocutoria revocari potest, difinitiva non potest. An interlocutory sentence or order may be revoked, but not a final.

Sententia non fertur de rebus non liquidis. Sentence is not given upon a thing which is not clear.

Sequi debet potentia justitiam, non praecedere. Power should follow justice, not precede it. 2 Co. Inst. 454.

Sermo index animi. Speech is an index of the mind. 5 Co. 118.

Sermo relatus ad personam, intelligi debet de conditione personae. A speech relating to the person is to be understood as relating to his condition. 4 Co. 16.

Si a jure discedas vagus eris, et erunt omnia omnibus incerta. If you depart from the law, you will wander without a guide, and everything will be in a state of uncertainty to every one. Co. Litt. 227.

Si assuetis mederi possis nova non sunt tentanda. If you can be relieved by accustomed remedies, new ones should not be tried. 10 Co. 142.

Si judicas, cognasce. If you judge, understand.

Si meliores sunt quos ducit amor, plures sunt quos corrigit timer. If many are better led by love, more are corrected by fear. Co. Litt. 392.

Si nulla sit conjectura quae ducat alio, verba intelligenda sunt ex proprietate, non grammatica sed populari ex usu. if there be no conjecture which leads to a different result, words are to be understood, according to the proper meaning, not in a grammatical, but in a popular and ordinary sense. 2 Kent, Com. 555.

Si quis custos fraudem pupillo fecerit, a tutela removendus est. If a guardian behave fraudently to his ward, he shall be removed from the guardianship. Jenk. Cent. 39.

Si quis praegnantum uxorem reliquit, non videtur sine liberis decessisse. If a man dies, leaving his wife pregnant, he shall not be considered as having died childless.

Si suggestio non sit vera, literae patentes vacuae sunt. If the suggestion of a patent is false, the patent itself is void. 10 Co. 113.

Si quid universitate debetur singulis non debetur, nec quod debet, universitas singuli debent. If anything is due to a corporation, it is not due to the individual members of it, nor do the members individually owe what the corporation owes. Dig. 3, 4, 7.

Sic interpretandum est ut verba accipiantur cum effectu. Such an interpretation is to be made, that the words may have an effect.

Sic utere tuo ut alienum non laedas. So use your own as not to injure another's property. 1 Bl. Com. 306; Broom's max. 160; 4 McCord, 472; 2 Bouv. Inst. n. 2379.

Sicut natura nil facit per saltum, ita nec lex. As nature does nothing by a bound or leap, so neither does the law. Co. Litt. 238.

Silent leges inter arma. Laws are silent amidst arms. 4 Co. Inst. 70.

Simplicitas est legibus amica. Simplicity is favorable to the law. 4 Co. 8.

Sine possessione usucapio procedere non potest. There can be no prescription without possession.

Solemnitas juris sunt observandae. The solemnities of law are to be observed. Jenk. Cent. 13.

Solo cedit quod solo implantatur. What is planted in the soil belongs to the soil. inst. 2, 1, 29. See 1 Mackeld. civ. Law, §268; 2 Bouv. Inst. n. 1571.

Solo cedit quodquod solo implantatur. What is planted in the soil belongs to the soil. Inst. 2, 1, 32; 2 Bouv. Inst. n. 1572.

Solus Deus haeredem facit. God alone makes the heir.

Solutio pretii, emptiones loco habetur. The payment of the price stands in the place of a sale.

Spes est vigilantis somnium. Hope is the dream of the vigilant. 4 Co. Inst. 203.

Spes impunitatis continuum affectum tribuit delinquendi. The hope of impunity holds out a continual temptation to crime. 3 Co. Inst. 236.

Spoliatus debet ante omnia restitui. Spoil ought to be restored before anything else. 2 Co. Inst. 714.

Spondet peritiam artis. He promises to use the skill of his art. Poth. Louage, n. 425; Jones, Bailm. 22, 53, 62, 97, 120; Domat, liv. 1, t. 4, s. 8, n. 1; 1 Story Bailm. §431; 1 Bell's Com. 459, 5th ed.; 1 Bouv. Inst. n. 1004.

Stabit praesumptio donec probetur in contrarium. A presumption will stand good until the contrary is proved. Hob. 297.

Statuta pro publico commodo late interpretantur. Statutes made for the public good ought to be liberally construed. Jenk. Cent. 21.

Statutum affirmativum non derogat communi legi. An affirmative statute does not take from the common law. Jenk. Cent. 24.

Statutum generaliter est intelligendum quaudo verva statuti sunt specialia, ratio autem generalis. When the words of a statute are special, but the reason of it general, it is to be understood generally. 10 Co. 101.

Statutum speciale statuto speciali non derogat. One special statute does not take away from another special statute. Jenk. Cent. 199.

Sublata causa tollitur effectus. Remove the cause and the effect will cease. 2 Bl. Com. 203.

Sublata veneratione magistraiuum, respublica ruit. The commonwealth perishes, if respect for magistrates be taken away.

Sublato fundamento cadit opus. Remove the foundation, the structure or work fall.

Sublato principali tollitur adjunctum. If the principal be taken away, the adjunct is also taken away. Co. Litt. 389.

Summum jus, summa injuria. The rigor or height of law, is the height of wrong. Hob. 125; 1 Chan. Rep. 4.

Superflua non nocent. Superfluities do no injury.

Surplusagium non nocet. Surplusage does no harm. 3 Bouv. Inst. n. 2949.

Tacita quaedam habentur pro expressis. Things silent are sometimes considered as expressed. 8 Co. 40.

Talis interpretatio semper fienda est, ut evitetur absurdum, et inconveniens, et ne judicium sit illusorium. Interpretation is always to be made in such a manner, that what is absurd and inconvenient is to be avoided, so that the judgment be not nugatory. 1 Co. 52.

Talis non est eadem, nam nullum simile est idem. What is like is not the same, for nothing similar is the same. 4 Co. 18.

Tantum bona valent, quantum vendi possunt. Things are worth what they will sell for. 3 Co. Inst. 305.

Terminus annorum certus debet esse et determinatus. A term of years ought to be certain and determinate. Co. Litt. 45.

Terra transit cum onere. Land passes with the incumbrances. Co. Litt. 45.

Testamenta latissimam interpretationem habere debent. Wills ought to have the broadest interpretation.

Testamentum omne morte consumatum. Every will is completed by death. Co. Litt. 232.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his real intention. Co. Litt. 232.

Testibus deponentibus in pari numero dignioribus est credendum. When the number of witnesses is equal on both sides, the more worthy are to be believed. 4 Co. Inst. 279.

Testis de visu praeponderat aliis. An eye witness outweighs others. 4 Co. Inst. 470.

Testis nemo in sua causa esse potest. No one can be a witness in his own cause.

Testis oculatus unus plus valet quam auriti decem. One eye witness is worth ten ear witnesses. See 3 Bouv. Inst. n. 3154.

Timores vani sunt aestimandi qui non cadunt in constantem virum. Fears, which have no fixed persons for their object, are vain. 7 Co. 17.

That which I may defeat by my entry, I make good by my confirmation. Co. Litt. 300.

The fund which has received the benefit should make the satisfaction. 4 Bouv. Inst. n. 3730.

Things shall not be void which may possibly be good.

Trusts survive.

Totum prefertur uni cuique parte. The whole is preferable to any single part. 3 Co. 41.

Tout ce que la loi ne defend pas est permis. Everything is permitted, which is not forbidden by law.

Tonte exception non surveillee tend a prendre la place du principe. Every exception not watched tends to assume the place of the principle.

Tractent fabrilia fabri. Let smiths perform the work of smiths. 3 Co. Epist.

Traditio loqui facit chartam. Delivery makes the deed speak. 5 Co. 1.

Transgressione multiplicata, crescat paena inflictio. When transgression is multiplied, let the infliction of punishment be increased. 2 Co. Inst. 479.

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam. Trial ought always to be had where the jury have the best knowledge. 7 Co. 1.

Trupis est pars quae non convenit cum suo toto. That part is bad which accords not with the whole. Plow. 161.

Tuta est custodia quae sibimet creditur. That guardianship is secure which trusts to itself alone.

Tutius erratur ex parte mittioro. It is safer to err on the side of mercy. 3 inst. 220.

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum. When anything is impeded by one single cause, if that be removed the impediment is removed. 7 Co. 77.

Ubi cessat remedium ordinarium ibi decurritur ad extraordinarium. When a common remedy ceases to be of service, recourse must be had to an extraordinary one. 4 Co. 93.

Ubi culpa est ibi paena subesse debet. Where there is culpability, there punishment ought to be.

Ubi eadem ratio, ibi idem lex. Where there is the same reason, there is the same law. 7 co. 18.

Ubi damna dantur, victus victori in expensis condemnari debet. Where damages are given, the losing party should pay the costs of the victor. 2 Inst. 289.

Ubi factum nullum ibi sortia nulla. Where there is no deed committed, there can be no consequence. 4 Co. 43.

Ubi jus, ibi remedium. Where there is a right, there is a remedy. 1 T. R. 512; Co. Litt. 197, b; 3 Bouv. Inst. n. 2411; 4 Bouv. Inst. n. 3726.

Ubi jus incertum, ibi jus nullum. Where the law is uncertain, there is no law.

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et letitima. Where the law compels a man to show cause, the cause ought to be just and legal. 2 Co. Inst. 269.

Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est. Where the law is special and the reason of it is general, it ought to be taken as being general. 2 Co. Inst. 43.

Ubi lex non distinguit, nec nos distinguere debemus. Where the law does not distinguish, we ought not to distinguish. 7 Co. 5.

Ubi major pars est, ibi totum. Where is the greater part, there is the whole. Moor, 578.

Ubi non adest norma legis, omnia quasi pro suspectis habenda sunt. When the law fails to serve as a rule, almost everything ought to be suspected. Bacon, De Aug. Sci. Aph. 25.

Ubi non est condendi auctoritas, ibi non est parendi necessitas. Where there is no authority to enforce, there is no authority to obey. Dav. 69.

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia. Where there is no direct law, the opinion of the judges ought to be taken, or reference made to similar cases.

Ubi non est lex, non est transgressio quoad mundum. Where there is no law there is no transgression, as it regards the world.

ubi non est principalis non potest esse accessorius. Where there is no principal there is no accessory. 4 co. 43.

ubi nullum matrimonium ibi nullum dos. Where there is no marriage there is no dower. Co. Litt. 32.

Ubi periculum, ibi et lucrum collocatur. He at whose risk a thing is, should receive the profits arising from it.

Ubi quid generaliter conceditur, in est haec exceptio, si non aliquid sit contra jus fasque. Where a thing is concealed generally, this exception arises, that there shall be nothing contrary to law and right. 10 Co. 78.

Ubi quis delinquit ibi punietur. Let a man be punished when he commits the offence. 6 Co. 47.

Ubicunque est injuria, ibi damnum sequitur. Wherever there is a wrong, there damages follow. 10 Co. 116.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his true intention. Co. Litt. 322.

Ultra posse non est esse, et vice versa. What is beyond possibility cannot exist, and the reverse, what cannot exist is not possible.

Una persona vix potest supplere vices duorum. One person can scarcely supply the place of two. 4 co. 118.

Universalia sunt notoria singularibus. Things universal are better known than things particular. 2 Roll. R. 294.

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiamsi major pars id faciat. An university or corporation is not said to do anything unless it be deliberated upon collegiately, although the majority should do it. Dav. 48.

Uno absurdo dato, infinita sequuntur. One absurdity begin allowed, an infinity follow. 1 co. 102.

Unumquodque eodem modo quo colligatum est dissolvitur. In the same manner in which a thing is bound, it is loosened. 2 Roll. Rep. 39.

Unumquodque est id quod est principalius in ipso. That which is the principal part of a thing is the thing itself. Hob. 123.

Unumquodque dissolvatur eo modo quo colligatur. Everything is dissolved by the same mode in which it is bound together.

Usury is odious in law.

Ut paena ad paucos, metus ad omnes perveniat. That by the punishment of a few, the fear of it may affect all. 4 Inst. 63.

Ut res magis valeat quam pereat. That the thing may rather have effect than be destroyed.

Utile per inutile non vitiatur. What is useful is not vitiated by the useless. 3 Bouv. Inst. n. 2949, 3293; 2 Wheat. 221; 2 S. & R. 298; 17 S. & R. 297; 6 Mass. 303.

Valeat quantum valere potest. It shall have effect as far as it can have effect.

Vana est illa potentia quae numquam venit in actum. Vain is that power which is never brought into action. 2 Co. 51.

Vani timores sunt aestimandi, qui non cadunt in constantem virum. Vain are those fears which affect not a valiant man. 7 Co. 27.

Vendens eandem rem doubus falsarius est. It is fraudulent to sell the same thing twice. Jenk. Cent. 107. See Stalionat.

Veniae facilitas incentivum est delinquendi. Facility of pardon is an incentive to crime. 3 inst. 236.

Vreba aliquid operari debent, verba cum effectu sunt accipienda. Words are to be taken so as to have effect. Bacon's Max. Reg. 3, p. 47. See 1 Duer. on ins. 210, 211, 216.

Verba aequivoca ac in dubio sensu posita, intelliguntur dignori et potentiori sensu. Equivocal words and those in a doubtful sense are to be taken in their best and most effective sense. 6 Co. 20.

Verba currentis monetae, tempus solutionis designat. The words current money, refer to the time of payment. Dav. 20.

Verba dicta de persona, intelligi debent de conditione personae. Words spoken of the person are to be understood of the condition of the person. 2 Roll. R. 72.

Verba fortius accipientur contra proferentum. Words are to be taken most strongly against him who uses them. Bacon's Max. REg. 3; 1 Bouv. Inst. n. 661.

Verba generalia generaliter sunt intelligenda. General words are to be generally understood. 3 Co. Inst. 76.

Verba ganeralia restringuntur ad habilitatem rei vel personae. General words must be confined or restrained to the nature of the subject or the aptitude of the person. Bacon's max. Reg. 10.

Verba intentioni, non e contra, debent inservire. Words ought to be made subservient to the intent, not contrary to it. 8 Co. 94.

Verba ita sunt intelligenda, ut res magis valeat quam pereat. Words are to be so understood that the subject-matter may be preserved rather than destroyed. Bacon's Max. in Reg. 3.

Verba nihil operandi melius est quam absurde. It is better that words should have no operation, than to operate absurdly.

Verba posteriora propter certitudinem addita, ad priora quae certitudine indigent, sunt referenda. Words added for the purpose of certainty are to be referred to preceding words, in which certainty is wanting.

Verga relata hac maximi operantur per referentiam ut in eis in esse videntur. Words referred to other words operate chiefly by the reference which appears to be impled towards them. Co. Litt. 359.

Veredictum, quasi dictum veritas; ut judicium quasi juris dictum. A verdict is, as it were, the saying of the truth, in the same manner that a judgment is the saying of the law. Co. Litt. 226.

Veritas demonstrationis tollit errorem nominis. The truth of the demonstration removes the error of the name. Ld. Raym. 303. See Legatee.

Veritas nihil veretur nisi abscondi. Truth fears nothing but concealment. 9 co. 20.

Veritas nimium altercando amittitur. By too much altercation truth is lost. Hob. 344.

Veritatem qui non libere pronunciat, proditor est veritatis. He who does not speak the truth, is a traitor to the truth.

Vicarius non habet vicaruim. A deputy cannot appoint a deputy. Branch's max. 38; Broom's max. 384; 2 Bouv. Inst. n. 1300.

Vigilantibus et non dormientibus serviunt leges. The laws serve the vigilant, not those who sleep upon their rights. 2 Bouv. Inst. n. 2327. See Laches.

Viperina est expositio quae corrodit viscera textus. That is a viperous exposition which gnaws or eats out the bowels of the text. 11 Co. 34.

Vir et uxor consentur in lege una persona. Husband and wife are considered one person in law. Co. Litt. 112.

Vis legibus est inimica. Force is inimical to the laws. 3 Co. inst. 176.

Vitium clerici nocere non debet. Clerical errors ought not to hurt.

Voluit sed non dixit. He willed but did not say.

Voluntas testatoris ambulatoria est usque ad mortem. The will of a testator is ambulatory until his death; that is, he may change it at any time. See 1 Bouv. inst. n. 83.

Voluntas in delictis non exitus spectatur. In offences, the will and not the consequences are to be looked to. 2 Co. inst. 27.

Voluntas reputabatur pro facto. The will is to be taken for the deed. 3 Co. Inst. 69.

Volunti non fit injuria. He who consents cannot receive an injury. 2 Bouv. Inst. n. 2279, 2327; 4 T. R. 657; Shelf. on mar. & Div. 449.

What a man cannot transfer, he cannot bind by articles.

When the common law and statute law concur, the common law is to be preferred. 4 Co. 71.

When many join in one act, the law says it is the act of him who could best do it; and things should be done by him who has the best skill. Noy's Max. h.t.

When the law presumes the affirmative, the negative is to be proved. 1 Roll. R. 83; 3 Bouv. Inst. n. 3063, 3090.

When no time is limited, the law appoints the most convenient.

When the law gives anything, it gives a remedy for the same.

When the foundation fails, all fails.

Where two rights concur, the more ancient shall be preferred.

Where there is equal equity, the law must prevail. 4 Bouv. Inst. n. 3727.

Vide, generally, Dig. 50, 17; 1 Ayl. Pand. b. 1, t. 6; Merl. Repert. Regles de Droit; Pow. Mint. Index, h. t.; Dane's Ab. Index, h. t.; Wooddes. Lect. lxxi. note; and collections of Bacon, Noy, Francis, Branch and Heath; Duval, Le Droit dans ses Maximes.

MAY. To be permited; to be at liberty; to have the power.

2. Whenever a statute directs the doing of a thing for the sake of justice or the public good, the word may is the same as shall. For example, the 23 H. VI. says, the sheriff may take bail, that is construed he shall, for he is compellable to do so. Carth. 293 Salk. 609; Skin. 370.

3. The words shall and may in general acts of the legislature or in private constitutions, are to be construed imperatively; 3. Atk. 166; but the construction of those words in a deed depends on circumstances. 3 Atk. 282. See 1 Vern. 152, case. 142 9 Porter, R. 390.

MAYHEM, crimes. The act of unlawfully and violently depriving another of the use of such of his members as may render him less able in fighting either to defend himself or annoy his adversary; and therefore the cutting or disabling, or weakening a man's hand or finger, or striking out his eye or foretooth, or depriving him of those parts the loss of which abates his courage, are held to be mayhems. But cutting off the ear or nose or the like, are not held to be mayhems at common law. 4 Bl. Com. 205.

2. These and other severe personal injuries are punished by the Coventry act, (q. v.) which has been re-enacted in several of the states; Ryan's Med. Jurispr. 191, Philad. ed. 1832; and by congress. Vide act of April 30, 1790, s. 13, 1 Story's Laws U. S. 85; act of March 3, 1825, s. 22, 3 Story's L. U. S. 2006.

MAYHEMAVIT. Maimed. This is a term of art which cannot be supplied in pleadings by any other word; as, mutilavit, truncavit, &c. 3 Tho. Co. Litt. 548.

MAYOR, officer. The chief or executive magistrate of a city who bears this title.

2. It is generally his duty to cause the laws of the city to be enforeed, and to superintend inferior officers, such as constables, watchmen and the like. But the power and authority which mayors possess being given to them by local regulations, vary in different places.

MAYOR'S COURT. The name of a court usually established in cities, composed of a mayor, recorder and aldermen, generally having jurisdiction of offences committed within the city, and of other matters specially given them by the statute.

MEASURE. That which is used as a rule to determine a quantity. A certain quantity of something, taken for a unit, and which expresses a relation with other quantities of the same thing.

2. The constitution of the United States gives power to congress to " fix the standard of weights and measures." Art. 1, B. 8. Hitherto this has remained as a dormant power, though frequently brought before the attention of congress.

3. The states, it seems, possess the power to legislate on this subject, or, at least, the existing standards at the adoption of the constitution remain in full force. 3 Sto. Const. 21; Rawle on the Const. 102.

4. By a resolution of congress, of the 14th of June, 1836, the secretary of the treasury is directed to cause a complete set of all weights and measures adopted as standards, and now either made or in the progress of manufacture, for the use of the several custom-houses and for other purposes, to be delivered to the governor of each state in the Union, or to such person as he may appoint, for the use of the states respectively, to the end that an uniform standard of weights and measures may be established throughout the United States.

5. Measures are either, 1. Of length. 2. Of surface. 3. Of solidity or capacity. 4. Of force or gravity, or what is commonly called weight. (q. v.) 5. Of angles. 6. Of time. The measures now used in the United States, are the same as those of England, and are as follows

1. MEASURES OF LENGTH.

12 inches = l foot
3 feet = l yard
51/2 yards = l rod or pole
40 poles = 1 furlong
8 furlongs = l mile
69 1/15 miles = l degree of a great circle of the earth.

An inch is the smallest lineal measure to which a name is given, but subdivisions are used for many purposes. Among mechanics, the inch is commonly divided into eighths. By the officers of the revenue and by scientific persons, it is divided into tenths, hundredths, &c. Formerly it was made to consist of twelve parts called lines, but these have fallen into disuse.

Particular measures of length.

1st. Used for measuring cloth of all kinds.
1 nail = 2 1/4 inches
1 quarter = 4 inches
1 yard = 4 quarters
1 ell = 5 quarters. 2d. used for the height of horses.
1 hand = 4 inches. 3d. Used in measuring depths.
1 fathom = 6 feet.

4th. Used in land measure, to facilitate computation of the contents, 10 square chains being equal to an acre.

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1 link = 7 92/100 inches
  1 chain = 100 links.                    6.-2. MEASURES OF SURFACE.144
square inches = l square foot
    9 square feet = l square yard
   30 1/4 square yards = l perch or rod
   40 perches = l rood
    4 roods or 160 perches = l acre
  640 acres--l square mile.             7. - 3. MEASURES OF SOLTDITY AND
CAPACITY.1st. Measures of solidity.1728 cubic inches = l cubic foot
    27 cubic feet = l cubic yard.
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2d. Measures of capacity for all liquids, and for all goods, not liquid, except such as are comprised in the next division.

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4 gills = l pint = 34 2/3 cubic inches nearly.
  2 pints = l quart = 691/2         "       "
  4 quarts = 1 gallon = 277 1/4     "       "
  2 gallons = l peck = 554 1/2      "       "
  8 gallons= 1 bushel = 2218 1/2    "       "
  8 bushels = l quarter = 10 1/4 cubic feet "
  5 quarters = l load = 51 1/2      "       "
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The last four denominations are used only for goods, not liquids. For liquids, several denominations have heretofore been adopted, namely, for beer, the firkin of 9 gallons, the kilderkin of 18 , the barrel of 36, the hogshead of 54; and the butt of 108 gallons. For wine or spirits there are the anker, runlet, tierce, hogshead, puncheon, pipe, butt, and tun; these are, however, rather the names of the casks, in which the commodities are imported, than as express any definite number of gallons. It is the practice to gauge all such vessels, and to charge them according to their actual contents.

3d. Measures of capacity, for coal, lime, potatoes, fruit, and other commodities, sold by heaped measure.

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 2 gallons = 1 peck-704 cubic in. nearly.
   8 gallons = 1 bushel=28151/2  "     "
   3 bushels = 1 sack = 41 cubic feet  "
  12 sacks=l chaldron = 58 2/3   "     "8.-4. MEASURES OF WEIGHTS. See art.
Weights.9.-5., ANGULAR MEASURE; or, DIVISION OF THE CIRCLE.
  60 seconds = l minute
  60 minutes = l degree
  30 degrees = 1 sign
  90 degrees = 1 quadrant
 360 degrees, or 12 signs = 1 circumference.
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Formerly the subdivisions were carried on by sities; thus, the second was divided into 60 thirds, the third into sixty fourths, &c. At present, the second is more generally divided decimally into tens, hundreds, &c. The degree is frequently so divided.

or 10. - 6. MEASURE OF TIME.60 seconds = 1 minute 60 minutes = 1 hour 24 hours = l day 7 days = 1 week 28 days, or 4 weeks = 1 lunar month 28, 29, 30, or 31 days = 1 calendar month 12 calendar months = 1 year 365 days = 1 common year 366 day = l leap year. The second of time is subdivided like that of angular measure.

FRENCH MEASURES.

11. As the French system of weights and measures is the most scientific plan known, and as the commercial connexions of the United States with France are daily increasing, it has been thought proper here to give a short account of that system.

12. The fundamental, invariable, and standard measure, by which all weights and measures are formed, is called the metre, a word derived from the Greek , which signifies measure. It is a lineal measure, and is equal to 3 feet, 0 inches, 44/1000, Paris measure, or 3 feet, 3 inches, 370/1000 English. This unit is divided into ten parts; each tenth, into ten hundreths; each hundreth, into ten thousandths, &c. These divisions, as well as those of all other mea- sures, are infinite. As the standard is to be invariable, something has been sought, from which to make it, which is not variable or subject to any change. The fundamental base of the metre is the quarter of the terrestrial meridian, or the distance from the pole to the equator, which has been divided into ten millions of equal parts, one of which is the length of the metre. All the other measures are formed from the metre, as follows:

2. MEASURE OF CAPACITY

13. The litre. This is the decimetre; or one-tenth part of the cubic metre; that is, if a vase is made of a cubic form, of a decimetre every way, it would be of the capacity of a litre. This is divided by tenths, as the metre. The measures which amount. to more than a single, litre, are counted by tens hundreds, thousands, &c., of litres.

3. MEASURES OF WEIGHTS.

14. The gramme. This is the weight of a cubic centimetre of distilled water, at the temperature of zero; that is, if a vase be made of a cubic form, of a hundredth part of a metre every way, and it be filled with distilled water, the weight of that water will be that of the gramme.

4. MEASURES OF SURFACES.

15. The arc, used in surveying. This is a square, the sides of which are of the length of ten metres, or what is equal to one hundred square metres. Its divisions are the same as in the preceding measures.

5. MEASURES OF SOLIDITY.

16. The stere, used in measuring firewood. It is a cubic metre. Its subdivisions are similar to the preceding. The term is used only for measuring fire-wood. For the measure of other things, the term cube metre, or cubic metre is used, or the tenth, hundredth, &c., of such a cube.

6. MONEY.

17. The franc. It weighs five grammes. it is made of nine-tenths of silver, and one-tenth of copper. Its tenth part is called a decime, and its hundredth part a centime.

18. One measure being thus made the standard of all the rest, they must be all equally invariable; but, in order to make this certainty perfectly sure, the following precautions have been adopted. As the temperature was found to have an influence on bodies, the term zero, or melting ice, has been selected in making the models or standard of the metre. Distilled water has been chosen to make the standard of the gramme, as being purer, and less encumbered with foreign matter than common water. The temperature having also an influence on a determinate volume of water, that with which the experiments were made, was of the temperature of zero, or melting ice. The air, more or less charged with humidity, causes the weight of bodies to vary, the models which represent the weight of the gramme, have, therefore, been taken in a vacuum.

19. It has already been stated, that the divisions of these measures are all uniform, namely by tens, or decimal fractions, they may therefore be written as such. Instead of writing,

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1 metre and 1 tenth of a metre, we may write, 1 m. 1.
  2 metre and 8 tenths, 2 m. 8.
 10 metre and 4 hundredths, 10 m. 04.
  7 litres, 1 tenth, and 2 hundredths, 7 lit. 12, &c.;
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20. Names have been given to, each of these divisions of the principal unit but these names always indicate the value of the fraction, and the unit from which it is derived. To the name of the unit have been prefixed the particles deci, for tenth, centi, for hundredth, and milli, for thousandth. They are thus expressed, a decimetre, a decilitre, a decigramme, a decistere, a deciare, a centimetre, a centilitre, a centigramme, &c.

The facility with which the divisions of the unit are reduced to the same expression, is very apparent; this cannot be done with any other kind of measures.

21. As it may sometimes be necessary to express great quantities of units, collections have been made of them in tens, hundreds, thousands, tens of thousands, &c., to which names, derived from the Greek, have been given; namely, deca, for tens hecto, for hundreds; kilo, for thousands and myria, for tens of thousands; they are thus expressed; a decametre, a decalitre, &c.; a hectometre, a hectogramme, &c.; a kilometre, a kilogramme, &c.

22. The following table will facilitate the reduction of these weights and measures into our own.

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The Metre, is 3.28 feet, or 39.871 in.
    Are, is 1076.441 square feet.
    Litre, is 61.028 cubic inch
    Stere, is 35.317 cubic feet.
    Gramme, is 15.4441 grains troy, or 5.6481 drams, averdupois.
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MEASURE OF DAMAGES, prac. Those principles or rules of law which control a jury in adjusting or proportioning the damages, in certain cases. 1 Bouv. Inst. n. 636.

MEAN. This word is sometimes used for mesne. (q. v.)

MEASON-DUE. A corruption of Maison de Dieu. (q. v.)

MEDIATE, POWERS. Those incident to primary powers, given by a principal to Iiis agent. For example, the general authority given to collect, receive and pay debts due by or to the principal is a primary power. In order to accomplish this it is frequently required to settle accounts, adjust disputed claims, resist those which are unjust, and answer and defend suits; these subordinate powers are sometimes called mediate powers. Story, Ag. 58. See Primary powers, and 1 Camp. R. 43, note 4 Camp. R. 163; 6 S. & R. 149.

MEDIATION. The act of some mutual friend of two contending parties, who brings them to agree, compromise or settle their disputes. Vattel, Droit des Gens, liv. 2, eh. 18, 328.

MEDIATOR. One who interposes between two contending parties, with their consent, for the purpose of assisting them in settling their differences. Sometimes this term is applied to an officer who is appointed by a sovereign nation to promote the settlement of disputes between two other nations. Vide Minister; Mediator.

MEDICAL JURISPRUDENCE. That science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in courts of justice. By some authors, it is used in a more extensive sense and also comprehends Medical Police, or those medical precepts which may prove useful to the legislature or the magistracy. Some authors, instead of using the phrase medical jurisprudence, employ, to convey the same idea, those of legal medicine, forensic medicine, or, as the Germans have it, state medicine.

2. The best American writers on this subject are Doctors T. R. Beck and J. B. Beck, Elements of Medical Jurisprudence; Doctor Thomas Cooper; Doctor James S. Stringham, who was the first individual to deliver a course of lectures on medical jurisprudence, in this country; Doctor Charles Caldwell. Among the British writers may be enumerated Doctor John Gordon Smith; Doctor Male; Doctor Paris and Mr. Fonblanque, who published a joint work; Mr. Chitty, and Dr. Ryan. The French writers are numerous; Briand, Biessy, Esquirol, Georget, Falret, Trebuchet, Mare, and others, have written treatises or published papers on this subject; the learned Fodere published a work entitled "Les Lois eclairees par les sciences physiques ou Traite de Medecine Legale et d'hygiene publique;" the "Annale d'hygiene et de Medecine Legale," is one of the most valued works on this subject. Among the Germans may be found Rose's Manual on Medico Legal Dissection; Metzger's Principles of Legal Medicine, and others. The reader is referred for a list of authors and their works on Medical Jurisprudence, to Dupin, Profession d'Avocat, tom. ii., p. 343, art. 1617 to 1636, bis. For a history of the rise and progress of Medical Jurisprudence, see Traill, Med. Jur. 13.

MEDICINE CHEST. A box containing an assortment of medicines.

2. The act of congress for the government and regulation of seamen in the merchant service, sect. 8, 1 Story's L. U. S. 106, directs that every ship or vessel, belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary, once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness, at every port or place where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.

3. And by the act to amend the above mentioned act, approved March 2, 1805, 2 Story's Laws U. S. 971, it is provided that all the provisions, regulations, and penalties, which are contained in the eighth section of the act, entitled "An act for the, government and regulation of seamen in the merchants' service," so far as relates to a chest of medicines to be provided for vessels of one hundred and fifty tons burthen and upwards, shall be extended to all merchant vessels of the burthen of seventy-five tons or upwards, navigated with six persons, or more, in the whole, and bound from the United States to any port or ports in the West Indies.

MEDIETAS LINGUAE. Half tongue. This expression was used to signify that a jury for the trial of a foreigner or alien for a crime, was to be composed one half of natives and the other of foreigners. The jury de medietate linguae is used in but a few if any of the United States. Dane's Ab. vol. 6, c. 182, a, 4, n. 1. Vide 2 Johns. R. 381; 1 Chit. Cr. Law, 525; Bac. Ab. Juries, E 8.

MELANCHOLIA, med. jur. A name given by the ancients to a species of par- tial intellectual mania, now more generally known by the name of monomania. (q. v.) It bore this name because it was supposed to be always attended by dejection of mind and gloomy ideas. Vide Mania.,

MELIORATIONS, Scotch law. Improvements of an estate, other than mere repairs; betterments. (q. v.) 1 Bell's Com. 73.

MELIUS INQUIRENDUM VEL INQUIRENDO. English practice. A writ which in certain cases issues after an imperfect inquisition returned on a capias utlugatum in outlawry. This melius inquirendum commands the sheriff to summon another inquest in order that the value, &c., of lands, &c., may be better or more cor- rectly ascertained. Its use is rare.

MEMBER. This word has various significations: 1. The limits of the body use- ful in self-defence. Membrum est pars corporis habens destinatum operationem in corpore. Co. Litt. 126 a. See Limbs.

2. - 2. An individual who belongs to a firm, partnership, company or corporation. Vide Corporation; Partnership.

3. - 3. One who belongs to a legislative body, or other branch of the government; as, a member of the house of representatives; a member of the court.

MEMBER OF CONGRESS. A member of the senate or house of representatives of the United States.

2. During the session of congress they are privileged from arrest, except for treason, felony, or breach of the peace; they receive a compensation of eight dollars per day while in session, besides mileage. (q. v.)

3. They are authorized to frank letters and receive them free of postage for sixty days before, during, and for sixty days after the session.

4. They are prohibited from entering into any contracts with the United States, directly or indirectly, in whole or in part for themselves and others, under the penalty of three thousand dollars. Act of April 21, 1808, 2 Story's L. U. S. 1091. Vide Congress; Frank.

MEMBERS, English law. Places where a custom-house has been kept of old time, with officers or deputies in attendance; and they are lawful places of exportation or importation. 1 Chit. Com. L. 726.

MEMORANDUM. Literally, to be remembered. It is an informal instrument recording some fact or agreement, so called from its beginning, when it was made in Latin. It is sometimes commenced with this word, though written in English; as "Memorandum, that it is agreed," or it is headed with the words, "Be it remembered that," &c. The term memorandum is also applied to the clause of an instrument.

MEMORANDUM, insurance. A clause in a policy limiting the liability of the insurer. Its usual form is as follows, namely, "N. B. Corn, fish, salt, fruit, flour and seed, are warranted free from average, unless general, or the ship be stranded: sugar, tobacco, hemp, flax, hides and skins, are warranted free from average, under five percent; and all other goods, also the ship and freight, are warranted free from average, under three percent unless general, or the ship be stranded." Marsh. Ins.223; 5 N. S. 293; Id. 540; 4 N. S. 640; 2 L. R. 433; Id. 435.

MEMORANDUM OR NOTE. These words are use in the 4th section of the statute 29 Charles II., c. 3, commonly called the statute of frauds and perjuries, which enact, that "no action shall be brought whereby to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall he brought, or some memorandum or note thereof, Shall be in writing," &c.

2. Many cases have arisen out of the words of this part of the statute; the general rule seems to be that the contract must be stated with reasonable certainty in the memorandum or note so that it can be understood from the writing itself, without having recourse to parol proof. 3 John., R. 399; 2 Kent, Com. 402; Cruise, Dig. t. 32,

c. 3, s. 18. See 1 N. R. 252; 3 Taunt. 169; 15 East, 103; 2 M. & R. 222; 8 M. & W. 834 6 M. & W. 109.

MEMORANDUM CHECK. It is not unusual among merchants, when one makes a tem- porary loan from another, to give the lender a check on a bank, with the express or implied agreement that it shall be redeemed by the maker himself, and that it shall not be presented at the bank for payment. If passed to a third person, it will be valid in his hands, like any other check. 11 Paige, R. 612.

MEMORIAL. A petition or representation made by one or more individuals to a legislative or other body. When such instrument is addressed to a court, it is called a petition.

MEMORY. Understanding; a capacity to make contracts, a will, or to commit a crime, so far as intention is necessary.

2. Memory is sometimes employed to express the capacity of the understanding, and sometimes its power; when we speak of a retentive memory, we use it in the former sense; when of a ready memory, in the latter. Shelf. on Lun. Intr. 29, 30.

3. Memory, in another sense, is the reputation, good or bad, which a man leaves at his death. This memory, when good, is highly prized by the relations of the deceased, and it is therefore libelous to throw a shade over the memory of the dead, when the writing has a tendency to create a breach of the peace, by inciting the friends and relations of the deceased to avenge the insult offered to the family. 4 T. R. 126; 5 Co. R. 125; Hawk. b. 1, c. 73, s. 1.

MEMORY, TIME OF. According to the English common law, which has been altered by 2 & 3 Wm. IV., c. 71, the time of memory commenced from the reign of Richard the First, A. D. 1189. 2 Bl. Com. 31.

2. But proof of a regular usage for twenty years, not explained or contradicted, is evidence upon which many public and private rights are held, and sufficient for a jury in finding the existence of an immemorial custom or prescription. 2 Saund. 175, a, d; Peake's Ev. 336; 2 Price's R. 450; 4 Price's R. 198.

MENACE. A threat; a declaration of an intention to cause evil to happen to another.

2. When menaces to do an injury to another have been made, the party making them may, in general, be held to bail to keep the peace; and, when followed by any inconvenience or loss, the injured party has a civil action against the wrong doer.

Com. Dig. Battery, D; Vin. Ab. h. t.; Bac. Ab. Assault; Co. Litt. 161 a, 162 b, 253 b; 2 Lutw. 1428. Vide Threat.

MENIAL. This term is applied to servants who live under their master's roof Vide stat. 2 H. IV., c. 21.

MENSA. This comprehends all goods and necessaries for livelihood. Obsolete.

MENSA ET THORO. The phrase a mensa et thoro is applied to a divorce which separates the husband and wife but does not dissolve the marriage. Vide Divorce.

MERCHANDISE. By this term is understood all those things which merchants sell either wholesale or retail, as dry goods, hardware, groceries, drugs, &c. It is usually applied to personal chattels only, and to those which are not required for food or immediate support, but such as remain after having been used or which are used only by a slow consumption. Vide Pardess. n. 8; Dig. 13, 3, 1; Id. 19, 4, 1; Id. 50, 16, 66. 8 Pet. 277; 2 Story, R. 16, 53, 54; 6 Wend. 335.

MERCHANT. One whose business it is to buy and sell merchandise; this applies to all persons who habitually trade in merchandise. 1 Watts & S. 469; 2 Salk. 445.

2. In another sense, it signifies a person who owns ships, and trades, by means of them, with foreign nations, or with the different States of the United States; these are known by the name of shipping merchants. Com. Dig. Merchant, A; Dyer, R. 279 b; Bac. Ab. h. t.

3. According to an old authority, there are four species of merchants, namely, merchant adventurers, merchant dormant, merchant travellers, and merchant residents. 2 Brownl. 99. Vide, generally, 9 Salk. R. 445; Bac. Ab. h. t.; Com. Dig. h. t.; 1 Bl. Com. 75, 260; 1 Pard. Dr. Com. n. 78

MERCHANTMAN. A ship or vessel employed in a merchant's service. This term is used in opposition to a ship of war.

MERCHANTS' ACCOUNTS. In the statute of limitations, 21 Jac. 1. c. 16, there is an exception which has been copied in the acts of the legislatures of a number of the States, that its provisions shall not apply to such accounts as concern trade and merchandise between merchant and merchant, their factors or servants.

2. This exception, it has been holden, applies to actions of assumpsit as well as to actions of account. 5 Cranch, 15. But to bring a case within the exception, there must be an account, and that account open and current, and it must concern trade. 12 Pet.

300. See 6 Pet. 151; 5 Mason, R. 505; Bac. Ab. Limitation of Actions, E 3; and article Limitation.

MERCY, Practice. To be in mercy, signifies to be liable to punishment at the discretion of the judge.

MERCY, crim. law. The total or partial remission of a punishment to which a convict is subject. When the whole punishment is remitted, it is called a pardon; (q. v.) when only a part of the punishment is remitted, it is frequently a conditional pardon; or before sentence, it is called clemency or mercy. Vide Rutherf. Inst. 224; 1 Kent, Com. 265; 3 Story, Const. 1488.

MERE. This is the French word for mother. It is frequently used as, in ventre sa mere, which signifies; a child unborn, or in the womb.

MERGER. Where a greater and lesser thing meet, and the latter loses its separate existence and sinks into the former. It is applied to estates, rights, crimes, and torts.

MERGER, estates. When a greater estate and less coincide and meet in one and the same person, without any intermediate estate, the less is immediately merged, that is, sunk or drowned in the latter; example, if there be a tenant for years, and the reversion in fee simple descends to, or is purchased by him, the term of years is merged in the inheritance, and no longer exists; but they must be to one and the same person, at one and the same time, in one and the same right. 2 BL Com. 177; 3 Mass. Rep. 172; Latch, 153; Poph. 166; 1 John. Ch. R. 417; 3 John. Ch. R. 53; 6 Madd. Ch. R. 119.

2. The estate in which the merger takes place, is not enlarged by the accession of the preceding estate; and the greater, or only subsisting estate, continues, after the merger, precisely of the same quantity and extent of ownership, as it was before the accession of the estate which is merged, and the lesser estate is extinguished. Prest. on Conv. 7. As a general rule, equal estates will not drown in each other.

3. The merger is produced, either from the meeting of an estate of higher degree, with an estate of inferior degree; or from the meeting of the particular estate and the immediate reversion, in the same person. 4 Kent, Com. 98. Vide 3 Prest. on Conv. which is devoted to this subject. Vide, generally, Bac. Ab. Leases, &c. R; 15 Vin. Ab. 361; Dane's Ab. Index, h. t.; 10 Verm. R. 293;; 8 Watts, R. 146; Co. Litt. 338 b, note 4; Hill. Ab. Index, h. t.; Bouv. Inst; Index, h. t.; and Confusion; Consolidation; Unity of Possession.

MERGER, crim. law. When a man commits a great crime which includes a lesser, the latter is merged in the former.

2. Murder, when committed by blows, necessarily includes an assault and battery; a battery, an assault; a burglary, when accompanied with a felonious taking of personal property, a larceny in all these, and similar cases, the lesser crime is merged in the greater.

3. But when one offence is of the same character with the other, there is no merger; as in the case of a conspiracy to commit a misdemeanor, and the misdemeanor is afterwards committed in pursuance of the conspiracy. The two crimes being of equal degree, there can be no legal merger. 4 Wend. R. 265. Vide Civil Remedy.

MERGER, rights. Rights are said to be merged when the same person who is bound to pay is also entitled to receive. This is more properly called a confusion of rights, or extinguishment.

2. When there is a confusion of rights, and the debtor and creditor become the same person, there can be no right to put in execution; but there is an immediate merger. 2 Ves. jr. 264. Example: a man becomes indebted to a woman in a sum of money, and afterwards marries her, there is immediately a confusion of rights, and the debt is merged or extinguished.

MERGER, torts. Where a person in committing a felony also commits a tort against a private person; in this case, the wrong is sunk in the felony, at least, until after the felon's conviction.

2. The old maxim that a trespass is merged in a felony, has sometimes been supposed to mean that there is no redress by civil action for an injury which amounts to a felony. But it is now established that the defendant is liable to the party injured either after his conviction; Latch, 144; Noy, 82; W. Jones, 147; Sty. 346; 1 Mod. 282; 1 Hale, P. C. 546; or acquittal. 12 East, R. 409; 1 Tayl. R. 58; 2 Hayw. 108. If the civil action be commenced before, the plaintiff will be nonsuited. Yelv. 90, a, n. See Hamm. N. P. 63; Kely. 48; Cas. Tempt. Hardw. 350; Lofft. 88; 2 T.R. 750; 3 Greenl. R. 458. Butler, J., says, this doctrine is not extended beyond actions of trespass or tort. 4 T. R. 333. See also 1 H. Bl. 583, 588, 594; 15 Mass. R. 78; Id. 336. Vide Civil Remedy; Injury.

3. The Revised Statutes of New York, part 3, c. 4, t. 1, s. 2, direct that the right of action of any person injured by any felony, shall not, in any case, be merged in such felony, or be in any manner affected thereby. In Kentucky, Pr. Dec. 203, and New Hampshire, 6 N. H. Rep. 454, the owner of stolen goods, may immediately. pursue his civil remedy. See, generally, Minor, 8; 1 Stew. R. 70; 15 Mass. 336; Coxe, 115; 4 Ham. 376; 4 N. Hanp. Rep. 239; 1 Miles, R. 212; 6 Rand. 223; 1 Const. R. 231; 2 Root, 90.

MERITS. This word is used principally in matters of defence.

2. A defence upon the merits, is one that rests upon the justice of the cause, and not upon technical grounds only; there is, therefore, a difference between a good defence, which may be technical or not, and a defence on the merits. 5 B. & Ald. 703 1 Ashm. R. 4; 5 John. R. 536; Id. 360; 3 John. R. 245 Id. 449; 6 John. R. 131; 4 John. R. 486; 2 Cowen, R. 281; 7 Cowen, R. 514; 6 Wend. R. 511; 6 Cowen, R. 895.

MERTON, STATUTTE OF. A statute so called, because the parliament or rather council, which enacted it, sat at Merton, in Surrey. It was made the 20 Hen. III. A. D. 1236. See Barr. an the Stat. 41.

MESCROYANT. Used in our ancient books. An unbeliever. Vide Infidel.

MESE. An ancient word used to signify house, probably from the French maison; it is said that by this word the buildings, curtilage, orchards and gardens will pass. Co. Litt. 56.

MESNE. The middle between two extremes, that part between the commencement and the end, as it relates to time.

2. Hence the profits wbich a man receives between disseisin and recovery of lands are called mesne profits. (q. v.) Process which is issued in a suit between the original and final process, is called mesne process. (q . v.)

3. In England, the word mesne also applies to a dignity: those persons who hold lordships or manors of some superior wbo is called lord paramount, and grant the same to inferior persons, are called mesne lords.

MESNE PROCESS. Any process issued between original and final process; that is, between the original writ and the execution. See Process, mesne.

MESNE PROFITS, torts, remedies. The value of the premises, recovered in ejectment, during the time that the lessor of the plaintiff has been illegally kept out of the possession of his estate by the defendant; such are properly recovered by an action of trespass, quare clausum fregit, after a recovery in ejectment. 11 Serg. & Rawle, 55; Bac. Ab. Ejectment, H; 3 Bl. Com. 205.

2. As a general rule, the plaintiff is entitled to recover for such time as be can prove the defendant to have been in possession, provided he does not go back beyond six years, for in that case, the defendant may plead the statute of limitations. 3 Yeates' R, 13; B. N. P. 88.

3. The value of improvements made by the defendant, may be set off against a claim for mesne profits, but profits before the demise laid, should be first deducted from the value of the improvement's. 2 W. C. C. R. 165. Vide, generally, Bac. Ab. Ejectment, H; Woodf. L. & T. ch. 14, s. 3; 2 Sell. Pr. 140; Fonbl. Eq. Index, h. t.; Com. L & T. Index, h. t.; 2 Phil. Ev. 208; Adams on Ej. ch. 13; Dane's Ab. Index, h. t.; Pow. Mortg. Index, h. t.; Bouv. Inst. Index, h. t.

MESNE, WRIT of. The name of an ancient writ, which lies when: the lord paramount distrains on the tenant paravail; the latter shall have a writ of mesne against the lord who is mesne. F. N. B. 316.

MESSENGER. A person appointed to perform certain duties, generally of a ministerial character.

2. In England, a messenger appointed under the bankrupt laws, is an officer who is authorized to execute the lawful commands of commissioners of bankrupts.

MESSUAGE, property. This word is synonymous with dwelling-house; and a grant of a messuage with the appurtenances, will not only pass a house, but all the buildings attached or belonging to it, as also its curtilage, garden and orchard, together with the close on which the house is built. 1 Inst. 5, b.; 2 Saund. 400; Ham. N. P. 189; 4 Cruise, 321; 2 T. R. 502; 1 Tho. Co. Litt. 215, note 35; 4 Blackf. 331. But see the cases cited in 9 B. & Cress. 681; S. C. 17 Engl. Com. L. R. 472. This term, it is said, includes a church. 11 Co. 26; 2 Esp. N. P. 528; 1 Salk. 256; 8 B. & Cress. 25; S. C. 15 Engl. Com. L. Rep. 151. Et vide 3 Wils. 141; 2 Bl. Rep. 726; 4 M. & W. 567; 2 Bing. N. C. 617; 1 Saund. 6. METHOD. The mode of operating or the means of attaining an object. 2. It has been questioned whether the method of making a thing can be patented. But it has been considered that a method or mode may be the subject of a patent, because, when the object of two patents or effects to be produced is essentially the same, they may both be valid, if the modes of attaining the desired effect are essentially different. Dav. Pat. Cas. 290; 2 B. & Ald. 350; 2 H. Bl. 492; 8 T. R. 106; 4 Burr. 2397; Gods. on Pat. 85; Perpigna, Manuel des Inventeurs, &c., c. 1, sect. 5, 1, p. 22.

METRE or METER. This word is derived from the Greek, and signifies a measure.

2. This is the standard of French measure.

3. The fundamental base of the metre is the quarter of the terrestrial meridian, or the distance from the pole to equator, which has been divided into ten millions of equal parts, one of which is of the length of the metre. The metre is equal to 3.28 feet, or 39.371 inches. Vide Measure.

MEUBLES MEUBLANS. A French term used in Louisiana, which signifies simply household furniture. 4 N. S. 664; 3 Harr. Cond. R. 431.

MICEL GEMOT, Eng. law. In Saxon times, the great council of the nation bore this name, sometimes also called the witena gemot, or assembly of wise men; in aftertimes, this assembly assumed the name of parliament. Vide 1 Bl. Comm. 147.

MICHAELMAS TERM. Eng. law. One of the four terms of the courts; it begins on the 2d day of November, and ends on the 25th of November. It was formerly a movable term. St. 11 G. IV. and 1 W. IV. 70.

MICHIGAN. One of the new, states of the United States of America. This state was admitted into the Union by the Act, of Congress of January 26th, 1837, Sharsw. cont. of Story's L. U. S. 2531, which enacts "that the state of Michigan shall be one and is hereby declared to be one, of the United States of Amaerica, and admitted into the Union on an equal footing with the original states, in all respects whatever."

2. The first constitution of this state was adopted by a convention of the people, begun and held at the capital in the city of Detroit, on Monday, the eleventh day of May, 1835. This was superseded by the present constitution, which was adopted 1850. It provides, article 3, l; The powers of the government shall be divided into three distinct departments; the legislative, the executive, and the judicial; and one department shall never exercise the powers of another, except in such cases as are expressly provided for in this constitution.

3. - 1. Art. 4, relates to the Legislative department, and provides that

1. The legislative power shall be vested in a senate and house of representatives.

4. - 6. No person holding any office under the United States [or this state] or any county office, except notaries public, officers of the militia and officers elected by townships, shall be eligible to, or have a seat in either house of the legislature, and all votes given for any such person shall be void.

5. - 7. Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the terrainations of each session. They shall not be questioned in any other place for any speech in either house.

6. - 8. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

7. - 9. Each house shall choose its own officers, determine the rules of its proceeding, and judge of the qualifications, elections, and return of its own members and may, with the concurrence of two-thirds of all the members elected, expel a member; no member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election. The reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

8. - 10. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy; the yeas and nays of the members of either house, on any question, shall be entered on the journal at the request of one-fifth of the members present. Any member of either house may dissent from and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

9. - 11. In all elections by either house, or in joint convention, the votes shall be given viva voce. All votes on nominations to the senate shall be taken by yeas and nays, and published with the journal of its proceedings.

10. - 12. The doors of each house shall be open, unless the public welfare require secrecy; neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the legislature may then be in session.

11. - 1st. In considering the house of representatives, it will be proper to take a view of the qualifications of members; the qualification of the electors; the number of members; the time for wbich they are elected.

12. - 1. The representatives must be citizens of the United States, and qualified electors in the respective counties which they represent. Art. 4, S.

5. 2. In all elections, every white male citizen, every white male inhabitant residing in the state on the twenty-fourth day of June, one thousand eight hundred and thirty-five; every white male inhabitant residing in the first day of January, one thousand eight hundred and fifty, who has declared his in- tention to become a citizen of the United States pursuant to the laws thereof six months preceding an election, or who has resided in this state two years and six months and declared his intention as aforesaid and every civilized male inhabitant of Indian descent, a native of the United States, and not a member of any tribe, shall be an elector and entitled to vote; but no citizen or inhabitant shall be an elector or entitled to vote at any election, unless he shall be

above the age of twenty-one years, and has resided in this state three months and in the township or ward in which he offers to vote ten days next preceding such election. Art. 7, 1. 3. The house of representatives shall consist of not less than sixty-five nor more than one hundred members. Art. 4, s. 3. 4. The election of representatives, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, in the year one thousand eight hundred and fifty-two, and on the Tuesday succeeding the first Monday of November of every second year thereafter. Art. 4, s. 34. Representatives shall be chosen for two years. Art. 4, s. 3.

13. - 2d. The senate will be considered in the same order. 1. Senators must be citizens of the United States, and be qualified electors in the district which they represent. Art. 4, s. 5. 2. They are elected by the electors of representatives. Art. 7, s. 1. 3. The senate shall consist of thirty-two members. Art. 4, s. 2. 4. The senators shall be elected for two years, at the same time and in the same manner as the representatives are required to be chosen. Art. 4, section 2, 34.

14. - 2. The executive department is regulated by the fifth article of the constitution as follows, namely:

1. The executive power is vested in a governor, who shall hold his office for two years; a lieutenant governor shall be chosen for the same term.

l5. - 2 No person shall be eligible to the office of governor or lieutenant governor, who has not been five years a citizen of the United States, and a resident of this state two years next preceding the election; nor shall any person be eligible to either office who has not attained the age of thirty years.

16. - 3. The governor and lieutenant governor shall be elected at the times and places of choosing members of the legislature. The Person having the highest number of votes for governor and lieutenant governor shall be elected; in case two or more persons have an equal and the highest number of votes for governor or lieutenant governor, the legislature shall by joint vote choose one of such persons.

17. - 4. The governor shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrections and to repel invasions.

18. - 5. He shall transact all necessary; business with the officers of government; and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

19. - 6. He shall take care that the laws be faithfully executed.

20. - 7. He may convene the legislature on extraordinary occasions.

21. - 8. He shall give to the legislature, and at the close of his official term to the next legislature, information by message of the condition of the state, and recommend such measures to them as he shall deem expedient.

22. - 9. He may convene the legislature at some other place, when the seat of government becomes dangerous from disease or a common enemy.

23. - 0. He shall issue writs of election to fill such vacancies as occur in the senate or house of representatives.

24. - 1. He may grant reprieves, commutations and pardons after convictions, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to regulations provided by law, relative to the manner of ap- plying for pardons. Upon conviction for treason, he may suspend the execution of the sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the legislature at each session information of each case of reprieve, commutation or pardon granted, and the reasons therefor.

25. - 12. In case of the impeachment of the governor, his removal from office, death, inability, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability ceases. When the governor shall be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

26. - 13. During a vacancy in the office of governor, if the lieutenant governor die, resign, be impeached, displaced, be incapable of performing the duties of his office, or absent from the state, the president pro tempore of the senate shall act as governor until the vacancy be filled, or the disability cease.

27. - 14. The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and when there is an equal division, he shall give the casting vote.

28. - 15. No member of congress, nor any person holding office under the United States, or this state, shall execute the office of governor.

29. - 16. No person elected governor or lieutenant governor shall be eligible to any office or appointment from the legislature, or either house thereof, during the time for which he was elected. All votes for either of them, for any such office, shall be void.

30.- 17. The lieutenant governor and president of the senate pro tempore, when performing the duties of governor, shall receive the same compensation as the governor.

31. - 18. All official acts of the governor, his approval of the laws excepted, shall be authenticated by the great seal of the state, which shall be kept by the secretary of state.

32. - 19. All commissions issued to persons holding office under the provisions of this constitution, shall be in the name and by the authority of the people of the state of Michigan, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

32. - 3. The judicial department is regulated by the sixth article as follows, namely:

33. - 1. The judicial power is vested in one supreme court, in circuit courts, in probate courts, and in justices of the peace. Municipal courts of civil and criminal jurisdiction may be established by the legislature in cities.

34. - 2. For the term of six years, and thereafter, until the legislature otherwise provide, the judges of the several circuit courts shall be judges of the supreme court, four of whom shall constitute a quorum. A concurrence of three shall be necessary to a final decision. After six years the legislature may provide by law for the organization of a supreme court, with the jurisdiction and powers prescribed in this constitution, to consist of one chief justice and three associate justices, to be chosen by the electors of the state. Such supreme court, when so organized, shall not be changed or discontinued by the legislature for eight years thereafter. The judges thereof shall be so classified that but one of them shall go out of office at the same time. Their term of office, shall be eight years.

35. - 3. The supreme court shall have a general superintending control over all inferior courts, and shall have power to issue writs of error, habeas corpus, mandamus, quo warrants, procedendo, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only.

36. - 4. Four terms of the supreme court shall be held annually, at such times and places, as may be designated by law.

37. - 5. The supreme court shall, by general rules, establish, modify and amend the practice in such court and in the circuit courts, and, simplify the same. The legislature shall, as far as practicable, abolish distinctions between law and equity proceedings. The office of master in chancery is prohibited.

38. - 6. The state shall be divided, into eight judicial circuits; in each of which the electors thereof shall elect one circuit judge, who shall hold his office for the term of six years, and until his successor is elected and qualified.

39. - 7. The legislature may alter the limits of circuits, or increase the number of the same. No alteration or increase shall have the effect to remove a judge from office. In every additional circuit established the judge shall be elected by the electors of such circuit, and his term of office shall continue as provided in this constitution for judges of the circuit court.

40. - 8. The circuit courts shall have original jurisdiction in all matters civil and criminal, not excepted in this constitution, and not probibited by law; and, appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. They shall also have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other writs necessary to carry into effect their orders, judgments and decrees, and give there a general control over inferior courts and tribunals within their respective jurisdictions.

41. - 9. Each of the judges of the circuit courts shall receive a salary payable quarterly. They shall be ineligible to any other than a judicial office during the term for which they are elected, and for one year thereafter. All votes for any person elected such judge for any office other than judicial, given either by the legislature or the people, shall be void.42. - 10. The supreme court may appoint a reporter of its decisions. The decisions of the supreme court shall be in writing, and signed by the judges concurring therein. Any judge dissenting there from, shall give the reasons of such dissent in writing, under his signature. All such opinions shall be filed in the office of the clerk of the supreme court. The judges of the circuit court, within their respective jurisdictions, may fill vacancies in the office of county clerk and of prosecuting, attorney; but no judge of the supreme court, or, circuit court, shall exercise any other power of appointment to public office.

43. - 11. A circuit court shall be held at least twice in each year, in every county organized for judicial purposes, and four times in each year in counties containing ten thousand inhabitants. Judges of the circuit court may hold courts for each other, and shall do so when required by law.

44. - 12. The clerk of each county organized for judicial purposes shall be the clerk of the circuit court of such county, and of the supreme court when held within the same.

45. - 13. In each of the counties organized for judicial purposes, there shall be a court of probate. The judge of such court shall be elected by the electors of the county in which he resides, and shall hold his office for four years, and until his successor is elected and qualified. The jurisdiction, powers, and duties of such court, shall be prescribed by law.

46. - 14. When a vacancy occurs in the office of judge of the supreme, circuit or probate court, it shall be filled by appointment of the governor, which shall continue until a successor is elected and qualified. When elected, such successor shall hold his office the residue of the unexpired term.

47. - 15. The supreme court, the circuit and probate court of each county, shall be courts of record, and shall each have a common seal.

48. - 16. The legislature may provide by law for the election of one or more persons in each organized county, who may be vested with judicial powers, not exceeding those of a judge of the circuit court at chambers.

49. - 17. There shall be not exceeding four justices of the peace in each organized township. They shall be elected by the electors of the townships, and shall hold their offices for four years, and until their successors are elected and qualified. At the first election in any township, they shall be classified as shall be prescribed by law. A justice elected to fill a vacancy shall hold his office for the residue of the unexpired term. The legislature may increase the number of justices in cities.

50. - 18. In civil cases justices of the peace shall have exclusive jurisdiction to the amount of one hundred dollars, and concurrent jurisdiction to the amount of three hundred dollars, which may be increased to five hundred dollars, with such exceptions and restrictions as may be provided by law. They shall also have such criminal jurisdiction and perform such duties as shall be prescribed by the legislature.

51. - 19. Judges of the supreme court, circuit judges, and justices of the peace, shall be conservators of the peace within their respective jurisdictions.

52. - 20. The first election of judges of the circuit courts shall be held on the first Monday in April, one thousand eight hundred and fifty-one, and every sixth year thereafter. Whenever an additional circuit is created, provision. shall be made to hold the subsequent election of such additional judges at the regular elections herein provided.

53. - 1. The first election of judges of the probate courts shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and fifty-two, and every fourth year thereafter.

54. - 22. Whenever a judge shall remove beyond the limits of the jurisdiction for which he was elected or a justice of the peace from the township in which he was elected, or by a change in the boundaries of such township shall be placed without the same, they shall be deemed to have vacated their respective offices.

55. - 23. The legislature may establish courts of conciliation, with such powers and duties as shall be prescribed by law.

56. - 24. Any suitor in any court of this state shall have the right to prosecute or defend his suit, either in his own proper person, or by an attorney or agent, of his choice.

57. - 5. In all prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury shall have the right to determine the law and the fact.

58. - 26. The person, houses, papers, and possessions of every person shall be secure from unreasonable searches and seizure. No warrant to search any place, or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.

59. - 27. The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases unless demanded by one of the parties, in such manner as shall be prescribed by law.

60. - 8. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than twelve, men in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defence.

61. - 29. No person, after acquittal upon the merits, shall be tried for the same offence; all persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason, when the proof is evident or the presumption great.

62. - 30. Treason against the state shall consist only in levying war against, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of

treason unless upon the testimony of two witnesses to the same overt act, or on confession in open court.

63. - 31. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted, nor, shall witnesses be unreasonably detained.

64. - 32. No person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law.

65. - 33. No person shall be imprisoned for debt arising out of, or founded on a contract, express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers, or in any professional employment. No person shall be imprisoned for a militia fine in time of peace.

66. - 34. No person shall be rendered incompetent to be a witness, on account of his opinions on matters of religious belief.67. - 35. The style of all process shall be, "In the name of the people of the State of Michigan."

MIDDLEMAN contracts. A person who is employed both by the seller and purchaser of goods, or by the purcbaser alone, to receive them into his possession, for the purpose of doing something in or about them; as, if goods be delivered from a ship by the seller, to a wharfinger, to be by him forwarded to the purchaser, who has been appointed by the latter to receive them; or if goods be sent to a packer, for and by orders of the vendee, the packer is to be considerpd as a middleman.

2. The goods in both, these cases will be considered in transitu, provided the purchaser has not used the wharfinger's or the packer's warehouse as his own, an have an ulterior place of delivery in view. 3 B. & P. l27, 469; 4 Esp. R. 82; 2 B. & P. 457; 1 Campb. 282; 1 Atk. 245; 1 H. Bl. 364; 3 East, R. 93; Whit. on Trans. 195.

3. By middleman is also understood one who has been employed as an agent by a principal, and who has employed a subagent under him by authority of the principal, either express or implied. He is not in general Iiable for the wrongful acts of the sub-agent, the principal being alone responsible. 3 Campb. N. P. Cas. 4; 6 T. R. 411; 14 East, 65.

MIDWIFE, med. jur. A woman who practices midwifery; a woman who pursues the business of an account.

2. A midwife is required to perform the business she undertakes with proper skill, and if she be guilty of any mala praxis, (q. v.) she is liable to an action or an indictment for

the misdemeanor. Vide Vin. Ab. Physician; Com. Dig. Physician; 8 East, R. 348; 2 Wils. R. 359; 4 C. & P. 398; S. C. 19 E. C. L. R. 440; 4 C. & P. 407, n. a; 1 Chit. Pr. 43; 2 Russ. Cr. 288.

MILE, measure. A length of a thousand paces, or seventeen hundred and sixty yards, or five thousand two hundred and eighty feet. It contains eight furlongs, every furlong being forty poles, and each pole sixteen feet six inches. 2 Stark. R. 89.

MILEAGE. A compensation allowed by law to officers, for their trouble and expenses in travelling on public business.

2. The mileage allowed to members of congress, is eight dollars for every twenty miles of estimated distance, by the most usual roads, from his place of residence to the seat of congress, at tbe commencement and end of every session. Act of Jan. 22, 1818; 3 Story, Laws U. S. 1657.

3. In computing mileage the distance by the road usually travelled is that which must be allowed, whether in fact the officer travels a more or less distant way to suit his own convenience. 5 Shepl. R. 431.

MILITARY. That which belongs or relates to the army.

MILITIA. The military force of the nation, consisting of citizens called forth to execute the laws of the Union, suppress insurrection and repel invasion.

2. The Constitution of the United States provides on this subject as follows: Art. 1, s. 8, 14. Congress shall have power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

3. - 15. to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress.

4. Under the clauses of the constitution, the following points have been decided.

1. If congress had chosen, they might by law, have considered a militia man, called into the service ot the United States, as being, from the time of such call, constructively in that service, though not actually so, although he should not appear at the place of rendezvous. But they have not so considered him, in the acts of congress, till after his appearance at the place of rendezvous: previous to that, a fine was to be

paid for the delinquency in not obeying the call, which fine was deemed an equivalent for his services, and an atonement for disobedience.

5. - 2. The militia belong to the states respectively, and are subject, both in their civil and military capacities, to the jurisdiction and laws of the state, except so far as these laws are controlled by acts of congress, constitutionally made.

6. - 3. It is presumable the framers of the constitution contemplated a full exercise of all the powers of organizing, arming, and disciplining the militia; nevertheless, if congress had declined to exercise them, it was competent to the state governments respectively to do it. But congress has ex- ecuted these powers as fully as was thought right, and covered the whole ground of their legislation by different laws, notwithstanding important provisions may have been omitted, or those enacted might be beneficially altered or enlarged.

7. - 4. After this, the states cannot enact or enforce laws on the same subject. For although their laws may not be directly repugnant to those of congress, yet congress, having exercised their will upon the subject, the states cannot legislate upon it. If the law of the latter be the same, it is inoperative: if they differ, they must, in the nature of things, oppose each other, so far as they differ.

8. - 5. Thus if an act of congress imposes a fine, and a state law fine and imprisonment for the same offence, though the latter is not repugnant, inasmuch as it agrees with the act of the congress, so far as the latter goes, and add another punishment, yet the wills of the two legislating powers in relation to the subject are different, and cannot subsist harmoniously together.

9. - 6. The same legislating power may impose cumulative punishments; but not different legislating powers.

10. - 7. Therefore, where the state governments have, by the constitution, a concurrent power with the national government, the former cannot legislate on any subject on which congress has acted, although the two laws are not in terms contradictory and repugnant to each other.

11. - 8. Where congress prescribed the punishment to be inflicted on a militia man, detached and called forth, but refusing to march, and also provided that courts martial for the trial of such delinquent's, to be composed of militia officers only, should be held and conducted in the manner pointed out by the rules and articles of war, and a state had passed a law enacting the penalties on such delinquents which the act of congress prescribed, and directing lists of the delinquents to be furnished to the comptroller of the United States and marshal, that further proceeding might take place

according to the act of congress, and providing for their trial by state courts martial, such state courts martial have jurisdiction. Congress might have vested exclusive jurisdiction in courts martial to be held according to their laws, but not having done so expressly, their jurisdiction is not exclusive.

12. - 9. Although congress have exercised the whole power of calling out the militia, yet they are not national militia, till employed in actual service; and they are not employed in actual service, till they arrive at the place of rendezvous. 5 Wheat. 1; Vide 1 Kent's Com. 262; 3 Story, Const. 1194 to 1210.

13. The acts of the national legislature which regulate the militia are the following, namely: Act of May 8, 1792, 1 Story, L. U. S. 252; Act of February 28, 1795, 1 Story, L. U. S. 390; Act of March 2, 1803, 2 Story, L. U. S. 888; Act of April 10, 1806, Story, L. U. S. 1005; Act of April 20, 1816, 3 Story, L. U. S. 1573; Act of May 12, 1820, 3 Story, L. U. S. 1786 Act of March 2, 1821, 3 Story; L. U. S. 1811.

MILL, estates. Mills are so very different and various, that it is not easy to give a definition of the term. They are used for the purpose of grinding and pulverising grain and other matters, to extract the juices of vegetables, to make various articles of manufacture. They take their names from the uses to which they are employed, hence we have paper-mills, fulling-mills, iron-mills, oil-mills, saw-mills, &c. In another respect their kinds are various; they are either fixed to the freehold or not. Those which are a part of the freehold, are either watermills, wind-mills, steam-mills, &c.; those which are not so fixed, are hand-mills, and are merely personal property. Those which are fixed, and make a part of the freehold, are buildings with machinery calculated to obtain the object proposed in their erection.

2. It has been held that the grant of a mill; and its appurtenances, even without the land, carries the whole right of water enjoyed by the grantor, as necessary to its use, and as a necessary incident. Cro. Jac. 121, And a devise of a mill carries the land used with it, and the right to use the water. 1 Serg. & Rawle, 169; and see 5 Serg. & Rawle, 107; 2 Caine's Ca. 87; 10 Serg. & Rawle, 63; 1 Penna. R. 402; 3 N. H. Rep. 190; 6 Greenl. R. 436; Id. 154; 7 Mass. Rep. 6; 5 Shepl. 281.

3. A mill means not merely the building, in which the business is carried on, but includes the site, the dam, and other things annexed to the freehold, necessary for its beneficial enjoyment. 3 Mass R. 280. See Vide 6 Greenl. R. 436.

4. Whether manufacturing machinery will pass under the grant of a mill must depend mainly on the circumstances of each case. 5 Eng. C. L. R. 168; S. C. 1 Brod. & Bing. 506. In England the law appears not to be settled. 1 Bell's Com. 754, note 4, 5th ed. In this note are given the opinions of Sir Samuel Romily and Mr. Leech, on a question

whether a mortgage of a piece of land on which a mill was erected, would operate as a mortgage of the machinery. Sir Samuel was clearly of opinion that such a mortgage would bind the machinery, and Mr. Leech was of a directly opposite opinion.

5. The American law on this subject, appears not to be entirely fixed. 1 Hill. Ab. 16; 1 Bailey's R. 540; 3 Kent, Com. 440; see Amos & Fer., on Fixt., 188, et seq.; 1 Atk. 165; 1 Ves. 348; Sugd. Vend. 30; 6 John. 5; 10 Serg. & Rawle, 63; 2 Watts & Serg. 116; 6 Greenl. 157; 20 Wend. 636; 1 H. Bl. 259, note; 17 S. & R. 415; 10 Amer. Jur. 58; 1 Misso. R. 620; 3 Mason, 464; 2 Watts & S. 390. Vide 15 Vin. Ab. 398; Dane's Ab. Index, h. t. 6 Cowen, 677.

MILL, money. An imaginary money, of which ten are equal to one cent, one hundred equal to a dime, and one thousand equal to a dollar. There is no coin of this denomination. Vide Coin; Money.

MILLED MONEY. This term means merely coined money, and it is not necessary that it should be marked or rolled on the edges. Running's case, Leach, 708.

MIL-REIS. The name of a coin. The mil-reis of Portugal is taken as money of account, at the custom-house, to be of the value of one hundred and twelve cents. Act of March 13, 1843.

2. The mil-reis of Azores, is deemed of the value of eighty-three and one-third cents. Act of Match 3, 1843.

3. The mil-reis of Maderia, is deemed of the value of one hundred cents. Id.

MIND AND MEMORY. It is usual in considering the state of a testator at the time of making his will, to ascertain whether he was of sound mind and memory; that is, whether he had capacity to make a will. These words then import capacity, ability.

MINE. An excavation made for obtaining minerals from the bowels of the earth, and the minerals themselves are known by the name of mine.

2. Mines are therefore considered as open and not open. An open mine is one at which work has been done, and a part of the materials taken out. When land is let on which there is an open mine, the tenant may, unless restricted by his lease, work the mine; 1 Cru. Dig. 132; 5 Co. R. 12; 1 Chit. Pr. 184, 5; and he may open new pit's or shafts for working the old vein, for otherwise the working of the same mine might be impracticable. 2 P. Wms. 388; 3 Tho. Co. Litt. 237; 10 Pick. R. 460. A mine not opened, cannot be opened by a tenant for years unless authorized, nor even by a tenant for life, without being guilty of waste. 5 Co. 12.

3. Unless expressly excepted, mines would be included in the conveyance of land, without being expressly named, and so vice versa, by a grant of a mine, the land itself, the surface above the mine, if livery be made, will pass. Co. Litt. 6; 1 Tho. Co. Litt. 218; Shep. To. 26. Vide, generally, 15 Vin. Ab. 401; 2 Supp. to Ves. jr. 257, and the cases there cited, and 448; Com. Dig. Grant, G 7; Id. Waifs, H. 1; Crabb, R. P. 98-101; 10 East, 273; 1 M. & S. 84; 2 B. & A. 554; 4 Watts, 223-246.

4. In New York the following provisions have been made in relation to the mines in that state, by the revised statutos, part 1, chapter 9, title 11. It is enacted as follows, by

1. The following mines are, and shall be, the property of this state, in its right of sovereignty. 1. All mines of gold and silver discovered, or hereafter to be discovered, within this state. 2. All mines of other metals discovered, or hereafter to be discovered, upon any lands owned by persons not being citizens of any of the United States. 3. All mines of other metals discovered, or hereafter to be discovered, upon lands oned by a citizen of any of the United States, the ore of which, upon an average, shall contain less than two equal third parts in value, of copper, tin, iron or lead, or any of those metals.

6. - 2. All mines, and all minerals and fossils discovered, or hereafter to be discovered, upon any lands belonging to the people of this state, are, and shall be the property of the people, subject to the provisions hereinafter made to encourage the discovery thereof.

6. - 3. All mines of whatever description, other than mines of gold and silver, discovered or hereafter to be discovered, upon any lauds owned by a citizen of the United states, the ore of which, upon an average, shall contain two equal third parts or more, in value, of copper, tin, iron and lead, or any of those metals, shall belong to the owner of such land.

7. - 4. Every person who shall make a discovery of any mine of gold or silver, within this state, and the executors, administrators or assigns of such person, shall be exempted from paying to the people of this state, any part of the ore, profit or produce of such mine, for the term of twenty-one years, to be computed from the time of giving notice of such discovery, in the manner hereinafter directed.

8. - 5. No person discovering a mine of gold or silver within this state, shall work the same, until he give notice thereof, by information in writing, to the secretary of this state, describing particularly therin the nature and situation of the mine. Such notice shall be registered in a book, to be kept the secretary for that purpose.

9. - 6. After the expiration of the term above specified, the discoverer of the mine, or his representatives, shall be preferred in any contract for the working of such mine, made with the legislature or under its authority.

10. - 7. Nothing in this title contained shall affect any grants heretofore made by the legislature, to persons having discovered mines; nor be construed to give to any person a right to enter on, or to break up the lands of any other person, or of the people of this state, or to work any mines in such lands, unless the consent, in writing, of the owner thereof, or of the commissioners of the land office, when the lands belong to the people of this state, shall be previously obtained.

MINISTER, government. An officer who is placed near the sovereign, and is invested with the administration of some one of the principal branches of the government.

2. Ministers are responsible to the king or other supreme magistrate who has appointed them. 4 Conn. 134.

MINISTER, international law. This is the general name given to public functionaries who represent their country abroad, such as ambassadors, (q.v.) envoys, (q.v.) and residents. (q.v.) A custom of recent origin has introduced a new kind of ministers, without any particular determination of character; these are simply called ministers, to indicate that they are invested with the general character of a sovereign's mandatories, without any particular assignment of rank or character.

2. The minister represents his government in a vague and indeterminate manner, which cannot be equal to the first degree; and be possesses all the rights essential to a public minister.

3. There are also ministers plenipotentiary, who, as they possess full powers, are of much greater distinction than simple ministers. These also, are without any particular attribution of rank and character, but by custom are now placed immediately below the ambassador, or on a level with the envoy extraordinary. Vattel, liv. 4, c. 6, 74; Kent, Com. 38; Merl. Repert. h. t. sect. 1, n. 4.

4. Formerly no distinction was made in the different classes of public ministers, but the modern usage of Europe introduced some distinctions in this respect, which, on account of a want of precision, became the source of controversy. To obviate these, the congress of Vienna, and that of Aix la Chapelle, put an end to these disputes by classing ministers as follows: 1. Ambassadors, and papal legates or nuncios. 2. Envoys, ministers, or others accredited to sovereigns, (aupres des souverains). 3. Ministers resident, accredited to sovereigns. 4. Charges d'Affaires, accredited to the

minister of foreign affairs. Recez du Congres de Vienne, du 19 Mars, 1815; Protocol du Congres d' Aix la Chapelle, du 21 Novembre, 1818; Wheat, Intern. Law, pt. 3, c. 6.

5. The act of May 1, 1810, 2 Story's L. U. S. 1171, fixes a compensation for public, ministers, as follows

1. Be it enacted, &c. That the president of the United States shall not allow to any minister plenipotentiary a greater sum than at the rate of nine thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any charge des affaires, a greater sum than at the rate of four thousand five bundred dollars per annum, as a compensation for all his personal services and expenses, nor to the secretary of any legation, or embassy to any foreign country, or secretary of any minister plenipotentiary, a greater sum than at the rate of two thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any consul who shall be appointed to reside at Algiers, a greater sum than at the rate of four thousand dollars per annum, as a compensation for all his personal services and expenses; nor to any other consul who shall be appointed to reside at any other of the states on the coast of Barbary, a greater sum than at the rate of two thousand dollars per annum, as a compensation for all his personal services and expenses; nor shall there be appointed more than one consul for any one of the said states: Provided, it shall be lawful for the president of the United States to allow to a minister plenipotentiary, or charge des affaires, on going from the United States to any foreign country, an outfit, which shall in no case exceed one year's full salary of such minister or charge des affaires; but no consul shall be allowed an outfit in any case whatever, any usage or custom' to the contrary notwithstanding.

6. - 2. That to entitle any charge des affaires, or secretary of any legation or embassy to any foreign country, or secretary of any minister pleni-potentiary, to the compensation hereinbefore provided, they shall, respectively, be appointed by the president of the United Staies, by and with the advice and consent of the senate; but in the recess of the senate, the president is hereby authorized to make such appointments, which shall be submitted to the senate at the next session thereafter, for their advice and consent; and no compensation shall be allowed to any charge des affaires, or any of the secretaries hereinbefore described, who shall not be appointed as aforesaid: Provided, That nothing herein contained shall be construed to authorize any appointment, of a secretary to a charge des affaires, or to any consul residing on the Barbary coast; or to sanction any claim against the United States for expenses incident to the same, any usage or custom to the contrary notwithstanding.

7. The Act of August 6, 1842, sect. 9, directs, that the president of the United States shall not allow to any minister, resident a greater sum than at the rate of six thousand dollars per annum, as a compensation for all his personal services and expenses:

Provided, that it shall be lawful for the president to allow to such minister resident, on going from the United States to any foreign country, an outfit, which shall in no case exceed one year's full salary of such minister resident.

MINISTER, eccles. law. One ordained by some church to preach the gospel.

2. Ministers are authorized in the United States, generally, to marry, and are liable to fines and penalties for marrying minors contrary to the local regulations. As to the right of ministers or parsons, see Am. Jur. No. 30, p. 268; Anth. Shep. Touch. 564; 2 Mass. R. 500; 10 Mass. R. 97; 14 Mass. R. 333; 3 Fairf. R. 487.

MINISTER, mediator. An officer appointed by the government of one nation, with the consent of two other nations, who have a matter in dispute, with a view by his interference and good office to have such matter settled.,

MINISTERIAL. That which is done under the authority of a superior; opposed to judidial; as, the sheriff is a ministerial officer bound to obey the judicial commands of the court.

2. When an officer acts in both a judicial and ministerial capacity, he may be compelled to perform ministerial acts in a particular way; but when he acts in a judicial capacity, he can only be required to proceed; the manner of doing so is left entirely to his judgment. See 2 Fairf. 377; Bac. Ab. Justices of the Peace, E; 1 Conn. 295; 3 Conn. 107; 9 Conn. 275; 12 Conn. 464; also Judicial; Mandamus; Sheriff.

MINISTERIAL TRUSTS. These which are also called instrumental trusts, demand no further exercise of reason or understanding, than every intelligent agent must necessarily employ as to convey an estate. They are a species of special trusts, distinguished from discretionary trusts, which necessarily require much exercise of the understanding. 2 Bouv. Inst. A. 1896.

MINOR, persons. One under the age of twenty-one years, while in a state of infancy; one who has not attained the age of a major. The terms major and minor, are more particularly used in the civil law. The common law terms are adult and infant. See Infant.

MINORITY. The state or condition of a minor; infancy. In another sense, it signifies the lesser number of votes of a deliberative assembly; opposed to majority. (q.v.)

MINT. The place designated by law, where money is coined by authority of the government of the United States.

2. The mint was established by the Act of April 2, 1792, 1 Story's L. U. S. 227, and located at Philadelphia, where, by virtue of sundry acts of congress, it still remains. Act of April 24, 1800, 1 Story, 770; Act of March 3, 1801, 1 Story, 816; Act of May 19, 1828, 4 Sharsw. cont. of Story's L. U. S. 2120.

3. Below will be found a reference to the acts of congress now in force in relation to the mint. Act of January 18, 1837, 4 Sharsw. cont. of Story, L. U. S. 2120; Act of May 19, 1828, 4 Id. 2120; Act of May 3, 1835; Act of February 13, 1837; Act of March 3, 1849; Act of March 3, 1851, s. 11. Vide Coin; Foreign Coin; Money.

MINUTE, measures. In divisions of the circle or angular measures, a minute is equal to sixty seconds, or one sixtieth part of a degree.

2. In the computation of time, a minute is equal to sixty seconds, or the sixtieth part of an hour. Vide Measure.

MINUTE, practice. A memorandum of what takes place in court; made by authority of the court. From these minutes the record is afterwards made up. 2. Toullier says, they are so called because the writing in which they were originally, was small, that the word is derived, from the Latin minuta, (scriptura) in opposition to copies which were delivered to the parties, and which were always written in a larger hand. 8 Toull. n. 413.

3. Minutes are not considered as any part of the record. 1 Ohio R. 268. See 23 Pick. R. 184.

MINUTE BOOK. A book kept by the clerk or prothonotary of a court, in which minutes of its proceedings are entered. It has been decided that minutes are no part of the record. 1 Ohio R. 268.

MIRROR DES JUSTICES. The Mirror of Justices, a treatise written during the reign of Edward II. Andrew Horne is its reputed author. It was first published in 1642, and in 1768 it was translated into English by William Hughes. Some diversity of opinion seems to exist as to its merits. Pref. to 9 & 10 Co. Rep. As to the history of this celebrated book see St. Armand's Hist. Essays on the Legislative power of England, 68, 59.

MIS. A syllable which prefixed to some word signifies some fault or defect; as, misadventure, misprision, mistrial, and the like.

MISADVENTURE, crim. law, torts. An accident by which an injury occurs to another.

2. When applied to homicide, misadventure is the act of a man who, in the performance of a lawful act, without any intention to do harm, and after using proper precaution to prevent danger, unfortunately kills another person. The act upon which the death ensues, must be neither malum in se, nor malum prohibitum. The usual examples uuder this head are, 1. When the death ensues from innocent recreations. 2. From moderate and lawful correction (q. v.) in foro domestico. 3. From acts lawful and indifferent in themselves, done with proper and ordinary caution. 4 Bl. Com. 182; 1 East, P C. 221.

MISBEHAVIOUR. Improper or unlawful conduct. See 2 Mart. N. S. 683.

2. A party guilty of misbehaviour; as, for example, to threaten to do injury to another, may be bound to his good behaviour and thus restrained. See Good Behaviour.

3. Verdicts are not unfrequently set aside on the ground of misbehaviour of jurors; as, when the jury take out with them papers which were not given in evidence, to the prejudice of one of the parties. Ld. Raym. 148. When they separate before they have agreed upon their verdict. 3 Day, 237, 310., When they cast lots for a verdict; 2 Lev. 205; or, give their verdict because they have agreed to give it for the amount ascertained by each juror putting down a sum, adding the whole together, and then dividing by twelve the number of jurors, and giving their verdict for the quotient. 15 John. 87. See Bac. Ab. Verdict, H.

4. A verdict will be set aside if the successful party has been guilty of any misbehaviour towards the jury; as, if he say to a juror, "I hope you will find a verdict for me;" or " the matter is clearly of my side." 1 Vent. 125; 2 Roll. Ab. 716, pl. 17. See Code, 166, 401; Bac. Ab. Verdict, I.

MISCARRIAGE, **med. jurisp. By this word is technically understood the expulsion of the ovum or** embryo from the uterus within the first six weeks after conception; between that time and before the expiration of the sixth month, when the child may possibly live, it is termed abortion. When the delivery takes place soon after the sixth month, it is denominated premature labor. But the criminal act of destroying the foetus at any time before birth, is termed in law, procuring miscarriage. Chit. Med. Jur. 410; 2 Dunglison's Human Physiology, 364. Vide Abortion; Foetus.

MISCARRTAGE, contracts, torts. By the English statute of frauds, 29, C. II., c. 3, s. 4, it is enacted that "no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement," &c. "shall be in writing," &c. The word miscarriage, in this statute comprehends that species of wrongful act, for the consequences of which the law would make the party civilly responsible. The wrongful riding the horse of

another, without his leave or license, and thereby causing his death, is clearly an act for which the party is reasonsible in damages, and therefore, falls within the meaning of the word miscarriage. 2 Barn. & Ald. 516; Burge on Sur. 21.

MISCASTING. By this term is not understood any pretended miscasting or mis-valuing, but simply an error in auditing and numbering. 4 Bouv. Inst. n. 4128.

MISCOGNlSANT. This word, which is but little used, signifies ignorant or not knowing. Stat. 32 H. VIII. c. 9.

MISCONDUCT. Unlawful behaviour by a person entrusted in any degree: with the administration of justice, by which the rights of the parties and the justice of the, case may have been affected.

2. A verdict will be set aside when any of the jury have been guilty of such misconduct, and a court will set aside an award, if it has been obtained by the misconduct of an arbitrator. 2 Atk. 501, 504; 2 Chit. R. 44; 1 Salk. 71; 3 P. Wms. 362; 1 Dick. 66.

MISCONTINUANCE, practice. By this term is understood a continuance of a suit by undue process. Its effect is the same as a discontinuance. (q. v.) 2 Hawk. 299; Kitch. 231; Jenk. Cent. 57.

MISDEMEANOR, crim. law. This term is used to express every offence infe- rior to felony, punishable by indictment, or by particular prescribed proceedings; in its usual acceptation, it is applied to all those crimes and offences for which the law has not provided a particular name; this word is generally used in contradistinction to felony; misdemeanors comprehending all indictable offences, which do not amount to felony, as perjury, battery, libels, conspiracies and public nuisances.

2. Misdemeanors have sometimes been called misprisions. (q. v.) Burn's Just. tit. Misdemeanor; 4 Bl. Com. 5, n. 2; 2 Bar. & Adolph. 75: 1 Russell, 43; 1 Chitty, Pr. 14; 3 Verm. 347; 2 Hill, S. C. 674; Addis. 21; 3 Pick. 26; 1 Greenl. 226; 2 P. A. Browne, 249; 9 Pick. 1; 1 S. & R. 342; 6 Call. 245; 4 Wend. 229; 2 Stew. & Port. 379. And see 4 Wend. 229, 265; 12 Pick. 496; 3 Mass. 254; 5 Mass. 106. See Offence.

MISDIRECTION, practice. An error made by a judge in charging the jury in a special case.

2. Such misdirection is either in relation to matters of law or matters of fact.

3. - 1. When the judge at the trial misdirects the jury, on matters of law, material to the issue, whatever may be the nature of the case, the verdict will be set aside, and a new trial granted; 6 Mod. 242; 2 Salk. 649; 2 Wils. 269; or if such misdirection appear in the bill of exceptions or otherwise upon the record, a judgment founded on a verdict thus obtained, will be reversed. When the issue consists of a mixed question of law and fact and there is a conceded state of facts, the rest is a question for the court; 2 Wend. R. 596; and a misdirection in this respect will avoid the verdict.

4. - 2. Misdirection as to matters of fact will in some cases be sufficient to vitiate the proceedings. If, for example, the judge should undertake to dictate to the jury. When the, judge delivers, his opinion to the jury on a matter of fact, it should be delivered as mere opinion, and not as direc- tion. 12 John. R. 513. But the judge is in general allowed to very liberal discretion in charging a jury on matters of fact. 1 McCl. & Y. 286.

5. As to its effects, misdirection must be calculated to do injustice; for if justice has been done, and a new trial would produce the same result, a new trial will not be granted on that account, 2 Salk. 644, 646; 2 T. R. 4; 1 B. & P. 338; 5 Mass. R. 1; 7 Greenl. R. 442; 2 Pick. R. 310; 4 Day's R. 42; 5 Day's R. 329; 3 John. R. 528; 2 Penna. R. 325.

MISE, English law. In a writ of right which is intended to be tried by the grand assize, the general issue is called the mise. Lawes, Civ. Pl. 111; 7 Cowen, 51. This word also signifies expenses, and it is so commonly used in the entries of judgments in personal actions; as when the plaintiff recovers, the judgment is quod recuperet damna sua for such value, and pro mises et custagiis for costs and charges for so much, &c.

MISERABILE DEPOSITUM, civ. law. The name of an involuntary deposit, made under pressing necessity; as, for instance, shipwreck, fire, or other inevitable calamity. Poth. Proced. Civ. 5eme part., ch. 1, 1 Louis. Code, 2935.

MISERICORDIA, mercy. An arbitrary or discretionary amercement.

2. To be in mercy, is to be liable to such punishment as the judge may in his discretion inflict. According to Spelman, misericordia is so called, because the party is in mercy, and to distinguish this fine from redemptions, or heavy fines. Spelm. GI. ad voc.; see Co. Litt. 126 b, and Madox's Excheq. c. 14. See Judgment of Misericordia.

MISFEASANCE, torts, contracts. The performance of an act which might lawfully be done, in an improper manner, by which another person receives an injury. It differs from malfeasance, (q. v.) or, nonfeasance (q. v.) Vide, generally, 2 Vin. Ab. 35; 2 Kent, Com. 443; Doct. Pl. 62; Story, Bail. 9.

2. It seems to be settled that there is a distinction between misfeasance and nonfeasance in the case of mandates. In cases of nonfeasance, the mandatary is not generally liable, because his undertaking being gratuitous, there is no consideration to support it; but in cases of misfeasance, the common law gives a remedy for the injury done, and to the extent of that injury. 5 T. R. 143; 4 John. Rep. 84; Story, Bailment, 165; 2 Ld. Raym. 909, 919, 920; 2 Johns. Cas. 92; Doct. & Stu. 210; 1 Esp. R. 74; 1 Russ. Cr. 140; Bouv. Inst. Index h. t.

MISJOINDER, pleading. Misjoinder of causes of action, or counts, consists in joining, in different counts in one declaration, several demands, which the law does not permit to be joined, to enforce several distinct, substantive rights of recovery; as, where a declaration joins a count in trespass with another in case, for distinct wrongs or a count in tort, with another in contract. Gould. 6n PI. c. 4, 98; Archb. Civ. PI. 61, 78 176; Serg. and Rawle, 358; Dane's Ab. Index, h. t.

2. Misjoinder of parties, consists in joining as plaintiffs or defendants, persons, who have not a joint interest. When the misjoinder relates to the plaintiffs, the defendants may, at common law, plead the matter in abatement, whether the action be real; 12 H. IV., 15; personal; Johns. Ch. R. 350, 438; 12 John. R. 1; 2 Mass. R. 293; or mixed; or it will be good cause of nonsuit at the trial. 3 Bos. & Pull. 235. Where the objection appears upon the face of the declaration, the defendant may demur generally; 2 Saund. 145; or move in arrest of judgment; or bring a writ of error.

3. When in actions ex contractu against several, there is a misjoinder of the defendants, as if there be too many persons made defendants, and the objection appears on the pleadings, either of the defendants may demur, move in arrest of judgment, or support a writ of error; and, if the objection do not appear on the pleadings, the plaintiff may be nonsuited upon the trial, if he fail in proving a joint contract. 5 Johns. R. 280; 2 Johns. R. 213; 11 Johns. R. 101; 5 Mass. R. 270.

4. In actions ex delicto, the misjoinder cannot in general be objected to, because in actions for torts, one defendant may be found guilty and the others acquitted. Archb. Civ. Pl. 79. As to the cases in which a misjoinder may be aided by a nolle prosequi, see 2 Archb. Pr. 218-220.

MISNOMER. The act of using a wrong name.

2. Misnomers, may be considered with regard to contracts, to devises and bequests, and to suits or actions.

3. - 1. In general, when the party can be ascertained, a mistake in the name will not avoid the contract. 11 Co. 20, 21; Lord Raym. 304; Hob. 125. Nihil facit error nominis, cum de corpori constat, is the rule of the civil law.

4. - 2. Misnomers of legatees will not in general avoid the legacy, when tho person intended can be ascertained from the context. Example: Thomas Stockdale bequeathed "to his nephew Thomas Stockdale, second son of his brother John Stockdale," 1000ú, John had no son named Thomas, his second son was named William, and he claimed the legacy. It was determined, in his favor, because the mistake of the name was obviated by the correct description given of the person, namely, the second son of John Stockdale. 19 Ves. 381; S. C. Coop. 229; and see Ambl. 175; 3 Leon. 18; Co; Litt. 3 a; Finch's R. 403; Domat l. 4, t. 2, s. 1, n. 22; 1 Rop. Leg. 131.

5. - 3. Misnomers in suits or actions, when the mistake is in the name of one of the parties, must be pleaded in abatement; 1 Chit. Pl. 440; 1 Mass. 76; 5 Mass. 97; 15 Mass. 469; 16 Mass: 146; 10 S. & R. 257; 4 Cowen, R. 148; Coxe, 138; 6 Munf. 219; 2 Wash. C. C. R. 200; 2 Penna. R. 984; 5 Halst. R. 295; 1 Pen. R. 75, 137; 6 Munf. 580; 3 Caines, 170; 1 Tayl. R. 148; 8 Yerg. 101; Harp. R. 49; for the misnomer of one of the parties sued is not material on the general issue, when the identity is proved. 16 East, R. 110.

6. The names of third persons must, be correctly laid, for the error will not be helped by pleading the general issue; but, if a sufficient description be given, it has been held, in a civil case, that the misnomer was immaterial. Example: in an action for medicines alleged to have been furnished to defendant's wife, Mary, and his wife was named Elizabeth, the misnomer was held to be immaterial, the word wife being the material word. 2 Marsh. R. 159. In indictments, the names of third persons must be correctly given. Rose. Cr. Ev. R. 78. Vide, generally, 18 E. C. L. R. 149; 10 East, R. 83, n; Bac. Ab. h. t.; Dane's Ab. h. t.; 1 Vin. Ab. 7; 15 Vin. Ab. 466; 2 Phil, Ev. 2, note b; Bac. Ab. Abatement, D; Archb. Civ. Pl. 305; 1 Metc. & Perk. Dig. Abatement, V; and this Dictionary, Abatement; Contracts; Parties to Contracts; Parties to Actions.

MISPLEADING. Pleading incorrectly, or omitting anything in pleading which is essential to the support or defence of an action, is so called.

2. Pleading not guilty to an action of debt, is an example of the first; and when the plaintiff sets out a title not simply in a defective manner, but sets out a defective title, is an example of the second. See 3 Salk. 365.

MISPRISION, crim. law. 1. In its larger sense, this word is used to signify every considerable misdemeanor, which has not a certain name given to it in the law; and it

is said that a misprision is contained in every treason or felony whatever. 2. In its narrower sense it is the concealment of a crime.

2. Misprision of treason, is the concealment of treason, by being merely passive; Act of Congress of April 30, 1790, 1 Story's L. U. S. 83; 1 East, P. C. 139; for if any assistance be given, to the traitor, it makes the party a principal, as there is no accessories in treason.

3. Misprison of felony, is the like concealment of felony, without giving any degree of maintenance to the felon; Act of Congress of April 30, 1790, s. 6, 1 Story's L. U. S. 84; for if any aid be given him, the party becomes an accessory after the fact.

4. It is the duty of every good citizen, knowing of a treason or felony having been committed; to inform a magistrate. Silently to observe the commission of a felony, without using any endeavors to apprehend the offender, is a misprision. 1 Russ. on Cr. 43; Hawk. P. C. c. 59, s. 6; Id. Book 1, c. s. 1; 4 Bl. Com. 119.

5. Misprisions which are merely positive, are denominated contempts or high misdemeanors; as, for example, dissuading a witness from giving evidence. 4 Bl. Com. 126.

MISREADING, contracts. When a deed is read falsely to an illiterate or blind man, who is a party to it, such false reading amounts to a fraud, because the contract never had the assent of both parties. 5 Co. 19; 6 East, R. 309; Dane's Ab. c. 86, a, 3, 7; 2 John. R. 404; 12 John. R. 469; 3 Cowen, R. 537.

MISRECITAL, contracts, pleading. The incorrect recital of a matter of fact, either in an agreement or a plea; under the latter term is here understood the declaration and all the subsequent pleadings. Vide Recital, and the cases there cited; and Bac. Ab. Pleas, &c. B. 5, n. 3.

MISREPRESENTATION, contracts. The statement made by a party to a contract, that a thing relating to it is in fact in a particular way, when he knows it is not so.

2. The misrepresentation must be both false and fraudulent, in order to make the party making it, responsible to the other for damages. 3 Com. R. 413; 10 Mass. R. 197; 1 Rep. Const. Court, 328, 475, Yelv. 21 a, note l; Peake's Cas. 115; 3 Campb. 154; Marsh. Ins. B. 1, c. 10, s. 1. And see Representation. It is not every misrepresentation which will make a party liable; when a mere misstatement of a fact has been erroneously made, without fraud, in a casual, improvident communication, respecting a matter which the person to whom the communication was made, and who had an interest in it, should not have taken upon trust, but is bound to inquire himself, and

had the means of ascertaining the truth, there would be no responsibility; 5 Maule & Selw. 380; 1 Chit. Pr. 836; 1 Sim. R. 13, 63; and when the informant was under no legal pledge or obligation as to the precise accuracy and correctness of his statement, the other party can maintain no action for the consequences of that statement, upon which it was his indiscretion to place reliance. 12 East, 638; see also, 2 Cox, R. 134; 13 Ves. 133; 3 Bos. & Pull. 370; 2 East, 103; 3 T. R, 56, 61; 3 Bulstr. 93; 6 Ves. 183; 3 Ves. & Bea. 110; 4 Dall. R. 250. Vide Concealment; Representation; Suggestio falsi; Suppressio veri.

MISSING SHIP, mar. law. When a ship or other vessel has been at sea for a much longer time than she ought to have been, she is presumed to have perished there with all on board, and such a vessel is called a missing ship.

2. There is no precise time fixed as to when the presumption is to arise, and this must depend upon the circumstances of each case. 2 Str. R. 1199; Park. Ins. 63; Marsh. Ins. 488; 2 Johns. R. 150; 1 Caines' R. 525; Holt's N. P. Rep. 242.

MISSISSIPPI. The name of one of the new states of the United States of America. This state was admitted into the Union, by a resolution of congress, passed the 10th day of December, 1817; 3 Story's L. U. S. 1716; by which it is "Resolved, that the state of Mississippi, shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with these original states, in all respects whatever."

2. The constitution of this state was adopted at the town of Washington, the 15th day of August, 1817. It was revised by a convention, and adopted on the 26th day of October, 1832, when it went into operation.

3. By the second article of the constitution, a provision is made for the distribution of powers as follows, namely;

1. The powers of the government of the state of Mississippi, shall be divided into three distinct departments, and each of them confided to a separate body of magistracy; to wit; those which are, legislative to one, those which are judicial to another, and those which are executive to another.

4. - 2. No person, or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

5. - 1st. The legislative power of this state is vested in two distinct branches the one styled "the senate" the other, "the house of representatives;" and both together, "the legislature of the state of Mississippi.

6. The following regulations, contained in the third article of the constitution, apply to both branches of the legislature.

7. - 16. Each house may determine the rules of its own proceedings punish members for disorderly behaviour, and, with the consent of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

8. - 17. Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

9. - 18. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

10. - 19. Senators and representatives shall, in all cases, except of treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

11. - 20. Each house may punish, by imprisonment, during the session, any person, not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings: Provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

12. - 21. The doors of each house shall be open, except on such occasions of great emergency, as, in the opinion of the house, may require secrecy.

13. - 22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

14. - 23. Bills may originate in either house, and be amended, altered or rejected by the other, but no bill shall have the force of a law, until on three several days, it be read in each house, and free discussion be allowed thereon, unless four-fifths of the house in which the bill shall be pending, may deem it expedient to dispense with this rule; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

15. - 24. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or rejec

t them as other bills.16. - 25. Each member of the legislature shall receive from the public treasury a compensation for his services, which may be increased or diminished by law, but no increase of compensation shall take effect during the session at which such increase shall have been made.

17. - 26. No senator or representative shall, during the term for which be shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled, by elections by the people; and no member of either house of the legislature shall, after the commencement of the first session of the legislature after his election and during the remainder of the term for which he is elected, be eligible to any office or place, the appointment to which may be made in whole or in part by either branch of the legislature.

18. - 27. No judge of any court of law or equity, secretary of state, attorney general, clerk of any court of record, sheriff or collector, or any, person bolding a lucrative office under the United States or this state, shall be eligible to the legislature: Provided, That offices in the militia, to which there

is attached no annual salary, and the office of justice of the peace, shall not be deemed lucrative. 19. - 28. No person who hath heretofore been, or hereafter may be, a collector or holder of public moneys, shall have a seat in either house of the legislature, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

20.- 29. The first election for senators and representatives shall be general throughout the state, and shall be held on the first Monday and day following in November 1833; and thereafter, there shall be biennial elections for senators to fill the places of those whose term of service may have expired.

21. - 30. The first and all future sessions of the legislature shall be held in the town of Jackson, in the county of Hinds, until the year 1850. During the first session thereafter, the legislature shall have power to designate by law the permanent seat of government: Provided, however, That unless such designation be then made by law, the seat of government shall continue permanently at the town of Jackson. The first session shall commence on the third Monday in November, in the year 1833. And in every two years thereafter, at such time as may be prescribed by law.

22. - 1. The senate. Under this lead will be considered the qualification of senators; their number; by whom they are elected; the time for which they are elected.

1. No person shall be a senator unless he be a citizen of the United States; and shall have been an inhabitant of this state for four years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and have attained the age of thirty years. Art. 3, s. 14.

2. The number of senators shall never be less than one-fourth, nor more than one-third, of the whole number of representatives. Art. 3, s. 10. 3. The qualifications of electors is as follows: every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last four months within the county, city, or town in which he offers to vote, shall be deemed a qualified elector. Art. 3, s. 1. 4. The senators shall be chosen for four years, and on their being convened in consequence of the first election, they shall be divided by lot from their respective districts into two classes, as nearly equal as can be. And the seats of the senators of the first class shall be vacated at the expiration of the second year.

23. - 2. The house of representatives, will be considered in the same order that has been observed in relation, to the senate. 1. No person shall, be a representative unless he be a citizen of the United States, and shall have been an inhabitant of this state two years next prceeding his election, and the last year thereof a resident of the county, city or town for which be shall be chosen; and shall have attained the age of twenty-one years. Art. 3, s. 7. 2. The number of representatives shall not be less than thirty-six, nor more than one hundred. Art. 3, s. 9. 3. They are elected by the same electors who elect senators. Art. 3, s. 1. 4. The representatives are chosen every two years on the first Monday and day following in November. They serve two years from the day of the commencement of the general election and no longer. Art. 3, s. 5, and 6.

24. - 2d. The judicial power. By the fourth article of the constitution, the judicial power is distributed as follows, namely:

1. The judicial power of this state shall be vested in one high court of errors and appeals, and such other courts of law and equity as are hereafter provided for in this constitution.

25. - 2. The high court of errors and appeals shall consist of three judges, any two of whom shall form a quorum. The legislature shall divide the state into three districts, and the qualified electors of each district shall elect one of said judges for the term of six years.

26. - 3. The office of one of said judges shall be vacated in two years, and of one in four years, and of one in six years, so that at the expiration of every two years, one of said judges shall be elected as aforesaid.

27. - 4. The high court of errors and appeals shall have no jurisdiction, but such as properly belongs to a court of errors and appeals.

28. - 5. All vacancies that may occur in said court, from death, resignation or removal, shall be filled by election as aforesaid. Provided, however, that if the unexpired term do not exceed one year, the vacancy sbalI be filled by executive appointment.

29. - 6. No person shall be eligible to the office of judge of the high court of errors and appeals, who shall not have attained, at the time of his election, the age of thirty yers.

30. - 7. The high court of errors and appeals shall be held twice in each year, at such place as the legislature shall direct, until the year eighteen hundred and thirty-six, and afterwards at the seat of government of the state.

31. - 8. Tbe secretary of state, on receiving all the official returns of the first election, shall proceed, forthwith, in the presence and with the assistance of two justices of the peace, to determine by lot among the three candidates having the highest number of votes, which of said judges elect shall serve for the term of two years, which shall serve for the term of four years, and which shall serve for the term of six years, and having so determined the same, it shall be the duty of the governor to issue commissions accordingly.

32. - 9. No judge shall sit on the trial of any cause when the parties or either of them shall be connected with him by affinity or consanguinity, or when he may be interested in the same, except by consent of the judge and of the parties; and whenever a quorum of said court are situated as aforesaid, the governor of the state shall in such case specially commission two or more men of law knowledge for the determination thereof.

33. - 10. The judges of said court shall, receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

34. - 11. The judges of the circuit court shall be elected by the qualified electors of each judicial district, and hold their offices for the term of four years, and reside in their respective districts.

35. - 12. No person shall be eligible to the office of judge of the circuit court, who shall not, at the time of his election, have attained the age of twenty-six years.

36. - 13. The state shall be divided into convenient districts, and each district shall contain not less than three nor more than twelve counties.

37. - 14. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this state; but in civil cases only when the principal of the sum in controversy exceeds fifty dollars.

38.- 15. A circuit court shall be held in each county of this state, at least twice in each year; and the judges of said courts shall interchange circuits with each other, in such manner as may be prescribed by law, and shall receive for their services a compensation to be fixed by law, which shall not be diminished during their continuance in office.

39. - 16. A separate superior court of chancery, shall be establisbed, with full jurisdiction in all matters of equity; Provided, however, the legislature may give to the circuit courts of each county equity jurisdiction in all cases where the value of the thing, or amount in controversy, does not exceed five hundred dollars; also, in all cases of divorce, and for the foreclosure of mortgages. The chancellor shall be elected by the qualified electors of the whole state, for the term of six years, and shall be at least thirty years old at the time of his election.

40. - 17. The style of all process, shall be "The state of Mississippi," and all prosecutions shall be carried on in the name and by the authority of "The state of Mississippi," and shall conclude "against the peace and dignity of the same."41. - 18. A court of probates shall be established in each county of this state, with jurisdiction in all matters testamentary and of administration in orpbans' business and the allotment of dower, in cases of idiotcy and lunacy, and of persons non compos mentis; the judge of said court shall be elected by the qualified electors of the respective counties, for the term of two years.

42. - 19. The clerk of the high court, of errors and appeals shall be appointed by said court, for the term of four years, and the clerks of the circuit, probate, and other inferior courts, shall be elected by the qualified electors of the respective counties, and shall hold their offices for the term of two years.

43. - 20. The qualified electors of each county shall elect five persons for the term of two years, who shall constitute a board of police for each county, a majority of whom may transact business; which body shall have full jurisdiction over roads, highways, ferries, and bridges, and all other matters of county police, and shall order all county

elections to fill vacancies that may occur in the offices of their respective counties: the clerk of the court of probate shall be the clerk of the board of county police.

44. - 21. No person shall be eligible as a member of said board, who shall not have resided one year in the county: but this qualification shall not extend to such new counties as may hereafter be established until one year after tbeir orgainization; and all vacancies that may occur in said board shall be supplied by election as aforesaid to fill the unexpired term.

45. - 22. The judges of all the courts of the state, and also the members of the board of county police, shall in virtue of their offices be conservators of tbe peace, and shall be by law vested with ample powers in this respect.

46. - 23. A competent number of justices of the peace and constables shall be chosen in each county by the qualified electors thereof, by districts, who shall hold their offices for the term of two years. The jurisdiction of justices of the peace shall be limited to causes in which the principal of the amount in controversy shall not exceed fifty dollars. In all causes tried by a justice of the peace, the right of appeal shall be secured under such rules and regulations as shall be prescribed by law.

47. - 24. The legislature may from time to time establish, such other inferior courts as may be deemed necessary, and abolish the same whenever they shall deem it expedient.

48. - 25. There shall be an attorney general elected by the qualified electors of the state: and a competent number of district attorneys shall be elected by qualified voters of their respective districts, whose compensation and term of service, shall be prescribed by law.

49. 26. The legislature shall, provide by law for determining contested elections of judges of the high court of errors and appeals, of the circuit and probate courts, and other officers.

50. - 27. The judges of the several courts of this state, for wilful neglect of duty or other reasonable cause, shall be removed by the governor on the address of two-thirds of both houses of the legislature; the address to be by joint vote of both houses. The cause or causes for which such removal shall be required, shall be stated at length in such address, and on the journals of each house. The judge so intended to be removed, shall be notified and admitted to a hearing in his own defence before any vote for such address shall pass; the vote on such address shall be taken by yeas and nays, and entered on the journals of each house.

51. - 28. Judges of probate, clerks, sheriffs, and other county officers, for wilful neglect of duty, or misdemeanor in office, shall be liable to presentment or indictment by a grand jury, and trial by a petit jury, and upon conviction shall be removed from office.

52. - 3d. The chief executive power of this state shall be vested in a governor. It will be proper to consider his qualifications; by whom he is elected; the time for which he is elected; his rights, duties and powers; and how, vacancies are supplied when the office of governor becomes vacant.

53. - 1. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this state at least five years next preceding the day of his election, and shall not be capable of holding the office more than four in any term of six years. Art. 5, s. 3.

54. - 2. The governor shall be elected by the qualified elector's of the state. Art. 5, s. 2.

55. - 3. He shall hold his office for two years from the time of his installation. Art 5, s. 1.

56. - 4. He shall, at stated times, receive for his services a compensation which shall not be increased or diminished during the term for which he shall be elected. Art. 5 s. 4.

57. - 5. He shall be commander-in-chief of the army and navy in this state, and of the militia, except when they shall be called into the service of the United States. Art. 5, s. 5.

58. - 6. He may require information in writing, from the officers in the executive department, on any subject relating to the duties of their respective offices. Art. 5, s. 6.

59. - 7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or from disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next stated meeting of the legislature. Art. 5, s. 7.

60. - 8. He shall from time to time give to the legislature information of the state of the government, and recommend to their consideration, such measures as he may deem necessary and expedient. Art. 5, s. 8.

61. - 9. He shall take care that the laws be faithfully executed. Art. 5, s. 9.

62. - 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines; and in cases of forfeiture to stay the collection until the end of the next session of the legislature, and to remit forfeitures by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the legislature. Art. 5, s. 10.

63. - 11. All commissions shall be in the name and by the authority of the state of Mississippi; be sealed with the great seal, and signed by the governor, and be attested by the secretary of state. The governor is also invested with the veto power. Art. 5, s. 15 and 16.

64. Whenever the office of governor shall become vacant by death, resignation, removal from office, or otherwise, the president of the senate shall exercise the office of governor until another governor shall be duly qualified; and in case of the death, resignation, removal from office, or other disqualifications of the president of the senate so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a president of the senate shall have been chosen; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. Art. 5, s. 17.

MISSOURI. The name of one of the new states of the United States of America. This state was admitted into the Union by a resolution of congress, approved March 2, 1821, 3 Story's L. U. S. 1823, by which it is resolved, that Missouri shall be admitted into this Union on an equal footing with the original states, in all respects whatever. To this resolution there is a condition, which having been fulfilled, it is now useless here to repeat.

2. The convention which formed the constitution of this state assembled at St. Louis, on Monday the 12th of June, 1820, and continued by adjournment, till the 19th day of July, 1820, when the constitution was adopted, establishing "an independent republic by the name of the `state of Missouri.'"

3. The powers of the government are divided into three distinct departments, each of which is confided to a separate magistracy. Art. 2.

4. - 1st. The legislative power is vested in a general assembly, which consists of a senate and house of representatives. 1. The senate is to consist of not less than fourteen nor more than thirty-three members. The senators are chosen by tho electors for the term of four years; one-half of the senators are chosen every second year. 2. The house of representatives is never to consist of more than one hundred members. The members are chosen by the qualified electors every second year.

5. - 2d. The executive power is vested in a governor and lieutenant-governor. 1. The supreme executive power is vested in a chief magistrate, styled "the governor of the state of Missouri." Art. 4, s. 1, He is elected by the people, and holds his office for four years, and until a successor be duly appointed and qualified. Art. 4, s. 3. He is invested with the veto power. Art. 4, s. 10. The lieutenant-governor is elected at the same time, in the same manner, for the same term, and is required to possess the same qualifications as the governor. Art. 4, s. 14. He is by virtue of his office president of the senate, and when the office of governor becomes vacant by death, resignation, absence from the state, removal from office, refusal to qualify, or otherwise, the lieutenant-governor possesses all the powers and discharges all the duties of governor until such vacancy be filled, or the governor, so absent or impeached, shall return or

be acquitted. And in such case there shall be a new election after three months previous notice.

6. - 3d. The judicial powers are vested by the 5th article of the constitution as follows:

1. The judicial powers, as to matters of law and equity, shall be vested in a "supreme court," in a "chancellor," in "Circuit courts," and in such inferior tribunals as the general assembly may, from time to time, ordain and establish.

7. - 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under the restrictions and limitations in this constitution provided.

8. - 3. The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs; and to hear and determine the same.

9. - 4. The supreme court shall consist of three judges, any two of whom shall be a quorum, and the said judges shall be conservators of the peace throughout the state.

10. - 5. The state shall be divided into convenient districts, not to exceed four; in each of which the supreme court shall hold two sessions annually, at such place as the

general assembly shall appoint; and when sitting in either district, it shall exercise jurisdiction over causes originating in that district only: provided, however, that the general assembly may, at any time hereafter, direct by law, that the said court shall be held at one place only.

11. - 6. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly. It shall hold its terms in such place in each county as may be by law directed.

12. - 7. The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who, after his appointment, shall reside, and be a conservator of the peace, within the circuit for which he shall be appointed.

13. - 8. The circuit courts shall exercise a superintending control over all such inferior tribunals as the general assembly may establish; and over justices of the peace in each county in their respective circuits.

14. - 9. The jurisdiction of the court of chancery shall be co-extensive with the state and the times and places of holding its sessions shall be regulated in the same manner as those of the supreme court.

15. - 10. The court of chancery shall have original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians, and minors, subject to appeal, in all cases, to the supreme court, under such limitations as the general assembly may by law provide.

16. - 11. Until the general assembly shall deem it expedient to establish inferior courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the court of chancery, in such manner, and under such restrictions, as shall be prescribed by law.

17. - 12. Inferior tribunals shall be established in each county, for the transaction of all county business; for appointing guardians; for granting letters testamentary, and of administration; and for settling the accounts of executors, administrators, and guardians.

18. - 13. The governor shall nominate, and, by and with the advice and consent of the senate, appoint the judges of the supreme court, the judges of the circuit courts, and the chancellor, each of whom shall hold his office during good behaviour, and shall

receive for his services a compensation, which shall not be diminished during his continuance in office, and which shall not be less than two thousand dollars annually.

19. - 14. No person shall be appointed a judge in the supreme court, nor of a circuit court, nor chancellor, before he shall have attained to the age of thirty years; nor shall any person continue to exercise the duties of any of said offices after he shall have attained to the age of sixty-five years.

20. - 15. The courts respectively shall appoint their clerks, who shall hold their offices during good behaviour. For any misdemeanor in office, they shall be liable to be tried aud removed by the Supreme court, in such manner as the general assembly shall by law provide.

21. - 16. Any judge of the supreme court, or of the circuit court, or the chancellor, may be removed from office on the address of two-thirds of each house of the general assembly to the governor for that purpose; but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof; and he shall have the right to be heard in his defence in such manner as the general assembly shall by law direct; but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached.

22. - 17. In each county there shall be appointed as many justices of the peace as the public good may be thought to require. Their powers and duties, and their duration in office, shall be regulated by law.

23. - 18. An attorney general shall be appointed by the governor, by and with the advice and consent of the senate. He shall remain in office four years, and shall perform such duties as shall be required of him by law.

24.- 19. All writs and process shall run, and all prosecutions shall be conducted in the name of the "state of Missouri;" all writs shall be tested by the clerk of the court from which they shall be issued, and all indictments shall conclude, "against the peace and dignity of the state."

MISTAKE, contracts. An error committed in relation to some matter of fact affecting the rights of one of the parties to a contract.

2. Mistakes in making a contract are distinguished ordinarily into, first, mistakes as to the motive; secondly, mistakes as to the person, with whom the contract is made; thirdly, as to the subject matter of the contract; and, lastly, mistakes of fact and of law. See Story, Eq. Jur. 110; Bouv. Inst. Index, h. t.; Ignorance; Motive.

3. In general, courts of equity will correct and rectify all mistakes in deeds and contracts founded on good consideration. 1 Ves. 317; 2 Atk. 203; Mitf. Pl. 116; 4 Vin. Ab. 277; 13 Vin. Ab. 41; 18 E. Com. Law Reps. 14; 8 Com. Digest, 75; Madd. Ch. Prac. Index, h. t.; 1 Story on Eq. ch. 5, p. 121; Jeremy's Eq. Jurisd. B. 3, part 2, p. 358. See article Surprise.

4. As to mistakes in the names of legatees, see 1 Rop. Leg. 131; Domat, l. 4, t. 2, s. 1, n. 22. As to mistakes made in practice, and as to the propriety or impropriety of taking advantage of them, see Chitt. Pr. Index, h. t. As to mistakes of law in relation to contracts, see 23 Am. Jur. 146 to 166.

MISTRIAL. An erroneous trial on account of some defect in the persons trying, as if the jury come from the wrong county or because there was no issue formed, as if no plea be entered; or some other defect of jurisdiction. 3 Cro. 284; Hob. 5; 2 M. & S. 270.

MISUSE OF PROPERTY. The unlawful use of property.

2. The misuse of personal property delivered lawfully to the defendant, is a conversion which will enable the owner immediately to maintain trover. 6 Shepl. 382; 8 Leigh, 565; 3 Bouv. Inst. n. 3525.

MISUSER. An unlawful use of a right.

2. In cases of public officers and corporations, a misuser is sufficient to cause the right to be forfeited. 2 Bl. Com. 153; 5 Pick. R. 163.

MITIGATION. To make less rigorous or penal.

2. Crimes are frequently committed under circumstances which are not justifiable nor excusable, yet they show that the offender has been greatly tempted; as, for example, when a starving man steals bread to satisfy his hunger, this circumstance is taken into consideration in mitigation of his sentence.

3. In actions for damages, or for torts, matters are frequently proved in mitigation of damages. In an action for criminal conversation with the plaintiff's wife, for example, evidence may be given of the wife's general bad character for want of chastity; or of particular acts of adultery committed by her, before she became acquainted with the defendant; 12 Mod. R. 232; Bull. N. P. 27, 296; Selw. N. P. 25; 1 Johns. Cas, 16: or that the plaintiff has carried on a criminal conversation with other women; Bull. N. P. 27; or that the plaintiff's wife has made the first advances to the defendant, 2 Esp. N. P. C. 562; Selw. N. P. 25. See 3 Am. Jur. 287, 313; Bouv. Inst. Index, h. t.

4. In actions for libel, although the defendant cannot under the general issue prove the crime, which is imputed to the plaintiff, yet he is in many cases allowed to give evidence of the plaintiff's general character in mitigation of damages. 2 Campb. R. 251; 1 M. & S. 284.

MITIOR SENSUS, construction. The more lenient sense. It was formerly held in actions for libel and slander, that when two or more constructions could be put upon the words, one of which would not be actionable the words were to be so construed, for verba accipienda sunt in mitiore sensu. 4 Co. 13, 20. It is now, however, well established, that they are not to be taken in the more lenient, or more severe sense, but in the sense which fairly belongs to them, and which they were intended to convey. 2 Campb. 403; 2 T. R. 206.

MITTER, law-French. To put, to send, or to pass; as mitter' l'estate, to pass the estate; mitter le droit, to pass a right. 2 Bl. Com. 324; Bac. Ab. Release, C; Co. Lit. 193, 273, b. Mitter a large, to put or, set at large. Law French Dict. h. t.

MITTIMUS, English practice. A writ enclosing a record sent to be tried in a county palatine; it derives its name from the Latin word mittimus, "we send." It is the jury process of these counties, and commands the proper officer of the county palatine to command the sheriff to summon the jury for the trial of the cause, and to return the record, &c. 1 M. R. 278; 2 M. R. 88.

MITTIMUS, crim. law, practice. A precept in writing, under the hand and seal of a justice of the peace, or other competent officer, directed to the gaoler or keeper of a prison, commanding him to receive and safely keep, a person charged with an offence therein named until he shall be delivered by due course of law. Co. Litt. 590.

MIXED. To join; to mingle. A compound made of several simples is said to be something mixed.

MIXED ACTIONS, practice. An action partaking of a real and personal action by which real property is demanded, and damages for a wrong sustained: an ejectment is of this nature. 4 Bouv. Inst. n. 3650.

MIXED OR COMPOUND LARCENY, crim. law. A larceny which has all the properties of simple larceny, and is accompanied with one or both the aggravations of violence to the person or taking from the house.

MIXED GOVERNMENT. A government composed of some of the powers of a monarchical, aristocratical, and democratical government. See Government.

MIXED PROPERTY. That kind of property which is not altogether real nor personal, but a compound of both. Heir-looms, tomb-stones, monuments in a church, and title deeds to an estate, are of this nature. 1 Ch. Pr. 95; 2 Bl. Com. 428; 3 Barn. Adolph. 174; 4 Bingh. R. 106; S. C. 13 Engl. Com. Law Rep. 362.

MIXT CONTRACT, civil law. One in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given; as a legacy charged with something of less value than the legacy itself. Poth. Oblig. n. 12. See Contract.

MIXTION. The putting of different goods or chattels together in such a manner that they can no longer be separated; as putting the wines of two different persons into the same barrel, the grain of several persons into the same bag, and the like. 2. The intermixture may be occasioned by the wilful act of the party, or owner of one of the articles; by the wilful act of a stranger; by the neglilence of the owner or a stranger; of by accident. See, as to the rights of the parties under each of these circumstances, the article Confusion of goods. Vide Aso & Man. Inst. B. 2, t.

MOBBING AND RIOTING, Scotch law. The general term mobbing and rioting includes all those convocations of the lieges for violent and unlawful purposes, which are attended with injury to the persons or property of the lieges, or terror and alarm to the neighborhood in which it takes place. The two phrases are usually placed together, but, nevertheless, they have distinct meanings, and are sometimes used separately in legal language; the word mobbing being peculiarly applicable to the unlawful assemblage and violence of a number of persons, and that of rioting to the outrageous behaviour of a single individual. Alison, Prin. C. Law of Scotl. c. 23, p. 509.

MODEL. A machine made on a small scale to show the manner in which it is to be worked or employed.

2. The Act of Congress of July 4, 1836, section 6, requires an inventor who is desirous to take out a patent for his invention, to furnish a model of his invention, in all cases which admit of represent ation by model, of a convenient size to exhibit advantageously its several parts.

MODERATE CASTIGAVIT, pleading. The name of a plea in trespass by which the defendant justifies an assault and battery, because he moderately corrected the plaintiff, whom he had a right to correct. 2 Chit. Pl. 676; 2 Bos. & Pull. 224. Vide Correction, and 15 Mass. R. 347; 2 Phil. Ev. 147; Bac. Ab. Assault, &c. C.

2. This plea ought to disclose, in general terms, the cause which rendered the correction expedient. 3 Salk. 47.

MODERATOR. A person appointed to preside at a popular meeting; sometimes he is called a chairman.

MODIFICATION. **A change; as the modification of a contract. This may take** place at the time of making the contract by a condition, which shall have that effect; for example, if I sell you one thousand bushels of corn, upon condition that any crop shall produce that much, aud it produces only eight hundred bushels, the contract is modified, it is for eight hundred bushels, and no more.

12. It may be modified by the consent of both parties, after it has been made. See 1 Bouv. Inst. n. 733.

MODO ET FORMA, pleading. In manner and form. These words are used in tendering an issue in a civil case.

2. Their legal effect is to put in issue all material circumstances and no other, they may therefore be always used with safety.

3. These words are sometimes of the substance of the issue and sometimes merely words of form. When they are of the substance of the issue, they put in issue the circumstances alleged as concomitants of the principal matter denied by the pleader, such as time, place, manner, &c. When not of the substance of the issue they do not put in issue such circumstances. Bac. Ab. Plea, G 1; Lawes' Pl. 120; Hardr. 39. To determine when they are of the substance of the issue and when not so, the established criterion is, that when the circumstances of manner, time, place, &c. alleged in connexion with the principal fact traversed, are originally and, in themselves material, and therefore necessary to be proved as stated, the words modo et forma are of the substance of the issue, and do, consequently, put those concomitants in issue; but that when such concomitants or circumstances are not in themselves material, and therefore not necessary to be proved as stated, the words modo et forma, are not of the substance of the issue, and consequently do not put them in issue. Lawes on Pl. 120; and see Gould, Pl. c. 6, 22; Steph. Pl. 213; Dane's Ab. Index, h. t.; Kitch. 232. See Bac. Ab. Verdict, P; Vin. Ab. Modo et Forma.

MODUS, civil law. Manlier; means; way.

MODUS, eccl. law. Where there is by custom a particular manner of tithing allowed, different from the general law of taking tithes in kind, as a pecuniary compensation, or the performance of labor, or when any means are adopted by which the general law of tithing is altered, and a new method of taking them is introduced, it is called a modus decimandi, or special manner of taking tithes. 2 Bl. Com. 29.

MOHATRA, French law. The name of a fraudulent contract, made to cover a usurious loan of money.

2. It takes place when an individual buys merchandise from another oil a credit at a high price, to sell it immediately to the first seller, or to a third person, who acts as his agent, at a much less price for cash. 16 Toull. n. 44; 1 Bouv. Inst. n. 1118.

MOIETY. The half of anything; as, if a testator bequeath one moiety of his estate to A, and the other to B, each shall take an equal part. Joint tenants are said to hold by moieties. Lit. 125; 3 M. G. & S. 274, 283

MOLESTATION, Scotch law, The name of an action competent to the proprietor of a landed estate, against those who disturb his possession, It is chiefly used in questions of commonty, or, of controverted marches. Ersk. Prin. B. 4, t. 1, n. 48.

MOLITER MANUS IMPOSUIT, pleading. In an action of trespass to the person, the defendant frequently justifies by pleading that he used no more force than was necessary to remove the plaintiff who, was unlawfully in the house of the defendant, and for this purpose he gently laid his hands upon him, molitur manus imposuit.

2. This plea may be used whenever the defendant laid hold of the plaintiff to prevent his committing a breach of the peace.

3. When supported by evidence, it is a complete defence. Ham. N. P. 149; 2 Chit. Pl. 574, 576; 12 Vin. Ab. 182; Bac. Abr. Assault and Battery, C 8.

MOLITURA. Toll paid for grinding at a mill; multure. Not used.

MONARCHY, government. That form of government in which the sovereign power is entrusted to the hands of a single magistrate. Toull. tit. prel. n. 30. The country governed by a monarch is also called a monarchy.

MONEY. Gold, silver, and some other less precious metals, in the progress of civilization and commerce, have become the common standards of value; in order to avoid the delay and inconvenience of regulating their weight and quality whenever passed, the governments of the civilized world have caused them to be manufactured in certain portions, and marked with a Stamp which attests their value; this is called money. 1 Inst. 207; 1 Hale's Hist. 188; 1 Pardess. n. 22; Dom. Lois civ. liv. prel. t. 3, s. 2, n. 6.

2. For many purposes, bank notes; (q. v.) 1 Y. & J, 380; 3 Mass. 405; 14 Mass. 122; 2 N. H. Rep. 333; 17 Mass. 560; 7 Cowen, 662; 4 Pick. 74; Bravt. 24; a check; 4 Bing.

179; S. C. 13 E. C. L. R. 295; and negotiable notes; 3 Mass. 405; will be so considered. To support a count for money had and received, the receipt by the defendant of bank notes, promissory notes: 3 Mass. 405; 3 Shepl. 285; 9 Pick. 93; John. 132; credit in account, in the books of a third person; 3 Campb. 199; or any chattel, is sufficient; 4 Pick. 71; 17 Mass. 560; and will be treated as money. See 7 Wend. 311; 8 Wend. 641; 7 S. & R. 246; 8 T. R. 687; 3 B. & P. 559; 1 Y. & J. 380.

3. The constitution of the United States has vested in congress the power "to coin money, and regulate the value thereof." Art. 1, s. 8.

4. By virtue of this constitutional authority, the following provisions have been enacted by congress.

1. Act of April 2, 1792, 1 Story's L. U. S. 229.

1. 9. That there shall be from time to time, struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values, and descriptions, viz: Eagles; each to be of the value of ten dollars, or units, and to contain two hundred and forty-seven grains and four-eighths of a grain of pure, or two hundred and seventy grains of standard, gold. Half eagles; each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six-eighths of a pure, or one hundred and thirty-five grains of standard gold. Quarter eagles; each to be of the value of two dollars and a half dollar, and to contain sixty-one grains and seven-eighths of a grain of pure, or sixty-seven grains and four-eighths of a grain of standard gold. Dollars, or units; each to be of the value of a Spanish milled dollar, as the same is now current, and to contain three hundred and seventy-one grains and four-sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver. Half dollars; each to be of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten-sixteenth parts of a grain of pure, or two hundred and eight grains of standard, silver. Quarter dollars; each to be of one-fourth the value of the dollar, or unit, and to contain ninety-two grains and thirteen-sixteenth parts of a grain of pure, or one hundred and four grains of standard, silver. Dimes; each to be of the value of one-tenth of a dollar, or unit, and to contain thirty-seven grains and two sixteenth parts of a grain of pure, or forty-one grains and three-fifth parts of a grain of standard, silver. Half dimes; each to be of the value of one-twentieth of dollar, and to contain eighteen grains and nine-sixteenth parts of a grain of pure, or twenty grains and four-fifth parts of a grain of standard, silver. Cents; each to be of the value of the one-hundredth part of a dollar, and to contain eleven pennyweights of copper. Half cents; each to be of the value of half a cent, and to contain five pennyweights and, a half a pennyweight of copper.

5. - 10. That upon the said coins, respectively, there shall be the following devises and legends, namely: Upon one side of each of the said coins there shall be an impression emblematic of liberty, with an inscription of the word liberty, and the year of the coinage; and, upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with this inscription, "United States of America:" and, upon the reverse of each of the copper coins there shall be an inscription which shall express the denomination of the piece, namely, cent or half cent, as the case may require.

6. - 11. That the proportional value of gold to silver in all coins which shall, by law, be current as money within the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value in all payments, with one pound weight of pure gold; and so in proportion, as to any greater or less quantities of the respective metals.

7. - 12. That the standard for all gold coins of the United States, shall be eleven parts fine to one part alloy: and accordingly, that eleven parts in twelve, of the entire weight of each of the said coins, shall consist of pure gold, and the remaining one-twelfth part of alloy; and the said alloy shall be composed of silver and copper in such proportions, not exceeding one-half silver, as shall be found convenient; to be regulated by the director of the mint for the time being, With the approbation of the president of the United States, until further provision shall be made by law. And to the end that the necessary information may be had in order to the making of such further provision, it shall be the duty of the director of the mint, at the expiration of a year after commencing the operations of the said mint, to report to congress the practice thereof during the said year, touching the composition of the alloy of the said gold coins, the reasons for such practice, and the experiments and observations which shall have been made concerning the effects of different proportions of silver and copper in the said alloy.

8.- 13. That the standard for all silver coins of the United States, shall be one thousand four hundred and eighty-five parts fine to one hundred and seventy-nine parts alloy; and, accordingly, that one thousand four hundred and eighty-five parts in one thousand six hundred and sixty-four parts, of the entire weight of each of the said coins, shall consist of pure silver, and the remaining one hundred and seventy nine parts of alloy, which alloy shall be wholly of copper.

9. - 2. Act of June 28, 1834, 4 Sharsw. cont. of Story's Laws U. S. 2376.

1. That the gold coins of the United States shall contain the following quantities of metal, that is to say: each eagle shall contain two hundred and thirty-two grains of

pure gold, and two hundred and fifty-eight grains of standard gold; each half-eagle, one hundred and sixteen grains of pure gold, and one hundred and twenty-nine grains of standard gold; each quarter eagle shall contain fifty-eight grains of pure gold, and sixty-four and a half grains of standard gold; every such eagle shall be of the value of ten dollars; every such half eagle shall be of the value of five dollars; and every such quarter eagle shall be of the value of two dollars and fifty cents; and the said gold coins shall be receivable in all payments, when of full weight, according to their respective values; and when of less than full weight, at less values, proportioned to their respective actual weights.

10. - 2. That all standard gold or silver deposited for coinage after the thirty-first of July next, shall be paid for in coin under the direction of the secretary of the treasury, within five days from the making of such deposit, deducting from the amount of said deposit of gold and silver, one-half of one per centum: Provided, That no deduction shall be made unless said advance be required by such depositor within forty days.

11. - 3. That all gold coins of the United States, minted anterior to the thirty-first day of July next, shall be receivable in all payments at the rate of ninety-four and eight-tenths of a cent per pennyweight.

12. - 3. Act of January 18, 1837, 4 Sharsw. cont. of Story's Laws U. S. 2524. 9. That of the silver coins, the dollar shall be of the weight of four hundred and twelve and one-half grains; the half dollar of the weight of two hundred and six and one-fourth grains; the quarter dollar of the weight of one hundred and three and one-eighth grains; the dime, or tenth part of a dollar, of the weight of forty-one and a quarter grains; and the half dime, or twentieth part of a dollar, of the weight of twenty grains, and five-eighths of a grain. And that dollars, half dollars, and quarter dollars, dimes and half dimes, shall be legal tenders of payment, according to their nominal value, for any sums whatever.

13. - 10. That of the gold coins, the weight of the eagle shall be two hundred and fifty-eight grains; that of the half eagle, one hundred and twenty-nine grains; and that of the quarter eagle, sixty-four and one-half grain;. And that for all sums whatever, the eagle shall be a legal tender of payment for ten dollars; the half eagle for five dollars and the quarter eagle for two and a half dollars.

14.- 11. That the silver coins heretofore issued at the mint of the United States, and the gold coins issued since the thirty-first day of July, one thousand eight hundred and thirty-four, shall continue to be legal tenders of payment for their nominal values, on the same terms as if they were of the coinage provided for by this act.

15. - 12. That of the copper coins, the weight of the cent shall be one hundred and sixty-eight grains, and the weight of the half cent eighty four grains. And the cent shall be considered of the value of one hundredth part of a dollar, and the half cent of the value of one two-hundredth part of a dollar.

16. - 13. That upon the coins struck at the mint, there shall be the following devices and legends; upon one side of each of said coins, there shall be an impression emblematic of liberty, with an inscription of the word LIBERTY, and the year of the coinage; and upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with the inscription United States of America, and a designation of the value of the coin; but on the reverse of the dime and half dime, cent and half cent, the figure of the eagle shall be omitted.

17. - 38. That all acts or parts of acts heretofore passed, relating to the mint and coins of the United States, which are inconsistent with the provisions of this act, be, and the same are hereby repealed.

18. - 4. Act of March 3, 1825, 3 Story's L. U. S. 2005.

20. That, if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any coin, in the resemblance or similitude of the gold or silver coin, which has been, or hereafter may be, coined at the mint of the United States; or in the resemblance or similitude of any foreign gold or silver coin which by law now is, or hereafter may be made current in the United States; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States, from any foreign place, with intent to pass, utter, publish, or sell, as true, any such false, forged, or counterfeited coin, knowing the same to be false, forged, or counterfeited, with intent to defraud any body politic, or corporate, or any other person or persons, whatsoever; every person, so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding five thousand dollars, and by imprisonment, and confinement to hard labor, not exceeding ten years, according to the, aggravation of the offence.

19. - 21. That, if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any coin, in the resemblance or similitude of any copper coin, which has been, or hereafter may be, coined at the mint of the United States; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish or sell, or bring into the United States, from any foreign place, with intent to pass, utter, publish, or sell as true, any such false, forged, or counterfeited coin, with intent to defraud any body politic, or corporate, or any other person or persons whatsoever;

every person so offending, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exeeeding one thousand dollars, and by imprisonment, and confinement, to hard labor, not exceeding three years. See generally, 1 J. J. Marsh. 202; 1 Bibb, 330; 2 Wash. 282; 3 Call, 557; 5 S. & R. 48; 1 Dall. 124; 2 Dana, 298; 3 Conn. 534; 4 Harr. & McHen. 199.

20. - 5. Act of March 3, 1849, Minot's Statutes at Large of U. S. 397.

21. - 1. That there shall be, from time to time, struck and coined at the mint of the United States, and the branches thereof, conformably in all respects to law, (except that on the reverse of the gold dollar the figure of the eagle shall be omitted), and conformably in all respects to the standard for gold coins now established by law, coins of gold of the following denominations and values, viz.: double eagles, each to be of the value of twenty dollars, or units, and gold dollars, each to be of the value of one dollar, or unit.

22. - 2. That, for all sums whatever, the double eagle shall be a legal tender for twenty dollars, and the gold dollar shall be a legal tender for one dollar.

23. - 3. That all laws now in force in relation to the coins of the United States, and the striking and coining the same, shall, so far as applicable, have full force and effect in relation to the coins herein authorized, whether, the said laws are penal or otherwise; and whether they are for preventing counterfeiting or debasement, for protecting the currency, for regulating and guarding the process of striking and coining, and the preparations therefor, or for the security of the coin, or for any other purpose.

24. - 4. That, in adjusting the weights of gold coins henceforward, the following deviations from the standard weight shall not be exceeded in any of the single pieces; namely, in the double eagle, the eagle, and the half eagle, one half of a grain, and in the quarter eagle, and gold dollar, one quarter of a grain; and that, in weighing a large number of pieces together, when delivered from the chief coiner to the treasurer, and from the treasurer to the depositors, the deviation from the standard weight shall not exceed three pennyweights in one thousand double eagles; two pennyweights in one thousand, eagles; one and one half pennyweights in one thousand half eagle;; one pennyweight in one thousand quarter eagles; and one half of a pennyweight in one thousand gold dollars.

25. - 6. Act of March 3, 1851. Minot's Statutes at Large, U. S. 591.

26. - 11. That from and after the passage of this act, it shall be lawful to coin at the mint of the United States and its branches, a piece of the denomination and legal value of three cents, or three hundredths of a dollar, to be composed of three-fourths silver

and one-fourth copper and to weigh twelve grains and three eighths of a grain; that the said coin shall bear such devices as shall be conspicuously different from those of the other silver coins, and of the gold dollar, but having the inscription United States of America, and its denomination and date; and that it shall be a legal tender in payment of debts for all sums of thirty cents and under. And that no ingots shall be used for the coinage of the three cent pieces herein authorized, of which the quality differs more than five thousandths from the legal standard; and that in adjusting the weight of the said coin, the following deviations from the standard weight shall not be exceeded, namely, one half of a grain in the single piece, and one pennyweight in a thousand pieces.

MONEY BILLS, legislation. Pills or projects of laws providing for raising revenue, and for making grants or appropriations of the public treasure.

2. The first clause of the seventh section of the constitution of the United States declares, "all bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills." Vide Story on the Const. 871 to 877.

3. What bills are properly "bills for raising revenue," in the sense of the constitution, has been matter of some discussion. Tucker's Black. App. 261 and note; Story, 877. In practice, the power has been confined to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue. Story, Ibid.; 2 Elliott's Debates, 283, 284.

MONEY COUNTS, pleadings. The common counts in an action of assumpsit are so called, because they are founded on express or implied promises to pay money in consideration of a precedent debt; they are of four descriptions: 1. The indebitatus assumpsit. (q. v.) 2. The quantum meruit. (q. v.) 3. The quantum valebant. (q. v.) and, 4. The account stated. (q. v.) 2. Although the plaintiff cannot resort to an implied promise when there is a general contract, yet he may, in many cases, recover on the common counts, notwithstanding there was a special agreement, provided it has been executed. 1 Camp. 471; 12 East, 1; 7 Cranch, Rep. 299; 10 Mass. Rep. 287; 7 Johns. Rep. 132; 10 John. Rep. 136; 5 Mass. Rep. 391. It is therefore advisable to insert the money counts in an action of assumpsit, when suing on a special contract. 1 Chit. Pl. 333, 4.

MONEY HAD AND RECEIVED. An action of assumpsit will lie to recover money to which the plaintiff is entitled, and which in justice and equity, when no rule of policy or strict law prevents it, the defendant ought to refund to the plaintiff, and which he cannot with a good conscience retain, on a count for money had and received. 6 S. & R. 369; 10 S. & R. 219: 1 Dall. 148; 2 Dall. 154; 3 J. J. Marsh. 175; 1

Harr. 447; 1 Harr. & Gill. 258; 7 Mass. 288; 6 Wend. 290; 13 Wend. 488; Addis. on Contr. 230.

2. When the money has been received by the defendant in consequence of some tortious act to the plaintiff's property, as when he cut down the plaintiff's timber and sold it, the plaintiff may waive the tort and sue in assumpsit for money had and received. 1 Dall. 122; 1 Blackf. 181; 5 Pick. 285; 1 J. J. Marsh. 543: 4 Pick. 452; 12 Pick. 120; 4 Binn. 374; 3 Watts, 277; 4 Call, 451.

3. In general the action for money had and received lies only where money has been received by the defendant. 14 S. & R. 179; 1 Pick. 204; 7 S. & R. 246; 1 J. J. Marsh. 544; 3 J. J. Marsh. 6; 7 J. J. Marsh. 100; 3 Bibb, 378; 11 John. 464. But bank notes or any other property received as money, will be considered for this purpose as money. 17 Mass. 560; 3 Mass. 405; 14 Mass. 122; Brayt. 24; 7 Cowen, 622; 4 Pick. 74. See 9 S. & R. 11.

4. No privity of contract between the parties is required in order to support this action, except that which results from the fact of one man's having the money of another, which he cannot conscientiously retain. 17 Mass. 563, 579. See 2 Dall. 54; Mart. & Yerg. 221; 5 Conn. 71.

MONEY LENT. In actions of assumpsit a count is frequently introduced in the declaration charging that the defendant promised to pay the plaintiff for money lent. To recover, the plaintiff must prove that the defendant received his money, but it is not indispensable that it should be originally lent. If, for example, money has been advanced upon a special contract, which has been abandoned and rescinded, and which cannot be enforced, the law raises an implied promise from the person who holds the money to pay it back as money lent. 5 M. & P. 26; 7 Bing. 266; 9 M. & W. 729; 3 M. & W. 434. See 1 Chip. 214; 3 J. J. Marsh. 37.

MONEY PAID. When one advances money for tbe benefit of another with his consent, or at his express request, although he be not benefited by the transaction, the creditor may recover the money in an action of assumpsit declaring for money paid for the defendant. 5 S. & R. 9. But one cannot by a voluntary payment of another's debt make himself creditor of that other. 1 Const. R. 472; 1 Gill. & John. 497; 5 Cowen, 603; 10 John. 361; 14 John. 87; 2 Root, 84; 2 Stow. 500; 4 N. H. Rep. 138; 3 John. 434; 8 John. 436; 1 South. 150.

2. Assumpsit for money paid will not lie where property, not money, has been paid or received. 7 S. & R. 246; 8 Bibb, 378; 14 S. & R. 179; 10 S. & R. 75; 7 J. J. Marsh. 18. But see 7 Cowen, 662.

3. But where money has been paid to the defendant either for a just, legal or equitable claim, although it could not have been enforced at law, it cannot be recovered as money paid. See Money had and received.

4. The form of declaring is for "money paid by the plaintiff, for the use of the defendant and at his request." 1 M. & W. 511.

MONITION, practice. In those courts which use the civil law process, (as the court of admiralty, whose proceedings are, under the provisions of the acts of congress, to be according to the course of the civil law,) it is a process in the nature of a summons; it is either, general, special, or mixed.

2. - 1. The general monition is a citation or summons to all persons interested, or, as is commonly said, to the whole world, to appear and show cause why the libel filed in the case should not be sustained, and the prayer of relief granted. This is adopted in prize cases, admiralty suits for forfeitures, and other suits in rem, when no particular individuals are summoned to answer. In such cases the taking possession of the property libeled, and this general citation or nomination, served according to law, are considered constructive notice to the world of the pendency of the suit; and the judgment rendered thereupon is conclusive upon the title of the property which may be affected. In form, the monition is a warrant of the court, in an admiralty cause, directed to the marshal or his deputy, commanding him in the name of the president of the United States, to give public notice, by advertisements in such newspapers as the court may select, and by notification to be posted in public places, that a libel has been filed in a certain admiralty cause pending, and of the time and place appointed for the trial. A brief statement of the allegations in the libel is usually contained in the monition. The monition is served in the manner directed in the warrant.

3. - 2. A special monition is a similar warrant, directed to the marshal or his deputy, requiring him to give special notice to certain persons, named in the warrant, of the pendency of the suit, the grounds of it, and the time and place of trial. It is served by delivery of a copy of the warrant, attested by the officer, to each one of the adverse parties, or by leaving the same at his usual place of residence; but the service should be personal if possible. Clerke's Prax. tit. 21; Dunlap's Adm. Pr. 135.

4. - 3. A mixed monition is one which contains directions for a general monition to all persons interested, aud a special summons to particular persons named in the warrant. This is served by newspaper advertisements, by notifications posted in public places, and by delivery of a copy attested by the officer to each person specially named, or by leaving it at his usual place of residence. See Dunlap's Adm. Pr. Index, h. t.; Bett's Adm. Pr. Index, h. t.

MONITORY LETTER, eccl. law. The process of an official, a bishop or other prelate having jurisdiction, issued to compel, by ecclesiastical censures, those who know of a crime or other matter which requires to be explained, to come and reveal it. Merl. Repert. h. t.

MONOCRACY. A government by one person only.

MONOCRAT. A monarch who governs alone; an absolute governor. **MONOGAMY.** A marriage contracted between one man and one woman, in exclusion of all the rest of mankind; it is used in opposition to bigamy and polygamy. (q. v.) Wolff, Dr. de la Nat. 857. The state of having only one husband or one wife at one time.

MONOGRAM. A character or cipher composed of one or more letters interwoven, being an abbreviation of a name.

2. A signature made by a monogram would perhaps be binding, provided it could be proved to have been made and intended as a signature. 1 Denio, R. 471. And there seems to be no reason why such a signature should not be as binding as one which is altogether illegible. See Initial; Mark; Signature.

MONOMANIA. med. jur. Insanity only upon a particular subject; and with a single delusion of the mind.

2. The most simple form of this disorder is that in which the patient has imbibed some single notion, contrary to common sense and to his own experience, and which seems, and no doubt really is, dependent on errors of sensation. It is supposed the mind in other respects retains its intellectual powers. In order to avoid any civil act done, or criminal responsibility incurred, it must manifestly appear that the act in question was the effect of monomania. Cyclop. Pract. Medicine, title Soundness and Unsoundness of Mind; Dr. Ray on Insanity, 203; 13 Ves. 89; 3 Bro. C. C. 444; 1 Addams' R. 283; Hagg. R. 18; 2 Addams' R. 102; 2 Addams' R. 79, 94, 209; 5 Car. & P. 168; Dr. Burrows on Insanity, 484, 485. Vide Delusion; Mania; and Trebuchet, Jur. de la Med. 55 to 58

MONOPOLY, commercial law. This word has various significations. 1. It is the abuse of free commerce by which one or more individuals have procured the advantage of selling alone all of a particular kind of merchandise, to the detriment of the public.

2. - 2. All combinations among merchants to raise the price of merchandise to the injury of the public, is also said to be a monopoly.

3. - 3. A monopoly is also an institution or allowance by a grant from the sovereign power of a state, by commission, letters patent, or otherwise, to any person, or corporation, by which the exclusive right of buying, selling, making, working, or using anything, is given. Bac. Abr. h. t.; 3 Inst. 181.

4. The constitutions of Maryland, North Carolina, and Tennessee, declare that "monopolies are contrary to the genius of a free government, and ought not to be allowed." Vide art. Copyyright; Patent.

MONSTER, physiology, persons. An animal which has a conformation contrary to the order of nature. Dunglison's Human Physiol. vol. 2, p. 422.

2. A monster, although born of a woman in lawful wedlock, cannot inherit. Those who have however the essential parts of the human form and have merely some defect of coformation, are capable of inheriting, if otherwise qualified. 2 Bl. Com. 246; 1 Beck's Med. Jurisp. 366; Co. Litt. 7, 8; Dig. lib. 1, t. 5, l. 14; 1 Swift's Syst. 331 Fred. Code, Pt. 1, b. 1, t. 4, s. 4.

3. No living human birth, however much it may differ from human shape, can be lawfully destroyed. Traill. Med. Jur. 47, see Briand, Med. Leg. 1ere part. c. 6, art. 2, 3; 1 Fodere, Med. Leg. 402-405.

MONSTRANS DE DROIT. Literally showing of right, in the English law, is a process by which a subject claim from the crown a restitution of a right. Bac. Ab. Prerogative, E; 3 Bl. 256; 1 And. 181; 5 Leigh's R. 512.

MONSTRANS DE FAIT. Literally, showing of a deed; a profert. Bac. Ab. Pleas, &c. I 12, n. 1.

MONSTRAVERUNT, WRIT OF, Eng. law. A writ which lies for the tenants of ancient demesne who hold by free charter, and not for those tenants who hold by copy of court roll, or by the rod, according to the custom of the manor. F. N. B. 31.

MONTES PIETATIS, or Monts de Piete. The name of institutions established by public authority for lending money upon pledge of goods. In those establishments a fund is provided, with suitable warehouses, and all necessary accommodations. Directors, manage these concerns. When the money for which the goods pledged is not returned in proper time, the goods are sold to reimburse the institutions.

2. These establishments are found principally on the continent of Europe. With us private persons, called pawnbrokers, perform this office, sometimes with doubtful fidelity. See Bell's Com. B. 5, c. 2, s. 2.

MONTH. A space of time variously computed, as it is applied to astronomical, civil or solar, or lunar months.

2. The astronomical month contains one-twelfth part of the time employed by the sun in going through the zodiac. In law, when a month simply is mentioned, it is never understood to mean an astronomical month.

3. The civil or solar month is that which agrees with the Gregorian calendar, and these months are known by the names of January, February, March, &c. They are composed of unequal portions of time. There are seven of thirty-one days each, four of thirty, and one which is sometimes composed of twenty-eight days, and in leap years, of twenty-nine.

4. The lunar mouth is composed of twenty-eight days only. When a law is passed or contract made, and the month is expressly stated to be solar or civil, which is expressed by the term calendar month, or when it is expressed to be a lunar month, no difficulty can arise; but when time is given for the performance of an act, and the word month simply is used, so that the intention of the parties cannot be ascertained then the question arises, how shall the month be computed? By the law of England a month means ordinarily, in common contracts, as, in leases, a lunar month; a contract, therefore, made for a lease of land for twelve months, would mean a lease for forty-eight weeks only. 2 Bl. Com. 141; 6 Co. R. 62; 6 T. R. 224. A distinction has been made between "twelve months," and "a twelve-month;" the latter has been held to mean a year. 6 Co. R. 61.

5. Among the Greeks and Romans the months were Iunar, and probably the mode of computation adopted in the English law has been adopted from the codes of these countries. Clef des Lois Rom. mot Mois.

6. But in mercantile contracts, a month simply signifies a calendar month; a promissory note to pay money in twelve months, would therefore mean a promise to pay in one year, or twelve calendar months. Chit. on Bills, 406; 1 John. Cas. 99; 3 B. & B. 187; 1 M. & S. 111; Story on Bills, 143; Story, P. N. 213; Bayl. on Bills, c. 7; 4 Kent, Comm. Sect. 56; 2 Mass. 170; 4 Mass. 460; 6 Watts. & Serg. 179.

7. In general, when a statute Speaks of a month, without adding "calendar," or other words showing a clear intention, it shall be intended a lunar month. Com. Dig. Ann. B; 4 Wend. 512; 15 John. R. 358. See 2 Cowen, R. 518; Id. 605. In all legal proceedings, as in commitments, pleadings, &c. a month means four weeks. 3 Burr. R. 1455; 1 Bl. Rep. 450; Dougl. R. 446 463.

8. In Pennsylvania and Massachusetts, and perhaps some other states, 1 Hill. Ab. 118, n., a month mentioned generally in a statute, has been construed to mean a calendar month. 2 Dall. R. 302; 4 Dall. Rep. 143; 4 Mass. R. 461; 4 Bibb. R. 105. In England, in the ecclesiastical law, months are computed by the calendar. 3 Burr. R. 1455; 1 M. & S. 111.

9. In New York, it is enacted that whenever the term "month," or "months," is or shall be used in any statute, act, deed, verbal or written contract, or any public or private instrument whatever, it shall be construed to mean a calendar, and not a lunar month; unless otherwise expressed. Rev. Stat. part 1, c. 19, tit. 1, 4. Vide, generally, 2 Sim. & Stu. 476; 2 A. K. Marsh. Rep. 245; 3 John. Ch. Rep. 74; 2 Campb. 294; 1 Esp. R. 146; 6 T. R. 224; 1 M. & S. 111; 3 East, R. 407; 4 Moore, 465; 1 Bl. Rep. 150; 1 Bing. 307; S. C. 8 Eng. C. L. R. 328;. 1 M. & S. 111; 1 Str. 652; 6 M. & S. 227; 3 Brod. & B. 187; S. C. 7 Eng. C. L. R. 404.

MONUMENT. A thing intended to transmit to posterity the memory of some one; it is used, also, to signify a tomb where a dead body has been deposited. In this sense it differs from a cenotaph, which is at empty tomb. Dig. 11, 7, 2, 6; Id. 11, 7, 2, 42.

MONUMENTS. Permanent landmarks established for the purpose of ascertaining boundaries.

2. Monuments may be either natural or artificial objects, as rivers, known streams, springs, or marked trees. 7 Wheat. R. 10; 6 Wheat. R. 582; 9 Cranch, 173; 6 Pet. 498; Pet. C. C. R. 64; 3 Ham. 284; 5 Ham. 534; 5 N. H. Rep. 524; 3 Dev. 75. Even posts set up at the corners, 5 Ham. 534, and a clearing, 7 Cowen, 723, are considered as monuments. Sed vide 3 Dev. 75.

3. When monuments are established, they must govern, although neither courses, nor distances, nor 'computed' contents correspond; 5 Cowen, 346; 1 Cowen, 605; 6 Cowen, 706; 7 Cowen, 723; 6 Mass. 131; 2 Mass. 380; 3 Pick. 401; 5 Pick. 135; 3 Gill & John. 142,; 5 Har. & John. 163, 255; 2 Id. 260; Wright, 176; 5 Ham. 534; 1 H. & McH. 355; 2 H. & McH. 416; Cooke, 146; 1 Call, 429; 3 Call, 239; 3 Fairf. 325; 4 H. & M. 125; 1 Hayw. 22; 5 J. J. Marsh. 578; 3 Hawks, 91; 3 Murph. 88; 4 Monr. 32; 5 Monr. 175; 2 Overt. 200; 2 Bibb, 493; S. C. 6 Wheat. 582; 4 W. C. C. Rep. 15. Vide Boundary.

MOORING, mar. law. The act of arriving of a ship or vessel at a particular port, and there being anchored or otherwise fastened to the shore.

2. Policies of insurance frequently contain a provision that the ship is insured from one place to another, "and till there moored twenty-four hours in good safety." As to

what shall be a sufficient mooring, see 1 Marsh. Ins. 262; Park. on Ins. 35; 2 Str. 1251; 3. T. R. 362.

MOOT, English law. A term used in the inns of court, signifying the exercise of arguing imaginary cases, which young barristers and students used to perform at certain times, the better to be enabled by this practice to defend their clients cases. A moot question is one which has not been decided.

MORA, In civil law. This term, in mora, is used to denote that a party to a contract, who is obliged to do anything, has neglected to perform it, and is in default. Story on Bailm. 123, 259; Jones on Bailm. 70; Poth. Pret a Usage, c. 2, 2, art. 2, n. 60; Encyclopedie, mot Demeure; Broderode, mot Mora.

MORA, estates. A moor, barren or unprofitable ground; marsh; a heath. 1 Inst. 5; Fleta, lib. 2, c. 71.

MORAL EVIDENCE. That evidence which is not obtained either from intuition or demonstration. It consists of those convictions of the mind, which are produced by the use of the senses, the testimony of men, and analogy or induction. It is used in contradistinction to mathematical, evidence. (q. v.) 3 Bouv. Inst. n. 3050.

MORAL INSANITY, med. jur. A term used by medical men, which has not yet acquired much reputation in the courts. Moral insanity is said to consist in a morbid perversion of the moral feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination. Prichard, art. Insanity, in Cyclopaedia of Practical Medicine

2. It is contended that some human beings exist, who, in consequence of a deficiency in the moral organs, are as blind to the dictates of justice, as others are deaf to melody. Combe, Moral Philosophy, Lect. 12.

3. In some, this species of malady is said to display itself in an irresistible propensity to commit murder; in others, to commit theft, or arson. Though most persons afflicted with this malady commit such crimes, there are others whose disease is manifest in nothing but irascibility. Annals D'Hygiene tom. i. p. 284. Many are subjected to melancholy, and dejection, without any delusion or illusion. This, perhaps without full consideration, has been judicially declared to be a "groundless theory." The courts, and law writers, have not given it their full assent. 1 Chit. Med. Jur. 352; 1 Beck, Med. Jur. 553 Ray, Med. Jur. Prel. Views, 23, p. 49.

MORAL OBLIGATION. A duty which one owes, and which he ought to perform, but which he is not legally bound to fulfil.

2. These obligations are of two kinds 1st. Those founded on a natural right; as, the obligation to be charitable, which can never be enforced by law. 2d. Those which are supported by a good or valuable antecedent consideration; as, where a man owes a debt barred by the act of limitations, this cannot be recovered by law, though it subsists in morality and conscience; but if the debtor promise to pay it, the moral obligation is a sufficient consideration for the promise, and the creditor may maintain an action of assumpsit, to recover the money. 1 Bouv. Inst. n. 623.

MORATUR, IN LEGE. He demurs in law. He rests on the pleadings of the case, and abides the judgment of the court.

MORGANTIC MARRIAGE. During the middle ages, there was an intermediate estate between matrimony and concubinage, known by this name. It is defined to be a lawful and inseparable conjunction of a single man, of noble and illustrious birth, with a single woman of an inferior or plebeian station, upon this condition, that neither the wife nor children should partake of the title, arms, or dignity of the husband, nor succeed to his inheritance, but should have a certain allowance assigned to them by the morgantic contract. The marriage ceremony was regularly performed; the union: was for life and indissoluble; and the children were considered legitimate, though they could not inherit. Fred. Code, book 2, art. 3; Potb. Du Marriage, 1, c. 2, s. 2; Shelf. M. & D. 10; Pruss. Code, art. 835.

MORT D'ANCESTOR. An ancient and now almost obsolete remedy in the English law. An assize of mort d'ancestor was a writ which was sued out where, after the decease of a man's ancestor, a stranger abated, and entered into the estate. 1, Co. Litt. 159. The remedy in such case is now to bring ejectment.

MORTGAGE, contracts, conveyancing. Mortgages are of several kinds: as the concern the kind of property, mortgaged, they are mortgages of lands, tenements, and, hereditaments, or of goods and chattels; as they affect the title of the thing mortgaged, they are legal and equitable.

2. In equity all kinds of property; real or personal, which are capable of an absolute sale, may be the subject of a mortgage; rights in remainder and reversion, franchises, and choses in action, may, therefore, be mortgaged; But a mere possibility or expectancy, as that of an heir, cannot. 2 Story, Eq. Jur. 1021; 4 Kent, Com. 144; 1 Powell, Mortg. 17, 23; 3 Meri. 667.

3. A legal mortgage of lands may be described to be a conveyance of lands, by a debtor to his creditor, as a pledge and security for the repayment of a sum of money borrowed, or performance of a covenant; 1 Watts, R. 140; with a proviso, that such conveyance shall be void on payment of the money and interest on a certain day, or the performance of such covenant by the time appointed, by which the conveyance of the land becomes absolute at law, yet the, mortgagor has an equity of redemption, that is, a right in equity on the performance of the agreement within a reasonable time, to call for a re-conveyance of the land. Cruise, Dig. t. 15, c. 1, s. 11; 1 Pow. on Mortg. 4 a, n.; 2 Chip. 100; 1 Pet. R. 386; 2 Mason, 531; 13 Wend. 485; 5 Verm. 532; 1 Yeates, 579; 2 Pick. 211.

4. It is an universal rule in equity that once a mortgage, always a mortgage; 2 Cowen, R. 324; 1 Yeates, R. 584; every attempt, therefore, to defeat the equity of redemption, must fail. See Equity of Redemption.

5. As to the form, such a mortgage must be in writing, when it is intended to convey the legal title. 1 Penna. R. 240. It is either in one single deed which contains the whole contract - and which is the usual form - or, it is two separate instruments, the one containing an absolute conveyance, and the other a defeasance. 2 Johns. Ch. Rep. 189; 15 Johns. R. 555; 2 Greenl. R. 152; 12 Mass. 456; 7 Pick. 157; 3 Wend, 208; Addis. 357; 6 Watts, 405; 3 Watts, 188; 3 Fairf. 346; 7 Wend. 248. But it may be observed in general, that whatever clauses or covenants there are in a conveyance, though they seem to import an absolute disposition or conditional purchase, yet if, upon the whole, it appears to have been the intention of the parties that such conveyance should be a mortgage only, or pass an estate redeemable, a court of equity will always so construe it. Vern. 183, 268, 394; Prec Ch. 95; 1 Wash. R 126; 2 Mass. R. 493; 4 John. R. 186; 2 Cain. Er. 124.

6. As the money borrowed on mortgage is seldom paid on the day appointed, mortgages have now become entirely subject to the court of chancery, where it is an established rule that the mortgagee holds the estate merely as a pledge or security for the repayment of his money; therefore a mortgage is considered in equity as personal estate.

7. The mortgagor is held to be the real owner of the land, the debt being considered the principal, and the land the accessory; whenever the debt is discharged, the interest of the mortgagee in the lands determines of course, and he is looked on in equity as a trustee for the mortgagor.

8. An equitable mortgage of lands is one where the mortgagor does not convey regularly the land, but does some act by which he manifests his determination to bind the same for the security of a debt he owes. An agreement in writing to transfer an

estate as a security for the repayment of a sum of money borrowed, or even a deposit of title deeds, and a verbal agreement, will have the same effect of creating an equitable mortgage. 1 Rawle, Rep. 328; 5 Wheat. R. 284; 1 Cox's Rep. 211. But in Pennsylvania there is no such a thing as an equitable mortgage. 3 P. S. R. 233. Such an agreement will be carried into execution in equity against the mortgagor, or any one claiming under him with notice, either actual or constructive, of such deposit having been made. 1 Bro. C. C. 269; 2 Dick. 759; 2 Anstr. 427; 2 East, R. 486; 9 Ves. jr. 115; 11 Ves. jr. 398, 403; 12 Ves. jr. 6, 192; 1 John. Cas. 116; 2 John. Ch. R. 608; 2 Story, Eq. Jur. 1020. Miller, Eq. Mortg. passim.

9. A mortgage of goods is distinguishable from a mere pawn. 5 Verm. 532; 9 Wend. 80; 8 John. 96. By a grant or conveyance of goods in gage or mortgage, the whole legal title passes conditionally to the mortgagee, and if not redeemed at the time stipulated, the title becomes absolute at law, though equity will interfere to compel a redemption. But, in a pledge, a special property only passes to the pledgee, the general property remaining in the pledger. There have been some cases of mortgages of chattels, which have been held valid without any actual possession in the mortgagee; but they stand upon very peculiar grounds and may be deemed exceptions to the general rule. 2 Pick. R. 607; 5 Pick. R. 59; 5 Johns. R. 261; Sed vide 12 Mass. R. 300; 4 Mass. R. 352; 6 Mass. R. 422; 15 Mass. R. 477; 5 S. & R. 275; 12 Wend. 277: 15 Wend. 212, 244; 1 Penn. 57. Vide, generally,, Powell on Mortgages; Cruise, Dig. tit. 15; Viner, Ab. h. t.; Bac. Ab. h. t., Com. Dig. h. t.; American Digests, generally, h. t.; New, York Rev. Stat. p. 2, c. 3; 9 Wend. 80; 9 Greenl. 79; 12 Wend. 61; 2 Wend. 296; 3 Cowen, 166; 9 Wend. 345; 12 Wend. 297; 5 Greenl. 96; 14 Pick. 497; 3 Wend. 348; 2 Hall, 63; 2 Leigh, 401; 15 Wend. 244; Bouv. Inst. Index, h. t.

10. It is proper to, observe that a conditional sale with the right to repurchase very nearly resembles a mortgage; but they are distinguishable. It is said that if the debt remains, the transaction is a mortgage, but if the debt is extinguished by mutual agreement, or the money advanced is not loaned, but the grantor has a right to refund it in a given time, and have a reconveyance, this is a conditional sale. 2 Edw. R. 138; 2 Call, R. 354; 5 Gill & John. 82; 2 Yerg. R. 6; 6 Yerg. R. 96; 2 Sumner, R. 487; 1 Paige, R. 56; 2 Ball & Beat. 274. In cases of doubt, however, courts of equity will always lean in favor of a mortgage. 7 Cranch, R. 237; 2 Desaus. 564.

11. According to the laws of Louisiana a mortgage is a right granted to the creditor over the property of his debtor, for the security of his debt, and gives him the power of having the property seized and sold in default of payment. Civ. Code of Lo. art. 3245.

12. Mortgage is conventional, legal or judicial. 1st. The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in

favor of another, to secure the execution of some engagement, but without divesting himself of the possession. Civ. Code, art. 3257.

13. - 2d. Legal mortgage is that which is created by operation of law: this is also called tacit mortgage, because it is established by the law, without the aid of any agreement. Art. 3279. A few examples will show the nature of this mortgage. Minors, persons interdicted, and absentees, "have a legal mortgage on the property of their tutors and curators, as a security for their administration; and the latter have a mortgage on the property of the former for advances which they have made. The property of persons who, without being lawfully appointed curators or tutors of minors, &c., interfere with their property, is bound by a legal mortgage from the day on which the first act of interference was done.

14. - 3d. The judicial mortgage is that resulting from judgments, whether these be rendered on contested cases or by default, whether they be final or provisional, in favor of the person obtaining them. Art. 3289.

15. Mortgage, with respect to the manner in which it binds the property, is divided into general mortgage, or special mortgage. General mortage is that which binds all the property, present or future, of the debtor. Special mortgage is that which binds only certain specified property. Art. 3255.

16. The following objects are alone susceptible of mortgage: 1. Immovables, subject to alienation, and their accessories considered likewise as immovable. 2. The usufruct of the same description of property with its accessories during the time of its duration. 3. Slave's. 4. Ships and other vessels. Art. 3256.

MORTGAGEE, estates, contracts. He to whom a mortgage is made.

2. He is entitled to the payment of the money secured to him by the mortgage; he has the legal estate in the land mortgaged, and may recover it in ejectment, on the other hand he cannot commit waste; 4 Watts, R. 460; he cannot make leases to the injury of the mortgagor; and he must account for the profits he receives out of the thing mortgaged when in possession. Cruise, Dig. tit. 15, c. 2.

MORTGAGOR, estate's, contracts. He who makes a mortgage.

2. He has rights, and is liable to certain duties as such. 1. He is quasi tenant, at will; he is entitled to an equity of redemption after forfeiture. 2. He cannot commit waste, nor make a lease injurious to the mortgagee. As between the mortgagor and third persons, the mortgagor is owner of the land. Dougl. 632; 4 M'Cord, R. 310; 3 Fairf. R. 243; but see 3 Pick. R. 204; 1 N. H. Rep. 171; 2 N. H. Rep. 16; 10 Conn. R. 243; 1 Vern. 3; 2

Vern. 621; 1 Atk. 605. He can, however, do nothing which will defeat the rights of the mortgagee, as, to make a lease to bind him. Dougl. 21. Vide Mortgagee; 2 Jack. & Walk. 194.

MORTIFICATION, Scotch law. This term is nearly synonymous with mortmain.

MORTMAIN. An unlawful alienation of lands, or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. These purchases having been chiefly made by religious houses, in consequence of which lands became perpetually inherent in one dead hand, this has occasioned the general appellation of mortmain to be applied to such alienations. 2 Bl. Com. 268; Co. Litt. 2 b; Ersk. Inst. B. 2, t. 4, s. 10; Barr. on the Stat. 27, 97.

2. Mortmain is also employed to designate all prohibitory laws, which limit, restrain, or annul gifts, grants, or devises of lands and other corporeal hereditaments to charitable uses. 2 Story, Eq. Jur. 1137, note 1. See Shelf. on Mortm. 2, 3.

MORTUARIES, Eng. law. These are a sort of ecclesiastical heriots, being a customary gift claimed by and due to the minister, in many parishes, on the death of the parishioner. 2 Bl. Com. 425.

MORTUUM VADIUM. A mortgage; a dead pledge

MORTUUS EST. A return made by the sheriff, when the defendant is dead, as an excuse for not executing the writ. 4 Watts, 270, 276.

MOTHER, domestic relations. A woman who has borne a child.

2. It is generally the duty of a mother to support her child, when she is left a widow, until he becomes of age, or is able to maintain himself; 8 Watts, R. 366; and even after he becomes of age, if he be chargeable to the public, she may, perhaps, in all the states, be compelled, when she has sufficient means, to support him. But when the child has property sufficient for his support, she is not, even during his minority, obliged to maintain him. 1 Bro. C. C. 387; 2 Mass. R. 415; 4 Miss. R. 97.

3. When the father dies without leaving a testamentary guardian, at common law, the mother is entitled to be the guardian of the person and estate of the infant, until he arrives at fourteen years, when he is able to choose a guardian. Litt. sect. 123; 3 Co. 38; Co. Litt. 84 b; 2 Atk. 14; Com Dig. B, D, E; 7 Ves. 348. See 10 Mass. 135, 140; 15 Mass. 272; 4 Binn. 487; 4 Stew. & Part. 123; 2 Mass. 415; Harper, R. 9; 1 Root, R. 487.

4. In Pennsylvania, the orphans' court will, in such case, appoint a guardian until the infant shall attain his fourteenth year. During the joint lives of the parents, (q. v.) the father (q. v.) is alone responsible for the support of the children; and has the only control over them, except when in special cases the mother is allowed to have possession of them. 1 P. A. Browne's Rep. 143; 5 Binn. R. 520; 2 Serg. & Rawle 174. Vide 4 Binn. R. 492, 494.

5. The mother of a bastard child, as natural guardian, has a right to the custody and control of such child, and is bound to maintain it. 2 Mass. 109; 12 Mass. 387, 433; 2 John. 375; 15 John. 208; 6 S. & R. 255; 1 Ashmead, 55.

MOTHER-IN-LAW. In Latin socrus. The mother of one's wife, or of one's husband.

MOTION, practice. An application to a court by one of the parties in a cause, or his counsel, in order to obtain some rule or order of court, which he thinks becomes necessary in the progress of the cause, or to get relieved in a summary manner, from some matter which would work injustice.

2. When the motion. is made on some matter of fact, it must be supported by an affidavit that such facts are true; and for this purpose, the party's affidavit will be received, though, it cannot be read on the hearing. 1 Binn. R. 145; S. P. 2 Yeates' R. 546. Vide 3 Bl. Com. 304; 2 Sell. Pr. 356; 15 Vin. Ab. 495; Grah. Pr. 542; Smith's Ch. Pr. Index, h. t.

MOTIVE. The inducement, cause or reason why a thing is done.

2. When there is such a mistake in the motive, that had the truth been known, the contract would pot have been made, it is generally void., For example, if a man should, after the death of Titius, of which he was ignorant, insure his life, the error of the motive would avoid the contract. Toull. Dr. Civ. Fr. liv. 3, c. 2, art. 1. Or, if Titius should sell to Livius his horse, which both parties supposed to be living at some distance from the place where the contract was made, when in fact, the horse was then dead, the contract would be void. Poth. Vente, n. 4; 2 Kent, Com. 367. When the contract is entered into under circumstances of clear mistake or surprise, it will not be enforced. See the following authorities on this subject. 1 Russ. & M. 527; 1 Ves. jr. 221; 4 Price, 135; 1 Ves. jr. 210; Atkinson on Titl. 144. Vide Cause; Consideration.

3. The motive of prosecutions is frequently an object of inquiry, particularly when the prosecutor is a witness, and in his case, as that of any other witness, when the motion is ascertained to be bad, as a desire of revenge for a real or supposed injury, the credibility of the witness will be much weakened, though this will not alone render him incompetent. See Evidence; Witness.

MOURNING. This word has several significations. 1. It is the apparel worn at funerals, and for a time afterwards, in order to manifest grief for the death of some one, and to honor his memory. 2. The expenses paid for such apparel.

2. It has been held in England, that a demand for mourning furnished to the widow and family of the testator, is not a funeral expense. 2 Carr. & P. 207. Vide 14 Ves. 346; 1 Ves. & Bea. 364. See 2 Bell's Comm. 156.

MOVABLES, estates. Such subjects of property as attend a man's person wherever he goes, in contradistinction to things immovable. (q. v.)

2. Things movable by their nature are such as may be carried from one place to another, whether they move themselves, as cattle, or cannot be removed without an extraneous power, as inanimate things. Movables are further distinguished into such as are in possession, or which are in the power of the owner, as, a horse in actual use, a piece of furniture in a man's own house; or such as are in the possession of another, and can only be recovered by action, which are therefore said to be in action, as a debt. Vide art. Personal Property, and Fonbl. Eq. Index, h. t.; Pow. Mortg. Index, h. t.; 2 Bl. Com. 884; Civ. Code of Lo. art. 464 to 472; 1 Bouv. Inst. n. 462.

MULATTO. A person born of one white and one black parent. 7 Mass. R. 88; 2 Bailey, 558.

MULCT, punishment. A fine imposed on the conviction of an offence.

MULCT, commerce. An imposition laid on ships or goods by a company of trade, for the maintenance of consuls and the like. Obsolete.

MULIER. A woman, a wife; sometimes it is used to designate a marriageable virgin, and in other cases the word mulier is employed in opposition to virgo. Poth. Pand. tom. 22, h. t. In its most proper signification, it means a wife.

2. A son or a daughter, born of a lawful wife, is called filius mulieratus or filia mulierata, a son mulier, or a daughter mulier. The term is used always in contradistinction to a bastard; mulier being always legitimate. Co. Litt. 243.

3. When a man has a bastard son, and afterwards marries the mother, and has by her another son, the latter is called the mulier puisne. 2 Bl. Com. 248.

MULTIFARIOUSNESS, equity pleading. By multifariousness in a bill, is understood the improperly joining in one bill distinct matters, and thereby confounding them; as, for example, the uniting in one bill, several matters, perfectly

distinct and unconnected, against one defendant; or the demand of several matters of distinct natures, against several defendants in the same bill. Coop. Eq. Pl. 182; Mitf. by Jeremy, 181; 2 Mason's R. 201; 18 Ves. 80; Hardr. R. 337; 4 Cowen's R. 682; 4 Bouv. Inst. n. 4165.

2. In order to prevent confusion in its pleadings and decrees, a court of equity will anxiously discountenance this multifariousness. The following case will illustrate this doctrine; suppose an estate should be sold in lots to different persons, the purchasers could not join in exhibiting one bill against the vendor for a specific performance; for each party's case would be distinct, and would depend upon its own peculiar circumstances, and therefore there should be a distinct bill upon each contract; on the other hand, the vendor in the like case, would not be allowed to file one bill for a specific performance against all the purchasers of the estate, for the same reason. Coop. Eq. Pl. 182; 2 Dick. Rep. 677; 1 Madd. Rep. 88; Story's Eq . PI. 271 to 286. It is extremely difficult to say what constitutes multifariousness as an abstract proposition. Story, Eq. Pl. 530, 539; 4 Blackf. 249; 2 How. S. C. Rep. 619, 642; 4 Bouv. Inst. n. 4243.

MULTITUDE. The meaning of this word is not very certain. By some it is said that to make a multitude there must be ten persons at least, while others contend that the law has not fixed any number. Co. Litt. 257.

MULTURE, Scotch law. The quantity of grain or meal payable to the proprietor of the mill, or to the multurer, his tacksman, for manufacturing the corns. Ersk. Prin. Laws of Scotl. B. 2 t. 9, n. 19.

MUNERA. The name given to grants made in the early feudal ages, which were mere tenancies at will, or during the pleasure of the grantor. Dalr. Feud. 198, 199; Wright on Ten. 19.

MUNICIPAL. Strictly, this word applies only to what belongs to a city. Among the Romans, cities were called municipia; these cities voluntarily joined the Roman republic in relation to their sovereignty only, retaining, their laws, their liberties, and their magistrates, who were thence called municipal magistrates. With us this word has a more extensive meaning; for example, we call municipal law, not the law of a city only, but the law of the state. 1 Bl. Com. Municipal is used in contradistinction to international; thus we say an offence against the law of nations is an international offence, but one committed against a particular state or separate community, is a municipal offence.

MUNICIPALITY. The body of officers, taken collectively, belonging to a city, who are appointed to manage its affairs and defend its interests.

MUNIMENTS. The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which he is enabled to defend the title of his estate. Termes de la Ley, h. t.; 3 Inst. 170.

MURAGE. A toll formerly levied in England for repairing or building public walls.

MURAL MONUMENTS. Monuments made in walls.

2. Owing to the difficulty or impossibility of removing them, secondary evidence may be given of inscriptions on walls, fixed tables, gravestones, and the like. 2 Stark. Rep. 274.

MURDER, crim. law. This, one of the most important crimes that can be committed against individuals, has been variously defined. Hawkins defines it to be the wilful killing of any subject whatever, with malice aforethought, whether the person slain shall be an Englishman or a foreigner. B. 1, c. 13, s. 3. Russell says, murder is the killing of any person under the king's peace, with malice prepense or aforethought, either express or implied by law. 1 Rus. Cr. 421. And Sir Edward Coke, 3 Inst. 47, defines or rather describes this offence to be, " when a person of sound mind and discretion, unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought either express or implied."

2. This defnition, which has been adopted by Blackstone, 4 Com. 195; Chitty, 2 Cr. Law, 724; and others, has been severely and perhaps justly criticised. What, it has been asked, are sound memory and understanding? What has soundness of memory to do with the act; be it ever so imperfect, how does it affect the guilt? If discretion is necessary, can the crime ever be committed, for, is it not the highest indiscretion in a man to take the life of another, and thereby expose his own? If the person killed be an idiot or a new born infant, is he a reasonable creature? Who is in the king's peace? What is malice aforethought? Can there be any malice afterthought? Livingst. Syst. of Pen. Law; 186.

3. According to Coke's definition there must be, lst. Sound mind and memory in the agent. By this is understood there must be a will, (q. v.) and legal discretion. (q. v.) 2. An actual killing, but it is not necessary that it should be caused by direct violence; it is sufficient if the acts done apparently endanger. life, and eventually fatal. Hawk. b. 1, c. 31, s. 4; 1 Hale, P. C. 431; 1 Ashm. R. 289; 9 Car. & Payne, 356; S. C. 38 E. C. L. R. 152; 2 Palm. 545. 3. The party killed must have been a reasonable being, alive and in the king's peace. To constitute a birth, so as to make the killing of a child murder, the whole body must be detached from that of the mother; but if it has come wholly forth, but is still connected by the umbilical chord, such killing will be murder. 2 Bouv. Inst. n. 1722, note. Foeticide (q. v.) would not be such a killing; he must have

been in rerum natura. 4. Malice, either express or implied. It is this circumstance which distiuguishes murder from every description of homicide. Vide art. Malice.

4. In some of the states, by legislative enactments, murder has been divided into degrees. In Pennsylvania, the act of April 22, 1794, 3 Smith's Laws, 186, makes "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find the person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but if such person shall be convicted by confession, the court shall proceed by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Many decisions have been made under this act to which the reader is referred: see Whart. Dig. Criminal Law, h. t.

5. The legislature of Tennessee has adopted the same distinction in the very words of the act of Pennsylvania just cited. Act of 1829, 1 Term. Laws, Dig. 244. Vide 3 Yerg. R. 283; 5 Yerg. R. 340.

6. Virginia has adopted the same distinction. 6 Rand. R. 721. Vide, generally, Bac. Ab. h. t.; 15 Vin. Ab. 500; Com. Dig. Justices, M 1, 2; Dane's Ab. Index, h. t.; Hawk. Index, h. t.; 1 Russ. Cr. b. 3, c. 1; Rosc. Cr. Ev. h. t. Hale, P. C. Index, h. t.; 4 Bl. Com. 195; 2 Swift's Syst. Index, h. t.; 2 Swift's Dig. Index, h. t.; American Digests, h. t.; Wheeler's C. C. Index, h. t.; Stark. Ev. Index, h. t.; Chit. Cr. Law, Index, h. t.; New York Rev. Stat. part 4, c. 1, t. 1 and 2.

MURDER, pleadings. In an indictment for murder, it must be charged that the prisoner "did kill and murder" the deceased, and unless the word murder be introduced into the charge, the indictment will be taken to charge manslaughter only. Foster, 424; Yelv. 205; 1 Chit. Cr. Law, *243, and the authorities and cases there cited.

MURDRUM, old Engl. law. During the times of the Danes, and afterwards till the reign of Edward III, murdrum was the killing of a man in a secret manner, and in that it differed from simple homicide.

2. When a man was thus killed, and he was unknown, by the laws of Canute he was presumed to be a Dane, and the vill was compelled to pay forty marks for his death. After tlie conquest, a similar law was made in favor of Frenchmen, which was abolished by 3 Edw. III.

3. By murdrum was also understood the fine formerly imposed in England upon a person who had committed homicide perinfortunium or se defendendo. Prin. Pen. 219, note r.

MUSICAL COMPOSITION. The act of congress of February 3, 1831, authorizes the granting of a copyright for a musical composition. A question was formerly agitated whether a composition published on a single sheet of paper, was to be considered a book, and it was decided in the affirmative. 2 Campb. 28, n.; 11 East, 244. See Copyright.

TO MUSTER, mar. law. By this term is understood to collect together and exhibit soldiers and their arms; it also signifies to employ recruits and put their names down in a book to enrol them.

MUSTER-ROLL, maritime law; A written document containing the name's, ages, quality, place of residence, and, above all, place of birth, of every person of the ship's company. It is of great use in ascertaining the ship's; neutrality. Marsh. Ins. B. 1, c. 9, s. 6, p. 407; Jacobs. Sea Laws, 161; 2 Wash. C. C. R. 201.

MUSTIRO. This name is given to the issue of an Indian and a negro. Dudl. S. Car. R. 174.

MUTATION, French law. This term is synonymous with change, and is particularly applied to designate the change which takes place in the property of a thing in its transmission from one person to another; permutation therefore happens when, the owner of the thing sells, exchanges or gives it. It is nearly synonymous with transfer. (q. v.) Merl. Repert. h. t.

MUTATION OF LIBEL, practice. An amendment allowed to a libel, by which there is an alteration of the substance of the libel, as by propounding a new cause of action, or asking one thing instead of another. Dunl. Adm. Pr. 213; Law's Eccl. Law, 165-167; 1 Paine's R. 435; 1 Gall. R. 123; 1 Wheat. R. 26l.

MUTATIS MUTANDIS. The necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered, when necessary, as to names, offices, and the like.

MUTE, persons. One who is dumb. Vide Deaf and Dumb.

MUTE, STANDING MUTE, practice, crim. law. When a prisoner upon his arraignment totally refuses to answer, insists upon mere frivolous pretences, or refuses to put himself upon the country, after pleading not guilty, he is said to stand mute. 2.

In the case of the United States v. Hare, et al., Circuit Court, Maryland Dist. May sess. 1818, the prisoner standing mute was considered as if he had pleaded not guilty.

3. The act of congress of March 3, 1825, 3 Story's L . U. S. 2002, has since provided as follows; 14, That if any person, upon his or her arraignment upon any indictment before any court of the United States for any offence, not capital, shall stand mute, or will not answer or plead to such indictment, the court shall, notwithstanding, proceed to the trial of the person, so standing mute, or refusing to answer or pleas, as if he or she had pleaded not guilty; and upon a verdict being returned by the jury, may proceed to render judgment accordingly. A similar provision is to be found in the laws of Pennsylvania.

4. The barbarous punishment of peine forte et dure which till lately disgraced the criminal code of England, was never known in the United States. Vide Dumb; 15 Vin. Ab. 527.

5. When a prisoner stands mute, the laws of England arrive at the forced conclusion that he is guilty, and punish him accordingly. 1 Chit. Cr. Law, 428.

6. By the old French law, when a person accused was mute, or stood mute, it was the duty of the judge to appoint him a curator, whose duty it was to defend him, in the best manner he could; and for this purpose, he was allowed to communicate with him privately. Poth. Proced. Crim. s. 4, art. 2, 1.

MUTILATION, crim. law. The depriving a man of the use of any of those limbs, which may be useful to him in fight, the loss of which amounts to mayhem. 1 Bl. Com. 130.

MUTINY, crimes. The unlawful resistance of a superior officer, or the raising of commotions and disturbances on board of a ship against the authority of its commander, or in the army in opposition to the authority of the officers; a sedition; (q. v.) a revolt. (q. v.)

2. By the act for establishing rules and articles for the government of the armies of the United States, it is enacted as follows: Article 7. Any officer or soldier, who shall begin, excite, or cause, or join in, any mutiny or sedition in any troop or company in the service of the United States, or in any party, post, detachment or guard, shall suffer death, or such other punishment as by a court martial shall be inflicted. Article 8. Any officer, non-commissioned officer, or soldier, who being present at any mutiny or sedition, does not use his utmost endeavors to suppress the same, or coming to the knowledge of any intended mutiny, does not without delay give information thereof to

his commanding officer, shall be punished by the sentence of a court martial, with death, or otherwise, according to the nature of his offence.

3. And by the act for the better government of the navy of the United States, it is enacted as follows,: Article 13. If any person in the navy shall make or attempt to make any mutinous assembly, he shall, on conviction thereof by, a court martial, suffer death; and if any person as aforesaid, shall utter any seditious or mutinous words, or shall conceal or connive at any mutinous or seditious practices, or shall treat with contempt his superior, being in the execution of his office, or being witness to any mutiny or sedition, shall not do his utmost to suppress it, he shall be punished at the discretion of a court martial. Vide 2 Stra. R. 1264.

MUTUAL. Reciprocal.

2. In contracts there must always be a consideration in order to make them valid. This is sometimes mutual, as when one man promises to pay a sum of money to another in consideration that he shall deliver him a horse, and the latter promises to deliver him the horse in consideration of being paid the price agreed upon. When a man and a woman promise to marry each other, the promise is mutual. It is one of the qualities of an award, that it be mutual; but this doctrine is not as strict now as formerly. 3 Rand. 94; see 3 Caines 254; 4 Day, 422; 1 Dall. 364, 365; 6 Greenl. 247; 8 Greenl. 315; 6 Pick. 148.

3. To entitle a contracting party to a specific performance of an agreement, it must be mutual, for otherwise it will not be compelled. 1 Sch. & Lef. 18; Bunb. 111; Newl. Contr. 152. See Rose. Civ. Ev. 261.

4. A distinction has been made between mutual debts and mutual credits. The former term is more limited in its signification than the latter. In bankrupt cases where a person was indebted to the bankrupt in a sum payable at a future day, and the bankrupt owed him a smaller sum which was then due; this, though in strictness, not a mutual debt, was holden to be a mutual credit. 1 Atk. 228, 230; 7 T. R. 378; Burge on Sur. 455, 457.

MUTUARY, contracts. A person who borrows personal chattels to be consumed by him, and returned to the lender in kind; the person who receives the benefit arising from the contract of mutuum. Story, Bailm. 47.

MUTUUM, or loan for consumption, contracts. A loan of personal chattels to be consumed by the borrower, and to be returned to the lender in kind and quantity; as a loan of corn, wine, or money, which are to be used or consumed, and are to be replaced by other corn, wine, or money. Story on Bailm. 228; Louis. Code, tit. 12, c.

2; Ayliffe's Pand. 481; Poth. Pand. tom. 22, h. t.; Dane's Ab. Index, h. t.; 1 Bouv. Inst. logo.

2. It is of the essence of this contract, 1st. That there be either a certain sum of money, or a certain quantity of other things, which is to be consumed by use which is to be the subject-matter of the contract, and which is loaned to be consumed. 2d. That the thing be delivered to the borrower. 3d. That the property in the thing be transferred to him. 4th. That he obligates himself to return as much. 5th. That the parties agree on all these points. Poth. Prât. de Consomption, n. 1; 1 Bouv. Inst. n. 1091-6.

MYSTERY or MISTERY. This word is said to be derived from the French mestier now written mâtier, a trade. In law it signifies a trade, art, or occupation. 2 Inst. 668.

2. Masters frequently bind themselves in the indentures with their apprentices to teach them their art, trade, and mystery. Vide 2 Hawk. c. 23, s. 11.

MYSTIC. In a secret manner; concealed; as mystic testament, for a secret testament. Vide 2 Bouv. Inst. n. 3138; Testament Mystic.

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Bouvier's Law Dictionary

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N

NAIL, A measure of length, equal to two inches and a quarter. Vide Measure.

NAKED. This word is used in a metaphorical sense to denote that a thing is not complete, and for want of some quality it is either without power, or it possesses a limited power. A naked contract, is one made without consideration, and, for that reason, it is void; a naked authority, is one given without any right in the agent, and wholly for the benefit of the principal. 2 Bouv. Inst. n. 1302. See Nudum Pactum.

NAME. One or more words used to distinguish a particular individual, as Socrates, Benjamin Franklin.

2. The Greeks, as is well known, bore only one name, and it was one of the especial rights of a father to choose the names for hi's children and to alter them if he pleased. It was customary to give to the eldest son the name of the grandfather on his father's side. The day on which children received their names was the tenth after their birth. The tenth day, called 'denate,' was a festive day, and friends and relatives were invited to take part in a sacrifice and a repast. If in a court of justice proofs could be adduced that a father had held the denate, it was sufficient evidence that be had recognized the child as his own. Smith's Diet. of Greek and Rom. Antiq. h. v.

3. Among the Romans, the division into races, and the subdivision of races into families, caused a great multiplicity of names. They had first the pronomen, which was proper to the person; then the nomen, belonging to his race; a surname or cognomen, designating the family; and sometimes an agnomen, which indicated the branch of that family in which the author has become distinguished. Thus, for example, Publius Cornelius Scipio Africanus; Publius is the pronomen; Cornelius, the nomen, designating the name of the race Cornelia; Scipio, the cognomen, or surname of the family; and Africanus, the agnomen, which indicated his exploits.

4. Names are divided into Christian names, as, Benjamin, and surnames, as, Franklin.

5. No man can have more than one Christian name; 1 Ld. Raym. 562; Bac. Ab. Misnomer, A; though two or more names usually ke* t separate, as John and Peter, may undoubtedly be compounded, so as to form, in contemplation of law, but one. 5 T. R. 195. A letter put between the Christian and surname, as an abbreviation of a part of the Christian name, as, John B. Peterson, is no part of either. 4 Watts' R. 329; 5 John. R. 84; 14 Pet. R. 322; 3 Pet. R. 7; 2 Cowen. 463; Co. Litt. 3 a; 1 Ld. Raym. 562; , Vin. Ab. Misnomer, C 6, pl. 5 and 6: Com. Dig. Indictment, G 1, note u; Willes, R. 654; Bac. Abr. Misnomer and Addition; 3 Chit. Pr. 164 to 173; 1 Young, R. 602. But see 7 Watts & Serg. 406.

5. In general a corporation must contract and sue and be sued by its corporate name; 8 Jobn. R. 295; 14 John. R. 238; 19 John. R. 300; 4 Rand. R. 359; yet a slight alteration in stating the name is unimportant, if there be no possibility of mistaking the identity of the corporation suing. 12 L. R. 444.

6. It sometimes happens that two different sets of partners carry on business in the same social name, and that one of the partners is a member of both firms. When there is a confusion in this respect, the partners of one firm may, in some cases, be made responsible for the debts of another. Baker v. Charlton, Peake's N. P. Cas. 80; 3 Mart. N. S. 39; 7 East. 210; 2 Bouv. Inst. n. 1477.

7. It is said that in devises if the name be mistaken, if it appear the testator meant a particular corporation, the devise will be good; a devise to " the inhabitants of the south parish," may be enjoyed by the inhabitants of the first parish. 3 Pick. R. 232; 6 S. & R. 11; see also Hob. 33; 6 Co. 65; 2 Cowen, R, 778.

8. As to names which have the same sound, see Bac. Ab. Misnomer, A; 7 Serg & Rawle, 479; Hammond's Analysis of Pleading, 89; 10 East. R. 83; and article Idem Sonans.

9. As to the effect of using those which have the same derivation, see 2 Roll. Ab. 135; 1 W. C. C. R. 285; 1 Chit. Cr. Law 108. For the effect of changing one name, see 1 Rop. Leg. 102; 3 M. & S. 453 Com. Dig. G 1, note x.

10. As to the omission or mistake of the name of a legatee, see 1 Rop. Leg. 132, 147; 1 Supp. to Ves. Jr. 81, 82; 6 Ves. 42; 1 P. Wms. 425; Jacob's R. 464. As to the effect of mistakes in the names of persons in pleading, see Steph. Pl. 319. Vide, generally, 13 Vin. Ab. 13; 15 Vin. Ab. 595; Dane's Ab. Index, h. t.; Roper on Leg. Index, b. t; 8 Com: Dig., 814; 3 Mis. R. 144; 4 McCord, 487; 5 Halst. 230; 3 Mis. R. 227; 1 Pick. 388; Merl. Rep. mot Nom; and article Misnomer.

11. When a person uses a name in making a contract under seal, he will not be permitted to say that it is not his name; as, if he sign and seal a bond " A and B," (being his own and his partner's name,) and he had no authority from bis partner to make such a deed, he cannot deny that bis name is A. & B. 1 Raym. 2; 1 Salk. 214. And if a man describes himself in the body of a deed by the name of James and signs it John, he cannot, on being sued by the latter name, plead that his name is James. 3 Taunt. 505; Cro. Eliz. 897, n. a. Vide 3 P. & D. 271; 11 Ad. & L. 594.

NAMES OF SHIPS. The act of congress of December 31, 1792, concerning the registering and recording of ships or vessels, provides, §3. That every ship or vessel, hereafter to be registered, (except as is hereinafter provided,) shall be registered by the collector of the district in which shall be comprehended the port to which such ship or vessel shall belong at the time of her registry, which port shall be deemed to be that at or nearest to which the owner, if there be but one, or, if more than one, the husband, or acting and managing owner of such ship or vessel, usually resides. And the name of the said ship or vessel, and of the port to which she shall so belong, shall be painted on her stern, on a black ground, in white letters, of not less than three inches in length. And if any ship or vessel of the United States shall be found without having her name, and the name of the port to which she belongs, painted in manner aforesaid, the owner or owners shall forfeit fifty dollars; one half to the person, giving the information thereof, the other half to the use of the United States. 1 Story's L. U. S. 269.

2. And by the act of February 18, 1793, it is directed, §11. That every licensed ship or vessel shall have her name, and the port to which she belongs, painted on her stern, in the manner as is provided for registered ships or vessels; and if any licensed ship or vessel be found without such painting, the owner or owners thereof shall pay twenty dollars. 1 Story's L. U. S. 290.

3. By a resolution of congress, approved, March. 3, 1819, it is resolved, that all the ships of the navy of the United States, now building, or hereafter to be built, shall be named by the secretary of the navy, under the direction of the president of the United States, according to the following rule, to wit: Those of the first class, shall be called after the states of this Union those of the second class, after the rivers and those of the third class, after the principal cities and towns; taking care that no two vessels in the navy shall bear the same name. 3 Story's L. U. S. 1757.

4. When a ship is pleaged, as in the contract of bottomry, it is indispensable that its name should be properly stated; when it is merely the place in which the pledge is to be found, as in respondentia, it should also be stated, but a mistake in this case would not be fatal. 2 Bouv. Inst. n. 1255.

NAMIUM. An old word which signifies the taking or distraining another person's movable goods; 2 Inst. 140; 3 Bl. Com. 149 a distress. Dalr. Feud. Pr. 113.

NARR, pleading. An abbreviation of the word narratio; a declaration in the cause.

NARRATOR. A pleader who draws narrs serviens narrator, a sergeant at law. Fleta, 1. 2, c. 37. Obsolete.

NARROW SEAS, English law. Those seas which adjoin the coast of England. Bac. Ab. Prerogative, B 3.

NATALE. The state of condition of a man acquired by birth.

NATIONAL or PUBLIC DOMAIN. All the property which belongs to the state is comprehended under the name of national or public domain.

2. Care must be taken not to confound the public or national domain, with the national finances, or the public revenue, as taxes, imposts, contributions, duties, and the like, which are not considered as property, and are essentially attached to the sovereignty. Vide Domain; Eminent Domain.

NATIONALITY. The state of a person in relation to the nation in which he was born.

2. A man retains his nationality of origin during bis minority, but, as in the case of his domicil of origin, he may change his nationality upon attaining full age; he cannot, however, renounce his allegiance without permission of the government. See Citizen; Domicil; Expatriation; Naturalization; Foelix, Du Dr. Intern. prive, n. 26; 8 Cranch, 263; 8 Cranch, 253; Chit. Law of Nat. 31 2 Gall. 485; 1 Gall. 545.

NATIONS. Nations or states are independent bodies politic; societies of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.

2. But every combination of men who govern themselves, independently of all others, will not be considered a nation; a body of pirates, for example, who govern themselves, are not a nation. To constitute a nation another ingredient is required. The body thus formed must respect other nations in general, and each of their members in particular. Such a society has her affairs and her interests; she deliberates and takes resolutions in common; thus becoming a moral person who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights. Vattel, Prelim. §1, 2; 5 Pet. S. C. R. 52.

3. It belongs to the government to declare whether they will consider a colony which has thrown off the yoke of the mother country as an independent state; and until the government have decided on the question, courts of justice are bound to consider the ancient state of things as remaining unchanged. 1 Johns. Ch. R. 543; 13 John. 141, 561; see 5 Pet. S. C. R. 1; 1 Kent, Com 21; and Body Politic; State.

NATIVES. All persons born within the jurisdiction of the United States, are considered as natives.

2. Natives will be classed into those born before the declaration of our independence, and those born since.

3. - 1. All persons, without regard to the place of their birth, who were born before the declaration of independence, who were in the country at the time it was made, and who yielded a deliberate assent to it, either express or implied, as by remaining in the country, are considered as natives. Those persons who were born within the colonies, and before the declaration of independence, removed into another part of the British dominions, and did not return prior to the peace, would not probably be considered natives, but aliens.

4. - 2. Persons born within the United States, since the Revolution, may be classed into those who are citizens, and those who are not.

5. - 1st. Natives who are citizens are the children of citizens, and of aliens who at the time of their birth were residing within the United States.

6 The act to establish an uniform rule of naturalization, approved April 14, 1802, §4, provides that the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States" But, the right of citizenship shall not descend to persons whose fathers have never resided in the United States.

7. - 2d. Natives who are not citizens are, first, the children of ambassadors, or other foreign ministers, who, although born here, are subjects or citizens of the government of their respective fathers. Secondly, Indians, in general, are not citizens. Thirdly, negroes, or descendants of the African race, in general, have no power to vote, and are not eligible to office.

8. Native male citizens, who have not lost their political rights, after attaining the age required by law, may vote for all kinds of officers, and be elected to any office for which they are legally qualified.

9. The constitution of the United States declares that no person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president or vice-president of the United States. Vide, generally, 2 Cranch, 280; 4 Cranch, 209; 1 Dal. 53; 20 John. 213; 2 Mass. 236, 244, note; 2 Pick. 394, n.; 2 Kent, 35.

NATURAL AFFECTION. The affection which a husband, a father, a brother, or other near relative, naturally feels towards those who are so nearly allied to him, sometimes supplies the place of a valuable consideration in contracts; and natural affection is a good consideration in a deed For example, if a father should covenant without any other consideration to stand seised to the use of his child, the naming him to be of kin implies the consideration of natural affection, whereupon such use will arise. Carth. 138 Dane's Ab. Index, h. t.

NATURAL CHILDREN. In the phraseology of the English or American law, natural children are children born out of wedlock, or bastards, and are distinguished from legitimate children; but in the language of the civil law, natural are distinguished from adoptive children, that is, they are the children of the parents spoken of, by natural procreation. See Inst. lib. 3, tit. 1, §2.√

2. In Louisiana, illegitimate children who have been acknowledged by their father, are called natural children; and those whose fathers are unknown are contradistinguished by the appellation of bastards. Civ. Code of Lo. art. 220. The acknowledgment of an

illegitimate child shall be made by a declaration executed before a notary public, in the presenee of two witnesses, whenever it shall not have been made in the registering of the birth or baptism of such child. Id. art. 221. Such acknowledgment shall not be made in favor of the children produced by an incestuous or adulterous connexion. Id. art. 222.

3. Fathers and mothers owe alimony to their natural children, when they are in need. Id. art. 256, 913. In some cases natural children are entitled to the legal succession, of their natural fathers or mothers. Id. art. 911 to 927.

4. Natural children owe alimony to their father or mother, if they are in need, and if they themselves have the means of providing it. Id. art. 256.

5. The father is of right the tutor of his natural children acknowledged by him; the mother is of right the tutrix of her natural child not acknowledged by the father. The natural child, acknowledged by both, has for tutor, first the father; in default of him, the mother. Id. art. 274. See 1 Bouv. Inst. n. 319, et seq.

NATURAL EQUITY. That which is founded in natural justice, in honesty and right, and which arises ex aequo et bono. It corresponds precisely with the definition of justice or natural law, which is a constant and perpetual. will to give to every man what is his. This kind of equity embraces so wide a range, that human tribunals have never attempted to enforce it. Every code of laws has left many matters of natural justice or equity wholly unprovided for, from the difficulty of framing general rules to meet them, from the almost impossibility of enforcing them, and from the doubtful nature of the policy of attempting to give a legal sanction to duties of imperfect obligation, such as charity, gratitude, or kindness. 4 Bouv. Inst. n. 3720.

NATURAL OBLIGATION, Civil law. One which in honor and conscience binds the person who has contracted it, but which cannot be enforeed in a court of justice. Poth. n. 173, and n. 191. See Obligation.

NATURAL PRESUMPTIONS, evidence. Presumptions of fact; those which depend upon their own form and efficacy in generating belief or conviction in the mind, as derived from those connexions which are pointed out by experience; they are independent of any artificial connexions, and differ from mere presumptions of law in this essential respect, that the latter depend on and are a branch of th& particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind, without the aid or control of any particular rule of law, but simply from the course of nature and the habits of society. These presumptions fall within the exclusive province of the jury, who are to pass upon the facts. 3 Bouv. Inst. n. 3064; Greenleaf on Ev. §44.

NATURAL DAY. That space of time included between the rising and the setting of the sun. See Day.

NATURAL FOOL. An idiot; one born without the reasoning powers, or a capacity to acquire them.

NATURAL FRUITS. The natural production of trees, bushes, and other plants, for the use of men and animals, and for the reproduction of such trees, bushes or plants.

2. This expression is used in contradistinction to artificial or figurative fruits; for example, apples, peaches and pears are natural fruits; interest is the fruit of money, and this is artificial.

NATURALIZATION. The act by which an alien is made a citizen of the United States of America.

2. The Constitution of the United States, art. 1, s. 8, vests in congress the power " to establish an uniform rule of naturalization." In pursuance of this authority congress have passed several laws on this subject, which, as they are of general interest, are here transcribed as far as they are in force.

3. - 1. An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject. Approved Aprill 14, 1802. 7 Hill, 137.

§1. Be it enacted, &c, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: First, That be shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. Secondly, That he shall, at the time of bis application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. Thirdly, That the court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held,

one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same:

4. Provided, That the oath of the applicant shall, in no case, be allowed to prove his residence. Fourthly, That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall in addition to the above requisites, make a express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court:

5. Provided, That no alien, who shall heretofore passed on that subject. Approved April 14, 1802. 7 Hill, 137. §1. Be it enacted, &c. That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: First, That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. Secondly, That be shall, at the time of bis application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. Thirdly, That the court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same:

4. Provided, That the oath of the applicant shall, in no case, be allowed to prove his residence. Fourthly, That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to wbich his application shall be made, which renunciation shall be recorded in the said court:

5. Provided, That no alien, who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States:

6. Provided, also, That any alien who was residing within the limits, and under the jurisdiction, of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application within the state or territory where such court is at the time held; and on bis declaring on oath, or affirmation, that he will support the constitution of the United States, and that be doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral cbaracter, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying, for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which be came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof:

7. And provided, also, That any alien who was residing within the limits, and under the jurisdiction, of the United States, at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

8. - §3. And whereas, doubts have arisen whether certain courts of record, in some of the states, are included within the description of district or circuit courts: Be it further enacted, That every court of record in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien, who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

9. - §4. That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States:

10. Provided, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States:

11. Provided also, That no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen, as aforesaid, without the consent of the legislature of the state in which such person was proscribed.

12. - §5. That all acts heretofore passed respecting naturalization, be, and the same are hereby repealed.

13. - 2. An act in addition to an act, entitled " An act to establish an uniform rule of naturalization; and to repeal the acts heretofore passed 'on that subject." Approved March 26, 1804.

14. - §1. 'Be it enacted, &c. That any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, entitled " An act to establish an uniform rule of naturalization, and to repeal tile acts heretotore passed on that subject."

15. - §2. That when any alien who shall have complied with the first condition specified in the first section of the said orginal act, and who shall have pursued the directions prescribed in the second section of the said - act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all the rights and privileges as such, upon taking the oaths prescribed by law.

16. - 3. An act for the regulation of seamen on board the public and private vessels of the United States.

17. - §12. That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next precediug his admission as aforesaid, have resided within tlie United States, without being, at any time during the said five years, out of the territory of the United States. App. March 3, 1813.

18. - 4. An act supplementary to the acts heretofore passed on tlie subject of an uniform rule of naturalization. App. July 30, 1813.

19. - §1. Be it enacted, &c. That persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration, according to law, of their intentions to become citizens of the United States, or who, by the existing laws of the United States, were, on that day, entitled to becoine citizens without making such declaration, may be admitted to become citizens thereof" notwithstanding they shall be alien enemies, at the time and in the manner prescribed by the laws heretofore passed on the subject: Provided, That nothing herein contained shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the naturalization of such alien.

20. - 5. An act relative to evidence in case of naturalization. App. March 22, 1816.

21. - §2. That nothing herein contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein, without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the twenty-sixth of March, one thousand eight hundred and four, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.' "Whenever any person, without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved, to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of tlie United States before the fourteenth day of April one thousand eight hundred and two, and has continued to reside within tlie same, or be shall not be so admitted. And the residence

of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

22. - 6. An act in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject." App. Ma 26, 1824.

23. - §1. Be it enacted, &c. That an alien, being a free white person and a minor under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time be way make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after be shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is an addition, three years previous to his admission.

24. Provided, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

25. - §2. That no certificates of citizenship, or naturalization, heretofore obtained from any court of record within the United States, shall be deemed invalid, in consequence of an omission to comply with the requisition of the first section of the act, entitled " An Act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

26. - §8. That the declaration required by the first condition specified in the first section of the act, to which this is an addition, shall, if the same shall be bona fide, made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts, respectively.

27. - §4. That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is an addition, two years before his admission, shall be a sufficient compliance with said condition; anything in the said act, or in any subsequent act, to the contrary notwithstanding.

28. - 7. An mot to amend the acts concerning naturalization. App. May 24, 1828.

29. - §1. Be it enacted, &c. That the second section of the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act, entitled " An act relative to evidence in cases of naturalization," passed on the twenty-second day of March, one thousand eight hundred and sixteen, be, and the same are hereby repealed.

30. - §2. That any alien, being a free white person, who has resided within the Iimits and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within tbe same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen:

31. Provided, That whenever any person without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

NATURALIZED CITIZEN. One who, being born an alien, has lawfully become a citizen of the United States Under the constitution and laws.

2. He has all the rights of a natural born citizen, except that of being eligible as president or vice-president of the United States. In foreign countries he has a right to be treated as such, and will be so considered even in tlie country of his birth, at least for most purposes. 1 Bos. & P. 430. See Citizen; Domicil; Inhabitant.

NAUFRAGE, French mar. law. When, by the violent agitation of the waves, the impetuosity of the winds, the storm, or the lightning, a vessel is swallowed up, or so shattered that there remain only the pieces, the accident is called naufrage.

2. It differs from echouement, which is, when the vessel, remains whole, but is grounded; or from bris, which is, when it strikes against a rock or a coast; or from sombrer, which is, the sinking of the vessel in the sea, when it is swallowed up, and which may be caused by any accident whatever. Pardes. n. 643, Vide Wreck.

NAUTAE. Strictly speaking, only carriers by water are comprehended under this word. But the rules which regulate such carriers have been applied to carriers by land. 2 Ld. Raym. 917; 1 Bell's Com. 467.

NAVAL OFFICER. The name of an officer of the United States, whose duties are prescribed by various acts of congress.

2. Naval officers are appointed for the term of four years, but are removable from office at pleasure. Act of May 15, 1820, 1, 3 Story, L. U . S. 1790.

3. The act of March 2, 1799, 21, 1 Story, L. U. S. 590, prescribes that the naval officer shall receive copies of all manifests, and entries, and shall, together with the collector, estimate the duties on all goods, wares, and merchandise, subject to duty, (and no duties shall be received without such estimate,) and shall keep a separate record thereof, and shall countersign all permits, clearances, certificates, debentures, and other documents, to be granted by the collector; he shall also examine the collector's abstracts of duties, and other accounts of receipts, bonds, and expenditures, and, if found right, he shall certify the same.

4. And by 68, of the same law, it is enacted, that every collector, naval officer, and surveyor, or other person specially appointed, by either of them, for that purpose, shall have full power and authority to enter any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise, subject to duty, are concealed, and therein to search for, seize, and secure, any such goods, wares, or merchandise and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building, or other place, they or either of them shall, upon proper application, on oath, to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the day time only,) and there to search for

such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited.

NAVICULARIS, civil law. He who had the management and care of a ship. The same as our sea captain. Bouch. Inst. n. 359. Vide Captain.

NAVIGABLE. Capable of being navigated.

2. In law, the term navigable is applied to the sea, to arms of the sea, and to rivers in which the tide flows and reflows. 5 Taunt. R. 705; S. C. Eng. Com. Law Rep. 240; 5 Pick. R. 199; Ang. Tide Wat. 62; 1 Bouv. Inst. n. 428.

3. In North Carolina; 1 M'Cord, R. 580; 2 Dev. R. 30; 3 Dev. R. 59; and in Pennsylvania; 2 Binn. R. 75; 14 S. & R. 71; the navigability of a river does not depend upon the ebb and flow of the tide, but a stream navigable by sea vessels is a navigable river.

4. By the common law, such rivers as are navigable in the popular sense of the word, whether the tide ebb and flow in them or not, are public highways. Ang. Tide Wat. 62; Ang. Wat. Courses, 205 1 Pick. 180; 5 Pick. 199; 1 Halst. 1; 4 Call, 441: 3 Blackf. 136. Vide Arm of the sea; Reliction; River.

NAVIGATION. The act of traversing the sea, rivers or lakes, in ships or other vessels; the art of ascertaining the geographical position of a ship, and directing her course.

2. It is not within the plan of this work to copy the acts of congress relating to navigation, or even an abstract of them. The reader is referred to Story's L. U. S. Index, h. t.; Gordon's Dic. art. 2905, et seq.

NAVY. The whole shippings taken collectively, belonging to the government of an independent nation; the ships belonging to private individuals are not included in the navy.

2. The constitution of the United States, art. 1, s. 8, vests in congress the power to provide and maintain a navy."

3. Anterior to the war of 1812, the navy of the United States bad been much neglected, and it was not until during the late war, when it fought itself into notice, that the public attention was seriously attracted to it. Some legislation favorable to it, then took place.

4. The act of January 2, 1813, 2 Story's L. U. S. 1282, authorized the president of the United States, as soon as suitable materials could be procured therefor, to cause to be built, equipped and employed, four ships to rate not less than seventy-four guns, and six ships to rate forty-four guns each. The sum of two millions five hundred thousand dollars is appropriated for the purpose.

5. And by the act of March 3, 1813, 2 Story, L. U. S. 1313, the president is further authorized to have built six sloops of war, and to have built or procured such a number of sloops of war or other armed vessels, as the public service may require on the lakes. The sum of nine hundred thousand dollars is appropriated for this purpose, and to pay two hundred thousand dollars for vessels already procured on the lakes.

6. The act of March 3, 1815, 2 Story, L. U. S. 1511, appropriates the sum of two hundred thousand dollars annually for three years, towards the purchase of a stock of materials for ship building.

7. The act of April 29, 1816, may be said to have been the first that manifested the fostering care of congress. By, this act the sum of one million of dollars per annum for eight years, including the sum of two hundred thousand dollars per annum appropriated by the act of March 3, 1815, is appropriated. And the president is authorized to cause to be built nine ships, to rate not less than seventy-four guns each, and twelve ships to rate not less than forty-four guns each, including one seventy-four and three forty-four gun ships, authorized to be built by the act of January 2d, 1813. The third section of this act authorizes the president to procure steam engines and all the imperishable materials for building three steam batteries.

8. The act of March 3, 1821, 3 Story's L. U. S. 1820, repeals the first section of the act of the 29th April, 1816, and instead of the appropriation therein contained, appropriates the sum of five bundred thousand dollars per annum for six years, from the year 1821 inclusive, to be applied to carry into effect the purposes of the said act.

9. To repress piracy in the gulf of Mexico, the Act of 22d December, 1822, was passed, 3 St. L. U. S. 1873. It authorizes the president to purchase or construct a sufficient number of vessels to repress piracy in that gulf and the adjoining seas and territories. It appropriates one hundred and sixty thousand dollars for the purpose.

10. The act of May 17, 1826, authorizes the suspension of the building of one of tlie ships above authorized to be built, and authorizes the president to purchase a ship of not less than the smallest class authorized to be built by the act of 29th April, 1816.

11. The act of March 3 , 1827, 3 St. L. U. S. 2070, appropriates five hundred thousand dollars per annum for six years for the gradual improvement of the navy of the United

States, and authorizes the president to procure materials for ship building. A further appropriation is made by the act of March 2, 1833, 4 Sharsw. con. of St. L. U. S. 2346, of five hundred thousand dollars annually for six years from and after, the third of March, 1833, for the gradual improvement of the navy of the United States; and the president is authorized to cause the above mentioned appropriatiou to be applied as directed by the act of March 3, 1827.

12. For the rules and regulations of the navy of the United States, the reader is referred to the act " for the better government of the navy of the United States." 1 St. L. U. S. 761. Vide article Names of Ships.

NE DISTURBA PAS, pleading. The general issue in quare impedit. Hob. 162 Vide Rast, 517; Winch. Ent. 703.

NE BAILA PAS. He did not deliver. This is a plea in detinue, by which the defendant denies the delivery to him of the thing sued for.

NE DONA PAS, or NON DEDIT, pleading. The general issue in formedon; and is in the following formula: "And the said C D, by J K, his attorney, comes and defends the right, when, &c., and says, that the said E F did not give the said manor, with the appurtenances, or ally part thereof, to the said G B, and the heirs of his body issuing, in manner and form as the said A B hath in his count above alleged.' And of this the said C D puts himself upon the country." 10 Went. 182.

NE EXEAT REPUBLICA, practice. The name of a writ issued by a court of chancery, directed to the sheriff, reciting that the defendant in the case is indebted to the a complainant, and, that he designs going quickly into parts without the state, to the damage of the complainant, and then commanding him to cause the defendant to give bail in a certain sum that he will not leave the state without leave of the court, and for want of such bail that he tlie sheriff, do commit the defendant to prison.

2. This writ is used to prevent debtors from escaping from their creditors. It amounts in ordinary civil cases, to nothing more than process to hold to bail, or to compel a party to give security to abide the decree to be made in his case. 2 Kent, Com. 32 1 Clarke, R. 551,; Beames' Ne Excat; 13 Vin. Ab. 537; 1 Supp to Ves. jr. 33, 352, 467; 4 Ves. 577 5 Ves. 91; Bac. Ab. Prerogative, C; 8 Com. Dig. 232; 1 Bl. Com. 138 Blake's Ch. Pr. Index, h. t.; Madd. Ch. Pr. lndex, h. t.; 1 Smith's Ch. Pr. 576; Story's Eq. Index, h. t.

3. The subject may be considered under the following heads.

4. - 1. Against whom a writ of ne exect may be issued. It may be issued against foreigners subject to the jurisdiction of the court, citizens of the same state, or of another state, when it appears by a positive affidavit that the defendant is about to leave the state, or has threatened to do so, and that the debt would be lost or endangered by bis departure. 3 Johns. Ch. R. 75, 412;

7 Johns. Ch. R. 192; 1 Hopk. Ch. R. 499. On the same principle which has been adopted in the courts of law that a defendant could not be held to bail twice for the same cause of action, it has been decided that a writ of ne exeat was not properly issued against a defendant who had been held to bail in an action at law. 8 Ves. jr. 594.

5. - 2. For what claims. This writ can be issued only. for equitable demands. 4 Desaus. R. 108; 1 Johns. Ch. R. 2; 6 Johns. Ch. R. 138; 1 Hopk. Ch. R. 499. It may be allowed in a case to prevent the failure of justice. 2 Johns. Chanc. Rep. 191. When tlie demand is strictly legal, it cannot be issued, because the court has no jurisdiction. When the court has concurrent jurisdiction with the courts of common law, the writ may, in such case, issue, unless the party has been already arrested at law. 2 Johns. Ch. R. 170. In all cases, when a writ of Be exeat is claimed, the plaintiff's equity must appear on the face of the bill. 3 Johns. Ch. R. 414.

6.-3. The amount of bail. The amount of bail is assessed by the court itself and a sum is usually directed sufficient to cover the existing debt, and a reasonable amount of future interest, having regard to the probable duration of the suit. 1 Hopk. Ch. R. 501.

NE LUMINIBUS OFFICIATOR, civil law. The name of a servitude which restrains the owner of a house from making such erections as obstruct the light of the adjoining house. Dig. 8, 4, 15, 17.

NE RECIPIATUR. That it be not received. A caveat or words of caution given to a law officer, by a party in a cause, not to receive the next proceedings of his opponent. 1 Sell. Br. 7.

NE RELESSA PAS. The name of a replication to a plea, of release, by which tlie plaintiff insists he did not release. 2 Buls. 55.

NE UNJUSTE VEXES, old Engl. law. The name of a writ which issued to relieve a tenant upon, whom his lord had distrained for more services than he was bound to perform.

2. It was a prohibition to the lord, not unjustly to distrain or vex his tenant. F. N. B. h. t.

NE UNQUES ACCOUPLE, pleading. A plea by which the party denies that he ever was lawfully married to the person to whom it refers. See the form, 2 Wils. R. 118; Morg. 582; 10 Went. Prec. Pl. 158; 211 Bl. 145; 3 Chit. PI. 599.

NE UNQUES EXECUTOR, pleading. A plea by which the party who uses it denies that the plaintiff is an executor, as he claims to be; or that the defendant is executor, as the plaintiff in his declaration charges him to be. 1 Chit. Pl. 484; 1 Saund. 274, n. 3; Coin. Dig. Pleader, 2 D, 2 2 Chit. PI. 498.

NE UNQUES SEISIE QUIZ DOWER, pleading. A plea by which a defendant denies the right of a widow who sues for, and demands her dower in lands, &c., late of her husband, because the husband was not, on the day of her marriage with him, or any time afterwards, seised of such estate, so that she could be endowed -of the game. See 2 Saund. 329; 10 Went. 159; 3 Chitt. Pl. 598, and the authorities there cited.

NE UNQUES SON RECEIVER, pleading. The name of a plea in an action of account render, by which the defendant affirms that he never was receiver of tlie plaintiff. 12 Vin. Ab. 183.

NE VARIETUR. These words, which literally signify that it be not varied or changed, are sometimes written by notaries public upon bills or notes, for the purpose of identifying them. This does not destroy their negotiability. 8 Wheat. 338.

NEAT or NET, contracts. The exact weight of an article, without the bag, box, keg, or other thing in which it may be enveloped.

NEATNESS, pleading. The statement, in apt and appropriate words, of all the necessary facts, and ne more. Lawes on Pl. 62.

NECESSARIES. Such things as are proper and requisite for tlie sustenance of man.

2. The term necessaries is not confined merely to what is requisite barely to support life, but includes many of the conveniences of refined society. It is a relative term, which must be applied to the circumstances and conditions of the parties. 7 S. & R. 247. Ornaments and superfluities of dress, such as are usually worn by the party's rank and situation in life, have been classed among necessaries. 1 Campb. R. 120; 7 C. & P. 52; 1 Hodges, R. 31; 8 T. R. 578; 3 Campb. 326; 1 Leigh's N. P. 135.

3. Persons incapable of making contracts generally, may, nevertheless, make legal engagements for necessaries for which they, or those bound to support them, will be held responsible. The classes of persons who, although not bound by their usual

contracts, can bind themselves or others for necessaries, are infants and married women.

4. - 1. Infants are allowed to make binding contracts whenever it is for their interest; when, therefore, they are unprovided with necessaries, which, Lord Coke says, include victuals, clothing, medical aid, and "good teaching and instruction, whereby he may profit himself afterwards," they may buy them, and their contracts will be binding. Co. Litt. 172 a. Necessaries for the infant's wife &lad children, are necessaries for himself. Str. 168; Com. Dig. Enfant, B 5; 1 Sid. 112 2 Stark. Ev. 725; 8 Day, 37 1 Bibb, 519; 2 Nott & McC. 524; 9 John. R. 141.; 16 Mass. 31; Bac. Ab. Infancy, I.

5. - 2. A wife is allowed to make contracts for necessaries, and her husband is generally responsible upon tbem, because his assent is presumed, and even if notice be given not to trust her, still he would be liable for all such necessaries as she stood in need of; but in this case, the creditor would be required to show she did stand in need of the articles furnished. 1 Salk. 118 Ld. Raym. 1006. But if the wife elopes, though it be not with an adulterer, ho is not chargeable even for necessaries; the very fact of the slopement and 'Separation, is sufficient to put persons on inquiry, and whoever gives credit to the wife afterwards, gives it at his peril. 1 Salk. 119; Str. 647; 1 Sid. 109; S. C. 1 Lec. 4; 12 John. R. 293; 3 Pick. R. 289; 2 Halst. 146; 11 John. R. 281; 2 Kent, Com. 123; 2 St. Ev. 696; Bac. Ab. Baron and Feme, H; Chit. Contr. Index, h. t.; 1 Hare & Wall. Sel. Dec. 104, 106; Ham. on Parties, 217.

NECESSARY AND PROPER. The Constitution of the United States, art. 1, s. 8, vests in congress the power " to make all laws, which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, in any department or officer thereof."

2. This power bas ever been viewed with perhaps unfounded jealousy and distrust. is a power expressly given, which, without this clause, would, be im lied. The plain import of the clause is, that congress shall have all incidental and instrumental powers, necessary and proper to carry into execution all the express powers. It neither enlarges any power, specifically granted, nor is it a grant of any new power to congress. It is merely a declaration for the removal of all uncertainty, that the means of carrying into execution those already granted, are included in the grant.

3. Some controversy has taken place as to what is to be considered " necessary; "it has been contended that by this must be understood what is indispensable; but it is obvious the term necessary means no more than useful, needful, requisite, incidental,

or conducive to. It is in this sense the word appears to have been used, when connected with the word " proper." 4 Wheat. 418-420; 3 Story, Cons-t. 1231 to 1253.

NECESSARY INTROMISSION, Scotch law. When the husband or wife continues, after the decease of his or her companion in possession of the decedent's goods, for their preservation.

NECESSITY. In general, whatever makes the contrary of a thing impossible, whatever may be the cause of such impossibilities,

2. Whatever is done through necessity, is done without any intention, and as the act is done without will, (q. v.) and is compulsory, the agent is not legally responsible. Bac. Max. Reg. 5. Hence the maxim, necessity has no law; indeed necessity is itself a law which cannot be avoided nor infringed. Clef des Lois Rom. h. t.; Dig 10, 3, 10, 1; Com. Dig. Pleader, 3 M 20, 3 M 30.

3. It follows, then, that the acts of a man in violation of law., or to the injury of another, may be justified by necessity, because the actor has no will to do or not to do the thing, he is a mere tool; but, it is conceived, this necessity must be absolute and irresistible, in fact, or so presumed in point of law.

4. The cases which are justified by necessity, may be classed as follows: I. For the preservation of life; as if two persons are on the same plank, and one must perish, the survivor is justified in having thrown off the other, who was thereby drowned. Bac. Max, Reg. 5.

5. - 2. Obedience by a person subject to the power of another; for example, if a wife should commit a larceny with her husband, in this case the law presumes she acted by coercion of her husband, and, being compelled, by necessity, she is justifiable. 1 Russ. Cr. 16, 20; Bac. Max. Reg. 5.

6. - 3. Those cases which arise from the act of God, or inevitable accident, or from the act of man, as public enemies. Vide dct of God; Inevitable Accident and also 15 Vin. Ab. 534 Dane's Ab h. t.; 2 Stark. Ev. 713; Marsh. Ins. b. 1, c. 6, s. 3 Jacob's Intr. to. Com. Law. Reg. 74.

7. - 4. There is another species of necessity. The actor in these cases is not compelled to do the act whether he will or not, but he has no choice left but to do the act which may be injurious to another, or to lose the total use of his property. For example, when a man's lands are surrounded by those of others, so that he cannot enjoy them without trespassing on his neighbors. The way which is thus obtained, is called a way of necessity. Gale and Whatley on Easements, 71; 11 Co. 52; Hob. 234; 1 Saund. 323,

note. See 3 Rawle, R. 495; 3 M'Cord, R. 131; Id. 170; 14 Mass. R. 56; 2 B. & C. 96; 2 Bing. R. 76; 8 T. R. 50; Cro. Jac. 170; 2 Roll. Ab. 60; 3 Kent, Com. 423; 3 Rawle's R. 492; 1 Taunt. R. 279; 8 Taunt. R. 24; ST. R. 50; Ham. N. P. 198; Cro. Jac. 170; 2 Bouv. Inst. n. 1637; and Way.

NEGATION. Denial. Two negations are construed to mean one affirmation. Dig. 50, 16, 137.

NEGATIVE. **This word has several significations. 1. It is used in** contradistinction to giving assent; thus we say the president has put his negative upon such a bill. Vide Veto. 2. It is also used in contradistinction to affirmative; as, a negative does not always admit of the simple and direct proof of which an affirmative is capable. When a party affirms a negative in his pleadings, and without the establishment of which, by evidence, he cannot recover or defend himself, the burden of the proof lies upon him, and he must prove the negative. 8 Toull. n. 18. Vide 2 Gall. Rep. 485; 1 McCord, R. 573; 11 John. R. 513; 19 John. R. 345; 1 Pick. R. 375; Gilb. Ev. 145; 1 Stark. Ev. 376; Bull. N. P. 298; 15 Vin. Ab. 540; Bac. Ab. Pleas, &c. I.

v202. Although as a general rule the affirmative of every issue must be proved, yet this rule ceases to operate the moment the preumption of law is thrown into the other scale. When the issue is on the legitimacy of a child, therefore, it is incumbent on the party asserting the illegitimacy to prove it. 2 Selw. N. P. 709. Vide Affirmative Innocence.

NEGATIVE AVERMENT, pleading, evidence. An averment in some of the pleadings in a case in which a negative is asserted.

2. It is a general rule, established for the purpose of shortening and facilitating investigations, that the point in issue is to be proved by the party who asserts the affirmative; 1 Phil. Ev. 184; Bull N. P. 298; but as this rule is not founded on any presumption of law in fav-or of the party, but is merely a rule of practice and conveience, it, ceases in all cases when the presumption of law is thrown into the opposite scale. Gilb. Ev. 145. For example, when the issue is on the legitimacy of a child born in lawful wedlock, it is, incumbent on the party asserting its illegitimacy to prove it. 2 Selw. N. P. 709. 3. Upon the same principle, when, the negative averment involves a charge of criminal neglect of duty, whether official or otherwise, it must be proved, for the law presumes every man to perform the duties which it imposes. 2 Gall. R. 498; 19 John. R. 345; 10 East, R. 211; 3 B. & P. 302; 3 East, R. 192; 1 Mass. R. 54; 3 Campb. R. 10; Greenl. Ev. SS 80; 3 Bouv. Inst. n. 3089. Vide Onus Probandi.

NEGATIVE CONDITION, contracts, wills. One where the thing which is the subject of it must not happen; as, if I do not marry. Poth. Ob. n. 200; 1 Bouv. Inst. n. 751.

NEGATIVE PREGNANT, pleading. Such form of negative expression, in pleading, as may imply or carry within it an affirmative.

2. This is faulty, because the meaning of such form of expression is ambiguous. Example: in trespass for entering the plaintiff's house, the defendant pleaded, that the plaintiff's daughter gave him license to do so; and that he entered by that license. The plaintiff replied that he did not enter by her license. This was considered as a negative pregnant and it was held the plaintiff should have traversed the entry by itself, or the license by itself, and not both together. Cro. Jac. 87.

3. It may be observed that this form of traverse may imply; or carry within it, that the license was given, though the defendant did not enter by that license. It is therefore in the language of pleading said to be pregnant with the admission, namely, that a license was given: at the same time, the license is not expressly admitted, and the effect therefore is, to leave it in doubt whether the plaintiff means to deny the license, or to deny, that the defendant entered by virtue of that license. It is this ambiguity which appears to constitute the fault. 28 H. VI. 7; Hob. 295; Style's Pr. Reg. Negative Pregnant. Steph. PI. 381; Gourd, Pl. c. 6, 29-37.

4. This rule, however, against a negative pregnant, appears, in modern times at least, to have received no very strict construction; for many cases have occurred in which, upon various grounds of distinction from the general rule, that form of expression has been free from objection. See several instances in Com. Dig. Pleader, R. 6; 1 Lev. 88; Steph. Pl. 383. Vide Arch. Civ. PI. 218; Doct. Pl. 817; Lawe's Civ. Pl. 114; Gould, Pl. c. 6, 36.

NEGATIVE STATUTE. One which is enacted in negative terms, and which so controls the common law, that it has no force in opposition to the statute. Bro. Parl. pl. 72; Bac. Ab. Statutes, G.

NEGLIGENCE, contracts, torts. When considered in relation, to contracts, negligence may be divided into various degrees, namely, ordinary, less than ordinary, more than ordinary. 1 Miles' Rep. 40.

2. Ordinary negligence is the want of ordinary diligence; slight or less than ordinary negligence, is, tlie want of great diligence; and gross or more than ordinary negligence, is the want of slight diligence.

3. Three great principles of responsibility, seem naturally to follow this division.

4. - 1. In those contracts which are made for the sole benefit of the creditor, the debtor is responsible only for gross negligence, good faith alone being required of him; as in tile case of a depositary, who is a bailee without reward; Story, Bailm. 62; Dane's Ab. c. 17, a, 2; 14 Serg. & Rawle, 275; but to this general rule, Pothier makes two exceptions. The first, in relation to the contract of a mandate, and the second, to the quasi contract negotiorum gestorum; in these cases, he says, the party undertaking to perform these engagements, is bound to use necessary care. Observation Generale, printed at the end of the Traite des Obligations.

5. - 2. In those contracts which are for the reciprocal benefit of both parties, such as those of sale, of hiring, of pledge, and the like, the party is bound to take, for the object of the contract, that care which a prudent man ordinarily takes of his affairs, and he will therefore be held responsible for ordinary neglect. Jones' Bailment, 10, 119; 2 Lord Raym. 909; Story, Bailm. 23; Pothier, Obs. Gener. ubi supra.

6. - 3. In those contracts made for the sole interest of the party who has received, and is to return the thing which is the object of the contract, such, for example, as loan for use, or commodatum, the slightest negligence will make him responsible. Jones' Bailm. 64, 65; Story's Bailm. 237; Pothier, Obs. Gen. ubi supra.

7. In general, a party who has caused an injury or loss to another in consequence of his negligence, is responsible for all the consequence. Hob. 134; 3 Wils. 126; 1 Chit. TI. 129, 130; 2 Hen. & Munf. 423; 1 Str. 596; 3 East, R. 596. An example of this kind may be found in the case of a person who drives his carriage during a dark night on the wrong side of the road, by which he commits an injury to another. 3 East, R. 593; 1 Campb. R. 497; 2 Cam b. 466; 2 New Rep. 119. Vide Gale and Whatley on Easements, Index, h. t.; 6 T. R. 659; 1 East, R. 106; 4 B. & A; 590; S. C. 6 E. C. L. R. 628; 1 Taunt. 568; 2 Stark. R. 272; 2 Bing. R. 170; 5 Esp. R. 35, 263; 5 B. & C. 550. Whether the incautious conduct of the plaintiff will excuse the negligence of the defendant, see 1 Q. B. 29; 4 P. & D. 642; 3 M. Lyr. & Sc. 9; Fault.

8. When the law imposes a duty on an officer, whether it be by common law or statute, and he neglects to perform it, he may be indicted for such neglect; 1 Salk. R. 380; 6 Mod, R. 96; and in some cases such neglect will amount to a forfeiture of the office. 4 Bl. Com. 140. See Bouv. Inst. Index, h. t.

NEGLIGENT ESCAPE. The omission to take such a care of a prisoner as a gaoler is bound to take, and in consequence of it, the prisoner departs from his confinement, without the knowledge or consent of the gaoler, and eludes pursuit.

2. For a negligent escape, the sheriff or keeper of the prison is liable to punishment in a criminal case; and in a civil case, be is liable to an action for damages at the suit of the plaintiff. In both cases, the prisoner may be retaken. 3 Bl. Com. 415.

NEGOTIABLE. That which is capable of being transferred by assignment; a thing, the title to which may be transferred by a sale and indorsement or delivery.

2. A chose in action was not assignable at common law, and therefore contracts or agreements could not be negotiated. But exceptions have been allowed to this rule in relation to simple contracts, and others have been introduced by legislative acts. So that, now, bills of exchange, promissory notes, bills of lading, bank notes, payable to order, or to bearer, and, in some states, bonds and other specialties, may be transferred by assignment, indorsement, or by delivery, when the instrument is payable to bearer.

3. When a claim is assigned which is not negotiable at law, such, for example, as a book debt, the title to it remains at law in the assigner, but the assignee is entitled to it in equity, and he may therefore recover it in the assignor's name. See, generally, Hare & Wall. Sel. Dec. 158 to 194 Negotiable paper.

NEGOTIABLE PAPER, contracts. This term is applied to bills of exchange and promissory notes, which are assignable by indorsement or delivery.

2. The statute of 3 & 4 Anne (the principles of which have been generally adopted in this country, either formally, or in effect,) made promissory notes payable to a person, or to his order, or bearer, negotiable like inland bills, according to the custom of merchants.

3. This negotiable quality transfers the debt from the party to whom it was originally owing, to the holder, when the instrument is properly indorsed, so as to enable the latter to sue in his own name, both the maker of a promissory note, or the acceptor of a bill of exchange, and the other parties to such instruments, such as the drawer of a bill, and the indorser of a bill or note, unless the holder has been guilty of laches in giving the required notice of non-acceptance or non-payment. But in order to make paper negotiable, it is essential that it be payable in money only, at all events, and not out of a particular fund. 1 Cowen, 691; 6 Cowen, 108; 2 Whart. 233; 1 Bibb, 490, 503; 1 Ham. 272; 3 J. J. Marsh, 174, 542; 3 Halst. 262; 4 Blackf. 47; 6 J. J. Marsh, 170; 4 Mont. 124. See 1 W. C. C. R. 512; 1 Miles, 294; 6 Munf. 3; 10 S. & R. 94; 4 Watts, 400; 4 Whart. R. 252; 9 John. 120; 19 John. 144; 11 Verm. 268; 21 Pick. 140. Vide Promissory note. Vide 3 Kent. Com. Lecture 44; Com. Dig. Merchant, F 15, 16; 2 Hill, R. 59; 13 East, 509; 3 B. & C. 47; 7 Bing. 284; 5 T. R. 683; 7 Taunt. 265, 278; 3 Burr. 1516 6 Cowen, 151.

4. To render a bill or note negotiable, it must be payable to order, or to bearer. When it is payable " to A B only," it cannot be negotiated so as to give the indorsee a claim against any one but his indorser. Dougl. 615. An indorsement to A B, without adding " or order," is not restrictive to A B alone, he may, therefore, assign it to another; Str. 557; or he may indorse it in blank, when any attempt, afterwards, to restrain its negotiability will be unavailing. Esp. N. P. Cas. 180; 1 Bl. Rep. 295. Vide Blank Indorsement; Indorsment.

NEGOTIATION, contracts The deliberation which takes place between the parties touching a proposed agreement.

2. That which transpires in the negotiation makes no part of the agreement, unless introduced into it. It is a general rule that no evidence can be given to add, diminish, contradict or alter a written instrument. 1 Dall. 426; 4 Dall. 340; 3 S. & R. 609; 7 S. & R. 114. See Pourparler

NEGOTIATION, merc. law. The act by which a bill of exchange or promissory note is put into circulation by being passed by one of the original parties to another person.

2. Until an accommodation bill or note has been negotiated, there is no contract which can be enforced on the note: the contract, either express or implied, that the party accommodated will indemnify the other, is, till then, conditional. 2 Man. & Gr. 911.

NEGOTIORUM GESTOR, contracts. In the civil law, the negotiorum gestor is one who spontaneously, and without authority, undertakes to act for another during his absence, in his affairs.

2. In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract, but the civil law raises a quasi mandate by implication, for the benefit of the owner in many such cases. Poth. App. Negot. Gest. Mandat, n. 167, &c.; Dig. 3, 5, 1, 9; Code, 2, 19, 2.

3. Nor is an implication of this sort wholly unknown to the common law., where there has been a subsequent ratification of acts of this kind by the owner; and sometimes, when unauthorized acts are done, positive presumptions are made by law for the benefit of particular, parties. For example, if a person enters upon a minor's lands, and takes the profit's, the law will oblige him to account to the minor for the profits, as his bailiff, in many cases. Dane's Abr. ch. 8, art. 2; SS 10; Bac. Abr. Account 1; Com. Dig. Accompt, A 3.

4. There is a case which has undergone decisions in our law, which approaches very near to that of negotionum gestorum. A master bad gratuitously taken charge of, and

received on board of his vessel a box, containing doubloons and other valuables, belonging to a passenger, who was to have worked his passage, but was accidentally left behind. During the voyage, the master opened the box, in the presence of the passengers, to ascertain its contents, and whether there were contraband goods in it; and he took out the contents and lodged them in a bag in his own chest in his cabin, where his own valuables were kept. After his arrival in port, the bag was missing. The master was held responsible for the loss, on the ground that he had imposed on himself the duty of carefully guarding against all peril to which the property was exposed by means of the alteration in the place of custody, although as a bailee without hire, he might not otherwise have been bound to take more than a prudent care of them; and that he had been guilty of negligence in guarding the goods. 1 Stark. R. 237. See Story, Bailm. 189; Story, Agency, 142; Poth. Pand. 1. 3, t. 5, n. 1 to L4; Poth. Ob. n. 113; 2 Kent, Com. 616, 3d ed; Ersk. Inst. B. 1, t. 3, SS 52; Stair, Inst. by Brodie, B. l, t. 8, 3 to 6.

NEIF, old Eng. law. A woman who was born a villain, or a bond woman.

NEMINE CONTRADICENTE, legislation. These words, usually abbreviated nem. con., are used to signify the unanimous consent of the house to which they are applied. In England they are used in the house of commons; in the house of lords, the words to convey the same idea are nemine dissentiente.

NEPHEW, dom. rel. The son of a person's brother or sister. Amb. 514; 1 Jacob's Ch. R. 207.

NEPOS. A grandson. This term is used in making genealogical tables.

NEUTRAL PROPERTY, insurance. The words "neutral property " in a policy of insurance, have the effect of warranting that the property insured is neutral; that is, that it belongs to the citizens or subjects of a state in amity with the belligerent powers.

2. This neutrality must be complete hence the property of a citizen or subject of a neutral state, domiciled in the dominions of one of the belligerents, and carrying on commerce there, is not neutral property; for though such person continue to owe allegiance to bis country, and may at any time by returning there recover all the privileges of a citizen or subject of that country; yet while he resides in the dominion of a belligerent he contributes to the wealth and strength of such belligerent, and is not therefore entitled to the protection of a neutral flag; and his property is deemed enemy's property, and liable to capture, as such by the other belligerent. Marsh. Ins. B. 1, c. 9, s. 6; l John. Cas. 363; 3 Bos. & Pull. 207, u. 4; Esp. R. 108; l Caines' R. 60;

16 Johns. R. 128. See also 2 Johns. Cas. 478; 1 Caines' C. Err. xxv.; l Johns. Cas. 360; 2 Johns. Cas. 191.

3. If the warranty of neutrality be false at the time, it is made, the policy will be void ab initio. But if the 'ship, and property are neutral at the time when the risk commences, this is a sufficient compliance with a warranty of neutral property, and a subsequent declaration of war will not be a breach of it. Dougl. 705. See 1 Binn. 293; 8 Mass. 308; 14 Johns. R. 308; 5 Binn. 464; 2 Serg. & Rawle, 119; 4 Cranch, 185; 7 Cranch, 506; 2 Dall. 274.

NEUTRALITY, international law. The state of a nation which takes no part between two or more other. nations at war with each other.

2. Neutrality consists in the observance of a strict and honest impartiality, so as not to afford advantage in the war to either party; and particularly in so far restraining its trade to the accustomed course, which is held in time of peace, as not to render assistance to one of the belligerents in escaping the effects of the other's hostilities Even a loan of money to one of the belligerent parties is considered a violation of neutrality. 9 Moore's Rep. 586. A fraudulent neutrality is considered as no neutrality.

3. In policies of insurance there is frequently a warranty of neutrality. The meaning of this warranty is, that the property insured is neutral in fact, and it shall be so in appearance and conduct; that the property does belong to neutrals; that it is or shall be documented so as to prove its neutrality, and that no act of the insured or his agents shall be done which can legally compromise its neutrality. 3 Wash. C. C. R. 117. See 1 Caines, 548; 2 S. & R. 119; Bee, R. 5; 7 Wheat. 471; 9 Cranch, 205; 2 John. Cas. 180; 2 Dall. 270; 1 Gallis. 274; Bee, R. 67.

4. The violation of neutrality by citizens of the United States, contrary to the provisions of the act of congress of April 20, 1818, 3, renders the individual liable to an indictment. One fitting out and arming a vessel in the United States, to commit hostilities against a foreign power at peace with them, is therefore indictable. 6 Pet. 445; Pet. C. C. R. 487. Vide Marsh. Ins. 384 a; Park's Ins. 'Index, h. t.; 1 Kent, Com. 116; Burlamaqui, pt. 4, c. 5, s. 16 & 17; Bunk. lib. 1, c. 9; Cobbett's Parliamentary Debates; 406; Chitty, Law of Nat., Index, h. t.; Mann. Comm. B. 3, c. 1; Vattel, 1. 3, c. 7, SS 104; Martens, Precis. liv. 8, c. 7, SS 306; Boucb. Inst. n. 1826-1831.

NEW. Something not known before.

2. To be patented, an invention must be new. When an invention has been described in a printed book which has been publicly circulated, and afterwards a person takes out a

patent for it, his patent is invalid, because the invention was not new, 7 Mann' & Gr. 818. See New and Useful Invention.

NEW AND USEFUL INVENTION. This phrase is used in tlie act of congress relating to granting patents for inventions.

2. The invention to be patented must not only be new, but useful; that is, useful in contradistinction to frivolous or mischievous inventions. It is not meant that the invention should in all cases be superior to the modes now in use for the same purposes. 1 Mason's C. C. R. 182; 1 Mason's C. C. R. 302; 4 Wash. C. C. R. 9: 1 Pet. C, C. R. 480, 481; 1 Paine's C. C. R. 203; 3 Mann. Gr. & Scott, 425. The law as to the usefulness of the invention is the same in France. Renouard, c. 5, s. 16, n. 1, page 177.

NEW FOR OLD. A term used in the law of insurance in cases of adjustment of a loss, when it has been but partial. In making such adjustment the rule is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one-third new for old upon the balance. See 1 Cowen, 265; 4 Cowen, 245; 4 Ohio, 284; 7 Pick. 259; 14 Pick. 141.

NEW or NOVEL ASSIGNMENT, pleading. Declarations are conceived in very general terms, and sometimes, from the nature of the action, are so framed as to be capable of covering several injuries. The effect of this is, that, in some cases, the defendant is not sufficiently guided by the declaration to the real cause of complaint; and is, therefore, led to apply his answer to a different matter from that which the plaintiff has in view. For example, it may happen that the plaintiff has, been twice assaulted by the defendant, and one of the assaults is justifiable, being in self-defence, while the other may have been committed without legal excuse. Supposing the plaintiff to bring an action for the latter; from the generality of the statement in the declaration, the defendant is not informed to which of the two assaults the plaintiff means to refer. The defendant may, therefore, suppose, or affect to suppose, that the first is the assault intended, and will plead son assault demesne. This plea the plaintiff cannot safely traverse, because an assault was in fact committed by the defendant, under the, circumstances of excuse here alleged; the defendant would have a right under the issue joined upon such traverse, to prove these circumstances, and to presume that such assault, and no other, was the cause of action. The plaintiff, therefore, in the supposed case, not being able safely to traverse, and having no ground either for demurrer, or for pleading in confession and avoidance, has no course, but, by a new pleading, to correct the mistake occasioned by the generality of the declaration, and to declare that he brought his action not for the first but for the second assault and this is called a new assignment. Steph. PI. 241-243.

2. As the object of a new assignment is to correct a mistake occasioned by the generality of the declaration, it always occurs in answer to a plea, and is therefore in the nature of a replication. It is not used in any other part of the pleading.

3. Several new assignments may occur in the course of the same series of pleading.

4. Thus in the above example, if it be supposed that three distinct assaults had been committed, two of which were justifiable, the defendant might plead as above to the declaration, and 'then, by way of plea to the new assignment,, he might again justify, in the same manner, another assault; upon which it would be necessary for the plaintiff to new-assign a third; and this upon the first principle by which the first new assignment was required. 1 Chit. PI. 614; 1 Saund. 299 c.

5. A new assignment is said to be in the nature of a new declaration. Bac. Abr. Trespass I, 4, 2; 1 Saund. 299 c. It seems, however, more properly considered as a repetition of the declaration; 1 Chit. PI. 602; differing only in this, that it distinguishes the true ground of complaint, as being different from that which is covered by the plea. Being in the nature of a new or repeated declaration, it is consequently to be framed with as much certainty or specification of circumstances, as the declaration itself. In some cases, indeed, it should be even more particular. Bac. Abr. Trespass, I 4, 2; 1 Chitt. Pl. 610; Steph. Pl. 245. See 3 Bl. Com. 311; Arch. Civ. 318; Lawes' Civ. PI. Pl. 286; Doct. Pl. 318; Lawes' Civ. Pl. 163.

NEW HAMPSHIRE. The name of one of the original states of the United States of America. During its provincial state, New Hampshire was governed, down to the period of the Revolution, by the authority of royal commissions. Its general assembly enacted the laws necessary for its welfare, in the manner provided for by the commission under which they then acted. 1 Story on the Const. Book, 1, c. 5, 78 to 81.

2. The constitution of this state was altered and amended by a convention of delegates, held at Concord, in the said state, by adjournment, on the second Wednesday of February, 1792.

3. The powers of the government are divided into three branches, the legislative, the executive, and the judicial.

4. - 1st. The supreme legislative power is vested in the senate and house of representatives, each of which bas a negative on the other.

5. The senate and house are required to assemble on the first Wednesday in June, and at such times as they may judge necessary and are declared to be dissolved seven days

next preceding the first Wednesday in June. They are styled The General Court of New Hampshire.

6. - 1. The senate. It will be considered with reference to the qualifications of the electors the qualifications of the members; the number of members; the duration of their office; and the time and place of their election.

7. - 1. Every male inhabitant of each town, and parish with town privileges, and places unincorporated, in this state, of twenty-one years of age and upwards, excepting paupers, and persons excused from paying taxes at their own request, have a right at the annual or other town meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March, to vote in the town or parish wherein he dwells, for the senators of the county or district whereof be is a member.

8. - 2. No person shall be capable of being elected a senator, who is not seised of a freehold estate, in his own right, of the value of two hundred pounds, lying within this state, who is not of the age of thirty years, and who shall not have been an inhabitant of this state for seven years immediately preceding his election, and a the time thereof he shall be an inhabitant of the district for which he shall be chosen.

9. - 3. The senate is to consist of twelve members.

10. - 4. The senators are to hold their offices from the first Wednesday in June next ensuing their election.

5. The senators are elected by the electors in the month of March.

11. - 2. The house of representatives will be considered in relation to its constitution, under the same divisions which have been made in relation to the senate.

12. - 1. The electors are the same who vote for senators.

13. - 2. Every member of the house of representatives shall be chosen by ballot; and for two years at least next preceding his election, shall have been an inhabitant of this state; shall have an estate within the district which he may be chosen to represent, of the value of one hundred pounds, one half of which to be a freehold, whereof he is seised in his own right; shall be, at the time of his election, an inhabitant of the district he may be chosen to represent and shall cease to represent such district immediately on his ceasing to be qualified as aforesaid.

14. - 3. There shall be in the legislature of this state, a representation of the people, annually elected, and founded upon principles of equality; and in order that such representation may be as equal as circumstances will admit, every town, parish, or place, entitled to town privileges, having one hundred and fifty rateable male polls, of twenty-one years of age, and upwards, may elect one representative; if four hundred and fifty rateable male polls, may elect two representatives; and so, proceeding in that proportion, make three hundred such rateable polls, the mean of increasing number, for every additional representative. Such towns, parishes, or places, as have less than one hundred and fifty rateable polls, shall be classed by the general assembly, for the purpose of choosing a representative, and seasonably notified thereof. And in every class formed for the above mentioned purpose, the first annual meeting shall be held in the town, parish, or place, wherein most of the rateable polls reside; and afterwards in that which has the next highest number and so on, annually, by rotation, through the several towns, parishes, or places forming the district. Whanever any town, parish, or place entitled to town privileges, as aforesaid, shall not have one hundred and fifty rateable polls, and be so situated as to render the classing thereof with any, other town, parish, or place very inconvenient; the general assembly may, upon application of a majority of the voters of such town, parish, or place, issue a writ for their selecting and sending, a representative to the general court.

15. - 4. The members are to be chosen annually.

16. - 5. The election is to be in the month of March.

17. - 2. The executive power consists of a governor and a council.

18. - 1. Of the governor. 1. The qualifications of electors of governor, are the same as those of senators.

19. - 2. The governor, at the time of his election, must have been an inhabitant of this state for the seven years next preceding, be of the age of thirty years, and have an estate of the value of five hundred pounds, one-half of which must consist of a freehold in bis own right, within the state.

20. - 3. He is elected annually.

21. - 4. The election is in the month of March.

22. - 5. His general powers and duties are as follows, namely 1. In case of any infectious distemper prevailing in the place where the general court at any time is to convene, or any other cause whereby dangers may arise to the health or lives of the members from their attendance, the governor may direct the session to be holden at

some other. 2. He is invested with the veto power. 3. He is commander-in-chief of the army and navy, and is invested with power on this subject very minutely described in the contitution as follows, namely: The governor of the state for the time being shall be commander-in-chief of the army and navy, and all the military forces of this state, by sea and land: ana shall have full power, by himself or by any chief commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and for the special defence and safety of this state, to assemble in martial array, and put in warlike posture the inhabitants thereof, and to lead and conduct them, and with them encounter, repulse, repel, resist, and pursue, by force of arms, as well by sea as by land, within and without the limits of this state; and also to kill, slay, destroy, if necessary, and conquer by all fitting ways, enterprise and means, all and every such person and persons as shall at any time hereafter in a hostile manner attempt or enterprise the destruction invasion, detriment, or annoyance of this state; and to use and exercise over the army and navy, and over the militia in actual service, the law martial in time of war, invasion, and also in rebellion, declared by the legislature to exist, as occasion shill necessarily require. And surprise, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering, or annoying this state: And, in fine, the governor is hereby entrusted with all other powers incident to the office of captain-general and commander-in-chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land: Provided, that the governor shall not at any, time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this state, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court, nor grant commissions for exercising the law martial in any case, without the advice and consent of the council.

23. Whenever the chair of the governor shall become vacant, by reason of* his death, absence from the state or otherwise, the president of the senate shall, during such 'Vacancy, have and exercise all the powers and authorities which, by this constitution, the governor is vested with, when personally present; but when the president of the senate shall exercise the office of governor, he shall not hold his office in the senate.

24. - 2. The council. 1. This body is elected by the freeholders and other inhabitants qualified to vote for senators. 2. No person shall be capable of being elected a councillor who has not an estate of the value of five hundred pounds within this state, three hundred pounds of which (or more) shall be a freehold in his own right, and who is not thirty years of age; and who shall not have been in inhabitant of this state for seven years immediately preceding his election; and at the time of his election an inhabitant of the county in which he is elected. 3. The council consists of five mem

bers. 4. They are elected annually. 5. The election is in the month of March. 6. Their principal duty is to advise the governor.

25.-3. The governor and council jointly. Their principal, powers and duties are as follows: 1. They may adjourn the general court not exceeding ninety days at one time, when the two houses cannot agree as to the time of adjournment. 2. They are required to appoint all judicial officers, the attorney-general, solicitors, all sheriffs, coroners, registers of probate, and all officers of the navy, and general and field officers of the militia; in these cases the governor and council have a negative on each other. 3. They have the power of pardoning offences, after conviction, except in cases of impeachment.

26. - 2d. The judicial power is distributed as follows: The tenure that all commissioned officers shall have by law in their offices, shall be expressed in their respective commissions all judicial officers, duly appointed, commissioned and sworn, shall hold. their offices during good behaviour, excepting those concerning whom there is a different provision made in this constitution: Provided, nevertheless, the governor, with consent of council, may remove them upon the address of both houses of the legislature.

27. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the superior court, upon important questions of law, and upon solemn occasions.

28. In order that the people play not suffer from the long continuance in, place of any justice of the peace, who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justices of the peace shall become void at the expiration of five years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the state.

29. All causes of marriage, divorce, and alimony, and all appeals from the respective judges of probate, shall be heard and tried by the superior court until the legislature shall by law make other provision.

30. The general court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed four pounds, and title of real estate is not concerned but with right of appeal to either party, to some other court, so that a trial by jury in the last resort may be had.

31. No person shall hold the office of a judge in any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.

32. No judge of any court, or justice of the peace, shall act as attorney, or be of counsel, to any Party, or originate any civil suit, in matters which shall come or be brought before him as judge, or justice of the peace.

33. All matters relating to the probate of wills, and granting letters of administration, shall be exercised by the judges of probate, in such manner as the legislature have directed, or may hereafter direct; and the judges of probate shall hold their courts at such place or places, on such fixed days as the conveniency of the people may require, and the legislature from time to time appoint.

34. No judge or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending or may be brought into any court of probate in the county of which he is judge or register.

NEW JERSEY. The name of one of the original states of the United States of America. This state, when it was first settled, was divided into, two provinces, which bore the names of East Jersey and West Jersey. They were granted to different proprietaries. Serious dissensions having arisen between them, and between them and New York, induced the proprietaries of both provinces to make a formal surrender of all their powers of government, but not of their lands, to Queen Anne, in April, 1702; they were immediately reunited in one province, and governed by a governor appointed by the crown, assisted by a council, and an assembly of the representatives of the people, chosen by the freeholders. This form of government continued till the American Revolution.

2. A constitution was adopted for New Jersey on the second day of July, 1776, which continued in force till the first day of September, 1844, inclusive. A convention was assembled at Trenton on the 14th of May, 1844; it continued in, session till the 29th day of Tune, 1844, when the new constitution was adopted, and it is provided by art. 8, s. 4, that this constitution shall take effect and go into operation on the second day of September, 1844.

3. By art. 3, the powers of the government are divided into three distinct department, the legislative, executive and judicial. It further provided that no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except therein expressed.

4. - 1. The legislative power shall be vested in a senate and general assembly. Art. 4, s. 1, n. 1.

5. - 1st. In treating of the senate, it will be proper to consider, 1. The of senators. 2. Of the electors of senators. 3. Of the number-of senators. 4. Of the time for which they are elected.

6. - 1. No person shall be a member of the senate, who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the state for four years, and of the county for which he shall be chosen one year, next before his election. And he must be entitled to suffrage at the time of his election. Art. 4, s. 1, n. 2.

7. - 2. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state one year, and of the county in which he claims his vote five months next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; provided, that no person in the military, naval, or marine service of the United States, shall be considered a resident in this state, by, being stationed in any garrison, barrack, or military or naval place or station within this state; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.

8.-3. The senate shall be composed of one senator from each county in the state. Art-. 4, s. 2, n. 1.

9. - 4. The senators are elected on the second Tuesday of October, for three years. Art. 4, s. 2, n. 1. As soon as the senate shall meet after the first election to be held in pursuance of this constitution, they shall be divided, as equally as may be, into three classes. The seats of the, senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one class may be elected every year; and if vacancies happen, by resignation or otherwise, the person elected to supply such vacancies shall be elected for the unexpired terms only. Art. 4, s. 2, n. 2.

10. - 2d. The general assembly will be considered in the same order that has been observed in speaking of the senate.

11. - 1. No person shall be a member, of the general assembly, who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the state for two years, and of the county for which he shall be chosen one year next before his election. He must be entitled to this right of suffrage. Art. 4, s. 1, n. 2.

12. - 2. The same persons who elect senators elect members of the general assembly.

13. - 3. The general assembly shall be composed of members annually elected by the legal voters of the counties, respectively, who shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the general assembly shall be made by the legislature, at its first session after the next and every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; provided, that each county shall at all times be entitled to one member: and the whole number of members shall never exceed sixty.

14. - 4. Members of the legislature are elected yearly on the second Tuesday of October.

15. - 3d. The powers of the respective houses are as follows:

16. - 1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or:otherwise; but if vacancies occur during the recess of the legislature, the writs may be issued by the governor, under such regulations as may be prescribed by law.

17. - 2. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be. authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

18. - 3. Each bouse shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

19. - 4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

20. - 5. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

21. - 6. All bills and joint resolutions shall be read three time; in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each house personally present and agreeing thereto:

and the yeas and nays of members voting on such final passage shall be entered on the journal.

22. - 7. Members of the senate and general assembly shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the state; which compensation shall not exceed the sum of three dollars per day for the period of forty days from the commencement of the session; and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. When convened in extra session by the governor, they shall receive such sum as shall be fixed for the first forty days of the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The president of the senate, and the speaker of the house of assembly shall, in virtue of their offices, receive an additional compensation equal to one-third of their per diem allowance as members.

23. - 8. Members of the senate and of the general assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same: and for any speech or debate, in either house, they shall not be questioned in any other place.

24. - 2. By the fifth article of the constitution, the executive power is vested in a governor. It will be convenient to consider, 1. The qualifications of the governor. 2. By whom he is elected. 3. The duration of his office. 4. His powers: and 5. His salary.

25. - 1. The governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this state seven years next before his election, unless be shall have been absent during that time on the public business of the United States or of this state. 26. - 2. He is chosen by the legal voters of the state. 27. - 3. The governor holds his office for three years, to commence on the third Tuesday of January next ensuing the election of governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter; and he cannot nominate nor appoint to office during the last week of his term. He is not reeligible without an intermission of three years. Art. 5, n. 3. 28. - 4. His powers are as follows: He shall be the commander-in-chief of all the military and naval forces of the state; he shall have power to convene the legislature, whenever, in his opinion, public necessity requires it; he shall communicate, by message, to the legislature, at the opening of each session, and at such other times as he may deem necessary, the condition of the state, and recommend such measures as he may deem expedient; he shall take care that the laws be faithfully executed, and grant, under the great seal of the state, commissions to all such officers as shall be required to be commissioned.

29. Every bill which shall have passed both houses shall be presented to the governor: if he approve, he shall sign it, but if not, he sball return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved of by a majority of the whole number of that house, it shall become a law; but in neither house shall the vote be taken on the same day on which the bill shall be returned to it; and in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor, within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

30. The governor, or person administering the government, shall have power to suspend the collection of fines and forfeitures, and to grant reprieves, to extend until the expiration of a time not exceeding ninety days after conviction but this power shall not extend to cases of impeachment.

31. The governor, or person administering the government, the chancellor, and the six judges of the court of errors and appeals, or a major part of them, of whom the governor or person administering the government shall be one, may remit fines and forfeitures, and grant pardons after conviction, in all cages except impeachment.

32. - 5. The governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during 'the period for which be shall have been elected.

33. - 3. The judicial power shall be vested in a court of errors and appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require.

34. - 1. The court of errors and appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a major part of them; which judges are to be appointed for six years.

35. - 2. Immediately after the court shall first assemble, the six judges shall arrange themselves; in such manner that the seat of one of them shall be vacated every year, in order that thereafter one judge may be annually appointed.

36.- 3. Such of the six judges as shall attend the court shall receive, respectively, a per diem compensation, to be provided by law.

37. - 4. The secretary of state shall be the clerk of this court.

38. - 5. When an appeal from an order or decree shall be heard, the chancellor shall inform the court, in writing, of the reasons for his order or decree but he shall not sit as a member, or have a voice in the hearing or final sentence.

39. - 6. When a writ of error shall be brought, no justice who has given a judicial opinion in the cause, in favor of or against any error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmance or reversal; but the reasons for such opinion shall be assigned to the court in writing.

40. - 1. The house of assembly shall have the sole power of impeaching, by a vote of a majority of all the members; and all impeachments shall be tried by the senate: the members, when sitting for that purpose, to be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence:" and no person shall be convicted without the concurrence of two-thirds of all the members of the senate.

41. - 2. Any individual officer impeached shall be suspended from exercising his office until bis acquittal.

42. - 3. Judgment, in cases of impeachment, shall not extend farther than. to removal from, office and to disqualification to hold and enjoy any office of honor, profit, or trust under this state; but the party convicted shall nevertheless be liable to indictment, trial, and punishment, according to law.

43. - 4. The secretary of state shall be the clerk of this court.

44. - 1. The court of chancery shall consist of a chancellor.

45. - 2. The chancellor shall be the ordinary, or surrogate-general, and judge of the prerogative court.

46. - 3. All persons aggrieved by any order, sentence, or decree of the orphans' court may appeal from the same, or from any part thereof, to the prerogative court; but such order, sentence, or decree shall not be removed into the supreme court, or circuit court if the subject matter thereof be within the jurisdiction of the orphans' court.

47. - 4. The secretary of state shall be the register of the prerogative court, and shall perform the duties required of him by law in that respect.

48. - 1. The supreme court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two.

49. - 2. The circuit courts shall be held in every county of this state, by one or more of the justices of the supreme court, or a judge appointed for that purpose; and shall in all cases within the county, except in those of a criminal nature, have common law jurisdiction concurrent with the supreme court; and any final judgment of a circuit court may be docketed in the supreme court, and shall operate as a judgment obtained in the supreme court, from the time of such docketing.

50. - 3. Final judgments in any circuit court may be brought by writ of error into the supreme court, or directly into the court of errors and appeals.

51. - 1. There shall be no more than five judges of the inferior court of common pleas in each of the counties in this state after the terms of the judges of said court now in office shall terminate. One judge for each county shall be appointed every year, and no more, except to fill vacancies, which shall be for the unexpired term only.

52. - 2. The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next; and an subsequent commissions for judges of said court shall bear date and take effect on the first day of April in every successive year, except commissions to fill vacancies, which shall hear date and take effect when issued.

53. - 1. There may be elected under this constitution two, and not more than five, justices of the peace in each of the townships of the several counties of this state, and in each of the wards, in cities that may vote in wards. When a township or ward contains two thousand inhabitants or less, it may have two justices; when it contains more than two thousand inhabitants, and not more than four thousand, it may have four justices; and when it contains more than four thousand inhabitants, it may have, five justices; provided, that whenever any township, not voting in wards, contains more than seven thousand inhabitants, such township) may have an additional justice for each additional three thousand inhabitants above four thousand.

54. - 2. The population of the townships in the several counties of the state and of the several wards shall be ascertained by the lost preceding census of the United States, until the legislature shall provide by law some other mode of ascertaining it.

NEW MATTER, pleading. All facts alleged in pleading, which go in avoidance of what is before, pleaded, on the opposite side, are called new matter. In other words, every allegation made in the pleadings, subsequent to the declaration, and which does not go in denial of what is before alleged on the other side, is an allegation of new matter; generally, all new matter must be followed by a verification. (q. v.) Gould, Pl. c. 3, 195; 1 Saund. 103, n. 1; Steph. PI. 251; Com. Dig. Pleader, E 32; 2 Lev. 5; Vent. 121; 1 Chit. PI. 538; 3 Bouv. Inst. n. 2983. In proceedings in equity, when new matter has been discovered by either plaintiff or defendant, before a decree has been pronounced, a cross bill has been permitted to bring such matter before, the court to answer the purposes of justice. After the answer has been filed, it cannot be introduced by amendment; the only way to introduce it, is by filing a supplemental bill. 4 Bouv. Inst. n. 4385 - 87; 1 Paige 200; Harring. Ch. 438.

NEW PROMISE. A contract made, after the original promise has for some cause been rendered, invalid, by which the promiser agrees to fulfil such original promise.

2. When a debtor has been discharged under the bankrupt laws, the remedy against him is clearly gone, so when an infant has made a contract prejudicial to his interest, he may avoid it; and when by lapse of time a debt is barred by the act of limitations, the debtor may take advantage of the act, but in all these cases there remains a moral obligation, and if the original promiser renews the contract by a new promise, this is a sufficient consideration. See 8 Mass. 127; 2 S. & It. 208; 2 Rawle, 351; 5 Har. & John. 216; 2 Esp. C. 736; 2 H. Bl. 116; 8 Moore, 261; 1 Bing. 281; 1 Dougl. 192; Cowp. 544; Bac. Ab. Infancy and A e, I; Bac. Ab. Limitation of actions, E 85

3. Formerly the courts construed the slightest admission of the debtor as evidence of a new promise to pay; but of late years a more reasonable construction is put upon men's contracts, and the promise must be express, or at least, the acknowledgment of indebtedness must not be inconsistent with a promise to pay. 4 Greenl. 41, 413; 2 Hill's S. C. 326; 2 Pick. 368; 1 South. 153; 14 S. & R. 195; 1 McMull. R. 197; 3 Harring. 508; 7 Watts & Serg. 180; 10 Watts, 172; 6 Watts & Serg. 213; 5 Shep. 349; 5 Smed. & Marsh. 564; 1 Bouv. Inst. n. 866.

NEW TRIAL, practice, A reexamination of an issue in fact, before a court and jury, which had been tried, at least once, before the same court and a jury.

2. The origin of the practice of granting new trials is concealed in the night of time.

3. Formerly new trials could be obtained only with the greatest difficulties, but by the modern practice, they are liberally granted in furtherance of justice.

4. The reasons for granting new trials are numerous, and may be classed as follows; namely:

1. Matters which arose before and in the course of trial. These are, 1st. Want of due notice. Justice requires that the defendant should have sufficient notice of the time and place of trial; and the want of it, unless it has been waived by an appearance, and making defence, will, in general, be sufficient to entitle the defendant to a new trial. Bull., N. P. 327; 3 Price's Ex. R. 72; 3 Dougl. 402; 1 Wend. R. 22. But the insufficiency of the notice must have been calculated reasonably to mislead the defendant. 7 T. R. 59. 2d, The irregular impanneling of the jury; for example, if a person not duly qualified to serve be sworn: 4 T. R. 473; or if a juror not regularly summoned and returned personate another. Willes, 484; S. C. Barnes, 453. In Pennsylvania, by statutory, provision, going on to trial will cure the defect, both in civil and criminal cases. 3d. The admission of illegal testimony. 3 Cowen's Rep. 712 2 Hall's R. 40. 4 Chit. Pr. 33 4th. The rejection of legal testimony. 6 Mod. 242; 3 B. & C. 494; 1 Bingh. R. 38; 1 John. IR,. 508; 7 Wend. R. 371; 3 Mass. 124; 6 Mass. R. 391. But a new trial will not be granted for the rejection of a witness on the supposed ground of incompetency, when another witness establishes the same fact, and it is not disputed by the other side. 2 East, R. 451; and see other exceptions in 1 John. R. 509; 4 Ohio Rep. 49; 1 Charlt. B. 227; 2 John. Cas. 318. 5th. The misdirection of the judge. Vide article Misdirection, and 4 Chit. Pr. 38.

5. - 2. The acts of the prevailing party, his agents or counsel. For example, when papers, not previously submitted, are surreptitiously handed to the jury, being material on the point in issue. Co. Litt. 227; 1 Sid. 235; 4 W. C. C. R. 149. Or if the party, or one on his behalf, directly approach a juror on the subject of the trial. Cro. Eliz. 189; 1 Serg. & Rawle, 169; 7 Serg. & Rawle, 358; 4 Binn. 150; 13 Mass. R. 218; 2 Bay R. 94; 6 Greenl. R. 140. But if the other party is aware of such attempts, and he neglects to correct them when in his power, this will not be a sufficient reason for granting a new trial. 11 Mod. 118. When indirect measures have been resorted to, to prejudice the jury; 3 Brod. & Bing. 272; 7 Moore's R. 87; 7 East, R. 108; or tricks practiced; 11 Mod. 141; or disingenuous attempts to suppress or stifle evidence, or thwart the proceedings, or to obtain an unconscientious advantage, or to mislead the court and jury, they will be defeated by granting a new trial. Grah. N. T. 56; 4 Chit. Pr. 59.

6. - 3. The misconduct of the jury, as if they acted in disregard of their oaths; Cro. Eliz. 778; drinking spirituous liquors, after being charged with the cause; 4 Cowen's R. 26; 7 Cowen's R. 562; or resorting to artifice to get rid of their confinement; 5 Cowen's R. 283; and such like causes will avoid a verdict. Bunb. 51; Barnes, 438; 1 Str. 462; 2 Bl. R. 1299; Comb. 357; 4 Chit. Pr. 48 to 55. See, t's to the nature of the evidence to be received to prove misconduct of the jury, 1 T. R. 11; 4 Binn. R. 150; 7 S. & R. 458.

7. - 4. Cases in which the verdict is improper, because it is either void, against law, against evidence, or the damages are excessive. 1. When the verdict is contrary to the record; 2 Roll. 691; 2 Co. 4; or it finds a matter entirely out of the issue; Hob. 53; or finds only a part of the issue; Co. Litt. 227; or when it is uncertain; 8 Co. 65; a new trial will be granted. 2. When the verdict is. clearly against law, and injustice has been done, it will be set aside. Grah. N. T. 341, 356. 3. And so will a verdict be set aside if given clearly against evidence, and the presiding judge is dissatisfied. Grah. N. T. 368. 4. When the damages are excessive, and appear to have been given in consequence of prejudice, rather, than as an act of deliberate judgment. Grah. N. T. 410; 4 Chit. Pr. 63; 1 M. & G. 222; 39 E. C. L. R. 422.

8. - 5. Cases in which the party was deprived of his evidence by accident or because he was not aware of it. The non-attendance of witnesses, their mistakes, their interests, their infirmities, their bias, their partial or perverted views of facts, their veracity, their turpitude, pass in review, and in proportion as they bear upon the merits avoid or confirm the verdict. The absence of a material piece of testimony or the non-attendance of witnesses, contrary to reasonable expectation, and reasonably accounted for, will induce the court to set aside the verdict, and grant a new trial; 6 Mod. 22 11 Mod. 1; 2 Chit. Rep. 195; 14 John. R. 112; 2 John. Cas. 318; 2 Murph, R. 384; as, if the witness absent himself with out the party's knowledge after the cause is called on,; 14 John. R. 112; or is suddenly taken sick; 1 McClell. R. 179 and the like. The court will also grant a new trial, when the losing party has discovered material evidence since the trial, which would probably produce, a different result; this evidence must be accompanied by proof of previous diligence to procure it. To succeed, the applicant must show four things: 1. The names of the new witnesses discovered. 2. That the applicant has been diligent in preparing, his cage for trial. 3. That the new facts were discovered after the trial and will be important. 4. That the evidence discovered will tend to prove facts which were not directly in, issue on the trial, or were not then known and investigated by proof. 8 J. J. Marsh. R. 521; 2 J. J. Marsh. R. 52; 5 Serg. & Rawle, 41; 6 Greenl. R. 479; 4 Ohio Rep. 5; 2 Caines' R. 155; 2 W. C. C. R. 411; 16 Mart. Louis. Rep. 419; 2 Aiken, Rep, 407; 1 Haist. R. 434; Grah. N. T. ch. 13.

9. New trials may be granted in criminal as well as in civil cases, when the defendant is convicted, even of the highest offences. 3 Dall. R. 515; 1 Bay, R. 372; 7 Wend. 417; 5 Wend. 39. But when the defendant is acquitted, the humane influence of the law, in cases of felony, mingling justice with mercy, in favorem vitae et libertatis, does not permit a new trial. In cases of misdemeanor, after conviction a new trial may be granted in order to fulfil the purpose of substantial justice; yet, there are no instances of new trials after acquittal, unless in cases where the defendant has procured his acquittal by unfair practices. 1 Chit. Cr. Law, 654; 4 Chit. Pr. 80. Vide, generally, 21 Vin. Ab. 474 to 493; 3 Chit. Bl. Co 387, n.; 18 E. C. L. R. 74, 334; Bac. Ab. Trial, L;

1 Sell. Pr. 482; Tidd's Pr. 934, 939; Graham on New Trials 3 Chit. Pr. 47; Dane's Ab. h. t.; Com. Dig. Pleader, IR. 17; 4 Chitty's Practice, part 7, ch. 3. The rules laid down to authorize the granting of new trials in Louisiana, will be found in the Code of Practice, art. 557 to 563.

NEW WORK. In Louisiana, by a new work is understood every sort of edifice or other work, which is newly commenced on any ground whatever.

2. When the ancient form of the work is changed, either by an addition being made to it, or by some part of the ancient work being taken away, it is styled also a new work. Civ. Code of Lo. 852; Puff. b. 8 , c. 5, SS 3; Nov. Rec. L. 1, tit. 32; Asso y Manuel, b. 2, tit. 6, p. 144.

NEW YORK. The name of one of the original states of the United States of America. ln its colonial condition this state was governed from the period of the revolution of 1688, by governors appointed by the crown assisted by a council, which received its appointments also from the parental government, and by the representatives of the people. 1 Story, Const. B. 1, ch. 10.

2. The present constitution of the state was adopted by a convention of the people, at Albany, on the ninth day of October, 1846, and went into force from and including the first day of January, 1847. The powers of the government are distributed among three classes of magistrates, the legislative, the executive, and the judicial;

3. - 1. The legislative power is vested in a senate and assembly. By the second article, section first, of the constitution, the qualifications of the electors are thus described, namely:: Every male citizen of the age of twenty- one years, who shall have been a citizen for ten days, and an inhabitant of this state one year next, preceding any election, and for the last four months a resident of the county where he may offer bis vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election shall have been seised and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances, charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall be seised and possessed of such real estate as aforesaid.

4. The third article provides as follows Sect. 6. The members of the legislature sliall receive for their services, a sum not exceeding tbree dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate, three hundred dollars for per them allowance, except in proceedings for impeachment. The limitation as to the aggregate compensation shall not take effect until the year one thousand eight hundred and forty - eight. When convened in extra session by the governor, they shall receive three dollars per day. They sliall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting on the most usual route. The speaker of the assembly shall, in virtue of his office, receive an additional compensation equal to one-third of his per them allowance as a member.

Sect. 7. No member of the legislature shall receive any civil appointment within this state, or to the senate of the United States, from the governor, the governor and senate, or from the legislature, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member, for any such office or appointment, shall be void. Sect. 8. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Sect. 9. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

Sect. 10. A majority of each house shall constitute a quorum to do business. Each house sliall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members, shall choose its own officers, and the senate shall choose a temporary president, when the lieutenant. governor shall not attend as president, or shall act as governor.

Sect. 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sect. 12. For any speech or debate in either house of the, legislature, the members shall not be questioned in any other place.

5. - 1. The senate consists of thirty - two members, chosen by the electors. The state is divided into thirty - two districts, and each district elects one senator.

6. Senators are chosen for two years. v20 7. - 2. The assembly shall consist of one hundred and twenty-eight members. Art. 3, s. 2.

8. The state shall be divided into assembly districts as provided by the fifth section of the third article of the constitution as follows: The members of assembly shall be apportioned among the several counties of this state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single districts.

"The several boards of supervisors in such counties of this state, as are now entitled to more than one member of assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into assembly districts equal to the number of members of assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the secretary of state and the clerks of their respective counties, a description of such assembly districts, specifying the number of each district and the population thereof, according to the last preceding state enumeration, as near as can be ascertained. Each assembly district shall contain, as nearly as may be, an equal number of inbabitants, excluding aliens and persons of color not taxed, and shall consist of convenient. and contiguous territory; but no town shall be divided in the formation of assembly districts.

"The legislature, at its first session after the return of every enumeration, shall re-apportion the members of assembly among the several counties of this state, in manner aforesaid, and the boards of supervisors in such counties as, may be entitled, under such reapportionment, to more than one member, shall assemble at such time as the legislature making such reapportionment shall prescribe, and divide such counties into assembly districts, in the manner herein directed and the apportionment and districts so to be made, shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section.

"Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall be hereafter erected, unless its population shall entitle it to a member.

" The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member."

9. The members of assembly are elected annually.

10. - 2. The fourth article vests the executive power as follows:

" Sect. 1. The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be chosen at the same time, and for the same term.

" Sect. 2. No person except a citizen of the United States, shall be eligible to the office of governor; nor shall any person be eligible to that office, who shall not have attained the age of thirty years, and who shall not have been five years next preceding his election, a resident within this state.

" Sect. 3. The governor and lieutenant governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant governor, the two houses of the legislature at its next annual session, shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenaut governor.

" Sect. 4. The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state, and recommend such matters to them as be shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures, as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services, a compensation to be established by law, which shall neither be increased nor diminished after his election and during his continuance in office.

" Sect. 5. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulation as may be provided by. law relative to the maniaer of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the Oft - - e shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He sliall annually communicate to the legislature each case of reprieve, commutation or pardon granted stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

"Sect. 6. In case of the impeachment of the governor, of his removal from office, death, inability to discharge the powers and duties of the said office, resignation or

absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

"Sect. 7. The lieutenant governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor, until the vacancy be filled, or the disability shall cease.

"Sect. 8. The lieutenant governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

"Sect. 9. Every bill which shall have passed the senate and assembly, shall, before it becomes a law, be presented to the governor; if be approve, he shall Sign it; but if not, he shall return it with his objections to that bouse in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered: and if approved by two-thirds of all the members present, it shall become a law, notwithstanding the objections of the governor. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the flames of the members voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law."

11. - 3. The sixth article distributes the judicial power as follows:

"Sect. 1. The assembly shall have the power of impeachment, by the vote of a majority of all the members elected. The court for the trial of impeachments, shall be composed of the president of the senate, the senators, or a major part of them, and, the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise bis office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take, an oath or affirmation, truly and impartially to try the

impeachment, according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this state; but the party impeached shall be liable to indictment, and punishment according to law.

"Sect. 2. There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court, having the shortest time to serve. Provision shall be made by law, for designating one of the number elected, as chief judge, and for selecting such justices of the supreme court, from time to time, and for so classifying those elected, that one shall be elected every second year.

"Sect. 3. There shall be a supreme court having general jurisdiction in law and equity.

"Sect. 4. The state shall be divided into eight judicial districts, of which the city of New York shall be one: the others to be bounded by county lines. and to be compact, and equal in population, as rearly as may be. There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New York, as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such judges in the residue of the state in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

"Sect. 5. The legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

"Sect. 6. Provisions may be made by law for designating, from time to time, one or more of the said justices, who is not a judge of the court of appeals, to preside at the general terms of the said court to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated shall always be one, may hold: such general terms. And any one or more of the justices may hold special terms and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

"Sect. 7. The judges of the court of appeals and justices of the supreme court, shall severally receive, at stated times, for their services, a compensation to be established by law, which shall not be increased or diminished during their continuance in office.

"Sect. 8. They shall not hold any other office or public trust. All votes for either of them, for any elective office, (except that of justice of the supreme court, or judge of the court of appeals,) given by the legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this state.

"Sect. 9. The classification of the justices of the supreme court; the times and place of holding the terms of the court of appeals, and of the general and special terms of the supreme court within the several districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law.

"Sect. 10. The testimony in equity cases shall be taken in like manner as in cases at law.

"Sect. 11. Justices of the supreme court and judges of the court of appeals, way be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace, and judges and justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor: but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of, shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

"Sect. 12. The judges of the court of appeals shall be elected by the electors of the state, ana the justices of the supreme court by the electors of the several judicial districts, at such times as may be proscribed by law.

"Sect. 13. In case the office of any judge of the court of appeals, or justice of the supreme court, shall becoine vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the governor, until it shall be supplied at the next general election of judges, when it shall be filled by election, for the residue of the unexpired term.

Sect. 14. There shall be elected in each of the counties of this state, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the county court, and perform the duties of the office of surrogate. The county court shall have such jurisdiction in cases arising in justices' courts, and in

special cases, as the legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases.

"The county judge, with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the legislature shall prescribe, and perform such other duties as may be required by law.

"The county judge shall receive an annual salary, to be fixed by the board of supervisors, which sliall be neither increased nor diminished during his continuance in office. The justices of the peace for services in courts of sessions, shall be paid a per diem allowance out of the county treasury. "In counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

"The legislature may confer equity jurisdiction in special cases upon the county judge.

"Inferior local courts, of civil and criminal jurisdiction, may be established by the legislature in cities; and such courts, except for the cities of New York and Buffalo, shall have an uniform organization and jurisdiction in such cities.

"Sect. 15. The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge, and of surrogate in cases of their inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

"Sect. 16. The legislature may reorganize the judicial districts at the first session after the return of every enumeration under this constitution, in the manner provided for in the fourth section of this article, and at no other time; and they may, at such session, increase or diminish the number of districts, but such increase or diminution shall not, be more than one district at any one time. Each district shall have four justices of the supreme court; but no diminution of the districts shall have the effect to remove a judge from office.

"Sect. 17. The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed, (after due notice and an opportunity of being beard in their defence) by such county, city or state courts as may be prescribed by law, for causes to be assigned in the order of removal.

"Sect. 18. All judicial officers of cities and villages, and all such judicial officers is may be created therein by law, shall be elected at such times and in such manner as the legislature may direct.

"Sect. 19. The clerks of the several counties of this state shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. A clerk for the court of appeals, to be ex officio clerk of the supreme court, and to keep his office at the seat of government, shall be chosen by the electors of the state; he shall hold his office for three years, and bis compensation shall be fixed by law and paid out of the public treasury.

"Sec. 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office.

"Sect. 21. The legislature may authorize the judgments, decrees and decisions of any local inferior court of record of original civil jurisdiction, established removed for review directly into the court of appeals.

"Sect. 22. The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

"Sect. 23. Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law."

"Sect. 25. The legislature, at its first session after the adoption of this constitution, shall provide for the organization of the court of appeals, and for transferring to it the business pending in the court for the correction of errors, and for the allowance of writs of error and appeals to the court of appeals, from the judgments and decrees of the present court of chancery and supreme court, and of the courts that may be organized under this constitution."

12. The sixth article, section 24, provides that the legislature, at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature, subject to their adoption and modification from time to time.

13. In pursuance of the provisions of this section, commissioners were appointed to revise the laws on the subject of the practice, pleadings and proceedings of the courts of this state, who made a report to the legislature. This report, with some alterations, was enacted into a law on the 12th of April, 1848, ch. 379, by which the forms of action are abolished, and the whole subject is extremely simplified. How it will work in practice, time will make manifest.

NEWLY DISCOVERED EVIDENCE. That evidence which, after diligent search for it, was not discovered until after the trial of a cause.

2. In general a new trial will be granted on the ground that new, important, and material evidence has been discovered since the trial of the cause. 2 Wash. C. C. 411. But this rule must be received with the following qualifications: 1. When the evidence is merely cumulative, it is not sufficient ground for a new trial. 1 Sumn. 451; 6 Pick. 114; 4 Halst. 228; 2 Caines, 129; 4 Wend. 579; 1 A. K. Marsh. 151; 8 John. 84; 15 John. 210; 5 Ham. 375 10 Pick. 16; 7 W. & S. 415; 11 Ohio, 147; 1 Scamm. 490; 1 Green, 177; 5 Pike, 403; 1 Ashm. 141; 2 Ashm. 69; 3 Vei - in. 72; 3 A. K. Marsh. 104. 2. When the evidence is not material. 5 S. & R. 41; 1 P. A. Browne, Appx. 71; 1 A. K. Marsh. 151. 3. The evidence must be discovered after the trial, for if it be known before the verdict has been rendered, it is not newly discovered. 2 Sumn. 19; 7 Cowen, 369; 2 A. K. Marsh. 42. 4. The evidence must be such, that the party could not by due diligence have discovered it before trial. 2 Binn. 582; 1 Misso. 49; 5 Halst. 250; 1 South. 338; 7 Halst. 225; 1 Blackf. 367; 11 Con. 15; 1 Bay, 263, 491; 4 Yeates, 446; 2 Fairf. 218; 7 Metc. 478; Dudl. G. Rep. 85; 9 Shepl. 246; 14 Verm. 414, 558; 2 Ashm. 41, 69; 6 Miss. 600 2 Pike, 133 7 Yerg. 432; 6 Blackf. 496; 1 Harr. 410.

NEWSPAPERS. Papers for conveying news, printed and distributed periodically.

2. To encourage their circulation the act of congress of March 3, 1825, 3 Story's L. U. S. 1994, enacts, 29. That every printer of newspapers may rend one paper to each and every other printer of newspapers within the United States, free of postage, under such regulations as the postmaster general shall provide.

3. - 30. That all newspapers conveyed in the mail shall be under cover, open at one end, and charged with the postage of one cent each, for any distance not more than one hundred miles, and one and a half cents for any greater distance: Provided That the postage of a single newspaper, from any one place to another, in the same state, shall not exceed one cent, and the postmaster general shall require those who receive newspapers by post, to pay always the amount of one quarter's postage in advance; and should the publisher of any newspaper, after being three mouths previously notified that his paper is not taken out of the office, to which it is sent for delivery, continue to forward such paper in the mail, the postmaster to whose office such paper

is sent, may dispose of the same for the postage, unless the publisher shall pay it. If any person employed in any department of the post office, shall improperly detain, delay, embezzle, or destroy any newspaper, or shall permit any other person to do the like, or shall open or permit any other to open, any mail, or packet of newspapers, not directed to the office where he is employed, such offender shall, on conviction thereof, forfeit a sum, not exceeding fifty dollars, for every such offence. And if any other person shall open any mail or packet of newspapers, or shall embezzle or destroy the same, not - being directed to such person, or not being authorized to receive or open the same, such offender shall, on the conviction thereof, pay a sum not exceeding twenty dollars for every such offence. And if any person shall take, or steal, any packet, bag, or mail of newspapers, from, or out of any post office, or from any person having custody thereof, such person shall, on conviction, be imprisoned, not exceeding three mouths, for every, such offence, to be kept at hard labor during the period of such imprisonment. If any person shall enclose or conceal a letter, or other thing, or any memorandum in writing, in a newspaper, pamphlet, or magazine, or in any package of newspapers, pamphlets, or magazines, or make any writing or memorandum thereon, which he shall have delivered into any post office, or to any persou for that purpose, in order that the same may be carried by post, free of letter postage, he shall forfeit the sum of five dollars for every such offence; and the letter, newspaper, package, memorandum, or other thing, shall not be delivered to the person to whom it is directed, until the amount of single letter postage is paid for each article of which the package is composed. No newspapers shall be received by the postmasters, to be conveyed by post, unless they are sufficiently dried and enclosed in proper wrappers, on which, besides the direction, shall be noted the number of papers which are enclosed for subscribers, and the number for printers: Provided, That the number need hot be endorsed, if the publisher shall agree to furnish the postmaster, at the close of each quarter, a certified statement of the number of papers sent in the mail, chargeable with postage. The postmaster general, in any contract he may enter into for the conveyance of the mail, may authorize the person with whom such contract is to be made, to carry newspapers, magazines, and pamphlets, other than those conveyed in the mail: Provided, That no preference shall be given to the publisher of one newspaper over that of another, in the same place. When the mode of conveyance, and size of the mail, will admit of it, such magazines and pamphlets as are published periodically, may be transported in the mail, to subscribers, at one and a half cents a sheet, for any distance riot exceeding one hundred miles, and two and a half cents for any greater distance. And such magazines and pamphlets as are not published periodically, if sent in the mail, shall be charged with a postage of four cents on each sheet, for any distance not exceeding one hundred miles, and six cents for any greater distance. By the act of March 3, 1851, c. 20, s. 2, it is enacted, That all newspapers not exceeding three ounces in weight sent from the office of publication to actual and bona fide subscribers, shall be charged with postage is follows, to wit

weekly only, within the county where published, free; for any distance not exceeding fifty miles out of the county, five cents per quarter; exceeding fifty, and not exceeding three hundred miles, ten cents per quarter; exceeding three bundred and not exceeding one thousand miles, fifteen cents per quarter; exceeding one thousand and not exceeding two thousand miles, twenty cents per quarter exceeding two thousand and not exceeding four thousand, twenty-five cents per quarter; exceeding four thousand miles, thirty cents per quarter; newspapers published monthly, sent to actual and bona fide subscribers, one-fourth the foregoing rates; published semi-monthly, one-half the foregoing rates; semi-weekly, double those rates; tri-weekly, treble those rates; and oftener than tri-weekly, five times those rates; Provided, That newspapers not containing over three hundred square inches may be transmitted at one-fourth the above rates. See, as to other newspapers, Postage.

NEXT FRIEND. One who, without being regularly appointed guardian, acts for the benefit of an infant, married woman, or other person, not sui juris. Vide Amy; Prochein Amy.

NEXT OF KIN. This term is used to signify the relations of a party who has died intestate.

2. In general no one comes within this term who is not included in the provisions of the statutes of distribution. 3 Atk. 422, 761; 1 Ves. sen. 84. A wife cannot, in general, claim as next of kin of her husband, nor a husband as next of kin of his wife. But when there are circumstances in a will which induce a belief of an intention to include them under this term, they will be so considered, though in the ordinary sense of the word, they are not. Hov. Fr. 288, 9; 1 My. & Keen, 82. Vide Branch; Kindred; Line.

NEXUM, Rom. civ. law. Viewed as to its object and legal effect, nexum was either the transfer of the ownership of a thing, or the transfer of a thing to a creditor as a security. Accordingly in one sense nexum included mancipium, in another sense mancipium and nexum are opposed in the same way in which sale and mortgage or pledge are opposed. The formal part of both transactions consisted in a transfer per Des et libram. The person who became nexus by the effect of a nexum, placed himself in a servile condition, not becoming a slave, his ingenuitas being only in suspense, and was said nexum inire. The phrases nexi datio, nexi liberatio, respectively express the contracting and the release from the obligation.

2. The Roman law, as to the payment of borrowed money, was very strict. A curious passage of Gellius (xx. 1) gives us the ancient mode of legal procedure in the case of debt as fixed by the Twelve Tables. If the debtor admitted the debt, or bad been condemned in the amount of the debt by a judex, he had thirty days allowed him for payment. At the expiration of this time he was liable to the manus. injectio, and

ultimately to be assigned over to the creditor (addictus) by the sentence of the praetor. The creditor was required to keep him for sixty days in chains, during which time he publicly exposed the debtor, on three nundinae, and proclaimed the amount of bis debt. If no person released the prisoner by paying the debt, the creditor might sell him as a slave or put him to death. If there were several debtors, the letter of the law allowed them to cut the debtor in pieces, and take their share of his body in proportion to their debt. Gellius says that there was no instance of a creditor ever having adopted this extreme mode of satisfying his debt. But the creditor might treat the debtor, who was addictus, as a slave, and compel him to work out his debt, and the treatment was often very severe. In this passage Gellius does not speak of nexi but only of addicti, which is sometimes alleged as evidence of the identity of nbxus and addictus, but it proves no such identity. If a nexus is what he is here supposed to be, the laws of the Twelve Tables could not apply; for when a man became nexus with respect to one creditor, he could not become nexus to another; and if he became nexus to several at once, in this case the creditors must abide by their contract in taking a joint security. This law of the Twelve Tables only applied to the case of a debtor being @igned over by a judicial sentence to several debtors, and it provided for a settlement of their conflicting claims. The precise condition of a nexus has, however, been a subject of much dinussion among scholars. Smith, Dict. Rom. & Gr. Antiq. h. v., and vide Mancipitem.

NIECE, domestic relations: The daughter of a person's brother or sister. Amb. 514; 1 Jacob's Ch. R. 207.

NIEF, old Eng. law. A woman born in vassalage. In Latin she was called Nativa.

NIENT COMPRISE. Not included. It is an exception taken to a petition, because the thing desired is not contained in that deed or proceeding wltereoia the petition is founded. Touil. Law Dict.

NIENT CULPABLE. Nof guilty the name of a plea used to deny any charge of ao r@al nature, or of a tort.

NIE'@QT DEDIRE. To say nothing.

2. These words are used to signify that judgment be rendered ag@ a party, because he does not deny the cause of action, i. e. by default.

3. When a fair and impartial trial cannot be had in the county where the venue is laid, the practice in the English courts is, on an affidavit of the eirculustances, to change it in transitory actions; or in local actions they will give leave to enter a suggestion on

the roll, with a nient dedire, in order to have the trial in another country. 1 Tidd's Pr. 655, 8th ed.

NIENT LE FAIT, pleading. The same as non est factum, a plea by which the defendant asserts that the deed declared upon is not his deed.

NIGHT. That space of time during which the sun is below the horizon of the earth, except, that short space which precedes its rising and follows its setting, during which, by its light, the countenance of a man may be discerned. I Hale, P. C. 550; 3 Inst. 63; 4 Bl. Com. 224; 1 Hawk. P. C. 101; 3 Chit. Cr- Law, 1093; 2 Leach, 710; Bac. Ab. Burglary, D; 2 East, P. C. 509; 2 Russ. Cr. 32; Rosc. Cr. Ev. 278; 7 Dane's Ab. 134.

NIGHT WALKERS. Persons who sleep by day and walk by niggt 5 E. Ill. c. 14; that is, persons of suspicious appearance and demeanor, who walk by night.

2. Watchmen may undoubtedly arrest them, and it is said that private persons may also do so. 2 Hawk. P. C. 120; but see 3 Taunt. 14,; Ham. N. P. 135. Vide 15 Vin. Ab. 655; Dane's Ab. Index, h. t.

NIHIL CAPIAT PER BREVE, practice. That he take nothing by his writ. This is the judgment against the plaintiff in an action, either in bar or in abatement. When the plaintiff has commenced his proceedings by bill, the judgment is nihil capiat per billam. Co. Litt. 363.

NiHIL DICIT. He says nothing. It is the failing of the defendant to put in a plea or answer to the plaintiff's declaration by the day assigned; and in this case judgment is given against the defendant of course, as he says nothing why it should not. Vide 15 Vin. Ab. 556; Dane's Ab. Index, h. t.

NIHIL HABET. The name of a return made by a sheriff, marshal, or other proper officer, to a scire facia.9 or other writ, when he Ims not been able to, serve it on the defendant. 5 Whart. 367.

2. Two returns of nihil are in general equivalent to a service. Yelv. 112; 1 Cowen, 70; 1 Car. Law Regags. 491; 4 Blackf. 188; 2 Binn. 40.

NIL DEBET, pleading. The general issue in debt,6r simple contract. It is in the following form: IcAndthesaideD, by E F, his attorney, comes and defends the wrong and injury, when, &c. and says, that he does not owe the said sum of money above demanded, or any part thereof, in manner and form as the said A B hath above complained. And of this the said C, D puts himself upon the country." When, in debt

on specially, the deed is the only iuducernent to the action, the general issue is nil debet. Stephens on Pleading, 174, n.; Dane's Ab. Index, h. t.

NIL HABUIT IN TENEMENTIS, pleading. A plea by which the defendant, wbo is sued by his landlord in debt for rent uppa-a lease, but by deed indented, by,which he denies his landlord's title to the premises, that he has no interest in the tenements. 2 Lill. Ab. 214; 12 Vin. Ab. 184; 15 Vin. Ab. 556 Woodf. L. & T. 330; Com. Dig. Pleader, 2 W 48 Co. Litt. 47 b; Dane's Ab. Index, h. t. 3 E. C. L. R. 169, n.; 1 Holt's R. 489.

NISI. This word is frequently used in legal proceedings to denote that something has been done, which is to be valid unless something else Shall be done within a certain time to defeat it. For example, an order may be made that if on the day appointed to show cause, none be shown, an injunction will be dissolved of course, on motion, and production of an affidavit of service of the order. This is called an order nisi. Ch. Pr. 547. Under the compulsory arbitration law of Pennsylvania, on the filing of the award, judgment nisi is to be entered: which judgment is to be as valid as if it had been rendered on the verdict of a jury, unless an appeal be entered within the time required by the law.

NISI PRIUS. These words, which signify 'unless before,' are the name of a court. The name originated as follows: Formerly, an action was triable only in the court where it was brought. But, it was provided by Magna Charta, in ease of the subject, that assises of novel disseisin and mort d'ancestor (then the most usual remedies,) should thenceforward instead of being tried at Westminster, in the superior court, be taken in their proper counties; and for this purpose justices were to be sent into every county once a year, to take these assises there. 1 Reeves, 246; 2 Inst. 422, 3, 4. These local trials being found convenient, were applied not only to assises, but to other actions; for, by the statute of 13 Edw. I. c. 30, it is provided as the general course of proceeding, that writs of venire for summoning juries in the superior courts, shall be in the following form. Praecipimus tibi quod veneri facias coram justiciariis nostris apud Westm. in Octabis Seti Michaelis, nisi talis et talis tali, die et loco ad partes illas venerint, duodecim, &c. Thus the trial was to be had at Westminster, only in the event of its not previously taking place in the county, before the justices appointed to take tlie assises. It is this provision of the statute of Nisi Prius, enforeed by the subsequent statute of 14 Ed. III. c. 16, which authorizes, in England, a trial before the justices of assises, in lieu of the superior court, and gives it the name of a trial by nisi prius. Steph. Pl. App. xxxiv.; 3 Bl. Com. 58; 1 Reeves, 245, 382; 2 Reeves, 170; 2 Com. Dig. Courts, D b, page 316.

2. Where courts bearing this name exist in the United States, they are instituted by statutory provision. 4 W. & S. 404.

NISI PRIUS ROLL, Eng. practice. A transcript of a case made from the plea roll, and includes the declaration, plea, replication, rejoinder, &c. and the issue. Eunom. Dial. 2, 28, 29, p. 110, 111. After the nisi prius roll is returned from the trial, it assumes the name of posted. (q. v.)

NO AWARD. The name of a plea to an action or award. 1 Stew. 520; f Chip. R. 131; 3 Johns. 367. See Nul. Agard.

NO BILL. These words are frequently used by grand juries. They are endorsed on a bill of indictment when the grand jury have not sufficient cause for finding a true bill. They are equivalent to Not found, (q. v.) or Ignoramus. (q. v.) 2 Nott & McC. 558.

NOBILITY. An order of men in several countries to whom privileges are granted at the expense of the rest of the people. 2. The constitution of the United States provides that no state shall "grant any title of nobility; and no person can become a citizen of the United States until he has renounced all titles of nobility." The Federalist, No. 84; 2 Story, Laws U. S. 851. 3. There is not in the constitution any general prohibition against any citizen whomsoever, whether in public or private life, accepting any foreign title of nobility. An amendment of the constitution in this respect has been recommended by congress, but it has not been ratified by a sufficient number of states to make it a part of the constitution. Rawle on the Const. 120; Story, Const. 1346.

NOLLE PROSEQUI, practice. An entry made on the record, by which the prosecutor or plaintiff declares that he will proceed no further.

2. A nolle prosequi may be entered either in a criminal or a civil case. In criminal cases, a nolle prosequi may be entered at any time before the finding of the grand jury, by the attorney general, and generally after a true bill has been found; in Pennsylvania, in consequence of a statutory provision, no nolle prosequi can be entered after a bill has been found, without leave of the court, except in cases of assault and battery, fornication and bastardy, on agreement between the parties, or in prosecutions for keeping tippling houses. Act of April 29, 1819, s. 4, 7 Smith's Laws, 227.

3. A nolle prosequi may be entered as to one ot several defendants. 11 East, R. 307.

4. The effect of a nolle prosequi, when obtained, is to put the defendant without day, but it does not operate as an acquittal; for he may be afterwards reindicted, and even upon the same indictment, fresh process may be awarded. 6 Mod. 261; 1 Salk . 59; Com. Dig. Indictment. K; 2 Mass. R. 172.

5. In civil cases, a nolle prosequi is considered, not to be of the nature of a retraxit or release, as was formerly supposed, but an agreement only, not to proceed either against some of the defendants, or as to part of the suit. Vide 1 Saund. 207, note 2, and the authorities there cited. 1 Chit. PI. 546. A nolle prosequi is now held to be no bar to a future action for the same cause, except in those cases where, from the nature of the action, judgment and execution against one, is a satisfaction of all the damages sustained by the plaintiff. 3 T. R. 511; 1 Wils. 98.

6. In civil cases, a nolle prosequi may be entered as to one of several counts; 7 Wend. 301; or to one of several defendants; 1 Pet. R. 80; as in the case of a joint contract, where one of two defendants pleads infancy, the plaintiff may enter a nolle prosequi, as to him, and proceed against the other. 1 Pick. 500. See, generally, 1 Pet. R. 74; see 2 Rawle, 334; 1 Bibb, 337; 4 Bibb, 887, 454; 3 Cowen, 374; 5 Gill & John. 489; 5 Wend. 224; 20 John. 126; 3 Cowen, 335; 12 Wend. 110; 3 Watts, 460.

NOMEN COLLECTIVUM. This expression is used to signify that a word in the singular number is to be understood in the plural in certain cases. 2. Misdemeanor, for example, is a word of this kind, and when in the singular, may be taken as nomen collectivum, and including several offences. 2 Barn. & Adolp. 75. Heir, in the singular, sometimes includes all the heirs.

NOMEN GENERALISSIMUM. A name which applies generally to a number of things; as, land, which is a general name by which everything attached to the freehold will pass.

NOMINAL. Relating to a name.

2. A nominal plaintiff is one in whose name an action is brought, for the use of another. In this case, the nominal plaintiff has no control over the action, nor is he responsible for costs. 1 Dall. 1 39; 2 Watts, R. 12.

3. A nominal partner is one, who, without having an actual interest in the profits of a concern, allows his name to be used, or agrees that it shall be continued therein, as a partner; such nominal partner is clearly liable to the creditors of the firm, as a general partner, although the creditors were ignorant at the time of dealing, that his name was used.. 2 H. Bl. 242, 246; 1 Esp. R. 31; 2 Campb. 302; 16 East, R. 174; 2 B. & C. 411.

NOMINAL PLAINTIFF. One who is named as the plaintiff in an action, but who has no interest in it, having assigned the cause or right of action to another, for whose use it is brought.

2. In general, he cannot interfere with the rights of his assignee, nor will he be permitted to discontinue. the action, or to meddle with it. 1 Wheat. R. 233; 1 John. Cas. 411; 3 John. Cas. 242; 1 Johns. R. 532, n.; 3 Johns. R. 426; 11 Johns. R. 47; 12 John. R. 237; 1 Phil. Ev. 90; Cowen's note 172; Greenl. Ev. SS 173; 7 Cranch, 152.

NOMINATE CONTRACT, civil law. Nominate contracts are those which have a particular name to distinguish them; as, purchase and sale, hiring, partnership, loan for use, deposit, and the like. Dig. 2, 14, 7, 1. Innominate contracts, (q. v.) are those which have no particular name. Dig. 19, 4, 1, 2 Code, 4, 64, 3.

NOMINATION, This word has several significations. 1. An appointment; as, I nominate A B, executor of this my last will. 2. A proposition; the word nominate is used in this sense in the constitution of the United States, art. 2, s. 2, the president "shall nominate, and by and with the consent of the senate, shall appoint ambassadors," &c.

NOMINE POENAE, contracts. The name of a penalty incurred by the lessee to the lessor, for the non-payment of rent at the day appointed by the lease or agreement for its payment. 2 Lill. Ab. 221. It is usually a gross sum of money, though it may be any thing else, appointed to be paid by the tenant to the reversioner, if the duties are in arrear, in addition to the duties themselves. Ham. N. P. 411, 412.

2. To entitle himself to the nomine paenae, the landlord must make a demand of the rent on the very day, as in the case of a reentry. 1 Saund. 287 b, note; 7 Co. 28 b Co. Litt. 202 a; 7 T. R. 11 7. A distress cannot be taken for a nomine paenae, unless a special power to distrain be annexed to it by deed. 3 Bouv. Inst. n. 2451. Vide Bac. Ab. Rent, K 4; Woodf. L. & T. 253; Tho. Co. Litt. Index, h. t.; Dane's Ab. Index, h. t.

NOMINEE. One who has been named or proposed for an office. NON. Not. When prefixed to other words, it is used as a negative as non access, non assumpsit.

NON ACCEPTAVIT. The name of a plea to an action of assumpsit brought against the drawee of a bill of exchange upon a supposed acceptance by him. See 4 Mann. & Gr. 561; S. C. 43 E. C. L. R. 292.

NON ACCESS. The non existence of sexual intercourse is generally expressed by the words " non access of the husband to the wife which expressions, in a case of bastardy, are understood to mean the same thing. 2 Stark Ev. 218, n.

2. In Pennsylvania, when the husband has access to the wife, no evidence short of absolute impotence of the husband, is sufficient to convict a third person of bastardy with tlie wife. 6 Binn. 283.

3. In the civil law the maxim is, Pater is est quem nupticae demonstrant. Toull. tom. 2, n. 787. The Code Napoleon, art. 312, enacts, " que l'enfant concu pendant le mariage a pour pere le mari." See also 1 Browne's R. Appx. xlvii. 4. A married woman cannot prove the non access of her husband. Id. See 8 East, 202; 4 T. R. 251; 11 East, 132; 13 Ves. 58; 8 East, R. 193; 12 East, R. 550; 4 T. R. 251, 336; 11 East, R. 132; 6 T. R. 330.

NON AGE. By this term is understood that period of life from the birth till the arrival of twenty-one years. In another sense it means under the proper age to be of ability to do a particular thing; as, when non age is applied to one under the age of fourteen, who is unable to marry.

NON ASSUMPSIT, pleading. The general issue in trespass on the case, in the species of assumpsit. Its form is, "And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says, that he did not undertake or promise in manner and form as the said A B, hath above complained. And of this he puts himself upon the country."

2. Under this plea almost every matter may be given in evidence, on the ground, it is said, that as the action is founded on the contract, and the injury is tlie non, performance of it, evidence which disaffirms the obligation of the contract, at the time when the action was commenced, goes to the gist of the action. Gilb. C. P. 6 5; Salk. 27 9; 2 Str. 738; 1 B. & P. 481. Vide 12 Vin. Ab. 189; Com Dig. Pleader, 2 G 1.

NON ASSUMPSIT INFRA SEX ANNOS. The name of a plea by which the defendant avers that he did not assume to perform the assumption charged in the declaration within six years.

2. The act of limitation bars the recovery of a simple contract debt after six years; when a defendant is sued on such a contract, and it is more than six years since he entered into the contract, he pleads this plea by the following formula: " and saith that the aforesaid plaintiff the action aforesaid hereof against him he ought not to have, because he saith that he did not undertake, &c., and this he is ready to verify." Vide ddio non accrevit infra sex annos.

NON BIS IN IDEM, civil law. This phrase signifies that no one shall be twice tried for the same offence; that is, that when a party accused has been once tried by a tribunal in the last resort, and either convicted or acquitted, he shall not again be tried. Code 9, 2, 9 & 11. Merl. Räpert. h. t. Vide art. Jeopardy.

NON CEPIT MODO ET FORMA, pleading. The general issue in replevin. Its form is, "And the said C D, by E F, his attorney, comes and defends the wrong and injury,

when, &c., and says, that he did not take the said cattle, (or ' goods and chattels,' according. to the subject of the action,) in the said declaration mentioned or any of them, in manner and form as the said A B hath above complained. And of this the said C D puts himself upon the country."

2. This issue applies to a case where the defendant has not, in fact, taken the cattle or goods, or where he did not take them, or have them in the place mentioned in the declaration. The declaration alleges that the defendant " took certain cattle or goods of the plaintiff, in a certain place called," &c.; and the general issue states, that he did not take the said cattle or goods, -- in manner and form as alleged;" which involves a denial of the taking and of the place in which the taking was alleged to have been, the place being a material point in this action. Steph. PI. 183, 4; 1 Chit. Pl. 490.

NON CLAIM. An omission or neglect by one entitled to make a demand within the time limited by law; as, when a continual claim ought to be made, a neglect to make such claim within a year aud a day.

NON COMPOS MENTIS, persons. These words signify not of sound mind, memory, or understanding. This is a generic term, and includes all the species of madness, whether it arise from, 1, idiocy; 2, sickness 3, lunacy or 4, drunkenness. Co. Litt. 247; 4 Co. 124; 1 Phillim. R. 100; 4 Com. Dig. 613; 5 Com. Dig. 186; Shelf. on Lunatics, 1; and the articles Idiocy; Lunacy.

NON CONCESSIT, Eng. law. The name of a plea by which the defendant denies that the crown granted to the plaintiff by letters patent, the rights which he claims as a concession from the king; as, for example, when a plaintiff sues another for the infringement of his patent right, the defendant way deny that the crown has granted him such a right.

2. The plea of non concessit does not deny the grant of a patent, but of the patent as described in the plaintiff's declaration. 3 Burr. 1544; 6 Co. 15, b.

NON CONFORMISTS English law. A name given to certain dissenters from the rites and ceremonies of the church of England.

NON CONSTAT. It does not appear. These words are frequently used, particularly in argument; as, it was moved in arrest of judgment that the declaration was not good, because non constat whether A B was seventeen years of age when the action was commenced. Sw. pt. 4, SS 22, p. 331.

NON CULPABILLS, pleading. Not guilty. (q. v.) It is usually abbreviated non cul. 16 Vin. Ab. 1.

NON DAMNIFICATUS, pleading. A plea to an action of debt on a bond of indemnity, by which the defendant asserts that the plaintiff has received no damage; in other words that he is not damnified. 1 B. & P. 640, n. a; 1 Taunt. R. 428; 1 Saund. 116, n. 1; 2 Saund. 81; 7 Wentw. PI. 615, 616; 1 H. Bl. 253; 2 Lill. Ab. 224; 14 John R. 177; 5 John. R. 42; 20 John. Rep. 153; 3 Cowen, R. 313; 10 Wheat R. 396, 405; 3 Halst. R. 1.

NON DEDIT, pleading. The general issue in formedom. See Ne dona pas.

NON DEMISIT, pleading. A plea proper to be pleaded to an action of debt for rent, when the plaintiff declares on a parol lease. Gilb. Debt, 436, 438; Bull. N. P. 177; 1 Chit. Pl. 477.

2. It is improper to plead such plea when the demise is stated to have been by indenture. Id.; 12 Vin. Ab. 178; Com. Dig. Pleader, 2 W 48.

NON DETINET, pleading. The general issue in an action of detinue. Its form is as follows:: And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says, that he does not detain the said goods and chattels (or, deeds and writings,' according to the subject of the action,) in the said declaration specified, or any part thereof, in manner and form as the said A B bath above complained. And of this the said C D puts himself upon the country."

2. In debt on simple contract, in the case of executors and administrators, instead of pleading nil debet, the plea should be "doth, not detain.". 6 East, R. 549; Bac. Abr. Pleas, I; 1 Chit. PI. 476. 3. The plea of non detinet merely puts iii issue the simple fact of detainer; when the defendant relies upon a justifiable detainer, he must plead it specially. 8 D. P C. 347.

NON EST FACTUM, pleading. The general issue in debt on bond or other specialty, and is, in form, as follows: I " And the said C D, by E F, his attorney, conies and defends the wrong and injury, when, &c., and says, that the said supposed writing obligatory, (or 'indenture,' or 'articles of agreement,' according to the subject of the action,) is not his deed. And of this he puts himself upon the country." 6 Rand. Rep. 86; 1 Litt. R. 158.

2. Though non est factum is, in most cases, the general issue in debt on specialty, yet, when the deed is only inducement to the action, the general issue is nil debet. Steph. Pl. 174, n.

3. In covenant tlie general issue is non est factum; and its form is similar to that in debt on a specialty. Id. 174. It is, however, said, that in covenant there is, strictly

speaking, no general issue, as the plea of non est factum only puts tlie deed in issue, as in debt on a specialty, and not the breach of covenant or any other matter of defence. 1 Chit. PI. 482. See generally, 1 Harring. R. 230; 6 Munf. R. 462; Minor, R. 103; 1 Harr. & Gill, 324; 13 John. R, 430; 12 John. R. 337; 2 N. H. Rep. 74; 4 Wend. R. 519; 2 N. & M. 492. See Issint; Special non est factum.

NON EST INVENTUS, practice. The sheriff's return to a writ requiring him to ,arrest the person of the defendant, which signifies that he is not to be found within his jurisdiction. The return is usually abbreviated N. E. I. Chit. Pr. Index, L. t.

NON FEASANCE, torts, contracts. The non-performance of some act which ought to be performed.

2. When a legislative act requires a person to do a thing, its non feasance will subject the party to punishment; as, if a statute require the supervisors of the highways to repair such highways, tlie neglect to repair them may be punished. Vide 1 Russ. on Cr. 48.

3. Mere non-feasance does not imply malice; this is strongly exemplified in the case of a plaintiff, who, having issued a writ of capias against his debtor, afterwards received the debt, and neglected to countermand tlie writ, in consequence of which the defendant was afterwards arrested. On a suit brought by the former defendant against tlie former plaintiff, it was held that the law did not impose on the first plaintiff the duty of countermanding his writ. If he had refused to give the countermand when requested, it might have been evidence of malice, but in such case there would have been something beyond mere non-feasance, an actual refusal. 1 B & P. 388; 3 East, R. 314; 2 Bos. & P. 129.

4. There is a difference between nonfeasance and misfeasance, (q. v.) or malfeasance. (q. v.) Vide 2 Kent, Com. 443 Story on Bailm. 9, 165; 2 Vin. Ab. 35 1 Hawk. P. C. 13; Bouv. Inst. Index, h. t.

NON FECIT. He did not make it. The name of a plea, for example, in an action of assumpsit on a promissory note. 3 Mann. Gr. 446.

NON FECIT VASTUM CONTRA PROHIBITIONEM. The name of a plea to an action founded on a writ of estrepement, that the defendant did not commit waste contrary to the prohibition. 3 Bl. Com. 226, 227.

NON INFREGIT CONVENTIONEM, pleading. A plea in an action of covenant. This plea is not a general issue, it merely denies that the defendant has broken the covenants on which he is sued. It being in the negative, it cannot be used where the

breach is also in the negative. Bac Ab. Covenant L; 3 Lev. 19; 2 Taunt. 278; 1 Aik. R. 150; 4 Dall. 436; 7 Cowen, R. 71.

NON JOINDER, pleading, practice. The omission of some one of the persons who ought to have been made a plaintiff or defendant along with others is called a non joinder.

2. In actions upon contracts, where the contract has been made, with several, if their interest were joint, they miist all, if living, join in the action for its breach. 8 S., & R. 308; 10 S. & R. 257; Minor, 167; Hardin, 508. In such case the non joinder must be pleaded in abatement. Id.; 3 Bouv. Inst. n. 2749.

NON JURORS, English law. Persons who refuse to take the oaths, required by law, to support the government. 1 Dall. 170.

NON LIQUET. It is not clear.

NON MODERATE CASTIGAVIT. The name of a faulty replication to a plea of moderate castigavit. (q. v.) This replication, in such a case, is a negative. pregnant. Gould, PI. ch. 7, SS 37.

NON OBSTANTE, Engl. law. These words, which literally signify notwithstanding, are used to express the act of the English king, by which he dispenses with the law, that is, authorizes its violation.

2. He cannot by his license or dispensation make an offence dispunishable which is malum in se; but in certain matters which are mala prohibita, be may, to certain persons and on special occasions, grant a non obstante. 1 Th. Co. Litt. 76, n. 19; Vaugh. 330 to 359; Lev. 217; Sid. 6, 7; 12 Co. 18; Bac. Ab. Prerogative, D. 7. Vide Judgment non obstante veredicto.

NONOBSTANTEVEREDICTO. Notwithstanding the verdict. See Judgment non obstante veredicto.

NON OMITTAS, English practice. The name of a writ directed to the sheriff Where the bailiff of a liberty or franchise, who has the return of writs, neglects or refuses to serve a process, this writ issues commanding the sheriff to enter into the franchise and execute the process himself, or by bis officer, non omittas propter aliquam libertatem. For the despatch of business a non omittas is commonly directed in the first instance. 3 Chit. Pr. 190, 310.

NON PROS, or NON PROSEQUITUR. The name of a judgment rendered against a plaintiff for neglecting to prosecute his suit agreeably to law and the rules of the court. Vide Grah. Pr. 763; 3 Chit. Pr. 910; 1 Sell. Pr. 359; 1 Penna. Pr. 84; Caines' Pr. 102; 2 Arch. Pr. 204 and article Judgment of Non Pros.

NON RESIDENCE, eccles. law. The absence of spiritual persons from their benefices.

NON SUBMISSIT. The name of a plea to an action of debt or a bond to perform an award, by which the defendant pleads that he did not submit. Bac. Ab. Arbitr. &c., G.

NON SUM INFORMATUS, pleading. I am not informed. Vide lnformatus non SUM.

NON TENENT INSIMUL, pleadings. A plea to an action in partition, by which the defendant denies that he holds the property, which is the subject of the suit, together with the complainant or plaintiff.

NON TENUIT. He did not hold. The name of a plea in bar in replevin, when the plaintiff has avowed for rent arrear, by which the plaintiff avows that he did not hold in manner and form as the avowry alleges.

NON TENURE, pleading. A plea in a real action, by which the defendant asserted, that he did not hold the land, or at least some part of it, as mentioned in the plaintiff's declaration. 1 Mod. 250.

2. Non tenure is either a plea in bar or a plea in abatement. 14 Mass. 239; but see 11 Mass. 216. It is in bar, when the plea goes to the tenure, as when the tenant denies that he holds of the defendant, and says he holds of some other person, But when the plea goes to the tenancy of the land, as when the defendant pleads that be is not the tenant of the land, it is in abate, ment only. Id.; Bac. Ab. Pleas, &c., I 9.

NON TERM. The vacation between two terms of a court.

NON USER. The neglect to make use of a thing.

2. A right which may be acquired by use, may be lost by non-user, and an absolute discontinuance of the use for twenty years affords presumption of the extinguishment of the right, in favor of some others adverse right. 5 Whart. Rep. 584; 23 Pick. 141.

3. As an enjoyment for twenty years is necessary to found the presumption of a grant of an easement, the general rule is, there must be a similar non-user to raise the

presumption of a release. But in this case the owner of the servient premises must have done some act inconsistent with, or adverse to the existence of the right. See 2 Evans's Pothier, 136; 10 Mass. R, 183; 3 Campbl. R. 614; 3 Kent, Com. 359; 1 Chit. Pr. 284, 285, 767 to 759, n. (s); 1 Ves. jr. 6, 8; 2 Supp. to Ves. jr. 442; 2 Anstr. 603; S. C. on appeal, 1 Dowl. R. 316; 4 Ad. & Ell 369; 6 Nev. & M. 230. But the dereliction or abandonment of rights affecting lands is not in all cases held to be evidenced by mere non-user.

4. As an exception to the rule may be mentioned rights to mines and minerals, with the incidental privilege of boring and working them. 16 Ves. 390; 19 Ves. 166.

5. In the civil law there is a similar doctrine: on this subject, Vide Dig. 8, 6, 5; Voet, Com. ad Pand. lib. 8, tit. 6, s. 5 et 7; 3 Toull. n. 673; Merl. Repert. mot Servitude, 30, n. 6, and 33; Civ. Code of Louis. art. 815, 816.

6. Every public officer is required to use his office for the public good; a non-user of a public office is therefore a sufficient cause of forfeiture. 2 Bl. Com. 153; 9 Co. 60. Non user, for a great length of time, will have the effect of repealing an old law. But it must be a very strong case which will have that effect. 13 S. & R. 452; 1 Bouv. Inst. n. 94.

NONSENSE, construction. That which in a written agreement or will is unintelligible.

2. It is a rule of law that an instrument shall be so construed that the whole, if possible, shall stand. When a matter is written grammatically right, but it is unintelligible, and the whole makes nonsense, some words cannot be rejected to make sense of the rest; 1 Salk. 324; but when matter is nonsense by being contrary and repugnant to, some precedent sensible latter, such repugnant matter is rejected. Ib.; 15 Vin. Ab. 560; 14 Vin. Ab. 142. The maxim of the civil law on this subject agrees with this rule: Quae in testamento ita sunt scripta, ut intelligi non possent: perinde sunt, ac si scripta non essent. Dig. 50,17,73,3. Vide articles dmbiguity; Construction; Interpretation.

3. In pleading, when matter is nonsense by being contradictory and repugnant to something precedent, the precedent matter, which is sense, shall not be defeated by the repugnancy which follows, but that which is contradictory shall be rejected; as in ejectment where the declaration is of a demise on the second day of January, and that the defendant postea scilicet, on the first of January, ejected him; here the scilicet may be rejected as being expressly contrary to the postea and the precedent matter. 5 East, 255; 1 Salk. 324.

NON SUIT. The name of a judgment given against a plaintiff, when be is unable to prove his case, or when he refuses or neglects to proceed to the trial of a cause after it has been put at issue, without determining such issue.

2. It is either voluntary or involuntary.

3. A voluntary nonsuit is an abandonment of his cause by a plaintiff, and an agreement that a judgment for costs be entered against him.

4 An involuntary nonsuit takes placs when the 'Plaintiff on being called, when his case is before the court for trial, neglects to appear, or when he has given no evidence upon which a jury could find a verdict. 13 John. R. 334.

5. The courts of the United States; 1 Pet. S. C. R. 469, 476; those of Pennsylvania; 1 S. & R. 360; 2 Binn. R. 234, 248; 4 Binn. R. 84; Massachusetts; 6 Pick. R. 117; Tennessee; 2 Overton, R. 57; 4 Yerg. R. 528; and Virginia; 1 Wash. R. 87, 219 cannot order a nonsuit against a plaintiff who has given evidence of his claim. In Alabama, unless authorized by statute, the court cannot order a nonsuit. Minor, R. 75; 3 Stew. R. 42.

6. In New York; 13 John. R 334; 1 Wend. R. 376; 12 John. R. 299; South Carolina; 2 Bay, R. 126, 445; 2 Bailey, R. 321; 2 McCord, R. 26; and Maine; 2 Greenl. R. 5; 3 Greenl. R. 97; a nonsuit may in general be ordered where the evidence is insufficent to support the action. Vide article Judgment of Nonsuit, and Grah. Pr. 269; 3 Chit. Pr. 910; 1 Sell. Pr. 463; 1 Arch. Pr. 787; Bac. Ab. h. t.; 15 Vin. Ab. 560.

NORTH CAROLINA. The name of one of the original states of the United States of America. The territory which now forms this state was included in the grant made in 1663 by Charles II. to Lord Clarendon and others, of a much more extensive country. The boundaries were enlarged by a new charter granted by the same prince to the same proprietaries, in the year 1665. By this charter the proprietaries were authorized to make laws, with the assent of the freemen of the province or their delegates, and they were invested with various other powers. Being dissatisfied with the form of government, the proprietaries procured the celebrated John Locke to draw a plan of government for the colony, which was adopted and proved to be impracticable; it was highly exceptionable on account of its disregard of the principles of religious toleration and national liberty, which are now universally admitted. After a few years of unsuccessful operation it was abandoned. The colony had been settled at two points, one called the Northern and the other the Southern settlement, which were governed by separate legislatures. In 1729, the proprietaries surrendered their charter, when it became a royal province, and was governed by a commission and a form of government in substance similar to that established in other royal provinces. In 1732,

the territory was divided, and the divisions assumed the names of North Carolina and South Carolina.

2. The constitution of, North Carolina was adopted December 18, 1776. To this constitution ammendments were made in convention, June 4, 1835, which were ratified by the people on the 9th day of November of the same year, and took effect on the 1st day of January, 1836.

3. The powers of the government are distributed into three branches, the legislative, the executive, and the judiciary.

4. - 1. The legislative power is vested in a senate and in a house of commons, and both are denominated the general assembly. These will be separately, considered.

5. - 1st. In treating of the senate, it will be proper to take a view of, 1. The qualifications of senators. 2. Of electors of senators. 3. Of the number of senators. 4. Of the time for which they are elected.

6. - 1. The first article, section 3, of the amendments, provides: All freemen of the age of twenty-one years, (except as is hereinafter declared,) who have been inhabitants of any one district within, the state twelve months immediately preceding the day of any election, and possessed of a freehold within the same district of fifty acres of land for six months next before and at the day of election, shall be entitled to vote for a member of the senate; consequently no free negro or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, can be a senator, as such persons cannot be voters. The 4th article, sec. 2, of the amendments, declares that no person who shall deny the being of God, or the truth of the Christian religion, or the divine authority of tlie Old or New Testament, or who shall hold religious principles incompatible with the freedom or safety of the state, shall be capable of holding any office or place of trust or profit in the civil department within this state. And the fourth section of the article directs that no person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly: Provided, that nothing herein contained shall extend to officers, in the militia or justices of the peace. The 31st section of the constitution provides that no clergyman, or preacher of the gospel, of any denomination, shall be capable of being a member of either the senate, house of commons, or council of state, while he continues in the exercise of his pastoral function. 2. The first article of the amendments, provides, section 3, 2, that all free men of the age of twenty-one years, (except as hereinafter declared,) who have been inhabitants of any one district within the state twelve months immediately preceding the day of any election, and possessed

of a freehold within the same district of fifty acres of land, for six months next before and at the day of election, shall be entitled to vote for a member of the senate. And 3, no negro, free, mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) shall vote for members of the senate or house of commons. 3. The senate consists of fifty representatives. Amendm. art. 1, s. 1. 4. They are chosen biennially by ballot. Id.

7. - 2d. The house of commons will be considered in the same order which has been observed in speaking of the senate. 1. The sixth section of the constitution requires that each member of the house of commons shall have usually resided in the county in which he is chosen for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which be represents, not less than one hundred acres of land in fee, or for the term of his own life. The disqualifications of persons for membersbip in the house of commons will be found ante, under the bead senate.

2. The qualifications of voters for members of the house of commons are, by sect. 8 of the constitution, that all freemen of the age of twenty-one years, who have been inhabitants of any one county within the state twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the house of commons, for the county in which be resides. And by 9, that all persons possessed of a freehold, in any town in this state, having a right of representation, and also all freemen, who have been inhabitants of any such town twelve months next before, and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the house of commons; Provided, always, that this section shall not entitle any inhabitant of such town to vote for members of the house of commons for the county in which he may reside; nor ally freeholder in such county, who resides without or beyond the limits of such town, to vote for a member of the said town. But mulattoes, or persons of a mixed blood, are not voters. Amendm. art. 1, sect. 3, 3.

3. The Amendments, article 1, section 1, 2, 3, and 4, direct bow the house of commons shall be composed, as follows: The house of commons shall be composed of one hundred and twenty representatives, biennially chosen by ballot, to be elected by counties according to their federal population; that is, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term, of years, and excluding Indians not taxed, three-fifths of all other, persons; and each county shall have at least one member in the house of commons, although it may not contain the requisite ratio of population. This apportionment shall be made by the general assembly, at the respective times and periods when the districts for the senate are hereinbefore directed to be laid off; aud

the said apportionment shall be made according to an enumeration to be ordered by the general assembly, or according to the census which may be taken by order of congress, next preceding the miking such apportionment. In making the apportionment in the house of commons, the ratio of representation shall be ascertained by dividing the amount of federal population in the state, after deducting that comprehended within those counties which do not severally contain the one hundred and twentieth part of the entire federal population aforesaid, by the number of representatives less than the number assigned to the said counties. To each county containing the said ratio, and not twice the said ratio, there shall be assigned one representative; 'to each county containing twice, but not three times the said ratio, there shall be assigned two representatives, and so on progressively; and then the remaining representatives shall be assigned severally to the counties having the largest fractions. 4. They are elected biennially.

8. - 2. The executive power is regulated by the amendments of the constitution, article 2, as follows, namely:

1. The governor shall be chosen by the qualified voters for the members of the house of commons, at such time and places as members of the general assembly are elected.

2. He shall hold Iiis office for the term of two years from the time of bis installation, and until another shall be elected and qualified; but he shall not be eligible more than four years in any term of six years.

3. The returns of every election for governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote of both houses of the general assembly.

4. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law., SS 5. The governor elect shall enter on the duties of the office on the first day of January next after his election, having previously taken the oath of office in the presence of the members of both branches of the general assembly, or before the chief justice of the supreme court, who, in case the governor elect should be prevented from attendance before the general assembly, by sickness or other unavoidable cause, is authorized to administer the same.

9. - 3. Tbejudicial powers are vested in supreme courts of law and equity, courts of admiralty, and justices of the peace.

NOSOCOMI, civil law. Persons who have the management and care of hospitals for paupers. Clef Lois Rom. mot Administrateurs.

NOT FOUND. These words are endorsed ou a bill of indictment by a grand jury,.when they have not sufficient evidence to find a true bill; the same as Ignoramus. (q. v.)

NOT GUILTY, pleading. The general issue in several sorts of actions. It is the general issue.

2. In trespass, its form is as follows: "And the said C D, by E F, his attorney, comes and defends the, force and injury, when, &c., and says, that he is not guilty of the said trespasses above laid to his charge, or any part thereof, in the mannor and form as the said A B hath above complained. And of this the said C D puts himself upon the country."

3. Under this issue the defendant may give in evidence any matter which directly controverts the truth of any allegation, which the plaintiff on such general issue will be bound to prove; 1 B. & P. 213; and no person is bound to justify who is not, prima facie, a trespasser. 2 B. & P. 359: 2 Saund. 284, d. For example, the plea of not guilty is proper in trespass to persons, if the defendant have committed no assault, battery, or imprisonment, &c.; and in trespass to personal property, if the plaintiff had no property in the goods, or the defendant were not guilty of taking them, &c.; and in trespass to real property, this plea not only puts in issue the fact of trespass, &c , but also the title, which, whether freehold or possessory in the defendant, or a person under whom he claims, may be given in evidence under it, which matters show, prima facie, that the right of possession, which is necessary in trespass, is not in the plaintiff, but in the defendant or the person under whom he justifies. 8 T. R. 403; 7 T. R. 354; Willes, 222; Steph. PI. 178; 1 Chit. PI. 491, 492.

4. In trespass on the case in general, the formula is as follows: " And the said C D, by E F his attorney, comes and defends the wrong and injury when, &c., and says, that he is not guilty of the premises above laid to his charge, in manner and form as the said A B hath above complained. And of this the said C D puts himself on the country."

5. This, it will be observed, is a mere traverse, or denial, of the facts alleged in the declaration; and therefore, on principle, should be applied only to cases in which the defence rest's on such denial. But here a relaxation has taken place, for under this plea, a defendant is permitted not only to contest the truth of the declaration, but with some exceptions, to prove any matter of defence, that tends to show that the plaintiff has no cause of action, though such matters be in confession and avoidance of the

declaration; as, for example, a release given, or satisfaction made. Steph. Pl. 182-3; 1 Chit. Pi. 486.

6. In trover. It is not usual in this action to plead any other plea, except the statute of limitations; and a release, and the bankruptcy of the plaintiff, may be given in evidence under the general issue. 7 T. R. 391

7. In debt on a judgment suggesting a devastavit, an executor may plead not guilty. 1 T. R. 462.

8. In criminal cases, when the defendant wishes to put himself on his trial, he pleads not guilty.

NOT POSSESSED. A plea sometimes used in actions of trover, when the defendant was not possessed of the goods at the commencement of the action. 3 Mann. & Gr. 101, 103.

NOTARY or NOTARY PUBLIC. An officer appointed by the executive, or other appointing power, under the laws of different states.

2. Their duties are generally prescribed by such laws. The most usual of which are, l. To attest deeds, agreements and other instruments, in order to give them authenticity. 2. To protest notes, bills of exchange, and the like. 3. To certify copies of agreements and other instruments.

3. By act of congress, Sept. 16, 1850, Minot's Statutes at Large. U. S. 458, it is enacted, That, in all cases in which, under the laws of the United States, oaths, or affirmations, or acknowledgments may now be taken or made before any justice or justices of the peace of any state or territory, such oaths, affirmations, or acknowledgments may be hereafter also taken or made by or before any notary public duly appointed in any state or territory, aud, when certified under, the hand and official seal of such notary, shall have the name force and effect as if taken or made by or before such justice or justices of the peace. And all laws and parts of laws for punishing perjury, or subornation of perjury, committed in any such oaths or affirmations, when taken or made before any such justice of the peace, shall apply to any such offence committed in any oaths or affirmations which may be taken under this act before a notary public, or commissioner, as hereinafter named: Provided always, That on any trial for either of these offences, the seal and signature of the notary shall not be deemed sufficient in themselves to establish the official character of such notary, but the same shall be shown by other and proper evidence.

4. Notaries, are of very ancient origin they were well known among the Romans, and exist in every state of Europe, and particularly on the continent.

5. Their acts have long been respected by the custom of merchants and by the courts of all nations. 6 Toull. n. 211, note. Vide, generally, Chit. Bills, Index, h. t.; Chit. Pr. Index,, h. t.; Burn's Eccl. Law, h. t.; Bro. Off. of a Not. passim; 2 Har. & John. 396; 7 Verm. 22; 8 Wheat. 326; 6 S. & R. 484; 1 Mis. R. 434.

NOTE, estates, conv., practice. The fourth part of a fine of lands: it is an abstract of the writ of covenant and concord, and is only a, doequet taken by the chirographer, from which he draws up the indenture. It is sometimes taken in the old books for the concord. Cruise, Dig. tit. 35, c. 2, 51.

NOTE OF HAND, contracts. Another name, less technical, for a promissory note. (q. v.) 2 Bl. Com. 467. Vide Bank note; Promissory note, Reissuable note.

NOTES, practice. Short statements of what transpires on the trial of a cause; they are generally made by the judge and the counsel, for their Own satisfaction.

2. They are not, per se, evidence on another trial, not being in the nature of a deposition. 4 Binn. R. 110. But such notes were admitted in a court of equity as evidence of what had been stated by a witness at the trial of an action at law. 3 Y. & C. 413., And a verdict was amended, in a court of law, from the notes of the judges. 11 Ad. & El. 179; S. C. 39 Eng. C L R. 38; see 5 Whart. 156; 5 Watts & S. 51.

3. Notaries formerly made notes, matrix, by abbreviations, from which they made their records, and engrossed the acts which were passed before them. This original is now called the minutes. The notes of the prothonotaries and clerks of courts are called minutes.

NOTICE. The information given of some act done, or the interpellation by which some act is required to be done. It also signifies, simply, knowledge; as A had notice that B was a slave. 5 How. S. C. Rep. 216; 7 Penn. Law Journ. 119.

2. Notices should always be in writing; they should state, in precise terms, their object, and be signed by the proper person, or his authorized agent, be dated, and addressed to the person to be affected by them.

3. Notices are actual, as when they are directly given to the party to be affected by them; or constructive, as when the party by any circumstance whatever, is put upon inquiry, which amounts in judgment of law to notice, provided the, inquiry becomes a duty. Vide 2 Pow. Mortg. 561 to .662; 2 Stark. Ev. 987; 1 Phil. Ev. Index, b. t.; 1

Vern. 364, n.; 4 Kent, Com. 172; 16 Vin. Ab. 2; 2 Supp. to Ves. jr. 250; Grah. Pr. Index, h. t.; Chit. PI. Index, h. t.; 2 Mason, 531; 14 Pick. 224; 4 N. H.]Rep. 397; 14 S. & R. 333; Bouv. Inst. In- dex, h. t.

4. With respect to the necessity for giving notice, says Mr. Chitty, 1 Pr. 496, the rules of law are most evidently founded on good sense and so as to accord with the intention of the parties. The giving notice in certain cases obviously is in the nature of a condition precedent to the right to call on the other party for the performance of his engagement, wbether his contract were express or implied. Thus, in the familiar instance of bills of exchange and promis- sory notes, the implied contract of an in- dorser is, that be will pay the bill or note, provided it be not paid, on presentment at maturity, by the acceptor or maker, (being the party primarily liable, and provided that he (the indorser) has due notice of the dishonor, and without which be is discharged from all liability; consequently, it is essen- tial for the holder to be prepared to prove affirmatively that such notice was given, or some facts dispensing with such notice.

5. Whenever the defendant's liability to perform an act depends on another oc- currence, which is best known to the plain- tiff, and of which the defendant is not legally bound to take notice, the plaintiff must prove that due notice, was in fact given. So in cases of insurances on ships, a notice of abandonment. is frequently ne- cessary to enable the assured plaintiff. to proceed as for a total lose when sometbing remains to be saved, in relation to which, upon notice, the in-surers might themselves take their own measures.

6. To avoid doubt or ambiguity in the terms of the notice, it may be advisable to give it in writing, and to preserve evidence of its delivery, as in the case of notices of the dishonor of a bill.

7. The form of the notice may be as subscribed, but it must necessarily vary in its terms according to the circumstances of each case. So, in order to entitle a party to insist upon a strict and exact perform- ance of a contract on the fixed day for completing it, and a fortiori to retain a deposit as forfeited, a reasonable notice must be given of the intention to insist on a precise performance, or be will be consi- dered as having waived such strict right. So if a lessee or a purchaser be sued for the recovery of the estate, and he have a remedy over against a third person, upon a covenant for quiet enjoyment, it is expe- dient (although not absolutely necessary) referring to such covenant.

NOTICE, AVERMENT OF, in pleading. This is frequently necessary, particularly in special actions of assumpsit.

2. When the matter alleged in the pleading is to be considered as lying more properly in the knowledge of the plaintiff, than of the defendant, then the declaration ought to state that the defendant had notice thereof; as when the defendant promised to give the plaintiff as much for a commodity as another person had given, or should give for the like.

3. But where the matter does not lie more properly in the knowledge of the plaintiff, than of the defendant, notice need not be averred. 1 Saund. 117, n. 2; 2 Saund. 62 a, n. 4; Freeman, R. 285. Therefore, if the defendant contrasted to do a thing, on the performance of an act by a stranger, notice need not be averred, for it lies in the defendant's knowledge as much as the plaintiff's, and he ought to take notice of it at his peril. Com. Dig. Pleader, C 75. See Com. Dig. Id. o 73, 74, 75; Vin. Abr. Notice; Hardr. R. 42; 5 T. R. 621.

4. The omission of an averment of no- tice, when necessary, will be fatal on de- murrer or judgment by default; Cro. Jac. 432; but may be aided by verdict; 1 Str. 214; 1 Saund. 228, a; unless in an action against the drawer of a bill, when the omission of the averment of notice of non-pay- ment by the acceptor is fatal, even after verdict. Doug. R. 679.

NOTICE OF DISHONOR. The notice given by the holder of a bill of exchange or promissory note, to a drawer or endorser on the same, that it has been dishonored, either by not being accepted in the case of a bill, or paid in cue of an accepted bill or note.

2. It is proper to consider, 1. The form of the notice; 2. By whom it is to be given; 3. To whom. 4. When; 5. Where; 6. Its effects; 7. When a want of notice will be excused; 8. When it will be waived.

3. - SS1. Although no precise form of words is requisite in giving notice of dis- honor, yet such notice must convey, 1. A true description of the bill or note so as to ascertain its identity; but if the notice cannot mislead the party to whom it is sent, and it conveys the real fact without any. doubt, although there may be a small va- riance, it cannot be material, either to regard his rights or to avoid his responsibility. 11 Wheat. 431, 436; Story on Bills, SS 390; 11 Mees. & Wels. 809. 2. The notice must contain an assertion that ther bill has been duly presented to the drawee for accept- ance, when acceptance has been refused, or to the acceptor of a bill, or maker of a note for payment at its maturity, and dishonored. 4 C. 340; 7 Bing. 530; l Bing. N. C. 192; 1 M. & G. 76; 3 Bing. N. C. 688; 10 A. & E. 125. 3. The notice must state that the holder, or other person giving the notice, looks to the person to whom the no- tice is given, for reimbursement and indem- nity. Story on Bills, SS 301, 390. Although in strictness this may be required, where the language is otherwise doubtful and uncer-

tain, yet, in general, it will be presumed where in other respects the notice is sufficient. 2 A. & E. N. R. 388, 416; 11 Mees. & Wels. 372; Sto on P. N. SS 353; 11 Wheat. 431, 437; 2 Pet. 543; 2 John. Cas. 237; 2 Hill, (N. Y.) R. 588; 1 Spear, R. 244.

4.-SS 2. In general the notice may be given by the holder or some one authorized by him; Story on Bills, SS 303, 304; or by some one who is a party and liable to pay the bill or note. But notice given by a stranger is not sufficient. Chit. on Bills, 368, 8th edit.; 1. T. R. 170; 8 Miss. 704; 16 S. & R. 157, 160. On the death of the holder, his executor or administrator is re- quired to give notice, and, if none be then Appointed, the notice must be given within a reasonable time after one may be ap- pointed. Story on P. N. SS 3Q4. When the bill or note i's held by partners, notice by any of them is sufficient; and when joint- holders have the paper, and one dies, the notice may be given by the survivor; the assignee of the holder who is a bankrupt, must give notice, but if no assignee be ap- pointed when the paper becomes due, the notice must be given without delay after his appointment; but it seems the bankrupt holder may himself give the notice. Story on P. N. SS 305. If -an infant be the holder the notice may be given by him, or if he has a guardian, by the latter. .

5.-SS 3. The holder is required to give notice to all the parties to whom he means to resort for payment, and, unless excused in point of law, as will be stated below, such parties will be exonerated, and ab- solved from all liability on such bill or note. Story on P. N. SS 307. But a party who purchases a bill, and, without endorsing it, transmits it on account of goods ordered by him, is not entitled to notice of its dis- honor. 1 Wend. 219; 4 Wash. C. C. 1. In cases of partnership, notice to either of the partners is sufficient. Story on Bills, SS 299; Story on P. N. SS 308; 20 John. 176; 2 How. Sup. Ct. It. 457. Notice should be given to each of several joint endorsers, who are not partners. 1 Conn. 368; 4 Cowen, 126; 6 Hill, (N. Y.) R. 282; Story on Bills, SS 299. Notice to an absent endorser may be given to bis gene- ral agent. 1 M. & Selw. 545; 16 Martin, (Lo.) R. 87. See 12 Wheat. 599; 4 Wash. C. C. 464; 3 Wend. 276.

6. - SS 4. The notice of dishonor must be given to the parties to whom the holder means to resort, within a reasonable time after the dishonor of the bill, when it is dishonored for non-acceptance, and he must not delay giving notice until the bill has been protested for non-payment. Bull. N. P. 271; 12 East, 434; 1 Harr. & J. 187; 1 Dall. 235; 2 Dall. 219, 233; 1 Yeates, 147; 3 Wash. C. C. 396; 1 Bay, 177; 11 John. 187; 10 Wend. 304; 13 Wend. 133; 5 Halst. 139; 4 J. J. Marsh. 61; Paine, 156; 2 Hayw. 332; 2 Marsh. 616. Though formerly it was doubtful whether the court or jury were to judge as to the reasonable- ness of the notice in respect to time; 1 T. R. 168; yet, it -seems now to be settled, that when the facts are ascertained, it is a question for the court and 'not for the jury. 10 Mass. 84, 86; 6 Watts & S. 399; 3 Marsh. 262; 2 Harris R. 488;-Penn. 916; 1 N. H. Rep. 140; 17 Mass. 449, 453; 2 Aik. 9; Rice, R. 240; 2 Hayw. 45.

7.-SS 5. In considering as to where the 'notice should be given, a difference is made between cases, where the parties reside in the same town, and where they do not. 1. When both parties reside in the same town or city, the notice should either be personal or at the domicil or place of business of the party notified, so that it may reach him on the very day he is entitled to notice. 1 M. & S. 545, 554; 2 Pet. 100; 1 Pet. 578, 583; Story on Bills, SSSS 284-290; 1 Rob. Lo. R. 572; 3 Rob. Lo. 261; 20 John. 372; 1 Conn. 329; 17 Mart.,Lo. 137, 158, 359; 19 Mart. Lo. 492; Story on P. N. 322. But see 28 Pick. 305; 6 Watts & Serg. 262; 2 Aik. 263; 8 Ohio, 507, 510; Rice, R. 240, 243; 1 Litt. R. 194. If the notice be put in the post office, the holder must prove it reached the endorser. 2 Pet. 121. But in those towns where they have letter carriers, who carry letters from the post office and deliver them at the houses or places of business of the parties, if the notice be put in the post office in time to be delivered on the same day, it will be sufficient. Chit. on Bills, 504, 508, 513, 8th edit.; 1 Pet. 578; 11 John. 231. 2. When the parties reside in different towns or cities, the notice may be sent by the post, or a special messenger, or a private person, or by any other suitable or ordinary con- veyance. Chit. on Bills, 518, 8th ed.; Story on P. N. SS 324; Bayl. on Bills, eh. 7, SS 2; 1 Pet. 582. When the post is re, sorted to, the holder has the whole day on which the bill becomes due to prepare his notice, and if it be put in the post office on the next day in time to go by either mails, when there is more than one, it will in general be sufficient. 17 Mass. 449, 454; 1 Hill, (N. Y.) R. 263; but see contra, 2- Rob. Lo. R. 117.

8. - SS6. The effect of the notice of dis- honor, when properly given, and when it is followed by a protest, when a protest is requisite, will render the drawer and en- dorsers of a bill or the endorsers of a note liable to the holder. But the drawer and endorsers may tender the money at any time before a writ has been issued; though the acceptor must pay the bill on present- ment, and cannot plead a subsequent ten- der. 1 Marsh. 36; 5 Taunt. 240; S. C. 8 East, 168.

9. - SS 7. The same reasons which will excuse the want of a presentment, will in general excuse a want of protest. See Pre- sentment, contracts, n. 8, 9. 10.-SS 8. A want of notice may be waived by the party to be affected, after a full knowledge of the facts that the holder has no just cause for the neglect or omission. Story on P. N. SS 858. See Presentment, contracts, n. 9.

NOTICE, TO PRODUCE PAPERS, practice, evidence. When it is intended to give seoondary evidence of a written instrument or paper, which is in: the possession of the opposite party, it ii, in general, requisite to give him notice to produce the same on the trial of the cause, before such secondary evidence can be admitted.

2. To this general rule there are some exceptions: 1st. In cases where, from the nature of the proceedings, the party in pos- session of the instrument has notice that he is

charged with the possession of it, as in the case of trover for a bond. 14 East, R. 274; 4 Taunt. R. 865; 6 S. & R. 154; 4 Wend. 626; 1 Camp. 143. 2d. When the party in possession Las obtained the instru- ment by fraud. 4 Esp. R. 256. Vide 1 Phil. Ev. 425; 1 Stark. Ev. 862; Rosc. Civ. Ev. 4.

3. It will be proper to consider the form of the notice; to whom it should be given; when it must be served; and its effects.

4.-1. In general, a notice to produce papers ought to be given in writing, and state the title of the cause in which it is proposed to use the papers or instruments required. 2 Stark. R. 19; S. C. 3 E. C. L. R. 222. It seems, however, that the notice may be by parol. 1 Campb. R. 440. It must describe with sufficient certainty the papers or instruments called! for, and must not be too general, and by that means be uncertain. R. & M. 341; McCl. & Y. 139.

5.-2. The notice may be given to the party himself, or to his attorney. 3 T. R. 806; 2 T. It. 203, n.; R. & M. 827; 1 M. & M. 96.

6.-3. The notice must be served a reasonable time before trial, so as to afford an opportunity to the party to search for and produce the intrument or paper in question. 1 Stark. R. 283; S. C. 2 E. C. L. R. 391; R. & M. 47, 827; 1 M. & M. 96, 335, n. 7.-4. When a notice to produce an instrument or paper in the cause has been proved, and it is also proved that such paper or instrument was, at the time of the notice, in the hands of the party or his privy, and, upon request in court, he re- fuses or neglects to produce it, the party having given such notice, and made such proof, will he entitled to give secondary evidence of such paper or instrument thus withheld.

8. The 15th section of the, judiciary act of the United States provides, " that all the courts of the United: States shall have power, in the trial of actions at law, on motion, and due notice there of being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion, to give the like judgment for the defendant, as in cases of nonsuit; and if the defendant fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on mo- tion as aforesaid, to give judgment against him or her by default."

9. The proper course to pursue under this act, is to move the court for an order on the opposite party to produce such books or papers. See, as to the rules in courts of equity to compel the production of books and papers, 1 Baldw. Rep. 388, 9; 1 Vern. 408,

425; 1 Sch. & Lef. 222; 1 P. Wins. 731, 732; 2 P. Wms. 749; 3 Atk. 360. See Evidence, secondary.

NOTICE TO QUIT. A request from a landlord to his tenant, to quit the premises lessed, and to give possession of the same to him, the landlord, at a time therein mentioned.

2. It will be proper to consider, 1. The form of the notice. 2. By whom it is to be given. 3. To whom. 4. The mode of serving it. 5. At what time it must be served. 6. What will amount to a waiver of it.

3.-SS 1. The form of the notice. The notice or demand of possession should con- tain a request from the landlord to the tenant or person in possession to, quit the premises which he holds from the landlord, (which premises ought to be particularly described, as being situate in the street an city or place, or township and county,) and to deliver them to him on or before a day certain, generally, when the lease is for a year, the same day of the year on which the lease commences. But where there is some doubt as to the time when the lease is to expire, it is proper to add, " or at the ex- piration of the current year of your tenancy." 2 Esp. N. P. C. 589. It should be dated, signed by the landlord himself, or by some person in his name, who has been authorized him, and directed to the tenant. The notice must include all the premises under the same demise;, for the landlord cannot determine the tenancy as to part of the pre- mises demised and continue it as to the residue. For the purpose of bringing an ejectment, it is not necessary that the notice should be in writing, except when required to be so under an express agreement be- tween the parties. Com. Dig. Estate by Grant, G 11, n. p. But it is the general and safest practice to give written notices, and it is a precaution which should always, when possible, be observed, as it prevents mistakes, and renders the evidence certain and correct. Care should be taken that the words of a notice be clear and decisive, with- loat ambiguity, or giving an alternative to the tenant, for if it be really ambiguous or op- tional, it will be invalid. Adams on Ej. 122.

4. -SS 2. As to the person by whom the notice is to be given. It must be given by the person interested in the premises, or his agent properly appointed. Adams on Ej. 120. As the tenant is to act upon the notice at the time it is given to him , it is necessary that it should be such as he may act upon with security, and should, there- fore, be binding upon all the parties con- cerned at the time it is given. Where, therefore, several persons are jointly inte- rested in the premises, they all must join in the notice, and if any of them be not a party at the time no subsequent ratification by him will be sufficient by relation to ren- der the notice valid. 5 East, 491; 2 Phil. Ev. 184. But if the notice be given by an agent, it is sufficient if his authority is after- wards recognized. 3 B. & A. 689.

5.-SS 3. As to the person to whom the notice should be given. When the relation of landlord and tenant subsists, difficulties can seldom occur as to the party upon whom the notice should be served. It should in- variably be given to the tenant, of the party serving the notice, notwithstanding a part may have been underlet, or the whole of the premises may have been assigned; Adams on Ej. 119; 2 New Rep. 330, and vide 14 East, 234; unless, perhaps, the lessor has recognized the slb-tenant as his tenant. l0 Johns. 270. When the premises are in possession of two or more as joint-tenants or tenants in common, the notice should be to all; a notice addressed to all, and served upon one only, will, how- ever, be a good notice. Adams on Ej. 123.

6. - SS 4. As to the mode of, serving the notice. The person about serving the no- tice should make two copies of it, both signed by the proper person, then procure one or more respectable persons for wit- nesses, to whom he should show the copies, who, upon comparing them, and finding them alike, are to go with the person who is to serve the notice. The person serving the notice then in their presence, should deliver one of these copies to the tenant personally, or to one of his family, at his usual place of abode, although the same be not upon the demised premises; 2 Phil, Ev. 185; or serve it upon the person in possession; and where the tenant is not in possession, a copy may be served on him if he can be found, and another on the person in posses- sion. The witnesses should then, for the sake of security, sign their names on the back of the copy of the notice retained, or otherwise mark it so as to identify it, and they should also state the manner in which the notice was served. In the case of a joint demise to two defendants, of whom one alone resided upon this premises, proof of the service of the notice upon him has been held to be sufficient ground for the jury to presume that the notice so served upon the premises, has reached the other who resided in another place. 7 East, 553; 5 Esp. N. P. C. 196,

7.-SS 5. At what time it must be served. It must be given three months before the expiration of the lease. Difficulties some- times arise as to the period of the commence- ment of the tenancy, and when a regular notice to quit on any particular day is given, and the time when the term began is un- known, the effect of such notice as to its being evidence or not of the commencement of the tenancy, will depend upon the par- ticular circumstances of its delivery; if the tenant having been applied to by bis land- lord respecting the time of the commence- ment of the tenancy, has informed him, it began on a certain clay, and in consequence of such information, a notice to quit on that day is given at a subsequent period, the tenant is concluded by his act, and will not be permitted to prove that in point of fact, the tenancy has a different commencement; nor is it material whether the information be the result of design or ignorance, as the landlord is in both instances equally led into error. Adams on Ej. 130; 2 Esp. N. P. C. 635; 2 Phil. Ev. 186. In like manner if the tenant at the time of delivery of the notice, assent to the terms of it, it will waive any irregularity u to the

period of its ex- piration, but such assent must be strictly proved. 4 T. R. 361; 2 Phil. Ev. 183. When the landlord is ignorant of the time when the term commenced, a notice to quit may be given not specifying any particular day, but ordering the tenant in general terms to quit and deliver up the possession of the premises, at the end of the current year of his tenancy thereof, which shall, ex- pire next after the end of three months from the date of the notice. See 2 Esp. N. P. C. 589.

8.-SS 6. What will amount to a waiver of the notice. The acceptance of rent ac- cruing subsequently to the expiration of the notice is the most usual means by which a waiver of it may be produced, but the ac- ceptance of such rent is open to explanation; and it is the province of the jury to decide with what views, and under what circum- stances the rent is paid and received. Adapms on Ej. 139. If the money be taken with an express declaration that the notice is not thereby intended to be waived, or accompanied by other circumstances which may induce, an opinion that the landlord did not intend to continue the tenancy, no waiver will be produced by the acceptance; the rent must be paid and received as rent, or the notice will remain in force. Cowp. 243. The notice may also be waived by other acts of the landlord; but they are generally open to explanation, and the par- ticular act will or will not be a waiver of the notice, according to the circumstances which attend it. 2 East, 236; 10 East, 13; 1 T. R. 53. It has been held that a notice to quit at the end of a certain year is not waived by the landlord's permitting the tenant to remain in possession an entire year after the expiration of the notice, not- withstanding the tenant held by an improv- ing lease, that is, to clear and fence the land and pay the taxes. 1 Binn. 333. In cases, however, where the act of the land- lord cannot be qualified, but must of neces- sity be taken as a confirmation of the ten- ancy, as if he distrain for rent accruing after the expiration of the notice, or recover in an action for use and occupation, the notice of course will be waived. Adam on Ej. 144; 1 H. BI. 311.

NOTING. The name of the minute made by a notary on a bill of exohange, after it has been presented for acceptance or payment, consisting of the initials of his name, the date of the day, month ana year when such presentment was made, and the reason, if any has been assigned, for nonacceptance or non-payment, together with his charge. The noting is not indispensable, it being only a part of the protest; it will not supply the protest. 4 T. R. 175 Chit. on Bills, 280, 398. See Protest.

NOTORIETY, evidence. That which is generally known.

2, This notoriety is of fact or of law. In general, the notoriety of a fact is not suffi- cient to found a judgment or to rely on its truth; 1 Ohio Rep. 207; but there are some facts of which, in consequence of their notoriety, the court will, suo motu, take cognizance; for example, facts stated in ancient histories; Skin. 14; 1 Ventr. R. 149; 2 East, Rep. 464; 9 Ves. jr. 347; 10 Ves.jr. 854; 8 John. Rep. 385; 1 Binn. R. 399;

recitals in statutes; Co. Lit. 19 b; 4 M. & S. 542; and in the law text books; 4 Inst. 240; 2 Rags. 313; and the journals of the legislatures, are considered of such notoriety that they need not be otherwise proved.

3. The courts of the United States take judicial notice of the, ports and waters of the United States, in, which the tide ebbs and flows. 3 Dall. 297; 9 Wheat. 374; 10 Wheat. 428; 7 Pet. 342. They take like notice of the boundaries, of the several states and judicial districts. It would be altogether unnecesrary, if not absurd, to prove the fact that London in Great Britain or Paris in France, is not within the jurisdiction of an American court, because the fact is notoriously known.

4. It is difficult to say what will amount to such notoriety as to render any other proof unnecessary. This must depend upon many circumstances; in one case, perhaps upon the progress of human knowledge in the fields of science; in another, on the extent of information on the state of foreign countries, and in all such instances upon the accident of their being little known or pub- licly communicated. The notoriety of the law is such that the judges are always bound to take notice of it; statutes, pre- cedents and text books are therefore evi- dence, without any other proof than, their production. Gresley, Ev. 293. The courts of the United States take judicial notice of all laws and jurisprudence of the several states in which they exercise original or appellate jurisdiction. 9 Pet. 607, 624.

5. The doctrine of the civil and canon laws is similar to this. Boehmer in tit. 10, de probat. lib. 2, t. 19, n. 2; Mascardus, de probat conclus. 1106, 1107, et seq.; Menock. de praesumpt. lib. 1, quaest. 63, &c.; Toullier Dr. Civ. Frau. liv. 3, c. 6, n. 13; Diet. de Jurisp. mot Notoriete; 1 Th. Co. Lit. 26, n. 16; 2 Id. 63, n. A; Id. 334, n. 6; Id. 513, n. T 3; 9 Dana, 23 12 Verm. 178; 5 Port. 382; 1 Chit. PI. 216, 225.

NOVA CUSTOMA. The name of an imposition or duty in England. Vide An- tiqua; Customs.

NOVA STATUTA. New statutes. The name given to the statutes commencing with the reign of Edward III. Vide Vetera Statuta.

NOVAE NARRATIONES. The title of an ancient English book, written during the reign of Edward III. It consists of declarations and some other pleadings.

NOVATION, civil law. 1. Novation is a substitution of a new for an old debt. The old debt is extinguished by the new one con- tracted in its stead; a novation may be made in three different ways, which form three distinct kinds of novations.

2. , The first takes place, without the in- tervention of any new person, where a debtor contracts a new engagement with his credi- tor, in consideration of being liberated from the former. This kind has no appropriate name, and is called a novation generally.

3. The second is that which takes place by the intervention of a new debtor, where another person becomes a debtor instead of a former debtor, and is accepted by the creditor, who thereupon discharges the first debtor. The person thus rendering himself debtor for another, who is in consequence discharged, is called expromissor; and this kind of novation is caned expromissio.

4. The third kind of novation takes place by the intervention of a new creditor where a debtor, for the purpose of being discharged from his original creditor, by order of that creditor, contracts some obligation in favor of a new creditor. There is also a particu- lar kind of novation called a delegation. Poth. Obl. pt. 3, c. 2, art. 1. See Delega- tion.

5.-2. It is a settled principle of the common law, that a mere agreement to sub- stitute any other thing in lieu of the original obligation is void, unless actually carried into execution and accepted as satisfaction. No action can be maintained upon the new agreement, nor can the agreement be pleaded as a bar to the original demand. See Ac- cord. But where an agreement is entered into by deed, that deed gives, in itself, a substantive cause of action, and the giving such deed may be sufficient accord and satis- faction for a simple contract debt. 1 Burr. 9; Co. Litt. 212, b.

6. The general rule seems to be that if one indebted to another by simple contract, give his creditor a promissory note, drawn by himself, for the same sum, without any new consideration, the new note shall not be deemed a satisfaction of the original debt, unless so intended and accepted by the creditor. 15 Serg. & Rawle, 162; 1 Hill's N. Y. R. 516; 2 Wash. C. C. Rep. 191; 1 Wash. C. C. R. 156, 321; 2 John. Cas. 438; Pet. C. C. Rep. 266; 2 Wash. C. C. R. 24, 512; 3 Wash. C. C. R. 396: Addis. 39; 5 Day, 511; 15 John. 224; 1 Cowen, 711; see 8 Greenl. 298; 2 Greenl. 121; 4 Mason, 343; 9 Watts, 273; 10 Pet. 532; 6 Watts & Serg. 165, 168. But if he transfer the note he cannot sue on the original contract as long as the note is out of his possession. 1 Peters' R. 267. See generally Discharge; 4 Mass.. Rep. 93; 6 Mass. R. 371; 1 Pick. R. 415; 5 Mass. R. 11; 13 Mass. R. 148; 2 N. H. Rep. 525; 9 Mass. 247; 8 Pick. 522; 8 Cowen, 390; Coop. Just. 582; Gow. on Partn. 185; 7 Vin. Abr. 367; Louis. Code, art. 2181 to 2194; Watts & S. 276; 9 Watts, 280; 10 S. R. 807; 4 Watts, 378; 1 Watts & Serg. 94; Toull. h. t.; Domat, h. t.; Dalloz. Dict. h. t.; Merl. Rep. h. t.; Clef des Lois Romaines, h. t.; Azo & Man. Inst. t. 11, c. 2, SS 4; Burge on Sur. B. 2, c. 5, p. 166.

NOVEL ASSIGNMENT. Vide New Assignment.

NOVEL DISSEISIN. The name of an old remedy which was given for a new or recent disseisin.

2. When tenant in fee simple, fee tail, or for term of life, was put out, and digseised of his lands or tenements, rents, find the like; he might sue out a writ of assise or novel disseisin; and if, upon trial, he could prove his title, and his actual seisin, and the disseisin by the present tenant, be was entitled to have judgment to recover his seisin and damages for the injury sustained. 3 Bl. Com. 187. This remedy is obsolete.

NOVELLAE LEONIS. The ordinances of the emperor Leo, which were made from the year 887 till the year 893, are so called. These novels changed many rules of the Justinian law. This collection contains one hundred and thirteen novels, written originally in Greek, and afterwards, in 1560, translated into Latin, by Agilaeus. - .

NOVELS, civil law. The name given to some constitutions or laws of some of the Roman emperors; this name was so given because they were new or posterior to the laws which they had before published. The novels were made to supply what bad not been foreseen in the preceding laws, or to amend or alter the laws in force.

2. Although the novels of Justinian are the best known, and when the word novels only is mentioned, those of Justinian are always intended, he was not the first who gave the name of novels to his constitution and laws. Some of the acts of Theodosius, Valentinien, Leo, Severus, Anthemius, and others, were, also called novels. But the novels of the emperors who preceded Justinian bad not the force of law, after the enactment of the law by order of that emperor. Those novels are not, however, entirely useless, because the code of Justinian having been composed mainly from the Theodosian code and the novels, the latter frequently remove doubts which arise on the construction of the code. The novels of, Justinian form the fourth part of the Corpus Juris Civilis. They are directed either to some, officer, or an archbisbop or bishop, or to some private individual of Constantinople but they all had the force and authority of law. The number of the novels is uncertain. The 118th novel is the foundation and groundwork of the English statute of distribution of intestate's effects, which has been copied into many states of the Union. Vide 1 P. Wms. 27; Pr. in Chan. 593

NOVUS HOMO. A new man; -this term, is applied to a man who has been pardoned of a crime, by which he is restored to society, and is rebabilitated.

NOXAL ACTTON, civil law. A personal, arbitrary, and indirect action in favor of one who has been injured by the slave of another, by which the owner or master of the slave was compelled either to pay the damages or abandon the slave. Vide Abandonment for torts, and Inst. 4, 8; Dig. 9, 4; Code, 3, 41.

NUBILIS, civil law. One who is of a proper age to be married. Dig. 32,51.

NUDE. Naked. Figuratively, this word is applied to various subjects. 2. A nude contract, nudum pactum, q. v.) is one without a consideration; nu de matter, is a bare allegation of a thing done, without any evidence of it.

NUDE MATTER. A bare allegation unsupported by evidence.

NUDUM PACTUM, contracts. A contract made without a consideration,; it is called a nude or naked contract, because it is not clothed with the consideration required by law, in order to give an action. 3 McLean, 330; 2 Denio, 403; 6 Iredell, 480; 1 Strobh. 329; 1 Kelly, 294; 1 Dougl. Mich. R. 188.

2. There are some contracts which, in consequence of their forms, import a consideration, as sealed instruments, and bills of exchange, and promissory notes, which are generally good although no consideration appears.

3. A nudum pactum may be avoided, and is not binding.

4. Whether the agreement be verbal or in writing, it is still a nude pact. This has been decided in England, 7 T. R. 350, note; 7 Bro. P. C. 550; and in this country; 4 John. R. 235; 5 Mass. R. 301, 392; 2 Day's R. 22. But if the contract be under seal, it is valid. 2 B. & A. 551. It is a rule that no action can be maintained on a naked contract; ex nudopacto non oritur actio: 2 Bl. Com. 445; 16 Vin. Ab. 16.

5. This term is borrowed from the civil law, and the rule which decides upon the nullity of its effects, yet the common law has not; in any degree been influenced by the notions of the civil law, in defining what constitutes a nudum pactum. Dig. 19, 5, 5. See on this subject a learned note in Fonbl. Eq. 335, and 2 Kent, Com. 364. Toullier defines nudum pactum to be an agreement not executed by one of the parties, tom. 6, n. 13, page 10. Vide 16 Vin. Ab. 16; 1 Supp. to Ves. jr. 514; 3 Kent, Com. 364; 1 it. Pr. 113; 8 Ala. 131; and art. Consideration.

NUISANCE, crim. law, torts. This word means literally annoyance; in law, it signifies, according to Blackstone, " anything that worketh hurt, inconvenience, or damage." 3 Comm. 216.

2. Nuisances are either public or com- mon, or private nuisances.

3.-1. A public or common nuisance is such an inconvenience or troublesome offence, as annoys the whole community in general, and not merely some particular person. 1 Hawk. P. C. 197; 4 Bl. Com. 166-7. To constitute a Public nuisance, there must be

such 'a number of persons annoyed, that the offence can no longer be considered a private nuisance: this is a fact, generally, to be judged of by the jury. 1 .Burr. 337; 4 Esp. C. 200; 1 Str. 686, 704; 2 Chit. Cr. Law, 607, n. It is diffi- cult to define what degree of annoyance is necessary to constitute a nuisance. In rela- tion to offensive trades, it seems that when such a trade renders the enjoyment of life and property uncomfortable, it is a nuisance; 1 Burr. 333; 4 Rog. Rec. 87; 5 Esp. C. 217; for the neighborhood have a right to pure and fresh air. 2 Car. & P. 485; S. C. 12 E. C. L. R. 226; 6 Rogers' Rec. 61.

4. A thing may be a nuisance in one place, which-is not so in another; therefore the situation or locality of the nuisance must be considered. A tallow chandler seeing up his baseness among other tallow chandlers, and increasing the noxious smells of the neighborhood, is not guilty of setting up a nuisance, unless the annoyance is much increased by the new manufactory. Peake's Cas. 91. Such an establishment might be a nuisance-in a thickly populated town of merchants and mechanics, where Do such business was carried on.

5. Public nuisances arise in consequence of following particular trades, by which the air-is rendered offensive and noxious. Cro. Car. 510; Hawk. B. 1, c. 755 s. 10; 2 Ld. Raym. 1163; 1 Burr. 333; 1 Str. 686. From-acts of public indecency; as bathing in a public river, in sight of the neighbor- ing houses; 1 Russ. Cr. 302; 2 Campb. R. 89; Sid. 168; or for acts tending to a breach of the public peace, as for drawing a number of persons into a field for the pur- pose of pigeon-shooting, to the disturbance of the neighborhood; 3 B. & A. 184; S. C. 23 Eng. C. L. R. 52; or keeping a dis- orderly house; 1 Russ. Cr. 298; or a gaming house; 1 Russ. Cr. 299; Hawk . b. 1, c. 7 5, s. 6; or a bawdy house; Hawk. b. 1, c. 74, s. 1; Bac. Ab. Nuisance, A; 9 Conn. R. 350; or a dangerous animal, known to be such, and suffering him to go at large, as a large bull-dog accustomed to bite people; 4 Burn's, Just. 678; or exposing a person having a contagious disease, as the small- pox, in public; 4 M. & S. 73, 272; and the like.

6.-2. A private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. 3 Bl. Com. 1215; Finch, L. 188.

7. These are such as are injurious to corporeal inheritance's; as, for example, if a man should build his house so as to throw the rain water which fell on it, on my land; F. N. B. 184; or erect his. building, with- out right, so as to obstruct my ancient lights; 9 Co. 58; keep hogs or other ani- mals so as to incommode his neighor and render the air unwholesome. 9 Co. 58.

8. Private nuisances may also be in- jurious to incorporeal hereditaments. If, for example, I have a way annexed to my estate, across another man's land, and he

obstruct me in the use of it, by plowing it up, or laying logs across it, and the like. F. N. B. 183; 2 Roll. Ab. 140.

9. The remedies for a public nuisance are by indicting the party. Vide, generally, Com. Dig. Action on the case for a nuisance; Bac. Ab. h. t.; Vin. Ab. h. t.; Nels. Ab. h. t.; Selw. N. P. h. t.; 3 Bl. Com. c. 13 Russ. Cr. b. 2, c. 30; 1 0 Mass. R. 72 7 Pick. R. 76; 1 Root's Rep. 129; 1 John. R. 78; 1 S. & R. 219; 3 Yeates' R. 447; 3 Amer. Jurist, 85; 3 Harr. & McH. 441; Rose. Cr. Ev. h. t.; Chit. Cr. L. Index, b. t.; Chit. Pr. Index, b. t., and vol. 1, p. 383; Bouv. Inst. Index, h. t.

NUL, law French. A barbarous word which means to convey a negative; as, Nul tiel record, Nul tiel award.

NUL AGARD. No award. A plea to an action on an arbitration bond, when the defendant avers that there was no legal award made. 3 Burr. 1730; 2 Stra. 923.

NUL DISSEISIN, pleading. No disseisin. A plea in a real action, by which the defendant denies that there was any disseisin it is a species of the general issue.

NUL TIEL RECORD, pleading. No such record

2. When a party claims to recover on the evidence of a record, as in an action on scire facias, or when he sets up his defence on matter of record, as a former acquittal or former recovery, the opposite party may plead or, reply nul tiel record, there is no such record; in which case the issue thus raised is called an issue of nul tiel record, and it is tried by the court by the inspec- tion, of the record. Vide 1 Saund. 92, n. 3 12Vin. Ab.188; 1 Phil. Ev. 307,8; Com. Dig. Bail, R. 8 - Certiorari, A l Pleader, 2 W 13, 38 - Record, C; 2 McLean, 511; 7 Port. 110; 1 Spencer, 114.

NUL TORT, pleading No wrong.

2. This is a plea to a real action, by which the defendant denies that he com- mitted any wrong. It is a species of gene- ral issue.

NUL WASTE, pleading. This is the gene- ral issue in an action of waste. Co. Entr. 700 a, 708 a. The plea of, nul waste ad- mits nothing, but puts the whole declaration in issue; and in support of this plea the defendant may give in evidence anything which proves that the act charged is no waste, as that it happened by tempest, light- ning, and the like. Co. Litt. 283 a; 3 Saund. 238, n. 5.

NULL. Properly, that which does not .exist; that which is not in the nature of things. In a figurative sense it signifies that which has no more effect than if it did not exist. 8 Toull. n. 320.

NULIA BONA. The retum made to a writ of fieri facias, by the sheriff, when he has not found any goods of the defendant on which he could levy. 3 Bouv. Inst. n. 3393.

NULLITY. Properly, that which does not exist; that which is not properly in the nature of things. In a figurative sense, and in law, it means that which has no more effect than if it did not exist, and also the defect which prevents it from having such effect. That which is absolutely void.

2. It is a yule of law that what is abso- lutely null produces no effects whatever; as, if a man bad a wife in full life, and both aware of the fact, he married another wo- man, such second marriage would be nun and without any legal effect. Vide Chit, Contr. 228; 3 Chit. Pr. 522; 2 Archb. Pr. K. B. 4th edit. 888; Bayl. Ch. Pr. 97.

3. Nullities have been divided into ab- solute and relative. Absolute nullities are those which may be insisted upon by any one having an interest in rendering the act, deed or writing null, even by the public authorities, as a second marriage while the former was in full force. Everything fraudu- lent is null and void. Relative nullities can be invoked only by those in whose favor the law has been established, land, in fact, such power is less a nullity of the act than a faculty which one or more persons have to oppose the validity of the act.

4. The principal causes of nullities are, 1. Defect of form; as, for example, when the law requires that a will of land shall be attested by three witnesses, and it is on] attested by two. Vide Will.

5.-2. Want of will; as, if a man be compelled to execute a bond by duress, it is null and void. Vide Duress.

6. - 3. The incapacities of the parties; as in the cases of persons non compos mentis, of married women's contracts, and the like.

7.-4. The want of consideration in simple contracts; as a verbal promise with- out consideration.

8.-5. The want of recording, when the law requires that the matter should be re- corded; as, in the case of judgments.

9.-6. Defect of power in the party who entered into a contract in behalf of another; as, when an attorney for a special purpose makes an agreement for his principal in re- lation to another thing. Vide Attorney; Authority.

10. - 7. The loss of a thing which is the subject of a contract; as, when A sells B horse, both supposing him to be alive, when in fact he was dead. Vide Contract; Sale. Vide Perrin, Traite des Nullites; Hen- rion, Pouvoir Municipal, liv. 2, c. 18; Merl. Rep. h. t.; Dall. Diet. h. t. See art. Void.

NULIUS FILIUS. The son of no one; a bastard.

2. A bastard is considered nullius filius as far as regards his right inherit. But the rule of nullius filius does not apply in other respects.

3. The mother of a bastard, during its age of nurture, is entitled to the custody of her child, and is bound to maintain it. 6 S. & R. 255; 2 John. R. 375; 15 John. R. 208; 2 Mass. R. 109; 12 Mass. R. 387, 433; 1 New Rep. 148; sed vide 5 East, 224 n.

4. The putative father, too, is entitled to the custody of the child as against all but the mother. 1, Ashm. 55. And, it seems, that the putative father may main- tain an action, as if his child were legiti- mate, for marrying him without his consent, contrary. to law. Addis. 212. See Bas- tard; Child; Father; Mother;, Putative Father.

NULLUM ARBITRIUM, pleading. The name of a plea to an action on an arbitra- tion bond for not fulfilling the award, by which the defendant asserts that there is no award.

NULLUM FECERUNT ARBITRIUM. The name of a plea to an action of debt upon an obligation for the performance of an award, by which the defendant denies that he submitted to arbitration, &c. Bac. Ab. Arbitr. &c. G.

NUMBER. A collection of units.

2. In pleading, numbers must be stated truly, when alleged in the recital of a record, written instrument, or express contract. Lawes' PI. 48; 4 T. R. 314; Cro. Car. 262; Dougl. 669; 2 Bl. Rep. 1104. But in other cases, it is not in general requisite that they should be truly stated, because they are not required to be strictly proved. If, for example, in an action of trespass the plaintiff proves the wrongful taking away of any part of the goods duly described in his declaration, he is entitled to recover pro tanto. Bac. Ab. Trespass, I 2 Lawes' PI. 48.

3. And sometimes, when the subject to be described is supposed to comprehend a multiplicity of particulars, a general de- scription is sufficient. A declaration in trover alleging the conversion of " a library of books'" without stating their number, titles, or quality, was held 'to be sufficiently certain; 3 Bulst. 31; Carth. 110; Bac. Ab. Trover, F 1; and in an action for the loss of goods, by burning the plaintiff's bouse, the articles may be described by the simple denomination of " goods" or " divers goods." 1 Keb. 825; Plowd. 85, 118, 123; Cro. Eliz. 837; 1 H. Bl. 284.

NUNC PRO TUNC, practice. This phrase, which signifies now for then, is used to express that a thing is done at one time which ought to have been performed at another. Leave of court must be obtained to do things nunc pro tunc, and this is granted to answer the purposes of justice, but never to do injustice A judgment nunc pro tunc can be entered only when the delay has arisen from the act of the court. 3 Man. Gr. & Sc. 970. Vide 1 V.. & B. 312; 1 Moll. R. 462; 13 Price, R. 604; 1 Hogan, R. 110.

NUNCIO. The name given to the Pope's ambassador. Nuncios are ordinary or extraordinary; the former are sent upon usual missionas, the latter upon special occasions.

NUNCIUS, international law, A messenger, a minister; the pope's legate, commonly called a nuncio. It is used to express that a will or testament. has been made verbally, and not in writing, Vide Testament nuncupative; Will, nuncupative; 1 Williams on Exec. 59; Swinb. Index, h. t.; Ayl. Pand. 359; 1 Bro. Civ. Law, 288; Roberts on Wills, h. t.; 4 Kent, Com. 504; 2 Bouv. Inst. n. 436.

NUNQUAM INDEBITATUS, pleading. A plea to an action of indebitatus assumpsit, by which the defendant asserts that he is not indebted to the plaintiff. 6 Carr. & P. 545 S. C. 25 English Com. Law Rep. 535; 1 Mees. & Wels. 542, 1 Q. B. 77.

NUPER OBIIT, practice. He or she lately died. The name of a writ, which in the English law, lies for a sister co-heiress, dispossessed by her coparcener of lands and tenements, whereof their father, brother, or any common ancestor died seised of an estate in fee simple. Termes de la Ley, h. t.; F. N . B. 197.

NURTURE. The act of taking care of children and educating them: the right to the nurture of children generally belongs to the father till the child shall arrive at the age of fourteen years, and not longer. Till then, he is guardian by nurture. Co. Litt. 38 b. But in special cases the mother will be preferred to the father; 5 Binn. R. 520; 2 S. & R. 174; and after the death of the father, the mother is guardian by nurture. Fl. 1. 1, c. 6; Com. Dig. Guardian, D.

NURUS. A daughter-in-law. Dig. 50, 16, 50.

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O

OATH. A declaration made according to law, before a competent tribunal or officer, to tell the truth; or it is the act of one who, when lawfully required to tell the truth, takes God to witness that what he says is true. It is a religious act by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge his imposture or violated faith, or in other words to punish his perjury if he shall be guilty of it. l0 Toull. n. 343 a 348; Puff. book, 4, c. 2, s. 4; Grot. book 2, c. 13, s. 1; Ruth Inst. book 1, ch. 14, s. 1; 1 Stark. Ev. 80; Merl. Repert. Convention; Dalloz, Dict. Serment: Dur. n. 592, 593; 3 Bouv. Inst. n. 3180.

2. It is proper to distinguish two things in oaths; 1. The invocation by which the God of truth, who knows all things, is taken to witness. 2. The imprecation by which he is asked as a just and all-powerful being, to punish perjury.

3. The commencement of an oath is made by the party taking hold of the book, after being required by the officer to do so, and ends generally with the words,"so help you God," and kissing the book, when the form used is that of swearing on the Evangelists. 9 Car. & P. 137.

4. Oaths are taken in various forms; the most usual is upon the Gospel by taking the book in the hand; the words commonly used are, "You do swear that, " &c. "so help you God," and then kissing the book. The origin of this oath may be traced to the Roman law, Nov. 8, tit. 3; Nov. 74, cap. 5; Nov. 124, cap. 1; and the kissing the book is said to be an imitation of the priest's kissing the ritual as a sign of reverence, before he reads it to the people. Rees, Cycl. h. v.

5. Another form is by the witness or party promising holding up his right hand while the officer repeats to him,"You do swear by Almighty God, the searcher of hearts, that," &c., "And this as you shall answer to God at the great day."

6. In another form of attestation commonly called an affirmation, (q. v.) the officer repeats, "You do solemnly, sincerely, and truly declare and affirm, that," &c.

7. The oath, however, may be varied in any other form, in order to conform to the religious opinions of the person who takes it. 16 Pick. 154, 156, 157; 6 Mass. 262; 2 Gallis. 346; Ry. & Mo. N. P. Cas. 77; 2 Hawks, 458.

8. Oaths may conveniently be divided into promissory, assertory, judicial and extra judicial.

9. Among promissory oaths may be classed all those taken by public officers on entering into office, to support the constitution of the United States, and to perform the duties of the office.

10. Custom-house oaths and others required by law, not in judicial proceedings, nor from officers entering into office, may be classed among the assertory oaths, when the party merely asserts the fact to be true.

11. Judicial oaths, or those administered in judicial proceedings.

12. Extra-judicial oaths are those taken without authority of law, which, though binding in foro conscientiae, do not render the persons who take them liable to the punishment of perjury, when false.

13. Oaths are also divided into various kinds with reference to the purpose for which they are applied; as oath of allegiance, oath of calumny, oath ad litem, decisory oath, oath of supremacy, and the like. As to the persons authorized to administer oaths, see Gilp. R. 439; 1 Tyler, 347; 1 South. 297; 4 Wash. C. C. R. 555; 2 Blackf. 35.

14. The act of congress of June 1, 1789, 1 Story's L. U. S. p. 1, regulates the time and manner of administering certain oaths as follows:

§1. Be it enacted, &c., That the oath or affirmation required by the sixth article of the constitution of the United States, shall be administered in the form following, to wit, "I, A B, do solemnly swear or affirm, (as the case may be,) that I will support the constitution of the United States." The said oath or affirmation shall be administered within three days after the passing of this act, by any one member of the senate, to the president of the senate, and by him to all the members, and to the secretary; and by the speaker of the house of representatives, to all the members who have not taken a similar oath, by virtue of a particular resolution of the said house, and to the clerk: and in case of the absence of any member from the service of either house, at the time

prescribed for taking the said oath or affirmation, the same shall be administered to such member when he shall appear to take his seat.

15. - §2. That at the first session of congress after every general election of representatives, the oath or affirmation aforesaid shall be administered by any one member of the house of representatives to the speaker; and by him to all the members present, and to the clerk, previous to entering on any other business; and to the members who shall afterwards appear, previous to taking their seats. The president of the senate for the time being, shall also administer the said oath or affirmation to each senator who shall hereafter be elected, previous to his taking his seat; and in any future case of a president of the senate, who shall not have taken the said oath or affirmation, the same shall be administered to him by any one of the members of the senate.

16. - §3. That the members of the several state legislatures, at the next session of the said legislatures respectively, and all executive and judicial officers of the several states, who have been heretofore chosen or appointed, or, who shall be chosen or appointed before the first day of August next, and who shall then be in office, shall, within one month thereafter, take the same oath or affirmation, except where they shall have taken it before which may be administered by any person authorized by the law of the state, in which such office shall be holden, to administer oaths. And the members of the several state legislatures, and all executive and judicial officers of the several states, who shall be chosen or appointed after the said first day of August, shall, before they proceed to execute the duties of their respective offices, take the foregoing oath or affirmation, which shall be administered by the person or persons, who, by the law of the state, shall be authorized to ad- minister the oath of office; and the person or persons so administering the oath hereby required to be taken, shall cause a record or certificate thereof to be made, in the same manner as, by the law of the state, he or they shall be directed to record or certify the oath of office.

17. - §4. That all officers appointed or hereafter to be appointed, under the authority of the United States, shall, before they act in their respective offices, take the same oath or affirmation, which shall be administered by the person or persons who shall be authorized by law to administer to such officers their respective oaths of office; and such officers shall incur the same penalties in case of failure, as shall be imposed by law in case of failure in taking their respective oaths of office.

18. - §5. That the secretary of the senate, and the clerk of the house of repreentatives, for the time being, shall, at the time of taking the oath or affirmation aforesaid, each take an oath or affirmation in the words following, to wit; "I, A B, secretary of the senate, or clerk of the house of representatives (as the case may be) of the United

States of America, do solemnly swear or affirm, that I will truly and faithfully discharge the duties of my said office to the best of my knowledge and abilities."

19. There are several kinds of oaths, some of which are enumerated by law.

>20. Oath of calumny. This term is used in the civil law. It is an oath which a plaintiff was obliged to take that he was not actuated by a spirit of chicanery in commencing his action, but that he had bona fide a good cause of action. Poth. Pand. lib. 5, t. 16 and 17, s. 124. This oath is somewhat similar to our affidavit of a cause of action. Vide Dunlap's Adm. Pr. 289, 290.

21. No instance is known in which the oath of calumny has been adopted in practice in the admiralty courts of the United States; Dunl. Adm. Pr. 290; and by the 102d of the rules of the district court for the southern district of New York, the oath of calumny shall not be required of any party in any stage of a cause. Vide Inst. 4, 16, 1; Code, 2, 59, 2; Dig. 10, 2, 44; 1 Ware's R. 427.

22. Decisory oath. By this term in the civil law is understood an oath which one of the parties defers or refers back to the other, for the decision of the cause.

23. It may be deferred in any kind of civil contest whatever, in questions of possession or of claim; in personal actions and in real. The plaintiff may defer the oath to the defendant, whenever he conceives he has not sufficient proof of the fact which is the foundation of his claim; and in like manner, the defendant may defer it to the plaintiff when he has not sufficient proof of his defence. The person to whom the oath is deferred, ought either to take it or refer it back, and if he will not do either, the cause should be decided against him. Poth. on Oblig. P. 4, c. 3, s. 4.

24. The decisory oath has been practically adopted in the district court of the United States, for the district of Massachusetts, and admiralty causes have been determined in that court by the oath decisory; but the cases in which this oath has been adopted, have been where the tender has been accepted; and no case is known to have occurred there in which the oath has been refused and tendered back to the adversary. Dunl. Adm. Pr. 290, 291.

25. A judicial oath is a solemn declaration made in some form warranted by law, before a court of justice or some officer authorized to administer it, by which the person who takes it promises to tell the truth, the whole truth, and nothing but the truth, in relation to his knowledge of the matter then under examination, and appeals to God for his sincerity.

26. In the civil law, a judicial oath is that which is given in judgment by one party to another. Dig. 12, 2, 25.

27. Oath in litem, in the civil law, is an oath which was deferred to the complainant as to the value of the thing in dispute on failure of other proof, particularly when there was a fraud on the part of the defendant, and be suppressed proof in his possession. See Greenl. Ev. §348; Tait on Ev. 280; 1 Vern. 207; 1 Eq. Cas. Ab. 229; 1 Greenl. R. 27; 1 Yeates, R. 34; 12 Vin. Ab. 24. In general the oath of the party cannot, by the common law, be received to establish his claim, but to this there are exceptions. The oath in litem is admitted in two classes of cases: 1. Where it has been already proved, that the party against whom it is offered has been guilty of some fraud or other tortious or unwarrantable act of intermeddling with the complainant's goods, and no other evidence can be had of the amount of damages. As, for example, where a trunk of goods was delivered to a shipmaster at one port to be carried to another, and, on the passage, he broke the trunk open and rifled it of its contents; in an action by the owners of the goods against the shipmaster, the facts above mentioned having been proved aliunde, the plaintiff was held, a competent witness to testify as to the contents of the trunk. 1 Greenl. 27; and see 10 Watts, 335; 1 Greenl. Ev. §348; 1 Yeates, 34; 2 Watts, 220; 1 Gilb. Ev. by Lofft, 244. 2. The oath in litem is also admitted on the ground of public policy, where it is deemed essential to the purposes of justice. Tait on Ev. 280. But this oath is admitted only on the ground of necessity. An example may be mentioned of a case where a statute can receive no execution, unless the party interested be admitted as a witness. 16 Pet. 203.

28. A promissory oath is an oath taken, by authority of law, by which the party declares that he will fulfil certain duties therein mentioned, as the oath which an alien takes on becoming naturalized, that he will support the constitution of the United States: the oath which a judge takes that he will perform the duties of his office. The breach of this does not involve the party in the legal crime or punishment of perjury.

29. A suppletory oath in the civil and ecclesiastical law, is an oath required by the judge from either party in a cause, upon half proof already made, which being joined to half proof, supplies the evidence required to enable the judge to pass upon the subject. Vide Str. 80; 3 Bl. Com. 270.

30. A purgatory oath is one by which one destroys the presumptions which were against him, for he is then said to purge himself, when he removes the suspicions which were against him; as, when a man is in contempt for not attending court as a witness, he may purge himself of the contempt, by swearing to a fact which is an ample excuse. See Purgation.

OBEDIENCE. The performance of a command.

2. Officers who obey the command of their superiors, having jurisdiction of the subject-matter, are not responsible for their acts. A sheriff may therefore justify a trespass under an execution, when the court has jurisdiction, although irregularly issued. 3 Chit. Pr. 75; Ham. N. P. 48.

3. A child, an apprentice, a pupil, a mariner, and a soldier, owe respectively obedience to the lawful commands of the parent, the master, the teacher, the captain of the ship, and the military officer having command; and in case of disobedience, submission may be enforced by correction. (q. v.)

OBIT. That particular solemnity or office for the dead, which the Roman Ca- tholic church appoints to be read or performed over the body of a deceased member of that communion before interment; also the office which, upon the anniversary of his death, was frequently used as a commemoration or observance of the day. 2 Cro. 51; Dyer, 313.

OBLATION, eccl. law. In a general sense the property which accrues to the church by any right or title whatever; but, in a more limited sense, it is that which the priest receives at the altar, at the celebration of the eucharist. Ayl. Par. 392.

OBLIGATION. In its general and most extensive sense, obligation is synony- mous with duty. In a more technical meaning, it is a tie which binds us to pay or to do something agreeably to the laws and customs of the country in which the obligation is made. Just. Inst. 1. 3, t. 14. The term obligation also signifies the instrument or writing by which the contract is witnessed. And in another sense, an obligation still subsists, although the civil obligation is said to be a bond containing a penalty, with a condition annexed for the payment of money, performance of covenants or the like; it differs from a bill, which is generally without a penalty or condition, though it may be obligatory. Co. Litt. 172. It is also defined to be a deed whereby a man binds himself under a penalty to do a thing. Com. Dig. Obligation, A. The word obligation, in its most technical signification, ex vi termini, imports a sealed instrument. 2 S. & R. 502; 6 Verm. 40; 1 Blackf. 241; Harp. R. 434; 2 Porter, 19; 1 Bald. 129. See 1 Bell's Com. b. 3, p. 1, c. 1, page 293; Bouv. Inst. Index, h. t.

2. Obligations are divided into imperfect obligations, and perfect obligations.

3. Imperfect obligations are those which are not binding on us as between man and man, and for the non-performance of which we are accountable to God only; such as charity or gratitude. In this sense an obligation is a mere duty. Poth. Ob. art. Prel. n. 1.

4. A perfect obligation is one which gives a right to another to require us to give him something or not to do something. These obligations are either natural or moral, or they are civil.

5. A natural or moral obligation is one which cannot be enforced by action, but which is binding on the party who makes it, in conscience and according to natural justice. As for instance, when the action is barred by the act of limitation, a natural obligation is extinguished. 5 Binn. 573. Although natural obligations cannot be enforeed by action, they have the following effect: 1. No suit will lie to recover back what has been paid, or given in compliance with a natural obligation. 1 T. R. 285; 1 Dall. 184, 2. A natural obligation is a sufficient consideration for a new contract. 5 Binn. 33; 2 Binn. 591; Yelv. 41, a, n. 1; Cowp. 290; 2 Bl. Com. 445; 3 B. & P. 249, n.; 2 East, 506; 3 Taunt. 311; 5 Taunt. 36; Yelv. 41, b. note; 3 Pick. 207 Chit. Contr. 10.

6. A civil obligation is one which has a binding operation in law, vinculum juris, and which gives to the obligee the right of enforcing it in a court of justice; in other words, it is an engagement binding on the obligor. 12 Wheat. It:. 318, 337; 4 Wheat. R. 197.

7. Civil obligations are divided into express and implied, pure. and conditional, primitive and secondary, principal and accessory, absolute and alternative, determinate and indeterminate, divisible and indivisible, single and penal, and joint and several. They are also purely personal, purely real, and both real and mixed at the same time.

8. Express or conventional obligations are those by which the obligor binds himself in express terms to perform his obligation.

9. An implied obligation is one which arises by operation of law; as, for example, if I send you daily a loaf of bread, without any express authority, and you make use of it in your family, the law raises an obligation on your part to pay me the value of the bread.

10. A pure or simple obligation is one which is not suspended by any condition, either because it has been contacted without condition, or, having been contracted with one, it has been fulfilled.

11. A conditional obligation is one the execution of which is suspended by a condition which has not been accomplished, and subject to which it has been contracted.

12. A primitive obligation, which in one sense may also be called a principal obligation, is one which is contracted with a design that it should, itself, be the first fulfilled.

13. A secondary obligation is one which is contrasted, and is to be performed, in case the primitive cannot be. For example, if I sell you my house, I bind myself to give a title, but I find I cannot, as the title is in another, then my secondary obligation is to pay you damages for my non-perform- ance of my obligation.

14. A principal obligation is one which is the most important object of the engagement of the contracting parties.

15. An accessory obligation is one which is dependent on the principal obligation; for example, if I sell you a house and lot of ground, the principal obligation on my part is to make you a title for it; the accessory obligation is to deliver you all the title papers which I have relating to it; to take care of the estate till it is delivered to you, and the like.

16. An absolute obligation is one which gives no alternative to the obligor, but he is bound to fulfil it according to his engagement.

17. An alternative obligation is, where a person engages to do, or to give several things in such a manner that the payment of one will acquit him of all; as if A agrees to give B, upon a sufficient consideration, a horse, or one hundred dollars. Poth. Obl. Pt. 2, c. 3, art. 6, No.. 245.

18. In order to constitute an alternative obligation, it is necessary that two or more things should be promised disjunctively; where they are promised conjunctively, there are as many obligations as the things which are enumerated, but where they are in the alternative, though they are all due, there is but one obligation, which may be discharged by the payment of any of them.

19. The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that all belong to the creditor. Dougl. 14; 1 Lord Raym. 279; 4 N. S. 167. If one of the acts is prevented by the obligee, or the act of God, the obligor is discharged from both. See 2 Evans' Poth. Ob. 52 to 54; Vin. Ab. Condition, S b; and articles Conjunctive; Disjunctive; Election.

20. A determinate obligation, is one which has for its object a certain thing; as an obligation to deliver a certain horse named Bucephalus. In this case the obligation can only be discharged by delivering the identical horse.

21. An indeterminate obligation is one where the obligor binds himself to deliver one of a certain species; as, to deliver a horse, the delivery of any horse will discharge the obligation.

22. A divisible obligation is one which being a unit may nevertheless be lawfully divided with or without the consent of the parties. It is clear it may be divided by consent, as those who made it, may modify or change it as they please. But some obligations may be divided without the consent of the obligor; as, where a tenant is bound to pay two hundred dollars a year rent to his landlord, the obligation is entire, yet, if his landlord dies and leaves two sons, each will be entitled to one hundred dollars; or if the landlord sells one undivided half of the estate yielding the rent, the purchaser will be entitled to receive one hundred dollars, and the seller the other hundred. See Apportionment.

23. An indivisible obligation is one which is not susceptible of division; as, for example, if I promise to pay you one hundred dollars, you cannot assign one half of this to another, so as to give him a right of action against me for his share. See Divisible.

24. A single obligation is one without any penalty; as, where I simply promise to pay you one hundred dollars. This is called a single bill, when it is under seal.

25. A penal obligation is one to which is attached a penal clause which is to be enforeed, if the principal obligation be not performed. In general equity will relieve against a penalty, on the fulfilment of the principal obligation. See Liquidated damages; Penalty.

26. A joint obligation is one by which several obligors promise to the obligee to perform the obligation. When the obligation is only joint and the obligors do not promise separately to fulfil their engagement they must be all sued, if living, to compel the performance; or, if any be dead, the survivors must all be sued. See Parties to actions.

27. A several obligation is one by which one individual, or if there be more, several individuals bind themselves separately to perform the engagement. In this case each obligor may be sued separately, and if one or more be dead, their respective executors may be sued. See Parties to actions.

28. The obligation is, purely personal when the obligor binds himself to do a thing; as if I give my note for one thousand dollars, in that case my person only is bound, for my property is liable for the debt only while it belongs to me, and, if I lawfully transfer it to a third person, it is discharged.

29. The obligation is personal in another sense, as when the obligor binds himself to do a thing, and he provides his heirs and executors shall not be bound; as, for

example, when he promises to pay a certain sum yearly during his life, and the payment is to cease at his death.

30. The obligation is real when real estate, and not the person, is liable to the obligee for the performance. A familiar example will explain this: when an estate owes an easement, as a right of way, it is the thing and not the owner who owes the easement. Another instance occurs when a person buys an estate which has been mortgaged, subject to the mortgage, he is not liable for the debt, though his estate is. In these cases the owner has an interest only because he is seised of the servient estate, or the mortgaged premises, and he may discharge himself by abandoning or parting with the property.

31. The obligation is both personal and real when the obligor has bound himself, and pledged his estate for the fulfilment of his obligation.

OBLIGATION OF CONTRACTS. By this expression, which is used in the constitution of the United States, is meant a legal and not merely a moral duty. 4 Wheat. 107. The obligation of contracts consists in the necessity under which a man finds himself to, do, or to refrain from doing something. This obligation consists generally both in foro legis and in foro conscientice, though it does at times exist in one of these only. It is certainly of the first, that in foro legis, which the framers of the constitution spoke, when they prohibited the passage of any law impairing the obligation of contract. 1 Harr. Lond. Rep. Lo. 161. See Impairing the obligation of contracts.

OBLIGEE or CREDITOR, contracts. The person in favor of whom some obligation is contracted, whether such obligation be to pay money, or to do, or not to do something. Louis. Code, art. 3522, No. 11.

2. Obligees are either several or joint, an obligee is several when the obligation is made to him alone; obligees are joint when the obligation is made to two or more, and, in that event, each is not a creditor for his separate share, unless the nature of the subject or the particularity of the expression in the instrument lead to a different conclusion. 2 Evans' Poth. 56; Dyer 350 a, pl. 20; Hob. 172; 2 Brownl. 207 Yelv, 177; Cro. Jac. 251.

OBLIGOR or DEBTOR. The person who has engaged to perform some obligation. Louis. Code, art. 3522, No. 12. The word obligor, in its more technical signification, is applied to designate one who makes a bond.

2. Obligors are joint and several. They are joint when they agree to pay the obligation jointly, and then the survivors only are liable upon it at law, but in equity the assets of a deceased joint obligor may be reached. 1. Bro. C. R. 29; 2 Ves. 101; Id. 371. They

are several when one or more bind themselves each of them separately to perform the obligation. In order to become an obligor, the party must actually, either himself or by his attorney, enter into the obligation, and execute it as his own. If a man sign and seal a bond as his own, and deliver it, he will be bound by it, although his name be not mentioned in the bond. 4 Stew. R. 479; 4 Hayw R. 239; 4 McCord, R. 203; 7 Cowen; R. 484; 2 Bail. R. 190; Brayt. 38; 2 H. & M. 398; 5 Mass. R. 538; 2 Dana, R. 463; 4 Munf. R. 380; 4 Dev. 272. When the obligor signs between the penal part and the condition, still the latter will be a part of the instrument. 2 Wend. Rep. 345; 3 H. & M. 144.

3. The execution of a bond by the obligor with a blank, and a verbal authority to fill it up, and it is afterwards filled up, does not bind the obligor, unless it is redelivered, or acknowledged or adopted. 1 Yerg. R. 69 149; 1 Hill, Rep. 267; 2 N. & M. 125; 2 Brock. R. 64; 1 Ham. R. 368; 2 Dev. R. 369 6 Gill. & John. 250; but see contra, 17 Serg. & R. 438; and see 6 Serg. & Rawle, 308; Wright, R. 742.

OBREPTION, civil law. Surprise. Dig. 3,5,8,1. Vide Surprise.

OBSCENITY, crim. law. Such indecency as is calculated to promote the violation of the law, and the general corruption of morals.

2. The exhibition of an obscene picture is an indictable offence at common law, although not charged to have been exhibited in public, if it be averred that the picture, was exhibited to sundry persons for money. 2 Serg. & Rawle, 91.

TO OBSERVE, civil law. To perform that which has been prescribed by some law or usage. Dig., 1, 3, 32.

OBSOLETE. This term is applied to those laws which have lost their efficacy, without being repealed,

2. A positive statute, unrepealed, can never be repealed by non-user alone. 4 Yeates, Rep. 181; Id. 215; 1 Browne's Rep. Appx. 28; 13 Serg. & Rawle, 447. The disuse of a law is at most only presumptive evidence that society has consented to such a repeal; however this presumption may operate on an unwritten law, it cannot in general act upon one which remains as a legislative act on the statute book, because no presumption can set aside a certainty. A written law may indeed become obsolete when the object to which it was intended to apply, or the occasion for which it was enacted, no longer exists. 1 P. A. Browne's R. App. 28. "It must be a very strong case," says Chief Justice Tilghman, "to justify the court in deciding, that an act standing on the statute book, unrepealed, is obsolete and invalid. I will not say that such case may not exist-where there has been a non-user for a great number of years-

where, from a change of times and manners, an ancient sleeping statute would do great mischief, if suddenly brought into action-where a long, practice inconsistent with it has prevailed, and, specially, where from other and latter statutes it might be inferred that in the apprehension of the legislature, the old one was not in force." 13 Serg. & Rawle, 452; Rutherf. Inst. B. 2, c. 6, s. 19; Merl. Repert. mot Desuetude.

OBSTRUCTING PROCESS. crim. law. The act by which one or more persons attempt to prevent, or do prevent, the execution of lawful process.

2. The officer must be prevented by actual violence, or by threatened violence, accompanied by the exercise of force, or by those having capacity to employ it, by which the officer is prevented from executing his writ; the officer is not required, to expose his person by a personal conflict with the offender. 2 Wash. C. C. R. 169. See 3 Wash. C. C. R. 335.

3. This is in offence against public justice of a very high and presumptuous nature; and more particularly so where the obstruction is of an arrest upon criminal process: a person opposing an arrest upon criminal process becomes thereby particeps criminis; that is, an accessary in felony, and a principal in high treason. 4 Bl. Com. 128; 2 Hawk. c. 17, s. 1; l. Russ. on Cr. 360: vide Ing. Dig. 159; 2 Gallis. Rep. 15; 2 Chit. Criminal Law, 145, note a.

OCCUPANCY. The taking possession of those things corporeal which are without an owner, with an intention of appropriating them to one's own use. Pothier defines it to be the title by which one acquires property in a thing which belongs to nobody, by taking possession of it, with design of acquiring. Tr. du Dr. de Propriete n. 20. The Civil Code of Lo. art. 3375, nearly following Pothier, defines occupancy to be "a mode of acquiring property by which a thing, which belongs to nobody, becomes the property of the person who took possession of it, with an intention of acquiring a right of ownership in it."

2. To constitute occupancy there must be a taking of a thing corporeal, belonging to nobody with an intention of becoming the owner of it.

3. - 1. The taking must be such as the nature of the time requires; if, for example, two persons were walking on the sea-shore, and one of them should perceive a precious stone, and say he claimed it as his own, he would, acquire no property in it by occupancy, if the other seized it first.

4. - 2. The thing must be susceptible of being possessed; an incorporeal right, therefore, as an annuity, could not be claimed by occupancy.

5. - 3. The thing taken must belong to nobody; for if it were in the possession of another the taking would be larceny, and if it had been lost and not abandoned, the taker would have only a qualified property in it, and would hold the possession for the owner.

6. - 4. The taking must have been with an intention of becoming the owner; if therefore a person non compos mentis should take such a thing he would not acquire a property in it, because he had no intention to do so. Co. Litt. 41, b.

7. Among the numerous ways of acquiring property by occupancy, the following are considered as the most usual.

8. - 1. Goods captured in war, from public enemies, were, by the common law, adjudged to belong to the captors. Finch's law, 28; 178; 1 Wills. 211; 1 Chit. Com. Law, 377 to 512; 2 Wooddes. 435 to 457; 2 Bl. Com. 401. But by the law of nations such things are now considered as primarily vested in the sovereign, and as belonging to individual captors only to the extent and under such regulations as positive laws may prescribe. 2 Kent's Com. 290. By the policy of law, goods belonging to an enemy are considered as not being the property of any one. Lecon's Elem. du Dr. Rom. §348; 2 Bl. Com. 401.

9. - 2. When movables are casually lost by the owner and unreclaimed, or designedly abandoned by him, they belong to the fortunate finder who seizes them, by right of occupancy.

10. - 3. The benefit of the elements, the light, air, and water, can only be appropriated by occupancy.

11. - 4. When animals ferae naturae are captured, they become the property of the occupant while he retains the possession; for if an animal so taken should escape, the captor loses all the property he had in it. 2 Bl. Com. 403.

12. - 5. It is by virtue of his occupancy that the owner of lands is entitled to the emblements.

13. - 6. Property acquired by accession, is also grounded on the right of occupancy.

14. - 7. Goods acquired by means of confusion may be referred to the same right.

15. - 8. The right of inventors of machines or of authors of literary productions is also founded on occupancy. Vide, generally, Kent, Com. Lect. 36; 16 Vin. Ab. 69; Bac.

Ab. Estate for life and occupancy; 1 Brown's Civ. Law, 234; 4 Toull. n. 4; Lecons du Droit Rom. §342, et seq.; Bouv. Inst. Index, h. t.

OCCUPANT or OCCUPIER. One who has the actual use or possession of a thing.

2. He derives his title of occupancy either by taking possession of a thing without an owner, or by purchase, or gift of the thing from the owner, or it descends to him by due course of law.

3. When the occupiers of a house are entitled to a privilege in consequence of such occupation, as to pass along a way, to enjoy a pew, and the like, a person who occupies a part of such house, however small, is entitled to some right, and cannot be deprived of it. 2 B. & A. 164; S. C. Eng. C. L. R. 50; 1 Chit. Pr. 209, 210; 4 Com. Dig. 64; 5 Com. Dig. 199.

OCCUPATION. Use or tenure; as, the house is in the occupation of A B. A trade, business or mystery; as the occupation of a printer. Occupancy. (q. v.)

2. In another sense occupation signifies a putting out of a man's freehold in time of war. Co. Litt. s. 412. See Dependeney; Posession.

OCCUPAVIT. The name of a writ, which lies to recover the possession of lands, when they have been taken from the possession of the owner by occupation. (q. v.) 3 Tho. Co. Litt. 41.

OCCUPIER. One who is in the enjoyment of a thing.

2. He may be the occupier by virtue of a lawful contract, either express or implied, or without any contract. The occupier is, in general, bound to make the necessary repairs to premises he occupies the cleansing and repairing of drains and sewers, therefore, is prima facie the duty of him who occupies the premises. 3 Q. B. R. 449; S. C. 43 Eng. C. L. R. 814.

OCHLOCRACY. A government where the authority is in the hands of the multitude; the abuse of a democracy. Vaumene, Dict. du Language Politique.

ODHALL RIGHT. The same as allodial.

OF COURSE. That which may be done, in the course of legal proceedings, without making any application to the court; that which is granted by the court without further inquiry, upon its being asked; as, a rule to plead is a matter of course.

OFFENCE, crimes. The doing that which a penal law forbids to be done, or omitting to do what it commands; in this sense it is nearly synonymous with crime. (q. v.) In a more confined sense, it may be considered as having the same meaning with misdemeanor, (q.v.) but it differs from it in this, that it is not indictable, but punishable summarily by the forfeiture of a penalty. 1 Chit. Prac. 14.

OFFER, contracts. A proposition to do a thing.

2. An offer ought to contain a right, if accepted, of compelling the fulfilment of the contract, and this right when not expressed, is always implied.

3. By virtue of his natural liberty, a man may change his will at any time, if it is not to the injury of another; he may, therefore, revoke or recall his offers, at any time before they have been accepted; and, in order to deprive him of this right, the offer must have been accepted on the terms in which it was made. 10 Ves. 438; 2 C. & P. 553.

4. Any qualification of, or departure from those terms, invalidates the offer, unless the same be agreed to by the party who made it. 4 Wheat. R. 225; 3 John. R. 534; 7 John. 470; 6 Wend. 103.

5. When the offer has been made, the party is presumed to be willing to enter into the contract for the time limited, and, if the time be not fixed by the offer, then until it be expressly revoked, or rendered nugatory by a contrary presumption. 6 Wend. 103. See 8 S. & R. 243; 1 Pick. 278; 10 Pick. 326; 12 John. 190; 9 Porter, 605; 1 Bell's Com. 326, 5th ed.; Poth. Vente, n. 32; 1 Bouv. Inst. n. 577, et seq.; and see Acceptance of contracts; Assent; Bid.

OFFICE. An office is a right to exercise a public function or employment, and to take the fees and emoluments belonging to it,. Shelf. on Mortm. 797; Cruise, Dig. Index, h. t.; 3 Serg. & R. 149.

2. Offices may be classed into civil and military.

3. - 1. Civil offices may be classed into political, judicial, and ministerial.

4. - 1. The political offices are such as are not connected immediately with the administration of justice, or the execution of the mandates of a superior officer; the office of the president of the United States, of the heads of departments, of the members of the legislature, are of this number.

5. - 2. The judicial offices are those which relate to the administration of justice, and which must be exercised by persons of sufficient skill and experience in the duties which appertain to them.

6. - 3. Ministerial offices are those which give the officer no power to judge of the matter to be done, and require him to obey the mandates of a superior. 7 Mass. 280. See 5 Wend. 170; 10 Wend. 514; 8 Verm. 512; Breese, 280. It is a general rule, that a judicial office cannot be exercised by deputy, while a ministerial may.

7. In the United, States, the tenure of office never extends beyond good behaviour. In England, offices are public or private. The former affect the people generally, the latter are such as concern particular districts, belonging to private individuals. In the United States, all offices, according to the above definition, are public; but in another sense, employments of a private nature are also called offices; for example, the office of president of a bank, the office of director of a corporation. For the incompatibility of office, see Incompatibility; 4 S. & R. 277; 4 Inst. 100; Com. Dig. h. t., B. 7; and vide, generally, 3 Kent, Com. 362; Cruise, Dig. tit. 25; Ham. N. P. 283; 16 Vin. Ab. 101; Ayliffe's Parerg. 395; Poth. Traite des Choses, §2; Amer. Dig. h. t.; 17 S. & R. 219.

8. - 2. Military offices consist of such as are granted to soldiers or naval officers.

9. The room in which the business of an officer is transacted is also called an office, as the land office. Vide Officer.

OFFICE BOOK, evidence. A book kept in a public office, not appertaining to a court, authorized by the law of any state.

2. An exemplification, (q. v.) of any such office book, when authenticated under the act of congress of 27th March, 1804, Ingers' Dig. 77, is to have such faith and credit, given to it in every court and office within the United States, as such exemplification has by law or usage in the courts or offices of the state from whence the same has been taken.

OFFICE COPY. A transcript of a record or proceeding filed in an office established by law, certified under the seal of the proper officer.

OFFICE FOUND, Eng. law. When an inquisition is made to the king's use of anything, by virtue of office of him who inquires, and the inquisition is found, it is said to be office found.

OFFICE, INQUEST OF. An examination into a matter by an officer in virtue of his office. Vide Inquisition.

OFFICER. He who is lawfully invested with an office.

2. Officers may be classed into, 1. Executive; as the president of the United States of America, the several governors of the different states. Their duties are pointed out in the national constitution, and the constitutions of the several states, but they are required mainly to cause the laws to be executed and obeyed.

3. - 2. The legislative; such as members of congress; and of the several state legislatures. These officers are confined in their duties by the constitution, generally to make laws, though sometimes in cases of impeachment, one of the houses of the legislature exercises judicial functions, somewhat similar to those of a grand jury by presenting to the other articles of impeachment; and the other house acts as a court in trying such impeachments. The legislatures have, besides the power to inquire into the conduct of their members, judge of their elections, and the like.

4. - 3. Judicial officers; whose duties are to decide controversies between individuals, and accusations made in the name of the public against persons charged with a violation of the law.

5. - 4. Ministerial officers, or those whose duty it is to execute the mandates, lawfully issued, of their superiors.

6. - 5. Military officers, who have commands in the army; and

7. - 6. Naval officers, who are in command in the navy.

8. Officers are required to exercise the functions which belong to their respective offices. The neglect to do so, may, in some cases, subject the offender to an indictment; 1 Yeates, R. 519; and in others, he will be liable to the party injured. 1 Yeates, R. 506.

9. Officers are also divided into public officers and those who are not public. Some officers may bear both characters; for example, a clergyman is a public officer when he acts in the performance of such a public duty as the marriage of two individuals; 4 Conn. 209; and he is merely a private person when he acts in his more ordinary calling of teaching his congregation. See 4 Conn. 134; 1 Apple. 155.

OFFICIAL, civil and canon laws. In the ancient civil law, the person who was the minister of, or attendant upon a magistrate, was called the official.

2. In the canon law, the person to whom the bishop generally commits the charge of his spiritual jurisdiction, bears this name. Wood's Inst. 30, 505; Merl. Repert. h. t.

OFFICINA JUSTITIAE, Eng. law. The chancery is so called, because all writs issue from it, under the great seal returnable into the courts of common law.

OFFICIO, EX. By virtue of one's office. Vide Ex officio; 3 Bl. Com. 447.

OHIO. The name of one of the new states of the United States of America. It was admitted into the Union by virtue of the act of congress, entitled "An act to enable the people of the eastern division of the territory north-west of the river Ohio, to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes," approved, May 30, 1802, 2 Story's L. U. S. 869; by which it is enacted,

§1. That the inhabitants of the eastern division of the territory north-west of the river Ohio, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever.

2. - §2. That the said state shall consist of all the territory included within the following boundaries, to wit: Bounded on the east by the Pennsylvania line, on the south by the Ohio river, to the month of the Great Miami river, on the west by the line drawn due north from the mouth of the Great Miami aforesaid, and on the north by an east and west line dawn through the southerly extreme of lake Michigan, running east, after intersecting the due north line aforesaid, from the mouth of the Great Miami until it shall intersect lake Erie, or the territorial line, and thence, with the same, through lake Erie, to the Pennsylvania line aforesaid: Provided, That congress shall be at liberty, at any time hereafter, either to attach all the territory lying east of the line to be drawn due north from the mouth of the Miami aforesaid to the territorial line, and north of an east and west line drawn through the southerly extreme of lake Michigan, running east as aforesaid to lake Eric, to the aforesaid state, or dispose of it otherwise, in conformity to the fifth Article of compact between the original states and the people and states to be formed are the territory north-west of the river Ohio.

3. By virtue of the authority given them by the act of congress, the people of the eastern division of said territory met in convention at Chillicothe; on Monday, the, first day of November, 1802, by which they did ordain and establish the constitution and form of government, and did mutually agree with each other to form themselves into a free and independent state, by the name of The State of Ohio. This constitution has been superseded by the present one, which was adopted in 1851. The powers of

the government are separated into three distinct branches, the legislative, the executive, and the judicial.

4. - 1st. By article 2, the legislative department is constituted as follows:

5. - §1. The legislative power of this state shall be vested in a general assembly, which shall consist of a senate, and house of representatives.

6. - §2. Senators and representatives shall be elected biennally, by the electors in the respective counties or districts, on the second Tuesday of October; their term of office shall commence on the first, day of January next thereafter, and continue two years.

7. - §3. Senators and representatives shall have resided in their respective counties, or districts, one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this state.

8. - §4. No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to, or have a seat in, the general assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia.

9. - §5. No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state; nor shall any person, holding public money for dishursement, or otherwise, have a seat in the general assembly, until, he shall have accounted for, and paid such money into the treasury.

10. - §6. All regular sessions of the general assembly shall commence on the first Monday of January, biennially. The first session, under this constitution, shall commence on the first Monday of January, one thousand eight hundred and fifty-two.

11. - §7. The style of the laws of this state, shall be, "Be it enacted by the General Assembly of the State of Ohio."

12. - §8. The apportionment of this state for members of the general assembly, shall be made every ten years, after the year one thousand eight hundred and fifty-one, in the following manner: The whole population of the state, as ascertained by the federal census, or in such other mode as the general assembly may direct, shall be divided by the number: one hundred,: and the quotient shall be the ratio of representation in the house of representatives for ten years next succeeding such apportionment.

13. - §9. Every county, having a popuIation equal to one-half of said ratio, shall be entitled to one representative; every county, containing said ratio, and three-fourths

over, shall be entitled to two representantives; every county, containing three times said ratio, shall be entitled to three representatives: and so on, requiring after the first two, an entire ratio for each additional representative.

14. - §10. When any county shall have a fraction above the ratio, so large, that being multiplied by five, the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratios, among the several sessions of the decennial period, in the following manner: If there be only one ratio, a representative shall be allotted to the fifth session of the decennial period; if there are two ratios, a representative shall be allotted to the fourth and third sessions, respectively if three, to the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

15. - §11. Any county, forming with another county or counties, a representative district, during one decennial period, if it have acquired sufficient population at the next decennial period; shall be entitled to a separate representation, if there shall be left, in the district from which it shall have been separated, or population sufficient for a representative; but no such change shall be made, except at the regular decennial period for the apportionment of representatives.

16. - §12. If, in fixing any subsequent ratio, a county, previously entitled to a separate representation, shall have less than the number required by the new ratio for a representative, such county shall be attached to the county adjoining it; having the least number of inhabitants; and the representation of the district, so formed, shall be determined as herein provided.

17. - §13. The ratio for a senator shall, forever hereafter, be ascertained, by dividing the whole population of the state by the number thirty-five.

18. - §14. The same rule shall be applied, in apportioning the fractions of senatorial districts, and in annexing districts, which may hereafter have less than three-fourths of a senatorial ratio, as are applied to representative districts.

19. - §15. Any county forming part of a senatorial district, having acquired a population equal to a full senatorial ratio, shall be made a separate senatorial district, at any regular decennial apportionment, if a full senatorial ratio shall be left in the district from which it shall be taken.

20. - §16. For the first ten years, after the year one thousand eight hundred and fifty-one, the apportionment of representatives shall be as provided, in the schedule, and no change shall ever be made in the principles of representation, as herein established, or in the senatorial districts, except as above provided. All territory, belonging to a

county at the time of any appor- tionment, shall, as to the right of representation and suffrage, remain an integral part thereof, during the decennial period.

21. - §17. The governor, auditor, and secretary of state, or any two of them, shall, at least six months prior to the October election, in the year one thousand eight hundred and sixty-one, and, at each decennial period thereafter, ascertain and determine the ratio of representation, according to the decennial census, the number of representatives and senators each county or district shall be entitled to elect, and for what years, within the next ensuing ten years, and the governor shall cause the same to be published, in such manner as shall be directed by law.

22.- §18. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

23. - §19. No person shall be elected or appointed to any office in this state, unless he possess, the qualifications of an elector.

24. - 3d. By article 3, the executive department is constituted as follows:

25. - §1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, and an attorney general, who shall be chosen by the electors of the state, on the second Tuesday of October, and at the places of voting for members of the general assembly.

26. - §2. The governor, lieutenant governor, Secretary of State, treasurer, and attorney general, shall hold their offices for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their suceessors are elected and qualified.

27. - §3. The returns of every election for the officers, named in the foregoing section, shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the resident of the senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each house of the general assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the same office, one of them shall be chosen, by the joint vote of both houses.

28. - §4. Should there be no session of the general assembly in January next after an election for any of the officers aforesaid, the returns of such election shall be made to the secretary of state, and opened, and the result declared by the governor, in such manner as may be provided by law.

29. - §5. The supreme executive power of this state shall be vested in the governor.

30. - §6. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respeceive office's; and shall see that the laws are faithfully executed.

31. - §7. He shall communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient.

32. - §8. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they have been convened.

33. - §9. In case of disagreement between the two houses, in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof.

34. - §10. He shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States.

35. - §11. He shall have power, after conviction, to grant reprieves, commutatious, and pardons, for all crimes and offences, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the general assembly, at its next meeting, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the gene- ral assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor.

36. - §12. There shall be a seal of the state, which shall be kept by the governor and used by him officially; and shall be called "The Great Seal of the State of Ohio."

37. - §13. All grants and commissions shall be issued in the name, and by the authority, of the State of Ohio; sealed with the great seal signed, by the governor, and countersigned by the secretary of state.

>38. - §14. No member of congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of governor, except as herein provided.

39. - §15. In case of the death, impeachment, resignation, removal, or other disability of the governor, the powers and duties of the office, for the resi-due of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

40. - §16. The lieutenant governor shall be president of the senate, but shall vote only when the, senate is equally divided; and in case of him absence, or impeachment, or when he shall exercise the office of governor, the senate shall choose a president pro tempore.

41. - §17. If the lieutenant governor, while executing the office of governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the president of the senate shall act as govemor, until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the speaker of the house of representatives.

42. - §18. Should the office of auditor, treasurer, secretary, or attorney general, become vacant for any of the causes specified in the fifteenth section of this article, the governor shall fill the vacancy until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election, at the first general election that occurs, more than thirty days after it shall have happened; and the person chosen shall hold the office for the full term fixed in the second section of this article.

43. - §19. The officers mentioned in this article, shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor dimininshed during the period for which they shall have been elected.

44. - §20. The officers of the executive department, and of the public state institutions, shall, at least five days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports, with his message, to the general assembly.

45. - 4th. By article 4, the judicial department is constituted as follows: 46.-SS 1. The judicial power of the state shall be vested, in a supreme court, in district courts, courts of common pleas, courts of probate, justices of the peace, and in such other courts, inferior to the supreme court, in one or more counties, as the general assembly, may from time to time establish.

47. - §2. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, or to pronouuce a decision. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, and procedendo and such appellate jurisdiction as may be provided by law. It shall hold at least one term in each year, at the seat of government, and such other terms, at the seat of government, or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large.

48. - §3. The state shall be divided into nine common pleas districts, of which the county of Hamilton shall constitute one, of compact territory, and bounded by county lines; and each of said districts, consisting of three or more counties, shall be subdivided into three parts, of compact territory, bounded by county lines, and as nearly equal, in population as practicable; in each of which, one judge of the court of common pleas for said district, and residing therein, shall be elected by the electors of said subdivision. Courts of common pleas shall be held, by one or more of these judges, in every county in the district, as often as may be provided by law; and more than one court, or sitting thereof, may be held at the same time in each district.

49. - §4 . The jurisdiction of the courts of common pleas, and of the judges thereof, shall be fixed by law.

50. - §5. District courts shall be composed of the judges of the court of common pleas of the respective districts, and one of the judges of the supreme court, any three of whom shall be a quorum, and shall be held in each county therein, at least once in each year; but, if it shall be found inexpedient to hold such court annually, in each county, of any district, the general assembly may, for such district, provide that said court shall hold at least three annual sessions therein, in not less than three places: Provided, that the general assembly may, by law, authorize the judges of each district to fix the times of holding the courts therein.

51. - §6. The district court shall have like original jurisdiction with the supreme court, and such appellate jurisdiction as may be provided by law.

52. - §7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elec-ted by the voters of the county, who shall hold his office for the term of three years, and shall receive such

compensation, payable out of the county treasury, or by fees, or both; as shall be provided by law.

53. - §8. The probate court shall have jurisdiction in probate and testa-mentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, and such jurisdiction in habeas corpus, the issuing of marriage licenses, and for the sale of land by executors, aclministrators and guardians, and such other jurisdiction, in any county, or counties, as may be provided by law.

54. - §9. A competent number of justices of the peace shall be elected, by the electors, in each township in the several counties. Their term, of office shall be three years, and their powers and duties shall be regulated by law.

55. - §10. All judges, other than those provided for in this constitution, shall be elected by the electors of the judicial district for which they may be created, but not for a longer term of office than five years.

56. - §11. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold for the term of one year, one for two years, one for three years, one for four years, and one for five years; and, at all subsequent elections, the term sf each of said judges shall be for five years.

57. - §12. The judges of the courts of common pleas shall, while in office, reside in the district for which they, are elected; and their term of office shall be for five years.

58. - §13. In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and quali-fied; and such successor shall be elected for the unexpired term, at the first annual election that occurs more than thirty, days after the vacancy shall have happened.

59. - §14. The judges of the supreme court, and of the court of common pleas shall, at stated times, receive for their services, such compensation as may be provided by law, which shall not be diminished or increased, during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or the United States. All votes for either of them, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, shall be void.

60. - §15. The general assembly may increase or diminish the number of the judges of the supreme court, the number of the districts of the court of common pleas, the

number of judges in any district; change the districts, or the subdivisions thereof, or establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition, or diminution, shall vacate the office of any judge.

61. - §16. There shall be elected in each county by the electors thereof, one clerk of the court of common pleas, who shall hold his office for the term of three years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be clerk of all other courts of record held therein; but the general assembly may provide by law, for the election of a clerk, with a like term of office, for each or any other of the courts of record, and may authorize the judge of the probate court to perform the duties of clerk for his court, under such regulations as may be directed by law. Clerks of courts shall be removable for such cause, and in such manner, as shall be prescribed by law.

62. - §17. Judges may be removed from office, by concurrent resolution of both houses of the general assembly, if two-thirds of the members elected to each house concur therein; but no such removal shall be made, except upon complaint, the substance of which shall be entered on the journal, nor until the party charged shall have had notice thereof, and an opportunity to be heard.

63. - §18. The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise as may be directed by law.

64. - §19. The general assembly may establish courts of conciliation, and pre- scribe their powers and duties; but such courts shall not render final judgment in any case, except upon submission, by the parties of the matter in dispute, and their agreement to abide such judgment.

65. - §20. The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on in the name and by the authority of the state ofOhio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio."

OLD AGE. This needs no definition. Sometimes old age is the cause of loss of memory and of the powers of the mind, when the party may be found non compos mentis. See Aged witness; Senility.

OLD NATURA BREVIUM. The title of an old English book, (usually cited Vet. N. B.) so called to distinguish it from the F. N. B. It contains the writs most in use in the reign of Edward III, together with a short comment on the application and properties of each of them,

OLD TENURES. The title of a small tract, which, as its title denotes, contains an account of the various tenures by which land was holden in the reign of Edward III. This tract was published in 1719, with notes and additions, with the eleventh edition of the First Institutes, and reprinted in 8vo. in 1764, by Serjeant Hawkins, in a Selection of Coke's Law Tracts.

OLERON LAWS. The name of a maritime code. Vide Laws of Oleron.

OLIGARCHY. This name is given to designate the power which a few citizens of a state have usurped, which ought by the constitution to reside in the people. Among the Romans the government degenerated several times into an oligarchy; for example, under the decemvirs, when they became the only magistrates in the commonwealth.

OLOGRAPH. When applied to wills or testaments, this term signifies that they are wholly written by the testator himself. Vide Civil, Code of Louisiana, art. 1581: Code Civil, 970; 6 Toull. n. 357; 1 Stuart's (L. C.) R. 327; 2 Bouv. Inst. n. 2139; and see Testament, Olographic; Will, Olographic.

OMISSION. An omission is the neglect to perform what the law requires.

2. When a public law enjoins on certain officers duties to be performed by them for the public, and they omit to perform them, they may be indicted: for example, supervisors of the highways are required to repair the public roads; the neglect to do so will render them liable to be indicted.

3. When a nuisance arises in consequence of an omission, it cannot be abated if it be a private nuisance without giving notice, when such notice can be given. Vide Branches; Commission; Nuisance; Trees.

OMNIA PERFORMAVIT. A good plea in bar, where all the covenants are in the affirmative. 1 Greenl. R. 189.

OMNIUM, mercant. law. A term used to express the aggregate value of the different stocks in which a loan is usually funded. 2 Esp. Rep. 361; 7 T. R. 630.

ONERARI NON. The name of a plea by which the defendant says that he ought not to be charged. lt is used in an action of debt. 1 Saund. 290, n. a.

ONERIS FERENDI, civil law. The name of a servitude by which the wall or pillar of one house is bound to sustain the weight of the buildings of the neighbor.

2. The owner of the servient building is bound to repair and keep it sufficiently strong for the weight it has to bear. Dig. 8, 2, 23; 2 Bouv. Inst. n. 1627.

ONEROUS CAUSE, civil law., A valuable consideration.

ONEROUS CONTRACT, civil law. One made for a consideration given or promised, however small. Civ. Code of Lo. art. 1767.

ONEROUS GIFT, civil law. The gift of a thing subject to certain charges which the giver has imposed on the donee. Poth. h. t.

ONUS PROBANDI, evidence. The burden of the proof.

2. It is a general rule, that the party who alleges the affirmative of any proposition shall prove it. It is also a general rule that the onus probandi lies. upon the party who seeks to support his case by a particular fact of which he is supposed to be cognizant; for example, when to a plea of infancy, the plaintiff replies a promise after the defendant had attained his age, it is sufficient for the plaintiff to prove the promise and it lies on the defen-dant to show that he was not of age at the time. 1 Term. Rep. 648. But where the negative, involves a criminal omission by the party, and consequently where the law, by virtue of the general principle, presumes his innocence, the affirmative of the fact is also presumed. Vide 11 Johns. R. 513; 19 Johns. R. 345; 9 M. R. 48; 3 N. S. 576.

3. In general, wherever the law presumes the affirmative, it lies on the party who denies the fact, to prove the negative; as, when the law raises a presumption as to the continuance of life; the legitimacy of children born in wedlock; or the satisfaction of a debt. Vide. generally, 1 Phil. Ev. 156: 1 Stark. Ev. 376; Roscoe's Civ. Ev. 51 Roscoe's Cr. Ev. 55; B. P. 298; 2 Gall. 485; 1 McCord, 573; 12 Vin. Ab. 201; 4 Bouv. Inst. n. 4411.

4. The party on whom the onus probandi lies is entitled to begin, notwithstanding the technical form of the proceedings. 1 Stark. Ev. 584; 3 Bouv. last. n. 3043.

TO OPEN, OPENING. To open a case is to make a statement of the pleadings in a case, which is called the opening.

2. The opening should be concise, very distinct and perspicuous. Its use is to enable the judge and jury to direct their attention to the real merits of the case, and the points in issue. 1 Stark. R. 439;S. C. 2 E. C. L. R. 462; 2 Stark. R. 31; S. C 3 Eng. C. L. R. 230.

3. The opening address or speech is that made immediately after the evidence has been closed; such address usually states, 1st. The full extent of the plaintiff's claims, and the circumstances under which they are made, to show that they are just and reasonable. 2d. At least an outline of the evidence by which those claims are to be established. 3d. The legal grounds and authori-ties in favor of the claim or of the proposed evidence. 4th. An anticipation of the expected defence, and statement of the grounds on which it is futile, "either in law or justice, and the reasons why it ought to fail. 3 Chit. Pr. 881; 3 Bouv. Inst. n. 3044, et seq. To open a judgment, is to set it aside.

TO OPEN A CREDIT. When a banker accepts or pays a bill of exchange drawn on him by a correspondent, who has not furnished him with funds, he is said to open a credit with the drawer. Pardess. n. 29.

OPEN COURT. The term sufficiently explains its meaning. By the constitution of some states, and by the laws and practice of all the others, the courts are required to be kept open; that is, free access is admitted in courts to all persons who have a desire to enter there, while it can be done without creating disorder.

2. In England, formerly, the parties and probably their witnesses were admitted freely in the courts, but all other persons were required to pay in order to obtain admittance. Stat. 13 Edw. I. C. 42, and 44; Barr. on the Stat, 126, 7. See Prin. of Pen. Law. 165

OPEN POLICY. An open policy is one in which the amount of the interest of the insured is not fixed by the policy, and is to be ascertained in case of loss. Vide Policy.

OPENING A JUDGMENT. The act of the court by which a judgment is so far annulled that it cannot be executed, but which still retains some qualities of a judgment; as, for example, its binding operation or lien upon the real estate of the defendant.

2. The opening of the judgment takes place when some person having an interest makes affidavit to facts, which if true would render the execution of such judgment inequitable. The judgment is opened so as to be in effect an award of a collateral issue to try the facts alleged in the affidavit. 6 Watts & Serg. 493, 494.

OPERATION OF LAW. This term is applied to those rights which are cast upon a party by the law, without any act of his own; as, the right to an estate of one who dies intestate, is cast upon the heir at law, by operation of law; when a lessee for life enfeoffs him in reversion, or when the lessee and lessor join in a feoffment, or when a lessee for life or years accepts a new lease or demise from the lessor, there is a

surrender of the first lease by operation of law. 9 B. & C. 298; 5 B. & C. 269; 2 B. & A. 119; 5 Taunt. 518.

OPERATIVE. A workman; one employed to perform labor for another.

2. This word is used in the bankrupt law of 19th August, 1841, s. 5, which directs that any person who shall have performed any labor as an operative in the service of anly bankrupt shall be entitled to receive the full amount of wages due to him for such labor, not exceeding twenty-fivedo llars; provided that such labor shall have been performed within six months next before the bankruptcy of his employer.

3. Under this act it has been decided that an apprentice who had done work beyond a task allotted to him by his master, commonly called overwork, under an agreement on the part of the master to pay for such work, was entitled as an operative. 1 Penn. Law Journ. 368. See 3 Rob. Adm. R. 237; 2 Cranch, 240 270.

OPINION, practice. A declaration by a counsel to his client of what the law is, according to his judgment, on a statement of facts submitted to him. The paper upon which an opinion is written is, by a figure of speech, also called an opinion.

2. The counsel should as far as practicable give, 1. A direct and positive opinion, meeting the point and effect of the question and separately, if the- questions proposed were properly divisible into several. 2. The reasons, succinctly stated, in support of such opinion. 3. A reference to the statute, rule or decision on the subject. 4. When the facts are susceptible of a small difference in the statement, a suggestion of the probability of such variation. 5. When some, important fact is stated as resting principally on the statement of the party interested, a suggestion ought to be made to inquire how that fact is to be proved. 6. A suggestion of the proper process or pleadings to be adopted. 7. A suggestion of what precautionary measures ought to be adopted. As to the value of an opinion, see 4 Penn, St. R. 28.

OPINION, evidence. An inference made, or conclusion drawn, by a witness from facts known to him,

2. In general a witness cannot be asked his opinion upon a particular question, for he is called to speak of facts only. But to this general rule there are exceptions; where matters of skill and judgment are involved, a person competent, particularly to understand such matters, may be asked his opinion, and it will be evidence. 4 Hill , 129; 1 Denio, 281; 2 Scam. 297; 2 N. H. Rep. 480; 2 Story, R. 421; see 8 W. & S. 61; 1 McMullan, 561 For example, an engi-neer may be called to say what, in his opinion, is the cause that a harbor has teen blocked up. 3 Dougl. R. 158; S. C. 26 Eng. C. L. Rep. 63; 1 Phil. Ev. 276; 4 T. R. 498. A ship builder may be asked his opinion on a

question of sea-worthiness. Peake, N. P. C. 25; 10 Bingh. R. 57; 25 Eng. Com. Law Rep. 28.

3. Medical men are usually examined as to their judgment with regard to the cause of a person's death, who has suffered by violence. Vide Death. Of the sanity, 1 Addams, 244, or impotency, 3 Philm. 14, of an individual. Professional men are, however, confined to state facts and opinions within the scope of their professions, and are not allowed to give opinions on things of which the jury can as well judge. 5 Rogers' Rec. 26; 4 Wend. 320; 3 Fairf. 398; 3 Dana, 882; 1 Pennsyl. 161; 2 Halst. 244; 7 Verm. 161; 6 Rand. 704; 4 Yeates, 262; 9 Conn. 102; 3 N. H. Rep. 349; 5 H. & J. 488.

4. The unwritten or common law of foreign countries may be proved by the opinion of witnesses possessing professional skill. Story's Confl. of Laws, 530; 1 Cranch, 12, 38; 2 Cranch, 236; 6 Pet Rep. 763; Pet. C. C. R. 225; 2 Wash. C. C. R. 175; Id. 1; 5 Wend. Rep. 375; 2 Id. 411; 3 Pick. Rep. 293; 4 Conn. R. 517; 6 Conn: R. 486; 4 Bibb R. 73; 2 Marsh. Rep. 609; 5 Harr. & John. 86; 1 Johns. Rep. 385; 3 Johns. Rep. 105; 14 Mass., R. 455; 6 Conn. R. 508; 1 Verm. R. 336; 15 Serg. & Rawle, 87; 1, Louis. R. 153; 3 Id. 53; Cranch, 274. Vide also 14 Serg. & Rawle, 137; 3 N. Hamp. R. 349; 3 Yeates, 527; 1 Wheel. C. C. Rep. 205; 6 Rand. R. 704; 2 Russ. on Cr. 623; 4 Camp. R. 155; Russ. & Ry. 456; 2 Esp. C. 58; Foreign Laws; 3 Phillim. R. 449; 1 Eccl. R. 291.

OPINION, judgment. A collection of reasons delivered by a judge for giving the judgment he is about to pronounce the judgment itself is sometimes called an opinion.

2. Such an opinion ought to be a perfect syllogism, the major of which should be the law; the minor, the fact to be decided and the consequence, the judgment which declares that to be conformable or contrary to law.

3. Opinions are judicial or extra-judicial; a judicial opinion is one which is given on a matter which is legally brought before the judge for his decision; an extra-judicial opinion, is one which although given in court, is not necessary to the judgment. Vaughan, 382; 1 Hale's Hist. 141; and whether given in or out of court, is no more than the prolatum of him who gives it, and has no legal efficacy. 4 Penn. St. R. 28. Vide Reason.

OPPOSITION, practice. The act of a creditor who, declares his dissent to a debtor's being discharged under the insolvent laws.

OPPRESSOR. One who having public authority uses it unlawfully to tyrannize over another; as, if he keep him in prison until he shall do something which he is not lawfully bound to do.

2. To charge a magistrate with being an oppressor, is therefore actionable. Stark. Sland. 185.

OPPROBRIUM, civil law. Ignominy; shame; infamy. (q. v.)

OPTION. Choice; Election; (q. v.) where the subject is considered.

OR. This syllable in the termination of words has an active signification, and usually denotes the doer of an act; as, the grantor, he who makes a grant; the vendor, he who makes a sale; the feoffor, he who makes a feoffment. Litt. s. 57; 1 Bl. Com. 140, n.

ORACULUM, civil law. The name of a kind of decisions given by the Roman emperors.

ORAL. Something spoken in contradistinction to something written; as oral evidence, which is evidence delivered verbally by a witness,

ORATOR, practice. A good man, skillful in speaking well, and who employs a perfect eloquence to defend causes either public or private. Dupin, Profession d'Avocat, tom. 1, p. 19..

2. In chancery, the party who files a bill calls himself in those pleadings your orator. Among the Romans, advocates were called orators. Code, 1, 8, 33, 1.

ORDAIN. To ordain is to make an ordinance, to enact a law.

2. In the constitution of the United States, the preamble. declares that the people "do ordain and establish this constitution for the United States of America." The 3d article of the same constitution declares, that "the judicial power shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. "See 1 Wheat. R. 304, 324; 4 Wheat: R. 316, 402.

ORDEAL. An ancient superstitious mode of tribal. When in a criminal case the accused was arraigned, be might select the mode of trial either by God and his country, that is, by jury; or by God only, that is by ordeal.

2. The trial by ordeal was either by fire or by water. Those who were tried by the former passed barefooted and blindfolded over nine hot glowing ploughshares; or were to carry burning irons in their hands; and accordingly as they escaped or not, they were acquitted or condemned. The water ordeal was performed either in hot or cold water. In cold water, the parties suspected were adjudged innocent, if their bodies were not borne up by the water contrary to the course of nature; and if, after putting

their bare arms or legs into scalding water they came out unhurt, they were taken to be innocent of the crime.

3. It was impiously supposed that God would, by the mere contrivance of man, exercise his power in favor of the innocent. 4. Bl. Com. 342; 2 Am. Jur. 280. For a detailed account of the trial by ordeal, see Herb. Antiq. of the Inns of Court, 146.

ORDER, government. By this expression is understood the several bodies which compose the state. In ancient Rome, for example, there were three distinct orders; namely, that of the senators, that of the patricians, and that of the plebeians.

2. In the United States there are no orders of men, all men are equal in the eye of the law, except that in some states slavery has been entailed on them while they were colonies, and it still exists, in relation to some of the African race but these have no particular rights. Vide Rank.

ORDER, contracts. An indorsement or short writing put upon the back of a negotiable bill or note, for the purpose of passing the title to it, and making it payable to another person.

2. When a bill or note is payable to order, which is generally expressed by this formula, "to A B, or order,"or" to the order of A B," in this case the payee, A B may either receive the money secured by such instrument, or by his order, which is generally done by a simple indorsement, (q. v.) pass the right to receive it to another. But a bill or note wanting these words, although not negotiable, does not lose the general qualities of such instruments. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines, 137; 9 John. 217. Vide Bill of Exchange; Indorsement.

3. An informal bill of exchange or a paper which requires one person to pay or deliver to another goods on account of the maker to a third party, is called an order.

ORDER, French law. The act by which the rank of preferences of claims among creditors who have liens over the price which arises out of the sale of an immovable subject, is ascertained, is called order. Dalloz, Dict. h. t.

ORDER OF FILIATION. The name of a judgment tendered by two justices, having jurisdiction in such case, in which a man therein named is adjudged to be the putative father of a bastard child; and it is farther adjudged that he pay a certain sum for its support.

2. The order must bear upon its face, 1st. That it was made upon the complaint of the township, parish, or other place, where the child was born and is chargeable. 2d. That

it was made by justices of the peace having jurisdiction. Salk. 122, pl. 6; 2 Ld. Raym. 1197. 3d. The birth place of the child; 4th. The examination of the putative father and of the mother; but, it is said, the presence of the putative father is not requisite, if he has been summoned. Cald. It. 308. 5th. The judgment that the defendant is the putative father of the child. Sid. 363; Stile, 154; Dalt. 52; Dougl. 662. 6th. That he shall maintain, the child as long as he shall be chargeable to the township, parish, or other place, which must be named. Salk. 121, pl. 2; Comb. 232. But the order may be that the father shall pay a certain sum weekly as long as the child is chargeable to the public. Stile, 134; Vent. 210. 7th. It must be dated, signed, and, sealed by the justices. Such order cannot be vacated by two other justices. 15 John. R. 208; see 8 Cowen, R. 623; 4 Cowen, R. 253; 12 John. R. 195; 2 Blackf. R. 42.

ORDER NISI. A conditional order which is to be confirmed unless something be done, which has been required, by a time specified. Eden. Inj. 122.

ORDERS. Rules made by a court or other competent jurisdiction. The formula is generally in those words: It is ordered, &c.

2. Orders also signify the instructions given by the owner to the captain or commander of a ship which he is to follow in the course of the vovage.

ORDINANCE, legislation. A law, a statute, a decree.

2. This word is more usually applied to the laws of a corporation, than to the acts of the legislature; as the ordinances of the city of Philadelphia. The following account of the difference between a statute and an ordinance is extracted from Bac. Ab. Statute, A. "Where the proceeding consisted only of a petition from parliament, and an answer from the king, these were entered on the parliament roll; and if the matter was of a public nature, the whole was then styled an ordinance; if, however, the petition and answer were not only of a public, but a novel nature, they were then formed into an act by the king, with the aid of his council and judges, and entered on the statute roll." See Harg. & But. Co. Litt. l59 b, notis; 3 Reeves, Hist. Eng. Law, 146.

3. According to Lord Coke, the difference between a statute and an ordinance is, that the latter has not had the assent of the king, lords, and commons, but is made merely by two of those powers. 4 Inst. 25. See Barr. on Stat. 41, note (x).

ORDINANCE OF 1787. An act of congress which regulates the territories of the United States. It is printed in 3 Story, L. U. S. 2073. Some parts of this ordinance were designed for the temporary government of the territory north-west of the river Ohio while other parts were intended to be permanent, and are now in force. 1

McLean, R. 337; 2 Missouri R. 20; 2 Missouri R. 144; 2 Missouri R. 214; 5 How. U. S. R. 215.

ORDINARY, civil and eccles. law. An officer who has original jurisdiction in his own right and not by deputation.

2. In England the ordinary is an officer who has immediate jurisdiction in ecclesiastical causes. Co. Litt. 344.

3. In the United States, the ordinary possesses, in those states where such officer exists, powers vested in him by the constitution and acts of the legislature, In South Carolina, the ordinary is a judicial officer. 1 Rep. Const. Ct. 26; 2 Rep. Const. Ct. 384.

ORDINATION, civil and eccles. law. The act of conferring the orders of the church upon an individual. Nov. 137.

ORE TENUS. Verbally. orally. Formerly the pleadings of the parties were ore tenus, and the practice is said to have been retained till the reign of Edward the Third, 3 Reeves, 95; Steph. Pl. 29; and vide Bract. 372, b.

2. In chancery practice, a defendant may demur at the bar ore tentus; 3 P. Wms. 370; if he has not sustained the demurrer on the record. 1 Swanst. R. 288; Mitf. Pl. 176; 6 Ves. 779; 8 Ves. 405; 17 Ves. 215, 216,

OREGON. The name of a territory of the United States of America. This terri- tory was established by the act of congress of August 14, 1848; and this act is the fundamental law of the territory.

2. - Sect. 2. The executive power and authority in and over said territory of Oregon shall be vested in a governor who shall hold his office for four years, and until his successors shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs; he may grant pardons and respites for offences against the laws of said territory, and reprieves for offences against the laws of the United States until the decision of the president can be made thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

3. - Sect. 3. There shall be a secretary of said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the president of the United

States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July, in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or ab- sence, or until another governor shall be duly appointed and qualified to fill such vacancy.

4. - Sect. 4. The legislative power and authority of said territory shall be vested in a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into, three classes. The seats. of the members of council of the first. class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year, so that one-third may be chosen every year, and if vacancies happen by resignation or otherwise, the same shall be filled at the next ensuing election. The house of representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for memers of the council, and whose term of serice shall continue one year. The number of representatives may be increased by the legislative assembly from time to time, in proportion to the increase of qualified voters: Provided, That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council andrepresentatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and of the house of representatives shall reside in and be inhabitants of the district, or county or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons, and in such mode as the governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor; and the first election shall be held at such time and places, and be conducted in such manner, both as to the person who shall superintend such election, and the returns thereof, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the

council and house of representatives to which each of the counties or districts shall be entitled under this act; and the governor shall, by his proclamation, give at least sixty days previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house; Provided, That, in case two or more persons voted for shall have an equal number of votes and in case a vacancy shall otherwise occur, in either branch of the legislative assembly, the governor shall order a new election, and the persons thus elected to the legislative assembly shall meet at such place, and on such day, within ninety days after such elections, as the governor shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: Prodided, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not be prolonged beyond one hundred days.

5. - Sect, 5. Every white male inhabitant, above the age of twenty-one years, who shall have been a reident of said territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: Provided, That the right of suffrage and of holding office shall be exercised only by citizens United States above the age of twenty-one years, and those above that age who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the UnitedStates, and the provisions of this act: And, further, provided, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troop's in the service of the United States, shall be allowed to vote in said territory, by reason of being on service therein, unless said territory is and has been for the period of six months, his permanent domicil: Provided, further, That no person belonging to the army or navy of the United States shall ever be elected to, or hold any civil office or appointment in, said territory.

6. - Sect. 6. The legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; no tar shall be imposed upon the property of the United States; nor shall the lands or other property

of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect: Provided, That nothing in this act shall be construed to give power to incorporate a bank, or any institution with banking powers, or to borrow money in the name of the territory, or to pledge the faith of the people of the same for any loan whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds scrip, drafts, bills of exchange, or obligations, or granting anyother banking powers or privileges, shall be passed by the legislative assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said territory; nor shall said legislative assembly authorize the issue of any obligation, scrip, or evidence of debt by said territory, in any mode or manner whatever, except certificates for services to said territory; and all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void; and all taxes shall be equal and uniform and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences which may result from intermixing in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title.

7. - Sect. 7. All township, district, and county, officers, not herein otherwise provided for, shall be appointed or elected, in such manner as shall be provided by the legislative assembly of the territory of Oregon.

8. - Sect. 8. No member of the legislative assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission, or appointment under the United States shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

9. The 16th section of the act authorizes the qualified voters to elect a delegate to the house of representatives of the United States, who shall have and exercise all the rights and privileges as have been heretofore exercised and enjoyed by the delegates from the other territories of the United States to the said house of representatives. Vide Courts of the United States.

ORIGINAL, contracts, practice, evidence. An authentic instrument of something, and which is to serve as a model or example to be copied or imitated. It also means first,

or not deriving any authority from any other source as, original jurisdiction, original writ, original bill, and the like .

2. Originals are single or duplicate. Single, when there is but one; duplicate, when there are two. In the case of printed documents, all the impressions are originals, or in the nature of duplicate originals, and any copy will be primary evidence. Watson's Case, 2 Stark. R. 130; sed vide 14 Serg.& Rawle, 200; 2 Bouv. lnst. n. 2001.

3. When an original document is not evidence at common law, and a copy of such original is made evidence by an act of the legislature, the original is not, therefore, made admissible evidence by implication. 2 Camp. R. 121,

ORIGINAL ENTRY. The first entry made by a merchant, tradesman, or other person in his account books, charging another with merchandise, materials, work, or labor, or cash, on a contract made between them.

2. This subject will be divided into three sections. 1. The form of the original entry. 2. The proof of such entry. 3. The effect.

3. - §1. To make a valid original entry it must possess the following requisites, namely: 1. It must. be made in a proper book. 2. It must be made in proper time. 3. It must be intelligible and according to law. 4. It must be made by a person having authority to make it.

4. - 1. In general the books in which the first entries are made, belonging to a merchant, tradesman, or mechanic, in which are charged goods sold and delivered, or work and labor done, are received in evidence. There are many books which are not evidence, a few of which will he here enumerated. A book made up by transcribing entries made on a slate by a journeyman, the transcript being made on the same evening, or sometimes not until nearly two weeks after the work was done, was considered as not being a book of original entries. 1 Rawle, R. 435; 2 Watts, R. 451; 4 Watts, R. 258; 1 Browne's R. 147; 6 Whart. R. 189; 5 Watts, 432; 4 Rawle, 408; 2 Miles, 268. A book purporting to be a book of original entries, containing an entry of the sale of goods when they were ordered but before they were delivered, is not a book of ori-ginal entries. 4 Rawle, 404. And unconnected scraps of paper, containing, as alleged, original entries of sales by an agent, on account of his principal, and appearing on their face to be irregularly kept, are not to be considered as a book of original entries. 13 S. & R. 126. See 2 Whart. R. 33; 4 M'Cord, R. 76; 20 Wend. 72; 2 Miles, R. 268; 1 Yeates, R. 198; 4 Yeates, R. 341.

5. - 2. The entry must be made in the course of business, and with the intention of making a charge for goods sold or work done; they ought not to be made after the

lapse of one day. 8 Watts, 545; 1 Nott, & M'Cord, 130; 4 Nott & M'Cord, 77; 4 S. & R. 5; 2 Dall. 217; 9 S. & R. 285. A book in which the charges are made when the goods are ordered is not admissible. 4 Rawle, 404; 3 Dev. 449.

6. - 3. The entry must be made in an intelligible manner, and not in figures or hieroglyphics which are understood by the seller only. 4 Rawle, 404. A charge made in the gross as "190 days work," 1 Nott & M'Cord, 130, or "for medicine and attendance," or "thirteen dollars for medicine and attendance on one of the general's daughters in curing the hooping cough," 2 Const. Rep. 476, were rejected. An entry of goods without carrying out any prices, proves, at most, only a sale, and the jury cannot, without other evidence, fix any price. 1 South. 370. The charges should be specific and denote the particular work or service charged, as it arises daily, and the quantity, number, weight, or other distinct designation of the materials, or articles sold or furnished, and attach the price and value to each item. 2 Const. Rep. 745; 2 Bail. R. 449; 1 Nott & M'Cord, 130.

7. - 4. The entry must of course have been made by a person having authority to make it, 4 Rawle, 404, and with a view to charge the party. 8 Watts, 545.

8. - §2. The proof of the entry must be made by the person who made it. If made by the seller, he is competent to prove it from the necessity of the case, although he has an interest in the matter in dispute. 5 Conn. 496; 12 John. R. 461; 1 Dall. 239. When made, by a clerk, it must be proved by him. But, in either case, when the person who made the entry is out of the reach of the process of the court, as in the case of death, or absence out of the state, the handwriting may be proved by a person acquainted with the handwriting of the person who made the entry. 2 Watts & Serg. 137. But the plaintiff is not competent to prove the handwriting of a deceased clerk who made the entries. 1 Browne's R. App. liii.

9.- §3. The books and original entries, when proved by the supplementary oath of the party, is prima facie evidence of the sale and delivery of goods, or of work and labor done. 1 Yeates, 347; Swift's Ev. 84; 3 Verm. 463; 1 M'Cord, 481; 1 Aik. 355; 2 Root, 59; Cooke's R. 38. But they are not evidence of money lent, or cash paid. Id.; 1 Day, 104; 1 Aik. 73, 74; Kirby, 289. Nor of the time a vessel laid at the plaintiff's wharf; 1 Browne's Rep. 257; nor of the delivery of goods to be sold on commission. 2 Wharton, 33.

ORIGINAL JURISDICTION, practice. That which is given to courts to take cognizance of cases which may be instituted in those courts in the first instance. The constitution of the United States gives the supreme court of the United State original jurisdiction in cases which affect ambassadors, other public ministers and consuls, and to those in which a state is a party. Art. 3, s. 2; 1 Kent, Com. 314.

ORIGINAL WRIT, practice, English law. A mandatory letter issued in the king's name, sealed with his great seal, and directed to the sheriff of the county wherein the injury was committed or supposed to have been done, requiring him to command the wrongdoer or party accused, either to do justice to the complainant, or else to appear in court and answer the accusation against him. This writ is deemed necessary to give the courts of law jurisdiction.

2. In modern practice, however, it is often dispensed with, by recourse, as usual, to fiction, and a proceeding by bill is substituted. In this country, our courts derive their jurisdiction from the constitution and require no original writ to confer it. Improperly speaking, the first writ which is issued in a case, is sometimes called an original writ, but it is not so in the English sense of the word. Vide 3 Bl. Com. 273 Walk. Intr. to Amer. Law, 514.

ORIGINALIA, Eng. law. The transcripts and other documents sent to the office of the treasurer-remembrancer in the exchequer, are called by this name to distinguish them from records, which contain the judgment's of the barons.

ORNAMENT. An embellisment. In questions arising as to which of two things is to be considered as principal or accessory, it is the rule, that an ornament shall be considered as an accessory. Vide Accessory; Principal.

ORPHAN. A minor or infant who has lost both of his or her parents. Sometimes the term is applied to such a person who has lost only one of his or her parents. 3 Mer. 48; 2 Sim. & Stu. 93; Lo & Man. Inst. B. 1, t. 2, c. 1. See Hazzard's Register of Pennsylvania, vol. 14, pages 188, 1 89, for a correspon-dence between the Hon. Joseph Hopkinson and ex-president J. Q. Adams as to the meaning of the word Orphan, and Rob. 247.

ORPHANAGE, Engl. law. By the custom of London, when a freeman of that city dies, his estate is divided into three parts, as follows: one third part to the widow; another, to the children advanced by him in his lifetime, which is called the orphanage; and the other third part may be by him disposed of by will. Now, however, a freeman may dispose of his estate as he pleases; but in cases of intestacy, the statute of distribution expressly excepts and reserves the custom of London. Lov. on Wills, 102, 104; Bac. Ab. Custom of London, C. Vide Legitime.

ORPHANS' COURT. The name of a court in some of the states, having jurisdic- tion of the estates and persons of orphans.

ORPHANOTROPHI, civil law. Persons who have the charge of administering the affairs of houses destined for the use of orphans. Clef des Lois Rom. mot Administrateurs.

OSTENSIBLE PARTNER. One whose name appears in a firm, as a partner, and who is really such.

OTHER WRONGS, pleading, evidence. In actions of trespass, the declaration concludes by charging generally, that the defendant did other wrongs to the plaintiff to his great damage. When the injury is a continuation or consequence of the trespass declared on, the plaintiff may give evidence of such injury under this averment of other wrongs, Rep., Temp. Holt 699; 2 Salk. 642; 6 Mod. 127; Bull. N. P. 89; 2 Stark. N. P. C. 818.

OUNCE. The name of a weight. An ounce avoirdupois weight is the sixteenth part of a pound; an ounce troy weight is the twelfth part of a pound. Vide Weights.

OUSTER, torts. An ouster is the actual turning out, or keeping excluded, the party entitlod to possession of any real property corporeal.

2. An ouster can properly be only from real property corporeal, and cannot be committed of anything movable; 1 Car. & P. 123; S. C. 11 Eng. Com. Law R. 339; 2 Bouv. 1 Inst. n. 2348; 1 Chit. Pr. 148, note r; nor is a mere temporary trespass considered as an Guster. Any continuing act of exclusion from the enjoyment, constitutes an ouster, even by one tenant in common of his co-tenant. Co. Litt. 199 b, 200 a. Vide 3 Bl; Com. 167; Arch. Civ. Pl. 6, 14; 1 Chit. Pr. 374, where the remedies for an ouster are pointed out. Vide Judgment of Respondent Ouster.

OUSTER LE MAIN. In law-French, this signifies, to take out of the hand. In the old English law it signified a livery of lands out of the hands of the lord, after the tenant came of age. If the lord refused to deliver such lands, the tenant was entitled to a writ to recover the same from the lord; this recovery out of the hands of the lord was called ouster le main.

OUTFIT. An allowance made by the government of the United States to a minis-ter plenipotentiary, or charge des affaires, on going from the United States to any foreign country.

2. The outfit can in no case exceedlone year's full salary of such minister or charge des affaires. No outfit is allowed to a consul. Act of Cong. May 1, 1810. s. 1. Vide Minister.

OUTHOUSES. Buildings adjoining to or belonging to dwelling-houses.

2. It is not easy to say what comes within and what is excluded from the meaning of out-house. It has been decided that a school-room, separated from the dwelling-house by a narrow passage about a yard wide, the roof of which was partly upheld by that of the dwelling-house, the two buildings, together with some other, and the court which enclosed them, being rented by the same person, was properly described as an out-house: Russ. & R. C. C. 295; see, for other cases, 3 Inst. 67; Burn's Just., Burning, II; 1 Leach, 49; 2 East's P. C. 1020, 1021. Vide House.

OUTRIDERS, Engl. law. Bailiffs errant, employed by the sheriffs and their deputies, to ride to the furthest places of their counties or hundreds to summon such as they thought good, to attend their county or hundred court.

OUTLAW, Engl. law. One who is put out of the protection or aid of the law. 22 Vin. Ab. 316; 1 Phil. Ev. Index, h. t.; Bac. Ab. Outlawry; 2 Sell. Pr. 277; Doct. Pl. 331; 3 Bl. Com. 283, 4.

OUTLAWRY, Engl. law. The act of being put out of the protection of the law by process regularly sued out against a person who is in contempt in refusing to become amenable to the court having jurisdiction. The proceedings themselves are also called the outlawry.

2. Outlawry may take place in criminal or in civil cases. 3 Bl. Com. 283; Co. Litt. 128; 4 Bouv. Inst. n. 4196.

3. In the United States, outlawry in civil cases is unknown, and if there are any cases of outlawry in criminal cases they are very rare. Dane's Ab. eh. 193, a, 34. Vide Bac. Ab. Abatement, B; Id. h. t.; Gilb. Hist. C. P. 196, 197; 2 Virg. Cas. 244; 2 Dal. 92.

OUTRAGE. A grave injury; a serious wrong. This is a generic word which is applied to everything, which is injurious, in great degree, to the honor or rights of another.

TO OVERDRAW. To draw bills or cheeks upon an individual, bank or other corporation, for a greater amount of funds than the party who draws is entitled to.

2. When a person has overdrawn his account without any intention to do so, and afterwards gives a check on a bank, the holder is required to present it, and on refusal of payment to give notice to the maker, in order to hold him bound for it; but when the maker had overdrawn the bank knowingly, and had no funds there between the time the check was given and its presentment, the notice is not requisite. 2 N. & McC. 433.

OVERDUE. A bill, note, bond or other contract, for the payment of money at a particular day, when not paid upon the day, is overdue.

2. The indorsement of a note or bill overdue, is equivalent to drawing a new bill payable at sight. 2 Conn. 419; 18 Pick. 260; 9 Alab. R. 153.

3. A note when passed or assigned when overdue, is subject to all the equities between the original contracting parties. 6 Conn. 5; 10 Conn. 30, 55; 3 Har. (N. J.) Rep. 222.

OVERPLUS. What is left beyond a certain amount; the residue, the remainder of a thing. The same as Surplus. (q. v.)

2. The overplus may be certain or uncertain. It is certain, for example, when an estate is worth three thousand dollars, and the owner asserts it to be so in his will, and devises of the proceeds one thousand dollars to A, one thousand dollars to B, and the overplus to C, and in consequence of the deterioration of the estate, or from some other cause, it sells for less than three thousand dollars, each of the legatees A, B and C shall take one third: the overplus is uncertain where, for example, a testator does not know the value of his estate, and gives various legacies and the overplus to another legatee; the latter will be entitled only to what may be left. 18 Ves. 466. See Residue; Surplus.

TO OVERRULE. To annul, to make void. This word is frequently used to signify that a case has been decided directly opposite to a former case; when this takes place, the first decided case is said to be overruled as a precedent, and cannot any longer be considered as of binding authority.

2. Mr. Greenleaf has made a very valuable collection of overruled cases, of great service to the practitioner.

3. The term overrule also signifies that a majority of the judges have decided against the opinion of the minority, in which case the latter are said to be overruled.

OVERSEERS OF THE POOR. Persons appointed or elected to take care of the poor with moneys furnished to them by the public authority.

2. The duties of these officers are regulated by local statutes. In general the overseers are bound to perform those duties, and the neglect of them will subject them to an indictment. Vide 1 Bl. Com. 360; 16 Vin. Ab. 150; 1 Mass. 459; 3 Mass. 436; 1 Penning. R. 6, 136; Com. Dig. Justices of the Peace, B. 63, 64, 65.

OVERSMAN, Scotch law. A person commonly named in a submission, to whom power is given to determine in case the arbiters cannot agree in the sentence; sometimes the nomination of the oversman is left to the arbiters. In either case the oversman has no power to decide, unless the arbiters differ in opinion. Ersk. Pr. L. Scot. 4, 3, 16. The office of an oversman very much resembles that of an umpire.

OVERT. Open. An overt act in treason is proof of the intention of the traitor, because it opens his designs; without an overt act treason cannot be committed. 2 Chit: Cr. Law, 40. An overt act then, is one which manifests the intention of the traitor, to commit treason. Archb. Cr. Pl. 379 4 Bl. Com. 79.

2. The mere contemplation or intention to commit a crime; although a sin in the sight of heaven, is not an act amenable to human laws. The were speculative wantonness of a licentious imagination, however dangerous, or even san-guinary in its object, can in no case amount to a crime. But the moment that any overt act is manifest, the offender becomes amenable to the laws. Vide Attempt; Conspiracy, and Cro. Car. 577.

OWELTY. The difference which is paid or secured by one coparcener to another, for the purpose of equalizing a partition. Hugh. Ab. Partition and Partner, § 2, n. 8; Litt. s. 251; Co. Litt. 169 a; 1 Watts, R. 265; 1 Whart. 292; 3 Penna, 11 5; Cruise, Dig. tit. 19, §32; Co. Litt. 10 a; 1 Vern. 133; Plow. 134; 16 Vin. Ab. 223, pl. 3; Bro. Partition; §5. OWING. Something unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not.

2. In affidavits to hold to bail it is usual to state that the debt on which the action is founded is due, owing and unpaid. 1 Penn. Law Jo. 210.

OWLER, Eng. law. One guilty of the offence of owling.

OWLING, Eng. law. The offence of transporting wool or sheep out of the king-dom.

2. The name is said to owe its origin to the fact that this offence was carried on in the night, when the owl was abroad.

OWNER, property. The owner is he who has dominion of a thing real or person-al, corporeal or incorporeal, which he has a right to enjoy and to do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.

2. The right of the owner is more extended than that of him who has only the use of the thing. The owner of an estate may, therefore change the face of it; he may cut the wood, demolish the buildings, build new ones, and dig wherever he may deem proper,

for minerals, stone, plaster, and similar things. He may committ what would be considered waste if done by another.

3. The owner continues to have the same right although he perform no acts of ownership, or be disabled from performing them, and although another perform such acts, without the knowledge or against the will of the owner. But the owner may lose his right in a thing, if he permit it to remain in the possession of a third person, for sufficient time to enable the latter to acquire a title to it by prescription, or lapse of time. See Civil Code of Louis. B. 2, t. 2, c. 1; Encyclopedie de M. D'Alembert, Proprietaire.

4. When there are several joint owners of a thing, as for example, of a ship, the majority of them have the right to make contracts in respect of such thing, in the usual course of business or repair, and the like, and the minority will be bound by such contracts. Holt, 586; 1 Bell's Com. 519, 5th ed. See 5 Whart. R. 366.

OWNERSHIP, title to property. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. Louis. Code, art. 480.

OXGANG OF LAND, old Eng. law. An uncertain quantity of land, but, according to some opinions, it contains fifteen acres. Co. Litt. 69 a.

OYER, pleading. Oyer is a French word signifying to hear; in pleading it is a prayer or petition to the court, that the party may hear read to him the deed, &c., stated in the pleadings of the opposite party, aud which deed is by intendment of law in court, when it is pleaded with a profert.

2. The origin of this form of pleading, we are told, is that the generality of defendants, in ancient times, were themselves incapable of reading. 3 Bl. Com. 299.

3. Oyer is, in some cases demandable of right, and in others it is not. It may be demanded of any speciality or other written instrument, as bonds of all sorts, deeds poll, indentures, letters testamentary, and of administration, and the like, of which a profert in curiam is necessarily made by the adverse party. But if the party be not bound to plead the specialty or instrument with a profert, and he pleads it with one, it is but surplusage, and the court will not compel him to give oyer of it. 1 Salk. 497. Oyer is not now demandable of the writ, and if it be demanded, the plaintiff may proceed as if no such demand were made. Dougl. 227; 3 B. & P. 398; 1 B.& P. 646, n. b. Nor is oyer demandable of a record, yet if a judgment or other record be pleaded in its own court, the party pleading it must give a notice in writing of the term and number roll whereon such judgment or matter of record is entered or filed in default of which the plea is not to be received. Tidd's Pr. 529.

4. To deny over when it ought to be granted is error; and in such case the party making the claim, should move. the court to have it entered on record, which is in the nature of a plea, and the plaintiff may counterplead the right of oyer, or strike out the rest of the pleading, following the oyer, and demur; 1 Saund. 9 b, n. 1; Bac. Abr. Pleas, 1; upon which the judgment of the court is either that the defendant have oyer, or that he answer without it. Id. ibid.; 2 Lev. 142; 6 Mod. 28. On the latter judgment, the defendant may bring a writ of error, for to deny oyer when it ought to be granted, is error, but not e converso. Id. ibid.; 1 Blackf. R. 126. See, in general, 1 Saund. 9, n. 1; 289, in. 2; 2. Saund. 9, n. 12, 13; 46, n. 7; 366, n. 1; 405, n. 1; 410, n. 2; Tidd's Pr. 8 ed. 635 to 638, and index, tit. Oyer; 1 Chit. Pl. 369 to 375; Lawes on Civ. Pl. 96 to 101; 16 Vin. Ab. 157; Bac. Abr. Pleas, &c., I 12, n. 2; Arch. Civ. Pl. 185; 1 Sell. Pr. 260; Doct. Pl, 344; Com. Dig. Pleader, P Abatement, I 22; 1 Blackf. R. 241, 3 Bouv. Inst. n. 2890.

OYER AND TERMINER. The name of a court authorized to hear and determine all treasons, felonies and misdemeanors; and, generally, invested with other power in relation to the punishment of offenders.

OYEZ, practice. Hear; do you hear. In order to attract attention immediately before he makes proclamation, the cryer of the court cries Oyez, Oyez, which is generally corruptly pronounced O yes.

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P

PACE. A measure of length containing two feet and a half; the geometrical pace is five feet long. The common pace is the length of a step; the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.

PACIFICATION. The act of making peace between two countries which have been at war; the restoration of public tranquillity.

TO PACK. To deceive by false appearance; to counterfeit; to delude; as packing a jury. (q. v.) Bac. Ab. Juries, M; 12 Conn. R. 262. PACT, civil law. An agreement made by two or more persons on the same subject in order to form some engagement, or to dissolve or modify, one already made, conventio est duorum in idem placitum consensus de re solvenda, id. est facienda vel praestanda. Dig. 2, 14; Clef des Lois Rom. h. t.; Ayl. Pand. 558; Merl, Rep. Pacte, h. t.

PACTIONS, International law. When contracts between nations are to be performed by a single act, and their execution is at an end at once, they are not called treaties, but agreements, conventions or pactions. 1 Bouv. Inst. n. 100.

PACTUM CONSTITUTAE PECUNIAE, civil law. An agreement by which a person appointed to his creditor, a certain day, or a certain time, at which he promised to pay; or it maybe defined, simply. an agreement by which a person promises a creditor to pay him.

2. When a person by this pact promises his own creditor to pay him, there arises a new obligation which does not destroy the former by which he was already bound, but which is accessory to it; and by this multiplicity of obligations the right of the creditor is strengthened. Poth. Ob. Pt. 2, c. 6, s. 9.

3. There is a striking conformity between the pactum constitutae pecuniae, as above defined, and our indebitatus assumpsit. The pactum constitutae pecuniae was a promise to pay a subsisting debt whether natural or civil; made in such a manner as not to extinguish the preceding debt, and introduced by the praetor to obviate some formal difficulties. The action of indebitalus assumpsit was brought upon a promise for the payment of a debt, it was not subject to the wager of law and other technical difficulties of the regular action of debt; but by such promise, the right to the action of debt was not extinguished nor varied. 4 Rep. 91 to 95; see 1 H. Bl. 550 to 655; Doug. 6, 7; 3 Wood. 168, 169, n. c; 1 Vin. Abr. 270; Bro. Abr. Action sur le case, pl. 7, 69, 72; Fitzh. N. B. 94, A, n. a, 145 G; 1 New Rep. 295; Bl. Rep. 850; 1 Chit. Pl. 89; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, u. 388, 396.

PACTUM DE NON PETANDO, civil law. An agreement made, between a creditor and his debtor that the former will not demand, from the latter the debt due. By this agreement the debtor is freed from his obligation. This is not unlike the covenant not to sue, (q. v.) of the common law. Wolff, Dr. de la Nat. §755.

PACTUM DE QUOTA LITIS. An agreement by which a creditor of a sum difficult to recover, promises a portion, for example, one-third, to the person who will undertake to recover it. In general, attorneys will abstain from, making such a contract, yet it is not unlawful.

PAGODA, comm. law. A denomination of money in Bengal. In the computation of ad valorem duties, it is valued at one dollar and ninety-four cent's. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide Foreign Coins.

PAIS, or PAYS. A French word signifying country. In law, matter in pais is matter of fact in opposition to matter of record: a trial per pais, is a trial by the country, that is, by a jury.

PALFRIDUS, A palfrey; a horse to travel on. 1 Tho. Co. Litt. 471; F. N. B. 93.

PANDECTS, civil law. The name of an abridgment or compilation of the civil law, made by order of the emperor Justinian, and to which he gave the force of law. It is also known by the name of Digest. (q. v.)

PANEL, practice. A schedule or roll containing the names of jurors, summoned by virtue of a writ of venire facias, and annexed to the writ. It is returned into the court whence the venire issued. Co. Litt. 158, b.

PANNEL, Scotch law. A person, accused of a crime; one indicted.

PAPER-BOOK, practice. A book or paper containing an abstract of all the facts and pleadings necessary, to the full understanding of a case.

2. Courts of error and other courts, on arguments, require that the judges shall each be furnished with such a paper-book in the court of king's bench, in England, the transcript containing the whole of the proceedings, filed or delivered between the parties, when the issue joined, in an issue in fact, is called the paper-book. Steph. on Pl. 95; 3 Bl. Com. 317; 3 Chit. Pr. 521; 2 Str. 1131, 1266; 1 Chit. R. 277 2 Wils, R. 243; Tidd, Px. 727.

PAPER DAYS, Eng. law. Days on which special arguments are to take place. Tuesdays and Fridays in term time are paper days appointed by the court. Lee's Dict. of Pr. h. t.; Arch. Pr. 101.

PAPER MONEY. By paper money is understood the engagements to pay money which are issued by governments and banks, and which pass as money. Pardes. Dr. Com. n. 9. Bank notes are generally considered as cash, and win answer, all the

purposes of currency; but paper money is not a legal tender if objected to. See Bank note, Specie, Tender.

PAR, comm. law. Equal. It is used to denote a state of equality or equal value. Bills of exchange, stocks, and the like, are at par when they sell for their nominal value; above par, or below par, when they sell for more or less.

PARAGE. Equality of name or blood, but more especially of land in the partition of an inheritance among co-heirs, hence comes disparage and disparagement. Co. Litt. 166.

PARAGIUM. A Latin term which signifies equality. It is derived from the adjective par, equal, and made a substantive by the addition of agium; 1 Tho. Co. Litt. 681.

2. In the ecclesiastical law, by paragium is understood the portion which a woman gets on her marriage. Ayl. Par. 336.

PARAMOUNT. That which is superior.

2. It is usually applied to the highest lord of the fee, of lands, tenements, or hereditaments. F. N. B. 135. Where A lets lands to B, and he underlets them to C, in this case A is the paramount, and B is the mesne landlord. Vide Mesne, and 2 Bl. Com. 91; 1 Tho. Co. Litt. 484, n. 79; Id. 485, n. 81.

PARAPHERNALIA. The name given to all such things as a woman has a right to retain as her own property, after her hushand's death; they consist generally of her clothing, jewels, and ornaments suitable to her condition, which she used personally during his life.

2. These, when not extravagant, she has a right to retain even against creditors; and, although in his lifetime the hushand might have given them away, he cannot bequeath such ornaments and jewels by his will. 2 Bl. Com. 430; 2 Supp. to Ves. jr. 376; 5 Com. Dig. 230; 2 Com. Dig. 212; 11 Vin. Ab. 176; 4 Bouv. Inst. n. 8996-7.

PARATITLA, civil law. An abbreviated explanation of some titles or books of the Code or Digest.

PARATUM HABEO. A return made by the sheriff to a capias ad respondendum, which signified that he had the defendant ready to bring into court. This was a fiction where the defendant was at large. Afterwards be was required by statute to take bail from the defendant, and he returned cepi corpus and bail bond. But still he might be ruled to bring in the body. 7 Penn. St. Rep. 535.

PARAVAIL. Tenant paravail is the lowest tenant of the fee, or he who is the immediate tenant to one who holds of another. He is called tenant paravail, because it is presumed he has the avails or profits of the land. F. N. B. 135; 2 Inst, 296.

PARCEL, estates. Apart of the estate. 1 Com. Dig. Abatement, H 511 p. 133; 5 Com. Dig. Grant, E 10, p. 545. To parcel is to divide an estate. Bac, Ab. Conditions, 0.

PARCENARY. The state or condition of holding title to lands jointly by parceners, before the common inheritance has been divided. Litt. sec. 56. Vide 2 Bl. Com. 187; Coparcenary; Estate In coparcenary.

PARCENERS, Engl. law. The daughters of a man or woman seised of lands and tenements in fee simple or fee tail, on whom, after the death of such ancestor, such lands and tenements descend, and they enter. Litt. s. 243; Co. Litt. 164 2 Bouv. Inst. n. 1871-2. Vide Coparceners.

PARCO FRACITO, Engl. law. The name of a writ against one who violently breaks a pound, and takes from thence beasts which, for some trespass done, or some other just cause, were lawfully impounded.

PARDON, crim. law, pleading. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. 7 Pet. S. C. Rep. 160.

2. Every pardon granted to the guilty is in derogation of the law; if the pardon be equitable, the law is, bad; for where legislation and the administration of the law are perfect, pardons must be a violation of the law, But as human actions are necessarily imperfect, the pardoning power must be vested somewhere in order to prevent injustice, when it is ascertained that an error has been committed.

3. The subject will be considered with regard, 1. To the kinds of pardons. 2. By whom they are to be granted. 3. For what offences. 4. How to be taken advantage of 5. Their effect.

4. - §1, Pardons are general or special. 1. The former are express, when an act ofthe legislature is passed expressly directing that offences of a certain class; shall be pardoned, as in the case of an act of amnesty. See Amnesty. A general pardon is implied by the repeal of a penal statute, because, unless otherwise provided by law, an offence against such statute while it was in force cannot be punished, and the offender goes free. 2 Overt. 423. 2. Special pardons are those which are granted by the pardoning power for particular cases.

5. Pardons are also divided into absolute and conditional. The former are those which free the criminal without any condition whatever; the. fatter are those to which a condition is annexed, which must be performed before the pardon can have any effect. Bac. Ab. Pardon, E; 2 Caines, R. 57; 1 Bailey, 283; 2 Bailey 516. But see 4 Call, R. 85.

6. - §2. The constitution of the United States gives to the, president in general terms, "the power to grant reprieves and pardons for offences against the United States." The same power is given generally to the governors of the several states to grant pardons for crimes committed against their respective states, but in some of them the consent of the legislature or one of its branches is required.

7. - §3. Except in the case of impeachment, for which a pardon cannot be granted, the pardoning power may grant a pardon of all offences against the government, and for any sentence or judgment. But such a pardon does not operate to discharge the interest which third persons may have acquired in the judgment; as, where a penalty was incurred in violation of the embargo laws, and the custom house officers became entitled to one-half of the penalty, the pardon did not discharge that. 4 Wash. C. C R. 64. See 2 Bay, 565; 2 Whart. 440; 7 J. J. Marsh. 131.

8. - §4. When the pardon is general, either by an act of amnesty, or by the repeal of a penal law, it is not necessary to plead it, because the court is bound, ex officio, to take notice of it. And the criminal cannot even waive such pardon, because by his admittance, no one can give the court power to punish him, when it judicially appears there is no law to do it. But when the pardon is special, to avail the criminal it must judicially appear that it has been accepted, and for this reason it must be specially pleaded. 7 Pet. R. 150, 162.

9. - §5. The effect of a pardon is to protect from punishment the criminal for the offence pardoned, but for no other. 1 Porter, 475. It seems that the pardon of an assault and battery, which afterwards becomes murder by the death of the person beaten, would not operate as a pardon of the murder. 12 Pick. 496. In general, the effect of a full pardon is to restore the convict to all his rights. But to this there are some exceptions: 1st. When the criminal has been guilty of perjury, a pardon will not qualify him to be a witnessat any time afterwards. 2d. When one was convicted of an offence by which he became civilly dead, a pardon did not affect or annul the second marriage of his wife, nor the sale of his property by persons appointed to administer on his estate, nor divest his heirs of the interest acquired in his estate in consequence of his civil death. 10 Johns. R. 232, 483.

10. - §6. All contracts, made for the buying or procuring a pardon for a convict, are void. And such contracts will be declared null by a court of equity, on the ground that

they are opposed to public policy. 4 Bouv. Inst. n. 3857. Vide, generally, Bac. Ab. h. t.; Com. Dig. h. t.; Nels. Ab. h. t.; Vin. Ab. h. t.; 13 Petersd. Ab. h. t.; Dane's Ab. h. t.; 3 lust. 233 to 240; Hawk. b. 2, c. 37; 1 Chit. Cr. L. 762 to 778; 2 Russ. on Cr. 595 Arch. Cr. Pl. 92; Stark. Cr. Pl. 368, 380.

PARENTAGE. Kindred. Vide 2 Bouv. Inst. n. 1955; Branch; Line.

PARENTS. The lawful father and mother of the party spoken of. 1 Murph. R. 336; 11 S. & R. 93.

2. The term parent differs from that of ancestor, the latter embracing not only the father and mother, but every per ascending line. It differs also from predecessor, which is applied to corporators. Wood's Inst. 68; 7 Ves. 522; 1 Murph. 336; 6 Binn. 255. See Father; Mother.

3. By the civil law grandfathers and grandmothers, and other ascendants, were, in certain cases, considered parents. Dict. de Jurisp. Parente. Vide 1 Ashm. R. 55; 2 Kent, Com. 159; 5 East, R. 223; Bouv. Inst. Index, h. t.

PARES. A man's equals; his peers. (q. v.) 3 Bl. Com. 349.

PARES CURIE, feudal law, Those vassals who were bound to attend the lord's court were so called. Ersk. Inst. B. 2, tit. 3, s. 17.

PARI DELICTO crim. law. In a similar offence or crime; equal in guilt. A person who is in pari delicto with another, differs from a particeps criminis in this, that the former always includes the latter but the latter does not always include the former. 8 East, 381, 2.

PARI MATERIA. Of the same matter; on the same subject; as, laws pari materia must be construed with reference to each other. Bac. Ab. Stat. I. 3.

PARI PASSU. By the same gradation.

PARISH. A district of country of different extents. In the ecclesiastical law it signified the territory committed to the charge of a parson, vicar, or other minister. Ayl. Parerg. 404; 2 Bl. Com. 112. In Louisiana, the state is divided into parishes.

PARIUM JUDICIUM. The trial by jury , or by a man's peers, or equals, is so called.

PARK, Eng. law. An enclosed chase (q.v.) extending only over a man's own grounds. The term park signifies an enclosure. 2 Bl. Com. 38.

PARLIAMENT. This word, derived from the French parlement, in the English law, is used to designate the legislative branch of the government of Great Britain, composed of the house of lords, and the house of commons.

2. It is an error to regard the king of Great Britain as forming a part of parliament. The connexion between the king and the Iords spiritual, the lords temporal, and the commons, which, when assembled in parliament, form the, three states of the realm, is the same as that which subsists between the king and those states - the people at large - out of parliament; Colton's Records, 710; the king not being, in either case, a member, branch, or coestate, but standing solely in the relation of sovereign or head. Rot. Par. vol. iii,. 623 a.; 2 Mann. & Gr. 457 n.

PAROL. More properly parole. A French word, which means literally, word or speech. It is used to distinguish contracts which are made verbally or in writing not under seal, which are called, parol. contracts, from those which are under seal which bear the name of deeds or specialties (q. v.) 1 Chit. Contr. 1; 7 Term. R. 3 0 351, n.; 3 Johns. Cas. 60; 1 Chit. Pl. 88. It is proper to remark that when a contract is made under seal, and afterwards it is modified verbally, it becomes wholly a parol contract. 2 Watts, 451; 9 Pick. 298; 13 Wend. 71.

2. Pleadings are frequently denominated the parol. In some instances the term parol is used to denote the entire pleadings in a cause as when in an action brought against an infant heir, on an obligation of his ancestors, he prays that the parol may demur, i. e., the pleadings may be stayed, till he shall attain full age. 3 Bl. Com. 300; 4 East, 485 1 Hoffm. R. 178. See a form of a plea in abatement, praying that the parol may demur, in 1 Wentw. Pl. 43; and 2 Chit. Pl. 520. But a devisee cannot pray the parol to demur. 4 East, 485.

3. Parol evidence is evidence verbally delivered by a witness. As to the cases when such evidence will be received or rejected, vide Stark, Ev. pt. 4, p. 995 to 1055; 1 Phil. Ev. 466, c. 10, s. 1; Sugd. Vend. 97.

PAROL LEASES. An agreement made verbally, not in writing, between the parties, by which one of them leases to the other a certain estate.

2. By the English statute of frauds of 29 Car. III, c. 3, s. 1, 2, and 3, it is declared, that "all leases, estates, or terms of years, or any uncertain interest in lands, created by livery only, or by parol, And not put in writing, and signed by the party, should have the force and effect of leases or estates at will only, except leases not exceeding the term of three years, whereupon the rent reserved during the term shall amount to two third parts of the full improved value of the thing demised." "And that no lease or estate, either of freehold or term of years, should be assigned, granted, or surrendered,

unless in writing." The principles of this statute have been adopted with some modifications, in nearly all the states of the Union. 4 Kent, Com. 95; 1 Hill. Ab. 130

PAROLE, international law. The agreement of persons who have been taken by an enemy that they will not again take up arms against those who captured them, either for a limited time, or during the continuance of the war. Vattel, liv. 3, c. 8, §151.

PARRICIDE, civil law. One who murders his father; it is applied, by extension, to one who murders his mother, his brother, his sister, or his children. The crime committed by such person is also called parricide. Merl. Rep. mot Parricide; Dig. 48, 9, 1, 1. 3, 1. 4.

2. This offence is defined almost in the same words in the penal code of China. Penal Laws of China, B. 1, s. 2, §4.

3. The criminal was punished by being scourged, and afterwards sewed in a sort of sack, with a dog, a cock, a viper, and an ape, and then thrown into the sea, or into a river; or if there were no water, he was thrown in this manner to wild beasts. Dig. 48, 9, 9; C. 9, 17, 1, 1. 4, 18, 6; Bro. Civ; . Law, 423; Wood's Civ. Law, B. 3, c. 10, s. 9.

4. By the laws of France parricide is the crime of him who murders his father or mother, whether they, be the legitimate, natural or adopted parents of the individual, or the murder of any other legitimate ascendant. Code Penal, art. 297. This crime is there punished by the criminal's being taken to the place of execution without any other garment than his shirt, barefooted, and with his head covered with a black veil. He is then exposed on the scaffold while an officer of the court reads his sentence to the spectators; his right hand is then cut off, and he is immediately put to death. Id. art. 13.

5. The common law does not define this crime, and makes no difference between its punishment, and the punishment of murder. 1 Hale's P. C. 380; Prin. Penal Law, c. 18, §8, p. 243; Dalloz, Dict. mot Homicide.

PARSON, eccles. law. One who has full possession of all the rights of a parochial church.

2. He is so called because by his person the church, which is an invisible body, is represented: in England he is himself a body corporate it order to protect and defend the church (which he personates) by a the minority, if required to bring Story on Partn. §489. 1 Bouv. Inst. n. 1217. 398; 5 Com. Dig. 346.

PARTICEPS FRAUDIS. fraud. Both parties be in pari delicto is not allowed to allege his own turpitude in such cases, when defendant at law, or prevented from alleging it, when plaintiff in equity, whenever the refusal to execute the contract at law, or the refusal to relieve against it in equity, would give effect to the original purpose, and encourage the parties engaged, in such transactions. 4 Rand. R. 372; 1 Black. R. 363; 2 Freem. 101.

PARTICULAR AVERAGE. This term, partipular average, has been condemned as not being exact. See Average. It denotes, in general, every kind of expense or damage, short of total loss which regards a particular concern, and which is to be borne by the proprietor of that concern alone. Between the insurer and insured, the term includes losses of this description, as far as the underwriter is liable. Particular average must not be understood as a total loss of a part; for these two kinds of losses are perfectly distinct from each other. A total loss of a part may be recovered, where a particular average would not be recoverable. See Stev. on Av. 77.

PARTICULAR AVFRMENT, pleading. Vide Avermzent.

PARTICULAR CUSTOM. A particular custom is one which only affects the inhabitants of some particular district. To be good, a particular custom must possess these requisites: 1. It must have been used so long that the memory of man runneth not to the contrary. 2. It must have been continued. 3. It must have been peaceable. 4. It must be reasonable. 5. It must be certain. 6. It must be consistent with itself. 7. lt must be consistent with other customs. 1 Bl. Com. 74, 79.

PARTICULAR ESTATE. An estate which is carved out of a larger and which precedes a remainder; as, an estate for years to A, remainder to B for life; or, an estate, for life to A, remainder to' B in tail: this precedent estate is called the particular estate. 2 Bl. Com. 165; 4 Kent, Com. 226; 16 Vin. Abr. 216; 4 Com. Dig. 32; 5 Com. Dig. 346.

PARTTICULAR, LIEN, contracts. A right which a person has to retain property in respect of money or labor expended on such particular property. For example, when a tailor has made garments out of cloth delivered to him for the purpose, he is not bound to part with the clothes until his employer, has paid him for his services; nor a ship carpenter with a ship which he has repaired; nor can an engraver be compelled to deliver the seal which he has engraved for another, until his compensation has been paid. 2 Roll. Ab. 92; 3 M. & S. 167; 14 Pick. 332; 3 Bouv. Inst. n. 2514. Vide Lien.

PARTICULARS, practice. The items of which the accounts of one of the parties is composed, and which are frequently furnished to the opposite party in a bill of particulars. (q. v.)

PARTIES, contracts. Those persons who engage themselves to do, or not to do the matters and things contained in an agreement.

2. All persons generally can be parties to contracts, unless they labor under some disability.

3. Consent being essential to all valid contracts, it follows that persons who want, first, understanding; or secondly, freedom to exercise their will, cannot be parties to contracts. Thirdly, persons who in consequence of their situation are incapable to enter into some particular contract. These will be separately considered.

4. - §1. Those persons who want understanding, are idiots and lunatics; drunkards and infants,

5. - 1. The contracts of idiots and lunatics, are riot binding; as they are unable from mental infirmity, to form any accurate judgment of their actions; and consequently, cannot give a serious and sufficient consideration to any engagement. And although it was formerly a rule that the party could not stultify himself; 39 H. VI. 42; Newl. on Contr. 19 1 Fonb. Eq. 46, 7; yet this rule has been so relaxed, that the defendant may now set up this defence. 3 Camp. 128; 2 Atk. 412; 1 Fonb. Eq. n. d.; and see Highm. on Lun. 111, 112; Long on Sales, 14; 3 Day's Rep. 90 Chit. on Contr. 29, 257, 8; 2 Str. 1104.

6. - 2. A person in a state of complete intoxication has no agreeing mind; Bull. N. P. 172; 3 Campb. 33; Sugd. Vend. 154 Stark. Rep. 126; and his contracts are therefore void, particularly if he has been made intoxicated by the other party. 1 Hen. & Munf. 69; 1 South. Rep. 361; 2 Hayw. 394; see Louis. Code, art. 1781; 1 Clarke's R. 408.

7. - 3. In general the contract of an infant, however fair and conducive tohis interest it may be, is not binding on him, unless the supply of necessaries to him be the object of the agreement; Newl. Contr. 2; 1 Eq. Cas. Ab. 286; l Atk. 489; 3 Atk. 613; or unless he confirm the agreement after he shall be of full age. Bac. Abr. Infancy; I 3. But he may take advantage of contracts made with him, although the consideration were merely the infant's promise, as in an action on mutual promises to marry. Bull. N. P. 155; 2 Str. 907; 1 Marsh. (Ken.) Rep. 76; 2 M. & S. 205. See Stark. Ev. pt. iv. page 724; 1 Nott & McCord, 197; 6 Cranch, 226; Com. Dig. Infant; Bac. Abr. Infancy and Age; 9 Vin. Ab. 393, 4; Fonbl. Eq. b. 1 c. 2; §4, note b; 3 Burr. 1794; 1 Mod. 25; Stra. 937; Louis. Code, article 1778.

8. - §2. Persons who have understanding, who, in law, have not freedom to exercise their will, are married women; and persons under duress.

9. - 1. A married woman has, in general, no power or capacity to contract during the coverture. Com. Dig. Baron & Feme, W; Pleader, 2 A 1. She has in legal contemplation no separate existence, her hushand and herself being in law but one person. Litt. section 28; see Chitty on Cont. 39, 40. But a contract made with a married woman, and for her benefit, where she is the meritorious cause of action, as in the instance of an express promise to the wife, in consideration of her personal labor, as that she would cure a wound; Cro. Jac. 77; 2 Sid. 128; 2 Wils. 424; or of a bond or promissory note, payable on the face thereof to her, or to herself and hushand, may be enforced by the hushand and wife, though made during the coverture. 2 M. & S. 396, n. b.; 2 Bl. Rep. 1236; 1 H. Black. 108. A married woman has no original power or Authority by virtue of the marital tie, to bind her bushand by any of her contracts. The liability of a bushand on his wife's engagements rests on the idea that they were formed by his authority; and if his assent do not appear by express evidence or by proof of circumstances from which it may reasonably, be inferred, he is not liable. 1 Mod. 125; 3 B. & C. 631; see Chitty on Cont. 39 to 50.

10. - 2. Contracts may be avoided on account of duress. See that word, and also Poth. Obl. P. 1, c. 1, s. 1, art. 3, §2.

11. - §3. Trustees, executors, administrators, guardians, and all other, persons who make a contract for and on behalf of others, cannot become, parties to such contract on their own. account; nor are they allowed in any case to purchase the trust estate for themselves. 1 Vern. 465; 2 Atk. 59; 10 Ves. 3; 9 Ves. 234; 12 Ves. 372, 3 Mer. Rep. 200; 6 Ves. 627; 8 Bro. P. C. 42 10 Ves. 381; 5 Ves. 707; 13 Ves. 156; 1 Pet. C. C. R. 373; 3 Binn. 54; 2 Whart. 53; 7 Watts, 387; 13 S. & R, 210; 5 Watts, 304; 2 Bro. C. C. 400; White's L. C. in Eq. *104-117; 9 Paige, 238, 241, 650, 663; 1 Sandf. R. 251, 256; 3 Sandf. R. 61; 2 John. Ch. R. 252; 4 How. S. C. 503; 2 Whart. 53, 63; l5 Pick. 24, 31. As to the transactions between attorneys and others in relation to client's property, see 2 Ves. jr. 201; 1 Madd. Ch. 114; 15 Ves. 42; 1 Ves. 379; 2 Ves. 259. The contracts of alien enemies may in, general be avoided, except when made under the license of the government, either express or implied. 1 Kent, Com. 104. See 15 John. 6; Dougl. 641. As to the persons who make contracts in equity, see Newl. Cont. c. 1, pp. l to 33.

PARTIES TO ACTIONS. Those persons who institute actions for the recovery of their rights, and those persons against whom they are instituted, are the parties to the actions; the former are called plaintiffs, and the latter, defendants. The term parties is understood to include all persons who are directly interested in the subject-matter in issue, who have right to make defence, control the proceeding, or appeal from the judgment. Persons not having these rights are regarded as strangers to the cause. 20 How. St. Tr. 538, n.; Greenl. Ev. §523

2. It is of the utmost importance in bringing actions to have proper parties, for however just and meritorious the claim may be, if a mistake has been made in making wrong persons, either plaintiffs or defendants, or including too many or too few persons as parties, the plaintiff may in general be defeated.

3. Actions are naturally divided into those which arise upon contracts, and those which do not, but accrue to the plaintiff in consequence of some wrong or injury committed by the defendant. This article will therefore be divided into two parts, under which will be briefly considered, first, the parties to actions arising upon contracts; and, secondly, the parties to actions arising upon injuries or wrongs, unconnected with contracts, committed b the defendant.

4. - Part I. Of parties to actions arising on contracts. These are the plaintiffs and the defendants.

5. - Sect. 1. Of the plaintiffs. These will be considered as follows:

§1. Between the original contracting parties. An action. on a contract, whether express or implied, or whether it be by parol, or under seal, or of record, must be brought in the name of the party in whom the legal interest is vested. 1 East, R. 497; and see Yelv. 25, n. l; 13 Mass. Rep. 105; 1 Pet. C. C. R. 109; 1 Lev. 235; 3 Bos. & Pull. 147; 1 Ii. Bl. 84; 5 Serg. & Rawle, 27; Hamm. on Par. 32; 2 Bailey's R. 55; 16 S. & R. 237,; 10 Mass. 287; 15 Mass. 286 10 Mass. 230; 2 Root, R. 119.

6.- §2. Of the number of plaintiffs who must join. When a contract is made with several, if their legal interests were joint, they must all, if living, join in the action for the breach of the contract. 1 Saund. 153, note 1; 8 Serg. & Rawle, 308; 10 Serg. & Rawle, 257; 10 East, 418; 8 T. R. 140; Arch. Civ. Pl. 58; Yelv. 177, note 1. But dormant partners need not join their copartners. 8 S. & R. 85; 7 Verm. 123; 2 Verm. 65; 6 Pick. 352; 4 Wend. 628; 8 Wend. 666; 3 Cowen, 84; 2 Harr. & Gill, 159. When a contract is made and a bond is given to a firm by a particular name, as A B and Son, the suit must be brought by the actual partners, the two sons of A B, t-he latter having been dead several years at the time of making the contract. 2 Campb. 548. When a person who has no interest in the contract is joined with those who have, it is fatal. 19 John. 213 2 Penn. 817; 2 Greenl. 117.

7. - §3. When the interest of the contract has been assigned. Some contracts are assignable at law; when these are assigned, the assignee may maintain an action in his own name. Of this kind are promissory notes, bills of exchange, bail-bonds, replevin-bonds; Hamm. on Part. 108; and covenants running with the land pass with the tenure, though not made with assigns. 5 Co. 24; Cro. Eliz., 552; 3 Mod. 338; 1 Sid. 157; Hamm, Part. 116; Bac. Abr.; Covenant, E 5. When a contract not is signable at law

has been assigned, and a recoverly on such contract is sought, the action must be in the name of the assignor for the use of the assignee.

8. - §4. When one or more of several obligees, &c., is dead. When one or more of several obligees, covenantees, partners or others, haviug a joint interest in the contract; not running with the land, dies, the action must be brought in the name of the survivor, and that fact averred in the declaration. 1 Dall. 65, 248; 1 East, R. 497; 2 John. Cas. 374; 4 Dalt. 354; Arch. Civ. Pl. 54, 5; Addis. on Contr. 285; 1 Chan. Rep. 31; Yelv. 177.

9. - §5. In the case o executors and administrators. When a personal contract, or a covenant not running with the land, has been made with one person only, and he is dead, the action for the breach of it must be brought in the name of the executor or administrator in whom the legal interest in the contract is vested; 2 H. Bl. 310; 3 T. R. 393; and all the executors or administrators must join. 2 Saund. 213; Went.95; 1 Lev.161; 2 Nott & McCord, 70; Hamm. on Part. 272.

10. - §6. In the case of bankruptcy or insolvency. In the case of the bankruptcy or insolvency of a person who is beneficially interested in the performance; of a contract made before the act of bankruptcy or before, the assignment under the insolvent laws, the action should be brought in the name of his assignees. 1 Chit. Pl. 14; 2 Dall. 276; 3 Yeates, 520; 7 S. & R. 182; 5 S. & R. 394; 9 S, & R. 434. See 3 Salk. 61; 3 T. R. 779; Id. 433; Hamm. on Part. 167; Com. Dig. Abatement, E 17.

11. - §7. In case of marriage. This part of the subject will be considered with reference to tbose cases. 1st. When the hushand and wife, must join. 2d. When the hushand must sue alone. 3d. When the wife must sue alone. 4th. When they may join or not at their election. 5th. Who is to sue in the case of the death of the hushand or wife. 6th. When a woman marries, lis pendens.

12. - 1. To recover the chose in action of the wife, the hushand must, in general, join, when the cause of action would survive. 3 T. R. 348; 1 M. & S. 180; Com. Dig. Baron & Feme, V; Bac. Ab. Baron & Feme, K; 1 Yeates' R. 551; 1 P. A. Browne's R. 263; 1 Chit. Pl. 17.

13. - 2. In general the wife cannot join in any action upon a contract. made during coverture, as for work and labor, money lent, or goods sold by her during that time, 2 Bl. Rep. 1239; and see 1 Salk. 114; 2 Wils. 424.; 9 East, 412; 1 Str. 612; 1 M. & S. 180; 4 T. R. 516; 3 Lev. 103; Carth. 462; Ld. Raym. 368; Cro, Eliz. 61; Com. Dig. Baron & Feme, W.

14. - 3. When the hushand is civiliter mortuus, see 4 T. Rep. 361; 2 Bos. & Pull. 165; 4 Esp. R. 27; 1 Selw. N. P. 286; Cro. Eliz. 1519; 9 East, R. 472; Bac. Ab. Baron & Feme, M.; or, as has been decided in England, when he is an alien and has left the country, or has never been in it, the wife may, on her own separate contracts, sue alone. 2 Esp. R. 544; 1 Bos. & Pull. 357; 2 Bos. & Pull. 226; 1 N. R. 80; 11 East, R. 301; 3 Camp. R. 123; 5 T. R. 679. But the rights of such hushand being only suspended, the disability may be removed, in one case, by a pardon, and, in the other, by the hushand's return, and then: he must be joined. Broom on Part. s. 114.

15. - 4. When a party being indebted to a wife dum sola, after the marriage gives a bond to the hushand and wife in consideration of such debt, they may join, or the hushand may sue alone on such contract. 1 M. & B. 180; 4 IT. R. 616 1 Chit. Pl. 20.

16. - 5. Upon the death of the wife, if the hushand survive, he may sue for, anything he became entitled to during the coverture; as for rent accrued to the wife during the coverture. 1 Rolle's Ab. 352, pl. 5; Com. Dig. Baron & Feme, Z; Co. Litt. 351, a, n. 1. But the hushand cannot sue in his own right for the choses in action of the wife, belonging to her before coverture. Hamm. on Part. 210 to 215.

17. When the wife survives the hushand, she may sue on all contracts entered into with her before coverture, which remain unsatisfied; and she may recoverall arrears of rent of her real estate, which became due during the coverture, or their joint demise. 2 Taunt. 181; 1 Roll's Ab. 350 d.

18. - 6. When a suit is instituted by a single woman, or by her and others, and she afterwards marries, lis pendens, the suit abates. 1 Chit. Pl. 437; 14 Mass. R. 295; Brayt. R. 21.

19. - §8. When the plaintiff, is a foreign government, it must have been recognized by the government of this country to entitle it to bring an action. 3 Wheat. R. 324; Story, Eq. Pl. §55. See 4 Cranch, 272; 9 Ves. 347; 10 Ves. 354; 11 Ves. 283; Harr. Dig. 2276.

20. - Sect. 2. Of the defendants. These will be considered in the following order: §1. Between the original parties. The action upon an express contract, must in general be brought against the party who made it. 8 East, R. 12. On implied contracts against the person subject to the legal liability. Ramm. Part. 48; 2 Hen. Bl. 563. Vide 6 Mass. R. 253; 8 Mass. Rep. 198; 11 Mass. R. 335; 6 Binn. R. 234; 1 Chit. Pl. 24.

21. - §2. Of the number of defendants. For the breach of a joint contract made by several parties, they should all be made defendants; 1 Saund: 153, note 1; Id. 291 b, n. 4; even though one be a bankrupt or insolvent. 2 M. & S. 23. Even an infant must be

joined, unless the contract as to him be entirely void. 3 Taunt. 307; 5 John R. 160. Vide 5 John. R. 280; 11 John. R. 101; 5 Mass. R. 270; 1 Pick. 500. When a joint contractor is dead, the suit should be brought against the survivor, 1 Saund. 291, note 2. The misjoinder of defendants in an action ex contractu, by joining one who is not a contractor, is fatal. 3 Conn. 194; Pet. C. C. 16; 2 J. J. Marsh. 88; 1 Breese, 128; 2 Rand. 446; 10 Pick. 281.

22. - 3. In case of a change of credit, and of covenants running with the land, &c. In general in the case of a mere personal contract, the action for the breach of it, cannot be brought against the person to whom the contracting party has assigned his interest, and the original party can alone be sued; for example, if two partners dissolve their partnership, and one of them covenant with the other that he will pay all the debts, a creditor may nevertheless sue both. Upon a covenant running with land, which must concern real property, or the estate therein; 3 Wils. 29; 2 H. Bl. 133; 10 East, R. 130; the assignee of the lessee is liable to an' action for a breach of the covenant after the assignment of the estate to him, and while the estate remaim in him, although he have - not take possession. Bac. Ab. Covenant, E 34; 3 Is. 25; 2 Saund. 304, n. 12; Woodf. L. & T. 113; 7 T. R. 312; Bull. N. P. 159; 3 Salk. 4; 1 Dall. R. 210,; 1 Fonbl. Eq. 359, note y; Hamm. N. P. 136.

23. - §4. When one of several obligers, &c. is dead. When the parties were bound by a joint contract, and one of them dies, his executor or administrator is at law discharged from liability, and the survivor alone can be sued. Bac. Ab. Obligation, D 4; Vin. Ab. Obligation, P 20; Carth. 105; 2 Burr. 1196. And when the deceased was a mere surety, his executors are not liable even in equity. Vide 1 Binn. R. 123.

24. - §5. In the case of executors an administrators. When the contracting party is dead, his executor or administrator, or, in case of a joint contract, the executor or administrator of the survivor, is the party to be made defen-dant. Ham. on Part. 156. On a joint contract, the executors of the deceased contractor, the other surviving, are discharged at law, and no action can be supported against them; 6 Serg. & R. 262; 2 Whart. R. 344; 2 Browne, Rep. 31; and, if the deceased joint contractor was a mere surety, his representatives are not liable either at, law or in equity. 2 Serg. & R. 262; 2 Whart. 344; P. A. Browne's R. 31. All the executors must be sued jointly; when administration is taken on the debtor's estate, all his administrators must be joined, and if one be a married woman, her hushand must also be a party. Cro. Jac. 519.

25. - §6. In the case of bankruptcy or insolvency. A discharged bankrupt cannot be sued. A discharge under the insolvent laws does not protect the property of the insolvent, and he may in general be sued on his contracts, though he is not liable to be arrested for a debt which was due and not contingent at the date. of his discharge. Dougl. 93; 8 East, R. 311; 1 Saund. 241, n. 5; Ingrah. on Insol. 377.

26. - §7. In case of marriage. This head will be divided by considering, 1. When the bushand and wife must be joined. 2. When the hushand must be sued, alone. 3. When the wife must be sued alone. 4. When the hushand and wife may be joined or not at the election of the plaintiff. 5. Who is to be sued in case of the death of the hushand or wife. 6. Of actions commenced against the wife dum sola, which are pending at her marriage.

27. - 1. When a feme sole who has entered into a contract marries, the hushand and wife must in general be jointly sued. 7 T. R. 348; All. 72; 1 Keb. 281; 2 T. R. 480; 3 Mod. 186; 1 Taunt. 217; 7 Taunt. 432; 1 Moore, 126; aid, s6e 8 Johns. R. 2d ed. 115.; 15 Johns. R. 403, 483; 17 Johns. Rep, 16't;- 7 Mass. R. 291 - Com. Dig. Pleader, 2 A 2-; 1 Bingh. R. 60. But if the hushand be away, or live separate from his wife, she may, on a contract of which she is the meritorious cause, bring an action in the Paine of her hushand, on indemnitying the latter for costs. 4 B. & A. 419; 2 C. & M. 388 Addis. on Contr. 342. And, on such contract, she may sue as a feme sole when her hushand is civiliter inortu'us. Addis. on Contr. 342 1 Salk. 116; 1 Lord Raym. 147; 2 M. & W. 65; Moore, 851.

28. - 2. When the wife cannot be considered either in person, or property as creating the cause of action, as in the case of a mere personal contract made during the coverture, the hushand must be sued alone. Com. Dig. Pleader, 2 A 2; 8 T. R. 545; 2 B. & P. 105; Palm. 312; 1 Taunt. 217; 4 Price, 48; 16 Johns. R. 281.

29. - 3. The wife can in general be sued alone, in the same cases where she can sue alone, the cases being reversed.

30. - 4. When the hushand, in consequence of some new consideration, undertakes to pay a debt of the wife dum sola, he may be sued alone, or the hushand and wife. may be made joint defendants. All. 73; 7 T. R. 349; vide other cases in Com. Dig. Baron & Feme, Y; 1 Rolle's Ab. 348, pl. 45, 50; Bac. Ab. Baron & Feme, L.

31. - 5. Upon the death of the wife, her executor, when she has appointed one under a power, or her administrator, is alone responsible for a debt or duty she contracted dum sola. The hushand, as such, is not liable. Com. Dig. Baron & Feme, 2 C; 3 Mod. 186; Rep. Temp. Talb. 173; 3 P. Wms. 410. When the wife survives, she may be sued for her contracts made before coverture. 7 T. R. 350; 1 Camp. R. 189.

32. - 6. When a single woman, being sued, marries Iis pendens, the plaintiff may proceed to judgment, as if she were a feme sole. 2 Rolle's R. 53; 2 Str, 811.

33. Part 2. Of parties to actions in form ex delicto. These are plaintiffs and defendants.

34. - Sect. 1. Of plaintiffs. These will be separately, considered as follows:

35. - §1. With reference to the interest. Of the plaintiff. The action for a tort must, in general, be brought in the name of the party whose legal right has been affected, 8 T. R. 330; vide 7 T. R. 47; 1 East, R. 244; 2 Saund. 47 d; Hamm. on Part. 35, 6; 6 Johns. R. 195;.10 Mass. R. 125 10 Serg. & Rawle, 357.

36. - §2. With reference to the number of plaintiffs. It is a general rule that when an injury is done to the property of two or more joint owners, they must join in the action; and even when the property is several, yet when the wrong has caused a joint damage, the parties must join in the action. 1 Saund. 291, g. When suits are brought by tenants in common, against strangers for the recovery of the land, inasmuch as they have several titles, they cannot agreeably to the rules of the common law, join, but must bring separate actions; and this seems to be the rule in Missouri. 1 Misso. R. 746. This rule has been changed in some of the states. In Connecticut, when the plaintiff claims on the title of all the tenants, he recovers for their benefit, and his possession will be theirs. 1 Swift's Dig. 103. In Massachusetts, Mass. Rev. St. 611, and Rhode Island, R. I. Laws, 208, all the tenants or any two may join or any one may sue alone. In Tennessee they usually join. 2 Yerg. R. 228.

37. When personal reputation is the object affected, two or more cannot join as plaintiffs in the action, although the mode of expression in which the slander was couched comprehended them all; as when a man addressing himself to three, said, you have murdered Peter. Dyer, 191, pl. 112; Cro. Car. 510; Goulds. pl. 6, p. 78. The reason of this is obvious, no one has any interest in the character of the others, the damages are, therefore, several to each.

38. - §3. In general, rights or causes of action arising ex delicto are not assignable.

39. - §4. When one of several parties who had an interest is dead. In such case the action must be instituted by the survivor. 1 Show. 188; S. C. Carth. 170.

40. - §5. When the party injured is dead. The executors or administrators cannot in general recover damages for a tort, when the, action must be ex delicto, and the plea to it is not guilty. Vide the article Actio personalis moritur cum persona, where the subject is more fully examined.

41. - §6. In case of insolvency. The statutes generally authorize the trustee or assignee of an insolvent to institute a suit in his own name for the recovery of the rights and property of the insolvent. 6 Binn. 189; 8 Serg. & Rawle, 124. But for torts to the person of the insolvent, as for slander, the trustee or assignee cannot sue. W. Jones' Rep. 215.

42.- §7. When the tort has been committed, against a woman dum sola who afterwards married. A distinction is made between those injuries committed before and those which take place during coverture. For injuries to the person, personal or real property of the wife, committed before coverture, when the cause of action would survive to the wife, she must join in the action. 3 T. R. 627; Rolle's Ab. 347; Com. Dig. Baron & Feme, V. For an injury to the person of the wife during coverture, by battery, or to her character, by slander, or for any other such injury, the wife must be joined with her hushand in the suit; when the injury is such that the hushand receives a separate damage or loss, as if in consequence of the battery, he has been deprived of her society or been put to expense, he may bring a separate action, in his own name; and for slander of the wife, when words are not actionable of themselves, and the hushand has received some special damages, the hushand must sue alone. 1 Lev. 140; 1 Salk. 119; 3 Mod. 120.

43. - Sect. 2. Of the defendants. §1. Between the orginal parties. All natural persons are liable to be sued for their tortious acts, unconnected with or in disaffirmance of a contract; an infant is, therefore, equally liable with an adult for slander, assaults aud batteries, and the like; but the plaintiff cannot bring an action ex delicto which arose out of a contract, and by that means charge an infant for a breach of a contract. The form is of no consequence; the only question is whether the action arose out of contract or otherwise. A plaintiff who hired a horse to an infant, and the infant by hard, improper and injudicious driving, killed the horse,, cannot maintain an action ex delicto to recover damages for a breach of this contract. 8 Rawle's R. 351; 6 Watts' R. 9; 8 T. R. 385; Hamm. N. P. 267. But see contra, 6 Cranch,226; 15 Mass. 359; 4 McCord, 387. Vide Infant.

44. - §2. As to the number of defendants. There are torts which, when committed by several, may authorize a joint action against all the parties; but when in legal contemplation several cannot concur in the act complained of, separate actions must be brought against each; the cases of several persons joining in the publication of a libel, a malicious prosecution, or an assault and battery, are cases of the first kind verbal slander is of the second. 6 John. R: 32. In general, When the parties have committed a tort which might be committed by several, they may be jointly sued, or the plaintiff may sue one or more of them and not sue the others, at his election. Bac Ab. Action Qui Tam, D; Roll. Ab. 707; 3 East, R. 62.

45. - §3. When the interest has been assigned. A liability for a tort cannot well be assignee; but an estate may be assigned on which was erected a nuisance, and the assignee will be liable for continuing it, after having possession of the estate. Com. Dig. Case, Nuisauce, B; Bac. Ab. Actions, B; 2 Salk. 460; 1 B. & P. 409.

46.- 4. When the wrongdoer is dead. In this case the remedy for wrongs ex delicto, and unconnected with contract, cannot in general be maintained. Vide Actio personalis moritur cum persona.

47. - §5. In case of insolvency. Insolvency does not discharge the right of action of the plaintiff in any case; it merely liberates the defendant from arrest when he has received the benefit of, and been discharged under, the insolvent laws; an insolvent may therefore be sued for his torts committed before his discharge.

48. - §6. In case of marriage. Marriage does not affect or change the liabilities of the hushand and he is alone to be sued for his torts committed either before or during the coverture. But it is otherwise with the wife; after her marriage she has no personal property to pay the damages which may be recovered, and she cannot even appoint an attorney to defend her. For her torts committed by her before the marriage, the action must be against the hushand and wife jointly. Bac. Ab. Baron and Feme, L; 5 Binn. 43. They must also be sued jointly for the torts of the wife during the coverture, as for slander, assault and battery, &c. Bac. Ab. Baron and Feme, L. See, generally, as, to parties to actions,, 3 United States Dig. Pleading, I, and Promissory Note, XVI.; Bouv. Inst. Index, h. t.

PARTIES TO A SUIT IN EQUITY. The person who seeks a remedy in chancery by suit, commonly called a plaintiff, and the person against whom the remedy is sought, usually denominated the defendant, are the parties to a suit in equity.

2. It is of the utmost importance, that there should be proper parties; and therefore no rules connected with the science of equity pleading, are so necessary to be attentively considered and observed, as those which relate to the persons who are to be made parties. to a suit, for when a mistake in this respect is discovered at the hearing of the cause, it may sometimes be attended with defeat, and will, at least, be followed by delay and expense. 3 John. Ch. R. 555; 1 Hopk. Ch. R. 566; 10 Wheat. R. 152.

3. A brief sketch will be here given by considering, 1. Who may be plain-tiffs. 2. who may be made defendants. 3. The number of the parties.

4. - §1. Of the plaintiff. Under this head will be considered who may sue in equity: and,

5. - 1. The government, or as the style is in England, the crown) may sue in a court of equity, not only in suits strictly on behalf of the government, for its own peculiar rights and interest, but also on behalf of the rights and interest of those, who partake of its prerogatives, or claim its peculiar protection. Mitf. Eq. Plead. by Jeremy, 4, 21-24; Coop. Eq. 21, 101. Such suits are usually brought by the attorney general.

6.- 2. As a general rule all persons, whether natural or artificial, as corporations, may sue in equity; the exceptions are persons who are not sui juris, as a person not of full age, a feme covert, an idiot, or lunatic.

7. The incapacities to sue are either absolute, or partial.

8. The absolute, disable the party to sue during their continuance; the partial, disable the party to sue by himself alone, without the aid of another. In the United States, the principal ab solute incapacity, is alienage. The alien, to be disabled to sue in equity, must be an alien enemy, for an alien friend may sue in chancery. Mitf. Equity, PI, 129; Coop. Equity Pl. 27. But still the subject matter of the suit may. disable an alien to sue. Coop. Eq. Pl. 25; Co. Lit. 129 b. An alien sovereign or an alien corporation may maintain a suit in equity in this country. 2 Bligh's Rep. 1, N. S.; 1 Dow. Rep.. 179, N. S.; 1 Sim. R. 94; 2 Gall. R. 105; 8 Wheat. Rep. 464; 4 John. Ch. Rep. 370. In case if a foreign sovereign, he must have been recognized by the government of this country before he can sue. Story's Eq. pl. §55; 3 Wheat. Rep. 324; Cop. Eq. Pl. 119

9. Partial incapacity to sue exists in the case of infants, of married women, of idiots and lunatics, or other persons who are incapable, or are by law specially disabled to sue in their own names; as for example, in Pennsylvania, and some other states, habitual drunkards, who are under guardianship. 10.-1. An infant cannot, by himself, exhibit a bill, not only on account of his want of discretion, but because of his inability to bind himself for costs. Mitf. Eq. Pl. 25. And when an infant sues, he must sue by his next friend. Coop, Eq. 27; 1 Sm. Chan. Pl. 54. But as the next friend may sometimes bring a bill. from improper motives, the court will, upon a proper application, direct the master to make inquiry on this subject, and if there be reason to believe it be not brought for the benefit of the infant, the proceedings will be stayed. 3 P. Wms. 140; Mitf. Eq. Pl. 27; Coop. Eq. Pl. 28.

11. - 2. A feme covert must, generally, join with her hushand; but when he has abjured the realm, been transported for felony, or when he is civilly dead, she may sue as a feme sole. And when she has a separate claim, she may even sue her hushand, with the assistance of a next friend of her own selection. Story's Eq. Pl. §61; Story's Eq. Jur. §1368; Fonbl. Eq. b. 1, c. 2, §6, note p. And the hushand may himself sue the wife.

12. - 3. Idiots and lunatics are generally under the guardianship of persons who are authorized to bring a suit in the idiot's name, by their guardian or committee.

13. - §2. Of the defendant. 1. In general, those persons who may sue in equity, may be sued. Persons sui juris may defend themselves, but those under an absolute or partial inability, can make defence only in a particular manner. A bill may be exhibited

against all bodies politic or corporate, against all persons not laboring under any diability, and all persons subject to such incapacity, as infants, married women, and lunatics, or habitual drankards.

14. - 2. The government or the state, like the king in England, cannot be sued. Story, Eq. Pl. §69.

15. - 3. Bodies politic or corporate, like persons sui juris, defend a suit by themselves.

16. - 4. Infants institute a suit, as has been seen, by next friend, but they must defend a suit by guardian appointed by the court, who is usually the nearest relation, not concerned in interest, in the matter in question. Mitf. Eq. Pl. 103; Coop. Eq. Pl. 20, 109; 9 Ves. 357; 10 Ves. 159; 11 Ves. 563; 1 Madd. R. 290; Vide Guardian, n. 6.

17. - 5. Idiots and lunatics defend by their committees, who, in ordinary circumstances, are appointed guardians ad litem, for that purpose, as a matter of course. Mitf. Eq. Pl. 103; Coop. Eq. Pl. 30, 32; Story's Eq. Pl. SS70; Shelf on Lun. 425.; and vide 2 John. Ch. R. 242, where, Chancellor Kent held, that the idiot need not be made a party as defendant to a bill for the payment of his debts, but his committee only. When the idiot or lunatic has no committee, or the latter has an interest adverse to that of the lunatic or idiot, a guardian ad litem will be appointed Mitf. Eq. Pl. 103;; Story's Eq. Pl. §70.

18. - 6. In general, a married woman, when she is sued, must be joined with her hushand, and their answer must also be joint. But there axe exceptions to this rule in both its requirements.

19. - 1. A married woman may be made a defendant, and answer as a feme sole, in some instances, as when her hushand is plaintiff in the suit, and sues her as defendant, and from the like necessity, when the hushand is an exile or has abjured the realm, or has been transported under a criminal sentence, or is an alien enemy. She may be sued and answer as a feme sole. Mitf. Eq. Pl. 104, 105; Coop. Eq. Pl. 30.

20. - 2. When her hushand is joined, or ought to be joined, she cannot make a separate defence, without a special order of court. The following are instances where such orders will made. When a married woman claims as defendant in opposition to her hushand, or lives separate from him, or disapproves of the defence he wishes her to make, she may obtain an order of court for liberty to answer, and defend the suit separately. And when the hushand is abroad, the plaintiff may obtain, an order that she shall answer separately; and, if a woman obstinately refuses to join a defence with her hushand, the latter may obtain an order to compel her to make a separate answer. Mitf. Eq: Pl.: 104; Coop. Eq. Pl. 30; Story's Eq 71.

21. - 3. As to the number of parties. It is a general rule that every person who is at all interested in the subject-matter of the suit, must be made a party. It is, the constant aim of a court of equity, to do complete justice by deciding upon and settling the rights of all persons interested in the subject of the suit, to make the performance of the order of the court perfectly safe to those who are compelled to obey it, and, to prevent future litigation. For this purpose, all persons materially interested in the subject ought to be parties to the suit, plaintiffs or defendants, however numerous they may be, so that a complete decree may be made binding on those parties. Mitford's Eq. Pl. 144; 1 John. Ch. R. 349; 9 John. R. 442; 2 Paige's C. R. 278; 2 Bibb, 184; 3 Cowen's R. 637; 4 Cowen's R. 682 9 Cowen's R. 321; 2 Eq. Cas. Ab. 179; 3 Swans. R. 139. When a great number of individuals are interested as in the instance of creditors seeking an account of the estate of their deceased debtor for payment of their demands, a few suing on behalf of the rest may substantiate the suit, and the other creditors may come in under the decree. 2 Ves. 312, 313. In such case the bill should expressly show that it is fifed as well on the behalf of other members as those who are really made the complainants; and the parties must not assume a corporate, name, for if they assume the style of a corporation, the bill cannot be sustained. 6 Ves. jr. 773; Coop. Eq. Pl. 40; 1 John. Ch. R. 349; 13 Ves. jr. 397 16 Ves. jr. 321; 2 Ves. sen. 312 S. & S. 18; Id. 184. In some cases, however, when all the persons interested are, not made parties, yet, if there be such privily between the plaintiffs and defendants, that a complete decree may be made, the want of parties is not a cause of demurrer. Mitf. El q. Pl. 145. Vide Calvert on Parties to Suits in Equity; Edwards on Parties to Bills in Chancery; Bouv Inst. Index, h. t.

PARTITION, conveyancing. A deed of partition is, one by which lands held in joint tenancy, coparcenary, or in common, are divided into distinct portions, and allotted to the several parties, who take them in severalty.

2. In the old deeds of partition, it was merely agreed that one should enjoy a particular part, and the other, another part, in severalty; but it is now the practice for the parties mutually to convey and assure to each other the different estates which they are to take in severalty, under the partition. Cruise Dig. t. 32, c. 6, s. 15.

PARTITION, ?states. The division which is made between several persons, of lands, tenements, or hereditaments, or of goods and chattels which belong to them as co-heirs or co-proprietors. The term is more technically applied to the division of real estate made between coparceners, tenants in common or joint tenants.

2. The act of partition ascertanas and fixes what each of the co-proprietors is entitled to have in severalty

3. Partition is either voluntary, or involuntary, by compulsion. Voluntary partition is made by the owners of the estate, and by a conveyance or release of that part to each other which is to be held by him in severalty.

4. Compulsory partition is made by virtue of special laws providing that remedy. "It is presumed," says Chancellor Kent, 4 Com. 360, "that the English statutes of 31 and 32 Henry VIII. have been generally reenacted and adopted in this country, and probably, with increased facilities for partition." In some states the courts of law have jurisdiction; the courts of equity have for a long time exercised jurisdiction in awarding partition. 1 Johns. Ch. R. 113; 1 Johns. Ch. R. 302; 4 Randolph's R. 493; State Eq. Rep. S. C. 106. In Massachusetts, the statute authorizes a partition to be effected by petition without writ. 15 Mass. R. 155; 2 Mass. Rep. 462. In Pennsylvania, intestates' estates, may be divided upon petition to the orphans' court. By the civil code of Louisiana, art. 1214, et seq., partition of a succession may be made. Vide, generally, Cruise's Dig. tit. 32, ch. 6, s. 1 5; Com. Dig. Pleader, 3 F; Id. Parcener, C; Id. vol. viii. Append. h. t. 16 Vin. Ab. 217; 1 Supp. to Yes. jr. 168, 171; Civ. Code of Louis. B. 3, t. 1, c. 8.

5. Courts of equity exercise jurisdiction in cases of partition on various grounds, in cases of such complication of titles, when no adequate remedy can be had at law; 17 Ves. 551; 2 Freem. 26; but even in such cases the remedy in equity is more complete, for equity directs conveyances to be made, by which the title is more secure. "Partition at law, and in equity," says Lord Redesdale, "are very different things. The first operates by the judgment of a court of law, and delivering up possession in pursuance of it, which concludes all the parties to it. Partition in equity proceeds upon conveyances to be executed by the parties; and if the parties be not competent to execute the conveyance, the partition cannot be effectually had." 2 Sch. & Lef. 371. See 1 Hill. Ab. c. 55, where may be found an abstract of the laws of the several states on this subject.

PARTNERS, contracts. Persons who have united together and formed a partnership. 2. Every person sui juris is competent to contract the relation of a partner. An infant may by law be a partner. 5 B & A. 159; but a feme covert, not being capable of contracting, cannot enter into partnership; and altbough married women are not unfrequently entitled to shares in banking houses, and other mercantile concerns, under positive covenants, yet when this happens, their hushands are entitled to such shares, and become partners in their steads. Whether a feme sole trader in Pennsylvania could enter into such contract, seems not settled. See 2 Serg. & Rawle, 189; see also, 2 Nott & McC. R. 242; 2 Bay, 162, 333; Code Civ. par Sirey, art. 220.

3. Partners are considered as ostensible, dormant, or nominal partners. 1. An actual ostensible partner is a party who not only participates, in the profits and contributes to

the losses, but.who appears and exhibits himself to the world as a person connected with the partnership, and as forming a component member of a firm. He is clearly answerable for the debts and engagements of, the partnership; his right to a share of the, profits, or the permitted exhibition of his name as partner, would be sufficient to render him responsible. 6 Serg. & Rawle, 259, 337; Barnard. 343; 2 Blackst. R. 998; 17 Ves. 404;. 18 Ves. 301; 1 Rose, 297; 16 Johns. R. 40; 3 Hayw. R. 78.

4. - 2. A dormant partner is one who is a participant in the profile of the trade, but his name being suppressed and concealed from the firm, his interest is consequently not apparent. He is liable as a partner, because he receives and takes from the creditors a part of that fund which is the proper security to them for the satisfaction of debts, and upon which they rely for payment. 16 Johns. R. 40. Another reason assigned for subjecting a dormant partner to responsibility is, that if he were exempted he would receive usurious interest for his capital, without its being attended with any risk. 1 Dougl. 371; 4 East, R. 143; 10 Johns. R. 226; 4 B. & A. 663; 8 Man. Gr. & Scott, 641, 650. But in order to render one liable as a partner, he must receive the profits as such, and not merely his wages; to be paid out of the profits. Vide Profits.

5. - 3. A, nominal partner is one who has not any actual interest in the trade or its profits, but, by allowing his name to be used, he holds himself out to the world as having an apparent interest. He is liable as a partner, because of these false appearance he holds forth to the world in representing himself to be jointly concerned in interest with those with whom he is apparently associated. 2 H. Bl. 235; 1 Esp. N. P. O. 29; 6 Serg. & R. 338; Watts. Partn. 26.

6. A partner in a private commercial partnership cannot introduce a stranger into the firm as a partner without the consent of all the copartners. If he should attempt to do so, this may make such stranger a partner with the partner who has associated with such third person; this will be a partnership, distinct from the first, and limited to the share of that partner who has so joined himself with another. 2 Rose 255; Domat, de la Societe, tit. 8, s. 2, n. 5.

7. As between the members of a firm and the persons having claims upon it, each individual member is answerable in solido for the amount of the whole of the debts contracted by the partnership, without reference either to the extent of his own separate beneficial interest in the concern, or. to any private arrangement or agreement that may exist between himself and his copartners, stipulating for a restricted responsibility. 1 Ves. & Bea. 157; 9 East, 527; 5 Burr. 2611; 2 Bl. R. 947; 1 East, R. 20; 1 Ves. sen. 497; 2 Desaus. R. 148; 4 Serg. & Rawle, 356; 6 Serg. & Rawle, 333; Kirby, 53, 77, 147. In Louisiana, ordinary partners are not bound in solido for the debts of the partner- ship; Civ. Code of Lo. art. 2843; each partner is bound for his share of the partnership debts, calculating such share in proportion to the number of

the partners, without any attention to the proportion of the stock or profits each is entitled to id. art. 2844.

8. Partners are bound by what is done by one in the course of the business of the partnership. Their liability under contracts is commensurate and coextensive with their rights. Although the general rule of law is, that no one is liable upon any contract except such as are privy to it; yet this is not contravened by the liability of partners, as they are imagined virtually present at and sanctioning the proceedings they singly enter. into in the course of trade; or as each is vested with a power enabling him to act, at once as principal and as the authorized agent of his copartners. Wats. Partn. 167; Gow. Partn. 53. It is doubtful, however, whether one can close the business by a general assignment of the partnership property for the benefit of creditors. Pierpont and Lord v. Graham. Cir. Court, April 1820, MS. Whart. Dig. 453, 1st ed.; 4 Wash. C. C. R. 232; see 1 Brock. R. 456; 3 Paige's R. 517; 5 Paige's R. 30; 1 Desaus. R. 537; 4 Day's. R. 425; 5 Cranch, 300; 1 Hoffm. R. 08, 511; Stor. Partn. §101; 2 Washb. R. 390.

9. One partner can, in simple contracts, bind his copartners in transactions relative to the partnership. 7 T. R. 207; 4 Dall. 286; 1 Dall. 269. But a security given by, one partner, in the partnership name, known to be for his individual debt, does not bind the firm. 2 Caines' R. 246; 4 Johns. R. 251; 4 Johns. R. 262, in note; 2 Johns. R. 300; 16 Johns. R. 34; 4 Serg. & Rawle, 397. Nor can one partner bind his copartners by deed; and this both for technical reason and the general policy of the law. Wats. Partn. 218; Gow on Partn. 83; 3 Murph. 321; 4 Sm. & Marsh. 261; 7 N. H. Rep. 549; 1 Pike, 206; 2 Harr. 147; 2 B. Monr. 267; 5 B. Monr. 47; 4 Miss. 417; 1 McMullen, 311; 3 Johns. Cas. 180; Taylor's R. 113; 2 Caines' R. 254; 2 Caines' Err. 1;. 2 Johns. R. 213; 19 Johns. R. 513; 1 Dall. 11,9. But see 6 Watts & Serg. 165, where it is said this rule admits of sorae qualifications. The rule does not however apply to cases where the object is to discharge a debt as due to it; as to give a general release by deed. 3 John. 68; 7 N. H. Rep. 550; 1 Wend. 326; 20 Wend. 251; 22 Wend. 324. It seems to be an admitted principle, that one partner has no power to submit to arbitration any matters whatsoever, concerning or arising out of the partnership business. Story, Partn. §114; Com. Dig. Arbitrament, D 2; 3 Bing. R. 101; 1 C. M. & R. 681; 1 Pet. R. 222; 19 John. R. 137; 3 Kent, Com. 49, 4th ed. But in Pennsylvania, 12 S. & R. 243, and Kentucky, 3 Mont. R. 433, one, partner may by an unsealed, instrument refer any partnership matter to arbitration, though he has no implied authority to consent to an order for a judgment in an action against himself and his copartner. 3 Mann. G. & Scott, 742. Nor has one partner the power to confess a judgment, or authorize the confession of a judgment against the firm, when no writ has been issued against both. 1 Wend. 311; 9 Wend. 437; 1 Blackf. 252; 1 Scamm. 428, 442. Such a judgment, however is binding on the one who confessed it. 2 Bl. R. 1133; 1 Dall. 119; 1 W. & S.

340, 519; 7 W. & S. 142; 2 Caines, 254; 20 Wend. 609; and see 7 Watts, 331; 1 W. & S. 519, 525; 2 Miles, 436; 1 Hoff. Ch. R. 525.

10. With regard to the tight of the majority of, the partners, when there is a dissent among them, it may be laid down, 1. That when there are stipulations on this subject, they must govern. Tum. & Russ. 496, 517. 2. In the absence of all agreement on the subject, each partner has an equal voice, though their interests be different, and a majority have a right to conduct the business. 3 John. Ch. R . 400; 3 Chit. Com. Law, 236; Colly. Partn. B. 2, c. 2, s. 1; Id. B. 3, c. 1, s. 262 - Story, Partn. 123. 3. When there are only two partners, and they dissent, neither can bind the partnership, when the person with whom they deal has notice of such disagreement. 1 Stark. R. 164. See 1 Camp. R. 403; 10 East, R. 264; 7 Price, Rep. 193; 6 Ves. 777; 16 Vin. Ab. 244. But this right of the majority is confined to transactions in the usual scope of the business, and not to a change of the articles of the partnership, for in such case all the partners must consent, 4 John. Ch. R. 573.

11. The stock used in a joint undertaking by way of partnership in trade, is always considered in common and not as joint property, and consequently there is no survivorship therein; jus accrescendi inter mercatores, pro beneficio commercii, locum non habet. On the death of one partner, therefore, his representatives become tenants in common with the survivor, of all the partnership effects in possession. But with respect to choses in action, survivorship so far exists at law, as that the remedy or right to reduce them into possession vests exclusively in the survivor; although when they are recovered, the representatives of the deceased partner have, in equity, the same right of sharing and participating in them which their testator or intestate would have possessed had he been living. 1 Ld. Raym. 340. See 2 Dall. 65, 66, in note; 1 Dall. 248; 4 Dall. 354; 2 Serg. & Rawle, 494.

12. When real estate is owned by a partnership, it is held by the partners subject in all respects to the ordinary incident's of land held in common. 1 Sumn. R. 174; 7 Conn. 11; 5 Hill, (N. Y.) Rep. 118; 4 Mete. 537. But in equity the partners may by agreement, express or implied, affect real estate with a trust as, a partnership property, and, by that means, render it in, equity subject to the rules applicable to partnership property as between the partners themselves and all claiming under them. 2 Edw. R. 28; 2 Rand. R. 183; 7, S. & R. 438, 441; Conn. 11; 5 Metc. 582; 6 Yerg. 20. See, generally, as to partners, 5 Com. Dig. Merchant, D; Bac. Abr. Merchant, C; Wats. on Partn. passim; Gow on Partn. passim; Supp. to Ves. jr. vol. 1, p. 36, 279 281, 312, 389, 449, 503; Id. vol. 2, p. 40, 314, 315, 317, 362, 364, 377, 384, 456; 1 Salk. 291, 392; 1 Swanst. R. 506, 9; 10 East R. 265; 4 Ves. 396; 1 Hare & Wall. Sel. Dec. 292, 304; Civ. Code of Lo. B. 3, t. 11; Code Civ. L. 3, t. 9; Code de Proc. Civ. L. 1, t. 3; Chit. Contr. 66 to 82; Poth. Contrat de Soeiete; Bouv. Inst. Index, h. t. Vide Articles of Partnership; Death of. a partner; Dissolution; Firm; Partnership.

PARTNERSHIP, contracts. An agreement between two or more persons, for joining together their money, goods, labor and skill, or either or all of them, for the purpose of advancing fair trade, and of dividing the profits and losses arising from it, proportionably or otherwise, between them. 2 Bouv. Inst. n. 1435; Watson on Partn. 1; Gow on Partn. 2; see Civ. Code of Lo. art. 2772; Code Civ. art. 1832; Forbes. Inst. of Scotch Law, part 2, B. 3, s. 3, p. 184; edit. Edin. 1722, 12mo.; Dolmat, Civ. Law, vol. 1, p. 85; 9. John. R. 488; Puffend. B. 5, c. 8; 2 H. Bl. 246; 1 H. Bl. 37; Ersk. Inst. B. 3, t. 3, §18; Tapia, Elemontos de Jurisp. Mercantil, p. 86; 5 Duv. Dr. Civ. Fr. tit. 9, c. 1, n, 17; 4 Pard. Dr. Com. n. 966; 2 Bell's Com. 611, 5th ed.; Aso & Mann. Inst. B. 2, tit.

15. Sometimes partnership signifies a moral being composed of the reunion of all the partners. 4 Pard. n. 966. As a partnership has a separate existence as a person, it becomes liable to fulfil all its engagements, and the partners are individually bound and responsible only on its default, as sureties. 2 Bell's Comm. B. 6, c. 1, n. 4, p. 619, 5th ed.

2. Partnerships will be considered, 1st. In respect to their character and extent, as they regard property. 2d. With relation to the number and character of parties. 3d. As they are divided by the French code. 4th. As to their creation. 5th. As to their object. 6th. As to their duration. 7th. As to their dissolution. 8th. As to partnerships in Louisiana.

3. - §1. In respect to their character and extent, as they regard property, partnerships maybe divided into three classes, namely: universal partnerships; general partnerships; and limited or special partnerships. 1. A universal partnership is one where the parties agree to bring into thefir m all their property, real, personal and mixed, and to employ all their skill, labor, and services, in the trade, or business, for their common benefit. This, kind of partnership is perhaps unknown in the United States. 5 Mason, R. 176.

4. - 2. General partnerships are properly such, where the parties carry on all their trade and business for their joint benefit and profit; and it is not material whether the capital stock be limited or not, or the contributions of the partners be equal or unequal. Cowp. 814. The game appellation is given to a partnership where the parties are engaged in one branch of trade only.

5. - 3. Special partnerships, are those formed for a special or particular branch of business, as contradistinguished from the general business or employment of the parties, or of one of them. When they extend to a single transaction or adventure only, such as the purchase and sale of a particular parcel of goods, they are more commonly called limited partnerships. The appellation is however given to both classes of cases indiscriminately. Story, Partn. §75

6. - §2. When considered in relation to the number and character of the parties, partnerships are divided into private partnerships and public companies. 1. Private partnerships are those which consist of two or more partners for some private undertaking, trade, or business.

7. §2. Public companies are those where a greater number of persons are concerned, and the stock is divided into a considerable number of shares, the object embracing generally public as well as private interests. This term is, however, perhaps loosely applied, as these companies have for the most part the character of private associations. They are either incorporated or not. The incorporated are to be governed by the rules established in their respective charters. See Corporation. The unincorporated are in general subject, to all the regulations of a common private partnership.

8. - §3. In the French law, partnerships are divided into three kinds, namely: 1. Partnerships under a collective name, that is, where the name of the firm contains the names of all or some of the partners.

9. - 2. Partnerships en commandite or in commendam; these are limited partnerships, where one or more persons are general partners, and are jointly and severally responsible with all their estates, and one or, more other persons who furnish a part or the whole of the capital, who are liable only to the extent of the capital they have furnished. The business is carried on in, the name of the general partners. This species of partnership, with some modifica- tions, has been adopted in several of the states of the American union. 3 Kent, Com. 34, 4th ed.; 2 Bouv. Inst. n. 1473, et seq.

10. - 3. Anonymous partnerships are those in which all the partners are engaged in the business, there is no social name or firm, but a name designating the object of the association. The business is managed by syndics or directors. Vide Poth. de Societe, h. t.; 5, Duv. Dr. Civ., Fr. h. t.; Pardes. Dr: Com. h. t.; Code de Com. h. t.; Merl. Repert. h. t. In Louisiana a similar division has been made. Civ. Code of Lo. h. t.

11. - §4. Partnerships are created by mere act of the parties; and in this they differ from, corporations which require the sanction of public authority, either express or implied. Aug. & Ames on Corp. 23. The consent of the parties may be testified, either in express terms, as by articles of partnership, or positive agreement; or the assent may be tacit, and to be implied solely from the act of the parties. An implied or presumptive assent has equal operation with one that is express and determined. And it may be laid down as a general and undeniable proposition, that persons having a mutual interest in the profits and loss of any business, or particular branch of business, carried on by them, or persons appearing ostensibly to the world as joint traders, are to be recognized and treated as partners, whatever may be the nature of the agreement

under which they act, or whatever motive or inducement may prompt them to such an exhibition. 1 Dall. 269. 12. A community of property does not of itself create a partnership, however that property may be acquired, whether by purchase, donation, accession, inheritance or prescription. Civ. Code of Louis. art. 2777. Hence joint tenants or tenants in common of lands, goods, or chattels, under devises or bequests in last wills or testaments, and doeds or donations inter vivos, and inheritances or successions, are not partners. Story, Partn. §3.

13. Joint owners of ships are not, in consequence of such ownership, to be considered as partners. Abbot on Ship. 68; 3. Kent, Com. 25, 4th ed.; 15 Wend. 187; and see Poth. De Societe, n. 2; 4 Pard. Dr. Com. n. 969; 17 Dur. Dr. Fr. n. 320; 5 Duv. Dr. Civ. Fr. n. 33.

14.- The free and personal choice of the contracting parties is so essentially necessary to the constituting of a partnership, that even executors and representatives of deceased partners do not, in their representative capacity, succeed to the state and condition of partners; 2 Ves. sen. 34; Wats. on Partn. 6; although a community of interest necessarily exists between them and the surviving partners, until the affairs of the partnership are wound up. 11 Ves. 3. When there is a positive agreement at the commencement of the partnership, that the personaI representative or heir of a partner shall succeed him in the partnership, the obligation will be considered valid. Coll. on part. B. 1; ch. 1, §11; Story, Partn. §5.

15. - §5. The object of the partnership must be legal. All partnerships, therefore, which are formed for any purpose forbidden by law or good morals, are null and void. But all the partners in such a partnership are jointly liable to third persons who may contract with them without a knowledge of the illegal or immoral object of the partnership. Civ. Code of Lo. art.- 2775; 5 B. & A. 341 2 B. & P. 371; 3 T. R. 454; Poth. Oblig. by Evaans, vol. 2, page 3; Gow on Partn. 8; Wats. Partn. 131. Partnerships are not confined to mere commercial trade or business; but generally extend to, manufactures and, to all other lawful occupations and employments, or to professional or other business. They may extend to all the business of the parties; to a single branch of such business; to a single adventure; or to a single thing. But there cannot lawfully be a partnership in a mere, personal office, especially when it is of a public nature, requiring the personal confidence in the skill and integrity of the officer. Story, Partn. §81; Colly. Partn. 31.

16. - §6. Partnerships may be formed to last for life, or for a specific period of time; they may be conditional or indefinite in their duration, or for a single adventure or dealing; this depends altogether on the will of the parties. The period of duration is either expressed or implied, but the law will not presume that it shall last beyond life. 1 Swanst. 521; 1 J. Wils. R., 181. When a particular term is fixed, it is presumed to

endure until the period has elapsed; when no term is fixed, it is presumed to endure for the life of the parties, unless previously dissolved, by the acts of one of them, by mutual consent, or by operation of law. Story, Partn. §84. When no time is limited for the duration of a general trading partnership, it is a partnership at will, and may be dissolved at any time at the pleasure of any one or more of the partners.

17. - §7. A partnership may be dissolved in several ways: when the partnership is formed for a single dealing or transaction, it follows that it is at an end so soon as the dealing or transaction in which the partners jointly engaged is completed. Gow on Partn. 268; Inst. Lib. 3, tit., 26, s. 6.

18. Where a general partnership is formed, either for a definite, or an indefinite period of time, the causes which may operate a destruction of it, are various. In the case of a partnership limited as to its duration, it may, in the intermediate time, before the restricted period of its termination arrives, be dissolved either by the death, the confirmed insanity, the bankruptcy of all or one of the partners, or it may endure the stipulated period, and expire with the effluxion of time; but where the partnership is unlimited as to its existence, although in the instances of death or bankruptcy, it is determined, yet if they do not intervene, any partner may withdraw himself from it whenever he thinks proper. Code, lib. 4, t. 37, 1, 5.

19. Besides the causes above stated for a dissolution, a partnership, limited or unlimited as to its duration, may be dissolved by the decree of a court of equity, where the conduct of some or all of the partners has been such as not to carry on the trade or undertaking on the terms stipulated; Gow on Partn. 269; or by the involuntary or compulsory, sale or transfer of the partnership interest of any one of the partners. 17 John. R. 525.

20. In New York, it has been held that there is no such thing as an indissoluble partnership, and that, therefore, any partner may withdraw at any time; and by that act the partnership will be solved; the other party having his action against the withdrawing partner upon his covenant to continue the partnership; 19 Johns. R. 538. This doctrine is not in accordance with the English law. Indeed it is even doubtful in New York. Story, Eq. Jur. §668; Story, Partn. §275; 3 Kent Com. 61, 4th ed.; 1 Hoffm. Ch. R. 534. See Gow on Partn. 803, 305, and 4 Wash. C. C. R. 232.

21. It may also be dissolved by the extinction of the thing or object of the partnership; or by the agreement of the parties. See Civ. Code of Louis. art. 2847 Code Civ. B. 3, fit. 9, c 4 art. 1865 to 1872; 2 Bell's Com. 631 to 6414, 6th ed. See Dissolution.

22. The effect of the dissolution of the partnership is to disable any one of the partners from contracting new obligations or engagements on account of the firm. 1 Pet., R.

351; 3 McCord, 378; 4 Munf. 215; 2 John., 300; 5 Mason, 56; Harper, R. 470; 4 John. 224; 1 McCord, 338; 6 Cowen, 701. But notwithstanding the dissolution there remain, with each of the partners, certain powers, rights, duties, authorities, and relations between them, which are indispensable to the complete arrangement and final settlement of the affairs of the firm. The partnership must, therefore, subsist for many purposes, notwithstanding the dissolution. Among these are, 1st. The completion of an the unperformed engagements of the partnership. 2d. The conversion of all the property, means and assets of the partnership, existing at the time of the dissolution, for the benefit of those who, were partners, according to their respective shares. 3d. The application of the partnership funds, to, the liquidation of the partnership debts. Story, Partn. §324.

23. - §3. By the laws of Louisiana, partnerships are divided, as to their object, into commercial partnerships and ordinary partnerships Commercial partnerships are such as are formed, 1. For the purchase of any personal property, and the sale thereof, either in the same state or changed by manufacture. 2. For buying and selling any personal property whatsoever, as factors or brokers. 3. For carrying personal property for hire, in ships or other vessels. Civ. Code of Lo. art., 2796.

24. Ordinary partnerships are, such as are not commercial; they are divided into universal or particular partnerships. Id. art. 2797.

25. Universal partnership is a contract by which the parties agree to make a common stock of all the property they respectively possess; they may extend it to all the property real and personal, or restrict it to personal only; they may, as, in other partnerships, agree that the property itself shall be common stock, or that the fruits only shall be such; but prop erty which may accrue to one of the parties, after entering into the partnership, by donation, succession, or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void. Code Civ. of Lo.art. 2800.

26. Particular partnerships are such as are formed for any business not of a commercial nature. Id. art. 2806. The business of thispartnership must be conducted in the name of all the persons concerned, unless a firm is adopted by the articles of partnership reduced to writing, and recorded as is prescribed with respect to partnerships in commendam. Id. art 2808.

27. There is also a species of partnership which may be incorporated with either of the other kinds, called partnership in commendam, or limited partnership. Id. art. 799. Partnership in commendam is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership whom it is furnished,

in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished, and no more. Id. art. 2810.

28. Every species of partnership may receive such partners. It is therefore a modification of which the several kinds of partnerships are susceptible, rather than a separate division of partnerships. Vide Bouv. Inst. Index, h. t.: Firm.

PARTOWNERS. Persons who hold real or personal property by the same title, either as tenants in common, joint tenants, or coparceners. They are sometimes called guasi partners and differ from partners in this, that they are either joint owners, or tenants in common, each having an independent, although an undivided interest in the property; neither can transfer or dispose of the whole property, nor act for the others in relation to it, but merely for his own share, and to the extent of his own several right and interest.

2. In joint tenancy of goods or chattels, it is true, the joint tenants are seized per my et per tout; but still each one has an independent, and to a certain extent a distinct right during his lifetime, which he can dispose of and sever the tenancy.

3. Tenants in common hold undivided portions of the property by several titles, or in several rights, although by one title. Their possession, however, they hold in common and undivided. Whereas, in partnerships, the partners are joint owners of the property, and each has a right to sell or dispose of the whole, unless otherwise provided for in the articles of partnership. Colly. Partn. 86; Wats. Partn. 66; Story, Partn. §91.

4. At common law, each of the owners of a chattel has an equal title and right to possess and use it; and in the case of common cbattels the law has generally left this right to the free discretion of the several owners but in regard to ships, the common law has adopted and followed' out the doctrine of the courts of admiralty. It authorizes the majority in value and interest to employ the ship upon any probable design. This is done, not without guarding the rights, of the minority. When the majority desire to employ a ship upon any particular voyage or adventure, they have a right to do so, upon giving security by stipulation to the minority, if required, to bring back and restore the ship to them, or in case of her loss, to pay them the value of their shares. Abbott, Shipp. 70; 3 Kent Com. 151, 4th ed.; 2 Bro. Civ. Law, 131; Molloy, B. 2, c. 1, §3; 2 Pet. Adm. R. 288; Story, Partn. 428 11 Pet. R. 175. When the majority do not choose to employ the ship, the minority have the same right, upon giving similar security. 11 Pet. R. 175; 1 Hagg. Adm. R. 306; Jacobi: Sea Laws, 442.

5. When part owners are equally divided as to the employment, upon any particular voyage, the courts of admiralty have man fested a disposition to support the right of

the court to order a sale of the ship. Story Partn. §439; Bee's Adm. R. 2; Gilpin, R. 10; 18 Am. Jur. 486.

PARTURITION. The act of giving birth to a child.

2. Sometimes questions arise how far means may be employed to promote par turition, which cause, or are likely to cause others in relation to it, but merely for his own share, and to the extent of his own several right and interest.

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PARTURITION. Tho act of giving birth to a child

2. Sometimes questions arise bow far means may be employed to promote par-turition, which cause, or are likely to cause, the death of the foetus. These means, in

cases of deformed pelvis, are abortion in the early months, by embryotomy, by symphysotomy, and by the Caesarian section. These means are justifiable to save the life of the mother, and sometimes some of them have saved the lives of both. Vide Caesarian operation; Delivery; Pregnancy.

PARTUS. The child just before it is born, or immediately after its birth. Before birth the partus is considered as a portion of the mother. Dig. 25, 4, 1, 1. -See Birth; Foetus; Proles; Prolicide.

PARTY, practice, contracts. When applied to practice, by party is understood either the plaintiff or defendant. In contracts, a party is one or more persons who engage to perform or receive the performance of some agreement. Vide Parties to contrads; Parties to 'actions; Parties to a suit in equity.

PARTY-JURY. An ancient word used to signify a jury de medietas linguae, (q. v.) or one composed one-half of natives, and the other of foreigners. Lexic. Techn. h. t.

PARTY WALL. A wall erected on the line between two adjoining estates, belonging to different persons, for the use of both estates. 2 Bouv. Inst. n. 1615.

2. Party walls are generally regulated by acts of the local legislatures. The principles of these acts generally are, that the wall shall be built equally on the lands of the adjoining owners, at their joint expense, but when only one owner wishes to use such wall, it is built at his expense, and when the other wishes to make use of it, he pays one half of its value; each owner has a right to place his joists in it, and use it for the support of his roof. When the party wall has been built, and the adjoining owner is desirous of having a deeper foundation, he has a right to undermine such wall, using due care and diligence to prevent any injury to his neighbor, and having done so, he is not answerable for any consequential damages which may ensue. 17 Jobn. R. 92; 12 Mass. 220; 2 N. H. Rep. 534. Vide 1 Dall. 346; 5 S . & R. 1.

3. When such wall exists between two buildings, belonging to different persons, and one of them takes it down with his buildings, he is required to erect another in its place in a reasonable time, and with the least inconvenience; the other owner must contribute to the expense, if the wall required repairs, but such expense will be limited to the costs of the old wall. 3 Kent, Com. 436. When the wall is taken down, it must be done with care; but it is not the duty of the person taking it down to shore up or prop the.,house of his neighbor, to prevent it from falling; if, however, the work be done with negligence, by which injury accrues to the neighboring house, an action will lie. 1 Moody & M. 362. Vide 4 C. & P. 161; 9 B. & C. 725; 12 Mass. R. 220; 4 Paige's R. 169; 1 C. & J. 20; 1 Pick. 434; 12 Mass. 220; 2 Roll., Ab. 564; 3 B. & Ad. 874; 2 Ad. &-Ell. 493 Crabb on R. P. §500. In the excellent treatise of M. Lepage,

entitled "Lois des Batimens," part 1, c. 3, s. 2, art. l, will be found a very minute examination of the subject of party walls, with many cases well calculated to illustrate our law. See also Poth. Contr. de Societe, prem. app. n. 207; 2 Hill.: Ab. 119; Toull. liv. 2, t. 2, c. 3.

PASS. In the slave states this word signifies a certificate given by the master or mistress to a slave, in which it is stated that he is permitted to leave his home, with the authority of his master or mistress. The paper on which-such certificate is written is also called a pass.

PASS, practice. To be given, or entered; to proceed; as, let the judgment pass for the plaintiff.

TO PASS. To accomplish, to complete, to decide.

2. The title to goods passes by the sale whenever the parties have agreed upon the sale and the price, and nothing remains to be done to complete the agreement. 1 Bouv. Inst. n. 939.

3. When a jury decide upon the rights of the parties, which are in issue, they are said to pass upon them.

PASS BOOK, com. law. A book used by merchants with their customers, in which an entry of goods sold and delivered to a customer is made.

2. It is kept by the buyer, and sent to the merchant whenever he wishes to purchase any. article. It ought to be a counterpart of the mercbant's books, as far as regards the customer's account.

3. Among English bankers, the term pass-book is given to a small book made up from time to time, from the banker's ledger, and forwarded to the customer; this is not considered as a statement of account between the parties, yet when the customer neglects for a long time to make any objection to the correctness of the entries he will be bound by them. 2 Atk. 252; 2 Deac. & Ch. 534; 2 M. & W. 2.

PASSAGE. A way over water; a voyage made over the sea or great river; as, the Sea Gull had a quick passage: the money paid for the transportation of a person over the sea; as, my, passage to Europe was one hundred and fifty dollars.

PASSAGE MONEY, contracts. The sum claimable for the conveyance of a person with or without luggage on the water.

2. The difference between freight and passage money is this, that the former is claimable for the carriage of goods, and the latter for the carriage of the person. The same rules which govern the claim for freight affect that for passage money. 3 Chit. Com. Law, 424; 1 Pet. Adm. Dec. 126; 3 John. 335.

PASSIVE, com. law. All the sums of which one is a debtor. It is used in contradistinction to active. (q. v.) By active debts are understood those which may be employed in furnishing assets to a merchant to pay those which he owes, which are called passive debts.

PASSPORT, SEA BRIEF, or SEA LETTER, maritime law. A paper containing a permission from the neutral state to the captain or master of a ship or vessel to proceed on the voyage proposed; it usually contains his name and residence; the name, property, description, tonnage and destination of the ship; the nature and quantity of the cargo; the place from whence it comes, and its destination; with such other matters as the practice of the place requires.

2. - This document is indispensably necessary in time of war for the safety of every neutral vessel. Marsh. Ins. B. 1, c. 9, s. 6, p. 406, b.

3. In most countries of continental Europe passports are given to travellers; these are intended to protect them on their journey from all molestation, while they are obedient to the laws. Passports are also granted by the secretary of state to persons travelling abroad, certifying that they are citizens of the United States. 9 Pet. 692. Vide 1 Kent, Com. 162, 182; Merl. Repert. h. t.

PASSENGER, cont. One who has taken a place. in a public conveyance, for the purpose of being transported from one place to another.

2. By act of Feb. 22, 1847, Minot's Statutes at Large of United States, p. 127, it is provided as follows: That if the master of any vessel owned in whole or in part by a citizen of the United States of America, or by a citizen of any foreign country, shall take on board, such vessel, at any foreign port or place, a greater number of passengers than in the following proportion, to the space occupied by them and appropriated for their use, and unoccupied by stores, or other goods, not being the personal luggage of such passengers, that is to say, on the lower deck or platform one passenger for every fourteen clear superficial feet of deck, if such vessel is not to pass within the tropics during such voyage; but if such vessel is to pass within the tropics during such voyage, then one passenger, for every twenty such clear superficial feet of deck, and on the orlop deck (if any) one passenger for every thirty such superficial feet in all cases, with intent to bring such passengers to the United States of America, and shall leave such port or place with the same or any other number thereof, within

the jurisdiction of the United States aforesaid, or if any such master of vessel shall take on board of his vessel, at any port or place within the jurisdiction of the United States aforesaid, any greater number of passengers than the proportions aforesaid admit, with intent to carry the same to any foreign port or place, every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any circuit or district court of the United States aforesaid, shall, for each passenger taken on board beyond the above proportions, be fined in the sum of fifty dollars, and may also be imprisoned for any term not exceeding one year: Provided, That this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel.

3. - §2. That if the passengers so taken on board of such vessel, and brought into or transported from the United States aforesaid, shall exceed the number limited by the last section to the number of twenty in the whole, such vessel shall be forfeited to the United States aforesaid, and be prosecuted and distributed as forfeitures are under the act to regulate duties on imports and tonnage.

4. - §3. That if any such vessel as aforesaid shall have more than two tiers of berths, or in case, in such vessel, the interval between the floor and the deck or platform beneath shall not be at least six inches, and the berths well constructed, or in case the dimensions of such berths shall not be at least six feet in length, and at least eighteen inches in width, for each passenger as aforesaid, then the master of said vessel, and the owners thereof, severally, shall forfeit and pay the sum of five dollars for each and every passenger on board of said vessel on such voyage, to be recovered by the United States aforesaid, in any circuit or district court of the. United States where such vessel may arrive, or from which she sails.

5. - §4. That, for the purposes of this act, it shall in all cases be computed that two children, each being under the age of eight years, shall be equal to one passenger, and that children under the age of one year shall not be included in the computation of the number of passengers.

6. - §5. That the amount of the several penalties imposed by this act shall beliens on the vessel or vessels violating its provisions; and such vessel may be libelled and sold therefor in the district court of the United States aforesaid in which such vessel shall arrive.

9. By act of March 2, 1847, Minot's Statutes at Large of United States, p. 149, it is enacted, That so much of said act as authorizes shippers to estimate two children of eight years of age and under as one passenger, in the assignment of room, is hereby repealed.

10. The act of May 17, 1848, Minot's Statute at Large of United States, p. 220, further provides, That all vessels, whether of the United States or any other country, having sufficient capacity according to law for fifty or more passengers, (other than cabin passengers,) shall, when employed in transporting such passengers between the United States and Europe, have on the upper deck, for the use of such passengers, a house over the passage-way leading to the apartment allotted to such passengers below deck, firmly secured to the deck, or combings, of the hatch, with two doors, the sills of which shall be at least one foot above the deck, so constructed that one door or window in such house may, at all times, be left open for ventilation; and all vessels so employed, and having the capacity to carry one hundred and fifty such passengers, or more, shall have two such houses; and the stairs or ladder leading down to the aforesaid apartment shall be furnished with a handrail of wood or strong rope: Provided, nevertheless, Booby hatches may, be substituted for such houses in vessels having three permanent decks.

11. - §2. That every such vessel so employed, and having the legal capacity for more than one hundred such passengers, shall have at least two ventilators to purify the apartment or apartments occupied by such passengers; one of which shall be inserted in the after part of the apartment or apartments, and the other shall be placed in the forward portion of the apartment or apartments, and one of them shall have an exhausting cap to carry off the foul air, and the other a receiving cap to carry down the fresh air which said ventilators shall have a capacity proportioned to the size of the apartment or apartments to be purified; namely, if the apartment or apartments will lawfully authorize the reception of two hundred such passengers, the capacity of such ventilators shall each of them be equal to a tube of twelve inches diameter in the clear, and in proportion for larger or smaller apartments; and all said ventilators shall rise at least four feet six inches above the upper deck of any such vessel, and be of the most approved form and construction: Provided, That if it shall appear from the report to be made and approved., as provided in the seventh section of this act that such vessel is equally well ventilated by any other means, such other means of ventilation shall be deemed, and held to be, a compliance with the provisions of this section.

12. - §3. That every vessel carrying more than fifty such passengers shall have for their use on deck, housed and conveniently arranged, at least one camboose or cooking range, the dimensions of which shall be equal to four feet long and one foot six inches wide for every two hundred passengers; and provisions shall be made, in the manner aforesaid in this ratio for a greater or less number of passengers: Provided, however, Ana nothing herein contained shall take away the right to make such arrangements for cooking between decks, if that shall be deemed desirable.

13. - §4. That all vessels employed as aforesaid shall have on board, for the use of such passengers, at the time of leaving the last port whence such vessel shall sail, well

secured under deck, for each passenger, at least fifteen pounds of good navy bread, ten pounds of rice, ten pounds of oatmeal, ten pounds of wheat flour, ten pounds of peas and beans, thirty-five pounds of potatoes, one pint of vinegar, sixty gallons of fresh water, ten pounds of salted pork, free of bone, all to be of good quality, and a sufficient supply of fuel for cooking; but at places where either rice, oatmeal, wheat flour or peas and beans cannot be procured, of good quality and on reasonable terms, the quantity of either or any of the other last-named articles may be increased and substituted therefor; and in case potatoes cannot be procured on reasonable terms, one pound of either of said articles maybe substituted in lieu of five pounds of potatoes; and the captains of such vessels, shall deliver to each passenger at least one-tenth part, of the aforesaid provisions weekly, commencing on the day of sailing, and daily at least three quarts of water, and sufficient fuel for cooking; and if the passengers on board of any such vessel in which the provisions, fuel and water herein required shall not have been provided as aforesaid, shall at any time be put on short allowance during, any voyage, the master or owner of any such vessel shall pay to each and every passenger who shall have been put on short allowance the sum of three dollars for each and every day they may have been on such short allowance, to be recovered in the eircuit or district court of the United States; Provided, nevertheless, and nothing herein contained shall prevent any passenger, with the consent of the captain, from furnishing for himself the articles of food herein specified; and, if, put on board in good order, it shall fully satisfy the provisions of this act so far as regards food, and provided further, That any passenger may also, with the consent of the captain, furnish for himself an equivalent for the articles of food required in other and different articles: and if, without waste or neglect on the part of the passenger, or inevitable accident, they prove insufficient, and the captain shall furnish comfortable food to such passengers during the residue of the voyage, this, in regard to food, shall also be a compliance with the terms of this act.

14. - §5. That the captain of any such vessel so employed is hereby authorized to maintain good discipline, and such habits of cleanliness among such passengers, as will tend to the preservation and promotion of health,; and to that end, he shall cause such regulations as he may adopt for this purpose to be posted up, before sailing, on board such vessel, in a place accessible to such passengers, and stall keep the same so posted up during the voyage; and it is hereby made the duty of said captain to cause the apartment occupied by such passengers to be kept, at all times, in a clean healthy state, and the owners of every such vessel so employed are required to construct the decks, and all parts of said apartment, so that it can be thoroughly cleansed; and they shall also provide a safe, convenient privy or water closet for the exclusive use of every one hundred such passengers. And when the weather is such that said passengers cannot be mustered on deck with their bedding, it shall be the duty of the captain of every such vessel to cause the deck occupied by such passengers to be

cleaned [cleansed] with chloride of lime, or some other equally efficient disinfecting agent, and also at such other times as said captain may deem necessary.

15. - §6 That the master and owner or owners of any such vessel so employed, which shall not be provided with the house or houses over the passage-ways, as prescribed in the first section of this act; or with ventilators, as proscribed in the second section of this act; or with the cambooses or cooking ranges, with the houses over them, as prescribed in the third section of this act; shall severally forfeit and pay to the United States the sum of two hundred dollars for each and every violation of, or neglect to conform to, the provisions of each of said sections; and fifty dollars for each and every neglect or violation of any of the provisions of the fifth section of this act; to be recovered by suit in any circuit or district court of the United States, within the jurisdiction of which the said vessel may arrive, or from. which it may be about to depart, or at any place within the jurisdiction of such courts, wherever the owner orowners, or captain of such vessel, may be found.

16. - §7. That the collector of the customs, at any port in the United States at which any vessel so employed shall arrive, or from which any such vessel shall be about to depart, shall appoint and direct one of the inspectors of the customs for such port to examine such vessel, and report in writing to such collector whether the provisions of the first, second, third and fifth sections of this act have been complied with in respect to such vessel; and if such report shall state such compliance, and be approved by such collector, it shall be deemed and held as conclusive evidence thereof.

17. - §8. That the first section of the act entitled, "An act to regulate the carrying of passengers in merchant vessels," approved February twenty-second, eighteen hundred and forty-seven, be so amended that, when the height or distance between the decks of the vessels referred to in the said section shall be less than six feet, and not less than five feet, there shall be allowed to each passenger sixteen clear superficial feet on the deck, instead of fourteen, as prescribed in said section; and if the height or distance between the decks shall be less than five feet, there shall be allowed to each passenger twenty-two clear superficial feet on the deck; and if the master of any such vessel shall take on board his vessel, in any port of the United States, a greater number of passengers than is allowed by this section, with the intent specified in said first section of the act of eighteen hundred and forty-seven, or if the master of any such vessel shall take on board at a foreign port, and bring within the jurisdiction of the United, States, a greater numher of passengers than is allowed by this section, said master shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished in the manner provided for the punishment of persons convicted of a violation of the act aforesaid; and in computing the number of passengers on board such vessels, all children under the age of one year, at the time of embarkation, shall be excluded from such computation.

18. - §9. That this act shall take effect, in respect to such vessels sailing from ports in the United States, in thirty days from the time of its approval; and in respect to every such vessel sailing from ports in Europe, in sixty days after such approval; and it is hereby made the duty of the secretary of state to give notice, in the ports of Europe, of this act, in such manner as he may deem proper.

19. - §10. That so much of the first section of the act entitled " An act regulating passenger ships and vessels," approved March second, eighteen hundred and nineteen, or any other act that limits the number of passengers. to two for every five tons, is hereby repealed.

20. By act of March 3, 1849, Minot's Statutes at Large of United States, p. 399, it is enacted, That all vessels bound from any port in the United States to any port or place in the Pacific Ocean, or on its tributaries, or from any such port or place to any port in the, United States on the Atlantic, or its tributaries, shall be subject to the provisions of all the laws now in force relating to the carriage of passengers in merchant vessels, sailing to and from foreign countries, and the regulation thereof; except the fourth section of the "Act to provide for the ventilation of passenger vessels, and for other purpoes," approved May seventeenth, eighteen hundred and forty-eight, relating to provisions, water, and fuel; but the owners and masters of all such vessels shall in all cases furnish to each passenger the daily supply of water therein mentioned, and they shall furnish for themselves, a sufficient supply of, good and wholesome food; and in case they shall fail so to do, or shall provide unwholesome or unsuitable provisions, they shall be subject to the penalty provided in said fourth section in case the passengers are put on short allowance of water or provisions.

21. - §2. That the act, entitled "An act to regulate the carriage of passe ngers in merchant vessels," approved February twenty-second, eighteen hundred and forty-seven, shall be so amended as that a vessel passing into or through the tropics shall be allowed to carry the same number of passengers as vessels that do not enter the tropics,

22. By act of January 31, 1848, Minot's Statutes at Large of United States, p. 210, it is enacted, That, from and after the passage of this act, all and every vessel and vessels which shall or may be employed by the American Colonization Society, or by the Maryland State Colonization Society, to transport, and which shall actually transport, from any port or ports in the United States to any colony or colonies on the west coast of Africa, colored emigrants to reside there, shall be, and the same are hereby, excepted out of and exempted from the operation of the act entitled " An act to regulate the carriage of passengers in merchant vessels," passed twenty-second February, eighteen hundred and forty-seven; and of the act. entitled " An act to amend an act entitled 'An act to regulate the carriage of passengers in merchant vessels, and

to determine the time,' when said act shall take effect,'" passed, second March, eighteen hundred and forty-seven.

23. No deduction is to be made, in estimating, the number of passengers in a vessel, for children or persons not paying. Gilp. R. 334. For his rights and duties, vide Common Carriers.

PASTURES, pastures. The land on which beasts are fed; and by a grant of pastures the land itself passes. 1 Thorn. Co, Litt. 202.

PATENT, constrction. That which is open or manifest.

2. This word is usually applied to ambiguities which are said to be latent, or patent.

3. A patent ambiguity -is one which is produced by the uncertainty, contradictoriness or deficiency of the language of an instrument, so that no discovery of facts or proof of declaration can restore the doubtful or smothered sense without adding ideas which the actual words will not of themselves sustain. Bac. Max. 99 T. Raym. R. 411; Roberts on Fr. 15.

4. A latent ambiguity may be explained by parol evidence, but the rule is, different with regard to a patent abiguity, which cannot be explained by parol proof. The following instance has been proposed by the court as a patent ambiguity: " If A B, by deed, give goods to one of the sons of J S, who has several sons, he shall not aver which was intended; for by judgment of law upon this deed, the gift is void for uncertainty, which cannot be supplied by averment." 8 Co. 155 a. And no difference exists between a deed and a will upon this subject. 2 Atk. 239.

5. This rule, which allows an explanation of latent ambiguities, and which forbids the use of parol evidence to explain a patent ambiguity, is difficult of application. It is attended, in some instances, with very minute nicety of discrimination, and becomes a little unsteady in its application. When a bequest is made " to Jones, son of, Jones," or " to Mrs. B," it is not easy to show that the ambiguity which this imperfect designation creates, is not ambiguity arising upon the face of the will, and as such, an ambiguity patent, yet parol evidence is admitted to ascertain the persons intended by those ambiguous terms.

6. The principle upon which parol testimony is admitted in these cases, is probably, in the first of them, a presumption of possible ignorance in the testator of the christian name of the legatee; and in the second, a similar presumption of his being in the habit of calling the person by the name of Mrs. B. Presumptions, which being raised upon the face of the will, may be confirmed and explained by extrinsic evidence. Rob' on.

Fr. 15, 27; 2 Vern. 624, 5; 1 Vern. by Raithby, 31, note 2; 1 Rop. Leg. 147; 3 Stark. Ev. 1000; 3 Bro. C. C. 311 2 Atk. 239; 3 Atk. 257; 3 Ves. Jr. 547. Vide articles Ambiguity; Latent.

PATENT, contracts. A patent for an invention is a giant made by the government of the United States to the inventor of any new or useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer; securing to him for a limited time, therein expressed, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery, on certain conditions, among which is the one of at once giving up his secret and making public his discovery or invention, and the manner of making and using the same, so that at the expiration of his privilege, it may become public property. The instrument securing this grant is also called a patent. The subject will be considered by taking a succint view of, 1. The legislation of the United States on the subject. 2. The patentee. 3. The subject to be patented. 4. The caveat and preliminary proceedings. 5. The proceedings to obtain a patent. 6. The patent. 7. The duty or tax on patents. 8. Courts having jurisdiction in patent cases. 9. Actions for violations of patents. §1. Legislation of the United States. 2. The constitution of the United States authorizes congress to pass laws " to, promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right of their respective writings and discoveries." Art. 1, s. 8, n. 8. By virtue of this authority congress can grant patents to inventors, and it rests in the sound, discretion of the legislature to say when, and for what length of time, and under what circumstances the patent for an invention shall be granted. Congress may, therefore, grant a patent which shall operate retrospectively by securing to the inventor the use of his invention, though it was in public use and enjoyed by the community at the time this act was passed . 3 Sumn. 535; 2 Story, R. 164. The first act passed under this power is that which established the patent office on the 10th of April, 1790, 1 Story, L. U. S. 80. There were several supplements and modifications to this first law, namely, the acts passed February 7, 1793, Idem, 300; June 7, 1794, Idem, 363; April 17, 1800, Idem, 753; July 3,1832, 4 Sharsw. cont. of Story, L. U.S. 2300; July 13, 1832, Idem, 2313.

3. These acts were repealed by the act of July 4, 1836, 4 Sharsw. cont. Story, L. U. S. 2504, which. enacts:

§21. That all acts and parts of acts theretofore passed on this subject be, and the same are hereby repealed: Provided, however, That all actions and processes, in law or equity sued out prior to the passage of this act, may be prosecuted to final judgment

and execution, in the same manner as though this act had not been passed, excepting and saving the application to any such action, of the provisions of the fourteenth and fifteenth sections of this act, so far as they maybe applicable thereto. And provided, also, That all applications and petitions for patents, pending at the time of the passage of this act, in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage thereof.

4. The existing laws on the subject of patents are the act of July 4, 1836, already mentioned; the acts of March 3, 1837; Idem, 2546; March 3, 1839; 9 Laws U. S, 1019; August29,1842; ch. 263, Pamph. Laws, 171; May 27, 1848. Minot's Stat. at Large, U. S. 231. §2. Of the patentee.

5. Any person or persons having discovered or invented the thing to be pa-tented, whether he be a citizen of the United States or an alien, is entitled to a patent on fulfilling the requirements of the law. Act of July 4, 1836, s. 6.

6. By the 10th section of the same act it is provided, That where any person hath made, or shall have made, any new invention, discovery or improvement, on account of which a patent might by virtue of this act be granted, and, such person shall die before any patent shall be granted therefor, the right of applying for and obtaining such patent shall devolve on the executor or administrator of such person, in trust for the heirs at, law of the deceased, in case he shall have died intestate; but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions, as the same was held, or might have been claimed or enjoyed by such in his or her lifetime; and when application for a patent shall be made by such legal representatives, the oath or affirmation provided in the sixth section of this act, shall be so varied as to be applicable to them.

7. And by the act of March 3, 1837, section 6, it is enacted, That any patent hereafter to be issued, may be made and issued to the assignee or assignees of the inventor or discoverer, the assignment thereof being first entered of record, and the application therefor being duly made, and the specifications duly sworn to by the inventor. And in all cases, hereafter, the applicant for a patent shall be held to furnish duplicate drawings, Whenever the case admits of drawings, one of which to be deposited in the office, and the other to be annexed to the patent, and considered a part of the specification.

§3. The subject to be patented

8. Patents are granted, 1. For inventions and discoveries. 2. For importations. 1. Patents for inventions and discoveries. By the act, of July 4, 1836, sect. 6, it is enacted, that any person or persons having discovered or invented any new and useful

art, machine,, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer, and shall desire to obtain an exclusive property therein, may make application in writing to the commissioner of patents, expressing such desire, and the commissioner on due proceedings had, may grant a patent therefor.

9. The thing to be patented must be an invention Or discovery; it must be new and useful.

10. - 1. The invention or discovery must be something which the inventor has himself found out; some peculiar device or manner of producing any given effect. A patent cannot, therefore, be taken out for the elementary principles of motion, which philosophy and science have discovered, but only for the manner of applying them. 1 Gallis. 478; 2 Gallis. 51.

11. A patent may be taken out for an improvement on a machine which is known and used; 3 Wheat. 454; but a mere change of former proportions, will not entitle a party to a patent. 1 Gallis. 438; 2 Gallis. 51.

12. It is provided by the act of July 4, 1836, s. 13, that whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes as though it had been embraced in the original description and specification.

13. And by the act of March 3, 1837, s. 8, that, whenever application shall be made to the commissioner for any addition of a newly discovered improvement to be made on an existing patent, or when ever a patent shall be returned for correction, and re-issue, the specification of claim annexed to every such patent shall be subject to revision and restriction, in the same manner as are original applications for patents; the commissioner, shall not add any such improvement to the patent in the one case, nor grant the re-issue in the other case, until the applicant shall have entered a disclaimer, or altered his specification of claim in accordance with the decision of the commissioner; and in all such cases the applicant, if dissatisfied with such decision,

shall have the same remedy and be entitled to the benefit of the same privileges and proceedings as are provided by law in the case of original applications for patents.

14. - 2. The thing patented must be a new and useful invention, discovery or improvement.

15. Among inventors, he who is first in time, has a right to the patent for the invention. Pet. C. C. R. 394.

16. But by the act of March 3, 1839, sect. 7, it is provided, that every person or corporation who has, or shill have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or composition of matter so made or purchased, without liability therefor to the inventor, or any other person interested in such invention; ana no patent shall be held to be invalid by reason of such purchase, sale, or use, prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public; or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent.

17. By the term useful invention is meant an invention which may be applied to some beneficial use in society, in contradistinction to an invention which is injurious to morals, to the health, or good order of society. 1 Mason, C. C. R. 302; 4 Wash. C. C; R. 9. The term is also opposed to that which is frivolous or mischievous. 1 Mason, C. C. R. 182; Renouard, 177; Perpigna, Man. des Inv. c. 2, s. 1, page 50. See 3 Car. & P. 502; 1 Pet. C. C. R. 480; 1 U. S. Law Journ. 563; 1 Paine, 203; 2 Kent, Com. 368, Dr; Phill. on Pat. c. 7, s. 14.

18. The act of August 29, 1842, sect, 3, provides that any citizen or citizens, or alien or aliens, having resided, one year in the United States, and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design for a manufacture, whether of metal, or other material or materials, or any new and original design for the printing of woolen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or has relief or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked-into or worked on, or printed, or painted, or cast, or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of ally article of manufacture not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire or obtain an

exclusive Property or right therein to make, use, and sell and vend. the same, or copies of the same, to others, by them, made, used, and sold, may make application in writing to the commissioner of patents, expressing such desire, and the commissioner, on due proceedings had, may grant a patent therefor, as in the case. now of application for a patent: Provided, That the fee in such cases which by the now existing laws would be required of the particular applicant shall be one-half the sum, and that the duration of said patent shall be seven years, and that all the regulations and provisions which now apply to the obtaining or protection of patents not inconsistent with the provision's of this act, shall apply to applications under this section.

2. Patents-for importations.

19. It is enacted by the act of March 3, 1839, s. 6, that no person shall be debarred from receiving a patent for any invention or discovery, as provided in the act approved on the fourth day of July, one thousand eight hundred and thirty-six, to which this is additional, by reason of the same having been patented in, a foreign country, more than six months prior to his application: Provided, That the same shall not have been introduced into public and common use, in the United States, prior to the application for such patent: And provided, also, That in all cages every such patent shall be limited to the term of fourteen years from the date or publication of such foreign letters-patent. 20. And by the act of July 4, 1836, s. 8, it is provided, that nothing in this act contained shall be, construed to deprive an origisal and true inventor of the right to a patent for his invention, by reason of his having previously taken out letters-patent therefor in a foreign country, and the same having been published at any time within six mouths next preceding the filing of his specification and drawing.

4. Of the caveat and other preliminary, proceedings.

21. The act of July 4, 1836, s. 12, provides that any citizen of the United States, or alien who have been resident in the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to mature the same, may, on paying to the credit of the treasury, in manner as provided in the ninth section of this act, the sum of twenty dollars, file in the patent office a caveat, setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right, till he shall have matured his invention - which sum of twenty dollars, in case the person filing such caveat shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum herein required for the same. And such caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made by any other person within one year from the time of filing such caveat, for a

patent of any invention with which it may in any respect interfere, it shall be the duty of the commissioner to deposit the description, specifications, drawings, and model, in the confidential archives of the office, and to give notice, by mail, to the person filing the caveat, of such application, who shall, within three months after receiving the notice, if he would avail himself of the benfit of his caveat, file his description, specifications, drawings, and model: and if, in the opinion of the commissioner, the specifications of claim interfere with each other, like proceeding& may be had in all respects as are in this act provided in the case of interfering applications: Provided, however, That no opinion or decision of any board of examiners, under the provisions of this act, shall preclude any person interested in favor of or against the validity of any patent which has been or may hereafter be granted, from the right to contest the same in any judicial court in any action in which its, validity may come in question.

22. And the same act, s. 8, directs, that whenever, the applicant shall request it, the patent shall take date from the time of the filing of the specification and drawings, not however, exceeding six mouths prior to the actual issuing of the patent; and on like request, and the payment of the duty herein required, by any applicant, his specification and drawings shall be filed in the secret archives of the office, until he shall furnish the model and the patent be issued, not exceeding the term of one year, the applicant being entitled to notice of interfering application.

§5. Of the proceedings to obtain a patent.

23 . This section will be divided by considering the proceedings when there is no opposition, and when there are conflicting claims.

1. Proceedings without opposition

24. The sixth section of the act of July 4, 1836, directs, that before any inventor shall receive a patent for any such new invention or discovery, he shall deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using, and compounding the same, in such full, clear, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of any machine, he shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distiguished from other inventions and shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing, or drawings, and written references, where the nature of the case admits of drawings, or with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or

discovery is of a composition of matter; which descriptions and drawings, signed by the inventor and attested by two witnesses; shall be filed in the patent office; and be shall, moreover, furnish a model of his invention, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts. The applicant shall also make oath or affirmation that he does verily believe that he is the original and first inventor or discoverer of the art, machine, composition, or improvement, for which he solicits a patent, and that he does not know or believe that the same was ever known or used; and also of what country he is a citizen; which oath or affirmation may, be made before any person authorized by law to administer oaths.

25. The fourth section of the act of August 29, 1842, provides that the oath required for applicants for patents, may be taken, when the applicant is not, for the time being, residing in the United States, before any minister pleni-potentiary, charge d affaires; consul, or commercial agent, holding a commission under the government of the United States, or before any notary public of the country in which such applicant may be.

26. And the act of March 3, 1837, sect. 13, provides that in all cases in which an oath is required by this act, or by the act to which this is additional, if the person of whom it is required shall be conscientiously scru-pulous of taking an oath, affirmation may be substituted therefor.

27. The seventh section of the act of July 4, 1836, further enacts, that on the filing of any such application, description, and specification, and the payment of the duty hereinafter provided, the commissioner shall make or cause to be made, an examination of the alleged new invention or discovery; and if, on any such examination, it shall not appear to the commissioner that the same had been invented or discovered by any other person in this country prior to the alleged invention or discovery thereof by the applicant, or that it had been patented or described in any printed publication in this or any foreign country, or had been in public use or on sale with the applicant's consent or allowance prior to the application, if the commissioner shall deem it to be sufficiently useful and important, it shall be his duty to issue a patent therefor. But whenever on such examination it shall appear to the commissioner that the applicant wag not the original and first inventor or discoverer thereof, or that any part of that which is claimed as new had before been invented or discovered, or patented, or described in any printed, publication in this or any foreign country, as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him, briefly, such information and, references as may be useful in judging of the propriety of renewing his application, or of altering his specification to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, relinquishing his claim to the model, he shall be entitled to receive back twenty

dollars part of the duty required by this act, on filing a notice in writing of such election in the patent office, a copy of which, certified by the commissioner, shall be a sufficient warrant to the treasurer for paying back to said applicant the said sum of twenty dollars. But if the said applicant in such case shall persist in his claim for a patent, with or without any alteration of his specification, he shall be required to make oath or affirmation anew in manner as aforesaid. And if the specification and claim shall not have been so modified as in the opinion of the commissioner, shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of the board of examiners, to be composed of three disinterested persons, who shall be appointed for that purpose by the secretary of state, one of whom at least, to be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture, or branch of science to which the alleged invention appertains; who shall be under oath or affirmation for the faithful and impartial performance of the duty imposed upon them by said appointment. Said board shall be furnished with a certificate in writing, of the opinion and decision of the commissioner, stating the particular grounds of his objection, and the part or parts of the invention which he considers as not entitled to be patented. And the same board shall give reasonable notice to the applicant, as well as to the commissioner of the time and place of their meeting; that they may have an opportunity of furnishing them with such facts and evidence as they may deem necessary to. a just decision; and it shall be the duty of the commissioner to furnish to the board of examiners such information as he may possess relative to the matter under their consideration. And on an examination and consideration of the matter by such board, it shall be in their power, or of a majority of them, to reverse the decision of the commissioner, either in whole or in part; and their opinion being certified to the commissioner, he shall be governed therby, in the further proceedings to be had on such application: Provided, however, That before a board shall be instituted in any such case, the applicant shall pay to the credit of the treasury, as provided in the ninth section of this act, (see 47,) the sum of twenty-five dollars, and each of said persons so appointed shall be entitled to receive for his services in each case, a sum not exceeding ten dollars, to be determined and paid by the commissioner out of any moneys in his hands, which shall be in full compensation to, the persons who may be so appointed, for their examination and certificate as aforesaid.

28. By the twelfth section of the act of March 3, 1839, the commissioner of patents is vested with power to make all such regulation's in respect to the taking of evidence to be used in contested leases before him, as may be just and reasonable and so much of the act of July 4, 1836, as provides for a board of examiners, is thereby repealed.

29. And by the same act, sect. 11, it is provided, that in all cases where an appeal is now. allowed by law from the decision of the commissioner of patents to a board of

examiners provided for in the seventh section of the act to which this is additional, the party, instead thereof, shall have a right to appeal to the chief justice of the district court of the United States for the district of Columbia, by giving notice thereof to the commissioner, and filing in the patent office, within such time as the commissioner shall appoint, his reasons of appeal, specifically set forth in writing, and also paying into the patent office, to the credit of the patent fund, the sum of twenty-five dollars. And it shall be the. duty of said chief justice, on petition, to hear and determine all such appeals, and to revise such decisions in a summary manner, on the evidence produced before the commissioner, at such early and convenient time as he may appoint, first notifying the commissioner of the time and place of hearing, whose duty it shall be to give notice thereof to all parties who appear to be interested therein, in such manner as said judge shall prescribe. The commissioner shall also lay before the said judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined. And at the request of any party interested, or at the desire of the judge, the commissioner and the examiners in the patent office, may be examined under oath, in explanation of the principles of the machine, or other thing for which a patent, in such case, is prayed for. And it shall be the duty of said judge after a hearing of any such case, to return all the papers to the commissioner, with a certificate of his proce edings and decision, which shall be entered of record in the patent office; land such decision, so certified, shall govern the further proceedings of the commissioner in such case, Provided, however, That no opinion or decision of the judge in any such case, shall preclude any person interested in favor or against the validity of any patent, which has been or way hereafter be granted, from the right to contest the same in any judicial court, in any action in which its validity may come in question.

2. When there are conflicting claims.

30. It is enacted by the 8th section of the act of July 4, 1836, that whenever an application shall be made for a patent, which, in the opinion of the commissioner, would interfore with any other patent for which an application may be pending, or with any unexpired patent which shall have been granted, it shall be the duty of the commissioner to give notice thereof to such appli-cants or patentees; as the case maybe; and if either shall be dissatisfied with the decision of the commissioner on the question of priority, right or invention, on a hearing thereof, he may appeal from such decision, on the like terms and conditions as are provided in the preceding section of this act and like proceedings, shall be had, to determine which, or whether either of the applicants is entitled to receive a patent as prayed for.

31. And by the 16th section of the same act, that whenever there shall be two interfering patents, or whenever a patent on application shall have been refused on an

adverse decision of a board of examiners, on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent, either by assignment or otherwise, in the one case, and any such applicant in the other, may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge and declare either the patents void in whole or in part, or inoperative and invalid in any particular part or portion of the United States, according to the interest which the parties in such suit may possess in the patent or the inventions patented, and may also adjudge that such applicant is entitled, according to the principles and provisions of this act, to have and receive a patent for his invention, as specified in his claim, or for any part thereof, as the fact of priority of right or invention shall in any such case be made to appear. And such adjudication, if it be in favor of the right of such applicant, shall authorize the Commissioner to issue such patent, on his filing a copy of the adjudication, and otherwise complying with the requisitions of this act. Provided, however, that no such judgment or adjudication shall affect the rights of any persons except the parties to the action and those deriving title from or under them subsequent to the rendition of such judgment. And the commissioner is vested by the 12th section of the act of March 3, 1839, with powers to make such rules and regulations in respect to the taking of evidence to be used in contested cases before him, as may be just and reasonable.

32. The act of March 3, 1839, section 10, provides, that the provisions of the sixteenth section of the before recited act shall extend to all cases where the patents are refused for any reason whatever, either by the commissioner of patents or by the chief justice of the district of Columbia, upon appeals from the decision of said commissioner, as well as where the same shall have been refused on account of, or by reason of interference with a previously existing patent; and in all cases where there is ne opposing party, a copy of the bill shall be served upon the commissioner of patents, when the whole of the expenses of the proceeding shall be paid by the applicant, whether the final decision shall be in his favor or otherwise.

§6. Of the patent.

33. This section will be divided by considering, 1. The form of the patent. 2. The correction of the patent. 3. The special provisions of the acts of congress occasioned by the burning of the patent office. 4. The disclaimer. 5. The assignment of patents. 6. The extension of the patent. 7. The requisites to be observed after the granting of a patent to secure it.

1. Form of the patent.

34. The patent is to be issued in the form prescribed by the act of congress. The fifth section of the act of July 4, 1836, directs, that all patents issuing from said office shall be issued in the name of the United States, and under the seal of said office, and be signed by the secretary of state, and countersigned by the commissioner of the said office, and shall be recorded, together with the descriptions, specifications and drawings, in the said office, in books to be kept for that purpose. Every such patent shall contain a short description or title of the invention or discovery, correctly indicating its nature and design, and in its terms grant to the applicant or applicants, his or their heirs, administrators, executors or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention or discovery, referring to the specifications for the particulars thereof, a copy of which shall be annexed to the patent, specifying what the patentee claims as his invention or discovery. It is usually dated at the time of issuing it, but by a provision of the last mentioned act, section 8, whenever the applicant shall request it, the patent shall take date, from the time of filing, the specification and drawings, not, however, exceeding six months prior to the actual issuing of the patent.

2. Correction of patent.

35. It is provided by the thirteenth section of the act of July. 4, 1836, that whenever any patent which has heretofore been granted, or which shall hereafter be granted, shall be inoperative or invalid, by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention, more than he had or shall have a right to claim as new; if the error has, or shall have arisen b y inadvertency, accident or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the c6mmissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor, for the same invention, for the residue of the period then unexpired for which the original patent was granted, in accordance with the patentee's corrected description and specification. And in the event of his death, or any assignment by him made of the original patent, a similar right shall vest in his executors, administrators, or assignees. And the patent, so reissued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of all actions, hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing out of the original patent. And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as

hereinbefore provided, have the same annexed to the original description and specification; and, the commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes, as though it had been embraced in the original description and specification.

36. And it is enacted by the act of March 3, 1837, section 5, that, whenever a patent shall be returned for correction and reissue under the thirteenth section of the act to which this is additional, and the patentee shall desire several patents to be issued for distinct and separate parts of the thing patented, he shall first pay, in manner and in addition to the sum provided by that act, the sum of thirty dollars for each additional patent so to be issued; Provided, however, that no patent made prior to the aforesaid fif-teenth day of December, 1836, shall be corrected and reissued until a duplicate of the model and drawing of the thing as originally invented, verified by oath as shall be required by the commissioner, shall be deposited in the patent office: Nor shall any addition of an improvement be made to any patent heretofore granted, nor any new patent to be issued for an improvement made in any machine, manufacture, or process, to the original inventor, assignee or possessor, of a patent therefor, nor any disclaimer be admitted to record, until a duplicate model and drawing of the thing originally intended, verified as aforesaid, shall have been deposited in the patent office, if the commissioner shall require the same; nor shall any patent be granted for an invention, improvement, or discovery, the model or drawing of which shall have been lost, until another model and drawing, if required by the commissioner, shall, in like manner, be deposited in the patent office:

37. And in all such cases, as well as in those which may arise under the third section of this act, the question of compensation for such models and drawings, shall be subject to the judgment and decision of the commissioners provided for in the fourth section, under the same limitations and restrictions as are therein prescribed.

3. Special provisions occasioned by the burning the patent office.

38. The act of March 3, 1837, was passed to remedy the inconveniences arising from the burning of the patent office. It is enacted,

39. - Sect. 1. That any person who may be in possession of, or in any way interested in, any patent for an invention, disocovery, or improvement, issued prior to the fifteenth day of December, in the year of our Lord one thosand eight hundred and thirty-six, or in an assignment of any patent, or interest therein, executed, and recorded prior to the said fifteenth day of December, may, without charge, on presentation or transmission thereof to the commissioner of patents, have the same recorded anew in the patent office, together with the descriptions, specifications of

claim and drawings annexed or belonging to the same; and it shall be the duty of the commisioner to cause the same, or any authenticated copy of the original record, specification, or drawing which he may obtain, to be transcribed and copied into books of record to be kept for that purpose; and wherever a drawing was not originally annexed to the patent and referred to in the specification and drawing produced as a delineation of the invention, being verified by oath in such manner as the commissioner shall require, may be transmitted and placed on file, or copied as aforesaid, together with the certificate of the oath; or such drawings may be made in the office, under the direction of the commisioner, in conformity with the specification. And it shall be the duty of the commissioner to take such measures as may be advised and determined by the board commissioners provided for by the fourth section, of this act, to obtain the patents, specifications, and copies aforesaid, for the purpose of being so transcribed and recorded. And it shall be the duty of each of the several clerks of the judicial courts of the United States, to transmit, as soon as may be, to the commissioner of the patent office, a statement of all the authenticated copies of patents, descriptions, specifications, and drawings of inventions and discoveries made and executed prior to the aforesaid fifteenth day of December, which may be found on the files of his office; and also to make out and transmit to said commissioner for record as aforesaid, a certified copy of every such patent, description, specification, or drawing, which shall be specially required by such commissioner.

40. - Sect. 2. That copies of such record and drawings, certified by the commissioner, or, in his absence, by the chief clerk, shall be prima facie evidence of the particulars of the invention and of the patent granted therefore, in any judicial court of the United States, in all cases where copies of the original record or specification and drawings would be evidence, without proof of the loss of such originals and no patent issued therefor by the patentee or other person inprior to the aforesaid, fifteenth day of December, shall, after the first day of June next, be received in evidence in, any of the said courts in behalf of the patentee or other person who shall be in possession of the same, unless it shall have been so recorded anew, and a drawing of the invention, if separate from the patent, verified as, aforesaid, deposited in the patent office; nor shall any written assignment of any such patent, executed and, recorded prior to the said fifteenth day of December, be received in evidence in any of the said courts in behalf of the assignee or other person in possession thereof, until it shall have been so recorded anew.

41. - Sect. 3. That whenever it shall appear to the commissioner that any patent was destroyed by the burning of the patent office building on the aforesaid fifteenth day of December, or was otherwise lost prior thereto, it shall be his duty, on application terested therein, to issue a new patent for the same invention or discovery bearing the

date of the original patent, with his certificate thereon that it was made and issued pursuant to the provisions of the third section of this act, and shall enter the same of record: Provided, however, That before such patent shall be issued, the applicant therefor shall deposit in the patent office a duplicate, as near as may be, of the original model, drawings, and description, with specification of the invention or discovery, verified by oath, as shall be required by the commissioner; and such patent and copies of such drawings and descriptions, duly certified, shall be admissible as evidence in any judicial court of the United States, and shall protect the rights of the patentee, his administrators, heirs and assigns, to the extent only in which they would have been protected by the original patent and specification.

42. The act of August 29, 1842, sect. 2, extends the provisions of the last section to patents granted prior to the said fifteenth day of December, though they may have been lost subsequently; provided, however, the same shall not have been recorded anew under the provisions of said act.

4. Of the disclaimer.

43. The act of March 3, 1837 sect. 7, authorizes any patentee who shall have, through inadvertence, accident, or mistake, made his specification of claim too broad, claiming more than that of which he was the original or first inventor, some material and substantial part of the thing patented being truly and justly his own, any such patentee, his administrators, executors, and assigns, whether of the, whole or of a sectional interest therein, may make disclaimer of such parts of the thing patented as the disclaimant shall not claim to hold by virtue of the patent or assignment, stating therein the extent of his interest in, such patent; which disclaimer shall be in writing, attested by one or more witnesses, and recorded in the patent office, on payment by the person disclaiming, in manner as, other patent duties are required by law to be paid, of the sum of ten dollars. And such disclaimer shall thereafter be taken and considered as part of the originals specification, to the extent of the interest which shall be possessed in the patent or right secured thereby, by the disclaimant, and by those claiming by or under him subsequent to the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing the same.

5. Assignment of patents.

44. By virtue of the act of July 4, 1836, sect. 11, every-patent shall be assignable in law, either as to the whole interest, or, any undivided part thereof, by any instrument in writing; which assignment, and also every grant and conveyance of the exclusive right under any patent, to make and use, and to grant to others to make and use, the thing patented within and throughout any, specified part or portion of the United

States, shall be recorded in the patent office within three months from the execution thereof. This act required the payment of a fee of three dollars to be paid by the assignee, but this provison has been repealed by the act of March 3, 1839, s. 8, and such assignments, grants, and conveyances, shall, in future, be recorded without any charge whatever. But, by the act of May 27, 1848, Minot's. Stat. at Large, U. S. 231, it is enacted, That hereafter the commissioner of patents shall require a fee of one dollar for recording any assignment, grant or conveyance, of the, whole or any part of the interest in letters-patent, or power of attorney, or license to make or use the things patented, when such instrument shall not exceed three hundred words; the sum of two dollars when it shall exceed three hundred, and shall not exceed one thousand words and the sum of three dollars when it shall exceed one thousand words; which fees shall in all cases be paid in advance.

6. The extension of the patent.

45. The act of July. 4, 1836, sect. 18; directs, That whenever any patentee of an invention or discovery shall desire an extension of his patent beyond the term of its limitation, be may make application therefor, in writing, to the commissioner of the patent office, setting forth the grounds thereof, and the commissioner shall, on the applicant's paying the sum of forty dollars to the treasury, as in the case of an original application, for a patent, cause to be published, in one or more of the principal newspapers in the city of Washington, and in such other paper or papers as he may deem proper, published in the section of country most interested adversely to the extension of the patent, a notice of such application and of the time and place when and where the same will be considered, that any, person may appear and show cause why the extension should not be granted. And the secretary of state, the commissioner of the patent office, and the solicitor of, the treasury, shall constitute a board to hear and decide upon the evidence produced before them both for and against the extension, and shall sit for that purpose at the time and place designated in the published notice thereof. The patentee shall furnish to said board a statement, in writing, under oath, of the ascertained value of, the invention, and of his receipts and expenditures, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention. And if, upon a hearing of the matter, it shall appear to the full and entire satisfaction of said board, having due regard to the public interest therein, that it is just and proper that. the term of the patent should be extended by reason of the patentee, without neglect or fault on his part, having failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity and expense bestowed upon the same, and the introduction thereof into use, it shall be the duty of the commissioner to renew and extend the patent, by making a thereon of such extension, for the term of seven years from and after the expiration of the first term; which certificate, with a

certificate of said board of their judgment and opinion as aforesaid, shall be entered on record in the patent office; and thereupon the said patent shall have the same effect in law as though it had been originally granted for the term of twenty-one years. And the benefit of such, renewal shall extend to assignees and grantees of the right to use the thing patented, to the extent of their respective interest therein: Provided, however, That no extension of a patent shall be granted after the expiration of the term for which it was originally issued.

7. Requisites to secure the patent.

46. The act of August 29, 1842, section 6, requires, That all patentees and and assingees of patents hereafter granted, are hereby required to stamp, engrave, or cause to be stamped or engraved, on each article vended, or offered for sale, the date of the patent; and if any person or persons, patentees, or assignees, shall neglect to do so, he, she, or they, shall be liable to the same penalty, to be recovered and disposed of in the manner specified in the foregoing fifth section of this act. See 49.

§7. Duty or tax on patents.

47. The tax or duty on patents is not the same in all cases, foreigners being required to pay a greater sum than citizens, and the subjects of the king of Great Britain a greater sum than other foreigners. The ninth section of the act of July 4, 1836, requires, That before any application for a patent can be considered by the commissioner as aforesaid, the applicant shall pay into the treasury of the United States, or into the patent office, or into any of the deposit banks to the credit of the treasury, if he be a citizen of the United States, or an alien, and shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a citizen thereof, the sum of thirty dollars; if a subject of the king of Great Britain, the sum of five hundred dol1ars; and all other persons the sum of three hundred dollars, for which payment duplicate receipts shall be taken, one of which to be filed in the office of the treasurer. And the moneys received into the treasury under this act, shall constitute a fund for the payment of the salaries of the officers and clerks herein provided for, and all other expenses of the patent office, and to be called the patent fund.

48. When an applicant withdraws his application before the issuing of the patent, he is entitled to receive back twenty dollars of the sum he may have paid into the treasury. Act of July 4, 1836, sect. 7. And the act of March 3, 1837, section 12, enacts, That whenever the application of any foreigner for a patent shall be rejected and withdrawn for want of novelty in the invention, pursuant to the seventh, section of the act to which this is additional, the certificate thereof of the commissioner shall be a sufficient warrant to the treasurer to pay back to such applicant two-thirds of the duty

he shall have paid into the treasury on account of such application. When money has been paid by mistake, as for foes accruing at the patent office, it must, by the direction of the act of August 29, 1842, section 1, be refunded.

§8. Penalty for use of patentee's marks.

49. The act of August 29, 1842, s. 5, declares, That if any person or persons shall paint or print, or mould, cast, carve, or engrave, or stamp, upon any thing made, used, or sold, by him, for the sole making or selling which he hath not or shall not have obtained letters-patent, the name or any imitation of the namer of any other person who hath or shall have obtained letters-patent for the sole making and vending of such thing, without consent of such patentee or his assigns or legal representatives; or if any person, upon any such thing not having been purchased from the patentee, or some person who purchased it from or under such patentee, or not having the license or consent of such patentee, or his assigns or legal representatives, shall write paint, print, mould, carve, engrave, stamp, or otherwise make or affix the word "patent," or the words "letters-patent," or the word "patentee," or any word or words of like kind, meaning, or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall affix the same or any word, stamp, or device, of like import, on any unpatented article, for the purpose of deceiving the public, he, she, or they, so offending, shall be liable for such offence, to a penalty of not less than one hundred dollars, with costs, to be recovered by action in any of the circuit courts of the United States, or in any of the district courts of the United States, having the powers and jurisdiction of a circuit court; one-half of which penalty, as recovered, shall be paid to the patent fund, and the other half to any person or persons who shall sue for the same.

§9. Courts having jurisdiction in patent cases.

50. It is enacted by the 17th section of the act of July 4, 1836, That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or. discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court which courts shall have power, upon bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor as secured to him by any law of the United States on such terms and conditions as said courts may deem reasonable: Provided, however, That from all judgments and decrees, from. any, such court rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances as is now Provided by law in other judgments and decree, of circuit

courts, and in all other case's in which the court shall deem, it reasonable to allow the same.

§10. Actions for violation of patent rights.

51. The act of July 4, 1836, section 14, provides, That whenever in any action for damages for making, using, or selling the thing whereof the exclusive right is secured by any patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs; and such damages may be recovered by action on the case, in any court of competent jurisdiction, to be brought in the name or names of the person or persons interested, whether as patentee, assignees, or as grantees of the exclusive right within and throughout a specified part of the United States.

52. - Sect. 15. That the defendant in any such action shall be permitted to plead the general issue, and to give this act, and any special matter in evidence, of which notice in writing may have been given to the plaintiff or his attorney, thiry days before trial, tending to prove that the description and specification filed by plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect; which concealment or addition shall fully appear to have, been made for the purpose of deceiving the public, or that the patentee was not, the original and first inventor or discoverer of the thing patented, or of a substantial and miaterial art thereof claimed as new, or that it had teen described in some public work anterior to the supposed discovery thereof by the patentee, or had been in public use, or on sale with the consent and allowance of the patentee before his application for a patent, or that, he had surreptitiously or unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same; or, that the patentee if an alien at the time the patent was grauted, had failed and neglected for the space of eighteen months from the date of the patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the patent issued; in either of which cases judgment shall be rendered for the defendant, with costs. And whenever the defendant relies in his defence on the fact of a previous invention, knowledge, or use of the thing patented, be shall state, in his notice of special matter, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing and where the same had been used: Provided, however, that whenever it shall satisfactorily appear that the patentee, at the time of making his application for the patent, believed himself to be the first inventor or discoverer of the thing patented the same shall not be held to be void on account of

the invention or discovery or any part thereof having been before known or used in any foreign country, it not appearing that the same or any substantial part thereof, had before been patented or described in any printed publication. And provided, also, that whenever the plaintiff shall fail to sustain his action on the ground that in his specification of claim is embraced more than that of which he was the first inventor, if it shall appear that the defendant had used or violated any part of the invention justly and truly specified and claimed as new, it shall be in the power of the court to adjudge and award as to costs as may appear to be just and equitable.

53. This last section has been modified by the act of March 3, 1837, which enacts as follows: Section 9, That anything in the fifteenth section of the act to which this is additional to the contrary notwithstanding That, whenever by mistake, accident, or inadvertence, and without any wilful default or intent to defraud or mislead the public, any patentee shall have in his specification claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the first and original inventor, and shall have no legal or just right to claim the same in every such, case the patent shall be deemed good and valid for so much of the invention or discovery as shall be truly and bona fide his own: Provided, it shall be a material and substantial part of the thing patented, and be definitely distinguishable from the other parts so claimed without right as aforesaid. And every such patentee, his executors, administrators and assigns, whether of the whole or of a sectional interest therein, shall be entitled to maintain a suit at law or in equity on such patent for any infringement of such part of the invention or, discovery as shall be bona fide his own as aforesaid, notwithstanding the specification may embrace more than he shall have any legal right to claim. But, in every such case in which a judgment or verdict shall be rendered for the plaintiff he shall not be entitled to recover costs against the defendant, unless he shall have entered at the patent office, prior to the commencement of the suit, a disclaimer of all that part of the thing patented which were so claimed without right: Provided, however, That no person bringing any such suit shall be entitled to the benefits of the provisions contained in this section, who shall have unreasonably neglected or delayed to enter at the patent office a disclaimer as aforesaid. See Bac. Ab. Monopoly Id. Prerogative, F 4; Phill. on Pat.; Fessend. on Pat.; Carpm. on Pat.; Hand on Pat.; Webst. on Pat; Coll. on Pat.; Gods. on Pat.; Holr. on Pat.; Smith on Pat.; Drewry's Patent Law Abandonment Act; Davies' Collection of Cases on the Law of Patents; Rankin's Analysis of the Law of Patents. Among the French writers are Perpigna on Patents; written in English'; and the Manuel of the same author, in French; and the works of Renouard, Dalloz, Molard, and Regnault. See the various Digests h. t. and particularly Peters' Digest, h. t.

PATENT FRENCH. The following points in relation to the patent laws of France will be found useful to those who have invented valuable machinery, and who are desirous of availing themselves of the patent laws of that country: -

27 - §1. To whom patents are granted. All persons may obtain patents in this country, whether they are men or women, adults or infants, Frenchmen or foreigners, and in general all persons who fulfil the conditions required by the law in order to obtain patents.

3. It is not requisite that the applicant should be present, but the application must be made in his name.

4. - §2. The different kinds of patents. There are three principal kinds of patents. 1. Patents for inventions, (brevets d' invention.) 2. Patents for improvements, (brevets de perfectionnement.) 3. Patents for importa tions, (brevets d'importations.) But as patents may be taken for a combination of the above, there may be added, by such combination, four others, namely; 5. Patents for invention and improvements, (brevets d'invention et de perfectionnemen t.) 6. Patents for invention and importation, (brevets d'invention et d'importation.) 7. Patents for importation and improvement, (brevets d'importation et de perfectionnement.) 8. Patents for importation, invention and improvement (brevets d'invention, et perfectionnement et d' importation.)

5. The forms prescribed to obtain these several kinds of patents are exactly, the same, the only difference consists in the declaration of the applicant, which must be in conformity with the kind of patent he desires to obtain.

6. The applicant himself has the right to fix the number of years for, which he desires to have his patent, when he applies, to have his request registered at the prefecture. He may ha ve it for five, ten, or fifteen years. And this period he has a right to change until the patent has been signed. But with regard to patents for importations, the duration of the patent cannot extend beyond the period for which there is a patent in the country, from which the importation has been made.

7. Patents, other than for importation, may be extended as to time. There are two species of prolongation; the first, within fifteen years; the second, beyond fifteen years.

8. - §3. Cost of patents. The tax, as it is called, which must be paid in order to obtain a patent, varies according to the duration of the patent. This tax may be paid in cash or by instalments. When paid in cash, it is as follows: 1. For, five years, 300 francs, about 56 dollars and 40 cents. 2. For ten years, 800 francs, about 94 dollars. 3. For

fifteen years, 1500 francs, about 282 dollars; besides some office expenses, amounting to from ten to fifteen dollars.

9. - §4. Foreign patents. The patentee in France cannot obtain a patent in a foreign country, without losing his rights in France; but this provision is easily eluded by anotber person taking out the patent in the foreign country, when patents for importations are granted. Perpigna, Manuel des Inventeurs, &o., c. 3, 5, p. 90.

PATENT LAWS OF GREAT BRITAIN AND IRELAND. The patent laws of Great Britain and Ireland will be briefly considered by taking a view of the persons to whom patents will be granted; the different kinds of patents; the time for which they are granted; and the expenses attending them.

2. - §1. To whom patents are granted. Both foreigners and subjects may obtain letters-patent; but inasmuch as the applicant must accompany his petition by a declaration made before a master in chancery, or a master extraordinary in chancery, that he has made such an invention; that he is the true and first inventor thereof; or that it is new in the kingdom, according to the special circumstances of the case, the applicant must be present in Great Britain.

3. - §2 The different kinds of patents. This will be considered by taking a view, first, of the object of a patent, and secondly, the territory over which a patent extends.

4. - 1. The thing patented must be, 1. A discovery or invention made by the applicant himself, in the United Kingdom. 2. The introduction or importation of an invention known abroad, and in this case, the introducer is the true and first inventor, within the realm. 3. Though not absolutely the true and first inventor, by reason of some one else having made the same invention and kept it secret, yet the invention must have been made public by the applicant, and as the first publisher, the applicant will be entitled to letters-patent. Novelty and utility are essential conditions of the grant, but it is of no consequence whether the discovery was known or not, in a country foreign to the United Kingdom. Webst. on Pat. 11 and 70, note w. A recent act of parliament, passed July 1, 1852, (15 & 16 Viet. cap. 83,) amended the English patent' system in several important particulars. The cardinal features of the new system are: 1, protection from the day of the application 2, one patent for the United Kingdom; 3, moderate cost and periodical paywent; 4, printing and publishing of specifications; 5, one office of patents and specifications. Webster's New Patent Law, p. 41. By the 18th sec. of said act, letters patent are sealed with the great seal of the United Kingdom, and extend to the whole of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of man; also, to the colonies or plantations, or such of them as the applicant may designate in his petition for the letters patent and the law officer of the crown shall insert, in his warrant for the seal ing of the patent. The patent may bear

date as of the, day of the application, or of the sealing, or of any intermediate day. The patent is granted for fourteen years, subject however to the condition that it shall be void at the expiration of three years and of seven years respectively from the date thereof, unless before the expiration of the said three years and seven years, stamps of the value of X50 and X100 respectively, be affixed to the letters patent. The cost of obtaining letters patent is, in the first instance, X20 if the patent is unopposed; if opposed, there are additional fees amounting to nearly X5. By sec. 26, letters patent obtained in the United Kingdom for patented foreign inventions are not to continue in force after the expiration of the foreign patent.

PATENT, PRUSSIAN. This subject will be considered by taking a view of the persons who may obtain patents; the nature of the patent; and the duration of the right.

2. - §1, Of the persons who may obtain patents. Prussian citizens or subjects are alone entitled to a patent. Foreigners can not obtain one.

3. - §2. Nature of the patents. Patents are granted in Prussia for an invention when the thing has been discovered or invented by the applicant. For an improvement, when considerable improvement has been made to a thing before known. And for importation, when the thing has been brought from a foreign country and put in use in the kingdom. Patents may extend over the whole country or only over a particular part.

4. - §3. Duration of patents. The patent may at the choice of the applicant, be for any period not less than six months nor more than fifteen years.

PATENT, ROMAN. The Roman patents will be considered by taking a view of the persons to whom they may be granted; the different kinds of patents; the cost of a patent; and the obligations of thepatentee.

2. - §1. To whom patents are granted. Every person, whether a citizen of the estates of the pope or foreigner, man or woman, adult or infant, may obtain a patent for an invention, for an improvement, or for importation, by fulfilling the conditions prescribed in order to obtain a grant of such titles. Persons who have received a patent from the Roman government may, afterwards, without any compromise of their rights or privileges, receive a patent in a foregn country.

3. The different kinds of patents. In the Roman estates there are granted patents for invention, for improvements, and for importations.

4. - 1st. Patents for inventions are granted for, 1. A new kind of important culture. 2. A new and useful art, before unknown. 3. A new and useful process of culture or of

manufacture. 4. A new natural production. 5. A new application of a means already, known.

5. - 2d. Patents for improvements may be granted for any useful improvement made to inventions already known and used in the Roman states.

6. - 3d, Patents for importations are granted in two cases, namely: 1. For the introduction of inventions already patented in a foreign country, and the privilege of which patent yet continues. 2. For the introduction of an invention known and freely used in a foreign country, but not yet used or known in the Roman states.

7. - 3. Cost of a patent. The cost of a patent is fixed at a certain sum per annum, without regard to the length of time for which it may have been granted. It varies in relation to patents for inventions and importation. It is ten Roman crowns per annum for a patent for invention and improvement, and of fifteen crowns a year for a patent for importation.

8. - §4. Obligation of the patentee. He is required to bring into uue his invention within one year after the grant of the patent, and not to suspend the supply for the space of one year during the time the privilege shall last.

9. He is required to pay one balf of the tax or expense of his patent on receiving his patent, and the other half during the first month of the second portion of its, duration.

PATENT-OFFICE. An office bearing this name was established by law, and by the act Of congress of July 4, 1836, which repeals all acts theretofore passed in relation to patents, 4 Sharsw. cont. of Story's L. U. S. 2504, it is provided, §1. That there shall be established and attached to the department of state, an office to be denominated the patent office; the chief officer of which shall be called the commissioner of patents, to be appointed by the president, by and with the advice and consent of the senate, whose duty it shall be, under the direction of the secretary of state, to superintend, execute, and perform, all such acts and things touching and respecting the granting and issuing of patents for new and useful discoveries, inventions, and improvements, as are herein provided for, or shall hereafter be, by law, directed to be done and performed, and shall have the charge and custody of all the books, records, papers, models, machines, and all other things belonging to said office. And said commissioner, shall receive the same compensation as is allowed by law to the commissioner of the Indian department, and shall be entitled to send and receive letters and packages by mail, relating to the businesss of the office, free of postage.

2. - §2. That there shall be in said office, an inferior officer, to be appointed by the said principal officer, with the approval of the secretary of state, to receive an annual

salary of seventeen hundred dollars, and to be called the chief clerk of the patent-office; who in all cases during the necessary absence of, the commissioner, or when the said 'principal office shall become vacant, shall have the charge and custody of the seal, and of the records, books, papers, machines, models, and all other things belonging to the said office, and shall perform the duties of commissioner during such vacancy. And the, said commissioner may also, with like approval, Appoint an examining Clerk, at an annual salary of fifteen hundred dollars; two other clerks at twelve hundred dollars each, one of whom shall be a competent draughtsman; one other clerk at one thousand dollars; a machinist at twelve hundred and fifty dollars; and a messenger at seven hundred dollars. And said commissioner, clerks, and every other person appointed and employed in said office, shall be disqualified, and interdicted from acquiring or taking, except by inheritance, daring the, period for which they shall hold their appointments, respectively, any right or interest, directly or indirectly, in any patent for an invention or discovery which has been, or may hereafter be granted.

3. - §3. That the said principal officer, and every other person to be appointed in the said office, shall, before he enters upon the duties of his office or appointment, make oath or affirmation, truly and faithfully to execute the trust committed to him. And the said commissioner and the chief clerk shall also, before entering upon their duties, severally give bond with sureties to the treasurer of the United States, the former in the sum of ten thousand dollars, and the latter, in the sum of five thousand dollars, with condition to render a true and faithful account to him or his successor in office, quarterly of all moneys which shall be by them respectively received for duties on patents, and for copies of records, and drawings, and all other moneys received by virtue of said office.

4. - §4. That the said commissioner shall cause a seal to be made and provided for the said office, with such device as the president of the United States shall approve, and copies of any records, books, papers, or drawings, belonging to the said office, under the signature of the said commissioner, or when the office shall be vacant, under the signature of the chief clerk, with the said seal affixed, shall be competent evidence in all, cases in which the original records, books, papers, or drawing, could be evidence. And any person making application therefor, may have certified copies of the records, drawings, and other papers deposited in said office, on paying, for the written copies, the sum of ten cents for, every page of one hundred words; and for copies of drawing, the reasonable expense of making the same.

PATENTEE. He to whom a patent has been granted. The term is usually applied to one who has obtained letters-patent for a new invention.

2. His rights are, 1. To make, sell and enjoy the profits, during the existence, of his rights, of the invention or discovery patented. 2. To recover damages for a violation of such rights. 3. To have an injunction to prevent any infringement of such rights.

3. His duties are to supply the public, upon reasonable terms, with the thing patented.

PATER. Father. A term used in making genealogical tables.

PATER FAMILLIAS, civil law. One who was sui juris and consequently was not either under parental power, nor under that of a master; a child in his cradle, therefore, could have been pater familias, if he had neither a master nor a father. Lec. Elem. §127, 128.

PATERNA PATERNIS. This expression is used in the French law to signify that in a succession, the property coming from the father of the deceased, descends to his paternal relations.

PATERNAL. That which belongs to the father or comes from him: as, paternal power, paternal relation, paternal estate, paternal line. Vide Line.

PATERNAL POWER. Patria potestas, The, authority lawfully exercised by parents, over their children. It will be proper to consider, 1. Who are entitled to exercise this power. 2. Who are subject to it. 3. The extent of this power.

2. - 1. As a general rule the father is entitled to exert the paternal power over his children. But for certain reasons, when the father acts improperly, and against the interest of those over whom nature and the law have given him authority, he loses his power over them. It being a rule that whenever the good of the child requires it, the courts will deliver the custody of the children to others than the father. And numerous instances may be found where, for good reasons, the custody will be given to the mother.

3. The father of a bastard child has no control over him; the mother has the right to the custody and control of such child. 2 Mass. 109; 12 Mass. 887.

4. - 2. All persous are subject to this power until they arrive at the full age of twenty-one years. A father may, however, to, a certain extent, deprive himself of this unlimited paternal power, first, by delegating it to others, as when he binds his son an apprentice; and, secondly, when he abandons his children, and permits them to act for themselves. 2 Verm. Cas. 290; 2 Watts, 408 4 S. & R. 207; 4 Mass. 675.

5. - 3. The principle upon which the law is, founded as to the extent of paternal power is, that it be exerted for the benefit of the child. The child is subject to the lawful commands of the father to attend to his business, because by being so subjected he acquires that discipline and the practice of attending to business, which will be useful to him in after life. He is liable to proper correction for the same reason. 1 Bouv. Inst. n. 326-33. See Correction; Father; Mother; Parent.

PATERNAL PROPERTY. That which descends or comes from the father and other ascendants, or collaterals of the paternal stock. Domat. Liv. Prel. tit, 3, s. 2.

PATERNITY, The state or condition of a father.

2. The hushand is prima facie presumed to be the father of his wife's chhildren, born during coverture, or within a competent time afterwards pater is est quem nuptim demonstrant. 7 N. S. 553. But this presumption may be rebutted by showing circumstances which render it impossible that the hushand can be the father. 6 Binn. 283; 1 Browne's R. Appx. xlvii.; Hardin's R. 479; 8 East, R. 193; Stra. 51, 940. 4 T. R; 356;. 2 M. & K. 349; 3 Paige's R. 139; I Sim. & Stu. 150; Turn. & Russ. 138; 1 Bouv. Inst. n. 302, et seq.

3. The declarations of both or one of the spouses, however, cannot affect the condition of a child born during the marriage. 7 N. S. 553; 3 Paige's R. 139. Vide Bastard;. Bastardy;, Legitimacy; Maternity; Pregnancy.

PATHOLOGY, med. jur. The science or doctrine of diseases. In cases of homicides, abortions, and the like, it is of great consequence to the legal practitioner to be acquainted, in some degree, with pathology. 2 Chit. Pr. 42, note.

PATRIA. The country; the men of the neighborhood competent to serve on a jury; a jury. This word is nearly synonymous with pais. (.q. v.)

PATRIA POTESTAS, Civil law. Paternal power; (q. v.) the authority which is lawfully exercised by the father over his children.

PATRICIDE. One guilty of killing his father.

PATRIMONIAL. A thing, which comes from the father, and by extension, from the mother or other ancestor.

PATRIMONIUM, civil law. That which is capable, of being inherited.

2. Things capable of being possessed by a single person exclusively of all others, are, in the Roman or civil law, said to be in patrimonio; when incapable of being so possessed they are extra-patrimonium.

3. In general, things may be inherited, but there are some which are said to be extra patrimonium, or which are not in commerce. These are such as are common, as the light of heaven, the air, the sea, and the like. Things public, as rivers, harbors, roads, creeks, ports, arms of the sea, the, sea-shore, highways, bridges, and the like. Things which belong to cities and municipal corporations, as public-squares, streets, market houses, and the like. See, 1 Bouv. Inst. n. 421 to 446.

PATRIMONY. Patrimony is sometimes understood to mean all kinds of property but its more limited signification , includes only such estate, as has descended in the same family and in a still more confined sense, it is only that which has descended or been devised in a direct line from the father, and by extension, from the mother, or other ancestor.

2 . By patrimony, patrimonium, is also understood the father's duty to take care of his children. Sw. pt. 3, §18, n. 31, p. 235.

PATRINUS. A godfather.

PATRON, eccles. law. He who has the disposition and gift of an ecclesiastical benefice. In the Roman law it signified the former master of a freedman. Dig. 2, 4, 8, 1.

PATRONAGE. The right of appointing to office; as the patronage of the president of the United States, if abused, may endanger the liberties of the people.

2. In the ecclesiastical law, it signifies the right of presentation to a church or ecclesiastical benefice. 2 Bl. Com. 21.

PATRONUS, Roman civil law. This word is a modification of the, Latin word pater, father; a denomination applied by Romulus to the first, senators of Rome, and which they always afterwards bore. Romulus at first appointed a hundred of them. Seven years afterwards, in consequence of the association of Tatius to the Romans, a hundred more were appointed, chosen from the Sabines. Tarquinius Priscus increased the number to three hundred. Those appointed by Romulus and Tatius were called patres majorum gentium and the others were called patres minorum gentium. These and their descendants constituted, the nobility of Rome. The rest of the people were called lebeians, every one of whom was obliged to choose one of these fathers as his patron. The relation thus constituted involved important consequences. The plebeian,

who was called (cliens) a client, was obliged to furnish the means of maintenance to his chosen patron; to firnish a portion for his patron's daughters; to ransom him and his sons, if captured by an enemy, and pay all sums recovered against him by judgment, of the 'courts. The patron, on the other hand, was, obliged to watch over the interests of his client, whether present or absent to protect his person and property, and especially to defend him in all, actions brought against him for any cause. Neither could accuse or bear testimony against the other, or give contrary votes, &c. The contract was of a sacred nature,; the violation of it was a sort of treason, and punishable as such. According to Cicero, (De Repub. II. 9,) this relation formed an integral part of the governmental system, Et habutit plebem in clientelas principum descri ptum, which he affirms was eminently useful. Blackstone traces the system of vassalage to this. ancient relation of patron and client. It was, in fact, of the same nature as the feudal institutions of the middle ages, designed to maintain order in a rising state by a combination of the opposing interests of the aristocracy and of the common people, upon the principle of reciprocal bonds for mutual interests, Dumazeau, Barreau Romain, §III. Ultimately, by force of radical changes in the institution, the word patronus came to signify notbing more than an advocate. Id. IV

PATRUELIS, civil law. A cousin german by the father's side; the son or daughter of a father's brother. Dig. 38i 10, 1.

PATRUUS, citq law. An uncle by the father's side, a father's brother. Dig. 38, 10, 10, Patruus magnus, is a grandfather's brother, grand uncle. Patruus major, is a great-grandfather's brother. Patruus maximus, is a, great-grandfather's father's brother.

PAUPER. One so poor that he must be supported at the public expense.

2. The statutes of the several states make ample provisions for the support of the poor. It is not within the plan of this work even to give an abstract of such extensive legislation. Vide 16 Vin. Ab. 259;Botts on thc Poor Laws; Woodf. Landl. & Ten. 901.

PAVIAGE. Contribution or tax. for paving the streets or highways.

PAWN. A pledge. Vide Pledge.

PAWN-BROKER. One who is lawfully authorized to lend money, and actually lends it, usually in small sums, upon pawn or pledge.

PAWNEE. He who receives a pawn or pledge.

2. The rights of the pawnee are to have the exclusive possession of the pawn; to use it, when it is for the advantage of the pawner, but, in such case, when he makes a profit out of it, he must account for the same. 1 Car. Law Rep. 8 7; 2 Murph.

3. The pawnee is bound to take reasonable care, of the pledge, and to return it to the, pawnor, when the obligation of the latter has been performed.

4. The pawnee has two remedies to enforce his claim; the first, to sell the pawn, after having given due notice; and, secondly, by action. See. 1 Bouv. Inst. n. 1046, 1050.

PAWNOR. One who, being liable to an engagement, gives to the person to whom he is liable, a thing to be held as a security for the payment of his debt or the fulfilment of his liability.

2. The rights of the pawnor are to redeem the pledge, at any time before it is sold.

3. His oblioations are to warrant the title of the pledge, and to redeem it at the time agreed upon. See 1 Bouv. lnst. n. 1045.

PAYEE. The person in whose favor a bill of exchange is made payable. Vide Bills of Exchange.

PAYMENT, contracts. That which is given to execute what has been promised; or it is the fulfilment of a promise. Solvere dicimus cum quis fecit, quod facere promisit. But though this is the general acceptation of the word, yet by payment is understood, every way by which the creditor is satisfied or ought to be, and the debtor, liberated for example, an accord and satisfaction will operate as a payment. If I owe you a sum of money, for the security of which I give you a mortgage, and afterwards you consent to receive in payment a tract of land, from the moment the sale is complete, the first obligation, with all its accessories, is extinct, although you should be afterwards evicted of the property sold. 7 Toull. n. 46 2 Mart. Lo. Rep. N. S. 144; S. C. 2 Harr. Cond. Lo. R. 621, 624.

2. This subject will be considered by taking a separate view of the person by whom the payment may be made; to whom it may be made; when and where it ought to be made; how it ought to be made; the effect of the payment.

3. - 1. The payment may be made by the real debtor and other persons from whom the creditor has a right to demand it; an agent may make payment for his principal; and any mode of payment by the agent, accepted and received as such by the creditor, as an absolate payment will have the effect to discharge the principal, whether known or unknown, and whether it be in the usual course of business or not. If, for example, a

factor or other agent should be employed to purchase goods for his principal, or should be entrusted, with money to be paid for him, and, instead of receiving the money, the creditor or seller should take the note of the factor or agent; payable at a future day, as an absolute payment, the principal would be discharged from the debt. 3 Chit. Com. Law, 204; 1 B. & Ald. 14; 6 B. & C. 160; 7 B. & C. 17. When such note has been, received conditionally and not as an absolute payment, it would not have the effect of a payment by the principal; and whether so received or not is a fact to be decided by the jury. 1 Cowen, R, 259, 383; 9 John. R:, 310; 6 Cowen, R. 181; 7 John. R. 311; 15 John. R. 276; 3 Wend. R. 83; 6 Wend. R. 475; 10 Wcnd. R. 271; 5 John., R. 68; 1 Liverm. Ag. 207.

4. Payment may also be made by a third person a stranger to the contract.

5. In the payment of mortgages, it is a˜20rule, that the personal estate shall be applied to discharge them when made by the testator or intestate himself, to secure the payment of a debt due by bim, because the personal estate was benefited by the money borrowed; and it makes no difference whether the mortgaged lands have been devised, or come to the heir by descent. 2 Cruise, 1 Dig. 147. The testator may, however, exempt the personal estate from the payment, and substitute the real in its place. But when the mortgage was not given by the deceased, but be acquired the real estate subject to it, it never was his debt, and therefore his personal estate is not bound to pay the mortgage debt, but it must be paid by the real estate. 2 Cruise, Dig. 164-8; 3 John. Chan. R. 252; 2 P. Wms. 664, n. 1; 2 Bro. C. C. 57; 2 Bro. C. C. 101, 152; 5 Ves. jr. R. 534; 14 Ves. 417.

6. - 2. It must be made by the creditor himself, or his assigns, if known, or some person authorized by him, either expressly or by implication; as to his factor; Cowp. 251: to his broker, 1 Maul. & Selw. 576; 4 Id. 566; 4 Taunt. 242; 1 Stark. Ca. 238.

7. In the case of partners and other joint creditors, or joint execuutors or administrators, payment to one is generally a valid payment. When an infant is a creditor, payment must be made to his guardian. A payment may be good when made to a person who had no authority to receive it, if the creditor shall afterwards ratify it. Poth. Obl. n. 528.

8. - 3. Time and place of payment: first, as to the time. When the contract is, that payment shall be made at a future time, it is clear that nothing can be demanded until after it has elapsed, or until any other condition to which the payment is subject, has been fulfilled; and in a case where the goods had been sold at six or nine months, the debtor had the option as to those two terms. 5 Taunt, 338. When no time of payment is mentioned in the agreement, the money is payable immediately. 1 Pet. 455; 4 Rand. 346.

9. Secondly, the payment must be made at the place agreed upon in the contract; but in the absence of such agreement, it must be made agreeably to the presumed intention of the parties, which, among other things, may be ascertained by the nature of the thing to be paid or delivered, or by the custom in such cases.

10. - 4. How the payment ought to be made. To make a valid payment, so as to compel the receiver to take it, the whole amount due must be paid; Poth. Obl. n. 499, or n. 534, French edition; when a part is accepted, it is a payment pro tanto. The payment must be made in the thing agreed upon; but when it ought to be made in money, it must be made in the lawful coin of the country, or in bank notes which are of the value they are represented to be. A payment made in bills of an insolvent bank, though both parties may be ignorant of its insolvency, it has been held, did not discharge the debt; 11 Verm. 676; 6 Hill, 340; but see 1 W. & S. 92; 8 Yerg. 175; and a payment in counterfeit bank notes is a nullity. 2 Hawks, 326; 3 Hawks, 568, 6 Hill, 840. Iii general, the payment of a part of a debt, after it becomes due, will not discharge the whole, although there may be an agreement by the debtor that it should have that effect, because there is no consideration for such agreement. But see 3 Kelly's R. 210, contra. A payment of a part, before it is due, will discharge the whole, when so agreed.

11. - 5. The payment, when properly made, discharges the debtor from his obligation. Sometimes a payment extinguishes several obligations; this happens when the thing given to discharge an obligation was the same which is the object of another obligation. Poth. Obl. 552.

12. A single payment may discharge several debts; as, for example if Peter be indebted to Paul one thousand dollars, and Paul being indebted to James, Paul give an order to Peter to pay Tames this money; the payment made by Peter to James discharges both the obligations due by Peter to Paul, and by Paul to James. Poth. Ob. n. 553. This rule, that a payment made in order to acquit or discharge an obligation, extinguishes the other obligations which have the same object, takes place also when there are several debtors as regards the whole of them. If, for example, Peter trust Paul on the credit of James, a payment by Paul discharges both himself and James. Poth. Obl. n. 554.

13. But in case money or other things have been delivered to a person who was supposed to be entitles to them as a creditor, when he was not, this is not a payment, and the whole, if nothing was due, or if the debt was less than the amount paid, the surplus, may be recovered in action for money bad and received. Vide, generally, Bouv. Inst. Index, h. t.; Com. Di g. 473; 8 Com. Dig. 607; 16 Vin 6; 1 Vern. by Raith. 3, 150 n. Yelv. 11 a; 1 Salk. 22; 15 East, 12; 8 East, R. 111; 2 Ves. jr. 11; Phil. Ev. Index, b, t,; Stark. Ev. h. t.; Louis. Code, art. 2129; Ayl. Pand. 565; 1 Sell. Pr. 277;

Dane's Ab. Index, h. t.; Toull. lib. 3, tit. 3, c. 5; Pardes. part 2, tit. 2, c. 1 Merl. Repert. h. t.; Chit. Contr. Index, h. t.; 3 Eng. C. L. Rep. 130. As to what transfer will amount to an assignment or a payment and extinguishment of a claim, see 6 John. Ch. R. 395; Id. 425; 2 Ves. jr. 261 18Ves. jr. 384; 1 N. H. Rep. 167; 1 N. H. Rep. 252; 2 N. H. Rep. 300; 3 John. Ch. R. 53.

PAYMENT, pleadings. The name of a plea by which the defendant alleges that he has paid the debt claimed in the declaration; this plea must conclude to the country. 4 Call, 371; Minor, 137. Vide Solvit ad them; Solvit post diem.

PAYS. The country. Trial per pays, is a trial by the country; that is, by jury. Vide Pais.

PAX REGIS, Eng. law. The king's peace. In ancient times there were certain limits which were known by this name. The pax regis, or the verge of the court, as it was afterwards called, extended from the palace gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms and nine barleycorns. Crabb's C. L. 41.

PEACE. The tranquillity enjoyed by a political society, internally, by the good order which reigns among its members, and externally, by the good understanding it has with all other nations. Applied to the internal regulations of a nation, peace imports, in a technical sense, not merely a state of repose and security, as opposed to one of violence and warfare, but likewise a state of public order and decorum. Ham. N. P. 139; 12 Mod. 566. Vide, generally, Bac. Ab. Prerogative, D 4; Hale, Hist. P. C. 160; 3 Taunt. R. 14; 1 B. & A. 227; Peake, R. 89; 1 Esp. R. 294; Harr. Dig. Officer, V 4; 2 Benth. Ev. 319, note. Vide Good behaviour; Surety of the peace.

PECK. A measure of capacity, equal to two gallons. Vide Measure.

PECULATION, civil law. The unlawful appropriation by a depositary of public funds, of the property of the government entrusted to his care, to his own use or that of others. Domat, Suppl. au Droit Public, liv. 3, tit. 5.

PECULIAR, eccles. law. In England, a particular parish or church, which has, within itself, independent of the ordinary jurisdiction, power to grant probate of wills, and the like. 1 Eng. Eccl. R. 72, note; Shelf. on Mar. & Div. 538. Vide Court of peculiars.

PECULIUM, civil law. The savings which were made by a son or slave with the consent of his father or master. Inst. 2, 9, 1; Dig. 15, 1, 5, 3; Poth. ad Pand. lib. 50 , tit. 17, c. 2, art. 3.

2. A master is not entitled to the extraordinary earnings of his apprentice, which do not interfere with his services so as to affect his master's profits. An apprentice was therefore decreed to be entitled to salvage in opposition to his master's claim for it. 2 Cranch, 270.

PECUNIA, civil law, property By the term was understood, 1. Money. 2. Every thing which constituted the private property of an individual, or which was a part of his fortune; a slave' a field, a house, and the like, were so considered.

2. It is in this sense the law of the Twelve Tables said; Uti quisque pater familias legassit super pecunia tutelare rei suae, ita jus esto. In whatever manner a father of a family may have disposed of his property, or of the tutorship of his things, let this disposition be law. 1 Lecons Elem. du Dr. Civ. Rom. 288.

3. Flocks were the first riches of the ancients, and it is from pecus that the words pecania, peculium, peculatus, are derived. Co. Litt. 207.

PECUNIARY. That which relates to money.

2. Pecuniary punishment, is one which imposes a fine on a convict; a pecuniary legacy is one which entitles the legatee to receive a sum of money, and not a specific chattel. In the ecclesiastical law, by pecuniary causes is understood such causes as arise either from the withholding ecclesiastical dues, or the doing or omitting such acts relating to the church, in consequence of which damage accrues to the plaintiff. In England these causes are cognizable in the ecclesiastical courts.

PEDIGREE, descents. A succession of degrees from the origin; it is the state of the family as far as regards the relationship of the different members, their births, marriages and deaths; this term is applied to persons or families, who trace their origin or descent.

2. On account of the difficulty of proving in the ordinary manner by living witnesses, facts which occurred in remote times, hearsay evidence (q. v.) hasbeen admitted to prove a pedigree. 1 Phil. Ev. 186; 1 Stark. Ev. 55; 10 Serg. & Rawle, 383; 2 Supp. to Ves. jr. 110; 8 Com. Dig. 583 1 Pet. 337; 6 Pet., 81; 13 Pet. 209 1 Wheat. 6; 3 Wash. C. C. R. 243; 4 Wash.C.C.R.186; 3Bouv.Inst.n. 3067. Vide Descent; Line.

PEDIS POSSESSIO. A foothold, an actual possession. To constitute adverse possession there must be pedis possessio, or a substantial enclosure. 2 Bouv. Inst. n. 2193; 2 N. & M. 343.

PEDLARS. Persons who travel about the country with merchandise, for the purpose of selling it. They are obliged under the laws of perhaps all the states to take out licenses, and to conform to the regulations which those laws establish.

PEER. Equal. A man's peers are his equals. A man is to be tried by his peers.

2. In England and some other countries, this is a title of nobility; as, peers of the realm. In the United States, this equality is not so much political as civil. A man who is not a citizen, is nevertheless to be tried by citizens.

PEERESS. A noblewoman, the wife of a peer.

PEINE FORTE ET DURE, Eng. law A punishment formerly inflicted in England, on a person who, being arraigned of felony, refused to plead and put himself on his trial, and stubbornly stood mute. He was to be laid down and as much weight was to be put upon him as he could bear, and more, until he died. This barbarous punishment has been abolished. Vide Mute.

PELTWOOL. The wool pulled off the skin or pelt of a dead ram.

PENAL. That which may be punished; that which inflicts a punishment.

PENAL STATUTES. Those which inflict a penalty for the violation of some of their provisions.

2. It is a rule of law that such statutes must be construed strictly. 1 Bl. Com. 88; Esp. on Pen. Actions, 1; Bosc. on Conv.; Cro. Jac. 415; 1 Com. Dig. 444; 5 Com. Dig. 360; 1 Kent, Com. 467. They cannot, therefore, be extended by their spirit or equity to other offences than those clearly described and provided for. Paine, R. 32; 6 Cranch, 171.

PENALTY, contr. A clause in an agreement, by which the obligor agrees to pay a certain-sum of money, if he shall fail to fulfil the contract contained in another clause of the same agreement.

2. A penal clause in an agreement supposes two obligations, one of which is the primitive or principal; and the other, is, conditional or accessory.

3. The penal obligation differs from an alternative obligation, for this is but one in its essence; while a penalty always includes two distinct engagements, and, when the first is fulfilled, the second is void. When a breach has taken place, the obligee has his option to require the fulfilment of the first obligation, or' the payment of the penalty,

in those cases which cannot be relieved in equity, when the penalty is considered as liquidated damages. Dalloz, Dict. mots Obligation avec clause penale.

4. It is difficult, in many cases, to distinguish between a penalty and liquidated damages. In general, the courts have inclined to consider the sum reserved by such agreement to be a penalty, rather than as stipulated damages. (q. v.)

5. The sum will be considered as a penalty, and not as liquidated damages, in the following cases: 1. When the parties to the agreement have expressly declared the sum to be a penalty, and no other intent is to be collected from the instrument. 2 Bos. & P. 346; 1 H. Bl. 227; 1 Pick. 45 1; 4 Pick. 179; 7 Wheat. 14; 3 John. Cases, 297. 2. When from the form of the instrument, as in the case of a money bond, it is sufficiently clear a penalty was intended.

3. When it is doubtful whether the sum was intended as a penalty or not, and a certain damage or debt is made payable on the face of the instrument. 2 B. & P. 350; 3 C. & P. 240. 4. When the agreement was evidently made for the attainment of another object, to which the sum, specified is wholly collateral, 11 Mass. 76; 15 Mass. 488; 1 Bro. C. C. 418, 419. 5. When the agreement contains several matters, of different degrees of importance, and yet the sum mentioned is payable for the breach of any, even the least. 6 Bing. 141; 5 Bing. N. C. 390; 7 Scott, 364. 6. When the contract is not under seal, and the damages may be ascertained and estimated; and this though the parties have expressly declared the sum to be as liquidated damages. 2B. & Ald. 704; 6 B. & C. 216; 4 Dall. 150; 5 Cowen, 144. See 2 Greenl. Ev. 258. 1 Holt N. P. C. 43 1 Bing. R. 302; S. C. 8 Moore, 244; 4 Burr. 2229.

6. The penalty remains unaffected, although the condition may have been partially performed; as in a case where the penalty was one thousand dollars, and the condition was to pay an annuity of one hundred dollars, which had been paid for ten years; the penalty was still valid. 5 Verm. 365.

7. A distinction seems to be made in courts of equity between penalties and forfeitures. In cases of forfeiture for the breach of any covenant other than a covenant to pay rent, relief will not be granted in equity, unless upon the ground of accident, fraud, mistake, or surprise, when the breach is capable of compensation. Edin. on Inj. 22; 16 Ves. 403; S. C. 18 Ves. 58 3 Ves. 692; 4 Bouv. List. n. 3915.

8. By penalty is understood, also, the punishment inflicted by law for its violation; the term is mostly applied to a pecuniary punishment. See 6 Pet. 404; 10 Wheat. 246; 1 Gall. R. 26; 2 Gall. R. 515; 1 Mason, R. 243; 3 John. Cas. 297: R. 451; 15 Mass. 488; 7 John. 72 4 Mass. 433; 8 Mass. 223; 8 Com. Dig. 846; 16 Vin. Ab. 301; 1 Vern. 83,

n.; 1 Saund. 58, n.; 1 Swans. 318; 1 Wash. C. C. R. 1; 2 Wash. C. C. R. 323; Paine, C. C. R. 661; 7 Wheat. 13. See, generally, Bouv. Inst. Index, h. t.

PENANCE, eccl. law. An ecclesiastical punishment, inflicted by an ecclesiastical court, for some spiritual offence. Ayl. Par. 420.

PENCIL. An instrument made of plumbago, black lead, red chalk, or other suitable substance, for writing without ink.

2. It has been holden that a will written with a pencil, could riot, on this account, be annulled. 1 Phillim. R. 1; 2 Phillim. 173.

PENDENTE LITE. Pending the continuance of an action, while litigation continues.

2. An administrator is appointed, pendente lite, when a will is contested. 2 Bouv. Inst. n. 1557. Vide ddministrator.

PENDENTES, civil law. The fruits of the earth not yet separated from the ground; the fruits hanging by the roots. Ersk. Inst. B. 2, Lit. 2, s. 4.

PENETRATION, crimes. The act of inserting the penis into the female organs of generation. 9 Car. & Pa 118; S. C. 38 E. C. L. R. 63. See 8 Car. & Payne, 614; 34 E. C. L. R. 562; 5 C. & P. 321; S. C. 24 E, C. L. R. 339; 9 C. & P. 31 Id. 752; 38 E. C. L. R. 320. But in order to commit the crime of rape, it is requisite that the penetration should be such as to rupture the hymen. 5 C. & P. 321.

2. This has been denied to be sufficient to constitute a rape without emission. (q. v.) Bee, on this subject, 12 Co. 37; Hawk. bk 1, c. 41, s. 3; 1 Hale, P. C. 628; 1 East, P. C. 437, 8; Russ & Ry. C. C. 519; 6 C. & P. 351; 5 C. & P. 297, 321; S. C. 24 E. C. L. R. 339; 1 Chit. Med. Jur. 386 to 395; 1 Virg. Cas. 307; 4 Mood. Cr. Cas. 142, 337; 4 Car. & P. 249; 1 Par. & Fonbl. 433; 2 Mood. & M. C. N. P. 122; 1 Russ. C. & M 560; 1 East, P. C. 437.

PENITENTIARY. A prison for the punishment of convicts.

2. There are two systems of penitentiaries in the United States, each of which is claimed to be the best by its partizans: the Pennsylvauia system and the New York system. By the former, convicts are lodged in separate, well lighted, and well ventilated cells, where they are required to work, during stated hours. During the whole time of their confinement, they are never permitted to see or speak with each other. Their usual employments are shoemaking, weaving, winding yarn, picking wool, and such like business. The only punishments to which convicts are subject, are

the privation of food for short periods, and confinement without labor in dark, but well aired cells; this discipline has been found sufficient to keep perfect order; the whip ana all other corporal punishments are prohibited. The advantages of the plan are numerous. Men cannot long remain in solitude without labor convicts, when deprived of it, ask it as a favor, and in order to retain it, use, generally, their best exertions to do their work well; being entirely secluded, they are of course unknown to their fellow prisoners, and can form no combination to escape while in prison, or associations to prey upon society when they are out; being treated with kindness, and afforded books for their instruction and amusement, they become satisfied that society does not make war upon them, and, more disposed to return to it, which they are not prevented from doing by the exposure of their fellow prisoners, when in a strange place; the labor of the convicts tends greatly to defray the expenses of the prison. The disadvantages which were anticipated have been found, to be groundless.; Among these were, that the prisoners would be unhealthy; experience has proved the contrary; that they would become insane, this has also been found to be otherwise; that solitude is incompatible with the performance of business; that obedience to the discipline of the prison could not be enforced. These and all other objections to this system are, by its friends, believed to be without force.

3. The New York system, adopted at Auburn, which was probably copied from the penitentiary at Ghent, in the Netherlands, called La Maison de Force, is founded on the system of isolation and separation, as well as that of Pennsylvania, but with this difference, that in the former the prisoners are confined to their separate cells during the night only; during the working hours in the day time they labor together in work shops appropriated to their use. They cat their meals together, but in such a manner as not to be able to speak with each other. Silence is also imposed upon them at their labor. They perform the labor of carpenters, blacksmiths, weavers, shoemakers, tailors, coopers, gardeners, wood sawyers, &c. The discipline of the prison is enforced by stripes, inflicted by the assistant keepers, on the backs of the prisoners, though this punishment is rarely exercised. The advantages of this plan are, that the convicts are in solitary confinement during the night; that their labor, by being joint, is more productive; that, inasmuch as a clergyman is employed to preach to the prisoners, the system affords an, opportunity for mental and moral improvements. Among the objections made to it are, that the prisoners have opportunities of communicating with each other, and of forming plans of escape, and when they are out of prison, of associating together in consequence of their previous acquaintance, to the detriment of those who wish to return to virtue, and to the danger of the public; that the discipline is degrading, and that it engenders bitter resentment in the mind of the convict. Vide, generally, on the subject of penitentiaries, Report of the Commissioners (Messrs. King, Shaler, and Wharton,) on the Penal Code of Pennsylvania; De Beaumont and De Toqueville, on the Penitentiary System of the United States; Mease on the

Penitentiary System of Pennsylvania; Carey on ditto; Reports of the Boston Prison Discipline Society; Livingston's excellent Introductory Report to the Code of Reform and Prison Discipline, prepared for the state of Louisiana; Encycl. Americ. art. Prison Discipline; De. I'Etat Actuel des Prisons en France, par L. M. More au Christophe; Dalloz, Dict. mot Peine, §1, n. 3, and Supplem. mots Prisons et Bagnes.

PENNSYLVANIA. The name of one of the original states of the United States of America. Pennsylvania was occupied by planters of various nations, Dutch Swedes, English, and others; but obtained no separate name until the year 1681, when Charles II. granted a charter to William Penn, by which he became its proprietary, saving, however, allegiance to the crown, which retained the sovereignty of the country. This charter authorized the proprietary, his heirs and successors, by and with the assent of the freemen of the country, or their deputies assembled for the purpose, to make laws. Their laws were required to be consonant to reason, and not repugnant or contrary, but as near as conveniently could be to the laws and statutes of England. Pennsylvania was governed by this charter till the period of the Revolution.

2. The constitution of the state was adopted on the second day of September, 1790, and amended by a convention selected by the people, on the twenty-second day of February, 1838. The powers of the government are divided into three distinct branches: the legislative, the executive and the judiciary.

3. - 1st. The legislative power is vested in a general assembly, which consists of a senate and house of representatives.

4. - 1. The senate will be considered with reference to the qualification of the electors; the qualification of the members; the length of time for which they are elected; and the time of their election. 1. In elections by the citizens, every white freeman of the age of twenty-one years having resided in this state one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a state or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector. But a citizen of the United States who had previously been a qualified voter of this state and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the state six months: Provided, that white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the state one year, and in the election district ten days as aforesaid, shall be en-titled to vote although they shall not have paid taxes. Art. 3, s. 1. 2. No person shall be a senator who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the state four years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public

business of the United States or of this state; and no person elected as aforesaid, shall hold the said office after he shall have removed from such district. Art. 1, s. 8. 3. The number of senators shall never be less than one-fourth, nor greater than one-third of the number of representatives. Art. 1, s. 6. 4. The senators hold their office for three years.

5. Their election takes place on the second Tuesday of October, one-third of the senate each year.

6. - 2. The house of representatives will be treated of in the same manner which has been observed in considering the senate. 1. The electors are qualified in the same manner as the electors of the senate. 2. No person shall be a representative who shall Dot have attained the age of twenty-one years, and have been a citizen and inhabitant of the state three years next preceding his election, and the last year thereof an inhabitant of the district in and for which he shall be chosen a representative, unless be shall have been absent on the public business of the United States or of this state. Art. 1, s. 3. 3. The number of representatives shall never be less than sixty, nor greater than one hundred. Art. 1, s. 4. 4. They are elected yearly. 5. Their election is on the second Tuesday of October, yearly.

6. - 2d. The supreme executive power of this commonwealth is vested in a governor. 1. He is elected by the electors of the legislature. 2. He must be at least thirty years of age, and have been a citizen and an inhabitant of the state seven years next before his election, unless he shall have been absent on the public business of the United States or of this state. Art. 2, s. 4. 3. The governor shall hold his office during three years from the third Tuesday of January next ensuing his election, and shall not be capable of holding it longer than six in any term of nine years. Art. 2, s. 3. 4. His principal duties are enumerated in the second article of the constitution, as follows: The governor shall at stated times receive for his services a compensation which shall be neither increased or diminished during the period for which he shall have been elected. He shall be commander-in-chief of the army and navy of this commonwealth, and of the militia, except when they shall be called into the actual service of the United States. He shall appoint a secretary of the commonwealth during pleasure; and he shall nominate, and by and with the advice and consent of the senate appoint, all judicial officers of courts of record, unless otherwise provided for in this constitution. He shall have power to fill all vacancies that may happen in such judicial offices during the recess of the senate, by granting commissions which shall expire at the end of their next session: Provided, that in acting on executive nominations the senate shall sit with open doors, and in confirming or rejecting the nominations of the governor, the vote shall be taken by yeas and nays. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment. He may require information in writing from the officers in the executive department,

upon any subject relating to the duties of their respective offices. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he shall judge expedient. He may, on extraordinary occasions, convene the general assembly; and, in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. He shall take care that the laws be faithfully executed. In case of the death or resignation of the governor, or of his removal from office, the speaker of the senate shall exercise the office of governor until another governor shall be duly qualified; but in such case another governor shall be chosen at the next annual election of representatives, unless such death, resignation or removal shall occur within three calendar months, immediately preceding such next annual election, in which case a governor shall be chosen at the second succeeding annual election of representatives. And if the trial of a contested election shall continue longer than until the third Monday of January next ensuing the election of governor, the governor of the last year, or the speaker of the senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a governor shall be duly qualified as aforesaid.

7. - 3d. The judicial power of the commonwealth is vested by the fifth article of the constitution as follows:

§1. The judicial power of this commonwealth shall be vested in a supreme Court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, register's court, and a court of quarter sessions of the peace, for each county in justices of the peace, and in such other courts as the legislature may from time to time establish.

8. - §2. By an amendment to this constitution, the judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors, as provided by act of April 15, 1851. Pam. Laws, 648. The judges of the supreme court shall hold their offices for the term of fifteen years if they shall so long behave themselves well. The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years if they shall so long behave themselves well. But for any reasonable cause which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two-thirds of each branch of the legislature. The judges ofthe supreme court and the presidents of the several courts of common pleas, shall at stated times receive for their services an adequate

compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perequisites of office, nor hold any other office of profit under this commonwealth.

9. - §3. Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.

10. - §4. The jurisdiction of the supreme court shall extend over the state; and the judges thereof shall, by virtue of their offices be justices of oyer and terminer and general jail delivery, in the several counties.

11. - §5. The judges of the court of common pleas, in each county, shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery, for the trial of capital and other offenders therein; any two of the said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer, or jail delivery, in any county, when the judges, of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court,

12. - §6. The supreme court, and the several courts of common pleas, shall, besides the powers heretofore usually exercised by them, have the power of a court of chancery, so far as relates to the perpetuating If testimony, the obtaining of evidence from places not within the state, and the care of the persons and estates of those who are non compotes mentis. And the legislature shall vest in the said courts such other powers to grant relief in equity, as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice.

13, - §7. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace, and orphans' court thereof: and the register of wills, together with the said judges, or, any two of them, shall compose the register's court of each county.

14. - §8. The judges of the courts of common pleas shall, within their respective counties, have the like powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

15. - §9. The president of the court in each circuit within such circuit, and the judges of the court of common pleas within their respective counties, shall be justices of the peace, so far as relates to criminal matters.

16. - §10. A register's office, for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

17. - §11. The style of all process shall be "The commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude, "against the peace and dignity of the same."

PENNY. The name of an English coin of the value of one-twelfth part of a shilling. While the United States were colonies, each adopted a monetary system composed of pounds, shillings, and pence. The penny varied in value in the different colonies.

PENNYWEIGHT. A troy weight which weighs twenty-four grains, or one-twentieth part of an ounce. Vide Weights.

PENSION. A stated and certain allowance granted by the government to an individual, or those who represent him, for valuable services performed by him for the country. The government of the United States has, by general laws, granted pensions to revolutionary soldiers; vide 1 Story's Laws U. S. 68; 101, 224, 304, 363, 371, 451; 2 Id. 903, 915, 983, 1008, 1240; 3 Id. 1662, 1747, 1778, 1794, 1825, 1927; 4 Id. 2112, 2270, 2329, 2336, 2366; to naval officers and sailors; 1 Stor. L. U. S. 474, 677, 769; 2 Id. 1284 3 Id. 1565; to the army generally; 1 Id. 360, 412, 448; 2 Id. 833; 3 Id 1573 to the militia generally; 1 Id. 255, 360, 412, 488 2 Id. 1382; 3 Id. 1873; in the Seminole war, 3 Id. 1706.

PENSIONER. One who is supported by an allowance at the will of another. It is more usually applied to him who receives an annuity or pension from the government.

PEONIA, Spanish law. A portion of land which was formerly given to a simple soldier, on the conquest of a country. It is now a quantity of land, of different size in different provinces. In the Spanish possessions in America, it measured fifty feet front and one hundred feet deep. 2 White's Coll. 49; 12 Pet. 444, notes.

PEOPLE. A state; as, the people of the state of New York; a nation in iis collective and political capacity. 4 T. R. 783. See 6 Pet. S. C. Rep. 467.

2. The word people occurs in a policy of insurance. The insurer insures against "detainments of all kings, princes and people." He is not by this understood to insure

against any promiscuous or lawless rabble which may be guilty of attacking or detaining a ship. 2 Marsh. Ins. 508. - Vide Body litic; Nation.

PER. By. When a writ of entry is sued out against the alienee, or descendant of the original disseisor, it is then said to be brought in the per, because the writ states that the tenant had not the entry but by the original wrong doer. 3 Bl. Com. 181. See Entry, writ of.

PER CAPITA, by the head or polls. This term is applied when an estate is to be divided share and share alike. For example, if a legacy be given to the issue of A B, and A B at the time of his death, shall have two children and two grandchildren, his estate shall be divided into four parts, and the children and grandchildren shall each have one of them. 3 Ves. 257; 13 Ves. 344. Vide 1 Rop. on Leg. 126, 130.

PER AND CUI. When a writ of entry is brought against a second alienee or descendant from the disseisor, it is said to be in the per and cui, because the form of the writ is that the tenant had not entry but by and under a prior alienee, to whom the intruder himself demised it. 2 Bl. Com. 181. See Entry, writ of.

PER FRAUDEM. A replication to a plea where something has been pleaded which would be a discharge, if it had been honestly pleaded, that such a thing has been obtained by fraud for example, where on debt on a statute, the defendant pleads a prior action depending, if such action has been commenced by fraud the plaintiff may reply per fraudem: 2 Chit. Pl. *675.

PER INFORTUNIUM, criminal law. Homicide per infortunium, or by misadventure, is said to take place when a man in doing a lawful act, without any intent to hurt, unfortunately kills another. Hawk. bk. 1, c. 11; Foster, 258, 259; 3 Inst. 56.

PER MINAS. By threats. When a man is compelled to enter into a contract by threats or menaces, either for. fear of loss of life, or mayhem, he may avoid it afterwards. 1 Bl. Com. 131; Bac. Ab. Duress; Id. Murder A. See Duress.

PER MY ET PER TOUT. By every part or parcel and by the whole. A joint tenant of lands is said to be seised per my et per tout. Litt. s. 288. See 7 Mann. & Gr. 172, note c.

PER QUOD, pleading. By which; whereby.

2. When the plaintiff sues for an injury to his relative rights, as for beating his wife, his child,, or his servant, it is usual to lay the injury with a per quod. In such case, after complaining of the injury, say to the wife, the declaration proceeds, "insomuch

that the said E F, (the wife,) by means of the premises, then and there became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, hitherto, whereby he, the said A B, (the plaintiff,) lost", &c. 2 Chit. Pl. 422; 3 Bl. Com. 140. It seems that the per quod is not traversable. 1 Saund. 298; 1 Ld. Raym. 410; 2 Keb. 607; 1 Saund. 23, note 5.

PER STIRPES. By stock; by roots.

2. When, for example, a man dies intestate, leaving children and grandchildren, whose parents are deceased, the estate is to be divided not per capita, that is, by each of the children and grandchildren taking a share, but per stirpes, by each of the children taking a share, and the grandchildren, the children of a deceased child, taking a share to be afterwards divided among themselves per capita.

PERAMBULATIONE FACIENDA, WRIT DE, Eng. law. The name of a writ which is sued by consent of both parties, when they are in doubt as to the bounds of their respective estates; it is directed to the sheriff to make perambulation, and to set the bounds and limits between them in certainty. F. N. B. 309.

2. "The writ de perambulatione facienda is not known to have been adopted in practice in the United States," says Professor Greenleaf, Ev. §146 note, "but in several of the states, remedies somewhat similar in principle have been provided by statutes."

PERCH, measure. The length of sixteen feet and a half: a pole or rod of that length. Forty perches in length and four in breadth make an acre of land.

PERDONATIO UTLAGARIAE, Eng. law. A pardon for a man who, for contempt in not yielding obedience to the process of the king's courts, is outlawed, and afterwards, of his own accord, surrenders.

PEREGRINI, civil law. Under the denomination of peregrini were comprehended all who did not enjoy any capacity of the law, namely, slaves, alien enemies, and such foreigners as belonged to nations with which the Romans bad not established relations. Sav. Dr. Rom. §66.

PEREMPTORY. Absolute; positive. A final determination to act without hope of renewing or altering. Joined to a substantive, this word is frequently used in law; as peremptory action; F. N. B. 35, 38, 104, 108; peremptory nonsuit; Id. 5, 11; peremptory exception; Bract. lib. 4, c. 20; peremptory undertaking; 3 Chit. Pract. 112, 793; peremptory challenge of jurors, which is the right to challenge without assigning any cause. Inst. 4, 13, 9 Code, 7, 50, 2; Id. 8, 36, 8; Dig. 5, 1, 70 et 73.

PEREMPTORY DEFENCE, equity, pleading. A defence which insists that the plaintiff never had the right to institute the suit, or that if he had, the original right is extinguished or determined. 4 Bouv. Inst. n. 4206.

PEREMPTORY PLEA, pleading. A plea which denies the plaintiff's cause of action. 3 Bouv. Inst. n. 2891. Vide Plea.

PERFECT. Something complete.

2. This term is applied to obligations in order to distinguish those which may be enforeed by law, which are called perfect, from those which cannot be so enforced, which are said to be im perfect. Vide Imperfect; Obligations.

PERFIDY The act of one who has engaged his faith to do a thing, and does not do it, but does the contrary. Wolff, §390.

PERFORMANCE. The act of doing something; the thing done is also called a performance; as, Paul is exonerated from the obligation of his contract by its performance.

2. When it contract has been made by parol, which, under the statute of frauds and perjuries, could not be enforced, because it was not in writing, and the party seeking to avoid it, has received the whole or a part performance of such agreement, he cannot afterwards avoid it; 14 John. 15; S. C. 1 John. Ch. R. 273; and such part performance will enable the other party to prove it aliunde. 1 Pet. C. C. R. 380; 1 Rand. R. 165; 1 Blackf. R. 58; 2 Day, R. 255; 1 Desaus. R. 350; 5 Day, R. 67; 1 Binn. R. 218; 3 Paige, R. 545; 1 John. Ch. R. 131, 146. Vide Specific performance.

PERIL. The accident by which a thing is lost Lee,. Dr. Rom. 911.

PERILS OF THE SEA, contracts. Bills of lading generally contain an exception that the carrier shall not be liable for "perils of the sea." What is the precise import of this phrase is not perhaps very exactly settled. In a 'strict sense, the words perils of the sea, denote the natural accidents peculiar to the sea; but in more than one instance they have been held to extend to events not attributable to natural causes. For instance, they have been held to include a capture by pirates on the high sea and a case of loss by collision by two ships, where no blame is imputable to either, or at all events not to the injured ship. Abbott on Sh. P. 3, C. 4 §1, 2, 3, 4, 5, 6; Park. Ins. c, 3; Marsh. Ins. B. 1, c. 7, p. 214; 1 Bell's Comm. 579; 3 Kent's Comm. 251 n. (a); 3 Esp. R. 67.

2. It has indeed been said, that by perils of the sea are properly meant no other than inevitable perils or accidents upon the sea, and, that by such perils or accidents

common carriers are, prima facie, excused, whether there be a bill of lading containing the expression of "peril of the sea," or not. 1 Conn. Rep. 487.

3. It seems that the phrase perils of the sea, on the western waters of the United States, signifies and includes perils of the river. 3 Stew. & Port. 176.

4. If the law be so, then the decisions upon the meaning of these words become important in a practical view in all cases of maritime or water carriage.

5. It seems that a loss occasioned by leakage, which is caused by rats gnawing a hole in the bottom of the vessel, is not, in the English law, deemed a loss by peril of the sea, or by inevitable casualty. 1 Wils. R. 281; 4 Campb. R. 203. But if the master had used all reasonable precautions to prevent such loss, as by having a cat on board, it seems agreed, it would be a peril of the sea, or inevitable accident. Abbott on Shipp. p. 3, c. 3, §9; but see 3 Kent's Comm. 243, and note c. In conformity to this rule, the destruction of goods at sea by rats has, in Pennsylvania, been held a peril of the sea, where there has been no default in the carrier. 1 Binn. 592. But see 6 Cowen, R. 266, and 3 Kent's Com. 248, n. c. On the other hand, the destruction of a ship's bottom by worms in the course of a voyage, has, both in America and England, been deemed not to be a peril of the sea, upon the ground, it would seem, that it is a loss by ordinary wear and decay. Park. on Ins. c. 3; 1 Esp. R. 444; 2 Mass. R. 429 but see 2 Cain. R. 85. See generally, Act of God; Fortuitous Event;. Marsh. Ins. eh. 7; and ch. 12, §1.; Hildy on Mar. Ins. 270.

PERIPHRASIS. Circumlocution; the use of other words to express the sense of one.

2. Some words are so technical in their meaning that in charging offences in indictments they must be used or the indictment will not be sustained; for example, an indictment for treason must contain the word traitorously; (q. v.) an indictment for burglary, burglariously; (q. v.) and feloniously (q. v.) must be introduced into every indictment for felony. 1 Chitty's Cr. Law, 242; 3 Inst. 15; Carth. 319; 2 Hale , P. C. 172; 184;, 4 Bl. Com. 307; Hawk B. 2, c. 25, s. 55; 1 East P. C. 115; Bac. Ab. Indictment, G 1; Com.]Dig. Indictment, G 6 Cro. C. C. 37.

TO PERISH. To come to an end; to cease to be; to die.

2. What has never existed cannot be said to have perished.

3. When two or more persons die by the same accident, as a shipwreck, no presumption arises that one perished before the other. Vide Death. Survivorship.

PERISHABLE GOODS, Goods which are lessened in value and become worse by being kept. Vide Bona Peritura.

PERJURY, crim. law. This offence at common law is defined to be a wilful false oath, by one who being lawfully required to depose the truth in any judicial proceedings, swears absolutely in a matter material to the point in question, whether he be believed or not.

2. If we analyze this definition we will find, 1st. That the oath must be wilful. 2d. That it must be false. 3d. That the party was lawfully sworn. 4th. That the proceeding was judicial. 6th. That the assertion was absolute. 6th. That the falsehood was material to the point in question.

3. - 1. The intention must be wilful. The oath must be taken and the falsehood asserted with deliberation, and a consciousness of the nature of the statement made; for if it has arisen in consequence of inadvertency, surprise or mistake of the import of the question, there was no corrupt motive; Hawk. B. 1, c. 69, s. 2; but one who swears wilfully and deliberately to a matter which he rashly believes, which is false, and which he had no probable cause for believing, is guilty of perjury. 6 Binn. R. 249. See 1 Baldw. 370; 1 Bailey, 50.

4. - 2. The oath must be false. The party must believe that what he is swearing is fictitious; for, if intending to deceive, he asserts that which may happen to be true, without any knowledge of the fact, he is equally criminal, and the accidental truth of his evidence will not excuse him. 3 Inst. 166 Hawk. B. 1, c. 69, s. 6.

5. - 3. The party must be lawfully sworn. The person by whom the oath is administered must have competent authority to receive it; an oath, therefore, taken before a private person, or before an officer having no jurisdiction, will not amount to perjury. 3 Inst. 166; 1 Johns. R. 498; 9 Cowen, R. 30; 3 M'Cord, R. 308; 4 M'Cord, It. 165; 2 Russ. on Cr. 520; 3 Carr. & Payne, 419; S. C. 14 Eng. Com. Law Rep. 376; 2 Chitt. Cr. Law, 304; 4 Hawks, 182; 1 N. & M. 546; 3 M'Cord, 308; 2 Hayw. 56; 8 Pick. 453.

6. - 4. The proceedings must be judicial. Proceedings before those who are in any way entrusted with the administration of justice, in respect of any matter regularly before them, are considered as judicial for this purpose. 2 Chitt. Crim. C. 303; 2 Russ. on Cr. 518; Hawk. B. 1, c. 69, s. 3. Vide 3 Yeates, R. 414; 9 Pet. Rep. 238. Perjury cannot therefore be committed in a case of which the court had no jurisdiction. 4 Hawks, 182; 2 Hayw. 56; 3 M'Cord, 308; 8 Pick. 453: 1 N. & McC. 546.

7. - 5. The assertion must be absolute. If a man, however, swears that he believes that to be true which he knows to be false, it will be perjury. 2 Russ. on Cr. 518; 3 Wils. 427; 2 Bl. Rep. 881; 1 Leach, 242; 6 Binn. Rep. 249; Lofft's Gilb. Ev. 662.

8. - 6. The oath must be material to the question depending. Where the facts sworn to are wholly foreign from the purpose and altogether immaterial to the matter in question, the oath does not amount to a legal perjury. 2 Russel on Cr. 521; 3 Inst. 167; 8 Ves. jun. 35; 2 Rolle, 41, 42, 369; 1 Hawk. B. 1, c. 69, s. 8; Bac. Ab. Perjury, A; 2 N. & M. 118; 2 Mis. R. 158. Nor can perjury be assigned upon the valuation under oath, of a jewel or other thing, the value of which consists in estimation. Sid. 146; 1 Keble, 510.

9. It is not within the plan of this work to cite all the statutes passed by the general government, or the several states on the subject of perjury. It is proper, however, here to transcribe a part of the 13th section of the act of congress of March 3, 1825, which provides as follows: "If any person in any case, matter, bearing, or other proceeding, when an oath or affirmation shall be required to be taken or administered under or by any law or laws of the United States, shall, upon the taking of such oath or affirmation, knowingly and willingly swear or affirm falsely, every person, so offending, shall be deemed guilty of perjury, and shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to bard labor, not exceeding five years, according to the aggravation of the offence. And if any person or persons shall knowingly or willingly procure any such perjury to be committed, every person so offending shall be deemed guilty of subornation of perjury, and shall on conviction thereof, be punished. by fine, not exceeding two thousand dollars, and by imprisonment and confinement to bard labor, not exceeding five years, according to the aggravation of the offence."

10. In general it may be observed that a perjury is committed as well by making a false affirmation, as a false oath. Vide, generally, 16 Vin. Abr. 307; Bac. Abr. h. t.; Com. Dig. Justices of the Peace, B 102 to 106; 4 Bl. Com. 137 to 139; 3 Inst. 163 to 168; Hawk. B. 1, c. 69; Russ. on Cr. B. 5, c. 1; 2 Chitt. Cr. L. c. 9; Roscoe on Cr. Ev. h. t.; Burn's J. h. t. Williams' J. h. t.

PERMANENT-TRESPASSES. When trespasses of one and the same kind, are committed on several days, and are in their nature capable of renewal or continuation, and are actually renowed or continued from day to day, so that the particular injury, done on each particular day, cannot be distinguished from what was done on another day, these wrongs are called permanent trespasses. in declaring for such trespasses they may be laid with a continuando. 3 Bl. Com. 212; Bac. Ab. Trespass, B 2; Id. 1 2; 1 Saund. 24, n. 1. Vide Continuando; Trespass.

PERMISSION. A license to do a thing; an authority to do an act which without such authority would have been unlawful. A permission differs from a law, it is a cheek upon the operations of the law.

2. Permissions are express or implied. 1. Express permissions derogate from something which before was forbidden, and may operate in favor of one or more persons, or for the performance of one or more acts, or for a longer or shorter time. 2. Implied, are those, which arise from the fact that the law has not forbidden the act to be done. 3. But although permissions do not operate as laws, in respect of those persons in whose favor they are granted; yet they are laws as to others. See License.

PERMISSIVE. Allowed; that which may be done; as permissive waste, which is the permitting real estate to go to waste; when a tenant is bound to repair he is punishable for permissive waste. 2 Bouv. Inst. n. 2400. See Waste.

PERMIT. A license or warrant to do something not forbidden bylaw; as, to land goods imported into the United States, after the duties have been paid or secured to be paid. Act of Cong. of 2d March, 1799, s. 49, cl. 2. See form of such a permit, Gord. Dig. Appendix, No. II. 46.

PERMUTATION, civil law. Exchange; barter.

2. This contract is formed by the consent of the parties, but delivery is indispensable; for, without it, it mere agreement. Dig. 31, 77, 4; Code, 4, 64, 3.

3. Permutation differs from sale in this, that in the former a delivery of the articles sold must be made, while in the latter it is unnecessary. It agrees with the contract of sale, however, in the following particulars: 1. That he to whom the delivery is made acquires the right or faculty of prescribing. Dig. 41, 3, 4, 17. 2. That the contracting parties are bound to guaranty to each other the title of the things delivered. Code, 4, 64, 1. 3. That they are bound to take back the things delivered, when they have latent defects which they have concealed. Dig. 21, 1, 63. See Aso & Man. Inst. B. 2, t. 16, c. 1; Nutation; Transfer.

PERNANCY. This word, which is derived from the French prendre, to take, signifies a taking or receiving.

PERNOR OF PROFITS. He who receives the profits of lands, &c. A cestui que use, who is legally entitled and actually does receive the profits, i's the pernor of profits.

PERPETUAL. That which is to last without limitation as to time; as, a perpetual statute, which is one without limit as to time, although not expressed to be so.

PERPETUATING TESTIMONY. The act by which testimony is reduced to writing as prescribed by law, so that the same shall be read in evidence in some suit or legal proceedings to be thereafter instituted. The origin of this practice may be traced to the canon law cap. 5, it ut lite non contestata, &c., et ibi. Bockmer, n. 4; 8 Toull. n. 22. Vide Bill to perpetuate testimony.

PERPETUITY, estates. Any limitation tending to take the subject of it out of commerce for a longer period than a life or lives in being, and twenty-one years beyond; and in case of a posthumous child, a few months more, allowing for the term of gestation; Randell on Perpetuities, 48; or it is such a limitation of property as renders it unalienable beyond the period allowed by law. Gilbert on Uses, by Sugden, 260, note.

2. Mr. Justice Powell, in Scattergood v. Edge, 12 Mod. 278, distinguished perpetuities into two sorts, absolute and qualified; meaning thereby, as it is apprehended, a distinction between a plain, direct and palpable perpetuity, and the case where an estate is limited on a contingency, which might happen within a reasonable compass of time, but where the estate nevertheless, from the nature of the limitation, might be kept out of commerce longer than was thought agreeable to the policy of the common law. But this distinction would not now lead to a better understanding or explanation of the subject; for whether an estate be so limited that it cannot take effect, until a period too much protracted, or whether on a contingency which may happen within a moderate compass of time, it equally falls within the line of perpetuity and the limitation is therefore void; for it is not sufficient that an estate may vest within the time allowed, but the rule requires that it must. Randell on Perp. 49. Vide Cruise, Dig. tit. 32, c. 23; 1 Supp. to Ves. Jr. 406; 2 Ves. Jr. 357; 3 Saund. 388 h. note; Com. Dig. Chancery, 4 G 1; 3 Chan. Cas. 1; 2 Bouv. Inst. n. 1890.

PERQUISITES. In its most extensive sense, perquisites signifies anything gotten by industry, or purchased with money, different from that which descends from a father or ancestor. Bract. lib. 2, c. 30, n. 8; et lib. 4, c. 22. In a more limited sense it means something gained by a place or office beyond the regular salary or fee.

PERSON. This word is applied to men, women and children, who are called natural persons. In law, man and person are not exactly-synonymous terms. Any human being is a man, whether he be a member of society or not, whatever may be the rank he holds, or whatever may be his age, sex, &c. A person is a man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes. 1 Bouv. Inst. n. 137.

2. It is also used to denote a corporation which is an artificial person. 1 Bl. Com. 123; 4 Bing. 669; C. 33 Eng. C. L R. 488; Wooddes. Lect. 116; Bac. Us. 57; 1 Mod. 164.

3. But when the word "Persons" is spoken of in legislative acts, natural persons will be intended, unless something appear in the context to show that it applies to artificial persons. 1 Scam. R. 178.

4. Natural persons are divided into males, or men; and females or women. Men are capable of all kinds of engagements and functions, unless by reasons applying to particular individuals. Women cannot be appointed to any public office, nor perform any civil functions, except those which the law specially declares them capable of exercising. Civ. Code of Louis. art. 25.

5. They are also sometimes divided into free persons and slaves. Freemen are those who have preserved their natural liberty, that is to say, who have the right of doing what is not forbidden by the law. A slave is one who is in the power of a master to whom he belongs. Slaves are sometimes ranked not with persons but things. But sometimes they are considered as persons for example, a negro is in contemplation of law a person, so as to be capable of committing a riot in conjunction with white men. 1 Bay, 358. Vide Man.

6. Persons are also divided into citizens, (q. v.) and aliens, (q. v.) when viewed with regard to their political rights. When they are considered in relation to their civil rights, they are living or civilly dead; vide Civil Death; outlaws; and infamous persons.

7. Persons are divided into legitimates and bastards, when examined as to their rights by birth.

8. When viewed in their domestic relations, they are divided into parents and children; hushands and wives; guardians and wards; and masters and servants son, as it is understood in law, see 1 Toull. n. 168; 1 Bouv. Inst. n. 1890, note.

PERSONABLE. Having the capacities of a person; for example, the defendant was judged personable to maintain this action. Old Nat. Brev. 142. This word is obsolete.

PERSONAL. Belonging to the person.

2. This adjective is frequently employed in connection with substantives, things, goods, chattels, actions, right, duties, and the like as personal estate, put in opposition to real estate; personal actions, in contradistinction to real actions; personal rights are those which belong to the person; personal duties are those which are to be performed in person.

PERSONAL ACTIONS. Personal actions are those brought for the specific goods and chattels; or for damages or other redress for breach of contract or for injuries of every other description; the specific recovery of lands, tenements and hereditaments only excepted. Vide Actions, and 1 Com. Dig. 206, 450; 1 Vin. Ab. 197; 3 Bouv. Inst. n. 2641, et. seq.

PERSONAL LIBERTY. Vide Liberty.

PERSONAL PROPERTY. The right or interest which a man has in things personal; it consists of things temporary and movable, and includes all subjects of property not of a freehold nature, nor descendable to the heirs at law. Things of a movable nature, when a right can be had in them, are personal property, but some things movable are not the subject of property; as light and air. Under the term personal property, is also included some property which is in its nature immovable, distinguished by the name of chattels real, as an estate for years; and fixtures (q . v.) are sometimes classed among personal property. A crop growing in the ground is considered personal property. so far as not to be considered an interest in land, under the statute of frauds. 11 East, 362; 1 Shopl. 337; 5 B & C. 829; 10 Ad. & E. 753; 9 B. & C. 561; sed vide 9 B. & C. 561.

2. It is a general principle of American law, that stock held in corporations, is to be considered as personal property; Walk. Introd. 211; 4 Dane's Ab. 670; Sull. on Land Tit. 71; 1 Hill. Ab. 18; though it was held that such stock was real estate; 2 Conn. R. 567; but, this being found inconvenient, the law was changed by the legislature.

3. Property in personal chattels is either absolute or qualified; absolute, when the owner has a complete title and full dominion over it; qualified, when -he has a temporary or special interest, liable to be totally divested on the happening of some particular event. 2 Kent, Com. 281.

4. Considered in relation to its use, personal property is either in possession, that is, in the actual enjoyment of the owner, or, in action, that is, not in his possession, but in the possession of another, and recoverable by action.

5. Title to personal property is acquired. 1st. By original acquisition by occupancy; as, by capture in war; by finding a lost thing. 2d. By original acquisition; by accession. 3d. By original acquisition, by intellectual labor; as, copyrights and patents for inventions. 4th. IV transfer, which is by act of law. 1. By forfeiture. 2. By judgment. 3. By insolvency. 4. By intestacy. 5th. By transfer, by act of the party. 1 . Gifts. 2. Sale. Vide, generally, 16 Vin. Ab. 335; 8 Com. Dig. 474; Id. 562; 1 Supp. to Ves. Jr. 49, 121, 160, 198, 255, 368, 9, 399, 412, 478; 2 Ibid. 10, 40, 129, 290, 291, 341; 1

Vern. 3, 170, 412; 2 Salk. 449; 2 Ves. Jr. 59, 336, 176, 261, 271, 683; 7 Ves. 453. See Pew; Property; Real property.

PERSONAL REPRESENTATIVES. These words are construed to mean the executors or administrators of the person deceased. 6 Mad. R. 159; 2 Mad. R. 155; 5 Ves. 402; 1 Madd. Ch. 108.

PERSONAL SECURITY. The legal and uninterrupted enjoyment by a man of his life, his body, his health and his reputation. 1 Bouv. Inst. n. 202.

PERSONALITY OF LAWS. Those laws which regulate the condition, state, or capacity of persons. The term is used in opposition to those laws which concern property, whether real or personal, and things. See Story, Confl. of L. 23; and Reality of laws.

PERSONAITY. An abstract of personal; as, the action is in the personalty, that is, it is brought against a person for a personal duty which he owes. It also signifies what belongs to the person; as, personal property.

TO PERSONATE, crim. law. The act of assuming the character of another without lawful authority, and, in such character, doing something to his prejudice, or to the prejudice of another, without his will or consent.

2. The bare fact of personating another for the purpose of fraud, is no more than a cheat or misdemeanor at common law, and punishable as such. 2 East, P. C. 1010; 2 Russ. on Cr. 479.

3. By the act of congress of the 30th April, 1790, s. 15, 1 Story's Laws U. S. 86, it is enacted, that " if any person shall acknowledge, or procure to be acknowledged in any court of the United States, any recognizance, bail or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person or persons, on conviction thereof, shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding seven years, and whipped not exceeding thirty-nine stripes, Provided nevertheless. that this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys, duly admitted, for any person or persons against whom any such judgment or judgments shall be bad or given." Vide, generally, 2 John. Cas. 293; 16 Vin. Ab. 336; Com. Dig. Action on the case for a deceit, A 3.

TO PERSUADE, PERSUADING. To persuade is to induce to act: persuading is inducing-others to act. lnst. 4, 6, 23; Dig. 11, 3, 1, 5.

2. In the act of the legislature which declared that " if any person or persons knowingly and willingly shall aid or assist any enemies at open war with this state, &c. by persuading others to enlist for that purpose, &c., he shall be adjudged guilty of high treason;" the word persuading, thus used; means to succeed: and there must be an actual enlistment, of the person persuaded in order to bring the, defendant within the intention of the clause. 1 Dall. R. 39; Carr. Crim. L 237; 4 Car. & Payne, 369 S. C. 1 9 E. C L. R. 425; 9 Car. & P. 79; and article Administering; vide 2 Lord Raym. 889. It may be fairly argued, however, that the attempt to persuade without success would be a misdemeanor. 1 Russ. on Cr. 44.

3. In England it has been decided, that to incite and procure a person to commit suicide, is not a crime for which the party could be tried. 9 C. & P. 79; 38 E. C. L. R. 42; M. C. C. 356. Vide Attempt; Solicitation.

PERSUASION. The act of influencing by expostulation or request. While the persuasion is confined within those limits which leave the mind free, it may be used to induce another to make his will, or even to make it in his own favor; but if such persuasion should so far operate on the mind of the testator, that he would be deprived of a perfectly free will, it would vitiate the instrument. 3 Serg. & Rawle, 269; 5 Serg. & Rawle, 207; 13 Serg. & Rawle, 323.

PERTINENT, evidence. Those facts which tend to prove the allegations of the party offering them, are called pertinent; those which have no such tendency are called impertinent, 8 Toull. n. 22. By pertinent is also meant that which belongs. Willes, 319.

PERTURBATION. This is a technical word which signifies disturbance, or infringement of a right. It is usually applied to the disturbance of pews, or seats in a church. In the ecclesiastical courts actions for these disturbances are technically called "suits for perturbation of seat." 1 Phillim. 323. Vide Pew.

PESAGE, mer. law. In England a toll bearing this name is charged for weighing avoirdupois goods other than wool. 2 Chit. Com. Law. 16.

PETIT, sometimes corrupted into petty. A French word signifying little, small. It is frequently used, as petit larceny, petit jury, petit treason.

PETIT, TREASON, English law. The killing of a master by his servant; a hushand by his wife; a superior by a secular or religious man. In the United States this is like any other murder. See High, Treason; Treason.

PETITION. An instrument of writing or printing containing a prayer from the person presenting it, called the petitioner, to the body or person to whom it is presented, for

the redress of some wrong, or the grant of some favor, which the latter has the right to give.

2. By the constitution of the United States the right "to petition the government for a redress of grievances," is secured to the people. Amendm. Art. 1.

3. Petitions are frequently presented to the courts in order to bring some matters before them. It is a general rule, in such cases, that an affidavit should be made that the facts therein contained are true as far as known to the petitioner, and that those facts which he states as knowing from others be believes to be true.

PETITION OF RIGHT, Eng. law. When the crown is in possession, or any title is vested in it which is claimed by a subject, as no suit can be brought against the king, the subject is allowed to file in chancery a petition of right to the king.

2. This is in the, nature of an action against a subject, in which the petitioner sets out his right to tbat which is demanded by him, and prays the king to do him right and justice; and, upon a due and lawful trial of the right, to make him restitution. It is called a petition of right, because the king is bound of right to answer it, and let the matter therein contained be determined in a legal way, in like manner as causes between subject and subject. The petition is presented to the king, who subscribes it, with these words, soit droit fait al partie, and thereupon it is delivered to the chancellor to be executed according to law. Coke's Entr. 419, 422 b; Mitf. Eq. Pl. 30, 31; Coop. Eq. Pl. 22, 23.

PETITORY. That which demands or petitions that which has, the, quality of a prayer or petition; a right to demand.

2. A petitory suit or action is understood to be one in which the mere title to property is to be enforced by means of a demand or petition, as distin-guished from a possessory suit. 1 Kent, Com. 371.

3. In the Scotch law, petitory actions are so called, not because something is sought to be awarded by the judge, for in that sense all actions must be petitory, but because some demand is made upon the defender, in consequence either of the right of property or credit in the pursuer. Thus, actions for restitution of movables, actions of pounding, of forthcoming, and indeed all personal actions upon contracts, or quasi contracts, which the Romans called condictiones, are petitory. Ersk. Inst. b. 4, t. 1, n. 47.

PETTY AVERAGE. A contribution by the owners of the ship, freight and goods on board, for losses sustained by the ship and cargo, which consist of small charges. Vide Average.

PETTY BAG, Engl. law. An office in the court of chancery, appropriated for suits against attorneys and officers of the court; and for, process and proceedings, by extent on statutes, recognizances, ad quod damnum and the like. T. de la Ley.

PETTIFOGGER. One who pretends to be a lawyer, but possessing neither knowledge, law, nor conscience.

PEW. A seat in a church separated from all others, with a convenient space to stand therein.

2. It is an incorporeal interest in the real property. And, although a man has the exclusive right to it, yet, it seems, he cannot maintain trespass against a person entering it; 1 T. R. 430; but case is the proper remedy. 3 B. & Ald. 361; 8 B. & C. 294; S. C. 15 Eng. C. L. R. 221.

3. The right to pews is limited and usufructuary, and does not interfere with the right of the parish or congregation to pull down and rebuild the church. 4 Ohio R 541; 5 Cowen's R. 496; 17 Mass. R. 435; 1 Pick. R. 102; 3 Pick. R. 344; 6 S. & R. 508; 9 Wheat. R. 445; 9 Cranch, R. 52; 6 John. R. 41; 4 Johns. Ch. R. 596; 6 T. R. 396. Vide Pow. Mortgages, Index, h. t.; 2 Bl. Com. 429; 1 Chit. Pr. 208, 210; 1 Pow. Mort. 17 n.

4. In Connecticut and Maine, and in Massachusetts, (except in Boston), pews are considered real estate: in Boston they are personal chattels. In New Hampshire they are personal property. 1 Smith's St. 145. The precise nature of such property does not appear to be well settled in New York. 15 Wend. R. 218; 16 Wend. R. 28; 5 Cowen's R. 494. See Rev. St. Mass. 413; Conn. L. 432; 10 Mass. R. 323 17 Mass. 438; 7 Pick. R. 138; 4 N. H. Rep. 180; 4 Ohio R. 515; 4 Harr. & McHen. 279; Harr. Dig. Ecclesiastical Law. Vide Perturbation of seat; Best on Pres. 111; Crabb on R. P. §481 to 497.

PHAROS. A light-house or beacon. It is derived from Phams, a small island at the mouth of the Nile, on which was built a watch-tower.

PHYSICIAN. One lawfully engaged in the practice of medicine.

2. A physician in England cannot recover for fees, as his practice is altogether honorary. Peake C. N. P. 96, 123; 4 T. R. 317.

3. But in Pennsylvania, and perhaps in all the United States, he may recover for his services. 5 Serg. & Rawle, 416. The law implies, therefore, a contract on the part of a medical man, as well as those of other professions, to discharge their duty in a skillful and attentive manner; and the law will redress the party injured by their neglect or ignorance. 1 Saund. 312, R; 1 Ld. Raym. 213; 2 Wils. 359; 8 East, 348.

4. They are sometimes answerable criminally for mala praxis. (q. v.) 2 Russ. on Cr. 288; Ayl. Pand. 213; Com. Dig. h. t. Vin. Ab. h. t.

PHYSIOLOGY, med. jur. The science which treats of the functions of animals; it is the science of life.

2. The legal practitioner who expects to rise to eminence, must acquire some acquaintance with physiology. This subject is intimately connected with gestation, birth, life and death. Vide 2 Chit. Pr. 42, n.

PIGNORATION, civil law . This word is used by Justinian in the title of the 52d novel, and signifies not only a pledge of property, but an engagement of the person.

PICKPOCKET. A thief; one who in a crowd or. in other places, steals from the pockets or person of another without putting him in fear. This is generally punished as simple larceny.

PIGNORATIVE CONTRACT, civ. law. A contract by which the owner of an estate engages it to another for a sum of money, and grants to him and his successors the right to enjoy it, until he shall be reimbursed, voluntarily, that sum of money. Poth. h. t.

PIGNORIS CAPIO, ROM. civil law. The name given to one of the legis actiones of the Roman law. It consisted chiefly in the taking. of a pledge, and was in fact a mode of execution. It was confined to special cases determined by positive law or by custom, such as taxes, duties, rents, &c., and is comparable in some respects to distresses at common law. The proceeding took place in the presence of a praetor.

PIGNUS, civil law. This word signifies in English, pledge or pawn. (q. v.) It is derived, says Gaius, from pugnium, the fist, because what is delivered in pledge is delivered. in hand. Dig. 50, 16, 238, 2. This is one of several instances of the failure of the Roman jurists, when they attempted etymological explanation of words. The elements of pignus (pig) is contained in the word pa(n)g-o, and its cognate forms. Smith's Dict. Gr. and Rom. Antiq. h. v.

PILLAGE. The taking by violence of private property by a victorious army from the citizens or subjects of the enenly. This, in modern times, is seldom allowed, and then, only when authorized by the commander or chief officer, at the place where the pillage is committed. The property thus violently taken in general belongs to the common soldiers. See Dall. Dict. Propriete, art. 3, §5; Wolff, §1201; and Booty; Prize.

PILLORY, punishment. wooden machine in which the neck of the culprit is inserted.

2. This punishment has been superseded by the adoption of the penitentiary system in most of the states. Vide 1 Chit. Cr. Law, 797. The punishment of standing in the pillory, so far as the same was provided by the laws of the United States, was abolished by the act of congress of February 27, 1839, s. 5. See Baxr. on the Stat. 48, note.

PILOT, mer. law. This word has two meanings. It signifies, first, an officer serving on board of a ship during the course of a voyage, and having the charge of the helm and of the ship's route; and, secondly, an officer authorized by law, who is taken on board at a particular place, for the purpose of conducting a ship through a river, road or channel, or from or into port.

2. Pilots of the second description are established by legislative enactments at the principal seaports in this country, and have rights, and are bound to perform duties, agreeably to the provisions of the several laws establishing them.

3. Pilots have been established in all maritime countries. After due trial and experience of their qualifications, they are licensed to offer themselves as guides in difficult navigation; and they are usually, on the other hand, bound to obey the call of a ship-master to exercise their functions. Abbott on Ship. 180; 1 John R. 305; 4 Dall. 205; 2 New R. 82; 5 Rob. Adm. Rep. 308; 6 Rob. Adm. R. 316; Laws of Oler. art. 23; Molloy, B. 2, c. 9, s. 3 and 7; Wesk. Ins. 395; Act of Congress of 7th August, 1789, s. 4; Merl. Repert. h. t.; Pardessus, n. 637.

PILOTAGE, contracts. The compensation given to a pilot for conducting a vessel in or out of port. Poth. Des Avaries, n. 147.

2. Pilotage is a lien on the ship, when the contract has been made by the master or quasi master of the ship, or some other person lawfully authorized to make it; 1 Mason, R. 508; and the admiralty court has jurisdiction, when services have been performed at sea. Id.; 10 Wheat. 428; 6 Pet. 682; 10 Pet. 108; and see 1 Pet. Adm. Dec. 227.

PIN MONEY. Money allowed by a man to his wife to spend for her own personal comforts.

2. When pin money is given to, but not spent by the wife, on his death it belongs to his estate. 4 Vin. Ab. 133, tit'. Baron and Feme, E a. 8; 2 Eq. Cas. Ab. 156; 2 P. Wms. 341; 3 P. Wms. 353; 1 Ves. 267; 2 Ves. 190; 1 Madd. Ch. 489, 490.

3. In the French law the term Epingles, pins, is used to designate the present which is sometimes given by the purchaser of an immovable to the wife or daughters of the seller to induce them to consent to the sale. This present is not considered as a part of the consideration, but a purely voluntary gift. Diet. de Jur. mot Epingles.

4. In England it was once adjudged that a promise to a wife, by the purchaser, that if she would not hinder the bargain for the sale of the hushand's lands, he would give her ten pounds, was valid, and might be enforeed by an action of assumpsit, instituted by hushand and wife. Roll. Ab. 21, 22. 5. It has been conjectured that the term pin money, has been applied to signify the provision for a married woman, because anciently there was a tax laid for providing the English queen with pins. Barringt. on the Stat. 181.

PINT. A liquid measure containing half a quart or the eighth part of a gallon.

PIPE, Eng. laid. The name of a roll in the exchequer otherwise called the Great Roll. A measure containing two hogsheads; one hundred and twenty-six gallons is also called a pipe.

PIRACY, crim. law. A robbery or forcible depreciation on the high seas, without lawful authority, done animo furandi, in the spirit and intention of universal hostility. 5 Wheat. 153, 163; 3 Wheat. 610; 3 Wash. C. C. R. 209. This is the definition of this offence by the law of nations. 1 Kent, Com. 183. The word is derived from peira deceptio, deceit or deception: or from peiron wandering up and down, and resting in no place, but coasting hither and thither to do mischief. Ridley's View, Part 2, c. 1, s. 3.

2. Congress may define and punish piracies and felonies on the high seas, and offences against the law of nations. Const. U. S. Art. 1, s. 7, n. 10; 5 Wheat. 184, 153, 76; 3 Wheat. 336. In pursuance of the authority thus given by the constitution, it was declared by the act of congress of April 30, 1790, s. 8, 1 Story's Laws U. S. 84, that murder or robbery committed on the high seas, or in any river, haven, or bay, out of the jurisdiction of any particular state, or any offence, which, if committed within the body of a county, would, by the laws of the United States, be punishable with death, should be adjudged to be piracy and felony, and punishable with death. It was further

declared, that if any captain or manner should piratically and feloniously run away with a vessel, or any goods or merchandise of the value of fifty dollars; or should yield up such vessel voluntarily to pirates; or if any seaman should forcible endeavor to hinder his commander from defending the ship or goods committed to his trust, or should make revolt in the ship; every such offender should be adjudged a pirate and felon, and be punishable with death. Accessaries before the fact are punishable as the principal; those after the fact with fine and imprisonment.

3. By a subsequent act, passed March 3, 1819, 3 Story, 1739, made perpetual by the act of May 15, 1820, 1 Story, 1798, congress declared, that if any person upon the high seas, should commit the crime of piracy as defined by the law of nations, he should, on conviction, suffer death.

4. And again by the act of May 15, 1820, s. 3, 1 Story, 1798, congress declared that if any person should, upon the high seas, or in any open roadstead, or in any haven, basin or bay, or in any river where the sea ebbs and flows, commit the crime of robbery in or upon any ship or vessel, or upon any of the ship's company of any ship or vessel, or the lading thereof, such person should be adjudged to be a pirate, and suffer death. And if any person engaged in any piratical cruise or enterprize, or being of the crew or ship's company of any piratical ship or vessel, should land from such ship or vessel, and, on shore; should commit robbery, such person should be adjudged a pirate and suffer death. Provided that the state in which the offence may have been committed should not be deprived of its jurisdiction over the same, when committed within the body of a county, and that the courts of the United States should have no jurisdiction to try such offenders, after conviction or acquittal, for the same offence, in a state court. The 4th and 5th sections of the last mentioned act declare persons engaged in the slave trade, or in forcibly detaining a free negro or mulatto and carrying him in any ship or vessel into slavery, piracy, punishable with death. Vide 1 Kent, Com. 183; Beaussant, Code Maritime, t. 1, p. 244; Dalloz, Diet. Supp. h. t.; Dougl. 613; Park's Ins. Index, h. t. Bac. Ab. h. t.; 16 Vin. Ab. 346; Ayl. Pand. 42 11 Wheat. R. 39; 1 Gall. R. 247; Id. 524 3 W. C. C. R. 209, 240; 1 Pet. C. C. R. 118, 121.

PIRACY, torts. By piracy is understood the plagiarisms of a book, engraving or other work, for which a copyright has been taken out. 2. When a piracy has been made of such a work, an injunction will be granted. 5 Ves. 709; 4 Ves. 681; 12 Ves. 270. Vide copyright.

PIRATE. A sea robber, who, to enrich himself by subtlety or open force, setteth upon merchants and others trading by sea, despoiling them of their loading, and sometimes bereaving them of life and, sinking their ships; Ridley's View of the Civ. and Ecc. Law, part 2, c. 1, s. 8; or more generally one guilty of the crime of piracy. Merl. Repert. h. t. See, for the etymology of this word, Bac. Ab. Piracy

PIRATICALLY, pleadings. This is a technical word, essential to charge the crime of piracy in an indictment, which cannot be supplied by another word, or any circumlocution. Hawk. B. 1, c. 37, s. 15; 3 Inst. 112; 1 Chit. Cr. Law, *244.

PISCARY. The right of fishing in the waters of another. Bac. Ab. h. t.; 5 Com. Dig. 366. Vide Fishery.

PISTAREEN. A small Spanish coin. It is not a coin made current by the laws of the United States. 10 Pet. 618.

PIT, fossa. A hole dug in the earth, which was filled with water, and in which women thieves were drowned, instead of being hung. The punishment of the pit was formerly common in Scotland.

PLACE, pleading, evidence. A particular portion of space; locality.

2. In local actions, the plaintiff must lay his venue in the county in which the action arose. It is a general rule, that the place of every traversable fact, stated in the pleading, must be distinctly alleged; Com. Dig. Pleader, c. 20; Cro. Eliz. 78, 98; Lawes' Pl. 57; Bac. Ab. Venue, B; Co. Litt. 303 a; and some place must be alleged for every such fact; this is done by designating the city, town, village, parish or district, together with the county in which the fact is alleged to have occurred; and the place thus designated, is called the venue. (q. v.)

3. In transitory actions, the place laid in the declaration, need not be the place where the cause of action arose, unless when required by statute. In local actions, the plaintiff will be confined in his proof to the county laid in the declaration.

4. In criminal cases the facts must be laid and proved to have been committed within the jurisdiction of the court, or the defendant must be acquitted. 2 Hawk. c. 25, s. 84; Arcb. Cr. Pl. 40, 95. Vide, generally, Gould on Pl. c. 3, 102-104; Arcb. Civ. Pl. 366; Hamm. N. P. 462; 1 Saund. 347, n. 1; 2 Saund. 5 n.

PLACE OF BUSINESS. The place where a man usually transacts his affairs or business. When a man keeps a store, shop, counting room or office, independently and distinctly from all other persons, that is deemed his place of business 3 and when he usually transacts his business at the counting house, office, and the like, occupied and used by another, that will also be considered his place of business, if he has no independent place of his own. But when he has no particular right to use a place for such private purpose, as in an insurance office, in exchange room, banking room, a post office, and the like, where persons generally resort, these will not be considered as the party's place of business, although he may occasionally or transiently transact

business there. 2 Pet. R. 121; 10 John. 501; 11 John. 231; 1 Pet. S. C. R. 582; 16 Pick. 392.

2. It is a general rule that a notice of the non-acceptance or non-payment of a bill, or of the non-payment of a note, may be sent either to the domicil or place of business of the person to be affected by such notice, and the fact that one is in one town and the other in the other will make no difference, and the holder has his election to send to either. A notice to partners may be left at the place of business of the firm or of any one of the partners. Story on Pr. Notes, §312.

PLACITUM. A plea. This word is nomen generalissimum, and refers to all the pleas in the case. 1 Saund. 388, n. 6; Skinn. 554; S. C. earth. 834; Yelv. 65. By placitum is also understood the subdivisions in abridgments and other works, where the point decided in a case is set down, separately, and generally numbered. In citing, it is abbreviated as follows: Vin. Ab. Abatement, pl. 3.

2. Placita, is the style of the English courts at the beginning of the record of Nisi Prius; in this sense, placita are divided into pleas of the crown, and common pleas.

3. The word is used by continental writers to signify jurisdictions, judgments, or assemblies for discussing causes. It occurs frequently in the laws of tae Longobards, in which there is a title de his qui ad, placitum venire coguntur. The word, it has been suggested, is derived from the German platz, which signifies the same as area facta. See Const. Car. Mag. Cap. IX. Hine-mar's Epist. 227 and 197. The common formula in most of the capitularies is "Placuit atque convenit inter Francos et corum proceres," and hence, says Dupin, the laws themselves are often called placita. Dupin, Notions sur le Droit, p. 73.

PLAGIARISM. The act of appropriating the ideas and language of another, and passing them for one's own.

2. When this amounts to piracy the party who has been guilty of it will be enjoined, when the original author has a copyright. Vide Copyright; Piracy; Quotation; Pard. Dr. Com. n. 169.

PLAGIARIUS, civil law. He who fraudulently concealed a freeman or slave who belonged to another.

2. The offence itself was called plagium.

3. It differed from larceny or theft in this, that larceny always implies that the guilty party intended to make a profit, whereas the plagiarius did not intend to make any profit. Dig. 48, 15, 6; Code, 9, 20, 9 and 15.

PLAGIUM. Man stealing, kidnapping. This offence is the crimen plagii of the Romans. Alis. Pr. Cr. Law, 280, 281.

PLAINT, Eng. law. The exhibiting of any action, real or personal, in writing; the party making his plaint is called the plaintiff.

PLAINTIFF, practice. He who, in a personal action, seeks a remedy for an injury to his rights. Ham. on Parties, h. t.; 1 Chit. Pl. Index, h. t.; Chit. Pr. Index, h. t.; 1 Com. Dig. 36, 205, 308.

2. Plaintiffs are legal or equitable. The legal plaintiff is he in whom the legal title or cause of action is vested. The equitable plaintiff is he who, not having the legal title, yet, is in equity entitled to the thing sued for; for example, when a suit is brought by Benjamin Franklin for the use of Robert Morris, Benjamin Franklin is the legal, and Robert Morris the equitable plaintiff. This is the usual manner of bringing suit, when the cause of action is not assignable at law, but is so in equity. Vide Bouv. Inst. Index, h. t.; Parties to Actions.

PLAINTIFF IN ERROR. A party who sues out a writ of error, and this whether in the court below he was plaintiff or defendant.

PLAN. The delineation or design of a city, a house or houses, a garden, a vessel, &c. traced on paper or other substance, representing the position, and the relative proportions of the different parts.

2. When houses are built by one person agreeably to a plan, and one of them is Sold to a person, with windows and doors in it, the owner of the others cannot shut up those windows, nor has his grantee any greater right. 1 Price, R. 27; 2 Ry. & Mo. 24; 1 Lev. 122; 2 Saund. 114, n. 4 1 M. & M. 396; 9 Bing 305; 1 Leigh's N. P. 559. See 12 Mass: 159; Hamm. N. P. 202; 2 Hill. Ab. c. 12, n. 6 to 12; Com. Dig. Action on the case for a nuisance, A. See Ancients Lights; Windows.

PLANTATIONS. Colonies, (q. v.) dependencies. (q. v.) 1 Bl. Com. 107. In England, this word, as it is used in St. 12, II. c. 18, is never applied to, any of the British dominions in Europe, but only to the colonies in the West Indies and America. 1 Marsh. Ins, B. 1, c. 3, §2, page 64.

2. By plan tation is also meant a farm.

PLAT. A map of a piece of land, in which are marked the courses and disstances of the different lines, and the quantity of land it contains.

2. Such a plat;nay be given in evidence in ascertaining the position of the land, and what is included, and may serve to settle the figure of a survey, and correct mistakes. 5 Monr. 160. See 17 Mass. 211; 5 Greenl. 219; 7 Greenl, 61; 4 Wheat. 444; 14 Mass. 149.

PLEA, chancery practice. "A plea," says Lord Bacon, speaking of proceedings in courts of equity, "is a foreign matter to discharge or stay the suit." Ord. Chan. (ed. Beam.) p. 26. Lord Redesdale defines it to be " a special answer showing or relying upon one or more thisgs as a cause why the suit should be either dismissed, delayed or barred." Mitf. Tr. Ch. 177; see Coop. Eq. Pl. 223; Beames' Pl. Eq. 1. A plea is a special answer to a bill, and differs in this from an answer in the common form, as it demands the judgment of the court in the first instance, whether the matter urged by it does not debar the plaintiff from his title to that answer which the bill requires. 2 Sch. & Lef. 721.

2. Pleas are of three sorts: 1. To the jurisdiction of the court. 2. To the person of the plaintiff. 3. In bar of the plaintiff's suit. Blake's Ch. Pr. 112. See, generally, Beames' Elem. of Pleas in Eq.; Mitf. Tr. Cha. oh. 2, s. 2, pt. 2; Coop. Eq. Pl. ch. 5; 2 Madd. Ch. Pr. 296 to 331; Blake's Ch. Pr. 112 to 114; Bouv. Inst. Index, h. t.

PLEA, practice. The defendant's answer by matter of fact, to the plaintiff's declaration.

2. It is distinguished from a demurrer, which opposes matter of law to the declaration. Steph. Pl. 62.

3. Pleas are divided into plea dilatory and peremptory; and this is the most general division to which they are subject.

4. Subordinate to this is another division; they are either to the jurisdiction of the court, in suspension of the action; in abatement of the writ; or, in bar of the action; the first three of which belong to the dilatory class, the last is of the peremptory kind. Steph. Pl. 63; 1 Chit. Pl. 425; Lawes, Pl. 36.

5. The law has prescribed and settled the order of pleading, which the defendant is to pursue, to wit; 1st. To the jurisdiction of the court. 2d. To the disability, &c. of the person. 1st. Of thepla'intiff. 2d. Of the defendant. 3d. To the count or declaration. 4th. To the writ. 1st. To the form of the writ; first, Matter apparent on the face of it, secondly, Matter dehors. 2d. To the action of the writ. 5th. To the action itself in bar.

6. This is said to be the natural order of pleading, because each subsequent, plea admits that there is no foundation for the former. Such is the English law. 1 Ch. Plead. 425. The rule is different with regard to the plea of jurisdiction in the courts of the United States and those of Pennsylvania. 1. Binn. 138; ld. 219; 2 Dall. 368; 3 Dall. 19; 10 S. & R. 229.

7. - 2. Plea, in its ancient sense, means suit or action, and it is sometimes still used in that sense; for example, A B was summoned to answer C D of a plea that he render, &c. Steph. Pl. 38, 39, u. 9; Warr. Law Studies, 272, note n.

8. - 3. This variable word, to plead, has still another and more popular use, importing forensic argument in a cause, but it is not so employed by the profession. Steph. Pl. App. note 1.

9. There are various sorts of pleas, the principal of which are given below.

10. Plea in abatement, is when, for any default, the defendant prays that the writ or plaint do abate, that is, cease against him for that time. Com. Dig. Abatement, B.

11. Hence it may be observed, 1st. That the defendant may plead in Abatement for faults apparent on the writ or plaint itself, or for such as are shown dehors, or out of the writ or plaint. 2d. That a plea in, abatement is never perpetual, but only a temporary plea, in form at least, and if the cause revived, the plaintiff may sue again.

12. If the defendant plead a plea in abatement, in his plea, he ought generally to give a better writ to the plaintiff, that is, show him what other and better writ can be adopted; Com. Dig. Abatement, I 1; but if the plea go to the matter and substance of the writ, &c., he need not give the plaintiff another writ. Nor need he do so when the plea avoids the whole cause of the action. Id. I 2.

13. Pleas in abatement are divided into those relating, first, to the disability of the plaintiff or defendant; secondly, to the count or declaration; thirdly, to the writ. 1 Chit. Pl. 435.

14. - 1. Plea in abatement to the person of the plaintiff. Pleas of this kind are either that the plaintiff is not in existence, being only a fictitious person, or dead; or else, that being in existence, he is under some disability to bring or maintain the action, as by being an alien enemy; Com. Dig. Abatement, E 4 Bac. Abr. Abatement, B 3; 1 Chit. Pl. 436; or the plaintiff is a married woman, and she sues alone. See 3 T. R. 631; 6 T. R. 265.

15. Plea in abatement to the person of the defendant. These pleas are coverture, and, in the English law, infancy, when the parol shall demur. When a feme covert is sued, and the objection is merely that the hushand ought to have been sued jointly with her; as when, since entering into the contract, or committing the tort, she has married; she must, when sued alone, plead her coverture in abatement, and aver that her hushand is living. 3 T. R. 627; 1 Chit. Pl. 437 , 8.

16. - 2. Plea in abatement to the count. Pleas of this kind are for some uncertainty, repugnancy, or want of form, not appearing on the face of the writ itself, but apparent from the recital of it in the declaration only; or else for some variance between the writ and declaration. But it was always necessary to obtain oyer of the writ before the pleading of these pleas; and since oyer cannot now be had of the original writ for the purpose of pleading them, it seems that they can no longer be pleaded. See Oyer.

17. Plea in abatement to the form of the writ. Such pleas are for some apparent uncertainty, repugnancy, or want of form, variance from the record, specialty, &c., mentioned therein, or misnomer of the plaintiff or defendant. Lawes' Civ. Pl. 106; 1 Chit. Pl. 440.

18. Plea in abatement to the action of the writ. Pleas of this kind are pleaded when the action is misconceived, or was prematurely commenced before the cause of action arose; or when there is another action depending for the same cause. Tidd's Pr. 579. But as these matters are ground for demurrer or nonsuit, it is now very unusual to plead them in abatement. See 2 Saund. 210, a.

19. Plea in avoidance, is one which confesses the matters contained in the declaration, and avoids the effect of them, by some new matter which shows that the plaintiff is not entitled to maintain his action. For example, the plea may admit the contract declared upon, and show that it was void or voidable, because of the inability of one of the parties to make it, on account of coverture, infancy, or the like. Lawes, Pl. 122.

20. Plea in bar, is one that denies that the plaintiff has any cause of action. 1 Ch. Pl. 459 Co. Litt. 303 b; 6 Co. 7. Or it is one which shows some ground for barring or defeating the action; and makes prayer to that effect, Steph. Pl. 70; Britton, 92. See Bar.

21. A plea in bar is, therefore, distinguished from all pleas of the dilatory class, as impugning the right of the action altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ. It is in short a substantial and conclusive answer to the action. It follows, from this property, that in general, it must either deny all, or some essential part of the averments of fact in the declaration; or, admitting them to be true, allege new facts,

which obviate and repel their legal effect. In the first case the defendant is said, in the language of pleading, to traverse the matter of the declaration; in the latter, to confess and avoid it. Pleas in bar are consequently divided into pleas by way of traverse, and pleas by way of confession and avoidance. Steph. Pl. 70, 71.

22. Pleas in bar are, also divided into general or special. General pleas in bar deny or take issue either upon the whole or part of the declaration, or contain some new matter which is relied upon by the defendant in his defence. Lawes Pl. 110.

23. Special pleas in bar a re very various, according to the circumstances of the defendant's case; as, in personal actions, the defendant may plead any special matter in denial, avoidance, discharge, excuse, or justification of the matter alleged in the declaration, which destroys or bars the plaintiff's action; or he may plead any matter which estops, or precludes him from averring or insisting on any matter relied upon by the plaintiff in his declaration. The latter sort of pleas are called pleas in estoppel. In real actions, the tenant may plead any matter which destroys and bars the demandant's title; as, a general release. Id. 115, 116.

24. The general qualities of a plea in bar are, 1. That it be adapted to the nature and form of the action, and also conformable to the count. Co. Litt. 303, a 285, b; Bac. Abr. Pleas, I; 1 Roll. Rep. 216.

2. That it answers all it assumes to answer, and no more. Co. Litt. 303 a; Com. Dig. Pleader, E 1, 36; 1 Saund. 28, n. 1, 2, 3; 2 Bos. & Pull. 427; 3 Bos. & Pull. 174.

3. In the case of a special plea, that it confess and admit the fact. 3 T. R. 298; 1 Salk. 394; Carth. 380; 1 Saund. 28, n. and 14 u. 3 10 Johns. R. 289.

4. That it be single. Co. Litt. 304; Bac. Ab. Pleas, 2 Saund. K, 1, 2; Com Dig. Plead. E 2; 49, 50; Plowd. Com. 140, d.

5. That it be certain. Com. Dig. Pleader, E 5, 7, 8, 9, 10, 11; C 41; this Dict. Certainty; Pleading.

6. It must be direct, positive, and not argumentative. See 6 Cranch, 126; 9 Johns. It. 313.

7. It must be capable of trial. 8. It must be true and capable of proof. See Plea, sham.

25. The parts of a plea in bar may be considered with reference to,

1. The title of the court in which it is pleaded.

2. The title of the term.

3. The names of the parties in the margin. These, however, do not constitute any part of the plea. The surnames only are usually inserted, and that of the defendant precedes the plaintiff's; as, " Roeats. Doe."

4. The commencement which includes the statement of, 1. The name of the defendant; 2. The appearance; 3. The defence; see Defence; 4. The actio non; see dctio non.

5. The body, which may contain, 1. The inducement; 2. The protestation; 3. Ground of defence 4. Qua est eadem; 5. The traverse. 6. The conclusion.

26. Dilatory pleas are such as delay the plaintiff's remedy, by questioning, not the cause of action, but the propriety of the suit, or the mode in which the remedy is sought.

27. Dilatory pleas are divided by Sir William Blackstone, into three kinds: 1. Pleas to the jurisdiction of the court; as, that the cause of action arose out of the limits of the jurisdiction of the court, when the action is local. 2. Pleas to the disability of the plaintiff, or, as they are usually termed, to' the person of the plaintiff; as, that he is an alien enemy. 3. Pleas in abatement of the writ, or count; these are founded upon some defect or mistake, either in the writ itself; as, that the defendant is misnamed in it, or the like; or in the mode in which the count pursues it; as, that there is some variance or repugnancy between the count and writ; in which case, the fault in the count furnishes a cause for abating the writ. 2 Bl. Com. 301 Com. Dig. Abatement, G 1, 8; Id. Pleader, C 14, 15; Bac. Ab. Pleas, F 7.

28. All dilatory pleas are sometimes called pleas in abatement, as contradistinguished to pleas to the action; this is perhaps not strictly proper, because, though all pleas in abatement are dilatory pleas, yet all dilatory pleas are not pleas in abatement. Gould on Pl. ch. 2, §35; vide 1 Chit. PI, ch. 6; Bac. Ab. Abatement, 0; 1 Mass 358; 1 John. Cas. 101. 2. A plea in discharge, as distinguish ed from a plea in avoidance, is one which admits the demand, and instead of avoiding the payment or satisfaction of it, shows that it has been discharged by some matter of fact. Such are pleas of payment, release, and the like.

30. A plea in excuse, is one which admits the demand or complaint stated in the declaration, but excuses the non-compliance of the plaintiff's claim, or the commission of the act of which he complains, on account of the defendant having done all in his power to satisfy the former, or not having teen the culpable author of the latter. A plea of tender is an example of the former, and a plea of son assault demesne, an instance of the latter.

31. A foreign plea is one which takes the cause out of the court where it is pleaded, by showing a want of jurisdiction in that court. 2 Lill. Pr. Beg. 374; Carth. 402. See the form of the plea in Lill. Ent. 475.

32. A plea of justification is one in which the defendant professes purpo sely to have done the acts which are the subject of the plaiutiff's suit, in order to exercise that right which he considers he might in point of law exercise, and in the exercise of which he conceives himself not merely excused, but justified.

33. A plea puis darrein continuance. Under the ancient law, there were continuances, i. e. adjournments of the proceedings for certain purposes, from one day or one term to another; and, in such cases, there was an entry made on the record, expressing the ground of the adjournment, and appointing the parties to reappear at a given day.

34. In the interval between such continuance and the day appointed, the parties were of course out of court, and consequently not in a situation to plead. But it sometimes happened, that after a plea had been pleaded, and while the parties were out of court, in consequence of such continuance, a new matter of defence arose, which did not exist, and which the defendant had consequently no opportunity to plead, before the last continuance. This new defence he was therefore entitled, at the day given for his reappearance, to plead as a matter that had happened after the last continuance, puis darrein continuance. In the same cases that occasioned a continuance in the ancient common Iaw, but in no other, a continuance shall take place. At the time indeed, when the pleadings are filed and delivered, no record exists, and there is, therefore, no entry at that time, made on the record, of the award of a continuance; but the parties are, from the day when, by the ancient practice, a continuance would have been entered, supposed to be out of court, and the pleading is suspended, till the day arrives to which, by the ancient, practice, the continuance would extend. At that day, the defendant is entitled, if any new matter of defence has arisen in the interval, to plead it according to the ancient plan, puis darrein continuance.

35. A plea puis darrein continuance is not a departure from, but is a waiver of the first plea, and is always headed by way of substitution for it, on which no proceeding is afterwards had. 1 Salk. 178; 2 Stran. 1195 Hob. 81; 4 Serg. & Rawle, 239. Great certainty is requisite in pleas of this description. Doct. Pl. 297; Yelv. 141; Cro. Jac. 261; Freem. 112; 2 Lutw. 1143; 2 Salk. 519; 2 Wils. 139; Co. Entr. 517 b. It is not sufficient to say generally that after the last continuance such a thing happened, but the day of the continuance must be shown, and also the time and place must be alleged where the matter of defence arose. Id. ibid.; Bull. N. P. 309.

36. Pleas puis darrein continuance are either in bar or abatement; Com. Dig. Abatement, I 24; and are followed, like other pleas, by a replication and other

pleadings, till issue is attained upon them such pleas must be verified on oath before they are allowed. 2 Smith's R. 396; Freem. 352; 1 Strange, 493.

37. A sham plea is one which is known to the pleader to be false, and is entered for the purpose of delay. There are certain pleas of this kind, which, in consequence of their having been long and frequently used in practice, have obtained toleration from the courts; and, though discouraged, are tacitly allowed; as, for example, the common plea of judgment recovered, that is, that judgment has been already recovered by the plaintiff, for the same cause of action. Steph. on Pleading, 444, 445; 1 Chit. Pl. 505, 506.

38. Plea in suspension of the action. Such a plea is one which shows some ground for not proceeding in the suit at the present period, and prays that the pleading may be stayed, until that ground be removed. The number of these pleas is small. Among them is that which is founded on the nonage of the parties, and termed parol demurrer. Stephen on Pleading, 64. See, generally, Bac. Abr. Pleas, Q; Com. Dig. Abatement, I 24, 34; Doct, Pl. 297; Bull. N. P. 309; Lawes Civ. Pl. 173; 1 Chit. Pl. 634,; Steph. Pl. 81; Bouv. Inst. Index, h. t.

TO PLEAD. The formal entry of the defendant's defence on the record. In a popular sense, it signifies the argument in a cause, but it is not so used by the profession. Steph. Pl. Appex. note I; Story, Eq. Pl. §5, note.

PLEADING, practice. The statement in a logical, and legal form, of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence; it is the formal mode of alleging that on the record, which would be the support, or the defence of the party in evidence. 8 T. R. 159; Dougl. 278; Com. Dig. Pleader, A; Bac. Abr. Pleas and Pleading; Cowp. 682-3. Or in the language of Lord Coke, good pleading consists in good matter pleaded in good form, in apt time, and due order. Co. Lit. 303. In a general sense, it is that which either party to a suit at law alleges for himself in a court, with respect to the subject-matter of the cause, and the mode in which it is carried on, including the demand which is made by the plaintiff; but in strictness, it is no more than setting forth those facts or arguments which show the justice or legal sufficiency of the plaintiff's demand, and the defendant's defence, without including the statement of the demand itself, which is contained in the declaration or count. Bac. Abr. Pleas and Pleading.

2. The science of pleading was designed only to render the facts of each party's case plain and intelligible, and to bring the matter in dispute between them to judgment. Steph. Pl. 1. It is, as has been well observed, admirably calculated for analyzing a cause, and extracting, like the roots of an equation, the true points in dispute; and

referring them with all imaginable simplicity, to the court and jury. 1 Hale's C. L. 301, n

3. The parts of pleading have been considered as arrangeable under two heads; first, the regular, or those which occur, in the ordinary course of a suit; and secondly, the irregular, or collateral, being those which are occasioned by mistakes in the pleadings on either side.

4. The regular parts are, 1st. The declaration or count. 2d. The plea, which is either to the jurisdiction of the court, or suspending the action, a's in the case of a parol demurrer, or in abatement, or in bar of the action, or in replevin, an avowry or cognizance. 3d . The replication, and, in case of an evasive plea, a new assignment, or in replevin the plea in bar to the avowry or cognizance. 4th. The rejoinder, or, in replevin, the replication to the plea in bar. 5th. The sur-rejoinder, being in replevin, the rejoinder. 6th. The rebutter. 7th. The sur-rebutter. Vin. Abr. Pleas and Pleading, C; Bac. Abr. Pleas and Pleadings, A. 8th. Pleas puis darrein continuance, when the matter of defence arises pending the suit.

6. The irregular or collateral parts of Pleading are stated to be, 1st. Demurrers to Illly art of the pleadings above mentioned. 2dly. Demurrers to evidence given at trials. 3dly. Bills of exceptions. 4thly. Pleas in scire facias. And, 5thly. Pleas in error. Vin. Abr. Pleas and Pleadings, C.; Bouv. Inst. Index, h. t.

PLEADING, SPECIAL. By special pleading is meant the allegation of special or new matter, as distinguished from a direct denial of matter previously alleged on the opposite side. Gould on Pl. c. 1, s. 18.

PLEAS OF THE CROWN, Eng. law. This phrase is now employed to signify criminal causes in which the king is a party. Formerly it signified royal causes for offences of a greater magnitude than mere misdemeanors. These were left to be tried in the courts of the barons, whereas the greater offences, or royal causes, were to be tried in the king's courts, under the appellation of pleas of the crown. Robertson's Hist. of Charles V., vol. 1, p. 48.

PLEAS POLL, Engl. practice. A record which contains the declaration, plea, replication, rejoinder, and other pleadings, and the issue. Eunom. Dial. 2, §29, p. 111.

PLEBEIAN. One who is classed among the common people, as distinguished from the nobles. Happily in this country the order of nobles does not exist.

PLEBEIANS. One of the divisions of the people in ancient Rome; that class which was composed of those who were not nobles nor slaves. Vide Smith's Dic. Gr. & Rom. Antiq. art. Plebes.

PLEBISCIT, civil law. This is an anglicised word from the Latin plebiscitum, which is composed or derived from plebs and scire, and signifies, to establish or ordain.

2. A plebiscit was a law which the people, separated from the senators and the patricians, made on the requisition of one of their magistrates, that is, a tribune. Inst. 1, 2, 4.

PLEDGE or PAWN, contracts. These words seem indifferently used to convey the same idea. Story on Bailm. §286.

2. In the civil code of Louisiana, however, they appear not to have exactly the same meaning. It is there said that pledges are of two kinds, namely, the pawn, and the antichresis. Louis'. Code, art. 3101.

3. Sir William Jones defines a pledge to be a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged. Jones' Bailm. 117; Id. 36. Chancellor Kent, 2 Kent's Com. 449, follows the same definition, and see 1 Dane's Abr. c. 17, art. 4. Pothier, De Nantissement, art. prelim. 1, defines it to be a contract by which a debtor gives to his creditor a thing to detain as security for his debt. The code Napoleon has adopted this definition, Code Civ. art. 2071, and the Civil Code of Louisiana has followed it. Louis. Code, 3100. Lord Holt's definition is, when goods or chattels are delivered to another as a pawn, to be security for money borrowed of him by the bailor - and this, he adds, is called in Latin vadium, and in English, a pawn or pledge. Ld. Raym. 909, 913.

4. The foregoing definitions are sufficiently descriptive of the nature of a pawn or pledge but they are in terms limited to cues where a thing is given as a security for a debt; but a pawn may well be made as security for any other engagement. 2 Bulst. 306; Pothier, De Nantissement, n. 11. The definition of Domat is, therefore, more accurate, because it is more comprehensive, namely, that it is an appropriation of the thing given for the security of an engagement. Domat, B. 3, tit. 1, §1, n. 1. And, according to Judge Story, it may be defined to be a bailment of personal property, as security for some debt or engagement. Story on Bailm. §286.

5. The term pledge or pawn is confined to personal property; and where real or personal property is transferred by a conveyance of the title, as a security, it is commonly denominated a mortgage.

6. A mortgage of goods is, in the common law, distinguishable from a mere pawn. By a grant or a conveyance of goods in gage or mortgage, the whole legal title passes conditionally to the mortgagee; and if not redeemed at the time stipulated, the title becomes absolute at law, though equity will interfere to compel a redemption. But in a pledge a special property only passes to the pledges, the general property remaining in the pledger. 1 Atk. 167; 6 East, 25; 2 Caines' C. Err. 200; 1 Pick. 889; 1 Pet. S. C. B. 449 2 Pick. R. 610; 5 Pick. R. 60; 8. Pick. R. 236; 9 Greenl. R. 82; 2 N. H. Rep. 13; 5 N. H. Rep. 545; 5 John. R. 258; 8 John. R. 97; 10 John. R. 471; 2 Hall, R. 63; 6 Mass. R. 425; 15 Mass. R. 480. A mortgage may be without possession, but a pledge cannot be without possession. 5 Pick. 59, 60; and see 2 Pick. 607.

7. Things which are the subject of pledge or pawn are ordinarily goods and chattels; but money, negotiable instruments, choses in action, and indeed any other valuable thing of a personal nature, such as patent-rights and manuscripts, may, by the common law, be delivered in pledge. 10 Johns. R. 471, 475; 12 Johns. R. 146; 10 Jonhs. R. 389; 2 Blackf. R. 198; 7 Greenl. R. 28; 2 Taunt. R. 268; 13 Mass. 105; 15 Mass. 389; Id. 534; 2 Caines' C. Err. 200; 1 Dane's Abr. ch. 17, art. 4, § ii. See Louis. Code, art. 3121.

8. It is of the essence of the contract, that there should be an actual delivery of the thing. 6 Mass. 422; 15 Mass. 477 14 Mass. 352; 2 Caines' C. Err. 200; 2 Kent's Com. 452; Bac. Abr. Bailment, B; 2 Rolle R. 439; 6 Pick. R. 59, 60; Pothier, De Nantissement, n. 8, 9; Louis. Code, 3129. What will amount to a delivery, is matter of law. See Delivery.

9. It is essential that the thing should be delivered as a security for some debt or engagement. Story on Bailm. §300. And see 3 Cranch, 73; 7 Cranch, 34; 2 John. Ch. R. 309; 1 Atk. 236; Prec. in Ch. 419; 2 Vern. 691; Gilb. Eq. R. 104; 6 Mass. 339; Pothier, Nantissement, n. 12; Civ. Code of Lo. art. 3119; Code Civ. art. 2076.

10. In virtue of the pawn the pawnee acquires, by the common law, a special property in the thing, and is entitied to the possession of it exclusively, during the time and for the objects for which it is pledged. 2 Bl. Com. 396; Jones' Bailm. 80; Owen R. 123, 124; 1 Bulst. 29; Yelv. 178 Cro. Jac. 244; 2 Ld. Raym. 909, 916; Bac. Abr. Bailment, B; 1 Dane's Abr. ch. 17, art. 4, SSSS 1, 6; Code Civ. art. 2082; Civ. Code of Lo. art. 3131. And he has a right to sell the pledge, when there has been a default in the pledger in complying with his engagement. Such a default does not divest the general property of the pawner, but still leaves him a right of redemption. But if the, pledge is not redeemed within the stipulated time, by a due performance of the contract for which it is a security, the pawnee has then a right to sell it, in order to have his debt or indemnity. And if there is no stipulated time for the payment of the debt, but the pledge is for an indefinite period, the pawnee has a right, upon request, to a prompt

fulfilment of the agreement; and if the pawner refuses to comply, the pawnee may, upon demand and notice to the pawner, require the pawn to be sold. 2 Kent's Com. 452; Story on Bailm. 308.

11. The pawnee is bound to use ordinary diligence in keeping the pawn, and consequently is liable for ordinary neglect in keeping it. Jones'-Bailm. 75; 2 Kent's Com. 451; 1 Dane's Abr. ch. 17, art. 12; 2 Ld. Raym, 909, 916; Domat B 1, tit. 1, §4, n. 1.

12. The pawner has the right of redemption. If the pledge is conveyed by way of mortgage, and thus passes the legal title, unless he redeems the pledge at a stipulated time, the title of the pledge becomes absolute at law; and the pledger has no remedy at law, but only a remedy in equity to redeem. 2 Ves. Jr. 378; 2 Caines' C. Err. 200. If, however, the transaction is not a transfer of ownership, but a mere pledge, as the pledger has never parted with the general title, he may, at law, redeem, notwithstanding he has not strictly complied with the condition of his contract. Com. Dig. Mortgage, B; 1 Pow. on Mortg. by Coventry & Land. 401, and notes, ibid. See further, as to the pawner's right of redemption, Story on Bailm. §§345 to 349.

13. By the act of pawning, the pawner enters into an implied agreement or warranty that he is the owner of the property pawned, and that he has a good right to pass the title. Story on Bailm. §354.

14. As to the manner of extinguishing the contract of pledge or mortgage of personal property, see Story on Bailm. 359 to 366.

PLEDGE, contracts. He who becomes security for another, and, in this sense, every one who becomes bail for another is a pledge. 4 Inst. 180 Com. Dig. B. See Pledges.

PLEDGER. The same as pawner. (q. v.)

PLEDGEE. The same as pawnee. (q. v.)

PLEDGES, pleading. It was anciently necessary to find pledges or sureties to prosecute a suit, and the names of the pledges were added at the foot of the declaration; but in the course of time it became unnecessary to find such pledges because the plaintiff was no longer liable to be amerced, pro falsa clamora, and the pledges were merely nominal persons, and now John Doe and Richard Roe are the universal pledges; but they may be omitted altogether; 1 Tidd's. Pr. 455; Arch. Civ. Pl. 171; or inserted at any time before judgment. 4 John. 190.

PLEGIIS ACQUIETANDIS, WRIT DE. The name of an ancient writ in the English law, which lies where a man becomes pledge or surety for another to pay a certain sum of money at a certain day; after the day, if the debtor does not pay the debt, and the. surety be compelled to pay, he shall have this writ to compel the debtor to pay the same. F. N. B. 321.

PLENA PROBATIO. A term used in the civil law, to signify full proof, in contradistinction to semi-plena probatio, which is only a presumption. Code, 4, 19, 5, &c. 1 Greenl. Ev. §119.

PLENARTY, eccl. law. Signifies that a benefice is full. Vide Avoidance.

PLENARY. Full, complete.

2. In the courts of admiralty, and in the English ecclesiastical courts, causes or suits in respect of the different course of proceeding in each, are termed plenary or summary. Plenary, or full and formal suits, are those in which the proceedings must be full and formal: the term summary is applied to those causes where the proceedings are more succinct and less formal. Law's Oughton, 41; 2 Chit. Pr. 481.

PLENE ADMINISTRAVIT, pleading. A plea in bar entered by an executor or administrator by which he affirms that he had not in his possession at the time of the commencement of the suit, nor has had at any time since any goods of the deceased to be administered; when the plaintiff replies that the defendant had goods, &c., in his possession at that time, and the parties join issue, the burden of the proof will be on the plaintiff. Vide 15 John. R. 323; 6 T. R. 10; 1 Barn. & Ald. 254; 11 Vin. Ab. 349; 12 Vin. Ab. 185; 2 Phil. Ev. 295; 3 Saund. (a) 315, n. 1; 6 Com. Dig. 311.

PLENE ADMINISTRAVIT PRAETERt. This is the usual plea of plene administravit, except that the defendant admits a certain amount of assets in his hands.

PLENE COMPUTAVIT, pleading. A plea in an action of account render, by which the defendant avers that he has fully accounted. Bac. Ab. Accompt, E. This plea does not admit the liability of the defendant to account. 15 S. & R. 153.

PLENIPOTENTIARY. Possessing full powers; as, a minister plenipotentiary, is one authorized fully to settle the matters connected with his mission, subject however to the ratification of the government by which he is authorized. Vide Minister.

PLENUM DOMINIUM. The unlimited right which the owner has to use his property as he deems proper, without accountability to any one.

PLOUGH-BOTE. An allowance made to a rural tenant, of wood sufficient for ploughs, harrows, carts, and other instruments of hushandry.

PLOUGH-LAND, old Eng. law. An uncertain quantity of land; but, according to some opinions, it contains one hundred and twenty acres. Co. Litt. 69 a.

TO PLUNDER. The capture of personal property on land by a public enemy, with a view of making it his own. The property so captured is called plunder. See Booty; Piize.

PLUNDERAGE, mar. law. The embezzlement of goods on board of a ship, is known by the name of plunderage.

2. The rule of the maritime law in such cases is, that the whole crew shall be responsible for the property thus embezzled, because there must be some negligence in finding out the depredator. Abbott on Ship. 457; 3 John. Rep. 17; 1 Pet. Adm. Dee. 243; 1 New Rep. 347; 1 Pet. Adm. Dee. 200, 239.

PLURAL. A term used in grammar, which signifies more than one.

2. Sometimes, however, it may be so expressed that it means only one, as, if a man were to devise to another all he was worth, if he, the testator, died without children, and he died leaving one child, the devise would not take effect. See Dig. 50, 16, 148; Id. 35, 1, 101, 1; Id. 3 1, 17, 4 Code, 6, 49, 6, 2; Shelf. on L 559, 589. See Singular.

PLURALITY, government. The greater number of votes given at an election; it is distinguished from a majority, (q. v.) which is a plurality of all the votes which might have been given; though in common parlance majority is used in the sense here given to plurality.

PLURIES, practice. A term by which a writ issued subsequently to an alias of the same kind, is denominated.

2. The pluries writ is made by adding after we command you, the words, " as often times we have commanded you." This is called the first pluries, the next is called the second pluries, &c.;

POINDING, Scotch. law. That diligence, affecting movable subjects, by which their property is carried directly to, the creditor. Poinding is real or personal. Ersk. Pr. L. Scot. 3, 6, 11.

POINDING, PERSONAL, Scotch law. Poinding of the goods belonging to the debtor; and of those goods only.

2. It may have for its warrant either letters of horning, containing a clause for poinding, and then it is executed by messengers; or precepts of poinding, granted by sheriffs, commissaries, &c., which are executed by their proper officers. No cattle pertaining to the plough, nor instruments of tillage, can be poinded in the time of laboring or tilling the ground, unless where the debtor, has no other goods that may be poinded. Ersk. Pr. L. Soot. 3, 6, 11. See Distress, to which this process is somewhat similar.

POINDING, REAL, or poinding of the ground, Scotch law. Though it be properly a diligence, this is generally considered by lawyers as a species of real action, and is so called to distinguish it from personal poinding, which is founded merely on an obligation to pay.

2. Every debitum fundi, whether legal or conventional, is a foundation for this action. It is therefore competent to all creditors in debts which make a real burden on lands. As it proceeds on a, real right, it may be directed against all goods that can be found on the lands burdened but, 1. Goods brought upon the ground by strangers are not subject to this diligence. 2. Even the goods of a tenant cannot be poinded for more than his term's rent, Ersk. Pr. L. Scot. 4, 1, 3.

POINT, practice. A proposition or question arising in a case.

2. It is the duty of a judge to give an opinion on every point of law, properly arising out of the issue, which is propounded to him. Vide Resolution.

POINT RESERVED. A point or question of law which the court, not being fully satisfied how to decide, in the hurried trial of a cause, rules in favor of the party offering it, but subject to revision on a motion for a new trial. If, after argument, it be found to have been ruled correctly, the verdict is supported; if otherwise, it is set aside .

POINTS, construction. Marks in writing and in print, to denote the stops that ought to be made in reading, and to point out the sense.

2. Points are not usually put in legislative acts or in deeds: Eunom. Dial. 2, §33, p. 239; yet, in construing them, the courts must read them with such stops as will give effect to the whole. 4 T. R. 65.

3. The points are the comma, the semi-colon, the colon, the full point, the point of interrogation and exclamation. Barr. on the Stat. 294, note; vide Punctuation.

POISON, crim. law. Those substances which, when applied to the organs of the body, are capable of altering or destroying, in a majority of cases, some or all of the functions necessary to life, are called poisons. 3 Fodere, Traite de Med. Leg. 449; Guy, Med. Jur. 520.

2. When administered with a felonious intent of committing , murder, if. death ensues, it is murder the most detestable, because it can of all others, be least prevented by manhood or forethought. It is a deliberate act necessarily implying malice. 1 Russ. Cr. 429. For the signs which indicate poisoning, vide 2 Beck's Med. Jurisp. ch. 16, p. 236, et seq.; Cooper's Med. Jurisp. 47; Ryan's Med. Jurisp. ch. 15, p. 202, et seq.; Traill, Med. Jur. 109.

POLE. A measure of length, equal to five yards and a half. Vide Measure.

POLICE. That species of superintendence by magistrates which has principally for its object the maintenance of public tranquillity among the citizens. The officers who are appointed for this purpose are also called the police.

2. The word police has three significations, namely; 1. The first relates to the measures which are adopted to keep order, the, laws and ordinances on cleanliness, health, the markets, &c. 2. The second has for its object to procure to the authorities the means of detecting even the smallest attempts to commit crime, in order that the guilty may be arrested before their plans are carried into execution, and delivered over to the justice of the country. 3. The third comprehends the laws, ordinances and other measures which require the citizens to exercise their rights in a particular form.

3. Police has also been divided into administrative police, which has for its object to maintain constantly public order in every part of the general administration; and into judiciary police, which is intended principally to prevent crimes by punishing the criminals. Its object is to punish crimes which the administrative police has not been able to prevent.

POLICE JURY. In Louisiana this name is given. to certain officers who collectively exercise jurisdiction in certain cases of police as levying taxes, regulating roads,

POLICY OF INSURANCE, contracts. An instrument in writing by which the contract of insurance is effected and reduced into form.

2. The term policy of insurance, or as surance, as it is sometimes called, is derived from the Italian di olizza di assecurazione, or di securanza, or securta; and in that language signifies a tote or bill of security or indemnity.

3. The policy is always considered as being made upon an executed consideration, namely, the payment or security for the payment of the premium, and contains only the promise of the underwriters, without anything in nature of a counter promise on the part of the insured. The policy may be effected by the owner of the property insured, his broker or agent.

4. As to its form, the policy has been considered in courts of law as an absurd and incoherent instrument; 4 T. R. 210; but courts of justice have always construed it according to the intention of the parties, and so that the indemnity of the insured, dud the advancement of trade, which are ,the great objects of insurance, may be attained. It should contain, 1. The names of the parties. 2. The name of the vessel insured, in order to identify it; but to prevent the ill consequence that might result from a mistake in the name of the vessel or master, there are usually inserted in policies these words, " or by whatsoever name or names the same ship or the master thereof is, or shall be, named or called." 3. A Specification of the subject-matter, of the insurance, whether it be goods, ship, freight, respondentia or bottomry securities, or other things. Marsh. Ins. 315; 3 Mass. Rep. 476. 4. A description of the voyage, with the commencement and end of the risk. 5. A statement of the perils insured against. 6. A power in the insured tosave goods in case of misfortune, without violating the policy. 7. The promise of the insurers, and an acknowledgment of their receipt of the premium. 8. The common memorandum. 9. The date and subscription.

5. Policies, with reference to the reality of the interest insured, are distinguished into interest and wager policies; with reference to the amount of interest, into open and valued.

6. An interest policy, is where the insured has a real, substantial, assignable interest in the thing insured; in which case only it is a contract of indemnity.

7. A wager policy, is a pretended insurance, founded on an ideal risk, where the insured has no interest in the thing insured, and can therefore sustain no loss, by the happening of any of the misfortunes insured against. These policies are strongly reprobated. 3 Kent, Com. 225.

8. An open policy, is where the amount of the interest of the insured is not fixed by the policy; but is left to be ascertained by the insured in case a loss shall happen.

9. A valued policy, is where a value has been set on the ship. or goods insured, and this value inserted in the policy in the nature of liquidated damages, to save the necessity of proving it in case of loss. Marsh. Ins. 287; and see Kent, Com. Lecture 48; Marsh. Ins. ch. 8; 16 Vin. Ab. 402; 1 Supp. to Ves. jr. 305; Park. Ins. 1, 14; Westcott, Ins. 400; Pardes. h. t.; Poth. h. t.; Boulay Paty, h. t.; Bouv. Inst. Index, h. t.

POLICY, PUBLIC. By public policy is meant that which the law encourages for the promotion of the public good.

2. That which is against public policy is generally unlawful. For example, to restrain an individual from marrying, or from engaging in business, when the restraint is general, in the first case, to all persons, and, in the second, to all trades, business, or occupations. But if the restraint be only partial, as that Titius shall not marry Moevia, or that Caius shall not engage in a particular trade in a particular town or, place, the restraint is not against public policy,, and therefore valid. 1 Story, Eq. Jur. §274. See Newl. Contr. 472.

POLITICAL. Pertaining to policy, or the administration of the government. Political rights are those which may be exercised in the formation or administration of the government they are distinguished from civil, rights, which are the rights which a man enjoys, as regards other individuals, and not in relation to the government. A political corporation is one which has principally for its object the administration of the government, or to which the powers of government, or a part of such powers, have been delegated. 1 Bouv. Inst. n. 182, 197, 198.

POLL. A head. Hence poll tax is the name of a tax imposed upon the people at so much a head. 2. To poll a jury is to require that each juror shall himself declare what is his verdict. This may be done at the instance of either party, at any time before the verdict is recorded. 3 Cowen, R. 23. See 18 John. R. 188. See Deed Poll.

POLLICITATION, civil law. A pollicitation is a promise not yet accepted by the person to whom it is made; it differs from a contract inasmuch as the latter includes a concurrence of intention in two parties, one of whom promises something to the other, who accepts on his part of such promise. L. 3, ff. Pollicit.; Grotius, lib. 2, c. 2; Poth. on Oblig. P. 1, c. 1, s. 1, art. 1,§2.

2. An offer to guaranty, but not accepted, is not a contract on which an action will lie. 1 Stark. C. 10; 1 M. & S. 557; 3 B. & C. 668, 690; 5 D. & R. 512, 586; 7 Cranch, 69; 17 John. R. 134; 1 Mason's R. 323, 371; 16 John. R. 67; 3 Conn. R. 438; 1 Pick. R. 282, 3; 1 B. & A. 681.

POLLS. The place where electors cast in their votes.

POLYANDRY. The state of a woman who has several hushands.

2. Polyandry is legalized only in Tibet. This is inconsistent with the law of nature. Vide Law of Nature.

POLYGARCHY. A term used to express a government which is shared by several persons; as, when two brothers succeed to the throne, and reign jointly.

POLYGAMY, crim. law. The act of a person who, knowing he has two or more wives, or she has two or more hushands living, marries another. It differs from bigamy. (q. v.) Com. Dig. Justices, S 5, Dict. de Jur. h. t.

POND. A body of stagnant water; a pool.

2. Any one has a right to erect a fish pond; the fish in ii are considered as real estate, and pass to the heir and not to the executor. Ow. 20. See Pool; River; Water.

PONE, English practice. An original writ issuing out of chancery, for the purpose of removing a plaint from an inferior court into the superior courts at Westminster. The word signifies "put;" put by gages, &c. The writ is called from the words it contained when in Latin, "Pone per vadium et salvos plegios," &c. Put by gage and safe pledges, &c. See F. N. B. 69, 70 a; Wilkinson on Replevin, Index.

PONTAGE. A contribution towards the maintenance, rebuilding or repairs of a bridge. The toll taken for this purpose also bears this name. Obsolete.

POOL. A small lake of standing water.

2. By the grant of a pool, it is said, both the land and water will pass. Co. Litt. 5. Vide Stagnum; Water. Undoubtedly the right to fish, and probably the right to use hydraulic works, will be acquired by such grant. 2 N. Hamps. Rep. 259; An on Wat. Courses, 47; Plowd. 161; Vaugh. 103; Bac. Ab. Grants, H 3; Com. Dig. Grant, E 5; 5 Cowen, 216; Cro. Jac. 150; 1 Lev. 44; Co. Litt. 5.

POPE. The chief of the catholic religion is so called. He is a temporal prince. He is elected by certain officers called cardinals, and remains in power during life. In the 9th Collation of the Authentics it is declared the bishop of Rome hath the first place of sitting in all assemblies, and the bishop of Constantinople the second. Ridley's View, part 1, chap. 3, sect. 10.

2. The pope has no political authority in the United States.

POPE'S FOLLY. The name of a small island, situated in the bay of Passama quoddy, which, it has been decided, is within the jurisdiction of the United States. 1 Ware's R. 26.

POPULAR ACTION, punishment. An action given by statute to any one who will sue for the penalty. A qui tam action. Dig. 47, 23, 1.

PORT. A place to which the officers of the customs are appropriated, and which include the privileges and guidance of all members and creeks which are allotted to them. 1 Chit. Com. Law, 726; Postlewaith's Com. Dict. h. t.; 1 Chit. Com. L. Index, h. t. According to Dalloz, a port is a place within land, protected against the waves and winds, and affording to vessels a place of safety. Diet. Supp. h. t. By the Roman law a port is defined to be locus, conclusus, quo importantur merces, et unde exportantur. Dig. 50,16, 59. See 7 N. S. 81. 2. A port differs from a haven, (q. v.) and includes something more. 1st. It is a place at which vessels may arrive and discharge, or take in their cargoes. 2. It comprehends a vale, city or borough, called in Latin caput corpus, for the reception of mariners and merchants, for securing the goods, and bringing them to market, and for victualling the ships. 3. It is impressed with its legal character by the civil authority. Hale de Portibus Mar. c. 2; 1 Harg. 46, 73; Bac. Ab. Prerogative, D 5; Com. Dig. Navigation, E; 4 Inst. 148; Callis on Sewers, 56; 2 Chit. Com. Law, 2; Dig. 60, 16, 59; Id. 43, 12, 1, 13; Id. 47, 10, 15, 7; Id. 39, 4, 15.

PORT-REEVE, Eng. law. In some places in England an officer bearing this name is the chief magistrate of a port-town. Jacob's Dict. h. t.

PORT TOLL, Mer. law., By this phrase is understood the money paid for the privilege of bringing goods into a port.

PORTATICA, Engl. law. The generic name for port duties charged to ships. Harg. L. Tr. 74.

PORTER. The name of an ancient English officer who bore or carried a rod before the justices. The door-keeper of the English parliament also bears this name.

2. One who is employed as a common carrier to carry goods from one place to another in the same town, is also called a porter. Such person is in general answerable as a common carrier. Story, Bailm. §496.

PORTION. That part of a parent's estate, or the estate of one standing in loco parentis, which is given to a child. 1 Vern. 204. Vide 8 Com. Dig. 539; 16 Vin. Ab. 4321; 1 Supp. to Ves. Jr. 34, 58, 303, 308; 2 Id. 46, 370, 404.

PORTORIA, civil law. Duties paid in ports on merchandise. Code, 4, 61, 3.

PORTSALES. Auctions were anciently so called, because they took place in ports.

POSITIVE. Express; absolute; not doubtful. This word is frequently used in composition.

2. A positive condition is where the thing which is the subject of it must happen; as, if I marry. It is opposed to a negative condition, which is where the thing which is the subject of it must not happen; as, if I do not marry.

3. A positive fraud is the intentional and successful employment of any cunning, deception or artifice, to circumvent, cheat, or deceive another. 1 Story, Eq. §186; Dig. 4, 3, 1, 2; Dig. 2, 14, 7, 9. It is cited in opposition to constructive fraud. (q. v.)

4. Positive evidence is that which, if believed, establishes the truth or falsehood of a fact in issue, and does not arise from any presumption. It is distinguished from circumstantial evidence. 3 Bouv. Inst. n. 3057.

POSSE. This word is used substantively to signify a possibility. For example, such a thing is in posse, that is, such a thing may possibly be; when the thing is in being, the phrase to express it is, in esse. (q. v.)

POSSE COMITATUS. These Latin words signify the power of the county.

2. The sheriff has authority by the common law, while acting under the authority of the writ of the United States, commonwealth or people, as the case may be, and for the purpose of preserving the public peace, to call to his aid the posse comitatus.

3. But with respect to writs which issue, in the first instance, to arrest in civil suits, the sheriff is not bound to take the posse comitatus to assist him in the execution of them: though he may, if he pleases, on forcible resistance to the execution of the process. 2 Inst. 193; 3 Inst. 161.

4. Having the authority to call in the assistance of all, it seems to follow, that he may equally require that of any individual; but to this general rule there are some exceptions; persons of infirm health, or who want understanding, minors under the age of fifteen years, women, and perhaps some others, it seems, cannot be required to assist the sheriff, and are therefore not considered as a part of the power of the county. Vin. Ab. Sheriff, B.

5. A refusal on the part of an individual lawfully called upon to assist the officer in putting down a riot is indictable. 1 Carr. & Marsh. 314. In this case will be found the form of an indictment for this offence.

6. Although the sheriff is acting without authority, yet it would seem that any person who obeys his command, unless aware of that fact, will be protected.

7. Whether an individual not enjoined by the sheriff to lend his aid, would be protected in his interference, seems questionable. In a case where the defendant assisted sheriff's officers in executing a writ of replevin without their solicitation, the court held him justified in so doing. 2 Mod. 244. Vide Bac. Ab. Sheriff, N; Hamm. N. P. 63; 5 Whart. R. 437, 440.

POSSESSED. This word is applied to the right and enjoyment of a termor or a person having a term, who is said to be possessed, and not seized. Bac. Tr. 335; Poph. 76; Dy. 369.

POSSESSIO FRATRIS. The brother's possession. This is a technical phrase which is applied in the English law relating to descents. By the common law, the ancestor from whom the inheritance was taken by descent, must have had actual seisin of the lands, either by his own entry, or by the possession of his own, or his ancestor's lessee for years, or by being in the receipt of rent from the lessee of the freehold. But there are qualifications as to this rule, one of which arises from the doctrine of possesio fratris. The possession of a tenant for years, guardian or brother, is equivalent to that of the party himself, and is termed in law possessio fratris. Litt. sect. 8 Co. Litt. 15 a; 3 Wils. 516 7 T. R. 386 2 Hill Ab. 206.

2. In Connecticut, Delaware, Georgia, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and probably in other states, the real and personal estates of intestates are distributed among the heirs, without any reference or regard to the actual seisin of the ancestor. Reeve on Des. 377 to 379; 4 Mason's R. 467; 3 Day's R. 166; 2 Pet. R. 59. In Maryland, New Hampshire, North Carolina, and Vermont, the doctrine of possessio fratris, it seems, still exists. 2 Peters' Rep. 625; Reeve on Desc. 377; 4 Kent, Com. 384, 5.

POSSESSION, intern. law. By possession is meant a country which is held by no other title than mere conquest.

2. In this sense Possession differs from a dependency, which belongs rightfully to the country which has dominion over it; and from colony, which is a country settled by citizens or subjects of the mother country. 3 Wash. C. C. R. 286.

POSSESSION, property. The detention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name. By the possession of a thing, we always conceive the condition, in which not only one's own dealing with the thing is physically possible, but every other person's dealing with it is capable of being excluded. Thus, the seaman possesses his ship, but not the water in which it moves, although he makes each subserve his purpose.

2. In order to complete a possession two things are required. 1st. That there be an occupancy, apprehension, (q. v.) or taking. 2dly. That the taking be with an intent to possess (animus possidendi), hence persons who have no legal wills, as children and idiots, cannot possess or acquire possession. Poth. h. It.; Etienne, h. t. See Mer. R. 358; Abbott on Shipp. 9, et seq. But an infant of sufficient understanding may lawfully acquire the possession of a thing.

3. Possession is natural or civil; natural, when a man detains a thing corporeal, as by occupying a house, cultivating grounds or retaining a movable in his custody; possession is civil, when a person ceases to reside in the house, or on the land which he occupied, or to detain the movable he possessed, but without intending to abandon the possession. See, as to possession of lands, 2 Bl. Com. 116; Hamm. Parties, 178; 1 McLean's R. 214, 265.

4. Possession is also actual or constructive; actual, when the thing is in the immediate occupancy of the party. 3 Dey. R. 34. Constructive, when a man claims to hold by virtue of some title, without having the actual Occupancy; as, when the owner of a lot of land, regularly laid out, is in possession of any part, he is considered constructively in possession of the whole. 11 Vern. R. 129. What removal of property or loss of possession will be sufficient to constitute larceny, vide 2 Chit. Cr. Law, 919; 19 Jurist, 14; Etienne, h. t. Civ. Code of Louis. 3391, et seq.

5. Possession, in the civil law, is divided into natural and civil. The same division is adopted by the Civil Code of Louisiana.

6. Natural possession is that by which a man detains a thing corporeal, as by occupying a house, cultivating ground, or retaining a movable in his possession. Natural possession is also defined to be the corporeal detention of a thing, which we possess as belonging to us, without any title to that possession, or with a title which is void. Civ. Code of Lo. art. 3391, 3393.

7. Possession is civil, when a person ceases to reside in a house or on the land which he occupied, or to detain the movable which he possessed, but without intending to abandon the possession. It is the detention of a thing, by virtue of a just title, and under the conviction of possessing as owner. Id. art. 3392, 3394.

8. Possession applies properly only to corporeal things, movables and immovables. The possession of incorporeal rights, such as servitudes and other rights of that nature, is only a quasi. possession, and is exercised by a species of possession of which these rights are susceptible. Id. art. 3395.

9. Possession may be enjoyed by the proprietor of the, thing, or by another for him; thus the proprietor of ahouse possesses it by his tenant or farmer.

10. To acquire possession of a property, two things are requisite. 1. The intention of possessing as owner. 2. The corporeal possession of the thing. Id. art. 3399.

11. Possession is lost with or without the consent of the possessor. It is lost with his consent, 1. When he transfers this possession to another with the intention to divest himself of it. 2. When he does some act, which manifests his intention of abandoning possession, as when a man throws into the street furniture or clothes, of which he no longer chooses to make use. Id. art. 3411. A possessor of an estate loses the possession against his consent. 1. When another expels him from it, whether by force in driving him away, or by usurping possession during his absence, aud preventing him from reentering. 2. When the possessor of an estate allows it to be usurped, and held for a year, without, during that time, having done any act of possession, or interfered with the usurper's possession. Id. art. 3412.

12. As to the effects of the purchaser's taking possession, see Sugd. Vend. 8, 9; 3 P. Wms. 193; 1 Ves. Jr. 226; 12 Ves. Jr. 27; 11 Ves. Jr. 464. Vide, generally, 5 Harr. & John. 230, 263; 6 Har. & John. 336; 1 Har. & John. 18; 1 Greenl. R. 109; 2 Har. & McH. 60, 254, 260; 3 Bibb, R. 209 1 Har. & McH., 210; 4 Bibb, R. 412, 6 Cowen, R. 632; 9 Cowen, R. 241; 5 Wheat. R. 116, 124; Cowp. 217; Code Nap. art. 2228; Code of the Two Sicilies, art. 2134; Bavarian Code, B. 2, c. 4, n. 5; Prus. Code, art. 579; Domat, Lois Civ. liv. 3, t, 7, s. 1; Vin. Ab. h. t.; Wolff, Inst. §200, and the note in the French translation; 2 Greenl. Ev. §614, 615; Co. Litt. 57 a; Cro. El. 777; 5 Co. 13; 7 John. 1.

POSSESSOR. He who holds, detains or enjoys a thing, either by himself or his agent, which he claims as his own.

2. In general the possessor of personal chattels is presumed to be the owner; and in case of real estate he has a right to receive the profits, until a title adverse to his possession has been established, leaving him subject to an action for the mesne profits. (q. v.)

POSSESSORY ACTION, old Eng. law. A reall action in which the plaintiff called the demandant, sought to recover the possession of lands, tenements, and

hereditaments. On account of the great nicety required in its management, and the introduction of more expeditious methods of trying titles by other actions, it has been laid aside. Finch's Laws, 257; 3 Bouv. Inst. n. 2640.

2. In Louisiana, by this term is understood an action by which one claims to be maintained in the possession of an immovable property, or of a right upon or growing out of it, when he has been disturbed: or to be reinstated to that possession, when he has been divested or evicted. Code of Practice, art. 6; 2 L. R. 227, 454.

POSSIBILITY. An uncertain thing which may happen; Lilly's Reg. h. t.; or it is a contingent interest in real or personal estate. 1 Mad. Ch. 549.

2. Possibilities are near as when an estate is limited to one after the death of another; or remote, as that one man shall be married to a woman, and then that she shall die, and he be married to another. 1 Fonb. Eq. 212, n. e; l6 Vin. Ab. h. t., p. 460; 2 Co. 51 a.

3. Possibilities are also divided into, 1. A possibility coupled with an interest. This may, of course, be sold, assigned, transmitted or devised; such a possibility occurs in executory devises, and in contingent, springing or executory uses.

4. - 2. A bare possibility, or hope of succession; this is the case of an heir apparent, during the life of his ancestor. It is evident that he has no right which he can assign, devise, or even, release.

5. - 3. A possibility' or mere contingent interest, as a devise to Paul if he survive Peter. Dane's Ab. c. 1, a 5, 2, and the cases there cited.

POST. After. When two or more alienations or descents have taken place between an original intruder ant or defendant in a writ of entry, the writ is said to be in the post, because it states that the tenant had not entry unless after the ouster of the original intruder. 3 Bl. Com. 182. See Entry, limit of.

POST DATE. To date an instrument a time after that on which it is made. Vide Date.

POST DIEM. After the day; as a plea of payment post diem, after the, day when the money became due. Com. Dig. Pleader, 2 W 29.

POST DISEISIN, Engl. law. The name of a writ which, lies for him who, having recovered lands and tenements by force of a novel disseisin, is again disseised by a former disseisor. Jacob.

POST ENTRY, maritime law. When a merchant makes an entry on the importation of, goods, and at the time he is not able to calculate exactly the duties which he is liable to pay, gave rise to the practice of allowing entries to be made after the goods have been weighed, measured or gauged, to make up the deficiency of the original or prime entry; the entry thus allowed to be made is called a post entry. Chit. Com. Law, 746.

POST FACTO. after the fact. Vide Ex post facto.

POST LITEM MOTAM. After the commencement of the suit.

2. Declarations or acts of the parties made post litem motam, are presumed to be made with reference to the suit then pending, and, for this reason, are not evidence in favor of the persons making them; while those made before an action has been commenced, in so me cases, as when a pedigree is to be proved, may in some cases be considered as evidence. 4 Camp. 401.

POST MARK. A stamp or, mark put on letters in the post office.

2. Post marks are evidence of a letter having passed through the post office. 2 Camp. 620; 2 B. & P. 316; 15 East, 416; 1 M. & S. 201; 15 Com. R. 206.

POST MORTEM. After death; as, an examination post mortem, is an examination made of a dead body to ascertain the cause of death; an inquisition post mortem, is one made by the coroner.

POST NOTES. A species of bank notes payable at a distant period, and not on demand. 2 Watts & Serg. 468. A kind of bank notes intended to be transmitted at a distance by post. See 24 Maine, R. 36.

POST NATUS. Literally after born; it is used by the old law writers to designate the second son. See Puisne; Post-nati.

POST NUPTIAL. Something which takes place after marriage; as a post nuptial settlement, which is a conveyance made generally by the hushand for the benefit of the wife.

2. A post nuptial settlement is either with or without consideration. The former is valid even against creditors, when in other respects it in untainted with fraud. 4 Mason, 443; 2 Bailey 477. The latter, or when made without consideration, if bona fide, and the hushand be not involved at the time, and it be not disproportionate to his

means, taking his debts and situation into consideration, is valid. 4 Mason, 443.7 See 4 Dall. 304; Settlement; Voluntary conveyance.

POST OBIT, contract. An agreement, by which the obligor borrows a certain sum of money and promises to pay a larger sum, exceeding the lawful rate of interest, upon the death of a person, from whom he has some expectation, if the obligor be then living. 7 Mass. R. 119; 6 Madd. R. 111; 5 Ves. 57; 19 Ves. 628.

2. Equity will, in general, relieve a party from these unequal contracts, as they are fraudulent on the ancestor. See 1 Story, Eq. 842; 2 P. Wms. 182; 2 Sim. R. 183, 192; 5 Sim. R. 524. But relief will be granted only on equitable terms, for he who seeks equity must do equity. 1 Fonb. B. 1, c. 2, 13, note, p; 1 Story, Eq. 344. See Catching Bargain; Macedonian Decree.

POST OFFICE. A place where letters are received to be sent to the persons to whom they, are addressed.

2. The post office establishment of the United States, is of the greatest importance to the people and to the government. The constitution of the United States has invested congress with power to establish post offices and post roads.. Art. 1, s. 8, n. 7.

3. By virtue of this constitutional authority, congress passed several laws anterior to the third day of March, 1825, when an act, entitled "An act to reduce into one the several acts establishing and regulating the post office department," was passed. 3 Story, U. S. 1985. It is thereby enacted, 1. That there be established, the seat of the government of the United States, a general post office, under the direction of a postmaster general. The postmaster general shall appoint two assistants, and such clerks as may be necessary for the performance of the business of his office, and as are authorized by law; and shall procure, and cause to be kept, a seal for the said office, which shall be affixed to commissions of postmasters, and used to authenticate all transcripts and copies which may be required from the department. He shall establish post offices, and appoint postmasters, at all such places as shall appear to him expedieut, on the post roads that are, or may be, established by law. He shall give his assistants, the postmasters, and all other persons whom he shall employ, or who may be employed in any of the departments of the general pos office, instructions relative to their duty. He shall provide for the carriage of the mail on all post roads that are, or may be, established by law, and as often "he, having regard to the productiveness thereof, and other circumstances, shall think proper. He may direct the route or road, where there are more than one, between places designated by law for a post road, Which route shall be considered the post road. He shall obtain, from the postmasters, their accounts and vouchers for their receipts and expenditures, once in three months, or oftener, with the balances thereon arising, in favor of the general post

office. He shall pay all expenses which may arise in conducting the post office, and in the conveyance of the mail, and all other necessary expenses arising on the collection of the revenue, and management of the general post office. He shall prosecute offences against the post office establishment. He shall, once in three months, render, to the secretary of the treasury, a quarterly account of all the receipts and expenditures in the said department, to be adjusted and settled as other public accounts. He shall, also, superintend the business of the department in all tho duties that are, or may be assigned to it: Provided, That, in case of the death, resignation, or, removal from office, of the postmaster general, all his duties shall be performed by his senior assistant, until a successor shall be appointed, and arrive at the general post office, to perform the business.

4. - 2. That the postmaster general, and all other persons employed in the general post office, or in the care, custody, or conveyance of the mail, shall, previous to entering upon the duties assigned to them, or the execution of their trusts, and before they shall be entitled to receive any emolument therefor, respectively take and subscribe the following oath, or affirmation, before some magistrate, and cause a certificate thereof to be filed in the general post office: "I, A B, do swear or affirm, (as the case may be, that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of the post office and post road s within the United States." Every person who shall be, in any manner, employed in the care, custody, or conveyance, or mauagement of the mail, shall be subject to all pains, penalties, and forfeitures, for violating the injunctions, or neglecting the duties, required of him by the laws relating to the establishment of the post office and post roads, whether such person shall have taken the oath or affirmation, above prescribed, or not.

5. - 3. That it shall be the duty of the postmaster general, upon the appointment of any postmaster, to require, and take, of such postmaster, bond, with good and approved security, in such penalty as he may judge sufficient, conditioned for the faithful discharge of all the duties of such postmaster, required by law, or which may be required by any instruction, or general rule, for the government of the department: Provided, however, That, if default shall be made by the postmaster aforesaid, at any time, and the postmaster general shall fail to institute suit against such post-master, and said sureties, for two years from and after such default shall be made, then, and in that case, the said sureties shall not be held liable to the United States, nor shall suit be instituted against them.

6. - 4. That the postmaster general shall cause a mail to be carried from the nearest post office, on any established post road, to the court house of any county which is now, or may hereafter be established in any of the states or territories of the United States, and which is without a mail; and the road on which such mail shall be

transported, shall become a post road, and so continue, until the transportation thereon shall cease. It shall for the postmaster general to enter into contracts, for a term not exceeding four years, for extending the line of posts, and to authorize the persons, so contracting, as a compensation for their expenses, to receive during the continuance of such contracts, at rates not exceeding those for like distances, established by this act, all the postage which shall arise on all letters, newspapers, magazines, pamphlets, and packets, conveyed by any such posts; and the roads designated in such contracts, shall, during the continuance thereof, be deemed and considered as post roads, within the provision of this act: and a duplicate of every such contract shall, within sixty days after the execution thereof, be lodged in the office of the comptroller of the treasury of the United States.

7. - 5. That the postmaster general be authorized to have the mail carried in any steamboat, or other vessel, which shall be used as a packet in, any of the waters of the United States, on such terms and conditions as shall be considered expedient: Provided, That he does not pay more than three cents for each letter, And more than one half cent for each newspaper, conveyed in such mail.

8. - 8. That, whenever it shall be made appear, to the satisfaction of the postmaster general, that any road established, or which may hereafter be established as a post road, is obstructed by fences, gates, or tars, or other than those lawfally used on turnpike, roads to collect their toll, and not kept in good repair, with proper bridges and ferries, where the same may be necessary, it shall be the duty of the postmaster general to report the same to congress, with such information as can be obtained, to enable congress to establish some other road instead of it, in the same main direction.

9. - 39. That it shall be the duty of the postmaster general to report, annually, to congress, every post road which shall not, after the second year from its establishment, have produced one-third of the expense of carrying the mail on the same.

10. The act "to change the organization of the post office department, and to provide more effectually for the settlement of the accounts thereof," passed July 2, 1836, 4 Shars. cont. of Story L. U. S. 2464, contains a variety of minute provisions for the settlement of the revenue of the post office department.

11. By the act of the 3d of March, 1845, various provisions are made to protect the department from fraud and to prevent the abuse of franking.

12. Finding roads in use throughout the country, congress has established, that is, selected such as suited the convenience of the government, and which the exigencies of the people required, to be post roads. It has seldom exercised the power of making

new roads, but examples are not wanting of roads having been made under the express authority of congress. Story, Const. 1133. Vide Dead Letter; Jeopardy; Letter; Mail; Newspaper; Postage; Postmaster; Postmaster general.

POSTAGE. The money charged by law for carrying letters, packets and documents by mail. By act of congress of March 3, 1851, Minot's Statute at Large, U. S. 587, it is enacted as follows:

2. - 1. That from and after the thirtieth day of June, eighteen hundred and fifty-one, in lieu of the rates of postage now established by law, there shall be charged the following rates, to with or every single letter in manuscript, or paper of any kind, upon which information shall be asked for, or communicated, in writing, or, by marks or signs, conveyed in the mail for any distance between places within the United State's, not exceeding three thousand miles, when the postage upon such letter shall have been prepaid, three cents, and five cents when the postage thereon shall not have been prepaid; and for any distance exceeding three thousand miles, double those rates. For every such, single letter or paper when conveyed wholly or in part by sea, and to or from a foreign country, for any distance over twenty-five hundred miles, twenty cents, and for any distance under twenty-five hundred miles, ten cents, (excepting, however, all cases where such postages have been or shall be adjusted at different rates, by postal treaty or convention already concluded or hereafter to be made;) and for a double letter there shall be charged double the rates above specified; and for a treble letter, treble those rates; and for a quadruple letter, quadruple those rates; and every letter or parcel not exceeding half an ounce in weight shall be deemed a single letter, and every additional weight of half an ounce, or additional weight of less than half an ounce, shall be charged with an adclitional single postage. And all drop letters, or letters placed in any post office, not for transmission, but for delivery only, shall be charged with postage at the rate of one cent each; and all letters which shall hereafter be advertised as remaining over or uncalled for in any post office, shall be charged with one cent in addition to the regular postage, both to be accounted for as other postages are.

3. - 2. That all newspapers not exceeding three ounces in weight, sent from the office of publication to actual and bona fide subscribers, shall be charged with postage as follows, to wit: All newspapers published weekly only, shall circulate in the mail free of postage within the county where published, and that the postage on the regular numbers of a newspaper published weekly, for any distance not exceeding fifty miles out of the county where published, shall be five cents per quarter; for any distance exceeding fifty miles and not exceeding three hundred miles, ten cents per quarter; for any distance exceeding three hundred miles and not exceeding one thousand miles, fifteen cents per quarter; for any distance exceeding one thousand miles and not exceeding two thousand miles, twenty cents per quarter; for any distance exceeding

two thousand miles and not exceeding four thousand miles, twenty-five cents per quarter; for any distance exceeding four thousand miles, thirty cents per quarter; and all newspapers published monthly, and sent to actual aud bona fide subscribers, shall be charged with one-fourth the foregoing rates; and on all such newspapers published semi-monthly shall be charged with one-half the foregoing rates; and papers published semi-weekly shall be charged double those rates; triweekly, treble those rates; and oftener than tri-weekly, five times, those rates. And there shall be charged upon every other newspaper, and each circular not sealed, handbill, engraving, pamphlet, periodical, magazine, book, and every other description of printed matter, which shall be unconnected with any manuscript or written matter, and which it may be lawful to transmit through the mail, of no greater weight than one ounce, for any distance not exceeding five hundred miles, one cent; and for each additional ounce or fraction of an ounce, one cent; for any distance exceeding five hundred miles and not exceeding one thousand five hundred miles, double those rates; for any distance, exceeding one thousand five hundred miles-and not exceeding two thousand five hundred miles, treble those rates; for any distance exceeding two thousand five hundred miles and not exceeding three thousand five hundred miles, four times those rates; for any distance exceeding three thousand five hundred miles, five times those rates. Subscribers to all periodicals shall be required to pay one quarter's postage in advance, and in all such cases the postage shall be one-half the foregoing rates. Bound books, and parcels of printed matter not weighing over thirty-two ounces, shall be deemed mailable matter under the provisions of this section. And the postage on all printed matter other than newspapers and periodicals published at intervals not exceeding three months, and sent from the office of publication, to actual and bona fide subscribers, to be prepaid; and in ascertaining the weight of newspapers for the purpose of determining the amount of postage chargeable thereon, they shall be weighed when in a dry state, And whenever any printed matter on which the postage is required by this section to be prepaid, shall, through the inattention of postmasters or otherwise, be sent without prepayment, the same shall be charged with double the amount of postage which would have been chargeable thereon if the postage had been prepaid; but nothing in this act contained shall subject to postage any matter which is exempted from the payment of postage by any existing law, And the postmaster general, by and with the advice and consent of the president of the United States, shall be, and he hereby is, authorized to reduce or enlarge, from time to time, the rates of postage upon all letters. and other mailable matter conveyed between the United States and any foreign country for the purpose of making better postal arrangements with other governments, or counteracting any adverse measures affecting our postal intercourse with foreign countries, and postmasters at the office of delivery are hereby authorized, and it shall be their duty, to remove the wrappers and envelopes from all printed matter and pamphlets not charged with letter postage, for the purpose of ascertaining whether there is upon or connected with any such printed matter, or in such package, any

matter or thing which would authorize or require the charge of a higher rate of postage thereon. And all publishers of pamphlets, periodicals, magazines, and newspapers, which shall not exceed sixteen ounces in weight, shall be allowed. to interchange their publications reciprocally, free of postage: Provided, That such interchange shall be confined to a single copy of each publication: And provided, also, That said publishers may enclose in their publications the bills for subscriptions thereto, without any additional charge for postage; And provided, further, Thai in all cases where newspapers shall not contain over three hundred square inches, they may be transmitted through the mails by the publishers to bona fide subscribers, at one-fourth the rates fixed by this act.

5. By the act of March 3, 1845, providing for the transportation of the mail between the United States and foreign countries, it is enacted by the 3d section, that the rates of postage to be charged and collected on all letters, packages, newspapers, and pamphlets, or other printed matter, between the ports of the United States and the ports of foreign governments enumerated herein, transported in the United States mail under the provisions of this act, shall be as follows: Upon all letters and packages not exceeding one-half ounce in weight, between any of the ports of the United States aud the ports of England or France, or any other foreign port not less than three thousand miles distant twenty-four cents, with the inland postage of the United States added when sent through the United States mail to or from the post office at a port of the United States; upon letters and packets over one-half an ounce in weight, and not exceeding one ounce, forty-eight cents; and for every additional half ounce or fraction of an ounce, fifteen cents; upon all letters and packets not, exceeding one-half ounce, gent through the United States mail between the ports of the United States and any of the West India islands, or islands in the Gulf of Mexico, ten cents; and twenty cents upon letters and packets not exceeding one ounce; and five cents for every additional half ounce or fraction of an ounce; upon each newspaper, pamphlet, and price current, sent in the mail between the United States and any of the ports and places above enumerated, three cents, with inland United States postage added when the same is transported to or from said port of the United States in the United States mail.

POSTAGE STAMPS. The act of congress, approved March 3, 1847, section 11, and the act of congress of March 3, 1841, sections 3, 4, provide that, to facilitate the transportation of letters in the mail, the postmaster general be authorized to prepare postage, stamps, which, when attached to any letter or packet, shall be evidence of the payment of the postage, chargeable on such letter. The same sections declare that any person who shall falsely or fraudulently make, utter, or, forge any postage stamp, with the intent to defraud the post office department, shall be deemed guilty of felony, and be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding five years, or by both such fine and imprisonment. And if any person shall

use or attempt to use, in pre-payment of postage, any postage stamp which shall have been used before for like purposes, such person shall be subject, to a penalty of fifty dollars for every such offence, to be recovered in the name of the United States in any court of competent jurisdiction.

POSTEA, practice. Afterwards. The endorsement on the nisi prius record purporting to be the return of the judge before whom a cause is tried, of, what has been done in respect of such record. It states the day of trial, before what judge, by name, the cause is tried, and also who is or was an associate of such judge; it also states the appearance of the parties by their respective attorneys, or their defaults; and the summoning and choice of the jury, whether those who were originally summoned, or those who were tales, or taken from the standers by; it then states the finding of the jury upon oath, and, according to the description of the action, and the assessment of the damages with the occasion thereof, together with the costs.

2. These are the usual matters of fact contained in the postea, but it varies with the description of the action. See Lee's Dict. Postea; 2 Lill. P. R. 337; 16 Vin. Abr. 465; Bac. Use of the Law, Tracts, 127, 5.

3. When the trial is decisive, and neither the law nor the facts can afterwards be controverted, the postea is delivered by the proper officer to the attorney of the successful party, to sign his judgment; but it not unfrequently happens that after a verdict has been given, there is just cause to question its validity, in such case the postea remains in the custody of the court. Eunom. Dial. 2, 33, p. 116.

POSTERIORES. This term was used by the Romans to denote the descendant in a direct line beyond the sixth degree. It is still used in making genealogical tables.

POSTERIORITY, rights. Being or, coming after. It is a word of comparison, the correlative of which is priority; as, when a man holds lands from two landlords, he holds from his ancient landlord by priority and from the other by posteriority. 2 Inst. 392.

2. These terms, priority and posteriority, are also used in cases of liens the first are prior liens, and are to be paid in the first place; the last are posterior liens, and are not entitled to payment until the former have been satisfied.

POSTERITY, descents. All the descendants of a person in a direct line.

POSTHUMOUS CHILD. after the death of its father; or, when the Caesarian operation is performed, after that of the mother.

2. Posthumous children are entitled to take by descent as if they had been born at the time of their deceased ancestor. When a father has made a will without providing for a posthumous child, such a will is in some states, as in Pennsylvania, revoked pro tanto by implication. 4 Kent, Com. 506; Dig. 28, 5, 92; Ferriere, Com. h. t.; Domat, Lois Civiles, part 2 ' liv. 2, t. 1, s. 1: Merl. Rep. h. t.; 2 Bouv. Inst. n. 2158.

POSTILS, postillae. Marginal notes made in a book or writing for reference to other parts of the same, or some other book or writing.

POSTLIMINIUM. That right in virtue of which persons and things taken by the enemy are restored to their former state, when coming again under the power of the nation to which they belong. Vat. Liv. 3, c. 14, s. 204; Chit. Law of Nat. 93 to, 104; Lee on Captures, ch. 5; Mart. Law of Nat. 305; 2 Wooddes. p. 441, s. 34; 1 Rob. Rep. 134; 3 Rob. Rep. 236; Id. 97 2 Burr. 683; 10 Mod. 79; 6 Rob. R. 45; 2 Rob. Rep. 77; 1 Rob. Rep. 49; 1 Kent, Com. 108.

2. The jus posiliminii was a fiction of the Roman law. Inst. 1, 12, 5.

3. It is a right recognized by the law of nations, and contributes essentially to mitigate the, calamities of war. When, therefore, property taken by the enemy is either recaptured or rescued from him, by the fellow subjects or allies of the original owner, it does not become the property of the recaptor or rescuer, as if it had been a new prize, but it is restored to the original owner by right of postliminy, upon certain terms.

POSTMAN, Eng. law. A barrister in the court of exchequer, who has precedence in: motions.

POSTMASTER, or DEPUTY POSTMASTER. An officer of the United States appointed by the postmaster general to hold his office. during the, plaasure of the former. Before entering on the duties of his office, he is required to give bond with surety to be approved by the postmaster general. Act of 3d March, 1825, s. 3. 12. Every postmaster is required to keep an office in the place for which he may be appointed; and it is his duty to receive and forward by mail, without delay, all letters, papers, and packets as directed; to receive the mails and deliver, at all reasonable hours, all letters, papers and packets to the persons entitled thereto.

3. In lieu of commissions allowed deputy postmasters by the 14th section of the act of 3d March, 1845,.the postmaster general is authorized by the act of March 1, 1847, s. 1, to allow, on the proceeds of their respective offices, a commission not exceeding the following rates on the amount received in any one year, or a due proportion thereof for less-than a year: On a sum not exceeding one hundred dollars, forty per

cent; on a sum over the first hundred and not exceeding four hundred dollars, thirty-three and one-third per cent; on a sum over and above the first four hundred dollars and not exceeding twenty-four hundred dollars, thirty per cent.; on a sum over twenty-four hundred dollars, twelve and one-half per cent.; on all sums arising from the postage on newspapers, magazines, and pamphlets, fifty per cent.; on the amount of postages on letters or packets received for distribution, seven per cent.: Provided, That all allowances, commissions, or other emoluments, shall be subject to the provisions of the forty-first section of the act which this is intended to amend; and that the annual compensation therein limited shall be computed for the fiscal year commencing on the first of July and ending the thirtieth of June each year, and that for any period less than a year the restrictions contained in said section shall be held to apply in a due proportion for such fractional period: And, provided further, That the compensation to any,, deputy postmaster under the foregoing provisions to be computed upon the receipt at his office of a larger sum shall in no case fall short of the amount to which he would be entitled under a smaller sum received at his office.

4. By act of congress approved March 3, 1851, 6, it is enacted, That to any postmaster whose commissions may be reduced below the amount allowed at his office for the year ending the thirtieth day of June, eighteen hundred and fifty-one, and whose labors may be increased, the postmaster general shall be authorized, in his discretion, to allow such additional commissions as be may deem just and proper Provided, That the whole amount of commissions allowed such postmaster during any fiscal year, shall not exceed by more than twenty per centum the amount of commissions at such office for the year ending the thirtieth day of June, eighteen hundred and fifty-one.

5. Although not subject to all the, responsibilities of a common carrier, yet a postmaster is liable for all losses and injuries occasioned by his own default in office. 3 Wils. Rep. 443; Cowp. 754; 5 Burr. 2709; 1 Bell's Com. 468; 2 Kent. Com. 474; Story on Bailm. 463.

6. Whether a postmaster is liable for the acts of his clerks or servants seems not to be settled. 1 Bell's Com. 468, 9. In Pennsylvania it has been decided that he is not responsible for their secret delinquencies, though perhaps he is answerable for want of attention to the official conduct of his subordinates. 8 Watts. R. 453. Vide Frank; Post Office.

POSTMASTER GENERAL. The chief officer of the post office department of the United States. Various duties are imposed upon this officer by the acts of congress of March 3, 1825, and July 2, 1836, which will be found under the articles Mail; Post Office and Postage.

2. The act of February 20, 1819, 3 Story's L. U. S. 1720, gives the postmaster general a salary of four thousand dollars per annum and that of March 2, 1827, 3 Story's L. U. S. 2076, declares there shall be paid, annually, to the postmaster general two thousand dollars, in addition to his present salary.

POST NATI. Born after. This term is applied to persons who came to reside in tho United States after the declaration of independence. They are generally considered aliens, unless they become naturalized, or are otherwise so declared, by law. In Massachusetts, by statutory provision, and in Connecticut, by decision, a person born abroad, if he went there to reside before the treaty of peace of the 3d of September, 1783, is considered a citizen. 2 Pick. R. 394 5 Day, R. 169; 2 Kent, Com. 51, 2.

POSTULATIO, Rom. civ. law. The name given to the first act in a criminal proceeding. A person who wished to accuse another of a crime, appeared before the praetor and asked his authority for that purpose, designating the person intended. This act was called postulatio. The postulant (calumniam jurabat) made oath that he was not influenced by a spirit of calumny, but acted in good faith, with a view to the public interest. The praetor received this declaration, at, first made verbally, but afterwards in writing, and called a libel. The postulatio was posted lip in the forum, to give public notice of the names of the accuser and the accused. A second accuser sometimes appeared and went through the same formalities.

2. Other persons were allowed to appear and join the postulant or principal accuser. These were said postulare subscriptionem and were denominated subscriptores. Cic. in Caecil Divin. 15. But commonly such persons acted concurrently with the postulant, and inscribed, their names at the time he first appeared. Only one accuser, however, was allowed to act, and if the first inscribed did not desist in favor of the second, the right was determined, after discussion, by judges appointed for the purpose. Cic. in Verr. I. 6. The preliminary proceeding was called divinatio, and is well explained, in the oration of Cicero, entitled Divinatio. Bee Aulus Gellius, Att. Noct. lib. II. cap. 4.

3. The accuser having been determined in this manner, he appeared, before the praetor, and formally charged the accused by name, specifying the crime. This was called nominis et criminis, delatio. The magistrate reduced it to writing, which was called inscriptio, and the accuser and his adjuncts, if any, signed it, subscribebant. This proceeding corresponds to the indictment of the common law.

4. If the accused appeared, the accuser formally charged him with the crime. If the accused confessed it, or stood mute, he was adjudged to pay the penalty. If he denied it, the inscriptio contained his answer, and he was then (in reatu) indicted, (as we should say) and was called reus, and a day was fixed, ordinarily after an interval of at

least ten days, according to the nature of the case, for the appearance of the parties. In the case of Verres, Cicero obtained one hundred and ten days to prepare his proofs, although he accomplished it in fifty days, and renounced, as he might do, the advantage of the remainder of the time allowed him.

5. At the day appointed for the trial the accuser and his adjuncts or colleagues, the accused, and the judges, were summoned by the herald of the preator. If the accuser did not appear, the' case was erased from the roll. If the accused made default he was condemned. If both parties appeared, a jury was drawn by the praetor or judex questionis. The jury were called jurati homines, and the drawing of them sortitio, and they were taken from a general list made out for the year. Either party had a right to object to a certain extent to the persons drawn, and then there was a second drawing called subsortitio, to complete the number.

6. In some tribunals (quaestiones) the jury were (editi) produced in equal number by the accuser and the accused, and sometimes by the accuser alone, who were objected to or challenged in different ways, according to the nature of the case. The number of the jury also varied according to the. tribunal, (quaestio) they were sworn before the trial began. Hence they were called jurati.

7. The accusers ana often the subscriptores were heard, and afterwards the accused, either by himself or by his advocates, of whom he commonly had several. The witnesses, who swore by Jupiter, gave their testimony after the discussions or during the progress of the pleadings of the accuser. In some cases it was necessary to plead the cause on the third day following the first hearing, which was called comperendinatio.

8. After the pleadings were concluded the praetor or the judex quastionis distributed tablets to the jury, upon which each wrote secretly, either the letter A (absolvo) or the letter C, (condemno) or N. L. (non liquet.) These tablets were deposited in an urn. The president assorted and counted the tablets. If the majority were for acquitting the accused, the magistrate declared it by the words fecisse non videtur, and by the words fecisse videtur if the majority were for a conviction. If the tablets marked N. L. were so many as to prevent an absolute majority for a conviction or acquittal, the cause was put off for more ample information, ampliatio, which the preator declared by the word amplies. Such in brief was the course of proceedings before the quaestiones perpeduae.

9. The forms observed in the comitia centiniata and comitia tributa were nearly the same, except the composition of the tribunal, and the mode of declaring the vote.

10. It is easy to perceive in this account of a criminal action, the germ of the proceedings on an indictment at common law.

POT-DE-VIN, French law. A sum of money frequently paid, at the moment of entering into a contract, be=yond the price agreed upon.

2. It differs from arrha, (q. v.) in this, that it is no part of the price of the thing sold, and, that the person who has received it, cannot by returning double the amount, or the other party by losing what he has paid, rescind the contract. 18 Toull. n. 52.

POTENTATE. One who has a great power over, an extended country; a sovereign.

2. By the naturalization laws, an alien is required, before he can be naturalized, to renounce all allegiance aud fidelity to any foreign prince, potentate, state, or sovereign whatever.

POTESTAS, civil law. A Latin word which signifies power; authority; domination; empire. It has several meaning. 1. It signifies imperium, or the jurisdiction of magistrates. 2. The power of the father over his children, patriapotestas. 3. The authority of masters over their slaves, which makes it nearly synonymous with dominium. See Inst. 1, 9, et 12; Dig. 2, 1, 13, 1; Id. 14, 1; Id. 14, 4, 1, 4.

POUND, weight. There are two kinds of weights, namely, the troy, and the avoirdupois. The pound avoirdupois is greater than the troy pound, in the proportion of seven thousand to five thousand seven hundred and sixty. The troy pound contains twelve ounces, that of avoirdupois sixteen ounces.

POUND, Eng. law. A place enclosed to keep strayed animals in. 5 Pick. 514; 4 Pick. 258; 9 Pick. 14.

POUND, money. The sum of twenty shillings. Previous to the establishment of the federal currency,, the different states made use of the pound in computing money; it was of different value in the several states.

2. Pound sterling, is a denomination of money of Great Britain. It is of the value of a sovereign. (q. v.) In calculating the rates of duties, the pound sterling shall be considered and taken as of the value of four dollars and eighty cents. Apt of March 3, 1833.

3. The pound sterling of Ireland is to be computed, in calculating said duties, at four dollars and ten cents. Id.

4. The pound of the British provinces Nova Scotia, New Brunswick, Newfoundland, and Canada, is to be so computed at four dollars. Act of May, 22, 1846.

POUNDAGE, practice. The amount allowed to the sheriff, or other officer, for commissions on, the money made by virtue of an execution. This allowance varies in different states, and to different officers.

POURPARLER, French law. The conversations and negotiations which have taken place between the parties in order to make an agreement. These form no part of the agreement. Pard. Dr. Com. 142.

2. The general rule in the common law is the same, parol proof cannot, therefore, be given to contradict, alter, add to, or diminish a written instrument, except in some particular cases. 1 Dall. 426; Dall. 340; 8 Serg. & Rawle, 609; 7 Serg. Rawle, 114.

POURSUIVANT. A follower, a pursuer. In the ancient English law, it signified an officer who attended upon the king in his wars, at the council table, exchequer, in his court, &e., to be sent as a messenger. A poursuivant was, therefore, a messenger of the king.

POWER. This is either inherent or derivative. The former is the right, ability, or faculty of doing something, without receiving that right, ability, or faculty from another. The people have the power to establish a form of govemment, or to change one already established. A father has the legal power to chastise his son; a master, his apprentice.

2. Derivative power, which is usually known, by the technical name of power, is an authority by which one person enables another to do an act for him. Powers of this kind were well known to the common law, and were divided into two sorts: naked powers or bare authorities, and powers coupled with an interest. There is a material difference between them. In the case of the former, if it be exceeded in the act done, it is entirely void; in the latter it is good for so much as is within the power, and void for the rest only.

3. Powers derived from, the doctrine of uses may be defined to be an authority, enabling a person, through the medium of the statute of uses, to dispose of an interest, vested either in himself or another person.

4. The New York Revised Statute's define a power to be an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power might himself lawfully perform.

5. They are powers of revocation and appointment which are frequently inserted in conveyances which owe their effect to the statute of uses; when executed, the uses originally declared cease, and new uses immediately arise to the persons named in the appointment, to which uses the statute transfers the legal estate and possession.

6. Powers being found to be much more convenient than conditions, were generally introduced into family settlements. Although several of these powers are not usually called powers of revocation, such as powers of jointuring, leasing, and charging settled estates with the payment of money, yet all these are powers of revocation, for they operate as revocations, pro tanto, of the preceding estates. Powers of revocation and appointment may be reserved either to-the original owners of the land or to strangers: hence the general division of powers into those which relate to the land, and those which are collateral to it.

7. Powers relating to the land are those given to some person having an interest in the land over which they are to be exercised. These again are subdivided into powers appendant and in gross.

8. A power appendant is where a person has an estate in land, with a power of revocation and appointment, the execution of which falls within the compass of his estate; as, where a tenant for life has a power of making leases in possession.

9. A power in gross is where a person has an estate in the land, with a power of appointment, the execution of which falls outof the compass of his estate, but, notwithstanding, is annexed in privity to it, and takes effect in the appointee, out of an interest vested in the appointer; for instance, where a tenant for life has a power of creating an estate, to commence after the determination of his own, such as to settle a jointure on his wife, or to create a term of years to commence after his death, these are called powers in gross, because the estate of the person to whom they are given, will not be affected by the execution of them.

10. Powers collateral, are those which are given to mere strangers, who have no interest in the laud: powers of sale and exchange given to trustees in a marriage settlement are of this kind. Vide, generally, Powell on Powers, assim; Sugden on Powers, passim; Cruise, Dig. tit. 32, ch.

13; Vin. Ab. h. t.; C om. Dig. Poiar; 1 Supp. to Ves. jr. 40, 92, 201, 307; 2 Id. 166, 200; 1 Vern. by Raithby, 406; 3 Stark. Ev. 1199; 4 Kent, Com. 309; 2 Lilly's Ab. 339; Whart. Dig. h. t. See 1 Story, Eq. Jur. 169, as to the execution of a power, and when equity will supply the defect of execution.

11. This classification of powers is admitted to be important only with reference to the ability of the donee to suspend, extinguish or merge the power. The general rule is that a power shall not be exercised in derogation of a prior grant by the appointer. But this whole division of powers has been condemned' as too artificial and arbitrary.

12. Powell divides powers into general and particular. powers. General powers are those to be exercised in favor of any person whom the appointer chooses. Particular powers are those which are to be exercised in favor of specific objects. 4 Kent, Com. 311, Vide, Bouv. Inst. Index, h. t.; Mediate powers; Primary powers.

POWER OF ATTORNEY. Vide Letter of attorney, and 1 Mood. Or. Cas. 57, 58.

POYNING'S LAW, Engl. law. The name usually given to an act which was passed by a parliament holden in Ireland in the tenth of Henry the Seventh; it enacts that all statutes made in the realm of England before that time should be in force and put in use in the realm of Ireland. Irish Stat. 10 H. VII. c. 22; Co. Litt. 141 b; Harg. n. 3.

PRACTICE. The form, manner and order of conducting and carrying on suits or prosecutions in the courts through their various stages, according, to the principles of law, and the rules laid down by the respective courts.

2. By practice is also meant the business which an attorney or counsellor does; as, A B has a good practice.

3. The books on practice are very numerous; among the most popular are those Of Tidd, Chiity, Archbold, Sellon, Graham, Dunlap, Caines, Troubat and Haly, Blake, Impey.

4. A settled, uniform, and loll, continued practice, without objection is evideuce of what the law is, and such practice is based on principles which are founded in justice and convenience. Buck, 279; 2 Russ. R. 19, 570; 2 Jac. It. 232; 5 T. R. 380; 1 Y. & J. 167, 168; 2 Crompt. & M. 55; Ram on Judgm. ch. 7.

PRAEDA BELLICA. Lat. Booty; property seized in war. Vide Booty; Prize.

PRAECIPE or PRECIPE, practice. The name of the written instructions given by an attorney or plaintiff to the clerk or prothonotary of a; court, whose duty it is to make out the writ, for the making of the same.

PRAEDIAL. That which arises immediately from the ground; as, grain of all sorts, hay, wood, fruits, herbs, and the like.

PRAEDIUM DOMINANS, civil law. The name given to an estate to which a servitude is due; it is called the ruling estate.

PRAEDIUM RUSTICUM, civil law. By this is understood all heritages whicb are not destined for the use of man's habitation; such, for example, as lands, meadows, orchards, gardens, woods, even though they should be within the boundaries of a city.

PRAEDIUM SERVIENS, Civil law. The name of an estate which suffers or yields a service to another estate.

PRAEDIUM URBANUM, civil law. By this term is understood buildings and edifices intended for the habitation and use of man, whether they be built in cities or whether they be constructed in the country.

PRAEFECTUS VIGILUM, Roman civ. law. The chief officer of the night watch. His jurisdiction extended to certain offences affecting the public peace; and even to larcenies. But he could inflict only slight punishments.

PRAEMUNIRE. In older to prevent the pope from assuming the supremacy in granting ecclesiastical livings, a number of statutes were made in England during the reigns of Edward I., and his successors, punishing certain acts of submission to the papal authority, therein mentioned. In the writ for the execution of these statutes, the words praemunire facias, being used, to command a citation of the party, gave not only to the writ, but to the offence itself, of maintaining the papal power, the name of praemunire. Co. Lit. 129; Jacob's L. D. h. t.

PRAETOR, Roman civil law. A municipal officer of Rome, so called because, (praeiret populo,) he went before or took precedence of the people. The consuls were at first called praetors. Liv. Hist. III. 55. He was a sort of minister of justice, invested with certain legislative powers, especially in regard to the forms or formalities of legal proceedings. Ordinarily, be aid not decide causes as a judge, but prepared the grounds of decision for the judge and sent to, him the questions to be decided between the parties. The judge was always chosen by the parties, either directly, or by rejecting, under certain rules and limitations, the persons proposes to them by the praetor. Hence the saying of Cicero, (pro Cluentis, 43,) that no one could be judged except by a judge of his own choice. There were several kinds of officers called proctors. See Vicat, Vocab.

2. Before entering on his functions he published an edict announcing the system adopted by him for the application and interpretation of the laws during his magistracy. His authority extended over all jurisdictions, and was summarily expressed by the word do, dico, addico, i, e. do I give the action, dico I declare the

law, I promulgate the edict, addico I invest the judge with the right of judging. There were certain cases which he was bound to decide himself, assisted by a council chosen by himself perhaps the Decemvirs. But the greater part of causes brought before him, be sent either to a judge, an arbitrator, or to recuperators, (recuperatores,) or to the centumvirs, as before stated. Under the empire the powers of the praetor passed by degrees to the praefect of the praetorium, or the praefect of the city; so that this magistrate, who at first ranked with the consuls, at last dwindled into a director or manager of the public spectacles or games.

3. Till lately, there were officers in certain cities of Germany denominated praetors Vide 1 Kent, Com. 528.

PRAGMATIC SANCTION, French law. This expression is used to designate those ordinances which concern the most important object of the civil or ecclesiastical administration. Merl. Repert, h. t.; 1 Fournel, Hist. des Avocats, 24, 38, 39. 2. In the civil law, the answer given by the emperors on questions of law, when consulted by a corporation or the citizens of a province, or of a, municipality, was called a pragmatic sanction. Lecons El. du Dr. Civ. Rom. 53. This differed from a rescript. (q. v.)

PRAYER, chanc. pleadings. That part of a bill which asks for relief.

2. The skill of the solicitor is to be exercised in framing this part of the bill. An accurate specification of the matters to be decreed in complicated cases, requires great discernment and experience; Coop. Eq. Pl. 13; it is varied as the case is made out, concluding always with a prayer of general relief, at the discretion of the court. Mitf. Pl. 45.

PRAYER OF PROCESS, chanc. plead. That part of a bill which prays that the defendant be compelled to appear and answer the bill, and abide the determination of the court on the subject, is called prayer of process. This prayer must contain the name's of all Persons who are intended to be made parties. Coop. Eq. Pl. 16; Story, Eq. Pl. 44.

PRAYER FOR RELIEF, chan. pleading. This is the name of that part of the bill, which, as the phrase imports, prays for relief. This prayer is either general or special but the general course is for the plaintiff to make a special prayer for particular relief to which he thinks himself entitled, and then to conclude with a prayer of general relief at the discretion of the court. Story, Eq. Pl. 40; 4 Bouv. Inst. n. 4174-6.

PREAMBLE. A preface, an introduction or explanation of what is to follow: that clause at the head of acts of congress or other legislatures which explains the reasons

why the act is made. Preambles are also frequently put in contracts to, explain the motives of the contracting parties,

2. A preamble is said to be the key of a statute, to open the minds of the makers as to the mischiefs which are to be remedied, and the objects which are to be accomplished by the provisions of the statutes. It cannot amount, by implication, to enlarge what is expressly given. 1 Story on Const. B 3, c. 6. How far a preamble is to be considered evidence of the facts it recites, see 4 M. & S. 532; 1 Phil. Ev. 239; 2 Russ. on Cr. 720; and see, generally, Ersk. L. of Scotl. 1, 1, 18; Toull. liv. 3, n. 318; 2 Supp. to Ves. jr. 239; 4 L. R. 55; Barr. on the Stat. 353, 370.

PRECARIOUS RIGHT. The right which the owner of a thing transfers to another, to enjoy the same until it shall please the owner to revoke it.

2. If there is a time fixed during which the right may be used it is then vested for that time, and cannot be revoked until after its expiration. Wolff, Inst. 833.

PRECARIUM. The name of a contract among civilians, by which the owner of a thing at the request of another person, gives him a thing to use as long as the owner shall please. Poth. h. t. n. 87. See Yelv. 172; Cro. Jac. 236; 9 Cowen, 687; Roll. R. 128; Bac. Ab. Bailment, c; Ersk. Prin. B. 3, t. 1, n. 9; Wolff, Ins. Nat. 333.

2. A tenancy at will is a right of this kind.

PRECATORY WORDS. Expressions in a will praying or requesting that a thing shall be done.

2. Although recommendatory words used by a testator, of themselves, seem to leave the devisee to act as he may deem proper, giving him a discretion, as when a testator gives an estate to a devisee, and adds that he hopes, recommends, has a confidence, wish or desire that the devisee shall do certain things for the benefit of another person; yet courts of equity have construed such precatory expressions as creating a trust. 18 Ves. 41; 8 Ves. 380; Bac. Ab. Legacies, B, Bouv. ed.

3. But this construction will not prevail when either the objects to be benefited are imperfectly described, or the amount of property to which the trust should attach, is not sufficiently defined . 1 Bro. C. C. 142; 1 Sim. 542, 556. See 2 Story, Eq. Jur. 1070; Lewin on Trusts, 77; 4 Bouv. Inst. n. 3953.

PRECEDENCE. The right of being first placed in a certain order, the first rank being supposed the most honorable.

2. In this country no precedence is given by law to men.

3. Nations, in their intercourse with each other, do not admit any precedence; hence in their treaties in one copy one is named first, and the other in the other. In some cases of officers when one must of necessity act as the chief, the oldest in commission will have precedence; as when the president of a court is not present, the associate who has the oldest commission will have a precedence; or if their. commissions bear the same date, then the oldest man.

4. In. the, army and navy there is an order of precedence which regulates the officers in their command.

PRECEDENTS. the decision of courts of justice; when exactly in point with a case before the court, they are generally held to have a binding authority, as well to keep the scale of justice even and steady, as because the law in that case has been solemnly declared and determined. 9 M. R. 355.

2. To render precedents valid, they must be founded in reason and justice; Hob. 270; must have been made upon argument, and be the solemn decision of the court; 4 Co. 94; and in order to give them binding effect, there must be a current of decisions. Cro. Car. 528; Cro. Jac. 386; 8 Co. 163.

3. According to Lord Talbot, it is "much better to stick to the known general rules, than to follow any one particular precedent, which may be founded on reason, unknown to us." Cas. Temp. Talb. 26. Blackstone, 1 Com. 70, says, that a former decision is in general to be followed, unless "manifestly absurd or unjust,", and, in the latter case, ii is declared, when overruled, not that the former sentence was bad law, but that it was not law.

4. Precedents can only be useful when they show that the case has been decided upon a certain principle, and ought not to be binding when contrary to such principle. If a precedent is to be followed because it is a precedent, even when decided against an established rule of law, there can be no possible correction of abuses, because the fact of, their existence renders them above the law. It is always safe to rely upon principles. See Principle; Rewon. de 16 Vin. Ab. 499; Wesk. on Inst. h. t.: 2 Swanst. 163; 2 Jac. & W. 31; 3 Ves. 527; 2 Atk. 559; 2 P. Wms. 258; 2 Bro. C. C. 86; 1 Ves. jr. 11; and 2 Evans Poth. 377, where the author argues against the policy of making precedents binding when contrary to reason. See also 1 Kent, Comm.475-77; Liv.Syst. 104-5; Gresl. Ev. 300; 16 Johns. R. 402; 20 Johns. R. 722; Cro. Jac. 527; 33 H. VII. 41; Jones, Bailment, 46; and the articles Reason and Stare decisis.

PRECEPT. A writ directed to the sheriff or other officer, commanding him to do something. The term is derived from the operative praecipimus, we command.

PRECINCT. The district for which a high or petty constable is appointed, is in England, called a precinct. Willc. Office of Const. xii.

2. In day time all persons are bound to recognize a constable acting within his own precincts; after night the constable is required to make himself known, and it is, indeed, proper he should do so at all times. Ibid. n. 265, p. 93.

PRECIPUT, French law. An object which is ascertained by law or the agreement of the parties, and which is first to be taken out of property held in common, by one having a right, before a partition takes place.

2. The preciput is an advantage, or a principal part to which some one is entitled, praecipium jus, which is the origin of the word preciput. Dict. de Jur. h. t.; Poth. h. t. By preciput is also understood the right to sue out the preciput.

PRECLUDI NON, pleading. A technical allegation contained in a replication which denies or confesses and avoids the plea. It is usually in the following form; "And the said A B, as to the plea of the said C D, by him secondly above pleaded, says, that he the said A B, by reason of any thing by the said C D, in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said C D, because he says that," &c. 2 Wils. 42; 1 Chit. Pl. 573.

PRECOGNITION, Scotch law. The examination of witnesses who were present at the commission of a criminal act, upon the special circumstances attending it, in order to know whether there is ground for a trial, and to serve for direction to the prosecutor. But the persons examined may insist on having their declaration cancelled before thev give testimony at the trial. Ersk. Princ. B. 4, t. 4, n. 49.

PRECONTRACT. An engagement entered into by a person, which renders him unable to enter into another; as a promise or covenant of marriage to be had afterwards. When made per verba de presenti, it is in fact a marriage, and in that case the party making it cannot marry another person.

PREDECESSOR. One who has preceded another.

2. This term is applied in particular to corporators who are now no longer such, and whose rights have been vested in their successor; the word ancestor is more usually applicable to common persons. The predecessor in a corporation stands in the same relation to the successor, that the ancestor does to the heir.

3. The term predecessor is also used to designate one who has filled an office or station before the present incumbent.

PRE-EMPTION, intern. law. The right of preemption is the right of a nation to detain the merchandise of strangers passing through her territories or seas, in order to afford to her subjects the preference of purchase. 1 Chit. Com. Law, 103; 1 Bl. Com. 287.

2. This right is sometimes regulated by treaty. In that which was made between the United States and Great Britain, bearing date the 10th day of November, 1794, ratified in 1795, it was agreed, art. 18, after mentioning that the usual munitions of war, and also naval materials should be confiscated as contraband, that "whereas the difficulty of agreeing on precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise. It is further agreed that whenever any such articles so being contraband according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; an the captors, or in their default-the government under whose authority they act, shall pay to the masters or owners of such vessel the full value of all articles, with a reasonable mercantile profit thereon, together with the freight, and also the damages incident to such detention." See Mann. Com. B. 3, c. 8.

3. By the laws of the United States the right given to settlers of public lands, to purchase them in preference to others, is called the preemption right. See act of L. April 29, 1830, 4 Sharsw. Cont. of Story, U. S. 2212.

PREFECT, French law. A chief officer invested with the superintendence of the administration of the laws in each department. Merl. Repert. h. t.

PREFERENCE. The paying or securing to one or more of his creditors, by an insolvent debtor, the whole or a part of their claim, to the exclusion of the rest. By preference is also meant the right which a creditor has acquired over others to be paid first out of the assets of his debtor, as, when a creditor has obtained a judgment against his debtor which binds the latter's land, he has a preference.

2. Voluntary preferences are forbidden by the insolvent laws of some of the states, and are void, when made in a general assignment for the benefit of creditors. Vide Insolvent; Priority.

PREGNANCY, med. jurisp. This is defined by medical writer; to be the state of a female who has within her ovary or womb, a fecundated germ which gradually becomes developed in the latter receptaale. Dunglison's Med. Diet. h. t.

2. The subject may be considered with reference to the signs of pregnancy; its duration; and the laws relating to it.

3. - 1. The fact that women sometimes conceal their state of pregnancy in order to avoid disgrace, and to destroy their offspring in its mature or immature state; and that in other cases to gratify the wishes of relations, the desire to deprive the legal successor of his just claims, to gratify their avarice by extorting money, and to avoid or delay execution, pregnancy is prtended, renders it necessary that an inquiry should take place to ascertain whether a woman has or has not been pregnant.

4. There are certain signs which usually indicate this state; these have been divided into those which affect the system generally, and those which affect the uterus.

5. - 1. The changes observed in the system from conception and pregnancy, are principally the following; namely, increased irritability of temper, melancholy, a languid cast of countenance, nausea, heart-burn, loathing of food, vomiting in the morning, an increased salivary discharge, feverish neat, with emaciation and costiveness, occasionally depravity of appetite, a congestion in the head, which gives rise to spots on the face, to headache, and erratic pains in the face and teeth. The pressure of increasing pregnancy, occasions protrusion of the umbilicus, and, sometimes, varicose tumors or anasarcous swellings of the lower extremities. The breasts also enlarge, an areola, or brown circle is observed around the nipples, and a secretion of lymph, composed of milk and water, takes place. It should be remembered that these do not occur in every pregnancy, but many of them in most cases.

6. - 2. The changes which affect the uterus, are, a suppression and cessation of the menses; an augmentation in size of the womb, which becomes perceptible between the eighth and tenth weeks; as time progresses, the enlargement continues about the middle of pregnancy, the woman feels the motion of the child, and this is called quickening. (q. v.) The vagina is also subject to alteration, as its glands throw out more mucus, and apparently prepare the parts for the passage of the foetus. Ryan's Med. Jur. 112, 113, 1 Beck's Med. Jur. 157, 158; 2 Dunglison's Human Physiology, 361. These are the general signs of pregnancy; it will be proper to consider them more minutely, though briefly, in detail.

7. - 1. The expansion and enlargement of the abdomen. This sign is not visible during the early months of pregnancy, and by art in the disposition of the dress and the use of

stays, it may be concealed for a much longer period. The corpulency of the woman or the peculiarity of her form, may also contribute to produce the same effect. In common cases, where there is no such obstacle, this sign is generally manifest at the end of the fourth month, and continues till delivery. But the enlargement may originate from disease; from suppression or retention of the menses; tympanites; dropsy; or schirrosity of the liver and spleen. Patient and assiduous investigation and professional skill are requisite to pronounce as to this sign, and all these may fail. Fodere, tome i. p. 443. Cyclop. of Practical Medicnae, h. t. Cooper's Lect. vol. ii. p. 163.

8. - 2. Change in the state of the breasts. They are said to grow larger and more firm; but this enlargement occurs in suppressed menses, and sometimes at the period of the cessation of the menses; and sometimes they do not enlarge till after delivery. The dark appearance of the areola is no safe criterion; and the milky fluid may occur without pregnancy.

9. - 3. The suppression of the menses. Although this usually follows conception, yet in some cases menstruation is carried on till within a few weeks of delivery. When the suppression takes place, it is not always the effect of impregnation; it may, and frequently does arise, from, disease. Some medical authors, however, deem the suppression to be a never failing consequence of conception.

10. - 4. The loss of appet ite, nausea, vomiting, &c. Although attendant upon pregnancy in many cases, are very equivocal signs.

11. - 5. The motion of the foetus in the mother's womb. In the early months of pregnancy this is wanting, but afterwards it can be ascertained. In cases of concealed pregnancy it cannot be ascertained from the declarations of the mother, and the examiner must discover it by other means. When the fcetus is alive, the sudden application of the hand, immediately after it has been dipped in cold water, over the regions of the uterus, will generally produce a motion of the foetus; but this is not an infallible test, the foetus may be dead, or there may be twins; in the first case, then, there will be no motion and in the latter, the motion is not felt sometimes until a late period. Vide Quickening.

12. - 6. Alteration in the state of the uterus. This is ascertained by what is technically called the touch. This is an examination, made with the hand of the examiner, of the uterus.

13. - 7. By the application of auscultation to the impregnated uterus, it is said certainty can be obtained. The indications of the presence of a living foetus in the womb, as derived from auscultation, are two: - 1. The action of the foetal heart This is marked

by double pulsations; that of the foetus generally exceeds in frequency the maternal pulse. These pulsations may be perceived at the fifth, or between the fifth and sixth months. Their situation varies with that of the child. 2. The other auscultatory sign to denote the presence of the foetus has been variously denominated the placental bellows sound, the placental sound, and the utero placental souffflet. It is generally agreed that its seat is in the enlarged vessels of the portion of the uterus which is immediately connected with the placenta. According to Laennec, it is an arterial pulsation perfectly isochronous with the pulse of the mother, and accompanied by a rushing noise, resembling the blast of a pair of a bellows. It commonly begins to be beard with the aid of the stethoscope, (an instrument invented by Professor Laennec of Paris, for examining the chest) at the end of the fourth month of pregnancy. In the case of twins, Laennec detected the pulsation of two foetal hearts before delivery, by means of this instrument.

14. - 8. Another sign of pregnancy has been discovered, which is said by M. Jaquemin never to fail. It is the peculiar dark color which the mucous merabrane of the vagina acquires during this state. It was only after an examination of four thousand five hundred women that M. Jacquemin came to the conclusion which be formed of the certainty of this sign. Parent Duchatellet, De la Prostitution dans la ville de Paris, c, 3, 5.

15. It is, always difficult though perhaps not impossible to ascertain the presence of the foetus, and on the other band, many of the signs which would indicate such presence, have been known to fail. 1 Beck's Med. Jur. ch. Chit. Med. Jur. b. t.; Ryan's Med. Jur. 112, 113; Allison's Princ. of the Cr., Law of Scotl. ch. 3, p. 153; 1 Briand, Med. Leg. c. 3.

16.- 2. The duration of human pregnancy is not certain, and probably is not the same in every woman. It may perbaps be safely stated that forty weeks is the ordinary duration, though much discussion has taken place among medico-legal writers on this subject, and opinions fluctuate largely. 1 Beck's Med. Jur. 862. This is occasioned perhaps by the difficulty of ascertaining the time from which this period begins to run. Chit. Med. Jur. 409; Dewees, Midwifery, 125; 1 Paris & Fonbl. 218, 230, 245; 2 Dunglison's Human Physiology, 362; Rvan's Med. Jur. 121; 1 Fodere, M4d. Leg. 407-416.

17. - 3. The laws relating to pregnancy are to be considered, first, in reference to the fact of pregnancy; and, secondly, inrelation to its duration.

18. - 1. As to the fad of pregnancy. There are two cases where the fact whether a woman is or has been pregnant is of importance; when it is supposed she pretends pregnancy, and when she is charged with concealing it.

19. - 1st. Pretended pregnancy may arise from two causes: the one when a widow feigns herself with child, in order to produce a supposititious heir to the estate. In this case in England the heir presumptive may have a writ de ventre inspiciendo, to examine whether she be with child or not; and if she be, to keep her under proper restraint until delivered; but if, upon examination, the widow be found not pregnant, the presumptive heir shall be admitted to the inheritance, though liable to lose it again on the birth of a child within forty weeks from the death of the hushand. 1 Bl. Com. 456; Cro. Eliz. 566; 4 Bro. C. C. 90; 2 P. Wms. 591; Cox's C. C. 297. In the civil law there was a similar practice. Dig. 25, 4.

20. The second cause of pretended pregnancy occurs when a woman has been sentenced to death, for the commission of a crime. At common law, in case this plea be made before execution, the court must direct a jury of twelve matrons, or discreet women, to ascertain the fact, and if they bring in their verdict quick with child, execution shall be staid generally till the next session of the court, and so from session to session till either she be delivered, or proves by the lapse of time, not to have been with child at all. 4 Bl. Com. 394, 395; 1 Bay, 487. It is proper to remark that a verdict of the matrons that the woman is pregnant is not sufficient, she must be found to be quick with child. (q. v.)

21. Whether under the English law a woman would be hanged who could be proved to be privement enceinte, beyond all doubt, is not certain; but in this country, it is presumed if it could be made to appear, indubitably: that the woman was pregnant, though not quick with child, the execution would be respited until after delivery. Fatal errors have been made by juries of matrons. A case occurred at Norwich in England in the month of March, 1833, of a murderess who pleaded pregnancy. Twelve married women were impanneled on the jury; after an hour's examination, they returned a verdict that she was not quick with child. She was ordered for execution. Fortunately three of the principal surgeons in the place, fearing some error, waited upon the convict and examined her; they found her not only pregnant, but quick with child. The matter was represented to the judge, who respited the execution, and on the 11th day of July she was safely delivered of a living child. London Medical Gazette, vol. xii. p. 24, 585. 22. In New York it is provided by legislative enactment, (2 Rev. Stat. 658,) that "if a female convict, sentenced to the punishment of death, be pregnant, the sheriff shall summon a jury of six physicians, and shall give notice to the district attorney, who shall have power to subpoena witnesses. If, on such inquisition, it shall appear that the female is quick with child, the sheriff shall suspend the execution, and transmit the inquisition to the governor. Whenever the governor shall be satisfied that she is no longer quick with child, he shall issue Iiis warrant for execution, or commute it, by imprisonment for life in the state prison."

23. By the laws of. Franco, "if a woman condemned to death declares herself to be pregnant, and it is verified that she is pregnant, she shall not suffer her punishment till after her delivery. Code Penal, art. 27.

24. - 2d. Concealed pregnancy seldom takes place except for the criminal purpose of destroying the life of the foetus in utero, or of the child immediately after its birth. The extreme facility of extinguishing the infant life, at the time, or shortly after birth,, and the experienced difficulty of proving this unnatural crime, has induced the passage of laws, in perhaps all the states, as well as in England and other countries, calculated to facilitate the proof, land also to punish the very act of concealment of pregnancy and death of the child, when, if born alive, it would have been a bastard. The English statute of 21 Jac. 1, c. 27, required that any mother of such child who had endeavored to conceal its birth, should prove, by one witness at least, that the child was actually born dead; and for want of such proof it arrived at the forced conclusion that the mother murdered it. But it was considered a blot upon even the English code, and it was therefore repealed by 43 Geo. III. c. 58, s. 3. An act of assembly of Pennsylvania, of the 31st May, 1781, made the concealment of the death of a bastard child conclusive evidence to convict the mother of murder; which was repealed by the act of 5th of April, 1790, s. 6, which declared that the constrained presumption that the child whose death is concealed, was therefore murdered by the mother, shall not be sufficient to convict the party indicted, without probable presumptive proof is given that the child was born alive. The law was further modified by the act of 22d of April, 1794, s. 18, which declares that the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously troy take away the life of such a child. The last mentioned act, section 17, punishes the concealment of the death of a bastard child by fine and imprisonment. See, for the law of Connecticut on the subject, 2 Swift's Digest, 296. See Alison's Principles of the Criminal Law of Scotland, ch. 3.

26. - 2. As to the duration of pregnancy. Lord Coke lays down the peremptory rule that forty weeks is the longest time allowed by law for gestation. Co. Litt. 123. There does not, however, appear to be any time fixed by the law as to the duration of pregnancy. Note by Hargr. & Butler, to 1 Inst. 123, b: 1 Rolle's Ab. 356, 1. 10; Cro. Jac. 541; Palm. 9.

27. The civil code of Louisiana provides that the child capable of living, which is born before the one hundred and eightieth day after the marriage, is not presumed to be the child of the hushand; every child born alive more than six months after conception, is presumed to be capable of living. Art. 205. The same rule applies with respect to the child born three hundred days after the dissolution of the marriage, or after sentence of separation e and board. Art. 206. The Code Civil of France contains the following

provision. The child conceived during the marriage, has the hushand for its father. Nevertheless the hushand may disavow the child, if he can prove that during the time that has elapsed between the three hundredth and the one hundred and eightieth before its birth he was prevented either by absence, or in consequence of some accident, or on account of some physical impossibility, from cohabiting with his wife. Art. 312. A child born before the one hundred and eightieth day after the marriage cannot be disavowed by the hushand in the following cases: - l. When he had knowledge of the pregnancy before the marriage; 2. When he has assisted in writing the act of birth, [a certificate stating the birth and sex of the child, the time when born, &c. required by law to be filed with a proper officer and recorded,] and when that act has been signed by him, or when it contains his declaration that he cannot sign;

3. When the child is not declared capable of living. Art. 314. And the legitimacy of a child born three hundred days after the dissolution of the marriage may be contested. Art. 315.

PREGNANT, pleading. A fulness in the pleadings which admits or involves a matter which is favorable to the opposite party. 2. It is either an affirmative pregnant, or negative pregnant. See Affirmative pregnant; Negative pregnant.

PREJUDICE. To decide beforehand; to lean in favor of one side of a cause for some reason or other than its justice.

2. A judge ought to be without prejudice, and he cannot therefore sit in a case where he has any interest, or when a near relation is a partt, or where he has been of counsel for one of the parties. Vide Judge.

3. In the civil law prejudice signifies a tort or injury; as the act of one man should never prejudice another. Dig. 60, 17, 74.

PRELATE. The name of an ecclesiastical officer. There are two orders of prelates; the first is composed of bishops, and the second, of abbots, generals of orders, deans, &c.;

PRELEVEMENT, French law. The portion which a partner is entitled to take out of the assets of a firm before any sion shall be made of the remainder of the assets, between the partners.

2. The partner who is entitled to a prelevement is not a creditor of the partnership; on the contrary he is a part owner for if the assets should be deficient, a creditor has a preference over the partner; on the other hand, should the assets yield any profit, the

partner is entitled to his portion of it, whereas the creditor is entitled to no part of it, but he has a right to charge interest, when he is in other respects entitled to it.

PREHENSION. The lawful taking of a thing with an intent to, assert a right in it.

PRELIMINARY. Something which precedes, as preliminaries of peace, which are the first sketch of a treaty, and contain the principal articles on which both parties are desirous of concluding, and which are to serve as the basis of the treaty.

PREMEDITATION. A design formed to commit a crime or to do some other thing before it is done.

2. Premeditation differs essentially from will, which constitutes the crime, because it supposes besides an actual will, a deliberation and a continued persistance which indicate more perversity. The preparation of arms or other instruments required for the execution of the crime, are indications of a premeditation, but are not absolute proof of it, as these preparations may have been intended for other purposes, and then suddenly changed to the performance of the criminal act. Murder by poisoning must of necessity be done with premeditation. See Aforethought; Murder.

PREMISES. that which is put before. The word has several significations; sometimes it means the statements which have been before made; as, I act upon these premises; in this sense, this word may comprise a variety of subjects, having no connexion among themselves; 1 East, R. 456; it signifies a formal part of a deed; and it is made to designate an estate.

PREMISES, estates. Lands and tenements are usually, called premises, when particularly spoken of; as, the premises will be sold without reserve. 1 East, R. 453.

PREMISES, conveyancing. That part in the beginning of a deed, in which are set forth the names of the parties, with their titles ana additions, and in which are recited such deeds, agreements, or matters of fact, as are necessary to explain the reasons upon which the contract then entered into is founded; and it is here also the consideration on which it is made, is set down, and the certainty of the thing granted. 2 Bl. Com. 298. The technical meaning of the premises in a deed, is every thing which precedes the habendum. 8 Mass. R. 174; 6 Conn. R. 289. Vide Deed.

PREMISES, equity pleading. That part of a bill usually denominated the stating part of the bill. It contains a narrative of the facts and circumstances of the plaintiff's case, and the wrongs of which he complains, and the names of the persons by whom done, and against whom he seeks redress. Coop. Eq. Pl..9; Bart. Suit in equity, 27; Mitf. Eq. Pl. by Jeremy, 43; Story, Eq. Pl. 27; 4 Bouv, Inst. n. 4158.

PREMIUM, contracts. The consideration paid by the insured to the insurer for making an insurance. It is so called because it is paid primo, or before the contract shall take effect. Poth. h. t. n. 81; Marah. Inst. 234.

2. In practice, however, the premium is not always paid when the policy is underwritten; for insurances are frequently effected by brokers, and open accounts are kept between them and the underwriters, in which they make themselves debtors for all premiums;, and sometimes notes or bills are given for the amount of the premium.

3. The French writers, when they speak of the consideration given for maritime loans, employ a variety of words in order to distinguish it according to the nature of the case. Thus, they call it interest when it is stipulated to be paid by the month or at other stated periods. It is a premium, when a gross sum is to be paid at the end of a voyage, and here the risk is the principal object which they have in view. When the sum is a percentage on the money lent, they denominate it exchange, considering it in the light of money lent in one place to be returned in another, with a difference in amount between the sum borrowed and that which is paid, arising from the difference of time and place. When they intend to combine these various shades into one general denomination, they make use of the term maritime profit, to convey their meaning. Hall on Mar. Loans, 56, n. Vide Park, Ills. h. t. Poth. h. t.; 3 Kent, Com. 285; 15 East, R. 309, Day's note, and the cases there cited.

PREMIUM PUDICITIAE, contracts. Literally the price of chastity.

2. This is the consideration of a contract by which a man promises to pay to a woman with whom he has illicit intercourse a certain sum of money. When the contract is made as the payment of past cohabitation, as between the parties, it is good, and will be enforced against the obligor, his heirs, executors and administrators, but it cannot be paid, on a deficiency of assets, until all cred itors are paid, though it has a preference over the heir, next of kin, or devisee. If the contract be for future cohabitation, it is void. Chit. Contr. 215; 1 Story, Eq. Jur. 296; 5 Ves. 286; 2 P. Wms. 432; 1 Black. R. 517; 3 Burr. 1568; 1 Fonbl. Eq, B. 1, a. 4, 4, and notes s and y; 1 Ball & Beat. 360; 7 Ves. 470; 11 Ves. 535; Rob. Fraud. Conv. 428; Cas. Temp. Talb. 153; and the cases there cited; 6 Ham. R. 21; 5 Cowen, R. 253; Harper, R. 201; 3 Mont. R. 35; 2 Rev. Const. Ct; 279; 11 Mass. R. 368; 2 N. & M. 251.

PRENDER or PRENDRE. To take. This word is used to signify the right of taking a thing before it is offered,; hence the phrase of law, it lies in render, but not in prender. Vide A prendre; and Gale and Whatley on Easements, 1.

PROENOMEN. The first or Christian name of a person; Benjamin is the proenomen of Benjamin Franklin. See Cas. temp. Hard. 286; 1 Tayl. 148.

PREPENSE. The same as aforethought. (q. v.) Vide 2 Chit. Cr. Law, *784.

PREROGATIVE, civil law. The privilege, preeminence, or advantage which one person has over another; thus a person vested with an office, is entitled to all the rights, privileges, prerogatives, &c. which belong to it.

PREROGATIVE, English law. The royal prerogative is an arbitrary power vested in the executive to do good and not evil. Rutherf. Inst. 279; Co. Litt. 90; Chit. on Prerog.; Bac. Ab. h. t.

PREROGATIVE COURT, eccles. law. The name of a court in England in which all testaments are proved and administrations granted, when the deceased has left bona notabilia in the province in some other diocese than that in which he died. 4 Inst. 335.

2. The testamentary courts of the two archbishops, in their respective provinces, are styled prerogative courts, from the prerogative of each archbishop to grant probates and administrations, where there are bona, notabilia; but still these are only inferior and subordinate jurisdictions; and the style of these courts has no connexion with the royal prerogative. Derivatively, these courts are the king's ecclesiastical courts; but immediately, they are only the courts of the ecclesiastical ordinary. The ordinary, and not the crown, appoints the judges of these courts; they are subject to the control of the king's courts of chancery and common law, in case they exceed their jurisdiction; and they are subject in some instances to the command of these courts, if they decline to exercise their jurisdiction, when by law they ought to exercise it. Per Sir John Nicholl, In the Goods of George III.; 1 Addams, R. 265; S. C. 2 Eng. Eccl. R. 112.

PRESCRIPTIBLE. That which is subject to prescription.

PRESCRIPTION. The manner of acquiring property by a long, honest, and uninterrupted possession or use during the time required by law. The possession must have been possessio longa, continua, et pacifica, nec sit ligitima interruptio, long, continued, peaceable, and without lawful interruption. Domat, Loix Civ. liv. 3, t. 29, s. 1; Bract. 52, 222, 226; Co. Litt. 113, b; Pour pouvoir prescire, says the Code Civil, l. 3, t. 20, art. 22, 29, il faut une possession continue et non interrompue, paisible, publique, et a titre de proprietaire. See Knapp's R. 79.

2. The law presumes a grant before the time of legal memory when the party claiming by prescription, or those from whom he holds, have had adverse or uninterrupted possession of the property or rights claimed by prescription. This presumption may be a mere fiction, the commencement of the user being tor-tious; no prescription can, however, be sustained, which is not consistent with such a presumption.

3. Twenty years uninterrupted user of a way is prima facie evidence of a prescrptive right. 1 Saund. 323, a; 10 East, 476; 2 Br. & Bing. 403; Cowp. 215; 2 Wils. 53. The subject of prescription are the several kinds of incorporeal rights. Vide, generally, 2 Chit. Bl. 35, n. 24; Amer. Jurist, No. 37, p. 96; 17 Vin. Ab. 256; 7 com. Dig. 93; Rutherf. Inst. 63; Co. Litt. 113; 2 Conn. R. 584; 9 conn. R. 162; Bouv. Inst. Index, h. t.

4. The Civil Code Louisiana, art. 3420, defines a prescription to be a manner of acquiring property, or of discharging debts, by the effect of time, and under the conditions regulated by law. For the law relating to prescription in that state, see Code, art. 8420 to 3521. For the difference between the meaning of the term prescription as understood by the common law, and the same term in the civil law, see 1 Bro. Civ. Law, 246.

5. The prescription which has the effect to liberate a creditor, is a mere bar which the debtor may oppose to the creditor, who has neglected to exercise his rights, or procured them to be acknowledged during the time prescribed by law. The debtor acquires this right without any act on his part, it resalts entirely from the negligence of the creditor. The prescription does not extinguish the debt, it merely places a bar in the hands of the debtor, which he may use or not at his choice against the creditor. The debtor may therefore abandon this defence, which has been acquired by mere lapse of time, either by paying the debt, or acknowledging it. If he pay it, he cannot recover back the money so paid, and if he acknowledge it, he may be constrained to pay it. Poth. Intr. au titre xiv. des Prescriptions, Bect. 2. Vide Bouv. Inst. Theo. pars prima, c. 1, art. 1, 4, s. 3; Limitations.

PRESENCE. The existence of a person in a particular place.

2. In many contracts and judicial proceedings it is necessary that the parties should be present in order to reader them valid; for example, a party to a deed when it is executed by himself, must personally acknowledge it, when such acknowledgment is required by law, to give it its full force aud effect, and his presence is indispensable, unless, indeed, another person represent him as his attoruey, having authority from him for that purpose.

3. In the criminal law, presence is actual or constructive. When a larceny is committed in a house by two men, united in the same design, and one of them goes into the house, arid commits the crime, while the other is on the outside watching to prevent a surprise, the former is actually, an the latter constructively, present.

4. It is a rule in the civil law, that he who is incapable of giving his consent to an act, is not to be considered present, although he be actually in the place; a lunatic, or a

man sleeping, would not therefore be considered present. Dig. 41, 2, 1, 3. And so, if insensible; 1 Dougl. 241; 4 Bro. P. R. 71; 3 Russ. 441; or if the act were done secretly so that he knew nothing of it. 1 P. Wms. 740.

5. The English statute of fraud, 5, directs that all devises and bequests of any lands or tenements shall be attested or subscribed in the presence of said devisor. Under this statute it has been decided that an actual presence is not indispensable, but that where there was a constructive presence it was sufficient; as, where the testatrix executed the will in her carriage stand- ing in the street before the office of her solicitor, the witness retired into the office to attest it, and it being proved that the carriage was accidentally put back, so that she was in a situation to see the witness sign the will through the window of the office. Bro. Ch. C. 98; see 2 Curt. R. 320; 2 Salk. 688; 3 Russ. R. 441; 1 Maule & Selw. 294; 2 Car.& P. 491 2 Curt. R. 331. Vide Constructive.

PRESENT. A gift, or wore properly the thing given. It is provided by the constitution of the United States, art. 1, s. 9, n, 7, that "no person holding any office of profit or trust under them, [the United States] shall, without the consent of congress, accept of any present, emolument, or office, or title of any kind whatever, from any king, prince, or foreign state."

PRESENTS. This word signifies the writing then actually made and spoken of; as, these presents; know all men by these presents, to all to whom these presents shall come.

PRESENTATION, eccl. law. The act of a patron offering his clerk to the bishop of the diocese to be instituted in a church or benefice.

PRESENTEE, eccles. law., A clerk who has been presented by his patron to a bishop in order to be instituted in a church.

PRESENTMENT, crim. law, practice. The written notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government; 4 Bl. Com. 301; upon such presentment, when 'proper, the officer emloyed to prosecute, afterwards frames a till of indictment, which is then sent to the grand jury, and they find it to be a true bill. In an extended sense presentments include not only what is properly so called, but also inquisitions of office, and indictments found by a grand jury. 2 Hawk. c. 25, s. 1.

2. The difference between a presentment and an inquisition, (q. v.) is this, that the former is found by a grand jury authorized to inquire of offences generally, whereas the latter is an accusation found by a jury specially returned to inquire concerning the

particular offence. 2 Hawk. c. 25, s. 6. Vide, generally, Com. Dig. Indictment, B Bac. Ab. Indictment, A 1 Chit. Cr. Law, 163; 7 East, R. 387 1 Meigs. 112; 11 Humph. 12.

3. The writing which contains the accusation so presented by a grand jury, is also called a presentment. Vide 1 Brock. C. C. R. 156; Grand Jury.

PRESENTMENT, contracts. The production of a bill of exchange or promissory note to the party on whom the former is drawn, for his acceptance, or to the person bound to pay either, for payment.

2. The holder of a bill is bound, in order to hold the parties to it responsible to him, to present it in due time for acceptance, and to give notice, if it be dishonored, to all tho parties he intends to hold liable. And when a bill or note becomes payable, it must be presented for payment.

3. The principal circumstances concerning presentment, are the person to whom, the place where, and the time when, it is to be made.

4. - 1. In general the presentment for payment should be made to the maker of a note, or the drawee of a bill for acceptance, or to the acceptor, for payment; but a presentment made at a particular place, when pavable there, is in general sufficient. A personal demand on the drawee or acceptor is not necessary; a demand at his usual place of residence of his wife or other agent is sufficient. 2 Esp. Cas. 509; 5 Esp. Cas. 265 Holt's N. P. Cas. 313.

5. - 2. When a bill or note is made payable at a particular place, a presentment, as we have seen, may be made there; but when the acceptance is general, it must be presented at the house or place of business of the acceptor. 3 Kent, Com. 64, 65.

6. - 3. In treating of the time for presentment, it must be considered with reference, 1st. To a presentment for acceptance. 2d. To one for payment. 1st. When the bill is payable at sight, or after sight, the presentment must be made in reasonable time; and what this reasonable time is depends upon the circumstances of each case. 7 Taunt. 397; 1 Dall. 255; 2 Dall. 192; Ibid. 232; 4 Dall. 165; Ibid. 129; 1 Yeates, 531; 7 Serg. & Rawle, 324; 1 Yeates 147. 2d. The presentment of a note or bill for payment ought to be made on the day it becomes due, and notice of non-payment given, otherwise the holder will lose the security of the drawer and endorsers of a bill and the endorsers of a promissory note, and in case the note or bill be payable at a particular place and the money lodged there for its payment, the holder would probably have no recourse against the maker or acceptor, if he did not present them on the day, and the money should be lost. 5 Barn. & Ald. 244. Vide 5 Com. Dig. 134; 2 John. Cas. 75; 3 John. R.

230; 2 Caines' Rep. 343; 18 John. R. 230; 2 John. R. 146, 168, 176; 2 Wheat. 373; Chit. on Bills, Index, h. t.; Smith on Mer. Law, 138; Byles on Bills, 102.

7. The excuses for not making a presentment are general or applicable to all persons, who are endorsers; or they are special and applicable to the particular' endorser only.

8. - 1. Among the former are, 1. Inevitable accident or overwhelming calamity; Story on Bills, 308; 3 Wend. 488; 2 Smith's R. 224. 2. The prevalence of a malignant disease, by which the ordinary operations of business are suspended. 2 John. Cas. 1; 3 M. & S. 267; Anth. N. P. Cas. 35. 3. The breaking out of war between the country of the maker and that of the holder. 4. The occupation of the country where the note is payable or where the parties live, by a public enemy, which suspends commercial operations and intercourse. 8 Cranch, 155 15 John. 57; 16 John. 438 7 Pet. 586 2 Brock. 20; 2 Smith's R. 224. 51. The obstruction of the ordinary negotiations of trade by the vi's maj or. 6. Positive interdictions and public regulations of the state which suspend commerce and intercourse. 7. The utter impracticability of finding the maker, or ascertaining his place of residence. Story on Pr. N. 205, 236, 238, 241, 264.

9. - 2. Among the latter or special excuses for not making a presentment may be enumerated the following: 1. The receiving the note by the holder from the payee, or other antecedent party, too late to make a due presentment; this will be an excuse as to such party. 16 East, 248; 7 Mass. 483; Story, P. N. 201, 265; 11 Wheat. 431 2 Wheat. 373. 2. The note being an accommodation note of the maker for the benefit of the endorser. Story on Bills, 370; see 2 Brock. 20; 7 Harr. & J. 381; 7 Mass. 452; 1 Wash. C. C. R. 461; 2 Wash. C. C. R. 514; 1 Rayw. 271; 4 Mason, 113; 1 Har. & G. 468; 1 Caines, 157; 1 Stew. 175; 5 Pick. 88; 21 Pick. 327. 3. A special agreement by which the endorser waives the presentment. 8 Greenl. 213; 11 Wheat. 629; Story on Bills, 371, 373; 6 Wheat. 572. 4. The receiving security or money by an endorser to secure himself from loss, or to pay the note at maturity. In this case, when the indemnity or money is a full security for the amount of the note or bill, no presentment is requisite. Story on Bills, 374; Story on P. N. 281; 4 Watts, 328.; 9 Gill & John. 47; 7 Wend. 165; 2 Greenl. 207; 5 Mass. l70; 5 Conn. 175. 5. The receiving the note by the holder from the endorser, as a collateral security for another debt. Story on Pr. Notes, 284; Story on Bills, 372; 2 How. S. C. R. 427, 457.

10. A want of presentment may be waived by the party to be affected, after a full knowledge of the fact. 8 S. & R. 438; see 6 Wend. 658; 3 Bibb, 102; 5 John. 385; 4 Mass. 347; 7 Mass. 452; Wash. C. C. R. 506; Bac. Ab. Merchant, &c. M. Vide, generally, 1 Hare & Wall. Sel. Dec. 214, 224. See Notice of dishonor.

PRESERVATION. keeping safe from harm; avoiding injury. This term always presupposes a real or existing danger.

2. A jettison, which is always for the preservation of the remainder of the cargo, must therefore be made only when there is a real danger existing. See Average; Jettison.

PRESIDENT. An officer of a company who is to direct the manner in which business is to be transacted. From the decision of the president there is an appeal to the body over which he presides.

PRESIDENT OF THE UNITED STATES OF AMERICA. This is the title of the executive officer of this country.

2. The constitution directs that the executive power shall be vested in a president of the United States of America. Art. 2, s. 1.

3. This subject will be examined by considering, 1. His qualifications. 2. His election. 3. The duration of his office. 4. His compensation. 5. His powers.

4. - 1. No person except a natural born a citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States. Art. 2, s. 1, n. 5. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may by law provide for the removal, death, resignation, or inability both of the president and vice-president, declaring what officer shall then act as president and such officer shall act accordingly, until the disability be removed, or a president shall be elected. Art. 2, s. 1, n. 6.

5. - 2. He is chosen by electors of president. (q. v.) See Const. U. S. art. 2, s. 1, n. 2, 3, and 4; 1 Kent, Com. 273 Story on the Constit. 1447, et seq. After his election and before he enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States." Article 2, s. 1, n. 8 and 9.

6. - 3. He holds his office for the term of four years; art. 2, s. 1, n. 1; he is reeligible for successive terms, but no one has ventured, contrary to public opinion, to be a candidate for a third term.

7. - 4. The president shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument

from the United States, or any of them. Art. 2, sect. 1, n. 7. The act of the 24th September, 1789, ch. 19, fixed the salary of the president at twenty-five thousand dollars. This is his salary now.

8. - 5. The powers of the president are to be exercised by him alone, or by him with the concurrence of the senate.

9. - 1. The constitution has vested in him alone, the following powers: be is commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officers of each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachluent. Art. 2, s. 2, n. 2. He may appoint all officers of the United States, whose appointments are not otherwise provided for in the constitution, and which shall be established by law, when congress shall vest the appointment of such officers in the president alone. Art. 2, s. 2, n. 2. He shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session. Art. 2, sect. 2, n. 3. He shall from time to time give congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all officers of the United States.

10. - 2. His power, with the concurrence of the senate, is as follows: to make treaties, provided two-thirds of the senators present concur; nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not provided for in the constitution, and which have been established by law; but the congress may by law vest the appointment of such inferior officers, as they shall think proper, in the president alone, in the courts of law, or in the heads of departments. Art. 2, s. 2, n. 2. Vide 1 Kent, Com. Lect. 13; Story on the Const. B. 3, ch. 36; Rawle on the Const. Index, h. t.; Serg. Const. L. Index, h. t.

PRESS. By a figure this word signifies the art of printing. The press is free.

2. All men have a right to print and publish whatever they may deem proper, unless by doing so they infringe the rights of another, as in the case of copyrights, (q. v.) when they may be enjoined. For any injury they may commit against the public or

individuals they may be punished, either by indictment, or by a civil action at the suit of the party injured, when the injury has been committed against a private individual. Vide Const. of the U. S. Amendm. art. 1, and Liberty of the Press.

PRESUMPTION, evidence. An inference as to the existence of one fact, from the existence of some other fact, founded on a previous experience of their connexion. 3 Stark. Ev. 1234; 1 Phil. Ev. 116; Gilb. Ev. 142; Poth. Tr. des. Ob. part. 4, c. 3, s. 2, n. 840. Or it, is an opinion, which circumstances, give rise to, relative to a matter of fact, which they are supposed to attend. Menthuel sur les Conventions, liv. 1, tit. 5.

2. To constitute such a presumption, a previous experience of the connexion between the known and inferred facts is essential, of such a nature that as soon as the existence of the one is established, admitted or assumed, an inference as to the existence of the other arises, independently of any reasoning upon the subject. It follows that an inference may be certain or not certain, but merely, probable, and therefore capable of being rebutted by contrary proof.

3. In general a presumption is more or less strong according as the fact presumed is a necessary, usual or infrequent consequence of the fact or facts seen, known, or proven. When the fact inferred is the necessary consequence of the fact or facts known, the presumption amounts to a proof when it is the usual, but not invariable consequence, the presumption is weak; but when it is sometimes, although rarely,the consequence of the fact or facts known, the presumption is of no weight. Menthuel sur les Conventions, tit. 5. See Domat, liv. 9, tit. 6 Dig. de probationibus et praesumptionibus.

4. Presumptions are either legal and artificial, or natural.

5. - 1. Legal or artificial presumptions are such as derive from the law a technical or artificial, operation and effect, beyond their mere natural. tendency to produce belief, and operate uniformly, without applying the process of reasoning on which they are founded, to the circumstances of the particular case. For instance, at the expiration of twenty years, without payment of interest on a bond, or other acknowledgment of its existence, satisfaction is to be presumed; but if a single day less than twenty years has elapsed, the presumption of satisfaction from mere lapse of time, does not arise; this is evidently an artificial and arbitrary distinction. 4 Greenl. 270; 10 John. R. 338; 9 Cowen, R. 653; 2 M'Cord, R. 439; 4 Burr. 1963; Lofft, 320; 1 T. R. 271; 6 East, R. 215; 1 Campb. R. 29. An example of another nature is given under this head by the civilians. If a mother and her infant at the breast perish in the same conflagration, the law presumes that the mother survived, and that the infant perished first, on account of its weakness, and on this ground the succession belongs to the heirs of the mother. See Death, 9 to 14.

6. Legal presumptions are of two kinds: first, such as are made by the law itself, or presumptions of mere law; secondly, such as are to be made by a jury, or presumptions of law and fact.

7. - 1st. Presumptions of mere law, are either absolute and conclusive; as, for instance, the presumption of law that a bond or other specialty was executed upon a good consideration, cannot be rebutted by evidence, so long as the instrument is not impeached for fraud; 4 Burr. 2225; or they are not absolute, and may be rebutted evidence; for example, the law presumes that a bill of exchange was accepted on a good consideration, but that presumption may be rebutted by proof to the contrary.

8. - 2d. Presumptions of law and fact are such artificial presumptions as are recognized aud warranted by the law as the pro er inferences to be made by juries under particular circumstances; for instance, au unqualified refusal to deliver up the goods on demand made by the owner, does not fall within any definition of a conversion, but inasmuch as the detention is attended with all the evils of a conversion to the owner, the law makes it, in its effects and consequences, equivalent to a conversion, by directing or advising the jury to infer a conversion from the facts of demand and refusal.

9. - 2. Natural presumptions depend upon their own form and efficacy in generating belief or conviction on the mind, as derived from these connexions which are pointed out by experience; they are wholly independent of any artificial connexions and relations, and differ from mere presumptions of law in this essential respect, that those depend, or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind, from the course of nature and the ordinary habits of society. Vide, generally, Stark. Ev. h. t.; 1 Phil. Ev. 116; Civ. Code of Lo. 2263 to 2267; 17 Vin. Ab. 567; 12 Id. 124; 1 Supp. to Ves. jr. 37, 188, 489; 2 Id. 51, 223, 442; Bac. Ab. Evidence, H; Arch. Civ. Pl. 384; Toull. Dr. Civ. Fr. liv. 3, t. 3, o. 4, s. 3; Poth. Tr. des Obl. part 4, c. 3, s. 2; Matt. on Pres.; Gresl. Eq. Ev. pt. 3, c. 4, 363; 2 Poth. Ob. by Evans, 340; 3 Bouv. Inst. n. 3058, et seq.

PRESUMPTIVE HEIR. One who, if the ancestor should die immediately, would under the present circumstances of things be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother, who is the presumptive heir, may be defeated by the birth of a child to the ancestor. 2 Bl. Com. 208.

PRET A USAGE. Loan for use. This phrase is used in the French law instead of commodatum. (q. v.)

PRETENTION, French law. The claim made to a thing which a party believes himself entitled to demand, but which is not admitted or adjudged to be his.

2. The words rights, actions and pretensions, are usually joined, not that they are synonymous, for right is something positive and certain, action is what is demanded, while pretention is sometimes not even accompanied by a demand.

PRETERITION, civil law. The omission by a testator of some one of his heirs who is entitled to a legitime, (q. v.) in the succession.

2. Among the Romans, the preterition of children when made by the mother were presumed to have been made with design; the preterition of sons by any other testator was considered as a wrong and avoided the will, except the will of a soldier in service, which was not subject to so much form.

PRETEXT. The reasons assigned to justify an act, which have only the appearance of truth, and which are without foundation; or which if true are not the true reasons for such act. Vattel, liv. 3, c. 3, 32.

PRETIUM AFFECTIONIS. An imaginary value put upon a thing by the fancy of the owner in his affection for it, or for the person from whom he obtained it. Bell's Dict. h. t.

2. When an injury has been done to an article, it has been questioned whether in estimating the damage there is any just ground in any case, for admitting the pretium affectionis? It seems that when the injury has been done accidentally by culpable negligence, such an estimation of damages would be unjust, but when the mischief has been intentional, it ought to be so admitted. Kames on Eq. 74, 75.

PREVARICATION. Praevaricatio, civil law. The acting with unfaithfulness and want of probity. The term is applied principally to the act of concealing a crime. Dig. 47, 15, 6.

PREVENTION, civil and French law. The right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge.

2. In Pennsylvania it has been ruled that a justice of the peace cannot take cognizance of a cause which has been previously decided by another justice. 2 Dall. 77; Id. 114.

PRICE, contracts. The consideration in money given for the purchase of a thing.

2. There are three requisites to the quality of a price iii order to make a sale.

3. - 1. It must be serious, and such as may be demanded: if, therefore, a person were to sell me an article, and by the agreement, reduced to writing, he were to release me from the payment, the transaction would no longer be a sale, but a gift, Poth. Vente, n. 18.

4. - 2. The second quality of a price is, that the price be certain and determinate; but what may be rendered certain is considered as certain if, therefore, I sell a thing at a price to be fixed by a third person, this is sufficiently certain, provided the third person make a valuation and fix the price. Poth. Vente, n. 23, 24.

5. - 3. The third quality of a price is, that it consists in money, to be paid down, or at a future time, for if it be of any thing else, it will no longer be a price, nor the contract a sale, but exchange or barter. Poth. Vente, n. 30; 16 Toull. n. 147.

6. The true price of a thing is that for which things of a like nature and quality are usually sold in the place where situated, if real property; or in the place where exposed to sale, if personal. Poth. Contr. de Vente, n. 243. The first price or cost of a thing does not always afford a sure criterion of its value. It may have been bought very dear or very cheap. Marsh. Ins. 620, et seq.; Ayliffe's Pand. 447; Merlin, Repert. h. t.; 4 Pick. 179; 8 Pick. 252; 16 Pick. 227.

7. In a declaration in trover it is usual, when the chattel found is a living one, to lay it as of such a price when dead, of such a value. 8 Wentw. Pl. 372, n; 2 Lilly's Ab. 629. Vide Bouv. Inst. Index, h. t.; Adjustment; Inadequacy of price; Pretium offectionis.

PRICE CURRENT. The price for which goods, usually sell in the market. A printed newspaper containing a list of such prices is also called a price current.

PRIMA FACIE. The first blush; the first view or appearance of the business; as, the holder of a bill of exchange, indorsed in blank, is prima facie its owner.

2. Prima facie evidence of a fact, is in law sufficient to establish the fact, unless rebutted. 6 Pet. R. 622, 632; 14 Pet. R. 334. See, generally, 7 J. J. Marsh, 425; 3 N. H. Rep. 484; 3 Stew. & Port. 267; 5 Rand. 701; 1 Pick. 332; 1 South. 77; 1 Yeates, 347; Gilp. 147; 2 N. & McCord, 320; 1 Miss. 334; 11 Conn. 95; 2 Root, 286; 16 John. 66, 136; 1 Bailey, 174: 2 A. K. Marsh. 244. For example, when buildings are fired by sparks emitted from a locomotive engine passing along the road, it is prima facie evidence of negligence on the part of those who have the charge of it. 3 Man. Gr. & Sc. 229.

PRIMA TONSURA. A grant of a right to have the first crop of grass. 1 Chit. Pr. 181.

PRIMAGE, merc. law. A duty payable to the master and mariner of a ship or vessel; to the master for the use of his cables and ropes to discharge the goods of the merchant; to the mariners for lading and unlading in any port or haven. Merch. Dict. h. t.; Abb. on Ship. 270.

2. This payment appears to be of very ancient date, and to be variously regulated in different voyages and trades. It is sometimes called the master's hat money. 3 Chit. Com. Law, 431.

PRIMARY. That which is first or principal; as primary evidence, or that evidence which is to be admitted in the first instance, as distinguished from secondary evidence, which is allowed only when primary evidence cannot be had.

2. A primary obligation is one which is the principal object of the contract; for example, the primary obligation of the seller is to deliver the thing sold, and to transfer the title to it. It is distinguished from the accessory or secondary obligation to pay damages for not doing so. 1 Bouv. Inst. n. 702.

PRIMARY EVIDFNCE. The best evidence of which the case in its nature is susceptible. 3 Bouv. Inst. n. 3053. Vide Evidence. PRIMARY POWERS. The principal authority given by a principal to his agent; it differs from mediate powers. (q. v.) Story, Ag. 58.

PRIMATE, eccles. law.. An archbishop who has jurisdiction over one or several other metropolitans.

PRIMER ELECTION. A term used to signify first choice.

2. In England, when coparcenary lands are divided, unless it is otherwise agreed, the eldest sister has the first choice of the purparts; this part is called the enitia pars. (q. v.) Sometimes the oldest sister makes the partition, and in that case, to prevent partiality, she takes the last choice. Hob. 107; Litt. 243, 244, 245; Bac. Ab. Coparceners, C.

PRIMER SEISIN, Eng. law. The right which the king had, when any of his tenants died seised of a knight's fee, to receive of the heir, provided he were of fall age, one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if the lands were in reversion, expectant on an estate for life. 2 Bl. Com. 66.

PRIMOGENITURE. The state of being first born the eldest. 2. Formerly primogeniture gave a title in cases of descent to the oldest son in preference to the

other children; this unjust distinction has been geuerally abolished in the United States.

PRIMOGENITUS. The first born. 1 Ves. 290 and see 3 M. & S. 25; 8 Taunt. 468; 3 Vern. 660.

PRIMUM DECRETUM. In the courts of admiralty, this name is given to a provisional decree. Bac. Ab. The Court of Admiralty, E.

PRINCE. In a general sense, a sovereign the ruler of a nation or state. The son of a king or emperor, or the issue of a royal family; as, princes of the blood. The chief of any body of men.

2. By a clause inserted in policies of insurance, the insurer is liable for all losses occasioned by "arrest or detainment of all kings, princes, and people, of what nation, condition, or quality soever." 1 Bouv. Inst. n. 1218.

PRINCIPAL. This word has several meanings. It is used in opposition to accessary, to show the degree of crime committed by two persons; thus, we say, the principal is more guilty than the accessary after the fact.

2. In estates, principal is used as opposed to incident or accessory; as in the following rule: "the incident shall pass by the grant of the principal, but not the principal by the grant of the incident. Accessorium non ducit, sed sequitur suum principale." Co. Litt. 152, a.

3. It is used in opposition to agent, and in this sense it signifies that the principal is the prime mover.

4. It is used in opposition to interest; as, the principal being secured tho interest will follow.

5. It is lased also in opposition to surety; thus, we say the principal is answerable before the surety.

6. Principal is used also to denote the more important; as, the principal person.

7. In the English law, the chief person in some of the inns of chancery is called principal of the house. Principal is also used to designate the best of many things as, the best bed, the best table, and the like.

PRINCIPAL, contracts. One who, being competent to contract, and who is sui juris, employs another to do any act for his own benefit, or on his own account.

2. As a general rule, it may be said, that every person, sui juris, is capable of being a principal, for in all cases where a man has power as owner, or in his own right to do anything, he may do it by another. 16 John. 86; 9 Co. 75; Com. Dig. Attorney, C 1; Heinec. ad Pand. P. 1, lib. 3, tit. 424.

3. Married women, and persons who are deprived of understanding, as idiots, lunatics, and others, not sui juris, are wholly incapable of entering into any contract, and, consequently, cannot appoint an agent. Infants and married women are generally, incapable but, under special circumstances, they may make such appointments. For instance, an infant may make an attorney, when it is for his benefit; but lie cannot enter into any contract which is to Iiis prejudice. Com. Dig. Enfant, C 2; Perk. 13; 9 Co. 75; 3 Burr. 1804. A married woman cannot, in general, appoint an agent or attorney, and when it is requisite that one should be appointed, the hushand generally appoints for both. Perhaps for her separate property she may, with her hushand, appoint an agent or attorney; Cro. Car. 165,; 2 Leon. 200; 2 Buls. R. 13; but this seems to be doubted. Cro. Jac. 617; Yelv. 1; 1 Brownl. 134; 2 Brownl. 248; Adams' Ej. 174; Runn. Ej. 148.

4. A principal has rights which he can enforce, and is liable to obligations which he must perform. These will be briefly considered: 1. The rights to which principals are entitled arise from obligations due to them by their agents, or by third persons.

5. - 1st. The rights against their agents, are, 1. To call them to an account at all times, in relation to the business of their agency. 2. When the agent violates his obligations to his principal, either by exceeding his authority, or by positive misconduct, or by mere negligence or omissions in the discharge of the functions of his agency, or in any other manner, and any loss or damage falls on his principal, the latter will be entitled to full indemnity. Paley on Ag. by Lloyd, 7, 71, 74, and note 2 12 Pick. 328; 1 B. & Adolph. 415; 1 Liverm. Ag. 398. 3. The principal has a right to supersede his agent, where each may maintain a suit against a third person, by suing in his own name; and he may, by his own intervention, intercept, suspend, or extinguish the right of the agent under the contract. Paley Ag. by Lloyd, 362; 7 Taunt. 237, 243; 1 M. & S. 576 1 Liverm. Ag. 226-228; 2 W. C. C. R. 283; 3 Chit. Com. Law, 201-203.

6. - 2d. The principal's rights against third persons. 1. When a contract is made by the agent with a third person in the name of his principal, the latter may enforce it by action. But to this rule there are some exceptions 1st. When the instrument is under seal, and it has been exclusively made between the agent and the third person; as, for example, a charter party or bottomry bond iii this case the principal cannot sue on it.

See 1 Paine, Cir. R. 252; 3 W. C. C. R. 560; 1 M. &. S. 573; Abbott, Ship, pt. 3, c. 1, s. 2. 2d. When an exclusive credit is given to and by the agent, and therefore the principal cannot be considered in any manner a party to the contract, although he may have authorized it, and be entitled to all the benefits arising from it. The case of a foreign factor, buying or selling goods, is an example of this kind: he is treated as between himself and the other party, as the sole contractor, and the real principal cannot sue or be sued on the contract. This, it has been well observed, is a general rule of commercial law, founded upon the known usage of trade; and it is strictly adhered to for the safety and convenience of foreign commerce. Story, Ag. 423; Smith Mer. Law, 66; 15 East, R. 62; 9 B. & C. 87. 3d. When the agent, has a lien or claim upon the property bought or sold, or upon its proceeds, when it equals or exceeds the amount of its value. Story, Ag. 407, 408, 424.

7. - 2. But contracts are not unfrequently made without mentioning the name of the principal; in such case he may avail himself of the agreement, for the contract will be treated as that of the principal, as well as of the agent. Story, Ag. 109, 111, 403, 410, 417, 440; Paley, Ag. by Lloyd, 21, 22; Marsh. Ins. b. 1, c. 8, 3, p. 311; 2 Kent's Com. 3d edit. 630; 3 Chit. Com. Law, 201; vide 1 Paine's C. C. Rep. 252.

8. - 3. Third persons are also liable to the principal for any tort or injury done to his property or rights in the course of the agency. Pal. Ag. by Lloyd, 363; Story, Ag. 436; 3 Chit. Com. Law, 205, 206; 15 East, R. 38.

9. - 2. The liabilities of the principal are either to his agent or to third persons.

10. - 1st. The liabilities of the principal to his agent, are, 1. To reimburse him all expenses he may have lawfully incurred about the agency. Story, Ag. 335 Story, Bailm. 196, 197; 2 Liv. Ag. 11 to 33. 2. To pay him his commissions as agreed upon, or according to the usage of trade, except in cases of gratuitous agency. Story, Ag. 323; Story, Bailm. 153, 154, 196 to 201. 3. To indemnify the agent when he has sustained damages in consequence of the principal's conduct for example, when the agent has innocently sold the goods of a third person, under the direction or authority of his principal, and a third person recovers damages against the agent, the latter will be entitled to reimbursement from the principal. Pal. Ag. by Lloyd, 152, 301; 2 John. Cas. 54; 17 John. 142; 14 Pick. 174.

11. - 2d. The liabilities of the principal to third persons, are,

1. To fulfii all the engagements made by the agent, for or in the name of the principal, and which come within the scope of his authority. Story, Ag. 126.

2. When a man stands by and permits another to do an act in his name, his authority will be presumed. Vide Authority, and 2 Kent, Com. 3d edit. 614; Story, Ag. 89, 90, 91; and articles Assent; Consent.

3. The principal is liable to third persons for the misfeasance, negligence, or omission of duty of his agent; but he has a remedy over against the agent, when the injury has occurred in consequence of his misconduct or culpable neglect; Story, Ag. 308; Paley, Ag. by Lloyd, 152, 3; 1 Metc. 560; 1 B. Mont. 292; 5 B. Monr. 25; 9 W. & S. 72; 8 Pick. 23; 6 Gill & John. 292; 4 Q. B. 298; 1 Hare & Wall. Sel. Dee. 467; Dudl. So. Car. R. 265, 268; 5 Humph. 397; 2 Murph. 389; 1 Ired. 240; but the principal is not liable for torts committed by the agent without authority. 5 Humph. 397; 2 Murph. 389; 19 Wend. 343; 2 Metc. 853. A principal is also liable for the misconduct of a sub-agent, when retained by his direction, either express or implied. 1 B. & P. 404; 15 East, 66.

12. The general, rule, that a principal cannot be charged with injuries committed by his agent without his assent, admits of one exception, for reasons of policy. A sheriff is liable, even under a penal statute, for all injurious acts, wilful or negligent, done by his appointed officers, colore officii, when charged and deputed by him to execute the law. The sheriff is, therefore, liable where his deputy wrongfully executes a writ; Dougl. 40; or where he takes illegal fees. 2 E. N. P. C. 585.

13. But the principal may be liable for his agent's misconduct, when he has agreed, either expressly or by implication, to be so liable. 8 T. R . 531; 2 Cas. N. P. C. 42. Vide Bouv. Inst. Index, h. t.; Agency; Agent.

PRINCIPAL, crim. law. A principal is one who is the actor in the commission of a crime.

2. Principals are of two kinds; namely, 1. Principals in the first degree, are those who have actually with their own hands committed the fact, or have committed it through an innocent agent incapable himself, of doing so; as an example of the latter kind, may be mentioned the case of a person who incites a child wanting discretion, or a person non compos, to the commission of murder, or any other crime, the incitor, though absent, when the crime was committed, is, ex necessitate, liable for the acts of his agent and is a principal in the first degree. Fost. 340; 1 East, P. C. 118; 1 Hawk. c. 31, s. 7; 1 N. R. 92; 2 Leach, 978. It is not requisite that each of the principals should be present at the entire transaction. 2 East, P. C. 767. For example, where several persons agree to forge an instrument, and each performs some part of the forgery in pursuance of the common plan, each is principal in the forgery, although one may be away when it is signed. R. & R. C. C. 304; Mo. C. C. 304, 307.

3. - 2. Principals in the second degree, are those who were present aiding and abetting the commission of the fact. They are generally termed aiders and abettors, and sometimes, improperly, accomplices. (q. v.) The presence which is required in order to make a man principal in the second degree, need not be a strict actual, immediate presence, such a presence as would make him an eye or ear witness of what passes, but may be a constructive presence. It must be such as may be sufficient to afford aid and assistance to the principal in the first degree. 9 Pick. R. 496; 1 Russell, 21; Foster, 350.

4. It is evident from the definition that to make a wan a principal, he must be an actor in the commission of the crime and, therefore, if a man happen merely to be present when a felony is committed without taking any part in it-or aiding those who do, he will not, for that reason, be considered a principal. 1 Hale, P. C. 439; Foster, 350.

PRINCIPAL CONTRACT. One entered into by both parties, on their own accounts, or in the several qualities they assume. It differs from an accessory contract. (q. v.) Vide Contract.

PRINCIPAL OBLIGATION That obligation which arises from the principal object of the engagement which has been contracted between the parties. It differs from an accessory obligation. (q. v.) For example, in the sale of a horse, the principal obligation of the seller is to deliver the horse; the obligation to take care of him till delivered is an accessory engagement. Poth. Obl. n. 182. By principal obligation is also understood tho engagement of one who becomes bound for himself and not for the benefit of another. Poth. Obl. n. 186.

PRINCIPLES. By this term is understood truths or propositions so clear that they cannot be proved nor contradicted, unless by propositions which are still clearer. They are of two kinds, one when the principle is universal, and these are kuown as axioms or maxims; as, no one can transmit rights which he has not; the accessory follows the principal, &c. The other class are simply called first principles. These principles have known marks by which they may always be recognized. These are, 1. That they are so clear that they cannot be proved by anterior and more manifest truths. 2, That they are almost universally received. 3. That they are so strongly impressed on our minds that we conform ourselves to them, whatever may be our avowed opinions.

2. First principles have their source in the sentiment of our own existence, and that which is in the nature of things. A principle of law is a rule or axiom which is founded in the nature of the subject, and it exists before it is expressed in the form of a rule. Domat, Lois Civiles, liv. prel. t. 1, s. 2 Toull. tit. prel. n. 17. The right to defend one's self, continues as long as an unjust attack, was a principle before it was ever decides by a court, so that a court does Dot establish but recognize principles of law.

3. In physics, by principle is understood that which constitutes the essence of a body, or its constituent parts. 8 T. R. 107. See 2 H. Bl. 478. Taken in this sense, a principle cannot be patented; but when by the principle of a machine is meant the modus operandi, the peculiar device or manner of producing any given effect, the application of the principle may be patented. 1 Mason, 470; 1 Gallis, 478; Fessend. on Pat. 130; Phil. on Pat. 95, 101; Perpigna, Manuel des Inventeurs, &c., c. 2, s. 1.

PRINTING. The art of impressing letters; the art of making books or papers by impressing legible characters.

2. The right to print is guarantied by law, and the abuse of the right renders the guilty person liable to punishment. See Libel,; Liberty of the Press; Press.

PRIORITY. Going before; opposed to posteriority. (q. v.)

2. He who has the precedency in time has the advantage in right, is the maxim of the law; not that time, considered barely in itself, can make any such difference, but because the whole power over a thing being secured to one person, this bars all others from obtaining a title to it afterwards. 1 Fonb. Eq. 320.

3. In the payment of debts, the United States are entitled to priority when the debtor is insolvent, or dies and leaves an insolvent estate. The priority was declared to extend to cases in which the insolvent debtor had made a vol-untary assignment of all his property, or in which his effects had been attached as an absconding or absent debtor, on which an act of legal bankruptcy had been committed. 1 Kent, Com. 243; 1 Law Intell. 219, 251; and the cases there cited.

4. Among common creditors, he who has the oldest lien has the preference; it being a maxim both of law and equity, qui prior est tempore, potior est jure. 2 John. Ch. R. 608. Vide Insolvency; and Serg. Const. La*, Index, h. t.

PRISAGE. The name of an ancient duty taken by the English crown on wines imported into England. Bac. Ab. Smuggling and Customs, C. 2; Harg. L. Tr. 75.

PRISON. A legal prison is the building designated by law, or used by the sheriff, for the confinement, or detention of those whose persons are judicially ordered to be kept in custody. But in cases of necessity, the sheriff may make his own house, or any other place, a prison. 6 John. R. 22. 2. An illegal prison is one not authorized by law, but established by private authority; when the confinement is illegal, every place where the party is arrested is a prison; as, the street, if he be detained in passing along. 4 Com. Dig. 619; 2 Hawk. P. C. c. 18, s. 4; 1 Buss. Cr. 378; 2 Inst. 589.

PRISON BREAKING. The act by which a prisoner, by force and violence, escapes from a place where he is lawfully in custody. This is an offence at common law.

2. To constitute this offence, there must be, 1. A lawful commitment of the prisoner; vide Regular and Irregular process. 2. An actual breach with force and violence of the prison, (q. v.) by the prisoner himself or by others with his privity and procurement. Russ. & Ry. 458; 1 Russ. Cr. 380. 3. The prisoner must escape. 2 Hawk. P. C. c. 18, s. 12; vide 1 Hale P. C. 607; 4 Bl. Com. 130; 2 Insts. 500; 2 Swift's Dig. 327; Alis. Prin. 555; Dalloz, Dict. mot Effraction.

PRISONER One held in confinement against his will.

2. Prisoners are of two kinds, those lawfully confined, and those unlawfully imprisoned.

3. Lawful prisoners are either prisoners charged with crimes, or for a civil liability. Those charged with crimes are either persons accused and not tried, and these are considered innocent, and are therefore entitled to be treated with as little severity as possible, consistently with the certain detention of their persons; they are entitled to their discharge on bail, except in capital cases, when the proof is great; or those who have been convicted of crimes, whose imprisonment, and the mode of treatment they experience, is intended as a punishment, these are to be treated agreeably to the requisitions of the law, and in the United States, always with humanity. Vide Penitentiary. Prisoners in civil cases, are persons arrested on original or mesne process, and these may generally be discharged on bail; and prisoners in execution, who cannot be discharged, except under the insolvent laws.

4. Persons unlawfully confined, are those who are not detained by virtue of some lawful, judicial, legislative; or other proceeding. They are entitled to their immediate discharge on habeas corpus. For the effect of a contract entered into by a prisoner, see 1 Salk. 402, n.; 6 Toull. 82.

5. By tho resolution. of congress, of September 23, 1789, it was recommended to the legislatures of the several states, to pass laws, making it expressly the duty of the keepers of those jails to receive and safely keep therein, all persons committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the like penalties as in the case of prisoners committed under the authority of such states respectively. And by the resolution of March 3, 1791, it is provided, that if any state shall not have complied with the above recommendation the marshal in such state, under the direction of the judge of the district, shall be authorized to hire a convenient place to serve as a temporary jail. See 9 Cranch, R. 80.

PRISONER OF WAR. One who has been captured while fighting under the banner of some state. He is a prisoner, although never coufined in a prison.

2. In modern times, prisoners are treated with more humanity than formerly; the individual captor has now no personal right to his prisoner. Prisoners are under the superintendence of the government, and they are now frequently exchanged. Vide 1 Kent, Com . 14.

3. It is a general rule, that a prisoner is out of the protection of the laws of the state, so for, that he can have no civil remedy under them, and he can, therefore, maintain no action. But his person is protected against all unlawful acts. Bac. Ab. Abatement, b. 3; Bac. Ab. Aliens, D.

PRIVATE. Not general, as a private act of the legislature; not in office; as, a private person, as well as an officer, may arrest a felon; individual, as your private interest; not public, as a private way, a private nuisance.

PRIVATEER war. A vessel owned by one or by a society of private individuals, armed and equipped at his or their expense, for the purpose of carrying on a maritime war, by the authority of one of the belligerent parties.

2. For the purpose of encouraging the owners of private armed vessels, they are usually allowed to appropriate to themselves the property they capture, or, at least, a large proportion of it. 1 Kent, Com. 96; Posh. du Dr. de Propr. n. 90 et seq. See 2 Dall. 36; 3 Dall. 334; 4 Cranch, 2; 1 Wheat. 46; 3 Wheat. 546; 2 Gall. R. 19; Id. 526; 1 Mason, R. 365 3 Wash. C. C. R. 209 2 Gall. R. 56; 5 Wheat. 338; Mann. Com. 1.16.

PRIVEMENT ENCEINTE. This term is used to signify that a woman is pregnant, but not quick with child; (q. v.) and vide Wood's Inst. 662; Enceinte; Foetus; Pregnancy.

PRIVIES. Persons who are partakers, or have an interest in any action or thing, or any relation to another. Wood, Inst. b. 2, c. 3, p. 255; 2 Tho. Co. Lit. 506 Co. Lit. 271, a.

2. There aye several kinds of privies, namely, privies in blood, as the heir is to the ancestor; privies in representation, as is the executor or administrator to the deceased privies in estate, as the relation between the donor-and donee, lessor and lessee; privies in respect to contracts; and privies on account of estate and contract together. Tho. Co. Lit. 506; Prest. Con v. 327 to 345. Privies have also been divided into privies in fact, and privies in law. 8 Co. 42 b. Vide Vin. Ab. Privily; 5 Coin. Dig. 347; Ham. on Part. 131; Woodf. Land. & Ten. 279, 1 Dane's Ab. c. 1, art. 6.

PRIVILEGE, civil law. A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors. Louis. Code, art. 3153; Dict. de Juris. art. Privilege: Domat, Lois Civ. liv. 2, t. 1, s. 4, n. 1.

2. Creditors of the same rank of privileges, are paid in concurrence, that is, on an equal footing. Privileges may exist either in movables, or immovables, or both at once. They are general or special, on certain movables. The debts which are privileged on all the movables in general, are the following, which are paid in this order. 1. Funeral charges. 2. Law charges, which are such as are occasioned by the prosecution of a suit before the courts. But this name applies more particularly to costs, which the party cast has to pay to the party gaining the cause. It is in favor of these only that the law grants the privilege. 3. Charges, of whatever nature, occasioned by the last sickness, concurrently among those to whom they are due; see Last sickness. 4. The wages of servants for the year past, and so much as is due for the current year. 5. Supplies of provisions made to the debtor or his family during the last six months, by retail dealers, such as bakers, butchers, grocers; and during the last year by keepers of boarding houses and taverns. 6. The salaries of clerks, secretaries, and other persons of that kind. 7. Dotal rights, due to wives by their hushands.

3. The debts which are privileged on particular movables, are, 1. The debt of a workman or artizan for the price of his labor, on the movable which he has repaired, or made, if the thing continues still in his possession. 2. That debt on the pledge which is in the creditor's possession. 3. The carrier's charges and accessory expenses on the thing carried. 4. The price due on movable effects, if they are yet in the possession of the purchaser; and the like. See Lien.

4. Creditors have a privilege on immovables, or real estate in some, cases, of which the following are instances: 1. The vendor on the estate by him sold, for the payment of the price, or so much of it as is due whether it be sold on or without a credit. 2. Architects and undertakers, bricklayers and other workmen employed in constructing, rebuilding or repairing houses, buildings, or making other works on such houses, buildings, or works by them constructed, rebuilt or repaired. 3. Those who have supplied the owner with materials for the construction or repair of an edifice or other work, which he has erected or repaired out of these materials, on the edifice or other work constructed or repaired. Louis. Code, art. 3216. See, generally, as to privilege. Louis. Code, tit. 21; Code Civ. tit. 18; Dict. de Juris. tit. Privilege; Lien; Last sickness; Preference.

PRIVILEGE, mar. law. An allowance to the master of a ship of the general nature with primage, (q. v.) being compensation or rather a gratuity customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the

contract on both sides is made under the knowledge such usage by the parties. 3 Chit. Com. Law, 431.

PRIVILEGE, rights. This word, taken its active sense, is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, contrary to common right. In its passive sense, it is the same prerogative granted by the same particular law.

2. Examples of privilege may be found in all systems of law; members of congress and of the several legislatures, during a certain time, parties and witnesses while attending court; and coming to and returning from the same; electors, while going to the election, remaining on the ground, or returning from the same, are all privileged from arrest, except for treason, felony or breach of the peace.

3. Privileges from arrest for civil cases are either general and absolute, or limited and qualified as to time or place.

4. - 1. In the first class may be mentioned ambassadors, and their servants, when the debt or duty has been contracted by the latter since they entered into the service of such ambassador; insolvent debtors duly discharged under the insolvent laws; in some places, as in Pennsylvania, women for any debt by them contracted; and in general, executors and administrators, when sued in their representative character, though they have been held to bail. 2 Binn. 440.

5. - 2. In the latter class may be placed, 1st. Members of congress this privilege is strictly personal, and is not only his own, or that of his constituent, but also that of the house of which he is a member, which every man is bound to know, and must take notice of. Jeff. Man. 3; 2 Wils. R. 151; Com. Dig. Parliament, D. 17. The time during which the privilege extends includes all the period of the session of congress, and a reasonable time for going to, and returning from the seat of government. Jeff. Man. 3; Story, Const. 856 to 862; 1 Kent, Com. 221; 1 Dall. R. 296. The same privilege is extended to the members of the different state legislatures.

6. - 2d. Electors under the constitution and laws of the United States, or of any state, are protected from arrest for any civil cause, or for any crime except treason, felony, or a breach of the peace, eundo, morando, et redeundo, that is, going to, staying at, or returning from the election.

7. - 3d. Militia men, while engaged in the performance of military duty, under the laws, and eundo, morando et redeundo.

8. - 4th. All persons who, either necessarily or of right are attending any court or forum of justice, whether as judge, juror, party interested or witness, and eundo, morando et redeundo. See 6 Mass. R, 245; 4 Dall. R. 329, 487; 2 John. R. 294; 1 South. R. 366; 11 Mass. R. 11; 3 Cowen, R. 381; 1 Pet. C. C. R. 41.

9. Ambassadors are wholly exempt from arrest for civil or criminal cases. Vide Ambassador. See, generally, Bac. Ab. h. t.; 2 Rolle's Ab. 272; 2 Lilly's Reg. 369; Brownl. 15; 13 Mass. R. 288; 1 Binn. R. 77; 1 H. Bl. 686; Bouv. Inst. Index, h. t.

PRIVILEGED COMMUNICATIONS. Those statements made by a client to his counsel or attorney, or solicitor, in confidence, relating to some cause Or action then pending or in contemplation.

2. Such communications cannot be disclosed without the consent of the client. 6 M. & W. 587; 8 Dow]. 774; 2 Yo. & C. 82; 1 Dowl. N. S. 651; 9 Mees. & W. 508. See Confidential communication.

PRIVILEGIUM CLERICALE. The same as benefit of clergy.

PRIVITY. The mutual or successive relationship to the same rights of property. 1 Greenl. Ev. 189; 6 How. U. S. R. 60.

PRIVITY OF CONTRACT. The relation which subsists between two contracting parties. Hamm. on Part. 182.

2. From the nature of the covenant entered into by him, a lessee has both privity of contract and of estate; and though by an assignment of his lease he may destroy his privity of estate, still the privity of contract remains, and he is liable on his covenant notwithstanding the assignment. Dougl. 458, 764; Vin. Ab. h. t. 6 How. U. S. R. 60. Vide Privies.

PRIVITY OF ESTATE. The relation which subsists between a landlord and his tenant.

2. It is a general rule that a termor cannot transfer the tenancy or privity of estate between himself and his landlord, without the latter's consent: an assignee, who comes in only in privity of estate, is liable only while he continues to be legal assignee; that is, while in possession under the assignment. Bac. Ab. Covenant, E 4; Woodf. L. & T. 279; Vin. Ab. h: t.; Hamm. on Part. 132. Vide Privies.

PRIVY. One who is a partaker, or has an interest in any action, matter or thing.

PRIVY COUNCIL, Eng. law. A council of state composed of the king and of such persons as he may select.

PRIVY SEAL, Eng. law. A seal which the king uses to such grants or things as pass the great seal. 2 Inst. 554.

PRIVY VERDICT. One which is delivered privily to a judge out of court.

PRIZE, mar. law, war. The apprehension and detention at sea, of a ship or other vessel, by authority of a belligerent power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or a part of its cargo. 1 Rob. Adm. R. 228. The vessel or goods thus taken are also called a prize. Goods taken on land from a public enemy, are called booty, (q. v.) and the distinction between a prize and booty consists in this, that the former is taken at sea and the latter on laud.

2. In order to vest the title of the prize in the cap tors, it must be brought with due care into some convenient port for adjudication by a competent court. The condemnation must be pronounced by a prize court of the government of the captor sitting in the country of the captor, or his ally; the prize court of an ally cannot condemn. Strictly speaking, as between the belligerent parties the title passes, and is vested when the capture is complete; and that was formerly held to be complete and perfect when the battle was over, and the spes recuperandi was gone. 1 Kent, Com. 100; Abbott on Shipp. Index, h. t.; 13 Vin. Ab. 51; 8 Com. Dig. 885; 2 Bro. Civ. Law, 444; Harr. Dig. Ship. and Shipping, X; Merl. Repert. h. t.; Bouv. Inst. Index. h. t. Vide Infra praesidia.

PRIZE, contracts. A reward which is offered to one of several persons who shall accomplish a certain condition; as, if an editor should offer a silver cup to the individual who shall write the best essay in favor of peace.

2. In this case there is a contract subisting between the editor and each person who may write such essay that he will pay the prize to the writer of the best essay. Wolff, Dr. de la Nat. 675.

3. By prize is also meant a thing which is won by putting into a lottery.

PRIZE COURT, Engl. law The name of court which has jurisdiction of all captures made in war on the high seas.

2. In England this is a separate branch of the court of admiralty, the other branch being called the instance court. (q. v.)

3. The district courts of the United States have jurisdiction both as instance and prize courts, there being no distinction in this respect as in England. 3 Dall. 6; vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 6 & 7; 1 Kent, Com. 356; Mann. Comm. B. 3, c. 12.

PRO. A Latin proposition signifying `for.' As to its effects in contracts, vide Plowd. 412.

PRO AND CON. For and against. For example, affidavits are taken pro and con.

PRO CONFESSO, chan. pract. For confessed.

2. When the defendant has been served personally with a subpoena, or when not being so served has appeared, and afterwards neglects to answer the matter contained in the bill, it shall be taken pro confesso, as if the matter were confessed by the defendant. Blake's Ch. Pr. 80; Newl. Ch. Pr. c. 1, s. 12; 1 Johns. Cb. Rep. 8. It also be taken pro confesso if the manner is sufficient. 4 Vin. Ab. 446 2 Atk. 24 3 Ves. 209; Harr. Ch. Pr. 154. Vide 4 Ves. 619, and the cases there cited.

PRO-CURATORS, PRO-TUTORS. Persons who act as curators or tutors, without being lawfully authorized. They are, in general, liable to all the duties of curators or tutors, and are entitled to none of the advantages which legal curators or tutors can claim.

PRO EO QUOD, pleading. For this that. It is a phrase of affirmation, and is sufficiently direct and positive for introducing a material averment. 1 Saund. 117, n. 4; 1 Com. Dig. Pleader, c. 86 2 Chit. Pl. 369-393 Gould on Pl. c. 3, 34.

PRO INDIVISO. For an undivided part. The possession or occupation of lands or tenements belonging to two or mare persons, and consequently neither knows his several portion till divided: Bract. 1. 5.

PRO QUERENTE. For the plaintiff; usually abbreviated, pro quer.

PRO RATA. According to the rate, proportion or allowance. A creditor of an insolvent estate, is to be paid pro rata with creditors of the same class.

PRO RE NATA. For the occasion as it may arise.

PRO TANTO. For so much. See 17 Serg. & Rawle, 400.

PROAMITA. Great paternal aunt; the sister of one's grandfather. Inst. 3, 6, 3 & 4; Dig. 38, 10, 10, 14, et seq.

PROAVUS. Great grandfather. This term is employed in making genealogical tables.

PROBABILITY. That which is likely to happen; that which is most consonant to reason; for example, there is a strong probability that a man of a good moral character, and who has heretofore been remarkable for truth, will, when examined as a witness under oath, tell the truth; and, on the contrary, that a man who has been guilty of perjury, will not, under the same circumstances, tell the truth; the former will, therefore, be entitled to credit, while the latter will not.

PROBABLE. That which has the appearance of truth; that which appears to be founded in reason.

PROBABLE CAUSE. When there are grounds for suspicion that a person has committed a crime or misdemeanor, and public justice and the good of the community require that the matter should be examined, there is said to be a probable cause for, making a charge against the accused, however malicious the intention of the accuser may have been. Cro. Eliz. 70; 2 T. R. 231; 1 Wend. 140, 345; 5 Humph. 357; 3 B. Munr. 4. See 1 P. S. R. 234; 6 W. & S. 236; 1 Meigs, 84; 3 Brev. 94. And probable cause will be presumed till the contrary appears.

2. In an action, then, for a malicious prosecution, the plaintiff is bound to show total absence of probable cause, whether the original proceedings were civil or criminal. 5 Taunt. 580; 1 Camp. N. P. C. 199; 2 Wils. 307; 1 Chit. Pr. 48; Hamm. N. P. 273. Vide Malicious prosecution, and 7 Cranch, 339; 1 Mason's R. 24; Stewart's Adm. R. 115; 11 Ad. & El. 483; 39 E. C. L. R. 150; 24 Pick.-81; 8 Watts, 240; 3 Wash. C. C. R. 31: 6 Watts & Serg. 336; 2 Wend. 424 1 Hill, S. C. 82; 3 Gill & John. 377; 1 Pick. 524; 8 Mass. 122; 9 Conn. 309; 3 Blackf. 445; Bouv. Inst. Index, h. t.

PROBATE OF A WILL. The proof before an officer appointed by law, that an instrument offered to be recorded is the act of the person whose last will and testament it purports to be. Upon proof being so made and security being given when the laws of the state require such security, the officer grants to the executors or administrators cum testamento annexo, when there been adopted, but provision is made for perare no executors, letters testamentary, or of administration.

2. The officer. who takes such probate is variously denominated; in some states he is called judge of probate. in others register, and surrogate in others. Vide 11 Vin. Ab. 5 8 12 Vin. Ab. 126 2 Supp. to Ves. jr. 227 1 Salk. 302; 1 Phil. Ev. 298; 1 Stark. Ev. 231, note, and the cases cited in the note, and also, 12 John. R. 192; 14 John. R. 407 1

Edw. R. 266; 5 Rawle, R. 80 1 N. & McC. 326; 1 Leigh, R. 287; Penn. R. 42; 1 Pick. R. 114; 1 Gallis. R. 662, as to the effect of a probate on real and personal property,

3. In England, the ecclesiastical courts, which take the probate of wills, have no jurisdiction of devises of land. In a trial at common law, therefore, the original will must be produced, and the probate of a will is no evidence.

4. This rule has been somewhat changed in some of the states. In New York it has petuating the evidence of a will. 12 John. Rep. 192; 14 John. R, 407. In Massachusetts, Connecticut, North Carolina, and Michigan, the probate is conclusive of its validity, and a will cannot be used in evidence till proved. 1 Pick. R. 114; l Gallis. R. 622 1 Mich. Rev. Stat. 275. In Pennsylvania, the probate is not conclusive as to lands, and, although not allowed by the Register's court, it may be read in evidence. 5 Rawle's R. 80. In North Carolina, the will must be proved de novo in the court of common pleas, though allowed by the ordinary. 1 Nott & McCord, 326. In New Jersey, probate is necessary, but it is not conclusive. Penn. R. 42.

5. The probate is a judicial act, and while unimpeached, authorizes debtors of the deceased in paying the debts they owed him, to the executors although the will may, have been forged. 3 T. R. 125; see 8 East, Rep. 187. Vide Letters testamentary.

PROBATION. The evidence which proves a thing. It is either by record, writing, the party's own oath, or the testimony of witnesses. Proof. (q. v.) It also signifies the time of a novitiate; a trial. Nov. 5.

PROBATOR. Ancient English law. Strictly, an accomplice in felony, who to save himself confessed the fact, and charged or accused any other as principal or accessary, against whom he was bound to make good his charge. It also signified an approver, or one who undertakes to prove a crime charged upon another. Jacob's Law Dict. h. t.

PROBATORY TERM. In the British courts of admiralty, after the issue is formed between the parties, a time for taking the testimony is assigned, this is called a probatory term.

2. This term is common to both parties, and either party may examine his witnesses. When good cause is shown the term will be enlarged. 2 Bro. Civ. and Adm. Law, 418 Dunl. Pr. 217.

PROBI ET LEGALES HOMINES. Good and lawful men; persons competent in point of law to serve on juries. Cro. Eliz. 654, 751; Cro. Jac. 635; Mart. & Yerg. 147; Hardin, 63; Bac. Ab. Juries, A.

PROBITY. Justice, honesty. A man of probity is one who loves justice and honesty, and who dislikes the contrary. Wolff, Dr. de la Nat. 772. ,

PROCEDENDO, practice. A writ which issues where an action is removed from an inferior to a superior jurisdiction by habeas corpus, certiorari or writ of privilege, and it does not appear to such superior court that the suggestion upon which the cause has been removed, is sufficiently proved; in which case the superior court by this writ remits the cause to the court from whence it came, commanding the inferior court to proceed to the final hearing and determination of the same. See 1 Chit. R. 575; 2 Bl. R. 1060 1 Str. R. 527; 6 T. R. 365; 4 B. & A. 535; 16 East, R. 387.

PROCEEDING. In its general acceptation, this word means the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments and of executing.

2. Proceediugs are ordinary and summary. 1. By ordinary proceedings are understood the regular and usual mode of carrying on, a suit by due course at common law. 2. Summary proceedings are those when the matter in dispute is decided without the intervention of a jury; these must be authorized by the legislature, except perhaps in cages of contempts, for such proceedings are unknown to the common law.

3. In Louisiana, there is a third kind of proceeding, known by the name of executory proceeding, which is resorted to in the following cases: 1. When the creditor's right arises from an act importing a confession of judgment, and which contains a privilege or mortgage in his favor. 2. When the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. Code of Practice, art. 732.

4. In New York the code of practice divides remedies into actions and special proceedings. An action is a regular judicial proceeding, in which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. Every other remedy is a special proceeding. 2.

PROCERES. The name by which the chief magistrates in cities were formerly known. St. Armand, Hist. Eq. 88.

PROCES VERBAL, French law. A true relation in writing in due form of law of what has been done and said verbally in the presence of a public officer, and what he himself does upon the occasion. It is a species of inquisition of office.

2. The proces verbal should be dated, contain the name, qualities, and residence of the public functionary who makes it, the cause of complaint, the existence of the crime, that which serves to substantiate the charge, point out its nature, the time, the place, the circumstances, state the proofs and presumptions, describe the place, in a word, everything calculated to ascertain the truth. It must be signed by the officer. Dall. Dict. h. t.

PROCESS, practice. So denominated because it proceeds or issues forth in order to bring the defendant into court, to answer the charge preferred against him, and signifies the writ or judicial means by which he is brought to answer. 1 Paine, R. 368 Bouv. Inst. Index, h. t.

2. In the English law, process in civil causes is called original process, when it is founded upon the original writ; and also to distinguish it from mesne or intermediate process, wliich issues pending the suit, upon some collateral interlocutory matter, as, to summon juries, witnesses,, and the like; mesne process is also sometimes put in contradistinction to final process, or process of execution; and then it signifies all process which intervenes between the beginning and end of a suit. 3 Bl. Com. 279.

3. In criminal cases that proceeding which is called a warrant, before the finding of the bill, is termed process when issued after the indictment has been found by the jury. Vide 4 Bl. Com. 319; Dalt. J. c. 193; Com. Dig. Process, A 1; Burn's Dig. Process; Williams, J, Process; 1 Chit. Cr. Law, 338; 17 Vin. Ab. 585.

4. The word process in the 12th section of the 5th article of the constitution of Pennsylvania, which provides that "the style of all process shall be The Commonwealth of Pennsylvania," was intended to refer to such writs only as should become necessary to be issued in the course of the exercise of that judicial power which is established and provided for in the article of the constitution, and forms exclusively the subject matter of it. 3 Penns. R. 99.

PROCESS, rights. The means or method of accomplishing a thing.

2. It has been said that the word manufacture, (q. v.) in the patent laws, may, perhaps, extend to a new process, to be carried on by known implements, or elements, acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better and more useful kind. 2 B. & Ald. 349. See Perpigna, Manuel des Inventeurs, &c., c. 1; s. 5, 1, p. 22, 4th ed.; Manufacture; Method.

PROCESS, MESNE, pradice. By this term is generally understood any writ issued in the course of a suit between the original process and execution.

2. By this term is also meant the writ or proceedings in an action to summon or bring the defendant into court, or compel him to appear or put in bail, and then to hear and answer the plaintiffs claim. 3 Chit. Pr. 140.

PROCESS OF GARMISHMENT, practice. It was formerly the practice to deposit deeds and other things in the hands of third persons, to await the performance of covenants, upon which they were to be re-delivered to one of the parties. When one of the parties contended that he was entitled to such things, and the other denied it, and the claiming party brought an action of detinue for them, the defendant was allowed to in terplead, and thereupon he prayed for a monition or notice to compel the other depositor to appear and become a defendant in his stead. This was called a process of garnishment. 3 Reeves, Hist. Eng. Law, eh. 23, p. 448.

PROCESS OF INTERPLEADER, practice. Formerly when two parties concurred in a bailment to a third person of things which were to be delivered to one of them on the performance of a covenant or other thing, and the parties brought several actions of detinue against the bailee, the latter might plead the facts of the case and pray that the plaintiffs in the several actions might interplead with each other; this was called process of interpleader. 3 Reeves, Hist. Law, eh. 23; Mitford, Eq. Pl. by Jeremy, 141; 2 Story, Eq. Jur. 802.

PROCESSIONING. A term used in Tennessee to signify the manner of ascertaining the boundaries of land, as provided for by the laws of that state. Carr. & Nich. Comp. of Stat. of Tenn. 348. The term is also used in North Carolina. 3 Murph. 504; 3 Dev. 268.

PROCHEIN. Next. This word is frequently used in composition; as, prochein amy, prochein cousin, and the like. Co. Lit. 10.

PROCHEIN AMY, more correctly prochain ami. Next friend.

2. He who, without being appointed guardian, sues in the name of an infant for the recovery of the rights of the latter, or does such other acts as are authorized by law; as, in Pennsylvania, to bind the infant apprentice. 3 Serg. & Rawle, 172; 1 Ashm. Rep. 27. For some of the rules with respect to the liability or protection of a prochein amy, see 4 Madd. 461; 2 Str. 709; 3 Madd. 468; 1 Dick. 346; 1 Atk. 570; Mosely, 47, 85; 1 Ves. Jr. 409; 10 Ves. 184; 7 Ves. 425; Edw. on Parties, 182 to 204.

PROCLAMATION, evidence. The act of causing some state matters to be published or made generally known. A written or printed document in which are contained such matters, issued by proper authority; as the president's proclamation, the governor's, the mayor's proclamation. The word proclamation is also used to express the public

nomination made of any one to a high office; as, such a prince was proclaimed emperor.

2. The president's proclamation has not the force of law, unless when authorized by congress; as if congress were to pass an act, which should take effect upon the happening of a contingent event, which was to be declared by the president by proclamation to hive happened; in this case the proclamation would give the act the force of law, which, till then, it wanted. How far a proclamation is evidence of facts, see Bac. Ab. Ev. F; Dougl. 594, n; B. N. P. 226; 12 Mod. 216; 8 State Tr. 212; 4 M. & S. 546; 2 Camp. Rep. 44; Dane's Ab. eh. 96, a. 2, 3 and 4; 1 Scam. R. 577; Bro. h. t.

PROCLAMATION, practice. The declaration made by the cryer, by authority of the court, that something is about to be done.

2. It usually commences with the French word Oyez, do you hear, in order to attract attention; it is particularly used on the meeting or opening of the court, and at its adjournment; it is also frequently employed to discharge persons who have been accused of crimes or misdemeanors.

PROCLAMATION OF EXIGENTS, Eng. law. On awarding an exigent, in order to outlawry, a writ of proclamation issues to the sheriff of the county where the party dwells, to make three proclamations for the defendant to yield himself, or be outlawed.

PROCLAMATION OF REBELLION, Eng. law. When a party neglects to appear upon a subpoena, or an attachment in the chancery, a writ bearing this name issues, and if he does not surrender himself by the day assigned, he is reputed, and declared a rebel.

PROCREATION. The generation of children; it is an act authorized by the law of nature: one of the principal ends of marriage is the procreation of children. Inst. tit. 2, in pr.

PROCTOR. One appointed to represent in judgment the party who empowers him, by writing under his hand called a proxy. The term is used chiefly in the courts of civil and ecclesiastical law. The proctor is somewhat similar to the attorney. Avl. Parerg. 421.

PROCURATION, civil law. The act by which one person gives power to another to act in his place, as he could do himself. A letter of attorney.

2. Procurations are either express or implied; an express procuration is one made by the express consent of the parties; the implied or tacit takes place when an individual sees another managing his affairs, and does not interfere to prevent it. Dig. 17, 1, 6, 2; Id. 50, 17, 60; Code 7, 32, 2.

3. Procurations are also divided into those which contain absolute power, or a general authority, and those which give only a limited power. Dig. 3, 3, 58; Id. 17, 1, 60, 4 4. The procurations are ended in three ways first, by the revocation of the authority; secondly, by the death of one of the parties; thirdly, by the renunciation of the mandatory, when it is made in proper time and place, and it can be done without injury to the person who gave it. Inst. 3, 27 Dig. 17, 1; Code 4, 35; and see Authority; Letter of Attorney; Mandate.

PROCURATIONS, eccles. law. Certain sums of money which parish priests pay yearly to the bishops or archdeacons ratione visitationis. it 3, 39, 25; Ayl. Parerg. 429; 17 Vin. Ab. h. t., pa e 544.

PROCURATOR, civil law. A proctor; a person who acts for another by virtue of a procuration. Procurator est, qui aliena negotia mandata Domini administrat. Dig 3, 3, 1. Vide Attorney; Authority.

PROCURATOR in rem suam. Scotch law. This imports that one is acting as attorney as to his own property. When an assignment of a thing is made, as a debt, and a procuration or power of attorney is given to the assignee to receive the same, he is in such case procurator in rein suam. 3 Stair's Inst. 1, 2, 3, &c.; 3 Ersk. 5, 2; 1 Bell's Com. B. 5, c. 2, s. 1, 2.

PROCURATORIUM. The proxy or instrument by which a proctor is constituted and appointed.

PRODIGAL, civil law, persons. Prodigals were persons who, though of full age, were incapable of managing their affairs, and of the obligations which attended them, in consequence of their bad conduct, and for whom a curator was therefore appointed.

2. In Pennsylvania, by act of assembly, an habitual drunkard is deprived of the management of his affairs, when he wastes his property, and his estate is placed in the bands of a committee.

PRODITORIE. Treasonably. This is a technical word formerly used in indictments for treason, when they were written in Latin.

PRODUCENT. He who produces a witness to be examined. The term is used in the ecclesiastical courts.

PROFANE. That which has not been consecrated. By a profane place is understood one which is neither sacred, nor sanctified, nor religious. Dig. 11, 7, 2, 4. Vide Things.

PROFANELY. In a profane manner. In an indictment, under the act of assembly of Pennsylvania, against profanity, it is requisite that the words should be laid to have been spoken profanely. 11 S. & R. 394.

PROFANENESS or PROFANITY, crim. law. A disrespect to the name of God, or his divine providence. This is variously punished by statute in the several states.

PROFECTITUS, civil law. That which descends to us from our ascendants. Dig. 23, 3, 5.

PROFERT IN CURIA, plead. Produces in court.

2. When the plaintiff declares on a deed, or the defendant pleads a deed, and makes title under it, be must do it with a profert in curia, by declaring that he " brings here into court, the said writing obligatory," or other deed.

3. The object of this is to enable the court to inspect the instrument pleaded, the construction and legal effect of which is matter of law, and to entitle the adverse party to oyer of it; 10 Co. 92, b.; 1 Chit. Pl. 414; 1 Archb. Pr. 164; but one who pleads a deed of any kind, without making title under it, is not bound to make profert of it. Gould on Pl. oh. 7, part 2, 47. To the above rule that he who declares on, or pleads a deed, and makes title under it, must make profert of it, there are several exceptions, all of which are founded on the pleader's actual or presumed inability to produce the instrument. A stranger to a deed, therefore, may in general plead it, and make title under it, without profert. Com. Dig. Pleader, 0 8; Cro. Jac. 217; Cro. Car. 441; Carth. 316. Also he who claims title by operation of law, under a deed, to another, may plead the deed without profert. Co. Litt. 225; Bac. Abr. Pleas, I 12; 5 Co. 75. When the deed is in the hands of the opposite party, or destroyed by him, no profert need be made; or when it has been lost or destroyed by time or casualty.

4. In all these cases, to excuse the want of a profert, the special facts which bring the case within the exception, should be alleged in the party's pleadings. Vide Gould, Pl. ch. 8, part 2; Lawes' Pl. 96; 1. Saund. 9, a, note.

PROFESSION. This word has several significations. 1. It is a public declaration respecting something. Code, 10, 41, 6.

2. It i's a state, art, or mystery; as the legal profession. Dig. 1, 18, 6, 4; Domat, Dr. Pub. 1. 1, t. 9, s. 1, n. 7. 3. In the ecclesiastical law, it is the act of entering into a religious order. See 17 Vin. Ab. 545.

PROFITS. In general, by this term is understood the benefit which a man derives from a thing. It is more particularly applied to such benefit as arises from his labor and skill.

2. It has, however, several other meanings. 1. Under the term profits, is comprehended the produce of the soil, whether it arise above or below the surface as herbage, wood, turf, coals, minerals, stones, also fish in a pond or running water. Profits are divided into profits a prendre, or those taken and enjoyed by the mere act of the proprietor himself; and profits a rendre, namely, such as are received at the hands of, and rendered by another. Ham. N. P. 172.

3. - 2. When land is devised to pay debts and legacies out of rents and profits, the land may be sold; otherwise, if out of the annual rents and profits. 1 Vern. 104, ca. 90.

4. - 3. The natural meaning of raising by rents and profits, is by the yearly profits but to prevent an inconvenience the word profits has, in some particular instances, been extended to any profits the land will yield, either by sale or mortgage; 1 Ch. Ca. 176; 2 Ch. Ca. 205; 2 Vern. 420; 1 P. Wms. 468; Pre. Ch. 586; 2 P. Wms. 19; 2 Ves. Jr. 481, n.; 2 Bro. Par. Cas. 418; 1 Atk. 506. Id. 550; 2 Atk. 358 where cases on raising portions in the life of parents and to the prejudice of the remainder-man are considered; and vide Powell on Mort. 90, et seq. But in no case where there are subsequent restraining words, has the word profit; been extended. Pre. Ch. 586, note, and the cases cited there; 1 Atk. 506; 2 Atk. 105.

5. - 4. A devise of profit considered, at law and in equity, a devise of the land itself. 1 Atk. 506; 1 Ves. 171 et vide 1 Ves. 42; 2 Atk. 358; 1 Bro. Ch. R. 310; 9 Mus. R. 372; 1 Pick. R. 224; 2 Pick. R. 425; 4 Pick. R. 203.

6. - 5. Where an assignment of rents and profits recites the intention of the parties then to make a security for money borrowed, and there is a covenant for further assurance, this amounts to an equitable lien, and would entitle the assignee to insist upon a mortgage. 2 Cox, 233; S. C. 1 Ves. Jr. 162; see also 3 Bro. C. C. 538; S. C. 1 Ves. Jr. 477.

7. - 6. Much doubt has arisen upon the question, whether the profit expected to arise upon maritime commerce be a proper subject of insurauce. 1 Marsh. on Ins. 94. In some countries, as Holland and France, Code de Com. 347, it is illegal to insure

profits; but in England, profits expected to arise from a cargo of goods may be insured. 1 Marsh. on Ins. 97.

8. - 7. Personal representatives aud trustees are generally bound to account for all the profits they make out of the assets entrusted to them. See Toll. Ex. 486; 1 Serg. & Rawle, 245; 1 T. R. 295; 1 M. & S. 412; Supp. to Ves. Jr., Notes to Wilkinson v. Strafford, 1 Ves. Jr. 32 Paley on Agency, 48, 9.

9. - 8. In cases of breach of contract, the plaintiff cannot in general recover damages for the profits he might have made. 1 R. 85, 94; S. C. 3 W. C. C. R. 184; 1 Pet. R. 172; see also 1 Yeates, 36; 11 Serg. & Rawle, 445.

10. - 9. It is a general rule that any participation in the profits of a trade or business, makes a person receiving such profits responsible as a partner. Gow on Part.; 6 Serg. & Rawle, 259; 1 Com. on Contr. 287 to 293. See generally on this subject, 3 W. C. C. R. 110; 15 Serg. & Rawle, 137; Chit. on Contr. 67; 6 Watts & Serg. 139.

11. But it is proper to observe that to make one a partner he must have such an interest in the profits as will entitle him to an account as it partner; he must be entitled to them as a principal. A clerk who receives a salary to be paid out of the profits would not be so considered, for there is a distinction between receiving the profits as sucli, and a commission on tile profits, and although this seems, at first sight, but a flimsy distinction, it appears to be a well settled rule of law. 15 S. & R. 157; 6 S. R. 259; 1 Denio, 337; 20 Wend. 70; 3 M. Gr. & So. 32; 17 Ves. 404; 1 Camp. 329; 2 H. Bl. 590; 3 M. G. & S. 651; 3 Kent, Com. 25, note (b) 4th ed.; Cary on Partn. 11; Colly on Part. p. 17; Addis on Contr. 451; 4 M. & S. 244; Russ. & Ry. 141; 3 M. & P. 48; 5 Taunt. 74; 4 T. R. 144. The Roman law, Dig. 17, 2, 44; Poth. Pand. 17, 2, 4; and the French law, 5 Duv. Dr. Civ. Fr. n. 48; 17 Dur. Dr. Fr. n. 332; Poth. du Contrat de Societe, n. 13, recognize the same distinction. Such is also the law of Scotland. Burt. Man. P. L. 178. When there are no stipulations to the contrary, the profits are to be enjoyed, and the losses borne by all the partners in equal proportions. Wats. Partn. 59, 60; Colly. Partn. 105; 6 Wend. 263; Story, Partn. 24; 7 Bligh, R. 132; Wilson & Shaw. 16.

12. - 10. A purchaser is entitled to the profits of the estate from the time fixed upon for completing the contract, whether he does or does not take possession of the estate. Sugd. on Vend. 353. See 6 Ves. Jr. 143, 352.

13. Profits among merchants are divided into gross profits and net profits. The former are the profits without any deduction for losses; the latter are the same profits, after having deducted all the losses. Story, Partn. 34.

PROGRESSION. That state of a business which is neither the commencement nor the end. Some act done after the matter has commenced and before it is completed. Plowd. 343. Vide Consummation; Inception.

PROHIBITION, practice. The name of a writ issued by a superior court, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court. 3 Bl. Com. 112; Com. Dig. h. t.; Bac. Ab. h. t. Saund. Index, h. t.; Vin. Ab. h. t.; 2 Sell. Pr. 308; Ayliffe's Parerg. 434; 2 Hen. Bl.

2. The writ of prohibition may also be issued when, having jurisdiction, the court has attempted to proceed by rules differing from those which ought to be observed; Bull. N. P. 219; or when, by the exercise of its jurisdiction, the inferior court would defeat a legal right. 2 Chit. Pr. 355.

PROHIBITIVE IMPEDIMENTS, canon law. Those impediments to a marriage which are only followed by a punishment, but do not render the marriage null. Bowy. Alod. Civ. Law, 44.

PROJET. In international law, the draft of a proposed treaty or convention is called a projet.

PROLES. Progeny, such issue as proceeds from a lawful marriage; and, in its enlarged sense, it signifies any children.

PROLETARIUS, civil law. One who has no property to be taxed; and paid a tax only on account of his cliildren, proles; a person of mean or common extraction. The word has become Frenchified, proletaire signifying one of the common people.

PROLICIDE, med. jurisp. Medical jurists have employed this word to designate the destruction of the human divided the subject into foeticide, (q. v.) or the destruction of the foetus in utero; and infanticide, (q. v.) or the destruction of the new-born infant. Ryan, Med. Jur. 137.

PROLYTAE, Rom. civil law. The term used to denominate students of law during the fifth and last year of their studies. They were left during this year, very much to their own direction, and took the name (prolytoi) Prolytae omnino soluti. They studied chiefly the code and the imperial constitutions. See Dig. Proef. Prim. Const. 2; Calvini Lex ad Voc.

PROLIXITY. The unnecessary and superfluous statement of facts in pleading or in evidence. This will be rejected as impertinent. 7 Price, 278, n.

PROLOCUTOR. In the ecclesiastical law, signifies a president or chairman of a convocation.

PROLONGATION. Time added to the duration of something.

2. When the time is lengthened during which a party is to perform a contract, the sureties of such a party are in general discharged, unless the sureties consent to such prolongation. See Giving time.

3. In the civil law the prolongation of time to the principal did not discharge the surety. Dig. 2, 14, 27; Id. 12, 1, 40.

PROMATERTERA. Great maternal aunt; the sister of one's grandmother. Inst. 3, 6, 3; Dig. 38, 10, 10, 14, et seq.

PROMISE, contr. An engagement by which the promisor contracts towards another to perform or do something to the advantage of the latter.

2. When a promise is reduced to the form of a written agreement under seal, it is called a covenant.

3. In order to be binding on the promisor, the promise must be made upon a sufficient con@ideration - when made without consideration, however, it may be binding in foro conscientice, it is not obliggtory in law, being nudtim pactum. Rutherf. Inst. 85; 18 Eng. C. L. Rep. 180, note a; Merl. Rep. h. t.

4. When a promise is made, all that is said at the time, in relation to it, must be considered; if, therefore, a man promise to pay all he owes, accompanied by a denial that he owes anything, no action will lie to enforce such a promise. 15 Wend. 187.

5. And when the promise is conditional, the condition must be performed before it becomes of binding force. 7 John. 36. Vide Condition. Promises are express or implied. Vide Undertaking, and 5 East, 17 2 Leon. 224, 5; 4 B. & A. 595.

PROMISE OF MARRIAGE. A contract mutually entered into by a man and a woman capable of contracting matrimony, that they will marry each other.

2. When one of the contracting parties violates his or her promise to the other, the latter may support an action against the former for damages, which are sometimes

very liberally given. To entitle the plaintiff to recover damages, however, the defendant must not have been incapable of making the contract at, the time, and such incapacity must not have been known to the opposite party; as, if a married man were to promise to marry a woman, and he afterwards refused to do so.

3. The canon law punished these breaches of promises by ecclesiastical censures.

4. According to the ancient jurisprudence of France, damage's could have been recovered for the in execution of this engagement, and cases are reported which show a considerable liberality on this subject. M. Maynon, counsellor in the parliament of Paris, was condemned to sixty thousand livres damages; and a M. Hebert to fourteen thousand livres. D'Hericourt, Lois Ecclesiastiques, titre du Mariage, art. 1, n. 13. By the modern law of France, damages may be recovered for the violation of this contract.

5. In Germany and Holland damages may also be recovered. Voet, in Pandec tas, tit. de sponsalibus, n. 12; Huberus, in Pandectas, eod. tit. n. 19. And the Prussian code regulates the amount of damages to be paid under a variety of circumstances. Part 1, b. 2, tit. 2. Vide 2 Chit. Pr. 52; Rose, Civ. Ev. 193; 2 Car. & P. 631; 4 Esp. R. 258; 1 C. & P. 350; Holt, R. 151; S. C. 3 E. C. L. R. 57; 7 Cowen, 22; 1 John. Cas. 116; 6 Cowen, 254; 4 Cowen, 355; 7 Wend. 142.

PROMISES, evidence. When a defendant has been arrested, he is frequently in duced to make confessions in consequence of promises made to him, that if he will tell the truth, he will be either discharged or favored: in such a case evidence of the confession cannot be received, because being obtained by the flattery of hope, it comes in so questionable a shape, when it is to be considered evidence of guilt, that no credit ought to be given to it. 1 Leach, 263. This is the principle, but what amounts to a promise is not so easily defined. Vide Confession.

PROMISEE. A person to whom a promise has been made.

2. In general a promisee can maintain an action on a promise made to him, but when the consideration moves not from the promisee, but some other person, the latter, and not the promisee, has a cause of action, because he is the person for whose use the contract was made. Latch, 272; Poph. 81; 3 Cro. 77; 1 Raym, 271, 368; 4 B. & Ad. 434; 1 N. & M. 303; S. C. Cowp. 437; S. C. Dougl. 142. But see Carth. 5 2 Ventr. 307; 9 M. & W. 92) 96.

PROMISOR. One who makes a promise.

2. The promisor is bound to fulfil his promise, unless when it is contrary to law, as a promise to steal or to commit an assault and battery; when the fulfilment is prevented by the act of God, as where one has agreed to teach another drawing and he loses his sight, so that he cannot teach it; when the promisee prevents the promisor from doing what he agreed to do; when the promisor has been discharged from his promise by the promisee, when the promise, has been made without a sufficient consideration; and, perhaps, in some other cases, the duties of the promisor are at an end.

PROMISSORY NOTE, contracts. A written promise to pay a certain sum of money, at a future time, unconditionally. 7 Watts & S. 264; 2 Humph. R. 143; 10 Wend. 675; Minor, R. 263; 7 Misso. 42; 2 Cowen, 536; 6 N. H. Rep. 364; 7 Vern. 22. A promissory note differs from a mere acknowledgment of debt, without any promise to pay, as when the debtor gives his creditor an I 0 U. (q. v.) See 2 Yerg. 50; 15 M. & W. 23. But see 2 Humph. 143; 6 Alab. R. 373. In its form it usually contains a promise to pay, at a time therein expressed, a sum of money to a certain person therein named, or to his order, for value received. It is dated and signed by the maker. It is never under seal.

2. He who makes the promise is called the maker, and he to whom it is made is the payee. Bayley on Bills, 1; 3 Kent, Com, 46.

3. Although a promissory note, in its original shape, bears no resemblance to a bill of exchange; yet, when indorsed, it is exactly similar to one; for then it is an order by the indorser of the note upon the maker to pay to the indorsee. The indorser is as it were the drawer; the maker, the acceptor; and the indorsee, the payee. 4 Burr. 669; 4 T. R. 148; Burr. 1224.

4. Most of the rules applicable to bills of exchange, equally affect promissory notes. No particular form is requisite to these instruments; a promise to deliver the money, or to be accountable for it, or that the payee shall have it, is sufficient. Chit. on Bills, 53, 54.

5. There are two principal qualities essential to the validity of a note; first, that it be payable at all events, not dependent on any contingency; 20 Pick. 132; 22 Pick. 132 nor payable out of any particular fund. 3 J. J. Marsh. 542; 5 Pike, R. 441; 2 Blackf. 48; 1 Bibb, 503; 1 S. M. 393; 3 J. J. Marsh. 170; 3 Pick. R. 541; 4 Hawks, 102; 5 How. S. C. R. 382. And, secondly, it is required that it be for the payment of money only; 10 Serg. & Rawle, 94; 4 Watts, R. 400; 11 Verm. R. 268; and not in bank notes, though it has been held differently in the state of New York. 9 Johns. R. 120; 19 Johns. R. 144.

6. A promissory note payable to order or bearer passes by indorsement, and although a chose in action, the holder may bring suit on it in his own name. Although a simple contract, a sufficient consideration is implied from the nature of the instrument. Vide 5 Com. Dig. 133, n., 151, 472 Smith on Merc. Law, B. 3, c. 1; 4 B. & Cr. 235 7 D. P. C. 598; 8 D. P. C. 441 1 Car. & Marsh. 16. Vide Bank note; Note; Reissuable note.

PROMOTERS. In the English law, are those who in popular or penal actions prosecute in. their own names and the king's, having part of the fines and penalties.

PROMULGATION. The order given to cause a law to be executed, and to make it public it differs from publication. (q. v.) 1 Bl. Com. 45; Stat. 6 H. VI., c. 4.

2. With regard to trade, unless previous notice can be brought home to the party charged with violating their provisions, laws are to be considered as beginning to operate in the respective collection districts only from the time they are received from the proper department by the collector. Paine's C. C. R. 32. See Paine's C. C. R. 2 3.

PROMUTUUM, civil law. A quasi contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, which have been paid to him through mistake, contracts towards the payer the obligation of returning him as much. Poth. De l'Usure, 3eme part. s. 1, a. 1.

2. This contract is called promutuum, because it has much resemblance to that of mutuum. (q. v.) This resemblance consists, 1st. That in both a sum of money or some fungible things are required. 2d. That in both there must be a transfer of the property in the thing. 3d. That in both there must be returned the same amount or quantity of the thing received. Poth. h. t., n. 133. But though there is this general resemblance between the two, the mutuum differs essentially from the promutuum. The former is the actual contract of the parties, made expressly, but the 'latter is a quasi contract, which is the effect of an error or mistake. Id. 134; l Bouv. Inst. n. 1125-6.

PRONEPOS. Great Grandson.

PRONOTARY. An ancient word which signifies first notary. The same as prothonotary. (q. v.)

PRONURUS. The wife of a great grandson.

PROOF, practice. The conviction or persuasion of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged: as, to prove, is to determine or persuade that a thing does or does not exist. 8 Toull. n. 2; Ayl. Parerg. 442; 2 Phil. Ev. 44, n, a. Proof is the perfection of evidence, for without evidence there is no proof,

although, there may be evidence which does not amount to proof: for example, a man is found murdered at a spot where another had been seen walking but a short time before, this fact would be evidence to show that the latter was the murderer, but, standing alone, would be very far from proof of it.

2. Ayliffe defines judicial proof to be a clear and evident declaration or demonstration, of a matter which was before doubtful, conveyed in a judicial manner by fit and proper arguments, and likewise by all other legal methods; first, by proper arguments, such as conjectures, presumptions, indicia, and other adminicular ways and means; and, secondly, by legal method, or methods according to law, such as witnesses, public instruments, end the like. Parerg. 442 Aso. & Man. Inst. B. 3, t. 7.

PROPER. That which is essential, suitable, adapted, and correct. 2. Congress is authorized by art, 1, s. 8, of the constitution of the United States, "to make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution of the United States, in any department. or officer thereof." See Necessary and Proper.

PROPERTY. The right and interest which a man has in lands and chattels to the exclusion of others. 6 Binn. 98; 4 Pet. 511; 17 Johns. 283; 14 East, 370; 11 East, 290, 518. It is the right to enjoy and to dispose of certain things in the most absolute manner as he pleases, provided he makes no use of them prohibited by law. See Things.

2. All things are not the subject of property the sea, the air, and the like, cannot be appropriated; every one may enjoy them, but he has no exclusive right in them. When things are fully our own, or when all others are excluded from meddling with them, or from interfering about them, it is plain that no person besides the proprietor, who has this exclusive right, can have any, claim either to use them, or to hinder him from disposing of them as, he pleases; so that property, considered as an exclusive right to things, contains not only a right to use those things, but a right to dispose of them, either by exchanging them for other things, or by giving them away to any other person, without any consideration, or even throwing them away. Rutherf. Inst. 20; Domat, liv. prel. tit. 3; Poth. Des Choses; 18 Vin. Ab. 63; 7 Com. Dig. 175; Com. Dig. Biens. See also 2 B. & C. 281; S. C. 9 E. C. L. R. 87; 3 D. & R. 394; 9 B. & C. 396; S. C. 17 E. C. L. R. 404; 1 C. & M. 39; 4 Call, 472; 18 Ves. 193; 6 Bing. 630.

3. Property is divided into real property, (q. v.) and personal property. (q. v.) Vide Estate; Things.

4. Property is also divided, when it consists of goods and chattels, into absolute and qualified. Absolute property is that which is our own, without any qualification

whatever; as when a man is the owner of a watch, a book, or other inanimate thing: or of a horse, a sheep, or other animal, which never had its natural liberty in a wild state.

5. Qualified property consists in the right which men have over wild animals which they have redueed to their own possession, and which are kept subject to their power; as a deer, a buffalo, and the like, which are his own while he has possession of them, but as soon as his possession is lost, his property is gone, unless the animals, go animo revertendi. 2 Bl. Com. 396; 3 Binn. 546.

6. But property in personal goods may be absolute or qualified without ally relation to the nature of the subject-matter, but simply because more persons than one have an interest in it, or because the right of property is separated from the possession. A bailee of goods, though not the owner, has a qualified property in them; while the owner has the absolute property. Vide, Bailee; Bailment.

7. Personal property is further divided into property in possession, and property or choses in action. (q. v.)

8. Property is again divided into corporeal and incorporeal. The former comprehends such property as is perceptible to the senses, as lands, houses, goods, merchandise and the like; the latter consists in legal rights, as choses in action, easements, and the like.

9. Property is lost, in general, in three ways, by the act of man, by the act of law, and by the act of God.

10. - 1. It is lost by the act of man by, 1st. Alienation; but in order to do this, the owner must have a legal capacity to make a contract. 2d. By the voluntary abandonment of the thing; but unless the abandonment be purely voluntary, the title to the property is not lost; as, if things be thrown into the sea to save the ship, the right is not lost. Poth. h. t., n. 270; 3 Toull. ii. 346. But even a voluntary abandonment does not deprive the former owner from taking possessiou of the thing abandoned, at any time before another takes possession of it.

11. - 2. The title to property is lost by operation of law. 1st. By the forced sale, under a lawful process, of the property of a debtor to satisfy a judgment, sentence, or decree rendered against him, to compel him to fulfil his obligations. 2d. By confiscation, or sentence of a criminal court. 3d. By prescription. 4th. By civil death. 6th. By capture of a public enemy.

12. - 3. The title to property is lost by the act of God, as in the case of the death of slaves or animals, or in the total destruction of a thing; for example, if a house be swallowed up by an opening in the earth during an earthquake.

13. It is proper to observe that in some cases, the moment that the owner loses his possession, he also loses his property or right in the thing: animals ferae naturae, as mentioned above, belong to the owner only while he retains the possession of them. But, in general,' the loss of possession does not impair the right of property, for the owner may recover it within a certain time allowed by law. Vide, generally, Bouv. Inst. Index, b. t.

PROPINQUITY. Kindred; parentage. Vide. Affinity; Consanguinity; Next of kin.

PROPIOS, or PROPRIOS, Span. law. Certain portions of ground laid off and reserved when a town was founded in Spanish America, as the unalienable property of the town, for the purpose of erecting public buildings, markets, &c., or to be used in any other way, under the direction of the municipality, for the advancement of the revenues, or the prosperity of the place. 12 Peters' R. 442, note.

PROPONENT, eccl. law. One who propounds a telling as "the party proponent doth allege and propound." 6 Eng. Ecclesiastical R. 356, n.

PROPOSAL. An offer for consideration or acceptance.

2. It is a general rule that a proposal offered to another for acceptance may be withdrawn at any time before it is accepted, provided that notice of the withdrawal be given to the party to whom it was made. A bid (q. v.) may be withdrawn at any time before acceptance; and a proposal by letter may be withdrawn at any time before, acceptance 1 Pick. 278; and, if accepted, it must be, in the very terms offered. 3 Wheat. 225. Vide Bid; Correspondence; Letter; Offer.

PROPOSITION. An offer to do something. Until it has been accepted, a proposition may be withdrawn by the party who makes it; and to be binding, the acceptance must be in the same terms, without any variation. Vide Acceptance; Offer; To retract; and 1 L. R. 190; 4 L. R. 80.

PROPOSITUS. The person proposed. In making genealogical tables, the person whose relations it is desirous to find out, is called the propositus.

TO PROPOUND. To offer, to propose; as, the onus probandi in every case lies upon the party who propounds ia will. 1 Curt. R. 637; 6 Eng. Eccl. R. 417.

PROPRES, French law. The term propres or biens propres, is used to denote that property which has come to an individual from his relations, either in a direct line, ascending or descending, or from a collateral line, whether the same have come by

operation of law or by devise. Propres is used. in opposition to acquets. Poth. Des. Propres; 2 Burge, Confl. of Laws, 61; 2 L. R. S.

PROPRIA PERSONA. In his own person. It is a rule in pleading that pleas to the jurisdiction of the court must be pleaded in propria persona, because, if pleaded by attorney, they admit the jurisdiction, as an attorney is an officer of the court, and he is presumed to plead after having obtained leave, which admits the jurisdiction. Lawes on Pl. 91.

2. An appearance may be in propria persona, and need not be by attorney.

PROPRIETARY. In its strict sense, this word signifies one who is master of his actions, and who has the free disposition of his property. During the colonial government of Pennsylvania, William Penn was called the proprietary.

2. The domain which William Penn and his family had in the state, was, during the Revolutionary war, divested by the act of June 28, 1779, from that family and vested in the commonwealth for the sum which the latter paid to them of one hundred and thirty thousand pounds sterling.

PROPRIETATE PROBANDA. The name of a writ. See De proprietate probanda.

PROPRIETOR. The owner. (q. v.)

PROPRIO VIGORE. By its own force or vigor. This expression is frequently used in construction. A phrase is said to have a certain meaning proprio vigore.

PROPTER AFFECTUM. For or on account of some affection or prejudice. A juryman may be challenged propter affectum; as, because he is related to the party has eaten at his expense, and the like. See Challenge, practice.

PROPTER AFFECTUM. On account or for some defect. This phrase is frequently used in relation to challenges. A juryman may be challenged propter defectum; as, that he is a minor, an alien, and the like. See Challenge, practice.

PROPTER DELICTUM. For or on account of crime. A juror may be challenged propter delictum, when he has been convicted of an infamous crime. See Challenge, practice.

PROROGATED JURISDICTION, Scotch law. That jurisdiction, which, by the consent of the parties, is conferred upon a judge, who, without such consent, would be incompetent. Ersk. Prin. B. 1, t. 2, n. 15.

2. At common law, when a party is entitled to some privilege or exemption from jurisdiction, he may waive it, and then the jurisdiction is complete; but the consent cannot give jurisdiction. PROROGATION. To put off to another time. It is generally applied to the English parliament, and means the continuance of it from one day to another; it differs from adjournment, which is a continuance of it from one day to another in the same session. 1 Bl. Com. 186.

2. In the civil law, prorogation signifies the time given to do a thing beyond the term prefixed. Dig. 2, 14, 27, 1. See Prolongation.

PROSCRIBED, civil law. Among the Romans, a man was said to be proscribed when a reward was offered for his head; but the term was more usually applied to those who were sentenced to some punishment which carried with it the consequences of civil death. Code, 9; 49.

PROSECUTION, crim. law. The means adopted to bring a supposed offender to justice and punishment by due course of law.

2. Prosecutions are carried on in the name of the government, and have for their principal object the scourity and happiness of the people in general. Hawk. B. 2, c. 25, s. 3; Bac. Ab. Indictment, A 3.

3. The modes most usually employed to carry them on, are by indictment; 1 Chit. Cr. Law, 132; presentment of a grand jury; Ibid. 133; coroner's inquest; Ibid. 134; and by an information. Vide Merl. Repert. mot Accusation.

PROSECUTOR, practice. He who prosecutes another for a crime in the name of the government.

2. Prosecutors are public or private. The public prosecutor is an officer appointed by the government, to prosecute all offences; he is the attorney general or his deputy.

3. A private prosecutor is one who prefers an accusation against a party whom be suspects to be guilty. Every man may become a prosecutor, but no man is bound except in some few of the more enormous offences, as treason, to be one but if the prosecutor should compound a felony, he will be guilty of a crime. The prosecutor has an inducement to prosecute, because he cannot, in many cases, have any civil remedy until he has done his duty to society by an endeavor to bring the offender to justice. If a prosecutor act from proper motives, me will not be responsible to the party in damages, though he was mistaken in his suspicions; but if, from a motive of revenge, he institute a criminal prosecution without any reasonable foundation, he may be punished by being mulcted in damages in an action for a malicious prosecution.

4. In Pennsylvania a defendant is not bound to plead to an indictment where there is a private prosecutor, until his name shall have been indorsed on the indictment as such, and on acquittal of the defendant, in all cases except where the charge is for a felony, the jury may direct that he shall pay the costs. Vide 1 Chit. Cr. Law, 1 to 10; 1 Phil. Ev. Index, h. t.; 2 Virg. Cas. 3, 20; 1 Dall. 5; 2 Bibb. 210; 6 Call. 245; 5 Rand. 669; and the article Informer.

PROSPECTIVE. That which is applicable to the future; it is used in opposition to retrospective. To be just, a law ought always to be prospective. 1 Bouv. Inst. n. 116.

PROSTITUTION. The common lewdness of a woman for gain.

2. In all well regulated communities this has been considered a heinous offence, for which the woman may be punished, and the keeper of a house of prostitution may be indicted for keeping a common nuisance.

3. So much does the law abhor this offence, that a landlord cannot recover for the use and occupation of a house let for the purpose of prostitution. 1 Esp. Cas. 13; 1 Bos. & Pull. 340, n.

4. In a figurative sense, it signifies the bad use which a corrupt judge makes of the law, by making it subservient to his interest; as, the prostitution of the law, the prostitution of justice.

PROTECTION, merc. law, The name of a document generally given by notaries public, to sailors and other persons going abroad, in which is certified that the bearer therein named, is a citizen of the United States.

PROTECTION, government. That benefit or safety which the government affords to the citizens.

PROTECTION, Eng. law. A privilege granted by the king to a party to an action, by which he is protected from a judgment which would otherwise be rendered against him. Of these protections there are several kinds. F. N. B. 65.

PROTEST, mar. law. A writing, attested by a justice of the peace or a consul, drawn by the master of a vessel, stating the severity of a voyage by which a ship has suffered, and showing it was not owing to the neglect or misconduct of the master. Vide Marsh. Ins. 715, 716. See 1 Wash. C. R. 145; Id. 238; Id. 408, n.; 1 Pet. C. R. 119; 1 Dall. 6; Id. 10; Id. 317; 2 Dall. 195; 3 Watts & Serg. 144; 3 Binn. 228, n.; 1 Yeates, 261.

PROTEST, legislation. A declaration made by one or more members of a legis lative body that they do not agree with some act or resolution of the body; it is usual to add the reasons which the protestants have for such a dissent.

PROTEST, contracts. A notarial act, made for want of payment of a promissory note, or for want of acceptance or payment of a bill of exchange, by a notary public, in which it is declared that all parties to such instruments will be held responsible to the holder for all damages, exchanges, reexchanges, &c.;

2. There are two kinds of protest, namely, protest for non-acceptance, and protest for non-payment. When a protest is made and notice of the non-payment or non-acceptance given to the parties in proper time, they will be held responsible. 3 Kent, Com. 63; Chit. on Bills, 278; 3 Pardes. n. 418 to 441; Merl. Repert. h. t.; COID. Dig. Merchant, F 8, 9, 10; Bac. Ab. Merchant, &c. M 7.

3. There is also a species of protest, common in England, which is called protest for better security. It may be made when a merchant who has accepted a bill becomes insolvent, or is publicly reported to have failed in his credit, or absents himself from change, before the bill he has accepted becomes due, or when the holder has any just reason to suppose it will not be paid; and on demand the acceptor refuses to give it. Notice of such protest must, as in other cases, be sent by the first post. 1 Ld. Raym. 745; Mar. 27.

4. In making the protest, three things are to be done: the noting; demanding acceptance or payment or, as above, better security and drawing up the protest. 1. The noting, (q. v.) is unknown to the law as distinguished from the protest. 2. The demand, (q. v.) which must be made by a person having authority to receive the money. 3. The drawing up of the protest, which is a mere matter of form. Vide Acceptance; Bills of Exchange.

PROTESTANDO, pleading. According to Lord Coke, Co. Litt. 124, it is an exclusion of a conclusion. It has been more fully defined to be a saving to the party who takes it, from being concluded by any matter alleged or objected against him, upon which he cannot join issue. Plowd. 276, b; Finch's L. 359, 366, Lawes, Pl. 141.

2. Matter on which issue may be joined, whether it be the gist of the action, plea, replication or other pleading, cannot be taken by protestation; Plowd. Com. 276, b; although a man may take by protestation matter that he cannot plead, as in an action for taking goods of the value of one hundred dollars, the defendatn may make protestation that they were not worth more than fifty dollars. It is obvious that a protestation, repugnant to or inconsistent with the gist of the plea, &c., cannot be of any benefit to the party making it. Bro. Abr. tit. Protestation, pl. 1, 5. It is also idle and

superfluous to make protestation of the same thing that is traversed by the plea; Plowd. 276, b: or of any matter of fact which must necessarily depend upon another fact protested against; as, to protest that A made no will, and that he made no executor, which he could not do if there was no will. Id.

3. The common form of making a protestando is in these words, "Because pro- testing that," &c., excluding such matters of the adversary's pleading as are intended to be excluded in the protestando, if it be matter of fact; or if it be against the legal sufficiency of his pleading, "Because protesting that the plea by him above pleaded in bar, or by way of reply, or rejoinder, &c., as the case may be, is wholly insufficient in law." No answer is necessary to a protestando, because it is never to be tried in the action in which it is made, but of such as is excluded from any manner of consideration in that action. Lawes' Civ. Pl. 143.

4. Protestations are of two sorts; first, when a man pleads anything which he dares not directly affirm, or cannot plead for fear of making his plea double; as if, in conveying to himself by his plea a title to land, the defendant ought to plead divers descents from several persons, but dares not affirm that they were all seised at the time of their death; or, although he could do so, it would make his plea double to allege two descents, when one descent would be a sufficient bar, then the defendant ought to plead and allege the matter introducing the word "protesting," thus, protesting that such a one died seised, &c., and this the adverse party cannot traverse.

5. The other sort of protestation is, when a person is to answer two matters, and yet by law he can only plead one of them, then in the beginning of his plea he may say, protesting or not acknowledging such part of the matter to be true, and add, "but for plea in this behalf," &c., and so take issue, or traverse, or plead to the other part of the matter; and by this he is not concluded-by any of the rest of the matter, which he has by protestation so denied, but may afterwards take issue upon it. Reg. Plac. 70, 71; 2 Saund. 103 a, n. 1. See 1 Chit. Pl. 534; Arch. Civ. Pl. 245; Doct. Pl. 402; Com. Dig. Pleader, N; Vin. Abr. Protestation Steph. Pl. 235.

PROTESTATION. An asseveration made by taking God to witness. A protestation is a form of asseveration which approaches very nearly to an oath. Wolff, Inst. 375.

PROTHONOTARY. The title given to an officer who officiates as principal clerk of some courts. Vin Ab. h. t.

2. In the ecclesiastical law, the name of prothonotary is given to an officer of the court of Rome, he is so called because he is the first notary; the Greek word prootos signifying primus or first. These notaries have preeminence over the other notaries, and, are put in the rank of prelates. There are twelve of them. Dict. de Jur. h. t.

PROTOCOL, civil law, international law. A record or register. Among the Romans, protocollunt was a writing at the head of the first page of the paper used by the notaries or tabellions. Nov. 44.

2. In France the minutes of notarial acts were formerly transcribed on registers, which were called protocols. Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 6, s. 1, n. 413.

3. By the German law it signifies the minutes of any transaction. Eneye. Amer. Protocol. In the latter sense the word has of late been received into international law. Ibid.

PROTUTOR, civil law. He who not being the tutor of a pupil or minor, has administered his property or affairs as if he had been, whether he thought himself legally invested with the authority of a tutor, or not.

2. He who marries a woman who is tutrix, becomes, by the marriage, a protutor. The protutor is equally responsible as the tutor.

PROUT PATET PER RECORDUM. As appears by the record. This phrase is frequently used in pleading; as, for example, in debt on a judgment or other matter of record, unless when it is stated is an inducement, it is requisite after slowing the matter of record, to refer to it by the prout patet per recordum. 1 Chit. Pl. *356.

PROVINCE. Sometimes this signifies the district into which a country has been divided; as, the province of Canterbury, in England the province of Languedoc, in France. Sometimes it means a dependency or colony; as, the province of New Brunswick. It is sometimes used figuratively, to signify power or authority; as, it is the province of the court to judge of the law, that of the jury to decide on the facts.

PROVISION, com. law. The property which a drawer of a bill of exchange places in the hands of a drawee; as, for example, by remittances, or when the drawee is indebted to the drawer when the bill becomes due, provision is said to have been made. Acceptance always presumes a provision. See Code de Comm. art. 115, 116, 117.

PROVISION, French law. An allowance granted by a judge to a party for his support; which is to be paid before there is a definitive judgment. In a civil case, for example, it is an allowance made to a wife who is separated from her hushand. Dict. de Jurisp. h. t.

PROVISIONAL SEIZURE. A term used in Louisiana, which signifies nearly the same as attachment of property.

2. It is regulated by the Code of Practice as follows, namely: Art. 284. The plaintiff may, in certain caws, hereafter provided, obtain the provisional seizure of the property which he holds in pledge, or on which he has a privilege, in order to secure the payment of his claim.

3. Art. 285. Provisional seizure may be ordered in the following cases: 1. In executory proceedings, when the plaintiff sues on a title importing confession of judgment. 2. When a lessor prays for the seizure of furniture or property used in the house, or attached to the real estate which he has leased. 3. When a seaman, or another person, employed on board of a ship or water craft, navigating within the state, or persons having furnished materials for, or made repairs to such ship or water craft, prays that the same may be seized, and prevented from departing, until he has been paid the amount of his claim.

4. When the proceedings are in rem, that is to say, against the thing itself, which stands pledged for the debt, when the property is abandoned, or in cases where the owner of the thing is unknown or absent. Vide 6 N. S. 168; 8 N. S. 320; 7 N. S. 153; 1 Martin, R. 168; 12 Martin, R. 32.

PROVISIONS. Food for man; victuals.

2. As good provisions contribute so much to the health and comfort of man, the law requires that they shall be wholesome; he who sells unwholesome provisions, may therefore be punished for a misdemeanor. 2 East, P. C. 822; 6 East, R. 133 to 141; 3 M. & S. 10; 4 Campb. R. 10; 4 M. & S. 214.

3. And in the sale of provisions, the rule is, that the seller impliedly warrants that they are wholesome. 3 Bl. Com. 166.

PROVISO. The name of a clause inserted in an act of the legislature, a deed, a written agreement, or other instrument, which generally contains a condition that a certain thing shall or shall not be done, in order that an agreement contained in another clause shall take effect.

2. It always implies a condition, unless subsequent words change it to a covenant; but when a proviso contains the mutual words of the parties to a deed, it amounts to a covenant. 2 Co. 72; Cro. Eliz. 242; Moore, 707 Com. on Cov. 105; Lilly's Reg. h. t.; 1 Lev. 155.

3. A proviso differs from an exception. 1 Barn. k Ald. 99. An exception exempts, absolutely, from the operation of an engagement or an enactment; a proviso defeats their operation, conditionally. An exception takes out of an engagement or enactment,

something which would otherwise be part of the subject-matter of it; a proviso avoids them by way of defeasance or excuse. 8 Amer. Jurist, 242; Plowd. 361; Carter 99; 1 Saund. 234 a, note; Lilly's Reg. h. t.; and the cases there cited. Vide, generally Amer. Jurist, No. 16, art. 1; Bac. Ab. Conditions, A; Com. Dig. Condition, A 1, A 2; Dwar. on Stat. 660.

PROVOCATION. The act of inciting another to do something.

2. Provocation simply, unaccompanied by a crime or misdemeanor, does not justify the person provoked to commit an assault and battery. In cases of homicide, it may reduce the offence from murder to manslaughter. But when the provocation is given for the purpose of justifying or excusing an intended murder, and the party provoked is killed, it is no justification. 2 Gilb. Ev. by Lofft, 753.

3. The unjust provocation by a wife of her hushand, in consequence of which she suffers from his ill usage, will not entitle her to a divorce on the ground of cruelty; her remedy, in such cases, is by changing her manners. 2 Lee,, R. 172; 1 Hagg. Cons. Rep. 155. Vide Cruelty; To Persuade; 1 Russ. on Cr. B. 3, c. 1, s. 1, page 434, and B. 3, c. 3, s. 1, pa e 486; 1 East, P. C. 232 to 241.

PROVOST. A title given to the chief of some corporations or societies. In France, this title was formerly given to some presiding judges. The word is derived from the Latin praepositus.

PROXENETAE, civil law. Among the Romans these were persons whose functions somewhat resembled the brokers of modern commercial nations. Dig. 50, 14, 3; Domat, 1. 1, t. 17, 1, art. 1.

PROXIMITY. Kindred between two persons. Dig. 38, 16, 8.

PROXY. A person, appointed in the place of another, to represent him.

2. In the ecclesiastical law, a judicial proctor, or one who is appointed to manage another man's law concerns, is called a proxy. Ayl. Parerg.

3. The instrument by which a person is appointed so to act, is likewise called a proxy.

4. Proxies are also annual payments made by the parochial clergy to the bishop, &c., on visitations. Tom. Law Dictionary, h. t. Vide Rutherf. Inst. 253; Hall's Pr. 14.

5. The right of voting at an election of an incorporated company by proxy is not a general right, and the party claiming it must show a special authority for that purpose. Ang. on Corp. 67-69; 1 Paige's Ch. Rep. 590; 5 Day's Rep. 329; 5 Cowen, Rep. 426.

PUBERTY, civil law. The age in boys after fourteen years until full age, and in girls after twelve years until full age. Ayl. Pand. 63; Hall's Pract. 14; Toull. Dr. Civ. Fr. tom. 6, p. 100; Inst. 1, 22; Dig. 1, 7, 40, 1; Code, 5, 60, 3.

PUBLIC. By the term the public, is meant the whole body politic, or all the citizens of the state; sometimes it signifies the inhabitants of a particular place; as, the New York public.

2. A distinction has been made between the terms public and general, they are sometimes used as synonymous. The former term is applied strictly to that which concerns all the citizens and every member of the state; while the latter includes a lesser, though still a large portion of the community. Greenl. Ev. 128.

3. When the public interests and its rights conflict with those of an individual, the latter must yield. Co. Litt. 181. if, for example, a road is required for public convenience, and in its course it passes on the ground occupied by a house, the latter must be torn down, however valuable it may be to the owner. In such a case both law and justice require that the owner shall be fully indemnified.

4. This term is sometimes joined to other terms, to designate those things which have a relation to the public; as, a public officer, a public road, a public passage, a public house.

PUBLIC DEBT. That which is due or owing by the government.

2. The constitution of the United States provides, art. 6, s. 1, that "all debts contracted or engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation." It has invariably been the policy since the Revolution, to do justice to the creditors of the government. The public debt has sometimes been swelled to a large amount, and at other times it has been reduced to almost nothing.

PUBLIC ENEMY. This word, used in the singular number, designates a nation at war with the United States, and includes every member of such nation. Vatt. 1. 3, c. 5, 70. To make a public enemy, the government of the foreign country must be at war with the United States; for a mob, how numerous soever it may be, or robbers, whoever they may be, are never considered as a public enemy. 2 Marsh. Ins. 508; 3 Esp. R. 131, 132.

2. A common carrier is exempt from responsibility, whenever a loss has been occasioned to the goods in his charge by the act of a public enemy, but the burden of proof lies on him to show that the loss was so occasioned. 3 Munf. R. 239; 4 Binn. 127; 2 Bailey, 1 57. Vide Enemy; People.

PUBLIC PASSAGE. This term is synonymous with public highway, with this difference; by the latter, is understood a right to pass over the land of another; by the former is meant the right of going over the water which is on another's land. Carth. 193; Hamm. N. P. 195. See Passage.

PUBLICAN, civil law. A farmer of the public revenue; one who held a lease of some property from the public treasury. Dig. 39, 4, 1, 1; Id. 39, 4, 12, 3; Id. 39, 4, 13.

PUBLICATION. The act by which a thing is made public.

2. It differs from promulgation, (q. v.) and see also Toullier, Dr. Civ. Fr. Titre Preliminaire, n. 59, for the difference in the meaning of these two words.

3. Publication has different meanings. When applied to a law, it signifies the rendering public the existence of the law; when it relates to the opening the depositions taken in a case in chancery, it means that liberty is given to the officer in whose custody the depositions of witnesses in a cause are lodged, either by consent of parties, or by the rules or orders of the court, to show the depositions openly, and to give out copies of them. Pract. Reg. 297; 1 Harr. Ch. Pr. 345; Blake's Ch. Pr. 143. When it refers to a libel, it is its communication to a second or third person, or a greater number. Holt on Libels, 254, 255, 290; Stark. on Slander, 350; Holt's N. P. Rep. 299; 2 Bl. R. 1038; 1 Saund. 112, n. 3. And when spoken of a will, it signifies that the testator has done some act from which it can be concluded that he intended the instrument to operate as his will. Cruise, Dig. tit. 38, c. 5, s. 47; 3 Atk. 161; 4 Greenl. R. 220; 3 Rawle, R. 15; Com. Dig. Estates by devise, E 2. Vide Com. Dig. Chancery, Q; Id. Libel, B 1; Ibid. Action upon the case for defamation, G 4; Roscoe's Cr. Ev. 529; Bac. Ab. Libel, B; Hawk. P. C. B. 1, c. 73, s. 10; 3 Yeates' R. 128; 10 Johns. R. 442. As to the publication of an award, see 6 N. H. Rep. 36. See, generally, Bouv. Inst. Index, h. t.

PUBLICIANA, civil law. The name of an action introduced by the proctor Publicius, the object of which was to recover a thing which had been lost. Inst. 4, 6, 4; Dig. 6, 2 1, 16 et 17. Its effects were similar to those of our action of trover.

PUBLICITY. The doing of a thing in the view of all persons who choose to be present.

2. The law requires that courts should be open to the public, there can therefore be no secret tribunal, except the grand jury (q. v.) and all judgments are required to be given in public.

3. Publicity must be given to the acts of the legislature before they can be in force, but in general their being recorded in a certain public office is evidence of their publicity. Vide Promulgation; Publication.

PUBLISHER. One who does by himself or his agents make a thing publicly known; one engaged in the circulation of books, pamphlets, and other papers.

2. The publisher of a libel is responsible as if he were the author of it, and it is immaterial whether he has any knowledge of its contents or not; 9 Co. 59; Hawk. P. C. c. 73, 10; 4 Mason, 115; and it is no justification to him that the name of the author accompanies the libel. 10 John, 447; 2 Moo. & R. 312.

3. When the publication is made by writing or printing, if the matter be libelous, the publisher may be indicted for a misdemeanor, provided it was made by his direction or consent, but if he was the owner of a newspaper merely, and the publication was made by his servants or agents, without any consent or knowledge on his part, he will not be liable to a criminal prosecution. In either case he will be liable to an action for damages sustained by the party aggrieved. 7 John. 260.

4. In order to render the publisher amenable to the law, the publication must be maliciously made, but malice will be presumed if the matter be libelous. This presumption, however, will be rebutted, if the publication be made for some lawful purpose, as, drawing up a bill of indictment, in which the libelous words are embodied, for the purpose of prosecuting the libeler; or if it evidently appear the publisher did not, at the time of publication, know that the matter was libelous as, when a person reads a libel presence of others, without beforehand knowing it to be such. 9 Co. 59. See Libel; Libeler; Publication.

PUDICITY. Chastity; the abstaining from all unlawful carnal commerce or connexion. A married woman or a widow may defend her pudicity as a maid may her virginity. Vide Chastity; Rape.

PUDZELD Eng. law. To be free from the payment of money for taking of wood in any forest. Co. Litt. 233 a. The same as Woodgeld. (q. v.)

PUER. In its enlarged sense this word signifies a child of either sex; though in its restrained meaning it is applied to a boy only.

2. A case once arose which turned upon this question, whether a daughter could take lands under the description of puer, and it was decided by two judges against one that she was entitled. Dy. 337 b. In another case, it was ruled the other way. Rob. 33.

PUERILITY, civil law. This commenced at the age of seven years, the end of the age of infancy, and lasted till the age of puberty, (q. v.) that is, in females till the accomplishment of twelve years, and in males, till the age of fourteen years fully accomplished. Ayl. Pand. 63.

2. The ancient Roman lawyers divided puerility into proximus infantiae, as it approached infancy, and into proximus pubertati, as it became nearer to puberty. 6 Toullier, n. 100.

PUFFER, commerce, contracts. A person employed by the owner of property which is sold at auction to bid it up, who does so accordingly, for the purpose of raising the price upon bona fide bidders.

2. This is a fraud which at the choice of the purchaser invalidates the sale. 5 Madd. R. 37, 440; 3 Madd. R. 112; 12 Ves. 483; l Fonb. Eq. 227, n; 2 Kent, Com. 423; 11 Serg. & Rawle, 86; Cowp. 395; 3 Ves. jun. 628; 6 T. R. 642; 2 Bro. C. C. 326; 3 T. R. 93, 95; 1 P. A. Browne, Rep. 346; 2 Hayw. R. 328; Sugd. Vend. 16; 4 Harr. & McH. 282; 2 Dev. 126; 2 Const. Rep. 821;. 3 Marsh. 526.

PUIS DARREIN CONTINUANCE, pleading. These old French words signify since the last continuance.

2. Formerly there were formal adjournments or continuances of the proceedings in a suit, for certain purposes, from one term to another; and during the interval the parties were of course out of court. When any matter arose which was a ground of defence, since the last continuance, the defendant was allowed to plead it, which allowance was an exception to the general rule that the defendant can plead but one plea of one kind or class.

3. By the modern practice the parties are, from the day when, by the ancient practice, a continuance would have been entered, supposed to be out of court, and the pleading is suspended till the day arrives to which, by the ancient practice, the continuance would extend; at that day, the defendant is en-titled, if any new matter of defence has arisen in the interval, to plead it, according to the ancient plan puis darrein continuance, before the next continuance.

4. Pleas of this kind may be either in abatement or in bar; and may be pleaded, even after an issue joined, either in fact or in law, if the new matter has arisen after the

issue was joined, and is pleaded before the next adjournment. Gould on Pl. c. 6, 123-126; Steph. Pl. 81, 398; Lawes on Pl. 173; 1 Chit. Pl. 637; 5 Peters , Rep. 232; 3 Bl. Com. 316; Arch. Civ, Pl. 353; Bac. Ab. Pleas, Q; 4 Mass. 659; 4 S. & R. 238; 1 Bailey, 369; 4 Verm. 545; 11 John. 4; 24; 1 S. & R. 310; 3 Bouv. Inst. n. 3014-18.

PUISNE. Since born; the younger; as, a puisne judge, is an associate judge.

PUNCTUATION, construction. The act or method of placing points (q. v.) in a written or printed instrument.

2. By the word point is here understood all the points in grammar, as the comma, the semicolon, the colon, and the like.

3. All such instruments are to be construed without any regard to the punc-tuation; and in a case of doubt, they ought to be construed in such a manner that they may have some effect, rather than in one in which they would be nugatory. Vide Toull. liv. 3, t. 2, c. 5, n. 430; 4 T. R. 65; Barringt. on the Stat. 394, n. Vide article Points.

PUNISHMENT, crim. law. Some pain or penalty warranted by law, inflicted on a person, for the commission of a crime or misdemeanor, or for the omission of the performance of an act required by law, by the judgment and command of some lawful court.

2. The right of society to punish, is derived by Becoaria, Mably, and some others, from a supposed agreement which the persons who composes the primitive societies entered into, in order to keep order and, indeed, the very existence of the state. According to others, it is the interest and duty of man to live in society; to defend this right, society may exert this principle in order to support itself, and this it may do, whenever the acts punishable would en-danger the safety of the whole. And Bentham is of opinion that the foundation of this right is laid in public utility or necessity. Delinquents are public enemies, and they must be disarmed and prevented from doing evil, or society must be destroyed. But, if the social compact has ever existed, says Livingston, its end must have been the preservation of the natural rights of the members and, therefore the effects of this fiction are the same with those of the theory which takes abstract justice as the foundation of the right to punish; for, this justice, if well considered, is that which assures to each member of the state, the free exercise of his rights. And if it should be found that utility, the last source from which the right to punish is derived, is so intimately united to justice that it is inseparable from it in the practice of law, it will follow that every system founded on one of these principles must be supported by the others.

3. To attain their social end, punishments should be exemplary, or capable of intimidating those who might be tempted to imitate the guilty; reformatory, or such as should improve the condition of the convicts; personal, or such as are at least calculated to wound the feelings or affect the rights of the relations of the guilty divisible, or capable of being graduated and proportioned to the offence, and the circumstances of each case; reparable, on account of the fallibility of human justice.

4. Punishments are either corporal or not corporal. The former are, death, which is usually denominated capital punishment; imprisonment, which is either with or without labor; vide Penitentiary; whipping, in some states, though to the honor of several of them, it is not tolerated in them; banishment and death.

5. The punishments which are not corporal, are fines; forfeitures; suspension or deprivation of some political or civil right deprivation of office, and being rendered incapable to hold office; compulsion to remove nuisances.

6. The object of punishment is to reform the offender; to deter him and others from committing like offences; and to protect society. Vide 4 Bl. Com. 7 Rutherf. Inst. B. 1, ch. 18.

7. Punishment to be just ought to be graduated to the enormity of the offence. It should never exceed what is requisite to reform the criminal and to protect society; for whatever goes beyond this, is cruelty and revenge, the relic of a barbarous age. All the circumstances under which the offender acted should be considered. Vide Moral Insanity.

8. The constitution of the United States, amendments, art. 8, forbids the infliction of "cruel and unusual punishments."

9. It has been well observed by the author of Principles of Penal Law, that "when the rights of human nature are not respected, those of the citizen are gradually disregarded. Those eras are in history found fatal to liberty, in which cruel punishments predominate. Lenity should be the guardian of moderate governments; severe penalties, the instruments of despotism, may give a sudden check to temporary evils, but they have a tendency to extend themselves to every class of crimes, and their frequency hardens the sentiments of the people. Une loi rigoureuse produit des crimes. The excess of the penalty flatters the imagination with the hope of impunity, and thus becomes an advocate with the offender for the perpetrating of the offence." Vide Theorie des Lois Criminelles, ch. 2; Bac. on Crimes and Punishments; Merl. Rep. mot Peine; Dalloz, Dict. mot Peine and Capital crimes.

10. Punishments are infamous or not infamous. The former continue through life, unless the offender has been pardoned, and are not dependant on the length of time for which the party has been sentenced to suffer imprisonment; a person convicted of a felony, perjury, and other infamous crimes cannot, therefore, be a witness nor hold any office, although the period for which he may have been sentenced to imprisonment, may have expired by lapse of time. As to the effect of a pardon, vide Pardon.

11. Those punishments which are not infamous, are such as are inflicted on persons for misdemeanors, such as assaults and batteries, libels, and the like. Vide Crimes; Infamy; Penitentiary.

PUNISHMENT OF DEATH. The deliberate killing, according to the forms of law,, of a person who has been lawfully convicted of certain crimes. See Capital crimes.

PUPIL, civil law. One who is in his or her minority. Vide. Dig. 1, 7; Id. 26, 7, 1, 2; Code, 6, 30, 18; Dig. 50, 16, 239. One who is in ward or guardianship.

PUPILLARITY, civil law. That age of a person's life which included infancy and puerility. (q. v.)

PUR. A corruption of the French word par, by or for. It is frequently used in old French law phrases; as, pur autre vie. It is also used in the composition of words, as purparty, purlieu, purview.

PUR AUTRE VIE, tenures. These old French words signify, for another's life. An estate is said to be pur autre vie, when a lease is made of lands or tenements to a man, to hold for the life of another person. 2 Bl. Com. 259; 10 Vin. Ab. 296; 2 Supp. to Ves. Jr. 41.

PURCHASE. In its most enlarged and technical sense, purchase signifies the lawful acquisition of real estate by any means whatever, except descent. It is thus defined by Littleton, section 12. "Purchase is called the possession of lands or tenements that a man hath by his own deed or agreement, unto which possession he cometh, not by title of descent from any of his ancestors or cousins, but by his own deed."

2. It follows, therefore, that not only when a man acquires an estate by buying it for a good or valuable consideration, but also when it is given or devised to him be acquires it by purchase. 2 Bl. Com. 241.

3. There are six ways of acquiring a title by purchase, namely, 1. By, deed. 2. By devise. 3. By execution. 4. By prescription. 5. By possession, or occupancy. 6. By

escheat. In its more limited sense, purchase is applied only to such acquisitions of lands as are obtained by way of bargain and sale for money, or some other valuable consideration. Id. Cruise, Dig. tit. 30, s. 1, to 4; 1 Dall. R. 20. In common parlance, purchase signifies the buying of real estate and of goods and chattels.

PURCHASER, contracts. A buyer, a vendee.

2. It is a general rule that all persons, capable of entering into contracts, may become purchasers both of real and personal property.

3. But to this rule there are several exceptions. 1. There is a class of persons who are incapable of purchasing except sub modo; and, 2. Another class, who, in consequence of their peculiar relation with regard to the owners of the thing sold, are totally incapable of becoming purchasers, while that relation exists.

4. - 1. To the first class belong, 1st. Infants under the age of twenty-one years, who may purchase, and at their full age bind themselves by agreeing to the bargain, or waive the purchase without alleging any cause for so doing. If they do not agree to the purchase after their full age, their heirs may waive it in the same manner as they themselves could have done. Cro. Jac. 320; Rolle's Ab. 731 K; Co. Litt. 2 b; 6 Mass. R. 80; 6 John. R. 257.

5. - 2d. Femes covert, who are capable of purchasing but their hushands may disagree to the contract, and divest the whole estate; the hushand may further recover back the purchase-money. 1 Ld. Raym. 224; 1 Madd. Ch. R. 258; 6 Binn. R. 429. When the hushand neither, agrees nor disagrees, the purchase will be valid. After the hushand's death, the wife may waive the purchase without assigning any cause for it, although the hushand may have agreed to it; and if, after her hushand's death, she do not agree to it, her heirs may waive it. Co. Lift. 3 a; Dougl. R. 452.

6. - 3d. Lunatics, or idiots, who are capable of purchasing. It seems that although they recover their senses, they cannot of themselves waive the purchase; yet if, after recovering their senses, they agree to it, their heirs cannot set it aside. 2 Bl. Com. 291; and see 3 Day's R. 101. Their heirs may avoid the purchase when they die during their lunacy or idiocy. Co. Litt. 2 b.

7. - 2. It is a general rule that trustees 2 Bro. C. C. 400; 3 Bro. C. C. 483; 1 John. Ch. R. 36; 3 Desaus. Ch. R. 26; 3 Binn. Y. 59; unless they are nominally so, to preserve contingent remainders; 11 Ves, Jr. 226; agents; 8 Bro. P. C; 42; 13 Ves. Jr. 95; Story, Ag. 9; commissioners of bankrupts; assignees of bankrupts; solicitors to the commission; 6 Ves. Jr. 630, n. b.; auctioneers and creditors who have been consulted as to the mode of sale; 6 Ves. Jr. 617; 2 Johns. Ch. R. 257; or any other persons who,

by their connexion with the owner, or by being employed concerning his affairs, have acquired a knowledge of his property, are generally incapable of purchasing such property themselves. And so stern is the rule, that when a person cannot purchase the estate himself, he cannot buy it, as agent for another; 9 Ves. Jr. 248; nor perhaps employ a third person to bid for it on behalf of a stranger; 10 Ves. Jr. 381 for no court is equal to the examination and ascertanment of the truth in a majority of such cases. 8 Ves. Jr. 345.

8. The obligations of the purchaser resulting from the contract of sale, are, 1. To pay the price agreed upon in the contract. 2. To take away the thing purchased, unless otherwise agreed upon; and, 3. To indemnify the seller for any expenses he may have incurred to preserve it for him. Vide Sugd. on Vend. Index, h. t.; Ross on Vend. Index, h. t.; Long on Sales, Index, h. t.; 2 Supp. to Ves. Jr. 449, 267, 478; Yelv. 45; 2 Ves. Jr. 100; 8 Coin. Dig. 349; 3 Com. Dig. 108.

PURCHASE-MONEY. The consideration which is agreed to be paid by the purchaser of a thing in money. It is the duty of the purchaser to pay the purchase-money as agreed upon in making the contract, and, in case of conveyance of an estate before it is paid, the vendor is entitled according to the laws of, England, which have been adopted in several of the states, to a lien on the estate sold for the purchase-money so remaining unpaid. This is called an equitable lien. This doctrine is derived from the civil law. Dig. 18, 1, 19. The case of Chapman v. Tauner, 1 Vera. 267, decided in 1684, is the first where this doctrine was adopted. 7 S. & R. 73. It was strongly opposed, but is now firmly established in England, and in the United States. 6 Yerg. R. 50; 4 Bibb, R. 239 1 John. Ch. R. 308; 7 Wheat. R. 46, 50 5 Monr. R. 287; 1 liar. & John. 106; 4 Har. & John. 522; 1 Call. R. 414; 1 Dana, R. 576; 5 Munf. R. 342; Dev. Eq. R. 163 4 Hawks, R. 256; 5 Conn. 468; 2 J. J. Marsh, 330; 1 Bibb. R. 590.

2. But the lien of the seller exists only between the parties and those having notice that the purchase-money has nut been paid. 3 J. J. Marsh. 557; 3 Gill & John. 425 6 Monr. R. 198.

PURE DEBT. In Scotland, this name is given to a debt actually due, in contradistinction to one which is to become due at a future day certain, which is called a future debt: and one due provisionally, in a certain event, which is called a contingent debt. 1 Bell's Com. 315, 5th ed.

PURE OR SIMPLE OBLIGATION. One which is not suspended by any condition, whether it has been contracted without any condition, or when thus contracted, the condition has been performed. Poth. Obl. n. 176.

PURE PLEA, equity pleading. One which relies wholly on some matter dehors the bill as for example, a plea of a release or a settled account.

2. Pleas not pure, are so called in contradistinction to pure pleas; they are sometimes also denominated negative pleas. 4 Bouv. Inst. n. 4275.

PURGATION. The clearing one's self of an offence charged, by denying the guilt on oath or affirmation.

2. There were two sorts of purgation, the vulgar, and the canonical.

3. Vulgar purgation consisted in superstitious trials by hot and cold water, by fire, by hot irons, by batell, by corsned, &c., which modes of trial were adopted in times of ignorance and barbarity, and were impiously called judgments of God.

4. Canonical purgation was the act of justifying one's self, when accused of some offence in the presence of a number of persons, worthy of credit, gen-erally twelve, who would swear they believed the accused. See Compurgator; Wager of Law.

5. In modern times, a man may purge himself of an offence, in some cases where the facts are within his own knowledge; for example, when a man is charged with a contempt of court, he may purge himself of such contempt, by swearing that in doing the act charged, he did not intend to commit a contempt.

PURLIEU, Eng. law. A space of land near a forest, known by certain boundaries, which was formerly part of a forest, but which has been separated from it.

2. The history of purlieus is this. Henry III., on taking possession of the throne, manifested so great a taste for forests that he enlarged the old ones wherever he could, and by this means enclosed many estates, which had no outlet to the public roads, and things increased in this way until the reign of King John, when the public reclamations were so great that much of this land was disforested; that is, no longer had the privileges of the forests, and the land thus separated bore the name of purlieu.

PURPARTY. That part of an estate, which having been held in common by parceners, is by partition allotted to any of them. To make purparty is to divide and sever the lands which fall to parceners. Old Nat. Br. 11.

PURPORT, pleading. This word means the substance of a writing, as it appears on the face of it, to the eye that reads it; it differs from tenor. (q. v.), 2 Russ. on Cr. 365; 1 Chit. Cr. Law, 235; 1 East, R. 179, and the cases in the notes.

PURPRESTURE. According to Lord Coke, purpresture, is a close or enclosure, that is, when one encroaches or makes several to himself that which ought to be in common to many; as if an individual were to build between high and low water-mark on the side of a public river. In England this is a nuisance; and in cases of this kind an injunction will be granted, on ex parte affidavits, to restrain such a purpresture and nuisance. 2 Bouv. Inst. n, 2382; 4 Id. n. 3798; 2 Inst. 28; and see Skene, verbo Pourpr esture; Glanville, lib. 9, ch. 11, p. 239, note Spelm. Gloss. Purpresture Hale, de Port. Mar.; Harg. Law Tracts, 84; 2 Anstr. 606; Cal. on Sew. 174 Redes. Tr. 117.

PURSE. In Turkey the sum of five hundred dollars is called a purse. Merch. Dict. h. t.

PURSER. The person appointed by the master of a ship or vessel, whose duty it is to take care of the ship's books, in which everything on board is inserted, as well the names of mariners as the articles of merchandise shipped. Rocc. Ins. note.

2. The act of congress concerning the naval establishment, passed March 30, 1812, provides, 6, That the pursers in the Navy of the United States shall be appointed by the president of the United States, by and with the advice and consent of the senate; and that, from and after the first day of May next, no person shall act in the character of purser, who shall not have been thus first nominated and appointed, excepting pursers on distant service, who shall not remain in service after the first day of July next, unless nominated and appointed as aforesaid. And every purser, before entering upon the duties of his office, shall give bond, with two or more sufficient sureties, in the penalty of ten thousand dollars, conditioned faithfully to perform all the duties of purser in the United States.

3. And by the supplementary act to this act concerning the naval establishment, passed March 1, 1817, it is enacted, 1, That every purser now in service, or who may hereafter be appointed, shall, instead of the bond required by the act to which this is a supplement, enter into bond, with two or more sufficient sureties, in the penalty of twenty-five thousand dollars, conditioned for the faithful discharge of all his duties as purser in the navy of the United States, which said sureties shall be approved by the judge or attorney of the United States for the district in which such purser shall reside.

PURSUER, canon law. The name by which the complainant or plaintiff is known in the ecclesiastical courts. 3 Eng. Eccl. R. 350.

PURVEYOR. One employed in procuring provisions. Vide Code, 1, 34.

PURVIEW. That part of an act of the legislature which begins with the words "Be it enacted," &c., aud ends before the repealing clause. Cooke's R. 330 3 Bibb, 181. According to Cowell, this word also signifies a conditional gift or grant. It is said to

be derived from the French pourvu, provided. It always implies a condition. Interpreter, h. t.

TO PUT, pleading. To select, to demand; as, the said C D puts himself upon the country; that is, he selects the trial by jury, as the mode of settling the matter in dispute, and does not rely upon an issue in law. Gould, Pl. c. 6. part 1, 19.

PUTATIVE. Reputed to be that which is not. The word is frequently used, as putative father, (q. v.) putative marriage, putative wife, and the like. And Toullier, tome 7, n. 29, uses the words putative owner, proprietare putatif. Lord Kames uses the same expression. Princ. of Eq. 391.

PUTATIVE FATHER. The reputed father.

2. This term is most usually applied to the father of a bastard child.

3. The putative father is bound to support his children, and is entitled to the guardianship and care of them in preference to all persons but the mother. 1 Ashm. It. 55; and vide 7 East, 11; 5 Esp. R. 131; 1 B. & A. 491; Bott, P. L. 499; 1 C. & P. 268; 1 B. & B. 1; 3 Moore, R. 211; Harr. Dig. Bastards, VlI.; 3 C. & P. 36.

PUTATIVE MARRIAGE. This marriage is described by jurists as "matrimonium putativum, id est, quod bona fide et solemnitur saltem, opinions conjugis unius justa contractum inter personas vetitas jungi." Hertius, h. t. It is a marrriage contracted in good faith, and in ignorance of the existence of those facts which constituted a legal impediment to the intermarriage.

2. Three circumstances must concur to constitute this species of marriage. 1st. There must be a bona fides. One of the parties, at least, must have been ignorant of the impediment, not only at the time of the marriage, but must also have continued ignorant of it during his or her life, because, if he became aware of it, he was bound to separate himself from his wife. 2d. The marriage must be duly solemnized. 3d. The marriage must have been considered lawful in the estimation of the parties, or of that party who alleges the bona fides.

3. A marriage in which these three circumstances concur, although null and void, will have the effect of entitling the wife, if she be in good faith, to enforce the rights of property, which would have been competent to her if the marriage had been valid, and of rendering the children of such marriage legitimate.

4. This species of marriage was not recognized by the civil law; it was introduced by the canon law. It is unknown to the law of the United States, and in England and

Ireland. In France it has been adopted by the Code Civil, art. 201, 202. In Scotland, the question has not been settled. Burge on the Confl. of Laws, 151, 2.

PUTTING IN FEAR. These words are used in the definition of a robbery from the person; the offence must have been committed by putting in fear the person robbed. 3 Inst. 68; 4 Bl. Com. 243.

2. This is the circumstance which distinguishes robbery from all other larcenies. But what force must be used, or what kind of fears excited, are questions very proper for discussion. The goods must be taken against the will (q. v.) of the possessor. For. 123.

3. There must either be a putting in fear or actual violence, though both need not be positively shown; for the former will be inferred from the latter, and the latter is sufficiently implied in the former. For example, when a man is suddenly knocked down and robbed while he is senseless, there is no fear,, yet in consequence of the violence, it is presumed. 2 East, P. C. 711; 4 Binn. Rep. 379; 3 Wash. C. C. Rep. 209; 2 Chit. Cr. Law, 803.

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Q

QUACK. One, who, without sufficient knowledge, study or previous preparation, and without the diploma of some college or university, undertakes to practice medicine or surgery, under the pretence that he possesses secrets in those arts.

2. He is criminally answerable for his unskilful practice, and also, civilly to his patient in certain cases. Vide Mala praxis; Physician.

QUADRANS, civil law. The fourth part of the whole. Hence the heir exquad rante; that is to say, the fourth-part of the whole.

QUADRANT. In angular measures, a quadrant is equal to ninety degrees. Vide Measure.

QUADRIENNIUM UTILE, Scotch law. The four years of a minor between his age of twenty-one and twenty-five years, are so called.

2. During this period he is permitted to impeach contracts made against his interest previous to his arriving at the age of twenty-one years. Ersk. Prin. B. 1, t. 7, n. 19; 1 Bell's Com. 135, 5th ed.; Ersk. Inst. B. 1, t. 7, s. 35.

QUADRIPARTITE. Having four parts, or divided into four parts; as, this indenture quadripartite made between A B, of the one part, C D, of the second part, E P, of the third part, and G H, of the fourth part.

QUADROON.A person who is descended from a white person, and another person who has an equal mixture of the European and African blood. 2 Bailey, 558. Vide Mulatto.

QUADRUPLICATION, pleading. Formerly this word was used instead of surrebutter. 1 Bro. Civ. Law, 469, n.

QUAE EST EADEM, pleading. Which is the same.

2. When the defendant in trespass justifies, that the trespass justified in the plea is the same as that complained of in the declaration; this clause is called quae est eadem. Gould. Pl. c. 3, s. 79, 80.

3. The form is as follows: "which are the same assaullting, heating and ill-treating, the said John, in the said declaration mentioned, and whereof the said John hath above thereof complained against the said James." Vide 1 Saund. 14, 208, n. 2; 2 Id. 5 a, n. 3; Archb. Civ. Pl. 217.

QUAERE, practice. A word frequently used to denote that an inquiry ought to be made of a doubtful thing. 2 Lill. Ab. 406.

QUAERENS NON INVENIT PLEGIUM, practice. The plaintiff has not found pledge. The return made by the sheriff to a writ directed to him with this clause, namely, si A facerit B securum de clamore suo prosequando, when the plaintiff has neglected to find sufficient security. F. N. B. 38.

QUAESTIO, Rom. civ. law. A sort of commission (ad quaerendum) to inquire into some criminal matter given to a magistrate or citizen, who was called quaesitor or

quaestor who made report thereon to the senate or the people, as the one or the other appointed him. In progress, he was empowered (with the assistance of a counsel) to adjudge the case; and the tribunal thus constituted, was called quaestio. This special tribunal continued in use until the end of the Roman republic, although it was resorted to during the last times of the republic, only in extraordinary cases.

2. The manner in which such commissions were constituted was this: If the matter to be inquired of was within the jurisdiction of the comitia, the senate on the demand of the consul or of a tribune or of one of its members, declared by a decree that there was cause to prosecute a citizen. Then the consul ex auctoritate senatus asked the people in comitia, (rogabat rogatio) to enact this decree into a law. The comitia adopted it either simply, or with amendment, or they rejected it.

3. The increase of population and of crimes rendered this method, which was tardy at best, onerous and even impracticable. In the year A. U. C. 604 or 149 B. C., under the consulship of Censorinus and Manilius, the tribune Calpurnius Piso, procured the passage of a law establishing a questio perpetua, to take cognizance of the crime of extortion, committed by Roman magistrates against strangers de pecuniis repetundis. Cic. Brut. 27. De Off.. II., 21; In Verr. IV. 25.

4. Many such tribunals were afterwards established, such as Quaestiones de majestate, de ambitu, de peculatu, de vi,de sodalitiis, &c. Each was composed of a certain number of judges taken from the senators, and presided over by a preator, although he might delegate his authority to a public officer, who was called judex quaestionis. These tribunals continued a year only; for the meaning of the word perpetuus is (non interruptus,) not interrupted during the term of its appointed duration.

5. The establishment of these quaestiones, deprived the comitia of their criminal jurisdiction, except the crime of treason - they were in fact the depositories of the judicial power during the sixth and seventh centuries of the Roman republic, the last of which was remarkable for civil dissentions, and replete with great public, transactions. Without some knowledge of the constitution of the Quaestio perpetua, it is impossible to understand the forensic speeches of Cicero, or even the political history of that age. But when Julius Caesar, as dictator, sat for the trial of Ligarius, the ancient constitution of the republic was in fact destroyed, and the criminal tribunals, which had existed in more or less vigor and purity until then, existed no longer but in name. Under Augustus, the concentration of the triple power of the consuls, pro-consuls and tribunes, in his person transferred to him as of course, all judicial powers and authorities.

QUAESTOR. The name of a magistrate of ancient Rome.

QUAKERS. A sect of Christians.

2. Formerly they were much persecuted on account of their peaceable principles which forbade them to bear arms, and they were denied many rights because they refused to make corporal oath. They are relieved in a great degree from the consequent penalties for refusing to bear arms; and their affirmations are everywhere in the United States, as is believed, taken instead of their oaths.

QUALIFICATION. Having the requisite qualities for a thing; as, to be president of the United States, the candidate must possess certain qualifications. See President of the United States.

QUALIFIED. This term is frequently used in law. A man hag a qualified property in animals ferae naturae, while they remain in his power, but, as soon as they regain their liberty, his property in them is lost. A man has a qualified right to recover property of which he is not the owner, but which was unlawfully taken out of his possession. But this right may be defeated by the owner bring a suit or claiming the property. Vide Animals; Trover.

QUALIFIED FEE, estates. One which has a qualification subjoined to it, and which must be determined whenever the qualification annexed to it is at an end. A Iimitation to a man and his heirs on the part of his father, affords an example of this species of estate. Litt. 254; 2 Bouv. Inst. n. 1695.

QUALIFIED INDORSEMENT. A transfer of a bill of exchange or promissory note to an indorsee, without any liability to the indorser; the words usually employed for this purpose, are sans recours, without recourse. 1 Bouv. Inst. n. 1138,

QUALITY, persons. The state or condition of a person.

2. Two contrary qualities cannot be in the same person at the same time. Dig. 41, 10, 4.

3. Every one is presumed to know the quality of the person with whom he is contracting.

4. In the United States, the people happily are all upon an equality in their civil and political rights.

QUALITY, pleading. That which distinguishes one thing from another of the same kind.

2. It is in general necessary, when the declaration alleges an injury to the goods and chattels, or any contract relating to them, that the quality should be stated and it is also essential, in an action for the recovery of real estate, that its quality should be shown; as, whether it consists of houses, lands, or other hereditaments, whether the lands are meadow, pasture or arable, &c. The same rule requires that, in an action for an injury to real property, the quality should be shown. Steph. Pl. 214, 215. Vide, as to the various qualities, Ayl. Pand. [60.]

QUAMDIU SE BENE GESSERIT. As long as he shall behave himself well. A clause inserted in commissions, when such instruments were written in Latin, to signify the tenure by which the officer held his office.

QUANDO ACCIDERENT, pleading, practice. When they may happen. When a defendant, executor, or administrator pleads plene administravit, the plaintiff may pray to have judgment of assets quando acciderint. Bull. N. P. 169; Bac. Ab. Executor, M.

2. By taking a judgment in this form the plaintiff admits that the defendant has fully administered to that time. 1 Pet. C. C. R. 442, n. Vide 11 Vin. Ab. 379; Com. Dig. Pleader, 2 D 9.

QUANTI MINORIS. The name of a particular action in Louisiana. An action quanti minoris is one brought for the reduction of the price of a thing sold, in consequence of defects in the thing which is the object of the sale.

2. Such action must be commenced within twelve months from the date of the sale, or from the time within which the defect became known to the purchaser. 3 Mart. N. S. 287 11 Mart. Lo. R. 11.

QUANTITY, pleading. That which is susceptible of measure.

2. It is a general rule that, when the declaration alleges an injury to goods and chattels, or any contract relating to them, their quantity should be stated. Gould on Pl. c. 4, 35. And in actions for the recovery of real estate, the quantity of the land should be specified. Bract. 431, a; 11 Co. 25 b, 55 a; Doct. Pl. 85, 86; 1 East, R. 441; 8 East, R. 357; 13 East, R. 102; Steph. Pl. 314, 315.

QUANTUM DAMNIFICATUS, equity practice. An issue directed by a court of equity to be tried in a court of law, to ascertain by a trial before a jury, the amount of damages suffered by the non-performance of some collateral undertaking which a penalty has been given to secure. When such damages have thus been ascertained the court will grant relief upon their payment. Jer. on Jur. 477; 4 Bouv. Inst. n. 3913.

QUANTUM MERUIT, pleading. As much as he has deserved. When a person employs another to do work for him, without any agreement as to his compensation, the lawimplies a promise from, the employer to the workman that he will pay him for his services, as much as be may deserve or merit. In such case the plaintiff may suggest in his declaration that the defendant promised to pay him as much as he reasonably deserved, and then aver that his trouble was worth sucli a sum of money, which the defendant has omitted to pay. This is called an assumpsit on a quantum meruit. 2 Bl. Com. 162, 3 1 Vin. Ab. 346; 2 Phil. Ev. 82.

2. When there is an express contract for a stipulated amount and mode of compensation for services, the plaintiff cannot abandon the contract and resort to an action for a quantum meruit on an implied assumpsit. 18 John. R. 169; 14 John. R. 326; 10 Serg. & Rawle, 236. Sed vide 7 Cranch, 299; Stark. R. 277; S., C. Holt's N. P. 236; 10 John. Rep. 36; 12 John. R. 374; 13 John. R. 56, 94, 359; 14 John. R. 326; 5 M. & W. 114; 4 C. & P. 93; 4 Sc. N. S. 374; 4 Taunt. 475; 1 Ad. & E. 333; Addis. on Contr. 214.

QUANTUM VALEBAT, pleading. As much as it was worth. When goods are sold, without specifying any price, the law implies a promise from the buyer to the seller that he will pay him for them as much as they were worth.

2. The plaintiff may, in such case, suggest in this declaration that the defendant promised to pay him as much as the said goods were worth, and then aver that they were worth so much, which the defendant has refused to pay. Vide the authorities cited under the article Quantum meruit.

QUARANTINE, commerce, crim. law. The space of forty days, or a less quantity of time, during which the crew of a ship or vessel coming from a port or place infected or supposed to be infected with discase, are required to remain on board after their arrival, before they can be permitted to land.

2. The object of the quarantine is to ascertain whether the crew are infected or not.

3. To break the quarantine without legal authority is a misdemeanor. 1 Russ. on Cr. 133.

4. In cases of insurance of ships, the insurer is responsible when the insurance extends to her being moored in port 24 hours in safety, although she may have arrived, if before the 24 hours are expired she is ordered to perform quarantine, if any accident contemplated by the policy occur 1 Marsh. on Ins. 264.

QUARANTINE, inheritances, rights. The space of forty days during which a widow has a right to remain in her late hushand's principal mansion, immediately after his death. The right of the widow is also called her quarantine.

2. In some, perhaps all the states of the United States, provision has been expressly made by statute securing to the widow this right for a greater or lesser space of time in Massachusetts, Mass. Rev. St. 411, and New York, 4 Kent, Com. 62, the widow is entitled to the mansion house for forty days. In Ohio, for one year, Walk. Intr. 231, 324. In Alabama, Indiana, Illinois, Kentucky, Missouri, New Jersey, Rhode Island and Virginia, she may occupy till dower is assigned; in Indiana, Illinois, Kentucky, Missouri, New Jersey and Virginia, she may also occupy the plantation or messuage. In Pennsylvania the statute of 9 Hen. III., c. 7, is in force, Rob. Dig. 176, by which it is declared that "a widow shall tarry in the chief house of her hushand forty days after his death, within which, her dower shall be assigned her." In Massachusetts the widow is entitled to support for forty days in North Carolina for one year.

3. Quarantine is a personal right, forfeited by implication of law, by a second marriage. Co. Litt. 82. See Ind. Rev. L. 209; 1 Virg. Rev. C. 170,; Ala. L. 260; Misso. St. 229; Ill. Rev. L. 237; N. J. Rev. C. 397 1 Ken. Rev. L. 573. See Bac. Ab. Dower, B; Co. Litt. 32, b; Id, 34, b 2 Inst. 16, 17.

QUARE, pleadings. Wherefore. This word is sometimes used in the writ in certain actions, but is inadmissible in a material averment in the pleadings, for it is merely interrogatory and, therefore, when a declaration began with complaining of the defendant, "wherefore with force, &c. he broke and entered" the plaintiff's close, was considered ill. Bac. Ab. Pleas, B 5, 4; Gould on Pl. c. 3, 34.

QUARE CLAUSUM FREGIT. Wherefore he broke the close. In actions of trespass to real estate the defendant is charged with breaking the close of the plain-tiff. Formerly the original writ in such a case was a writ of trespass quare clausum fregit, now the charge of breaking the close is laid in the declaration. See Close; Trespass.

QUARE EJECIT INFRA TERMINUM. Wherefore did he eject within the term. The name of a writ which lies for a 1essee, who has been turned out of his farm before the expiration of his term or lease, Against the feoffee of the land, or the lessor who ejects him. This has given way to the action of ejectment. 3 Bl. Com. 207.

QUARE IMPEDIT, Eng. eccl. law. The name of a writ directed by the king to the sheriff, by which he is required to command certain persons by name to permit him, the king, to present a fit person to a certain church, which is void, and which belongs to his gift, and of which the said defendants hinder the king, as it is said, and unless, &c. then to summon, &c. the defendants so that they be and appear, &c. F. N. B. 74.

QUARE OBSTRUXIT. The name of a writ formerly used in favor of one who having a right to pass through his neighbor's grounds, was prevented enjoying such right, because the owner of the grounds had obstructed the way. T. L.

QUARREL. A dispute; a difference. In law, particularly in releases, which are taken most Bly against the releasor, when a man releases all quarrels he is said to release all actions, real and personal. 8 Co. 153.

QUARRY. A place whence stones are dug for the purpose of being employed in building, making roads, and the like.

2. When a farm is let with an open quarry, the tenant may, when not restrained by his contract, take out the stone, but he has no right to open new quarries. Vide Mines. Waste.

QUART, measures. A quart is a liquid measure containing one-fourth part of a gallon.

QUARTER. A measure of length, equal to four inches. Vide Measure.

To QUARTER. A barbarous punishment formerly inflicted on criminals by tearing them to pieces by means of four horses, one attached to each limb.

QUARTER DAY. One of the four days of the year on which rent payable quarterly becomes due.

QUARTER DOLLAR, money. A silver coin of the United States of the value of twenty-five cents.

2. It weighs one hundred and threee and one-eighth grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. L. U. S. 2523, 4. Vide Money.

QUARTER EAGLE, money. A gold coin of the United States of the value of two dollars and a half.

2. It weighs sixty-four and one-half grains. Of one thousapd parts, nine hundred are of pure gold, and one hundred of alloy. Act of January, 18, 1837, S. 8 and 10, 4 Sharsw. cont. of Story's L. U. S. 2523, 4. Vide Money.

QUARTER SEAL. The seal kept by the director of the chancery in Scotland is so called. It is in the shape and impression of the fourth part of the great seal. Bell's Scotch Law Diet. h. t.

QUARTER SESSIONS.A court bearing this name, mostly invested with the trial of criminals. It takes its name from sitting quarterly or once in three months.

2. The English courts of quarter sessions were erected during the reign of Edward III. Vide Stat. 36 Edward III. Crabb's Eng. L. 278.

QUARTER YEAR. In the computation of time, a quarter year consists of ninety-one days. Co. Litt. 135 b; 2 Roll. Ab. 521, l. 40; Rev. Stat. of N. Y. part 1, c. 19, t. 1, 3.

QUARTERING OF SOLDIERS. The constitution of the United States, Amendm. art. 3, provides that "no soldier shall in time of peace be quartered, in any house, without the consent of the owner, nor in time of war but in a manner to be prescribed by law." By quartering is understood boarding and lodging or either. Encycl. Amer. h. t.

QUARTEROON. One who has had one of his grand parents of the black or African race.

QUARTO DIE POST. The fourth day inclusive after the return day of the writ is so called. This is the day of appearance given ex gracia curiae.

TO QUASH, practice. To overthrow or annul.

2. When proceedings are clearly irregular and void the courts will quash them, both in civil and criminal cases: for example, when the array is clearly irregular, as if the jurors have been selected by persons not authorized by law, it will be quashed. 3 Bouv. Inst. n. 3342.

3. In criminal cases, when an indictment is so defective that no judgment can be given upon it, should the defendant be convicted, the court, upon application, will in general quash it; as if it have no jurisdiction of the offence charged, or when the matter charged is not indictable. 1 Burr. 516, 548; Andr. 226. When the application to quash is made on the part of the defendant, the court generally refuses to quash the indictment when it appears some enormous crime has been committed. Com. Dig. Indictment, H; Wils. 325; 1 Salk. 372; 3 T. R. 621; 6 Mod. 42; 3 Burr. 1841; 5 Mod. 13; Bac. Abr. Indictment, K. When the application is made on the part of the prosecution, the indictment will be quashed whenever it is defective so that the defendant cannot be convicted, and the prosecution appears to be bona fide. If the prosecution be instituted by the attorney general, he may, in some states, enter a nolle prosequi, which has the same effect. 1 Dougl. 239, 240. The application should be made before plea pleaded; Leach, 11; 4 St. Tr. 232; 1 Hale, 35; Fost. 231; and before the defendant's recognizance has been forfeited. 1 Salk. 380. Vide Cassetur Breve.

QUASI. A Latin word in frequent use in the civil law signifying as if, almost. It marks the resemblance, and supposes a little difference between two objects. Dig. b. 11, t. 7, 1. 8, 1. Civilians use the expressions quasi-contractus, quasi-delictum, quasi-possessio quasi-traditio, &c.

QUASI-AFINITY. A term used in the civil law to designate the affinity which exists between two persons, one of whom has been betrothed to the kindred of the other, but who have never been married. For example, my brother is betrothed to Maria, and, afterwards, before marriage he dies, there then exists between Maria and me a quasi-affinity.

2. The history of England furnishes an example of this kind. Catherine of Arragon was betrothed to the brother of Henry VIII. Afterwards Henry married her and, under the pretence of this quasi affinity, he repudiated her, because the marriage was incestuous.

QUASI-CONTRACTUS. A term used in the civil law. A quasi-contract is the act of a person, permitted by law, by which he obligates himself towards another, or by which another binds himself to him, without any agreement between them.

2. By article 2272 of the Civil Code of Louisiana, which is translated from article 1371 of the Code Civil, quasi-contracts are defined to be "the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometime a reciprocal obligation between the parties." In contracts, it is the consent of the contracting parties which produces the obligation; in quasi-contracts no consent is required, and the obligation arises from the law or natural equity, on the facts of the case. These acts are called quasi-contracts, because, without being contracts, they bind the parties as contracts do.

3. Quasi-contracts may be multiplied almost to infinity. They are, however, divided into five classes: such "relate to the voluntary and spontaneous management of the affairs of another, without authority; the administration of tutorship; the management of common property; the acquisition of an inheritance; and the payment of a sum of money or other thing by mistake, when nothing was due.

4. - 1. Negotiorum gestio. When a man undertakes of his own accord to manage the affairs of another, the person assuming the agency contracts the tacit engagement to continue it, an& complete it, until the owner shall be in a condition to attend to it himself. The obligation of such a person is, 1st. To act for the benefit of the absentee. 2d. He is commonly answerable for the slightest neglect. 3d. He is bound to render an account of his management. Equity obliges the proprietor, whose business has been well managed, 1st. To comply with the engagements contracted by the manager in his

name. 2d. To indemnify the manager in all the engagements he has contracted. 3d. To reimburse him all useful and necessary expenses.

5. - 2. Tutorship or guardianship, is the second kind of quasi-contracts, there being no agreement between the tutor and minor.

6. - 3. When a person has the management of a common property owned by himself and others, not as partners, he is bound to account for the profits, and is entitled to be reimbursed for the expenses which he has sustained by virtue of the quasi-contract which is created by his act, called communio bonorum.

7. - 4. The fourth class is the aditio herreditatis, by which the heir is bound to pay the legatees, who cannot be said to have any contract with him or with the deceased.

8. - 5. Indebiti solutio, or the payment to one of what is not due to him, if made through any mistake in fact, or even in law, entitles him who made the payment to an action against the receiver for repayment, condictio indebiti. This action does not lie, 1. If the sum paid was due ex equitate, or by a natural obligation. 2. If he who made the payment; knew that nothing was due, for qui consulto dat quod non, debebat, proesumitur donare.

9. Each of these quasi-contracts has an affinity with some contract; thus the management of the affairs of another without authority, and tutorship, are compared to a mandate; the community of property, to a partnership; the acquisition of an inheritance, to a stipulation; and the payment of a thing which is not due, to a loan.

10. All persons, even infants and persons destitute of reason, who are consequently incapable of consent may be obliged by the quasi-contract, which results from the act of another, and may also oblige others in their favor; for it is not consent which forms these obligations; they are contracted by the act of another, without any act on our part. The use of reason is indeed required in the person whose act formsthe quasi-contract, but it is not re-quired in the person by whom or in whose favor the obligations which result from it are contracted. For instance, if a person undertakes the business of an infant or a lunatic; this is a quasi-contract, which obliges the infant or the lunatic to the person undertaking his affairs, for what he has beneficially expended, and reciprocally obliges the person to give an account of his administration or management.

11. There is no term in the common law which answers to that of quasi-contract; many quasi-contracts may doubtless be classed among implied contracts; there is, however, a difference between them, which an example will make manifest. In case money should be paid by mistake to a minor, it may be recovered from him by the

civil law, because his consent is not necessary to a quasi-contract but by the common law, if it can be recovered, it must be upon an agreement to which the law presumes he has consented, and it is doubtful, upon principle, whether such recovery could be had.

See generally, Just. Inst. b. 3, t. 28 Dig. b. 3, tit. 5; Ayl. Pand. b. 4, tit. 31 1 Bro. Civil Law, 386; Ersk. Pr. Laws of Scotl. b. 3, tit. 3, s. 16; Pardessus, Dr. Com. n. 192, et seq.; Poth. Ob. n. 113, et seq.; Merlin, Rep. Riot Quasi-contract; Menestrier, Lecons Elem. du Droit Civil Romain, liv. 3, tit. 28; Civil Code of Louisiana, b. 3, tit. 5; Code Civil, liv. 3, tit. 4, c. 1.

QUASI CORPORATIONS. This term is applied to such bodies or municipal societies, which, though not vested with the general powers of corporations, are yet recognized by statutes or immemorial usage, as persons or aggregate corporations, with precise duties which may be enforced, and privileges which may be maintained by suits at law. They may be considered qua corporations, with limited powers, coextensive with the duties imposed upon them by statute or usage; but restrained from a general use of the authority, which belongs to those metaphysical persons by the common law.

2. Among quasi corporations may be ranked towns, townships, parishes, hundreds, and other political divisions of counties, which are established with-out an express charter of incorporation; commissioners of a county, supervisors of highways, overseers of the poor, loan officers of a county, and the like, who are invested with corporate powers sub modo, and for a few specified purposes only. But not such a body as the general assembly of the Preshyterian church, which has not the capacity to sue and be sued. 4 Whart. 531. See 2 Kent Com. 224; Ang. on Corp. 16; 13 Mass. 192; 18 John. R. 422; 1 Cowen, R. 258, and the note; 2 Wend. R. 109; 7 Mass. R. 187; 2 Pick. R. 352; 9 Mass. Rep. 250; 1 Greenl. R. 363; 2 John. Ch. Rep. 325; 1 Cowen, 680; 4 Wharton, R. 531, 598.

QUASI DELICT, civil law. An act whereby a person, without malice, but by fault, negligence or imprudence not legally excusable, causes injury to another.

2. A quasi delict may be public or private; the neglect of the affairs of a community, when it is our duty to attend to them, may be a crime; the neglect of a private matter, under similar circumstances, may be the ground of a civil action. Bowy. Mod. C. L. c. 43, p. 265.

QUASI OFFENCES, torts, civil law. Those acts which, although not committed by the persons responsible for them, are by implication of law supposed to have been committed by their command, by other persons for whom they are answerable. They

are also injuries which have been caused by one person to another, without any intention to hurt them.

2. Of the first class of quasi offences are the injuries occasioned by agents or servants in the exercise of their employments. A master is, therefore, liable to be sued for injuries occasioned by the neglect or unskilfulness of his servant while in the course of his employment, though the act was obviously tortious and against the master's consent as, for fraud, deceit, or other wrongful act. 1 Salk . 280; Cro. Jac. 473; 1 Str. 653; Roll. Abr. 95, 1. 15; 1 East, 106; 2 H. Bl. 442; 3 Wills. 313; 2 Bl. Rep. 845; 5 Binn. 54 0; sed vide, Com. Dig. tit. Action on the case for deceit, B. A master is liable for a servant's negligent driving of a carriage or navigating a ship; 1 East, 105; or for a libel inserted in a newspaper of which defendant was proprietor. 1 B. & P. 409. The master is also liable not only for the acts of those immediately employed about him, but even for the acts of a sub-agent, however remote, if committed in the course of his service; 1 Bos. & P. 404; 6 T. R. 411; and a corporate company are liable to be sued for the wrongful acts of their servants; 3 Camp. 403; when not, see 4 M. & S. 27.

3. But the wrongful or unlawful acts must be committed in the course of the servant's employmen, and while the servant is acting as such; therefore a person who hires a post chaise is not liable for the negligence of the driver, but the action must be against the driver or owner of the chaise and horses. 6 Esp. Cas. 35; 4 Barn. & A. 409 sed vide 1 B. & P. 409.

4. A master is not in general liable for the criminal acts of his servant wilfully committed by him. 2 Str. 885. Neither is he liable his servant wilfully commit an injury to another as if a servant wilfully drive his master's carriage against another's, or ride or beat a distress damage feasant. 1 East. 106; Rep. T. Hard. 87; 3 Wils. 217; 1 Salk. 289; 2 Roll. Abr. 553; 4 B. & A. 590. In some cases, however, where it is the duty of the master to see that the servant acts correctly, he may be liable criminally for what the servant has done; as where a baker's servant introduced noxious materials in his bread. 3 M. & S. 11; Ld. Raymond, 264; 4 Camp. 12. And on principles of public policy, a sheriff is liable civilly for the trespass, extortion, or other wilful misconduct of his bailiff. 2 T. Rep. 154; 3 Wils. 317; 8 T. R. 431.

5. In Louisiana, the father, or after his decease, the mother is responsible for the damages occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons. Code art. 2297. The curators of insane persons are answerable for the damage occasioned by those under their care. Id. 2298. Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed; teachers and artisans, for the damage caused by their scholars and apprentices, while under their superintendence. In the

above cases responsibility attaches, when the masters or employers, teachers and artisans, might have prevented the act which caused the damage, and have not done it. Id. 299. The owner of an animal is answerable for the damage he has caused; but if the animal has been lost or strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who his sustained the injury; except where the master has turned loose a dangerous or noxious animal; for then he must pay all the harm done without being allowed to make the abandonment. Id. 2301.

QUASI PARTNERS. Partners of lands, goods, or chattels, who are not actual partners, are sometimes so called. Poth. De Societe, App. n. 184. Vide Part owners.

QUASI POSTHUMOUS CHILD, civil law. One who, born during the life of his grand father, or other male ascendant, was not his heir at the time he made his testament, but who by the death of his father became his heir in his lifetime. Inst. 2, 13, 2; Dig. 28, 3, 13.

QUASI PURCHASE. This term is used in the civil law to denote that a thing is to be considered as purchased from the presumed consent of the owner of the thing; as, if a man should consume a cheese, which is in his possession and belonging to another, with an intent to pay the price of it to the owner, the consent of the latter will be presumed, as the cheese would have been spoiled by keeping it longer. Wolff, Dr. de la Nat. 691.

QUASI TRADITION, civil law. A term used to designate that a person is in the use of the property of another, which the latter suffers and does not oppose. Lec. Elein. 396. It alsosignifies the act by which the right of property is ceded in a thing to a person who is in possession of it; as, if I loan a boat to Paul, and deliver it to him, and afterwards I sell him the boat, it is not requisite that he should deliver the boat to me, to be again delivered to him there is a quasi tradition or delivery.

QUATUORVIRI. Among the Romans these were magistrates who had the care and inspection of roads. Dig. 1, 2, 3, 30.

QUAY, estates. A wharf at which to load or land goods, sometimes spelled key.

2. In its enlarged sense the word quay, means the whole space between the first row of houses of a city, and the sea or river 5 L. R. 152, 215. So much of the quay as is requisite for the public use of loading and unloading vessels, is public property, and cannot be appropriated to private use, but the rest may be, private property. Id. 201.

QUE EST MESME. Which is the same. Vide Quce est eadem.

QUE ESTATE. These words literally translated signify quem statum, or which estate. At common law, it is a plea by which a man prescribes in himself and those whose estate he holds. 2 Bl. Com. 270; 18 Vin. Ab. 133-140; 2 Tho. Co. Litt. 203; Co. Litt. 121 a; Hardress, 459 2 Bouv. Inst. n. 499.

QUEAN. A worthless woman a strumpet. The meaning of this word, which is now seldom used, is said not to be well ascertained. 2 Roll. Ab. 296 Bac. Ab. Stander, U 3.

QUEEN. There are several kinds of queens in some countries. 1. Queen regnant, is a woman who possesses in her own right the executive power of the country.

2. Queen consort, is the wife of a king.

3. Queen dowager is the widow of a king. In the United States there is no one with this title.

QUERELA. An action preferred in any court of justice, in which the plaintiff was called querens or complainant, and his brief, complaint, or declaration, was called querela. Jacob's Diet. h. t.

QUESTION, punishment, crm. law. A means sometimes employed, in some countries, by means of torture, to compel supposed great criminals to disclose their accomplices, or to acknowledge their crimes.

2. This torture is called question, because, as the unfortunate person accused is made to suffer pain, he is asked questions as to his supposed crime or accomplices. The same as torture. This is unknown in the United States. See Poth. Procedure Criminelle, sect. 5, art. 2, 3.

QUESTION, evidence. An interrogation put to a witness, requesting him to declare the truth of certain facts as far as he knows them.

2. Questions are either general or leading. By a general question is meant such an one as requires the witness to state all be knows without any suggestion being made to him, as who gave the blow?

3. A leading question is one which leads the mind of the witness to the answer, or suggests it to him, as did A B give the blow?

4. The Romans called a question by which the fact or supposed fact which the interrogator expected, or wished to find asserted, in and by the answer made to the

proposed respondent, a suggestive interrogation, as, is not your name A B? Vide Leading Question.

QUESTION, practice. A point on which the parties are not agreed, and which is submitted to the decision of a judge and jury.

2. When the doubt or difference arises as to what the law is on a certain state of facts, this is said to be a legal question, and when the party demurs, this is to be decided by the court; when it arises as to the truth or falsehood of facts, this is a question of fact, and is to be decided by the jury.

QUESTOR or QUAESTOR, civil law. A name which was given to two distinct classes of Roman officers. One of which was called quaestores classici, and the other quaestores parricidii,

2. The quaestores classici were officers entrusted with the care of the public money. Their duties consisted in making the necessary payments from the aerarium, and receiving the public revenues. Of both, they had to keep correct accounts in their tabulae publicae. Demands which any one might have on the aerarium, and outstanding debts were likewise registered by them. Fines to be paid to the public treasury were registered and exacted by them. They were likewise to provide proper accomodations for foreign ambassadors and such persons as were connected with the republic by ties of public hospitality. Lastly, they were charged with the care of the burials and monuments of distin-guished men, the expenses for which had been decreed by the senate to be paid, by the treasury. Their number at first was confined to two, but this was afterwards increased as the empire became, extended. There were questors of cities, provinces, and questors of the army, the latter were in fact pay-masters.

3. The questores parricidii were public accusers, two in number, who conducted the accusation of persons guilty of murder or any other capital offence, and carried the sentence into execution. They ceased to be appointed at an early period, Smith's Dic. Gr. and Rom. Antiq. h. v.

QUI TAM, remedies. Who as well. When a statute imposes a penalty, for the doing or not doing an act, and gives that penalty in part to whosoever will sue for the same, and the other part to the commonwealth, or some charitable, literary, or other institution, and makes it recoverable by action, such actions are called qui tam actions, the plaintiff describing himself as suing as well for the commonwealth, for example, as for himself. Espin. on Pen. Act. 5, 6; 1 Vin. Ab. 197; 1 Salk. 129 n.; Bac. Ab. h. t.

QUIA, pleadings. Because. This word is considered a term of affirmation. It is sufficiently direct and positive for introducing a material averment. 1 Saund. 117, n. 4; Com. Dig, Pleader, c. 77.

QUIA EMPTORES. A name sometimes given to the English Statute of Westminster, 3, 13 Edw. I., c. 1, from its initial words. 2 Bl. Com. 91.

QUIA TIMET, remedies. Because he fears. According to Lord Coke, "there be six writs of law that may be maintained quia timet, before any molestation, distress, or impleading; as. 1. A man may have his writ or mesne, before he be distrained. 2. A warrantia chartae, before he be impleaded. 3. A monstra-verunt, before any distress or vexation. 4. An audita querela, before any execution sued. 5. A curia claudenda, before any default of inclosure. 6. A ne injuste vexes, before any distress or molestation. And those are called brevia anticipantia, writs of prevention." Co. Litt. 100 and see 7 Bro. P. C. 12 5.

2. These writs are generally obsolete. In chancery, when it is contemplated to prevent an expected injury, a bill quia timet (q. v.) is filed. Vide 1 Fonb. 41; 18 Vin Ab. 141; 4 Bouv. Inst. n. 3801, et seq. Bill quia timet.

QUIBBLE. A slight difficulty raised without necessity or propriety; a cavil.

2. No justly eminent member of the bar will resort to a quibble in his argument. It is contrary to his oath, which is to be true to the court as well as to the client; and bad policy because by resorting to it, he will lose his character as a man of probity.

QUICK WITH CHILD, or QUICKENING, med. jurisp. The motion of the foetus, when felt by the mother, is called quickening, and the mother is then said to be quick with child. 1 Beck's Med. Jurisp. 172; 1 Russ. on Cr. 553.

2. This happens at different periods of pregnancy in different women, and in different circumstances, but most usually about the fifteenth or sixteenth week after conception. 3 Camp. Rep. 97.

3. It is at this time that in law, life (q. v.) is said to commence. By statute, a distinction is made between a woman quick with child, and one who, though pregnant, is not so, when she is said to be privement enceinte. (q. v.) 1 Bl. Com. 129.

4. Procuring the abortion (q. v.) of a woman quick with child, is a misdemeanor when a woman is capitally convicted, if she be enceinte, it is said by Lord Hale, 2 P. C. 413, that unless they be quick with child, it is no cause for staying execution, but that if she be enceinte, and quick with child, she may allege that fact in retardationem

executionis. The humanity of the law of the present day would scarcely sanction the execution of a woman whose pregnancy was undisputed, although she might not be quick with child; for physiologists, perhaps not without reason, think the child is a living being from the moment of conception. 1 Beck, Med. Jur. 291; Guy, Med. Jur. 86, 87.

QUID PRO QUO. This phrase signifies verbatim, what for what. It is applied to the consideration of a contract. See Co. Litt. 47, b; 7 Mann. & Gr. 998.

QUIDAM, French law. Some, one; somebody. This Latin word is used to express an unknown person, or one who cannot be named.

2. A quidam is usually described by the features of his face, the color of his hair, his height, his clothing, and the like in any process which may be issued against him. Merl. Repert. h. t.; Encyclopedie, h. t.

3. A warrant directing the officer to arrest the "associates" of persons named, without naming them, is void. 3 Munf. 458.

QUIET ENJOYMENT. In leases there are frequently covenants by which the lessor agrees that the lessee shall peaceably enjoy the premises leased; this is called a covenant for quiet enjoyment. This covenant goes to the possession and not to the title. 3 John. 471; 5 John. 120; 2 Dev. R. 388; 3 Dev. R. 200. A covenant for quiet enjoyment does not extend as far as a covenant of warranty. 1 Aik. 233.

2. The covenant for quiet enjoyment is broken only by an entry, or lawful expulsion from, or some actual disturbance in, the possession. 3 John. 471; 15 John. 483; 8 John. 198; 7 Wend. 281; 2 Hill, 105; 2 App. R. 251; 9 Metc. 63; 4 Whart. 86; 4 Cowen, 340. But the tortious entry of the covenantor, without title, is a breach of the covenant for quiet enjoyment. 7 John. 376.

QUIETUS, Eng. law. A discharge; an acquittance.

2. It is an instrument by the clerk of the pipe, and auditors in the exchequer, as proof of their acquittance or discharge to accountants. Cow. Int. h. t.

QUlNTAL. A weight of one hundred pounds

QUlNTO EXACTUS, Eng. law. The fifth call or last requisition of a defendant sued to outlawry.

QUIT CLAIM, conveyancing. By the laws of Connecticut, it is the common practice there for the owner of land to execute a quit claim deed to a purchaser who has neither possession nor pretence of claim, and as by the laws of that state the delivery of the deed amounts to the delivery of possession, this operates as a conveyance without warranty. It is, however, essential that the land should not, at the time of the conveyance, be in the possession of a stranger, holding adversely to the title of the grantor. l Swift's Dig. 133; 2 N. H. R. 402; 1 Cowen, 613; and vide Release.

QUIT CLAIM, contracts. A release or acquittal of a man from all claims which the releasor has against him.

QUIT RENT. A rent paid by the tenant of the freehold, by which he goes quit and free; that is, discharged from any other rent. 2 Bl. Com. 42.

2. In England, quit rents were rents reserved to the king or a proprietor, on an absolute grant of waste land, for which a price in gross was at first paid, and a mere nominal rent reserved as a feudal acknowledgment of tenure. Inasmuch as no rent of this description can exist in the United States, when a quit rent is spoken of, some other interest must be intended. 5 Call. R. 364. A perpetual rent reserved on a conveyance in fee simple, is sometimes known by the name of quit rent in Massachusetts. 1 Hill. Ab. 150. See Ground Rent; Rent.

QUO ANIMO. The intent; the mind with which a thing has been done; as, the quo animo with which the words were spoken may be shown by the proof of conversations of the defendant relating to the original defamation. 19 Wend. 296.

JURE, WRIT OF, Engl. law. The name of a writ commanding the defendant to show by what right he demands common of pasture in the land of the complainant, who claims to have a fee in the same. F. N. B. 299.

QUO MlNUS. The name of a writ. In England, when the king's debtor is sued in the court of the exchequer, he may sue out a writ of quo minus, in which he suggests that he is the king's debtor, and that the defendant has done him the injury or damage complained of, quo minus sufficiens existit, by which he is less able to pay the king's debt. This was originally requisite in order to give jurisdiction to the court of exchequer, but now this suggestion is a mere form. 3 Bl. Com. 46.

QUO WARRANTO, remedies. By what authority or warrant. The name of a writ issued in the name of a government against any person or corporation that usurps any franchise or office, commanding the sheriff of the county to summon the defendant to be and appear before the court whence the writ issued, at a time and place therein

named, to show "quo warranto" he claims the franchise or office mentioned in the writ. Old Nat. Br. 149; . 5 Wheat. 291; 15 Mass. 125; 5 Ham. 358; 1 Miss. 115.

2. This writ has become obsolete, having given way to informations in the nature of a quo warranto at the common law; Ang. on Corp. 469; it is authorized in Pennsylvania by legislative sanction. Act 14 June, 1836. Vide 1 Vern. 156; Yelv. 190; 7 Com. Dig. 189; 17 Vin. Ab. 177.

3. An information in the nature of a quo warranto, although a criminal proceeding in form, in substance, is a civil one. 1 Serg. & Rawle, 382.

QUOAD HOC. As to this; with respect to this. A term frequently used to signify, as to the thing named, the law is so and so.

QUOD COMPUTET. The name of an interlocutory judgment in an action of account render: also the name of a decree in the case of creditors' bills against executors or administrators. Such a decree directs the master to take the accounts between the deceased and all his creditors; to cause the creditors, upon due and public notice to come before him to prove their debts, at a certain place, and within a limited period; and also directs the master to take an account of all personal estate of the deceased in the hands of the executor or administrator. Story, Eq. Jur. SS 548. See Judgment quod computet.

QUOD CUM, pleading; It is a general rule in pleading, regulating alike every form of action, that the plaintiff shall state his complaint in positive and direct terms, and not by way of recital. "For that," is a positive allegation; "for that whereas," in Latin "quod cum," is a recital

2. Matter of inducement may with propriety be stated with a quod cum, by way of recital; being but introductory to the breach of the promise, and the supposed fraud or deceit in the defendant's non-performance of it. Therefore, where the plaintiff declared that whereas there was a communication and agreement concerning a horse race, and whereas, in consideration that the plaintiff promised to perform his part of the agreement, the defendant promised to perform his part thereof; and then alleged the performance in the usual way; it was held that the inducement and promise were alleged certainly enough, and that the word "whereas" was as direct an affirmation as the word "although," which undoubtedly makes a good averment; and it was observed that there were two precedents in the new book of entries, and seven in the old, where a quod cum was used in the very clause of the promise. Ernly v. Doddington, Hard. 1. go, where the plaintiff declared on a bill of exchange against the drawer, and on demurrer to the declaration, it was objected that it was with a quod cum, which was argumentative, and implied no direct averment; the objection was over-ruled, because

assumpsit is an action on the case, although it might have been otherwise in trespass vi et armis. March v. Southwell, 2 Show. 180. The reason of this distinction is, that in assumpsit or other action on the case, the statement of the gravamen, or grievance, always follows some previous matter, which is introduced by the quod cum, and is dependent or consequent upon it; and the quod cum only refers to that introductory matter, which leads on to the subsequent statement, which statement is positively and directly alleged. For example, the breach in an action of assumpsit is always preceded by the allegation of the consideration or promise, or some inducement thereto, which leads onto the breach of it, which is stated positively and directly; and the previous allegations only, which introduce it, are stated with a quod cum, by way of recital.

3. But in trespass vi et armis, the act of trespass complained of is usually stated without any introductory matter having reference to it, or to which a quod cum can be referred; so that if a quod cum be used, there is no positive or direct allegation of that act. Sherland v. Heat 214. After verdict the quod cum may be considered as surplusage, the defect being cured by the verdict. Horton v. Mink, 1 Browne's R. 68; Com. Dig. Pleader, C 86.

QUOD EI DEFORCEAT, Engl. law. The name of a writ given by Stat. Westmin. 2, 13 Edw. I. c. 4, to the owners of a particular estate, as for life, in dower, by the curtesy, or in fee tail, who are barred of the right of possession by a recovery had against them through their default or non-appearance in a possessory action; by which the right was restored to him, who had been thus unwarily deforced by his own default. 3 Bl. Com. 193.

QUOD PERMITTAT, Engl. law. That he permit. The name of a writ which lies for the heir of him who is disseised of his common of pasture, against the heir of the disseisor, he being dead. Termes de la Ley.

QUOD PERMITTAT PROSTERNERE, Engl. law. That he give leave to demolish. The name of a writ which commands the defendant to permit the plaintiff to abate the nuisance of which complaint is made, or otherwise to appear in court and to show cause why he will not. On proof of the facts the plaintiff is entitled to have judgment to abate the nuisance and to recover damages. This proceeding, on account of its tediousness and expense, has given way to a special action on the case.

QUOD PROSTRAVIT. The name of a judgment upon an indictment for a nuisance, that the defendant abate such nuisance.

QUOD RECUPERET. That he recover. The form of a judgment that the plaintiff do recover. See Judgment quod recuperet.

QUORUM. Used substantively, quorum signifies the number of persons belonging to a legislative assembly, a corporation, society, or other body, required to transact business; there is a difference between an act done by a definite number of persons, and one performed by an indefinite number: in the first case a majority is required to constitute a quorum, unless the law expressly directs that another number may make one; in the latter case any number who may be present may act, the majority of those present having, as in other cases, the right to act. 7 Cowen, 402; 9 B. & C. 648; Ang. on Corp. 28.1.

2. Sometimes the law requires a greater number than a bare majority to form a quorum, in such case no quorum is present until such a number convene.

3. When an authority is confided to several persons for a private purpose, all must join in the act, unless otherwise authorized. 6 John. R. 38. Vide Authority, Majority; Plurality.

QUOT, Scotch law. The twentieth part of the movables, computed without computation of debts, was so called.

2. Formerly the bishop was entitled, in all confirmations, to the quot of the testament. Ersk. Prin. B. 3, t. 9, n. 11.

QUOTA. That part which each one is to bear of some expense; as, his quota of this debt; that is, his proportion of such debt.

QUOTATION, practice. The allegation of some authority or case, or passage of some law, in support of a position which it is desired to establish.

2. Quotations when properly made, assist the reader, but when misplaced, they are inconvenient. As to the manner of quoting or citing authorities, see Abbreviations; Citations.

QUOTATION, rights. The transcript of a part of a book or writing from a book or paper into another.

2. If the quotation is fair, aud not so extensive as to extract the whole value or the most valuable part of an author, it will not be a violation of the copyright. It is mostly difficult to define what is a fair quotation. When the quotation is unfair, an injunction will lie to restrain the publication. See 17 Ves. 424; 1 Bell's Com. 121, 5th ed.

3. "That part of a work of one author found in another," observed Lord Ellenborough, "is not of itself piracy, or sufficient to support an action; a man may adopt part of the

work of another; he may so make use ofanother's labors for the promotion of science, and the benefit of the public." 5 Esp. N. P. C. 170; 1 Campb. 94. See Curt. on Copyr. 242; 3 Myl. & Cr. 737, 738; 17 Ves. 422; 1 Campb. 94; 2 Story, R. 100; 2 Beav. 6, 7; Abridgment; Copyright.

QUOUSQUE. A Latin adverb, which signifies how long, how far, until.

2. In old conveyances it is used as a word of limitation. 10 Co. 41.

3. In practice it is the name of an execution which is to have force until the defendant shall do a certain thing. Of this kind is the capias ad satisfaciendum, by virtue of which the body of the defendant is taken into execution, and he is imprisoned until be shall satisfy the execution. 3 Bouv. Inst. n. 3371.

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R

RACK, punishments. An engine with which to torture a supposed criminal, in order to extort a confession of his supposed crime, and the names of his supposed accomplices. Unknown in the United States.

2. This instrument, known by the nickname of the Duke of Exeter's daughter, was in use in England. Barr. on the Stat. 866 12 S. & R. 227.

BACK RENT, Engl. law. The full extended value of land let by lease, payable by tenant for life or Years. Wood's Inst. 192.

RADOUB, French law. This word designates the repairs made to a ship, and a fresh supply of furniture and victuals, munitions and other provisions required for the voyage. Pard. n. 602.

RAILWAY. A road made with iron rails or other suitable materials.

2. Railways are to be constructed and used as directed by the legislative acts creating them.

3. In general, a railroad company may take lands for the purpose of making a road when authorized by the charter, by paying a just value for the same. 8 S. & M. 649.

4. For most purposes a railroad is a public highway, but it may be the subject of private property, and it has been held that it may be sold as such, unless the sale be forbidden by the legislature; not the franchise, but the land constituting the road. 5 Iredell, 297. In. general, however, the public can only have a right of way for it is not essential that the public should enjoy the land itself, namely, its treasures, minerals, and the like, as these would add nothing to the convenience of the public.

5. Rail-road companies, like all other principals, are liable for the acts of their agents, while in their employ, but they can not be made responsible for accidents which could not be avoided. 2 Iredell, 234; 2 McMullan, 403.

RAIN WATER. The water which naturally falls from the clouds.

2. No one has a right to build his house so as to cause the rain water to fall over his neighbor's land; 1 Rolle's Ab. 107; 2 Leo. 94; 1 Str. 643; Fortesc. 212; Bac. Ab. Action on. the case, F.; 5 Co. 101; 2 Rolle, Ab. 565, 1. 10; 1 Com. Dig. Action upon the case for a nuisance, A; unless he has acquired a right by a grant or prescription.

3. When the land remains in a state of nature, says a learned writer, and by the natural descent, the rain water would descend from the superior estate over the lower, the latter is necessarily subject to receive such water. 1 Lois des Batimens, 15, 16. Vide 2 Roll. 140; Dig. 39, 3; 2 Bouv. Inst. n. 1608.

RANGE. This word is used in the land laws of the United States to designate the order of the location of such lands, and in patents from the United States to individuals they are described as being within a certain range.

RANK. The order or place in which certain officers are placed in the army and navy, in relation to others, is called their rank.

2. It is a maxim, that officers of, an inferior rank are bound to obey all the lawful commands of their superiors, and are justified for such obedience.

RANKING. In Scotland this term is used to signify the order in which the debts of a bankrupt ought to be paid.

RANSOM, contracts, war. An agreement made between the commander of a capturing vessel with the commander of a vanquished vessel, at sea, by which the former permits the latter to depart with his vessel, and gives him a safe conduct, in consideration of a sum of money, which the commander of the vanquished vessel, in his own name, and in the name of the owners of his vessel and cargo, promises to pay at a future time named, to the other.

2. This contract is usually made in writing in duplicate, one of which is kept by the vanquished vessel which is its safe conduct; and the other by the conquering vessel, which is properly called ransom bill.

3. This contract, when made in good faith, and not locally prohibited, is valid, and may be enforeed. Such contracts have never been prohibited in this country. 1 Kent, Com. 105. In England they are generally forbidden. Chit. Law of Nat. 90 91; Poth. Tr. du Dr. de Propr. n. 127. Vide 2 Bro. Civ. Law, 260; Wesk. 435; 7 Com. Dig. 201; Marsh. Ins. 431; 2 Dall. 15; 15 John. 6; 3 Burr. 1734. The money paid for the redemption of such property is also called the ransom.

RAPE, crim. law. The carnal knowledge of a woman by a man forcibly and unlawfully against her will. In order to ascertain precisely the nature of this offence, this definition will be analysed.

2. Much difficulty has arisen in defining the meaning of carnal knowledge, and different opinions have been entertained some judges having supposed that penetration alone is sufficient, while other's deemed emission as an essential ingredient in the crime. Hawk. b. 1, c. 41, s. 3; 12 Co. 37; 1 Hale, P. C. 628; 2 Chit. Cr. L. 810. But in modern times the better opinion seems to be that both penetration and emission are necessary. 1 East, P. C. 439; 2 Leach, 854. It is, however, to be remarked, that very slight evidence may be sufficient to induce a jury to believe there was emission. Addis. R. 143; 2 So. Car. C. R. 351; 1 Beck's Med. Jur. 140. 4 Chit. Bl. Com. 213, note 8. In Scotland, emission is not requisite. Allis. Prin. 209, 210. See Emission; Penetration.

3. By the term man in this definition is meant a male of the human species, of the age of fourteen years and upwards; for an infant, under fourteen years, is supposed by law incapable of committing this offence. 1 Hale, P. C. 631; 8 C. & P. 738. But not only can an infant uncler fourteen years, if of sufficient mischievous discretion, but even a woman may be guilty as principals in the second degree. And the hushand of a woman

may be a principal in the second degree of a rape committed upon his wife, as where he held her while his servant committed the rape. 1 Harg St. Tr. 388.

4. The knowledge of the woman's person must be forcibly and against her will; and if her consent has not been voluntarily and freely given, (when she has the power to consent,) the offence will be complete, nor will any subsequent acquiescence on her part do away the guilt of the ravisher. A consent obtained from a woman by actual violence, by duress or threats of murder, or by the administration of stupefying drugs, is not such a consent as will shield the offender, nor turn his crime into adultery or fornication.

5. The matrmonial consent of the wife cannot be retracted, and, therefore, her hushand cannot be guilty of a rape on her as his act is not unlawful. But, as already observed, he may be guilty as principal in the second degree.

6. As a child under ten years of age is incapable in law to give her consent, it follows, that the offence may be committed on such a child whether she consent or not. See Stat. 18 Eliz, c. 7, s. 4. See, as to the possibility of commi tting a rape, and as to the signs which indicate it, 1 Beck's Med. Jur. ch. 12; Merlin, Rep. mot Viol.; 1 Briand, Med. Leg. 1ere partic, c. 1, p. 66; Biessy, Manuel Medico-Legal, &c. p. 149; Parent Duchatellet, De la Prostitution dans la ville de Paris, c. 3, §5 Barr. on the Stat. 123; 9 Car. & P. 752 2 Pick. 380; 12 S. & R. 69; 7 Conn. 54 Const. R. 354; 2 Vir. Cas. 235.

RAPE, division of a country. In the English law, this is a district similar to that of a hundred; but oftentimes containing in it more hundreds than one.

RAPINE, crim. law. This is almost indistinguishable from robbery. (q. v.) It is the felonious taking of another man's personal property, openly and by violence, against his will. The civilians define rapine to be the taking with violence, the movable property of another, with the fraudulent intent to appropriate it to one's own USC. Lec. El. Dr. Rom. §1071.

RAPPORT A SUCCESSION. A French term used in Louisiana, which is somewhat similar in its meaning to our homely term hotch-pot. It is the reunion to the mass of the succession, of the things given by the deceased ancestor to his heir, in order that the whole may be divided among the do-heirs.

2. The obligation to make the rapport has a tripple foundation. 1. It is to be presumed that the deceased intended in making an advancement, to give only a portion of the inheritance. 2. It establishes the equality of adivision, at least, with regard to the children of the same parent, who all have an equal right to the succession. 3. It

preserves in families that harmony, which is always disturbed by unjust favors to one who has only an equal right. Dall. Dict. h. t. See Advancement; Collation; Hotchpot.

RASCATL. An opprobrious term, applied to persons of bad character. The law does not presume that a damage has arisen because the defendant has been called a rascal, and therefore no general damages can be recovered for it; if the party has received special damages in consequence of being so called, be can recover a recompense to indennify him for his loss.

RASURE. The scratching or scraping a writing, so as to prevent some part of it from being read. The word writing here is intended to include printing. Vide Addition; Erasure and Interlineation. Also 8 Vin. Ab. 169; 13 Vin. Ab. 37; Bac. Ab. Evidence, F.; 4 Com. Dig. 294; 7 Id. 202.

RATE. A public valuation or assessment of every man's estate; or the ascertaining how much tax every one shall pay. Vide Pow. Mortg. Index, h. t.; Harr. Dig. h. t.; 1 Hopk. C. R. 87.

RATE OF EXCHANGE. Among merchants, by rate of exchange is understood the price at which a bill drawn in one country upon another, may be sold in the former.

RATIFICATION, contracts. An agreement to adopt an act performed by another for us.

2. Ratifications are either empress or implied. The former are made in express and direct terms of assent; the latter are such as the law presumes from the acts of the principal; as, if Peter buy goods for James, and the latter, knowing the fact, receive them and apply them to his own use. By ratifying a contract a man adopts the agency, altogether, as well what is detrimental as that which is for his benefit. 2 Str. R. 859; 1 Atk. 128; 4 T. R. 211; 7 East, R. 164; 16 M. R. 105; 1 Ves. 509 Smith on Mer. L. 60; Story, Ag. §250 9 B. & Cr. 59.

3. As a general rule, the principal has the right to elect whether he will adopt the unauthorized act or not. But having once ratified the act, upon a full knowledge of all the material circumstances, the ratification cannot be revoked or recalled, and the principal becomes bound as if he had originally authorized the act. Story, Ag. §250; Paley, Ag. by Lloyd, 171; 3 Chit. Com. Law, 197.

4. The ratification of a lawful contract has a retrospective effect, ana binds the principal from its date, and not only from the time of the ratification, for the ratification is equivalent to an original authority, according to the maxim, that omnis

ratihabitio mandate aeguiparatur. Poth. Ob. n. 75; Ld. Raym. 930; Com. 450; 5 Burr. 2727; 2 H. Bl. 623; 1 B. & P. 316; 13 John.; R. 367; 2 John. Cas. 424; 2 Mass. R. 106.

5. Such ratification will, in general, relieve the agent from all responsibility on the contract, when be would otherwise have been liable. 2 Brod. & Bing. 452. See 16 Mass. R. 461; 8 Wend. R. 494; 10 Wend. R. 399; Story, Ag. §251. Vide Assent, and Ayl. Pand. *386; 18 Vin. Ab. 156; 1 Liv. on, Ag. c. 2, §4, p. 44, 47; Story on Ag. §239; 3 Chit. Com. L. 197; Paley on Ag. by Lloyd, 324; Smith on Mer. L. 47, 60; 2 John. Cas. 424; 13 Mass. R. 178; Id. 391; Id. 379; 6 Pick. R. 198; 1 Bro. Ch. R. 101, note; S. C. Ambl. R. 770; 1 Pet. C. C. R. 72; Bouv. Inst. Index, h. t.

6. An infant is not liable on his contracts; but if, after coming of age, he ratify the contract by an actual or express declaration, he will be bound to perform it, as if it had been made after he attained full age. The ratification must be voluntary, deliberate, and intelligent, and the party must know that without it, he would not be bound. 11 S. & R. 305, 311; 3 Penn. St. R. 428. See 12 Conn. 551, 556; 10 Mass. 137,140; 14 Mass. 457; 4 Wend. 403, 405. But a confirmation or ratification of a contract, may be implied from acts of the infant after he becomes of age; as by enjoying or claiming a benefit under a contract be might have wholly rescinded; 1 Pick. 221, 22 3; and an infant partner will be liable for the contracts of the firm, or at least such as were known to him, if he, after becoming of age, confirm the contract of partnership by transacting business of the firm, receiving profits, and the like. 2 Hill. So. Car. Rep. 479; 1 B. Moore, 289.

RATIFICATION OF TREATIES. The constitution of the United States, art. 2, s. 2, declares that the president shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur. 2. So treaty is therefore of any validity to bind the nation unless it has been ratified by two-thirds of the members present in the senate at the time its expediency or propriety may have been discussed. Vide Treaty.

RATIHABITION, contracts. Confirmation; approbation of a contract; ratification. Vin. Ab. h. t.; Assent. (q. v.)

RATIONALIBUS DIVISIS, WRIT DE. The name of a writ which lies properly when two men have lands in several towns or hamlets, so that the one is seised of the land in one town or hamlet, and the other, of the other town or hamlet by himself; and they do not know the bounds of the town or hamlet, nor of their respective lands. This writ lies by one, against the other, and the object of it is to fix the boundaries. F . N. B. 300.

RAVISHED, pleadings. In indictments for rape, this technical word must be introduced, for no other word, nor any circumlocution, will answer the purpose. The defendant should be charged with having "feloniously ravished" the prosecutrix, or woman mentioned in the indictment. Bac. Ab. Indictment, G l; Com. Dig. Indictment, G 6; Hawk. B. 2, c. 25, s. 56; Cro. C. C. 37; 1 Hale, 628: 2 Hale, 184 Co. Litt. 184, n. p.; 2 Inst. 180; 1 East, P. C. 447. The words "feloniously did ravish and carnally know," imply that the act was done forcibly and against the will of the woman. 12 S. & R. 70. Vide 3 Chit. Cr. Law, 812.

RAVISHMENT, crim. law. This word has several meanings. 1. It is an unlawful taking of a woman, or an heir in ward. 2. It is sometimes used synonymously with rape.

RAVISHMENT OF WARD, Eng. law. The marriage of an infant ward, without the consent of the guardian, is called a ravishment of ward, and punishable by statute. Westminster 2, c. 35.

READING. The act of making known the contents of a writing or of a printed document.

2. In order to enable a party to a contract or a devisor to know what a paper contains it must be read, either by the party himself or by some other person to him. When a person signs or executes a paper, it will be presumed that it has been read to him, but this presumption may be rebutted.

3. In the case of a blind testator, if it can be proved that the will was not read to him, it cannot be sustained. 3 Wash. C C. R. 580. Vide 2 Bouv. Inst. n. 2012.

REAL. A term which is applied to land in its most enlarged signification. Real security, therefore, means the security of mortgages or other incumbrances affecting lands. 2 Atk. 806; S. C. 2 Ves. sen. 547.

2. In the civil law, real has not the same meaning as it has in the common law. There it signifies what relates to a thing, whether it be movable or immovable, lands or goods; thus, a real injury is one which is done to a thing, as a trespass to property, whether it be real or personal in the common law sense. A real statute is one which relates to a thing, in contradistinction to such as relate to a person,

REAL ACTIONS. Those which concern the realty only, being such by which the demandant claims title to have any lands or tenements, rents, or other hereditaments, in fee simple, fee tail, or for term of life. 3 Bl. Com. 117. Vide Actions.

2. In the civil law, by real actions are meant those which arise from a right in a thing, whether it be movable or immovable.

REAL CONTRACT, com. law. By this term are understood contracts in respect to real property. 3 Rawle, 225.

2. In the civil law real contracts are those which require the interposition of thing (rei,) as the subject of them; for instance, the loan for goods to be specifically returned.

3. By that law, contracts are divided into those which are formed by the mere consent of the parties, and therefore are called consensual; such as sale, hiring and mandate, and those in which it is necessary that there should be something more than mere consent, such as the loan of money, deposit or pledge, which, from their nature, require the delivery of the thing; whence they are called real. Poth. Obl. p. 1, c. 1, s. 1, art. 2.

REAL PROPERTY, That which consists of land, and of all rights and profits arising from and annexed to land, of a permanent, immovable nature. In order to make one's interest in land, real estate, it must be an interest not less than for the party's life, because a term of years, even for a thousand years, perpetually renewable, is a mere personal estate. 3 Russ. R. 376. It is usually comprised under the words lands, tenements, and hereditaments. Real property is corporeal, or incorporeal.

2. Corporeal consists wholly of substantial, permanent objects, which may all be comprehended under the general denomination of land. There are some chattels which are so annexed to the inheritance, that they are deemed a part of it, and are called heir looms. (q. v.) Money agreed or directed to be laid out in land is considered as real estate. Newl. on Contr. chap. 3; Fonb. Eq. B. 1, c. 6, §9; 3 Wheat. Rep. 577.

3. Incorporeal property, consists of certain inheritable rights, which are not, strictly speaking, of a corporeal nature, or land, although they are by their own nature or by use, annexed to corporeal inheritances, and are rights issuing out of them, or which concern them. These distinctions agree with the civil law. Just. Inst. 2, 2; Poth. Traite de la Communaute, part 1, c. 2, art. 1. The incorporeal hereditaments which subsist by the laws of the several states are fewer than those recognized by the English law. In the United States, there are fortunately no advowsons, tithes, nor dignities, as inheritances.

4. The most common incorporeal hereditaments, are, 1. Commons. 2. Ways. 3. Offices. 4. Franchises. 5. Rents. For authorities of what is real or personal property, see 8 Com. Dig. 564; 1 Vern. Rep. by Raithby, 4, n.; 2 Kent, Com. 277; 3 Id. 331; 4

Watts' R. 341; Bac. Ab. Executors, H 3; 1 Mass. Dig. 394; 5 Mass. R. 419, and the references under the article Personal property, (q. v.) and Property. (q. v.)

5. The principal distinctions between real and personal property, are the following: 1. Real property is of a permanent and immovable nature, and the owner has an estate therein at least for life. 2. It descends from the ancestor to the heir instead of becoming the property of an executor or admin-istrator on the death of the owner, as in case of personalty. 3. In case of alienation, it must in general be made by deed, 5 B. & C. 221, and in presenti by the common law; whereas leases for years may commence in futuro, and personal chattels may be transferred by parol or delivery. 4. Real estate when devised, is subject to the widow's dower personal estate can be given away by will discharged of any claim of the widow.

6. These are some interests arising out of, or connected with real property, which in some respects partake of the qualities of personally; as, for example, heir looms, title deeds, which, though in themselves movable, yet relating to land descend from ancestor to heir, or from a vendor to a purchaser. 4 Bin . 106.

7. It is a maxim in equity, that things to be done will be considered as done, and vice versa. According to this doctrine money or goods will be considered as real property, and land will be treated as personal property. Money directed by a will to be laid out in land is, in equity, considered as land, and will pass by the words "lands, tenements, and hereditaments whatsoever and wheresoever." 3 Bro. C. C. 99; 1 Tho. Co. Litt. 219, n. T.

REALITY OF LAWS. Those laws which govern property, whether real or personal, or things; the term is used in persona opposition to personality of laws. (q. v.) Story, Confl. of L. 23.

REALM. A kingdom; a country. 1 Taunt. 270; 4 Campb. 289; Rose, R. 387.

REALTY. An abstract of real, as distinguished from personalty. Realty relates to lands and tenements, rents or other hereditaments. Vide Real Property.

REASON. By reason is usually understood that power by which we distinguish truth from falsehood, and right from wrong; and by which we are enabled to combine means for the attainment of particular ends. Encyclopedie, h. t.; Shef. on Lun. Introd. xxvi. Ratio in jure aequitas integra.

2. A man deprived of reason is not criminally responsible for his acts, nor can he enter into any contract.

3. Reason is called the soul of the law; for when the reason ceases, the law itself ceases. Co. Litt. 97, 183; 1 Bl. Com. 70; 7 Toull. n. 566.

4. In Pennsylvania, the judges are required in giving their opinions, to give the reasons upon which they are founded. A similar law exists in France, which Toullier says is one of profound wisdom, because, he says, les arrets ne sont plus comme autre fois des oracles muets qui commandent une obeissance passive; leur autorite irrefragable pour ou contre ceux qui les ont obtenus, devient soumise a la censure de la raison, quand on pretend les eriger en re-gles a suivre en d'autres cas semblables, vol. 6, n. 301; judgments are not as formerly silent oracles which require a passive obedience; their irrefragable authority, for or against those who have obtained them, is submitted to the censure of reason, when it is pretended to set them up as rules to be observed in other similar cases. But see what Duncan J. says in 14 S. & R. 240.

REASONABLE. Conformable or agreeable to reason; just; rational.

2. An award must be reasonable, for if it be of things nugatory in themselves, and offering no advantage to either of the parties, it cannot be enforeed. 3 Bouv. Inst. n. 2096. Vide Award.

REASONABLE ACT. This term signifies such an act as the law requires. When an act is unnecessary, a party will not be required to perform it as a reasonable act. 9 Price's Rep. 43; Yelv. 44; Platt. on Cov. 342, 157.

REASONABLE TIME. The English law, which in this respect, has been adopted by us, frequently requires things to be done within a reasonable time; but what a reasonable time is it does not define: quam long-um debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum. Co. Litt, 50. This indefinite requisition is the source of much litigation. A bill of exchange, for example, must be presented within a reasonable time Chitty, Bills, 197-202. An abandonment must be made within a reasonable time after advice received of the loss. Marsh. Insurance, 589.

2. The commercial code of France fixes a time in both these cases, which varies in proportion to the distance. See Code de Com. L. 1, t. 8, s. 1, §10, art. 160; Id. L. 5, t. 10, s. 3, art. 373. Vide, generally, 6 East, 3; 7 East, 385; 3 B. & P. 599; Bayley on Bills, 239; 7 Taunt. 159, 397; 15 Pick. R. 92,; 3 Watts. R. 339; 10 Wend. R. 304; 13 Wend. R. 549; 1 Hall's R. 56 6 Wend. R. 369; Id. 443; 1 Leigh's N. P. 435; Co. Litt. 56 b.

REASSURANCE. When an insurer is desirous of lessening his liability, he may procure some other insurer to insure him from loss, for the insurance he has made this is called reassurance.

REBATE, mer. law. Discount; the abatement of inferest in consequence of prompt payment. Merch. Dict. h. t.

REBEL. A citizen or subject who unjustly and unlawfully takes up arms against the constituted authorities of the nation, to deprive them of the supreme power, either by resisting their lawful and constitutional orders, in some particular matter, or to impose on them conditions. Vattel, Droit des Gens, liv. 3, §328. In another sense it signifies a refusal to obey a superior, or the commands of a court. Vide Commission of Rebellion.

REBELLION, crim. law. The taking up arms traitorously against the government and in another, and perhaps a more correct sense, rebellion signifies the forcible opposition and resistance to the laws and process lawfully issued.

2. If the rebellion amount to treason, it is punished by the laws of the United States with death. If it be a mere resistance of process, it is generally punished by fine and imprisonment. See Dalloz, Dict. h. t.; Code Penal, 209.

REBELLION, COMMISSION OF. A commission of rebellion is the name of a writ issuing out of chancery to compel the defendant to appear. Vide Commission of Rebellion.

REBOUTER. To repel or bar. The action of the heir by the warranty of his ancestor, is called to rebut or repel. 2 Tho. Co. Litt. 247, 303.

TO REBUT. To contradict; to do away as, every homicide is presumed to be murder, unless the contrary appears from evidence which proves the death; and this presumption it lies on the defendant to rebut by showing that it was justifiable or excusable. Allis. Prin. 48.

REBUTTER, pleadings. The name of the defendant's answer to the plaintiff's surrejoinder. It is governed by the same rules as the rejoinder. (q. v.) 6 Com. Dig. 185.

REBUTTING EVIDENCE. That which is given by a party in the cause to explain, repel, counteract or disprove facts given in evidence on the other side. The term rebutting evidence is more particularly applied to that evidence given by the plaintiff, to explain or repel the evidence given by the defendant.

2. It is a general rule that anything may be given as rebutting evidence which is a direct reply ta that produced on the other side; 2 M'Cord, 161; and the proof of circumstances may be offered to rebut the most positive testi-mony. Pet. C. C. 235. See Circumstances.

3. But there are several rules which exclude all rebutting evidence. A party cannot impeach the validity of a promissory note which he has made or en-dorsed; 3 John. Cas. 185; nor impeach his own witness, though he may disprove, by other witnesses, matters to which he has testified; 3 Litt. 465, nor can be rebut or contradict what a witness has sworn to, which is immaterial to the issue. 16 Pick. 153; 2 Bailey, 118.

4. Parties and privies are estopped from contradicting a written instrument by parol proof, but this rule does not apply to strangers. 10 John. 229. But the parties may prove that before breach the agreement was abandoned, or annulled by a subsequent agreement not in writing. 4 N. Hamp. Rep. 196. And when the writing was made by another, as, where the log-book stated a desertion, the party affected by it may prove that the entry was false or made by mistake. 4 Mason, R. 541.

TO RECALL, international law. To deprive a minister of his functions; to supersede him.

TO RECALL A JUDGMENT. To reverse a judgment on a matter, of fact; the judgment is then said to be recalled or revoked, and when it is reversed for an error of law, it is said simply to be reversed, quod judicium reversetur.

RECAPTURE, war. By this term is understood the recovery from the enemy, by a friendly force, of a prize by him captured. It differs from rescue. (q. v.)

2. It seems incumbent on follow citizens, and it is of course equally the duty of allies, to rescue each other from the enemy when there is a reasonable prospect of success. 3 Rob. Rep. 224.

3. The recaptors are not entitled to the property captured, as if it were a new prize; the owner is entitled to it by the right of postliminium. (q. v.) Dall. Dict. mots Prises maritmies, art. 2, §4.

RECAPTION, remedies. The act of a person who has been deprived of the cus-tody of another to which he is legally entitled, by which he regains the peaceable custody of such person; or of the owner of personal or real property who has been deprived of his possession, by which he retakes possession, peaceably. In each of these cases the law allows the recaption of the person or of the property, provided he can do so without occasioning a breach of the peace, or an injury to a third person who has not

been a party to the wrong. 3 Inst. 134; 2 Rolle, Rep. 55, 6; Id. 208; 2 Rolle, Abr. 565; 3 Bl. Comm. 5; 3 Bouv. Inst. n. 2440, et seq.

2. Recaption may be made of a person, of personal property, of real property; each of these will be separately examined.

3. - 1. The right of recaption of a person is confined to a hushand in re-taking his wife; a parent, his child, of whom he has the custody; a master, his apprentice and, according to Blackstone, a master, his servant; but this must be limited to a servant who assents to the recaption; in these cases, the party injured may peaceably enter the house of the wrongdoer, without a demand being first made, the outer door being open, and take and carry away the person wrongfully detained. He may also enter peaceably into the house of a person harboring, who was not concerned in the original abduction. 8 Bing. R. 186; S. C. 21 Engl. C. L. Rep. 265.

4. - 2. The same principles extend to the right of recaption of personal property. In this sort of recaption, too much care cannot be observed to avoid any personal injury or breach of the peace.

5. - 3. In the recaption of real estate the owner may, in the absence of the occupier, break open the outer door of a house and take possession; but if, in regaining his possession, the party be guilty of a forcible entry and breach of the peace, he may be indicted; but the wrongdoer or person who had no right to the possession, cannot sustain any action for such forcible regaining possession merely. 1 Chit. Pr. 646.

RECEIPT, contracts. A receipt is an acknowledgment in writing that the party giving the same has received from the person therein named, the money or other thing therein specified.

2. Although expressed to be in full of all demands, it is only prima facie evidence of what it purports to be and upon satisfactory proof being made that it was obtained by fraud, or given either under a mistake of facts or an ignorance of law, it may be inquired into and corrected in a court of law as well as in equity. 1 Pet. C. C. R. 182; 3 Serg. & Rawle, 355; S. P. 7 Serg. & Rawle, 309; 3 Serg. & Rawle, 564, 589; 12 Serg. & Rawle, 131; 1 Sid. 44; 1 Lev. 43; 1 Saund. 285; 2 Lutw. 1173; Co. Lit. 373; 2 Stark. C. 382; 1 W., C. C. R. 328; 2 Mason's R. 541; 11 Mass. 27; 1 Johns. Cas. 145; 9 John. R. 310; 8 Johns. R. 389; 5 Johns. R. 68; 4 Har. & McH. 219; 3 Har. & McH. 433; 2 Johns. R. 378; 2 Johns. R., 319. A receipt in full, given with a full knowledge of all the circumstances and in the absence of fraud, seems to be conclusive. 1 Esp. C. 172; Benson v. Bennet, 1 Camp. 394, n.

3. A receipt sometimes contains an acknowledgment of having received a thing, and also an agreement to do another. It is only prima facie evidence as far as the receipt goes, but it cannot be contradicted by parol evidence in any part by which the party engages to perform a contract. A bill of lading, for example, partakes of both these characters; it may be contradicted or explained as to the facts stated in the recital, as that the goods were in good order and well conditioned; but, in other respects, it cannot be contradicted in any other manner than a common written contract. 7 Mass. R. 297; 1 Bailey, R. 174; 4 Ohio, R. 334; 3 Hawks, R. 580; 1 Phil. & Am. on Ev. 388; Greenl. Ev. §305. Vide, generally, 1 B . & C. 704 S. C. 8 E. C. L. R. 193; 2 Taunt. R. 141; 2 T. R. 366; 5 B. & A. 607; 7 E. C. L. R. 206; 3 B. & C. 421; 1 East, R. 460.

4. If a man by his receipt acknowledges that he has received money from an agent on account of his principal, and thereby accredits the agent with the principal to that amount, such receipt is, it seems, conclusive as to the payment by the agent. For example, the usual acknowledgment in a policy of insurance of the receipt of premium from the assured, is conclusive of the fact as between the underwriter and the assured; Dalzell v. Mair, 1 Camp. 532; although such receipt would not be so between the underwriter and the broker. And if an agent empowered to contract for sale, sell and convey land, enter into articles of agreement by which it is stipulated that the vendee shall clear, make improvements, pay the purchase money by installments, &c., and on the completion of the covenants to be performed by him, receive from the vendor or his legal representatives, a good and sufficient warranty deed in fee for the premises, the receipt of the agent for Such parts of the purchase-money as may be paid before the execution of the deed, is binding on the principal. 6 Serg. & Rawle, 146. See 11 Johns. R. 70.

5. A receipt on the back of a bill of exchange is prima facie evidence of payment by the acceptor. Peake's C. 25. The giving of a receipt does not exclude parol evidence of payment. 4 Esp. N. P. C. 214.

6. In Pennsylvania it has been holden that a receipt, not under seal, to one of several joint debtors, for his proportion of the debt, discharges the rest. 1 Rawle, 391. But in New York a contrary rule has been adopted. 7 John. 207. See Coxe, 81; 1 Root, 72. See Evidence.

RECEIPTOR. In Massachusetts this name is given to the person who, on a trustee process being issued and goods attached, becomes surety to the sheriff to have them forthcoming on demand, or in time to respond the judgment, when the execution shall be issued. Upon which the goods are bailed to him. Story, Bailm. §124, and see Attachment; Remedies.

RECEPTUS, civil law. The name sometimes given to an arbitrator, because he had been received or chosen to settle the differences between the parties. Dig. 4, 8 Code, 2, 56.

TO RECEIVE. Voluntarily to take from another what is offered.

2. A landlord, for example, could not be said to receive the key from his tenant, when the latter left it at his house without his knowledge, unless by his acts afterwards, he should be presumed to have given his consent.

RECEIVER, chancery practice. A person appointed by a court possessing chan- cery jurisdiction to receive the rents and profits of land, or the profits or produce of other property in dispute.

2. The power of appointing a receiver is a discretionary power exercised by the court. the appointment is provisional, for the more speedy getting in of the estate in dispute, and scouring it for the benefit of such person as may be entitled to it, and does not affect the right. 3 Atk. 564.

3. It is not within the compass of this work to state in what cases a receiver will be appointed; on this subject, see 2 Madd. Ch. 233.

4. The receiver is an officer of the court, and as such, responsible for good faith and reasonable diligence. When the property is lost or injured by any negligence or dishonest execution of the trust, he is liable in damages; but he is not, as of course, responsible because there has been an embezzlement or theft. He is bound to such ordinary diligence, as belongs to a prudent and honest discharge of his duties, and such as is required of all persons who receive compensation for their services. Story, Bailm. §620, 621; and the cases there cited. Vide, generally, 2 Mudd. Ch. 232; Newl. Ch. Pr. 88; 8 Com. Dig. 890; 18 Vin. Ab. 160; 1 Supp. to Ves. jr. 455; 2 Id. 57, 58, 74, 75, 442, 455; Bouv. Inst. Index, h. t.

RECEIVER OF STOLEN GOODS, crim. law. By statutory provision the receiver of stolen goods knowing them to have been stolen may be punished as the principal in perhaps all the United States.

2. To make this offence complete, the goods received must have been stolen, and the receiver must know that fact.

3. It is almost always difficult to prove guilty knowledge; and that must in general be collected from circumstances. If such circumstances are proved which to a person of common understanding and prudence and situated as the prisoner was, must have

satisfied him that they were stolen, this is sufficient. For example, the receipt of watches, jewelry, large quantities of money, bundles of clothes of various kinds, or personal property of any sort, to a considerable value, from boys or persons destitute of property, and with-out any lawful means of acquiring them and specially if bought at untimely hours, the mind can arrive at no other conclusion than that they were stolen. This is further confirmed if they have been bought at an undervalue, concealed, the marks defaced, and falsehood resorted to in accounting for the possession of them. Alison's Cr. Law, 330; 2 Russ. Cr. 253; 2 Chit. Cr. Law , 951; Roscoe, Cr. Ev. h. t.; 1 Wheel. C. C. 202.

4. At common law receiving, stolen goods, knowing them to have been stolen, is a misdemeanor. 2 Russ. Cr. 253.

RECESSION. A re-grant: the act of returning the title of a country to a go- vernment which formerly held it, by one which has it at the time; as the recession of Louisiana, which took place by the treaty between France and Spain, of October 1, 1800. See 2 White's Coll. 516.

RECIDIVE, French law. The state of an individual who commits a crime or misdemeanor, after having once been condemned for a crime or misdemeanor; a relapse.

2. Many states provide, that for a second offence, the punishment shall be increased in those cases the indictment should set forth the crime or mis-dmeanor as a second offence.

3. The second offence must have been committed after tho conviction for the first; a defendant could not be convicted of a second offence, as such, until after he had suffered a punishment for the first. Dall. Diet. h. t.

RECIPROCAL CONTRACT, civil law. One in which the parties enter into mutual engagements.

2. They are divided into perfect and imperfect. When they are perfectly reciprocal, the obligation of each of the parties is equally a principal part of the contract, such as sale, partnership, &c. Contracts imperfectly reciprocal are those in which the obligation of one of the parties only is a principal obligation of the contract; as, mandate, deposit, loan for use, and the like. In all reciprocal contracts the consent of the parties must be ex- pressed. Poth. Obl. n. 9; Civil Code of Louis. art. 1758, 1759.

RECIPROCITY. Mutuality; state, quality or character of that which is reciprocal.

2. The states of the Union are bound to many acts of reciprocity. The constitution requires that they shall deliver to each other fugitives from justice; that the records of one state, properly authenticated, shall have full credit in the other states; that the citizens of one state shall be citizens of any state into which they may remove. In some of the states, as in Pennsylvania, the rule with regard to the effect of a discharge under the insolvent laws of another state, are reciprocated; the discharges of those courts which respect the discharges of the courts of Pennsylvania, are respected in that state.

RECITAL, contracts, pleading. The repetition of some former writing, or the statement of something which has been done. Touchst. 76.

2. Recitals are used to explain those matters of fact which are necessary to make the transaction intelligible. 2 Bl. Com. 298. It is said that when a deed of defeasance recites the deed which it is meant to defeat, it must recite it truly. Cruise, Dig. tit. 32, c 7, s. 28. In other cases it need not be so particular. 3 Penna. Rep. 324; 3 Chan. Cas. 101; Co. Litt. 352 b; Com. Dig. Fait, E 1.

3. A party who executes a deed reciting a particular fact is estopped from denying such fact; as, when it was recited in the condition of a bond that the obligor had received divers sums of money for the obligee which he had not brought to account, and acknowledged that a balance was due to the obligee, it was holden that the obligor was estopped to say that he had not received any money for the use of the obligee. Willes, 9, 25; Rolle's Ab. 872, 3.

4. In pleading, when public statutes are recited, a small variance will not be fatal, where by the recital the party is not "tied up to the statute;" that is, if the conclusion be contra formam statuti praediti. Sav. 42; 1 Chit. Crim. Law, 276 Esp. on Penal Stat. 106. Private statutes must be recited in pleading, and proved by an exemplified copy, unless the opposite party, by his pleading admit them.

5. By the plea of nul tiel record, the party relying on a private statute is put to prove it as recited, and a variance will be fatal. See 4 Co. 76; March, Rep. 117, pl. 193; 3 Harr. & McHen. 388. Vide. generally, 12 Vin. Ab. 129; 13 Vin. Ab. 417; 18 Vin. Ab. 162; 8 Com. Dig. 584; Com. Dig. Testemoigne-Evid. B 5; 4 Binn. R. 231; 1 Dall. R. 67; 3 Binn. R. 175; 3 Yeates, R. 287; 4 Yeates, R. 362, 577; 9 Cowen, R. 86; 4 Mason, R. 268; Yelv. R. 127 a, note 1; Cruise, Dig. tit. 32, c. 20, s. 23; 5 Johns. Ch. Rep. 23; 7 Halst. R. 22; 2 Bailey's R. 101; 6 Harr. & Johns. 336; 9 Cowen's R. 271; 1 Dana's R. 327; 15 Pick. R. 68; 5 N. H. Rep. 467; 12 Pick. R, 157; Toullier in his Droit Civil Francais, liv. 3, t. 3, c. 6, n. 157 et seq. has examined this subject with his usual ability. 2 Hill. Ab. c. 29, s. 30; 2 Bail. R. 430; 2 B. & A. 625; 2 Y. & J. 407; 5 Harr. & John. 164; Cov. on Conv. Ev. 298, 315; Hurl. on Bonds, 33; 6 Watts & Serg. 469.

6. Formerly, in equity, the decree contained recitals of the pleadings in the cause, which became a great grievance. Some of the English chancellors endeavored to restrain this prolixity. By the rules of practice for the courts in equity of the United States it is provided, that in drawing up decrees and orders, neither the bill, nor the answer, nor other pleading nor any part thereof, nor the report of any master, nor any other prior proceedings, shall be stated or recited in the decree or order. Rule 86; 4 Bouv. Inst. n. 4443.

RECLAIM. To demand again, to insist upon a right; as, when a defendant for a consideration received from the plaintiff, has covenanted to do an act, and fails to do it, the plaintiff may bring covenant for the breach, or assumpsit to reclaim the consideration. 1 Caines, 47.

RECOGNITION, contracts. An acknowledgment that something which has been done by one man in the name of another, was done by authority of the latter.

2. A recognition by the principal of the agency of another in the particular instance, or in similar instances, is evidence of the authority of the agent, so that the recognition may be either express or implied. As an instance of an implied recognition may be mentioned the case of one who subscribes policies in the name of another and, upon a loss happening, the latter pays the amount. 1 Camp. R. 43, n. a; 1 Esp. Cas. 61; 4 Camp. R. 88.

RECOGNITORS, Eng. law. The name by which the jurors impanneled on an assize are known. Barnet v. Ihrie, 17 S. & R. 174.

RECOGNIZANCE, contracts. An obligation of record entered into before a court or officer duly authorized for that purpose, with a condition to do some act required by law, which is therein specified. 2 Bl. Com. 341; Bro. Ab. h. t.; Dick. Just. h. t.; 1 Chit. Cr. Law, 90.

2. Recognizances relate either to criminal or civil matters. 1. Recognizances in criminal cases, are either that the party shall appear before the proper court to answer to such charges as are or shall be made against him, that he shall keep the peace or be of good behaviour. Witnesses are also required to be bound in a recognizance to testify.

3. - 2. In civil cases, recognizances are entered into by bail, conditioned that they will pay the debt, interest and costs recovered by the plaintiff under certain contingencies. There are also cases where recognizances are entered into under the authority and requirements of statutes.

4. As to the form. The party need not sign it; the court, judge or magis-trate having authority to take the same, makes a short memorandum on the record, which is sufficient. 2 Binn. R. 481; 1 Chit. Cr. Law, 90; 2 Wash. C. C. R. 422; 9 Mass. 520; 1 Dana, 523; 1 Tyler, 291; 4 Verm. 488; 1 Stew. & Port. 465; 7 Vern. 529; 2 A. R. Marsh. 131; 5 S. & R. 147; Vide generally, Com. Dig. Forcible Entry, D 27; Id. Obligation, K; Whart. Dig. h. t. Vin. Ab. h. t.; Rolle's Ab. h. t.; 2 Wash. C. C. Rep. 422; Id. 29; 2 Yeates, R. 437; 1 Binn. R. 98 , note 1 Serg. & Rawle, 328 3 Yeates, R. 93; Burn. Just. h. t. Vin. Ab. h. t.; 2 Sell. Pract. 45.

RECOGNIZEE. He for whose use a recognizance has been taken.

RECOGNISOR, contracts. He who enters into a recognizance.

RECOLEMENT, French law. The reading and reexamination by a witness of a de-position, and his persistance in the saine, or his making such alteration, as his better recollection may enable him to do, after having read his deposition. Without such reexamination the deposition is void. Poth. Proced. Cr. s. 4, art. 4.

RECOMMENDATION. The giving to a person a favorable character of another.

2. When the party giving the character has acted in good faith, he is not responsible for the injury which a third person, to whom such recommendation was given, may have, sustained in consequence of it, although he was mistaken.

3. But when the recommendation is knowingly untrue, and an injury is sustained, the party recommending is civilly responsible for damages; 3 T. R. 51; 7 Cranch, 69; 14 Wend. 126; 7 Wend. 1; 6 Penn. St. R. 310 whether it was done merely for the purpose of benefitting the party recommended, or the party who gives the recommendation.

4. And in case the party recomended was a debtor to the one recommending, and it was agreed prior to the transaction, that the former should, out of the property to be obtained by the recommendation, be paid; or in case of any other species of collusion, to cheat the person to whom the credit is given, they may both be criminally prosecuted for the conspiracy. Vide Character, and Fell on Guar. ch. 8; 6 Johns. R. 181; 1 Davis Ca. Er. 22; 13 Johns. R. 224; 5 N. S. 443.

RECOMPENSATION, Scolch law. When a party sues for a debt, and the defendant pleads compensation, or set-off, the plaintiff may allege a compensation on his part, and this is called a recompensation. Bell's Dict. h. t.

RECOMPENSE. A reward for services; remuneration for goods or other property.

2. In maritime law there is a distinction between recompense and restitution. (q. v.) When goods have been lost by jettison, if at any subsequent period of the voyage the remainder of the cargo be lost, the owner of the goods lost by jettison cannot claim restitution from the owners of the other goods; but in the case of expenses incurred with a view to the general benefit, it is clear that they ought to be made good to the party, whether he be an agent employed by the master in a foreign port or the ship owner himself.

RECOMPENSE OP RECOVERY IN VALUE. This phrase, is applied to the matter recovered in a common recovery, after the vouchee has disappeared, and judgment is given for the demandant. 2 Bouv. Inst. n. 2093.

RECONCILIATION, contracts. The act of bringing persons to agree together, who before, had had some difference.

2. A renewal of cohabitation between hushand and wife is proof of reconcil-iation, and such reconciliation destroys the effect of a deed of separation. 4 Eccl. R. 238.

RECONDUCTION, civ. law. A renewing of a former lease; relocation. (q. v.) Dig. 19, 2, 13, 11; Code Nap. art. 1737-1740.

RECONVENTION, civ. law. An action brought by a party who is defendant against the plaintiff before the same judge. Reconventio est petitio qua reus vicissim, quid ab actore petit, ex eadem, vel diversa causa. Voet, in tit. de Judiciis, n. 78; 4 N. S. 439. To entitle the defendant to institute a demand in reconvention, it is requisite that such demand, though different from the main action, be nevertheless necessarily connected with it and incidental to the same. Code of Pr. Lo. art. 375; 11 Lo. R. 309; 7 N. S. 282; 8 N. S. 516.

2. The reconvention of the civil law was a species of cross-bill. Story, Eq. Pl. §402. See Conventio; Bill in chancery. Vide Demand in reconvention.

RECORD, evidence. A written memorial made by a public officer authorized by law to perform that function, and intended to serve as evidence of something written, said, or done. 6 Call, 78; 1 Dana, 595.

2. Records may be divided into those which relate to the proceedings of congress and the state legislatures - the courts of common law - the courts of chancery - and those which are made so by statutory provisions.

3. - 1. Legislative acts. The acts of congress and of the several legislatures are the highest kind of records. The printed journals of congress have been so considered. 1 Whart. Dig. tit. Evidence, pl. 112 and see Dougl. 593; Cowp. 17.

4. - 2. The proceedings of the courts of common law are records. But every minute made by a clerk of a court for his own future guidance in making up his record, is not a record. 4 Wash. C. C. Rep. 698.

5. - 3. Proceedings in courts of chancery are said not to be, strictly speaking, records; but they are so considered. Gresley on Ev. 101.

6. - 4. The legislatures of the several states have made the enrollment of certain deeds and other documents necessary in order to perpetuate the memory of the facts they contain, and declared that the copies thus made should have the effect of records.

7. By the constitution of the United States, art. 4. s. 1, it is declared that "full faith and credit shll be given, in each state, to the public acts, records and judicial proceedings of every other state; and the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." In pursuance of this power, congress have passed several acts directing the manner of authenticating public records, which will be found under the article Authentication.

8. Numerous decisions have been made under these acts, some of which are here referred to. 7 Cranch, 471; 3 Wheat. 234; 4 Cowen, 292; 1 N. H. Rep. 242; 1 Ohio Reports, 264; 2 Verm. R. 263; 5 John. R. 37; 4 Conn. R. 380; 9 Mass 462; 10 Serg. & Rawle, 240; 1 Hall's N. York Rep. 155; 4 Dall. 412; 5 Serg. & Rawle, 523; 1 Pet. S. C. Rep. 352. Vide, generally, 18 Vin. Ab. 17; 1 Phil. Ev. 288; Bac. Ab. Amendment, &c., H; 1 Kent, Com. 260; Archb. Civ. Pl. 395; Gresley on Ev. 99; Stark. Ev. Index, h. t.; Dane's Ab. Index, h. t.; Co. Litt. 260; 10 Pick. R. 72; Bouv. Inst. Index, h. t.

TO RECORD, the act of making a record.

2. Sometimes questions arise as to when the act of recording is complete, as in the following case. A deed of real estate was acknowledged before the register of deeds and handed to him to be recorded, and at the same instant a creditor of the grantor attached the real estate; in this case it was held the act of recording was incomplete without a certificate of the acknowledgment, and wanting that, the attaching creditor had the preference. 10 Pick. Rep. 72.

3. The fact of an instrument being recorded is held to operate as a constructive notice upon all subsequent purchasers of any estate, legal or equitable, in the same property. 1 John. Ch. R. 394.

4. But all conveyances and deeds which may be de facto recorded, are not to be considered as giving notice; in order to have this effect the instruments must be such as are authorized to be recorded, and the registry must have been made in compliance with the law, otherwise the registry is to be treated as a mere nullity, and it will not affect a subsequent purchaser or encumbrancer unless he has such actual notice as would amount to a fraud. 2 Sell. & Lef. 68; 1 Sch. & Lef. 157; 4 Wheat. R. 466; 1 Binn. R. 40; 1 John. Ch. R. 300; 1 Story, Eq. Jur. §403, 404; 5 Greenl. 272.

RECORD OF NISI PRIUS, Eng. law. A transcript from the issue roll; it contains a copy of the pleadings and issue. Steph. Pl. 105.

RECORDARI FACIAS LOQUELAM, English practice. A writ commanding the sheriff, that he cause the plaint to be recorded which is in his county, without writ, between the parties there named, of the cattle, goods, and chattels of the complainant taken and unjustly distrained as it is said, and that he have the said record before the court on a day therein named, and that he prefix the same day to the parties, that then they may be there ready to proceed in the same plaint, 2 Sell. Pr. 166. See Refalo.

RECORDATUR. An order or allowance that the verdict returned on the nisi prius roll, be recorded. Bac. Ab. Arbitr. &c., D.

RECORDER. 1. A judicial officer of some cities, possessing generally the powers and authority of a judge. 3 Yeates' R. 300; 4 Dall. Rep. 299; but see 1 Rep. Const. Ct. 45. Anciently, recorder signified to recite or testify on re-collection as occasion might require what had previously passed in court, and this was the duty of the judges, thence called recordeurs. Steph. Plead. note 11. 2. An officer appointed to make record or onrolment of deeds and other legal instruments, authorized by law to be recorded.

TO RECOUPE. This word is derived from the French recouper, to cut again. In law it signifies the right and the act of making a set-off, defalcation, or discount, by the defendant, to the claim of the plaintiff. 21 Wend. It. 342. In another sense it signifies to recompense. 19 Ves. 123.

RECOVERER. The demandant in a common recovery, after judgment has been given in his favor, assumes the name of recoverer.

RECOVERY. A recovery, in its most extensive sense, is the restoration of a former right, by the solemn judgment of a Court of justice. 3 Murph. 169.

2. A recovery is either true or actual, or it is feigned or common. A true recovery, usually known by the name of recovery simply, is the procuring a former right by the

judgment of a court of competent jurisdiction; as, for example, when judgment is given in favor of the plaintiff when he seeks to recover a thing or a right.

3. A common recovery is a judgment obtained in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in such suit. Bac. Tracts, 148.

4. Common recoveries are considered as mere forms of conveyance or common assurances; although a common recovery is a fictitious suit, yet the same mode of proceeding must be pursued, and all the forms strictly adhered to, which are necessary to be observed in an adversary suit. The first thing therefore necessary to be done in suffering a common recovery is, that the person who is to be the demandant, and to whom the lands are to be adjudged, would sue out a writ or praecipe against the tenant of the freehold; whence such tenant is usually called the tenant to the praecipe. In obedience to this writ the tenant appears in court either in person or by his attorney; but, instead of defending the title to the land himself, he calls on some other person, who upon the original purchase is supposed to have warranted the title, and prays that the person may be called in to defend the title which he warranted, or otherwise to give the tenant lands of equal value to those he shall lose by the defect of his warranty. This is called the voucher vocatia, or calling to warranty. The person thus called to warrant, who is usually called the vouchee, appears in court, is impleaded, and enters into the warranty by which means he takes upon himself the defence of the land. The defendant desires leave of the court to imparl, or confer with the vouchee in private, which is granted of course. Soon after the demand and returns into court, but the vouchee disappears or makes default, in consequence of which it is presumed by the court, that he has no title to the lands demanded in the writ, and therefore cannot defend them; whereupon judgment is given for the demandant, now called the recoverer, to recover the lands in question against the tenant, and for the tenant to recover against the vouchee, lands of equal value in recom-pense for those so warranted by him, and now lost by his default. This is called the recompense of recovery in value; but as it is, customary for the crier of the court to act, who is hence called the common vouchee, the tenant can only have a nominal, and not a real recompense, for the land thus recovered against him by the demandant. A writ of habere facias is then sued out, directed to the sheriff of the county in which the lands thus recovered are situated; and, on the execution and return of the writ, the recovery is completed. The recovery here described is with single voucher; but a recovery may, and is frequently suffered with double, treble, or further voucher, as the exigency of the case may require, in which case there are several judgments against the several vouchees.

5. Common recoveries were invented by the ecclesiastics in order to evade the statute of mortmain by which they were prohibited from purchasing or re-ceiving under the

pretence of a free gift, any land or tenements whatever. They have been used in some states for the purpose of breaking the entail of estates. Vide, generally, Cruise, Digest, tit. 36; 2 Saund. 42, n. 7; 4 Kent, Com. 487; Pigot on Common Recoveries, passim.

6. All the learning in relation to common recoveries is nearly obsolete, as they are out of use. Rey, a French writer, in hiswork, Des Institutions Judicaire del'Angleterre, tom. ii. p. 221, points out what appears to him the absurdity of a common recovery. As to common recoveries, see 9 S. & R . 330; 3 S. & R. 435; 1 Yeates, 244; 4 Yeates, 413; 1 Whart. 139, 151; 2 Rawle, 168; 2 Halst. 47; 5 Mass. 438; 6 Mass. 328; 8 Mass. 34; 3 Harr. & John. 292; 6 P. S. R. 45,

RECREANT. A Coward; a poltroon. 3 Bl. Com. 340.

RECRIMINATION, crim. law. An accusation made by a person accused against his accuser, either of having committed the same offence, or another.

2. In general recrimination does not excuse the person accused, nor diminish his punishment, because the guilt of another can never excuse him. But in applications for divorce on the ground of adultery, if the party defendant, can prove that the plaintiff or complainant has been guilty of the same offence, the divorce will not be granted. 1 Hagg. C. Rep. 144; S. C. 4 Eccl. Rep. 360. The laws of Pennsylvania contain a provision to the same effect. Vide 1 Hagg. Eccl. R. 790; 3 Hagg. Eccl. R. 77; 1 Hagg. Cons. R . 147; 2 Hagg. Cons. R. 297; Shelf. on Mar. and Div. 440; Dig. 24, 3, 39; Dig. 48, 5, 13, 5; 1 Addams, R. 411; Compensation; Condonation; Divorce,

RECRUIT. A newly made soldier.

RECTO. Right. (q.v.) Brevederecto, writ of right. (q. v.)

RECTOR, Eccl. law. One who rules or governs a name given to certain officers of the Roman church. Dict. Canonique, h. v.

RECTORY, Engl. law. Corporeal real property, consisting of a church, glebe lands and tithes. 1 Chit. Pr. 163.

RECTUS IN CURIA. Right in court. One who stands at the bar, and no one objects any offence, or prefers any charge against him.

2. When a person outlawed has reversed his outlawry, so that he can have the benefit of the law, he is said to be rectus in curia. Jacob, L. D. h. t.

RECUPERATORES, Roman civil law. A species of judges originally established, it is supposed, to decide controversies between Roman citizens and strangers, concerning the right to the possession of property requiring speedy remedy; but gradually extended to questions which might be brought before ordinary judges. After this enlargement of their powers, the difference between them and judges, it is supposed, was simply this: If the praetor named three judges he called them recuperatores; if one, he called him judex. But opinions on this subject are very various. (Colman De Romano judicio recuperatorio,) Cicero's oration pro Coecin, 1, 3, was addressed to Recuperators.

RECUSANTS, or POPISH RECUSANTS, Engl. law. Persons who refuse to make the declarations against popery, and such as promote, encourage, or profess the popish religion.

2. These are by law liable to restraints, forfeitures and inconveniences, which are imposed upon them by various acts of parliament. Happily in this country no religious sect has the ascendency, and all persons are free to profess what religion they conscientiously believe to be the right one.

RECUSATION, civ. law. A plea or exception by which the defendant requires that the judge having jurisdiction of the cause, should abstain from deciding upon the ground of interest, or for a legal objection to his prejudice.

2. A recusation is not a plea to the jurisdiction of the court, but simply to the person of the judge. It may, however, extend to all the judges, as when the party has a suit against the whole court. Poth. Proced. Civ. 1ere part., ch. 2, s. 5. It is a personal challenge of the judge for cause.

3. It is a maxim of every good system of law, that a man shall not be judge in his own cause. 2 L. R. 390; 6 L. R. 134 Ayl. Parerg. 451; Dict. de Jur. h. t.; Merl. Repert. h. t.; vide Jacob's Intr. to the Com. Civ. and Can. L. 11; 8 Co. 118 Dyer, 65. Dall. Diet. h. t.

4. By recusation is also understood the challenge of jurors. Code of Practice of Louis. art. 499, 500. Recusation is also an act, of what nature soever it may be, by which a strange heir, by deeds or words, declares he will not be heir. Dig. 29, 2, 95. See, generally, 1 Hopk. Ch. R. 1; 5 Mart. Lo. R. 292; and Challenge.

REDDENDO SINGULA SINGULIS, construction. By rendering each his own; for example, when two descriptions of property are given together in one mass, both the next of kin and the heir cannot take, unless in cases where a construction can be made reddendo singula singulis, that the next of kin shall take the personal estate aud the heir at law the real estate. 14 Ves. 490. Vide 11 East,, 513, n.; Bac. Ab. Conditions, L.

REDDENDUM, contracts. A word used substantively, and is that clause in a deed by which the grantor reserves something new to himself out of that which he granted before, and thus usually follows the tenendum, and is generally in these words "yielding and paying."

2. In every good reddendum or reservation, these things must concur; namely, 1. It must be apt words. 2, It must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself, nor of something issuing out of another thing. 3. It must be of such thing on which the grantor may resort to distrain 4. It must be made to one of the grantors and not to a stranger to the deed. Vid 2 Bl. Com. 299; Co. Litt. 47; Touchs 80; Cruise, Dig. tit. 32, c. 24, s. 1; Dane' Ab. Index, h. t.

REDEMPTION, contracts. The act of taking back by the seller from the buyer a thing which had been sold subject to th right of repurchase.

2. The right of redemption then is an agreement by which the seller reserves to himself the power of taking back the thing sold by returning the price paid for it. As to the fund out of which a mortgaged estate is to be redeemed, see Payment. Vide Equity of redemption.

REDEMPTIONES. Heavy fines, contradistinguished from misericordia. (q. v.)

REDHIBITION, civil law, and in Louisiana. The avoidance of a sale on account of some vice or defect in the thing sold, which renders it absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice. Civ. Code of Lo. 2496. Redhibition is also the name of an action which the purchaser of a defective movable thing may bring to cause the sale to be annulled, and to recover the price he has paid for it. Vide Dig. 21, 1.

2. The rule of caveat emptor, (q. v.) in the common law, places a purchaser in a different position from his situation under the like circumstances under the civil law; unless there is an express warranty, he can seldom annul a sale or recover damages on account of a defect in the thing sold. Chitty, Contr. 133, et seq.; Sugd. Vend. 222 2 Kent, Com. 374; Co. Litt. 102, a; 2 B1. Com. 452; Bac. Ab. Action on the case, E; 2 Com. Cont. 263.

REDIDIT SE, Eng. practice. He surrendered himself. This is endorsed on the bail piece when a certificate has been made by the proper officer that the defendant is in custody. Pr. Reg. 64; Com. Dig. Bail Q 4.

REDITUS ALBI. A rent payable in money; sometimes called white rent or, blanche farm. Vide Alba firma.

REDITUS NIGRI. A rent payable in grain, work, and the like; It was also called black mail. This name was given to it to distinguish it from reditus albi, which was payable in money. Vide Alba firma.

RE-DRAFT, comm. law. A bill of exchange drawn at the place where another bill was made payable, and where it was protested, upon the place where the first bill was drawn, or when there is no regular commercial intercourse rendering that practicable, then in the next best or most direct practicable course. 1 Bell's Com. 406, 5th ed. Vide Reexchange.

REDRESS. The act of receiving satisfaction for an injury sustained. For the mode of obtaining redress, vide Remedies 1 Chit. Pr. Annal. Table.

REDUBBERS, crim law. Those who bought stolen cloth, and dyed it of another color to prevent its being identified, were anciently so called. 3 Inst. 134.

REDUNDANCY. Matter introduced in an answer, or pleading, which is foreign to the bill or articles.

2. In the case of Dysart v. Dysart, 3 Curt. Ecc. R. 543, in giving the judgment of the court, Dr. Lushigton says: "It may not, perhaps, be easy to define the meaning of this term [redundant]in a short sentence, but the true meaning I take to be this: the respondent is not to insert in his answer any matter foreign to the articles he is called upon to answer, although such matter may be admissible in a plea; but he may, in his answer, plead matter by way of explanation pertinent to the articles, even if such matter shall be solely in his own knowledge and to such extent incapable of proof; or he may state matter which can be substantiated by witnesses; but in this latter instance, if such matter be introduced into the answer and not afterwards put in the plea or proved, the court will give no weight or credence to such part of the answer."

3. A material distinction is to be observed between redundancy in the allegation and redundancy in the proof. In the former case, a variance between the allegation and the proof will be fatal if the redundant allegations are descriptive of that which is essential. But in the latter case, redundancy cannot vitiate, because more is proved than is alleged, unless the matter superfluously proved goes to contradict some essential part of the allegation. 1 Greenl. Ev. §67; 1 Stark. Ev. 401.

RE-ENTRY, estates. The resuming or retaking possession of land which the-party lately had.

2. Ground rent deeds and leases frequently contain a clause authorizing the landlord to reenter on the non-payment of rent, or the breach of some covenant, when the estate is forfeited. Story, Eq. Jur. §1315; 1 Fonb. Eq. B. 1, c. 6, §4, note h. Forfeitures for the non-payment of rent being the most common, will here alone be considered. When such a forfeiture has taken place, the lessor or his assigns have a right to repossess themselves of the demised premises.

3. Great niceties must be observed in making such reentry. Unless they have been dispensed with by the agreement of the parties, several things are required by law to be previously done by the landlord or reversioner to entitle him to reenter. 3 Call, 424; 8 Watts, 51; 9 Watts, 258; 18 John. 450; 4 N. H. Rep. 254; 13 Wend. 524; 6 Halst. 270; 2 N. H. Rep. 164; 1 Saund. 287, n. 16.

4. - 1. There must be a demand of rent. Com. Dig. Rent, D 3 a 18 Vin. Ab. 482; Bac. Ab. Rent, H.

5. - 2. The demand must be of the precise rent due, for the demand of a penny more or less will avoid the entry. Com. Dig. Rent, D 5. If a part of the rent be paid, a reentry may be made for the part unpaid. Bac. Ab. Conditions, O 4; Co. Litt. 203; Cro. Jac. 511.

6. - 3. It must be made precisely on the day when the rent is due and payable by the lease, to save the forfeiture. 7 T. R. 117. As where the lease contains a proviso that if the rent shall be behind and unpaid, for the space of thirty, or any other number of days, it must be made on the thirtieth or last day. Com. Dig. Rent, D 7; Bac. Abr. Rent, I.

7. - 4. It must be made a convenient time before sunset, that the money may be counted and a receipt given, while there is light enough reasonably to do so therefore proof of a demand in the afternoon of the last day, without showing in what part of the afternoon it was made, and that it was towards sunset or late in the afternoon, is not sufficient. Jackson v. Harrison, 17 Johns. 66; Com. Dig. Rent, D 7; Bac. Abr. Rent, I.

8. - 5. It must be made upon the land, and at the most notorious place of it. 6 Bac. Abr. 31; 2 Roll. Abr. 428; see 16 Johns. 222. Therefore, if there be a dwelling-house upon the laud, the demand must be made at the front door, though it is not necessary to enter the house, notwithstanding the door be open; if woodland be the subject of the lease, a demand ought to be made at the gate, or some highway leading through the woods as the most notorious. Co. Litt. 202; Com. Dig. Rent, D. 6.

9. - 6. Unless a place is appointed where the rent is payable, in which case a demand must be made at such place; Com. Dig. Rent, D. 6; for the presumption is the tenant was there to pay it. Bac. Abr. Rent, I.

10. - 7. A demand of the rent must be made in fact, although there should be no person on the land ready to pay it. Bac. Ab. Rent, I.

11. - 8. If after these requisites have been performed by the lessor or reversioner, the tenant neglects or refuses to pay the rent, and no sufficient distress can be found on the premises, then the lessor or reversioner is to reenter. 6 Serg. & Rawle, 151; 8 Watts, R. 51; 1 Saund. 287, n. 16. He should then openly declare before the witnesses he may have provided for the purpose, that for the want of a sufficient distress, and because of the non-payment of the rent demanded, mentioning the amount, he reenters and re-possesses himself of the premises.

12. A tender of the rent by the tenant to the lessor, made on the last day, either on or off the premises, will save the forfeiture.

13. It follows as a necessary inference from what has been premised, that a demand made before or after the last day which the lessee has to pay the rent, in order to prevent the forfeiture, or off the land, will not be sufficient to defeat the estate. 7 T. R. 11 7.

14. The forfeiture may be waived by the lessor, in the case of a lease for years, by his acceptance of rent, accruing since the forfeiture, provided he knew of the cause. 3 Rep. 64.

15. A reentry cannot be made for nonpayment of rent if there is any distrainable property on the premises, which may be taken in satisfaction of the rent, and every part of the premises must be searched. 2 Phil. Ev. 180.

16. The entry may be made by the lessor or reversioner himself, or by attorney; Cro. Eliz. 601; 7 T. R. 117; the entry of one joint tenant or tenant in common, enures to the benefit of the whole. Hob 120.

17. After the entry has been made, evidence of it ought to be perpetuated.

18. Courts of chancery will generally make the lessor account to the lessee for the profits of the estate, during the time of his being in possession; and will compel him, after he has satisfied the rent in arrear, and the costs attending his entry, and detention of the lands, to give up the possession to the lessee, and to pay him the surplus profits of the estate. 1 Co. Litt. 203 a, n. 3; 1 Lev. 170; T.. Raym. 135, 158; 3 Cruise, 299,

300. See also 6 Binn. 420; 18 Ves. 60; Bac. Ab. Rent, K; 3 Call, 491; 18 Ves. 58 2 Story, Eq. Jur. §1315; 4 Bing. R. 178; 33 En . C. L. It. 312 , 1 How. S. C. R. 211

REEVE. The name of an ancient English officer of justice, inferior in rank to an alderman.

2. He was a ministerial officer, appointed to execute process, keep the king's peace, and put the laws in execution. He witnessed all contracts and bargains; brought offenders to justice, and delivered them to punishment; took bail for such as were to appear at the county court, and presided at the court or folcmote. He was also called gerefa.

3. There were several kinds of reeves as the shire-gerefa, shire-reeve or sheriff; the heh-gerefa, or high-sheriff, tithing-reeve, burgh or borough-reeve.

RE-EXAMINATION. A second examination of a thing. A witness maybe reexamined, in a trial at law, in the discretion of the court, and this is seldom refused. In equity, it is a general rule that there can be no reexamination of a witness, after he has once signed his name to the deposition, and turned his back upon the commissioner or examiner; the reason of this is that he may be tam-pered with or induced to retract or qualify what he has sworn to. 1 Meriv. 130.

RE-EXCHANGE, contracts, commerce. The expense incurred by a bill's being dishonored in a foreign country where it is made payable, and returned to that country in which it was made or indorsed, and there taken up; the amount of this depends upon the course of exchange between the two countries, through which the bill has been negotiated. In other words, reexchange is the difference between the draft and redraft.

2. The drawer of a bill is liable for the whole amount of reexchange occasioned by the circuitous mode of returning the bill through the various countries in which it has been negotiated, as much as for that occasioned by a direct return. Maxw. L. D. ii. t.; 5 Com. Dig. 150.

3. In some states, legislative enactments have been made which regulate damages on reexchange. These damages are different in the several states, and this want of uniformity, if it does not create injustice, must be admitted to be a serious evil. 2 Amer. Jur. 79. See Chit. on Bills. (ed. of 1836,) 666. See Damages on Bills of Exchange.

REFALO. A word composed of the three initial syllables re. fa. lo., for recordari facias loquelam. (q. v.) 2 Sell. Pr 160; 8 Dowl. R. 514.

REFECTION, civil law. Reparation, reestablishment of a building. Dig. 19, 1, 6, 1.

REFEREE. A person to whom has been referred a matter in dispute, in order that he may settle it. His judgment is called an award. Vide Arbitrator; Reference.

REFERENCE, contracts. An agreement to submit to certain arbitrators, matters in dispute between two or more parties, for their decision, and judgment. The persons to whom such matters are referred are sometimes called referees.

REFERENCE, mercantile law. A direction or request by a party who asks a credit to the person from whom he expects it, to call on some other person named in order to ascertain the character or mercantile standing of the former.

REFERENCE, practice. The act of sending any matter by a court of chancery or one exercising equitable powers, to a master or other officer, in order that he may ascertain facts and report to the court. By reference is also understood that part of an instrument of writing where it points to another for the matters therein contained. For the effect of such reference, see 1 Pick. R. 27; 17 Mass. R. 443; 15 Pick. R. 66; 7 Halst. R. 25; 14 Wend. R. 619; 10 Conn. R. 422; 4 Greenl. R. 14, 471; 3 Greenl. R. 393; 6 Pick. R. 460; the thing referred to is also called a reference.

REFERENDUM, international law. When an amhassador receives propositions touching an object over which he has no sufficient power and he is without instruction, he accepts it ad referendum, that is, under the condition that it shall be acted upon by his government, to which it is referred. The note addressed in that case to his government to submit the question to its consideration is called a referendum.

REFORM. To reorganize; to rearrange as, the jury "shall be reformed by putting to and taking out of the persons so impanneled." Stat. 3 H. VIII. c. 12; Bac. Ab. Juries, A.

2. To reform an instrument in equity, is to make a decree that a deed or other agreement shall be made or construed as it was originally intended by the parties, when an error or mistake as to a fact has been committed. A contract has been reformed, although the party applying to the court was in the legal profession, and he himself drew the contract, it appearing clear that it was framed so as to admit of a construction inconsistent with the true agreement of the parties. 1 Sim. & Stu. 210; 3 Russ. R. 424. But a contract will not be reformed in consequence of an error of law. 1 Russ. & M. 418; 1 Chit. Pr. 124.

REFORMATION, criminal law. The act of bringing back a criminal to such a sense of justice, so that he may live in society without any detriment to it.

2. The object of the criminal law ought to be to reform the criminal, while it protects society by his punishment. One of the best attempts at reformation is the plan of solitary confinement in a penitentiary. While the convict has time to reflect he cannot be injured by evil example or corrupt communication.

TO REFRESH. To reexamine a subject by having a reference to something connected with it.

2. A witness has a right to examine a memorandum or paper which he made in relation to certain facts, when the same occurred, in order to refresh his memory, but the paper or memorandum itself is not evidence. 5 Wend. 301; 12 S. & R. 328; 6 Pick. 222; 1 A. K. Marsh. 188; 2 Conn. 213. See 1 Rep. Const. Ct. 336, 373, 423.

TO REFUND. To pay back by the party who has received it, to the party who has paid it, money which ought not to have been paid.

2. On a deficiency of assets, executors and administrators cum testamento annexo, are entitled to have refunded to them legacies which they may have paid, or so much as may be necessary. to pay the debts of the testator; and in order to insure this, they are generally authorized to require a refunding bond. Vide 8 Vin. Ab. 418; 18 In Vin. Ab. 273; Bac. Ab. Legacies, H.

REFUSAL. The act of declining to receive or to do something.

2. A grantee may refuse a title, vide Assent; one appointed executor may refuse to act as such. la some cases, a neglect to perform a duty which the party is required by law or his agreement to do, will amount to a refusal.

REGENCY. The authority of the person in monarchical countries invested with the right of governing the state in the name of the monarch, during his minority, absence, sickness or other inability.

REGENT. 1. A ruler, a governor. The term is usually applied to one who governs a regency, or rules in the place of another.

2. In the canon law, it signifies a master or professor of a college. Dict. du Dr. Call. h. t. 3. It sometimes means simply a ruler, director, or superintendent; as, in New York, where the board who have the superintendence of all the colleges, academies and schools, are called the regents of the University of the state of New York.

REGIAM MAJESTATEM. The name of an ancient law book ascribed to David I of Scotland. It is, according to Dr. Robertson, a servile copy of Glanville. Ro- bertson's Hist. of Charles V., vol. 1, note 25, p. 262; Ersk. Prin. B. 1, t. 1, n. 13.

REGICIDE. The killing of a king, aud, by extension, of a queen. Theorie des Lois Criminelles, vol. 1, p. 300. REGIDOR. Laws of the Spanish empire of the Indies. One of a body, never exceeding twelve, who formed a part of the ayuntamiento or municipal council in every capital of a jurisdiction. The office of regidor was held for life, that is to say, during the pleasure of the supreme authority. In most places the office was purchased; in some cities, however, they were elected by persons of the district, called capitulares. 12 Pet. R. 442, note.

REGIMIENTO. Laws of the Spanish empire of the Indies. The body of regi- dores who never exceeded twelve, forming a part of the municipal council or ayuntamiento, in every capital of a jurisdiction. 12 Pet. Rep. 442, note.

REGISTER, evidence. A book containing a record of facts as they occur, kept by public authority; a register of births, marriages and burials.

2. Although not originally intended for the purposes of evidence, public registers are in general admissible to prove the facts to which they relate.

3. In Pennsylvania, the registry of births, &c. made by any religious society in the state, is evidence by act of assembly, but it must be proved as at common law. 6 Binn. R. 416. A copy of the register of births and deaths of the Society of Friends in England, proved before the lord mayor of London by an ex parte affidavit, was allowed to be given in evidence to prove the death of a person; 1 Dall. 2; and a copy of a parish register in Barbadoes, certi-fied to be a true copy by the rector, proved by the oath of a witness, taken before the deputy secretary of the island and notary public, under his hand and seal was held admissible to prove pedigree; the handwriting and office of the secretary being proved. 10 Serg. & Rawle, 383.

4. In North Carolina, a parish register of births, marriages and deaths, kept pursuant to the statute of that state, is evidence of pedigree. 2 Murphey's R. 47.

5. In Connecticut, a parish register has been received in evidence. 2 Root, R. 99. See 15 John. R. 226. Vide 1 Phil. Ev. 305; 1 Curt. R. 755; 6 Eng. Eccl. R. 452; Cov. on Conv. Ev. 304.

REGISTER, common law. The certificate of registry granted to the person or persons entitled thereto, by the collector of the district, comprehending the port to which any ship or vessel shall belong; more properly, the registry itself. For the form, requisites,

&c. of certificate of registry, see Act of Con. Dec. 31, 1792; Story's Laws U. S. 269 3 Kent, Com. 4th ed. 141.

REGISTER or REGISTRAR. An officer authorized by law to keep a record called a register or registry; as the register for the probate of wills.

REGISTER FOR THE PROBATE OF WILLS. An officer in Pennsylvania, who has gene- rally the same powers that judges of probates and surrogates have in other states, and the ordinary has in England, in admitting the wills of deceased persons to probate.

REGISTER OF WRITS. This is a book preserved in the English court of chancery, in which were entered, from time to time, all forms of writs once issued.

2. It was first printed and published in the reign of Henry VIII. This book is still in authority, as containing, in general, an accurate transcript of the forms of all writs as then framed, and as they ought still to be framed in modern practice.

3. It seems, however, that a variation from the register is not conclusive against the propriety of a form, if other sufficient authority can be adduced to prove its correctness. Steph. Pl. 7, 8.

REGISTRARIUS. An ancient name given to a notary. In England this name is confined to designate the officer of some court, the records or archives of which are in his custody.

REGISTRUM BREVIUM. The name of an ancient book which was a collection of writs. See Register of Writs

REGISTRY. A book authorized by law, in which writings are registered or recorded. Vide To Record; Register.

REGNANT. One having authority as a king; one in the exercise of royal authority.

REGRATING, crim. law. Every practice or device, by act, conspiracy, words, or news, to enhance the price of victuals or other merchandise, is so denomin-ated. 3 Inst. 196; 1 Russ. on Cr. 169.

2. In the Roman law, persons who monopolized grain, and other produce of the earth, were called dardanarii, and were variously punished. Dig. 47, 11, 6.

REGRESS. Returning; going back opposed to ingress. (q. v.)

REGULAR DEPOSIT. One where the thing deposited must be returned. It is distinguished from an irregular deposit.

REGULAR AND IRREGULAR PROCESS. Regular process is that which has been lawfully issued by a court or magistrate, having competent jurisdiction. Irregular process is that which has been illegally issued.

2. When the process is regular, and the defendant has been damnified, as in the case of a malicious arrest, his remedy is by an action on the case, and not trespass: when it is irregular, the remedy is by action of trespass.

3. If the process be wholly illegal or misapplied as to the person intended to be arrested, without regard to any question of fact, or whether innocent or guilty, or the existence of any debt, then the party imprisoned may legally resist the arrest and imprisonment, and may escape, be rescued, or even break prison; but if the process and imprisonment were in form legal, each of these acts would be punishable, however innocent the defendant might be, for he ought to submit to legal process, and obtain his release by due course of law. 1 Chit. Pr. 637; 5 East, R. 304, 308; S. C. 1 Smitt's Rep. 555; 6 T. R. 234; Foster, C. L. 312; 2 Wils. 47; 1 East, P. C. 310 Hawk. B. 2, c. 19, s. 1, 2.

4. When a party has been arrested on process which has afterwards been set aside for irregularity, he may bring an action of trespass and recover damages as well against the attorney who issued it, as the party, though such process will justify the officer who executed it. 8 Adolph. & Ell. 449; S. C. 35 E. C. L. R. 433; 15 East, R. 615, note c; 1 Stra. 509; 2 W. Bl. Rep., 845; 2 Conn. R. 700; 9 Conn. 141; 11 Mass. 500; 6 Greenl. 421; 3 Gill & John. 377; 1 Bailey, R. 441; 2 Litt. 234; 3 S. & R. 139 12 John. 257 3 Wils. 376; and vide Malicious Prosecution.

REHABILITATION. The act by which a man is restored to his former ability, of which he had been deprived by a conviction, sentence or judgment of a competent tribunal.

REHEARING. A second consideration which the court gives to a cause, on a second argument.

2. A rehearing takes place principally when the court has doubts on the subject to be decided; but it cannot be granted by the supreme court after the cause has been remitted to the court below to carry into effect the decree of the supreme court. 7 Wheat. 58.

REI INTERVENTUS. When a party is imperfectly bound in an obligation, he may in general, annul such imperfect obligation; but when he has permitted the opposite party to act as if his obligation or agreement were complete, such things have intervened as to deprive him of the right to rescind such obligation; these circumstances are the rei interventus. Bell's Com. 328, 329, 5th ed.; Burt. Man. P. R. 128.

RE-INSURANCE, mar. contr. An insurance made by a former insurer, his executors, administrators, or assigns, to protect himself and his estate from a risk to which they were liable by the first insurance.

2. It differs from a double insurance (q. v.) in this, that in the latter cases, the insured makes two insurances on the same risk and the same interest.

3. The insurer on a re-insurance is answerable only to the party whom he has insured, and not to the original insured, who can have no remedy against him in case of loss, even though the original insurer become insolvent, because there is no privity of contract between them and the original insured. 3 Kent, Com. 227; Park. on Ins. c. 15, p. 276; Marsh. Ins. B. 1, c. 4, s. 4

REISSUABLE NOTES. Bank notes, which after having been once paid, may again be put into circulation, are so called.

2. They cannot properly be called valuable securities, while in the hands of the maker; but in an indictment, may properly be called goods and chattels. Ry. & Mood. C. C. 218; vide 5 Mason's R. 537; 2 Russ. on Cr. 147. And such notes would fall within the description of promissory notes. 2 Leach, 1090, 1093; Russ. & Ry. 232. Vide Bank note; Note; Promissory note.

REJOINDER, pleadings. The name of the defendant's answer to the plaintiff's replication.

2. The general requisites of a rejoinder are, 1. It must be triable. 2. It must not be double, nor will several rejoinders be allowed to the same declaration. 3. It must be certain. 4. It must be direct and positive, and not merely by way of recital or argumentative. 5. it must not be repugnant or insensible. 6. It must be conformable to, and not depart from the plea. Co. Litt. 304; 6 Com. Dig. 185 Archb. Civ. Pl. 278; U. S. Dig, Pleading, XIII.

RELAPSE. The condition of one who, after having abandoned a course of vice, returns to it again. Vide Recidive.

RELATION, civil law. The report which the judges made of the proceedings in certain suits to the prince were so called.

2. These relations took place when the judge had no law to direct him, or when the laws were susceptible of difficulties; it was then referred to the prince, who was the author of the law, to give the interpretation. Those reports were made in writing and contained the pleadings of the parties, and all the proceedings, together with the judge's opinion, and prayed the emperor to order what should be done. The ordinance of the prince thus required was called a rescript. (q. v.) the use of these relations was abolished by Justinian, Nov. 125.

RELATION, contracts, construction. When an act is done at one time, and it operates upon the thing as if done at another time, it is said to do so by relation; as, if a man deliver a deed as an escrow, to be delivered by the party holding it, to the grantor, on the performance of some act, the delivery to the latter will have relation back to the first delivery. Termes de la Ley. Again, if a partner be adjudged a bankrupt, the partnership is dissolved, and such dissolution relates back to the time when the commission issued. 3 Kent, Com. 33. Vide 18 Vin. Ab. 285; 4 Com. Dig. 245; 5 Id. 339; Litt. S. C. 462-466; 2 John. 510; 4 John. 230; 15 John. 809; 2 Har. & John. 151, and the article Fiction.

RELATIONS, kindred. In its most extensive signification, this term includes all the kindred of the person spoken of. In a more limited sense, it signifies those persons who are entitled as next of kin under the statute of distribution.

2. A legacy to "relations" generally, or to "relations by blood or marriage," without enumerating any of them, will, therefore, entitle to a share, such of the testator's relatives as would be entitled under the statute of distribution's in the event of intestacy. 1 Madd. Ch. R. 45; 1 Bro. C. C. 33. See the cases referred to under the word Relations, article Construction.

3. Relations to either of the parties, even beyond the ninth degree, have been holden incapable to serve on juries. 3 Chit. Pr. 795, note c. 4. Relationship or affinity is no objection to a witness, unless in the case of hushand and wife. See Witness.

RELATOR. A rehearser or teller; one who, by leave of court, brings an information in the nature of a quo warranto.

2. At common law, strictly speaking, no such person as a relator to an information is known; he being a creature of the statute 9 Anne, c. 20.

3. In this country, even where no statute similar to that of Anne prevails, informations are allowed to be filed by private persons desirous to try their rights, in the name of the attorney general, and these are commonly called relators; though no judgment for costs can be rendered for or against them. 2 Dall. 112; 5 Mass. 231; 15 Serg. & Rawle, 127; 3 Serg. & Rawle, 52; Ang. on Corp. 470. In chancery the relator is responsible for costs. 4 Bouv. Inst. n. 4022.

RELATIVE. One connected with another by blood or affinity; a relation, a kinsman or kinswoman. In an adjective sense, having relation or connexion with some other person or thing; as relative rights, relative powers.

RELATIVE POWERS. Those which relate to land, so called to distinguish them from those which are collateral to it.

2. These powers are appendant, as where a tenant for life has a power of making leases in possession. They are in gross when a person has an estate in the land, with a power of appointment, the execution of which falls out of the compass of his estate, but, notwithstanding, is annexed in privity to it, and takes effect in the appointee out of an interest appointed in the appointer. 2 Bouv. Inst. n. 1930.

RELATIVE RIGHTS. Those to which a person is entitled in consequence of his relation with others such as the rights of a hushand in relation to his wife; of a father, as to his children; of a master, as to his servant; of a guardian, as to his ward. 2. In general, the superior may maintain an action for an injury committed against his relative rights. See 2 Bouv. Inst. n. 2277 to 2296; 3 Bouv. Inst. n. 3491; 4 Bouv. Inst. n. 3615 to 3618.

RELEASE. Releases are of two kinds. 1. Such as give up, discharge, or abandon a right of action. 2. Such as convey a man's interest or right to another, who has possession of it, or some estate in the same. Touch. 320; Litt. sec. 444; Nels. Ab. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; Rolle's Ab. h. t.; Com. Dig. h. t.

RELEASE, contracts. A release is the giving or discharging of a right of action which a man has or may claim against another, or that which is his. Touch. 320 Bac. Ab. h. t.; Co. Litt. 264 a.

2. This kind of a release is different from that which is used for the purpose of convoying real estate. Here a mere right is surrendered; in the other case not only a right is given up, but an interest in the estate is conveyed, and becomes vested in the release.

3. Releases may be considered, as to their form, their different kinds, and their effect. §1. The operative words of a release are remise, release, quitclaim, discharge and acquit; but other words will answer the purpose. Sid. 265; Cro. Jac. 696; 9 Co. 52; Show. 331.

4. - §2. Releases are either express, or releases in deed; or those arising by operation of law. An express release is one which is distinctly made in the deed; a release by operation of law, is one which, though not expressly made, the law presumes in consequence of some act of, the releasor; for instance, when, one of several joint obligors is expressly released, the others are also released by operation of law . 3 Salk. 298. Hob. 10; Id. 66; Noy, 62; 4 Mod. 380; 7 Johns. Rep. 207.

5. A release may also be implied; as, if a creditor voluntarily deliver to his debtor the bond, note, or other evidence of his claim. And when the debtor is in possession of such security, it will be presumed that it has been delivered to him. Poth. Obl. n. 608, 609.

6. - §3. As to their effect, releases 1st, acquit the releasee: and 2dly, enable him to be examined as a witness.

7. - 1st. Littleton says a release of all demands is the best and strongest release. Sect. 508. Lord Coke, on the contrary, says claims is a stronger word. Co. Litt. 291 b.

8. In general the words of a release will he restrained by the particular occasion of giving it. 3 Lev. 273; 1 Show. 151: 2 Mod. 108, n.; 2 Show. 47; T. Raym. 399 3 Mod. 277; Palm. 218; 1 Lev. 235.

9. The reader is referred to the following cases where a construction has been given to the expressions mentioned. A release of "all actions, suits and demands," 3 Mod. 277: " all actions, debts, duties, and demands," Ibid. 1 and 64; 3 Mod. 185; 8 Co. 150 b; 2 Saund. 6 a; all demands," 5 Co. 70, b; 2 Mod. 281; 3 Mod 278; 1 Lev. 99; Salk. 578; 2 Rolle's Rep. 12 Mod. 465; 2 Conn. Rep. 120; "all actions, quarrels, trespasses " Dy. 2171 pl. 2; Cro. Jac. 487; " all errors, and all actions, suits, and writs of error whatsoever," T. Ray. 3 99 all suits," 8 Co. 150 of covenants," 5 Co. 70 b.

10. - 2d. A release by a witness where he has an interest in the matter which is the subject of the suit or release by the party on whose side he is interested, renders him competent. 1 Phil. Ev. 102, and the cases cited in n. a. Vide 2 Chitt. It. 329; 1 D. & R. 361; Harr. Dig. h. t.; Bouv. Inst. Index, h. t.

RELEASE, estates. The "conveyance of a man's interest or right, which he hath unto a thing, to another that hath the possession thereof, or some estate therein." Touch. 320.

2. The words generally used in such conveyance, are, "remised, released, and forever quit claimed." Litt. s ec, 445.

3. Releases of land are, in respect of their operation, divided into four sorts. 1. Releases that enure by way of passing the estate, or mitter l'estate. (q. v.) 2. Releases that enure by way of passing the right, or mitter le droit. 3. Releases that enure by enlargement of the estate; and

4. Releases that enure by way of extinguishment. Vide 4 Cruise, 71; Co. Lit. 264; 3 Marsh. Decis. 185; Gilb. Ten. 82; 2 Sumn. R. 487; 10 Pick. R. 195; 10 John. R. 456; 7 Mass. R. 381; 8 Pick. R. 143; 5 Har. & John. 158; N. H. Rep. 402; Paige's R. 299.

RELEASEE. A person to whom a release is made.

RELEASOR. He who makes a release.

ELEGATION, civil law. Among the Romans relegation was a banishment to a certain place, and consequently was an interdiction of all places except the one designated.

2. It differed from deportation. (q. v.) Relegation and deportation agree u these particulars: 1. Neither could be in a Roman city or province. 2. Neither caused the party punished to lose his liberty. Inst. 1,16 , 2; Digest, 48, 22, 4; Code, 9, 47,26.

3. Relegation and deportation differed in this. 1. Because deportation deprived of the right of citizenship, which was preserved notwithstanding the relegation. 2. Because deportation was always perpetual, and relegation was generally for a limited time. 3. Because deportation was always attended with confiscation of property, although not mentioned in the sentence; while a loss of property was not a consequence of relegation unless it was perpetual, or made a part of the sentence. Inst. 1, 12, 1 & 2; Dig. 48, 20, 7, 5; Id. 48, 22, 1 to 7; Code, 9, 47, 8.

RELEVANCY. By this term is understood the evidence which is applicable to the issue joined; it is relevant when it is applicable to the issue, and ought to be admitted; it is irrelevant, when it does not apply; and it ought then to be excluded. 3 Hawks, 122; 4 Litt. Rep. 272; 7 Mart. Lo. R. N. S. 198. See Greenl. Ev. §49, et seq.; 1 Phil. Ev. 169; 11 S. & R. 134; 7 Wend. R. 359; 1 Rawle, R. 311; 3 Pet. R. 336; 5 Harr. & Johns. 51, 56; 1 Watts. & Serg. 362; 6 Watts. R. 266; 1 S. & R. 298.

RELEVANT EVIDENCE. That which is applicable to the issue and which ought to be received; the phrase is used in opposition to irrelevant evidence, which is that which is not so applicable, and which must be rejected. Vide Relevancy.

RELICT. A widow; as A B, relict of C D.

RELICTA VFRIFICATIONE. When a judgment is confessed by cognovit actionem after plea pleaded, and then the plea is withdrawn, it is called a confession or cognovit actionem relicta verificatione. He acknowledges the action having abandoned his plea. See 5 Halst. 332.

RELICTION. An increase of the land by the sudden retreat of the sea or a river.

2. Relicted lands arising from the sea and in navigable rivers, (q. v.) generally belong to the state and all relicted lands of unnavigable rivers generally belong to the proprietor of the estate to which such rivers act as boundaries. Schultes on Aqu. Rights, 138; Ang. on Tide Wat. 75. But this reliction must be from the sea in its usual state for if it should inundate the land and then recede, this would be no reliction. Harg. Tr. 15. Vide Ang. on Wat. Co. 220. 3. Reliction differs from avulsion, (q. v.) and from alluvion. (q. v.)

RELIEF, Engl. law. A relief was an incident to every feudal tenure, by way of fine or composition with the lord for taking up the estate which was lapsed or fallen in by the death of the last tenant. At one time the amount was arbitrary; but afterwards the relief of a knight's fee became fixed at one hundred shillings. 2 Bl. Com. 65.

RELIEF, practice. That assistance which a court of chancery will lend to a party to annul a contract tinctured with fraud, or where there has been a mistake or accident; courts of equity grant relief to all parties in cases where they have rights, ex aequo et bono, and modify and fashion that relief according to circumstances.

RELIGION. Real piety in practice, consisting in the performance of all known duties to God and our fellow men.

2. There are many actions which cannot be regulated by human laws, and many duties are imposed by religion calculated to promote the happiness of society. Besides, there is an infinite number of actions, which though punishable by society, may be concealed from men, and which the magistrate cannot punish. In these cases men are restrained by the knowledge that nothing can be hidden from the eyes of a sovereign intelligent Being; that the soul never dies, that there is a state of future rewards and punishments; in fact that the most secret crimes will be punished. True religion then

offers succors to the feeble, consolations to the unfortunate, and fills the wicked with dread.

3. What Montesquieu says of a prince, applies equally to an individual. "A prince," says he, " who loves religion, is a lion, which yields to the hand that caresses him, or to the voice which renders him tame. He who fears religion and bates it, is like a wild beast, which gnaws, the chain which re-strains it from falling on those within its reach. He who has no religion is like a terrible animal which feels no liberty except when it devours its vic- tims or tears them in pieces." Esp. des , Lois, liv. 24, c. 1.

4. But religion can be useful to man only when it is pure. The constitution of the United States has, therefore, wisely provided that it should never be united with the state. Art. 6, 3. Vide Christianity; Religious test; Theo- cracy.

RELIGIOUS TEST. The constitution of the United States, art. 6, s. 3, de-clares that "no religious test shall ever be required as a qualification to any office, or public trust under the United States."

2. This clause was introduced for the double purpose of satisfying the scruples of many respectable persons, who feel an invincible repugnance to any religious test or affirmation, and to cut off forever every pretence of any alliance between church and state in the national government. Story on the Const. §1841.

RELINQUISHMENT, practice. A forsaking, abandoning, or giving over a right; for example, a plaintiff may relinquish a bad count in a declaration, and proceed on the good: a man may relinquish a part of his claim in order to give a court jurisdiction.

RELOCATION, Scotch law, contracts. To let again to renew a lease, is called a relocation.

2. When a tenant holds over after the expiration of his lease, with the consentof his landlord, this will amount to a relocation.

REMAINDER, estates. The remnant of an estate in lands or tenements expectant on a particular estate, created together with the same, at one time. Co. Litt. 143 a.

2. Remainders are either vested or contingent. A vested remainder is one by which a present interest passes to the party. though to be enjoyed in future; and by which the estate is invariably fixed to remain to a determinate person, after the particular estate has been spent. Vide 2 Jo ins. R. 288; 1 Yeates, R. 340.

3. A contingent remainder is one which is limited to take effect on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding particular estate; in which case such remainder never can take effect.

4. According to Mr. Fearne, contingent remainders may properly be distin-guished into four sorts. 1. Where the remainder depends entirely on a contin-gent determination of the preceding estate itself. 2. Where the contingency on which the remainder is to take effect, is independent of the determination of the preceding estate. 3. Where the condition upon which the remainder is limited, is certain in event, but the determination of the particular estate may happen before it. 4. Where the person, to whom the remainder is limited, is not yet ascertained, or not yet in being. Fearne, 5.

5. The pupillary substitutions of the civil law somewhat resembled contingent remainders. 1 Brown's Civ. Law, 214, n.; Burr. 1623. Vide, generally, Viner's Ab. h. t.; Bac. Ab. h. t; Com. Dig. h. t.; 4 Kent, Com. 189; Yelv. 1, n.; Cruise, Dig. tit. 16; 1 Supp. to Ves. jr. 184; Bouv. Inst. Index, h. t.

REMAINDER-MAN. One who is entitled to the remainder of the estate after a particular estate carved out of it has expired.

TO REMAND. To send back or recommit. When a prisoner is brought before a judge on a habeas corpus, for the purpose of obtaining his liberty, the judge hears the case, and either discharges him or not; when there is cause for his detention, he remands him.

REMANDING A CAUSE, practice. The sending it back to the same court out ofwhich it came for the purpose of having some action on it there. March, R. 100.

REMANENT PRO DEFECTU EMPTORUM, practice. The return made by the sheriff to a writ of execution when he has not been able to sell the property seized, that the same remains unsold for want of buyers: in that case the plaintiff is entitled to a venditioni exponas. Com. Dig. Execution, C. 8.

REMANET, practice. The causes which are entered for trial, and which cannot be tried during tho term, are remanets. Lee's Dict. Trial, vii.; 1 Sell. Pr. 434; 1 Phil. Ev., 4.

REMEDIAL. That which affords a remedy; as, a remedial statute, or one which is made to supply some defects or abridge some superfluities of the common law. 1 131. Com. 86. The term remedial statute is also applied to those acts which give a new remedy. Esp. Pen. Act. 1.

REMEDY. The means employed to enforce a right or redress an injury.

2. The importance of selecting a proper remedy is made strikingly evident by tho following statement. "Recently a common law barrister, very eminent for his legal attainments, sound opinions, and great practice, advised that there was no remedy whatever against a married woman, who, having a considerable separate estate, had joined with her hushand in a promissory note for X2500, for a debt of her hushand, because he was of opinion that the contract of a married woman is absolutely void, and referred to a decision to that effect, viz. Marshall v. Rutton, 8 T. R. 545, he not knowing, or forgetting, that in equity, under such circumstances, payment might have been enforced out of the separate estate. And afterwards, a very eminent equity counsel, equally erroneously advised, in the same case, that the remedy was only in equity, although it appeared upon the face of the case, as then stated, that, after the death of her hushand, the wife had promised to pay, in consideration of forbearance, and upon which promise she might have been arrested and sued at law. If the common law counsel had properly advised proceedings in equity, or if the equity counsel had advised proceedings by arrest at law, upon the promise, after the death of the hushand, the whole debt would have been paid. But, upon this latter opinion, a bill in chancery was filed, and so much time elapsed before decree, that a great part of the property was dissipated, and the wife escaped with the residue into France, and the creditor thus wholly lost his debt, which would have been recovered, if the proper proceedings had been adopted in the first or even second instance. This is one of the very numerous cases almost daily occurring, illustrative of the consequences of the want of, at least, a general knowledge of every branch of law."

3. Remedies may be considered in relation to 1. The enforcement of contracts. 2. The redress of torts or injuries.

4. - §1. The remedies for the enforcement of contracts are generally by action. The form of these depend upon the nature of the contract. They will be briefly considered, each separately.

5. - 1. The breach of parol or simple contracts, whether verbal or written, express or implied, for the payment of money, or for the performance or omission of any other act, is remediable by action of assumpsit. (q, v.) This is the proper remedy, therefore, to recover money lent, paid, and had and re-ceived to the use of the plaintiff; and in some cases though the money have been received tortiously or by duress of, the person or goods, it may be recovered.in this form of action, as, in that case, the law implies a contract. 2 Ld. Raym. 1216; 2 Bl. R. 827; 3 Wils. R. 304; 2 T. R. 144; 3 Johns. R. 183. This action is also the proper remedy upon wagers, feigned issues, and awards when the submission is not by deed, and to recover money due on foreign judgments; 4 T. R. 493; 3 East, R. 221; 11 East, R; 124; and on by-laws. 1 B. & P. 98.

6. - 2. To recover money due and unpaid upon legal liabilities, Hob. 206; or upon simple contracts either express or implied, whether verbal or written, and upon contracts under seal or of record, Bull. N. P. 167; Com. Dig. Debt, A 9; and on statutes by a party grieved, or by a common informer, whenever the demand is for a sum certain, or is capable of being readily reduced to a certainty; 7 Mass. R. 202; 3 Mass. R. 309, 310; the remedy is by action of debt. Vide Debt.

7. - 3. When a covenantee, has sustained damages in consequence of the non-performance of a promise under seal, whether such promise be contained in a deed poll, indenture, or whether it be express or implied by law from the terms of the deed; or whether the damages be liquidated or unliquidated, the proper remedy is by action of covenant. Vide Covenant.

8. - 4. For the detention of a cliattel, which the party obtained by virtue of a contract, as a bailment, or by some other lawful means, as by finding, the. owner, may in general support an action of detinue, (q. v.) and replevin; (q. v.) or when he has converted the property to his own use, trover and conversion. (q. v.)

9. - §2 . Remedies for the redress of injuries. These remedies are either public, by indictment, when the injury to the individual or to Iiis property affects the public; or private, when the tort is only injurious to the individual.

10. There are three kinds of remedies, namely, 1. The preventive. 2. That which seeks for a compensation. 3. That which has for its object punishment.

11. - 1. The preventive, or removing, or abating remedies, are those which may be by acts of the party aggrieved, or by the intervention of legal proceedings; as, in the case of injuries to the. person, or to personal or real property, defence, resistance, recaption, abatement of nuisance, and surety of the peace, or injunction in equity and perhaps some others.

12. - 2. Remedies for compensation are those which may he either by the acts of the party aggrieved, or summarily before justices, or by arb itration, or action, or suit at law or in equity.

13. - 3. Remedies which have for their object punishments, or compensation and punishments, are either summary proceedings before magistrates, or indictment, &c. The party injured in many cases of private injuries, which are also a public offence, as, batteries and libels, may-have both remedies, a public indictment for the criminal offence, and a civil action for the private wrong. When the law gives several remedies, the party entitled to them may select that best calculated to answer his ends. Vide 2 Atk. 344; 4 Johns. Ch. R. 140; 6 Johns. Ch. Rep. 78; 2 Conn. R. 353; 10 Johns.

R. 481; 9 Serg. & Rawle, 302. In felony and some other cases, the private injury is so far merged in the public crime that no action can be maintained for it, at least until after the public prosecution shall have been ended. Vide Civil remedy.

14. It will be proper to consider, 1. The private remedies, as, they seek the prevention of offences, compensation for committing them, and the punishment of their authors. 2. The public remedies, which have for their object protection and punishment.

15. - 1. Private remedies. When the right invaded and the injury committed are merely private, no one has a right to interfere or seek a remedy except the party immediately injured and his professional advisers. But when the remedy is even nominally public, and prosecuted in the name of the commonwealth, any one may institute the proccedings, although not privately injured. 1 Salk. 174; 1 Atk. 221; 8 M. & S. 71.

16. Private remedies are, 1, By the act of the party, or by legal proceedings to prevent the commission or repetition of an injury, or to remove it; or, 2. They are to recover compensation for the injury which has been committed.

17. - 1. The preventive and removing remedies are principally of two descriptions, namely, 1st. Those by the act of the party himself, or of certain relations or third persons permitted by law to interfere, as with respect to the person, by self-defence, resistance, escape, rescue, and even prison breaking, when the imprisonment is clearly illegal; or in case of personal property, by resistance or recaption; or in case of real property, resistance or turning a trespasser out of his house or off his land, even with force; 1 Saund. 81, 140, note 4; or by apprehending a wrong-doer, or by reentry and re-gaining possession, taking care not to commit a forcible entry, or a breach of the peace; or, in case of nuisances, public or private, by abatement; vide Abatement of nuisances; or remedies by distress, (q. v.) or by set off or re-tainer. See, as to remedies by act of the parties, 1 Dane's Ab. c. 2, p. 130.

18. - 2. When the injury is complete or continuing, the remedies to obtain compensation are either specific or in damages. These are summary before jus-tices of the peace or others; or formal, either by action or suit in courts of law or equity, or in the admiralty courts. As an example of summary proceedings may be mentioned the manner of regaining possession by applying to magis-trates against forcible entry and detainer, where the statutes authorize the proceedings. Formal proceedings are instituted when certain rights have been invaded. If the injury affect a legal right, then the remedy is in general by action in a court of law; but if an equitable right, or if it can be better investigated in a court of equity,' then the remedy is by bill. Vide Chancery.

19. - 2. Public remedies. These may be divided into such as are intended to prevent crimes, and those where the object is to punish them. 1. The preven-tive remedies may be exercised without any warrant either by a constable, (q. v.) or other officer, or even by a private citizen. Persons in the act of committing a felony or a broach of the peace may arrested by any one. Vide Arrest. A public nuisance may be abated without any other warrant or authority than that given by the law. Vide Nuisance. 2. The proceedings intended as a punishment for offences, are either summary, vide Conviction; or by indict- ment. (q. v.)

20. Remedies are specific and cumulative; the former are those which can alone be applied to restore a right or punish a crime; for example, where a statute makes unlawful what was lawful before, and gives a particular remedy, that is specific and must be pursued, and no other. Cro. Jac. 644; 1 Salk. 4 5; 2 Burr. 803. But when an offence was antecedently punishable by a common law proceeding, as by indictment, and a statute prescribes a particular remedy, there such particular remedy is cumulative, and proceedings may be had at common law or under the statute. 1 Saund. 134, n. 4. Vide Bac. Ab. Actions in general, B; Bouv. Inst. Index, h. t.; Actions; Arrest; Civil remedy; Election of Actions.

REMEMBRANCERS; Eng. law. Officers of the exchequer, whose duty it is to remind the lord treasurer and the justices of that court of such things as are to be called and attended to for the benefit of the crown.

REMISE. A French word which literally means a surrendering or returning a debt or duty.

2. It is frequently used in this sense in releases; as, "remise, release and forever quit-claim." In the French law the word remise is synonymous with our word release. Poth. Du Contr. de Change, n. 176; Dalloz, Dict, h. t.; Merl. Rep. h. t.

REMISSION, civil law. A release.

2. The remission of the debt is either conventional, when it is expressly granted to the debtor by a creditor having a capacity to alienate; or tacit, when the creditor voluntarily surrenders to his debtor the original title under private signature constituting the obligation. Civ. Code of Lo. art. 2195.

3. By remission is also understood a forgiveness or pardon of an offence. It has the effect of putting back the offender into the same situation he was before the commission of the offence. Remission is generally granted in cases where the offence was involuntary, or committed in self defence. Poth. Pr. Civ. sec t. 7, art. 2, §2.

4. Remission is also used by common lawyers to expresss the act by which a forfeiture or penalty is forgiven. 10 Wheat. 246.

TO REMIT. To annul a fine or forfeiture.

2. This is generally done by the courts where they have a discretion by law: as, for example, when a juror is fined for nonattendance in court, after being duly summoned and, on appearing, he produces evidence to the court that he was sick and unable to attend, the fine will be remitted by the court.

3. In commercial law, to remit is to send money, bills, or something which will answer the purpose of money.

REMITTANCE, comm. law. Money sent by one merchant to another, either in specie, bill of exchange, draft or otherwise.

REMITTEE, contracts. A person to whom a remittance is made. Story on Bailm. §75.

REMITTER, estates. To be placed back in possession.

2. When one having a right to lands is out of possession, and afterwards the freehold is cast upon him by some defective title, and he enters by virtue of that title, the law remits him to his ancient and more certain right and by an equitable fiction, supposes him to have gained possession under it. 3 Bl. Com. 190; 18 Vin. Ab. 431; 7 Com. Dig. 234.

REMITTIT DAMNA. An entry on the record by which the plaintiff declares that he remits the damages or a part of the damages which have been awarded him by the jury, is so called.

2. In some cases, a misjoinder of actions may be cured by the entry of a remittit damna. 1 Chit. Pl. *207.

REMITTOR, contracts. A person who makes a remittance to another.

REMITTITUR DAMNUM, or DAMNA, practice. The act of the plaintiff upon the record, whereby he abates or remits the excess of damages found by the jury beyond the sum laid in the declaration. See 1 Saund. 285, n. 6; 4 Conn. 109; Bouv. Inst. Index, h. t.

REMITTUR OF RECORD. After a record has been removed to the supreme court, and a judgment has been rendered, it is to be remitted or sent back to the court below, for the purpose of re-trying the cause, when the judgment has been reversed, or of issuing an execution when it has been affirmed. The act of so returning the record, and the writ issued for that purpose, bear the name of remittitur.

REMONSTRANCE. A petition to a court, or deliberative or legislative body, in which those who have signed it request that something which it is in contemplation to perform shall not be done.

REMOTE. At a distance; afar off, not immediate. A remote cause is not in general sufficient to charge a man with the commission of a crime, nor with being the author of a tort.

2. When a man suffers an injury in consequence of the violation of a contract, he is in general entitled to damages for the violation of such contract, but not for remote consequences, unconnected with the contract, to which he may be subjected; as, for example, if the maker of a promissory note should not pay it at maturity; the holder will be entitled to damages arising from the breach of the contract, namely, the principal and interest; but should the holder, in consequence of the non-payment of such note, be compelled to stop payment, and lose his credit and his business, the maker will not be responsible for such losses, on account of the great remoteness of the cause; so if an agent who is bound to account should neglect to do so, and a similar failure should take place, the agent would not be responsible for the damages thus caused. 1 Brock. Cir. C. R. 103; see 3 Pet. 69, 84, 89; 5 Mason's R. 161; 3 Wheat. 560; 1 Story, R. 157; 3 Sumn. R. 27, 270; 2 Sm. & Marsh. 340; 7 Hill, 61. Vide Cause.

REMOVAL FROM OFFICE. The act of a competent officer or of the legislature which deprives an officer of his office. It may be express, that is, by a notification that the officer has been removed, or implied, by the appointment of another person to the same office. Wallace's C. C. R. 118. See 13 Pet. 130; 1 Cranch, 137.

REMOVER. practice. When a suit or cause is removed out of one court into another, which is effected by writ of error, certiorari, and the like. 11 Co.41.

REMUNERATION. Reward; recompense; salary. Dig. 17, 1, 7.

RENDER. To yield; to return; to give again; it is the reverse of prender.

RENDEZVOUS. A place appointed for meeting.

2. Among seamen it is usual when vessels sail under convoy, to have a rend ezvous in case of dispersion by storm, an enemy, or other accident,

3. The place where military men meet and lodge, is also called a rendezvous.

RENEWAL. A change of something old for for something new; as, the renewal of a note; the renewal of a lease. See Novation, and 1 Bouv. Inst. n. 800.

TO RENOUNCE. To give up a right; for example, an executor may renounce the right of administering the estate of the testator; a widow the right to administer to her intestate hushand's estate.

2. There are some rights which a person cannot renounce; as, for example, to plead the act of limitation. Before a person can become a citizen of the United States he must renounce all titles of nobility. Vide Naturalization; To Repudiate.

RENT, estates, contracts. A certain profit in money, provisions, chattels, or labor, issuing out of lands and tenements in retribution for the use. 2 Bl. Com. 41; 14 Pet. Rep. 526; Gilb., on Rents, 9; Co. Litt. 142 a; Civ. Code of Lo. art. 2750; Com. on L. & T. 95; 1 Kent, Com. 367; Bradb. on Distr. 24; Bac. Ab. h. t.; Crabb, R. P. SSSS 149-258.

2. A rent somewhat resembles an annuity, (q. v.) their difference consists in the fact that the former issues out of lands, and the latter is a mere personal charge.

3. At common law there were three kinds of rents; namely, rent-service, rent-charge, and rent-seek. When the tenant held his land by fealty or other corporeal service, and a certain rent, this was called rent-service; a right of distress was inseparably incident to this rent.

4. A rent-charge is when the rent is created by deed and the fee granted; and as there is no fealty annexed to such a grant of rent, the right of distress is not in incident; and it requires an express power of distress to be annexed to the grant, which gives it the name of a rent-charge, because the lands are, by the deed, charged with a distress. Co. Litt. 143 b.

5. Rent-seek, or a dry or barren rent, was rent reserves by deed, without a clause of distress,and in a case in which the owner of the rent had no future interest or reversion in the land, he was driven for a remedy to a writ of annuity or writ of assize.

6. But the statute of 4 Geo. II. c. 28, abolished all distinction in the several kinds of rent, so far as to give the remedy by distress in cases of rents-seek, rents of assize, and

chief rents, as in the case of rents reserved upon a lease. In Pennsylvania, a distress is inseparably incident to every species of rent that may be reduced to a certainty. 2 Rawle's Rep. 13. In New York, it seems the remedy by distress exists for all kinds of rent. 3 Kent Com. 368. Vide Distress; 18 Viner's Abr. 472; Woodf, L. & T. 184 Gilb. on Rents Com. Dig. h. t.. Dane's Ab. Index, h. t.

7. As to the time when the rent becomes due, it is proper to observe, that there is a distinction to be made. It becomes due for the purpose of making a demand to take advantage of a condition of reentry, or to tender it to save a forfeiture, at sunset of the day on which it is due: but it is not actually due till midnight, for any other purpose. An action could not be supported which had been commenced on the day it became due, although commenced after sunset; and if the owner of the fee died between sunset and midnight of that day, the heir and not the executor would be entitled to the rent. 1 Saund. 287; 10 Co. 127 b; 2 Madd. Ch. R. 268; 1 P. Wms. 177; S. C. 1 Salk, 578. See generally, Bac. Ab. h. t.; Bouv. Inst. Index h. t.; and Distress; Reentry.

RENT-ROLL. A roll of the rents due to a particular person or public body. See Rental.

RENTAL. A roll or list of the rents of an estate containing the description of the lands let, the names of the tenants, and other particulars connected with such estate. This is the same as rent roll, from which it is said to be corrupted.

RENTE. In the French funds this word is nearly synonymous with our word annuity.

RENTE FONCIERE. This is a technical phrase used in Louisiana. It is a rent which issues out of land, and it is of its essence that it be perpetual, for if it be made but for a limited time, it is a lease. It may, however, be extinguished. Civ. Code of Lo. art. 2750, 2759; Poth. h. t. Vide Ground-rent.

RENTE VIAGERE, French law. This term, which is used in Louisiana, signifies an annuity for life. Civ. Code of Lo. art. 2764; Poth. Du Contract de Constitution de Rente, n. 215.

RENUNCIATION. The act of giving up a right.

2. It is a rule of law that any one may renounce a right which the law has established in his favor. To this maxim there are many limitations. A party may always renounce an acquired right; as, for example, to take lands by descent; but one cannot always give up a future right, before it has accrued, nor to the benefit conferred by law, although such advantage may be introduced only for the benefit of individuals.

3. For example, the power of making a will; the right of annulling a future contract, on the ground of fraud; and the right of pleading the act of limitations, cannot be renounced. The first, because the party must be left free to make a will or not; and the latter two, because the right has not yet accrued.

4. This term is usually employed to signify the abdication or giving up of one's country at the time of choosing another. The act of congress requires from a foreigner who applies to become naturalized a renunciation of all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. See Citizen; Expatriation; Naturalization; To renounce.

REPAIRS. That work which is done to an estate to keep it in good order.

2. What a party is bound to do, when the law imposes upon him the duty to make necessary repairs, does not appear to be very accurately defined. Natural and unavoidable decay in the buildings must always be allowed for when there is no express covenant to the contrary; and it seems, the lessee will satisfy the obligation the law imposes on him, by delivering the premises at the expiration of his tenancy, in a habitable state. Questions in relation to repairs most frequently arise between the landlord and tenant.

3. When there is no express agreement between the parties, the tenant is always required to do the necessary repairs. Woodf. L. & T. 244: Arch. L. & T. 188. He is therefore bound to put in windows or doors that have been broken by him, so as to prevent any decay of the premises, but he is not required to put a new room on an old worn out house. 2 Esp. N. P. C. 590.

4. An express covenant on the part of the lessee to keep a house in repair, and leave it in as good a plight as it was when the lease was made, does not bind him to repair the ordinary and natural decay. Woodf. L. & T. 256. And it has been held that such a covenant does not bind him to rebuild a house which had been destroyed by a public enemy. 1 Dall. 210.

5. As to the time when the repairs are to be made, it would seem reasonable that when the lessor is bound to make them he should have the right to enter and make them, when a delay until after the expiration of the lease would be injurious to the estate: but when no such damage exists, the landlord should have no right to enter without the consent of the tenant. See 18 Toull. n. 297. When a house has been destroyed by accidental fire, neither the tenant nor the landlord is bound to rebuild unless obliged by some agreement so to do. 4 Paige R. 355; 1 T. R. 708; Fonbl. Eq. B. 1, c. 6, s. S. Vide 6 T. R. 650; 4 Camp. R. 275; Harr. Dig. Covenant VII. Vide Com. Rep. 627; 6 T. R. 650; 21 Show. 401; 3. Ves. Jr. 34; Co. Litt., 27 a, note 1; 3 John. R. 44; 6 Mass.

R. 63; Platt on Cov. 266; Com. L. & T. 200; Com. Dig. Condition, L 12; Civil Code of Louis. 2070; 1 Saund. 322, n. 1; Id. 323, n. 7; 2 Saund, 158 b, n. 7 & 10; Bouv. Inst. Index. h. t.

REPARATION. The redress of an injury; amends for a tort inflicted. Vide Remedy; Redress.

REPARTIONE, FACIENDA, WRIT DE. The name of an ancient writ which lies by one or more joint tenants against the other joint tenants, or by a person owning a house or building against the owner of th; adjoining building, to compel the reparation of such, joint property. F. N. B. 295.

REPEAL, legislation. The abrogation or destruction of a law by a legislative act.

2. A repeal is express; as when it is literally declared by a subsequent law or implied, when the new law contains provisions contrary to or irreconcilable with those of the former law.

3. A law may be repealed by implication, by an affirmative as well as by a negative statute, if the substance is inconsistent with the old statute. 1 Ham. 10: 2 Bibb, 96; Harper, 101; 4 W. C. C. R. 691.

4. It is a general rule that when a penal statute punishes an offence by a certain penalty, and a new statute is passed imposing a greater or a lesser penalty, for the same offence, the former statute is repealed by implication. 5 Pick. 168; 3 Halst. 48; 1 Stew. 506; 3 A. K. Marsh. 70; 21 Pick. 373. See 1 Binn. 601; Bac. Ab. Statute D 7 Mass. 140.

5. By the common law when a statute repeals another, and afterwards the repealing statute is itself repealed, the first is revived. 2 Blackf. 32. In some states this rule has been changed, as in Ohio and Louisiana. Civ. Code of:Louis. art. 23.

6. When a law is repealed, it leaves all the civil rights of the parties acquired under the law unaffected. 3. L. R. 337; 4 L. R. 191; 2 South. 689; Breese, App. 29; 2 Stew. 160.

7. When a penal statute is repealed or so modified as to exempt a class from its operation, violations committed before the repeal are also exempted, unless specifically reserved, or unless there have been some private right divested by it. 2 Dana, 330; 4 Yeates, 392; 1 Stew. 347; 5 Rand. 657; 1 W. C. C. R. 84; 2 Virg. Cas. 382. Vide Abrogation; 18 Vin. Ab. 118.

REPERTORY. This word is nearly synonymous with inventory, and is so called because its contents are arranged in such order as to be easily found. Clef des Lois Rom. h . t.; Merl. Repertoire, h. t.

2. In the French law, this word is used to denote the inventory or minutes which notaries are required tomake of all contracts which take place before them. Dict. de Jur. h. t.

REPETITION, construction of wills. A repetition takes place when the same testator, by the same testamentary instrument, gives to the same legatee legacies of equal amount and of the same kind; in such case the latter is considered a repetition of the former, and the legatee is entitled to one only. For example, a testator gives to a legatee "ô30 a year during his life;" and in another part of the will he gives to the same legatee "an annuity of ô3O for his life payable quarterly," he is entitled to only one annuity of thirty pounds a year. 4 Ves. 79, 90; 1 Bro. C. C. 30, note.

REPETITION, civil law. The act by which a person demands and seeks to recover what he has paid by mistake, or delivered on a condition which has not been performed. Dig. 12, 4, 5. The name of an action which lies to recover the payment which has been made by mistake, when nothing was due.

2. Repetition is never admitted in relation to natural obligations which have been voluntarily acquitted, if the debtor had capacity to give his consent. 6 Toull. n. 386. The same rule obtains in our law. A person who has voluntarily acquitted a natural or even a moral obligation, cannot recover back the money by an action for money had and received, or any other form of action. D. & R. N. P. C. 254; 2 T. R. 763; 7 T. R. 269; 4 Ad. & Ell. 858; 1 P. & D. 253; 2 L. R. 431; Cowp. 290; 3 B. & P. 249, note; 2 East, R. 506; 3 Taunt. R. 311; 5 Taunt. R. 36; Yelv. 41, b, note; 3 Pick. R. 207; 13 John. It. 259.

3. In order to entitle the payer to recover back money paid by mistake it must have been paid by him to a person to whom he did not owe it, for otherwise he cannot recover it back, the creditor having in such case the just right to retain the money. Repetitio nulla est ab eo qui suum recepit.

4. How far money paid under a mistake of law is liable to repetition, has been discussed by civilians, and opinions on this subject are divided. 2 Poth. Ob. by Evans, 369, 408 to 487; 1 Story, Eq. Pl. §111, note 2.

REPETITION, Scotch law. The act of reading over a witness deposition, in order that he may adhere to it, or correct it at his choice. The same as Recolement, (q. v.) in the French law. 2 Benth. on Ev. B. 3, c. 12, p. 239.

REPLEADER, practice. When an immaterial issue has been formed, the court will order the parties to plead de novo, for the purpose of obtaining a better issue this is called a repleader.

2. In such case, they must begin to replead at the first fault. If the declaration, plea and replication be all bad, the parties must begin de novo, if the plea and replication be both bad and a repleader is awarded, it must be as to both; but if the declaration and plea be good, and the replication only bad, the parties replead from the replication only.

3. In order to elucidate this point, it may be proper to give an instance, where the court awarded a repleader for a fault in the plea, which is the most ordinary cause of a repleader. An action was brought against hushand and wife, for a wrong done by the wife alone, before the marriage, and both pleaded that they were not guilty of the wrong imputed to them, which was held to be bad, because there was no wrong alleged to have been committed by the hushand, and therefore a repleader was awarded, and the plea made that the wife only was not guilty. Cro. Jac. 5. See other instances in: Hob. 113: 5 Taunt. 386.

4. The following rules as to repleaders were laid down in the case of Staples v. Haydon, 2 Salk. 579. First. That at common law, a repleader was allowed before trial, because a verdict did not cure an immaterial issue, but now a repleader ought not to be allowed till after trial, in any case when the fault of the issue might be helped by the verdict, or by the statute of jeofails. Second. That if a repleader be allowed where it ought not to be granted, or vice versa, it is error. Third. That the judgment of repleader is general, quod partes replacitent, and the parties must begin at the first fault, which occasioned the immaterial issue. Fourth. No costs are allowed on either side. Fifth. That a repleader cannot be awarded after a default at nisi prius; to which may be added, that in general a repleader cannot be awarded after a demurrer or writ of error, without the consent of the parties, but only after issue joined; where however, there is a bad bar, and a bad replication, it is said that a repleader may be awarded upon a demurrer; a repleader will not be awarded where the court can give judgment on the whole record, and it is not grantable in favor of the person who made the first fault in pleading. See Com. Dig. Pleader, R 18; Bac. Abr. Pleas, M; 2 Saund. 319 b, n. 6; 2 Vent. 196; 2 Str. 847; 5 Taunt. 386; 8 Taunt. 413; 2 Saund. 20; 1 Chit. Pl. 632; Steph. pl. 119; Lawes, Civ. Pl. 175.

5. The difference between a repleader and a judgment non obstante veredicto, is this; that when a plea is good in form, though not in fact, or in other words, if it contain a defective title or ground of defence by which it is apparent to the court, upon the defendant's own showing, that in any way of putting it, he can have no merits, and the issue joined thereon be found for him there, as the awarding of a repleader could not

mend the case, the court for the sake of the plaintiff will at once give judgment non obstante veredicto; but where the defect is not so much in the title as in the manner of stating it, and the issue joined thereon is immaterial, so that the court know not for whom to give judgment, whether for the plaintiff or defendant, there for their own sake they will award a repleader; a judgment, therefore, non obstante veredicto, is always upon the merits, and never granted but in a very clear case; a repleader is upon the form and manner of pleading. Tidd's Pr. 813, 814; Com. Dig. Pleader, R 18 Bac. Abr. Pleas, M; 18 Vin. Ab. 567; 2 Saund. 20; Doct. Plac. h. t.; Arch. Civ. Pl. 258; 1 Chit. Pl. 632; U. S. Dig. XII.

REPLEGIARE, To redeem a thing detained or taken by another, by putting in legal sureties. See Replevin.

REPLEVIN, remedies. The name of an action for the recovery of goods and chattels.

2. It will be proper to consider, 1. For what property this action will lie. 2. What interest the plaintiff must have in the same. 3. For what injury. 4. The pleadings. 5. The judgment.

3. - 1. To support replevin, the property affected must be a personal chattel, and not an injury to the freehold, or to any matter which is annexed to it; 4 T. R. 504; nor for anything which has been turned into a chattel by having been separated from it by the defendant, and carried away at one and the same time; 2 Watts, R. 126; 3 S. & R. 509 6 S. & R. 4761; 10 S. & R. 114; 6 Greenl. R. 427; nor for writings which concern the realty. 1 Brownl. 168.

4. The chattel also must possess indicia or ear-marks, by which it may be distinguished from all others of the same description; otherwise the plaintiff would be demanding of the law what it has not in its power to bestow; replevin for loose money cannot, therefore, be maintained; but it may be supported for money tied up in a bag, and taken in that state from the plaintiff. 2 Mod. R. 61. Vide 1 Dall. 157; 6 Binn. 2; 3 Serg. & Rawle, 562; 2 P. A. Browne's R. 160; Addis. R. 134; 10 Serg. & Rawle, 114; 4 Dall. Appx. i.; 2 Watt's R. 126; 2 Rawle's R. 423.

5. - 2. The plaintiff, at the time of the caption, must have been possessed, or, which amounts to the same thing, have had an absolute property in and be entitled to the possession of the chattel, or it could not have been taken from him. He must, in other words, have had a general property, or a special property, as the bailee of the goods. His right to the possession must also be continued down to the time of judgment pronounced, otherwise he has no claim to the restoration of the property. Co. Litt. 145, b. It has however, been doubted whether on a more naked tailment for safe keeping, the bailee can maintain replevin. 1 John. R. 380; 3 Serg. & Rawle, 20.

6. - 3. This action lies to recover any goods which have been illegally taken. 7 John R. 140; 5 Mass. R. 283; 14 John. R. 87; 1 Dall. R. 157; 6 Binn. R. 2; 3 Serg. & Rawle, 562; Addis. R. 134; 1 Mason, 319; 2 Fairf. 28. The primary object of this action, is to recover back the chattel itself, and damages for taking and detaining it are consequent on the recovery. 1 W. & S. 513; 20 Wend. 172; 3 Shepl. 20. When the properly has been restored this action cannot, therefore, be maintained. But the chattel is considered as detained, not-withstanding the defendant may have destroyed it before the suit was commenced; for he cannot take advantage of his own wrong.

7. - 4. This being a local action, the declaration requires certainty in the description of the place where the distress was taken. 2 Chit: Pl. 411, 412; 10 John. R. 53. But it has been held in Pennsylvania, that the declaration is sufficient, if the taking is laid to be in the county. 1 P. A. Browne's Rep. 60. The strictness which formerly prevailed on this subject, has been relaxed. 2 Saund. 74, b. When the distress has been taken for rent, the defendant usually avows or makes cognizance, in order to obtain a return of the goods to which avowry or cognizance the plaintiff pleads in bar, or the defendant may, in proper cases, plead non cepit, cepit in alio loco, guilty. 1 Chit. Pl. 490, 491.

8. - 5. As to the judgment, Vide article Judgment in Replevin. Vide, gen-erally, Bac. Ab. h. t.; 1 Saund. 347, n. 1; 2 Sell. Pr. 153; Doct. Pl. 414; Com. Dig. h. t.; Dane's Ab. h. t.; Petersd. Ab. h. t.; 18 Vin. Ab. 576; Yelv. 146, a; 1 Chit., Pl. 157; Ham. N. P. ch. 3, p. 372 to 498; Amer. Dig. h. t.; Harr. Dig. h. t.; Bouv. Inst. Index, h. t. As to the evidence required in replevin, see Roscoe's Civ. Ev. 353. Vide, also, article Detinuit.

REPLEVY. To re-deliver goods which have been distrained to the original possessor of them, on his giving pledges in all action of replevin. It signifies also the bailing or liberating a man from prison, on his finding bail to answer. See Replevin.

REPLIANT. One who makes a replication.

REPLICATION, pleading. The plaintiff's answer to the defendant's plea.

2. Replications will be considered, 1. With regard to their several kinds. 2. To their form. 3. To their qualities.

3. - §1. They are to pleas in abatement and to pleas in bar.

4. - 1. When the defendant pleads to the jurisdiction of the court, the plaintiff may reply, and in this case the replication commences with a statement that the writ ought not to be quashed, or that the court ought not to be ousted of their jurisdiction, because &c., and concludes to the country, if the replication merely deny the subject-matter of the plea. Rast. Entr. 101 Thomps. Entr. 2; Clift's Entr. 17; 1 Chit. Pl. 434. As a general

rule, when the plea is to the misnomer of the plaintiff or defendant, or when the plea consists of matter of fact which the plaintiff denies, the replication may begin without any allegation that the writ or bill ought not to be quashed. 1 Bos. & Pull. 61.

5. - 2. The replication is, in general, governed by the plea, and most frequently denies it. When the plea concludes to the country, the plaintiff must, in general, reply by adding a similiter; but when the plea concludes with a verification, the replication must either, 1. Conclude the defendant by matter of estoppel; or, 2. May deny the truth of the matter alleged in the plea, either in whole or in part; or, 3. May confess and avoid the plea; or, 4. In the case of an evasive plea, may new assign the cause of action. For the several kinds of replication as they relate to the different forms of action, see 1 Chit. Pl. 551, et seq.; Arch. Civ. Pl. 258.

6. - §2. The form of the replication will be considered with regard to, 1. The title. 2. The commencement. 3. The body. 4. The conclusion.

7. - 1. The replication is usually entitled in the court and of the term of which it is pleaded, and the names of the plaintiff and defendant are stated in the margin, thus "A B against C D." 2 Chit. Pl. 641.

8. - 2. The commencement is that part of the replication which immediately follows the statement of the title of the court and term, and the names of the parties. It varies in form when it replies to matter of estoppel from what it does when it denies, or confesses and avoids the plea; in the latter case it commences with an allegation technically termed the preclude non. (q. v.) It generally commences with the words, "And the said plaintiff saith that the said defendant," &c. 1 Chit. Pl. 573.

9. - 3. The body of the replication ought to contain either. 1. Matter of estoppel. 2. Denial of the plea. 3. A confession and avoidance of it; or, 4. In case of an evasive plea, a new assignment. 1st. When the matter of estoppel does not appear from the anterior pleading, the replication should set it forth; as, if the matter has been tried upon a particular issue in trespass, and found by the jury, such finding may be replied as an estoppel. 3 East, R. 346; vide 4 Mass. R. 443. 2d. The second kind of replication is that which denies or traverses the truth of the plea, either in part or in whole. Vide Traverse, and 1 Chit. Pl. 576, note a. 3d. The third kind of replication admits, either in words or in effect, the fact alleged in the plea, and avoids the effect of it by stating new matter. If, for example, infancy be pleaded, the plaintiff may reply that the goods were necessaries, or that the defen-dant, after he came of full age, ratified and confirmed the promise. Vide Confession and Avoidance. 4th. When the plea is such as merely to evade the allegation in the declaration, the plaintiff in his replication may reassign it. Vide New Assignment, and 1 Chit. Pl. 601.

10. - 4. With regard to the conclusion, it is a general rule, that when the replication denies the whole of the defendant's plea, containing matter of fact, it should conclude to the country. There are other conclusions in particular cases, which the reader will find fully stated in 1 Chit. Pl. 615, et seq.; Com. Dig. Pleader, F 5 vide 1 Saund. 103, n.; 2 Caines' R. 60 2 John. R. 428; 1 John. R. 516; Arcb. Civ. Pl. 258; 19 Vin. Ab 29; Bac. Ab. Trespass, I 4; Doct. Pl. 428; Beames' Pl. in Eq. 247, 325, 326.

11. - §3. The qualities of a replication are, 1. That it must answer so much of the defendant's plea as it professes to answer, and that if it be bad in part, it is bad for the whole. Com. Dig. Pleader, F 4, W 2; 1 Saund. 338; 7 Cranch's Rep. 156. 2. It must not depart from the allegations in the declaration in any material matter. Vide Departure, and 2 Saund . 84 a, note 1; Co. Lit. 304 a. See also 3 John. Rep. 367; 10 John. R. 259; 14 John., R. 132; 2 Caines' R. 320. 3. It must be certain. Vide Certainty. 4. It must be single. Vide U. S. Dig. Pleading, XI.; Bouv. Inst. Index, h. t.; Duplicity; Pleadings.

REPORT, legislation. A statement made by a committee to a legislative assembly, of facts of which they were charged to inquire.

REPORT, practice. A certificate to the court made by a master in chancery, commissioner or other person appointed by the court, of the facts or matters to be ascertained by him, or of something of which it is his duty to inform the court.

2. If the parties in the case accede to the report, find no exceptions are filed, it is in due time confirmed; if exceptions are filed to the report, they will, agreeably to the rules of the court, be heard, and the report will either be confirmed, set aside, or referred. back for the correction of some error. 2 Madd. Ch. 505; Blake's Ch. Pr. 230; Vin. Ab. h. t.

REPORTER. A person employed in making out and publishing the history of cases decided by the court.

2. The act of congress of August 26, 1842, sect., 2, enacts, that in the supreme court of the United States, one reporter shall be appointed by the court with the salary of twelve hundred and fifty dollars; provided that he deliver to the secretary of state for distribution, one hundred and fifty copies of each volume of reports that he shall hereafter prepare and publish, immediately after the publication thereof, which publication shall be made annually within four months after the adjournment of the court at which the decisions are made.

3. In some of the states the reporters are appointed by authority of law; in others, they are volunteers.

REPORTS. Law books, containing a statement of the facts and law of each case which has been decided by the courts; they are generally the most certain proof of the judicial decisions of the courts, and contain the most satisfactory evidence, and the most authoritative and precise application of the rules of the common law. Lit. s. 514; Co. Lit. 293 a; 4 Co. Pref.; 1 Bl. Com. 71 Ram. on Judgm. ch. 13.

2. The number of reports has increased to an inconvenient extent, and should they multiply in the same ratio which of late they have done, they will so soon crowd our libraries as to become a serious evil. The indiscriminate re-port of cases of every description is deserving of censure. Cases where first principles are declared to be the law, are reported with as much care as those where the most abstruse questions are decided. But this is not all; sometimes two reporters, with the true spirit of book-making, report the same set of cases, and thereby not only unnecessarily increase the lawyer's already encumbered library, but create confusion by the discrepancies which occasionally appear in the report of the same case.

3. The modern reports are too often very diffuse and inaccurate. They seem too frequently made up for the purpose of profit and sale, much of the matter they contain being either useless or a mere repetition, while they are deficient in stating what is really important.

4. A report ought to contain, 1. The name of the case. 2. The court in which it originated; and, when it has been taken to another by appeal, certiorari, or writ of error, it ought to mention by whom it was so taken, and by what proceeding. 3. The state of the facts, including the pleadings, as far as requisite. 4. The true point before the court. 5. The manner in which that point has been determined, and by whom. 6. The date.

5. The following is believed to be a correct list of the American and English Reports; the former arranged under the heads of the respective states; and the latter in chronological order. It is hoped this list will be useful to the student.

AMERICAN REPORTS.

UNITED STATES.

1. Supreme Court.

Dallas' Reports. From August term, 1790, to August term, 1800. 4 vols. Cranch's Reports. From 1800 to February term, 1815. 9 vols. Wheaton's Reports. From February term, 181 to January term, 1827, inclusive. 12 vols.

Peters' Reports. 16 vols. Peters' Condensed Reports of Supreme Court of the United States. These volumes contain condensed reports of all the cases in second, third, and fourth Dallas, the nine volumes of Cranch, and the twelve volumes of Wheaton.

Howard's Reports. From 1843 to 1852. 11 vols.

2. Circuit Courts - First Circuit

Gallison's Reports. From 1812 to 1815, inclusive. 2 vols.
Mason's Reports. From 1816 to 1830, inclusive. 5 vols.
Sumner's Reports. From 1830 t. 1837. 2 vol.
Story's Reports. From 1839 to l845. 3 vols.
Woodbury and Minot's Reports. From 1845 to 1847. 2 vols.

Second Circuit

.

Paine's Reports. From 1810 to 1826. 1 vol.

Third Circuit.

Dallas' Reports. The second, third and fourth volumes contain cases decided in
this court. From Washington's C. C. Reports. From 1803 to 1827. 4 vols.
Peters' C. C. Reports. From 1803 to 1818. 1 vol.
Baldwin's Reports. From Oct. term, 1829, to April term 1833 inclusive. 1 vol.
Wallace's Reports. Include the cases of May Sessions, 1801. 1 vol.
Wallace, Jr's. Reports. 1 vol.

Fourth Circuit.

Marshall's Decisions. From 1802 to 1832, published since the death of Chief Justice Marshall, from his manuscripts, by John M. Brockenbrough. 2 vols.

Seventh Circuit.

McLean's Reports. From 182 9 to 1845. 3 vols,

3. District Courts - Distnct of New York.

Van Ness' Reports. I vol.

District of Pennsylvania

.

Peters' Admiralty Decisions. From 1792 to 1807. 2 vols.

Eastern District of Pennsylvania

.

Gilpin's Reports. From Nov. term, 1828, to Feb. term, 1836, inclusive. 1 vol.

District of South Carolina

.

Bee's Admiralty Reports. From 1792 to 1805. 1 vol.

District of Maine.

Reports of cases argued and determined in the District Court of the United States, for the District of Maine, from 1822 to 1839. 1 vol. Cited Ware's Reports.

STATE REPORTS.

Alabama.

Alabama Reports. By Henry Minor. From 1820 to 1826. 1 vol.
Stewart's Reports. From 1827 to 1831. 3 vols.
Stewart & Porter's Reports. From 1831 to 1833. 5 vols.
Porter's Reports. From 1834 to 1839. 9 vols.
Alabama Reports. From 1840 to 1849. 14 vols.

Arkansas.

Pike's Reports. From 1837 to 1842. 5 vols.

Connecticut.

Kirby's Reports,. From 1785 to 1788. 1 vol.
Root's Reports. From 1799 to 1798. 2 vols.
Day's Reports, From 1802 to 1813. 5 vols.
Connecticut Reports. By Thomas Day. From June, 1814 to 1847. 18 vols.

Delaware.

Harrington's Reports. From 1832 to 1847. 4 vols.

Florida.

Florida Reports. From 1846 to 1847. 2 vols.

Georgia.

T. U. P. Chariton's Reports. A Cases decided previous to 1810. 1 vol.
Dudley's Reports. From 1831 to 1833. 1 vol.
R. M. Charlton's Reports. From 1811 to 1837. 1 vol.
Kelly's Reports, 3 vols.
Georgia Reports. From 1846 to 1849. 6 vols.

Illinois.

Breese's Reports. From 1819 to 1830. 1 vol.
Scammond's Reports. From 1832 to 1843. 4 vols.
Gilman's Reports. From 1844 to 1847. 4 vols.

Indiana.

Blackford's Reports. From May, 1817, to May, 1838, inclusive, 7 vols.

Iowa.

Green's Reports. 1 vol.

Kentucky

Hughes' Reports. From 1785 to 1801. 1 vol.
Kentucky Decisions. From 1801 to 1806. 1 vol.
Hardin's Reports. Fr@m 1805 to 1806. 1 vol.
Bibb's Reports. From 1808 to 1817. 4 vols.
A. K. Marshall's Reports. From 1817 to 1821 3 vols.
Littells Reports. From 1822 to 1824. 6 vols.
Littells Select Cases. From 1795 to 1821. 1 vol.
Munro's Reports. From 1824 to 1828. 7 vols
J. S. Marshall's Reports. From 1829 to 1832 7 vols.
Dana's Reports. From 1833 to 1840. 9 vols.
B. Monroe's Reports. From 1840 to 1848. 8 vols.

Louisiana.

Orleans Term Reports. By Martin. From 1809 to 1812. 2 vols in 1. Louisiana Term Reports. By Martin, From 1812 to 1823. 10 vols. Martin's Reports, N. S. (sometimes cited simply New Series,) 1823 to 1830. 8 vols. The whole of Martin's Reports amount to twenty volumes; the first twelve, namely, the Orleans and the Louisiana Term Reports, are cited as Martin's Reports; from the twelfth, they are sometimes cited as first, second, &c., Martin's New Series, and sometimes simply New Series. Louisiana Reports. 19 vols. The first five volumes, from 1830 to August term, 1834, and the first part of the sixth volume, are the work of Branch W. Miller. The

remainder were reported by Mr. Currey, and are continued to June term, 1839. The whole of the 19 volumes are cited Louisiana Reports. Robinson's Reports. From 1841 to 1843. 12 vols.

Maine.

By a resolve of the legislature, passed in 1836, each volume subsequent to the third volume of Fairfield's Reports, shall be entitled and lettered upon the back thereof, "Maine Reports;" and the first volume subsequent to the third volume of Fairfield's shall be numbered the thirteenth Volume of Maine Reports. Maine Reports. 26 vols. These reports consist of Greenleaf's Reports. From 1820 to 1832. The first 9 vols.

Fairfield's Reports. From 1833 to 1835. The 10th, 11th, and 12th vols.
Shepley's Reports. From 1836 to 18401. The 13th to 18th vols., inclusive. 6 vols.
Appleton's Reports. The 19th vol. 2 vols.
Appleton, part of vol. 20.
Shepley's Reports, part of vol. 20 and vol. 21 to 28, inclusive. From 1841 to 1846. 8 vols.

Maryland.

Harris & McHenry's Reports. From 1709 to 1799. 4 vols. Sometimes cited Maryland Reports.
Harris & Johnson. From 1800 to 1826. 7 vols.
Harris & Gill. From 1826 to 1829. 2 vols.
Gill & Johnson. From 1829 to 1840. 12 vols.
Bland's Chancery Reports. From 1811 to 1832. 3 vols.
Gill's Reports. From 1813 to 1849. 5 vols.

Massachusetts.

Massachusetts Reports. The first volume is reported by Ephraim Williams. His reports commenced with September term, 1804, in Berkshire, and terminate with June term, 1805, in Hancock. The 16 volumes from the second to the seventeenth, inclusive, are reported by Dudley Alkins Tyng, and embrace from March term, 1806, in Suffolk, to March term, 1822, in Suffolk. The reports of Williams and Tyng are cited Massachusetts Reparts. Pickering's Reports. From 1832 to March 1840. 24 vols. Metcalf's Reports. From 1840 to 1848. 1 vols.

Michigan.

Harrington's Reports. 1 vol.
Walker's Chancery Cases. From 1842 to 1845. 1 vol.
Douglass' Reports. From 1843 to 1847. 2 vols.

Mississippi.

Walker's Reports. From 1818 to 1832. 1 vol.
Howard's Reports. From 1834 to 1843. 7 vols.
Smedes & Marshall's Reports. From 1843 to 1849. 12 vols.
Freeman's Chancery Reports. From 1839 to 1843. 1 vol.
Smedes & Marshall's Chancery Reports. From 1840 to 1843. 1 vol.

Missouri.

Missouri Reports. From 1821 to 1846. 9 vols.

New Hampshire.

New Hampshire Reports. From 1816 to 1842. 13 vols.
Nathaniel Adams reported cases from 1816 to 1819, which makes the first volume of N. H. Rep. Levi Woodbury and William Richardson reported the cases from 1819, to 1823; and William Richardson from 1823 to 1832, making the third fourth and fifth volumes of N. H. Rep. They are continued under the direction of the supreme court, and already make thirteen volumes.

New Jersey.

Coxes' Reports. From 1790 to 1795. 1 vol.
Pennington's Reports. From 1806 to 1813. 2 vols.
Southard's Reports. From 1816 to 1820. 2 vols.
Halstead's Reports. From 1821 to 1831. 7 vols.
Green's Reports. From 183@ to 1836. 3 vols.
Harrison's Reports. From 1837 to 1842. 4 vols.
Sexton's Chancery Reports. From 1830 to 1832. 1 vol.
Green's Chancery Reports, 1838 to 1846. 3 vols.
Spencer's Reports. From 1842 to 1845. 1 vol.
Halsted's Chancery Reports. From 1845 to 1846. 1 vol.

New York.

Coleman & Caine's Cases. From 1794 to 1805. 1 vol.
Caine's Reports. From 180,3 to 1805. 3 vols.
Caine's Cases. For 1804 and 1805. 2 vols.
Anthon's Nisi Prias Cases. From 1808 to 1818. 1 vol.
Roger's New York City Hall Recorder. From 1816 to 1821. 6 vols.
Wheeler's Criminal Cases. 3 vols.
Hall's Reports. For 1828 and 1829. 2 vols.
Hoffman's Vice Chancery Reports. From 1839 to 1840. 1 vol.
Edwards' Vice Chancery Reports. From 1831 to 1842. 3 vols.
Clarke's Vice Chancery Reports. From 1839 to 1841., 1 vol.
Johnson's Cases. From 1799 to 1803. 3 vols.
Johnson's Repoets. From 1806 to 1823. 20 vols.
Cowen's Reports. From 1823 to 1828. 9 vols,
Wendell's Reporti. From 1828 to 1841. 26 vols.
Hill's Reports from 1841 to 1845. 7 vols.
John ns &a cery Reparts. From 1814 to 1823. 7 vols.
Howard's Practice Reports. For 1844 and 1845. 3 vols.
Denio's Reports. From 1845 to 1847. 5 vols.
Hopkin's Chancery Reports. From 1823 to 1826. 1 vol.

Paige's Chancery Reports. From 1828 to 1845. 11 vols.
Sandford's Vice Chancery Reports. From 1843 to 1846. 3 vols.
Barbour's Chancery Reports. From 1845 to 1849. 3 vols.
Barbour's Superior Court. For 1847 and 1848. 4 vols.
Sandford's Superior Court. For 1847 and 1848. 1 vol.
Lockwood's Reversed Cases. From 1799 to 1847. 1 vol.
Comstock's Supreme Court. For 1847 and 1848. 1 vol.

North Carolina

Martin's Reports. 1 vol.
Heywood's Reports. From 1789 to 1806. 2 vols.
Taylor's Reports. From 1789 to 1802. 1 vol.
North Carolina Term Reports, (sometimes bound and lettered are cited as the third Law Repository.) It is a second volume of Reports by John Louis Taylor; it contains cases from 1816 to 1818. 1 vol.
Conference Reports. By Cameron & Norwood. From 1800 to 1804. 1 vol.
Murphy's Reports. From 1804 to 1819. 3 vols.
Carolina Law Repository. From 1813 to 1816. 2 vols.
Hawks' Reports. From 1820 to 1826. 4 vols.
Ruin's Reports, (bound with Hawks' Reports.)
Devereux's Reports. From 1826 to 1834. 4 vols.
Devereux's Equity Reports. From 1826 to 1834. 2 vols.
Devereux & Battle's Reports. From 1834 to 1840. 4 vols.
Deveretlx & Battle's Equity Reports. From 1834 to 1840. 2 vols.
Iredell's Reports, Law. From 1840 to 1849. 9 vols.
Iredell's Reports, Chancery. From 1840 to 1848, 5 vols.

Ohio.

Ohio Reports. 15 vols.
These reports are composed of Hammond's Reports. From 1821 to 1839. 9 vols.
Wright's Reports. From 1831 to 1834. 1 vol.
Wilcox's Reports. From 1840 to 1841. 1 vol.
Stanton's Reports. From 1841 to 1843. 3 vols.
Griswold's Reports. From 1844 to 1846. 2 vols.

Pennsylvania.

Dallas' Reports. From 1754 to 1806. 4 vols. Vide Supra.
Yeates' Reports. From 1791 to 1808. 4 vols.
Binney's Reports. From 1799 to 1814. 6 vols
Sergeant & Rawle's Reports. From 1818 to 1829. 17 vols
Rawle's Reports. trom 1828 to 1835. 5 vols.
Wharton's Reports. From 1835 to 1841. 6 vols.
Pennsylvania Reports, reported by William Rawle, Charles B. Penrose, and Frederick Watts. From 1829 to 1832. 3 vols.
Watts' Reports. From 1832 to 1840. 10 vols.
Watts & Sergeant's Reports. 9 vols.
Browne's Reports. From 1806 to 1814. 2 vols.
Miles' Reports. For 1835 and 1841. 2 vols.
Addison's Reports. From 1791 to 1799. 1 vol.
Ashmead's Reports. From 1808 to 1841. 2 vols.
Pennsylvania State Reports. By Robert M.

Barr. From 1844 to 1849. 10 vols. 1849 to 1850. 2 vol. By J. Pringle Jones.
1830 to 1852. 4 vols. By Geo. W. Harris.

South Carolina.

Bay's Reports. From 1783 to 1804. 2 vols.
Dessaussure's Equity Reports. From the Revolution to 1813. 4 vols.
Brevard's Reports. From 1793 to 1816. 3 vols.
South Carolina Reports. From 1812 to 1816. 2 vols.
Nott & M'Cord's Reports. From 1817 to 1820. 2 vols.
Mills' Constitutional Reports, N. S. For 1817 and 1818. 2 vols.
Harper's Reports. For 1823 and 1824. 1 vol.
Harper's Equity Reports. For 1824. 1 vol.
M'Cord's Reports. From 1820 to 1829. 4 vols.
M'Cord's Chancery Reports. From 1825 to 1827. 2 vols.
Bailey's Reports. From 1828 to 1832. 2 vols.
Bailey's Cbancery. From 1830 to 1831. 1 vol.
Hill's Reports. From 1833 to 1837. 3 vols.
Hill's Chancery Reports. For 1838. 2 vols.
Riley's Chancery Cases. From 1836 to 1887. 1 vol
Riley's Law Cases. From 1836 to 1837. 1 vol.
Dudley's Law Reports. From 1837 to 1838 1 vol.
Dudley's Equity Reports. From 1837 to 1838 1 vol.
Rice's Reports. Frlom 1838 to 1839. 1 vol.
Rice's Chancery Reports. From 1838 to 1839. 1 vol.
Cheves' Reports. From 1839 to 1840. 2 vols.
McMullan's Chancery. From 1840 to 1842. 1 vol.
McMullen's Law. FTOM 1835 to 1842. 2 vols.
Spear's Equity. From 1842 to 1844. 1 vol.
Spear's Law. For 1843. 2 vols.
Richardson's Law Reports. From 1844 to 1847. 3 vols.
Richardson's Equity Reports. From 1844 to 1846. 2 vols.
Strobhart's Law Reports. From 1846 to 1848. 3 vols.
Strobhart's Equity Reports. From 1846 to 1848. 2 vols.
Statutes at Large, For 1838. 9 vols.

Tennessee.

Tennessee Reports. From 179i to 1815. 2 vols. These cases were reported by John Overton. They are cited Tenn. Rep. Cooke's Reports. From 1811 to 1814.
1 vol.
Heywood's Reports. From 1816 to 1818. 3 vols. These volumes are numbered three, four, and five, in a series with Judge Heywood's North Carolina Reports, volumes one and two.
Peck's Reports. From 1822 to 1824. 1 vol.
Martin & Yerger's Reports. From 1825 to 1828. 1 vol.
Yerger's Reports. From 1832 to 1837. 10 vols.
Meigs' Reports. From 1838 to 1839. 1 vol.
Humphrey's Reports. From 1839 to 1846. 8 vols.

Vermont.

N. Chipman's Reports. From 1789 to 1791. 1 vol.
Tyler's Reports. From 1801 to 1803. 2 vols

Brayton's Reports. From 1815 to 1819. 1 vol.
D. Chipman's Reports. Containing Select Cases from N. Chipman's Reports, and cages down to 1825. 2 vols.
Aiken's Reports. For 1826 and 1827. 2 vols.
Vermont Reports. From 1826 to 1846. 18 vols. These reports are composed of Judges Reports, the first 9 vols.
Shaw's Reports. The 10th and part of the 11th vol.
Watson's Reports. Part of 11th, the whole of 12th, 13th, and 14th vols.
Slade's Reports. The 15th vol.
Washburne's Reports. The 16th, 17th, and 18th vols.

Virginia.

Wythe's Chancery Reports. From 1790 to 1795. 1 vol.
Washington's Reports. From 1790 to 1796. 2 vols.
Call's Reports. From 1790 to 1818. 6 vols.
Henning and Mumford's Reports. From 1806 to 1809. 4 vols.
Mumford's Reports. From 1810 to 1820. 6 vols. I
Gilmer's Reports, (sometimes cited Virginia Reports.) During 1820 and 1821. 1 vol.
Randolph's Reports. From 1821 to 1828. 6 vols.
Leigh's Reports. From 1829 to 1841. 12 vols.
Jefferson's Reports. From 1730 to 1772. 1 vol.
Virginia cases. From 1789 to 1826. 2 vols.
The first of these volumes is by Judges Brockenbrough and Holmes, and contains cases decided from 1789 to 1814; the second volume is by Judge Brockenbrough, and contains cases decided from 1815 to 1826.
Robinson's Reports. From 1842 to 1844. 2 vols.
Grattan's Reports. From 1844 to 1848. 5 vols.

Wisconsin.

Burritt's Reports. 1 Vol.

ENGLISH AND IRISH REPORTS.

6. The following is a chronological list of English and Irirh contemporary Reports, alphabetically arranged under each reign.

Henry III. Oct. 19, 1216. Nov. 16, 1272.
Jenkins, Ex., 4, 19, 21.

Edward I. Nov. 16, 1272. July 7, 1307. Jenkins, Ex., 18, 34. Keilwey, K. B. and C. P., 6. Year Book, K. B., C. P. and Exchequer, part 1.

Edward II. July 7, 1307. Jan. 25, 1327. Jenkins, Ex., 5, 15, 18. Year Book, K. B., C. P;, and Ex., part I.

Edward III. Jan. 25, 1327., June 21, 1377. Benloe, K. B. and C. P., 32. Jenkins, Ex., I to 47. Keilwey, K. B. and C. P. 1 to 47. Year Book' K. B. and C. P., part 2-1 to 10.

Year Book: K. B. and C. P., P.,t 3-17, 18, 21 to 28, 38, 89. Year Book, K. B. and C. P., part 4-40 to 50. Year Book, part 5, Liber Assisarum, 1 to 51.

Richard II. June 21, 1377. Sept. 29, 1399. Bellewe, K. B. and C. P., 1 to 22. Jenkins, Ex., I to 22.

Henry IV. Sept. 29, 1399. Mar. 20, 1413. Jenkins, Ex., 1 to 14. Year Book, K. B. and C. P., part 6, 1 to 14.

Henry V. Mar. 20, 1413. Aug. 31, 1422. Jenkins, Ex., 1 to 10. Year Book, K. B. and C. P., part 6 - 1, 2, 5, 7 to 10.

Henry VI. Aug. 31, 1422. Mar. 4, 1461. Benloe, K. B. and C. P., 2, 18. Jenkins, Ex., I to 39. Year Book, K. B. and C. P., parts 7 and 8 - 4, 7 to 12, 14, 18 to 22, 27, 28, 30 to 39.

Edward IV. Mar. 4, 1461. April 9, 1483. Jenkins, Ex., 1 to 21. Year Book, K. B. and C. P., part 9 - 1 to 22. Year Book, K. B., C. P., and Ex., part 10-5.

Edward V. April 9, 1483. June 22, 1483. Jenkins, Ex. Year Book, X. B. and C. P., part 11.

Richard III. June 22, 1483., Aug. 22, 1485. Jenkins, Ex., 1, 2. 1 Year Book, K. B. and C. P., part 11 - 1, 2.

Henry VII. Aug. 22, 1485. April 22, 1509. Benloe, K. B. and C. P. 1. Jenkins, Ex., 1 to 21. Keilwey, K. B. and C. P.; 12, 13, 17 to 24. Moore, K. B. and C. P., Ex. and Chan., 1 to 2 Year Book, K. B, and C. P., part 11 - 1 to 16, 20 to 24.

Henry VIII. April 22, 1509. Jan. 28, 1547. Anderson, C. P., 25, &c.;Benloe, C. P., 1 to 38. Benloe, (New), K. B., C. P., and Ex., 22, &c;Benloe, Keilwey and Ashe, K. B., C. P and Ex. Brooke's New Cases, K. B., C. P., and Exchequer. Dalison, C. P., 38. Dyer, K. B., C. P., Ex. and Chan. 4, &c.;Jenkins, Ex., 1 to 38. Keilwey, K. B. and C. P., 1 to 11, and 21. Moore, K. B., C. P., Ex. and Chan., 3. Year Book, K. B., and C. P., part 11-13, 14, 18, 19, 26, 27, 29 to 38.

Edward VI. Jan, 28, 1547. July 6, 1553. Anderson, C. P., 1 to 6. Benloe and Dalison, C. P., 2, Brooke's New Cases, K. B., C. P. and Ex. Benloe (New), K. B., C. P. and Ex. 1 to 6. Dyer, K. B., C. P.; Ex. and Chan. 1 to 6. Jenkins, Ex., 1 to 6. Moore, K. B., C. P., Ex. and Chan., 1 to 6. Plowden, K. B., C. P. and Exchequer, 4 to 6.

Mary. - July 6, 1553. Nov. 17, 1558. Anderson, C. P., 1 to 6. Benloe and Dalison, C P., 1 to 5. Benloe in Keilwey and Ashe, K. B., C. P. a Ex., 1 to 5. Benloe (New), K. B., C. P. and Ex., 1 to 5. Booke's New Cases, K. B., C. P., and Ex., 1 to 5. Cary, Chan., 5. Dyer, K. B., C. P., Ex. and Chan., 1 to 5. Dalison, in Keilwey and Ashe, C. P., 1, 4, 5. Jenkins, Ex., 1 to 5. Leonard, K. B., C. P., and Ex., 1 to 5. Owen, K. B. and C. P., 4, 5. Plowden, K. B., C. P. and Ex., I to 5.

Elizabeth. Nov. 17, 1558. Mar. 24, 1603. Anderson, C. P., 1 to 45. Benloe in Keilwey and Ashe, K. B., C. P., and Ex., 2 to 20. Benloe, K. B., C. P., and Ex., 1 to 17. Benloe, C. P., 1 to 21. Brownlow and Goldeshorough, C. P., 11 to 45. Cary, Chan., 1 to 45. Coke, K. B , C. P., Ex. and Chan., 14 to 45. Croke, K. B., and C. P., 24 to 45. Dalison, C. P., 1 to 16. Dalison in Keilwey and Ashe, C. P., 2 to 7. Dickens, Chan., a few cases. Dyer, K. B. and C. P., 1 to 23. Godbolt, K. B., &c., 17 to 45. Goldeshorough, K. B., &c., 28 to 31, 39 to 43. Hobart, K. B., &c., a few cases. Hutton, C. P., 26 to 38. Jenkins, Ex., I to 45. Leonard, K. B., C. P. and Ex., 1 to 45. Moore, K. B., C. P., Ex. and Chan. 1 to 45. Noy. K. B. and C. P., 1 to 45. Owen, K. B. and C. P., I to 45. Plowden, K. B., C. P. and Ex. Popham, K. B., C. P. and Chan., 34, 9 Savill e, C. P. and Ex., 22 to 36. Tothill, Chan., 1 to 45. YelveKton, K. B. 44, 45.

James I. Mar. 24, 1603. Mar. 27, 1625. Anderson, C. P., 1. Benloe, K. B., C. P., and Ex., 19 to 23. Bridgman, C. P , 12 to 19. Brownlow and Goldeshorough, C. P., 1 to 23. Bulstrode, K. B., 7 to 15. Cary, Chan. 1. Coke, K. B., C. P, Ex. and Chan., 1 to 13. Croke, K. B. and C. P. 1, 23. Davis, K. B., C. P. and Ex., 2 to 9. Glanville, election before committee of H. C., 21, 22. Godbolt, K. B., &c., 1 to 23. Hobert, K. B., &c., 1 to 23. Hutton, C. P., 10 to 23. Jenkins, Ex., 1 to 21. Jones (W.) K. B. and C. P., 18 to 33. Lane, Ex., 3 to 9. Leonard, K. B., C. P. and Ex., 1 to 12. Ley, K. B., C. P., Ex. and Court of Wards, 6 to 23. Moore, K. B., C. P., Ex. and Chan., 1 to 18. Noy, K. B. and C. P. 1 to 23. Owen, K. B. and C. P., 1 to 12. Palmer, K. B., 17 to 23. Popham, K. B., C. P., and Chan., 15 to 23. Reports in Chancery, 13. Rolle, K. B., 12 to22. Tothill, Chan., 1 to 23. Winch, C. P., 19 to 23. Yelverton, K. B., 1 to 10.

Charles I. - Mar. 27, 1625. Jan. 30, 1649. Aleyn, K. B., 22 to 24. Benloe, K. B., C. P. and Ex., 1 to 3. Bulstrode, K. B., 1 to 14. Clayton, Pleas of As. York, 7 to 24. Croke, K. B. and C. P., 1 to 16 Godbolt, K. B., &c., 1 to 13. Hetley, C. P., 3 to 7. Hutton, C. P.. 1 to 14. Jones, (W.) K. B. and C. P., 1 to 16. Latch, K. B., 1 to 3. Ley, K. B., C. P., Ex. and Court of Wards, 1 to 4. Littleton, C. P. and Ex., 2 to 7. March, K. B. and C. P., 15 to 18. Nelson, Chan., 1 to 24. Noy, K. B. and C. P., 1 to 24. Palmer, K. B. and C. P., 1 to 4. Popham, K.,B., C. P. and Chan., 1, 2. Reports in Chancery, 1 to 24. Style, K. B., 21 to 24. Tothill, Chan., I to 21.

Charles II. May 29, 1660. Feb. 6, 1685. Bridgman, C. P., 1 to 8. Carter, C. P., 16 to 27. Cases in Chancery, part 1-12 to 30. Cases in Chancery, part 2-26 to 37. Most of

these cases in 2 C. C. are grossly misreported, said per Lord Loughborough,* 1 H. Bl. 332 Cayton, Pleas of As. York, 1, 2. Dickens, Chan., a few cases. Finch, Chan., 25 to 32. Freeman, K. B., C. P., Ex. and Chan., 22 to 37. Hardres, Ex., 7 to 21. Jones (Tho.) K. B. and C. P., 19 to 37 Krebi K. B., 13 to 30. Kelyng (Sir J.) Crown Cades and in K. B., 14 to 20. Levinz, X. B. and C. P., 12 to 37 Lutwyche, C. P., 34 to 37. Modern, K. B., C. P., Ex. and Chan., vols. 1, 2 - 1 to 29. Modern, K. B., C. P., Ex. and Cban., vol. 2 - 26 to 30. Modern, K. C., C. P., Ex. and Chan., vol. 3 - 34 to 37. Nelson, Chan., 1 to 37. Parker, Ex., 30. Pollexfen, K. B., C. P. and Chan., 22 to 37. Raymond, (T.) K. B., C. P. and Ex., 12 to 35. Reports in Chancery, 1 to 37. Saunders, k. B., 18 to 24. Select Cases in Chancery, 33. Shower, K. B., 30 to 37. Siderlin, K. Ii., C. P. and Ex., 9 to 22. Skinner, K. B., 33 to 37. Style, K. B., I to 7. Vaughan, C. P., 17 to 25. Ventris, K. B., C. P., Ex. and Chan., 20 to 37. Vernon, Chan., 32 to 37,

James II. Feb. 6, 1685. Feb. 13, 1689. Carthew, K. B., 2 to 4. N Cases in Chancery, part 2 - 1 to 3. Cases of Settlement, K. B., 2 to 4. Comberbach, K. B., 1 to 4. Comberbach is said, by Lord Thurlow, to be bad authority. 1 Bro. C. C. 97. Freeman, K. B., C. P., Ex. lind Chan., 1 to 4. Levinz, K. B. and C. P., 1, 2. Lutwyche, C. P. 1 to 4. N Modern, K B., C. P. and Chan. vol. 3 - 1 to 4. Parker, Ex., 3, 4. Reports in Chancery, 1 to 3. Shower, K. B., 1 to 4. Skinner, K. B., 1 to 4. Ventris, K. B., C. P., Ex. and Chan., 1 to 4. Vernon, Ch., 1 to 4.

William III. & Mary. Feb. 13, 1682. Mar. 8, 1702. Carthew, K. B., 1 to 12. Cases concerning Settlements, X. B., 1 to 14. Colles, Parliamentary Cases, 9 to 14. Comberbach, K. B., 1 to 10. Comyns, K. B., C. P., Ex. Chan. and before the Delegates, 7 to 14. Fortescue, K: B., C. P., Ex. and Chan., 7 to 14. Freeman, K B., C. P., I Ex. and Chan., 1 to 14. Kelyng, (Sir J.) Crown Canes, and in K. B., 8 to 13. Levinz, K. B. and C. P., 1 to 18. Lutwyche, C. P., I to 14. Modern, K. B,., C. P., Ex. and Chan., vol. 3 - 1, 2. Modern, K. B., C. P., Fx- and Chan., vol. 4 - 3 to 7. Modern, K. B., C. P., Ex- and Chan., vol. 5 - 5 to 11. Modern, K. B., C. 'P., Ex. and Chan., vol. 12 - 2 to 14. Parker, Ex., 4 to 13. Peere Williams, Chan. and K. B., 7 to 14. Precedents in Chancery, 1 to 4. Raymond, (Lord) K. B. and C. P., 4 to 14. Reports in Chancery, vol. 2-5. Reports temp. Holt, K. B., C. P.,Ex. and Chan., 1 to 14. Salkeld, K. B., C. P., Ex. and Chair., 1 to 14. Select Cases in Chancery, 5,,9. Shower, K. B., 1 to 6. Skinner, K. B , I to 9. Ventris, K. B., C. P., Ex. and Chan., 1, 2. Vernon, Chan., 1 to 14.

Anne. Mar. 8, 1702. dug. 1, 1714, Brown's Parliamentary Cases, 1 to 1.3. Banbury, Ex., 12, 13. Cases concerning Settlements, K. B., 1 to 13. Cases on Practice, C. P., 5 to 13. Colles, Parliamentary Cases, 1 to 8. Comyns, K. B., C. P., Ex. Chanc. and before the Delegates, 1 to 13. Dickens, Chan., a few cases. Fortesque, K. B., C. P., Ex. and Chan., 1 to 13. Freeman, K. J3., C. P., Ex. and Chan., 1 to 5. Gilbert's Cases in Law an Equity, 12, 13. Gilbert, K. B.,.Chan. and Ex., 4 to 43. Relyng, (Sir J.) Crown Cases, and in K. B. Lutwyche, C. P., 1, 2. Modern, K. B., C. P., Ex. and Chan., vol. 6

- 2, 3. Modern, K. B., C. P., Ex. and Chan., vol. 7 - 1. Modern, K. B., C. P., Ex. and Chan., vol. 10 - 8 to 13. Modern, K. B., C. P., Ex. and Chan., vol. 11 - 4 to 8. Parker, Ex., 6 to 12. Peere Williams, Chan. and K. B., 1 to 13. Practical Register, C. P.) 3 to 13. Precedents in Chancery, 1 to 13. Raymond, (Lord) K. B. and C. P., 1 to 13. Reports in Chancery, 4 to 8. Reports temp. Holt, 1 to 9. Robertson's App. Cases, 5 to 13. Salkeld, K.,B., C. P., Ex. and Chan., 1 to 10. Session Cases, K. B., 9 to 13 Vernon, Chan., 1 to 13.

George I. Aug. 1, 1714. June 11, 1727. Barnardiston, K. B., 12, 13. This book is said to be "not of much authority;" Dougl. 333, n.; "of still less authority than 10 Mod.;" Dougl. 669, n; "a bad reporter." 1, East, 642, n. Brown's Parliamentary Cases, 1 to 13. Bunbury, Ex., 1 to 13. Mr. Bunbury never meant that those cases should be published; they are very loose notes. 5 Burr. 2568. Cases concerning Settlements, K. B., 1 to 13. Cases of Practice, C. P., 1 to 13. Comyns, K. B., C. P., Ex. Chanc. and before the Delegates, 1 to 13. Dickens, Chan., 1 to 13. Fortescue, K.@ B., C. P., Ex. and Chan., 1 to 13. Gilbert, K. B., Chan. and Ex., 1 to 12. Modern, K. B., C. P., Ex.,and Chan., vols. 8 and 9 - 8 to 12. Modern, K. B., C. P.,. Ex., and Chan., vol. 10 - 1 to 11. Mosely' Chan., 12, 13. Parker, Ex., 4 to 13. Peere Williams, Chan. and K. B., 1 to 13. Practical Register, C. P., 1 to 13. Precedents in Chancery, 1 to 8. Raymond (Lord) K. B. and C. P., 1 and 10 to 13. Robertson's Appeal Cases, 1 to 13. Select Cases in Chan., 10 to 12. Sessions Cases, K. B., 1 to 13. Strange, K. B., C. P., Ex. and Chan., 2 to 13. Vernon, Chan. 1 to 5.

George II. June 11, 1727. Oct. 25, 1760. Ambler, Chap. and Ex. 11 to 34. Andrews, K. B., 11, 12. Atkyn's Chan., 9 to 27. Barnardiston, C. B., 1 to 7. Barnardiston, Chan., 13, 14. Barnes, C. P., 5 to 34. Belt's Supplement to Vesey, Chan., 20 to 28. Blackstone (Wm.) K. B. and C. P., 20 to 24, and 30 to 34. These reports are said not to be very accurate, per Lord Mansfield, Doug. 92, n. Brown's Parl. Cases, 1 to 34. Bunbury, Ex., 1 to 14. Burrow's K. B., 30 to 34. Burrow's Settlement Cases, K. B., 5 to 34. Cases of Settlement, K. B., 1 to 5. Cases of Practice, K. P., 1 to 20. Cases temp. Talbot, Chan. K. B., C. P., 7, 10. Comyns, Ex., Chan. and before the Delegates, 1 to 13. Cunningham, K. B., 7, 8. Dickens, Chan., 1 to 34. Mr. Dickens was a very attentive and diligent register; but his notes being rather loose, are not to be considered as of very high authority, per Lord Redesdale, 1 Sch. & Lef. 240. Vide also Sug. Vend. 146. Eden, Chan., 30 to 34. Fitzgibbon, K. B., C. P., Ex. and Chan., 1 to 5. Fortescue, 1 to 10. Foster, Crown Cases, 16 to 34. Kelynge, (W.) K. B.; C. P. and Chan., 1 to 8. Konyon, K. B., &c., 26 to 30., Leach, Crown Cases, 4 to 34. Lee, (Sir Geo.) Ecclesiastical, 25 to 32. Moseley, Chan., 1 to 3. Parker, Fx , 16 to 34. Peere Williams, Chan. and K. B., 1 to 8. Practical Register, C. P., I to 15. Raymond, (Lord) K. B. and C. P., 1 to 6. Reports temp. Hardwicke, K. B., 7, 10. Robertson's Appeal Cases, a few. Sayer, K. B., 25 to 29. Select Cases in Chancery, 6. Sessions Cases, K.

B., 1 to 20. Strange, K. B., C. P., Ex. and Chan., 1 to 21. Vesey, (sen.) Chan., 20 to 28. Willes, C. P., Exch., Chan. and House of Lords. 11 to 32. Wilson, K. B., C. P., 16 to 34.

George III. Oct. 25, 1762. Jan. 29, 1820. Acton, Appeal Cases, 49, 50. Ambler, Chan. and Ex., 1 to 24. Anstruther, Ex., 32 to 37. Ball and Beatty, Irish Chan., 47 to 54. Barnewell and Alderson, K. B., 58 to 60. Blackstone, (Sir W.) K. B. and C.,P., 1 to 20. Blackstone, (H.) C. P. and Ex. Chamb., 28 to 36. Bligh, Appeal Cases, 59, 60. Bosanquet and Puller, C. P., and Exch. Chamb., to 47. Bott, Settlement Cases, 1 to 60. Broderip and Bingham, C. P., 59, 60. Brown, Chancery, 18 to 34. Brown, Parl. Cases, 1 to 40. Buck, Bankruptcy, 57 to 60. Burrow, K. B., 1 to 12. Burrow, Settlement Cases, K. B., 1 to 16. Caldecot, Settlement Cases, K. B., 17 to 26. Campbell, Nisi Prius, K. B., C. P., and Home Circuit, 48 to 56. Cases of Practice, K. B., 1 to 14. Chitty, K. B., 47 to 60. Cooper, Chan., 55. Corbet and Daniel, Election Cases. Cowper, K. B., 14 to 18. Cox, Chan., 23 to 36. Daniell, Ex., 57 to 60. Dickens, Chan., I to 38. Dodson, Admiralty, 51 to 57. Douglas, K. B., 19 to 25. Dow, H. of Lords, 53 to 58. Durnford and East, K. B., 26 to 40. East, K. B., 41 to 52. Edwards, Admiralty, 48, 49. Eden, Cban., 1 to 7. Espinasse, Nisi Prius, K. B., C. P. and Home Circuit, 33 to 47. Forrest, Ex., 41@ Fraser, Elec., H. Com. 32. Gow, Nisi Prius, C. P., 59, 60. Haggard, Consistory Court, 29 to 60. Holi, Nisi Prius, C. P. and North Circuit, 55 to 18. Jacob & Walker, Chan., 60. Kenyon, K. B., &c.;Leach's Crown Cases, 1 to 55. Lofft, K. B., C. P. and Chan., 12 to 14. Luders, Election Cases, 25 to 30. Mariott, Admiralty, 16 to 19. Marshall, C. P., 54 to 57. Maddock, Vice Chan., 55 to 60. Maule & Selwyn,, K. B., 53 to 57 Merivate, Chan., 57 to 58. Moore, C. P., 57 to 60. Nolan, K. B., 32 to 34. Parker, Ex., 1 to 7. Peake, Nisi Prius, K. B., 30 to 35. Peckwell, Election Cases, 45,46. Phillimore, Ecclesiastical, 49 to 60. Price, Ex., 54 to 60. Robinson, Admiralty, 39 to 48. Rose, Bankruptcy 50 to 56. Russell & Ryan, Crown Cases, 39, &c.;Schoales & Lefroy, Irish Chan., 42 to 44. Smith, K. B. and Chan., 44 to 46. Starkie, Nisi Prius, K. B., C. P. and North Cir., 5 to 60. Swanston, Chan., 58 to 60. Taunton, C. P., 48 to 58. Vesey, jun., Chan., 29 to 52. Vesey & Beames, dhan., 52 to 54. Wightwick, Ex., 50, 51. Wilson, K. B. and C. .P., 1 to 14. Wilson, Chan., 58 to 60. Wilson; Ex., 57.

George IV. Jan. 29, 1820, June 26, 1830. Addams, Eccl. 2 to 6. Barnwell & Alderson, K. B., 1 to 3. Barnewall & Cresswell, K. B., 3 to 10. Adolphus, K. B., 10, &c.;Batty, K. B., (Ireland) 5 & 6. Beitty, Chan., (do.) 7 & 8. Bingham, C. P., 3, &c.;Bligh, H. of Lords, 1, &c.;Bott, Settlement Cases, 1 to 7. Broderip & Bingham, C. P., 1 to 3. Carrington & Payne, N. P., 4, &c.;Chitty, K. B., 1 to 3. Cresswell, Insolvent, 7 to 9. Daniell, Exchequer. Danson & Lloyd, Mercantile Cases, 8, 9. Dowling & Ryland, 2 to 7. Fox & Smith, K. B., (Ireland) 3 to 5. Glyn & Jameson, Bankruptcy. Haggard, Eccles. 7 to 10. Hogan, Rolls, (rreland) 6 & 7. Hudson & Brooke, K. B., (Ireland) 7 to

11. Jacob & Walker, Chan., 1, 2. Jacob, Chan., 2, 3. Lloyd & Welshy, Mercantile Cases, 10, &c.;Maddock, Vice-Chan., I to 3. Manning & Ryland, K. B., 7 to 9. Molloy, Chan., (Ireland) 7 to 11. Moody & Malkin, N. P., 7, &c.;Moore, C. P., 1 to 7. Moore & Payne, C. P., 7, &c.;Phillimore, Eccles., 1, 2. Price, Exchequer, 1, &c.;Russell & Ryan, Cro. Cases, 1 to 3. Russell, Chan., 6 &c.;Russell & Mylne, 9, &c.;Ryan & Moody, N. P., 4 to 7. Ryan & Moody, Cro. Cases, 4 to 10. Simon & Stuart, Vice-Chan., 2 to 7. Simons, Vice-Chan., 7 &c.;Smith & Batty, K B., (Ireland) 4, & 5 Starke, N. P., 1 &c.;Turner, Chan., 3, &c.;Younge & Jervis, Ex., 7, &c.;Younge, Ex. Eq., 11, &C.

William IV. June 26, 1830. June 20, 1837. Adolphus & Ellis, K. B., 4 to Barnewell & Adolphus, X. B., 1 to 3. Bingham, C. P., 1 to Bligh, H. of Lords, 1 to Carrington & Payne' N. P., 1 to Clark & Finnelli, 2 to Cockburn & Rowe, 3. Crompton & Jervis, Exch., 1 & 2, Crompton & Meeson, Exch., 3 & 4, Crompton, Meeson & Roscoe, Ech., 4 to 6. Curteis, 5 to Deacon & Chitty, Bankruptcy, 2 to 5. Deacon, Bankruptcy, 6 to Dow & Clarke, H. of Lords, 1 to Dowling, Practice, Cases, 1 to Haggard, Ecclesiastical, 1 to Haggard, Admiralty, 1 to Hayes, Exch., (Ireland) 1 to 3. Knapp, Appeal Cases, 1 to Knapp & Ombler, Election Cases, 5 to Lloyd & Goold, Irish Chan., 5 to Manning & Ryland, K. B., 1 to Meeson & Welshy, 6. Montagu & Bligh, Bankruptcy, 2 & 3. Montagu & Ayrton, Bankruptch, 3 to Moody & Malkin, N. P., 1 to Moore & Payne, C. P., 1 to Moore & Scott, C. P., 1 to Mylne & Craig. Mylne & Keen, Chan., 3 to Neville & Manning, K. B., 3 Perry & Knapp, election Cases, 3 to 5. Russell & Mylne, Chan., 1 to 3. Scott, C. P., 5 tyo Simons, Vice-Chan. 1 to Tamlyn, Rolls, 1 to Tyrwhitt, Exch., 1 to Tyrwhitt & Granger. Wilson & Shaw. H. of Lords, 1 to Wilson & Courtenay, H. of Lords, 2 to Younge, Equity Exch., 1 to Younge & Collyer, Equity Exch., 4,to

Victoria. June 20, 1837. Adolphus & Ellis, K. B. Adolphus & Ellis, New Series. Alcock & Napier, K. B., (Ireland) Alcock's REgistry Cases. Armstrong & Mercartney, N. P. (Ireland) Baron & Austin, Election Cases. Baron & Arnold, Election Cases. Beavan, Rolls Court. Bells, Appeal Cases to H. of L., (Ireland) Bell, Murray, Young & Tennent, Session Cases, (Ireland) Brown, High Court of Justiciary, (Ireland.) Bingham, C. P., 1 to Bligh, House of Lords. Bligh, New Series. Carrington & Kirwan, N. P. Carrington & Marshman, N. P., C. P. and Exch. Carrington & Payne, N. P., Q. P., C. P. Exch. Carrow, Hammerton & Allen, Magistrates' Cases., Clark & Finnelly, H. of Lords. Collyer, Chancery. Connor & Lawson, Chancery, (Ireland.) Cooper, Chancery Practice Caset. Cooper tempore Brougham, Chancery. Craig & Phillips, Chancery. Crawford & Dix, Abridged Cases in all the Courts, (Ireland.) Crawford & Dix, Circuit Cases, (Ireland) Curtis, Ecclesiastical. Davison & Manning, Q. B. Deacon, Bankruptcy. Denison, Crown Cases, reserved. De Gex & Smales, Chancery. Dow & Clark, H. of L. Dowling & Lowndes, Points of Practice. Dowling, Practice

Cases Dowling, New Series. Drury & Walsh, Chancery, (Ireland) Drury & Warren, Chancery, (Ireland) Dunlap, Bell, Murray, Sessions Cases, (Ireland) Dunlap, BeIl, Murray & Donaldson, Sessions cases, (Ireland.) Exchequer Reports, by Welshy, Hurstone & Gordon. Falconer & Fitzherbert, Election. Flanagan & Kelle, Rolls, (Ireland.) Gale & Davison, K. B. Haggard, Admiralty, Hare, Chancery. Jebb & Bourke, Q. B., (Ireland.) Jebb & Symes, K. B., (Ireland.) Jones & Latouche, Q. B., (Ireland.) Jones Exchequer, (Ireland.) Jones & Carey, Exchequer, (Ireland.) Keen, Rolls. Law Recorder, in all the Courts, (Ireland.) Longfield & Townsend, Exch., (Ireland.) McLean & Robinson, H. of L (Ireland.) Manning & Granger, C. P. Manning, Granger & Scott, C. P. Meeson & Welshy, Exch. Montagu & Ayrton, Bankruptcy. Montagu & Chitty, Bankruptcy. Montagu, Deacon & De Gex, Bankruptcy. Montagu & Neale, Election. Moody, N. P. and Crown Cases. Moodv & Robinson, Nisi Prius. Moore, Appeal Cases. Moore, East India Appeals. Moore, Privy Council. Mylne & Craig, Chancery. Neville & Perry, K. B. Perry & Davidson, K. B., Phillips, Chancery. Robinson, Admiralty. Robinson, House of Lords. Sausse & Scully, Rolls, (Ireland.) Scott, C. P. Scott, New Series. Shaw & Maclean, House of Lords. Smyth; C. P., (Ireland.) Simons, Vice-Chancellor. Welsh, Registry Cases, (Ireland.) West, Parl. Reports. Younge & Collyer, Equity Ex.

REPRESENTATIVE. One who represents or is in the place of another.

2. In legi4lation, it signifies one who has been elected a moraber of that branch of the legislature called the house of representatives.

3. A representative of a deceased person, sometimes called a "personal representative," or legal personal representative," is one who is executor or administrator of the person described. 6 Madd. 159; 5 yes. 402.

REPRESENTATIVE DEMOCRACY. A form of government where the powers of the sovereignty are delegated to a body of men, elected from time to time, who exercise them for the benefit of the whole nation. 1 Bouv. Inst. n. 31.

TO REPRESENT. To exhibit; to expose before the eyes: to represent a thing is to produce it publicly. Dig. 10, 4, 2, 3.

REPRESENTATION, insurances. A representation is a collateral statement, either by writing not inserted in the policy, or by parol, of such facts or circumstances relative to the proposed adventure, as are necessary to be communicated to the underwriters, to enable them to form a just estimate of the risk.

2. A representation, like a warranty, may be either affirmative, as where the insured avers the existence of some fact or circumstance which may affect the risk; or promissory, as where he engages the performance of, something executory.

3. There is a material difference between a representation and a warranty.

4. A warranty, being a condition upon which the contract is to take effect, is always a part of the written policy, and must appear on the face of it. Marsh. Ins. c. 9, §2. Whereas a representation is only a matter of collateral information or intelligence on the subject of the voyage insured, and makes no part of the policy. A warranty being in the nature of a condition precedent, must be strictly and literally complied with; but it is sufficient if the representation be true in substance, whether a warranty be material to the risk or not, the insured stakes his claim of indemnity upon the precise truth of it, if it be affirmative, or upon the exact performance of it, if executory; but it is sufficient if a representation be made without fraud, and be not false in any material point, or if it be substantially, though not literally, fulfilled. A false warranty avoids the policy, as being a breach of the condition upon which the contract is to take effect; and the insurer is not liable for any loss though it do not happen in consequence of the breach of the warranty; a false representation is no breach of the contract, but if material, avoids the policy on the ground of fraud, or at least because the insurer has been misled by it. Marsh. Insur. B. 1, c. 10, s. 1; Dougl. R. 247: 4 Bro. P. C. 482. See 2 Caines' R. 155; 1 Johns. Cas. 408; 2 Caines' Cas. 173, n.; 3 Johns. Cas. 47; 1 Caines' Rep. 288; 2 Caines' R. 22; Id. 329; Sugd. Vend. 6; Bouv. Inst. Index, h. t. and Concealment; Misrepresentation.

REPRESENTATION, Scotch law. The name of a plea or statement presented to a lord ordinary of the court of sessions, when his judgment is brought under review.

REPRESENTATION OF PERSONS; A fiction of the law, the effect of which is to put the representative in the place, degree, or right of the person represen-ted.

2. The heir represents his ancestor. Bac. Abr. Heir and Ancestor, A. The devisee, his testator; the executor, his testator; the administrator, his intestate; the successor in corporations, his predecessor. And generally speaking they are entitled to the rights of the persons whom they represent, and bound to fulfil the duties and obligations, which were binding upon them in those characters.

3. Representation was unknown to the Romans, and was invented by the commentators and doctors of the civil law. Toull. Dr. Civ. Fr. liv. 3, t. 1, c. 3, n. 180. Vide Ayl. Pand. 397; Dall. Diet. mot Succession, art. 4, §2.

REPRIEVE, crim. law practice. This term is derived from reprendre, to take back, and signifies the withdrawing of a sentence for an interval of time, and operates in delay of execution. 4 Bl. Com. 394. It is granted by the favor of the pardoning power, or by the court who tried the prisoner.

3. Reprieves are sometimes granted ex necessitate legis; for example, when a woman is convicted of a capital offence, after judgment she may allege pregnancy in delay of execution. In order, however, to render this plea available she must be quick with child, (q. v.) the law presuming, perhaps absurdly enough, that before that period, life does not commence in the foetus. 3 Inst. 17; 2 Hale, 413; 1 Hale, 368; 4 Bl. Com. 395.

4. The judge is also bound to grant a reprieve when the prisoner becomes insane. 4 Harg. St. Tr. 205, 6; 3 Inst. 4; Hawk B. 1, c. 1, s. 4; 1 Chit. Cr. Law, 757.

REPRIMAND, punishment. The censure which in some cases a public office pronounces against an offender.

2. This species of punishment is used by legislative bodies to punish their members or others who have been guilty of some impropriety of conduct towards them. The reprimand is usually pronounced by the speaker.

REPRISALS, war. The forcibly taking a thing by one nation which belonged to another, in return or satisfaction for a injury committed by the latter on the former. Vatt. B., 2, ch. 18, s. 342; 1 Bl. Com. ch. 7.

2. Reprisals are used between nation and nation to do themselves justice, when they cannot otherwise obtain it. Congress have the power to grant letters of marque (q. v.) and reprisal. Const. art. 1, s. 8 cl. 11.

3. Reprisals are made in two ways either by embargo, in which case the act is that of the state; or, by letters of marque and reprisals, in which case the act is that of the citizen, authorized by the government. Vide 2 Bro. Civ. Law, 334.

4. Reprisals are divided into negative, when a nation refuses to fulfil a perfect obligation, which it has contracted, or to permit another state to enjoy a right which it justly claims; or positive, when they consist in seizing the persons and effects belonging to the other nation, in order to obtain satisfaction.

5. They are also general or special. They are general when a state which has received, or supposes it has received an injury from another nation delivers commissions to its officers and subjects to take the persons and property belonging to the other nation, in retaliation for such acts, wherever they may be found. It usually amounts to a

declaration of war. Specia reprisals are such as are granted in times of peace, to particular individuals who have suffered an injury from the citizens or subjects of the other nation. Bynker. Quaest. Jur. Pub. lib. 1, Duponce, au's Translation, p. 182, note; Dall. Diet. Prises maritimes, axt. 2, §5.

6. The property seized in making reprisals is preserved, while there is any hope of obtaining satisfaction or justice, as soon as that hope disappears, it is confiscated, and then the reprisal is complete. Vattel, B. 2, c. 18, §342.

REPRISES. The deductions and payments out of lands, annuities, and the like, are called reprises, because they are taken back; when we speak of the clear yearly value of an estate, we say it is worth so much a year ultra reprises, besides all reprises.

2. In Pennsylvania, lands are not to be sold when the rents can pay the encumbrances in seven years, beyond all reprises.

REPROBATION, eccl. law. The propounding exceptions either against facts, persons or things; as, to allege that certain deeds or instruments have not been duly and lawfully executed; or that certain persons are such that they are incompetent as witnesses; or that certain things ought not for legal reasons to be admitted.

REPUBLIC. A commonwealth; that form of government in which the administration of affairs is open to all the citizens. In another sense, it signifies the state, independently of its form of government. 1 Toull. n. 28, and n. 202, note. In this sense, it is used by Ben Johnson. Those that, by their deeds make it known, whose dignity they do sustain; And life, state, glory, all they gain, Count the Republic's, not their own, Vide Body Politic; Nation; State.

REPUBLICAN GOVERNMENT. A government in the republican form; a government of the people; it is usually put in opposition to a monarchical or aristocratic government.

2. The fourth section of the fourth article of the constitution, directs that "the United States shall guaranty to every state in the Union a republican form of government." The form of government is to be guarantied, which supposes a form already established, and this is the republican form of government the United States have undertaken to protect. See Story, Const. §1807.

REPUBLICATION. An act done by a testator from which it can be concluded that be intended that an instrument which had been revoked by him, should operate as his will; or it is the re-execution of a will by the testator, with a view of giving it full force and effect.

2. The republication is express or implied. It is express when there has been an actual re-execution of it; 1 Ves. 440; 2 Rand. R. 192; 9 John, R. 312; it is implied when, for example, the testator by a codicil executed according to the statute of frauds, reciting that he had made his will, added, "I hereby ratify and confirm my said will, except in the alterations after mentioned." Com. R. 381.; 3 Bro. P. C. 85, The will might be at a distance, or not in the power of the testator, and it may be thus republished. 1 Ves. 437; 3 Bing. 614; 1 Ves. jr. 486; 4 Bro. C. C. 2.

3. The republication of a will has the effect; 1st. To give it all the force of a will made at the time of the republication; if, for example, a testator by his will devise "all his lands in A," then revokes his will, and afterwards buys other lands in A, the republication, made after the purchase, will pass all the testator's lands in A. Cro. Eliz. 493. See 1 P. Wms. 275. 2d. It sets up a will which had been revoked. See, generally, 2 Hill. Ab. 509; 3 Lomax, Dig. tit. 28, c. 6; 2 Bouv. Inst. n. 216 4.

TO REPUDIATE. To repudiate a right is to express in a sufficient manner, a determination not to accept it, when it is offered.

2. He who repudiates a right cannot by that act transfer it to another. Repudiation differs from renunciation in this, that by the former he who repudiates simply declares that he will not accept, while he who renounces a right does so in favor of another. Renunciation is however sometimes used in the sense of repudiation. See To Renounce; Renunciation; Wolff, Inst. 339.

REPUDIATION. In the civil law this term is used to signify the putting away of a wife or a woman betrothed.

2. Properly divorce is used to point out the separation of married persons; repudiation, to denote the separation either of married people, or those who are only affianced. Divortium est repudium et separatio maritorum; repodium est renunciatio sponsalium, vel etiam est divortium. Dig. 50, 16, 101, 1. Repudiation is also used to denote a determination to have nothing to do with any particular thing; as, a repudiation of a legacy, is the abandonment of such legacy, and a renunciation of all right to it.

3. In the canon law, repudiation is the refusal to accept a benefice which has been conferred upon the party repudiating.

REPUGNANCY, contracts. That which in a contract, is inconsistent with something already contracted for; as, for example, where a man by deed grants twenty acres of land, excepting one, this latter clause is repugnant, and is to be rejected. But if a farm or tract of land is conveyed by general terms, in exception of any number of acres, or

any particular lot, it is not repugnant, but valid. 4 Pick. 54; Vide 3 Pick. 272; 6 Cowen, 677.

REPUGNANCY, pleading. Where the material facts stated in a declaration or other pleading, are inconsistent one with another for example, where in an action of trespass, the plaintiff declared for taking and carring away certain timber, lying in a certain place, for the completion of a house then lately built; this declaration was considered bad, for repugnancy; for the timber could not be for the building of a house already built. 1 Salk. 213.

2. Repugnancy of immaterial facts, and what is merely redundant, and which need not have been put into the sentence, and contradicting what was before alleged, will not, in general, vitiate the pleading. Gilb. C. P. 131; Co. Litt. 303 b; 10 East, R. 142; 1 Chit. Pl. 233. See Lawes, Pl. 64; Steph. Pl. 378; Com. Dig. Abatement H 6; 1 Vin. Ab. 36; 19 Id. 45; Bac. Ab. Amendment, &c. E 2 Bac. Ab. Pleas, Ac. I 4 Vin. Ab. h. t.

REPUGNANT. That which is contrary to something else; a repugnant condition is one contrary to the contract itself; as, if I grant you a house and lot in fee, upon condition that you shall not aliens, the condition is repugnant and void. Bac. Ab. Conditions, L.

REPUGNANT CONDITION. One which is contrary to the contract itself; as, if I grant you a house and lot in fee, upon condition that you shall not aliens, the condition is repugnant and void, as being consistent with the right granted.

REPUTATION, evidence. The opinion generally entertained by persons who know another, as to his character, (q. v.) or it is the opinion generally entertained by person; who know a family as to its pedigree, and the like.

2. In general, reputation is evidence to prove, 1st. A man's character in society. 2d. A pedigree. (q. v.) 3d. Certain prescriptive or customary rights and obligations and matters of public notoriety. (q. v.) But as such evidence is in its own nature very weak, it must be supported. 1st. When it relates to the exercise of the right or privilege, by proof of acts of enjoyment of such right or privilege, within the period of living memory; 1 Maule & Selw. 679; 5 T. R. 32; afterwards evidence of reputation may be given. 2d. The fact must be of a public nature. 3d. It must be derived from persons likely to know the facts. 4th. The facts must be general and, not particular. 5th. They must be free from suspicion. 1 Stark. Ev. 54 to 65. Vide 1 Har. & M'H. 152; 2 Nott & M'C. 114 5 Day, R. 290; 4 Hen. & M. 507; 1 Tayl. R. 121; 2 Hayw. 3; 8 S. & R. 159; 4 John. R. 52; 18 John. R. 346; 9 Mass. R. 414; 4 Burr. 2057; Dougl. 174; Cowp. 594; 3 Swanst. 400; Dudl. So. Car. R. 346; and arts. Character; Memory.

REQUEST, contracts. A notice of a desire on the part of the person making it, that the other party shall do something in relation to a contract.

2. In general when a debt exists payable immediately, the law does not impose on the creditor to make a request of payment. But when by the express terms of a contract, a request is necessary, it must be made. And in some cases where there is no express agreement a request is also requisite; as where A sells a horse to B to be paid for on delivery, a demand or request to deliver must be made before B can sustain an action; 5 T. R. 409; 1 East, 209; or, it must be shown that A has incapacitated himself to deliver the horse because he has sold the horse to another person. 10 East. 359; 5 B. & A. 712. On a general promise to marry, a request must be made before action, unless the proposed defendant has married another. 2 Dow. & Ry. 55. Vide Demand.

3. A request, like a notice, ought to be in writing and state distinctly what is required to be done without any ambiguous terms. 1 Chit. Pr. 497, 498.

REQUEST, pleading. The statement in the plaintiff's declaration that a demand or request has been made by the plaintiff from the defendant, to do some act which he was bound to perform, and for which the action is brought.

2. A request is general or special. The former is called the licet saepius requisitus, (q. v.) or "although often requested so to do;" though generally inserted in the common breach to the money counts, it is of no avail in pleading, and the omission of it will not vitiate the declaration. 2 Hen. Bl. 131; 1 Bos. & Pull. 59, 60; and see 1 John. Cas. 100. Whenever it is essential to the cause of action, that the plaintiff should have requested the defendant to perform his contract, such request must be stated in the declaration and proved. The special request must state by whom, and the time and place when it was made, in order that the court may judge of its sufficiency. 1 Str. 89. , Vide Com. Dig. Pleader, C 69, 70; 1 Saund. 33; 2 Ventr. 75; 3 Bos. & Pull. 438; 3 John. R. 207; 1 John. Cas. 319; 10 Mass. R. 230; 3 Day's R. 327; and the articles Demand; Licet saepius requisitus.

REQUEST NOTES, Engl. law. Certain notes or requests from persons amenable to the excise laws, to obtain a permit for removing any excisable goods or articles from one place to another.

REQUISITION. The act of demanding a thing to be done by virtue of some right. 2. The constitution of the United States, art. 4, s. 2, provides that fugitives from justice shall be delivered up to the authorities of the state from which they are fugitives, on the demand of the executive from such state. The demand made by the governor of one state on the governor of another for a fugitive is called a requisition.

RES, property. Things. The terms "Res," "Bona," "Biens," used by jurists who have written in the Latin and French languages, are intended to include movable or personal, as well as immovable or real property. 1 Burge, Confl. of Laws, 19. See Biens; Bona; Things.

RES GESTA, evidence. The subject matter; thing done.

2. When it is necessary in the course of a cause to inquire into the nature of a particular act, or the intention of the person who did the act, proof of what the person said at the time of doing it, is admissible evidence, as part of the res gesta, for the purpose of showing its true character. On an indictment for a rape, for example, what the girl said so recently after the fact as to exclude the possibility of practising on her, has been held to be admissible evidence, as a part of the transaction. East, P. C. 414; 2 Stark. Cas. 241; 1 Stark. Ev. 47; 1 Phil. Ev. 218: Bouv. Inst. Index, h. t.

RES INTEGRA. An entire thing; an entirely new or untouched matter. This term is applied to those points of law which have not been decided, which are "untouched by dictum or decision." 3 Meriv. R. 269; 1 Burge on the Confl. of Laws, 241.

RES INTER ALIOS ACTA, evidence. This is a technical phrase which signifies acts of others, or transactions between others.

2. Neither the declarations nor any other acts of those who are mere stran-gers, or, as it is usually termed, any res inter alios ada, are admissible in evidence against any one when the party against whom such acts are offered in evidence, was privy to the act, the objection ceases; it is no longer res inter alios. 1 Stark Ev. 52; 3 Id 1300.

RES TUDIC ATA, practice. The decision of a legal or equitable issue, by a court of competent jurisdiction.

2. It is a general principle that such decision is binding and conclusive upon all other courts of concurrent power. This principle pervades not only our own, but all other systems of jurisprudence, and has become a rule of universal law, founded on the soundest policy. If, therefore, Paul sue Peter to recover the amount due to him upon a bond and on the trial the plaintiff fails to prove the due execution of the bond by Peter, in consequence of which a verdict is rendered for the defendant, and judgment is entered thereupon, this judgment, till reversed on error, is conclusive upon the parties, and Paul cannot recover in a subsequent suit, although he may then be able to prove the due execution of the bond by Peter, and that the money is due to him, for, to use the language of the civilians, res judicata facit ex albo nigrum, ex nigro album, ex curvo redum, ex recto curvum.

3. The constitution of the United States and the amendments to it declare, that no fact, once tried by a jury, shall be otherwise reexaminable in any court of the United States than according to the rules of the common law. 3 Pet. 433; Dig. 44, 2; and Voet, Ibid; Kaime's Equity, vol. 2, p. 367; 1 Johns. Ch. R. 95; 2 M. R. 142; 3 M. R. 623; 4 M. R. 313, 456, 481; 5 M. R. 282, 465; 9 M. R. 38; 11 M. R. 607; 6 N. S. 292; 5 N. S. 664; 1 L. R. 318; 8 L. R. 187; 11 L. R. 517. Toullier, Droit Civil Francais, vol. 10, No. 65 to 259.

4. But in order to make a matter res judicata there must be a concurrence of the four conditions following, namely: 1. Identity in the thing sued for. 2. Identity of the cause of action; if, for example, I have claimed a right of way over Blackacre, and a final judgment has been rendered against me, and afterwards I purchase Blackacre, this first decision shall not be a bar to my recovery, when I sue as owner of the land, and not for an easement over it, which I claimed as a right appurtenant to My land Whiteacre. 3. Identity of persons and of parties to the action; this rule is a necessary consequence of the rule of natural justice: ne inauditus condemnetur. 4. Identity of the quality in the persons for or against whom the claim is made; for example, an action by Peter to recover a horse, and a final judgment against him, is no bar to an action by Peter, administrator of Paul, to recover the same horse. Vide, Things adjudged.

RES MANCIPI, Rom. civ. law. Those things which might be sold and alienated, or the property of them transferred from one person to another. The division of things in to res mancipi and res nec mancipi, was one of ancient origin, and it continued to a late period in the empire. Res mancipi (Ulph. Frag. xix.) are praedia in italico solo, both rustic and urban also, jura rusticorum praediorum or servitutes, as via, iter, aquaeductus; also slaves, and four-footed animals, as oxen, horses, &c., qum collo dorsove domantur. Smith, Diet. Gr. and Rom. Antiq. To this list, may be added children of Roman parents, who were, according to the old law, res mancipi. The distinction between res mancipi and nec mancipi was abolished by Justinian in his code. Id.; Coop. Ins. 442.

RES NOVA. Something new; something not before decided.

RES NULLIUS. A thing which has no owner. A thing which has been abandoned by its owner is as much res nullius as if it had never belonged to any one.

2. The first possessor of such a thing becomes the owner, res nullius fit primi occupantis. Bowy. Com. 97.

RES PERIT DOMINO The thing is lost to the owner. This phrase is used to express that when a thing is lost or destroyed, it is lost to the person who was the owner of it at the time. For example, an article is sold; if the seller have perfected the title of the

buyer so that it is his, and it be destroyed, it is the buyer's loss; but if, on the contrary, something remains to be done before the title becomes vested in the buyer, then the loss falls on the seller. See Risk.

RES UNIVERSATIS. Those things which belong to cities or municipal corporations are so called; they belong so far to the public that they cannot be appropriated to private use; such as public squares, market houses, streets, and the like. 1 Bouv. Inst. n. 446.

RESALE. A second sale made of an article; as, for example, if A sell a horse to B, and the latter not having paid, for him, refuse to take him away, when by his contract he was bound to do so, and then A sells the horse to C.

2. The effect of a resale, is not always to annul the first sale, because, as in this case, B would be liable to A for the difference of the price between the sale and resale. 4 Bing. 722; Blackb. on Sales, 336; 4 M. & G. 898.

RESCEIT. The act of receiving or admitting a third person to plead his right in a cause commenced by two; as when an action is brought against a tenant for life or term of years, the reversioner is allowed to defend. Cowell.

RESCEIT or RECEIT. The admission or receiving of a third person to plead his right in a cause formerly commenced between two other persons; as, when an action is brought against a tenant for life or years, or any other particular tenant, and he makes default, in such case the reversioner may move that he may be received to defend his right, and to plead with the demandant. Jacob, L. D. h. t. Resceit is also applied to the admittance of a plea, when the controversy is betweeen the same two persons. Co. Litt. 192; 3 Nels. Ab. 146.

RESCISSION OF A CONTRACT. The destruction or annulling of a contract.

2. The right to rescind a contract seems to suppose not that the contract has existed only in appearance; but that it has never had a real existence on account of the defects which accompanied it; or which prevented its actual execution. 7 Toul. n. 551 17 Id. n. 114.

3. A contract cannot, in general, be rescinded by one party unless both parties can be placed in the same situation, and can stand upon the same terms as existed when the contract was made. 5 East, 449; 15 Mass. 819; 5 Binn. 355; 3 Yeates, 6. The most obvious instance of this rule is, where one party by taking possession, &c., has received a partial benefit from the contract. Hunt v. Silk. 5 East, 449.

4. A contract cannot be rescinded in part. It would be unjust to destroy a contract in toto, when one of the parties has derived a partial benefit, by a performance of the agreement. In such case it seems to have been the practice formerly to allow the vendor to recover the stipulated price, and the vendee to recover, by a cross-action, damages for the breach of the contract. 7 East, 480, in the note. But according to the later and more convenient practice, the vendee, in such case, is allowed in an action for the price, to give evidence of the inferiority of the goods in reduction of damages, and the plaintiff who has broken his contract is not entitled to recover more than the value of the benefit the defendant has actually derived from the goods or labor; and when the latter has derived no benefit, the plaintiff cannot recover at all. Stark. on Evidence, part 4, tit. Goods sold and delivered; Chitty on Contr. 276.

5. A sale of land, by making a deed for the same, and receiving security for the purchase money, may be rescinded before the deed has been recorded, by the purchaser surrendering the property and, the deed to the buyer, and receiving from him the securities he had given; in Pennsylvania, these acts revest the title in the original owner. 4 Watts, 196, 199. But this appears contrary to the current of decisions in other states and in England. 4 Wend. 474; 2 John. 86; 5 Conn. 262; 4 Conn. 350; 4 N. H. Rep. 191; 9 Pick. 105; 2 H. Bl. 263, 264; Pre. in- Chan. 235; 6 East, 86; 4 B. & A. 672. See 7 East, 484; 1 Mass. R. 101 14 Mass. 282; Whart on's Dig. 119, 120 10 East, 564; 1 Campb. 78, 190; 3 Campb. 451; 3 Starkie, 32; 1 Stark. R. 108; 2 Taunt. 2; 2 New Rep. 136; 6 Moore, 114; 3 Chit. Com. L. 153; 1 Saund. 320, b. note; l Mason, 437; 1 Chip. R. 159; 2 Stark. Ev. 97, 280 8 lb. 1614, 1645 3 New Hamp. R. 455; 2 South, R. 780 Day's note to Templer v. McLachlan, 2 N. R. 141; 1 Mason, 93; 20 Johns. 196; 5 Com. Dig. 631, 636; and Com. Dig. Action upon the case upon Assumpsit, A 1, note x, .p. 829, for a very full note; Com. Dig. Biens, D 3, n. s.

6. As to the cases where a contract will be rescinded in equity on the ground of mistake, see Newl. Cont. 432; or where heirs are dealing with, their expectancies, lbid. 435; sailors with their prize money, Ibid. 443; children dealing with their parents, Ibid. 445; guardians with their wards, Ibid. 448; attorney with his client, Ibid. 453; cestui que trust, with trustee, Ibid. 459; where contracts are rescinded on account of the turpitude of their consideration, Ibid. 469; in fraud of marital rights, Ibid. 424 in fraud of marriage agreement, Ibid. 417 on account of imposition, Ibid. 351; in fraud of creditors, lb. 369; in fraud of purchasers, Ib. 391; in fraud of a deed of composition by creditors, lb. 409.

RESCOUS, crim. law, torts. This word is used synonymously with rescue, (q. v.) and denotes the illegal taking away and setting at liberty a distress taken, or a person arrested by due process of law. Co. Litt. 160.

2. In civil cases when a defendant is rescued the officer will or will not be liable, as the process under which the arrest is made, is or is not final. When the sheriff executes a fi. fa. or ca. sa. he may take the posse comitatus; Show. 180; and, neglecting to do so, he is responsible; but on mesne or original process, if the defendant rescue himself, vi et armis, the sheriff is not answerable. 1 Holt's R. 537; 3 Engl. Com. Law Rep. 179, S. C. Vide Com. Dig. h. t.; Yelv. 51; 2 T. R. 156; Woodf. T. 521 Bac. Ab. Rescue, D; Doct. Pl. 433.

RESCRIPT, conv. A counterpart.

2. In the canon law, by rescripts are understood apostolical letters, which emanate from the pope, under whatever form they may be. The answers of the pope in writing are so called. Diet. Dr. Can. h. v. Vide Chirograph; Counterpart; Part.

RESCRIPTION, French law. A rescription is a letter by which the maker requests some one to pay a certain sum of money, or to account for him to a third person for it. Poth. Du Contr. de Change, n. 225.

2. According to this definition, bills of exchange are a species of rescription. The difference appears to be this, that a bill of exchange is given when there has been a contract of exchange between the drawer and the payee; whereas the rescription is sometimes given in payment of debt, and at other times it is lent to the payee. Id.

RESCRIPTS, civ. law. The answers of the prince at the request of the parties respecting some matter in dispute between them, or to magistrates in relation to some doubtful matter submitted to him.

2. The rescript was differently denominated, according to the character of those who sought it. They were called annotations or subnotations, when the answer was given at the request of private citizens; letters or epistles, when he answered the consultation of magistrates; pragmatic sanctions, when he answered a corporation, the citizens of a province, or a municipality. Lecons El. du Dr. Rom. §53; Code, 1, 14, 3.

RESCUE, crim. law. A forcible setting at liberty against law of a person duly arrested. Co. Litt. 160; 1 Chitty's Cr, Law, *62; 1 Russ. on Cr. 383. The person who rescues the prisoner is called the rescuer.

2. If the rescued prisoner were arrested for felony, then the rescuer is a felon; if for treason, a traitor; and if for a trespass, he is liable to a fine as if he had committed the original offence. Hawk. B. 5, c. 21. If the principal be acquitted, the rescuer may nevertheless be fined for the misdemeanor in the obstruction and contempt of public justice. 1 Hale, 598.

3. In order to render the rescuer criminal, it is necessary he should have knowledge that the person whom he sets at liberty has been apprehended for a criminal offence, if he is in the custody of a private person; but if he be under the care of a public officer, then he is to take notice of it at his peril. 1 Hale, 606.

4. In another sense, rescue is the taking away and setting at liberty, against law, a distress taken for rent, or services, or damage feasant. Bac. Ab. Rescue, A.

5. For the law of the United States on this subject, vide Ing. Dig. 150. Vide, generally, 19 Vin. Ab. 94.

RESCUE, mar. war. The retaking by a party captured of a prize made by the enemy. There is still another kind of rescue which partake's of the nature of a recapture; it occurs when the weaker party before he is overpowered, obtains relief from the arrival of fresh succors, and is thus preserved from the force of the enemy. 1 Rob. Rep. 224; 1 Rob. Rep. 271.

2. Rescue differs from recapture. (q. v.) The rescuers do not by the rescue become owners of the property, as if it had been a new prize - but the property is restored to the original owners by the right of postliminium. (q. v.)

RESCUSSOR. The party making a rescue, is sometimes so called, but more properly he is a rescuer.

RESERVATION, contracts. That part of a deed or other instrument which reserves a thing not in esse at the time of the grant, but newly created. 2 Hill. Ab. 359; 3 Pick. R. 272; It differs from an exception. (q. v.) See 4 Verm. 622; Brayt. R. 230; 9 John. R. 73; 20 John, R. 87; 3 Ridg. P. C. 402; Co. Litt. 43 a; 2 Tho Co. Litt. 412

RESET OF THEFT, Scotch law. The receiving and keeping of stolen goods knowing them to be stolen, with a design of feloniously retaining them from the real owner. Alis. Pr. Cr. 328.

RESETTER, Scotch law. A receiver of stolen goods, knowing them to have been stolen.

RESIANCE. A man's residence or permanent abode. Such a man is called a resiant. Kitch. 33.

RESIDENCE. The place of one's domicil. (q. v.) There is a difference between a man's residence and his domicil. He may have his domicil in Philadelphia, and still he may have a residence in New York; for although a man can have but one domicil, he

may have several residences. A residence is generally tran-sient in its nature, it becomes a domicil when it is taken up animo manendi. Roberts; Ecc. R. 75.

2. Residence is prima facie evidence of national character, but this may at all times be explained. When it is for a special purpose and transient in its nature, it does not destroy the national character.

3. In some cases the law requires that the residence of an officer shall be in the district in which he is required to exercise his functions. Fixing his residence elsewhere without an intention of returning, would violate such law. Vide the cases cited under the article Domicil; Place of residence.

RESIDENT, international law. A minister, according to diplomatic language, of a third order, less in dignity than an ambassador, or an envoy. This term formerly related only to the continuance of the minister's stay, but now it is confined to ministers of this class.

2. The resident does not represent the prince's person in his dignity, but only his affairs. His representation is in reality of the same nature as that of the envoy; hence he is often termed, as well as the envoy, a minister of the second order, thus distinguishing only two classes of public ministers, the former consisting of ambassadors who are invested with the representative character in preeminence, the latter comprising all other ministers, who do not possess that exalted character. This is the most necessary distinction, and indeed the only essential one. Vattel liv. 4, c. 6, 73.

RESIDENT, persons. A person coming into a place with intention to establish his domicil or permanent residence, and who in consequence actually remains there. Time is not so essential as the intent, executed by making or beginning an actual establishment, though it be abandoned in a longer, or shorter period. See 6 Hall's Law Journ. 68; 3 Hagg. Eccl. R. 373; 20 John. 211 2 Pet. Ad. R. 450; 2 Scamm. R. 377.

RESIDUARY LEGATEE. He to whom the residuum of the estate is devised or bequeathed by will. Roper on Leg. Index, h. t.; Powell Mortg. Index, h. t.; 8 Com. Dig. 444.

RESIDUE. That which remains of something after taking away a part of it; as, the residue of an estate, which is what has not been particularly devised by will.

2. A will bequeathing the general residue of personal property, passes to the residuary legatee everything not otherwise effectually disposed of and it makes no difference whether a legacy falls into the estate by lapse, or as void at law, the next of kin is

equally excluded. 15 Ves. 416; 2 Mer. 392. Vide 7 Ves. 391; 4 Bro. C. C. 55; 1 Bro. C. C. 589; Rop. on Leg. Index, h. t.; Worth. on Wills, 454.

RESIGNATION. The act of an officer by which he declines his office, and renounces the further right to use it. It differs from abdication. (q. v.)

2. As offices are held at the will of both parties, if the resignation of a officer be not accepted, he remains in office. 4 Dev. R. 1.

RESIGNEE. One in favor of whom a resignation is made. 1 Bell's Com. 125 n.

RESISTANCE. The opposition of force to force.

2. Resistance is either lawful or unlawful. 1. It is lawful to resist one who is in the act of committing a felony or other crime, or who maliciously endeavors to commit such felony or crime. See self defence. And a man may oppose force to force against one who endeavors to make an arrest, or to enter his house without lawful authority for the purpose; or, if in certain cases he abuse such authority, and do more than he was authorized to do; or if it turn out in the result he has no right to enter, then the party about to be imprisoned, or whose house is about to be illegally entered, may resist the illegal imprisonment or entry by self-defence, not using any dangerous weapons, and may escape, be rescued, or even break prison, and others may assist him in so doing. 5 Taunt. 765; 1 B. & Adol, 166; 1 East, P. C. 295; 5 East, 304; 1 Chit. Pr. 634. See Regular and Irregular Process.

3. - 2. Resistance is unlawful when the persons having a lawful authority to arrest, apprehend, or imprison, or otherwise to advance or execute the public justice of the country, either civil or criminal, and using the proper means for that purpose, are resisted in so doing; and if the party guilty of such resistance, or others assisting him, be killed in the struggle, such homicide is justifiable; while on the other hand, if the officer be killed, it will, at common law, be murder in those who resist. Fost. 270; 1 Hale, 457; 1 East, P. C. 305.

RESOLUTION. A solemn judgment or decision of a court. This word is frequently used in this sense, in Coke and some of the more ancient reporters. It also signifies an agreement to a law or other thing adopted by a legislature or popular assembly. Vide Dict. de Jurisp. h. t.

RESOLUTION, Civil law. The act by which a contract which existed and was good, is rendered null.

2. Resolution differs essentially from rescission. The former presupposes the contract to have been valid, and it is owing to a cause posterior to the agreement that the resolution takes place; while rescission, on the contrary, supposes that some vice or defect annulled the contract from the beginning. Resolution may be by consent of the parties or by the decision of a competent tribunal; rescission must always be by the judgment of a court. 7 Troplong, de la Vente, n. 689; 7 Toull. 551; Dall. Dict. h. t.

RESOLUTORY CONDITION. On which has for its object, when accomplished, the revocation of the principal obligation; for example, I will sell you my crop of cotton, if my ship America does not arrive in the United States, within six months. My ship arrives in one month, my contract with you is revoked. 1 Bouv. Inst. n. 764.

RESORT. The authority or jurisdiction of a court. The supreme court of the United States is a court of the last resort.

RESPECTABLE WITNESS. One who is competent to testify in a court of justice. To pass lands in Alabama, a will must be attested by three or more respectable witnesses. See Attesting witness; Competent witness; Credible witness and Witness.

RESPIRATION, Med. jur. Breathing, which consists of the drawing into, inhaling, or more technically, inspiring, atmospheric air into the lungs, and then: forcing out, expelling, or technically expiring, from the lungs the air therein. Chit. Med. Jur. 92 and 416, note n.

RESPITE, contracts, civil law. An act by which a debtor who is unable to satisfy his debts at the moment, transacts (i. e. compromises) with his creditors, and obtains from them time or delay for the payment of the sums which he owes to them. Louis. Code, 3051.

2. The respite is either voluntary or forced; it is voluntary when all the creditors consent to the proposal, which the debtor makes to pay in a limited time the whole or a part of his debt; it is forced when a part of the credi-tors refuse to accept the debtor's proposal, and when the latter is obliged to compel them by judicial authority, to consent to what the others have deter-mined in the cases directed by law. Id. 3052; Poth. Proced. Civ. 5eme partie, ch. 3.

3. In Pennsylvania, there is a provision in the insolvent act of June 16, 1836, s. 41, somewhat similar to involuntary respite. It is enacted, that whenever a majority in number and value of the creditors of any insolvent, as aforesaid, residing within the United States, or having a known attorney therein, shall consent in writing thereto, it shall be lawful for the court by whom such insolvent shall have been discharged, upon the application of such debtor, and notice given thereof, in the manner hereinbefore

provided for giving notice of his original petition, to make an order that the estate and effects which such insolvent may afterwards acquire, shall be exempted for the term of seven years thereafter from execution, for any debt contracted, or cause of action existing previously to such discharge, and if after such order and consent, any execution shall be issued for such debt or cause of action, it sliall be the duty, of any judge of the court from which such execution issued, to set aside the same with costs.

4. Respite also signifies a delay, forbearance or continuation of time.

RESPITE, crim. law. A suspension of a sentence, which is to be executed at a future time. It differs from a pardon, which is in abolition of the crime. See Abolition; Pardon.

RESPONDEAT OUSTER. The name of a judgment when an issue in law, arising on a dilatory plea, has been decided for the plaintiff, that the defendant answer over. See 1 Meigs, 122; 1 Ala. R. 442; 3 Ala. R. 278; 3 Pike, 339; 4 Pike, 445; 4 Misso. R. 366; 5 Blackf. 167; 5 Metc. 88; 1 Gilm. R. 395 16 Conn. 436; 24 Pick. 49. Vide Judgment of Respondeat Ouster.

RESPONDENT, practice. The party who makes an answer to a bill or other proceeding in chancery. In the civil law, this term signifies one who answers or is security for another; a fidejussor. Dig. 2, 8, 6.

RESPONDENTIA, maritime law. A loan of money on maritime interest, on goods laden on board of a ship, which, in the course of the voyage must, from their nature, be sold or exchanged, upon this condition, that if the goods should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender shall lose his money; if not, that the borrower shall pay him the sum borrowed, with the interest agreed upon,

2. The contract is called respondentia, because the money is lent on the personal responsibility of the borrower. It differs principally from bottomry, in the following circumstances: bottomry is a loan on the ship; respondentia is a loan upon the goods. The money is to be repaid to the lender, with mari-time interest, upon the arrival of the ship, in the one case and of the goods, in the other. In all other respects the contracts are nearly the same, and are governed by the same principles. In the former, the ship and tackle, being hypothecated, are liable, as well as the person of the borrower; in the latter, the lender has, in general, only the personal security of the borrower. Marsh. Ins. B. 2, c. 1, p. 734. See Lex Mer. Amer. 354; Com. Dig. Merchant, E 4; 1 Fonb. Eq. 247, n. I.; Id. 252, n. o.; 2 Bl. Com. 457; Park. Ins. ch. 21; Wesk. Ins. 44; Beawes' Lex. Mex. 143; 3 Chitty's Com. Law, 445 to 536; Bac. Abr. Merchant and Merchandise, K; Bottomry.

RESPONDERE NON DEBET. The prayer of a plea where the defendant insists that he ought not to answer, as when he claims a privilege; for example, as being a member of congress, or a foreign amhassador. 1 Chit. Pl. *433.

RESPONSA PRUDENTUM, civil law. Opinions given by Roman lawyers. Before the time of Augustus, every lawyer was authorized de jure, to answer questions put to him, and all such answers, response prudentum had equal authority, which had not the force of law, but the opinion of a lawyer. Augustus was the first prince who gave to certain distinguished jurisconsults the particular privi-lege of answering in his name; and from that period their answers required greater authority. Adrian determined in a more precise manner the degree of authority which these answers should have, by enacting that the opinions of such authorized jurisconsults, when unanimously given, should have the force of law (legis vicenz,) and should be followed by the judges; and that when they were divided, the judge was allowed to adopt that which to him appeared the most equitable.

2. The opinions of other lawyers held the same place they had before, they were considered merely as the opinions of learned men. Mackel. Man. Intro. §43; Mackel. Hist. du Dr. Rom. SSSS 40, 49; Hugo, Hist. du Dr. Rom. §313; Inst. 1, 2, 8,; Institutes Expliquees, n. 39.

RESPONSALIS, old Eng. law., One who appeared for another in court. Fleta, lib. 6, c., 21. In the ecclesiastical law, this name is sometimes given to a proctor.

RESPONSIBILITY. The obligation to answer for an act done, and to repair any injury it may have caused.

2. This obligation arises without any contract, either on the part of the party bound to repair the injury, or of the party injured. The law gives to the person who has suffered loss, a compensation in damages.

3. it is a general rule that no one is answerable for the acts of another unless he has, by some act of his own, concurred in them. But when he has sanctioned those acts, either explicitly or by implication, he is responsible. An innkeeper in general, civilly liable for the acts of his servants towards his guests, for anything done in their capacity of servants. The owner of a carriage is also, civilly responsible to a passenger for any injury done by the driver as such. See Driver.

4. There are cases where persons are made civilly responsible for the acts of others by particular laws and statutory provisions, when they have not done anything by which they might be considered as participating in such acts. The responsibility which the hundred (q. v.) in England formerly incurred to make good any robbery committed

within its precincts, may be mentioned as an instance. A somewhat similar liability is incurred now in some places in this country by a county, when property has been destroyed by a mob.

5. Penal responsibility is always personal, and no one can be punished for the commission of a crime but the person who has committed it or his accomplice. Vide Damages; Injury; Loss.

RESTITUTION, maritime law. The placing back or restoring articles which have been lost by jettison; this is done when the remainder of the cargo has been saved at the general charge of the owners of the cargo; but when the remainder of the goods are afterwards lost, there is not any restitution. Stev. on Av. 1, c. 1, s. 1, art. 1, ii., 8. Vide Recompense.

RESTITUTION, practice. The return of something to the owner of it, or to the person entitled to it.

2. After property has been taken into execution, and the judgment has been reversed or set aside, the party against whom the execution was sued out shall have restitution, and this is enforced by a writ of restitution. Cro. Jac. 698; 4 Mod. 161. When the thing levied upon under an execution has not been sold, the thing itself shall be restored; when it has been sold, the price for which it is sold is to be restored. Roll. Ab. 778; Bac. Ab. Execution, Q; 1 Al. & S. 425.

3. The phrase restitution of conjugal rights frequently occurs in the ecclesiastical courts. A suit may there be brought for this purpose whenever either the hushand or wife is guilty of the injury of subtraction, or lives separate from the other without sufficient reason; by which the party injured may compel the other to return to cohabitation. 1 Bl. Com. 94; 1 Addams, R. 305; 3 Hagg. Eccl. R. 619.

TO RESTORE. To return what has been unjustly taken; to place the owner of a thing in the state in which he formerly was. By restitution is understood not only the return of the thing itself, but all its accessories. It is to return the thing and its fruits. Dig. 60, 16, 35, 75 et 246, §1.

RESTRAINING. Narrowing down, making less extensive; as, a restraining statute, by which the common law is narrowed down or made less extensive in its operation.

RESTRAINING POWERS. A term used in equity. When the donor of a power, who is the owner of the estate, imposes certain restrictions by the terms of the powers, these restrictions are called restraining powers.

RESTRAINT. Something which prevents us from doing what we would desire to do.

2. Restraint is lawful and unlawful. It is lawful when its object is to prevent the violation of the law, or the rights of others. It is unlawful when it is used to prevent others from doing a lawful act; for example, when one binds himself not to trade generally; but an agreement not to trade in a particular place is lawful. A legacy given in restraint of marriage, or on condition that the legatee shall not marry, is good, and the condition alone is void. The Roman civil law agrees with ours in this respect; a legacy given on condition that the legatee shall not marry is void. Clef des Lois Rom. mot Passion. See Condition; Limitation.

RESTRICTIVE INDORSEMENT, contracts. One which confines the negotiability of a promissory note or bill of exchange, by using express words to that effect, as by indorsing it "payable to A,B only." 1 Wash. C. C. 512; 2 Murph. 138; 1 Bouv. Inst. n. 1138.

RESULTING TRUSTS, estates. Resulting, implied or constructive trusts, are those which arise in cases where it would be contrary to the principles of equity that be in whom the property becomes vested, should hold it otherwise than as a trustee. 2 Atk. 150.

2. As an illustration of this description of a resulting trust, may be mentioned the case of a contract made for the purchase of a real estate; on the completion of the contract, a trust immediately results to the purchaser, and the vendor becomes a trustee for him till the conveyance of the legal estate is made. Again, when an estate is purchased in the name of one person, and the purchase money is paid by another, there is a resulting trust in favor of the person who gave or paid the consideration. Willis on Tr. 55; 1 Cruise, Dig. tit. 12, s. 40, 41; Ch. Ca. 39; 9 Mod. 78; 7 Ves. 725; 3 Hen. & Munf. 367; 1 Supp. to Ves. jr. 11; Pow. Mortg. Index, h. t.; 2 John. Ch. R. 409, 450; 3 Bibb, R. 15, 506; 4 Munf. R. 222; 1 John. Ch. Rep. 450, 582; Sugd. on Vend. ch. 15, s. 2 Cox, Ch. Rep. 93; Bac. Ab. Trusts, C; Bouv. last. Index, h. t. Vide Trusts; Use.

RESULTING USE, estates. One which having been limited by deed, expires or cannot vest; it then returns back to him who raised it, after such expiration, or during such impossibility.

2. When the legal seisin and possession of land is transferred by any common law conveyance, and no use is expressly declared, nor any consideration nor evidence of intent to direct the use, such use shall result back to the original owner of the estate; for in such case, it cannot be supposed that it was intended to give away the estate. 2 Bl. Com. 335; Cruise, Dig. t. 11, c. 4, s. 20, et seq.; Bac. Tracts, Read. on Stat. of Use's, 351; Co. Litt. 23, a.; Id. 271, a; 2 Binn. R. 387; 3 John. R. 396.

RESUMPTION. To reassume; to promise again; as, the resumption of payment of specie by the banks is general. It also signifies to take things back; as the government has resumed the possession of all the lands which have not been paid for according to the requisitions of the law, and the contract of the purchasers. Cow. Int. h. t.

RETAIL. To sell by retail, is to sell by small parcels, and not in the gross. 5 N. S. 279.

RETAILER OF MERCHANDISE. One who deals in merchandise by selling it in smaller quantities than he buys, generally with a view to profit.

TO RETAIN, practice. To engage the services of an attorney or counsellor to manage a cause, at which time it is usual to give him a fee, called the re-taining fee. The act by which the attorney is authorized to act in the case is called a retainer.

2. Although it is not indispensable that the retainer should be in writing, unless required by the other side, it is very expedient. It is therefore recommended, particularly when the client is a stranger, to require from him a written retainer, signed by himself; and, in order to avoid the insinuation that it was obtained by contrivance, it should be witnessed by one or more respectable persons. When there are several plaintiffs, it should be signed by all and not by one for himself and the others, especially if they are trustees or assignees of a bankrupt or insolvent. The retainer should also state whether it be given for a general or a qualified authority. Vide the form of a retainer in 3 Chit. Pr. 116, note m.

3. There is an implied contract on the part of an attorney who has been retained, that he will use due diligence in the course of legal proceedings, but it is not an undertaking to recover a judgment. Wright, R. 446. An attorney is bound to act with the most scrupulous honor, he ought to disclose to his client if he has any adverse retainer which may affect his judgment, or his client's interest; but the concealment of the fact does not necessarily imply fraud. 3 Mason's R. 305; 2 Greenl. Ev. §139.

RETAINER. The act of withholding what one has in one's own hands by virtue of some right.

2. An executor or administrator is entitled to retain in certain cases, for a debt due to him by the estate of a testator or intestate.

3. It is proposed to inquire, 1. Who may retain. 2. Against whom. 3. On what claims. 4. What amount may be retained.

4. - 1. In inquiring who may retain, it is natural to consider, 1st. Those cases where there is but one executor or administrator. 2d, Where there are several, and one of them only has a claim against the estate of the deceased.

5. - 1. A sole executor may retain in those cases where, if the debt had been due to a stranger, such stranger might have sued the executor and recov-ered judgment; or where the executor might, in the due administration of the estate, have paid the same. 3 Burr. 1380. He may, therefore, retain a debt due to himself; 3 Bl. Com. 18; or to himself in right of another; 3 Burr. 1380; or to another in trust for him; 2 P. Wms. 298: the debt may be retained when administration is committed to another for the use of the creditor who is a lunatic; 3 Bac. Abr. 10, n; Com. Dig. Administration, C or an infant entitled to administration. 4 Ves. 763. An executor may retain if he be the executor of the first testator; but an executor of one of the executors of the first tes-tator, the other executor, being still living, is not an executor of the first testator, and therefore cannot retain. 11 Vin. Abr. 363, An executor may re-tain before he has proved the will, and if he die after having intermeddled with the goods of the testator and before probate, his executor has the same power. 3 P. Wms. 183, and note B.; 11 Vin. Abr. 263.

6. - 2. Where there are several executors, and one has a claim against the estate of the deceased, he may retain with or without the consent of the others; Off. Ex. 33; but where several of them have debts of equal degree they can retain only pro rata. Bac. Abr. Executors, A 9.

7. - II. Against whom. In those cases, 1. Where the deceased was alone bound. 2. Where he was bound with others. 3. Where the executor of the obligee is also his executor.

8. - 1. Where the deceased was sole obligor, his executor may clearly retain.

9. - 2. Where two are jointly and severally bound, and one of them appoints the obligee his executor; Rob. 10; 2 Lev. 73; Bac. Abr. Executors, A 9; Com. Dig. Administration,, C 1; or the obligee takes out letters of administration to him, the debt is immediately satisfied by way of retainer, if, the executor or administrator have sufficient assets.

10. - 3. If the obligee make the administrator of the obligor his executor, it is a discharge of the debt, if the administrator have assets of the estate of the obligor; but if he have fully administered, or if no assests to pay the debt came to his hands, it is no discharge, for there is nothing for him to retain. 8 Serg. & Rawle, 17.

11. - III. On what claims. 1. As to the priority of the claim. 2. As to its nature.

12. - 1. In the payment of the debts of a decedent, the law gives a preference to certain debts over others, an executor cannot, therefore, retain his debt, while there are unpaid debts of a superior degree, because if he could have brought an action for the recovery of his claim, he could not have re-covered in prejudice of such a creditor. 5 Binn. 167 Bac. Ab. Executors, A 9; Com. Dig. Administration, C 2; 1 Hayw. 413. He may retain only where he has superior claim, or one of equal degree. 3 Bl. Com. 18; 11 Vin. Abr. 261; Com. Dig. Administration, C 1. And in a case where two men were jointly bound in a bond, one as principal, the other as surety, after which the principal died intestate, and the surety took out administration to his estate, the bond being forfeited, the administrator paid the debt; it was held he could not retain as a specially creditor because being a party to the bond it became his own debt; 11 Vin. Abr. 265; Godb. 149, Pl. 194; but see 7 Serg. & Rawle, 9; after having paid the debt, however, he became a simple contract creditor, and might retain it as such. Com. Dig. Administration, C 2, n.

13. - 2. As to the nature of the claim for which an executor may retain, it seems that damages which are in their nature arbitrary cannot be retained, because, till judgment, no man can foretel their amount; such are damages upon torts. But where damages arise from the breach of a pecuniary contract, there is a certain measure for them, and such damages may well be retained. 2 Bl. Rep. 965; and see 3 Munf. 222. A debt barred by the act of limitation may be retained, for the executor is not bound to plead the act against others, and it shall, therefore, not operate against him. 1 Madd. Ch. 583.

14. - IV. What amount may be retained. 1. By the common law an executor is entitled to retain his debt in preference to all other creditors in an equal degree. 3 Bl. Com. 18; 11 Vin. Abr. 261. This he might do, because he is to be placed in the situation of the most vigilant creditor, who by suing and obtaining a judgment might have obtained a preference. Where however, the exec-utor cannot, by bringing suit, obtain a preference, the reason seems changed, and therefore in Pennsylvania, when do such preference can be obtained, the executor is entitled to retain only pro rata with creditors of the same class. 8 Serg. & Rawle, 17; 5 Binn. 167. A creditor cannot obtain a reference by bringing suit and obtaining judgment against executors in the following states, namely: Alabama; 4 Griff. L. R. 582; Connecticut; 3 Griff. L. R. 75; Illinois; Id. 422; Louisiana;, 4 Griff. L. R. 693; Maine; Id. 1004; Maryland; Id. 938; Massachusetts; 3 Griff. L. R. 516 Mississippi; 4 Griff. L. R. 669; Missouri Id. 625; Now Hampshire; 3 Griff. L. R 46; Ohio; Id. 402; Pennsylvania; Id. 262; 8 Serg. & Rawle, 17; 5 Binn. 1 67; Rhode Island; 8 Griff. L. R. 114; South Carolina; 4 Griff. L. R. 860; Vermont; 3 Griff. L. R. 20. Such a preference can be given by the laws of the following states, namely: Delaware; 4 Griff. L. R. 1064; Kentucky; Id. 1135; North Carolina; 3 Griff. L. R. 221; Now Jersey; 4 Griff. L. R. 1282; New York; 3 Griff. L.

R, 141; Tennessee; 4 Griff. L. R. 791; Virginia; 3 Griff. L. R. 360, In Georgia; 3 Griff. L. R. 444; and Indiana.; Id. 467; the matter is doubtful.

15. - 2. Where the estate is solvent an executor may of course retain for the whole of his debt, with interest.

RETAINER, practice. The act of a client, by which he engages an attorney or counsellor to manage a cause, either by prosecuting it, when he is plaintiff, or defending it, when he is defendant.

2. "The effect of a retainer to prosecute or defend a suit," says Professor Greenleaf; Ev. vol. ii. §141; "is to confer on the attorney all the powers exercised by the forms and usages of the courts, in which the suit is pending. He may receive payment; may bring a second suit after being non-suited in the first for want of formal proof; may sue a writ of error on the judgment; may discontinue the suit; may restore an action after a non pros; may claim an appeal and bind his client in his name for the prosecution of it; way submit the suit to arbitration; may sue out an alias execution; may receive livery of seisin of land taken by an extent may waive objections to evidence, and enter into stipulation for the admission of facts or conduct of the trial and for release of bail; may waive the right of appeal, review, notice, and the like, and confess judgment. But he has no authority to execute a discharge of a debtor but upon the actual payment of the full amount of the debt, and that in money only; nor to release sureties; nor to enter a retraxit; nor to act for the legal representatives of his deceased client; nor to release a witness."

RETAINING FEE. A fee given to counsel on being consulted in order to insure his future services.

RETAKING. The taking one's goods, wife, child, &c., from another, who with-out right has taken possession thereof. Vide Recaption; Rescue.

RETALIATION. The act by which a nation or individual treats another in the same manner that the latter has treated them. For example, if a nation should lay a veryheavy tariff on American goods, the United States would be justified in return in laying heavy duties on the manufactures and productions of such country. Vatt. Dr. des Gens, liv. 2, c. 18, §341. Vide Lex talionis.

RETENTION, Scottish law. The right which the possessor of a movable has, of holding the same until he shall be satisfied for his claim either against such movable or the owner of it; a lien.

2. The right of retention is of two kinds, namely, special or general. 1. Special retention is the right of withholding or retaining property of goods which are in one's possession under a contract, till indemnified for the labor or money expended on them. 2. General retention is the right to withhold or detain the property of another, in respect of any debt which happens to be due by the proprietor to the person who has the custody; or for a general balance of accounts arising on a particular train of employment. 2 Bell's Com. 90, 91, 5th ed. Vide Lien.

RETORNO HABENDO. The name of a writ issued to compel a party to return property which has been adjudged to the other in an action of replevin. Vide Writ pro retorno habendo.

RETORSION, war. The name of the act employed by a government to impose the same hard treatment on the citizens or subjects of a state, that the latter has used towards the citizens or subjects of the former, for the purpose of obtaining the removal of obnoxious measures. Vattel, liv. 2, c. 18, §341; De Martens, Precis, liv. 8, c. 2, §254; Kluber, Droit dos Gens, s. 2 c. 1, §234; Mann. Comm. 105.

2. Retorsion signifies also the act by which an individual returns to his adversary evil for evil; as, if Peter call Paul thief, and Paul says you are a greater thief.

TO RETRACT. To withdraw a proposition or offer before it has been accepted.

2. This the party making it has a right to do is long as it has not been accepted; for no principle of law or equity can, under these circumstances, require him to persevere in it.

3. The retraction may be express, as when notice is given that the offer is withdrawn; or, tacit as by the death of the offering party, or his inability to complete the contract; for then the consent of one of the parties has been destroyed, before the other has acquired any existence; there can therefore be no agreement. 16 Toull. 55.

4. After pleading guilty, a defendant will, in certain cases where he has entered that plea by mistake or in consequence of some error, be allowed to retract it. But where a prisoner pleaded guilty to a charge of larceny, and sentence has been passed upon him, he will not be allowed to retract his plea, and plead not guilty. 9 C. & P. 346; S. C. 38 E. C. L. R. 146; Dig. 12, 4, 5.

RETRAXIT, practice. The act by which a plaintiff withdraws his. suit; it is so called from the fact that this was the principal word used when the law entries were in Latin.

2. A retraxit differs from a nonsuit, the former being the act of the plain-tiff himself, for it cannot even be entered by attorney; 8 Co. 58; 3 Salk.245; 8 P. S. R. 157, 163; and it must be after declaration filed; 3 Leon. 47; 8 P. S. R. 163; while the latter occurs in consequence of the neglect merely of the plaintiff. A retraxit also differs from a nolle prosequi. (q. v.) The effect of a retraxit is a bar to all actions of a like or a similar nature; Bac. Ab. Nonsuit, A; a nolle prosequi is not a bar even in a criminal prosecution. 2 Mass. R. 172. Vide 2 Sell. Pr. 338; Bac. Abr. Nonsuit; Com. Dig. Pleader, X 2. Vide article Judgment of retraxit.

RETRIBUTION. 1. That which is given to another to recompense him for what has been received from him; as a rent for the hire of a house. 2. A salary paid to a person for his services. 3. The distribution of rewards and punishments.

RETROCESSION, civil law. When the assignee of heritable rights conveys his rights back to the cedent, it is called a retrocession. Erskine, Prin. B. 3, t. 5, n. 1; Dict. do Jur. h. t.

RETROSPECTIVE. Looking backwards.

2. This word is usually applied to those acts of the legislature, which are made to operate upon some subject, contract or crime which existed before the passage of the acts, and they are therefore called retrorospective laws. These laws are generally unjust and are, to a certain extent, forbidden by that article in the constitution of the United States, which prohibits the passage of ex post facto laws or laws impairing contracts.

3. The right to pass retrospective laws, with the exceptions above mentioned, exists in the several states, according to their own constitutions, and become obligatory if not prohibited by the latter. 4 S. & R. 364; 3 Dall. R. 396; 1 Bay, R. 179; 7 John. R. 477; vide 4 S. & R. 403; 1 Binn. R. 601; 3 S. & R. 169; 2 Cranch. R. 272 2 Pet. 414; 8 Pet. 110; 11 Pet. 420; 1 Bald. R. 74; 5 Penn. St. R. 149. 4. An instance may be found in the laws of Connecticut. In 1795, the legislature passed a resolve, setting aside a decree of a court of probate disapproving of a will and granted a new hearing; it was held that the resolve not being against any constitutional principle in that state, was valid. 3 Dall. 386. And in Pennsylvania a judgment was opened by the act of April 1, 1837, which was holden by the supreme court to be constitutional. 2 Watts & Serg. 271.

5. Laws should never be considered as applying to cases which arose previously to their passage, unless the legislature have clearly declared such to be their intention. 12 L. R. 352 Vide Barringt. on the Stat. 466, n. 7 John. R. 477; 1 Kent, Com. 455; Tayl. Civil Law, 168; Code, 1, 14, 7; Bracton, lib. 4, fo. 228; Story, Cons. §1393; 1

McLean, Rep. 40; 1 Meigs, Rep. 437; 3 Dall. 391; 1 Blackf.R.193; 2 Gallis. R. 139; 1 Yerg. R. 360; 5 Yerg. R. 320; 12 S. & R. 330; and see Ex post facto.

RETURN, contracts, remedies. Persons who are beyond the sea are exempted from the operation of the statute of limitations of Pennsylvania, and of other states, till after a certain time has elapsed after their returning. As to what shall be considered a return, see 14 Mass. 203; 1 Gall. 342; 3 Johns. 263; 3 Wils. 145; 2 Bl. Rep. 723; 3 Littell's Rep. 48; 1 Harr. & Johns. 89, 350; 17 Mass. 180.

RETURN DAY. A day appointed by law when all writs are to be returned which have issued since the preceding return day. The sheriff is in general not required to return his writ until the return day. After that period he may be ruled to make a return.

RETURN OF WRITS, practice. A short account in writing, made by the sheriff, or other ministerial officer, of the manner in which he has executed a writ. Steph. on Pl. 24.

2. It is the duty of such officer to return all writs on the return day; on his neglecting to do so, a rule may be obtained on him to return the writ and, if he do not obey the rule, he may be attached for contempt. See 19 Vin. Ab. 171; Con]. Dig. Return; 2 Lilly's Abr. 476; Wood. b. 1, c. 7; 1 Penna. R. 497; 1 Rawle, R. 520; 3 Yeates, 17; 3 Yeates, 47; 1 Dall. 439.

REUS, civil law. This word has two different meanings. 1. A party to a suit, whether plaintiff or defendant; Reus est qui cum altero litem contestatem habet, sive legit, sive cum eo adum est. 2. A party to a contract; reus credendi is be to whom something is due, by whatever title it may be; reus debendi is he who owes, for whatever cause. Poth. Pand. lib. 50, h. t.

REVENDICATION, civil and French law. An action by which a man demands a thing of which he claims to be owner. It applies to immovables as well as movables; to corporeal or encorporeal things. Merlin, Repert. h. t.

2. By the civil law, he who has sold goods for cash or on credit may demand them back from the purchaser, if the purchase-money is not paid according to contract. The action of revendication is used for this purpose. See an attempt to introduce the principle of revendication into our law, in 2 Hall's Law Journal, 181.

3. Revendication, in another sense, corresponds, very nearly, to the stoppage in transitu (q. v.) of the common law. It is used in that sense in the Code de Commerce, art. 577. Revendication, says that article, can take place only when the goods sold are on the way to their place of destination, whether by land or water, and before they

have been received into the warehouse of the insolvent, (failli,) or that of his factor or agent, authorized to sell them on account of the insolvent. See Dig. 14, 4, 15;Dig. 18, 1, 19, 53; Dig. 19, f, 11.

REVENUE. The income of the government arising from taxation, duties, and the like; and, according to some correct lawyers, under the idea of revenue is also included the proceeds of the sale of stocks, lands, and other property owned by the government. Story, Const. §877. Vide Money Bills. By revenue is also understood the income of private individuals and corporations.

REVERSAL, international law. First. A declaration by which a sovereign promises that he will observe a certain order, or certain conditions, which have been once established, notwithstanding any changes that may happen to cause a deviation therefrom; as, for example, when the French court, consented for the first time, in 1745, to grant to Elizabeth, the Czarina of Russia, the title of empress, exacted as a reversal, a declaration purporting that the assumption of the title of an imperial government, by Russia, should not dero-gate from the rank which France had held towards her. Secondly. Those letters are also termed reversals, Litterae Reversales, by which a sovereign declares that, by a particular act of his, he does not mean to prejudice a third power. Of this we have an example in history: formerly, the emperor of Germany, whose coronation, according to the golden ball, ought to have been solemnized at Aix-la-Chapelle, gave to that city when he was crowned elsewhere, reversals, by which he declared that such coronation took place without prejudice to its rights, and without drawing any consequences therefrom for the future.

TO REVERSE, practice. The decision of a superior court by which the judgment, sentence or decree of the inferior court is annulled.

2. After a judgment, sentence or decree has been rendered by the court below, a writ of error may be issued from the superior to the inferior tribunal, when the record and all proceedings are sent to the supreme court on the return to the writ of error. When, on the examination of the record, the superior court gives a judgment different from the inferior court, they are said to reverse the proceeding. As to the effect of a reversal, see 9 C. & P. 513 S, C. 38 E. C. L. Rep. 201.

REVERSION, estates. The residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him; it is also defined to be the return of land to the grantor, and Iiis heirs, after the grant is over. Co. Litt. 142, b.

2. The reversion arises by operation of law, and not by deed or will, and it is a vested interest or estate, and in this it differs from a remainder, which can never be limited

unless by either deed or devise. 2 Bl. Comm. 175; Cruise, Dig. tit. 17; Plowd. 151; 4 Kent, Comm. 349; 19 Vin. Ab. 217; 4 Com. Dig. 27; 7 Com. Dig. 289: 1 Bro. Civil Law, 213 Wood's Inst. 151 2 Lill. Ab. 483. A reversion is said to be an incorporeal hereditament. Vide 4 Kent, Com. 354. See, generally, 1 Hill. Ab. c. 52, p. 418; 2 Bouv. Inst. n. 1850, et seq.

REVERSIONER, estates. One entitled to a reversion.

2. Although not in actual possession, the reversioner having a vested interest in the reversion, is entitled to his action for an injury done to the inheritance. 4 Burr. 2141. The reversioner is entitled to the rent, and this important incident passes with a grant or assignment of the reversion. It is not inseparable from it, and may be severed and excepted out of the grant by special words. Co. Litt. 143, a, 151, a, b Cruise, Digest, t. 17, s. 19.

REVERSOR, law of Scotland. A debtor who makes a wadset and to whom the right of reversion is granted. Ersk. Pr. L. Scotl. B. 2, t. 8, sect. 1. A reversioner. Jacob, L. D. h. t.

REVERTER. Reversion. A formedon in reverter is a writ which was a proper remedy when the donee in tail or issue died without issue and a stranger abated: or they who were seised by force of the entail discontinued the same. Bac. Ab. Formedon, A 3.

REVIEW, practice. A second examination of a matter. For example, by the laws of Pennsylvania, the courts having jurisdiction of the subject may grant an order for a view of a proposed road; the viewers make a report, which when confirmed by the court would authorize the laying out of the same. After this, by statutory provision, the parties may apply for a review, or second examination; and the last viewers may make a different report. For the practice of reviews in chancery, the reader is referred to Bill of Review, and the cases there cited.

REVIVAL, contracts. An agreement to renew the legal obligation of a just debt, after it has been barred by the act of limitation or lapse of time, is called its revival. Vide Promise.

REVIVAL, practice. The act by which a judgment, which has lain dormant or without any action upon it for a year and a day is, at common law, again restored to its original force.

REVIVE, practice. When a judgment is more than a day and a year old, no execution can issue upon it at common law; but till it has been paid, or the presumption arises from lapse of time, that it has been satisfied, it may be revived and have all its original

force, which was merely suspended. This may be done by a scire facias, or an action of debt on the judgment. Vide Scire facias; Wakening.

REVIVOR. the name of a bill in chancery used to renew an original bill which for some reason has become inoperative. Vide Bill of Revivor.

REVOCATION. The act by which a person having authority, calls back or annuls a power, gift, or benefit, which had been bestowed upon another. For example, a testator may revoke his testament; a constituent may revoke his letter of attorney; a grantor may revoke a grant made by him, when he has reserved the power in the deed.

2. Revocations are expressed or implied. An express revocation of a will must be as formal as the will itself. 2 Dall. 289; 2 Yeates, R. 170. But this is not the rule in all the states. See 2 Conn. Rep. 67; 2 Nott & McCord, Rep. 485; 14 Mass. 208; 1 Harr. & McHenry, R. 409; Cam. & Norw. Rep. 174 2 Marsh. Rep. 17.

3. Implied revocations take place, by marriage and birth of a child, by the English law. 4 Johns. Ch. R. 506, and the cases there cited by Chancellor Kent. 1 Wash. Rep. 140; 3 Call, Rep. 341; Cooper's Just. 497, and the cases there cited. In Pennsylvania, marriage or birth of a child, is a revocation as to them. 3 Binn. 498. A woman's will is revoked by her subsequent marriage, if she dies "before her hushand. Cruise, Dig. tit. 38, c. 6, s. 51. 4. An alienation of the estate by the devisor has the same effect of revoking a will. 1 Roll. Ab. 615. See generally, as to revoking wills, Lovelass on Wills, oh. 3, p. 177 Fonbl. Eq. c. 2, s. 1; Robertson Wills, ch . 2, part 1.

5. Revocation of wills may be effected, 1. By cancellation or obliteration. 2. By a subsequent testamentary disposition. 3. By an express revocation contained in a will or codicil, or in any other distinct writing. 4. By the republication of a prior wili; by presumptive or implied revocation. Williams on Wills, 67; 3 Lom. on Ex'rs, 59. Vide Domat, Loix Civ. liv. 3, t. 1, s. 5.

6. The powers and authority of an attorney or agent may be revoked or deter-mined by the acts of the principal; by the acts of the attorney or agent; and by operation of law.

7. - 1. By the acts of the principal, which may be express or implied. An express revocation is made by a direct and formal and public declaration, or by an informal writing, or by parol. An implied revocation takes place when such circumstances occur as manifest the intention of the principal to revoke the authority; such, for example, as the appointment of another agent or attorney to perform acts which are incompatible with the exercise of the power formerly given to another; but this presumption arises only when there is such incompatibility, for if the original agent has a general authority, and the second only a special power, the revocation will only

operate pro tanto. The performance by the principal himself of the act which he has authorized to be done by his attorney, is another example; as, if the authority be to collect a debt, and afterwards the principal receive it himself.

8. - 2. The renunciation of the agency by the attorney will have the same effect to determine the authority.

9. - 3. A revocation of an authority takes place by operation of law. This may be done in various ways: 1st. When the agency terminates by lapse of time; as, when it is created to endure for a year, it expires at the end of that period; or when a letter of attorney is given to transact the constituent's business during his absence, the power ceases on his return. Poth. du Mandat, n. 119; Poth. Ob. n. 500.

10. - 2d. When a change of condition of the principal takes place so that he is rendered incapable of performing the act himself, the power he has delegat-ed to another to do it must cease. Liverm. Ag. 306; 8 Wheat. R, 174. If an unmarried woman give a power of attorney and afterwards marry, the marriage does, ipso facto, operate as a revocation of the authority; 2 Kent, Com. 645, 3d edit. Story Bailm. §206; Story, Ag. §481; 5 East, R. 206; or if the principal become insane, at least after the establishment of the insanity by an inquisition. 8 Wheat. R. 174, 201 to 204. When the principal becomes a bankrupt, his power of attorney in relation to property or rights of which he was dives-ted by the bankruptcy, is revoked by operation of law. 2 Kent, Com. 644, 3d edit.; 16 East, R. 382.

11. - 3d. The death of the principal will also have the effect of a revocation of the authority. Co. Litt. 52; Paley, Ag. by Lloyd, 185; 2 Liverm. Ag. 301; Story, Ag. §488; Story, Bailm. §203; Bac. Ab. Authority, E; 2 Kent, Com. 454, 3d edit.; 3 Chit. Com. Law, 223.

12. - 4th. When the condition of the agent or attorney has so changed as to render him incapable to perform his obligation towards the principal. When a married woman is prohibited by her hushand from the exercise of an authority given to her, it thereby determines. When the agent becomes a bankrupt, his authority is so far revoked that he cannot receive any money on account of his principal; 5 B. & Ald. 645, 3d edit.; but for certain other purposes, the bankruptcy of the agent does not operate as a revocation. 3 Meriv. 322; Story, Ag. §486. The insanity of the agent would render him unfit to act in the business of the agency, and would determine his authority.

13. - 5th. The death of the agent puts an end to the agency. Litt. §66.

14. - 6th. The extinction of the subject-matter of the agency, or of the principal's power over it, or the complete execution of the trust confided to the agent, will put an end to and determine the agency.

15. It must be remembered that an authority, coupled with an interest, cannot be revoked either by the acts of the principal, or by operation of law. 2 Mason's R. 244, 342; 8 Wheat. R. 170; 1 Pet. R. 1; 2 Esp. R. 565; 10 B. & Cr. 731; Story Ag. §477, 483.

16. It is true in general, a power ceases with the life of the person making it; but if the interest or estate passes with the power, and vests in the person by whom the power is exercised, such person acts in his own name. The es-tate being in him, passes from him by a conveyance in his own name. He is no longer a substitute acting in the name of another, but is the principal acting in his own name in pursuance of powers which limit the estate. The legal reason which limits the power to the life of the person giving it exists no long-er, and the rule ceases with the reason on which it is founded. 8 Wheat. R. 174.

17. The revocation of the agent is a revocation of any substitute he may have appointed. Poth. Mandat, n. 112; 2 Liverm. Ag. 307; Story, Ag. §469. But in some cases, as in the case of the master of a ship, his death does not revoke the power of the mate whom he had appointed; and in some cases of public appointments, on the death or removal of the principal officer, the depu-ties appointed by him are, by express provisions in the laws, autho rized to continue in the performance of their duties.

18. The time when the revocation takes effect must be considered, first, with regard to the agent, and secondly, as it affects third persons. 1. When the revocation can be lawfully made, it takes effect, as to the agent, from the moment it is communicated to him. 2. As to third persons, the revocation has no effect until it is made known to them; if, therefore, an agent, knowing of the revocation of his authority, deal with a third pers6n in the name of his late principal, when such person was ignorant of the revocation, both the agent and the principal will be bound by his acts. Story, Ag. §470; 2 Liverm. Ag. 306; 2 Kent, Com. 644, 3d edit.; Paley, Ag. by Lloyd, 108, 570; Story, Bailm. §208; 5 T. R. 215. A note or bill signed, accepted or indorsed by a clerk, after his discharge, who had been authorized to sign, indorse, or accept bills and notes for his principal while in his employ, will be binding upon the latter, unless notice has been given of his discharge and the revocation of his authority. 3 Chit. Com. Law, 197.

REVOCATOR. Recalled. This word is used when a judgment is annulled for an error in fact, the judgment is then said to be recalled, revocatur; and not reversed, which is the word used when a judgment is annulled for an error in law. Tidd's Pr. 1126.

REVOLT, crim. law. The act of congress of April 30, 1790, s. 8, 1 Story's L. U. S. 84, punishes with death any seaman who shall lay violent hands upon his commander, thereby to hinder or prevent his fighting in defence of his ship, or goods committed to his trust, or shall make a revolt in the ship. What is a revolt is not defined in the act of congress nor by the common law; it was therefore contended, that it could not be deemed an offence for which any person could be punished. 1 Pet. R. 118.

2. In a case which occurred in the circuit court for the eastern district of Pennsylvania, the defendants were charged with an endeavour to make a revolt. The judges sent up the case to the supreme court upon a certificate of division of opinion of the judges; as to the definition of the word revolt. 4 W. C. C. R. 528. The opinion of the supreme court was delivered by Washington, J., and is in these words "This case comes before the court upon a certificate of division of the opinion of the judges of the circuit court for the eastern district of Pennsylvania, upon the following point assigned by the defendants as a reason in arrest of judgment, viz. that the act of congress does not define the offence of endeavoring to make a revolt; and it is not competent to the court to give a judicial definition of an offence heretofore unknown. "This court is of opinion that although the act of congress does not define this offence, it is nevertheless, competent to the court to give a judicial definition of it. We think that the offence consists in the endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of her commander, with intent to remove him from his command; or against his will to take possession of the vessel by assuming the government and navigation of her; or by transferring their obedience from the lawful commander to some other person." 11 Wheat. R. 417. Vide 4 W. C. C. R. 528, 405; Mason's R. 147 4 Mason, R. 105; 4 Wash. C. C. R. 548 1 Pet. C. C. R. 213; 5 Mason, R. 464; 1 Sumn. 448; 3 Wash. C. C. R. 525; 1 Carr. & Kirw. 429.

3. According to Wolff, revolt and rebellion are nearly synonymous; he says it is the state of citizens who unjustly take up arms against the prince or government. Wolff, Dr. de la Nat. 1232.

REWARD. An offer of recompense given by authority of law for the performance of some act for the public good; which, when the act has been performed, is to be paid; or it is the recompense actually paid.

2. A reward may be offered by the government or by a private person. In criminal prosecutions, a person may be a competent witness although he expects, on conviction of the prisoner, to receive a reward. 1 Leach, 314, n 9 Barn. & Cresw. 556;S. C. Eng. C. L. R. 441; 1 Leach, 134; 1 Hayw. Rep. 3 1 Root, R. 249; Stark. Ev. pt. 4, p. 772, 3; Roscoe's Cr. Ev. 104; 1 Chit. Cr. Law, 881; Hawk. B. 2, c. 12, s. 21 to 38; 4 Bl. Com. 294; Burn's Just. Felony, iv. See 6 Humph. 113.

3. By the common law, informers, who are entitled under penal statutes to part of the penalty, are not in general competent witnesses. But when a stat-ute can receive no execution, unless a party interested be a witness, then it seems proper to admit him, for the statute must not be rendered ineffectual for want of proof. Gilb. 114. In many acts of the legislature there is a provision that the informer shall be a witness, notwithstanding the reward. 1 Phil. Ev. 92, 99.

RHODE ISLAND. The name of one of the original states of the United States of America. This state was settled by emigrants from Massachusetts, who assumed the government of themselves by a voluntarry association, which was soon discovered to be insufficient for their protection. In 1643, a charter of incorporation of Providence Plantations was obtained; and in 1644, the two houses of parliament, during the forced absence of Charles the First, granted a char-ter for the incorporation of the towns of Providence, Newport and Portsmouth, for the absolute government of themselves, according to the laws of England. Soon after the restoration of Charles the Second, in July, 1663, the inhabi-tants obtained a new charter from the crown. Upon the accession of James, the inhabitants were accused of a violation of their charter; and a quo warranto was filed against them, when they resolved to surrender it. In 1686, their government was dissolved, and Sir Edward Andros assumed, by royal authority, the administration of the colony. The revolution of 1688 put an end to his power and the colony immediately resumed its charter, the powers of which, with some interruptions, it continued to maintain and exercise down to the period of the American Revolution.

2. This charter remained as the fundamental law of the state until the first Tuesday of May, one thousand eight hundred and forty-three. A convention of the people assembled in November, 1842, and adopted a constitution which went into operation in May, 1843, as above mentioned.

3. By the third article of the constitution the powers of the government are distributed into three departments; the legislative, the executive, and the judicial.

4. - §1. The fourth article regulates the legislative power as follows, to wit: Sect. 1. This constitution shall be the supreme law of the state, and any law inconsistent therewith shall be void. The general assembly shall pass all laws necessary to carry this constitution into effect.

5. - Sect. 2. The legislative power, under this constitution, shall be vested in two houses, the one to be called the senate, the other the house of representatives; and both together the, general assembly. The concurrence of the two houses shall be necessary to the enactment of laws. The style of their laws shall be, It is enacted by the general assembly as follows.

6. - Sect. 3. There shall be two sessions of the general assembly holden annually; one at Newport, on the first Tuesday of May, for the purposes of election and other business; the other on the last Monday of October, which last session shall be holden at South Kingstown once in two years, and the intermediate years alternately at Bristol and East Greenwich; and an adjournment for the October session shall be holden annually at Providence.

7. - Sect. 4. No member of the general assembly shall take any fee, or be of counsel in any case pending before either house of the general assembly, under penalty of forfeiting his seat, upon proof thereof to the satisfaction of the house of which he is a member.

8. - Sect. 5. The person of every member of the general assembly shall be exempt from arrest and his estate from attachment, in any civil action, during the session of the general assembly, and two days before the commencement, and two days after the termination thereof; and all process served contrary hereto shall be void. For any speech in debate in either house, no member shall be questioned in any other place.

9. - Sect. 6. Each house shall be the judge of the elections and qualifications of its members; and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the atten-dance of absent members, in such manner, and under such penalties, as may be prescribed by such house or by law. The organization of the two houses may be regulated by law, subject to the limitations contained in this constitution.

10. - Sect. 7. Each house may determine its rules of proceeding, punish contempts, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

11. - Sect. 8. Each house shall keep a journal of its proceedings. The yeas and nays of the members of either house, shall, at the desire of one-fifth of those present, be entered on the journal.

12. - Sect. 9. Neither house shall, during a session, without the consent of the other, adjourn for more than two days, nor to any other place than that in which they may be sitting.

13. - Sect. 10. The general assembly shall continue to exercise the powers they have heretofore exercised, unless prohibited in this constitution.

14. - Sect. 11. The senators and representatives shall receive the sum of one dollar for every day of attendance, and eight cents per mile for travelling expenses in going to

and returning, from the general assembly. The general assembly shall regulate the compensation of the governor and all other officers, subject to the limitations contained in this constitution.

15. - Sect. 12. All lotteries shall hereafter be prohibited in this state, except those already authorized by the general assembly.

16. - Sect. 13. The general assembly shall have no power hereafter, without the express consent of the people, to incur state debts to an amount exceeding fifty thousand dollars, except in time of war, or in case of insurrection or invasion, nor shall they in any case, without such consent, pledge the faith of the state for the payment of the obligations of others. This section shall not be construed to refer to any money that may be deposited with this state by the government of the United States.

17. - Sect. 14. The assent of two-thirds of the members elected to each house of the general assembly shall be required to every bill appropriating the public money or property for local or private purposes.

18. - Sect. 15. The general assembly shall, from time to time, provide for making new valuations of property for the assessment of taxes, in such manner as they may deem best. A new estimate of such property shall be taken before the first direct state tax, after the adoption of this constitution, shall be assessed.

19. - Sect. 16. The general assembly may provide by law for the continuance in office of any officers of annual election or appointment, until other persons are qualified to take their places.

20. - Sect. 17. Hereafter when any bill shall be presented to either house of the general assembly, to create a corporation for any other than for religious, literary or charitable purposes, or for a military or fire company, it shall be continued until another election of members of the general assembly shall have taken place, and such public notice of the pendency thereof shall be given as may be required by law.

21. - Sect 18. It shall be the duty of the two houses upon the request of either, to join in grand committee for the purpose of electing senators in congress, at such times and in such manner as may be prescribed by law for said elections.

22. Having disposed of the rules which regulate both houses, a detailed statement of the powers of the house of representatives will here be given.

23. - 1. The house of representatives is regulated by the fifth article as follows; Sect. 1. The house of representatives shall never exceed seventy-two members, and shall be constituted on the basis ofpopulation, always allowing one representative for a fraction, exceeding half the ratio; but each town or city shall always be entitled to at least one member; and no town or city shall have more than one-sixth of the whole number of members to which the house is hereby limited. The present ratio shall be one representative to every fifteen hundred and thirty inhabitants, and the general assembly may, after any new census taken by the authority of the United States or of this state, re-apportion the representation by altering the ratio; but no town or city shall be divided into districts for the choice of representatives.

25. - Sect. 2. The house of representatives shall have authority to elect its speaker, clerks and other officers. The senior member from the town of Newport, if any be present, shall preside in the organization of the house.

26. - 2. The senate is the subject of the sixth article, as follows: Sect. 1. The senate shall consist of the lieutenant-governor and of one senator from each town or city in the state.

27. - Sect. 2. The governor, and, in his absence the lieutenant-governor, shall preside in the senate and in grand committee. The presiding officer of the senate and grand committee shall have a right to vote in case of equal division, but not otherwise.

28. Sect. 3. If, by reason of death, resignation, absence, or other cause, there be no governor or lieutenant governor present, to preside in the senate, the senate shall elect one of their own members to preside during such absence or vacancy, and until such election is made by the senate, the secretary of state shall preside.

29. - Sect. 4. The secretary of state shall, by virtue of his office, be secretary of the senate, unless otherwise provided by law; and the senate may elect such other officers as they may deem necessary.

30. - §2. The seventh article regulates the executive power. It provides: Sect. 1. The chief executive power of this state shall be vested in a governor, who, together with a lieutenant governor, shall be annually elected by the people.

31. - Sect. 2. The governor shall take care that the laws be faithfully executed.

32. - Sect. 3. He shall be captain general and commander-in-chief of the military and naval force of this state, except when they shall be called in

to the service of the United States.

33. - Sect. 4. He shall have power to grant reprieves after conviction, in all cases except those of impeachment, until the end of the next session of the general assembly.

34. - Sect. 5. He may fill vacancies in office not otherwise provided for by this constitution, or by law, until the same shall be filled by the general assembly, or by the people.

35. - Sect. 6. In case of disagreement between the two houses of the general assembly, respecting the time or place of adjournment, certified to him by either, he may adjourn them to such time and place as he shall think proper; provided that the time of adjournment shall not be extended beyond the day of the next stated session.

36. - Sect. 7. He may, on extraordinary occasions, convene the general assembly at any town or city in this state, at any time not provided for by law; and in case of danger from the prevalence of epidemic or contagious disease, in the place in which the general assembly are by law to meet, or to which they may have been adjourned; or for other urgent reasons, he may, by proc-lamation, convene said assembly, at any other place within this state.

37. - Sec. 8. All commissions shall be in the name and by the authority of the state of Rhode Island and Providence Plantations; shall be sealed with the state seal, signed by the governor and attested by the secretary.

38. - Sect. 9. In case of vacancy in the office of governor, or of his inability to serve, impeachment, or absence from the state, the lieutenant governor shall fill the office of governor and exercise the powers and authority appertaining thereto, until a governor is qualified to act, or until the office is filled at the next annual election.

39. - Sect. 10. If the offices of governor and lieutenant governor be both vacant by reason of death, resignation, impeachment, absence, or otherwise, the person entitled to preside over the senate for the time being, shall in like manner fill the office of governor during such absence or vacancy.

40. - Sec. 11. The compensation of the governor and lieutenant governor shall be established by law, and shall not be diminished during the term for which they are elected.

41. - Sect. 12. The duties and powers of the secretary, attorney general, and general treasurer, shall be the same under this constitution as are now established, or as from time to time may be prescribed by law.

42. - §3. The judicial power is regulated by the tenth article as follows: Sect. 1. The judicial power of this state shall be vested in one supreme court, and in such inferior courts as the general assembly may from time to time, ordain and establish.

43. - Sect. 2. The several courts shall have such jurisdiction as, may from time to time be prescribed by law. Chancery powers may be conferred on the supreme court, but on no other court to any greater extent than is now provided by law.

44. - Sect. 3. The judges of the supreme court shall in all trials, instruct the jury in the law. They shall also give their written opinion upon any question of law whenever requested by the governor, or by either house of the general assembly.

45. - Sect. 4. The judges of the supreme court shall be elected by the two houses in grand committee. Each judge shall hold his office until his place be declared vacant by a resolution of the general assembly to that effect; which resolution shall be voted for by a majority of all the members elected to the house in which it may originate, and be concurred in by the same majority of the other house. Such resolution sliall not be entertained at any other than the annual session for the election of public officers: and in default of the passage thereof at said session, the judge shall hold his place as herein provided. But a judge of any court shall be removed from office, if, upon impeachment, he shall be found guilty of any official misdemeanor.

46. - Sect. 5. In case of vacancy by death, resignation, removal from the state or from office, refusal or inability to serve, of any judge of the supreme court, the office may be filled by the grand committee, until the next annual election, and the judge then elected shall hold his office as before provided. In cases of impeachment, or temporary absence or inability, the governor may appoint a person to discharge the duties of the office during the vacancy caused thereby.

47. - Sect. 6. The judges of the supreme court shall receive a compensation for their services, which shall not be diminished during their continuance in office.

48. - Sect. 7. The towns of New Shoreham and Jamestown may continue to elect their wardens as heretofore. The other towns and the city of Providence, may elect such number of justices of the peace resident therein, as they may deem proper. The jurisdiction of said justices and wardens shall be regulated by law. The justices shall be commissioned by the governor.

RHODIAN LAW. A code of marine laws established by the people of Rhodes, bears this name. Vide Law Rhodian.

RIAL OF PLATE, and RIAL OF VELLON, comm. law. Denominations of money of Spain.

2. In the ad valorem duty upon goods, &c., the former are computed at ten cents, and the latter at five cents each. Act of March 2, 1799, s. 61, 1 Story's Laws U. S. 626. Vide Foreign Coins.

RIBAUD. A rogue; a vagrant. It is not used.

RIDER, practice, legislation. A schedule or small piece of paper or parchment added to some part of the record; as, when, on the reading of a bill in the legislature, a new clause is added, this is tacked to the bill on a separate piece of paper, and is called a rider.

RIDING, Eng. law. An ascertained district, part of a county. This term has the same meaning in Yorkshire which division has in Lincolnshire. 4 T. R. 459.

RIEN. This is a French word which signifies nothing. It has generally this meaning; as, rien in arrere; rien passe per le fait, nothing passes by the deed; rien per descent, nothing by descent; it sometimes signifies not, as rien culpable, not guilty. Doct. Plac. 435.

RIEN EN ARRERE, pleading. Nothing in arrear; nothing remaining due and unpaid.

2. The plea in an action of debt for rent, may be rien en arrere. This is a good general issue. Cowp. 588: Bac. Ab. Pleas, I; 12 Saund. 297, n. 1; 2 Lord Raym. 1503; 2 Chit. Pl. 486; 4 Bouv. Inst. n. 3576.

RIENS PASSA PAR LE FAIT. The name of a plea; it signifies that nothing pass-ed by the deed; for example, when a deed is acknowledged in court, a man cannot plead non est factum, because the act was done in court, which cannot be denied; but when the deed has been acknowledged in a court not having jurisdiction, the party may avoid the effect or operation of the deed by pleading riens passa par le fait, for this plea does not impeach the court where it was acknowledged. Bac. Ab. Evidence F; 1 Gilb. ET. by Lofft, 326.

RIGHT. This word is used in various senses: 1. Sometimes it signifies a law, as when we say that natural right requires us to keep our promises, or that it commands restitution, or that it forbids murder. In our language it is seldom used in this sense. 2. It sometimes means that quality in our actions by which they are denominated just ones. This is usually denominated rectitude. 3. It is that quality in a person by which he can do certain actions, or possess certain things which belong to him by virtue of

some title. In this sense, we use it when we say that a man has a right to his estate or a right to defend himself. Ruth, Inst. c. 2, §1, 2, 3; Merlin,; Repert. de Jurisp. mot Droit. See Wood's Inst. 119.

2. In this latter sense alone, will this word be here considered. Right is the correlative of duty, for, wherever one has a right due to him, some other must owe him a duty. 1 Toull. n. 96.

3. Rights are perfect and imperfect. When the things which we have a right to possess or the actions we have a right to do, are or may be fixed and determinate, the right is a perfect one; but when the thing or the actions are vague and indeterminate, the right is an imperfect one. If a man demand his property, which is withheld from him, the right that supports his demand is a perfect one; because the thing demanded is, or may be fixed and determinate.

4. But if a poor man ask relief from those from whom he has reason to expect it, the right, which supports his petition, is an imperfect one; because the relief which he expects, is a vague indeterminate, thing. Ruth. Inst. c. 2, §4; Grot. lib. 1, c. §4.

5. Rights are also absolute and qualified. A man has an absolute right to recover property which belongs to him; an agent has a qualified right to recover such property, when it had been entrusted to his care, and which has been unlawfully taken out of his possession. Vide Trover.

6. Rights might with propriety be also divided into natural and civil rights but as all the rights which man has received from nature have been modified and acquired anew from the civil law, it is more proper, when considering their object, to divide them into political and civil rights.

7. Political rights consist in the power to participate, directly or indirectly, in the establishment or management of government. These political rights are fixed by the constitution. Every citizen has the right of voting for public officers, and of being elected; these are the political rights which the humblest citizen possesses.

8. Civil rights are those which have no relation to the establishment, support, or management of the government. These consist in the power of acquiring and enjoying property, of exercising the paternal and marital powers, and the like. It will be observed that every one, unless deprived of them by a sen-tence of civil death, is in the enjoyment of his civil rights, which is not the case with political rights; for an alien, for example, has no political, although in the full enjoyment of his civil rights.

9. These latter rights are divided into absolute and relative. The absolute rights of mankind may be reduced to three principal or primary articles: the right of personal security, which consists in a person's legal and uninter-rupted enjoyment of his life, his limbs, his body, his health, and his reputation; the right of personal liberty, which consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's inclination may direct, without any restraint, unless by due course of law; the right of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. 1 Bl. 124 to 139.

10. The relative rights are public or private: the first are those which subsist between the people and the government, as the right of protection on the part of the people, and the right of allegiance which is due by the people to the government; the second are the reciprocal rights of hushand and wife, parent and child, guardian and ward, aud master and servant.

11. Rights are also divided into legal and equitable. The former are those where the party has the legal title to a thing, and in that case, his remedy for an infringement of it, is by an action in a court of law. Although the person holding the legal title may have no actual interest, but hold only as trustee, the suit must be in his name, and not in general, in that of the cestui que trust. 1 East, 497 8 T. R. 332; 1 Saund. 158, n. 1; 2 Bing. 20. The latter, or equitable rights, are those which may be enforced in a court of equity by the cestui que trust. See, generally, Bouv. Ins t. Index, h. t. Remedy.

RIGHT OF DISCUSSION, Scottish law. The right which the cautioner (surety) has to insist that the creditor shall do his best to compel the performance of the contract by the principal debtor, before he shall be called upon. 1 Bell's Com. 347, 5th ed. Vide 8 Serg. & Rawle, 116; 15 Serg. & Rawle, 29, 30 and the articles Surety. Suretyship.

RIGHT OF DIVISION, Scottish law. The right which each of several cautioners (sureties) has to refuse to answer for more than his own share of the debt. To entitle the cautioner to this right, the other cautioners must be solvent, and there must be no words in the bond to exclude it. 1 Bell's Com. 347, 5th ed.

RIGHT OF HABITATION. By this term, in Louisiana, is understood the right of dwelling gratuitously in a house, the property of another. Civ. Code, art. 623; 3 Toull. ch. 2, p. 325; 14 Toull. n. 279, p. 330; Poth. h. t., n. 22-25.

RIGHT OF RELIEF, Scottish law. The right which the cautioner (surety) has against the principal debtor when he has been forced to pay his debt. 1 Bell's Com. 347, 5th ed.

RIGHT PATENT. The name of an ancient writ, which Fitzherbert says, "ought to be brought of lands and tenements, and not of an advowson, or of common, and lieth only of an estate of fee simple, and not for him who has a lesser estate, as tenant in tail, tenant in frank marriage, or tenant for life." F. N. B. 1.

RIGHT, WRIT OF. Breve de recto. Vide Writ of light.

RING DROPPING, crim. law. This phrase is applied in England to a trick frequently practised in committing larcenies. It is difficult to define it; it will be sufficiently exemplified by the following cases. The prisoner, with some accomplices, being in company with the prosecutor, pretended to find a valuable ring wrapped up in a paper, appearing to be a jeweller's receipt for "a rich brilliant diamond ring." They offered to leave the ring with the prosecutor, if he would deposit some money and his watch as a security. The prosecutor having accordingly laid down his watch and money on a table, was beckoned out of the room by one of the confederates, while the others took away his watch and money. This was held to amount to a larceny. 1 Leach, 238; 2 East, P. C. 678. In another case under similar circumstances, the prisoner procured from the prosecutor twenty guineas, promising to return them the next morning, and leaving the false jewel with him. Thiswas also held to be larceny. 1 Leach, 314; 2 East, P. C. 679. In these cases the prosecutor had no intention of parting with the property in the money or goods stolen. It was taken, in the first case while the transaction was proceeding, without his knowledge; and, in the last, under the promise that it should be returned. Vide 2 Leach, 640.

RINGING THE CHANGE, crim. law. A trick practised by a criminal, by which, on receiving a good piece of money in payment of an article, he pretends it is not good, and, changing it, returns to the buyer a counterfeit one, as in the following case: The prosecutor having bargained with the prisoner, who was selling fruit about the streets, to have five apricot's for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to bite it in order to try its goodness, and returning a shilling to the prosecutor, told him it was a bad one. The prosecutor gave him another good shilling which he also affected to bite, and then returned another shilling, saying it was a bad one. The prosecutor gave him another good shilling with which he practised this trick a third time the shillings returned by him being in every respect, bad. 2 Leach, 64.

2. This was held to be an uttering of false money. 1 Russ. on Cr. 114.

RIOT, crim. law. At common law a riot is a tumultuous disturbance of the peace, by three persons or more assembling together of their own authority, with an intent, mutually to assist each other against any who shall oppose them, in the execution of some enterprise of a private nature, and afterwards actually executing the same in a

violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful.

2. In this case there must be proved, first, an unlawful assembling; for if a number of persons lawfully met together; as, for example, at a fire, in a theatre or a church, should suddenly quarrel and fight, the offence is an affray and not a riot, because there was no unlawful assembling; but if three or more being so assembled, on a dispute occurring, they form into parties with promises of mutual assistance, which promises may be express, or implied from the circumstances, then the offence will no longer be an affray, but a riot; the unlawful combination will amount to an assembling within the meaning of the law. In this manner any lawful assembly may be converted into a riot. Any one who joins the rioters after they have actually commenced, is equally guilty as if he had joined them while assembling.

3. Secondly, proof must be made of actual violence and force on the part of the rioters, or of such circumstances as have an apparent tendency to force and violence, and calculated to strike terror into the public mind. The definition requires that the offenders should assemble of their own authority, in order to create a riot; if, therefore, the parties act under the authority of the law, they may use any necessary force to enforce their mandate, without committing this offence.

4. Thirdly, evidence must be given that the defendants acted in the riot, and were participants in the disturbance. Vide 1 Russ. on Cr. 247 Vin. Ab. h. t.; Hawk. c. 65, s. 1, 8, 9; 3 Inst. 176; 4 Bl. Com. 146 Com. Dig. h. t.; Chit. Cr. Law, Index, h. t. Roscoe, Cr. Ev. h. t.

RIOTOUSLY, pleadings. A technical word properly used in an indictment for a riot, and ex vi termini, implies violence. 2 Sess. Cas. 13; 2 Str. 834; 2 Chit. Cr. Law, 489.

RIPA. The bank of a river, or the place beyond which the waters do not in their natural course overflow.

2. An extraordinary overflow does not change the banks of the river. Poth. Pand. lib. 50, h. t. See Banks of rivers; Riparian proprietors; Rivers.

RIPARIAN PROPRIETORS, estates. This term, used by the civilians, has been adopted by the common lawyers. 4 Mason's Rep. 397. Those who own the land bounding upon a water course, are so called.

2. Such riparian proprietor owns that portion of the bed of the river (not navigable) which is adjoining his land usque ad filum aquce; or, in other words, to the thread or central line of the stream. Harg. Tr. 5; Holt's R. 499; 3 Dane's Dig. 4; 7 Mass. R. 496;

5 Wend. R. 423; 3 Caines, 319 2 Conn. 482; 20 Johns. R. 91; Angell, Water Courses, 3 to 10; 9 Porter, R. 577: Kames, Eq. part 1, c. 1, s. 1; 26 Wend. R. 404; 11 Stanton, 138; 4 Hill, 369. The proprietor of land adjoining a navigable river has an exclusive right to the soil, between high and low water marks, for the purpose of erecting wharves or buildings thereon. 7 Conn. 186. But see 1 Pennsyl. 462. Vide River.

RIPUARIAN LAW. A code of laws of the Franks, who occupied the country upon the Rhine, the Meuse and Scheldt, who were collectively known by the name Ripuarians, and their laws as Ripuarian law.

RISK. A danger, a peril to which a thing is exposed. The subject will be divided by considering, 1. Risks with regard to insurances. 2. Risks in the contracts of sale, barter, &c.

2. - §1. In the contract of insurance, the insurer takes upon him the risks to which the subject of the insurance is exposed, and agrees to indemnify the insured when a loss occurs. This is equally the case in marine and terrestrial insurance. But as the rules which govern these several contracts are not the same, the subject of marine risks will be considered, and, afterwards, of terrestrial risks.

3. - 1st. Marine risks are perils which are incident to a sea voyage; 1 Marsh. Ins. 215; or those fortuitous events which may happen in the course of the voyage. Poth. Contr. d'assur. n. 49; Pardes. Dr. Com. n. 770. It will be proper to consider, 1. Their nature. 2. Their duration.

4. - 1. The nature of the risks usually insured against. These risks may be occasioned by storms, shipwreck, jetsom, prize, pillage, fire, war, reprisals, detention by foreign governments, contribution to losses experienced for the common benefit, or for expenses which would not have taken place if it had not been for such events. But the insurer may by special contract limit his responsibility for these risks. He may insure against all risks, or only against enumerated risks; for the benefit of particular persons, or for whom it may concern. 2 Wash. C. C. R. 346; 1 John. Cas. 337; 2 John. Cas. 480 1 Pet. 151 2 Mass.,365; 8 Mass. 308. The law itself has made some exceptions founded on public policy, which require that in certain cases men shall not be permitted to protect themselves against some particular perils by insurance; among these are, first, that no man can insure any loss or damage proceeding directly from his own fault. 1 John. Cas. 337; Poth. h. t. n. 65; Pard. h. t. n. 771; Marsh. Ins. 215. Secondly, nor can be insure risks or perils of the sea, upon a trade forbidden by the laws. Thirdly, the risks excluded by the usual memorandum (q. v.) contained in the policy. Marsh. Ins. 221.

5. As the insurance is upon maritime risks, the accidents must have happened on the sea, unless the agreement include other risks. The loss by accidents which might happen on land in the course of the voyage, even when the unloading may have been authorized by the policy, or is required by local regulations, as where they are necessary for sanitary measures, is not borne by the insurer. Pard. Dr. Com. n. 770.

6. - 2. As to the duration of the risk. The commencement and end of the risk depend upon the words of the policy. The insurer may take and modify what risks he pleases. The policy may be on a voyage out, or a voyage in, or it may be for part of the route, or for a limited time, or from port to port. See 3 Kent, Com. 254; Pard. Dr. Com. n. 775; Marsh. 246; 1 Binn. 592. The duration of the risk on goods is considered in Marsh. Ins. 247 a; on ships, p. 280; on freight, p. 278, and 12 Wheat. 383.

7. - 2d. In insurances against fire, the risks and losses insured against, are all losses or damages by fire; but, as in cases of marine insurances, this may be limited as to the things insured, or as to the cause or occasion of the accident, and many policies exclude fires caused by a mob or the enemies of the commonwealth. The duration of thepolicy is Iimited by its own provisions.

8. - 3d. In insurances on lives, the risks are the death of the party from whatever cause, but in general the following risks are excepted, namely: 1. Death abroad or in a district excluded by the terms of the policy. 2. Entering into the naval or military service without the consent of the insurer. 3. Death by suicide. 4. Death by duelling. 5. Death by the hands of justice. See Insurance on lives. The duration of the risks is limited by the terms of the policy.

9. - §2. As a general rule, whenever the sale has been completed; the risk of loss of the things sold is upon the buyer; but until it is complete, and while something remains to be done by either party, in relation to it, the risk is on the seller; as, if the goods are to be weighed or measured. See Sale.

10. In sales, the risks to which property is exposed and the loss which may occur, before the contract is fully complete, must be borne by him in whom the title resides: when the bargain, therefore, is made and rendered binding by giving earnest, or by part payment, or part delivery, or by a compliance with the requisitions of the statute of frauds, the property, and with it the risk, attaches to the purchaser. 2 Kent, Com. 392.

11. In Louisiana, as soon as the contract of sale is completed, the thing sold is at the risk of the buyer, but with the following modifications: Until the thing sold is delivered to the buyer, the seller is obliged to guard it as a faithful administrator, and if through his want of care, the thing is de-stroyed, or its value diminished, the seller

is responsible for the loss. He is released from this degree of care, when the buyer delays obtaining the possession: but he is still liable for any injury which the thing sold may sus-tain through gross neglect on his part. If it is the seller who delays to deliver the thing, and it be destroyed, even by a fortuitous event, it is be who sustains the loss, unless it appears that the fortuitous event would equally have occasioned the destruction of the thing in the buyer's possession, after delivery. Art. 2442-2445. For the rules of the civil law on this subject, see Inst. 2, 1, 41; Poth. Contr. de Vente, 4eme partie, n. 308, et seq.

RIVER. A natural collection of waters, arising from springs or fountains, which flow in a bed or canal of considerable width and length, towards the sea.

2. Rivers may be considered as public or private.

3. Public rivers are those in which the public have an interest.

4. They are either navigable, which, technically understood, signifies such rivers in which the tide flows; or not navigable. The soil or bed of such a navigable river, understood in this sense, belongs not to the riparian proprietor, but to the public. 3 Caines' Rep. 307; 10 John. R. 236; 17 John. R. 151; 20 John. R. 90; 5 Wend. R. 423; 6 Cowen, R. 518; 14 Serg. & Rawle, 9; 1 Rand. Rep. 417; 3 Rand. R. 33; 3 Greenl. R. 269; 2 Conn. R. 481; 5 Pick. 199.

5. Public rivers, not navigable, are those which belong to the people in general, as public highways. The soil of these rivers belongs generally, to the riparian owner, but the public have the use of the stream, and the authors of nuisances and impediments over such a stream are indictable. Ang. on Water Courses, 202; Davies' Rep. 152; Callis on Sewers, 78; 4 Burr. 2162.

6. By the ordinance of 1787, art. 4, relating to the north-western territory, it is provided that the navigable waters, leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free. 3 Story, L. U. S. 2077.

7. A private river, is one so naturally obstructed, that there is no passage for boats; for if it be capable of being so navigated, the public may use its waters. 1 M'Cord's Rep. 580. The soil in general belongs to the riparian proprietors. (q. v.) A river, then, may be considered, 1st. As private, in the case of shallow and obstructed streams. 2d. As private property, but subject to public use, when it can be navigated; and, 3d. As public, both with regard to its use and property. Some rivers possess all these qualities. The Hudson is mentioned as an instance; in one part it is entirely private

property; in another the public have the use of it; and it is public property from the mouth as high up as the tide flows. Ang. Wat. Co. 205, 6.

8. In Pennsylvania, it has been held that the great rivers of that state, as the Susquehanna, belong to the public, and that the riparian proprietor does not own the bed or canal. 2 Binn. R. 75; 14 Serg. & Rawle, 71. Vide, generally, Civ. Code of Lo. 444; Bac. Ab. Prerogatives, B 3; 7 Com. Dig. 291; 1 Bro. Civ. Law, 170; Merl. Repert, h. t.; Jacobsen's Sea Laws, 417; 2 Hill. Abr. c. 13; 2 Fairf. R. 278 3 Ohio Rep. 496; 6 Mass. R. 435; 15 John. R. 447; 1 Pet. C. C. Rep. 64; 1 Paige's Rep. 448; 3 Dane's R. 4; 7 Mass. Rep. 496; 17 Mass. Rep. 289; 5 Greenl. R. 69; 10 Wend. R. 260; Kames, Eq. 38; 6 Watts & Serg. 101. As to the boundaries of rivers, see Metc. & Perk. Dig. Boundaries, IV.; as to the grant of a river, see 5 Cowen, 216; Co. Litt. 4 b; Com. Dig. Grant, E 5.

RIX DOLLAR. The name of a coin. The rix dollar of Bremen, is deemed as money of account, at the custom-house, to be of the value of seventy-eight and three quarters cents. Act of March 3, 1843. The rix dollar is computed at one hundred cents. Act of March 2, 1799, s. 61. Vide Foreign coins.

RIXA, civil law. A dispute; a quarrel. Dig. 48, 8, 17.

RIXATRIX. A common scold. (q. v.)

ROAD. A passage through the country for the use of the people. 3 Yeates, 421.

2. Roads are public or private. Public roads are laid out by public author-ity, or dedicated by individuals to public use. The public have the use of such roads, but the owner of the land over which they are made and the owners of land bounded on the highway, have, prima facie, a fee in such highway, ad medium filum vice, subject to the easement in favor of the public. 1 Conn. 193; 11 Conn. 60; 2 John. 357 15 John. 447. But where the boundary excludes the highway, it is, of course, excluded. 11 Pick. 193. See 13 Mass. 259. The proprietor of the soil, is therefore entitled to all the fruits which grow by its side; 16 Mass. 366, 7; and to all the mineral wealth it contains. 1 Rolle, 392, 1. 5; 4 Day, R. 328; 1 Conn'. Rep, 103; 6 Mass. R. 454; 4 Mass, R. 427; 15 Johns. Rep. 447, 583; 2 Johns. R. 357; Com. Dig. Chimin, A 2; 6 Pet. 498; 1 Sumn. 21; 10 Pet. 25; 6 Pick. 57; 6 Mass. 454; 12 Wend. 98.

3. There are public roads, such as turnpikes and railroads, which are constructed by public authority, or by corporations. These are kept in good order by the respective companies to which they belong, and persons travelling on them, with animals and vehicles, are required to pay toll. In general these companies have only a right of

passage over the land, which remains the property, subject to the easement, of the owner at the time the road was made or of his heirs or assigns.

4. Private roads are, such as are used for private individuals only, and are not wanted for the public generally. Sometimes roads of this kind are wanted for the accommodation of land otherwise enclosed and without access to public roads. The soil of such roads belongs to the owner of the land over which they are made.

5. Public roads are kept in repair at the public expense, and private roads by those who use them. Vide Domain; Way. 13 Mass. 256; 1 Sumn. Rep. 21; 2 Hill. Ab. c. 7; 1 Pick. R. 122; 2 Mass. R. 127 6 Mass. R. 454; 4 Mass. R. 427; 15 Mass. Rep. 33; 3 Rawle, R. 495; 1 N. H. Rep. 16; 1 M'Cord, R. 67; 1 Conn. R. 103; 2 John. R. 357; 1 John. Rep. 447; 15 John. R. 483; 4 Day, Rep. 330; 2 Bailey, Rep. 271; 1 Burr. 133; 7 B. & Cr. 304; 11 Price R. 736; 7 Taunt. R. 39; Str. 1004. 1 Shepl. R. 250; 5 Conn. Rep. 528; 8 Pick. R. 473; Crabb, R. P. §§102-104.

ROAD, mar. law. A road is defined by Lord Hale to be an open passage of the sea, which, from the situation of the adjacent land, and its own depth and wideness, affords a secure place for the common riding and anchoring of vessels. Hale de Port. Mar. p. 2, c. 2. This word, however, doesnot appear to have a very definite meaning. 2 Chit. Com. Law, 4, 5.

ROARING. A disease among horses occasioned by the circumstance of the neck of the windpipe being too narrow for accelerated respiration; the disorder is frequently produced by sore throat or other topical inflammation.

2. A horse affected with this malady is rendered less serviceable, and he is therefore unsound. 2 Stark. R. 81; S. C. 3 Engl. Com. Law Rep. 255; 2 Camp. R. 523.

ROBBER. One who commits a robbery. One who feloniously and forcibly takes goods or money to any value from the person of another by violence or putting him, in fear.

ROBBERY, crimes. The felonious and forcible taking from the person of another, goods or money to any value, by violence or putting him in fear. 4 Bl. Com. 243 1 Bald. 102.

2. By "taking from the person" is meant not only the immediate taking from his person, but also from his presence when it is done with violence and against his consent. 1 Hale, P. C. 533; 2 Russ. Crimes, 61. The taking must be by violence or putting the owner in fear, but both these circumstances need not concur, for if a man should be knocked down and then robbed while be is insensible, the offence is still a

robbery. 4 Binn. R. 379. And if the party be put in fear by threats and then robbed, it is not necessary there should be any greater violence.

3. This offence differs from a larceny from the person in this, that in the latter, there is no violence, while in the former the crime is incomplete without an actual or constructive force. Id. Vide 2 Swift's Dig. 298. Prin. Pen. Law, ch. 22, §4, p. 285; and Carrying away; Invito Domino; Larceny; Taking.

ROD. A measure sixteen feet and a half long; a perch.

ROGATORY, LETTERS. A kind of commission from a judge authorizing and requesting a judge of another jurisdiction to examine a witness. Vide Letters Rogatory.

ROGUE. A French word, which in that language signifies proud, arrogant. In some of the ancient English statutes it means an idle, sturdy beggar, which is its meaning in law. Rogues are usually punished as vagrants. Although the word rogue is a word of reproach, yet to charge one as a rogue is not actionable. 5 Binn. 219. See 2 Dev. 162 Hardin, 529.

ROLE D'EQUIPAGE. The list of a ship's crew; the muster roll.

ROLL. A schedule of parchment which may be turned up with the hand in the form of a pipe or tube. Jacob, L. D. h. t.

2. In carly times, before paper came in common use, parchment was the substance employed for making records, and, as the art of bookbinding was but little used, economy suggested as the most convenient mode of adding sheet to sheet, as were found requisite, and they were tacked together in such manner that the whole length might be wound up together in the form of spiral rolls.

3. Figuratively it signifies the records of a court or office. In Pennsylvania the master of the rolls was an officer in whose office were recorded the acts of the legislature. 1 Smith's Laws, 46.

ROOD OF LAND. The fourth part of an acre.

ROOT. That part of a tree or plant under ground from which it draws most of its nourishment from the earth.

2. When the roots of a tree planted in one man's land extend into that of another, this circumstance does not give the latter any right to the tree, though such is the doctrine

of the civil law; Dig. 41, 1, 7, 13; but such person has a right to cut off the roots up to his line. Rolle's R. 394, vide Tree.

3. In a figurative sense, the term root is used to signify the person from whom one or more others are descended. Vide Descent; Per stirpes.

ROSTER. A list of persons who are in their turn to perform certain duties, required of them by law. Tytler , on Courts Mart. 93.

ROUBLE. The name of a coin. The rouble of Russia, as money of account, is deemed and taken at the custom-house, to be of the value of seventy-five cents. Act March 3, 1843.

ROUT, crim. law. A disturbance of the peace by persons assembled together with an intention to do a thing, which, if executed, would have made them rioters, and actually making a motion towards the execution of their purpose.

2. It generally agrees in all particulars with a riot, except only in this, that it may be a complete offence without the execution of the intended enterprise. Hawk. c. 65, s. 14; 1 Russ. on Cr. 253; 4 Bl. Com. 140; Vin. Abr. Riots, &c., A 2 Com. Dig. Forcible Entry, D 9.

ROUTOUSLY, pleadings. A technical word properly used in indictments for a rout as descriptive of the offence. 2 Salk. 593.

ROYAL HONORS. In diploniatic language by this term is understood the rights enjoyed by every empire or kingdom in Europe, by the pope, the grand duchies of Germany, and the Germanic, and Swiss confederations, to precedence over all others who do not enjoy the same rank, with the exclusive right of sending to other states public ministers of the first rank, as ambassadors, together with other distinctive titles and ceremonies. Vattel, Law of Nat. B. 2, c. 3, §38; Wheat. Intern. Law, pt. 2, c. 3, §2.

RUBRIC, civil law. The title or inscription of any law or statute, because the copyists formerly drew and painted the title of laws and statutes rubro colore, in red letters. Ayl. Pand. B. 1, t. 8; Diet. do Juris. h. t.

RUDENESS, crim. law. An impolite action; contrary to the usual rules observed in society, committed by one person against another.

2. This is a relative term which it is difficult to define: those acts which one friend might do to another, could not be justified by persons altogether unacquainted persons moving in polished society could not be permitted to do to each other, what boatmen,

hostlers, and such persons might perhaps justify. 2 Hagg. Eccl. R. 73. An act done by a gentleman towards a lady might be considered rudeness, whicb, if done by one gentleman to another might not be looked upon in that light. Russ. & Ry. 130.

3. A person who touches another with rudeness is guilty of a battery. (q. v.)

RULE. This is a metaphorical expression borrowed from mechanics. The rule, in its proper and natural sense, is an instrument by means of which may be drawn from one point to another, the shortest possible line, which is called a straight line.

2. The rule is a means of comparison in the arts to judge whether the line be straight, as it serves in jurisprudence, to judge whether an action be just or unjust, it is just or right, when it agrees with the rule, which is the law. It is unjust and wrong, when it deviates from it. lt is the same with our will or our intention.

RULE OF LAW. Rules of law are general maxims, formed by the courts, who having observed what is common to many particular cases, announce this conformity by a maxim, which is called a rule; because in doubtful and unforeseen cases, it is a rule for their decision; it embraces particular cases within general principles. Toull. Tit. prel. n. 17; 1 Bl. Com. 44; Domat, liv. prel. t. 1, s. 1 Ram on Judgm. 30; 3 Barn. & Adol. 34; 2 Russ. R. 216, 580, 581; 4 Russ. R. 305; 10 Price's R. 218, 219, 228; 1 Barn. & Cr. 86; 7 Bing. R. 280; 1 Ld. Raym. 728; 5 T. R. 5; 4 M. & S. 348. See Maxim.

RULE OF COURT. An order made by a court having competent jurisdiction.

2. Rules of court are either general or special; the former are the laws by which the practice of the court is governed; the latter are special orders made in particular cases.

3. Disobedience to these is punished by giving judgment against the disobedient party, or by attachment for contempt.

RULE TO SHOW CAUSE. An order made by the court, in a particular case, upon motion of one of the parties calling upon the other to appear at a particular time before the court, to show cause, if any he have, why a certain thing should not be done.

2. This rule is granted generally upon the oath or affirmation of the applicant; but upon the hearing, the evidence of competent witnesses must be given to support the rule, and the affidavit of the applicant is insufficient.

RULE OF THE WAR, l756, comm. law, war. A rule relating to neutrals was the first rule practically, established in 1756, and universally promulgated, that "neutrals are

not to carry onin times of war, a trade which was interdicted to them in times of peace." Chit. Law of Nat. 166; 2 Rob. n. 186; 4 Rob. App.; Reeve on Shipp. 271; 1 Kent, Com. 82; Mann. Law Nat. 196 to 202.

RULE, TERM, English practice. A term rule is in the nature of a day rule, by which a prisoner is enabled by the terms of one rule, instead of a daily rule, to quit the prison or its rules for the purpose of transacting his business. lt is obtained in the same manner as a day rule. See Rules.

TO RULE. This has several meanings: 1. To determine or decide; as, the court rule the point in favor of the plaintiff. 2. To order by rule; as rule to plead.

RULES, English law. The rules of the King's Bench and Fleet are certain limits without the actual walls of the prisons, where the prisoner, on proper security previously given to the marshal of the king's bench, or warden of the fleet, may reside; those limits are considered, for all legal and practical purposes, as merely a further extension of the prison walls.

2. The rules or permission to reside without the prison, may be obtained by any person not committed criminally; 2 Str. R. 845; nor for contempt Id. 817; by satisfying the marshal or warden of the security with which he may grant such permission.

RULES OF PRACTICE. Certain orders made by the courts for the purpose of regulating the practice of members of the bar and others.

2. Every court of record has an inherent power to make rules for the transaction of its business; which rules they may from time to time change, alter, rescind or repeal. While they are in force they must be applied to all cases which fall within them; they can use no discretion, unless such discretion is authorized by the rules themselves. Rules of court cannot, of course, contra-vene the constitution or the law of the land. 3 Pick. R. 512; 2 Har. & John. 79; 1 Pet. S. C. R. 604; 3 Binn. 227, 417; 3 S. & R. 253; 8 S. & R. 336; 2 Misso. R. 98; 11 S. & R. 131; 5 Pick. R. 187.

RUMOR. A general public report of certain things, without any certainty as to their truth.

2. In general, rumor cannot be received in evidence, but when the question is whether such rumor existed, and not its truth or falsehood, then evidence of it may be given.

RUNCINUS. A nag. 1 Tho. Co. Litt. 471.

RUNNING DAYS. In settling the lay days, (q. v.) or the days of demiurrage, (q. v.) the contract sometimes specifies "running days;" by this exprression is, in general, understood, that the days shall be reckoned like the days in a bill of exchange 1 Bell's Comm. 577, 5th ed.

RUNNING OF THE STATUTE OF LIMITATIONS. A metaphorical expression, by which is meant that the time mentioned in the statute of limitations is considered as passing. 1 Bouv. Inst. n. 861.

RUNNING WITH THE LAND. A technical expression applied to covenants real, which affect the land; and if a lessee covenants that he and his assigns will repair the house demised, or pay a ground-rent, and the lessee grants over the term, and the assignee does not repair the house or pay the ground-rent, an action lies against the assignee at common law, because this covenant runs with the land. Bro. Covenant, 32 Rolle's Ab. 522; Bac. Ab. Covenant, E 4.

2. The same principle which regulates the annexation of incorporeal to corporeal property, determines what covenants may be annexed to a tenure. Those alone which tend directly, not merely through the intervention of collateral causes, to improve the estate, give stability to the tenant's title, assure him, from a defective one, or add to the lord's means on the one hand, the tenant's on the other, of enforcing the stipulations between them, are of this sort. Cro. Eliz. 617; Cro. Jac. 125; 2 H. Bl. 133 T. Jones, 144; Cro. Car. 137, 503.

3. Covenants running with the land pass with the tenure, though not made with assigns. The parties to them are not A and B, but the tenant and the landlord in those characters. When the landlord assigns the reversion, the assignee becomes lord in his room, fills the precise situation and character the assignor was clothed with, and is therefore entitled to the privileges annexed to that character. Whether the tenant is sued by the landlord or his assigns, be is sued by the same person, namely, his lord. The same argument, changing its terms, applies to the tenant's assignee. 5 Co. 24; Cro. Eliz. 552; 3 Mod. 538; 10 Mod. 152; 12 Mod. 371.

4. To make a covenant run with the land, it is not requisite that the cove-nantor should be possessed of any estate; be may be an entire stranger to the land, but the covenantee must have some transferable interest in it, to which the covenant can attach itself, for otherwise the covenant is merely personal. Co. Litt. 385 a; 3 T. R. 393; 2 Sc. 630 2 Bing. N. S. 411. And to make the assignee liable, he must take the estate the covenantee had in the land, and no other, for when he takes another and a different estate in the same land, he cannot sue upon the covenants. 6 East, 289. Vide Breach; Covenant.

5. A covenant running with the land passes to the heir at law, on the death of the ancestor, whether the heir be named in such covenant or not. 2 Lev. 92; 2 Saund. 367 a. Vide Covenant.

RUPEE, comm. law. A denomination of money in Bengal. In the computation of ad valorem duties, it is valued at fifty-five and one half cents. Act of March 2, 1799, s. 61; 1 Story's L. U. S. 627. Vide Foreign coins.

2. The rupee of British India as money of account at the custom-house, shall be deemed and taken to be of the value of forty-four and one half cents. Act of March 3, 1848.

RURAL. That which relates to the country, as rural servitudes. See Urban.

RUSE DE GUERRE. Literally a trick in war; a stratagem. It is said to be lawful among belligerents, provided it does not involve treachery and falsehood. Grot. Droit de la Guerre, liv. 3, c. 1, §9.

RUTA, civ. law. The name given to those things which are extracted or taken from land, as sand, chalk, coal, and such other things. Poth. Pand. liv. 50, h. t.

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S

SABBATH. The same as Sunday. (q. v.)

SABINIANS. A sect of lawyers, whose first chief was Atteius Capito, and the second, Caelius Sabiaus, from whom they derived their name. Clef des Lois Rom. h. t.

SACRAMENTUM. An oath; as, qui dicunt supra sacramentum suum.

SACQUIER, maritime law. The same of an ancient officer, whose business "was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandise otherwise." Laws of Oleron, art. 11, published in an English translation in an Appendix to 1 Pet. Adm. R. XXV. See Arrameur; Stevedore.

SACRILEGE. The act of stealing from the temples or churches dedicated to the worship of God, articles consecrated to divine uses. Pen. Code of China, B. 1, s. 2, §6; Ayl. Par. 476.

SAEVETIA. Cruelty. (q. v.) It is required in order to constitute saevetia that there should exist such a degree of cruelty as to endanger the party's suffering bodily hurt. 1 Hagg. Cons. R. 85; 2 Mass. 150; 3 Mass. 821; 4 Mass. 587.

SAFE-CONDUCT, comm. law, war. A passport or permission from a neutral state to persons who are thus authorized to go and return in safety, and, sometimes, to carry away certain things, in safety. According to common usage, the term passport is employed on ordinary occasions, for the permission given to persons when there is no reason why they should not go where they please: and safe-conduct is the name given to the instrument which authorizes certain persons, as enemies, to go into places where they could not go without danger, unless thus authorized by the government.

2. A safe-conduct is also the name of an instrument given to the captain or master of a ship to proceed on a particular voyage: it usually contains his name and residence, the name, description and destination of the ship, with such other matters as the practice of the place requires. This document is indispensably necessary for the safety of every neutral ship.

3. The act of congress of April 30th, 1790, s. 27, punishes the violation of any safe-conduct or passport granted under the authority of the United States, on conviction, with imprisonment, not exceeding three years, and a fine at the discretion of the court. Vide Conduct; Passport; and 18 Vin. Ab. 272.

SAFE PLEDGE, salvus-plegius. A surety given that a man shall appear upon a certain day. Bract. lib. 4, c. 1.

SAID. Before mentioned.

2. In contracts and pleadings it is usual and proper when it is desired to speak of a person or thing before mentioned, to designate them by the term said or aforesaid, or by some similar term, otherwise the latter description will be ill for want of certainty. 2 Lev. 207: Com. Dig. Pleader, C IS; Gould on Pl: c. 3, §63.

SAILING INSTRUCTIONS, mar. law. Written or printed directions, delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed for the fleet, in case of dispersion by storm, by an enemy, or by any other accident.

2. Without sailing instructions no vessel can have the full protection and benefit of convoy. Marsh. Ins. 368.

SAILORS. Seamen, mariners. Vide Mariners; Seamen; Shipping Articles.

SAISIE-EXECUTION, French law. This term is used in Louisiana. It is a writ of execution by which the creditor places under the custody of the law, the movables, which are liable to seizure, of his debtor, in order that out of them he may obtain payment of the debt due by him Code of Practice, art. 641 , Dall. Diet. h. t.. It is a writ very similar to the fieri facias.

SAISIE-FORAINE. A term used in Louisiana and in the French law; this is a permission given by the proper judicial officer, to authorize a creditor to seize the property of his debtor in the district which he inhabits. Dall. Dict. h. t. It has the effect of an attachment of property, which is applied to the payment of the debt due.

SAISIE-GAGERIE, French law. A conservatory act of execution, by which the owner, or principal lessor of a house or farm, causes the furniture of the house or farm leased, and on which he has a lien, to be seized, in order to obtain the rent due to him. It is similar to the distress of the common law. Dall. Dict. h. t.

SAISIE-IMMOBILIERE. A writ by which the creditor puts in the custody of the law the immovables of his debtor, that out of the proceeds of their sale, he may be paid his demand. The term is French, and is used in Louisiana.

SALARY. A reward or recompense for services performed.

2. It is usually applied to the reward paid to a public officer for the performance of his official duties.

3. The salary of the president of the United States is twenty-five thousand dollars per annum; Act of l8th Feb. 1793; and the constitution, art. 2, s. 1, provides that the compensation of the president shall not be increased or diminished, during the time for which he shall have been elected.

4. Salary is also applied to the reward paid for the performance of other services; but if it be not fixed for each year, it is called honorarium. Poth. Pand. h. t. According to M. Duvergier, the distinction between honorarium and salary is this. By the former is understood the reward given to the most ele-vated professions for services performed; and by the latter the price of hir-ing of domestic servants and workmen. 19 Toull. n. 268, p. 292, note.

5. There is this difference between salary and price; the former is the re-ward paid for services, or for the hire of things; the latter is the consideration paid for a thing sold. Lec. Elem. §907, 908.

SALE, contracts. An agreement by which one of the contracting parties, called the seller, gives a thing and passes the title to it, in exchange for a certain price in current money, to the other party, who is called the buyer or purchaser, who, on his part, agrees to pay such price. Pard. Dr. Com. n. 6; Noy's Max. ch. 42; Shep. Touch. 244; 2 Kent, Com. 363; Poth. Vente, n. 1; 1 Duverg. Dr. Civ. Fr. n. 7.

2. This contract differs from a barter or exchange in this, that in the latter the price or consideration, instead of being paid in money, is paid in goods or merchandise, susceptible of a valuation. It differs from accord and satisfaction, because in that contract, the thing is given for the purpose of quieting a claim, and not for a price. An onerous gift, when the burden it imposes is the payment of a sum of money, is, when accepted, in the nature of a sale. When partition is made between two or more joint owners of a chattel, it would seem, the contract is in the nature of a barter. See 11 Pick. 311.

3. To constitute a valid sale there must be, 1. Proper parties. 2. A thing which is the object of the contract. 3. A price agreed upon; and, 4. The consent of the contracting parties, and the performance of certain acts required to complete the contract. These will be separately considered.

4. - 1. As a general rule all persons sui juris may be either buyers or sellers. But to this rule there are several exceptions. 1. There is a class of persons who are incapable of purchasing except sub modo, as infants, and married women; and, 2. Another class, who, in consequence of their peculiar relation with regard to the owner of the thing sold, are totally incapable of becoming purchasers, while that relation exists; these are trustees, guardians, assignees of insolvents, and generally all persons who, by their connexion with the owner, or by being employed concerning his affairs, have acquired, a knowledge of his property, as attorneys, conveyancers, and the like. See Purchaser.

5. - 2. There must be a thing which is the object of the sale, for if the thing sold at the time of the sale had ceased to exist it is clear there can be no sale; if, for example, Paul sell his horse to Peter, and, at the time of the sale the horse be dead, though the fact was unknown to both parties: or, if you and I being in Philadelphia, I sell you my house in Cincinnati, and, at the time of the sale it be burned down, it is manifest there was no sale, as there was not a thing to be sold. It is evident, too, that no sale can be made of things not in commerce, as the air, the water of the sea, and the like. When there has been a mistake made as to the article sold, there is no sale; as, for example, where a broker, who is the agent of both parties, sells an article and delivers to the seller a sold note describing the article sold as "St. Petershurg clean hemp," and bought note to, the buyer, as "Riga Rhine hemp," there is no sale. 5 Taunt. 786, 788; 5 B. & C. 437; 7 East, 569 2 Camp. 337; 4 Ad. & Ell. N. S. 747 9 M. &, W. 805. Holt. N. P. Cas. 173; 1 M. & P. 778.

6. There must be an agreement as to the specific goods which form the basis of the contract of sale; in other words, to make a perfect sale, the parties must have agreed the one to part with the title to a specific article, and the other to acquire such title; an agreement to sell one hundred bushels of wheat, to be measured out of a heap, does not change the property, until the wheat has been measured. 3 John. 179; Blackb. on Sales, 122 , 5 Taunt. 176; 7 Ham. (part 2d) 127; 3 N. Ramp. R.282; 6 Pick. 280; 15 John. 349; 6 Cowen, 250 7 Cowen, 85; 6 Watts, 29.

7. - 3. To constitute a sale there must be a price agreed upon; but upon the maxim id certum est quod reddi certum potest, a sale may be valid although it is agreed that the rice for the thing sold shall be determined by a third person. 4 Pick. 179. The price must have the three following qualities, to wit: 1. It must be an actual or serious price. 2. It must be certain or capable of being rendered certain. 3. It must consist of a sum of money.

8. - 1. The price must be an actual or serious price, with an intention on the part of the seller, to require its payment; if, therefore, one should sell a thing to another, and, by the same agreement, he should release the buyer from the payment, this would not be a sale but a gift, because in that case the buyer never agreed to pay any price, the same agreement by which the title to the thing is passed to him discharging him from all obligations to pay for it. As to the quantum of the price that is altogether immaterial, unless there has been fraud in the transaction. 2. The price must be certain or determined, but it is sufficiently certain, if, as before observed, it be left to the deterimination of a third person. 4 Pick. 179; Poth. Vente, n. 24. And an agreement to pay for goods what they are worth, is sufficiently certain. Coxe, 261; Poth. Vente, n. 26. 3. The price must consist in a sum of money which the buyer agrees to pay to the seller, for if paid for in any other way, the contract would be an exchange or barter, and not a sale, as before observed.

9. - 4. The consent of the contracting parties, which is of the essence of a sale, consists in the agreement of the will of the seller to sell a certain thing to the buyer, for a certain price, and in the will of the buyer, to purchase the same thing for the same, price. Care must be taken to distinguish between an agreement to enter into a future contract, and a present actual agreement to make a sale. This consent may be shown, 1. By an express agreement. 2. By all implied agreement.

10. - 1. The consent is certain when the parties expressly declare it. This, in some cases, it is requisite should be in writing. By the 17tth section of the English statute, 29 Car. II. c. 3, commonly called the Statute of Frauds, it is enacted, "that no contract for the sale of any goods, wares, or merchan-dise, for the price of ú10 or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorized." This statute has been renacted in most of the states of the Union, with amendments and alterations,

11. It not unfrequently happens that the consent of the parties to a contract of sale is given in the course of a correspondence. To make such contract valid, both parties must concur in it at the same time. See Letter, com. law, crim. law, §2; 4 Wheat. 225; 6 Wend. 103; 1 Pick. 278 10 Pick. 326.

12. An express consent to a sale may be given verbally, when it is not required by the statute of frauds to be in writing.

13. - 2. When a party, by his acts, approves of what has been done, as if he knowingly uses goods which have been left at his house by another who intended to sell them, he will, by that act, confirm the sale.

14. The consent must relate, 1. To the thing which is the object of the contract; 2. To the price; and, 3. To the sale itself. 1st. Both parties must agree upon the same object of the sale; if therefore one give consent to buy one thing, and the other to sell another, there is no sale; nor is there a sale if one sells me a bag full of oats, which I understand is full of wheat; because there is no consent as to the thing which is the object of the sale. But the sale would be valid, although I might be mistaken as to the quality of the tiling sold. 20 John. 196 3 Rawle, 23, 168. 2d. Both parties must agree as to the same price, for if the seller intends to sell for a greater sum than the buyer intends to give, there is no mutual consent; but if the case were reversed, and the seller intended to sell for a less price than the buyer intended to give, the sale would be good for the lesser sum. Poth. Vente, n. 36. 3d. The consent must be on the sale itself, that is, one intends to sell, and the other to buy. If, therefore, Peter intended to lease his

house for three hundred dollars a year for ten years, and Paul intended to buy it for three thousand dollars, there would not be a contract of sale nor a lease. Poth. Vente, n. 37.

15. In order to pass the property by a sale, there must be an express or implied agreement that the title shall pass. An agreement for the sale of goods is prima facie a bargain and sale of those goods; but this arises merely from the presumed intention of the parties, and if it appear that the parties have agreed, not that there shall be a mutual credit by which the property is to pass from the seller to the buyer, and the buyer is bound to pay the price to the seller, but that the exchange of the money for the goods shall be made on the. spot, no property is transferred, for it is not the intention of the parties to transfer any. 4 Wash. C. C. R. 79. But, on the contrary, when the making of part payment, or naming a day for payment, clearly shows an intention in the parties that they should have some time to complete the sale by payment and delivery, and that they should in the meantime be trustees for each other, the one of the property in the chattel, and the other in the price. As a general rule, when a bargain is made for the purchase of goods, and nothing is said about payment and. delivery, the property passes immediately, so as to cast upon the purchaser all future risk, if nothing remains to be done to the goods, although he cannot take them away without paying the price. 5 B. & C. 862.

16. Sales are absolute or conditional. An absolute sale is one made and completed without any condition whatever. A conditional sale is one which depends for its validity upon the fulfilment of some condition. See 4 Wash. C. C. R. 588; 4 Mass. 405; 17 Mass. 606; 10 Pick. 522; 13 John. 219; 18 John. 141; 8 Verm. 154; 2 Hall 561; 2 Rawle, 326; Coxe, 292; 1 Bailey 563; 2 A.K. Marsh. 430.

17. Sales are also voluntary or forced, public or private.

18. - 1. A voluntary sale is one made without constraint freely by the owner of the thing sold; to such the usual rules relating to sales apply. 2. A forced sale is one made without the consent of the owner of the property by some officer appointed by law, as by a marshal or a sheriff in obedience to the mandate of a competent tribunal. This sale has the effect to transfer all the rights the owner had in the property, but it does not, like a voluntary sale of personal property, guaranty a title to the thing sold it merely transfers the rights of the person as whose property it has been seized. This kind of a sale is sometimes called a judicial sale. 3. A public sale is one made at auction to the highest bidder. Auction sales sometimes are voluntary, as when the owner chooses to sell his goods in this way, and then as between the seller and the buyer the usual rules relating to sales apply; or they are involuntary or foreed when the same rules do not apply. 4. Private sales are those made voluntarily and not at auction.

19. The above rules apply to sales of personal property. The sale of real estate is governed by other rules. When a contract has been entered into for the sale of lands, the legal estate in such lands still remains vested in the vendor, and it does not become vested in the vendee until he shall have re-ceived a lawful deed of conveyance from the vendor to him; and the only remedy of the purchaser at Iaw, is to bring an action on the contract, and recover pecuniary damages for a breach of the contract. In equity, however, after a contract for the sale, the lands are considered as belonging to the purchaser, and the court will enforce his rights by a decree for a specific performance; and the seller will be entitled to the purchase money. Will. on Real Prop. 127. See Specific performance.

20. In general, the seller of real estate does not guaranty the title; and if it be desired that he should, this must be done by inserting a warranty to that effect. See, generally, Brown on Sales; Blackb. on Sales; Long on Sales; Story on Sales, Sugd. on Vendors; Pothier, Vente; Duvergier, Vente; Civil Code of Louisiana, tit. 7; Bouv. Inst. Index, h. t.; and Contracts; Delivery; Purchaser; Seller; Stoppage in transitu.

SALE NOTE. A memorandum given by a broker to a seller or buyer of goods, stating the fact that certain goods have been sold by him on account of a person called the seller to another person called the buyer. Sale notes are also called bought notes, (q. v.) and sold notes. (q. v.)

SALE AND RETURN. When goods are sent from a manufacturer or wholesale dealer to a retail trader, in the hope that he may purchase them, with the understanding that what he may choose to take he shall have as on a contract of sale, and what he does not take he will retain as a consignee for the owner, the goods are said to have been sent on sale and return.

2. The goods taken by the receiver as on a sale, will be considered as sold, and the title to them is vested in the receiver of them; the goods he does not buy are considered as a deposit in the hands of the receiver of them, and the title is in the person who sent them. 1 Bell's Com., 268, 5th ed.

SALIQUE LAW. The name of a code of laws so called from the Salians, a people of Germany, who settled in Gaul under their king Phararaond.

2. The most remarkable law of this code is that which regards succession. De terra vero salica nulla portio haereditatis transit in mulierem, sed hoc vir-iles sextus acquirit, hoc est filii in ipsa haereditate succedunt; no part of the salique land passes to females, but the males alone are capable of taking, that is, the sons succeed to the inheritance. This rule has ever excluded females from the throne of France.

SALVAGE, maritime law. This term originally meant the thing or goods saved from shipwreck or other loss; and in that sense it is generally to be understood in our old books. But it is at present more frequently understood to mean the compensation made to those by whose means the ship or goods have been saved from the effects of shipwreck, fire, pirates, enemies, or any other loss or misfortune. 1 Cranch, 1.

2. This compensation, which is now usually made in money, was, before the use of money became general, made by a delivery of part of the effects saved. Marsh. Ins. B. 1, c. 12, s. 8; Pet. Adm. Dec. 425; 2 Taunt. 302; 3 B. & P. 612; 4 M. & S. 159; 1 Cranch, 1; 2 Cranch, 240; Cranch, 221; 3 Dall. 188; 4 Wheat. 98 9 Cranch, 244; 3 Wheat. 91; 1 Day, 193 1 Johns. R. 165; 4 Cranch, 347; Com. Dig. Salvage; 3 Kent, Com. 196. Vide Salvors.

SALVAGE CHARGES. The expenses incurred to remunerate services rendered to a ship and cargo, which have prevented its being a total loss. Stev. on Av. c. 2, s. 1.

SALVAGE LOSS. By salvage loss is understood the difference between the amount of salvage, after deducting the charges, and the original value of the property. Stev. on Av. c. 2, s. 1.

SALVORS, mar. law. When a ship and cargo, or any part thereof, are saved at sea by the exertions of any person from impending perils, or are recovered after an actual abandonment or loss, such persons are denominated salvors; they are entitled to a compensation for their services, which is called salvage. (q. v.)

2. As soon as they take possession of property for the purpose of preserving it, as if they find a ship derelict at sea, or if they recapture it, or if they go on board a ship in distress, and take possession with the assent of the master or other person in possession, they are deemed boua fide possessors, and their possession cannot be lawfully displaced. 1 Dodson's Rep. 414. They have a lien on the property for their salvage, which the, laws of all maritime countries will respect and enforce. Salvors are responsible not only for good faith, but for reasonable diligence in their custody of the salvage property. Story, Bail. §623.

SAMPLE, contracts. A small quantity of any commodity or merchandise, exhibited as a specimen of a larger quantity called the bulk. (q. v.)

2. When a sale is made by sample, and it afterwards turns out that the bulk does not correspond with it, the purchaser is not, in general, bound to take the property on a compensation being made to him for the difference. 1 Campb. R. 113; vide 2 East, 314; 4, Campb. R. 22; 12 Wend. 566 9 Wend. 20; 6 Cowen, 354; 12 Wend. 413. See 5 John. R. 395.

SANCTION. That part of a law which inflicts a penalty for its violation, or bestows a reward for its observance. Sanctions are of two kinds, those which redress civil injuries, called civil sanctions; and those which punish crimes, called penal sanctions. 1 Hoffm. Leg. Outl. 279; Just. Ins. lib. 2, t. 1, §10; Ruthf. Inst. b. 2, c. 6, s. 6; Toull. tit. prel. 86; Ferguss. Inst. of Mor. Phil. p. 4, c. 3, s. 13, and p. 6, c. 1, et seq; 1 Bl. Com. 56.

SANCTUARY. A place of refuge, where the process of the law cannot be executed.

2. Sanctuaries may be divided into religious and civil. The former were very common in Europe; religious houses affording protection from arrest to all persons, whether accused of crime, or pursued for debt. This kind was never known in the United States.

3. Civil sanctuary, or that protection which is afforded to a man by his own house, was always respected in this country. The house protects the owner from the service of all civil process in the first instance but not if he is once lawfully arrested and takes refuge in his own house. Vide Door; House.

4. No place affords protection from arrest in criminal cases; a man may, therefore, be arrested in his own bouse in such cases, and the doors may be broken for the purpose of making the arrest. Vide Arrest in criminal cases.

SANE MEMORY. By this is meant that understanding which enables a man to make contracts and his will, and to perform such other acts as are authorized by law; Vide Lunacy; Memory; Non compos mentis.

SANG or SANC. Blood. These words are nearly obsolete.

SANITY, med. jur. The state of a person who has a sound understanding; the reverse of insanity.

2. The sanity of an individual is always presumed. 5 John. R. 144; 1 Pet. R. 163; 1 Hen. & M. 476; 4. Cowen, R. 207; 4 W. C. C. R. 262. See 9 Conn. 102; 9 Mass. 225; 3 Mass. 336 1 Mass. 71; 8 Mass. 371; 8 Greenl. 42; 15 John. 503; 4 Pick. 32.

SANS CEO QUE. The same as Absque hoc. (q. v.)

SANS NOMBRE. This is a French phrase, which signifies without number.

2. In England it is used in relation to the right of putting animals on a common. The term common sans nombre does not mean that the beasts are to be innumerable, but

only indefinite, not certain; Willes, 227; but they are limited to the commoner's own commonable cattle, levant et couchant, upon his lands, or as many cattle as the land of the commoner can keep and maintain in winter. 2 Brownl. 101; Vent. 54; 5 T. R. 48; 1 Saund. 28, n. 4.

SANS RECOURS. Without recourse.

2. These words are sometimes put on a bill before the payee endorses it; they have the effect of transferring the bill without responsibility to the endorser. Chit. on Bills, 179; 7 Taunt. 160; 1 Cowen, 538; 3 Cranch, 193; 7 Cranch, 159; 12 Mass. 172; 14 S. & R. 325.

SATISDACTION, civil law. This word is derived from the same root as satisfaction; for, in the same manner that to fulfil the demand which is made upon us, is called satisfaction, so satisdaction takes place when he who demands something has agreed to receive sureties instead of the thing itself. Dig. 2, 8, 1

SATISFACTION, practice. An entry made on the record, by which a party in whose favor a judgment was rendered, declares that he has been satisfied and paid.

2. In Alabama, Delaware, Illinois, Indiana, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, South Carolina, and, Vermont, provision is made by statute, requiring the mortgagee to discharge a mortgage upon the record, by entering satisfaction in the margin. The refusal or neglect to enter satisfaction after payment and demand, renders the mortgagee liable to an action, after the time given him by the respective statutes for doing the same has elapsed, and subjects him to the payment of damages, and, in some cases, treble costs. In Indiana and New York, the register or recorder of deeds may himself discharge the mortgage upon the record on the exhibition of a certificate of payment and satisfaction signed by the mortgagee or his representatives, and attached to the mortgage, which shall be recorded. Ind. St. 1836, 64; 1 N. Y. Rev. St. 761.

SATISFACTION, construction by courts of equity. Satisfaction is defined to be the donation of a thing, with the intention, express or implied, that such donation is to be an extinguishment of some existing right or claim in the donee.

2. Where a person indebted bequeaths to his creditor a legacy, equal to, or exceeding the amount of the debt, which is not noticed in the will, courts of equity, in the absence of any intimation of a contrary intention, have adopted the rule that the testator shall be presumed to have meant the legacy as a satisfaction. of the debt.

3. When a testator, being indebted, bequeaths to his creditor a legacy, simpliciter, and of the same nature as the debt, and not coming within the exceptions stated in the next paragraph, it has been held a satisfaction of the debt, when the legacy is equal to, or exceeds the amount of the debt. Pre. Ch. 240; 3 P. Wms. 353.

4. The following are exceptions to the rule: 1. Where the legacy is of, less amount than the debt, it shall not be deemed a part payment or satisfaction. 1 Ves. pen. 263.

5. - 2. Where, though the debt and legacy are of equal amount, there is a difference in the times of payment, so that the legacy may not be equally beneficial to the legatee as the debt. Prec. Ch. 236; 2 Atk. 300; 2 Ves. sen. 63 5; 3 Atk. 96; 1 Bro. C. C. 129; 1 Bro. C. C. 195; 1 M'Clel. & Y. Rep. Exch. 41; 1 Swans. R. 219.

6. - 3. When the legacy and the debt are of a different nature, either with reference, to the subjects themselves, or with respect to the interests given. 2 P. Wms. 614; 1 Ves. jr. 298; 2 Ves. jr. 463.

7. - 4. When the provision by the will is expressed to be given for a particular purpose, such purpose will prevent the testamentary gift being construed a satisfaction of the debt, because it is given diverse intuitu. 2 Ves. sen. 635.

8. - 5. When the debt of the testator is contracted subsequently to the, making of the will; for, in that case, the legacy will not be deemed a satisfaction. 2 Salk. 508.

9. - 6. When the legacy is uncertain or contingent. 2 Atk. 300; 2 P. Wms. 343.

10. - 7. Where the debt itself is contingent, as where it arises from a running account between the testator and legatee; 1 P. Wms. 296; or it is a negotiable bill of exchange. 3 Ves. jr. 561.

11. - 8. Where there is an express direction in the will for the payment of debts end legacies, the court will infer from the circumstance, that the testator intended that both the debt owing from him to the legatee and the legacy, should, be paid. 1 P. Wms. 408; 2 Roper, Leg. 54.

See, generally, Tr. of Eq. 333; Yelv. 11, n.; 1 Swans. R. 221; 18 Eng. Com. Law Rep. 201; 4 Ves. jr. 301; 7 Ves. jr. 507; 1 Suppl. to Ves. jr. 204, 308, 311, 342, 348, 329; 8 Com. Dig. Appen. tit. Satisfaction, p. 917; Rob. on Frauds, 46, n. 15; 2 Suppl. to Ves. jr. 22, 46, 205; 1 Vern. 346; Roper, Leg. c. 17; 1 Roper on Hush. and Wife, 501 to 511; 2 Id. 53 to 63; Math. on Pres. c. 6, p. 107; 1 Desaus. R. 814; 2 Munf. Rep. 413; Stallm. on El. and Sat.

SATISFACTION PIECE, Eng. practice. An instrument of writing in which it is declared that, satisfaction is acknowledged between the plaintiff and defendant. It is signed by the attorney, and on its production and the warrant of attorney to the clerk of the judgments, satisfactio is entered on payment, of certain fees. Lee's Dict. of Pr. tit. Satisfaction.

SATISFACTORY EVIDENCE. That which is sufficient to induce a belief that the thing is true; in other words, it is credible evidence. 3 Bouv. Inst. n. 3049.

SCANDAL. A scandalous verbal report or rumor respecting some person.

2. The remedy is an action on the case.

3. In chancery practice, when a bill or other pleading contains scandal, it will be referred to a master to be expunged, and till this has been done, the opposite party need not answer. 3 Bl. Com. 342. Nothing is considered scandalous which is positively relevant to the cause, however harsh and gross the charge may be. The degree of relevancy is not deemed material. Coop. Eq. Pl. 19; 2 Ves. 24; 6 Ves. 514, 11 Ves. 626; 15 Ves. 477; Story Eq. Plo. §269 Vide Impertinent.

SCANDALUM MAGNATUM. Great scandal or slander. In England it. is the slander of the great men, the nobility of the realm.

SCHEDULE, practice. When an indictment is returned, from au inferior court in obedience to a writ of certiorari, the, statement of the previous proceedings sent with it, is termed the schedule. 1 Saund. 309, a, n. 2.

2. Schedules are also frequently annexed to answers in a court of equity, and to depositions and other documents, in order to show more in detail the matter they contain, than could otherwise be conveniently shown.

3. The term is frequently used instead of inventory.

SCHOOLMASTER. One employed in teaching a school.

2. A schoolmaster stands in loco parentis in relation to the pupils committed to his charge, while they are under his care, so far as to enforce obedience to his, commands, lawfully given in his capacity of school-master, and he may therefore enforce them by moderate correction. Com. Dig. Pleader, 3 M 19; Hawk. c. 60, sect. 23. Vide Correction.

3. The schoolmaster is justly entitled to be paid for his important and arduous services by those who em ploy him. See 1 Bing. R. 357 8 Moore's Rep. 368. His duties are to teach his pupils what he has undertaken, and to have a special care over their morals. See 1 Stark. R. 421.

SCIENDUM, Eng. law. The name given to a clause inserted in the record by which it is made " known that the justice here in court, in this same term, delivered a writ thereupon to the deputy sheriff of the county aforesaid, to be executed in due form of law." Lee's Dict. art. Record.

SCIENTER, knowingly.

2. A man may do many acts which are justifiable or not, as he is ignorant or not ignorant of certain facts. He may pass a counterfeit coin, when he is ignorant of its being counterfeit, and is guilty of no offence; but if he knew the coin to be counterfeit, which is called the scienter, he is guilty of passing counterfeit money. A man who keeps an animal which injures some person, or his property, is answerable for damages, or in some cases he may be indicted if he had a knowledge of such animal's propensity to do injury. 3 Blackst. Comm. 154; 2 Stark. Ev. 178; 4 Campb. 198; 2 Str. 1264; 2 Esp. 482; Bull. N. P. 77; Burr. 2092; 2 Lev. 172; Lord Raym. 110; 2 B. & A. 620; 2 C. M. & R. 496; 5 C. & P. 1; S. C. 24 E. C. L. R. 187; 1 Leigh, N. P. 552, 553; 7 C. & P. 755.

4. In this respect the civil law agrees with our own. Domat, Lois Civ. liv. 2, t. 8, s. 2. As to what evidence maybe given to prove guilty knowledge, see Archb. Cr. Pl. 109. Vide Animal; Dog.

SCILICET. A Latin adverb, signifying that is to say; to wit; namely.

2. It is a clause to usher in the sentence of another, to particularize that which was too general before, distribute what was too gross, or to explain what was doubtful and obscure. It neither increases nor diminish the premises or habendum, for it gives nothing of itself; it may make a restriction when the preceding words may be restrained. Hob. 171 P. Wms. 18; Co. Litt. 180 b, note 1.

3. When the scilicet is repugnant to the precedent matter, it is void; for example, when a declaration in trover states that the plaintiff on the third day of May was possessed of certain goods which on the fourth day of May came to the defendant's hands, who afterwards, to wit, on the first day of May converted them, the scilicet was rejected as surplusage. Cro. Jac. 428; and vide 6 Binn. 15; 3 Saund. 291, note 1, and the cases there cited. This word is sometimes abbreviated, ss. or sst.

SCINTILLA JURIS, estates; A spark of right. A legal fiction, resorted to for the purpose of enabling feoffees to uses to support contingent uses when they come into existence, thereby to enable the statutes of uses, 27 Henry VIII., to execute them. 4 Kent's Com. 238, et seq., and the authorities there cited, for the learning upon this subject.

SCIRE FACIAS, remedies, practice. The name of a judicial writ, founded upon some record, and requiring the defendant to show cause why the plaintiff should not have the "advantage of such record; or, when it is issued to repeal letters-patent, why the record should not be annulled and vacated. 3 Sell. Pr. 187; Grah. Pr. 649; 2 Tidd's Pr. 982; 2 Arch. Pr. 76; Bac. Abr. h. t.

2. It is, however, considered as an action, and in the nature of a new original. Skin. 682; Com. 455.

3. The scire facias against a bail, against pledges in replevin, to repeal letters-patent, or the like, is an original proceeding; but when brought to revive a judgment after a year and a day, or upon the death or marriage of the parties, when in the latter case one of them is a woman; or when brought on a judgment quando, &c., against an executor, it is but a continuation of the original action. Vide 1 T. R. 388. Vide generally, 11 Vin. Ab. 1; 19 Vin. Ab. 280 Bac. Ab. Execution, H; Bac. Ab. h. t. 2 Saund. 72 e, note, 3; Doct. Pl. 436 Bouv. Inst. Index, h. t.

SCIRE FACIAS AD AUDIENDUM ERRORES. The name of a writ which is sued out after the plaintiff in error has assigned his errors. F. N. B. 20; Bac. Ab. Error F.

SCIRE FACIAS AD DISPROBANDUM DEBTTUM. The name of a writ in use in Pennsylvania, which lies by a defendant in foreign attachment against the plaintiff, in order to enable him, within a year and a day next ensuing the time of payment to the plaintiff in the attachment, to disprove or avoid the debt recovered against him. Act relating to the commencement of actions, s. 61, passed June 13th, 1836.

SCIRE FECI, practice. The return of the sheriff, or other proper officer, to the writ of scire facias, when it has been served; scire feci, "I have made known."

SCIRE FIERI INQUIRY, Eng. law. The name of a writ, the history of the origin of which is as follows: when on an execution de bonis testatoris against an executor the sheriff returned nulla bona and also a devastavit, a fieri fac-ias, de bonis propriis, might formerly have been issued against the executor, without a previous inquisition finding a devastavit and a scire facias. But the most usual practice upon the sheriff's return of nulla bona a to a fieri facias de bonis testatoris, was to sue out a special writ of fieri facias de bonis testatoris, with a clause in it, "et si tibi constare, poterit," that

the executor had wasted the goods, then to levy de bonis propriis. This was the practice in the king's bench till the time of Charles I.

2. In the common pleas a practice had prevailed in early times upon a suggestion in the special writ of fieri facias of a devastavit by the executor, to direct the sheriff to inquire by a jury, whether the executor had wasted the goods, and if the jury found he had, then a scire facias was issued out against him, and unless he made a good defence thereto, an execution de bonis propriis was awarded against him.

3. The practice of the two courts being different, several cases were brought into the king's bench on error, and at last it became the practice of both courts, for the sake of expedition, to incorporate the fieri facias inquiry, and scire facias, into one writ, thence called a scire fieri inquiry, a name compounded of the first words of the two writs of scire facias and fieri facias, and that of inquiry, of which it consists.

4. This writ recites the fieri facias de bonis testatoris sued out on the judgment against the executor, the return of nulla bona by the sheriff, and then suggesting that the executor bad sold and converted the goods of the testator to the value of the debt and damages recovered, commands the sheriff to levy the said debt and damages of the goods of the testator in the hands of the executor, if they could be but if it should appear to him by the inquisition of a jury that the executor had wasted the goods of the testator, then the sheriff is to warn the executor to appear, &c. If the judgment had been either by or against the testator or intestate, or both, the writ of fieri facias recites that fact, and also that the court had adjudged, upon a scire facias to revive the judgment, that the executor or administrator should have execution for the debt, &c. Clift's Entr. 659; Lilly's Entr. 664; 3 Rich. Pr. K. B. 523.

5. Although this practice is sometimes adopted, yet the most usual proceeding is by action of debt on the judgment, suggesting a devastavit, because in the proceeding by scire fieri inquiry the plaintiff is not entitled to costs, unless the executor appears and pleads to the scire facias. 1 Saund. 219, n. 8. See 2 Archb. Pr. 934.

SCITE. The setting or standing of may place. The seat or situation of a capital messuage, or the ground on which it Stood. Jacob, L. D. h. t.

SCOLD. A woman who by her habit of scolding becomes a nuisance to the neighborhood, is called a common scold. Vide Common Scold.

SCOT AND LOT, Eng. law. The name of a customary contribution, laid upon all the subjects according to their ability.

SCOUNDREL. An opprobrious title given to a person of bad character. General damages will not lie for calling a man a scoundrel, but special damages may be recovered when there has been an actual loss. 2 Bouv: Inst. n. 2250; 1 Chit. Pr. 44.

SCRIPT, conv. The original or principal instrument, where there are part and counterpart. Vide Chirograph; Part, Rescript.

SCRIVENER. A person whose, business it is to write deeds and other instruments for others; a conveyancer.

2. Money scriveners are those who are engaged in procuring money to be lent on mortgages and other securities, and lending such money accordingly. They act also as agents for the purchase and sale of real estates.

3. To be considered a money scrivener, a person must be concerned in carrying on the trade or profession as a means of making a livelihood. He must in the course of his occupation receive other men's moneys into his trust and custody, to lay out for them as occasion offers. 3 Camp. R. 538; 2 Esp. Cas. 555.

SCROLL. A mark which is to supply the place of a seal, made with a pen or other instrument on a writing.

2. In some of the states this has all the efficacy of a seal. 1, S. & R. 72; 1 Wash. 42; 2 McCord, 380; 4 McCord 267; 3 Blackf. 161; 3 Gill & John. 234; 2 Halst. 272. Vide Seal; 2 Serg. & Rawle, 504; 2 Rep. 5. a; Perk. §129. In others, a scroll has no such effect; and when a suit is brought on an instrument sealed with a scroll, the act of limitations may be pleaded to it, as to a simple contract. 2 Rand. 446; 6 Halst. 174; 5 John. 239; 1 Blackf. 241; Griff. Law Reg., answers to question No 110.

SCUTAGE, old Eng. law. The name of a tax or contribution raised for the use of the king's armies by those who held lands by knight's service.

SCYREGEMOTE. The name of a court among the Saxons. It was the court of the shire, in Latin called curia comitatus, and the principal court among the Saxons. It was holden twice a year for determining all causes both ecclesias-tical and secular.

SE DEFENDENDO, criminal law. Defending himself.

2. Homicide, se defendendo, is that which takes place upon a sudden rencounter, where two persons upon a sudden quarrel, without premeditation or malice, fight upon equal terms, and one, before a mortal stroke has been given, declines any further combat, and retreats as far as he can with safety, and kills his adversary, through

necessity, to avoid immediate death. 2 Swift's Dig. 289 pamphl. Rep. of Selfridge's, Trial in, 1805 Hawk. bk. 1, c. 11, s. 13; 2 Russ. on Cr. 543; Bac. Ab. Murder, &c F 2.

SEA. The ocean; the great mass of waters which surrounds the land, and which probably extends from pole to pole, covering nearly three quarters of the globe. Waters within the ebb and flow of the tide, are to be considered the sea. Gilp. R. 526.

2. The sea is public and common to all people, and every person has an equal right to navigate it, or to fish there; Ang. on Tide Wat. 44 to 49; Dane's Abr. c. 68, a. 3, 4; Inst. 2, 1, 1; and to land upon the sea, shore. (q. v.)

3. Every nation has jurisdiction to the distance of a cannon shot, (q, v.) or marine league, over the water adjacent to its shore. 2 Cranch, 187, 234; 1 Circuit Rep. 62; Bynk. Qu. Pub. Juris. 61; 1 Azuni Mar. Law, 204; Id. 185; Vattel, 207:

SEA LETTER OR SEA BRIEF, maritime law. A document which should be found on board of every neutral ship; it specifies the nature and quantity of the cargo, the place from whence it comes, and its destination. Chit. Law of Nat. 197; 1 John. 192.

SEA SHORE, property. That space of land, on the border of the sea, which is alternately covered and left dry, by the rising and falling of the tide or, in other words, that space of land between high and low water mark. Hargr, Tr. 12; 6 Mass. 435, 439; 1 Pick. 180, 182; 5 Day, 22.

2. Generally, the sea shore belongs to the public. Angell on Tide Wat. 34, 5; 3 Kent's Com. 347.

3. By the Roman law, the shore included the land as far as the greatest wave extended in winter; est autem littus, maris, quatenus hibernus, fluctus maximus excurrit. Inst. lib. 2, t. 1, s. 3. Littus publicum est eatenus qua maxime fluctus exaestuat. Dig., lib, 50, t. 16, s. 112.

4. The Civil Code of Louisiana seems to have followed the law of the Insti-tutes and the Digest, for it enacts, art. 442, that the "sea shore is that space, of land over which the waters of the sea are spread in the highest water, during the winter season." Vide. 5 Rob. Adm. R. 182; Dougl. 425; 1 Halst. R. 1; 2 Roll. Ab. 170; Dyer, 326; 5 Co. 107; Bac. Ab., Courts of Admiralty,, A; 1 Am. Law Mag. 76; 16 Pet. R. 234, 367 Ang. on Tide Waters, Index, tit. Shore; 2 Bligh's N, S. 146; 5 M. & W. 327 Merl. Quest. de Droit, mots Rivage de la Mer; Inst. 2, 1, 2; 22 Maine, R. 350. For the law of Mass. vide Dane's Ab. c. 68, a 3, 4.

SEA WEED. A species of grass which grows in the sea.

2. When cast upon land, it belongs to the owner of the land adjoining the sea shore; upon the grounds, that it increases gradually, that it is useful as manure and a protection to the ground, and that it is some compensation for the encroachments of the sea upon the land. 2 John. R. 313, 323. Vide 5 Verm. R. 223.

3. The French differs from our law in this respect, as sea weeds there, when cast on the beach, belong to the first occupant. Dall. Dict. Propriete, art. 3, §2, n. 128.

SEA WORTHINESS, mer. law. The ability of a ship or other vessel to make a sea voyage with probable safety: there is, in every insurance, whether on ship or goods, an implied warranty that the ship shall be worthy when she sails on the voyage insured; that is, that she shall be "tight, staunch, and strong, properly manned, provided with all necessary stores, and in all respects fit for the intended voyage." Marsh. Ins. 153 2 Phil. Ev. 60 10 Johns. R. 58.

2. The following rules have been established in regard, to the warranty of sea-worthiness.

3. - 1. That it is of no consequence whether the insured was aware of the condition of the ship, or not. His innocence or ignorance is no answer to the fact that the ship was not sea-worthy.

4. - 2. - The opinion of carpenters who have repaired the vessel, however they may strengthen the presumption that the ship is sea-worthy, when it is favorable, is not conclusive of the fact of sea-worthiness. 4 Dow's Rep. 269.

5. - 3. The presumption, prima facie, is for sea-worthiness. 1 Dow's R. 336; And it is presumed that a vessel continues sea-worthy, if she was so at the inception of the risk. 20 Pick. 389. See 1 Brev. 252.

6. - 4. Any sort of disrepair left in the ship, by which she, or the cargo may suffer, is a breach of the warranty of sea-worthiness.

7. - 5. A deficiency of force in the crew, or of skill in the master, mate, &c., is a want of sea-worthiness. 1 Campb. 1; 14 East, R. 481. But if there was once a sufficient crew, their temporary absence will not be considered a breach of the warranty. 2 Barn. & Ald. 73; 1 John. Cas. 184; 1 Pet. 183.

8. - 6. A vessel may be rendered not sea-worthy by being overloaded. 2 Barn. & Ald . 320.

9. - 7. When the sea-worthiness arises from justifiable ignorance of the cause of the defect, and is discovered and remedied before any injury occurs, it is not to be considered as a defect. Ib. See, generally, 2 John. 124, 129; 3 John. Cas. 76; 1 John. 241; 1 Caines, 217 3 S. & R. 25 1 Whart. 399.

10. By an act of congress, approved July 20, 1840, as amended, by the act of July 29, 1850, it is provided, that if the first officer, (or a second and third officer,) and a majority of the crew of any vessel, shall make complaint in writing that she is in an unsuitable condition to go to sea, because she is leaky, or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been, during the voyage, sufficient and wholesome, thereupon, in any of these or like cases, the consul or commercial agent who may discharge any duties of a consul shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to examine into the causes of complaint, who shall, in their report, state what defects and deficiencies, if any they find to be well founded, as well as what, in their judgment ought to be done, to put the vessel in order for the continuance of her voyage.

SEAL, conveyancing, contracts. A seal is an impression upon wax, wafer, or some other tenacious substance capable of being impressed. 5 Johns. R. 239. Lord Coke defines a seal to be wax, with an impression. 3 Inst. 169. " Sigillum," says he, "est cera impressa, quia cera sine impressione non est sigillum." This is the common law definition of a seal. Perk. 129, 134; Bro. tit. Faits, 17, 30; 2 Leon 21; 5 John. 239; 2 Caines, R. 362; 21 Pick. R. 417.

2. But in Pennsylvania, New Jersey, and the southern and western states generally, the impression upon wax has been disused, and a circular, oval, or square mark, opposite the name of the signer, has the same effect as a seal the shape of it however is indifferent; and it is usually written with a pen. 2 Serg. & Rawle, 503; 1 Dall. 63; 1 Serg. & Rawle, 72; 1 Watts, R. 322; 2 Halst. R. 272.

3. A notary must use his official seal, to authenticate his official acts, and a scroll will not answer. 4 Blackf. R. 185. As to the effects of a seal, vide Phil. Ev. Index, h. t. Vide, generally, 13 Vin. Ab. 19; 4 Kent, Com. 444; 7 Caines' Cas. 1; Com. Dig. Fait, A 2.

4. Merlin defines a real to be a plate of metal with a flat surface, on which is engraved the arms of a prince or nation, or private individual or other device, with which an impression may be made on wax or other substance on paper or parchment, in order to authenticate them: the impression thus made is also called a seal. Repert. mot Sceau; 3 McCord's R. 583; 5 Whart. R. 563.

5. When a seal is affixed to an instrument, it makes it a specialty, (q. v.) and whether the seal be affixed by a corporation or an individual the effect is the same. 15 Wend. 256.

6. Where an instrument concludes with the words, "witness our hands and seals," and is signed by two persons, with only one seal, the jury may infer, from the face of the paper, that the person who signed last, adopted the seal of the first. 6 Penn. St. Rep. 302. Vide 9 Am Jur. 290-297; 1 Ohio Rep. 368; 3 John. 470. 12 ohu. 76; as to the origin and use of seals, Addis. on Cont. 6; Scroll.

7. The public seal of a foreign state, proves itself; and public acts, decrees and judgments, exemplified under this seal, are received as true and genuine. 2 Cranch, 187, 238; 4 Dall. 416; 7 Wheat. 273, 335; 1 Denio, 376; 2 Conn. 85, 90; 6 Wend. 475; 9 Mod. 66. But to entitle its seal to such authority, the foreign state must have been acknowledged by the government, within whose jurisdiction the forum is located. 3 Wheat. 610; 9 Ves. 347.

SEAL-OFFICE, English practice. The office at which certain judicial writs are sealed with the prerogative seal, and without which they are of no author-ity. The officer whose duty it is to seal such writs is called "sealer of writs;"

SEAL OF THE UNITED STATES, government. The seal used by the United States in congress assembled, shall be the seal of the United States, viz.: ARMS, pale-ways of thirteen pieces argent and gules; a chief azure; the escutcheon on the breast of the American eagle displayer proper, holding in his dexter talon, an olive branch, and in his sinister, a bundle of thirteen arrows, all proper, and in his beak a scroll, inscribed with this motto, "E pluribus unum." For the CREST: over the head of the eagle which appears above the escutcheon, a glory, or breaking through a cloud, proper, and surrounding thirteen stars, forming a constellation argent on an azure field. REVERSE, a pyramid unfin-ished. In the zenith an eye in a triangle, surrounded with a glory proper: over the eye, these words, "Annuit caeptis." On the base of the pyramid, the numerical letters, MDCCLXXVI; and underneath, the following motto, "Novus ordo sectorum." Resolution of Congress, June 20, 1782; Gordon's Dig. art. 207.

SEALING OF A VERDICT, practice. The putting a verdict in writing, and placing it in an envelop, which is sealed. To relieve jurors after they have agreed, it is not unusual for the counsel to agree that the jury shall seal their verdict, and then separate. When the court is again in session, the jury come in and give their verdict, in all respects as if it had not been sealed, and a juror may dissent from it, if since the sealing, he has honestly changed his mind. 8 Ham. 405; Gilm. 333; 3 Bouv. Inst. n. 3257.

SEALS, matters of succession. On the death of a person, according to the laws of Louisiana, if the heir wishes to obtain the benefit of inventory, and the delays for deliberating, he is bound as soon as he knows of the death of the deceased to whose succession he is called, and before committing any act of heirship, to cause the seals to be affixed on the effects of the succession, by any judge or justice of the peace. Civ. Code, of Lo. art. 1027.

2. In ten days after this affixing of the seals, the, heir is bound to present a petition to the judge of the place in which the succession, is opened, praying for the removal of the seals, and that a true and faithful inventory of the effects of the succession be made. Id. art. 1028.

3. In case of vacant estates, and estates of which the heirs are absent and not represented, the seals, after the decease, must be affixed by a judge or justice of the peace within the limits of his jurisdiction, and may be fixed by him, either ex officio, or at the request of the parties. Civ. Code of Lo. art. 1070. The seals are affixed at the request of the parties, when a widow, a testamentary executor, or any other person who pretends to have an interest in a succession or community of property, requires it. Id. art. 1071.; They are affixed ex officio, when the presumptive heirs of the deceased do not all reside in the place where be died, or if any of them happen to be absent. Id. art 1072.

4. The object of placing the seals on the effects of a succession, is for the purpose of preserving them, and for the interest of third persons. Id. art. 1068.

5. The seals must be placed on the bureaus, coffers, armoires, and other things, which contain the effects and papers of the deceased, and on the doors of the apartments which contain these things, so that they cannot be opened without tearing off, breaking, or altering the seals. Id. art. 1069.

6. The judge or justice of the peace, who affixes the seals, is bound to appoint guardian, at the expense of the succession, to take care of the seals and of the effects, of which an account is taken at the end of the proces-verbal of the affixing of the seals; the guardian must be domiciliated in the plaze where the inventory is taken. Id. art. 1079. And the judge; when he retires, must take with him the keys of all things and apartments upon which the seals have been affixed. lb.

7. The raising of the seals is done by the judge of the place, or justice of the peace appointed by him to that effect, in the presence of the witnesses of the vicinage, in the same manner as for the affixing of the seals. Id. art. 1084. See, generally; Benefit of Inventory, Succession; Code de Pro. Civ. 2e part. lib. 1, t. 1, 2, 3; Dict. de Jurisp. Scelle.

SEAMAN. A sailor; a mariner; one whose business is navigation. 2 Boulay Paty, Dr. Com. 232; Code de Commerce art. 262; Laws of Oleron, art. 7; Laws of Wishuy, art. 19. The term seamen, in it most enlarged sense, includes the captain a well as other persons of the crew; in a more confined signification, it extends only to the common sailors; 3 Pardes. n. 667; the mate; 1 Pet. Adm. Dee. 246; the cook and steward; 2 Id. 268; are considered, as to their rights to sue in the admiralty, as common seamen; and persons employed on board of steamboats and lighters, engaged in trade or commerce, on tide water, are within the admiralty jurisdiction, while those employed in ferry boats are not. Gilp. R. 203, 532. Persons who do not contribute their aid in navigating the vessel or to its preservation in the course of their occupation, as musicians, are not to be considered as seamen with a right to sue in the admiralty for their wages. Gilp. R. 516, See 1 Bell's Com. 509, 5th ed.; 2 Rob. Adm. R. 232; Dunl. Adm. Pr. h . t.

2. Seamen are employed either in merchant vessels for private service, or in public vessels for the service of the United States.

3. - 1. Seamen in the merchant vessels are required to enter into a contract in writing commonly called shipping articles. (q. v.) This contract being entered into, they are bound under. severe penalties, to render themselves on board the vessel according to the agreement: they are not at liberty to leave the ship without the consent of the captain or commanding officer, and for such absence, when less than forty-eight hours, they forfeit three day's wages for every day of absence; and when the absence is more than forty-eight hours, at one time, they forfeit all the wages due to them, and all their goods and chattels which were on board the vessel, or in any store where they may have been lodged at the time of their desertion, to the use of the owners of the vessel, and they are liable for damages for hiring other hands. They may be imprisoned for desertion until the ship is ready to bail.

4. On board, a seaman is bound to do his duty to the utmost of his ability; and when his services are required for extraordinary exertions, either in consequence of the death of other seamen, Or on account of unforeseen perils, he is not entitled to an increase of wages, although it may have been promised to him. 2 Campb. 317; Peake's N. P. Rep. 72; 1 T. R. 73. For disobedience of orders he may be imprisoned or punished with stripes, but the correction (q. v.) must be reasonable; 4 Mason, 508; Bee, 161; 2 Day, 294; 1 Wash. C. C. R. 316; and, for just cause, may be put ashore in a foreign country. 1 Pet. Adm. R. 186; 2 Ibid. 268; 2 East, Rep. 145. By act of Congress, September 28, 1850, Minot's Stat. at Large, U. S. p. 515, it is provided, that flogging in the navy and on board vessels of commerce, be, and the same is hereby abolished from and after the passage of this act.

5. Seamen are entitled to their wages, of which one-third is due at every port at which the vessel shall unlade and deliver her cargo, before the voyage be ended; and at the

end of the voyage an easy and speedy remedy is given them to recover all unpaid wages. When taken sick a seaman is entitled to medical advice and aid at the expense of the ship: such expense being considered in, the nature of additional wages, and as constituting a just remuneration for his labor and services. Gilp. 435, 447; 2 Mason, 541; 2 Mass. R. 541.

6. The right of seamen to wages is founded not in the shipping articles, but in the services performed; Bee, 395; and to recover such wages the seaman has a triple remedy, against the vessel, the owner, and the master. Gilp. 592; Bee, 254.

7. When destitute in foreign ports, American consuls and commercial agents are required to provide for them, and for their passages to some port of the United States, in a reasonable manner, at the expense of the United States; and American vessels are bound to take such seamen on board at the request of the consul, but not exceeding two men for every hundred tons of the ship, and transport them to the United States, on such terms, not exceeding ten dollars for each person, as may be agreed on. Vide, generally, Story's Laws U. S. Index, h. t.; 3 Kent, Com, 136 to 156; Marsh. Ins. 90; Poth. Mar. Contr. translated by Cushing, Index, h. t.; 2 Bro. Civ. and Adm. Law, 155.

8. - 2. Seamen in the public service are governed by particular laws.

SEAMEN'S FUND. By the act of July 16, 1798, a provision is made for raising a fund for the relief of disabled and sick seamen: the master of every vessel arriving from a foreign port into the United States is required to pay to the collector of customs at the rate of twenty cents per month for every seaman employed on board of his vessel, which sum he may, retain out of the wages of such seaman: vessels engaged in the coasting trade, and boats, rafts or flats navigating the Mississippi, with intention to proceed to New Orleans, are also laid under similar obligations. The fund thus raised is to be employed by the president of the United States as circumstances shall require, for the benefit and convenience of sick and disabled American seamen. Act of March 3, 1802, s. 1.

2. By the act of congress, passed February 28, 1803, c. 62, 2 Story's L. U. S. 884, it is provided, that when a seaman is discharged in a foreign country with his own consent, or when the ship is sold there, he shall, in addition to his usual wages, be paid three months' wages into the hands of the American consul, two-thirds of which are to be paid to such seaman, on his engagement on board any vessel to return home, and the remaining one-third is retained in aid of a fund for the relief of distressed American seamen in foreign ports. See 11 John. R. 66; 12 John. Rep. 143; 1 Mason, R. 45; 4 Mason, R. 541; Edw. Adm. R. 239.

SEARCH, crim. law. An examination of a man's house, premises or person, for the purpose of discovering proof of his guilt in relation to some crime or misdemeanor of which be is accused.

2. The constitution of the United. States, amendments, art. 4, protects the people from unreasonable searches and seizures. 3 Story, Const. §1895; Rawle, Const. ch. 10, p. 127; 10 John. R. 263; 11 John. R. 500; 3 Cranch, 447.

3. By the act of March 2, 1799, s. 68, 1 Story's L. U. S. 632, it is enacted, that every collector, naval officer, and surveyor, or other person specially appointed, by either of them, for that purpose, shall have fall power and authority to enter any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise, subject to duty, are concealed, and therein to search for, seize, and secure any such goods, wares, or merchandise; and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building, or other place they or either of them shall; upon proper application, on oath, to any justice of the peace, be entitled to a warrant to enter such house, store, or other place, (in the day time only, and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares, and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited.

SEARCH, practice. An examination made in the proper lien office for mortgages, liens, judgments, or other encumbrances, against real estate. The certificate given by the officer as to the result of such examination is also called a search.

2. Conveyancers and others who cause searches to be made ought to be very careful that they should be correct, with regard, 1. To the time during which the person against whom the search has been made owned the premises. 2. To the property searched against, which ought to be properly described. 3. To the form of the certificate of search.

SEARCH, RIGHT OF, mar. law. The right existing in a belligerent to examine and inspect the papers of a neutral vessel at sea. On the continent of Europe, this is called the right of visit. Dalloz, Dict. mots Prises Maritimes, n. 104-111.

2. The right does not extend to examine the cargo; nor does it extend to a ship of war, it being strictly confined to the searching of merchant vessels. The exercise of the right is to prevent the commerce of contraband goods. Although frequently resisted by powerful neutral nations, yet this right appears now to be fixed beyond contravention. The penalty for violently resisting this right is the confiscation of the property so withheld from visitation. Unless in extreme cases of gross abuse of his right by a

belligerent, the neutral has no right to resist a search. 1 Kent, Com. 154; 2 Bro. Civ. and Adm. Law, 319; Mann. Comm. B. 3, c. 11.

SEARCH WARRANT, crim. law, practice. A warrant (q. v.) requiring the officer to whom it is addressed, to search a house or other place therein specified, for property therein alleged to have been stolen; and if the same shall be found upon such search, to bring the goods so found, together with the body of the person occupying the same, who is named, before the justice or other officer granting the warrant, or some other justice of the peace, or other lawfully authorized officer. It should be given under the hand and seal of the justice, and dated.

2. The constitution of the United States, amendments, art. 4, declares that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

3. Lord Hale, 2 P. C. 149, 150, recommends great caution in granting such warrants. 1. That they be, not granted without oath made before a justice of a felony committed, and that the complainant has probable cause to suspect they are in such a house or place, and his reasons for such suspicion. 2. That such warrants express that the search shall be made in day time. 3. That they ought to be directed to a constable or other proper officer, and not to a private person. 4. A search warrant ought to command the officer to bring the stolen goods and the person in whose custody they are, before some justice of the peace. Vide 1 Chit. Cr. Law, 57, 64; 4 Inst. 176; Hawk. B. 2, c. 13, s. 17, n. 6; 11 St. Tr; 321; 2 Wils. 149, 291; Burn's Just. h. t.; Williams' Just. h. t.

SEARCHER, Eng. law. An officer of the customs, whose duty it is to examine and search all ships outward bound, to ascertain whether they have any prohibited or uncustomed goods on board.

SECK. This word has two significations. 1. It means a warrant of remedy by distress. Litt. s. 218; and vide Rent. 2. It imports want of present fruit or profit, as in the case of the reversion without rent or other service, except fealty. Co. Litt. 151 b, note 5.

SECOND. A measure equal to one sixtieth part of a minute. Vide Measure.

SECOND DELIVERANCE, practice. The name of a writ given by statute of Westminster the second, 13 Edw. 1. c. 2, founded on the record of a former action of replevin. 2 Inst. 341. It commands the sheriff, if the plaintiff make him secure of prosecuting his claim, and returning the chattels which were adjudged to the defendant by reason of the plaintiff's default, to make deliver-ance. On being

nonsuited, the plaintiff in replevin might, at common law, have brought another replevin, and so in infinitum, to the intolerable vexation of the defendant. The statute of Westminster restrains the plaintiff When nonsuited from so doing, but allows him this writ, issuing out of the original record, in order to have the same distress delivered again to him, on his giving the like security as before. 3 Bl. Com. 150,; Hamm. N. P. 495; F. N. B. 68; 19 Vin. Ab. 1.

SECOND SURCHARGE, WRIT OF. The name of a writ issued in England against a commoner who has a second time surcharged the common. 3 Bl. Com. 239.

SECONDARY, construction. That which comes after the first, which is primary: as, the primary law of, nations the secondary law of nations.

SECONDARY, English law. An officer who is second or next to the chief officer; as secondaries to the prothonotaries of the courts of king's bench, or common pleas; secondary of the remembrancer in the exchequer, &c. Jacob, L. D. h. t.

SECONDARY EVIDENCE. That species of proof which is admissible on the loss of primary evidence, and which becomes, by that event, the best evidence. 3 Bouv. Inst. n. 3055.

SECONDS, crim. law. Those persons who assist, direct and support others engaged in fighting a duel.

2. As they are often much to blame in inciting the duellists to their rash act, and as they are always assisting in the commission of the crime, the laws generally punish them with severity but, in consequence of the false ideas too generally entertained on the subject of honor, the are too seldom enforced.

SECRET. That which is not to be revealed.

2. Attorneys and counsellors, who have been trusted professionally with the secrets of their clients, are not allowed to reveal them in a court of justice. The right of secrecy belongs to the client, and not to the attorney and counsellor.

3. As to the matter communicated, it extends to all cases where the client applies for professional advice or assistance; and it does not appear that the protection is qualified by any reference to proceedings pending or in contem-plation. Story, Eq. Pl. §600; 1 Milne & K. 104; 3 Sim. R. 467.

3. Documents confided professionally to the counsel cannot be demanded, unless indeed the party would himself be bound to produce them. Hare on Discov. 171.

Grand jurors are sworn the commonwealth's secrets, their fellows and their own to keep. Vide Confidential comunications; Witness.

SECRET, rights. A knowledge of something which is unknown to orthers, out of which a profit may be made; for example, an invention of a machine, or the discovery of the effect of the combination of certain matters.

2. Instances have occurred of secrets of that kind being kept for many years, but they are liable to constant detection. As such secrets are not pro-perty, the possessors of them in general prefer making them public, and securing the exclusive right for years, under the patent laws, to keeping them in an insecure manner, without them. See Phil. on Pat. ch. 15; Gods. on Pat. 171; Dav. Pat. Cas. 429; 8 Ves. 215; 2 Ves. & B. 218; 2 Mer. 446; 3 Mer. 157; 1 Jac. & W. 394; 1 Pick. 443; 4 Mason, 15; 3 B. & P. 630.

SECRETARY. An officer who, by order of his superior, writes letters and other instruments. He is so called because he is possessed of the secrets of his employer. This term wag used in France in 1343, and in England the term secretary was first applied to the clerks of the king, who being always near his person were called clerks of the secret, and in the reign of Henry VIII. the term secretary of state came into it.

SECRETARY OF EMBASSY or OF LEGATION. An officer appointed by the sovereign power, to accompany a minister of first or secoud rank, and sometimes, though not often, of an inferior rank. He is, in fact, a species of public minister; for independently of his protection as attached to an ambassador's suite, be enjoys, in his own rights, the same protection of the law of nations, and the same immunities as an ambassador. But private secretaries of a minister must Dot be confounded with secretaries of embassy or of legation. Such private secretaries are entitled to protection only as belonging to the suite of the ambassador.

2. The functions of a secretary of legation consist in his employment by his minister for objects of ceremony; in making verbal reports to the secretary of state, or other foreign ministers; in taking care of the archives of the mission; in ciphering and deciphering despatches; in sometimes making rough draughts of the notes or letters whicb the minister writes to his colleagues or to the local authorities; in drawup proces verbaux; in presenting passports to the minister for his signature, and delivering them to the persons for whom they are intended; and, finally, in assisting the minister, under whom be is placed, in everything concerning the affairs of the mission. In the absence of the minister he is admitted to conferences and to present notes signed by the minister. Vide Ambassador; Minister; Suite.

SECRETARY OF LEGATION. An officer employed to attend a foreign mission, and to perform certain duties as clerk.

2. His salary is fixed by the act of congress of May 1, 1810, s. 1, at such a sum as the president of the United States may allow, not exceeding two thousand dollars.

3. The salary of a secretary of embassy, or the secretary of a minister plenipotentiary, is the same as that of a secretary of legation.

SECRETARY OF THE NAVY, government. This officer is appointed by the president. His duties are to execute all such orders as he shall receive from the president, relative to the procurement of naval stores and materials, and the construction, armament, equipment and employment of vessels of war; as well as all other matters connected with the naval establishment of the United States; act of 30th April, 1798, s. 1, 1 Story's Laws, 498; he appoints his own clerks and subordinate officers. Various other duties are imposed upon him by sundry acts of congress. Vide Gordon's Dig. art. 370 to 375.

2. His salary is six thousand dollars. Act of 20th Feb. 1819, 3 Story's Laws, 1720.

SECRETARY OF STATE OF THE UNITED STATES, government. The principal officer in the Department of State. (q. v.) He shall perform such duties as shall be enjoined on or entrusted to him by the president, agreeably to the constitution, refative to the correspondences, commissions or instructions to or with public ministers or consuls from the United States, or to negotiations with foreign states or princes, or to memorials or other applications from foreign public ministers or foreigners, or to such other matters respecting foreign affairs as the president of the United States shall assign to such department. The secretary shall conduct the business of his department in such manner as the president shall, from time to time, order or instruct. Act of 27th July, 1789 act of 15th Sept: 1789, s. 1. Besides these general laws, there are various, others which impose upon him inferior and less important duties.

2. His salary is six thousand dollars per annum. Act of 20th Feb. 1819.

SECRETARY OF THE TREASURY OF THE UNITEE STATES, government. An officer appointed by the president. His principal duties are, 1. To superintend the collection of the revenue. 2. To digest, prepare, and lay before congress at the commencement of every session, a report on the subject of finance. 3. To annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former acts. 4. To give information to either house of congress, respecting all matters connected with his office. Besides these, there are other minor duties imposed upon him by various acts of congress.

2. His salary is six thousand dollars. Gord. Dig. art. 249 to 262.

SECRETARY FOR THE DEPARTMENT OF WAR, government. This officer is appointed by the president. He is required to perform and execute such duties as shall, from time to time, be enjoined on or entrusted to him by the president, agreeably to the constitution, relative to military commissions or to the land forces, or warlike stores of the United States, or to such other matters respecting military affairs as the president shall assign to the department of war, (q. v.) or relative to granting of lands to persons entitled thereto for military services rendered to the United States, or relative to Indian affairs. Act of 27th Aug., 1789, 1 Story's Laws, 31.

2. His salary is six thousand dollars per annum. Act of 20th Feb. 1819, 3 Story's Laws, 1720.

3. Various other duties are imposed upon the secretary by sundry acts of congress. Vide Laws, Index, Departments, &c.; Gordon's Dig. art. 368 to 382.

SECTA pleading. In ancient times the plaintiff was required to establish the truth of his declaration in the first instance, and before it was called in question, upon the pleading, by the simultaneous production of his secta, that is, a number of persons prepared to confirm his allegations. Bract. 214, a.

2. The practice of thus producing a secta, gave rise to the very. ancient formula almost invariably used at the conclusion of a declaration, as entered on the record, et inde producit sectam; and, though the actual production has, for many centuries, fallen into disuse, the formula still remains. Accordingly, except the count on a writ of right, and in dower, all declarations constantly conclude thus, "And therefore he brings his suit, &c. The count on a writ of right did not, in ancient times, conclude with the ordinary production of suit, but with the following formula peculiar to itself, "Et quod tale sit jus suum offert disrationare per corpus, talis liberi hominis, &c., and it concludes, at the present day, with an abbreviated. translation of the same phrase: "And, that such is his right, he offers," &c. The count in dower is an exception to the rule in question, and concludes without any production of suit, a peculiarity which appears always to have belonged to that action. Steph. Pl. 427, 8; 3 Bl. Com. 395; Gilb. C. P. 48; 1 Chit. Pl. 399.

SECTION OF LAND. The lands of the United States are surveyed into parcels of six hundred and forty acres; each such parcel is called a section. 1 Story's L. U. S. 422.

2. These sections are divided into half sections, each of which contains three hundred and twenty acres, and into quarter sections of one hundred and sixty acres each.

SECTORES. Among the Romans the bidders at an auction were so called. Bab. on Auct. 2.

TO SECURE. To protect, insure, or save a right.

2. The constitution of the United States, art. 1, s. 8, gives power to congress "to promote the progress of science and the useful arts by securing, for Iimited times, to authors and inventors the exclusive right to their respective writings and discoveries." The inventor of a machine has the right to it exclusively at common law, and the author a right to his manuscript. But they may abandon the, right by publishing the book without having secured a copy-right, (q. v.) or by using publicly the machine, and suffering others to use it, without having obtained a patent. (q. v.) Vide Secret.

SECURITY. That which renders a matter sure; an instrument which renders certain the performance of a contract. The term is also sometimes applied to designate a person who becomes the surety for another, or who engages himself for the performance of another's contract. See 3 Blackf. R. 431.

SECURITY FOR COSTS, practice. In some courts there is a rule that when the plaintiff resides abroad he shall give security for costs, and until that has been done, when demanded, he cannot proceed in his action.

2. This is a right which the defendant must claim in proper time, for if he once waives it, he cannot afterwards claim it; the waiver is seldom, or perhaps never expressly made, but is generally implied from the acts of the de-fendant. When the defendant had undertaken to accept short notice of trial; 2 Hen. Bl. 573; 3 Taunt. 272 or after issue joined, and when he knew of plain-tiff's residence abroad; or, with such knowledge, when the defendant takes any step in the cause these several acts will amount to a waiver. 5 Bar & Ald. 702; S. C. 1 Dow. & Ryl. 348; 1 M. & P. 30; S. C. 17 E. C. L. R. 164. Vide 3 John. Ch. R. 520; 1 John. Ch. Rep. 202; 1 Ves. jun. 396.

3. The fact that the defendant is out of the jurisdiction of the court, will not, alone, authorize the requisition of security for costs; he must have his domicil abroad. 1 Ves. jr. 396. When, the defendant resides abroad, he will be required to give such security, although he is a foreign prince. 33 E. C. L. Rep. 214. Vide 11 S. & Rawle, 121 1 Miles, R. 321; 2 Miles, 402.

SECUS. Otherwise.

SEDITION, crimes. The raising commotions or disturbances in the state; it is a revolt against legitimate authority, Ersk. Princ. Laws, Scotl. b. 4, t. 4, s. 14; Dig. Lib. 49, t. 16, 1. 3, §19.

2. The distinction between sedition and treason consists in this, that though its ultimate object is a violation of the public peace, or at least such a course of measures as evidently engenders it, yet it does not aim at direct and open violence against the laws, or the subversion of the constitution. Alis. Crim. Law of Scotl. 580.

3. The. obnoxious and obsolete act of July 14, 1798, 1 Story's Laws U. S. 543, was called the sedition law, because its professed object was to prevent disturbances.

4. In the Scotch law, sedition is either verbal or real. Verbal is inferred from the uttering of words tending to create discord between the king and his people; real sedition is generally committed by convocating together any considerable number of people, without lawful authority, under the pretence of redressing some public grievance, to the disturbing of the public peace. 1 Ersk. ut supra.

SEDUCTION. The offence of a man who abuses the simplicity and confidence of a woman to obtain by false promises what she ought not to grant.

2. The woman being particeps criminis, has no remedy for the mere seduction, nor is there, to the discredit of the law, a direct remedy in her parents. The seducer may be sued, though not. directly or ostensibly for the seduction; but for the consequent inability to perform those services for which she was accountable to her master, or to her parent, who, for this purpose, is obliged to assume that less endearing relation; and if it cannot be proved that she filled that office, the action cannot be sustained. 7 Mann. & Gr. 1033. It follows, therefore, that when the daughter is of full age, and the father is not entitled to her services, and actually, she is not in his service, the father can maintain no action for the seduction. 5 Harr. & J. 27; 1 Wend. 447; 3 Pennsyl. 49; 10 John. 115. Vide 2 Watts 474; 9 John. 387; 2 Wend. 459; 5 Cowen 106; 2 Penn. 583; 6 Munf. 587; 2 A. K. Marsh. 128; 2 Overt. 93; 9 John. R. 387; 2 New Reports, 476; 6 East, 887; Peake's Rep. 253; 11 East, 24; 5 East, 45; 2 T. R. 4; 2 Selw. N. P. 1001; 2 Phil. Ev. 156; 3 Chitt. Bl. Com. 140, n.; 7 Com. Dig. 318; 6 M. & W. 55.

SEEDS. The substance which nature prepares for the reproduction of plants or animals.

2. Seeds which have been sown in the earth immediately become a part of the land in which they have been sown; quae sata solo cedere intelliguntur. Inst. 2, 1, 32.

SEIGNIOR or SEIGNEUR. Among the feudists, this name signified lord of the fee. F. N. B. 23. The most extended signification of this word includes not only a lord or peer of parliament, but is applied to the owner or proprietor of a thing; hence, the owner of a hawk, and the master of a fishing vessel, is called a seigneur. 37 Edw. Ill. c. 19; Barr. on the Stat. 258.

SEIGNIORY, Eng. law. The rights of a lord as such, in lands. Swinb. 174.

SEISIN, estates. The possession of an estate of freebold. 8 N. H. Rep. 57; 3 Hamm. 220; 8 Litt. 134; 4 Mass. 408. Seisin was used in contradistinction to that precarious kind of possession by which tenants in villenage held their lands, which was considered to be the possession of their lords in, whom the freehold continued.

2. Seisin is either in fact or in law.

3. Where a freehold estate is conveyed to a person by feoffment, with livery of seisin, or by any of those conveyances which derive their effect from the statute of uses, he acquires a seisin in deed or in fact, and a freehold in deed: but where the freehold comes to a person by act of law, as by descent, he only acquires a seisin in law, that is, a right of possession, and his-estate is called a freehold In law.

4. The seisin in law, which the heir acquires on the death of his ancestor, May be defeated by the entry of a stranger, claiming a right to the land, which is called an abatement. (q. v.)

5. The actual seisin of an estate may be lost by the forcible entry of a stranger who thereby ousts or dispossesses the owner this act is called a disseisin. (q. v.)

6. According to Lord Mansfield, the various alterations which have been made in the law for the last three centuries, "have left us but the name of feoffment, seisin, tenure, and, freeholder, without any precise knowledge of the thing originally signified by these sounds."

7. In the United States, a conveyance by deed executed and acknowledged, and properly recorded according to law, and the descent cast upon the heir are, in general, considered as a seisin in deed without entry; and a grant by letters- patent from the commonwealth has the same effect. 4 Mass. R. 546; 7 Mass. R. 494; 15. Mass. R. 214 1 Munf. R. 17O. The recording of a deed is equivalent to livery of seisin. 4 Mass. 546.

8. In Pennsylvania, Connecticut, Massachusetts and Ohio, seisin means merely, ownership, and the distinction between seisin in deed and in law is not known in practice. Walk. Intr. 324, 330; 1 Hill. Abr. 24 4 Day, R. 305; 4 Mass.; R. 489 14 Pick. R. 224. A patent by the commonwealth, in Kentucky, gives a, right entry, but not actual seisin. 3 Bibb, Rep. 57. Vide 1 Inst. 31; 19 Vin. Ab. 306; Dane's Abr. c. 104, a. 3; 4 Kent, Com. 2, 381; Cruise's Dig. t. 1, §23; Toull. Dr. Civ. Fr. liv. 3, t. 1, c. 1, n. 80; Poth. Traite des Fiefs, part 1, c. 2; 3 Sumn. R. 170. Vide Livery of Seisin.

SEIZURE, practice. The act of taking possession of the property of a person condemned by the judgment of a competent tribunal, to pay a certain sum of money, by a sheriff, constable, or other officer, lawfully authorized thereto, by virtue of an execution, for the purpose of having such property sold according to law to satisfy the judgment. By seizure is also meant the taking possession of goods for a violation of a public law; as the taking possession of a ship for attempting an illicit trade. 2 Cranch, 18 7; 6 Cowen, 404; 4 Wheat. 100; 1 Gallis. 75; 2 Wash. C. C. 127, 567.

2. The seizure is complete as soon as the goods are within the power of the officer. 3 Rawle's Rep. 401; 16 Johns. Rep. 287; 2 Nott & McCord, 392; 2 Rawle's Rep. 142; Wats. on Sher. 172; Com. Dig. Execution, C 5.

3. The taking of part of the goods in a house, however, by virtue of a fieri facias in the name of the whole, is a good seizure of all. 8 East, R. 474. As the seizure must be made by virtue of an execution, it is evident that it cannot be made after the return day. 2 Caine's Rep. 243; 4 John. R. 450. Vide Door; House; Search Warrant.

SELECTI JUDICES. Judges among the Romans who were selected very much like our juries. They were returned by the praetor, drawn by lot, subject to be challenged and sworn. 3 Bl. Com. 366.

SELF-DEFENCE, crim. law. The right to protect one's person and property from injury.

2. It will be proper to consider, 1. The extent of the right of self-defence. 2. By whom it may be exercised. 3. Against whom. 4. For what causes.

3. - 1. As to the extent of the right, it may be laid down, first, that when threatened violence exists, it is the duty of the person threatened to use all, prudent and precautionary measures to prevent the attack; for example, if by closing a door which was usually left open, one could prevent an attack, it would be prudent, and perhaps the law might require, that it should be closed, in order to preserve the peace, and the aggressor might in such case be held to bail for his good behaviour; secondly, if, after having taken such proper precautions, a party should be assailed, he may undoubtedly repel force by force, but in most instances cannot, under the pretext that he has been attacked, use force enough to kill the assailant or hurt him after he has secured himself from danger; as, if a person unarmed enters a house to commit a larceny, while there he does not threaten any one, nor does any act which manifests an intention to hurt any one, and there are a number of persons present, who may easily secure him, no one will be justifiable to do him any injury, much less to kill him; he ought to be secured and delivered to the public authorities. But when an attack is made by a thief under such circumstances, and it is impossible to ascertain to what extent he may push

it, the law does not requite the party assailed to weigh with great nicety the probable extent of the attack, and he may use the most violent means against his assailant, even to the taking of his life. For homicide may be excused, se defendendo, where a man has no other probable means of preserving his life from one who attacks him, while in the commission of a felony, or even on a sudden quarrel, he beats him, so that he is reduced to this inevitable necessity. Hawk. bk. 2, c. 11, s. 13. And the reason is that when so reduced, he cannot call to his aid the power of society or of the commonwealth, and, being unprotected by law, he reassumes his natural rights, which the law sanctions, of killing his adversary to protect himself. Toull. Dr. Civ. Fr.]iv. 1, tit. 1, n. 210. See Pamph. Rep. of Selfridge's Trial in 1806 2 Swift's Ev. 283.

4. - 2. The party attacked may undoubtedly defend himself, and the law further sanctions the mutual and reciprocal defence of such as stand in the near relations of hushand and wife, patent and child, and master and servant. In these cases, if the party himself, or any of these his relations, be forcibly attacked in their person or property, it is lawful for him to repel force by force, for the law in these cases respects the passions of the human mind, and makes, it lawful in him, when external violence is offered to himself, or to those to whom he bears so near a connexion, to do that immediate justice to which he is prompted by nature, and which no prudential motives are strong enough to restrain. 2 Roll. Ab. 546; 1 Chit. Pr. 592.

5. - 3. The party making the attack may be resisted, and if several persons join in such attack they may all be resisted, and one may be killed although he may not himself have given the immediate cause for such killing, if by his presence and his acts, he has aided the assailant. See Conspiracy.

6. - 4. The cases for which a man may defend himself are of two kinds; first, when a felony is attempted, and, secondly, when, no felony is attempted or apprehended.

7. - 1st. A man may defend himself, and even commit a homicide for the prevention of any forcible and atrocious crime, which if completed would amount to a felony; and of course under the like circumstances, mayhem, wounding and battery would be excusable at common law. 1 East, P. C. 271; 4 Bl. Com. 180. A man may repel force by force in defence of his person, property or habitation, against any one who manifests, intends, attempts, or endeavors, by violence or surprise, to commit a forcible felony, such as murder, rape, robbery, arson, burglary and the like. In these cases he is not required to retreat, but he may resist, and even pursue his adversary, until he has secured himself from all danger.

8. - 2d. A man may defend himself when no felony has been threatened or attempted; 1. When the assailant attempts to beat another and there is no mutual combat; as, where one meets another and attempts to commit or does commit an assault and

battery on him, the person attacked may defend himself; and an offer or, attempt to strike another, when sufficiently near, so that that there is danger, the person assailed may strike first, and is not required to wait until he has been struk. Bull. N. P. 18; 2 Roll. Ab. 547. 2. When there is a mutual combat upon a sudden quarrel. In these cases both parties are the aggressors; and if in the fight one is killed it will be manslaughter at least, unless the survivor can prove two things: 1st. That before the mortal stroke was given be had refused any further combat, and had retreated as far as he could with safety; and 2d. That he killed his adversary from necessity, to avoid his own destruction.

9. A man may defend himself against animals, and he may during the attack kill them, but not afterwards. 1 Car. & P. 106; 13 John. 312; 10 John. 365.

10. As a general rule no man is allowed to defend himself with force if he can apply to the law for redress, and the law gives him a complete remedy, See Assault; Battery; Necessity; Trespass.

SELECTMEN. The name of certain officers in several of the United States, who are invested by the statutes of the several states with various powers.

SELLER, contracts. One who disposes of a thing in consideration of money; a

vendor.

2. This term is more usually applied in the sale of chattels, that of vendor in the sale of estates.

3. The duties of the seller are, 1. To deal with fairness. 2. To deliver the thing sold at the time and place appointed, and to take care of it until deli-very; but when everything the seller has to do with the goods is complete, the property and the risk of accident to the goods, rests in the buyer, even before delivery, or payment. Noy's Max. ch. 24; 7 East, 571; 2 Bl. Com. 448. 3. To warrant the title of personal property when he sells it as his own, when it is in his possession. 2 Kent, Com. 374; 1 Lord Raym. 593; 1 Salk. 210.

4. The rights of the seller are, 1. To be paid the price agreed upon. 2. To be indemnified for any expenses he may have incurred to preserve the thing sold for the buyer, after the title to it has passed to the latter. 3. To stop the thing in transitu when the buyer has failed and the price has not been paid . See Stoppage, in transitu. Vide Purchaser, and the authorities there cited; Bouv. Inst. Index, h. t.

SEMBLE. A French word which signifies, it seems. It is commonly used before the statement of a point of law which has not been directly settled; but about which the court have expressed an opinion, and intimated what it is.

SEMI-PROOF, civ. law. Presumptions of fact are so called. This degree of proof is thus deaned: "Non est ignorandum, probationem semiplenam eam esse, per quam rei gestae fides aliqua fit judici; non tamen tanta ut jure debeat in pronuncianda sententia eam sequi." Mascardus, De Prob. vol. 1, Quaest. 11, n. 1, 4.

SEMINAUFRAGIUM. A term used by Italian lawyers, which literally signifies half-shipwreck, and by which they understand the jetsam, or casting merchan-dise into the sea to prevent shipwreck. Locre, Esp. du Code de Com. art. 409. It also signifies the state of a vessel which has been so much injured by tem-pest or accident, that to repair the damages, after being brought into port, and prepare her for sea, would cost more than her worth. 4 Law Rep. 120.

SEMPER PARATUS. The name of a plea by which the defendant alleges that he has always been ready to perform what is demanded of him. 3 Bl. Com. 303. The same as Tout temps prist. (q. v.)

SEN. This is said to be an ancient word which signified justice. Co. Litt. 61 a.

SENATE, government. The less numerous branch of the legislature.

2. The constitution of the United States, article 1, s. 3, cl. 1, directs that "the senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years; and each senator shall have one vote." The vice president of the United States," to use the language of the constitution, art. 1, s. 3, cl. 4, "shall be president of the senate, but shall have no vote unless they be equally divided." In the senate each state in its political capacity, is represented, upon a footing of perfect equality, like a congress of sovereigns or ambassadors, or like an assembly of peers. It is unlike the house of representatives. where the people are represented. Story, Const. ch. 10.

3. The senate of the United States is invested with legislative, executive and judicial powers.

4. - 1. It is a legislative body whose concurrence is requisite to the passage of every law. It may originate any bill, except those for raising rev-enue, which shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills. Const. art. 1, s. 7, el. I.

5. - 2. The senate is invested with executive authority in concluding treaties and making appointments. Vide President of the United States of America.

6. - 3. It is invested with judicial power when it is formed into a court for the trial of impeachments. See Courts of the United States.

7. In most of the states the less numerous branch of the legislature bears the title of senate. In such a body the people are represented as well as in the other house. Vide article Congress; and, for the senates of the several states, the name of each state. See, also, articles Courts of the United States, I; House of Representatives; Vice-President of the United States.

SENATOR, government. One who is a member of a senate.

2. No person shall be a senator [of the national senate] who shall not have attained the age of thirty years, and been nine years a citizen of the United States and who shall not when elected, be an inhabitant of that state for which he shall be chosen. Const. U. S. art. 1, s. 3, cl. 5. Vide 1 Kent, Com. 224 Story on the Const. 726 to 730.

SENATUS CONSULTUM, civ. law. A decree or decision of the Roman senate, which had the force of law.

2. When the Roman people had so increased that there was no place where they could meet, it was found necessary to consult the senate instead of the people, both on public affairs and those which related to individuals. The opinion which was rendered on such an occasion was called senatus consultum. Inst. 1, 2, 5; Clef des Lois Rom. h. t.; Merl. Repert. h. t. These decrees frequently derived their titles from the names of the consuls or magistrates who proposed them; as, senatus-consultum Claudianum, Libonianum, Velleianum, &c. from Claudius, Libonius, Valleius. Ail. Pand. 30.

SENESCHALLUS. A steward. Co. Litt. 61 a.

SENILITY. The state of being old.

2. Sometimes in this state it is exceedingly difficult to know whether the individual is or is not so deprived of the powers of his mind as to be unable to manage his affairs. In general, senility of energy in some of the intellectual operations, while the affections remain natural and unperverted; such a state may, however, be followed by actual dementia or idiocy.

3. When on account of senility the party is unable to manage his affairs, a committee will be appointed as in case of lunacy. 1 Coll. on Lunacy, 66; 2 John. Ch. R. 232; 12

Ves. 446; 4 Call's R. 423; 5 John. Ch. R. 158; 8 Mass. 129; 2 Ves. sen. 407; 19 Ves. 285; 2 Cyclop. of Pract. Med. 872. See Aged Witness.

SENIOR. The elder. This addition is sometimes made to a man's name, when two persons bear the same, in order to distinguish them. In practice when nothing is mentioned, the senior is intended. 3 Miss. R. 59. See Junior.

SENTENCE. A judgment, or judicial declaration made by a judge in a cause. The term judgment is more usually applied to civil, and sentence to criminal proceedings.

2. Sentences are final, when they put, an end to the case; or interlocutory, when they settle only some incidental matter which has arisen in the course of its progress. Vide Aso & Man. Inst. B. 3, t. 8, c. 1.

SEPARALITER. Separately.

2. This word is sometimes used in indictments to show that the defendants are charged separately with offences, which, without the addition of this word, would seem, from the form of the indictment, to be charged jointly; as, for example, when two persons are indicted together for perjury, and the indictment states that A and B came before a commissioner, &c., this is alleging that they were both guilty of the same crime, when by law their crimes are distinct, and the indictment is vicious; but if the word separaliter is used, then the affirmation is that each was guilty of a separate offence. 2 Hale, P. C. 174.

SEPARATE ESTATE. That which belongs to one only of several persons; as, the separate estate of a partner, which does not belong to the partnership. 2 Bouv. Inst. n. 1519.

2. The separate estate of a married woman, is that which belongs to her, and over which her hushand has no right in equity. It may consist of lands or chattels. 4 Barb. S. C. Rep. 407; 1 Const. R. 452; 4 Bouv. Inst. n. 3996.

SEPARATE MAINTENANCE, contracts. An allowance made by a hushand to his wife for her separate support and maintenance.

2. When this allowance is regularly paid, and notice of it has been given, no person who has received such notice will be entitled to recover against the hushand for necessaries furnished to the wife, because the liability of the hushand, depends on a presumption of authority delegated by him to the wife, which is negatived by the facts of the case. 2 Stark. Ev. 699.

SEPARATE TRIAL, practice. The trial of one person by himself, when he is jointly indicted with others for an alleged offence.

2. On a joint indictment against two or more defendants for a crime of misdemeanor, it is in the discretion of the court whether to allow a separate trial for each prisoner, or to order the whole of them to be tried together. 1 Baldw. Rep. 81; 12 Wheat. 480; 5 Serg. & Rawle, 60; but see 1 Pet., C. C. Rep. 118.

SEPARATION, contracts. When the hushand and wife agree to live apart they are said to have made a separation.

2. Contracts of this kind are generally made by the hushand for himself and by the wife with trustees. 4 Paige's R. 516; 3 Paige's R. 483; 5 Bligh, N. S. 339; 1 Dow & Clark, 519. This contract does not affect the marriage, and the parties may, at any time agree to live together as hushand and wife. The hushand who has agreed to a total separation cannot bring an action for criminal conversation with the wife. Roper, Hush. and Wife, passim; 4 Vin. Ab. 173; 2 Stark. Ev. 698; Shelf. on Mar. & Div. ch. 6, p. 608.

3. Reconciliation after separation supersedes special articles of separation in courts of law and equity. 1 Dowl. P. C. 245; 2 Cox, R. 105; 3 Bro. C. C. 619, n.; 11 Ves. 532. Public policy forbids that parties should be permitted to make agreements for themselves to hold good whenever they choose to live separate. 5 Bligh, N. S. 367, 375; and see 1 Carr. & P. 36. See 5 Bligh, N. S. 339; 2 Dowl. P. C. 332; 2 C. & M. 388; 3 John. Ch. R. 521; 2 Sim. & Stu. 372; 1 Edw. R. 380; Desaus. R. 45, 198; 1 Y. & C. 28; 11 Ves. 526; 2 East, R. 283; 8 N. H. Rep. 350; 1 Hoff. R. 1.

SEPULCHRE. The place where a corpse is buried. The violation of sepulchres is a misdemeanor at common law. Vide Dead bodies.

TO SEQUESTER, civil and eccles. law. To renounce. Example, when a widow comes into court and disclaims having anything to do, or to intermeddle with her deceased hushand's estate, she is said to sequester. Jacob, L. D. h. t.

SEQUESTRATION, chancery practice. The process of sequestration is a writ of commission, sometimes directed to the sheriff, but most usually, to four or more commissioners of the complainant's own nomination, authorizing them to enter upon the real or personal estate of the defendant, and to take the rents, issues and profits into their own hands, and keep possession of, or pay the same as the court shall order and direct, until the party who is in contempt shall do that which he is enjoined to do, and which is specially mentioned in the writ. 1 Harr. Ch. 191; Newl. Ch. Pr. 18; Blake's Ch. Pr. 103.

2. Upon the return of non est inventus to a commission of rebellion, a ser-geant-at-arms may be moved for; and if he certifies that the defendant cannot be taken, a motion may be made upon his certificate, for an order for a sequestration. 2 Madd. Chan. 203; Newl. Ch. Pr. 18; Blake's Ch. Pr. 103.

3. Under a sequestration upon mesne process, as in respect of a contempt for want of appearance or answer, the sequestrators may take possession of the party's personal property and keep him out of possession; but no sale can take place, unless perhaps to pay expenses; for this process is only to form the foundation of taking the bill pro confesso. After a decree it may be sold. See 3 Bro. C. C. 72; 2 Cox, 224; 1 Ves. jr. 86; 3 Bro. C. C. 372; 2 Madd. Ch. Pr. 206. See, generally, as to this species of sequestration, 19 Vin. Abr. 325; Bac. Ab. h. t.; Com.; Chancery, D 7, Y 4; 1 Hov. Supp. to Ves. jr. 25 to 29; 1 Vern. by Raith. 58, note 1; Id. 421, note 1.

SEQUESTRATION, contracts. A species of deposit, which two or more persons, engaged in litigation about anything, make of the thing in contest to an indifferent person, who binds himself to restore it when the issue is decided, to the party to whom it is adjudged to belong. Louis. Code, art. 2942; Story on Bailm: §45. Vide 19 Vin. Ab. 325; 1 Supp. to Yes. jr. 29; 1 Vern. 58, 420; 2 Ves. jr. 23; Bac. Ab. h. t. 2. This is called a conventional sequestration, to distinguish it from a judicial sequestration, which is considered in the preceding article. Sec Dalloz, Dict. mot Sequestre.

SEQUESTRATION, Louisiana practice. The Code of Practice in civil cases in Louisiana, defines and makes the following provisions on the subject of sequestration. Art. 269. Sequestration is a mandate of the court, ordering the sheriff, in certain cases, to take in his possession, and to keep a thing of which another person has the possession, until after the decision of a suit, in order that it be delivered to him who shall be adjudged entitled to have the property or possession of that thing. This is what is properly called a judicial sequestratian. Vide 1 Mart. R. 79; 1 L. R. 439; Civil Code of Lo. 2941; 2948.

2. - Art. 270. In this acceptation, the word sequestration does not mean a judicial deposit, because sequestration may exist together with the right of administration, while mere deposit does not admit it.

3. - Art. 271. All species of property, real or personal, as well as the revenue proceeding from the same, may be sequestered.

4. - Art. 272. Obligations and titles may also be sequestered, when their ownership is in dispute.

5. - Art. 273. Judicial sequestration is generally ordered only at the request of one of the parties to a suit; there are cases, nevertheless, where it is decreed by the court without such request, or is the consequence of the execution of judgments.

6. - Art. 274. The court may order, ex officio, the sequestration of real property in suits, where the ownership of such property is in dispute and when one of the contending parties does not seem to have a more apparent right to the possession than the other. In such cases, sequestration may be ordered to continue, until the question of ownership shall have been decided.

7. - Art. 275. Sequestration may be ordered at the request of one of the parties in a suit in the following cases: 1. When one who had possessed for more than one year, has been evicted through violence, and sues to be restored to his possession. 2. When one sues for the possession of movable property, or of a slave, and fears that the party having possession, may ill treat the slave or send either that slave, or the property in dispute, out of the jurisdiction of the court, during the pendency of the suit. 3. When one claims the ownership, or the possession of real property, and has good ground to appre-hend, that the defendant may make use of his possession to dilapidate or to waste the fruits or revenues produced by such property, or convert them to his own use. 4. When a woman sues for a separation from bed and board, or only for a separation of property from her hushand, and has reason to apprehend that he will ruin her dotal property, or waste the fruits or revenues produced by the same during the pendency of the action. 5. When one has petitioned for a stay of proceedings, and a meeting of his creditors, and such creditors fear that he may avail himself of such stay of proceedings, to place the whole, or a part of his property, out of their reach. 6. A creditor by special mortgage shall have the power of sequestering the mortgaged property, when he appre-hends that it will be removed out of the state before he can have the benefit of his mortgage, and will make oath of the facts which induced his apprehension.

8. - Art. 276. A plaintiff wishing to obtain an order of sequestration in any one of the cases above provided, must annex to the petition in which he prays for such an order, an affidavit, setting forth the cause for which he claims such order, he must besides, execute his obligation in favor of the defendant, for such sum as the court shall determine, with the surety of one good and solvent person, residing within the jurisdiction of the court, to be responsible for such damages as the defendant may sustain, in case such sequestration should have been wrongfully obtained.

9. - Art. 277. When security is given in order to obtain the sequestration of real property which brings a revenue, the judge must require that it be given for an amount sufficient to compensate the defendant, not only for all damage which he may sustain, but also for the privation of such revenue, during the pendency of the action.

10. - Art. 278. The plaintiff when he prays for a sequestration of the property of one who has failed, is not required to give such security, though that property bring in a revenue.

11. - Art. 279. A defendant against whom a mandate of sequestration has been obtained, except in cases of failure, may have the same set aside, by executing his obligation in favor of the sheriff, with one good and solvent surety, for whatever amount the judge may determine, as being equal to the value of the property to be left in his possession.

12. - Art. 280. The security thus given by the defendant, when the property sequestrated consists in movables or in slaves, shall be responsible that he shall not send away the same out of the jurisdiction of the court; that he shall not make an improper use of them; and that he will faithfully present them, after definitive judgment, in case he should be decreed to restore the same to the plaintiff.

13. - Art. 281. As regards landed property, this security is given to prevent the defendant, while in possession, from wasting the property, and for the faithful restitution of the fruits that he may have received since the demand, or of their value in the event of his being cast in the suit.

14. - Art. 282. When the sheriff has sequestered property pursuant to an order of the court, he shall, after serving the petition and the copy of the order of sequestration on the defendant, send him return in writing to the clerk of the court which gave the order, stating in the same in what manner the order was executed, and annex to such return a true and minute inventory of the property sequestered, drawn by him, in the presence of two witnesses.

15. - Art. 283. The sheriff, while he retains possession of sequestered property, is bound to take proper care of the same and to administer the same, if it be of such nature as to admit of it, as a prudent father of a family administers his own affairs. He may confide them to the care of guardians or overseers, for whose acts he remains responsible, and he will be entitled to receive a just compensation for his administration, to be determined by the court, to be paid to him out of the proceeds of the property sequestered, if judgment be given in favor of the plaintiff.

SEQUESTRATOR. One to whom a sequestration is made.

2. A depositary of this kind cannot exonerate himself from the care of the thing sequestered in his hands, unless for some cause rendering it indispens-able that he should resign his trust. Louis. Code, art. 2947. See Stakeholder. Sequestrators are also officers appointed by a court of chancery, and named in a writ of sequestration. As to

their powers and duties, see 2 Madd. Ch. Pr. 205, 6; Blake's Ch. Pr. 103; Newl. Ch. Pr. 18, 19; 1 Harr. Ch. 191.

SERF. During the feudal times certain persons who were bound to perform very onerous duties towards others, were so called. Poth. Des Personnes, p. 1, t. 1, a. 6, s. 4. There is this essential difference between a serf and a slave; the serf was bound simply to labor on the soil where he was born, without any right to go elsewhere without the consent of his lord; but he was free to act as he pleased in his daily action: the slave on the contrary is the property of his master, who may require him to act as he pleases in every respect, and who may sell him as a chattel. Lepage, Science du Droit, c. 3, art. 2, §2.

SERGEANT or SERJEANT, Engl. law. An officer in the courts of the highest grade among the practitioners of the law.

SERGEANT or SERJEANT, in the army. An inferior officer of a company of foot, or troop of dragoons appointed to see discipline observed, to teach the soldiers the exercise of their arms, and to order, straighten and form ranks, files, &c.

SERGEANT AT ARMS, An officer appointed by a legislative body, whose duties are to enforce the orders given by such bodies, generally under the warrant of its presiding officer.

SERIATIM. In a series, severally; as, the judges delivered their opinions seriatim.

SERJEANTY, Eng. law. A species of service which cannot be due or performed from a tenant to any lord but the king; and is either grand or petit serjeanty.

SERVANTS, (negro or mulatto,) Pennsylvania. By the fourth section of the act for the gradual abolition of slavery, passed the first day of March, 1780, 1 Smith's Laws of Penn. 492, it is "provided that every negro or mulatto child, born within this state after the passing of this act, (who would in case this act had not been made, have been a servant for years, or life, or a slave) shall be by virtue of this act the servant of such person, or his assigns who would in such case have been entitled to the service of such child, until such child attain unto the age of twenty-eight years, in the manner and on the conditions, whereon servants bound by indenture for four years are or may be retained or holden; and shall be liable to like correction and punishment, and entitled to like relief, in case he be evilly treated by his master, and to like freedom dues and privileges, as servants bound by indenture for four years are entitled, unless the person to whom such services belong shall abandon his claim to the same; in which case the overseers of the poor where such child shall be abandoned shall by indenture bind out every such child so abandoned as an apprentice for a time not exceeding the age

hereinbefore limited for the service of such children." And by the thirteenth section it is enac-ted, "that no covenant of personal servitude or apprenticeship whatsoever shall be valid or binding on a negro or mulatto for a longer time than seven years, unless such servant or apprentice were at the commencement of such servitude or apprenticeship, under the age of twenty-one years, in which case such negro or mulatto may be holden as a servant or apprentice, respectively, according to the covenant, as the case shall be, until he shall attain the age of twenty-eight years, but no longer." See 6 Binn. 204; 1 Browne's R. 369, n.

2. The act requires that a register of such children as would have been slaves shall be kept by a public officer therein designated. The want of registry entitles such child to freedom.

SERVANTS. In Louisiana they are divided into free servants and slaves. See Slaves; Slavery.

2. Free servants are, in general, all free persons who let, hire, or engage their services to another in the state, to be employed therein at any work, commerce, or occupation whatever, for the benefit of him who has contracted with them, for a certain sum or retribution, or upon certain conditions.

3. There are three kinds of free servants in the state, to wit:

4. - 1. Those who only hire out their services by the day, week, month, or year, in consideration of certain wages.

5. - 2. Those who engage to serve for a fixed time for a certain consideration, and who are therefore considered not as having hired out, but as having sold their services.

6. - 3. Apprentices that is, those who engage to serve any one, in order to learn some art, trade, or profession. Civ. Code of Lo. art. 155, 156, 157.

SERVANTS, menial. Domestics those who receive wages, and who are lodged and fed in the house of another, and who are employed in his services. Such servants are not particularly recognized by law. They are called menial servants, or domestics, from living infra moenia, within the walls of the house. 1 Bl. Com. 324; Wood's Inst. 53; 1 Sw. Syst. 218. The right of the master to their services in every respect is grounded on the contract between them. 2. Labor-ers, or persons hired by the day's work, or any longer time, are not considered servants. 1 Sw. Syst. 218; 5 Binn. 167; 3 Serg. & Rawle, 351. Vide 12 Ves. 114; 2 Vern. 546; 16 Ves. 486; 1 Rop. on Leg. 121; 3 Deac. & Chit. 332; 1 Mont. & Bligh. 413; 2 Mart. N. S. 652; Poth. Proc. Civ. sect. 2, art. 5, §5; Poth. Ob. n. 710, 828, French ed.; 9 Toull. n. 314; Domestic; Operative.

SERVI. This name was given by the Romans to their slaves; they were so called from servare, to preserve, from the ancient practice of the generals of the army, who were accustomed to sell their captives, and preserved them rather than kill them: servi autem ex eo appellati sunt, quod imperatores captivos vendere, ac per hoc servare, nec occidere solent. Inst. 1 3, 3.

SERVICE, contracts. The being employed to serve another.

2. In cases of seduction, the gist of the action is not injury which the seducer has inflicted on the parent by destroying his peace of mind, and the reputation of his child, but for the consequent inability to perform those services for which she was accountable to her master or her parent who assumes this character for the purpose Vide Seduction, and 2 Mees. & W. 539; 7 Car. & P. 528.

SERVICE, feudal law. That duty which the tenant owes to his lord, by reason of his fee or estate.

2. The services, in respect of their quality, were either free or base, and in respect of their quantity and the time of exacting them, were either certain or uncertain. 2 Bl. Com. 62.

3. In the civil law by service is sometimes understood servitude. (q. v.)

SERVICE, practice. To execute a writ or process; as, to serve a writ of capias signifies to arrest a defendant under the process; Kirby, 48; 2 Aik. R. 338; 11 Mass. 181; to serve a summons, is to deliver a copy of it at the house of the party, or to deliver it to him personally, or to read it to him; notices and other papers are served by delivering the same at the house of the party, or to him in person.

2. When the service of a writ is prevented by the act of the party on whom it is to be served, it will, in general, be sufficient if the officer do everything in his power to serve it. 39 Eng. C. L. R. 431 1 M. & G. 238.

SERVIENT, civil law. A term applied to an estate or tenement by which a servitude is due to another estate or tenement. See Dominant; Servitude.

SERVITUDE, civil law. A term which indicates the subjection of one person to another person, or of a person to a thing, or of a thing to a person, or of a thing to a thing.

2. Hence servitudes are divided into real, personal, and mixed. Lois des Bat. P. 1, c. 1.

3. A real or predial servitude is a charge laid on an estate for the use and utility of another estate belonging to another proprietor. Louis. Code, art. 643. When used without any adjunct, the word servitude means a real or predial servitude. Lois des Bat. P. 1, c. 1.

4. The subjection of one person to another is a purely personal servitude; if it exists in the right of property which a person exercises over another, it is slavery. When the subjection of one person to another is not slavery, it consists simply in the right of requiring of another what he is bound to do, or not to do; this right arises from all kinds of contracts or quasi con tracts. Lois des Bat. P. 1, c. 1, art. 1.

5. The subjection of persons to things or of things to persons, are mixed servitudes. Lois des Bat. P. 1, c. 1, art. 2.

6. Real servitudes are divided into rural and urban. Rural servitudes are those which are due by an estate to another estate, such as the right of passage over the serving estate, or that which owes the servitude, or to draw water from it, or to water cattle there, or to take coal, lime and wood from it, and the like. Urban servitudes are those which are established over a building fur the convenience of another, such as the right of resting the joists in the wall of the serving building, of opening windows which overlook the serving estate, and the like. Dict. de Jurisp. tit. Servitudes. See, generally, Lois des Bat. Part 1 Louis. Code, tit. 4; Code Civil, B. 2, tit. 4; This Dict. tit. Ancient Lights; Easements; Ways; Lalaure, Des Servitudes, passim.

SERVITUDES, NATURAL, civil law. Those servitudes which arise in consequence of the nature of the soil.

2. By law the inferior heritages, are submitted in relation to the natural flow of waters, and the like, to the superior. An inferior field is, therefore, subject to the injury or prejudice which the situation of the ground, in its natural state, way cause it.

SERVITUDES, personal. Those by which the property of a subject, in Scotland, is burdened in favor, not of a tenement, but of a person. Ersk. Pr. L. Scot. B. 2, t. 9, s. 23. Life rent is the only personal servitude there.

SERVITUS, civil law. A service or servitude; a burden imposed by law, or the agreement of parties upon certain persons, for the benefit of others; or upon one estate for the advantage of another, or for the benefit of another person than the owner.

SERVITUS. Servitude; slavery; a state of bondage. "Servitus autem, est constitutio," say the Institutes of Justinian, 1, 3, 2, "qua quis dominio alieno contra naturam subjicitur." Servitude is a disposition of the law of nations, by which, against common

right, one man has been subjected to the dominion of another. See Bract. 4 b; Co. Litt. 116.

SERVITUS LUMINUM, civil law. The name of a servitude by which an obligation is imposed on the owner of a house to allow windows or lights to be put in his wall by the owner of the adjoining house. Dig. 4, 14, 40.

SERVITUS STILLICIDII, civil law. The name of a servitude which obliges the owner of an estate to receive, or his right to turn aside, the droppings or stream from his neighbor's house. Dig. 8, 2, 20 and 21, 41; Voet, h. t. n. 13. Vide Stillicidium.

SERVITUS TIGNI IMMITTENDI, civil law. The name of a servitude which consists in requiring him who owes it, to permit his neighbor to place his joists on his wall. It differs from the servitude Oneris ferendi. (q. v.) in this, that in the former the owner of the servient building is bound to repair and rebuild the wall; whereas, in the latter he is not. Dig. lib. 8, §2.

SESSION. The time during which a legislative body, a court or other assembly sits for the transaction of business; as, a session of congress, which commences on the day appointed by the constitution, and ends when congress finally adjourns before the commencement of the next session; the session of a court, which commences at the day appointed by law, and ends when the court finally rises a term.

SESSION COURT, or COURT OF SESSION. The highest civil court in the kingdom of Scotland. The judges, called lords of the session, are fifteen in number.

2. It has extensive original jurisdiction, and its powers of review as a court of appeal have no limits. In 1808, it was divided into two chambers, called the first and second division; the lord president and seven judges constituting the former, and the lord justice clerk, who is head of the court of justiciary, with six judges, the latter. These divisions have independent but coordinate jurisdiction.

3. The high court of justiciary, or supreme criminal jurisdiction for Scotland consists of six judges, who are lords of the session, the lord justice clerk presiding. In this court the number of the jury is fifteen, and a majority decides. The court of session is divided into the inner house and outer house, with appeal from the latter to the former, and from the former to the house of lords of the United Kingdom. Encycl. Amer.

SET, contracts. Foreign bills of exchange are generally drawn in parts; as, "pay this my first bill of exchange, second and third of the same tenor and date not paid;" the whole of these parts, which make but one bill, are called a set. Chit. Bills, 175, 6, (edition of 1836); 2 Pardess. n. 342.

TO SET ASIDE. To annul; to make void; as to set aside an award.

2. When proceedings are irregular they may be set aside on, motion of the party whom they injuriously affect.

SET-OFF, contracts, practice. Defalcation; (q. v.) a demand which a defen-dant makes against the plaintiff in the suit for the purpose of liquidating the whole or a part of his claim.

2. A set-off was unknown to the common law, according to which mutual debts were distinct and inextinguishable except by actual payment or release. 1 Rawle's R. 293; Babb. on Set-off, 1.

3. The statute 2 Geo. II., c. 22, which has been generally adopted in the United States with some modifications however, allowed, in cases of mutual debts, the defendant to set his debt against the other, either by pleading it in bar, or giving it in evidence, when proper notice had been given of such intention, under the general issue. The statute being made for the benefit of the defendant, is not compulsory; 8 Watts, R. 39; the defendant may Waive his right, and bring a cross action against the plaintiff. 2 Campb. 594; 5 Taunt. 148; 9 Watts, R. 179

4. It seems, however, that in some cases of intestate estates, and of insolvent estates, perhaps owing to the peculiar wording of the law, the statute has been held to operate on the rights of the parties before action brought, or an act done by either of them. 2 Rawle's R. 293; 3 Binn. Rep. 135; Bac. Ab. Bankrupt K.

5. Set-off takes place only in actions on contracts for the payment of money, as assumpsit, debt and covenant. A set-off is not allowed in actions arising ex delicto, as, upon the case, trespass, replevin or detinue. Bull. N. P. 181.

6. The matters which may be set off, may be mutual liquidated debts or damages, but unliquidated damages cannot be set off. 1 Black. R. 394; 2 John. 150; 8 Conn. 325; 1 M'Cord, 7; 3 Wend. 400; 1 Stew. & Port. 19; 2 Yeates, 208; 1 Sumn. 471; 2 Blackf. 31; 1 A. K. Marsh. 41; 6 Halst. 397; 5 Wash. C. C. 232 3 Bibb, 49; 2 Caines, 33. The statutes refer only to mutual unconnected debts; for at common law, when the nature of the employment, transaction or dealings necessarily constitute an account consisting of receipts and payments, debts and credits, the balance only is considered to be the debt, and therefore in an action, it is not necessary in such cases either to plead or give notice of set-off. 4 Burr. 2221.

7. In general, when the government is plaintiff, no set-off will be allowed. 9 Pet. 319; 4 Dall. 303. See 9 Cranch, 313; Paine, 156. But when an act of congress authorizes such set-off, it may be made. 9 Cranch, 213.

8. Judgments in the same rights may be set off against each other at the discretion of the court. 3 Bibb 233; 3 Watts 78; 3 Halst. 172; 4 Hamm. 90; 1 Stew. & Port. 24; 7 Mass. 140, 144; 8 Cowen 126. Vide Compensation; also Mon-tagu on Set-off; Babington on Set-off; 3 Stark. Ev. h. t.; Amer. Dig. h. t.; Whart. Dig. h. t.; 3 Chit. Bl. Com. 304, n.; 1 Chit. Pl. Index, h. t.; 8 Vin. Ab. 556; Bac. Ab. h. t. 1 Sell. Pr. 321; 5 Com. Dig. 595; 6 Id. 335; 7 Id. 336; 8 Id. 927; Chit. Pr. Index, h. t.; Bouv. Inst. Index, h. t. Vide Factor.

TO SETTLE. To adjust or ascertain to pay.

2. Two contracting parties are said to settle an account when they ascertain what is justly due by one to the other; when one pays the balance or debt due by him, he is said to settle such debt or balance. 11 Alab. R. 419

SETTLEMENT, domicil. The right which a person has of being considered as resident of a particular place.

2. It is obtained in various ways, to wit: 1. By birth. 2. By the legal settlement of the father, in the case of minor children. 3. By marriage. 4. By continued residence. 5. By the payment of requisite taxes. 6. By the lawful exercise of a public office. 7. By hiring and service for a year. 8. By serving an apprenticeship; and perhaps some others which depend upon the local statutes of the different states. Vide 1 Bl. Com. 363; 1 Dougl. 9; 2 Watts' Rep. 44, 342; 2 Penna. R. 432; 5 Serg. & Rawle, 417; 2 Yeates' R. 51; 5 Binn. R. 81; 3 Binn. R.. 22; 6 Serg. & Rawle, 103, 565; 10 Serg. & Rawle, 179. Vide Domicil.

SETTLEMENT, contracts. The conveyance of an estate, for the benefit of some person or persons.

2. It is usually made on the prospect of marriage for the benefit of the married pair, or one of them, or for the benefit of some other persons, as their children. Such settlements vest the property in trustees upon specified terms, usually for the benefit of the hushand and wife during their joint lives, and then for the benefit of the survivor for life, and afterwards for the benefit of children. Ante-nuptial agreements of this kind will be enforced in equity by a specific performance of them, provided they are fair and valid, and the intention of the parties is consistent with the principles and policy of law. Settlements after marriage, if made in pursuance of an agreement in

writing entered into prior to the marriage, are valid, both against creditors and purchasers.

4. When made without consideration, after marriage, and the property of the hushand is settled upon his wife and children, the settlement will be valid against subsequent creditors, if, at the time of the settlement being made, he was not indebted; but, if he was then indebted, it will be void as to the creditors existing at the time of the settlement; 3 John. Ch. R. 481; 8 Wheat. R. 229; unless in cases where the hushand received a fair consideration in value of the thing settled, so as to repel the presumption of fraud. 2 Ves. 16 10 Ves. 139. Vide 1 Madd. Ch. 459; 1 Chit. Pr. 57; 2 Kent, Com. 145; 2 Supp. to Ves. jr. 80, 375; Rob. Fr. Conv. 188. See Atherl. on Mar. passim.

5. The term settlement is also applied to an agreement by which two or more persons, who have dealings together, so far arrange their accounts, as to ascertain the balance due from one to the other; and settlement sometimes signifies a payment in full.

TO SEVER, practice. When defendants who are sued jointly have separate de-fences, they may in general sever, that is, each one rely on his own separate defence; each may plead severally and insist on his own separate plea. See Severance.

SEVERAL. A state of separation or partition. A several agreement or cove-nant, is one entered into by two or more persons separately, each binding himself for the whole; a several action is one in which two or more persons are separately charged; a several inheritance, is one conveyed so as to descend, or come to two persons separately by moieties. Several is usually opposed to joint. Vide 3 Rawle, 306. See Contract; Joint Contract, Parties to action.

SEVERALTY, title to an estate. An estate in severalty is one which is held by the tenant in his own right only, without any other being joined or connected with him in point of interest, during the continuance of his estate. 2 Bl. Com. 179. Cruise, Dig. 479, 480.

SEVERANCE, pleading. When an action is brought in the name of several plain-tiffs, in which the plaintiffs must of necessity join, aud one or more of the persons so named do not appear, or make default after appearance, the other may have judgment of severance, or, as it is technically called, judgment ad sequendum solum.

2. But in personal actions, with the exception of those by executors, and of detinue for charters, there can be no summons and severance. Co. Lit. 139.

3. After severance, the party severed can never be mentioned in the suit, nor derive any advantage from it.

4. When there are several defendants, each of them may use such plea as, he may think proper for his own defence; and they may join in the same plea, or sever at their discretion; Co. Litt. 303, a except perhaps, in the case of di-latory pleas. Hob. 245, 250. But when the defendants have once united in the plea, they cannot afterwards sever at the rejoinder, or other later stage of the pleading. Vide, generally, Bro. Summ. and Sev.; 2 Rolle, 488; Archb. Civ. Pl. 59.

SEVERANCE, estates. The act by which any one of the unities of a joint tenancy is effected, is so called; because the estate is no longer a joint tenancy, but is severed.

2. A severance may be effected in various ways, namely: 1. By partition, which is either voluntary or compulsory. 2. By alienation of one of the joint tenants, which turns the estate into a tenancy in common. 3. By the purchase or descent of all the shares of the joint tenants, so that the whole estate becomes vested in one only. Com. Dig. Estates by Grant, K 5; 1 Binn. R. 175.

3. In another and a less technical sense, severance is the separation of a part of a thing from another; for example, the separation of malchinery from a mill, is a severance, and, in that case, the machinery which while annexed to the mill was real estate, becomes by the severance; personalty, unless such severance be merely temporary. 8 Wend. R. 587.

SEWER. Properly a trench artificially made for the purpose of carrying water into the sea, river, or some other place of reception. Public sewers are, in general, made at the public expense. Crabb, R. P. §113.

SEX. The physical difference between male and female in animals.

2. In the human species the male is called man, (q. v.) and the female, woman. (q. v.) Some human beings whose sexual organs are somewhat imperfect, have acquired the name of hermaphrodite. (q. v.)

3. In the civil state the sex creates a difference among individuals. Women cannot generally be elected or appointed to offices or service in public capa-cities. In this our law agrees with that of other nations. The civil law excluded women from all offices civil or public: Faemintae ab omnibus officiis civilibus vel publicis remotae sunt. Dig. 50, 17, 2. The principal reason of this exclusion is to encourage that modesty which is natural to the female sex, and which renders them unqualified to mix and contend with men; the pre-tended weakness of the sex is not probably the true reason. Poth.

Des Personnes, tit. 5; Wood's Inst. 12; Civ. Code of Louis. art. 24; 1 Beck's Med. Juris. 94. Vide Gender; Male; Man; Women; Worthiest of blood.

SHAM PLEA. One entered for the mere purpose of delay; it must be of a matter which the pleader knows to be false; as judgment recovered, that is, that judgment has already been recovered by the plaintiff for the same cause of action.

2. These sham pleas are generally discouraged, and in some cases are treated as a nullity. Barn. & Ald. 197, 199; 5 Id. 750; 1 Barn. & Cr. 286; Archb. Civ. Pl. 249; 1 Chit. Pl. 401.

SHARE. A portion of anything. Sometimes shares are equal, at other times they are unequal.

2. In companies and corporations the whole of the capital stock is usually divided into equal proportions called shares. Shares in public companies have sometimes been held to be real estate, but most usually they are considered as personal property. Wordsw. Jo. Sto. Co. ch. 1 P, p. 288. 3. The proportion which descends to one of several children from his ancestor, is called a share. The term share and share alike, signifies in equal proportions. See Pwrpart.

SHEEP. A wether more than a year old. 4 Car. & Payne, 216; 19 Engl. Com. Law Rep. 331, S. C.

SHELLEY'S CASE. This case, reported in 1 Rep. 93, contains a rule usually known as the rule in Shelley's case, which has caused more commentaries perhaps than any other case. It has been expressed with great precision, though not with much elegance, to be "in any instrument, if a freehold be limited to the ancestor for life, and the inheritance to his heirs, either mediately or immediately, the first taker takes the whole estate; if it be limited to the heirs of his body, he takes a fee tail; if to his heirs a fee simple." Co. Litt. 376, b and Mr. Butler's note, 1; 3 Binn. R. 139 1 Day, Rep. 299; 1 Prest. on Estates, ch. 3; 4 Kent, Com. 206; Cruise, Dig. tit. 32, c. 22; 2 Yeates, R. 410; 1 Hargr. Law Tracts, article "Observations concerning the rule in Shelley's case, chiefly with a view to the application of that rule in Last Wills;" 5 Ohio R. 465.

SHERIFF. The name of the chief officer of the county. In Latin he is called vice comes, because in England he represented the comes or earl. His name is said to be derived from the Saxon seyre, shire or county, and reve, keeper, bailiff, or guardian.

2. The general duties of the sheriff are, 1st. To keep the peace within the county; he may apprehend, and commit to prison all persons who break the peace or attempt to break it, and bind any one in a recognizance to keep the peace. He is required ex

officio, to pursue and take all traitors, murderers, felons and rioters. He has the keeping of the county gaol and he is bound to defend it against all attacks. He may command the posse comitatus. (q. v.)

3. - 2d. In his ministerial capacity, the sheriff is bound to execute within his county or bailiwick, all process issuing from the courts of the commonwealth.

4. - 3d. The sheriff also possesses a judicial capacity, but this is very much circumscribed to what it was at common law in England. It is now generally confined to ascertain damages on writs of inquiry and the like.

5. Generally speaking the sheriff has no authority out of his county. 2 Rolle's Rep. 163; Plowd, 37 a. He may, however, do mere ministerial acts out of his county, as making a return. Dalt. Sh. 22. Vide, generally, the various Digests and Abridgments, h. t.; Dalt. Sher.; Wats. Off. and Duty of Sheriff; Wood's Inst. 75; 18 Engl. Com. Law Rep. 177; 2 Phil. Ev. 213; Chit. Pr. Index, h. t.; Chit. Pr. Law, Index, h. t.

SHERIFFALTY. The office of sheriff, the time during which a sheriff is to remain in office.

SHIFTING USE, estates. One which takes effect in derogation of some other estate, and is either limited by the deed creating it, or authorized to be created by some person named in it. This is sometimes called a secondary use.

2. The following is an example: If an estate be limited to A and his heirs, with a proviso that if B pay to A one hundred dollars by a time named, the use to A shall ease, and the estate go to B in fee; the estate is vested in A subject to the shifting or secondary use in fee in B. Again, if the proviso be that C may revoke the use to A, and limit it to B, then A is seised in fee, with a power in C of revocation and limitation of a new use. These shifting uses must be confined within proper limits, so as not to create a perpetuity. 4 Kent, Com. 291; Cornish on Uses, 91; Bac. Ab. Uses and Trusts, K; Co. Litt. 327, a, note Worth on Wills, 419; 2 Bouv. Inst. n. 1890. Vide Use.

SHILLING, Eng. law. The name of an English coin, of the value of one twen-tieth part of a pound. In the United States, while they were colonies, there were coins of this denomination, but they greatly varied in their value.

SHIP. This word, in its most enlarged sense, signifies a vessel employed in navigation; for example, the terms the ship's papers, the ship's hushand, shipwreck, and the like, are employed whether the vessel referred to be a brig, a sloop, or a three-masted vessel.

2. In a more confined sense, it means such a vessel with three masts 4 Wash. C. C. Rep. 530; Wesk. Inst. h. t. p. 514 the boats and rigging; 2 Marsh. Ins. 727 together with the anchors, masts, cables, pullies, and such like objects, are considered as part of the ship. Pard. n. 599; Dig. 22, 2, 44.

3. The capacity of a ship is ascertained by its tonnage, or the space which may be occupied by its cargo. Vide Story's Laws U. S. Index, h. t.; Gordon's Dig. h. t.; Abbott on Ship. Index, h. t.; Park. Ins. Index, h. t.; Phil. Ev. Index, h. t. Bac. Ab. Merchant, N; 3 Kent, Com. 93 Molloy, Jure Mar. Index, h. t.; l Chit. Pr. 91; Whart. Dig. h. t.; 1 Bell's Com. 496, 624; and see General Ships; Names of Ships.

SHIP BROKER. One who transacts business between the owners of vessels and merchants who send cargoes.

SHIP DAMAGES. In the charter parties with the English East India Company, these words occur; their meaning is damage from negligence, insufficiency or bad stowage in the ship. Dougl. 272; Abbott, on Ship. 204.

SHIP'S HUSBAND, mar. law. An agent appointed by the owner of a ship, and invested with authority to make the requisite repairs, and attend to the management, equipment, and other concerns of the ship he is usually authorized to act as the general agent of the owners, in relation to the ship in her home port.

2. By virtue of his agency, he is authorized to direct all proper repairs, equipments and outfits of the ship; to hire the officers and crew; to enter into contraets for the freight or charter of the ship, if that is her usual employment; and to do all other acts necessary and proper to prepare and despatch her for and on ber intended voyage. 1 Liverm. on Ag. 72, 73; Story on Ag. §35.

3. By some authors, it is said the ship's hushand must be a part owner. Hall on Mar. Loans, 142, n.; Abbott on Ship. part 1, c. 3, s. 2. 4. Mr. Bell, Comm. 410, §428, 5t ed. p. 503, points out the duties of the ship's hushand, as follows, namely: 1. To see to the proper outfit of the vessel, in the repairs adequate to the voyage, and in the tackle and furniture necessary for a sea-worthy ship.

5. - 2. To have a proper master, mate, and crew, for the ship, so that, in this respect, it shall be sea-worthy.

6. - 3. To see the due furnishing of provisions and stores, according to the necessities of the voyage.

7. - 4. To see to the regularity of the clearance's from the custom-house, and the regularity of the registry.

8. - 5. To settle the contracts, and provide for the payment of the furnishings which are requisite to the performance of those duties.

9. - 6. To enter into proper charter parties, or engage the vessel for general freight, under the usual conditions; and to settle for freight, and adjust averages with the merchant; and,

10. - 7. To preserve the proper certificates, surveys and documents, in case of future disputes with insurers and freighters and to keep regular books of the ship.

11. These are his general powers, but of course, they may be limited or enlarged by the owners; and it may be observed, that without special authority, he cannot, in general, exercise the following enumerated acts:

1. He cannot borrow money generally for the use of the ship; though, as above observed, he may settle the accounts for furnishings, or grant bills for them, which form debts against the concern, whether or not he has funds in his hands with which he might have paid them. 1 Bell, Com. 411, 499.

12. - 2. Although he may in general, levy the freight which is, by the bill of lading, payable on the delivery of the goods, it would seem that he would not have power to take bills for the freight, and give up the possession of the lien over the cargo, unless it has been so settled by the charter party. Id.

13. - 3. He cannot insure, or bind the owners for premiums. Id.; 5 Burr. 2627; Paley on Ag. by Lloyd, 23, note 8; Abb. on Ship. part 1, c. 3, s. 2; Marsh. Ins. b. 1, c. 8, s. 2; Liv. on Ag. 72, 73.

14. As the power of the master to enter into contracts of affreightments, is superseded in the port of the owners, so it is by the presence of the ship's hushand, or the knowledge of the contracting parties that a ship's hushand has been appointed. Bell's Com. ut supra.

SHIP'S PAPERS. Those documents which are required on board of neutral ships, as evidence of their neutrality, These are the passports, sea-letter, muster-roll, charter party, bill of lading, invoices, log book, bill of health, register, and papers containing proofs of property. 1 Chit. Com. Law 487.

2. The want of these papers, or either of them, renders the character of a vessel suspicious. Vide Clearance, and 2 Boulay Paty, Dr. Com. 14.

SHIPPER. One who ships or puts goods on board of a vessel, to be carried to another place during her voyage. In general, the shipper is bound to pay for the hire of the vessel, or the freight of the goods. 1 Bouv. Inst. n. 1030.

SHIPPING ARTICLES, contr. mar. law. The act of congress of July 20, 1790, s. 1, directs that a master of any vessel bound from a port in the United States to any foreign port, or of any vessel of fifty tons or upwards, bound from a port in one state to a port in any other than at adjoining state, shall, before he proceed on such voyage, make an agreement in writing or in print, with every seaman or mariner on board such vessel, (except such as shall be apprenticed or servant to himself or owners) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped.

2. And by sect. 2, it is required that at the foot of every such coutract, there shall be a memorandum in writing, of the day and the hour on which such seaman or mariner who shall so ship and subscribe, shall render himself on board to begin the voyage agreed upon.

3. This instrument is called the shipping articles. For want of which, the seaman is entitled to the highest wages which have been given at the port or place where such seaman or mariner shall have been shipped for a similar voyage within three months next before the time of such shipping, on his performing the service, or during the time he shall continue to do duty on board such vessel, without being bound by the regulations, nor subject to the penalties and forfeitures contained in the said act of congress; and the master is further liable to a penalty of twenty dollars.

4. The shipping articles ought not to contain any clause which derogates from the general rights and privileges of seamen, and if they do, such clause will be declared void. 2 Sumner, 443; 2 Mason, 541.

5. A seaman who signs shipping articles, is bound to perform the voyage, and he has no right to elect to pay damages for non-performance of the contract. 2 Virg. Cas. 276.

Vide, generally, Gilp. 147, 219, 452; 1 Pet. Ad. Dec. 212; Bee, 48; 1 Mason, 443; 5 Mason, 272; 14 John. 260.

SHIPWRECK. The loss of a vessel at sea, either. by being swallowed up by the waves, by running against another vessel or thing at sea, or on the coast. Vide Naufrage; Wreck.

SHIRE, Eng. law. A district or division of country. Co. Lit. 50 a.

SHOP BOOK. This name is given to a book in which a merchant, mechanic, or other person, makes original entries of goods sold or work done.

2. In general, such a book is prima facie evidence of the sale of the goods and of the work done, but not of their value. Vide Original entry.

SHORE. Land on the side of the sea, a lake, or a river, is called the shore. Strictly speaking, however, when the water does not ebb and flow, in a river, there is no shore. See 4 Hill, N. Y. Rep. 375; 6 Cowen, 547; and Seashore.

SHORT ENTRY. A term used among bankers, which takes, place when a note has been sent to a bank for collection, and an entry of it is made in the cus-tomer's bank book, stating the amount in an inner column, and carrying it out into the accounts between the parties when it has been paid.

2. A bill of this kind remains the property of the depositor. 1 Bell's Com. 27l; 9 East, 12; 1 Rose, 153; 2 Rose, 163; 2 B. & Cr. 422; Pull. Mer. Acc. 56.

SI FACERIT TE SECUREM. If he make you secure. These words occur in the form of writs, which originally requited, or still require, that the plaintiff should give security to the sheriff that he will prosecute his claim, before the sheriff can be required to execute such writ.

SICKNESS. By sickness is understood any affection of the body which deprives it temporarily of the power to fulfil iis usual functions.

2. Sickness is either such as affects the body generally, or only some parts of it. Of the former class, a fever is an example; of the latter, blindness. When a process has been issued against an individual for his arrest, the she-riff or other officer is authorized, after he has arrested him, if he be so dangerously sick, that to remove him would endanger his life or health, to let him remain where he found him, and to return the facts at large, or simply languidus. (q. v.)

SIDE BAR RULES, Eng practice. Rules which were formerly moved for by attorneys on the side bar of the court; but now may be had of the clerk of the rules,

upon a praecipe. These rules are, that the sheriff return his writ; that he bring in the body; for special imparlance; to be present at the taxing of costs, and the like.

SIENS. An obsolete word, formerly used for scion, which figuratively signified a person who descended from another. "The sien," says Lord Coke, "takes all his nourishment from the stocke, and yet it produceth his own fruit." Co. Lit. 123 a. Vide Branch.

SIGILLUM. A seal. (q. v.) Vide Scroll.

SIGHT, contracts. Bills of exchange are frequently made payable at sight, that is, on presentment, which might be taken naturally to mean that the bill should then be paid without further delay; but although the point be not clearly settled, it seems the drawee is entitled to the days of grace. Beaw. Lex Mer. pl. 256; Kyd on Bills, 10; Chit. on Bills, 343-4; Bayley on Bills, 42, 109, 110; Selw. N. P. 339.

2. - The holder of a bill payable at sight, is required to use due diligence to put it into circulation, or have it presented for acceptance within a reasonable time. 20 John. 146; 7 Cowen, 705; 12 Pick. 399 13 Mass. 137; 4 Mason, 336; 5 Mason's 118; 1 McCord, 322; 1 Hawks, 195.

3. When the bill is payable any number of days after sight, the time begins to run from the period of presentment and acceptance, and not from the time of mere presentment. 1 Mason, 176; 20 John. 176.

SIGN, contracts, evidence. A token of anything; a note or token given without words.

2. Contracts are express or implied. The express are manifested viva voce, or by writing; the implied are shown by silence, by acts, or by signs.

3. Among all nations find and at all times, certain signs have been considered as proof of assent or dissent; for example, the nodding of the head, and the shaking of hands; 2 Bl. Com. 448; 6 Toull. D. 33; Heinnec., Antiq. lib. 3, t. 23, n. 19; silence and inaction, facts and signs are sometimes very strong evidence of cool reflection, when following a question. I ask you to lend me one hundred dollars, without saying a word you put your hand in your pocket, and deliver me the money. I go into a hotel and I ask the landlord if he can accommodate me and take care of my trunk; without speaking he takes it out of my hands and sends it into his chamber. By this act he doubtless becomes responsible to me as a bailee. At the expiration of a lease, the tenant remains in possession, without any objection from the landlord; this may be fairly interpreted as a sign of a consent that the lease shall be renewed. 13 Serg. & Rawle, 60.

4, The learned author of the Decline and Fall of the Roman Empire, in his 44th chapter, remarks, "Among savage nations, the want of letters is imperfectly supplied by the use of visible signs, which awaken attention, and perpetuate the remembrance of any public or private transaction. The jurisprudence of the first Romans exhibited the scenes of a pantomime; the words were adapted to the gestures, and the slightest error or neglect in the forms of proceeding was sufficient to annul the substance of the fairest claim. The communion of the marriage-life was denoted by the necessary elements of fire and water: and the divorced wife resigned, the bunch of keys, by the delivery of which she had been invested with the government of the family. The manumission of a son, or a slave, was performed by turning him round with a gentle blow on the cheek: a work was prohibited by the casting of a stone; prescription was interrupted by the breaking of a branch; the clenched fist was the symbol of a pledge or deposits; the right hand was the gift of faith and confidence. The indenture of covenants was a broken straw; weights and, scales were introduced into every payment, and the heir who accepted a testament, was sometimes obliged to snap his fingers, to cast away his garments, and to leap and dance with real or affected transport. If a citizen pursued any stolen goods into a neighbor's house, he concealed his nakedness with a linen towel, and hid his. face with a mask or basin, lest he should encounter the eyes of a virgin or a matron. In a civil action, the plaintiff touched the ear of his witness seized his reluctant adversary by the neck and implored, in solemn lamentation, the aid of his fellow-citizens. The two competitors grasped each other's hand, as if they stood prepared for combat before the tribunal of the praetor: he commanded them to produce the object of the dispute; they went, they returned with measured steps, and a clod of earth was cast at his feet to represent the field for which they contended. This occult science of the words and actions of law, was the inheritance of the pontiffs and patricians. Like the Chaldean astrologers, they announced to their clients the days of business and repose; these important trifles wore interwoven with the religion of Numa; and, after the publication of the Twelve Tables, the Roman people were still enslaved by the ignorance of judicial proceedings. The treachery of some plebeian officers at length revealed the profitable mystery: in a more enlightened age, the legal actions were derided and observed; and the same antiquity which sanctified the practice, obliterated the use and meaning, of this primitive language."

SIGN, measures. In angular measures, a sign is equal to thirty degrees. Vide Measure.

SIGN, mer. law. A board, tin or other substance, on which is painted the name and business of a merchant or tradesman.

2. Every man has a right to adopt such a sign as he may please to select, but he has no right to use another's name, without his consent. See Dall. Dict. mot Propriete Industrielle, and the article Trade marks.

To SIGN. To write one's name to an instrument of writing in order to give the effect intended; the name thus written is called a signature.

2. The signature is usually made at the bottom of the instrument but in wills it has been held that when a testator commenced his will With these words;, "I, A B, make this my will," it was a sufficient signing. 3 Lev. 1; and vide Rob. on Wills, 122 1 Will. on Wills, 49, 50; Chit. Cont. 212 Newl. Contr. 173; Sugd. Vend. 71; 2 Stark. Ev. 605, 613; Rob. on Fr. 121; but this decision is said to be absurd. 1 Bro. Civ. Law, 278, n. 16. Vide Merl. Repert. mot Signature, for a history of the origin, of signatures; and also 4 Cruise, Dig. h. t. 32, c. 2, s. 73, et seq.; see, generally, 8 Toull. n. 94-96; 1 Dall. 64; 5 Whart. R. 386; 2 B. & P 238; 2 M. & S. 286.

3. To sign a judgment, is to enter a judgment for want of something which was required to be done; as, for example, in the English practice, if he who is bound to give oyer does not give it within the time required, in such cases, the adverse party may sign judgment against him. 2 T. R. 40; Com. Dig. Pleader, P 1; Barnes, 245.

SIGNA, civil law. Those species of indicia (q. v.) which come more immediately under the cognizance of the senses, such as stains of blood on the person of one accused of murder, indications of terror at being charged with the offence, and the like.

2. Signa, although not to be rejected as instruments of evidence, cannot always be relied upon as conclusive evidence, for they are frequently explained away; in the instance mentioned the blood may have been that of a beast, and expressions of terror have been frequently manifested by innocent persons who did not possess much firmness. See Best on Pres. 13, n. f.; Denisart, h. v.

SIGNATURE, eccl. law. The name of a sort of rescript, without seal, containing the supplication, the signature of the pope or his delegate, and the grant of a pardon Dict. Dr. Can. h. v.

SIGNATURE, pract. contr. By signature is understood the act of putting down a man's name, at the end of an instrument, to attest its validity. The name thus written is also called a signature.

2. It is not necessary that a party should write his name himself, to constitute a signature; his mark is now beld sufficient though he was able to write. 8 Ad. & El. 94; 3 N. & Per. 228; 3 Curt. 752; 5 John. 144, A signature made by a party, another person guiding his band with his consent, is sufficient. 4 Wash. C. C. 262, 269. Vide to Sign.

SIGNIFICATION, French law. The notice given of a decree, sentence or other judicial act.

SIGNIFICAVIT, eccl. law. When this word is used alone, it means the bishop's certificate to the court of chancery, in order to obtain the writ of excommunication; but where the words writ of significavit are used, the meaning is the same as writ de excommunicato capiendo. 2 Burn's Eccl. L. 248; Shelf. on Mar. & Div. 502.

SILENCE. The state of a person who does not speak, or of one who refrains from speaking.

2. Pure and simple silence cannot be considered as a consent to a contract, except in cases when the silent person is bound in good faith to explain himself, in which case, silence gives consent. 6 Toull. liv. 3, t. 3, n. 32, note; 14 Serg. & Rawle, 393; 2 Supp. to Ves. jr. 442; 1 Dane's Ab. c. 1, art. 4, §3; 8 T. R. 483; 6 Penn. St. R. 336; 1 Greenl. Ev. 201; 2 Bouv. Inst. n. 1313. But no assent will be inferred from a man's silence, unless, 1st. He knows his rights and knows what he is doing and, 2d. His silence is voluntary.

3. When any person is accused of a crime, or charged with any fact, and he does not deny it, in general, the presumption is very strong that the charge is correct. 7 C. & P. 832 5 C. & P. 332; Joy on Conf. s. 10, p. 77.

4. The rule does not extend to the silence of a prisoner, when on his exanination before a magistrate he is charged by another prisoner with having joined him in the commission of an offence: 3 Stark. C. 33.

5. When an oath is administered to a witness, instead of expressly promising to keep it, he gives his assent by his silence, and kissing the book.

6. The person to be affected by the silence must be one not disqualified to act as non compos, an infant, or the like, for even the express promise of such a person would not bind him to the performance of any contract.

7. The rule of the civil law is that silence is not an acknowledgment or denial in every case, qui tacet, non utique fatetur: sed tamen verum est, eum non negaro. Dig. 50, 17, 142.

SILVA CAEDUA. By these words in England is understood every sort of wood, except gross wood of the age of twenty years. Bac. Ab. Tythes, C.

SIMILITER, pleading. When the defendant's plea contains a direct contradiction of the declaration, and concludes with referring the matter to be tried by a jury of the country, the plaintiff must do so too; that is, he must also submit the matter to be tried by a jury, without offering any new answer to it, and must stand or fall by his declaration. Co. Litt. 126 a. In such case, he merely replies that as the defendant has put himself upon the country, that is, has submitted his cause to be tried by a jury of the country, he, the plaintiff, does so likewise, or the like. Hence this sort of replication is called a similiter, that having been the effective word when the proceedings were in Latin. 1 Chit. Pl. 549; Arch. Civ. Pl. 250. See Steph. Pl. 255; 2 Saund. 319, b; Cowp. 407; 1 Str. Rep. 551; 11 S. & R. 32.

SIMONY, eccl. law. The selling and buying of holy orders, or an ecclesiastical benefice. Bac. Ab. h. t.; 1 Harr. Dig. 556. By simony is also understood an unlawful agreement to receive a temporal reward for something holy or spiritual. Code, 1, 3, 31 Ayl. Parerg. 496.

SIMPLE. Not compounded, alone; as, simple interest, which is interest on the principal sum lent only and not interest on the interest; simple contract, &c.

SIMPLE CONTRACT. One, the evidence of which is merely oral, or in writing, not under seal, nor of record. 1 Chit. Contr. 1 1 Chit. Pl. 88; and vide 11 Mass. R. 30 ll East, R. 312; 4 Barn. & Ald. 588; Stark. Ev. 995; 2 Bl. Com. 472.

2. As contracts of this nature are frequently entered into without thought or proper deliberation, the law requires that there be some good cause, consideration or motive, before they can be enforced in the courts. The party making the promise must have obtained some advantage, or the party to whom it is made must have sustained some injury or inconvenience in consequence of such promise; this rule has been established for the purpose of protecting weak and thoughtless persons from the consequences of rash, improvident, and inconsiderate engageinents. See Nudum pactum. But it must be recollected this rule does not apply to promissory notes, bills of exchange or commercial papers. 3 M. & S. 352.

SlMPLE LARCENY. The felonious taking and carrying away the personal goods of another, unattended by acts of violence; it is distinguished from compound larceny, which is the stealing from the person or with violence.

SIMPLE OBLIGATION. An unconditional obligation, one which is to be performed without depending upon any event provided by the parties to it.

SIMPLE TRUST. A simple trust corresponds with the ancient use, and is where property is simply vested in one person for the use of another, and the nature of the

trust, not being qualified by the settler, is left to the construction of law. It differs from a special trust. (q. v.) 2 Bouv. Inst. n. 1896.

SIMPLEX. Simple or single; as, charta simplex, is a deed-poll, of single deed. Jacob's L. Dict. h. t.

SIMPLICITER. Simply, without ceremony; in a summary manner.

SIMUL CUM, pleading. Together with. These words are used in indictments and declarations of trespass against several persons, when some of them are known and others are unknown.

2. In cases of riots it is usual to charge that A B, together with others unknown, did the act complained of. 2 Chit. Cr. Law, 488; 2 Salk. R. 593.

3. When a party sued with another pleads separately, the plea is generally entitled in the name of the person pleading, adding "sued with___," naming the other party. When this occurred, it was, in the old phraseology, called pleading with a simul cum.

SIMULATION, French law. This word is derived from the Latin simul, together. It indicates, agreeably to its etymology, the concert or agreement of two or more persons to give to one thing the appearance of another, for the purpose of fraud. Merl. Repert. h. t.

2. With us such act might be punished by indictment for a conspiracy; by avoiding the pretended contract; or by action to recover back the money or property which may have been thus fraudulently obtained.

SINE DIE. Without day. A judgment for a defendant in many cases is quod eat sine die, that he may go without day. While the cause is pending and undeter-mined, it may be continued from term to term by dies datus. (q. v.) See Huxley's Judgments & Rastal's Entries, passim; Co. Litt. 362b & 363a. When the court or other body rise at the end of a session or term they adjourn sine die.

SINECURE. In the ecclesiastical law, this term is used to signify that an ecclesiastical officer is without a charge or cure.

2. In common parlance it means the receipt of a salary for an office when there are no duties to be performed.

SINGLE. By itself, unconnected.

2. A single bill is one without any condition, and does not depend upon any future event to give it validity. Single is also applied to an unmarried person; as, A B, single woman. Vide Simplex.

SINGLE ENTRY. A term used among merchants signifying that the entry is made to charge or to credit an individual or thing, without, at the same time, pre-senting any other part of the operation; it is used in contradistinction to double entry. (q. v.) For example, a single entry is made, A B debtor, or A B creditor, without designating what are the connexions between the entry and the objects which composed the fortune of the merchant.

SINGULAR, construction. In grammar the singular is used to express only one,

not plural. Johnson.

2. In law, the singular frequently includes the plural. A bequest to "my nearest relation," for example, will be considered as a bequest to all the relations in the same degree, who are nearest to the testator. 1 Ves. sen. 337; 1 Bro. C. C. 293. A bequest made to "my heir," by a person who had three heirs, will be construed in the plural. 4 Russ. C. C. 384.

3. The same rule obtains in the civil law: In usu juris frequenter uti nos singulari appellationie, am plura significari vellemus. Dig. 50, l6, 158.

SINKING FUND. A fund arising from particular taxes, imposts, or duties, which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal. See Funding System.

SIRE. A title of honor given to kings or emperors in speaking or writing to them.

SISTER. A woman who has the same father and mother with another, or has one of them only. In the first case she is called sister, simply; in the second, half sister. Vide Brother; Children; Descent; Father; Mother.

SITUS. Situation;, location. 5 Pet. R. 524.

2. Real estate has always a fixed situs, while personal estate has no such fixed situs; the law rei site regulates real but not the personal estate. Story, Confl. of Laws, §379.

SKELETON BILL, com. law. A blank paper, properly stamped, in those countries where stamps are required, with the name of a person signed at the bottom.

2. In such case the person signing the paper will be held as the drawer or acceptor, as it may be, of any bill which shall afterwards be written above his name to the sum of which the stamp is applicable. 1 Bell's Com. 390, 5th ed.

SKILL, contracts. The art of doing a thing as it ought to be done.

2. Every person who purports to have skill in la business, and undertakes for hire to perform it, is bound to do it with ordinary skill, and is res-ponsible civilly in damages for the want of it; 11 M. & W. 483; and sometimes he is responsible criminally. Vide Mala Praxis; 2 Russ. on Cr. 288,

3. The degree of skill and diligence required, rises in proportion to the value of the article, and the delicacy of the operation: more skill is required, for example, to repair a very delicate mathematical instrument, than upon a common instrument. Jones' Bailm. 91; 2 Kent, Com. 458, 463; 1 Bell's Com. 459; 2 Ld. Raym. 909, 918; Domat, liv. 1, t. 4, §8, n. 1; Poth. Louage, n. 425; Pardess. n. 528; Ayl. Pand. B. 4, t. 7, p. 466; Ersk. Inst. B. 3, t. 3, §16; 1 Rolle, Ab. 10; Story's Bailm. §431, et seq.; 2 Greenl. Ev. §144.

SLANDER, torts. The defaming a man in his reputation by speaking or writing words which affect his life, office, or trade, or which tend to his loss of preferment in marriage or service, or in his inheritance, or which occasion any other particular damage. Law of Nisi Prius, 3. In England, if slander be spoken of a peer, or other great man, it is called Scandalum Magnatum. Falsity and malice are ingredients of slander. Bac. Abr. Slander. Written or printed slanders are libels; see that word.

2. Here it is proposed to treat of verbal slander only, which may be considered with reference to, 1st. The nature of the accusation. 2d. The falsity of the charge. 3d. The mode of publication. 4th. The occasion; and 5th. The malice or motive of the slander.

3. - §1. Actionable words are of two descriptions; first, those actionable in themselves, without proof of special damages and, secondly, those actionable only in respect of some actual consequential damages.

4. - 1. Words of the first description must impute: 1st. The guilt of some offence for which the party, if guilty, might be indicted and punished by the criminal courts; as to call a person a "traitor," "thief," "highwayman;" or to say that he is guilty of "perjury," "forgery," "murder," and the like. And although the imputation of guilt be general, without stating the particulars of the pretended crime, it is actionable. Cro. Jac. 114, 142; 6 T. R. 674; 3 Wils. 186; 2 Vent. 266; 2 New Rep. 335. See 3 Serg. & Rawle, 255 7 Serg. & Rawle, 451; 1 Binn. 452; 5 Binn. 218; 3 Serg. & Rawle, 261; 2 Binn.

34; 4 Yeates, 423; 10 Serg. & Rawle, 44; Stark. on Slander, 13 to 42; 8 Mass. 248; 13 Johns. 124; Id. 275.

5. - 2d. That the party has a disease or distemper which renders him unfit for society. Bac. Abr. Slander, B 2. An action can therefore be sustained for calling a man a leper. Cro. Jac. 144 Stark. on Slander, 97. But charging another with having had a contagious disease is not actionable, as he will not, on that account, be excluded from society. 2 T. R. 473, 4; 2 Str. 1189; Bac. Abr. tit. Slander, B 2. A charge which renders a man ridiculous, and impairs the enjoyment of general society, and injures those imperfect rights of friendly intercourse and mutual benevolence which man has with respect to man, is also actionable. Holt on Libels, 221.

6. - 3d. Unfitness in an officer, who holds an office to which profit or emolument is attached, either in respect of morals or inability to discharge the duties of the office in such a case an action lies. 1 Salk. 695, 698; Rolle, Ab. 65; 2 Esp. R. 500; 5 Co. 125; 4 Co. 16 a; 1 Str. 617; 2 Ld. Raym. 1369; Bull. N. P. 4; Holt on Libels, 207; Stark. on Slander, 100.

7. - 4th. The want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business, in which the party is engaged, is actionable, 1 Mal. Entr. 244 as to accuse an attorney or artist of inability, inattention, or want of integrity; 3 Wils. 187; 2 Bl. Rep. 750; or a clergyman of being a drunkard; 1 Binn. 178; is actionable. See Holt on Libels, 210; Id. 217.

8. - 2. Of the second class are words which are actionable only in respect of special damages sustained by the party slandered. Though the law will not permit in these cases the inference of damage, yet when the damage has actually been sustained, the party aggrieved may support an action for the publication of an untruth; 1 Lev. 53; 1 Sid. 79, 80; 3 Wood. 210; 2 Leon. 111; unless the assertion be made for the assertion of a supposed claim; Com. Dig. tit. Action upon the case for Defamation, D 30; Bac. Ab. Slander, B; but it lies if maliciously spoken. See 1 Rolle, Ab. 36 1 Saund. 243 Bac. Abr. Slander, C; 8 T. R. 130 8 East, R. 1; Stark. on Slander, 157.

9. - §2. The charge must be false; 5 Co. 125, 6; Hob. 253; the falsity of the accusation is to be implied till the contrary is shown. 2 East, R. 436; 1 Saund. 242. The instance of a master making an unfavorable representation of his servant, upon an application for his character, seems to be an exception, in that case there being a presumption from the occasion of the speaking, that the words were true. 1 T. R. 111; 3 B. & P. 587; Stark. on Slander, 44, 175, 223.

10. - §3. The slander must, of course, be published, that is, communicated to a third person; and if verbal, then in a language which he understands, otherwise the

plaintiff's reputation is not impaired. 1 Rolle, Ab. 74; Cro. Eliz. 857; 1 Saund. 2425 n. 3; Bac. Abr. Slander, D 3. A letter addressed to the party, containing libelous matter, is not sufficient to maintain a civil action, though it may subject the libeler to an indictment, as tending to a breach of the peace; 2 Bl. R. 1038; 1 T. R. 110; 1 Saund. l32, n. 2; 4 Esp. N. P. R. 117; 2 Esp. N. P. R. 623; 2 East, R. 361; the slander must be published respecting the plaintiff; a mother cannot maintain an action for calling her daughter a bastard. 11 Serg. & Rawle, 343. As to the case of a man who repeats the slander invented by another, see Stark. on Slander, 213; 2 P. A. Bro. R. 89; 3 Yeates, 508; 3 Binn. 546.

11. - §4. To render words actionable, they must be uttered without legal occasion. On some occasions it is justifiable to utter slander of another, in others it is excusable, provided it be uttered without express malice. Bac. Ab. Slander, D 4; Rolle, Ab. 87; 1 Vin. Ab. 540. It is justifiable for au attorney to use scandalizing expressions in support of his client's cause and pertinent thereto. 1 M. & S. 280; 1 Holt's R. 531; 1 B. & A. 232; see 2 Serg. & Rawle, 469; 1 Binn. 178; 4 Yeates, 322; 1 P. A. Browne's R. 40; 11 Verm. R. 536; Stark. on Slander, 182. Members of congress and other legislative assemblies cannot be called to account for anything said in debate.

12. - §5. Malice is essential to the support of an action for slanderous words. But malice is in general to be presumed until the contrary be proved; 4 B. & C. 247; 1 Saund. 242, n. 2; 1 T. R. 1 11, 544; 1 East, R. 563; 2 East, R. 436; 2 New Rep. 335; Bull. N. P. 8; except in those cases where the occasion prima facie excuses the publication. 4 B. & C. 247. See 14 Serg. & Rawle, 359; Stark. on Slander, 201. See, generally, Com. Dig. tit. Action upon the case for Defamation; Bac. Abr. Slander; 1 Vin. Abr. 187; 1 Phill. Ev. ch. 8; Yelv. 28, n.; Doctr. Plac. 53 Holt's Law of Libels; Starkie on Slander, Ham. N. P. ch. 2, s. 3.

SLANDERER. A calumniator, who maliciously and without reason imputes a crime or fault to another, of which he is innocent.

2. For this offence, when the slander is merely verbal, the remedy is an action on the case for damages; when it is reduced to writing or printing, it is a libel. (q. v.)

SLAVE. A man who is by law deprived of his liberty for life, and becomes the property of another.

2. A slave has no political rights, and generally has no civil rights. He can enter into no contract unless specially authorized by law; what he acquires generally, belongs to his master. The children of female slaves follow the condition of their mothers, and are themselves slaves.

3. In Maryland, Missouri and Virginia slaves are declared by statute to be personal estate, or treated as such. Anth. Shep. To. 428, 494; Misso. Laws, 558. In Kentucky, the rule is different, and they are considered real estate. 1 Kty. Rev. Laws, 566 1 Dana's R. 94.

4. In general a slave is considered a thing and not a person; but sometimes he is considered as a person; as when he commits a crime; for example, two white persons and a slave can commit a riot. 1 McCord, 534. See Person.

5. A slave may acquire his freedom in various ways: 1. By manumission, by deed or writing, which must be made according to the laws of the state where the master then acts. 1 Penn. 10; 1 Rand. 15. The deed may be absolute which gives immediate freedom to the slave, or conditional giving him immediate freedom, and reserving a right of service for a time to come; 6 Rand. 652; or giving him his freedom as soon as a certain condition shall have been fulfilled. 2 Root, 364; Coxe, 4. 2. By manumission by will. When there is an express emancipation by will, the slave will be free, and the testator's real estate shall be charged with the payment of his debts, if there be not enough personal property without the sale of the slaves. 9 Pet. 461. See Harper, R. 20. The manumission by will may be implied, as, where the master devises property real or personal to his slave. 2 Pet; 670; 5 Har. & J. 190. 3. By the removal of the slave with the consent of the master, animo morandi, into one of the United States where slavery is forbidden by law; 2 Mart. Lo. Rep. N. J. 401; or when he sojourns there longer than is allowed by the law of the state. 7 S. & R. 378; 1 Wash. C. C. Rep. 499. Vide Stroud on Slavery; Bouv. Inst. Index, h. t.; and as to the rights of one who, being free, is held as a slave, 2 Gilman, 1; 3 Yeates, 240.

SLAVE TRADE, criminal law. The infamous traffic in human flesh, which though not prohibited by the law of nations, is now forbidden by the laws and treaties of most civilized states.

2. By the constitution of the United States, art. 1, s. 9, it is provided, that the "migration or importation of such persons as any of the states now existing (in 1789,) shall think proper to admit, shall not be probibited by the congress, prior to the year one thousand eight hundred and eight." Previously to that date several laws were enacted, which it is not within the plan of this work to cite at large or to analyze; they are here referred to, namely; act of 1794, c. 11, 1 Story's laws U. S. 319; act of 1800, c. 51, 1 Story's Laws U. S. 780 act of 1803, c. 63, 2 Story's Laws U. S 886; act of 1807, c. 77, 2 Story's Laws U. S. 1050; these several acts forbid citizens of the United States, under certain circumstances, to equip or build vessels for the purpose of carrying on the slave trade, and the last mentioned act makes it highly penal to import slaves into the United States after the first day of January, 1808. The act of 1818, c. 86, 3 Story's Laws U. S. 1698 the act of 1819, c. 224, 3 Story's Laws U. S. 1752; and

the act of 1820, c. 113, 3 Story's Laws U. S. 1798, contain further prohibition of the slave trade , and punish tho violation of their several provisions with the highest penalties of the law. Vide, generally, 10 Wheat. R. 66; 2 Mason, R. 409; 1 Acton, 240; 1 Dodson, 81, 91, 95; 2 Dodson, 238; 6 Mass. R. 358; 2 Cranch, 336; 3 Dall. R. 297; 1 Wash. C. C. Rep. 522; 4 Id. 91; 3 Mason, R. 175; 9 Wheat. R. 391; 6 Cranch, 330; 5 Wheat. R. 338; 8 Id. 380; 10 Id. 312; 1 Kent, Com. 191.

SLAVERY. The state or condition of a slave.

2. Slavery exists in most of the southern states. In Pennsylvania, by the act of March, 1780, for the gradual abolition of slavery, it has been almost entirely removed in Massachusetts it was held, soon after the Revolution, that slavery had been abolished by their constitution; 4 Mass. 128; in Connecticut, slavery has been totally extinguished by legislative provisions; Reeve's Dom. Bel. 340; the states north of Delaware, Maryland and the river Ohio, may be considered as free States, where slavery is not tolerated. Vide Stroud on Slavery; 2 Kent, Com. 201; Rutherf. Inst. 238.

SMUGGLING. The fraudulent taking into a country, or out of it, merchandise which is lawfully prohibited. Bac. Ab. h. t.

SO HELP YOU GOD. The formula at the end of a common oath, as administered to a witness wlio testifies in chief.

SOCAGE, Eng. law. A tenure of lands by certain inferior services in husbandry, and not knight's service, in lieu of all other services. Litt. sect. 117.

SOCER. The father of one's wife; a father-in-law.

SOCIDA, civ. law. This is the name of a contract by which one man delivers to another, either for a small recompense, or for a part of the profits, certain animals, on condition that if any of them perish they shall be replaced by the bailer, or he shall pay their value.

2. This is a contract of hiring, with this condition, that the bailee takes upon him the risk of the loss of the thing hired. Wolff, §638.

SOCIETAS LEONINA. Among the Roman lawyers this term signified that kind of society or partnership by which the entire profits should belong to some of the partners in exclusion of the rest.

2. It was so called in allusion to the fable of the lion and other animals, who having entered into partnership for the purpose of hunting, the lion appropriated all the prey

to himself. Dig. 17, 2, 29, 2; Poth. Traite de Societe, n. 12. See 2 McCord's R. 421; 6 Pick. 372.

SOCIETE EN COMMENDITE. This term is borrowed from the laws of France, and is used in Louisiana; the societe en commendite, or partnership in commendam, is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more. Civ. Code of Lo. art. 2810; Code de Comm. 26, 33; 4 Pard. Dr. Com. n. 1027; Dall. Dict. mots Societe Commerciale, n. 166. Vide Commendam; Partnership.

SOCIETY. A society is a number of persons united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose.

2. Societies are either incorporated and known to the law, or unincorporated, of which the law does not generally take notice.

3. By civil society is usually understood a state, (q. v.) a nation, (q. v.) or a body politic. (q. v.) Rutherf. Inst. c. 1 and 2.

4. In the civil law, by society is meant a partnership. Inst. 3, 26; Dig. 17, 2 Code, 4, 37.

SODOMITE. One who his been guilty of sodomy. Formerly such offender was punished with great severity, and was deprived of the power of making a will.

SODOMY, crim. law. The crime against nature, committed either with man or beast.

2. It is a crime not it to be named; peccatum illud horrible, inter christianos non nominandum. 4 Bl. Com. 215; 1 East, P. C. 480, 487; Bac. Ab. h. t.; Hawk. b. 1, c. 4; 1 Hale, 669; Com. Dig. Justices, S 4; Russ. & Ry. 331.

3. This crime was punished with great severity by the civil law. Nov. 141; Nov. 77; Inst. 4, 18, 4. See 1 Russ. on Cr. 568; R. & R. C. C. 331, 412; 1 East, P. C. 437.

SOIL. The superficies of the earth on which buildings are erected, or may be

erected.

2. The soil is the principal, and the building, when erected, is the accessory. Vide Dig. 6, 1, 49.

SOIT DROIT FAIT AL PARTIE, Eng. law. Let right be done to the party. This phrase is written on a petition of right, and subscribed by the king. See Petition of right.

SOKEMANS, Eng. law. Those who hold their land in socage. 2 Bl. Com. 100.

SOLARES, Spanish law. Lots of ground. This term is frequently found in grants from the Spanish government of lands in America. 2 White's Coll. 474.

SOLD NOTE, contracts. The name of an instrument in writing, given by a broker to a buyer of merchandise, in which it is stated that the goods therein mentioned have been sold to him. 1 Bell's Com. 5th ed. 435 Story on Ag. §28. Some confusion may be found in the books as to the name of these notes; they are sometimes called bought notes. (q. v.)

SOLDIER. A military man; a private in the army.

2. The constitution of the United States, amendm. art. 3, directs that no soldier shall, in time of peace, be quartered in any house, without the 'consent of the owner; nor in time of war, but in a manner to be prescribed by law.

SOLE. Alone, single; used in contradistinction to joint or married. A sole tenant, therefore, is one who holds lands in his own right, without being joined with any other. A feme sole is a single woman; a sole corporation is one composed of only one natural person.

SOLEMNITY. The formality established by law to render a contract, agreement, or other act valid.

2. A marriage, for example, would not be valid if made in jest, and without solemnity. Vide Marriage, and Dig. 4, 1, 7; Id. 45, 1, 30.

SOLICITATION OF CHASTITY. The asking a person to commit adultery or fornication.

2. This of itself, is not an indictable offence. Salk. 382; 2 Chit. Pr. 478. The contrary doctrine, bowever, has been held in Connecticut. 7 Conn. Rep. 267.

3. In England, the bare solicitation of chastity is punished in the ecclesiastical courts. 2 Chit. Pr. 478. Vide Str. 1100; 10 Mod. 384; Sayer, 33; 1 Hawk. ch. 74; 2 Ld. Raym. 809.

4. The civil law punished arbitrarily the person who solicited the chastity of another. Dig. 47, 11, 1. Vide To persuade; 3 Phill. R. 508.

SOLICITOR. A person whose business is to be employed in the care and management of suits depending in courts of chancery.

2. A solicitor, like an attorney, (q. v.) will be required to act with perfect good faith towards his clients. He must conform to the authority given him. It is said that to institute a suit he must have a special authority, although a general authority will be sufficient to defend one. The want of a written authority, may subject him to the expenses incurred in a suit. 3 Mer. R. 12; Hov, Fr. ch. 2, p. 28 to 61. Vide 1 Phil. Ev. 102; 19 Vin. Ab. 482; 7 Com.]big. 357; 8 Com. Dig. 985; 2 Chit. Pr. 2. See Attorney at law; Counsellor at law; Proctor.

SOLICITOR OP THE TREASURY. The title of one of the officers of the United States, created by the act of May 29, 1830, 4 Sharsw. cont. of Story, L. U. S. 2206, which prescribes his duties aud his rights.

2. - 1. His powers and duties are, 1. Those which were by law vested and required from the agent of the treasury of the United States. 2. Those which theretofore belonged to the commissioner, or acting commissioner of the revenue, as relate to the superintendence of the collection of outstanding direct and internal duties. 3. To take charge of all lands which shall be conveyed to the United States, or set off to them in payment of debts, or which are vested in them by mortgage or other security; and to release such lands which had, at the passage of the act, become vested in the United States, on payment of the debt for which they were received. 4. Generally to superintend the collection of debts due to the United States, and receive statements from different officers in relation to suits or actions commenced for the recovery of the same. 5. To instruct the district attorneys, marshals, and clerks of the circuit and district courts of the United States, in all matters and proceedings appertaining to suits in which the United States are a party or interested, and to cause them to report to him any information he may require in relation to the same. 6. To report to the proper officer from whom the evidence of debt was received, the fact of its having been paid to him, and also all credits which have by due course of law been allowed on the same. 7. To make rules for the government of collectors, district attorneys and marshals, as may be requisite. 8. To obtain from the district attorneys full accounts of all suits in their hands, and submit abstracts of the same to congress.

3. - 2. His rights are, 1. To call upon the attorney-general of the United States for advice and direction as to the manner of conducting the suits, proceedings and prosecutions aforesaid. 2. To receive a salary of three thousand five hundred dollars per annum. 3. To employ, with the approbation of the secretary of the treasury, a clerk, with a salary of one thousand five hundred dollars; and a messenger, with a salary of five hundred dollars. To receive and send all letters, relating to the business of his office, free of postage.

SOLIDO, IN, civil law. In solido, is a term used to designate those contracts in which the obligors are bound, jointly and severally, or in which several obligees are each entitled to demand the whole of what is due.

2. - 1. There is an obligation in solido on the part of debtors, when they are all obliged to the same thing, so that each may be compelled to pay the whole, and when the payment which is made by one of them, exonerates the others towards the creditor.

3. - 2. The obligation is in solido, or joint and several between several creditors, when the title expressly gives to each of them the right of demanding payment of the total of what is due, and when the payment to any one of them discharges the debtor. Civ. Code of La. 2083,2086; Merl. Repert. h. t.; Domat, Index, h. t. See In solido.

SOLITARY IMPRISONMENT. The punishment of separate confinement. This has been adopted in Pennsylvania, with complete success. Vide Penitentiary.

SOLUTION, civil law. Payment.

2. By this term, is understood, every species of discharge or liberation, which is called satisfaction, and with which the creditor is satisfied. Dig. 46, 3, 54; Code 8, 43, 17; Inst. 3, 30. This term has rather a reference to the substance of the obligation, than to the numeration or counting of the money. Dig. 50, 16, 176. Vide Discharge of a contract.

SOLVENCY. The state of a person who is able to pay all his debts; the opposite of insolvency. (q. v.)

SOLVENT. One who has sufficient to pay his debts, and all obligations. Dig. 50, 16, 114.

SOLVERE. To unbind; to untie; to release; to pay; solvere dicimus eum qui fecit quod facere promisit. 1 Bouv. Inst. n. 807.

SOLVIT AD DIEM, pleading. The name of a plea to an action on a bond, or other obligation to pay money, by which the defendant pleads that he paid the money on the day it was due. Vide 1 Stra. 652; Rep. Temp. Hardw. 133; Com. Dig. Pleader, 2 W 29.

2. This plea ought to conclude with an averment, and not to the country. 1 Sid. 215; 12 John. R. 253; vide 2 Phil. Ev. 92; Coxe, R. 467.

SOLVITPOSTDIEM, pleading. The name of a special plea in bar to an action of debt on a bond, by which the defendant asserts that he paid the money after the day it became due. 1 Chit. Pl. 480, 555; 2 Phil. Ev. 93.

SOMNAMBULISM, med. juris. Sleep walking.

2. This is sometimes an inferior species of insanity, the patient being unconscious of what he is doing. A case is mentioned of a monk who was remarkable for simplicity, candor and probity, while awake, but who during his sleep in the night, would steal, rob, and even plunder the dead. Another case is related of a pious clergyman, who during his sleep, would plunder even his own church. And a case occurred in Maine, where the somnambulist attempted to hang himself, but fortunately tied the rope to his feet, instead of his neck. Ray. Med. Jur. §294.

3. It is evident, that if an act should be done by a sleep walker, while totally unconscious of his act, he would not be liable to punishment, because the intention (q. v.) and will (q. v.) would be wanting. Take, for example, the following singular case: A monk late one evening, in the presence of the prior of the convent, while in a state of somnambulism, entered the room of the prior, his eyes open but fixed, his features contracted into a frown, and with a knife in his hand. He walked straight up to the bed, as if to ascertain if the prior were there, and then gave three stabs, which penetrated the bed clothes, and a mat which served for the purpose of a mattress; he returned. with an air of satisfaction, and his features relaxed. On being questioned the next day by the prior as to what he had dreamed the preceding night, the monk confessed he had dreamed that his mother had been murdered by the prior, and that her spirit had appeared to him and cried for vengeance, that he was transported with fury at the sight, and ran directly to stab the assassin; that shortly after be awoke covered with perspiration, and rejoiced to find it was only a dream. Georget, Des Maladies Mentales, 127.

4. A similar case occurred in England, in the last century. Two persons, who had been hunting in the day, slept together at night; one of them was renewing the chase in his dream, and, imagining himself present at the death of the stag, cried out aloud, "I'll kill him! I'll kill him!" The other, awakened by the noise, got out of bed, and, by the light of the moon, saw the sleeper give several deadly stabs, with a knife, on the part

of the bed his companion had just quitted. Harvey's Meditations on the Night, note 35; Guy, Med. Jur. 265.

SON, kindred. An immediate male descendant. In its technical meaning in devises, this is a word of purchase, but the testator may make it a word of descent. Sometimes it is extended to more remote descendants.

SON ASSAULT DEMESNE, pleading. His own first assault. A form of a plea to justify an assault and battery, by whicb the defendant asserts that the plaintiff committed an assault upon him, and the defendant merely defended himself.

2. When the plea is supported by evidence, it is a sufficient justification, unless the retaliation by the defendant were excessive, and bore no proportion to the necessity, or to the provocation received. 1 East, P. C. 406; 1 Chit. Pr. 595.

SON-IN-LAW, in Latin called gener. The hushand of one's daughter.

SOUND MIND. That state of a man's mind which is adequate to reason and comes to a judgment upon ordinary subjects, like other rational men.

2. The law presumes that every person who has acquired his full age is of sound mind, and consequently competent to make contracts and perform all his civil duties; and he who asserts to the contrary must prove the affirmation of his position by explicit evidence, and not by conjectural proof. 2 Hagg Eccl. R. 434; 3 Addams' R. 86; 8 Watts, R. 66; Ray, Med. Jur. §92; 3 Curt. Eccl. R. 671. Vide Unsound mind.

SOUNDING IN DAMAGES. When an action is brought, not for the recovery of lands, goods, or sums of money, (as is the case in real or mixed actions, or the personal action of debt or detinue,) but for damages only, as in covenant, trespass, &c., the action is said to be sounding in damages. Steph. Pl. 126, 127.

SOUNDNESS. In usual health; without any permanent disease. 1 Carr. & Marsh. 291. To create unsoundness, it is requisite that the animal should not be useful for the purpose for which he is bought, and that inability to be so useful should arise from disease or accident. 2 M. & Rob. 137; 9 M. & W. 670. 2 M. & Rob. 113.

2. In the sale of slaves and animals they are sometimes warranted by the seller to be sound, and it becomes important to ascertain what is soundness. Roaring; (q. v.) a temporary lameness, which renders a horse less fit for service; 4 Campb. 271; sed vide 2 Esp. Cas. 573; a cough, unless proved to be of a temporary nature; 2 Chit. R. 245, 416; and a nerved horse, have been held to be unsound. But crib-biting is not a breach of a general warranty of soundness. Holt, Cas. 630.

3. An action on the case is the proper remedy for a verbal warrant of soundness. 1 H. Bl. R. 17; 3 Esp. 82; 9 B. & Cr. 259; 2 Dow. & Ry. 10; 1 Bing. 344; 5 Dow. & R. 164; 1 Taunt. 566; 7 East, 274; Bac. Ab. Action on the Case, E.

SOURCES OF THE LAW. By this expression is understood the authority from which the laws derive their force.

2. The power of making all laws is in the people or - their representatives, and none can have any force whatever, which is derived from any other source. But it is not required that the legislator shall expressly pass upon all laws, and give the sanction of his seal, before they can have life or existence. The laws are therefore such as have received ala express sanction, and such as de-rive their force and effect from implication. The first, or express, are the constitution of the United States, and the treaties and acts of the legislature which have been made by virtue of the authority vested by the constitution. To these must be added the constitution of the state and the laws made by the state legislature, or by other subordinate legislative bodies, by virtue of the authority conveyed by such constitution. The latter, or tacit, received their effect by the general use of them by the people, when they assume the name of customs by the adoption of rules by the courts from systems of foreign laws.

3. The express laws, are first, the constitution of the United States; secondly, the treaties made with foreign powers; thirdly, the acts of congress; fourthly, the constitutions of the respective states; fifthly, the laws made by the several state legislatures; sixthly, laws made by inferior legislative bodies, such as the councils of municipal corporations, and general rules made by the courts.

4. - 1. The constitution is an act of the people themselves, made by their representatives elected for that purpose. It is the supreme law of the land, and is binding on all future legislative bodies, until it shall be altered by tho authority of the people, in the manner, provided for in the instrument itself, and if an act be passed contrary to the provisions of the constitution, it is, ipso facto, void. 2 Pet. 522; 12 Wheat. 270; 2 Dall. 309; 3 Dall. 386; 4 Dall. 18; 6 Cranch, 128.

5. - 2. Treaties made under the authority of the constitution are declared to be the supreme law of the land, and therefore obligatory on courts. 1 Cranch, 103. See Treaty.

6. - 3. The acts and resolutions of congress enacted constitutionally, are of course binding as laws and require no other explanation.

7. - 4. The constitutions of the respective states, if not opposed to the provisions of the constitution of the United States, are of binding force in the states respectively, and no

act of the state legislature has any force which is made in contravention of the state constitution.

8. - 5. The laws of the several states, constitutionally made by the state legislatures, have full and complete authority in the respective states.

9. - 6. Laws are frequently made by inferior legislative bodies which are authorized by the legislature; such are the municipal councils of cities or boroughs. Their laws are generally known by the name of ordinances, and, when lawfully ordained, they are binding on the people. The courts, perhaps by a necessary usurpation, have been in the practice of making general rules and orders, which sometime affect suitors and parties as much as the most regular laws enacted by congress. These apply to all future cases. There are also rules made in particular cases as they arise, but these are rather decrees or judgments than laws.

10. The tacit laws, which derive their authority from the consent of the people, without any legislative enactment, may be subdivided into 1st. The common law, which is derived from two sources, the common law of England, and the practice and decisions of our own courts. It is very difficult, in many cases, to ascertain what is this common law, and it is always embarrassing to the courts. Kirl. Rep. Pref. In some states, it has been enacted that the common law of England shall be the law, except where the same is inconsistent with our constitutions and laws. See Law.

2d. Customs which have been generally adopted by the people, have the force of law.

3d. The principles of the Roman law, being generally founded in superior wisdom, have insinuated themselves into every part of the law. Many of the refined rules which now adorn the common law appear there without any acknowledgment of their paternity, and it is at this source that some judges dipt to get the wisdom which adorns their judgments. The proceedings of the courts of equity and many of the admirable distinctions which manifest their wisdom are derived from this source. To this fountain of wisdom the courts of admiralty owe most of the law which governs in admiralty cases.

4th. The canon law, which was adopted by the ecclesiastical courts, figures in our laws respecting marriage, divorces, wills and testaments, executors and administrators and many other subjects.

5th. The jurisprudence, or decisions of the various courts, have contributed their full share of what makes the law. These decisions are made by following precedents, by borrowing from the sources already mentioned, and, sometimes by the less excusable disposition of the judges to legislate on the bench.

11. The monuments where the common law is to be found, are the records, reports of cases adjudicated by the courts, and the treatises of learned men. The books of reports are the best proof of what is the common law, but owing to the difficulty of finding out any systematic arrangement, recourse is had to treatises upon the various branches of the law. The records, owing to their being kept in one particular place, and therefore not generally accessible, are seldom used.

SOUS SEING PRIVE. An act sous seingprive, in Louisiana and by the French law, is an act or contract evidenced by writing under the private signature of the parties to it. The term is used in opposition to the authentic act, which is an agreement entered into in the presence of a notary or other public officer.

2. The form of the instrument does not give it its character so much as the fact that it appears or does not appear to have been executed before the officer. 7 N. S. 548 5 N. S. 196.

3. The effect of a sous seing prive is not the same as that of the authentic act. The former cannot be given in evidence until proved, and, unless accompanied by possession, it does not, in general, affect third persons; 6 N. S. 429, 432; the latter, or authentic acts, are full evidence against the parties and those who claim under them. 8 N. S. 132. See Act; Authentic act.

SOUTH CAROLINA. The name of one of the original states of the United States of America. For an account of its colonial history, see article North Carolina.

2. The constitution of this state was adopted the third day of June, 1790, to which two amendments have been made, one, ratified December 17, 1808, and the other, December 19, 1816. The powers of the government are distributed into three branches, the legislative, the executive, and the judicial.

3. - 1st. The legislative authority is vested in a general assembly, which consists of a senate and house of representatives.

4. - 1. The senate will be considered with reference to the qualifications of the electors; the qualifications of the members; the number of members; the duration of their office, and the time of their election. 1. Every free white man, of the age of twenty-one years, being a citizen of this state, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot, of which he hath been legally seised and possessed, at least six months before such election, or, not having such freehold or town lot, hath been a resident in the election district, in which he offers to give his vote, six mouths before the said election, and hath paid a tax the preceeding year of three shillings sterling towards the

support of this government, shall have a right to vote for a member or members, to serve in either branch of the legislature, for the election district in which he holds such property, or is so resident. 2. No person shall be eligible to a seat in the senate, unless he is a free white man, of the age of thirty years and hath been a citizen and resident in this state five years previous to his election. If a resident in the election district, he shall not be eligible unless he be legally seised and possessed in his own right, of a settled freehold estate of the value of three hundred pounds sterling, clear of debt. If a non-resident in the election district, he shall not be eligible unless he be legally seised and possessed in his own right, of a settled freehold estate in the said district, of the value of one thousand pounds sterling, clear of debt. 3. The senate is composed of one member from each district as now established for the election of the house of representatives, except the district formed by the districts of the parishes of St. Philip and St. Michael, to which shall be allowed two senators as heretofore. Amend. of Dec. 17, 1808. 4. They are elected for four years. Ibid. 5. The election takes place on the second Monday in October. Art. 1, s. 10.

5. - 2. The house of representatives will be considered in the same order which has been observed in considering the senate. 1. The qualification of electors are the same as those of electors of senators. 2. No person shall be eligible to a seat in the house of representatives, unless he is a free white man, of the age of twenty-one years, and hath been a citizen and resident in this state three years previous to his election. If a resident in the election district, he shall not be eligible to a seat in the house of representatives, unless he be legally seised and possessed in his own right, of a settled free-hold estate of five hundred acres of land, and ten negroes; or of a real es-tate, of the value of one hundred and fifty pounds sterling, clear of debt. If a non-resident, he shall be legally seised and possessed of a settled freehold estate therein, of the value of five hundred pounds sterling, clear of debt. 3. The house consists of one hundred and twenty-four members. Amend. of Dee. 17, 1808. 4. The members are elected for two years. Art. l, s. 2 . 5. The election is at the same time that the election of senators is held.

6. - 2. The executive authority is vested in a governor, and in certain cases, a lieutenant-governor.

7. - 1. Of the governor. It will be proper to consider his qualifications; by whom he is to be elected; when to be elected; duration of office; and his powers and duties. 1. No person shall be eligible to the office of governor, unless he bath attained the age of thirty years, and hath resided within this state, and been a citizen thereof, ten years, and unless he be seised and possessed of a settled estate within the same, in his own right, of the value of fifteen hundred pounds sterling, clear of debt. Art. 2, s. 2. 2. He is elected by the senate and house of representatives jointly, in the house of representatives. Art. 2, sect. 1. 3. He is to be elected whenever a majority of both

houses shall be present. lb. 4. He is elected for two years, and until a new election shall be made. Ibid. 5. The governor is commander-in-chief of the army and navy of the state, and of the militia, except when they shall be called into the actual Service of the United States. He may grant reprieves and pardons, after conviction, except in cases of impeachment, and remit fines and forfeitures, unless otherwise directed by law shall cause the laws to be faithfully executed in mercy - may prohibit the exportation of provisions, for any time not exceeding thirty days-may require information from the executive departments - shall recommend such measures as he may deem necessary, and give the assembly information as to the condition of the state-may on extraordinary occasions convene the assembly, and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the fourth Monday in the mouth of November then next ensuing.

8. - 2. A lieutenant-governor is to be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the governor. Art. 2, sect. 3. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant-governor shall succeed to his office. And in case of the impeachment of the lieutenant-governor, or his removal from office, death, resignation, or absence from the state, the president of the senate shall succeed to his office, till a nomination to those offices respectively shall be made by the senate and house of representatives, for the remainder of the time for which the officer so impeached, removed from office, dying, resigning, or being absent, was elected. Art. 2, s. 5.

9. - 3. The judicial power shall be vested in such superior and inferior courts of law and equity, as the legislature shall, from time to time, direct and establish. The judges of each shall hold their commissions during good behaviour; and judges of the superior courts shall, at stated times, receive a compensation for their services, which shall neither be increased nor diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor, hold any other office of profit or trust, under this state, the United States, or any other power. Art. 3, sect. 1. The judges are required to meet at such times, and places, as shall be prescribed by the act of the legislature, and sit for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgment, and such points of law as may be submitted to them. Amend. of Dec. 19, 1816.

SOVEREIGN. A chief ruler with supreme power; one possessing sovereignty. (q. v.) It is also applied to a king or other magistrate with limited powers.

2. In the United States the sovereignty resides in the body of the people. Vide Rutherf. Inst. 282.

SOVEREIGN, Eng. law. The name of a gold coin of Great Britain of the value of one pound sterling.

SOVEREIGN STATE. One which governs itself independently of any foreign power.

SOVEREIGNTY. The union and exercise of all human power possessed in a state; it is a combination of all power; it is the power to do everything in a state without accountability; to make laws, to execute and to apply them: to impose and collect taxes, and, levy, contributions; to make war or peace; to form treaties of alliance or of commerce with foreign nations, and the like. Story on the Const. §207.

2. Abstractedly, sovereignty resides in the body of the nation and belongs to the people. But these powers are generally exercised by delegation.

3. When analysed, sovereignty is naturally divided into three great powers; namely, the legislative, the executive, and the judiciary; the first is the power to make new laws, and to correct and repeal the old; the second is the power to execute the laws both at home and abroad; and the last is the power to apply the laws to particular facts; to judge the disputes which arise among the citizens, and to punish crimes.

4. Strictly speaking, in our republican forms of government, the absolute sovereignty of the nation is in the people of the nation; (q. v.) and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state. (q. v.) 2 Dall. 471; and vide, generally, 2 Dall. 433, 455; 3 Dall. 93; 1 Story, Const. §208; 1 Toull. n. 20 Merl. Reper. h. t.

SPADONES, civil law. Those who, on account of their temperament, or some accident they have suffered, are unable to procreate. Inst. 1, 11, 9; Dig. 1, 7, 2, 1; and vide Impotence.

SPARSIM. This Latin adverb signifies scatteredly, here and there, in a scattered manner, sparsedly, dispersedly. It is sometimes used in law; for example, the plaintiff may recover the place wasted, not only where the injury has been total, but where trees, growing sparsim in a close, are cut. Bac. Ab. Waste, M; Brownl. 240; Co. Litt. 54, a; 4 Bouv. Inst. n. 3690.

TO SPEAK. This term is used in the English law, to signify the permission given by a court to the prosecutor and defendant in some cases of misdemeanor, to agree together, after which the prosecutor comes into court and declares himself to be satisfied; when the court pass a nominal sentence. 1 Chit. Pr. 17.

SPEAKER. The presiding officer of the house of representatives of the United States is so called. The presiding officer of either branch of the state legislatures generally bears this name.

SPEAKING DEMURRER, equity pleading. One which contains an argument in the body of it; as, for instance, when a demurrer says, "in or about the year 1770," which is upwards of twenty years before the bill filed. 2 Ves. jr. 83; S. C. 4 Bro. C. C. 254.

SPECIAL. That which relates to a particular species or kind, opposed to general; as special verdict and general verdict; special imparlance and general imparlance; special jury, or one selected for a particular case, and general jury; special issue and general issue, &c.

SPECIAL AGENT. A special agent is one whose authority is confined to a particular, or an individual instance. It is a general rule, that he who is invested with a special authority, must act within the bounds of his authority, and he cannot bind his principal beyond what he is authorized to do. 2 Bouv. Inst. n. 1299; 2 John. 48; 1 Wash. C. C. lT4; 5 John. 48; 15 John. 44; 8 Wend. 494.

SPECIAL ASSUMPSIT, practice. Where an action of assumpsit (q. v.) has been brought on a special contract, and the plaintiff declares upon it, setting out its particular language, or its legal effect. It is distinguished from a general assumpsit, where the plaintiff, instead of setting out the particular language, or effect of the original contract, declares as for a debt, arising out of the execution of the contract, where that constitutes the debt. 3 Bouv. Inst. n. 3426.

SPECIAL BAIL. A person who becomes specially bound to answer for the appearance of another; the recoguizance or act by which such person thus becomes bound, is also called special bail. Vide Bail.

SPECIAL CONSTABLE. One who has been appointed a constable for a particular occasion, as in the case of an actual tumult or a riot, or for the purpose of serving a particular process.

SPECIAL DAMAGES. Such as actually have been suffered, and are not implied by law. Vide Damages, Special; and 1 Chit. Pl. 385; Com. Dig. Action on the case for Defamation, D 30, G 11.

SPECIAL DEMURRER, pleading. One which excepts to the sufficiency of the pleadings on the opposite side, and shows specifically the nature of the objection, and the particular ground of the exception. 3 Bouv. Inst. n. 3022. See Demurrer.

SPECIAL DEPOSIT. A deposit made of a particular thing with the depositary: it is distinguished from an irregular deposit.

2. When a thing has been specially deposited with a depositary, the title to it remains with the depositor, and if it should be lost, the loss will fall upon him. When, on the contrary, the deposit is irregular, as where money is deposited in a bank, the title to which is transferred to the bank, if it be, lost, the loss will be borne by the bank. This will result from the same principle; the loss will fall, in both instances, on the owner of the thing, according to the rule res perit domino. See 1 Bouv. Inst. n. 1 054.

SPECIAL ERRORS. Special pleas in error are those which assign for error matters in confession and avoidance, as a release of errors, the act of limitations, and the like, to which the plaintiff in error may reply or demur.

SPECIAL IMPARLANCE, pleading. One which contains the clause, "saving to himself all advantages and exceptions, as well to the writ, as to the declaration aforesaid." 2 Chit. Pl. 407, 8.

2. This imparlance admits the jurisdiction of the court, but the defendant may plead in abatement or to the action; that is, to the writ or the count. Gould. on Pl. c. 2, §18; Lawes on Pl. 84. See imparlance.

SPECIAL INJUNCTION. One obtained only on motion and petition, with notice to the other party, and is applied for, sometimes on affidavit before answer, but more frequently upon merits disclosed in the defendant's answer. 4 Bouv. lust. n. 3756. See Injunction.

SPECIAL ISSUE, pleading. A plea to the action which denies some particular material allegation, which is in effect a denial of the entire right of action. It differs from the general issue whicli traverses or denies the whole declaration or indictment. Gould. on Pl. c. 2, §38. See General Issue; Issue.

SPECIAL JURY. One selected in a particular way by the parties. A pannel is made out, and each party is entitled to strike from it the names of a certain number of jurors, as provided for by the local statutes, and from those who remain, the jury in that case must be selected. This is also called a struck jury.

SPECIAL NON EST FACTUM. The name of a plea by which the defendant says that the deed which he has executed is not his own or binding upon him, because of some circumstance which shows that it was not intended to be his deed, or because it was not binding upon him for some lawful reason; as, when the defendant delivered the deed to a third person as an escrow to be delivered upon a condition, and it has

been delivered without the performance of the condition, he may plead non est factum, state the fact, of the conditional delivery, the non-performance of the condition, and add, "and so it is not his deed;" or if the defendant be a feme covert, she may plead non est factum, that she was a feme covert at the time the deed was made, "and so it is not her deed." Bac. Ab. Pleas, &c. H 3, 1 2; Gould. on Pl. c. 6, part 1, §64. See Issint.

SPECIAL OCCUPANT, estates. When an estate is granted to a man and his heirs during the life, of cestui que vie, and the grantee die without alienation, and while the life for which he held continues, the heir will succeed, and is called a special occupant. 2 Bl. Com. 259. In the United States the statute provisions of the different states vary considerably upon this subject. In New York and New Jersey, special occupancy is abolished. Virginia, and probably Maryland, follow the English statutes; in Massachusetts and other states, where the real and personal estates of intestates are distributed in the same way and manner, the question does not seem to be material. 4 Kent, Com. 27.

SPECIAL PARTNERSHIP. Special or limited partnerships are of two kinds; 1. Those at common law. 2. Limited partnerships, or those in commendam.

2. Special partnerships at common law, are those formed for a particular or special branch of business, as contradistinguished from the general business of the parties, or of one of them.

3. A limited or special partnership, under special acts of assembly, may be found in several states. In such partnerships some of the partners are liable as general partners, while others are responsible only to the extent of the capital they have furnished. See 2 Bouv. Inst. n. 1472, 1473, and In Commendam; Partnership.

SPECIAL PLEA IN BAR. One which advances new matter. It differs from the general in this, that the latter denies some material allegation, but never advances new matter. Gould on Pl. c. 2, §38.

SPECIAL PLEADER, Engl. practice. A special pleader is a lawyer whose professional occupation is to give verbal or written opinions upon statements submitted to him, either in writing or verbally, and to draw pleadings, civil or criminal, and such practical proceedings as may be out of the general course. 2 Chit. Pr. 42.

SPECIAL PLEADING. The allegartion of special or new matter, as distinguished from a direct denial of matter previously alleged on the opposite side. Gould on Pl. c. 1, s. 18; Co. Litt. 282; 3 Wheat. R. 246 Com. Dig. Pleader, E 15.

SPECIAL PROPERTY. This term is used as synonymous with qualified or limited property. It is that property which is not perfect in the hands of the possessor, but his right is qualified or limited; as, where a person is possessed of an animal ferae naturae, he has a property in such animal, but this is not a general right, for if the animal should escape, and be taken by another person, the latter only would have a special property in it.

2. Again, a person may have a special property in a chattel in consequence of the peculiar circumstances of the owner; a bailee, for example, has a special property in the thing bailed. 1 Bouv. Inst. n. 475 to 477.

SPECIAL REQUEST. One actually made, at a particular time and place; this term is used in contradistinction to a general request, which need not state. the time when, nor place where made. 3 Bouv. Inst. n. 2843.

SPECIAL RULE. A rule or order of court made in a particular case, for a particular purpose; it is distinguished from a general rule, which applies to a class of cases. It differs also from a common rule, or rule of course.

SPECIAL TRAVERSE, pleading. A technical special traverse begins in most cases, with the words absque hoc, (without this,) which words in pleading form a technical form of negation. Lawes' Pl. 116 to 120.

2. A traverse commencing with these words is special, because, when it thus commences, the inducement and the negation are regularly both special; the former consisting of new matter, and the latter pursuing, in general, the words of the allegation traversed, or at least those of them which are material. For example, if the defendant pleads title to land in himself, by alleging that Peter devised the land to him, and then died seised in fee; and the plaintiff replies that Peter died seised in fee intestate, and alleges title in himself, as heir of Peter without this, that Peter devised the land to the defendant; the traverse is special. Here the allegation of Peter's intestacy, &c., forms the special inducement; and the absque hoc, with what follows it, is a special denial of the alleged devise, i. e. a denial of it in the words of the allegation. Lawes on Pl. 119, 120; Gould, Pl. ch. 7, §6, 7; Steph. Pl. 188. Vide Traverse; General Traverse.

SPECIAL TRUST. A special trust, is one where a trustee is interposed for the execution of some purpose particularly pointed out, and is not, as in the case of a simple trust, a mere passive depositary of the estate, but is required to exert himself actively in the execution of the settler's intention; as, where a conveyance is made to trustees upon trust to reconvey, or to sell for the payment of debts. 2 Bouv. Inst. n. 1896. See Trust.

SPECIAL VERDICT, practice. A special verdict is one by which the facts of the case are put on the record, and the law is submitted to the judges. Vide Verdict; Bac. Ab. Verdict, D.

SPECIALTY, contracts. A writing sealed aud delivered, containing some agreement. 2 Serg. & Rawle, 503; 1 Binn. Rep. 261; Willes, 189; 1 P. Wms. 130. In a more confined meaning, it signifies a writing sealed and delivered, which is given as a security for the payment of a debt, in which such debt is particularly specified. Bac. Ab. Obligation, A.

2. Although in the body of the writing it is not said, that the parties have set their hands and seals, yet if the instrument be really sealed it is a specialty, and if it be not sealed, it is not a specialty, although the parties in the body of the writing make mention of a seal. 2 Serg. & Rawle, 504; 2 Rep. 5 a; Perk. §129. Vide Bond; Debt; Obligation.

SPECIE. Metallic money issued by public authority.

2. This term is used in contradistinction to paper money, which in some countries is emitted by the government, and is a mere engagement which repre-sents specie. Bank paper in the United States is also called paper money. Specie is the only constitutional money in this country. See 4 Monr. 483.

SPECIFIC LEGACY. A bequest of a particular thing.

2. It follows that a specific legacy may be of animals or inanimate things, provided they are specified and separated from all other things; a specific legacy may therefore be of money in a bag, or of money marked and so described; as, I give two eagles to A B, on which are engraved the initials of my name. A specific legacy may also be given out of a general fund. Touch. 433 Amb. 310; 4 Ves. 565; 3 Ves. & Bea. 5. If the specific article given be, not found among the assets of the testator, the legatee loses his legacy; but on the other hand, if there be a deficiency of assets, the specific legacy will not be liable to abate with the general legacies. 1 Vern. 31; 1 P. Wms. 422; 3 P. Wms. 365; 3 Bro. C. C. 160; vide 1 Roper on Leg. 150; 1 Supp. to Ves. jr. 209 . Id. 231; 2 Id. 112; and articles Legacy; Legatee.

SPECIFIC PERFORMANCE, remedies. The actual accomplishment of a contract by the party bound to fulfil it.

2. Many contracts are entered into by parties to fulfil certain things, and then the contracting parties neglect or refuse to fulfil their engagements. In such cases the party grieved has generally a remedy at law, and he may recover damages for the

breach of the contract; but, in many cases, the recovery of damages is an incompetent remedy, and the party seeks to recover a specific performance of the agreement.

3. It is a general rule, that courts of equity will entertain jurisdiction for a specific performance of agreements, whenever courts of law can give but an inadequate remedy; and it is immaterial whether the subject relate to real or personal estate. 1 Madd. Ch. Pr. 295; 2 Story on Eq. §717; 1 Sim, & Stu. 607; 1 P. Wms. 570; 1 Sch. & Lef. 553; 1 Vern. 159.

4. But the rule is confined to cases where courts of law cannot give an adequate remedy. 2 Story on Eq. §718; Eden on Inj. ch. 3, p. 27. Vide, generally, 2 Story on Eq. ch. 18, §712 to 792; 1 Supp. to Ves. jr. 96, 148, 184, 211, 495; 2 Supp. to Ves. jr. 65, 164; Fonb. Eq. b. 1, c. 1, s. 5; Sugd. Vend. 145.

SPECIFICATION, civil law. A term used in the civil law, by which is meant a person's making a new species or subject from materials belonging to another. Bouv. Inst. Theolo. ps. 1, c. 1, art. 1, §4, Is. 4, p. 74.

2. When the new species can be again reduced to the matter of which it was made, the law considers the former mass as still existing, and, therefore, the new species as an accessory to the former subject; but where the thing made cannot be so reduced, as in the case of wine, which cannot be again turned into grapes, there is no place for the fictio juris; and, there, the workmanship draws after it the property of the material. Inst. 2, 1, 25 Dig. 41, 1, 7, 7. See Accession; Confusion; Mixtion; and Aso & Man. Inst. B. 2, t. 2, c. 8.

SPECIFICATION, practice, contracts. A particular and detailed account of a thing: example, in order to obtain a patent for an invention, it is necessary to file a specification or an instrument of writing, which must lay open and disclose to the public every part of the process by which the invention can be made useful if the specification does not contain the whole truth relative to the discovery, or contains more than is requisite to produce the desired effect, and the concealment or addition was made for the purpose of deception, the patent would be void; for if the specification were insufficient on account of its want of clearness, exactitude or good faith, it would be a fraud on society that the patentee should obtain a monopoly without giving up his invention. 2 Kent, Com. 300; 1 Bell's Com. part 2, c. 3, s. 1, p. 112; Perpigna on Pat. 67; Renouard, Des Brevets d'Inv. 252.

2. In charges against persons accused of military offences, they must be particularly described and clearly expressed; this is called the specification. Tytl. on Courts Mart. 109.

SPECIMEN. A sample; a part of something by which the other may be known.

2. The act of congress of July 4, 1836, section 6, requires the inventor or discoverer of an invention or discovery to accompany his petition and specification for a patent with specimens of ingredients, an of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of the composition of matter.

SPECULATION, contracts. The hope or desire of making a profit by the purchase and resale of a thing. Pard. Dr. Com. n. 12. The profit so made; as, be made a good speculation.

SPEECH. A formal discourse in public.

2. The liberty of speech is guarantied to members of the legislature, to counsel in court in debate.

3. The reduction of a speech to writing and its publication is a libel, if the matter contained in it is libelous; and the repetition of it upon occasions not warranted by law, when the matter is slanderous, wili be slander and. tho character of the speaker will be no protection to him from an action. 1 M. & S. 273; 1 Esp. C. 226 Bouv. Inst. Index, h. t. See Debate; Liberty of speech.

SPELLING, The art of putting the proper letters in words.

2. It is a rule that when it appears with certainty what is meant, bad spelling will not avoid a contract; for example, where a man agreed to pay thirty pounds, he was held bound to pay thirty pounds; and seutene was holden to be seventeen. Cro. Jac. 607; 10 Coke, 133, a; 2 Roll. Ab. 147.

3. Even in an indictment undertood has been holden as understood. 1 Chit. Cr. Law.

4. A misspelling of a name in a declaration, will not be sufficient to defeat the plaintiff, on the ground of variance between the writing produced, and the declaration, if such name be idem sonans; as Kay for Key. 16 East, 110; 2 Stark. 29; Segrave for Seagrave. 2 Str. 889. See Idem Sonans.

SPENDTHRIFT. By the Rev. Stat. of Vermont, tit. 16, c. 65, s. 9, spendthrift is defined to be a person who by excessive drinking) gaming, idleness or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, or expose the town to charge or expense, for support of himself or family.

SPERATE. That of which there is hope.

2. In the accounts of an executor and the inventory of the personal assets, he should distinguish between those assets which are sperate, and those which are desperate; he will be prima facie responsible for the former, and discharged for the latter. 1 Chit. Pr. 520; 2 Williams Ex. 644; Toll. Ex. 248. See Desperate.

SPES RECUPERANDI. The hope of recovery. This term is applied to cases of capture of an enemy's property as a booty or prize. As between the belligerent parties, the title to the property taken as a prize passes the moment there is no longer any hope of recovery. 2 Burr. Rep. 683. Vide Infra praesidea; Jus Postliminy; Bopty; Piize.

SPINSTER. An addition given, in legal writings, to a woman who never was married. Lovel. on Wills, 269.

SPLITTING A CAUSE OF ACTION. The bringing an action for only a part of the cause of action. This is not permitted either at law nor in equity. 4 Bouv. Inst. n. 4167.

SPOLIATION, Eng. eccl. law. The name of a suit sued out in the spiritual court to recover for the fruits of the church, or for the church itself. F. N. B. 85.

2. It is also a waste of church property by an ecclesiastical person. 3 Bl. Com. 90.

SPOLIATION, torts. Destruction of a thing by the act of a stranger; as, the erasure or alteration of a writing by the act of a stranger, is called spoliation. This has not the effect to destroy its character or legal effect. 1 Greenl. Ev. §566. 2. By spoliation is also understood the total destruction of a thing; as, the spoliation of papers, by the captured party, is generally regarded as proof of. guilt, but in America it is open to explanation, except in certain cases where there is a vehement presumption of bad faith. 2 Wheat. 227, 241; 1 Dods. Adm. 480, 486. See Alteration.

SPONSALIA, or STIPULATIO SPONSALITIA. A promise lawfully made between persons capable of marrying each other, that at some future time they will marry. See Espousals; Ersk. Inst. B. 1, t. 6, n. 3.

SPONSIONS, international law. Agreements or engagements made by certain public officers, as generals or admirals, in time of war, either without author-ity, or by exceeding the limits of authority under which they purport to be made.

2. Before these conventions can have any binding authority on the state, they must be confirmed by express or tacit ratification. The former is given in positive terms and in the usual forms; the latter is justly implied from the fact of acting under the agreement

as if bound by it, and from any other circumstance from which an assent may be fairly presumed. Wheat. Intern. Law, pt. 3, c. 2, §3; Grotius, de Jur. Bel. ac Pac. 1. 2, c. 15, §16; Id. 1. 3, c. 22, 1-3: Vattel, Law of Nat, B. 2, c. 14, 209 -212; Wolff, 1156.

SPONSOR, civil law. He who intervenes for another voluntarily and without being requested. The engagement which he enters into is only accessory to the principal. Vide Dig. 17, 1, 18; Nov. 4, ch. 1 Code de Com. art. 158, 159; Code Nap. 1236 Wolff, Inst. §1556.

SPRING. A fountain.

2. The owner of the soil has the exclusive right to use a spring arising on his grounds. When another has an easement, or right to draw water from such a spring, acquired by grant or prescription, if the spring fails the easement ceases, but if it returns, the right revives.

3. The waters which flow from the spring give rise to a variety of diffi-culties, the principal of which are, 1st. The owner of the inheritance in which the spring arises turns their course. The owner of the inferior estate, whose, meadow they fertilized, and who is deprived of them, claiming the right to them. 2d. The owner of the spring does not prevent the water from flowing on the inferior estate, but gives them a new direction injurious to it. 3d. The owner of the superior inheritance disposes of the water in such a way as to deprive the owner of the estate below him. The rights of these different owners will be separately considered.

4. - l. The owner of land on which there is a natural spring, has a right to use it for domestic and culinary purposes and for watering his cattle, and he may make an aqueduct to another part of his land, and use all the water required to keep the aqueduct in order, or to keep the water pure. 15 Conn. 366. He may also use it for irrigation, provided the volume be not materially decreased. Ang. W. C. 34. Vide Irrigation; and 1 Root, 535; 2 Watts. 327; 2 Hill, S. C. 634; Coxe, 460; 2 Dev. & Bat. 50; 9 Conn. 291; 3 Pick. 269; 13 Mass. 420; 8 Mass. 136; 8 Greenl. 253.

5. - 2. The owner of the spring cannot lawfully turn the current or give it a new direction. He is bound to let it enter the inferior estate on the same level it has been accustomed to, and at the same place; for every man is entitled to a stream of water flowing through his land, without diminution or alteration. 6 East, 206; 2 Conn. 584. Vide 3 Rawle, 84 12 Wend. 330; 10 Conn. 213; 14 Verm. 239.

6. - 3. The owner of the superior inheritance, or of the land on which there is a spring, has no right to deprive the owner of the estate below him; 1 Yeates, 574; 5 Pick. 175; 3 Har. & John. 231; 12 Verm. 178; 13 Conn. 303; 3 Scam. 492; nor can be detain the

water unreasonably. 17 John. 306; 2 B. C. 910. Vide Ham. N. P. 199; 1 Dall. 211; 3 Rawle's R. 256; Jus Aquaeductus; Pool; Stagnum; Back Water; lrrigation, Mill; Rain Water; Water Course.

SPRINGING USE, estates. One to arise on a future event, when no preceding estate is limited, and does not take effect in derogation of any preceding interest. Example: a grant is made to A in fee, to the use of B in fee, after the fourth of July; no use arises till the limited period. The use in the mean time results to the grantor, who has a determinable fee. A springing use differs from a resulting use, (q. v.) or a shifting use. (q. v.) 4 Kent, Com. 292; Com. Dig. Uses, K 7 Wils. on Springing Uses; Corn. on Uses, 91; 2 Bouv. Inst. n. 1889.

SPY. One who goes into a place for the purpose of ascertaining the best way of doing an injury there.

2. The term is mostly applied to an enemy who comes into the camp for the purpose of ascertaining its situation in order to make an attack upon it. The punishment for, this crime is death. See Articles of War, 1 Story's Laws U. S. 992; Vattel, Droit des Gens. liv. 3, §179.

SQUATTER. One who settles on the lands of others without any legal author-ity; this term is applied particularly to persons who settle on the public land. 3 Mart. N. S. 293.

TO STAB. To make a wound with a pointed instrument; a stab differs from a cut, (q. v.) or a wound. (q. v.) Russ. & Ry. 356; Russ. on Cr. 597; Bac. Ab. Maihem, B.

STAGNUM, estates. A pool. It is said to consist of land and water, and therefore by the name of stagnum, the water and the land may be passed. Co. Litt. 5.

STAKEHOLDER, contracts. A third person, chosen by two or more persons, to keep in deposit property, the right or possession of which is contested between them and to be delivered to the one who shall establish his right to it. Thus each of them is considered as depositing the whole thing. This distin-guishes this contract from that which takes place when two or more tenants in common deposit a thing with a bailee. Domat, Lois Civ. liv. 1, t. 7, s. 4; 1 Vern. R. 44, n. 1.

2. A person having in his hands money or other property claimed by several others, is considered in equity as a stakeholder. 1 Vern. R. 144.

3. The duties of a stakeholder are to deliver the thing holden by him to the person entitled to it on demand. It is frequently questionable who is entitled to it. In case of an unlawful wager, although be may be justified for delivering the thing to the winner,

by the express or implied consent of the loser; 8, John. 147; yet if before the event has happened he has been required by either party to give up the thing deposited with him by such party, he is bound so to deliver it; 3 Taunt. 377; 4 Taunt. 492; or if, after the event has happened, the losing party give notice to the stakeholder not to pay the winner, a payment made to him afterwards will be made in his own wrong, and the party who deposited the money or thing may recover it from the stakeholder. 16 S. & R. 147; 7 T. R. 536; 8 T. R. 575; 4 Taunt. 474; 2 Marsh. 542. See 3 Penns. R. 468; 4 John. 426; 5 Wend. 250; 2 P. A. Browne, 182; 1 Bailey, 486, 503. See Wagers.

STALE DEMAND. A stale demand is a claim which has been for a long time undemanded; as, for example, where there his been a delay of twelve years, unexplained. 3 Mason, 161.

STAMP, revenue. An impression made on paper, by order of the government, which must be used in reducing certain contracts to writing, for The purpose of raising a revenue. Vide Stark. Ev. h. t.; 1 Phil. Ev. 444.

2. Maryland is the only state in the United States that has enacted a stamp.

TO STAND. To abide by a thing; to submit to a decision; to comply with an agreement; to have validity, as the judgment must stand.

STAND SEISED TO USES. This phrase is frequently used in relation to conveyances under the statute of uses. A covenant to stand seised to uses is a species of conveyance which derives its effect from the statute of uses, by which a man, seised of lands, covenants, in consideration of blood or marriage, that he will stand seised of the same, to the use of his child, wife, or kinsman, for life, in tail or in fee. 2 Bouv. Inst. n. 2080.

STANDARD, in war. An ensign or flag used in war.

STANDARD, measure. A weight or measure of certain dimensions, to which all other weights and measures must correspond; as, a standard bushel. Also the quality of certain metals, to which all others of the same kind ought to be made to conform; as, standard gold, standard silver. Vide Dollar; Eagle; Money.

STAPLE, intern. law. The right of staple as exercised by a people upon foreign merchants, is defined to be, that they may not allow them to set their merchandises and wares to sale but in a certain place.

2. This practice is not in use in the United States. 1 Chit. Com. Law, 103; 4 Inst. 238; Malone, Lex Mere. 237; Bac. Ab. Execution, B 1. Vide Statute Staple.

STAR CHAMBER, Eng. law. A court which formerly had great jurisdiction and power, but which was abolished by stat. 16, C. I., c. 10, on account of its usurpations and great unpopularity. It consisted of several of the lords spir-itual and temporal, being privy counsellors, together with two judges of the courts of common law, without the intervention of a jury. Their legal jurisdiction extended over riots, perjuries, mishehaviour of public officers, and other great misdemeanors. The judges afterwards assumed powers, and stretched those they possessed to the utmost bounds of legality. 4 Bl. Com. 264.

STARE DECISIS. To abide or adhere to decided cases.

2. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. The doctrine of stare decisis is not always to be relied upon, for the courts find it necessary to overrule cases which have been hastily decided, or contrary to principle. Many hundreds of such overruled cases may be found in the American and English books of reports. Mr. Greenleaf has made a collection of such cases, to which the reader is referred. Vide 1 Kent, Com. 477; Livingst. Syst. of Pen. Law, 104, 5.

STARE IN JUDICIO. The act of appearing before a tribunal, either as plain-tiff or defendant. Vide Ester en jugement.

STATE, government. This word is used in various senses. In its most enlarged sense, it signifies a self-sufficient body of persons united together in one community for the defence of their rights, and to do right and justice to foreigners. In this sense, the state means the whole people united into one body politic; (q. v.) and the state, and the people of the state, are equivalent expressions. 1 Pet. Cond. Rep. 37 to 39; 3 Dall. 93; 2 Dall. 425; 2 Wilson's Lect. 120; Dane's Appx. §50, p. 63 1 Story, Const. §361. In a more limited sense, the word `state' expresses merely the positive or actual organization of the legislative, or judicial powers; thus the actual government of the state is designated by the name of the state; hence the expression, the state has passed such a law, or prohibited such an act. State also means the section of territory occupied by a state, as the state of Pennsylvania.

2. By the word state is also meant, more particularly, one of the commonwealths which form the United States of America. The constitution of the United States makes the following provisions in relation to the states.

3. Art. 1, s. 9, §5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or re-venue to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

4. - §6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

5. - §7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from, any king, prince, or foreign state.

6. - Art. 1, s. 10, §1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payments of debts; pass any bill of attainder, ex-post-facto, or law impairing the obligation of contracts; or grant any title of nobility.

7. - §2. No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of congress. No state, shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

8. The district of Columbia and the territorial districts of the United States, are not states within the meaning of the constitution and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat. 91.

9. The several states composing the United States are sovereign and independent, in all things not surrendered to the national government by the constitution, and are considered, on general principles, by each other as foreign states, yet their mutual relations are rather those of domestic independence, than of foreign alienation. 7 Cranch, 481; 3 Wheat. 324; 1 Greenl. Ev. §489, 504. Vide, generally, Mr. Madison's report in the legislature of Virginia, January, 1800; 1 Story's Com. on Const. §208; 1 Kent, Com. 189, note b; Grotius, B. 1, c. 1, s. 14; Id. B. 3, c. 3, s. 2; Burlamaqui, vol. 2, pt. 1, c. 4, s. 9; Vattel, B. 1, c. 1; 1 Toull. n. 202, note 1 Nation; Cicer. de Repub. 1. 1, s. 25.

STATE, condition of persons. This word has various acceptations. If we inquire into its origin, it will be found to come from the Latin status, which is derived from the

verb stare, sto, whence has been made statio, which signifies the place where a person is located, stat, to fulfil the obligations which are imposed upon him.

2. State is that quality which belongs to a person in society, and which secures to, and imposes upon him different rights and duties in consequence of the difference of that quality.

3. Although all men come from the hands of nature upon an equality, yet there are among them marked differences. It is from nature that come the distinctions of the sexes, fathers and children, of age and youth, &c.

4. The civil or municipal laws of each people, have added to these natural qualities, distinctions which are purely civil and arbitrary, founded on the manners of the people, or in the will of the legislature. Such are the differences, which these laws have established between citizens and aliens, between magistrates and subjects, and between freemen and slaves; and those which exist in some countries between nobles and plebeians, which differences are either unknown or contrary to natural law.

5. Although these latter distinctions are more particularly subject to the civil or municipal law, because to it they owe their origin, it nevertheless extends its authority over the natural qualities, not to destroy or to weaken them, but to confirm them and to render them more inviolable by positive rules and by certain maxims. This union of the civil or municipal and natural law, form among men a third species of differences which may be called mixed, because they participate of both, and derive their principles from nature and the perfection of the law; for example, infancy or the privileges which belong to it, have their foundation in natural law; but the age and the term of these prerogatives are determined by the civil or municipal law.

6. Three sorts of different qualities which form the state or condition of men may then be distinguished: those which are purely natural, those purely civil, and those which are composed of the natural and civil or municipal law. Vide 3 Bl. Com. 396; 1 Toull. n. 170, 171; Civil State.

TO STATE. To make known specifically; to explain particularly; as, to state an account, or to show the different items of an account; to state the cause of action in a declaration.

STATEMENT, pleading and in practice. In the courts of Pennsylvania, by the act to regulate arbitrations and proceedings in courts of justice, passed March 21, 1806, 4 Smith's Laws of Penn. 828, it is enacted, "that in all cases where a suit may be brought in any court of record for the recovery of any debt founded on a verbal promise, book account, note, bond, penal or single bill, or all or any of them, and which from the

amount thereof may not be cognizable before a justice of the peace, it shall be the duty of the plaintiff, either by himself, his agent or attorney, to file in the office of the pro-thonotary a statement of his, her or their demand, on or before the third day of the term to which the process issued is returnable, particularly specifying the date of the promise, book account, note, bond, penal or single bill or all or any of them, on which the demand is founded, and the whole amount which he, she, or they believe is justly due to him, her or them from the defendant."

2. This statement stands in the place of a declaration, and is not restric-ted to any particular form; 3 Serg. & Rawle, 406; it is an immethodical declaration, stating in substance the time of the contract, the sum, and on what founded, with (what is an important principle in a statement, 6 Serg. & Rawle, 21,) a certificate of the belief of the plaintiff or his agent, of what is really due. Serg. & Rawle, 28. See 6 Serg. & Rawle, 53; 8 Serg. & Rawle, 567; 2 Serg. & Rawle, 537; 2 Browne's R. 40; 8 Serg. & R. 316.

STATES. By this name are understood in some countries, the assembly of the different orders of the people to regulate the affairs of the commonwealth, as, the states general.

STATION, civil law. A place where ships may ride in safety. Dig. 49, 12, 1, 13; id. 50, 15, 59.

STATING-PART OF A BILL, chancery practice. That part of a bill which contains a narrative of the facts and circumstances of the plaintiff's case, and the wrong or grievance of which he complains, and the names of the persons by whom done, and against whom he seeks redress, is called the stating part of the bill. Bart. Suit in Eq. 27; Coop. Eq. Pl. 9; Story, Eq. Pl. §27.

STATU LIBERI, in Louisiana. Slaves for a time, who have acquired the right of being free at a time to come, or on a condition which is not fulfilled, or in a certain event which has not happened, but who, in the mean time, remain in a state of slavery. Code, art. 37. See 8 M. R. 219; 3 L. R. 176; 6 L. R. 571; 4 N. S. 102; 7 N. S. 351. This is substantially the definition of the civil law. Hist. de la Jur. 1. 40; Dig. 40, 7, 1; Code, 7, 2, 13.

STATUS. The condition of persons. It also means estate, because it signifies the condition or circumstances in which the owner stands with regard to his property. 2 Bouv. Inst. n. 1689.

STATUTE. The written will of the legislature, solemnly expressed according to the forms prescribed in the constitution; an act of the legislature.

2. This word is used in contradistinction to the common law. Statutes acquire their force from the time of their passage unless otherwise provided. 7 Wheat. R. 104: 1 Gall . R. 62.

3. It is a general rule that when the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law; Co. Litt. 235; 2 Inst. 222; Bac. Ab. h. t. B; and when a power is given by statute, everything necessary for making it effectual is given by implication: quando le aliquid concedit, concedere videtur et id pe quod devenitur ad aliud. 12 Co. 130, 131 2 Inst. 306.

4. Statutes are of several kinds; namely, Public or private. 1. Public statutes are those of which the judges will take notice without pleading; as, those which concern all officers in general; acts concerning trade in general or any specific trade; acts concerning all persons generally. 2. Private acts, are those of which the judges wiil not take notice without pleading; such as concern only a particular species, or person; as, acts relating to any particular place, or to several particular places, or to one or several particular counties. Private statutes may be rendered public by being so declared by the legislature. Bac. Ab. h. t. F; 1 Bl. Com. 85. Declaratory or remedial. 1. A declaratory statute is one which is passed in order to put an end to a doubt as to what the common law is, and which declares what it is, and has ever been. 2. Remedial statutes are those which are made to supply such defects, and abridge such superfluities in the common law as may have been discovered. 1 Bl. Com. 86. These remedial statutes are themselves divided into enlarging statutes, by which the common law is made more comprehensive and extended than it was before; and into restraining statutes, by which it is narrowed down to that which is just and proper. The term remedial statute is also applied to those acts which give the party injured a remedy, and in some respects those statutes are penal. Esp. Pen. Act. 1.

6. Temporary or perpetual. 1. A temporary statute is one which is limited in its duration at the time of its enactment. It continues in force until the time of its limitation has expired, unless sooner repealed. 2. A perpetual statute is one for the continuance of which there is no limited time, although it be not expressly declared to be so. If, however, a statute which did not itself contain any limitation, is to be governed by another which is temporary only, the former will also be temporary and dependent upon the existence of the latter. Bac. Ab. h. t. D.

7. Affirmative or negative. 1. An affirmative statute is one which is enacted in affirmative terms; such a statute does not take away the common law. If, for example, a statute without negative words, declares that when certain requisites shall have been complied with, deeds shall, have in evidence a certain effect, this does not prevent their being used in evidence, though the requisites have not been complied with, in the

same manner as they might have been before the statute was passed. 2 Cain. R. 169. 2. A negative statute is one expressed in negative terms, and so controls the common law, that it has no force in opposition to the statute. Bro. Parl. pl. 72; Bac. Ab. h. t. G.

8. Penal statutes are those which order or prohibit a thing under a certain penalty. Esp. Pen. Actions, 5 Bac. Ab. h. t. I, 9. Vide, generally, Bac. Ab. h. t.; Com. Dig. Parliament; Vin. Ab. h. t.; Dane's Ab. Index, h. t.; Chit. Pr. Index, h. t.; 1 Kent, Com. 447-459; Barrington on the Statutes, Boscaw. on Pen. Stat.; Esp. on Penal Actions and Statutes.

9. Among the civilians, the term statute is generally applied to all sorts of laws and regulations; every provision of law which ordains, permits, or prohibits anything is a statute without considering from what source it arises. Sometimes the word is used in contradistinction to the imperial Roman law, which, by way of eminence, civilians call the common law. They divide statutes into three classes, personal, real and mixed.

10. Personal statutes are those which have principally for their object the person, and treat of property only incidentally; such are those which regard birth, legitimacy, freedom, the fight of instituting suits, majority as to age, incapacity to contract, to make a will, to plead in person, and the like. A personal statute is universal in its operation, and in force everywhere.

11. Real statutes are those which have principally for their object, property, and which do not speak of persons, except in relation to property; such are those which concern the disposition, which one may make of his property either alive or by testament. A real statute, unlike a personal one, is confined in its operation to the country of its origin.

12. Mixed statutes are those which concern at once both persons and property. But in this sense almost all statutes are mixed, there being scarcely any law relative to persons, which does not at the same time relate to things. Vide Merl. Repert. mot Statut; Poth. Cout. d'Orleans, ch. 1; 17 Martin's Rep. 569-589; Story's Confl. of Laws, §12, et seq.; Bouv. Inst. Index, h. t.

STATUTE MERCHANT, English law. A security entered before the mayor of London, or some chief warden of a city, in pursuance of 13 Ed. 1. stat. 3, c. 1, whereby the lands of the debtor are conveyed to the creditor, till out of the rents and profits of them, his debt may be satisfied. Cruise, Dig. t. 14, s. 7; 2 Bl. Com. 160.

STATUTES STAPLE, English law. The statute of the staple, 27 Ed. HI. stat. 2, confined the sale of all commodities to be exported to certain towns in England, called estaple or staple, where foreigners might resort. It authorized a security for money,

commonly called statute staple, to be taken by traders for the benefit of commerce; the mayor of the place is entitled to take a recognizance of a debt, in proper form, which has the effect to convey the lands of the debtor to the creditor, till out of the rents and profits of them he may be satisfied. 2 Bl. Com. 160; Cruise, Dig. tit. 14, s. 10; 2 Rolle's Ab. 446; Bac. Ab. Execution, B. 1 4 Inst. 238.

STATUTI, Rom. civ. law. From Constantine to Justinian, advocates, were arranged in two classes: viz. those called Statuti, and the supernumeraries. (q. v.) The Statute were those advocates whose names were inscribed in the registers of matriculation, and formed a part of the college of advocates. The number of advocates of this class was limited. See Calvini Lex ad vocem.

STAY OF EXECUTION, practice. A term during which no execution can issue on a judgment.

2. It is either conventional, when the parties agree that no execution shall issue for a certain period; or it is granted by law, usually on condition of entering bail or security for the money.

3. An execution issued before the expiration of the stay is irregular and will be set aside; and the plaintiff in such case may be liable to an action for damages. What is said above refers to civil cases.

4. In criminal cases when a woman is capitally convicted, and she is proved to be enceinte, (q. v.) there shall be a stay of execution till after her delivery. Vide Pregnancy.

STAYING PROCEEDINGS. The suspension of an action.

2. Proceedings are stayed absolutely or conditionally.

3. - 1. They are peremptorily stayed when the plaintiff is wholly incapaci-tated from suing; as, for example, when the plaintiff is not the holder, nor beneficially interested in a bill on which he has brought his action; 2 Cr, & M. 416; 2 Dowl. 336; Chitty on Bills, 335; 3 Chitty, Pr. 628; or when the plaintiff admits in writing, that he has no cause of action; 3 Chit. Prac. 370, 630; or when an action is brought contrary to good faith. Tidd's Prac. 515, 529, 1134; 3 Chit. Pr. 633.

4. - 2. Proceedings are sometimes stayed until some order of the court shall have been complied with; as, when the plaintiff resides in a foreign country, or in another estate, or is insolvent, and he has been ruled to give security for costs, the proceedings are

stayed until such security shall be given; see Security for Costs; 3 Chit. Pr, 633, 635; or until the payment of costs in a, former action. 1 Chit. R. 195; 18 E. C. L. R. 64.

STEALING. This term imports, ex vi termini, nearly the same as larceny; but in common parlance, it does not always import a felony; as, for example, you stole an acre of my land.

2. In slander cases, it seems that the term stealing takes its complexion from the subject-matter to which it is applied, and will be considered as intended of a felonious stealing, if a felony could have been committed of such subject-matter. Stark. on Slan. 80; 12 Johns. Rep. 239; 3 Binn. R. 546; Whart. Dig. tit. Slander.

STELLIONATE, civil law. A name given generally, to all species of frauds committed in making contracts.

2. This word is said to be derived from the Latin stellio, a kind of lizard remarkable for its cunning and the change of its color, because those guilty of frauds used every art and cunning to conceal them. But more particularly it was the crime of a person who fraudulently assigned, sold, or engaged the thing which he had before assigned sold, or engaged to another, unknown to the person with whom be was dealing. Dig. 47, 20, 3; Code, 9, 34, 1; Merl. Repert. h. t.; Code Civil, art. 2069; 1 Bro. Civ. Law, 426.

3. In South Carolina and Georgia, a mortgagor who makes a second mortgage without disclosing in writing, to the second mortgagee, the existence of the first mortgage, is not allowed to redeem and, in the foraier state, when a person suffers a judgment, or enters into a statute or recognizance binding his land, afterwards mortgages it, without giving notice, in writing, of the prior incumbrance, he shall not be allowed to redeem, unless, within six months from a written demand, he discharges such incumbrauce. Prin. Dig. 161; 1 Brev. Dig. 166-8.

4. In Ohio a fraudulent conveyance is punished as a crime; Walk. Intr. 350; and, in Indians, any party to a fraudulent conveyance is subjected to a flue and to double damages. Ind. Rev. Laws, 189. See 12 Pet. 773.

STEP-DAUGHTER. In Latin privigna, is the daughter of one's wife, or of one's hushand.

STEP-FATHER. In Latin vitricus, is the hushand of one's mother who is not the father of the person spoken of.

STEP-MOTHER. In Latin noverca, is the wife of one's father, who is not the mother of the person spoken of.

STEP-SON. In Latin privignus, is the son of one's wife, or of one's hushand.

STERE. A French measure of solidity used in measuring wood. It is a cubic metre. Vide Measure.

STERILITY. Barrenness; incapacity to produce a child. It is curable and incurable; when of the latter kind, at the time of the marriage, and arising from impotency, it is a good cause for dissolving a marriage. 1 Fodere, Med. Leg. §254. See Impotency.

STERLING. Current money of Great Britain, but anciently a small coin, worth about one penny; and so called, as some suppose, because it was stamped with the figure of a small star, or, as others suppose, because it was first stamped in England in the reign of King John, by merchants from Germany called Esterlings. Pounds sterling, originally signified so many pounds in weight of these coins. Thus we find in Matthew Paris, A.D. 1242, the expression "Accepit a rege pro stipendio tredecim libras esterlingorum." The secondary or derived sense is a certain value in current money, whether in coins or other currency. Lowndes, 14. Watts' Gloss. Ad verbum.

STET PROCESSUS, practice. An order made, upon proper cause shown, that the process remain stationary. As where a defendant having become insolvent would, by moving judgment in the case of nonsuit, compel a plaintiff to proceed, the court will, on an affidavit, of the fact of insolvency, award a stet proces-sus. See 7 Taunt. Rep. 180, 1 Chit. Rep. 738; 10 Wentw. Pl. 43.

STEVEDORE. A person employed in loading and unloading vessels. Dunl. Adm. Pr. 98. Vide Arrameurs; Sac

STEWARD OF ALL ENGLAND. Seneschallus totius Angliae. An officer among the English who was invested with various powers, and, among others, it was his duty to preside on the trial of peers.

STEWS, Eng. law., Places formerly permitted in England to women of professed lewdness, and who, for hire, would prostitute their bodies to all comers.

2. These places were so called because the dissolute persons who visited them prepared themselves by bathing; the word stews being derived from the old French estuves, stove, or hot bath. 3 Inst. 205.

STILLICIDIUM, civ. law. The rain water that falls from the roof or eaves of a house by scattered drops. When it is gathered into a spout it is called flumen.

2. Without the constitution of one or other of these servitudes, no proprietor can build so as to throw the rain that falls from his house directly on his neighbor's grounds; for it is a restriction upon all property, nemo pro-test immitere in alienum; and he who in building breaks through that res-traint, truly builds on another man's property; because to whomsoever the area belong's, to him also belongs whatever is above it: cujus est solum, ejas est usque ad caelum. 3 Burge on the Conf. of Laws, 405. Vide Servitus Stillicidii. Inst. 3, 2, 1; Dig. 8, 2, 2.

STINT, Eng. law. The proportionable part of a man's cattle, which he may keep upon the common.

2. To use a thing without stint, is to use it without limit.

STIPULATED DAMAGES, contracts. The sum agreed by the parties to be paid, on a breach of a contract, by the party violating his engagement to the other.

2. It is difficult to distinguish, in some cases, between stipulated damages and a penalty; (q. v.) 3 Chitty's Commer. Law, 627; 2 Bos. & Pull. 346. The effect of inserting stipulated damages, either at law or equity, a pears to be, that both parties must abide by the stipulation, and the prescribed sum must be given. Holt, C. N. P. 46 Newl. Contr. 313; see 5 Taunt. Rep. 247. Vide Damages, Liquidated.

STIPULATION, contracts. In the Roman law, the contract of stipulation was made in the following manner, namely; the person to whom the promise was to be made, proposed a question to him from whom it was to proceed, fully expressing tho nature and extent of the engagement and, the question so proposed being answered in the affirmative, the obligation was complete.

2. It was essentially necessary that both parties should speak, (so that a dumb man could not enter into a stipulation) that the person making the promise should answer conformably to the specific question, proposed, without any material interval of time, and with the intention of contracting an obligation.

3. From the general use of this mode of contracting, the term stipulation has been introduced into common parlance, and, in modern language, frequently refer's to any thing which forms a material article of an agreement; though it is applied more correctly and more conformably to its original meaning to denote the insisting upon and requiring any particular engagement. 2 Evans' Poth. on Oblig. 19.

4. In this contract the Roman law dispensed with an actual consideration. See, generally, Pothier, Oblig. P. 1, c. 1, s. 1, art. 5.

5. In the admiralty courts, the first process is freq uently to arrest the defendant, and then they take the recognizances or stipulation of certain fide jussors in the nature of bail. 3 Bl. Comm. 108; vide Dunlap's Adm. Practice, Index, h. t.

6. These stipulations are of three sorts, namely: l. Judicatum solvi, by which the party is absolutely bound to pay such sum as may be adjudged by the court. 2 De judico sisti, by which he is bound to appear from time to time, during the pendency of the suit, and to abide the sentence. 3. De ratio, or De rato, by which he engages to ratify the acts of his proctor: this stipulation is not usual in the admiralty courts of the United States.

7. The securities are taken in the following manner, namely: 1. Cautio fide jussoria, by sureties. 2. Pignoratitia; by deposit. 3. Juratoria, by oath: this security is given when the party is too poor to find sureties, at the discretion of the court. 4. Aude promissoria, by bare promise: this security is unknown in the admiralty courts of the United States. Hall's Adm. Pr. 12; Dunl. Adm. Pr. 150, 151. See 17 Am. Jur. 51.

STIRPES, descents. The root, stem, or stock of a tree. Figuratively, it signifies, in law, that person from whom a family is descended, and also the kindred or family.

2. It is chiefly used in estimating the several interests of the different kindred, in the distribution of an intestate's estate. 2 Bl. Com. 517 and vide Descent; Line.

STOCK, mer. law. The capital of a merchant tradesman, or other person including his merchandise, money and credits. In a narrower sense it signifies only the goods and wares he has for sale and traffic. The capital of corporations is also called stock; this is usually divided into shares of a definite value, as one hundred dollars, fifty dollars per share.

2. The stock held by individuals in corporations is generally considered as personal property. 4 Dane's Ab. 670; Sull. on Land. Titl. 71; Walk. Introd. 211; 1 Hill, Ab. 1 8.

STOCK, descents. This is a metaphorical expression which designates, in the genealogy of a family, the person from whom others are descended: those persons who have so descended are called branches. Vide 1 Roper on Leg. 103; 2 Suppl. to Ves. 307 and Branch; Descent Line; Stirpes.

STOCKS, crim. law. A machine commonly made of wood, with boles in it, in which to confine persons accused of or guilty of a crime.

2. It was used either to confine unruly offenders by way of security, or convicted criminals for punishment.

3. This barbarous punishment has been generally abandoned in the United States.

STOPPAGE IN TRANSITU, contracts. This is the name of that act of a vendor of goods, upon a credit, who, on learning that the buyer has failed, resumes the possession of the goods, while they are in the hands of a carrier or middle-man, in their transit to the buyer, and before they get, into his actual possession.

2. The subject will be considered with reference to, 1. The person who has a right to stop goods in transitu. 2. The property whicli may be stopped. 3. The time when to be stopped. 4. The, manner of stopping. 5. The failure of the buyer. 6. The effect of stopping.

3. - 1. The right of stopping property in transitu is confined to cases in which the consignor is substantially the seller; and does not extend to a mere surety for the price, nor to any person who does not rest his claim on a proprietor's right. 6 East, R. 371; 4 Burr. 2047; 3 T. R. 119, 783; 1 Bell's Com. 224.

4. - 2. The property stopped must be personal property actually sold or bartered, on a credit. 2 Dall. 180; 1 Yeates, 177.

5. - 3. It must be stopped during the transit, and while something remains to be done to complete the delivery; for the actual or symbolical, delivery of the goods to the buyer puts an end to the right of the seller to stop the goods in transitu; 3 T. R. 464; 8 T. R. 199; but it has been decided that if, before delivery, the seller annex a condition that security, shall be given before taking possession; or that the price shall be paid in ready money; or that a bill shall be delivered; the property will not pass by the mere act of the buyer's attaining the possession. 3 Esp. Rep. 58., When the seller has given the buyer documents sufficient to transfer the property, and the buyer, upon the strength of such documents, has sold the goods to a bona fide purchaser without notice, the seller is divested of his rights 2 W. C. C. R. 283; but a resale by the buyer does not, of itself, and without other circumstances, destroy the vendor's right of stoppage in transitu. 6 Taunt. R. 433 Vide Delivery; and 1 Rawle's R. 9; 1 Ashm. R. 103; Harr. Dig. Sale, III. 4; 7 Taunt. R. 59; 2 Marsh. R. 366; Holt's R. 248; 1 Moore's R. 526; 3 B. & P. 320; Id. 119; 5 East, R. 175.

6. - 4 The manner of stopping the goods is usually by taking corporal possession of them; but this is not the only way it may be done; the seller may put in his claim or demand of his right to the goods either verbally or in writing. 2 B. & P. 257, 462; 2 Esp. R. 613; Co. Bankr. Law, 494; Holt's Cases, N. B. 338. Vide Corporal Touch.

7. - 5. The buyer must have actually failed, or be in actual and immediate danger of insolvency.

8. - 6. The stopping of goods in transitu does not of itself rescind the contract. 1 Atk. 245; Co. B. L. 394; 6 East, R. 27, n. The seller may, therefore, upon offering to deliver them, recover the price. 1 Campb. 109; 6 Taunt. 162. But inasmuch as the seller is permitted in equity to annul the transfer he has made, by stopping the goods on their transit, and by that means to deprive the general creditors of the buyer of property, which, in strict law, has passed to their debtor, it has been considered as equitable, on the other hand, that this act should be accompanied by a rescinding of the whole contract, and a renunciation of any further claim; since it would be a great bardship to give a preference to the seller over, the other creditors; and subject the divisible funds, which have derived no benefit from the contract, to a further claim of indemnification. 1 Bell's Com. B. 2, pt. 3, c. 2, s. 2, §5.

Vide, generally, 2 Kent, Com. 427; Bac. Abr. Merchant, L; Ross on Vend., Index, h. t. Selw. N. P. 1206; Whitaker on Stoppage in Transitu; Abbott on Ship. 351; 3 Chit. Com. Law, 340; Chit. on Contr. 124-126; 2 Com. Dig. 268; 8 Com. Dig. 952; 2 Supp. to Ves. jr. 231, 481; 2 Leigh's N. P. 1472; 1 Bouv. Inst. n. 959-65.

STORES. the victuals and provisions collected together for the subsistence of a ship's company, of a camp, and the like.

STOUTHRIEFF, Scotch law. Formerly this word included in its signification every species of theft, accompanied with violence to the person; but of late years it has become the vox signata for forcible and masterful depredation within or near the dwelling house; while robbery has been more particularly applied to violent depredation on the highway, or accompanied by house-breaking. Alison, Princ. Cr. Law of Scot]. 227.

STOWAGE, mar. law. The proper arrangement in a ship, of the different articles of which a cargo consists, so that they may not injure each other by friction, or be damaged by the leakage of the ship.

2. The master of the ship is bound to attend to the stowage, unless, by custom or agreement, this business is to be performed by persons employed by the mercbant. Abbott on Shipp. 228; Pardes. Dr. Com. n. 721.

STRANDING, maritime law. The running of a ship or other vessel on shore; it is either accidental or voluntary.

2. It is accidental where the ship is driven on, shore by the winds and waves; it is voluntary where she is run on shore, either to preserve her from a worse fate, or for some fraudulent purpose. Marsh. Ins. B. 1, c. 12, s. 1.

3. It is of great consequence to define accurately what shall be deemed a stranding, but this is no easy matter. In one case a ship having run on some wooden piles, four feet under water, erected in Wisheach river, about nine yards from shore, which were placed there to keep up the banks of the river, and having remained on these piles until they were cut away, was considered by Lord Kenyon to have been stranded. Marsh. Ins. B. 7, s. 3 . In another case, a ship arrived in the river Thames, and, upon coming up to the Pool, which was full of vessels, one brig ran foul of her bow, and another of her stern, in consequence of which she was driven aground, and continued in that situation an hour, during which period several other vessels ran foul of her; this, Lord Kenyon told the jury, that unskilled as he was in nautical affairs, he thought he could safely pronounce to be no stranding. lb.; 1 Camp. 131; 3 Camp. 431; 4 M. & S. 503; 7 B. & C. 224; 5 B. & A. 225; 4 B. & C. 736. See Perils of the Sea.

STRANGER, persons, contracts. This word has several significations. 1. A person born out of the United States; but in this sense the term alien is more properly applied, until he becomes naturalized. 2. A person who is not privy to an act or contract; example, he who is a stranger to the issue, shall not take advantage of the verdict. Bro. Ab. Record, pl. 3; Vin. Ab. h. t. pl. 1 and vide Com. Dig. Abatement, H 54.

2. When a man undertakes to do a thing, and a stranger interrupts him, this is no excuse. Com. Dig. Condition, L 14. When a party undertakes that a stranger shall do a certain thing, he becomes liable as soon as the stranger refuses to perform it. Bac. Ab. Conditions, Q 4.

STRATAGEM. A deception either by words or actions, in times of war, in order to obtain an advantage over an enenly.

2. Such stratagems, though contrary to morality, have been justified, unless they have been accompanied by perfidy, injurious to the rights of humanity, as in the example given by Vattel of an English frigate, which during a war between France and England, appeared off Calais and made signals of distress in order to allure some vessel to come to its relief, and seized a shallop and its crew, who had generously gone out to render it assistance. Vattel, Droit des Gens, liv. 3, c. 9, §178.

3. Sometimes stratagems are employed in making, contracts, this is unlawful and fraudulent, and avoids the contract. See Fraud.

STRATOCRACY. A military government; government by military chiefs of an army.

STREAM. A current of water. The right to a water course is not a right in the fluid itself so much as a right in the current of the stream. 2 Bouv. Inst. n. 1612. See River; Water Course.

STREET. A road in a village or city. In common parlance the word street is equivalent to highway. 4 Serg. & Rawle, 108.

2. A permission to the public for the space of eight, or even of six years, to use a street without bar or impediment, is evidence from which a dedication to the public maybe inferred. 11 East, R. 376; See 2 N. Hamp. 513; 4 B. & A. 447; 3 East, R. 294; 1 Law lntell. 134; 2 Smith's Lead. Cas. 94, n.; 2 Pick. R. 162; 2 Verm. R. 480; 5 Taunt. R. 125; S. C. 1 E. C. L. R. 34; 4 Camp. R. 169; 1 Camp. R. 260: 7 B. & C. 257; S. C. 14 E. C. L. R. 39; 5 B & Ald. 454; S. C. 7 E. C. L. R. 159; 1 Blackf. 44; 2 Wend. 472; 8 Wend. 85; 11 Wend. 486; 6 Pet. 431; 1 Paige, 510; and the article Dedication.

STRICT SETTLEMENT. When lands are settled to the parent for life, and after his death to his first and other sons in tail, and trustees are interposed to preserve the contingent remainders, this is called a strict settlement.

STRICTISSIMI JURIS. The most strict right or law. In general, when a person receives an advantage, as the grant of a license, he is bound to conform strictly to the exercise of the rights given him by it, and in case of a dispute, it will be strictly construed. See 3 Story, Rep. 159.

STRICTUM JUS. This phrase is used to denote mere law, in contradistinction to equity.

STRUCK, pleadings. In an indictment for murder, when the death arises from any woundng, beating or bruising, it is said, that the word "struck" is essential. 1 Bulstr. 184; 5 Co. 122; 3 Mod. 202; Cro. Jac. 655; Palm. 282; 2 Hale, 184, 6, 7: Hawk. B. 2, c. 23, s. 82; 1 Chit. Cr. Law, *243 6 Binn. R. 179.

STRUCK JURY. A special jury selected by striking from the pannel of jurors, a certain number by each party, so as to leave a number required by law to try the cause. In general, a list of forty-eight jurors is made out for each case; the plaintiff strikes off twelve, aud the defendant the same number from those who remain twelve are to be selected to try the cause, unless they are challenged for cause. See Challenge.

STRUCK OFF. A case is said to be struck off, where the court has no jurisdiction, aud can give no judgment, and order that the case be taken off the record, which is done by an entry to that effect.

STRUMPET. A harlot, or courtezan: this word was formerly used as an addition. Jacob's Law Dict. h. t.

TO STULTIFY. To make or declare insane. It is a general rule in the English law, that a man shall not be permitted to stultify himself; that is, he shall not be allowed to plead his insanity to avoid a contract. 2 Bl. Com. 291; Fonbl. Eq. b. 1, c. 2, 1; Pow. on Contr. 19.

2. In the United States, this rule seems to have been exploded, and the party may himself avoid his acts except those of record, and contracts for necessaries and services rendered, by allegation and proof of insanity. 5 Whart. R. 371, 379; 2 Kent, Com. 451; 3 Day, R. 90; 3 Conn. R. 203: 5 Pick. R. 431; 5 John R. 503.; 1 Bland. R. 376. Vide Fonbl. Eq b. 1, c. 2, §1, note 1; 2 Str. R. 1104; 3 Camp. R. 125; 7 Dowl. & Ryl. 614; 3 C. & P. 30; 1 Hagg. C. R. 414.

STUPIDITY, med. jur. That state of the mind which cannot perceive and embrace the data presented to it by the senses; and therefore the stupid person can, in general, form no correct judgment. It is a want of the perceptive powers. Ray, Med. Jur. c. 3, §40. Vide Imbecility.

STUPRUM, civ. law. The criminal sexual intercourse which took place between a man and a single woman, maid or widow, who before lived honestly. Inst. 4, 18, 4; Dig. 48, 5, 6; Id. 50, 16, 101; 1 Bouv. Inst. Theolo. ps. 3, quaest. 2, art. 2, p. 252.

SUB-AGENT. A person appointed by an agent to perform some duty, or the whole of the business relating to his agency.

2. Sub-agents may be considered in two points of view. 1. With regard to their rights and duties or obligations, towards their immediate employers. 2. As to their rights and obligations towards their superior or real principals.

3. - 1. A sub-agent is generally invested with the same rights, and incurs the same liabilities in regard to his immediate employers, as if he were the sole and real principal. To this general rule there are some exceptions for example, where by the general usage of trade or the agreement of the parties, sub-agents are ordinarily or necessarily employed, to accomplish the ends of the agency, there, if the agency is avowed, and the credit is exelusively given to the principal, the intermediate agent may be entirely exempted from all liability to the sub-agent. The agent, however, will

be liable to the sub-agent, unless such exclusive credit has been given, although the real principal or superior may also be liable. Story on Ag. §386; Paley on Ag. by Lloyd, 49. When the agent employs a sub-agent to do the whole, or any part of the business of the agency, without the knowledge or consent of his principal, either express or implied, the latter will only be entitled to recover from his immediate employer, and his sole responsibility is also to him. In this case the superior or real principal is not responsible to the sub-agent, because there is no privity between them. Story on Ag. §13, 14, 15, 217, 387.

4. - 2. Where by an express or implied agreement of the parties, or by the usages of trade, a sub-agent is to be employed, a privity exists between the principal and the sub-agent, and the latter may justly maintain his claim for compensation, both against the principal and his immediate employer, unless exclusive credit is given to one of them; and, in that case, his remedy is limited to that party. 1 Liv. on Ag. 64; 6 Taunt. R. 147.

SUBALTERN. A kind of officer who exercises his authority under the superintendence and control of a superior.

TO SUBDIVIDE. To divide a part of a thing which has already been divided. For example, when a person dies leaving children, and grandchildren, the children of one of his own who is dead, his property is divided into as many shares as he had children, including the deceased, and the share of the deceased is subdivided into as many shares as he had children.

SUBINFEUDATION, estates, English law. The act of an inferior lord by which he carved out a part of an estate which he held of a superior, and granted it to an inferior tenant to be held of himself.

2. It was an indirect mode of transferring the fief, and resorted to as an artifice to elude the feudal restraint upon alienation: this was forbidden by the statute of Quia Emptores, 18 Ed. I; 2 Bl. Com. 91; 3 Kent, Com. 406.

SUBJECT, contracts. The thing which is the object of an agreement. This term is used in the laws of Scotland.

SUBJECT, persons, government. An individual member of a nation, who is subject to the laws; this term is used in contradistiction to citizen, which is applied to the same individual when considering his political rights.

2. In monarchical governments, by subject is meant one who owes permanent allegiance to the monarch. Vide Body politic; Greenl. Ev. §286; Phil. & Am. on Ev. 732, n. 1.

SUBJECT-MATTER. The cause, the object, the thing in dispute.

2. It is a fatal objection to the jurisdiction of the court when it has not cognizance of the subject-matter of the action; as, if a cause exclusively of admiralty jurisdiction were brought in a court of common law, or a criminal proceeding in a court having jurisdiction of civil cases only. 10 Co. 68, 76 1 Ventr. 133; 8 Mass. 87; 12 Mass. 367. In such case, neither a plea to the jurisdiction, nor any other plea would be required to oust the court of jurisdiction. The cause might be dismissed upon motion, by the court, ex officio.

SUBJECTION. The obligation of one or more persons to act at the discretion, or according to the judgment and will of others.

2. Subjection is either private or public. By the former is meant the subjection to the authority of private persons; as, of children to their parents, of apprentices to their masters, and the like. By the latter is understood the subjection to the authority of public persons. Rutherf. Inst. B. 2, c. 8.

SUBLEASE. A lease by a tenant to another tenant of a part of the premises held by him; an underlease.

SUBMISSION. A yielding to authority. A citizen is bound to submit to the laws; a child to his parents; a servant to his master. A victor may enforce, the submission of his enemy.

2. When a captor has taken a prize, and the vanquished have submitted to his authority, the property, as between the belligerents, has been transferred. When there is complete possession on one side, and submission upon the other, the capture is complete. 1 Gallis. R. 532.

SUBMISSION, contracts. An agreement by which persons who have a law-suit or difference with one another, name arbitrators to decide the matter, and bind themselves reciprocally to perform what shall be arbitrated.

2. The submission may be by the act of the parties simply, or through the medium of a court of law or equity. When it is made by the parties alone it may be in writing or not in writing. Kyd on Aw. 11; Caldw. on Arb. 16; 6 Watts' R. 357. When it is made through the medium of a court, it is made a matter of record by rule of court. The

extent of the submission may be various, according to the pleasure of the parties; it may be of only one, or of all civil matters in dispute, but no criminal matter can be referred. It is usual to put in a time within which the arbitrators shall pronounce their award. Caldw. on Arb. ch. 3; Kyd on Awards, ch. 1; Civ. Code of Lo. tit. 19 3 Vin. Ab. 131; 1 Supp. to Ves. jr. 174; 6 Toull. n. 827; 8 Toull. n. 332; Merl. Repert. mot Compromis; 1 S. & R. 24; 5 S. & R. 51; 8 S. & R. 9; 1 Dall. 164; 6 Watts, R. 134; 7 Watts, R. 362; 6 Binn. 333, 422; 2 Miles, R, 169; 3 Bouv. Inst. n. 2483, et seq.

SUB MODO. Under a qualification; a legacy may be given sub modo, that is, subject to a condition or qualification.

SUBNOTATIONS, civ. law. The answers of the prince to questions which had been put to him respecting some obscure or doubtful point of law. Vide Rescripts.

SUBORNATION OF PERJURY, crim. law. The procuring another to commit legal perjury, who in consequence of the persuasion takes the oath to which be has been incited. Hawk. B. 1, c. 69, s. 10.

2. To complete the offence, the false oath must be actually taken, and no abortive attempt (q. v.) to solicit will complete the crime. Vide To Dissuade; To persuade.

3. But the criminal solicitation to commit perjury, though unsuccessful, is a misdemeanor at common law. 2 East, Rep. 17; 6 East, R. 464; 2 Chit. Crim. Law, 317; 20 Vin. Ab. 20. For a form of an indictment for an attempt to suborn a person to commit perjury, vide 2 Chit. Cr. Law, 480; Vin. Ab. h. t.

4. The act of congress of March 3, 1825, §13, provides, that if any person shall knowingly or wilfully procure any such perjury, mentioned in the act, to be committed, every such person so offending, shall be guilty of subornation of perjury, and shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to hard labor, not exceeding five years, according to the aggravation of the offence.

SUBPOENA, practice, evidence. A process to cause a witness to appear and give testimony, commanding him to lay aside all pretences and excuses, and appear before a court or magistrate therein named, at a time therein mentioned, to testify for the party named, under a penalty therein mentioned. This is usually called a subpoena ad testificandum.

2. On proof of service of a subpoena upon the witness, and that he, is material, an attachment way be issued against him for a contempt, if he neglect to attend as commanded.

SUBPOENA, chancery practice. A mandatory writ or process, directed to and requiring one or more persons to appear at a time to come, and answer the matters charged against him or them; the writ of subpoena was originally a process in the courts of common law, to enforce the attendance of a witness to give evidence; but this writ was used in the court of chancery for the game purpose as a citation in the courts of civil and canon law, to compel the appearance of a defendant, and to oblige him to answer upon oath the allegations of the plaintiff.

2. This writ was invented by John Waltham, bishop of Salishury, and chancellor to Rich. II. under the authority of the statutes of Westminster 2, and 13 Edw. I. c. 34, which enabled him to devise new writs. 1 Harr. Prac. 154; Cruise, Dig. t. 11, c. 1, sect. 12-17. Vide Vin. Ab. h. t.; 1 Swanst. Rep. 209.

SUBPOENA DUCES TECUM, practice. A writ or process of the same kind as the subpoena ad testificandum, including a clause requiring the witness to bring with him and produce to the court, books, papers, &c., in his hands, tending to elucidate the matter in issue. 3 Bl. Com. 382.

SUB PEDE SIGILLI. Under the foot of the seal; under seal. This expression is used when it is required that a record should be certified under the seal of the court.

SUB POTESTATE. Under or subject to the power of another; as, a wife is under the power of her hushand; a child subject to that of his father; a slave to that of his master.

SUBREPTION, French law. By this word is understood the fraud committed to obtain a pardon, title, or grant, by alleging facts contrary to truth.

SUBROGATION, civil law, contracts. The act of putting by a transfer, a person in the place of another, or a thing in the place of another thing. It is the substitution (q. v.) of a new for an old creditor, and the succession to his rights, which is called subrogation; transfusio unius creditoris in alium. It is precisely the reverse of delegation. (q. v.)

2. There are three kinds of subrogation: 1. That made by the owner of a thing of his own free will; example, when be voluntarily assigns it. 2. That which arises in consequence of the law, even without the consent of the owner; example, when a man pays a debt which could not be properly called his own, but which nevertheless it was his interest to pay, or which he might have been compelled to pay for another, the law subrogates him to all the rights of the creditor. Vide 2 Binn. Rep. 382; White's L. C. in Eq.* 60-72. 3. That which arises by the act of law joined to the act of the debtor; as, when the debtor borrows money expressly to pay off his debt, and with the intention of substituting the lender in the place of the old creditor. 7 Toull. liv. 3, t. 3, c. 5, sect.

1, §2. Vide Civ. Code of Louisiana, art. 2155 to 2158; Merl. Repert. h. t.; Dig. lib. 20; Code, lib. 8, t. 18 et 19 9 Watts. R. 451; 6 Watts & Serg. 190; 2 Bouv. Inst. n. 1413.

SUBSCRIBING WITNESS. One who subscribes his name to a writing in order to be able at a future time to prove its due execution; an attesting witness.

2. In order to make a good subscribing witness, it is requisite he Should sign his name to the instrument himself, at the time of its execution, and at the request or with the assent of the party. 6 Hill, N. Y. R. 303; 11 M. & W. 168; 1 Greenl. Ev. §569 a, 4th ed. See Witness instrumentary; 5 Watts, 399.

SUBSCRIPTION, contracts. The placing a signature at the bottom of a written or printed engagement; or it is the attestation of a witness by so writing his name; but it has been holden that the attestation of an illiterate witness, by making his mark, is a sufficient subscription. 7 Bing. 457; 2 Ves. 454; Atk. 177; 1 Yes. jr. 11; 3 P. Wms. 253; 1 V. & B. 362. Vide To sign.

2. By subscription is also understood the act by which a person contracts, in writing, to furnish a sum of money for a particular purpose; as, a subscription to a charitable institution, a subscription for a book, for a newspaper, and the like.

SUBSCRIPTION LIST. The names of persons who have agreed to take a newspaper, magazine or other publication, placed upon paper, is a subscription list.

2. This is, an incident to a newspaper, and passes with the sale of the printing materials. 2 Watts, 111.

SUBSIDY, Engl. law. An aid, tax or tribute granted by parliament to the king for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods. Jacob's Law. Dict. h. t.

2. The assistance given in money by one nation to another to enable it the better to carry on a war, when such nation does not join directly in the war, is called a subsidy. Vattel, liv. 3, §82. See Neutrality.

SUB SILENTIO. Under silence, without any notice being taken. Sometimes passing a thing sub silentio is evidence of consent. See Silence.

SUBSTANCE, evidence. That which is essential; it is used in opposition to form.

2. It is a general rule, that on any issue it is sufficient to prove the substance of the issue. For example, in a case where the defendant pleaded payment of the principal

sum and all interest due, and it appeared in evidence that a gross sum was paid, not amounting to the full interest, but accepted by the plaintiff as full payment, the proof was held to be sufficient. 2 Str. 690; 1 Phil. Ev. 161.

SUBSTITUTE, contracts. One placed under another to transact business for him; in letters of attorney, power is generally given to the attorney to nominate and appoint a substitute.

2. Without such power, the authority given to one person cannot in general be delegated to another, because it is a personal trust and confidence, and is not therefore transmissible. The authority is given to him to exercise his judgment and discretion, and it cannot be said that the trust and confidence reposed in him shall be exercised at the discretion of another. 2 Atk. 88; 2 Ves. 645. But an authority may be delegated to another, when the attorney has express power to do so. Bunb. 166; T. Jones, 110. See Story, Ag. §§13, 14. When a man is drawn in the militia, he may in some cases hire a substitute.

SUBSTITUTES, Scotch law. Where an estate is settled on a long series of heirs, substituted one after another, in tailzie, the person first called in the tailzies, is the institute; the rest, the beirs of tailzie; or the substitutes. Ersk. Princ. L. Scotl. 3, 8, 8. See Tailzie; Institute.

SUBSTITUTION, civil law. In the law of devises, it is the putting of one person in the place of another, so that he may, in default of ability in the former, or after him, have the benefit of a devise or legacy.

2. It is a species of subrogation made in two different ways; the first is direct substitution, and the latter a trust or fidei commissary substitution. The first or direct substitution, is merely the institution of a second legatee, in case the first should be either incapable or unwilling to accept the legacy; for example, if a testator should give to Peter his estate, but in case he cannot legally receive it, or he wilfully refuses it, then I give it to Paul; this is a direct substitution. Fidei commissary substitution is that which takes place when the person substituted is not to receive the legacy until after the first legatee, and consequently must receive the thing bequeathed from the hands of the latter for example, I institute Peter my heir, and I request that at his death he shall deliver my succession to Paul. Merl. Repert. h. t.; 5 Toull. 14.

SUBSTITUTION, chancery practice. This takes place in a case where a creditor has a lien on two different parcels of land, and another creditor has a subsequent lien on one only of the parcels, and the prior creditor elects to have his whole demand out of the parcel of land on which the subsequent creditor takes his lien; the latter is entitled, by way of substitution, to have the prior lien assigned to him for his benefit. 1 Johns.

Ch. R. 409; 2 Hawk's Rep. 623; 2 Mason, R. 342. And in a case where a bond creditor exacts the whole of the debt from one of the sureties, that surety is entitled to be substituted in his place, and to a cession of his rights and securities, as if be were a purchaser, either against the principal or his co-sureties. Id. 413; 1 Paige's R. 185; 7 John. Ch. Rep. 211; 10 Watts, R. 148.

2. A surety on paying the debt is entitled to stand in the place of the cre-ditor and to be subrogated to all his rights against the principal. 2 Johns. Ch. R. 454. 4 Johns. Ch. R. 123; 1 Edw. R. 164; 7 John. R. 584; 3 Paige's R. 117; 2 Call, R. 125; 2 Yerg. R. 346; 1 Gill & John. 346; 6 Rand. R. 98,; 8 Watts, R. 384. In Pennsylvania it is provided by act of assembly, that in all cases where a constable shall be entrusted with the execution of any process for the collection of money, and by neglect of duty shall fail to collect the same, by means whereof the bail or security of such constable shall be compelled to pay the amount of any judgment shall vest in the person paying, as aforesaid, the equitable interest in such judgment, and the amount due upon any such judgment may be collected in the name of the plaintiff for the use of such person. Pamphlet Laws, 1828-29, p. 370. Vide 2 Binn. R. 382, and Subrogation.

SUBSTRACTION, French law. The act of taking something fraudulently; it is generally applied to the taking of the goods of the estate of a deceased person fraudulently. Vide Expilation.

SUB-TENANT. The same as under-tenant. See Under-leaser; Under-tenant, and 1 Bell's Com. 76.

SUBTRACTION. The act of withhold ing or detaining anything unlawfully.

SUBTRACTION OP CONJUGAL RIGHTS. The act of a hushand or wife by living separately from the other without a lawful cause. 3 Bl. Com. 94.

SUCCESSION, in Louisiana. The right and transmission of the rights an obligations of the deceased to his heirs. Succession signifies also the estate, rights and charges which a person leaves after his death, whether the property exceed the charges, or the charges exceed the property, or whether he has left only charges without property. The succession not only includes the rights and obligations of the deceased, as they exist at the time of his death, but all that has accrued thereto since the opening of the succession, as also of the new charges to which it becomes subject. Finally, succession signifies also that right by which the beir can take possession of the estate of the de-ceased, such as it may be.

2. There are three sorts of successions, to wit: testamentary succession; legal succession; and, irregular succession. 1. Testamentary succession is that which results

from the constitution of the heir, contained in a testament executed in the form prescribed by law. 2. Legal succession is that which is established in favor of the nearest relations of the deceased. 3. Irregular succession is that which is established by law in favor of certain persons or of the state in default of heirs either legal or instituted by testament. Civ. Code, art. 867-874.

3. The lines of a regular succession are divided into three, which rank among themselves in the following order: 1. Descendants. 2. Ascendants. 3. Collaterals. See Descent. Vide Poth. Traite des Successions lbid. Coutumes d'Orleans, tit. 17 Ayl. Pand. 348; Toull. liv. 3, tit. 1; Domat, h. t.; Merl. Repert. h. t.

SUCCESSION, com. law. The mode by which one set of persons, members of a corporation aggregate, acquire the rights of another set which preceded them. This term in strictness is to be applied only to such corporations. 2 Bl. Com. 430.

SUCCESSOR. One who follows or comes into the place of another.

2. This term is applied more particularly to a sole co6-oration, or to any corporation. The word beir is more correctly applicable to a common person who takes an estate by descent. 12 Pick. R. 322; Co. Litt. 8 b.

3. It is also used to designate a person who has been appointed or elected to some office, after another person.

TO SUE. To prosecute or commence legal proceedings for the purpose of recovering a right.

SUFFRAGE, government. Vote; the act of voting.

2. The right of suffrage is given by the constitution of the United States, art. 1, s. 2, to the electors in each state, as shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Vide 2 Story on the Const. §578, et seq.; Amer. Citiz. 201; 1 Bl. Com. 171; 2 Wils. Lect. 130; Montesq. Esp. des Lois, Ii v. 11, c. 6; 1 Tucker's Bl. Com. App. 52, 3. See Division of opinion.

SUFFRANCE. The permitting a tenant who came in by a lawful title, to remain after his right has expired. Vide Estates at suffrance.

SUGGESTIO FALSI. A statement of a falsehood. This amounts to a fraud whenever the party making it was bound to disclose the truth.

2. The following is an example of a case where chancery will interfere and. set aside a contract as fraudulent, on account of the suggestio falsi: a purchaser applied to the seller to purchase a lot of wild land, and represented to him it was worth nothing, except for a sheep pasture, when he knew there was a valuable mine on the lot, of which the seller was ignorant. The sale was set aside. 2 Paige, 390; 4 Bouv. Inst. n. 3837, et seq. Vide Concealment; Misrepresentation; Representation; Suppressio veri.

SUGGESTION. In its literal sense this word signifies to inform, to insin-uate, to instruct, to cause to be remembered, to counsel. In practice it is used to convey the idea of information; as, the defendant suggests the death of one of the plaintiffs. 2 Sell. Pr. 191.

2. In wills, when suggestions are made to a testator for the purpose of procuring a devise of his property in a particular way, and when such suggestions are false, they generally amount to a fraud. Bac. Ab. Wills, G 3; 5 Toull. n. 706.

SUGGESTIVE INTERROGATION. This phrase has been used by some writers to signify the same thing as leading question. (q. v.) 2 Benth. on Ev. b. 3, c. 3. It is used in the French law. Vide Question.

SUI JURIS. One who has all the rights to which a freemen is entitled; one who is not under the power of another, as a slave, a minor, and the like.

2. To make a valid contract, a person must, in general, be sui juris. Every one of full age is presumed to be sui juris. Story on Ag. p. 10.

SUICIDE, crimes, med. jur. The act of malicious self-murder; felo de se. (q. v.) 3 Man. Gran. & Scott, 437, 457, 458; 1 Hale, P. C.. 441. But it has been decided in England that where a man's life was insured, and the policy contained a proviso that "every policy effected by a person on his or her own life should be void, if such person should commit suicide, or die by duelling or the hands of justice," the terms of the condition included all acts of voluntary self-destruction, whether the insured at the time such act was committed, was or was not a moral responsible agent. 3 Man. Gr. & Scott, 437. In New York it has been held, that an insane person cannot commit suicide, because. such person has no will. 4 Hill' 3 R. 75.

2. It is not punishable it is believed in any of the United States, as the unfortunate object of this offence is beyond the reach of human tribunals, and to deprive his family of the property he leaves would be unjust.

3. In cases of sudden death, it is of great consequence to ascertain, on finding the body, whether the deceased has been murdered, died suddenly of a natural death, or

whether he has committed suicide. By a careful examination of the position of the body, and of the circumstances attending it, it can be generally ascertained whether the deceased committed suicide, was murdered, or died a natural death. But there are sometimes cases of suicide which can scarcely be distinguished from those of murder. A case of suicide is mentioned by Doctor Devergie, (Annales d'Hygiene, transcribed by Trebuchet, Jurisprudence de la Medecine, p. 40,) which bears a striking analogy to a murder. The individuul went to the cemetery of Pere la Chaise, near Paris, and with a razor inflicted a wound on himself immediately below the os hyoide; the first blow penetrated eleven lines in depth; a second, in the wound made by the first, pushed the instrument to the depth of twenty-one lines; a third extended as far as the posterior of the pharynx, cutting the muscles which attached the tongue to the oshyoide, and made a wound of two inches in depth. Imagine an enormous wound, immediately under the chin, two inches in depth, and three inches and three lines in width, and a foot in circumference; and then judge whether such wound could not be easily mistaken as having been made by a stranger, and not by the deceased. Vide Death, and 1 Briand, Med. Leg. 2e partie, c. 1, art. 6.

SUIT. An action. The word suit in the 25th section of the judiciary act of 1789, applies to any proceeding in a court of justice, in which the plaintiff pursues, in such court, the remedy which the law affords him. An application for a prohibition is therefore a suit. 2 Pet. 449. According to the code of practice of Louisiana, art. 96, a suit is a real, personal or mixed demand, made before a competent judge, by which the parties pray to obtain their rights, and a decision of their disputes. In that acceptation, the words suit, process and cause, are in that state almost synonymous. Vide Secta, and Steph. Pl. 427; 3 Bl. Com. 395; Gilb. C. P. 48; 1 Chit. Pl. 399; Wood's Civ. Law, b. 4, c. p. 315; 4 Mass. 263; 18 John. 14; 4 Watts, R. 154; 3 Story, Const. §1719. In its most extended sense, the word suit, includes not only a civil action, but also a criminal prosecution, as indictment, information, and a conviction by a magistrate. Ham. N. P. 270.

SUITE. Those persons, who by his authority, follow or attend an ambassador or other public minister.

2. In general the suite of a minister are protected from arrest, and the inviolability of his person is communicated to those who form his suite. Vattel, lib. 4, c. 9, §120. See 1 Dall. 177; Baldw. 240; and Ambassador.

SUITOR. One who is a party to a suit or action in court. One who is a party to an action. In its ancient sense, suitor meant one Who was bound to attend the county court, also, one who formed part of the secta. (q. v.)

SULTAN. The title of the Turkish sovereign and other Mabometan princes.

SUMMARY PROCEEDINGS. When cases are-to be adjudged promptly, without any unnecessary form, the proceedings are said to be summary.

2. In no case can the party be tried summarily unless when such proceedings are authorized by legislative autliority, except perhaps in the cases of contempts, for the common law is a stranger to such a mode of trial. 4 Bl. Com. 280; 20 Vin. Ab. 42; Boscawen on Conv.; Paley on Convict.; vide Convictions.

SUMMING UP, practice. The act of making a speech before a court and jury, after all the evidence has been heard, in favor of one of the parties in the cause, is called summing up. When the judge delivers his charge to the jury, he is also said to sum up the evidence in the case. 6 Harg. St. Tr. 832; 1 Chit. Cr. Law, 632.

2. In summing up, the judge should, with much precision and clearness, state the issues joined between the parties, and what the jury are required to find, either in the affirmative or negative. He should then state the substance of the plaintiff's claim and of the defendant's ground of defence, and so much of the evidence as is adduced for each party, pointing out as he proceeds, to which particular question or issue it respectively applies, taking care to abstain as much as possible from giving an opinion as to the facts. It is his duty clearly to state the law arising in the case in such terms as to leave no doubt as to his meaning, both for the purpose of directing the jury, and with a view of correcting, on a review of the case on a motion for a new trial, or on a writ of error, any error he may, in the hurry of the trial, have committed. Vide 8 S. & R. 150; 1 S. & R. 515; 4 Rawle, R. 100, 195, 356; 2 Penna. R. 27; 2 S. & R. 464. Vide Charge; Opinion, (Judgment.)

TO SUMMON, practice. The act by which a defendant is notified by a compepetent officer, that an action has been instituted against him, and that he is required to answer to it at a time and place named. This is done either by giving the defendant a copy of the summons, or leaving it at his house; or by reading the summons to him.

SUMMONERS. Petty officers who cite men to appear in any court.

SUMMONS, practice. The name of a writ commanding the sheriff, or other authorized officer, to notify a party to appear in court to answer a complaint made against him and in the said writ specified, on a day therein mentioned. 21 Vin. Ab. 42 2 Sell. Pr. 356; 3 Bl. Com. 279.

SUMMONS AND SEVERANCE. Vide Severance; and 20 Vin. Ab. 51; Bac. Ab. h. t.; Archb. Civil Plead. 59.

SUMMUM JUS. Extreme right, strict right. It is seldom that extreme right can be administered without the danger of doing injustice, for extreme right may produce extreme wrong. Summum jus, summa injuria.

SUMPTUARY LAWS. Those relating to expenses, and made to restrain excess in apparel.

2. In the United States the expenses of every man are left to his own good judgment, and not regulated by Arbitrary laws.

SUNDAY. The first day of the week.

2. In some of the New England states it begins at sun setting on Saturday, and ends at the same time the next day. But in other parts of the United States, it generally commences at twelve o'clock on the night between Saturday and Sunday, and ends in twenty-four hours thereafter. 6, Gill. & John. 268; and vide Bac. Ab. Heresy, &c. D; Id. Sheriff, N 4; 1 Salk. 78; 1 Sell. Pr. 12; Hamm. N. P. 140. The Sabbath, the Lord's Day, and Sunday, all mean the same thing. 6 Gill. & John. 268; see 6 Watts, 231; 3 Watts, 56, 59.

2. In some states, owing to statutory provisions, contracts made on Sunday are void; 6 Watts, R. 231; Leigh, N. P. 14; 1 P. A. Browne, 171; 5 B. & C. 406; 4 Bing. 84; but in general they are binding, although made on that day, if good in other respects. 1 Crompt. & Jervis, 130; 3 Law Intell. 210; Chit. on Bills, 59; Wright's R. 764;,10 Mass. 312 1 Cowen, R. 76, n.; Cowp. 640; 1 Bl. Rep. 499; 1 Str. 702; see 8 Cowen, R. 27; 6 Penn. St. R. 417, 420.

4. Sundays are computed in the time allowed for the performance of an act, but if the last day happen to be a Sunday, it is to be excluded, and the act must in general be performed on Saturday; 3 Penna. R. 201; 3 Chit. Pr. 110; promissory notes and bills of exchange, when they fall due on Sunday, are gen-erally paid on Saturday. See, as to the origin of keeping-Sunday as a holiday, Neale's F. & F. Index, Lord's day; Story on Pr. Notes, §220; Story on Bills, §233; 2 Hill's N. Y. Rep. 587; 2 Applet. R. 264.

SUPER ALTUM MARE. Upon the high sea. Vide High Seas.

SUPER VISUM CORPORE. Upon view of the body. When an inquest is held over a body found dead, it must be super visum corpore. Vide Coroner; Inquest.

SUPERCARGO, mar. law. A person specially employed by the owner of a cargo to take charge of the merchandise which has been shipped, to sell it to the best

advantage, and to purchase returning cargoes and to receive freight, as he may be authorized.

2. Supercargoes have complete control over the cargo, and everything which immediately concerns it, unless their authority is either expressly or impliedly restrained. 12 East, R. 381. Under certain circumstances, they are responsible for the cargo; 4 Mass. 115; see 1 Gill & John. 1; but the supercargo has no power to interfere with the government of the ship. 3 Pardes. n. 646; 1 Boulay-Paty, Dr. Com. 421.

SUPERFOETATION, med. jur. The conception of a second embryo, during the gestation of the first, or the conception of a child by a woman already pregnant with another, during the time of such pregnancy.

2. This doctrine, though doubted, seems to be established by numerous cases. Beck's Med. Jur. 193; Cassan on Superfoetation; New York Medical Repository; 1 Briand, Med. Leg. prem. partie, c. 3, art. 4; 1 Fodere, Med. Leg. §299; Buffon, Hist. Nat. de l'Homme, Puberte.

SUPERFICIARIUS, civ. law. He who has built upon the soil of another, which he has hired for a number of years or forever, yielding a yearly rent. This is not very different from the owner of a lot on ground rent in Pennsylvania. Dig. 43, 18, 1 and 2.

SUPERFICIES. A Latin word used among civilians. It signifies in the edict of the praetor whatever has been erected on the soil, quidquid solo inoedificdtum est. Vide Dig. 43, tit. 18, 1. 1 and 2.

SUPERIOR. One who has a right to command; one who holds a superior rank; as, a soldier is bound to obey his superior. 2. In estates, some are superior to others; an estate entitled to a servitude or easement over another estate, is called the superior or dominant, and the other the inferior or servient estate. 1 Bouv. Inst. n. 1612.

3. Of courts, some are supreme or superior, possessing in -general appellate jurisdiction, either by writ of error or by appeal; 3 Bouv. Inst. n. 2527; the others are called inferior courts.

SUPERNUMERARII, Rom. civil law. From the reign of Constantine to Justinian, advocates were divided into two classes: viz. advocates in title, who were called statute, and supernumeraries. The statutis were inscribed in the mat-riculation books, and formed a part of the college of advocates in each jurisdiction. The supernumeraries were not attached to any bar in particular, and could reside where, they pleased; they took the place of advocates by title, as vacancies occurred in that body. Code Justin., de adv. div. jud. c. 3, 11, 13; Calvini Lex, ad voc.; also Statuti.

SUPERSEDEAS, practice, actions. The name of a writ containing a command to stay the proceedings at law.

2. It is granted on good cause shown that the party ought not to proceed. F. N. B. 236. There are some writs which though they do not bear this name have the effect to supersede the proceedings, namely, a writ of error, when bail is entered, operates as a supersedeas, and a writ of certiorari to remove the proceedings of an inferior into a superior court has, in general, the same effect. 8 Mod. 373; 1 Barnes, 260; 6 Binn. R. 461. But, under special circumstances, the certiorari has not the effect to stay the proceedings, particularly where summary proceedings, as to obtain possession under the landlord and tenant law, are given by statute. 6 Binn. R. 460; 1 Yeates, R. 49; 4 Dall. R. 214; 1 Ashm. R. 230; Vide Vin. Ab. h. t.; Bac. Ab. h. t.; Com. Dig. h. t.; Yelv. R. 6, note.

SUPERSTITIOUS USE, English law. When lands, tenements, rents, goods or chattels are given, secured or appointed for and toward the maintenance of a priest or chaplain to say mass; for the maintenance of a priest, or other man, to pray for the soul of any dead man, in such a church or elsewhere; to have and maintain perpetual obits, lamps, torches, &c., to be used at certain times to help to save the souls of men out of purgatory; in such cases the king by force of several statutes, is authorized to direct and appoint all such uses to such purposes as are truly charitable. Bac. Ab. Charitable Uses and Mortmain, D; Duke on Char. Uses, 105; 6 Ves. 567; 4 Co. 104.

2. In the United States, where all religious opinions are free, and the right to exercise them is secured to the people, a bequest to support a catholic priest, aud perhaps certain other uses in England, would not in this country be considered as superstitious uses. 1 Pa. R. 49; 8 Penn. St. R. 327; 17 S. & R. 388; 1 Wash. 224. It is not easy to see how there can be a supersti-tious use in this country, at least in the acceptation of the British courts. 1 Watts, 224; 4 Bouv. Inst. n. 3985.

SUPERVISOR. An overseer; a surveyor.

2. There are officers who bear this name whose duty it is to take care of the highways.

SUPPLEMENTAL. That which is added to a thing to complete it as a supplemental affidavit, which is an additional affidavit to make out a case; a supplemental bill. (q. v.)

SUPPLEMENTAL BILL, equity plead. A bill already filed to supply some defect in the original bill. See Bill supplemental.

SUPPLICAVIT, Eng. law. The name of a writ issuing out of the king's bench or chancery, for taking sureties of the peace; it is commonly directed to the justices of the peace, when they are averse to acting in the affair in their judicial capacity. 4 Bl. Com. 233; vide Vin. Ab. h, t.; Com. Dig. Chancery, 4 R.; Id. Forcible Entry, D 16, 17.

SUPPLICIUM, civil law. A corporal punishment ordained by law; the punishment of death, so called because it was customary to accompany the guilty man to the place of execution and there offer supplications for him.

SUPPLIES, Eng. Law. Extraordinary grants to the king by parliament, to supply the exigencies of the state. Jacob's Law Dict. h. t.

SUPPORT. The right of support is an easement which one man, either by contract or prescription, enjoys, to rest the joists or timbers of his house upon the wall of an adjoining building, owned by another person. 3 Kent, Com. 435. Vide Lois des Bat. part. 1, c. 3, s. a. 1, §T; Party wall.

SUPPRESSIO VERI. Cocealment of truth.

2. In general a suppression of the truth, when a party is bound to disclose it, vitiates a contract. In the contract of insurance a knowledge of the facts is required to enable the underwriter to calculate the chances and form a due estimate of the risk; and, in this contract perhaps more than any other, the parties are required to represent every thing with fairness. 1 Bla. Rep. 594; 3 Burr. 1809.

3. Suppressio veri as well as suggestio falsi is a ground to rescind an agreement, or at least not to carry it into execution. 3 Atk. 383; Prec. Ch. 138; 1 Fonb. Eq. c. 2, s. 8; 1 Ball & Beatty, 241; 3 Munf. 232 1 Pet. 383; 2 Paige, 390 4 Bouv. Inst. n. 3841. Vide Concealment; Mis-representation; Representationl: Suggestio falsi.

SUPRA PROTEST. Under protest. Vide Acceptance supra protest; dceptor supra protest; Bills of Exchange.

SUPREMACY. Sovereign dominion, authority, and preeminence; the highest state. In the United States, the supremacy resides in the people, and is exercises by their constitutional representatives, the president and congress. Vide Sovereignty.

SUPREME. That which is superior to all other things; as the supreme power of the state, which is an authority over all others. The supreme court, which is superior to all other courts.

SUPREME COURT. The court of the highest jurisdiction in the United States, having appellate jurisdiction over all the other courts of the United. States, is so called. Its powers are examined under the article Courts of the United States.

2. The following list of the judges who have had seats on the bench of this court is given for the purpose of reference.

Chief Justices. John Jay, appointed September 26, 1789, resigned in 1795.

John Rutledge, appointed July 1, 1795, resigned in 1796.

Oliver Ellsworth, appointed March 4, 1796, resigned in 1801.

John Marshall, appointed January 31, 1801, died July 6, 1835.

Roger B. Taney, appointed March 15, 1836. Associate Justices.

William Cushing, appointed September 27, 1789, died in 1811.

James Wilson, appoiuted September 29, 1789, died in 1798.

John Blair, appointed September 30, 1789, died in 1796.

James Iredell, appointed February 10, 1790, died in 1799.

Thomas Johnson, appointed November 7, 1791, resigned in 1793.

William Patterson, appointed March 4, 1793, in the place of Judge Johnson, died in 1806.

Samuel Chase, appointed January 7, 1796, in the place of Judge Blair, died in 1811.

Bushrod Washington, appointed December 20,1798, in the place of Judge Wilson, died November 26, 1829.

Alfred Moore, appointed December 10, 1799 in the place of Judge Iredell, resigned in 1864.

William Johnson, appointed March 6, 1804, in the place of Judge Moore, died in 1835.

Brockholst Livingston, appointed November 10, 1806, in the place of Judge Patterson, died in 1823.

Thomas Todd, appointed March 3, 1807, under the act of congress of February, 1807, providing for an additional justice, died in 1826.

Gabriel Duval, appointed November 18, 1811, in the place of Judge Chase, resigned in January, 1835.

Joseph Story, appointed November 18, 1811, in the place of Judge Cushing. Smith Thompson, appointed December 9, 1823, in the place of, Judge Livingston, deceased.

Robert Trimble, appointed May 9, 1826, in the place of Judge Todd, died in 1829.

John McLean, appointed March 1829, in the place of Judge Trimble, deceased.

Henry Baldwin, appointed January 1830, in the place of Judge Washington, deceased.

James M. Wayne, appointed January 9, 1835, in the place of Judge Johnson, deceased.

Philip P. Barbour, appointed March 15, 1836, died February 25,1841.

John Catron, appointed March 8, 1837, under the act of congress providing for two additional judges.

John McKinley, appointed September 25, 1837, under the last mentioned act.

Peter V. Daniel, appointed March 3, 1841, in the place of Judge Barbour, deceased.

Samuel Nelson, appointed February 14, 1845, in the place of Judge Thompson, deceased.

Levi Woodbury, appointed September 20, 1845, in the recess of senate, in the place of Judge Story, deceased: his nomination confirmed January 3, 1846.

Robert C. Grier, appointed August 4, 1846, in the place of Judge Baldwin, deceased.

Benj. Robbins Curtis, appointed 1851, in the recess of the senate, in the place of Judge Woodbury, deceased: his nomination confirmed

The present judges of the supreme court are,

Chief Justice. Roger B. Taney. Associate Justices. John McLean, James M. Wayne, John Catron, John McKinley, Peter V. Daniel, Samuel Nelson, Robert C. Grier, and B. Robbins Curtis.

3. In the several states there are also supreme courts; their powers aud jurisdiction will be found under the names of the several states.

SUR. A French word which signifies upon, on. It is very frequently used in connexion with other words as, sur rule to take deposition, sur trover and conversion, and the like.

SUR CUI ANTE DIVORTIUM. The name of a writ issued in favor of the heir of the wife, where the hushand alienated the wife's lands, during the coverture, and afterwards they were divorced and she died, to recover the lands from the alienee. Vide Cui ante divortium.

SURCHARGE, chancery practice. When a bill is filed to open an account, stated, liberty is sometimes given to the plaintiff to surcharge and falsify such account. That is, to examine not only errors of fact, but errors of law. 2 Atk. 112; 11 Wheat. 237; 2 Ves. 565.

2. "These terms, `surcharge,' and `falsify,'" says Mr. Justice Story, 1 Eq. Jur. §525, "have a distinct sense in the vocabulary of courts of equity, a little removed from that, which they bear in the ordinary language of common life. In the language of common life, we understand `surcharge' to import an overcharge in quantity, or price, or degree, beyond what is just and reasonable. In this sense, it is nearly equivalent to `falsify;' for every item, which is not truly charged, as it should be, is false; and by establishing such overcharge it is falsified. But, in the sense of courts of equity, these words are used in contradistinction to each other. A surcharge is appropriately applied to the balance of the whole account; and supposes credits to be omitted, which ought to be allowed. A falsification applies to some item in the debets; and supposes, that the item is wholly false, or in some part erroneous. This distinction is taken notice of by Lord Hardwicke; and the words used by him are so clear, that they supersede all necessity for farther commentary. `Upon a liberty to the plaintiff to surcharge, and falsify,' says he, `the onus probandi is always on the party having that liberty; for the court takes it as a stated account, and establishes it. But, if any of the parties can show an omission, for which credit ought to be, that is, a surcharge, or if anything is inserted, that is a wrong charge, he is at liberty to show it, aud that is a falsification. But that must be by proof on his side. And that makes a great difference between the general cases of an open account, and were only [leave] to surcharge and falsify; for such must be made out."

SURETY, contracts. A person who binds himself for the payment of a sum of money or for the performance of something else, for another, who is already bound for the same. A surety differs from a guarantor, and the latter cannot be sued until after a suit against the principal. 10 Watts, 258.

2. The surety differs from bail in this, that the latter actually has, or is by law presumed to have, the custody of his principal, while the former has no control over him. The bail may surrender his principal in discharge of his obligation; the surety cannot be discharged by such surrender.

3. In Pennsylvania it has been decided that the creditor is bound to sue the principal when requested by the surety, and the debt is due; and that when proper notice is given by the surety that unless the principal be sued, be will consider himself discharged, he will be so considered, unless the principal be sued. 8 Serg. & Rawle, 116; 15 Serg. & Rawle, 29, 30; S. P. in Alabama, 9 Porter, R. 409. But in general a creditor may resort to the surety for the payment of his debt in the first place, without applying to the principal. 1 Watts, 28O; 7 Ham. part 1, 223. Vide Bouv. Inst. Index, h. t.; Contribution; Contracts; Suretyship.

SURETY OF THE PEACE, crim. law. A security entered into before. Some competent court or officer, by a party accused, together with some other person, in the form of recognizance to the commonwealth in a certain sum of money, with, a condition that the accused shall keep the peace towards all the citizens of the commonwealth. A security for good behaviour is a similar recognizance with a condition that the accused shall be of good behaviour.

2. This security may be demanded by a court or officer having jurisdiction from all persons who threatened to kill or to, injure others, or who by their acts give reason to believe they will commit a breach of the peace. And even after an acquittal a prisoner may be required to give scourity of the peace or good behaviour, when the circumstances of the case justify a court in believing the public good requires it. 2 Yeates, R. 437 Bac. Ab. h. t.; 1 Binn. R. 98, note; Com. Dig. h. t.; Yin. Ab. h. t.; Bl. Com. B. 4, c. 18, p. 251.

3. To obtain surety to keep the peace, the party requiring it must swear or affirm be fears a present or future danger, and not merely swear or affirm to a breach of the peace which is past; it is usual, however, to state such injuries, and when the circumstances warrant it, a threat of their repetition, as a legitimate ground for fearing future injury, which fear must always be stated. 1 Chit. Pr. 677.

4. A recognizance to keep the peace is forfeited only by an actual attack or threat of bodily harm, or burning a house, and the like, but not by bare words Of h an choler. Hawk. h. 1, c. 60, s. 2. Vide Good Behaviour.

SURETYSHIP, contracts. An accessory agreement by which a person binds himself for another already bound, either in whole or in part, as for his debt, default or miscarriage.

2. The person undertaken for must be liable as well as the person giving the promise, for otherwise the promise would be a principal and not a collateral agreement, and the promissor would be liable in the first instanee; for example, a married woman would. Not be liable upon her contract, and the person who should become surety for her that she would perform it would be responsi-ble as a principal and not as a surety. Pitm. on P. & S. 13; Burge on Sur. 6; Poth. Ob. n. 306. If a Person undertakes as a surety when he knows the obligation, of the principal is void, he becomes a principal: 2 Id. Raym. 1066; 1 Burr. 373.

3. As the contract of suretyship must relate to the same subject as the principal obligation, it follows that it must not be of greater extent or more onerous' either in its amount, or in the time or manner, or place of performance, than such principal obligation; and if it so exceed, ii will be void, as to such excess. But the obligation of the surety may be less onerous, both in its amount, and in the time, place and manner of its performance, that of the principal debtor; it may be for a less amount, or the time may be more protracted. Burge, on Sur. 4, 5.

4. The contract of suretyship may be entered into by all persons who are sui juris, and capable of entering into other contracts. See Parties to contracts.

5. It must be made upon a sufficient consideration. See Consideration.

6. The contract of suretyship or guaranty, requires a present agreement between the contracting parties; and care must be taken to observe the distinction between an actual guaranty, and an offer to guaranty at a future time; when an offer is made, it must be accepted before it becomes binding. 1 M. & S. 557; 2 Stark. 371; Cr. M. & Ros. 692.

7. Where the statute of frauds, 29 Car. II., c. 3, is in force, or its principles have been adopted, the contract of suretyship "to answer for the debt, default or miscarriage of another person," must be in writing, &c.

8. The contract of suretyship is discharged and becomes extinct, 1st. Either by the terms of the contract itself. 2d. By the acts to which both the credi-tor and principal alone are parties. 3d. By the acts of the creditor and sure-ties. 4th. By fraud. 5th. By operation of law.

9. - §1. When by his contract the surety limits the period of time for which he is willing to be responsible, it is clear he cannot be beld liable for a longer period; as when he engages that an officer who is elected annually shall faithfully perform his duty during his continuance in office; his obligation does not extend for the performance of his duty by the same officer who may be elected for a second year.

Burge on Sur. 63, 113; 1 McCord, 41; 2 Campb. 39; 3 Ad. & Ell. N. S. 276; 2 Saund. 411 a; 6 East, 512; 2 M. & S. 370; New R. (5 B. & P.) 180; 2 M. & S. 363; 9 Moore, 102.

10. - §2. The contract of suretyship becomes extinct or discharged by the acts of the principal and of the creditor without any act of the surety. This may be done, 1. By payment, by the principal. 2. By release of the principal. 3. By tender made by principal to the creditor. 4. By compromise. 5. By accord and satisfaction. 6. By novation. 7. By delegation. 8. By set-off. 9. By alteration of the contract.

11. - 1. When the principal makes payment, the sureties are immediately dis- charged, because the obligation no longer exists. But as payment is the act of two parties, the party tendering the debt and the party receiving it, the money or thing due must be accepted. 7 Pick 88; 4 Pick. 83; 8 Pick. 122. See Payment.

12. - 2. As the release of the principal discharges the obligation, the surety is also discharged by it.

13. - 3. A lawful tender made by the principal or his authorized agent, to the creditor or his authorized agent, will discharge the surety. See. 2 Blackf. 87; 1 Rawle, 408; 2 Fairf. 475; 13 Pet. 136.

14. - 4. When the creditor and principal make a compromise by which the principal is discharged, the surety is also discharged. 11 Ves. 420; 3 Bro. C. C. 1; Addis. on Contr. 443.

15. - 5. Accord and satisfaction between the principal and the creditor will discharge the surety, as by that the whole obligation becomes extinct. See Accord and satisfaction.

16. - 6. It is evident that a simple novation, or the making a new contract and annulling the old, must, by the destruction of the obligation, discharge the surety.

17. - 7. An absolute delegation, where the principal procures another person to assume the payment upon condition that he shall be discharged, will have the effect to discharge the surety. See Delegation.

18. - 8. When the principal has a just set-off to the whole claim of the creditor, the surety is discharged.

19. - 9. If the principal and creditor change the nature of the contract, so that it is no longer the same, the surety will be discharged; and even extending the time of

payment, without the consent of the surety, when the agreement to give time is founded upon a valuable consideration, is such an alteration of the contract as discharges the surety. See Giving Time.

20. - §3. The contract is discharged by the acts of the creditor and surety, 1. By payment made by the surety. 2. By release of the surety by the creditor. 3. By compromise between them. 4. By accord and satisfaction. 5. By set off.

21. - §4. Fraud by the creditor in relation to the obligation of the surety, or by the debtor with the knowledge or assent of the creditor, will discharge the liability of the surety. 3 B. & C. 605; S. C. 6 Dowl. & Ry. 505; 6 Bing. N. C. 142.

22. - §5. The contract of suretyship is discharged by operation of law, 1. By confusion. - 2. prescription, or the act of limitations. 3. By bankruptcy.

23. - 1. The contract of suretyship is discharged by confusion or merger of rights; as, where the obligee marries the obligor. Burge on Sur. 256; 2 Ves. p. 264; 1 Salk. 306; Cro. Car. 551.

24. - 2. The act of limitations or prescription is a perfect bar to a recovery against a surety, after a sufficient lapse of time, when the creditor was sui juris and of a capacity to sue.

25. - 3. The discharge of the surety under the bankrupt laws, will put an end to his liability, unless otherwise provided for in the law.

26. The surety has the right to pay and discharge the obligation the moment the principal is in default, and have immediate recourse to his principal. He need not wait for the commencement of an action, or the issue of legal process, but he cannot accelerate the liability of the principal, and if he pays money voluntarily before the time of payment arrives, he will have no cause of action until such time, or if he pays after the principal obligation has been discharged, when he was under no obligation to pay, he has no ground of action,.

27. Co-sureties are in general bound in solido to pay the debt, when the principal fails, and if one be compelled to pay the whole, he may demand contribution from the rest, and recover from them their several proportions of their common liability in an action for money paid by him to their use. 6 Ves. 807; 12 M. & W. 421 8 M. & W. 589; 4 Scott, N. S. 429. See, generally, 15 East, R. 617; Yelv. 47 n.; 20 Vin. Ab. 101; 1 Supp. to Ves. jr. 220, 498, 9; Ayliffe's Pand. 559; Poth. Obl. part 2, c. 6; 1 Bell's Com. 350, 5th ed.; Git-ing time; Principal; Surety.

SURGERY, med. jur. That part of the healing art which relates to external diseases; their treatment; and, specially, to the manual operations adopted for their cure.

2. Every lawyer should have some acquaintance with surgery; his knowledge on this subject will be found useful in cases of homicide and wounds.

SURNAME. A name which is added to the christian name, and which, in modern times, have become family names.

2. They are called surnames, because originally they were written over the name in judicial writings and contracts. They were and are still used for the purpose of distinguishing persons of the same name. They were taken from something attached to the persons assuming them, as John Carpenter, Joseph Black, Samuel Little, &c. See Name.

SURPLUS. That which is left from a fund which has been appropriated for a particular purpose; the remainder of a thing; the overplus the residue. (q. v.) See 18 Ves. 466.

2. The following is an example of a surplus; if a thing be put in pledge as a security to pay one hundred dollars, and it be afterwards sold for one hundred and fifty dollars, the fifty dollars will be the surplus. Wolff, Inst. §697. See Overplus; Residue.

SURPLUSAGE, pleading. A superfluous and useless statement of matter wholly foreign and impertinent to the cause.

2. In general surplusagium non nocet, according to the maxim utile per inutile non vitiatur; therefore if a man in his declaration, plea, &c., make mention of a thing which need, not be stated, but the matter set forth is grammatically right, and perfectly sensible, no advantage can be taken on demurrer. Com. Dig. Pleader, C 28, E 2; 1 Salk. 325; 4 East, 400; Gilb. C. P. 131; Bac. Ab. Pleas, 1, 4; Co. Litt. 303, b; 2 Saund. 306, n. 14; 5 East 444; 1 Chit. Pl. 282; Lawes on Pl. 63; 7 John. 462; 3 Day, 472; 2 Mass. R. 283; 13 John. 80.

3. When, by an unnecessary allegation the plaintiff shows he has no cause of action, the defendant may demur. Com. Dig. Pleader, c. 29; Bac. Ab. Pleas, 1, 4; see 2 East, 451; 4 East, 400; Dougl. 667; 2 Bl. Rep. 842; 3 Cranch, 193; 2 Dall. 300; 1 Wash. R. 257.

4. When the surplusage is not grammatically set right, or it is unintelligible and, no sense at all can be given it, or it be contradictory or repugnant to what is before

alleged, the adversary may take advantage of it on special demurrer. Gilb. C. P. 132; Lewes on Pl. 64.

5. When a party alleges a material matter with an unnecessary detail of circumstances, and the essential and non-essential parts of a statement are, in their nature, so connected as to be incapable of separation, the opposite party may include under his traverse the whole matter alleged. And as it is an established rule that the evidence must correspond with the allegations, it follows that the party who has thus pleaded such unnecessarly matter will be required to prove it, and thus he is required to sustain an increased burden of proof, and incurs greater danger of failure at the trial. For example, if in justifying the taking of cattle damage feasant, in which case it is sufficient to allege that they were doing damage to his freehold, he should state a seisin in fee, which is traversed, be must prove a seisin in fee. Dyer, 365; 2 Saund. 206, a, note 22 Steph. on Pl. 261, 262; 1 Smith's Lead. Cas. 328, note; 1 Greenl. Ev. §51 1 Chit. Pl. 524, 525; U. S. Dig. Pleading, VII. c.

SURPLUSAGE, accounts. A greater dishursement than the charges of the accountant amount to.

SURPRISE. This term is frequently used in courts of equity and by writers on equity jurisprudence. It signifies the act by which a party who is entering into a contract is taken unawares, by which sudden confusion or perplexity is created, which renders it proper that a court of equity should relieve the party so surprised. 2 Bro. Ch. R. 150; 1 Story, Eq. Jur. §120, note. Mr. Jeremy, Eq. Jur. 366, seems to think that the word surprise is a technical expression, and nearly synonymous. with fraud. Page 383, note. It is sometimes, used in this sense when it is deemed presumptive of, or approaching to fraud. 1 Fonbl. Eq. 123 3 Chan. Cas. 56, 74, 103, 114. Vide 6 Ves. R. 327, 338; 2 Bro. Ch. R. 826; 16 Ves. R. 81, 86, 87; 1 Cox, R. 340; 2 Harr. Dig. 92.

2. In practice, by surprise is understood that situation in which a party is placed, without any default of his own, which will be, injurious to his interest. 8 N. AS. 407. The courts always do everything in their power to relieve a party from the effects of a surprise, when he has been diligent in endeavouring to avoid it. 1 Clarke's R. 162; 3 Bouv. Inst. n. 3285.

SURREBUTTER, pleading. The plaintiff's answer to the defendant's rebutter is governed by the same rules as the replication. (q. v.) Vide 6 Com. Dig. 185; 7 Com. Dig. 389

SUBREJOINDER, pleading. The plaintiff's answer to the defendant's rejoinder. It is governed in every respect by the same rules as the replication. (q. v.) Steph. Pl. 77; Arch., Civ. Pl. 284; 7 Com. Dig. 389.

SURRENDER, estates, conveyancing. A yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, by which the lesser estate is merged in the greater by mutual agreement, Co. Litt. 337, b.

2. A surrender is of a nature directly opposite to a release; for, as the latter operates by the greater estate descending upon the less, the former is the falling of a less estate into a greater, by deed. A surrender immediately divests the estate of the surrenderer, aud vests it in the surrenderee, even without the assent (q. v.) of the latter. Touchs. 300, 301.

3. The technical and proper words of this conveyance are, surrender and yield up; but any form of words; by which the intention. of the parties is sufficiently manifested, will operate as a surrender, Perk. §607; 1 Term Rep. 441; Com. Dig. Surrender, A.

4. The surrender may be express or implied. The latter is when an estate, incompatible with the existing estate, is accepted or the lessee takes a new lease of the same lands. 16 Johns. Rep. 28; 2 Wils. 26; 1 Barn. & A. 50; 2 Barn. & A. 119; 5 Taunt. 518, and see 6 East, R. 86; 9 Barn. & Cr. 288 7 Watts, R. 128. Vide, generally, Cruise, Dig. tit. 32, c. 7; Com. Dig. h. t.; Vin. Ab. h. t.; 4 Kent, Com. 102; Nels. Ab. h. t.; Rolle's Ab. h. t. 11 East, R. 317, n.

5. The deed or instrument by which a surrender is made, is also called a surrender. For the law of presumption of surrenders, see Math. on Pres. ch. 13, p. 236; Addis. on Contr. 658-661.

SURRENDER OF CRIMINALS. The act by which the public authorities deliver a person accused of a crime, and who is found in their, jurisdiction, to the authorities within whose jurisdiction it is alleged the crime has been committed. Vide Extradition; Fugitives from justice.

SURRENDEREE. One to whom a surrender has been made.

SURRENDEROR. One who makes a surren der; as when the tenant gives up the estate and cancels his lease before the expiration of the term; one who yields up a freehold estate for the purpose of conveying it.

SURREPTITIOUS. That which is done in a fraudulent stealthy manner.

SURROGATE. In some of the states, as in New Jersey, this is the name of an officer who has jurisdiction in granting letters testamentary and letters of administration.

2. In some states, as in Pennsylvania, this officer is called register of wills and for granting letters, of administration in others, as in Massachusetts, he is called judge of probates.

SURVEY, The act by which the quantity of a piece of land is ascertained; the paper containing a statement of the courses, distances, and quantity of land, is also called a survey.

2. A survey made by authority of law and duly returned into the land office, is a matter of record, and of equal dignity with the patent. 3 Marsh. 226; 2 J. J. Marsh, 160. See 3 Greenleaf, 126; 5 Greenleaf, 24; 14 Mass. 149 1 Harr. & John. 20 1 1 Overt. 199; 1 Dev. & Bat. 76.

3. By survey is also understood an examination; as, a survey has been made of your house, and now the insurance company will insure it.

SURVIVOR. The longest liver of two or more persons.

2. In crises of partnership, the surviving partner is entitled to have all the effects of the partnership, and, is bound to pay all the debts owing by the firm. Gow on Partn. 157; Watson on Partn. 364. He is, however, bound to account for the surplus to the representatives of his deceased partners, agreeably to their respective rights.

3. A surviving trustee is generally vested with all the powers of all the trustees, and the surviving administrator is authorized to act for the estate as if he had been sole administrator. As to the presumption of survivorship, when two or more persons have perished by the same event, see Civ. Code of Lo. art. 930 to 933 and vide Death; Cro. Eliz. 503; 1 Bl. Rep. 610 2 Phill. Rep. 261; S. C. 1 Eccles. Reports, 250; Fearne on Rem. iv.; Poth. on Obli. by Evans, vol. 2, p. 346; 8 Ves. 10; 14 Ves. 578 17 Ves. 482; 6 Taunt. 213; Cowp. 257; 5 Ves. 485. Vide, generally, 2 Fonbl. Eq. 102; 8 Vin. Ab. 323; 20 Vin. Ab. 146; 8 Com. Dig. 475, 594; 1 Suppl. to Ves. jun. 115, 186, 407, 8, 2 Suppl. to Ves. jun. 47, 296, 340, 391,477; 1 Fodere, Med. Leg. §424-483.

4. The right of survivorship among joint-tenants has been abolished, except as to estates beld in trust, in Pennsylvania, New York, Kentucky, Virginia, Indiana, Missouri, Tennessee, Alabama, Georgia, North and South Carolina. Vide Estates in Joint-tenancy. In Connecticut it never existed. 1 Swift's Dig. 102 see 1 Hill. Ab. 440. As to survivorship among legatees, see 1 Turn. & R. 413; 1 Br. C. C. 574; 3 Russ. 217. See Death; Estates in Joint-tenancy; Joint-tenants; Partnership.

SUS' PER COLL', EngI. law. In the English practice, a calendar is made out of attainted criminals, and the judge signs the calendar with their separate judgments in

the margin. In the case of a capital felony. it is written opposite the prisoner's name, "let him be hanged by the neck," which, when the proceedings were in Latin, was, "suspendatur per collum," or, in the abbreviated form, "sus' per coll'." 4 Bl. Comm. 403.

SUSPENDER, Scotch law. He in whose favor a suspension is made.

2. In general a suspender is required to give caution to pay the debt in the event it shall be found due. Where the suspender cannot, from his low or sus-pected circumstances, procure unquestionable security, the lords admit jura-tory caution; but the reasons of suspension are in that case, to be considered with particular accuracy at passing the bill. Act. S. 8 Nov. 1682; Ersk. Prin. L. Scot. 4, 3, 6.

SUSPENSE. When a rent, profit a prendre, and the like, are, in consequence of the unity of possession of the rent, &c., of the land out of which they issue, not in esse for a time, they are said to be in suspense, tunc dormiunt, but they may be revived or awakened. Co, Litt. 313 a.

SUSPENSION. A temporary stop of a right, of a law, and the like.

2. In times of war the habeas corpus act maybe suspended by lawful authority.

3. There may be a suspension of an officer's duties or powers, when he is charged with crimes. Wood's Inst. 510.

4. Suspension of a right in an estate is a partial extinguishment, or an extinguishment for a time. It differs from an extinguishment in this. A suspended right may be revived; one extinguished is absolutely dead. Bac. Ab. Extinguishment, A.

5. The suspension of a statute for a limited time operates so as to prevent its operation for the time, but it hits not the effect of a repeal. 3 Dall. 365.

SUSPENSION, Scotch law. That form of law by which the effect of a sentence-condemnatory, that has not yet received execution, is stayed or postponed, till the cause be again considered. Ersk. Prin. L. Scotl. 4, 3, 5. Suspension is competent also, even where there is no decree, for putting a stop to any illegal act whatsoever. Id. 4, 3, 7.

2. Letters of suspension bear the form of a summons, which contains a warrant to cite the charger, Ib.

SUSPENSION, eccl. law. An ecclesiastical censure, by which a spiritual person is either interdicted tho exercise of his ecclesiastical function, or hin-dered from receiving the profits of his benefice. It may be partial or total; for a limited time, or forever, when it is called deprivation or amotion. Ayl. Parerg. 501.

SUSPENSION OF ARMS. An agreement between belligerents, made for a short time or for a particular place, to cease hostilities between them. See Armistice. Truce.

SUSPENSION OF A RIGHT. The act by which a party is deprived of the exercise of his right, for a time.

2. When a right is suspended by operation of law, the right is revived the moment the bar is removed; but when the right is suspended by the act of the party, it is gone forever. See 1 Roll. Ab. tit. Extinguishment, L, M.

SUBPENSIVE CONDITION. One which prevents a contract from going into operation until it has been fulfilled; as if I promise to pay you one thousand dollars on condition that the ship Thomas Jefferson shall arrive from Havre, the contract is suspended until the arrival of the ship. 1 Bouv. Inst. n. 731.

SUSPICION. A belief to the disadvantage of another, accompanied by a doubt.

2. Without proof, suspicion, of itself, is evidence of nothing. When a crime has been committed, an arrest may be made when, 1st. There are such circumstances as induce a strong presumption of guilt; as being found in possession of goods recently stolen, without giving a probable account of having obtained the possession honestly. 2d. The absconding of the party accused. 3d. Being found in company of known offenders. 4th. Living an idle disorderly life, without any apparent means of support. In such cases the arrest must be made as in other cases. Vide 20 Vin. Ab. 150; 4 Bl. Com. 290.

SUTLER. A man whose employment is to sell provisions aud liquor to a camp.

2. By the articles of war, art. 29, no sutler is permitted to sell any kind of liquor or victuals, or to keep his house or shop open for the entertainment of soldiers, after nine at night, or before the beating of the reveillee, or upon Sundays during divine service or sermon, on penalty of being dismissed all future sutling. And by art. 60, all sutlers are to be subject to orders according to the rules and discipline of war.

SWAINMOTE COURT, Engl. law. The court within the forest to which all the freeholders owe suit and service. Bac. Ab. Courts of the Forest, 2.

TO SWEAR. To take an oath, judicially administered. Vide Affirmation; Oath.

2. To swear also signifies to use such profane language as is forbidden by law. This is generally punished by statutory provisions in the several states.

SWINDLER, criminal law. A cheat; one guilty of defrauding divers persons. 1 Term Rep. 748; 2 H. Blackst. 531; Stark. on Sland. 135.

2. Swindling is usually applied to a transaction, where the guilty party procures the delivery to him, under a pretended contract, of the personal property of another, with the felonious design of appropriating it to his own use. 2 Russel on Crimes, 130; Alison, Prine. Cr. Law of Scotland, 250; Mass. 406.

SYMBOL. A sign; a token; a representation of one thing by another.

2. A symbolical delivery is equivalent, in many cases, in its legal effects, to actual delivery; as, for example, the delivery of the keys of a warehouse in which goods are deposited, is a delivery sufficient to transfer the property. 1 Atk. 171; 5 John. 335; 2 T. R. 462; 7 T. R. 71; 2 Campb. 243; 1 East, R. 194; 3 Caines, 182; 1 Esp. 598; 3 B. & C. 423.

SYNALLAGMATIC CONTRACT, civil law. A synallagmatic or bilateral contract is one by which each of the contracting parties binds himself to the other; such are the contracts of sale, hiring, &c. Poth. Ob. n. 9. Vide Contract.

SYNDIC. A term used in the French law, which answers in one sense to our word assignee, when applied to the management of bankrupts' estates; it has also a more extensive meaning; in companies and communities, syndics are they who are chosen to conduct the affairs and attend to the concerns of the body corporate or community; and in that sense the word corresponds to director or manager. Rodman's Notes to Code. de Com. p. 351; Civ. Code of Louis. art. 429; Dict. de Jurisp. art. Syndic.

SYNGRAPH. A deed, bond, or other instrument of writing, under the band and seal of all the parties. It was so called because the parties wrote together.

2. Formerly such writings were attested by the subscription and crosses of the witnesses; afterwards, to prevent frauds and concealmenta, they made deeds of mutual covenant in a script and rescript, or in a part and counterpart, and in the middle between the two copies they wrote the word syngraphus in large letters, which being cut through the parchment, and one being delivered to each party, on being afterwards put together, proved their authenticity.

3. Deeds thus made were denominates syngraphs by the canonists, and by the common lawyers chirographs. (q. v.) 2 Blackstone's Commentaries, 296.

SYNOD. An ecclesiastical assembly.

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TABELLIO. An officer among the Romans who reduced to writing and into proper form, agreements, contracts, wills, and other instruments, and witnessed their execution. The term tabellio is derived from the Latin tabula, seu tabella, which in this sense, signified those tables or plates covered with wax which were then used instead of paper. 8 Toull. n. 5; Delauriere, sur Ragneau, mot Notaire.

2. Tabelliones differed from notaries in many respects: they had judicia jurisdiction in some cases, and from their judgments there were no appeals. Notaries were then the clerks or aiders of the tabelliones, they received the agreements of the parties, which they reduced to short notes; and these contracts were not binding until they were written in extenso, which was done by the tabelliones. Encyclopedie de, M. D'Alembert, mot Tabellion; Jac. Law. Dict. Tabellion; Merlin, Repertoire, mot Notaire, §1; 3 Giannone's Istoria di Napoli, p. 86.

TABLEAU OF DISTRIBUTION. In Louisiana this is a list of creditors of an insolvent estate, stating what each is entitled to. 4 N. S. 535.

TABLES. A synopsis in which many particulars are brought together in a general view; as genealogical tables, which are composed of the names of persons

TABULA IN NAUFRAGIO, Engl. law. Literally a plank in a wreck. This figure has been used to denote the condition of a third mortgagee, who obtained his mortgage without any knowledge of a second mortgage, and then, being puisne, takes the first

encumbrance; in this case he shall squeeze out and have satisfaction before the second. 2 Ves. 573; 2 Fonbl. Eq. B. 3, c. 2, §2; 2 Ventr. 337; 1 Ch. Cas. 162; 1 Story, Eq. §§414, 415; and Tacking.

TACIT. That which, although not expressed, is understood from the nature of the thing, or from the provision of the law; implied.

TACIT LAW. A law which derives its authority from the common consent of the people, without any legislative enactment. 1 Bouv. Inst. n. 120.

TACK, Scotch law. A contract of location by which the use of land, or any other immovable subject, is, set to the lessee or tacksman for a certain yearly rent, either in money, the fruits of tho ground, or services. Ersk. Prin. Laws of Scot. B. 2, t. 6, n. 8; 1 Tho. Co. Litt. 209. This word is nearly synonymous with lease.

TACKING, Engl. law. The union of securities given at different times, so as to prevent any intermediate purchasers claiming title to redeem, or otherwise discharge one lien, which is prior, without redeeming or discharging other liens also, which are subsequent to his own title. Jer. Eq. Jur. B. 1, c. 2, §1, p. 188 to 191; 1 Story, Eq. Jur. §412.

2. It is an established doctrine in the English chancery that a bona fide purchaser and without any notice of a defect in his title at the time of the purchase, may lawfully buy any statute, mortgage, or encumbrance, and if he can defend by those at law, his adversary shall have no help in equity to set those encumbrances aside, for equity will not disarm such a purchaser. And as mortgagees are considered in equity as purchasers pro tanto, the same doctrine has extended to them, and a mortgagee who has advanced his money without notice of any prior encumbrance, may, by getting an assignment of a statute, judgment, or recognizance, protect himself from any encumbrance subsequent to such statute, judgment or recognizance, though prior to his mortgage; that is, he will be allowed to tack or unite his mortgage to such old security, and will by that means be entitled to recover all moneys for which such security was given, together with the money due on his mortgage, before the prior. mortgagees are entitled to recover anything. 2 Fonbl. Eq. 306; 2 Cruise, t. 15, c. 5, s. 27; Powell on Morg. Index, h. t.; 1 Vern. 188; 8 Com. Dig. 953; Madd. Ch. Index, h. t.

3. This doctrine is inconsistent with the laws of the several states, which require the recording of mortgages. Caines' Cas. Er. 112; 1 Hop. C. R. 231; 3 Pick. 50; 2 Pick. 517.

4. The doctrine of tacking seems to have been acknowledged in the civil law, Code, 8, 27, 1; but see Dig. 13, 7, 8; and see 7 Toull. 110. But this tacking could not take place

to the injury of intermediate encumbrancers. Story on Eq. §1010, and the authorities cited in the note.

TAIL. An estate tail is an estate of inheritance, to a man or a woman and his or her heirs of his or her body, or heirs of his body of a particular description, or to several persons and the heirs of their bodies, or the heirs generally or specially of the body or bodies of one person, or several bodies. Prest. on Estates, 355; Cruise, tit. 2, c. 1, s. 12.

2. Estates tail, as qualified "in their limitation and extent, are of sev-eral sorts. They have different denominations, according to the circumstances under which, or the persons to whom they are limited. They are usually divided into estates tail general or special.

3. But they may be more advantageously arranged under the following classes.

4. - 1. As to the extent of the degree to which the estates may descend, they are, 1st, general; 2d, qualified.

5. - 2. As to the sex of the person who may succeed, they are, 1st. General, as extending to males or females of the body, without exception. 2d. Special, as admitting only one sex to the succession, and excluding the other sex.

6. - 3. As to the person by whom or by whose body those heirs are to be begotten, they are either, 1st. General, as to all the heirs of the body of a man or woman. 2d. Special, as to the heirs of the body of a man or woman begotten by a particular person, or to the heirs of the two bodies of a man and woman. On the several species of estates tail noticed under this division, it may be observed, that the samer estate may at the same time, be general in one respect; as, for example, to all the heirs of the body in whatever degree they are related; and may be, special in another respect, as that these heirs shall be males, &c. Prest. on Estates, 383, 4.

7. The law relating to entails is diversified in the several states. In Indiana and Louisiana they never existed they are unknown in Illinois and Vermont. In Ohio, Virginia, Tennessee, Kentucky, and New York, estates tail are converted into estates in fee simple by statute; and they may be barred by a simple conveyance in Pennsylvania. In Alabama, Missouri, Mississippi, New Jersey, Connecticut and North Carolina, they have been modified, and in Georgia, they have been abolished without reservation. Griff. Reg. h. t. Vide, generally, 8 Vin. Ab. 227 to 272; 10 Id. 257 to 269; 20 Id. 163; Bac. Ab. Estate in tail; 4 Com. Dig. 17; 4 Kent, Com. 12; Bouv. Inst. Index, h. t.; and. 1 Bro. Civ. Law, 188, where an attempt is made to prove that an estate resembling an estate tail was not unknown to the Romans.

TAKE. This is a technical expression which signifies to be entitled to; as, a devisee will take under the will. To take also signifies to seize, as to take and carry away.

TAKING, crim. torts. The act of laying hold upon an article, with or without removing the same; a felonious taking is not sufficient without a carrying away, to constitute the crime of larceny. (q. v.) And when the taking has been legal, no subsequent act will make it a crime. 1 Moody, Cr. Cas. 160.

2. The taking is either actual or constructive. The former is when the thief takes, without any pretence of a contract, the property in question.

3. A constructive felonious taking occurs when, under pretence of a contract, the thief obtains the felonious possession of goods; as, when under the pretence of hiring, he had a felonious intention at the time of the pretended contract, to convert the property to his own use. The court of criminal sessions for the city and county of Philadelphia have decided that in the case of a man who found a quantity of lumber, commonly called a raft, floating on the river Delaware and fastened to the shore, and sold it, to another person, at so low a price. as to enable the purchaser to remove it, and did no other act himself, but afterwards the purchaser removed it, that thls was a taking by the thief, and he was actually convicted and sentenced to two years imprisonment in the penitentiary. Hill's case, Aug. Sessions, 1838. It cannot be doubted, says Pothier, Contr. de Vente, n. 271, that by selling and delivering a thing which he knows does not belong to him, the party is guilty of theft.

4. When property is left through inadvertence with a person and he conceals it animo furandi, he is guilty of a felonious taking and may be convicted of larceny. 17 Wend. 460.

5. But when the owner parts with the property willingly, under an agreement that he is never to receive the style indentical property, the taking is not felonious; as, when a person delivered to the defendant a sovereign to get it changed, and the defendant never returned either with the sovereign or the change, this was not larceny. 9 C. & P. 741. See 1 Moody, C. C. 179; Id. 185; 1 Hill. R. 94; 2 Bos. & P. 508; 2 East, P. C. 554; 1 Hawk. c. 33, s. 8; 1 Hale, P. C. 507; 3 Inst. 408; and Carrying away; Finder; Invito Domino; Larceny; Robbery.

6. The wrongful taking of the personal property of another, when in his actual possession, or such taking of the goods of another who, has the right of immediate possession, subject the tort feasor to an action. For example, such wrongful taking will be evidence of a conversion, and an action of trover may be maintained. 2 Saund. 47, h. t.; 3 Willes, 55. Trespass is a concurrent remedy in such a case. 3 Wils. 336.

Replevin may be supported by the unlawful taking of a personal chattel. 1 Chit. Pl. 158. Vide Bouv. Inst. Index, h. t.

TALE, comm. law. A denomination of money in China. In the computation of the ad valorem duty on goods, &c. it is computed at one dollar and forty-eight cents. Act of March 2, 1799, s. 61, 1 Sto. L. U. S. 626. Vide Foreign Coins.

TALE, Eng. law. The declaration or count was anciently so called in law pleadings. 3 Bl. Com. 293.

TALES, Eng. law. The name of a book kept in the king's bench office, of such jurymen as were of the tales. See Tales de circumstantibus.

TALES DE CIRCUMSTANTIBUS, practice. Such persons as are standing round. When ever the panel of the jury is exhausted the court order that the jurors wanted shall be selected from among the bystanders which order bears the name of tales d circumstantibus. Bac. Ab. Juries, C.

2. The judiciary act of Sept. 24, 1789, 1 Story, L. U. S. 64, provides, §29, that When from challenges, or otherwise, there shall not be a jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return jurymen de talibus circumstantibus sufficient to complete the panel; and when the marshal or his deputy are disqualified as aforesaid, jurors may be returned by such disinterested persons as the court shall appoint. See 2 Hill, So. Car. R. 381; 2 Penna. R. 412; 4 Yeates, 236; Coxe, 283; 1 Blackf. 63; 2 Harr. & J. 426; 1 Pick. 43, n.

TALLAGE. This word is derived from the French tailler, and signifies liter-ally to cut. In England it is used to signify subsidies, taxes, customs, and indeed any imposition whatever by the government for the purpose of raising a revenue. Bac. Ab. Smuggling, &c. B; Fortesc. De Laud. 26; Madd. Exch. ch. 17; 2 Inst. 531, 532 Spelm. Gl. h. v.

TALLIES, evidence. The parts of a piece of wood out in two, which persons use to denote the quantity of goods supplied by one to the other. Poth. Obl. pt. 4, c. 1, art. 2, §7.

TALZIE, HEIR IN. Scotch law. Heirs of talzie or tailzie, are heirs of estates entailed. 1 Bell's Com. 47.

TANGIBLE PROPERTY. That which may be felt or touched; it must necessarily be corporeal, but it may be real or personal. A house and a horse are, each, tangible

property. The terni is used in contradistinction to property not tangible. By the latter expression, is; meant that kind of property which, though in possession as respects the right, and, consequently, not strictly choses in action, yet differ; from goods, because they are neither tangible nor visible, though the thing produced from the right be perfectly so. In this class may be mentioned copyrights and patent-rights. 1 Bouv. Inst. n. 467, 478.

TARDE VENIT, Practice. The name of a return made by the sheriff to a writ, when it came into his hands too late to be executed before the return day.

2. The sheriff is required to show that he has yielded obedience to the writ, or give a good excuse for his omission; and he may say, quod breve adeo tarde venit quod exequi non possunt. It is usual to return the writ with an indorsement of tarde venit. Com. Dig. Return, D 1.

TARE, weights. An allowance in the purchase and sale of merchandise, for the weight of the box, bag, or cask, or other thing, in which the goods are packed. It is also an allowance made for tiny defect, waste, or diminution in the weight, quality or quantity of goods. It differs from tret. (q. v.)

TARIFF. Customs, duties, toll. or tribute payable upon merchandise to the general government is called tariff; the rate of customs, &c. also bears this name and the list of articles liable to duties is also called the tariff.

2. For the tariff of duties imposed on the importation of foreign merchan-dise into the United States.

TAVERN. A place of entertainment; a house kept up for the accommodation of strangers.

2. These are regulated by various local laws. For the liabilities of tavern keepers, Vide Story on Bailm. art. 7; 2 Kent, Com. 458; 12 Mod. 487; Jones' Bailm. 94; 1 Bl. Com. 430; 1 Roll. Ab. 3, F; Bac. Ab. Inn, &c.; 1 Bouv. Inst. 1015, et seq.; and the articles Inn; Inn-keeper.

TAXES. This term in its most extended sense includes all contributions imposed by the government upon individuals for the service of the state, by whatever name they are called or known, whether by the name of tribute, tithe, talliage, impost, duty, gabel, custom, subsidy, aid, supply, excise, or other name.

2. The 8th section of art. 1, Const. U. S. provides, that "congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay," &c. "But all duties, imposts and excises shall be uniform throughout the United States."

3. In the sense above mentioned, taxes are usually divided into two great classes, those which are direct, and those which are indirect. Under the former denomination are included taxes on land or real property, and under the latter taxes on articles of consumption. 5 Wheat. R. 317.

4. Congress have plenary power over every species of taxable property, except exports. But there are two rules prescribed for their government, the rule of uniformity and the rule of apportionment. Three kinds of taxes, namely, duties, imposts and excises are to be laid by the first rule; and capitation and other direct taxes, by the second rule. Should there be any other species of taxes, not direct, and not included within the words duties, imposts or customs, they might be laid by the rule of uniformity or not, as congress should think proper and reasonable. Id.

5. The word taxes is, in a more confined sense, sometimes applied in contradistinction to duties, imposts and excises. Vide, generally, Story on the Const. c. 14; 1 Kent, Com. 254; 8 Dall. 171; 1 Tuck. Black. App. 232; 1 Black. Com. 308; The Federalist, No. 21, 36; Woodf. Landl. and Ten. 197, 254.

TAXING COSTS, practice. The act by which it is ascertained to what costs a party is entitled.

2. It is a rule that the jury must assess the damages and costs separately, so that it may appear to the court that the costs were not considered, in the damages; and when the jury give costs in an amount insufficient to answer the costs of the suit, the plaintiff may pray that the officer may tax the costs, and such taxation is inserted in the judgment: this is said to be done ex assensu of the plaintiff, because at his prayer. Bac. Ab. Costs, K. The costs are taxed in the first instance, by the prothonotary or clerk of the court. See 2 Wend. R. 244; 1 Cowen, R. 591; 7 Cowen, R. 412; 2 Yerg. R. 245, 310; 6. Yerg. R. 412; Harp. R. 326; 1 Pick. R. 211; 10 Mass. R. 26; 16 Mass. R. 370. A bill of costs having been once submitted to such an officer for taxation, cannot be withdrawn from him and referred to another. 2 Wend. R. 252.

TEAMSTER. One who drives horses in a wagon for the purpose of carrying goods for hire he is liable as a common carrier. Story, Bailm. §496.

TECHNICAL. That which properly belongs to an art.

2. In the construction of contracts, it is a general rule that technical words are to be taken according to their approved and known use in the trade in which the contract is entered into, or to which it relates, unless they have manifestly been understood in another sense by the parties. 2 B. & P. 164; 6 T. R. 320; 3 Stark. Ev. 1036, and the article Construction.

3. Words which do not of themselves denote that they are, used in a technical sense, are to have their plain, popular, obvious and natural meaning. 6 Watts & Serg. 114.

4. The law, like other professions, has a technical language. "When a mechanic speaks to me of the instruments aud operations of his trade,", says Mr. Wynne, Eunom. Dial. 2, s. 5, "I shall be as unlikely to comprehend him, as he would me in the language of my profession, though we both of us spoke English all the while. Is it wonderful then, if in systems of law, and especially among the hasty recruits of commentators, you meet (to use Lord Coke's expression) with a whole army of words that cannot defend themselves in a grammatical war? Technical language, in all cases, is formed from the most intimate knowledge of any art. One words stands for a great many, as it is. always to be resolved into many ideas by definitions. It is, therefore, unintelligible, because it is concise, and it is useful for the same reason." Vide Language.

TEINDS, Scotch Law. That liquid proportion of the rents or goods of the people, which is due to churchmen for performing divine service, or exercising the other spiritual functions proper to their several offices. Ersk. Pr. L. Scot. B. 2, t. 10, s. 2. See Tithes.

TELLER. An officer in a bank or other institution. He is said to take that name from tallier, or one who kept a tally, because it is his duty to keep the accounts between the bank or other institution and its customers, or to make their accounts tally. In another sense teller signifies a person appointed to receive votes. In England the name of teller is given to certain officers in the exchequer.

TEMPORARY. That which is to last for a limited time; as, a temporary sta-tute, or one which is limited in its operation for a particular period of time after its enactment the opposite of perpetual.

TENANCY or TENANTCY. The state or condition of a tenant; the estate held by a tenant, as a tenant at will, a tenancy for years.

TENANT, estates. One who holds or possesses lands or tenements by any kind of title, either in fee, for life, for years, or at will. See 5 Mann. & Gr. 54; S. C. 44 Eng. C. L. Rep. 39; 5 Mann. & Gr. 112; Bouv. Inst. Index, h . t.

2. Tenants may be considered with regard to the estate to which they are en-titled. There are tenants in fee; tenants by the curtesy; tenants in dower; tenants in tail after. possibility of issue extinct; tenants for life tenants for years; tenants from year to year; tenants at Will; and tenants at suffrance. When considered with regard to their number, tenants are in severalty; tenants in common; and joint tenants. There is also a kind of tenant, called tenant to the praecipe. These will be separately examined.

3. Tenant in fee is he who has an estate of inheritance in the land. See Fee.

4. Tenant by the curtesy, is where a man marries a woman seised of an estate of inheritance, that is, of lands and tenements in fee simple or fee tail; and has by her issue born alive, which was capable of inheriting her estate. In this case he shall, on the death of his wife, hold the lands for life, as tenant by the curtesy. Co. Litt. 29, a; 2 Lilly's Reg. 656; 2 Bl. Com. 126. See Curtesy.

5. Tenant in dower is where the hushand of a woman is seised of an estate of inheritance, and dies; in this case, the wife shall have the third part of the lands and tenements of which he was seised at any time during the coverture, to hold to herself during the term of her natural life. 2 Bl. Com. 129; Com. Dig. Dower, A 1. See Dower.

6. Tenant in tail after possibility of issue extinct, is where one is tenant in special tail, and a person from whose body the issue was to spring, dies without issue; or having issue, becomes extinct; in these cases the survivor becomes tenant in tail after possibility of issue extinct. 2 Bl. Com. 124; and vide Estate tail after possibility of issue extinct.

7. Tenant for life, is he to whom lands or tenements are granted, or to which he derives by operation of law a title for the term of his own life, or for that of any other person, or for more lives than one.

8. He is called tenant for life, except when he bolds the estate by the life of another, when he is called tenant er autre vie. 2 Bl. Com. 84; Com. Dig. Estates, E 1; Bac. Ab. Estates, See Estate for life; 2 Lilly's Reg. 557.

9. Tenant for years, is he to whom another has let lands, tenements and hereditaments for a term of certain years, or for a lesser definite period of time, and the lessee enters thereon. 2, Bl. Com. 140; Com. Dig Estates by grant, G.

10. A tenant for years has incident to, and unseparable from his estate, unless by special agreement, the same estovers to which a tenant for life is entitled. See Estate for life. With regard to the crops or emblements, the tenant for years is not, in general,

entitled to them after the expiration of his term. 2 Bl. Com. 144. But in Pennsylvania, the tenant is entitled to the way going crop. 2 Binn. 487; 5 Binn. 285, 289 2 S. & R. 14. See 5 B. & A. 768; this Diet. Distress; Estate for years; Lease; Lessee; Notice to quit.; Underlease.

11. Tenant from year to year, is he to whom another has let lands or tenements, without any certain or determinate estate; especially if an annual rent be reserved Com. Dig. Estates, R 1. And when a person is let into possession as a tenant, without any agreement as to time, the inference now is, that he is a tenant from year to year, until the contrary be proved; but, of course, such presumption may be rebutted. 3 Burr. 1609; 1 T. R. 163; 3 T. R. 16; 5 T. R. 471; 8 T. R. 3; 3 East 451. The difference between a tenant from year to year, and a tenant for years, is rather a distinction in words than in substance. Woodf., L. & J. 163.

12. Tenant at will, is when lands or tenements are let by one man to another, to have and th bold to him at the will of the lessor, by force of which the lessee is in possession. In this case the lessee is called tenant at will.

13. Every lease at will must be at the will of both parties. Co. Lit. 55; 2 Lilly's Reg. 555; 2 Bl. Com. 145., See Com. Dig. Estates, H 1; 12 Mass. 325; 1 Johns. Cas. 33; 2 Caines' C. Err. 314; 2 Caines' R. 169; 17 Mass. R. 282; 9 Johns. R. 331; 13 Johns. R. 235. Such a tenant may be ejected by the landlord at any time. 1 Watt's & Serg. 90.

14. Tenant at suffrance, is he who comes into possession by a lawful demise, and after his term is ended, continues the possession wrongfully, and holds over. Co. Lit. 57, b; 2 Leo. 46; 3 Leo. 153. See 1 Johns. Cas. 123; 5 Johns. R. 128; 4 Johns. R. 150; Id. 312.

15. Tenant in severalty, is he who holds land and tenements in his own right only, without any other person being joined or connected with him in point of interest, during his estate therein. 2 Bl. Com. 179.

16. Tenants in common, are such as hold by several and distinct titles, but by unity of possession. 2 Bl. Com. 161. See Estate in common; 7 Cruise, Dig. Ind. tit. Tenancy in Common; Bac. Abr. Joint-Tenants and Tenants in Common; Com. Dig. Abatement, E 10, F 6; Chancery, 3 V 4 Devise, N 8; Estates, K 8, K 2 Supp. to Ves. jr. vol. 1, 272, 315; 1 Vern. It. 353; Arch. Civ. Pl. 53, 73.

17. Tenants in common may have title as such to real or personal property; they may be tenants of a house, land, a horse, a ship, and the like.

18. Tenants in common are bound to account to each other; but they are bound to account only for the value of the property as it was when they entered, and not for any improvement or labor they put upon it, at their separate expense. 1 McMull. R. 298. Vide Estates in common; and 4 Kent, Com. 363. Joint tenants, are such as hold lands or tenements by joint tenancy. See Estate in joint tenany; 7 Cruise, Dig. Ind. tit. Joint Tenancy; Bac. Abr. Joint Tenants and Tenants in Common; Com. Dig. Estates, K 1; Chancery, 3 V 1; Devise, N 7, N 8; 2 Saund. Ind. Joint Tenants; Preston on Estates, 2 Bl. Com. 179.

19. Tenants to the praecipe, is be against whom the writ of praecipe is brought, in suing out a common recovery, and must be the tenant or seised of the freehold. 2 Bl. Com. 362.

TENANT OF THE DEMESNE, Eng. law. One who is tenant of a mesne lord; as where A is tenant of B, and C of A; B is the lord, A the mesne lord and C tenant of the demesne. Ham. N. P. 392, 393.

TENANT BY THE MANNER. One who has a less estate than a fee in land, which remains in the reversioner. He is so called because in avowries and other pleadings, it is specially shown in what manner, he is tenant of the land, in contradistinction to the veray tenant, who is called simply, tenant. Hamm. N. P. 393. See Veray.

TENANT PARAVAIL, English law. The tenant of a tenant; and is so called because he has the avails or profits of the land. Ham. N. P. 892, 393.

TENANT RIGHT, Eng. law. In leases from the crown, corporations or the church, it is usual to grant a further term to the old tenants in preference to strangers, and, as this expectation is seldom disappointed, such tenants are considered as baying an ulterior interest beyond their subsisting term; and this interest is called the tenant right. Bac. Ab. Leases and Terms for years, U.

TENDER, contracts, pleadings. A tender is an offer to do or perform an act which the party offering, is bound to perform to the party to whom the offer is made.

2. A tender may be of money or of specific articles; these will be separately considered. §1. Of the lender of money. To make la valid tender the following requisites are necessary: 1. It must be made by a person capable of paying: for if it be made by a stranger without the consent of the debtor, it will be insufficient. Cro. Eliz. 48, 132; 2 M. & S. 86; Co. Lit. 206.

3. - 2. It must be made to the creditor having capacity to receive it, or to his authorized agent. 1 Camp. 477; Dougl. 632; 5 Taunt. 307; S. C. 1 Marsh. 55; 6 Esp. 95; 3 T. R.

683; 14 Serg. & Rawle, 307; 1 Nev. & M. 398; S. C. 28 E. C. L. R. 324; 4 B. & C. 29 S. C. 10 E. C. L. R. 272; 3 C. & P. 453 S. C. 14 E. C. L. R. 386; 1 M. & W. 310; M. & M. 238; 1 Esp. R. 349 1 C. & P. 365

4. - 3. The whole sum due must be offered, in the lawful coin of the United States, or foreign coin made current by law; 2 N. & M. 519; and the offer must be unqualified by any circumstance whatever. 2 T. R. 305; 1 Campb. 131; 3 Campb. 70; 6 Taunt. 336; 3 Esp. C. 91; Stark. Ev. pt. 4, page 1392, n. g; 4 Campb. 156; 2 Campb. 21; 1 M. & W. 310. But a tender in bank notes, if not objected to on that account, will be good. 3 T. R. 554; 2 B. & P. 526; 1 Leigh's N. P. c. 1, S. 20; 9 Pick. 539; see 2 Caines, 116; 13 Mass. 235; 4 N. H. Rep. 296; 10 Wheat 333. But in such case, the amount tendered must be what is due exactly, for a tender of a five dollar note, demanding change, would not be a good tender of four dollars. 3 Campb. R. 70; 6 Taunt. R. 336; 2 Esp. R. 710; 2 D. & R. 305; S. C. 16 E. C. L. R. 87. And a tender was held good when made by a check contained in a letter, requesting a receipt in return which the plaintiff sent back demanding a larger sum, without objecting to the nature of the tender. 8 D. P. C. 442. When stock is to be tendered, everything must be done by the debtor to enable him to transfer it, but it is not absolutely requisite that it should be transferred. Str. 504, 533, 579 .

5. - 4. If a term had been stipulated in favor of a creditor, it must be expired; the offer should be made at the time agreed upon for the performance of the contract if made afterwards, it only goes in mitigation of damages, provided it be made before suit brought. 7 Taunt. 487; 8 East, R. 168; 5 Taunt. 240; 1 Saund. 33 a, note 2. The tender ought to be made before day-light is entirely gone. 7 Greenl. 31.

6. - 5. The condition on which the debt was contracted must be fulfilled.

7. - 6. The tender must be made at the place agreed upon for the payment, or, if there be no place appointed for that purpose, then to the creditor or his authorized agent. 8 John. 474; Lit. Sel. Cas. 132; Bac. Ab. h. t. c.

8. When a tender has been properly made, it is a complete defence to the action but the benefit of a tender is lost, if the creditor afterwards demand the thing due from the debtor, and the latter refuse to pay it. Kirby, 293.

9. - §2. Of the tender of specific articles. It is a rule that specific articles maybe tendered at some particular place, and not, like money, to the person of the creditor wherever found. When no place is expressly mentioned in the contract, the place of delivery is to be ascertained by the intent of the parties, to be collected from the nature of the case and its circumstances. If, for example, the contract is for delivery of goods from the seller to the buyer on demand, the former being the manufacturer of the

goods or a dealer in them, no place being particularly named, the manufactory or store of the seller will be considered as the place intended, and a tender there will be sufficient. When the specific articles are at another place at the time of sale, that will be the place of delivery. 2 Greenl. Ev. §609 4 Wend. 377; 2 Applet. 325.

10. When the goods are cumbrous, and the place of delivery is not designated, nor to be inferred from the circumstances, it is presumed that it was intended that they should be delivered at any place which the creditor might reasonably appoint; if the creditor refuses, or names an unreasonable place, the debtor may select a proper place, and having given notice to the creditor, deliver the goods there. 2 Kent, Comm. 507; 1 Greenl. 120; Chip. on Contr. 51 13 Wend. 95; 2 Greenl. Ev. §610. Vide, generally, 20 Vin., Ab. 177; Bac. Ab. h. t.; 1 Sell. 314; Com. Dig. Action upon the case upon Assumpsit, H 8-Condition, L 4 Pleader, 2 G 2-2 W, 28,49-3 K 23-3 M 36; Chipm, on Contr. 31, 74; Ayl. Pand. B. 4, t. 29; 7 Greenl. 31 Bouv. Inst. Index, h. t.

TENEMENT, estates. In its most extensive signification tenement comprehends every thing which may be holden, provided it be of a permanent nature; and not only lands and inheritances which are holden, but also rents and profits a prendre of which a man has any frank tenement, and of which he may be seised ut de libero tenemento, are included under this term. Co. Litt. 6 a; 1 Tho. Co. Litt. 219; Pork. s. 114; 2 Bl. Com. 17. But the word tenements simply, without other circumstances, has never been construed to pass a fee. 10 Wheat. 204. In its more confined and vulgar acceptation, it means a house or building. Ibid. an 1 Prest. on Est. 8. Vide 4 Bing. 293; S C. l1 Eng. C. L. Rep. 207; 1 T. R. 358; 3 T. R. 772; 3 East, R. 113; 5 East, R. 239; Burn's Just. Poor, 525 to 541; 1 B. & Adolph. 161; S. C. 20 Engl. C. L. Rep. 36 8; Com. Dig. Grant, E 2; Trespass, A 2; Wood's Inst. 120; Babington on Auctions, 211, 212.

TENENDAS, Scotch law. The name of a clause in charters of heritable rights which derives its name from its first words tenendus praedictas terras, and expresses the particular tenure by which the lands are to be holden. Ersk. Prin. B. 2, t. 3, n. 10.

TENENDUM, conveyancing. This is a Latin word, which signifies to hold.

2. It was formerly that part of a deed which was used to express the tenure by which the estate granted was holden; but since all freehold tenures were converted into socage, the tenendum is of no further use even in England, and is therefore joined to the habendum in this manner, "to have and to hold." The words "to hold" have now no meaning in our deeds. 2 Bl. Com. 298. Vide Habendum.

TENERI, contracts. That part of a bond where the obligor declares himself to be held and firmly bound to the obligee, his heirs, executors, administrators and assigns, is called the teneri. 3 Call, 350.

TENNESSEE. The name of one of the new states of the United States of America. This state was admitted into the Union by virtue of the "act for the admission of the state of Tennessee into the Union," approved June 1, 1796, 1 Story's L. IT. S. 450, which recites and enacts as follows:

2. Whereas, by the acceptance of the deed of cession of the state of North Carolina, congress are bound to lay out, into one or more states, the territory thereby ceded to the United States:

3. - §1. Be it enacted, &c., That the whole of the territory ceded to the United States by the state of North Carolina, shall be one state, and the same is hereby declared to be one of the United States of America, on an equal footing with the original states in all respects whatever, by the name and title of the state of Tennessee. That, until the next general census, the said state of Tennessee shall be entitled to one representative in the house of representatives of the United States; and, in all other respects, as far as they may be applicable, the laws of the United States shall extend to, and have force in, the state of Tennessee, in the same manner as if that state had originally been one of the United States.

4. The constitution was adopted on the sixth day of February, 1796; and amended by a convention which sat at Nashville, on the 30th day of August, 1834. The powers of the government are divided into three distinct departments; the legislative, executive, and judicial. Art. 2, 1.

5. - 1st. The legislative authority of the state is vested in a general assembly, which consists of a senate and house of representatives, both dependent on the people.

6. - 1. The senate will be considered with reference to the qualifications of the electors; the qualifications of the members; the number of members; the length of time for which they are elected; and, the time of their election. 1. Every free white man of the age of twenty-one years, being a citizen of the United States, and a citizen of the county wherein he may offer his vote six months next preceding the day of his election, shall be entitled to vote for members of the general assembly, and other civil officers, for the county and district in which he resides; provided, that no person shall be disqualified from voting on account of color, who is now, by the laws of this state, a competent witness in a court of justice against a white man. Art. 4, sect. 1. 2. No person shall be a senator, unless he be a citizen of the United States, of the age of thirty years, and shall have resided three years in this state, and one year in, the county or district, immediately preceding the election. Art. 2, s. 10. 3. The number of senators shall not exceed one-third of the number of representatives. Art. 2, s. 6. 4. Senators shall hold their office for the term of two years. Art. 2, s. 7. 5. Their election takes

place on the first Thursday of August, 1835, and every second year thereafter. Art. 2 , s. 7.

7. - 2. The house of representatives will be considered in the same order which has been observed in considering the senate. 1. The qualifications of the electors of representatives are the same as those of senators. 2. To be elected a representative, the candidate must be a citizen of the United States, of the age of twenty-one years, and must have been a citizen of the state for three years, and a resident of the county he represents one year immediately preceding the election. Art. 2, s. 9. 3. The number of representatives shall not exceed seventy-five, until the population of the state shall exceed one million and a half; and shall never thereafter exceed ninety-nine. Art. 2, s. 5. 4. They are elected for two years. Art. 2, s. 7. 5. The election is to be at the same time as that of senators. Art. 2, s. 7.

8. - 2d. The supreme executive power of this state is vested in a governor. Art. 3, s. 2. 1. He is chosen by the electors of the members of the general assembly. Art. 3, s. 2. 2. He shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a citizen of this state seven years next before his election. Id. sect. 3. He shall hold his office for two years, and until his successor shall be elected and qualified. He shall not be eligible more than six years in any term of right. Id. sect. 4. 3. He shall be elected by the electors of the members of the general assembly, at the times and places where they respectively vote for the members thereof. Id. s. 2. 4. He shall be commander-in-chief of the army and navy of the state, and of the militia, except when they are called into the service of the United States; shall have the power to grant reprieves and pardons, except in cases of impeachment; may convene the legislature on extraordinary occasions, by proclamation; take care that the laws be faithfully executed; from time to time give to the general assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient may requite information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices. Id. s. 5 to 11. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased nor diminished during the period for which he shall have been elected. Id. s. 7. 6. In case of the removal of the governor from office, or of his death, or resignation, the duties of the office shall devolve on the speaker of the senate; and in case of a vacancy in the office of the latter, on the speaker of the house of representatives. Id. s, 12.

9. - 3d. The judicial power of the state is vested, by the sixth article of the constitution, in one supreme court; in such inferior courts as the legislature shall, from time to time, ordain and establish, and the judges thereof; and in justices of the peace. The legislature may also vest such jurisdiction as may be deemed necessary in corporation courts.

10. - 1. The supreme court shall be composed of three judges; one of whom shall reside in each of the grand divisions of the state. The judges shall be thirty-five years of, age, and shall be elected for the term of twelve years. The jurisdiction of the supreme court shall be appellate only, under such restrictions and regulations as may, from time to time, be prescribed by law: but it may possess such other jurisdiction as is now conferred by law on the present supreme court. The concurrence of two of the judges shall be necessary to a decision. Said courts shall be held at one place, and at one place only, in each of the three grand divisions of the state.

11. - 2. The judges of such inferior courts as the legislature may establish, shall be thirty-five years of age, and shall be elected for eight years. The jurisdiction of such inferior courts shall be regulated by law. The judges shall not charge juries with regard to matters of fact, but may state the testimony and declare the law. They shall have power in all civil cases to issue writs of certiorari to remove any cause or transcript thereof, from any inferior jurisdiction, into said court, on sufficient cause, supported by oath or affirmation.

12. - 3. Judges of the courts of law, and equity are appointed by a joint vote of both houses of the general assembly; but courts may be established to be holden by justices of the peace.

13. - 4. The judges of the supreme court and inferior courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased nor diminished, during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor bold any other office of trust or profit under this state or the United States.

TENET. Which he holds. There are two ways of stating the tenure in an action of waste. The averment is either in the tenet and the tenuit; it has a refer-ence to the time of the waste done, and not to the time of bringing the action.

2. When the averment is in the tenet the plaintiff on obtaining a verdict, will recover the place wasted, namely, that part of the premises in which the waste was exclusively done, if it were done in a par only, together with treble damages. But when the averment is in the tenuit, the tenancy being at an end, he will have judgment for his damages only. 2 Greenl. Ev. 652.

TENOR, pleading. This word, applied to an instrument in pleading, signifies an exact copy; it differs from purport. (q. v.) 2 Phil. Ev. 99; 2 Russ. on Cr. 365; 1, Chit. Cr. Law, 235; 1 Mass. 203; 1 East, R. 180, and the cases cited in the notes. In chancery practice, by tenor is understood a certified copy of records of other courts removed into chancery by certiorari. Gresl. Ev. 309.

TENUIT. Which he held. When the tenancy is ended and the tenant is sued in an action of waste, the averment of tenure is in the tenuit. For a distinction between the averment in the tenet and tenuit, see 2 Greenl. Ev. §652, and Tenet.

TENURE, estates. The manner in which lands or tenements are holden. 2. According to the English law, all lands are held mediately or immediately from the king, as lord paramount and supreme proprietor of all the lands in the kingdom. Co. Litt. 1 b, 65 a; 2 Bl. Com. 105.

3. The idea of tenure; pervades, to a considerable degree, the law of real property in the several states; the title to land is essentially allodial, and every tenant in fee simple has an absolute and perfect title, yet in technical language, his estate is called an estate in fee simple, and the tenure free and common socage. 3 Kent, Com. 289, 290. In the states formed out of the North Western Territory, it seems that the doctrine of tenures is not in force, and that real estate is owned by an absolute and allodial title. This is owing to the wise provisions on this subject contained in the celebrated ordinance of 1787. Am. Jur. No. 21, p. 94, 5. In New York, 1 Rev. St. 718; Pennsylvania, 5 Rawle, R. 112; Connecticut, 1 Rev. L. 348 and Michigan, Mich. L. 393, feudal tenures have been abolished, and lands are held by allodial titles. South Carolina has adopted the statute, 12 C. II., c. 24, which established in England the tenure of free and common socage. 1 Brev. Dig. 136. Vide Wright on Tenures; Bro. h. t.; Treatises of Feuds and Tenures by Knight's service; 20 Vin Ab. 201; Com. Dig. h. t.; Bac. Ab. h. Thom. Co. Litt. Index, h. t.; Sulliv. Lect. Index, h. t.

TENSE. A term used in, grammar to denote the distinction of time.

2. The acts of a court of justice ought to be in the present tense; as, "praeceptum est," not "preaceptum fuit;" but the acts of, the party may be in the preterperfect tense, as "venit, et protulit hic in curia quandum querelam suam;" and the continuances are in the preterperfect tense; as, "venerunt," not "veniunt." 1 Mod. 81.

3. The contract of marriage should be made in language in the present tense. 6 Binn. Rep. 405. Vide 1 Saund. 393, n. 1.

TERCE, law of Scotland. A life-rent competent by law to widows who have not accepted of special provisions in the third part of the heritable subjects in which the hushand died infeft.

2. The terce takes place only where the marriage has subsisted for a year and day, or where a child has been born alive of it. No terce is due out of lands in which the hushand was not infeft, unless in case of a fraudulent omission. Cr. 423, §28; St. 2, 6, 16. The terce is not limited to lands, but extends to teinds, and to servitudes and other

burdens affecting lands. Ersk. Pr. L. Scot. B. 2, t. 9, s. 26, 27; Burge on the Confl. of Laws, 429 to 435.

TERM, construction. Word; expression speech.

2. Terms or words are characters by which we announce our sentiments, and make known to others things with which we are acquainted. These must be properly construed or interpreted in order to understand the parties using them. Vide Construction; Interpretation; Word.

TERM, contracts. This word is used in the civil, law to denote the space of time granted to the debtor for discharging his obligation; there are express terms resulting from the positive stipulations of the agreement; as, where one undertakes to pay a certain sum on a certain day and also terms which tacitly result from the nature of the things which are the object of the engagement, or from the place where the act is agreed to be done. For instance, if a builder engage to construct a house for me, I must allow a reasonable time for fulfilling his engagement.

2. A term is either of right or of grace; when it makes part of the agreement and is expressly or tacitly included in it, it is of right when it is not part of the agreement, it is of grace; as if it is not afterwards granted by the judge at the requisition of the debtor. Poth. on Oblig. P. 2, c. 3, art. 3; 1 Bouv. Inst. n. 719 et seq.

TERM, estates. The limitation of an estate, as a term for years, for life, and the like. The word term does not merely signify the time specified in the lease, but the estate also and interest that passes by that lease; and therefore the term may expire during the continuance of the time, as by surrender, forfeiture and the like. 2 Bl. Com. 145; 8 Pick. R. 339.

TERM, practice. The space of time during which a court holds a session; sometimes the term is a monthly, at others it is a quarterly period, according to the constitution of the court.

2. The whole term is considered as but one day so that the judges may at any time during the term, revise their judgments. In the computation of the term all adjournments are to be included. 9 Watts, R. 200. Courts are presumed to know judicially when their terms are required to be held by public law. 4 Dev. R. 427. See, 1 generally, Peck, R. 82; 6 Yerg. R. 395; 7 Yerg. R. 365; 6 Rand. R. 704; 2 Cowen, R. 445; 1 Cowen, R. 58; 5 Binn. R. 389; 4 S. & R. 507 5 Mass. R. 195, 435.

TERM ATTENDANT ON THE INHERITANCE. This phrase is used in the English courts of equity, to signify that when a term has been created for a particular

purpose, which is satisfied, and the instrument by which it is created does not provide for a cesser of the term, on the happening of the event, the benefit in it becomes subject to the rules of equity, and must be moulded and disposed of according to the equitable interests of all persons having claims upon the inheritance; and, when the purposes of the trust fire satisfied, the ownership of the term belongs in equity, to the owner of the inheritance, whether de-clared by the original conveyance to attend it or not.

2. Terms attendant on the inherit ance are but little known in the United States. 1 Hill. Ab. 243.

TERM PROBATORY. A probatory term is the time during which evidence may be taken in a cause. Vide Probatory term.

TERM FOR YEARS. An estate for years, (q. v.) and the time during which such estate is to be beld, are each called a term; hence the term may expire before the time, as by a surrender. Co. Litt. 45. If, for example, a conveyance be made to Peter for three years, and after the expiration of the said term to Paul for six, and Peter surrenders or forfeits his term after one year, Paul's estate takes effect immediately; if, on the contrary, the language had been after the expiration of the said time, or of the said three years, the result would have been different, and Paul's estate would not have taken effect till the end of such time, notwithstanding the forfeiture or surrender.

2. Whatever be its duration, a term for years is less than an estate for life. If, therefore, the same person have a term for years and an estate for life immediately succeeding it, the term is merged; but if the order of the estates be reversed, that is, if the greater precede the less, there is no merger. Co. Litt. 54 b; Vin. Ab. Merger, F 4 and G 13; Godb. 51; Biss. on Est. c. 8, s. 1, n. 3, p. 186. Vide Estate for years; Leases.

TERMINUM. In the civil law, says Spelman, this word signifies a day set to the defendant, and, in that sense, Bracton, Glanville and some others sometimes use it. Reliquiae Spelmanianae, p. 71; Beames' Gl. 27 n.

TERMINUS A QUO. The starting point of a private way is so called. Hamm. N. P. 196.

TERMINUS AD QUEM. The point of termination of a private way is so called.

TERMOR. One who holds lands and tenements for a term of years or, life. Litt. sect. 100; 4 Tyr. 561.

TERRE-TENANT, or improperly terre-tenant. One who has the actual possession of land; but in a more technical sense, he who is seised of the land; and, in the latter sense the owner of the land, or the person seised, is the terre-tenant, and not the lessee. 4 W. & S. 256; Bac. Ab. Uses and Trusts, in pr. It has been holden that mere occupiers of the land are not terre-tenants. Bee 16 S. & R, 432; 3 Penna. 229; 2 Saund. 7, n. 4; 2 Bl. Com. 91, 328.

TERRIER, Engl. Iaw. A roll, catalogue or survey of lands, belonging either to a single person or a town, in which are stated the quantity of, acres, the names of the tenants, and the like.

2. By the ecclesiastical law an inquiry is directed to be made from time to time, of the temporal rights of the clergyman of every parish, and to be returned into the registry of the bishop: this return is denominated a terrier. 1 Phil. & Am. Ev. 602, 603.

TERRITORIAL COURTS. The courts established in the territories of the United States. Vide Courts of the United States.

TERRITORY. Apart of a country, separated from the rest, and subject to a particular jurisdiction. The word is derived from terreo, and is so called because the magistrate within his jurisdiction has the power of inspiring a salutary fear. Dictum cat ab eo quod magistratus intra fines ejus terrendi jus habet. Henrion de Pansy, Auth. Judiciare, 98. In speaking of the ecclesiastical jurisdictions, Francis Duaren observes, that the ecclesiastics are said not to have territory, nor the power of arrest or removal, and are not unlike the Roman magistrates of whom Gellius says vocationem habebant non prehen-sionem. De Sacris Eccles. Minist. lib. 1, cap. 4. In the sense it is used in the constitution of the United States, it signifies a portion of the country subject to and belonging to the United States, which is not within the boundary of any of them.

2. The constitution of the United States, art. 4, s. 3, provides, that "the congress shall have power to dispose of, and make all needful rules and regu-lations respecting the territory or other property of the United States; and nothing in this constitution shall be construed, so as to preclude the claims of the United States or of any state."

3. Congress possesses the power to erect territorial governments within the territory of the United States; the power of congress over such territory is exclusive and universal, and their legislation is subject to no control, unless in the case of ceded territory, as far as it may be affected by stipulations in the cessions, or by the ordinance of 1787, 3 Story's L. U. S. 2073, under which any part of it has been settled. Story on the Const. §1322; Rawle on the Const: 237; 1 Kent's Com. 243, 359; 1 Pet. S. C. Rep. 511, 542, 517.

4. The only organized territories of the United States are Oregon, Minnesota, New Mexico and Utah. Vide Courts of the United States.

TERROR. That state of the mind which arises from the event or phenomenon that may serve as a prognostic of some catastrophe affright from apparent danger.

2. One of the constituents of the offence of riot is that the acts of the persons engaged in it should be to the terror of the people, as a show of arms, threatening speeches, or turbulent gestures; but it is not requisite, in order to constitute this crime, that personal violence should be committed. 3 Camp. R. 369; 1 Hawk. P. C. c. 65, s. 5; 4 C. & P. 373. S. C. 19 E. C. L. R. 425 4 C. & P. 538; S. C. 19 E. C. L. R. 616. Vide Rolle's R. 109; Dalt. Just. c. 186; 19 Vin. Ab. Riots, A 8.

3. To constitute a forcible entry, 1 Russ. Cr. 287, the act must be accom-panied with circumstances of violence or terror; and in order to make the crime of robbery, there must be violence or putting in fear, but both these circumstances need not concur. 4 Binn. R. 379. Vide Riot; Robbery; Putting in fear.

TERTIUS INTERVENIENS, civil law. One, who claiming an interest in the subject or thing in dispute in action between other parties, asserts his right to act with the plaintiff, to be joined with him, and to recover the matter in dispute because he has an interest in it or to join the defendant, and with him, oppose the interest of the plaintiff, which it is his interest to defeat. He differs from the intervener or he who interpleads in equity. 4 Bouv. Inst. n. 3819, note.

TEST. Something by which to ascertain the truth respecting another thing. 7 Penn. St. Rep. 428; 6 Whart. 284. Vide Religious Test.

TESTACY. The state or condition of dying after making a will, which was valid at the time of testator's death.

TESTAMENT, civil law. The appointment of an executor or testamentary heir, according to the formalities prescribed by law. Domat, Liv. 1, tit. 1, s. 1.

2. At first there were only two sorts of testaments among the Romans that called calatis comitiis, and another called in procinctu. (See below.) In the course of time these two sorts of testament having become obsolete, a third form was introduced, called per aes et libram, which was a fictitious sale of the inheritance to the heir apparent. The inconveniences which were experienced from these fictitious sales again changed the form of testaments; and the praetor introduced another which required the seal of seven witnesses. The emperors having increased the solemnity of those testaments, they were called written or solemn testaments, to distinguish them

from nuncupative testaments which could be made without writing. Afterwards military testaments were introduced, in favor of soldiers actually engaged in military service.

3. Among the civilians there are various kinds of testaments, the principal of which are mentioned below.

4. A civil testament is one made according to all the forms prescribed by law, in contradistinction to a military testament, in making which some of the forms may be dispensed with. Civil testaments are more ancient than military ones; the former were in use during the time of Romulus, the latter were introduced during the time of Coriolanus. See Hist. de la Jurisp. Rom. de M. Terrason, p. 119.

5. A common testament is one which is made jointly by several persons. Such testaments are forbidden in Louisiana, Civ. Code of Lo. art. 1565, and by the laws of France, Code Civ. 968, in the same words, namely, "A testament cannot be made by the same act, by two or more persons, either for the benefit of a third person, or under the title of a reciprocal or mutual disposition."

6. A testament calatis comitiis, or made in the comitia, that is, the assembly of the Roman people, was an ancient manner of making wills used in times of peace amonn the Romans. The comitia met twice a year for this purpose. Those who wished to make such testaments caused to be convoked the assembly of the people by these words, calatis comitiis. None could make such will's that were not entitled to be at the assemblies of the people. This form of testament was repealed by the law of the Twelve Tables.

7. Testament ab irato, a term used in the civil law. A testament ab irato, is one made in a gust of passion or hatred against the presumptive heir rather than from a desire to benefit the devisee. When the facts of unreasonable anger are proved, the will is annulled as unjust, and as not having been freely made. Vide Ab irato.

8. A mystic testament is also called a solemn testament, because it requires more formality than a nuncupative testament; it is a form of making a will, which consists principally in enclosing it in an envelope and sealing it in the presence of witnesses.

9. This kind of testament is used in Louisiana. The following are the provisions of the civil code of that state on the subject, namely: the mystic or secret testament, otherwise called the close testament, is made in the following manner: the testator must, sign his dispositions, whether he has written. them himself, or has caused them to be written by another person. The paper containing, those dispositions, or the paper serving as their envelope, must be closed and sealed. The testator shall present it thus

closed and sealed to the notary and to witnesses, or he shall cause it to be and sealed in their presence; then he shall declare to the notary, in the presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper, or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses. Art. 1577, 5 M. R. 1 82. All that is above prescribed shall be done without interruption or turning aside to other acts; and in case the testator, by reason of any hindrance that has happened since the signing of the testament, cannot sign the act of superscription, mention shall be made of the declaration made by him thereof; without its being necessary, in that case, to increase the number of witnesses. Art. 1578. Those who know not how, or are not able to write, and those who know not how, or are not able to sign their names, cannot make dispositions in the form of the mystic will. Art. 1579. If any one of the witnesses to the act of superscription knows not how to sign, express mention shall be made thereof. In all cases the act must be signed by at least two witnesses. Art. 1580.

10. Nuncupative, testament, a term used in the civil law. A numcupative testament was one made verbally, in the presence of seven witnesses; it was not necessary that it should have been, in writing; the proof of it was by parol evidence.

11. In Louisiana, testaments, whether nuncupative or mystic, must be drawn up in writing, either by the testator himself, or by some other person under his dictation. Civil Code of Lo. art. 1568. The custom of making verbal statements, that is to say, resulting from the mere deposition of witnesses, who were pregent when the testator made known to them his will, without his having committed it, or caused it to be committed to writing, is abrogated. Id. art. 1569. Nuncupative testaments may be made by public act, or by act under private signature. Id. art. 1570. See Will, nuncupative.

12. Olographic testament, a term used in the civil law. The olographic tes-tament is that which is written wholly by the testator himself. In order to be valid, it must be entirely written, dated, and signed by the hand of the tes-tator. It is subject to no other form. See Civil Code of Lo. art.

TESTAMENTARY. Belonging to a testament; as a testamentary gift; a testamen-tary guardian, or one appointed by will or testament; letters testamentary, or a writing under seal given by an officer lawfully authorized, granting power to one named as executor to execute a last will or testament.

TESTATE. One who dies having made a testament; a testator. This word is used in this sense, in the act of the legislature of Pennsylvania, entitled "An act relative to dower and for other purposes." Sect. 2, 5 Sm. Laws, 257.

TESTATOR. One who has made a testament or will.

2. In general, all persons may be testators. But to this rule there are various exceptions. First, persons who are deprived of understanding cannot make wills; idiots, lunatics and infants, are among this class. Secondly, persons who have understanding, but being under the power of others, cannot freely exercise their will; and this the law presumes to be the case with a married woman, and, therefore, she cannot make a will without the express consent of her hushand to the particular will. When a woman makes a will under some general agreement on the part of the hushand that she shall make a will, the instrument is not properly a will, but a writing in the nature of a will or testament. Thirdly, persons who are deprived of their free will cannot make a testament; as, a person in duress. 2 Bl. Com. 497; 2 Bouv. Inst. n. 2102, et seq. See Devisor; Duress; Feme covert;, Idiot; Influence; Parties to Contracts; Testament; Wife; Will.

TESTATRIX. A woman who makes a will or testament, is so called.

TESTATUM, practice. The name of a writ which is issued by the court of one county, to the sheriff of another county, in the same state, when the defen-dant cannot be found in the county where the court is located; for example, after a judgment has been obtained, and a ca. sa. has been issued, which has been returned non est inventus, a testatum ca. sa. may be issued to the sheriff of the county where the defendant is. Vide 20 Vin. Ab. 259; 7 Com. Dig. 424.

TESTATUM, conveyancing. That part of a deed which commences with the words "this indenture witnesseth."

TESTE, practice. The teste of a writ is the concluding clause, commencing with the word witness, &c.

2. The act of congress of May 8, 1792, 1 Story's Laws U. S. 257, directs that all writs and process issuing from the supreme or a circuit court, shall bear teste of the chief justice of the supreme court, or if that office be vacant, of the associate justice next in precedence; and that all writs or process issuing from a district court, shall hear teste of the judge of such court, or, if the said office be vacant, of the clerk thereof. Vide Serg. Const. Law, Index, h. t.; 20 Vin. Ab. 262; Steph. Plead. 25.

TESTES. Witnesses.

TO TESTIFY. To give evidence according to law; the examination of a witness who declares his knowledge of facts.

TESTIMONIAL PROOF, civ. law. This word is used in the same sense as we use parol evidence, and, in contradistinction to literal proof, which is written evidence.

TESTIMONY, evidence. The statement made by a witness under oath or affirmation. Vide Bill to perpetuate testimony.

TESTMOIGNE. This is an old and barbarous French word, signifying in the old books, evidence. Com. Dig. h. t.

TEXAS. The name of one of the new states of the United, States of America. Texas was an independent republic. By the joint resolution of congress of March 1, 1845, congress gave consent that the republic of Texas might be erected into a new state, to be called the state of Texas, with a republican form of government to be adopted by the people. And by the joint resolution of congress of the 29th day of December, 1845, the state of Texas was admitted into the union on an equal footing with the original states in all respects whatever.

2. The constitution of the state was adopted in convention by the deputies of the people of Texas, at the city of Austin the 27th day of August, 1845.

3. By the second article, it is provided that the powers of the government of the state of Texas shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another; and no person, or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

4. - §1. In considering the legislative power, it will be proper to consider, 1. The qualification of voters. 2. The rights of members of the legislature. 3. The senate. 4. The house of representatives.

5. - 1. By sections. 1st and 2d, it is declared that every free male person who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, or who is, at the time of the adoption of this constitution by the congress of the United States, a citizen of the republic of Texas, and shall have resided in this state one year next preceding an election, and the last six months within the district, county, city, or town in which he offers to vote, (Indians not taxed, Africans, and the descendants of Africans, excepted,) shall be deemed a qualified elector and should

such qualified elector happen to be in any other county situated in the district in which he resides at the time of an election, he shall be permitted to vote for any district officer: Provided, That the qualified electors shall be permitted to vote anywhere in the state for state officers: And provided further, That no soldier, seaman, or marine, in the army or navy of the United States, shall be entitled to vote at any election created by this constitution.

Sect. 2. All free male persons over the age of twenty-one years, (Indians not taxed, Africans, and descendants of Africans, excepted,) who shall have resided six months in Texas, immediately preceding the acceptance of this constitution by the congress, of the United States, shall be deemed qualified electors.

6. - 2. The powers of the two houses are defined by the following sections of the third article, namely,

Sec. 12. The house of representatives, when assembled, shall elect a speaker and its other officers; and the senate shall choose a president for the time being, and its other officers. Each house shall judge of the qualifications and elections of its own members; but contested elections shall be determined in such manner as shall be directed by law. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such pen alties as each house may provide.

Sec. 13. Each house may determine the rules of its own proceedings; punish members for disorderly conduct; and with the consent of two-thirds, expel a member, but not a second time for the same offence.

Sec. 14. Each house shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journals.

Sec. 16. Senators and representatives shall, in all cases, except in treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature; and, in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

Sec. 17. Each house may punish, by imprisonment during the session, any person, not a member, for disrespectful or disorderly conduct in its presence, or for obstructing,any of its proceedings, provided such imprisonment shall not, at any one time, exceed forty-eight hours.

Sec. 18. The doors of each house shall be kept open.

7. - 3. The senate will be considered by taking a view, 1. Of the qualifications of senators. 2. Of the time of their election. 3. Of the length of their service. 4. By whom chosen.

8. - 1st. The 11th section of the 3d article of the constitution directs that no person shall be a senator unless he be a citizen of the United States, or at the time of the acceptance of this constitution by the congress of the United States a citizen of the republic of Texas, and shall have been an inhabitant of this state three years next preceding the election; and the last year thereof a resident of the district for which he shall be chosen, and have attained the age of thirty years.

9. - 2d. Elections are to be held at such times and places as are now or may hereafter be designated by law. Art. 3, s. 7.

10. - 3d. Senator; are duly elected for four years.

11. - 4th. Senators are chosen by the qualified electors.

12. - 1. The house of representatives will be considered in the same order which has been observed in speaking of the senate.

13. - 1st. By the 6th section of the 3d article of the constitution, it is declared that no person shall be a reprsentative unless he be a citizen of the United States, or at the time of the adoption of this constitution a citizen of the republic of Texas, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a citizen of the county, city, or town for which he shall be chosen, and shall have attained the age of twenty-one years at the time of his election.

14. - 2d. Elections are to be held at such times and places as 'are now or may hereafter be designated by law. Art. 3, s. 7.

15. - 3d. The members of the house of representatives hold their office for two, years from the day of the general election; and the sessions of the legislature shall be biennial, at such times as shall be prescribed by law. Art. 3, s. 6.

16. - 4th. The members of the house of representatives shall be chosen by the qualified electors. Art. 3, s. 5.

17. - §2. The judicial power is vested in one supreme court, in district courts, and in such inferior courts as the legislature may from time to time ordain and establish; and

such jurisdiction may be vested in corporation courts. as may be deemed necessary, and be directed by law. Art. 4, s. 1. Each of these will be separately considered.

18. - 1. The supreme court will be considered by, 1. Taking a view of the appointment of the judges, and the time during which they hold their office. 2. The organization of the court. 3. Its jurisdiction.

19. - 1st. The governor shall nominate, and, by and with the advice and consent of two-thirds of the senate, shall appoint the judges of the supreme and district courts, and they shall hold their offices for six years. Art. 4, s. 5.

20. - 2d. The supreme court shall consist of a chief justice and two associates, any two of whom shall form a quorum. 4, s. 2. It appoints its own clerk.

21. - 3d. The 3d section of the 4th article of the constitution declares that the supreme court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state; but in criminal cases, and in appeals from interlocutory judgments, with such exceptions and under such regu-lations as the legislature shall make; And the supreme court and judges thereof shall have power to issue the writ of habeas corpus, and, under such regu-lations as may be prescribed by law, may issue Writs of mandamus, and such other writs as, shall be necessary to enforce its own jurisdiction; and also compel a judge of the district court to proceed to trial and judgment in a cause; and the supreme court shall hold its sessions once every year, between the months of October and June inclusive, at not more than three places in the state.

22. - 2. The circuit courts will be considered in the same order observed with regard to the supreme court.

23. - 1st. Circuit court judges are appointed in the same way as judges of the supreme court, and hold their office for the same time.

24. - 2d. By the 6th section of the 4th article of the constitution, if is directed that the state shall be divided into convenient judicial districts. For each district there shall be appointed a Judge, who shall reside in the same, and hold the courts at one place in each county, and at least twice in each year, in such manner as may be prescribed by law. The clerk is elected by the qualified voters of members of the legislature. Art. 4, s. 11.

24. - 3d. By the tenth section of the fourth article, jurisdiction is given to the district courts in these words: The district court shall have original jurisdiction of all criminal cases, of all suits in bebalf of the state to recover penalties, forfeitures and escheats, and of all cases of divorce, and of all suits, complaints, and pleas whatever, without

regard to -any distinction between law and equity, when the matter in controversy shall be valued at or amount to one hundred dollars, exclusive of interest; and the said courts, or the judges thereof, shall have power to issue all writs necessary to enforce their own jurisdiction, and give them a general superintendence and control over inferior jurisdictions; and in the trial of all criminal cases, the jury trying the same shall find and assess the amount of punishment to be inflicted, or fine imposed; except in capital cases, and where the. punishment or fine imposed shall be specifically imposed by law.

25. - §3. The supreme executive power is vested in a governor. We will consider, 1. His qualifications. 2. By whom elected. 3. Duration of his office. 4. His power and duty.

26. - 1st. He must be at least thirty years of age, be a citizen of the United States, or a citizen of Texas, at the time of the adoption of the constitution, and shall have resided in the same three years next immediately preceding his election. Art. 5, s. 4.

27. - 2d. The governor shall be elected by the qualified electors of the state, at the time and places of elections for members of the legislature. Art. 5, s. 2.

28. - 3d. He holds his office for two years from the regular time of installation, and until his successor shall have been duly qualified, but shall not be eligible for more than four years in any term of six years. Art. 5, s. 4.

29. - 4th. He is commander-in-chief of the army and navy of the state - may require information from officers of the executive department - may convene the legislature, or adjourn the same, when the houses cannot agree - may recommend measures to the legislature - shall cause the laws to be executed. Art. 5.

30. There shall be a lieutenant governor, who shall be chosen at every election for governor, by the same persons and in the same manner, continue in office for the same time, and, possess the same qualifications. In voting for governor and lieutenant-governor, the electors shall distinguish for whom they vote as governor, and for whom as lieutenant-governor. The lieutenant governor shall, by virtue of his office, be president of the senate, and have, when in committee of the whole, a right to debate and vote on all questions, and when the senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the governor to serve or of his impeachment or absence from the state, the lieutenant governor shall exercise the power and authority appertaining to the office of governor until another be chosen at the periodical election and be duly qualified or until the governor impeached, absent, or disabled, shall be acquitted, return, or his disability be removed. Art. 5, s. 12.

THAINLAND, old Eng. law. The land which was granted by the Saxon kings to their thains or thanes was so called. Crabb's C. L. 10.

The name of a coin. The thaler of Prussia and of the northern states of Germany is deemed as money of account, at the custom-house, to be of the value of sixty-nine cents. Act of May 22, 1846.

2. The thaler of Bremen, of seventy-two grotes, is deemed of the value of seventy-one cents. Act of March 3, 1843.

THEFT, crimes. This word is sometimes used as synonymous with larceny, (q. v.) but it is not so technical. Ayliffe's Pand. 581 2 Swift's Dig. 309.

2. In the Scotch law, this is a proper and technical word, and signifies the secret and felonious abstraction of the property of another for sake of lucre, without his consent. Alison, Princ. Cr. Law of Scotl. 250.

THEFT-BOTE. The act of receiving a man's goods from the thief, after they had been stolen by him, with the intent that he shall escape punishment.

2. This is an offence punishable at common law by fine and imprisonment. Hale's P. C. 130. Vide Compounding a felony.

THEOCRACY. A species of government which claims to be immediately directed by God.

2. La religion qui, dans l'antiquite, s'associa souvent au despotisms, pour regner. par son bras ou a son ombrage, a quelquefois tents de regner seule. Clest ce qu'elle appelait le regne de Dieu, la thiocratie. Matter, De l'influence des Moeurs sur les lois, et de l'influence dos Lois sur les moeurs, 189. Religion, which in former tinies, frequently associated itself with despotism, to reign, by its power, or under its shadow, has sometimes attempted to reign alone, and this she has called the reign of God, theocracy.

THIEF, crimes. One who has been guilty of larceny or theft.

THING ADJUDGED. That which has been decided by a final judgment, by a tribunal of competent jurisdiction, from which there can be no appeal, either because the appeal did not lie, or because the time fixed by law for the appealing has elapsed, or because it has been confirmed on the appeal. Vide res judicata.

2. The Roman law agrees with ours, for it requires a final judgment or sentence before the decision acquires the force of the thing adjudged. Dig. 42, 1; Code, 7, 52; Extravag. 2, 27.

THINGS. By this word is understood every object, except man, which may become an active subject of right. Code du Canton de Berne, art. 332. In this sense it is opposed, in the language of the law, to the word persons. (q. v.)

2. Things, by the common raw, are divided into, 1. Things real, which are such as are permanent, fixed and immovable, and which cannot be carried from place to place; they are are usually said to consist in lands, tenements and hereditaments. 2 Bl. Com. 16; Co. Litt. 4 a to 6 b. 2. Things personal, include all sorts of things movable which attend a man's person wherever he goes. Things personal include not only things movable, but also something more, the whole of which is generally comprehended under the name of chattels. Chattels are distinguished into two kinds, namely, chattels real and chattels personal. See Chattel.

3. It is proper to remark that sometimes it depends upon the destination of certain objects, whether they are to be considered personal or real property. See Dalloz, Dict. choses, art 1, §2. Destination; Fixtures; Mill.

4. Formerly, in England, a very low and contemptuous opinion was entertained of personal property, which was regarded as only a transient commodity. But of late years different ideas have been entertained of it; and the courts, both in that country, and in this, now regard a man's personal property in a light, nearly, if not quite equal to his realty; and have adopted a more enlarged and still Iess technical mode of considering the one than the other, frequently drawn from the rules which they found already established by the Roman law, wherever those rules appear to be well-grounded and apposite to the case in question, but principally from reason and convenience, adapted to the circumstances of the times. 2 Bl. Com. 385.

5. By the Roman or civil law, things are either inpatrimonio, capable of being possessed by single persons exclusive of others; or extra patrimoiium, incapable of being so possessed.

9. Things in patrimonio are divided into corporeal and incorporeal, and the corporeal again into movable and immovable.

7. Corporeal things are those which are visible and tangible, as lands, houses, horses, jewels, and the like; incorporeal are not the object of sensation, but are the creatures of the mind, being rights issuing out of a thing corporeal, or concerning or exercisable within the same; as, an obligation, a hypothecation, a servitude, and, in general, that

which consists only in a certain right. Domat, Lois Civ. Liv. Prel. t. 31 s. 2, §3; Poth. Traite dos Choses, in princ.

8. Corporeal things are either movable or immovable. The movable are those which have been separated from the earth, as felled trees, or gathered fruits, or stones dug out from quarries or those which are naturally separated, as an-imals. Immovable things are those parts of the surface of the earth, in what-ever manner thev way be distinguished, either as building;, woods, meadows, fields,or otherwise, and to whomsoever they may belong. Under the name of immovables is included everything which adheres to the surface of the earth, either by its nature, as trees; or which has been erected by the hands of man, as houses and other buildings, although, by being separated, such things way become movables. Domat, Lois Civ. Liv. Prel. tit. 3, s. 1, §5 and 6. See Movables; Immovables.

9. Things extra patrimonium are, 1. Common. 2. Public. 3. Res universitatis. 4. Res nullius.

10. - 1. Things common are, the heavens, light, air, and the sea, which cannot be appropriated by any man or set of men, so as to deprive others from the. use of them. Domat, Lois Civ. Liv. Prel. tit. 3, s. 1, §1; §1 lnst. de rer. div.; L. 2, §1, ff. de rer. div.; Ayliffe, Pand. B. 2, t. 1, in med.

11. - 2. Things public, res publicae, the property of which was in the state, and their use common to all the members of it, as navigable rivers, ways, bridges, harbors, banks, and the right of fishing.

12. - 3. Res universitatis, or things belonging to cities or bodies politic. Such things belong to the corporation or body politic in respect of the property of them; but as to their use, they appertain to those persons that are of the corporation or body politic: such may be theatres, market houses, and the like. They differ from things public, inasmuch as the latter belong to a nation. The lands or other revenue belonging to a corporation, do not fall under this class, but, are juris privati.

13. - 4. Res nullius, or things which are not the property of any man or number of men, are principally those of divine right; they are of three sorts: things sacred, things religious, and things sanct. Things sacred were those which were duly and publicly consecrated by the priests, as churches, their ornaments, &c. Things religious were those places which became so by burying in them a dead body, even though no consecration of these spots by a priest had taken place. Things sanct were those which by certain reverential awe arising from their nature, something augmented by religious ceremonies, were guarded and defended from the injuries of men; such were the gates

and walls of a city, offences against which were capitally punished. 1 Bro. Civ. Law, B. 2, c. 1, p. 172.

See, in general, Domat, Lois Civ. Liv. Prel. tit. 3; 1 Bro. Civ. Law, B. 2, c. 1 Poth. Traite des Choses; Ersk. Pr. Law Scot. B. 2, tit. 1; Toullier, Droit Francais, Liv. 2, tit. 1 Ayliffe, Pand. B. 3, t. 1; Inst. 2, 1, 2 Dig. 1, 8 Bouv. Inst. Index, h. t.

THIRD PARTIES. This term includes all persons who are not parties to the contract, agrement or instrument of writing, by which their interest in the thing conveyed is sought to be affected. 1 N. S. 384. See also 2 L. R. 425 6 M. R. 528.

2. But it is difficult to give a very definite idea of third persons, for sometimes those who are not parties to the contract, but who represent the rights of the original parties, as executors, are not to be considered third person. See Duverg. tome 16, n. 34, 35, 36, et idem, tome 17, n. 190; 2 Bouv. Inst. n. 1335, et seq.

THIRLAGE, Scotch law. The name of servitude by which lands are astricted or thirled to a particular mill, and the possessors bound to grind their grain there, for the payment of certain multures and sequels as the agreed price of grinding. Ersk. Prin. B. 2, t. 9, n. 18.

THOROUGHFARE. A street or way so open that one can go through and get out of it without returning. It differs from a cul de sac, (q. v.) which is open only at one end.

2. Whether a street which is not a thoroughfare is a highway, seems not fully settled. See 1 Campb. 260; 5 Taunt. 137; 11 East, 376, n.; Hawk. P. C. B. 1, c. 76, s. 1; 5 Barn. & Ald. 456. See Dedication.

THOUGHT. The operation of the mind. No one can be punished for his mere thoughts however wicked they may be. Human laws cannot reach them, first, because they are unknown; and, secondly, unless made manifest by some action, they are not injurious to any one; but when they manifest themselves, then the act, which is the consequence, may be punished. Dig. 50 16, 225.

THREAD. A figurative expression used to signify the central line of a stream or water course. Harg. Tracts, 5; 4 Mason's Rep. 397; Holt's R. 490. Vide Filum aguae; Island; Water course; River.

THREAT, crim. law. A menace of destruction or injury to the lives or property of those against whom it is made.

2. Sending threatening letters to persons for the purpose of extorting money, is said to, be a misdemeanor at common law. Hawk. B. 1, c. 53, s. 1; 2 Russ. on Cr. 575; 2 Chit. Cr. L. 841; 4 Bl. Com. l26. To be indictable, the threat must be of a nature calculated to overcome a firm and prudent man. The party who makes a threat may be held to bail for his good behaviour. Vide Com. Dig. Battery, D; 13 Vin. Ab. 357.

THREAT, evidence. Menace.

2. When a confession is obtained from a person accused of crime, in consequence of a threat, evidence of such confession cannot be received, because, being obtained by the torture of fear, it comes in so questionable a shape, that no credit ought to be given to it; 1 Leach, 263; this is the general principle, but what amounts to a threat is not so easily defined. It is proper to observe, however, that the threat must be made by a person having authority over the prisoner, or by another in the presence of such authorized person, and not dissented from by the latter. 8 C. & P. 733. Vide Confession, and the cases there cited.

THROAT, med. jur. The anterior part of the neck. Dungl. plea. Diet. h. t.; Coop. Dict. h. t.; 2 Good's Study of Med. 302; 1 Chit. Med. Jur. 97, n.

2. The word throat, in an indictment which charged the defendant with murder, by "cutting the throat of the deceased," does not mean, and is not to be confined to that part of the neck which is scientifically called the throat, but signifies that which is commonly called the throat. 6 Carr. & Payne, 401; S. C. 25 Engl. Com. Law Rep. 458.

TICK, contracts. Credit; as, if a servant usually buy for the master upon tick, and the servant buy something without the master's order, yet, if the master were trusted by the trader, he is liable. 1 Show. 95; 3 Keb. 625; 10 Mod. 111; 3 Esp. R. 214; 4 Esp. R. 174.

TIDE. The ebb and flow of the sea.

2. Arms of the sea, bays, creeks, coves, or rivers, where the tide ebbs and flows, are public, and all persons may use the same for the purposes of navi-gation and for fishing, unless restrained by law. To give these rights at common law, the tide must ebb and flow: the flowing of the waters of a lake into a river, and their reflowing, being not the flux and reflux of the tides, but mere occasional and rare instances of a swell in the lake, and a setting up of the waters into the river, and the subsiding of such swells, is not to be considered an ebb and flow of the tide, so as to constitute a river technically navigable. 20 John. R. 98. See 17 John. R. 195; 2 Conn. R. 481.

3. In Pennsylvania, the common law principle, that the flux and reflux of the tide ascertain the character of the river, has been rejected. 2 Binn. R. 475. Vide Arm of the sea; Navigable river; Sea shore.

TIE. When two persons receive an equal number of votes at an election, there is said to be a tie.

2. In that case neither is elected. When the votes are given on any question to be decided by a deliberative assembly, and there is a tie, the question is lost. Vide Majority.

TIEL. An old manner of spelling tel. Such as nul tiel record, no such record.

TIEMPO INHABIL. A Spanish phrase used in Louisiana, to express a time when a man is not able to pay his debts.

2. A man cannot dispose of his property, at such a time, to the prejudice of his creditors. 4 N. S. 292; 3 Mart. Lo. R. 270; 10 Mart. Lo. R. 704.

TIERCE, measures. A liquid measure containing the third part of a pipe, or forty-two gallons.

TIGNI IMMITTENDI, civil law. The name of a servitude; it is the right of inserting a beam or timber from the wall of one house into that of a neighboring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight. Dig. 8, 2, 36; Id. 8, 5, 14.

TIMBER TREES. According to Blackstone, oak, ash, elm, and such other trees as are commonly used for building, are considered timber. 2 Comm. 28. But it has been contended, arguendo, that to make it timber, the trees must be felled and severed from the stock. 6 Mod. 23 Stark on Slander, 79. Vide 12 Johns. R. 239; 2 Suppl. to Ves. jr.

TIME, contracts, evidence, practice. The measure of duration., It is divided into years, months. days, (q. v.) hours, minutes, and seconds. It is also divided into day and night. (q. v.)

2. Time is frequently of the essence of contracts and crimes, and sometimes it is altogether immaterial.

3. Lapse of time alone is often presumptive evidence of facts which are otherwise unknown; an uninterrupted enjoyment of certain rights for twenty or twenty-one years, is evidence that the party enjoying them is legally entitled to them; after such a

length of time, the law presumes payment of a bond or other specialty. 10 S. & R. 63, 383; 3 S. & R. 493; 6 Munf. R. 532; 2 Cranch, R. 180; 7 Wheat. R. 535; 2 W. C. C R. 323; 4 John. R. 202; 7 John' R. 556; 5 Conn. 1; 3 Day 289; 1 McCord 145; 1 Bay, 482; 7 Wend. 94; 5 Verm. 236.

4. In the computation of time, it is laid down generally, that where the computation is to be made from an act done, the day when such act was done is included. Dougl. 463. But it will be excluded whenever such exclusion, will prevent a forfeiture. 4 Greenl. 298. Sed vide 15 Ves. 248; 1 Ball & B. 196. In general, one day is taken inclusively and the other exclusively. 2 Browne; Rep. 18. Vide Chitt. Bl. 140 n. 2; 2 Evans , Poth. 50; 13 Vin. Abr. 52, 499; 15 Vin. Ab. 554; 20 Vin. Ab. 266; Com. Dig. Temps; 1 Rop. Legacy, 518; 2 Suppl. to Ves. jr. 229; Graham's Pract. 185; 1 Fonbl. Equity, 430; Wright, R. 580; 7 John. R. 476; 1 Bailey, R. 89; Coxe, Rep. 363; 1 Marsh. Keny. Rep. 321; 3 Marsh. Keny. Rep. 448; 3 Bibb, R. 330; 6 Munf. R. 394; vide Computation.

TIME, pleading. The avertment of time is generally necessary in pleading; the rules are different, in different actions.

2. - 1. Impersonal actions, the pleadings must allege the time; that is, the day, month and year when each traversable fact occurred; and when there is occasion to mention a continuous act, the period of its duration ought to be shown. The necessity of laying a time extends to traversable facts only; time is generally considered immaterial, ana any time may be assigned to a given fact. This option, however, is subject to certain restrictions. 1st. Time should be laid under a videlicit, or the party pleading it will be required to, prove it strictly. 2d. The time laid should not be intrinsically impossible, or inconsistent with the fact to which it relates. 3d. There are some instances in which time forms a material point in the merits of the case; and, in these instances, if a traverse be taken, the time laid is of the substance of the issue, and must be strictly proved. With respect to all facts of this description; they must be truly stated, at the peril of a failure for variance; Cowp. 671: and here a videlicit will give no help. Id. 6 T. R 463; 5 Taunt. 2; 4 Serg. & Rawle, 576; 7 Serg. & Rawle, 405. Where the time needs not to be truly stated, (as is generally the case,) it is subject to a rule of the same nature with one that applies to venues in transitory matters, namely, that the plea and subsequent pleadings should follow the day alleged in the writ or declaration; and if in these cases no time at all be laid, the omission is aided after verdict or judgment by confession or default, by operation of the statute of jeofails. But where, in the plea or subsequent pleadings, the time happens to be material, it must be alleged, and there the pleader may be allowed to depart from the day in the writ and declaration.

3. - 2. In real or mixed actions, there is no necessity for alleging any particular day in the declaration. 3 Bl. Com. App. No. 1, §6; Lawes' Pl. App. 212; 3 Chit. Pl. 620-635;

Cro. Jac. 311; Yelv. 182 a, note; 2 Chitt. Pl. 396, n. r; Gould, Pl. c. 3, §99, 100; Steph. Pl. 314; Com. Dig. Pleader, C 19.

4. - 3. In criminal pleadings, it is requisite, generally, to show both the day and the year on which the offence was committed; but the indictment will be good, if the day and year can be collected from the whole statement, though they be not expressly averred. Com. Dig. Indictm. G 2; 5 Serg. & Rawle, 315. Although it be necessary that a day certain should be laid in the indictment, the prosecutor may give evidence, of an offence committed, on any other day, previous to the finding of the indictment. 5 Serg. & Rawle, 316; Arch. Cr. Pl. 95; 1 Phil Evid. 203; 9 East, Rep. 157. This rule, however, does not authorize the laying of a day subsequent to the trial. Addis. R. 36. See generally Bouv. Inst. Index, h. t.

TIPPLING HOUSE. A place where spirituous liquors are sold and drunk in violation of law. Sometimes the mere selling is considered as evidence of keeping a tippling house.

TIPSTAFF. An officer appointed by the marshal of the court of king's bench, to attend upon the judges with a kind of a rod or staff tipped with silver.

2. In the United States, the courts sometimes appoint an officer who is known by this name, whose duty it is to wait on the court and serve its process.

TITHES, Eng. law. A right to the tenth part of the produce of, lands, the stocks upon lands, and the personal industry of the inhabitants. These tithes are raised for the support of the clergy.

2. Fortunately, in the United States, the clergy can be supported by the zeal of the people for religion, and there are, no tithes. Vide Cruise, Dig. tit. 22; Ayliffe's Parerg. 504.

TITHING, Eng. law. Formerly a district containing ten men with their fam-ilies. In each tithing there was a tithing man whose duty it was to keep the peace, as a constable now is bound to do. St. Armand, in his Historical Essay on the Legislative Power of England, p. 70, expresses, an opinion that the tithing was composed not of ten common families, but of ten families of lords of a manor.

TITLE estates. A title is defined by Lord Coke to be the means whereby the owner of lands hath the just possession of his property. Co. Lit. 345; 2 Bl. Com. 195. Vide 1 Ohio Rep. 349. This is the definition of title to lands only.

2. There are several stages or degrees requisite to form a complete title to lands and tenements. 1st. The lowest and most imperfect degree of title is the mere possession, or actual occupation of the estate, without any apparent right to hold or continue such possession; this happens when one man disseises another. 2 Bl. Com. 195. 2dly. The next step to a good and perfect title is the right of possession, which may reside in one man, while the actual possession is not in himself, but in another. This right of possession is of two sorts; an apparent right of possession, which may be defeated by proving a better; and an actual right of possession, which will stand the test against all opponents. Idem. 196. 3dly. The mere right of property, the jus proprietatis without either possession or the right of possession. Id. 197.

3. A title is either good, marketable, doubtful, or bad.

4. A good title is that which entitles a man by right to a property or estate, and to the lawful possession of the same.

5. A marketable title is one which a court of equity considers to be so clear that it will enforce its acceptance by a purchaser. The ordinary acceptation of the term marketable title, would convey but a very imperfect notion of its legal and technical import.

6. To common apprehension, unfettered by the technical and conventional distinction of lawyers, all titles being either good or bad, the former would be considered marketable, the latter non-marketable. But this is not the way they are regarded in courts of equity, the distinction taken there being not between a title which is absolutely good or absolutely bad, but between a title, which the court considers to be so clear that it will enforce its acceptance by a purchaser, and one which the court will not go so far as to declare a bad title, but only that it is subject to so much doubt that a purchaser ought not to be compelled to accept it. 1 Jac. & Walk. R. 568. In short, whatever may be the private opinion of the court, as to the goodness of the title yet if there be a reasonable doubt either as to a matter of law or fact involved in it, a purchaser will not be compelled to complete his purchase; and such a title, though it may be perfectly secure and unimpeachable as a holding title is said, in the current language of the day, to be unmarketable. Atkins on Tit.2.

7. The doctrine of marketable titles is purely equitable and of modern ori-gin. Id. 26. At law every title not bad is marketable. 6 Taunt. R. 263; 5 Taunt. R. 625; S. C. 1 Marsh., R. 258. See Dalzell v. Crawford, 2 Penn. Law Journ. 17.

8. A doubtful title is one which the court does not consider to be so clear that it will enforce its acceptance by a purchaser, nor so defective as to declare it a bad title, but

only subject to so much doubt that a purchaser ought not to be compelled to accept it. 1 Jac. & Walk. R. 568; 9 Cowen, R. 344; vide Title, Marketable.

9. At common law, doubtful, titles are unknown; there every title must be either good or bad. Atkins on Tit. 17. See Dalzell v. Crawford, 2 Penn. Law Journ. 17.

10. A bad title is one which conveys no property to a purchaser of an estate.

11. Title to real estate is acquired by two methods, namely, by descent and by purchase. (See these words.)

12. Title to personal property may accrue in three different ways. By original acquisition. 2. By transfer, by act of law. 3. By transfer, by, act of the parties.

13. - §1. Title by original acquisition is acquired, 1st. By occupancy. This mode of acquiring title has become almost extinct in civilized governments, and it is permitted to exist only in those few special cases, in which it may be consistent with the public good. First. Goods taken by capture in war were, by the common law, adjudged to belong to the captor, but now goods taken from enemies in time of war, vest primarily in the sovereign, and they belong to the individual captors only to the extent and under such regulations, as positive laws may prescribe. Finch's Law, 28, 178 Bro. tit. Property, pl. 18, 38; 1 Wilson, 211; 2 Kent, Com. 290, 95. Secondly. Another instance of acquisition by occupancy, which still exists under certain limitations, is that of goods casually lost by the owner, and unreclaimed, or designedly abandoned by him; and in both these cases they belong to the fortunate finder. 1 Bl. Com. 296. See Derilict.

14. - 2d. Title by original acquisition is acquired by accession. See Accession.

15. - 3d. It is acquired by intellectual labor. It consists of literary pro-perty as the construction of maps and charts, the writing of books and papers. The benefits arising from such labor are secured to the owner. 1. By patent rights for inventions. See Patents. 2. By copyrights. See Copyrights.

16. - §2. The title to personal property is acquired and lost by transfer, by act of law, in various ways. 1. By forfeiture. 2. By succession. 3. By marriage. 4. By judgment. 5. By insolvency. 6. By intestacy.

17. - §3. Title is also acquired and lost by transfer by the act of the party. 1. By gift. 2. By contract or sale.

18. In general, possession constitutes the criterion of title of personal property, because no other means exist by which a knowledge of the fact to whom it belongs can be attained. A seller of a chattel is not, therefore, required to show the origin of his title, nor, in general, is a purchaser, with-out notice of the claim of the owner, compellable to make restitution; but, it seems, that a purchaser from a tenant for life of personal chattels, will not be secure against the claims of those entitled in remainder. Cowp. 432; 1 Bro. C. C. 274; 2 T. R. 376; 3 Atk. 44; 3 V. & B. 16.

19. To the rule that possession is the criterion of title of property may be mentioned the case of ships, the title of which can be ascertained by the register. 15 Ves. 60; 17 Ves. 251; 8 Price, R. 256, 277.

20. To convey a title the seller must himself have a title to the property which is the subject of the transfer. But to this general rule there are exceptions. 1. The lawful coin of the United States will pass the property along with the possession. 2. A negotiable instrument endorsed in blank is transferable by any person holding it, so as by its delivery to give a good title "to any person honestly acquiring it." 3 B. & C. 47; 3 Burr. 1516; 5 T. R. 683; 7 Bing. 284; 7 Taunt. 265, 278; 13 East, 509; Bouv. Inst. Index, h. t.

TITLE, legislation That part of an act of the legislature by which it is known, and distinguished from other acts the name of the act.

2. A practice has prevailed of late years to crowd into the same act a mass of heterogeneous matter, so that it is almost impossible to describe, or even to allude to it in the title of the act. This practice has rendered the title of little importance, yet, in some cases, it is material in the construction of an act. 7 East, R. 132, 134; 2 Cranch, 386. See Lord Raym. 77; Hard. 324; Barr. on the Stat. 499, n.

TITLE, persons. Titles are distinctions by which a person is known.

3. The constitution of the United States forbids the tyrant by the United States, or any state of any title of nobility. (q. v.) Titles are bestowed by courtesy on certain officers; the president of the United States sometimes re-ceives the title of excellency; judges and members of congress that of honor-able; and members of the bar and justices of the peace are called esquires. Cooper's, Justinian, 416'; Brackenridge's Law Miscell. Index, h. t.

3. Titles are assumed by foreign princes, and, among their subjects they may exact these marks of honor, but in their intercourse with foreign nations they are not entitled to them as a matter of right. Wheat. Intern. Law, pt. 2, c. 3, §6.

TITLE, Iiterature. The particular division of a subject, as a law, a book, and the like; for example, Digest, book 1, title 2; for the law relating to bills of exchange, see Bacon's Abridgment, title Merchant.

TITLE, rights. The name of a newwpaper a book, and the like.

3. The owner of a newspaper, having particular title, has a right to such title, an an injunction will lie to prevent its use un lawfully by another. 8 Paige, 75. See Pardess. n. 170.

TITLE, pleading, rights. The right of action which the plaintiff has; the declaration must show the plaintiff's title, and if such title be not shown in that instrument, the defect cannot be cured by any of the future pleadings. Bac. Ab. Pleas, &c. B 1.

TITLE DEEDS. Those deeds which are evidences of the title of the owner of an estate.

2. The person who is entitled to the inheritance has a right to the possession of the title deeds. 1 arr. & Marsh. 653.

TITLE OF A DECLARATION, pleading. At the top of every declaration the name of the court is usually stated, with the term of which the declaration is filed, and in the margin the venue, namely, the city or county where the cause is intended to be tried is set down. The first two of these compose what is called the title of the declaration. 1 Tidd's Pr. 866.

TO WIT. That is to say; namely; scilicet; (q. v.) videlicet. (q. v.)

TOFT. A place or piece of ground on which, a house formerly stood, which has been destroyed by accident or decay; it also signifies a messuage.

TOGATI. Rom. civ, law. Under the empire, when the toga had ceased to be the usual costume of the Romans, advocates were nevertheless obliged to wear it whenever they pleaded a cause. Hence they were called togati. This denomination received an official or legal sense in the imperial constitutions of the fifth and sixth centuries, and the words togati, consortium (corpus, ordo, collegium,) togatorum, frequently occur in those acts.

TOKEN, contracts, crimes. A document or sign of the existence of a fact.

2. Tokens are either public or general, or privy tokens. They are true or false. When a token is false and indicates a general intent to defraud, and it is used for that purpose,

it will render the offender guilty of the crime of cheating; 12 John. 292; but if it is a mere privy token, as counterfeiting a letter in another man's name, in order to cheat but. one individual, it would not be indictable. 9 Wend. Rep. 182; 1 Dall. R. 47; 2 Rep. Const. Cr. 139; 2 Virg. Cas. 65; 4 Hawks, R. 348; 6 Mass. IR. 72; 1 Virg. Cas. 150; 12 John. 293; 2 Dev. 199; 1 Rich. R. 244.

TOKEN, commercial law. In England, this name is given to pieces of metal, made in the shape of money, passing among private persons by consent at a certain value. 2 Adolpb. P. S. 175; 2 Chit. Com. Law, 182.

TOLERAT10N. In some. countries, where religion is established by 1aw, cer-tain sects who do not agree with the established religion are nevertheless permitted to exist, and this permission is called toleration. Those are per-mitted and allowed to remain rather as a matter of favor than a matter of right.

2. In the United States, there is no such a thing as toleration, all men have an equal right to worship God according to the dictates of their own consciences. See Christianity; Conscience; Religious test.

TOLL, contracts. A sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, bridge, or the like, of a public nature. Toll is also the compensation paid to a miller for grinding another person's grain.

2. The rate of taking toll for grinding is regulated by statute in most of the states. See 2 Hill. Ab. oh. 17; 6 Ad. & Ell. N. S. 31,; 6 Q. B. 3 1.

TO TOLL, estates, rights. To bar, defeat, or take away; as to toll an entry into lands, is to deny. or take away the right of entry.

TOLLS. In a general sense, tolls signify any manner of customs, subsidy, prestation, imposition, or sum of money demanded for exporting or importing of any wares or merchandise, to be taken of the buyer. 2 Inst. 58.

TON. Twenty hundred weight, each hundred weight being one hundred and twelve pounds avoirdupois. See act of congress of Aug. 30, 1842, c. 270, s. 20.

TONNAGE, mar. law. The capacity of a ship or vessel.

2. The act of congress of March 2, 1799, s. 64, 1 Story's L. U. S. 630, directs that to ascertain the tonnage of any ship or vessel, the surveyor, &c. shall, if the said ship or vessel be double decked, take the length thereof from the forepart of the main stem, to the afterpart of the stern post, above the upper deck, the breadth thereof, at the

broadest part above the mainwales, half of which breadth shall be accounted the depth of such vessel, and then deduct from the length three-fifths of the breadth, multiply the remainder by the breadth and the product of the depth, and shall divide this last product by ninety-five, the quotients whereof shall be deemed the true contents or tonnage of such ship or vessel. And if such ship or vessel shall be single decked, the said, surveyor shall take the length and breadth as above directed, in respect to a double deck ship or vessel, and shall deduct from the length three-fifths of the breadth, and taking the depth from the under-side of the deck plank to the ceiling of the hold, shall multiply and divide as aforesaid, and the quotient shall be deemed the tonnage of such ship or vessel.

3. The duties paid on the tonnage of a ship or vessel are also called tonnage.

4. These duties are altogether abolished in relation. to American vessels by the act of May 31, 1830, s. 1, 4 Story's Laws U. S. 2216. And by the second section of the same act, all tonnage duties on foreign vessels are abolished, provided the president of the, United States shall be satisfied that the discriminating or countervailing duties of such foreign nation, so far as they operate to the disadvantage. of the United States, have been abolished.

5. The constitution of the United States provides, art. 1, s. 10, n. 2, that no state shall, without the consent of congress, lay any duty on tonnage.

TONTINE, French law. The name of a partnership composed of creditors or, recipients of perpetual or life-rents or annuities, formed on the condition that the rents of those who may die, shall accrue to the survivors, either in whole or in part.

2. This kind of partnership took its name from Tonti, an Italian, who first conceived the idea and put it in practice. Merl. Repert. h. t. Dall. Dict. h. t.; 5 Watts, 851.

TOOK AND CARRIED AWAY, pleadings. In an indictment for simple larceny, the words "feloniously took and carried away" the goods stolen, are indispensable. Bac. Abr. Indictment, GI; Com. Dig. Indictment, G 6; Cro. C. C. 37; 1 Chit. Cr. Law, 0244. Vide Taking.

TOOLS. The Massachusetts act of assembly of 1805, c. 100, which provided that "the tools of any debtor necessary for his trade and occupation, should be exempted from execution," was held to designate those implements which are commonly used by the hand of one man, in some manual labor necessary for his subsistence. The apparatus of a printing office, such as types, presses, &c. are not therefore included under the term tools. 13 Mass. Rep. 82; 10 Pick. 423; 3 Verm. 133; and see 2 Pick. 80; 5 Mass. 313.

2. By the forty-sixth section of the act of March 2, 1789, 1 Story's Laws U. S. 612, the tools or implements of a mechanical trade of persons who arrive in the United States, are free and exempted from duty.

TORT. An injury; a wrong; (q. v.) hence the expression an executor de son tort, of his own wrong. Co. Lit. 158.

2. Torts may be committed with force, as trespasses, which may be an injury to the person, such as assault, battery, imprisonment; to the property in possession; or they may be committed without force. Torts of this nature are to the absolute or relative rights of persons, or to personal property in possession or reversion, or to real property, corporeal or encorporeal, in possession or reversion: these injuries may be either by nonfeasance, malfeasance, or misfeasance. 1 Chit. Pl. 133-4. Vide 1 Fonb. Eq. 4; Bouv. Inst. Index, h. t.; and the article Injury.

TORTFEASOR. A wrong-doer, one who does wrong; one who commits a trespass or is guilty of a tort.

TORTURE, punishments. A punishment inflicted in some countries on supposed criminals to induce them to confess their crimes, and to reveal their associates.

2. This absurd and tyrannical practice never was in use in the United States; for no man is bound to accuse himself. An attempt to torture a person accused of crime, in order to extort a confession, is an indictable offence. 2 Tyler, 380. Vide Question.

TOTAL. Complete; containing the whole; as the total amount of an account is all the items of such account added together; total incapacity, is an absolute and complete incapacity to do a thing. A married woman is totally incapable to make a contract, because, although having intelligence, she has not legal capacity and an idiot is totally incapable to enter into a contract, because he has no will.

TOTAL LOSS. A technical expression, importing an utter loss of the property for the voyage, and no more. 1 T. R. 187. Vide Loss, and 2 Phil. Ev. 54, n.; 16 East, R. 214 Park's Ins. Index, h. t.; Marsh. Ins. 486.

TOTALITY. The whole sum or quantity.

2. In making a tender, it is requisite that the totality of the sum due should be offered, together with the interest and costs. Vide Tender.

TOTIDEM VERBIS. In so many words.

TOTIES QUOTIES. As often as the thing shall happen.

TOUCH AND STAY. These words are frequently introduced in policies of insurance, giving the party insured the right to stop and stay at certain designated points in the course of the voyage. A vessel which has the power to touch and stay at a place in the course of the voyage, must confine herself strictly to the terms of the liberty so given; for any attempt to trade at such a port during such a stay, as by shipping or landing goods, will amount to a species of deviation which will discharge the underwriters, unless the ship have also liberty to trade, as well as to touch and stay at such a place. 1 Marsh. Ins. 275; 1 Esp. R. 610; 5 Esp. R. 96.

TOUJOURS ET UNCORE PRIST. Always, and still ready. This is the name of a plea of tender, as where a man is indebted to another, and he tenders the amount due, and after wards the creditor brings a suit, the defendant may plead the tender, and add that he has always been and is still ready to pay what he owes, which may be done by the formula toujours et uncore prist. He must then pay the money into court, and if the issue be found for him, the defendant will be exonerated from costs, and the plaintiff made justly liable for them. 3 Bouv. Inst. n. 2923 Vide Tout temps prist.

TOUR D'ECHELLE, French law. Tour d'echelle is a right which the owner of an estate has of placing ladders on his neighbor's property to facilitate the reparation of a party wall, or of buildings which are supported by that wall. It is a species of servitude. Lois des Bat. part 1, c. 3, sect. 2, art. 9, §1.

2. In another sense by this term, or echellage, is understood the space of ground left unoccupied around a building for the purpose of enabling the owner to repair it with convenience; this is not a servitude, but an actual corporeal property. Td. part 1, c. 3, sect. 2, art. 9, §2.

TOUT TEMPS PRIST, pleading. These old French words signify always ready. The name of a plea to an action where the defendant alleges that he has always been ready to perform what is demanded of him; and he adds that he is still ready, uncore prist. (q. v.) 3 Bl. Com. 303; 20 Vin. Ab. 306; Com. Dig. Pleader, 2 Y 5.

TOWAGE, contracts. That which is given for towing ships in rivers. Guidon de la Mer, ch. 16; Poth. Des Avaries, n. 147; 2 Chit. Com. Law, 16.

TOWN. This word is used differently in different parts of the United States. In Pennsylvania and some other of the middle states, it signifies a village or a city. In some of the northeastern states it denotes a subdivision of a county, called in other places a township.

TRADE. In its most extensive signification this word includes all sorts of dealings by way of Bale or exchange. In a more limited sense it signifies the dealings in a particular business, as the India trade; by trade is also understood the business of a particular mechanic, hence boys are said to be put apprentices to learn a trade, as the trade of a carpenter, shoemaker, and the like. Bac. Ab. Master and Servant, D 1. Trade differs from art. (q. v.)

2. It is the policy of the law to encourage trade, and therefore all contracts which restrain the exercise of a man's talents in trade are detrimental to the commonwealth, and therefore void; though he may bind himself not to exercise a trade in a particular place, for, in this last case, as he may pursue it in another place, the commonwealth has the benefit of it. 8 Mass. 223; 9 Mass. 522. Vide Ware R. 257, 260 Com. Dig. h. t.; Vin. Ab. h. t.

TRADE MARKS. Signs, writings or tickets put upon manufactured goods, to distinguish them from others.

2. It seems at one time to have been thought that no man acquired a right in a particular mark or stamp. 2 Atk. 484. But it was afterwards considered that for one man to use as his own another's name or mark, would be a fraud for which an action would lie. 3 Dougl. 293; 3 B. & C. 541; 4 B. & Ad. 410. 1 court of equity will restrain a party from, using the marks of another. Eden, Inj. 314l; 2 Keene, 213; 3 Mylne & C. 339.

3. The Monthly Law Magazine for December 1840, in an article copied into the American Jurist, vol. 25, p. 279, says, "The principle to be extracted, after an examination of these cases, appear to be the following: First, that the first producer or vendor of any article gains no right of property in that article so as to prevent others from manufacturing, producing or vending it.

4. Secondly, that although any other person may manufacture, produce, and sell any such article, yet he must not, in manner, either by using the same or similar marks, wrappers, labels, or devices, or colorable imitations thereof, or otherwise, hold out to the public that he is manufacturing, producing, or selling the identical article, prepared, manufactured, produced, or sold by the other; that is to say, he may not make use of the name or reputation of the other in order to sell his own preparation.

5. Thirdly, the right to use or restrain others from using any mark or name of a firm, is in the nature of goodwill, and therefore goes to the surviving or continuing partner in such firm, and the personal representative of a deceased partner has an interest in it.

6. Fourthly, that courts of equity in these cases only act as auxiliary to the legal right, and to prevent injury, and give a relief by account, when damages at law would be inadequate to the injury received; and they will not interfere by injunction in the first instance, unless a good legal title is shown, and even then they never preclude the parties from trying the right at law, if desired.

7. Fifthly, if the legal title be so doubtful as not to induce the court to grant the injunction, yet it will put the parties in a position to try the legal right at law, notwithstanding the suit.

8. Sixthly, that before the party is entitled to relief in equity, he must truly represent his title, and the mode in which he became possessed of the article for the vending of which he claims protection; it being a clear rule of courts of equity not to extend their protection to persons whose case is not founded on truth."

9. In France the law regulates the rights of merchants and manu facturers as to their trade marks with great minuteness. Dall. Dict. mot Propriete Industrielle. See, generally, 4 Mann. & Gr. 357; B. & C. 541; 5 D. & R. 292; 2 Keen, 213; and Deceit.

TRADER. One who makes it his business to buy merchandise or goods and chattels, and to sell the same for the purpose of making a profit. The quantum of dealing is immaterial, when an intention to deal generally exists. 3 Stark. 56; 2 C. & P. 135; 1 T. R. 572.

2. Questions as to who is a trader most frequently arise under the bankrupt laws, and the most difficult among them are those cases where the party follows a business which is not that of buying and selling principally, but in which he is occasionally engaged in purchases and sales.

3. To show who is a trader will be best illustrated by a few examples: A farmer who in addition to his usual business, occasionally buys a horse not calculated for his usual occupation, and sells him again to make a profit, and who in the course of two years had so bought and sold five or six horses, two of which had been sold after be bad bought them for the sake of a guinea profit, was held to be a trader. 1 T. R. 537, n.; 1 Price, 20. Another firmer who bought a large quantity of potatoes, not to be used on his farm, but merely to sell again for a profit, was also declared to be a trader. 1 Str. 513. See 7 Taunt. 409; 2 N. R. 78; 11 East, 274. A butcher who kills only such cattle as be has reared himself is not a trader, but if he buy them and kill and sell them with a view to profit, he is a trader. 4 Burr. 21, 47. See 2 Rose, 38; 3 Camp. 233 Cooke, B. L. 48, 73; 2 Wils. 169; 1 Atk. 128; Cowp.745. A brickmaker who follows the business, for the purpose of enjoying the profits of his real estate merely, is not a trader; but when he buys the earth by the load or otherwise, and manufactures it into

bricks, and sells them with a view to profit, he is a trader. Cook, B. L. 52, 63; 7 East, 442; 3 C. & P. 500; Mood. & M. 263 2 Rose, 422; 2 Glyn & J. 183; 1 Bro. C. C. 173. For further examples, the reader is referred to 4 M. & R. 486; 9 B. & C. 577; 1 T. R. 34; 1 Rose, 316; 2 Taunt. 178; 2 Marsh. 236; 3 M. & Scott. 761; 10 Bing. 292 Peake, 76; 1 Vent. 270; 3 Brod. & B. 2 6 Moore, 56.

TRADITIO BREVIS MANUS. This term is used in the civil law to designate the delivery of a thing, by the mere consent of the parties; as, when Peter holds the property of Paul as bailee, and, afterwards, he buys it, it is not necessary that Paul should deliver the property to Peter, and he should re-deliver it to Paul, the mere consent of the parties transfers the title to Paul. 1 Duverg. n. 252; 6 Shipl. R. 231; Poth. Pand. lib. 50, CDLXXIV.; 1 Bouv. Inst. n. 944.

TRADITION, contracts, civil law. The act by which a thing is delivered by one or more persons to one or more others.

2. In sales it is the delivery of possession by the proprietor with an intention to transfer the property to the receiver. Two things are therefore requisite in order to transmit property in this way: 1. The intention or consent of the former owner to transfer it; and, 2. The actual delivery in pursuance of that intention.

3. Tradition is either real or symbolical. The first is where the ipsa corpora of movables are put into the hands of the receiver. Symbolical tradition is used where the thing is incapable of real delivery, as, in immovable subjects, such as lands and houses; or such as consist in jure (things incorporeal) as things of fishing and the like. The property of certain movables, though they are capable of real delivery, may be transferred by symbol. Thus, if the subject be under look and key, the delivery of the key is considered as a legal tradition of all that is contained in the repository. Cujas, Observations, liv. 11, ch. 10; Inst. lib. 2, t. 1, §40; Dig. lib. 41, t. 1, 1. 9; Ersk. Princ. Laws of Scotl. bk. 2, t. 1, s. 10, 11; Civil Code Lo. art. 2452, et seq.

4. In the common law the term used in the place of tradition is delivery. (q. v.)

TRAFFIC. Commerce, trade, sale or exchange of merchandise, bills, money and the like.

TRAITOR, crimes. One guilty of treason.

2. The punishment of a traitor is death.

TRAITOROUSLY, pleadings. This is a technical word, which is essential in an indictment for treason in order to charge the crime, and which cannot be supplied by

any other word, or any kind of circumlocution. Having been well laid in the statement of the treason itself, it is not necessary to state every overt act to have been traitorously committed. Vide Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G. 6; Hawk. B. 2, c. 25, s. 55; 1 East's P. C. 115; 2 Hale, 172, 184; 4 Bl. Com. 307; 8 Inst. 15; Cro. C. C. 87; Carth. 319; 2 Salk. 683; 4 Harg. St. Tr. 701; 2 Ld. Raym. 870; Comb. 259; 2 Chit. Cr. Law, 104, note (b).

TRANSACTION, contracts, civil law. An agreement between two or more persons, who for the purpose of preventing or putting an end to a law-suit, adjust their differences by mutual consent, in the manner which they agree on; in Louisiana this contract must be reduced to writing. Civil Code of Louis, 3038.

2. Transactions regulate only the differences which appear to be clearly comprehended in them by the intentions of the parties, whether they be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties, never intended to include in them. Id. 3040.

3. To transact, a man must have the capacity to dispose of the things included in the transaction. Id. 3039; 1 Domat, Lois Civiles, liv. 1, t. 13, s. 1; Dig. lib. 2, t. 15, l. 1; Code lib. 2, t. 4, 1. 41. In the common law this is called a compromise. (q. v.)

TRANSCRIPT. A copy of an original writing or deed.

2. In Pennsylvania, the act of assembly of March 20th, 1810, s. 10, calls a copy of the proceedings before a justice of the peace in any case, a transcript: the proper term would be an exemplification.

TRANSFER, cont. The act by which the owner of a thing delivers it to another person, with the intent of passing the rights which he has in it to the latter.

2. It is a rule founded on the plainest dictates of common sense, adopted in all systems of law, that no one can transfer a right to another which he has not himself: nemo plus juris ad alienum transfers potest quam ipse habet. Dig. 50, 17, 54 10 Pet. 161, 175; Co. Litt. 305.

3. To transfer means to change; for example, one may transfer a legacy, either, 1st. By the change of the person of the legatee, as, I bequeath to Primus a horse wliich I before bequeathed to Secundus. 2d. By the change of the thing bequeathed, as, I bequeath to Tertius my History of the United States instead of my copy of the Life of Washington. 3d. By the change of the person who was bound to pay the legacy, as, I

direct that the sun) of one bundred dollars, which I directed should be charged upon my house which I gave to Quartus, shall be paid by my executors.

TRANSFEREE. He to whom a transfer is made.

TRANSFERENCE, Scotch law. The name of an action by which a suit, which was pending at the time the parties died, is transferred from the deceased to his representatives, in the same condition in which it stood formerly. If it be the pursuer who is dead, the action is called a transference active; if the defender, it is a transference passive. Ersk. Prin. B. 4, t. 1, n. 32.

TRANSFEROR. One who makes a transfer.

TRANSGRESSION. The violation of a law.

TRANSHIPMENT, mar. law. The act of taking the cargo out of one ship and loading it in another.

2. When this is done from necessity, it does not affect the liability of an insurer on the goods. 1 Marsh. Ins. 166; Abbott on Shipp. 240. But when the master tranships goods without necessity, he is answerable for the loss of them by capture by public enemies. 1 Gallis. R. 443.

TRANSIRE, Eng. law. A warrant for the custom-house to let goods pass: a permit. (q. v.) See, for a form of a transire, Harg. L. Tr. 104.

TRANSITORY. That which lasts but a short time, as transitory facts that which may be laid in different places, as a transitory action.

TRANSITORY ACTION, pract., plead. Actions are transitory when the venue may lawfully be laid in any county, though the cause of action arose out of the jurisdiction of the court. Vide Actions, and 1 Chit. Pl. 273; Com. Dig. Actions, N 12; Cowp. 161; 9 Johns. R. 67; 14 Johns. R. 134; 3 Bl. Com. 294; 3 Bouv. Inst. n. 2645. Vide Bac. Ab. Actions local and transitory.

TRANSITUS. The act of going, or of removing goods, from one place to another. The transitus of goods from a seller commences the moment he has delivered them to an agent for the purpose of being carried to another place, and ends when the delivery is complete, which delivery may be by putting the purchaser into actual possession of the goods, or by making him a symbolical delivery. 2 Hill, S. C. 587; 5 John. 335; 2 Pick. 599; 11 Pick.. 352; 2 Aik. 79; 5 Ham. 88; 6 Rand. 473. See Stoppage in transitu.

TRANSLATION. The copy made in one language of what has been written, or spoken in another.

2. In pleading, when a libel or an agreement, written in a foreign language, must be averred, it is necessary that a translation of it should also be given.

3. In evidence, when a witness is unable to speak the English language so as to convey his ideas, a translation of his testimony must be made. In that case, an interpreter should be sworn to translate to him, on oath, the questions propounded to him, and to translate to the court and jury his answers. 4 Mass. 81; 5 Mass. 219; 2 Caines' Rep. 155; Louis. Code of Pr. 784, 5.

4. It has been determined that a copyright may exist in a translation, as a literary work. 3 Ves. & Bea. 77; 2 Meriv. 441, n.

5. In the ecclesiastical law, translation denotes the removal from one place to another.; as, the bishop was translated from the diocese of A, to that of B. In the civil law, translation signifies the transfer of property. Clef des Lois Rom. h. t.

6. Swinburne applies the term translation to the bestowing of a legacy which had been given to one, on another; this is a species of ademption, (q. v.) but it differs from it in this, that there may be an ademption without a translation, but there can be no translation without an ademption. Bac. Ab. Legacies, C.

7. By translation is also meant the transfer of property, but in this sense it is seldom used. 2 Bl. Com. 294. Vide Interpreter.

TRANSMISSION, civ. law. The right which heirs or legatees may have of passing to their successors, the inheritance or legacy to which they were entitled, if they happen to die without having exercised their rights. Domat, liv. 3, t. 1, s. 10; 4 Toull. n. 186; Dig. 50, 17, 54; Code, 6, 51.

TRANSPORTATION, punishment. In the English law, this punishment is inflicted by virtue of sundry statutes; it was unknown to the common law. 2 H. Bl. 223. It is a part of the judgment or sentence of the court, that the party shall be transported or sent into exile. 1 Ch. Cr. Law, 789 to 796: Princ. of Pen. Law, c. 4 §2.

TRAVAIL. The act of child-bearing.

2. A woman is said to be in her travail from the time the pains of child-bearing commence until her delivery. 5 Pick. 63; 6 Greenl. R. 460.

3. In some states, to render the mother of a bastard child a competent witness in the prosecution of the alleged father, she must have accused him of being the father during the time of her travail. 2 Root, R. 490; 1 Root, R. 107; 2 Mass. R. 443; 5 Mass. R. 518; 8 Greenl. R. 163; 3 N. H. Rep. 135; 6 Greenl. R. 460. But in Connecticut, when the state prosecutes, the mother is competent, although she did not accuse the father during her travail. 1 Day, R. 278.

TRAVERSE, crim. law practice. This is a technical term, which means to turnover: it is applied to an issue taken upon an indictment for a misdemeanor, and means nothing more than turning over or putting off the trial to a following sessions or assize; it has, perhaps with more propriety, been applied to the denying or taking issue upon an indictment, without reference to the delay of trial. Dick. Sess. 151; Burn's Just. h. t.; 4 Bl. Com. 351.

TRAVERSE, pleading. This term, from the French traverser, signifies to deny or controvert anything which is alleged in the declaration, plea, replication or other pleadings; Lawes' Civ. Plead. 116, 117 there is no real distinction between traverses and denials, they are the same in substance. Willes. R. 224. however, a traverse, in the strict technical meaning, and more ordinary acceptation of the term, signifies a direct denial in formal words, "without this that," &c. Summary of Pleadings, 75; 1 Chit. Pl. 576, n. a.

2. All issues are traverses, although all traverses cannot be said to be issues, and the difference is this; issues are where one or more facts are affirmed on one side, and directly and merely denied on the other; but special traverses are where the matter asserted by one party is not directly and merely denied or put in issue. by the other, but he alleges some new matter or distinction inconsistent with what is previously stated, and then distinctly excludes the previous statement of his adversary. The new matter so alleged is called the inducement to the traverse, and the exclusion of the previous statement, the traverse itself. Lawes' Civ. Pl. 117. See, in general, 20 Vin. Abr. 339; Com. Dig. Pleader, G; Bac. Abr. Pleas, H; Yelv. R. 147, 8; 1 Saund. 22, n. 2; Gould. on Pl. ell. 7 Bouv. Inst. Index, n. t.

3. A traverse upon a traverse is one growing out of the same point, or subject matter, as is embraced in a preceding traverse on the other side. Gould on Pl. ch. 7, §42, n. It is a general rule, that a traverse, well tendered on one side, must be accepted on the other. And hence it follows, as a general rule, that there cannot be a traverse upon a traverse, if the, first traverse is material. The meaning of the rule is, that when one party has tendered a material traverse, the other cannot leave it and tender another of his own to the same point upon the inducement of the first traverse, but must join in that first tendered; otherwise the parties might alternately tender traverses to each other, in unlimited succession, without coming to an issue. Gould on Pl. ch. 7, §42.

4. In cases where the first traverse is immaterial, there may be a traverse upon a traverse. Id. ch. 7, §43. And where the plaintiff might be ousted of some right or liberty the law allows him, there may be a traverse upon a traverse, although the first traverse include what is material. Poph. 101; Mo. 350; Com. Dig. Pleader, G 18; Bac. Abr. Pleas, H 4; Hob. 104, marg.; Cro. Eliz. 99, 418; Gould on Pl. ch. 7, 44.

5. Traverses may be divided into general traverses, (q. v.) and special traverses. (q. v.) There is a third kind called a common traverse. (q. v.)

TREASON, crim. law. This word imports a betraying, treachery, or breach of allegiance. 4 Bl. Com. 75.

2. The constitution of the United States, art. 3, s. 3, defines treason against the United States to consist only in levying war (q. v.) against them, or in adhering to their enemies, giving them aid or comfort. This offence is punished with death. Act of April 30th, 1790, 1 Story's Laws U. S. 83. By the same article of the constitution, no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. Vide, generally, 3 Story on the Const. ch. 39, p. 667; Serg. on the Const. ch. 30; United States v. Fries, Pamph.; 1 Tucker's Blackst. Comm. Appen. 275, 276; 3 Wils. Law Lect. 96 to 99; Foster, Disc. I; Burr's Trial; 4 Cranch, R. 126, 469 to 508; 2 Dall. R. 246; 355; 1 Dall. Rep. 35; 3 Wash. C. C. Rep. 234; 1 John. Rep. 553 11 Johns. R. 549; Com. Dig. Justices, K; 1 East, P. C. 37 to 158; 2 Chit. Crim. Law, 60 to 102; Arch. Cr. Pl. 378 to 387.

TREASURE TROVE. Found treasure.

2. This name is given to such money or coin, gold, silver, plate, or bullion, which having been hidden or concealed in the earth or other private place, so long that its owner is unknown, has been discovered by accident. Should the owner be found it must be restored to him; and in case of not finding him, the property, according to the English law, belongs to the king. In the latter case, by the civil law, when the treasure was found by the owner of the soil, he was considered as entitled to it by the double title of owner and finder; when found on another's property, one-half belonged to the owner of the estate, and the other to the finder; when found on public property, it belonged one-half to the public treasury, and the other to the finder. Lecons du Dr. Rom. §350-352. This includes not only gold and silver, but whatever may constitute riches, as vases, urns, statues, &c.

3. The Roman definition includes the same things under the word pecunia; but the thing found must have a commercial value for ancient tombs would not be considered a treasure. The thing must have been hidden or concealed in the earth; and no one

must be able to establish his right to it. It must be found, by a pure accident, and not in consequence of search. Dall. Dict. Propriete, art. 3, s. 3.

4. According to the French law, le tresor est toute chose cachee ou enfouie, sur laquelle personne ne peut justifier sa propriete, et qui est decouverte par lo pur effet du hasard. Code Civ. 716. Vide 4 Toull. n. 34. Vide, generally, 20 Vin. Abr. 414; 7 Com. Dig. 649; 1 Bro. Civ. Law, 237; 1 Blackstone's Comm. 295; Poth. Traite du Dr. de Propreite, art. 4.

TREASURER. An officer entrusted with the treasures or money either of a private individual, a corporation, a company, or a state.

2. It is his duty to use ordinary diligence in the performance of his office, and to account with those whose money he has.

TREASURER. OF THE MINT. An officer created by the act of January 18, 1837, whose duties are prescribed as follows: The treasurer shall receive and safely keep all moneys which shall be for the use and support of the mint; shall keep all the current accounts of the mint, and pay all moneys due by the mint, on warrants from the director. He shall receive all bullion brought to the mint for coinage; shall be the keeper of all bullion and coin in the mint, except while the same is legally placed in the hands of other officers, and shall, on warrants from the director, deliver all coins struck at the mint to the persons to whom they shall be legally payable. And he shall keep regular and faithful accounts of all the transactions of the mint, in bullion and coins, both with the officers of the mint and the depositors; and shall present, quarter-yearly, to the treasury department of the United States, according to such forms as shall be prescribed by that department, an account of the receipts and dishursements of the mint, for the purpose of being adjusted and settled.

2. This officer is required to give bond to the United States with one or more sureties to the satisfaction of the secretary of the treasury, in the sum of ten thousand dollars. His salary is two thousand dollars.

TREASURER OF THE UNITED STATES, government. Before entering on the duties of his office, the treasurer is required to give bond with sufficient sureties, approved by the secretary of the treasury and the first comptroller, in the sum of one hundred and fifty thousand dollars, payable to the United States, with condition for the faithful performance of the duties of his office, and the fidelity of the. persons by him employed. Act of 2d September, 1789, s. 4.

2. His principal duties are, 1. To receive and keep the moneys of the United States, and dishurse the same by warrants drawn by the secretary of the treasury,

countersigned by the proper officer, and recorded according to law. Id. s. 4. 2. To take receipts for all moneys paid by him.

3. To render his account to the comptroller quarterly, or oftener if required, and transmit a copy thereof, when settled, to the secretary of the treasury. 4. To lay before each house, on the third day of each session of congress, fair and accurate copies of all accounts by him, from time to time, rendered to and settled with the comptroller, and a true and perfect account of the state of the treasury. 5. To submit at all times, to the secretary of the treasury and the comptroller, or either of them, the inspection of the moneys in his bands. Id. s. 4. 3. His compensation is three thousand dollars -per annum. Act of 20th February, 1804, s. 1.

TREASURY. The place where treasure is kept the office of a treasurer. The term is more usually applied to the public than to a private treasury. Vide Department of the Treasury o the United States.

TREATY, international law. A treaty is a compact made between two or more independent nations with a view to the public welfare treaties are for a perpetuity, or for a considerable time. Those matters which are accomplished by a single act, and are at once perfected in their execution, are called agreements, conventions and pactions.

2. On the part of the United States, treaties are made by the president, by and with the consent of the senate, provided two-thirds of the senators present concur. Const. article 2, s. 2, n. 2.

3. No state shall enter into any treaty, alliance or confederation; Const. art. 1, s. 10, n. 1; nor shall any state, without the consent of congress, enter into any agreement or compact with another state, or with a foreign power. Id. art. 1, see. 10, n. 2; 3 Story on the Const. §1395.

4. A treaty is declared to be the supreme law of the land, and is therefore obligatory on courts; 1 Cranch, R. 103; 1 Wash. C. C. R. 322 1 Paine, 55; whenever it operates of itself without the aid of a legislative provision; but when the terms of the stipulation import a contract, and either of the parties engages to perform a particular act, the treaty addresses itself to the polit-ical, not the judicial department, and the legislature must execute the contract before it can become a rule of the court. 2 Pet. S. C. Rep. 814. Vide Story on the Constitut. Index, h. t.; Serg. Constit. Law, Index, h. t.; 4 Hall's Law Journal, 461; 6 Wheat. 161: 3 Dall. 199; 1 Kent, Comm. 165, 284.

5. Treaties are divided into personal and real. The personal relate exclusively to the persons of the contracting parties, such as family alliances, and treaties guarantying the throne to a particular sovereign and his family. As they relate to the persons they

expire of course on the death of the sov-ereign or the extinction of his family. Real treaties relate solely to the subject-matters of the convention, independently of the persons of the contracting parties, and continue to bind the state, although there may be changes in its constitution, or in the persons of its rulers. Vattel, Law of Nat. b. 2, c. 12, 183-197.

TREATY OF PEACE. A treaty of peace is an agreement or contract made by belligerent powers, in which they agree to lay down their arms, and by which they stipulate the conditions of peace, and regulate the manner in which it is to be restored and supported Vatt. lib. 4, c. 2, §9.

TREBLE COSTS, remedies. By treble costs, in the English law, is understood, 1st. The usual taxed costs. 2d. Half thereof. 3d. Half the latter; so that in effect the treble costs amount only to the taxed costs, and three-fourths thereof. 1 Chitty, R. 137; 1 Chitt. Pract. 27.

2. Treble costs are sometimes given by statutes, and this is the construction put upon them.

3. In Pennsylvania the rule is different; when an act of assembly gives treble costs, the party is allowed three times the usual costs, with the exception, that the fees of the officers are not to be trebled, when they are not regularly or usually payable by the defendant. 2 Rawle, R. 201.

4. And in New York the directions of the statute are to be strictly pursued, and the costs are to be trebled. 2 Dunl. Pr. 731.

TREBLE DAMAGES, remedies. In actions arising ex contractu some statutes give treble damages; and these statutes have been liberally construed to mean actually treble damages; for example, if the jury give twenty dollars damages for a forcible entry the court will award forty dollars more, so as to make the total amount of damages sixty dollars. 4 B. & C. 154; M'Clell. Rep. 567.

2. The construction on the words treble damages, is different from that which has been put on the words treble costs. (q. v.) Vide 6 S. & R. 288; 1 Browne, R. 9; 1 Cowen, R. 160, 175,176, 584; 8 Cowen, 115.

TREBUCKET. The name of an engine of punishment, said to be synonymous with tumbrel. (q. v.)

TREE. A woody plant, which in respect of thickness and height grows greater than any other plant.

2. Trees are part of the real estate while growing, and before they are severed from the freehold; but as soon as they are cut down, they are personal property.

3. Some trees are timber trees, while others do not bear that denomination. Vide Timber, and 2 Bl. Com. 281.

4. Trees belong to the owner of the land where they grow, but if the roots go out of one man's land into that of another, or the branches spread over the adjoining estates, such roots or branches may be cut off by the owner of the land into which they thus grow. Rolle's R. 394; 3 Bulstr. 198; Vin. Ab. Trees, E; and tit. Nuisance, W 2, pl. 3; 8 Com. Dig. 983; 2 Com. Dig. 274; 10 Vin. Ab. 142; 20 Viii. Ab. 415; 22 Vin. Ab. 583; 1 Supp. to Ves. jr. 138; 2 Supp. to Ves. jr. 162, 448; 6 Ves. 109.

5. When the roots grow into the adjoining land, the owner of such land may lawfully claim a right to hold the tree in common with the owner of the land where it was planted; but if the branches only overshadow the adjoining land, and the root does not enter it, the tree wholly belongs owner of the estate where the roots grow. 1 Swift's Dig. 104; 1 Hill. Ab. 6; 1 Ld. Raym. 737. Vide 13 Pick. R. 44; 1 Pick., R. 224; 4 Mass. R. 266; 6 N. H. Rep. 430; 3 Day, 476; 11 Co. 50; Rob. 316; 2 Rolle, It. 141 Moo. & Mal. 112; 11 Conn. R. 177; 7 Conn. 125; 8 East, R. 394; 5 B. & Ald. 600; 1 Chit. Gen. Pr. 625; 2 Phil. Ev. 138; Gale & Wheat. on Easem. 210; Code Civ. art. 671; Pardes. Tr. des Servitudes, 297; Bro. Ab. Demand, 20; Dall. Dict. mot Servitudes, art. 3 §8; 2 P. Wms. 606; Moor, 812; Hob. 219; Plowd. 470; 5 B. & C. 897; S. C. 8 D. & R. 651. When the tree grows directly on the boundary line, so that the Iine passes through it, it is the property of both owners, whether it be marked as a boun dary or not. 12 N. H. Rep. 454.

TRESAILE or TRESAYLE, domestic relations. The grandfather's grandfather. 1 Bl. Com. 186.

TRESPASS torts. An unlawful act committed with violence, ti et armis, to the person, property or relative rights of another. Every felony includes a tres-pass, in common parlance, such acts are not in general considered as tres-passes, yet they subject the offender to an action of trespass after his conviction or acquittal. See civil remedy.

2. There is another kind of trespass, which is committed without force, and is known by the name of trespass on the case. This is not generally known by the name of trespass. See Case.

3. The following rules characterize the injuries which are denominated tres-passes, namely: 1. To determine whether an injury is a trespass, due regard must be had to the nature of the right affected. A wrong with force can only be offered to the absolute

rights of personal liberty and security, and to those of property corporeal; those of health, reputation and in property incorporeal, together with the relative rights of persons, are, strictly speaking, incapable of being injured with violence, because the subject-matter to which they relate, exists in either case only in idea, and is not to be seen or handled. An exception to this rule, however, often obtains in the very instance of injuries to the relative rights of persons; and wrongs offered to these last are frequently denominated trespasses, that is, injuries with force.

4. - 2. Those wrongs alone are characterized as trespasses the immediate consequences of which are injurious to the plaintiff; if the damage sustained is a remote consequence of the act, the injury falls under the denomination of trespass on the case.

5. - 3. No act is injurious but that which is unlawful; and therefore, where the force applied to the plaintiff's property or person is the act of the law itself, it constitutes no cause of complaint. Hamm. N. P. 34; 2 Pbil. Ev. 131; Bac. Abr. h. t.; 15 East R. 614; Bouv. Inst. Index, h. t. As to what will justify a trespass, see Battery.

TRESPASS, remedies. The name of an action, instituted for the recovery of damages, for a wrong committed against the plaintiff, with immediate force; as an assault and battery against the person; an unlawful entry into his, land, and an unlawful injury with direct force to his personal property. It does not lie for a mere non-feasance, nor when the matter affected was not tangible.

2. The subject will be considered with regard, 1. To the injuries for which trespass may be sustained. 2. The declaration. 3. The plea. 4. The judgment.

3. - §1. This part of the subject will be considered with reference to injuries, 1. The person. 2. To personal property. 3. To real property. 4. When trespass can or cannot be justified by legal proceedings.

4. - 1. Trespass is the proper remedy for an assault and battery, wounding, imprisonment, and the like, and it also lies for an injury to the relative rights when occasioned by force; as, for beating, wounding, and imprisoning a wife or servant, by which the plaintiff has sustained a loss. 9 Co. 113; 10 Co. 130. Vide Parties to actions; Per guod, and 1 Chit. Pr. 37.

5. - 2. The action of trespass is the proper remedy for injuries to personal property, which may be committed by the several acts of unlawfully striking, chasing, if alive, and carrying away to the damage of the plaintiff, a personal chattel, 1 Saund. 84, n. 2, 3; F. N. B. 86; Bro. Trespass, pl. 407; Toll. Executors, 112; Cro. Jac. 362, of which another is the owner and in possession; but a naked possession or right to immediate

possession, is a sufficient title to support this action. 1 T. R. 480; and gee 8. John. R. 432; 7 John. R. 535; 11 John. R. 377; Cro. Jac. 46; 1 Chit. Pl. 165.

6. - 3. Trespass is the proper remedy for the several acts of breaking through an enclosure, and coming into contact with any corporeal hereditament, of which another is the owner and in possession, and by which a damage has ensued. There is an ideal fence, reaching in extent upwards, a superficie terrae usque ad caelum, which encircles every man's possessions, when he is owner of the surface, and downwards as far as his property descends; the entry, therefore, is breaking through this enclosure, and this generally constitutes, by itself, a right of action. The plaintiff must be the owner, and in possession. 5 East, R. 485; 9 John. R. 61; 12 John. R. 183; 11 John. R. 385; Id. 140; 3 Hill, R. 26. There must have been some injury, however, to entitle the plaintiff to recover, for a man in a balloon may legally be said to break the close of the plaintiff, when passing over it, as he is wafted by the wind, yet as the owner's possession is not by that act incommoded, trespass could not probably be maintained; yet, if any part of the machinery were to fall upon the land, the aeronaut could not justify an entry into it to remove it, which proves that the act is not justifiable. 19 John. 381 But the slightest injury, as treading down the grass, is sufficient. Vide 1 Chit. Pl. 173; 2 John, R. 357: 9 John. R. 113, 377; 2 Mass. R. 127; 4 Mass. R. 266; 4 John. R . 150.

7. - 4. It is a general rule that when the defendant has acted under regular process of a court of competent jurisdiction, or of a single magistrate having jurisdiction of the subject-matter, it is a sufficient justification to him; but when the court has no jurisdiction and the process is wholly void, the defendant cannot justify under it.

8. But there are some cases, where an officer will not be justified by the warrant or authority of a court, having jurisdiction. These exceptions are generally founded on some matter of public policy or convenience; for example, when a warrant was issued against a mail carrier, though the officer was justified in serving the warrant, he was liable to an indictment for detaining such mail carrier under the warrant, for by thus detaining him, he was guilty of "wilfully obstructing or retarding the passage of the mail, or of the driver or carrier," contrary to the provisions of the act of congress of 1825, ch. 275, s. 9. 8 Law Rep. 77. See Ambassador; Justification.

9. - §2. The declaration should contain a concise statement of the injury complained of, whether to the person, personal or real property, and it must allege that the injury was conimitted vi et armis and contra pacem; in which particulars it differs from a declaration in case. See Case, remedies.

10. - §3. The general issue is not guilty. But as but few matters can be given in evidence under this plea, it is proper to plead special matters of defence.

11. - §4. The judgment is generally for the damages assessed by the jury, and for costs. When the judgment is for the defendant, it is that be recover his costs. Vide Irregularity; Regular and Irregular process. Vide, generally, Bro. Ab. h. t.; Nelson's Ab. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Com. Dig. h. t.; Vin. Ab. h. t.; the various American and English Digests, h. t.; 2 Phil. Ev. 131; Ham. N. P. 33 to 265; Chit. Pr. Index, h. t.; Rose. Civ. Ev. h. t.; Stark. Ev. h. t.; Bouv. Inst. Index, h. t.

TRESPASS DE BONIS ASPORTATIS, practice. The action brought by the owner of goods for unlawfully taking and carrying them away, is so called. This action will lie for taking away another's goods, even though he should return them, because by such taking he has deprived the owner of his right to enjoy them. 1 Bouv. Inst. n. 3611.

TRESPASS ON THE CASE, practice. The technical name of an action, instituted for the recovery of damages caused by an injury unaccompanied with force, or where the damages sustained are only consequential. See Case, and 3 Bouv. Inst. n. 3482 to 3509.

TRESPASS QUARE CLAUSUM FREGIT, practice. This is the name of a remedy which lies to recover damages when the defendant has unlawfully and wrongfully trespassed upon the real estate of the plaintiff.

2. This action must be brought by the tenant in possession, for the injury is done to his possession. A remainder-man or reversioner cannot sustain it. 3. As the injury must be committed to the possession, one who has a mere incorporeal right cannot maintain this action. 4 Bouv. Inst. n. 3600.

TRESPASS VI ET ARMIS, practice. This is the remedy brought by the plaintiff for an immediate injury committed with force. It is distinguished from an action of trespass on the case, in this, that in the latter the injury is consequential, and not committed with direct force. 3 Bouv. Inst. n. 2871, 3482; 4 Bouv. Inst. n. 8583.

TRESPASSER. One who couimits a trespass.

2. A man is a trespasser by his own direct actohen he acts without any excuse; or he may be a trespasser in the execution of a legal process in an illegal manner; 1 Chit. Pl. 183: 2 John. Cas. 27; or when the court has no juris4iction over the subject-matter when the court has jurisdiction but the proceeding is defective and void; when the process has been misapplied, as, when the defendant has taken A's goods on an execution against B; when the process has been abused 1 Chit. Pl. 183-187 in all these cases a man is a trespasser ab initio. And a person capable of giving his assent may become a trespasser, by an act subsequent to the tort. If, for example, a an take

possession of land for the use of another, the latter may afterwards recognize and adopt the act; by so doing, he places himself in the situation of one who had previously commanded it, and consequently is himself a trespasser, if the other had no right to enter, nor he to command the entry. 4 Inst. 317; Ham. N. P. 215. Vide 1 Rawle's R. 121.

TRET, weights and measures. An allowance made for the water or

TRIAL, practice., The examination before a competent tribunal, according to the laws, of the land, of the facts put in issue in a cause, for the purpose of determining such issue. 4 Mason, 232.

2. There are various kinds of trial, the most common of which is trial by jury. To insure fairdess this mode of trial lust be in public; it is conducted by selecting a jury in the manner prescribed by the local statutes, who must be sworn to try the Hiatter in dispute according to law, and the evidence. Evidence is then given by the party on whom rests the onus probandi or burden of the proof, as the witnesses are called by a party they are questioned by him, and after they have been examined, which is called an examination in chief, they are subject to a cross-examination by the other party as to every part of their testimony. Having examined all his witnesses, the party who supports the affirmative of the issue closes; and the other party then calls his witnesses to explain his case or support his part of the issue these are in the same manner liable to a cross-examination. In case the parties should differ as to what is to be given in evidence, the judge, must decide the matter, and his decision is conclusive upon the parties so far as regards the trial; but, in civil cases, a bill of exceptions (q. v.) way be taken, so that the matter may be examined before another tribunal. When the evidence has been closed, the counsel for the party who supports the affirmative of the issue, then addressess the jury, by recapitulating the evidence and applying the law to the facts, and showing on what particular points he rests his case. The opposite counsel then addresses the jury, enforcing in like manner the facts and the law as applicable to his side of the case; to which the other counsel has a right to reply. It is then the duty of the judge to sum up the evidence and explain to the jury the law applicable to the case this is called his charge. (q. v.) The jurors then retire to deliberate upon their verdict, and, after having agreed upon it, they come into court and deliver it in public. In case they cannot agree they may, in cases of necessity, be discharged: but, it is said, in capital cases they cannot be. Very just and merited encomiums have been bestowed on this mode of trial, particularly in criminal cases. Livingston's Rep. on the Plan of a Penal Code, 13 3 Story, Const. 1773. The learned Duponceau has given beautiful sketch of this tribunal; "twelve invisible judges," said he, "whom the eye of the corrupter cannot see, and the influence of the powerful cannot reach, for they are nowhere to be found, until the moment when the balance of justice being placed in their bands, they hear, weigh, determine, pronounce, and immediately disappear, and

are lost in the crowd of their fellow citizens." Address at the opening of the Law Academy at Philadelphia. Vide, generally, 4 Com. Dig. 783; 7 Id. 522; 21 Vin. Ab. 1 Bac. Ab. h. t.; 1 Sell. Pr. 405 4 Bl. Com. ch. 27; Chit. Pr. Index, h. t. 3 Bl. Com. ch. 22; 15 Serg. & R. 61; 22 Vin. Ab. h. t. See Discharge of jury; Jury.

3. Trial by certificate. By the English law, this is a mode of trial allowed in such cases where the evidence of the person certifying is the only proper criterion of the point in dispute. For, when the fact in question lies out of the cognizance of the court, the judges must rely on the solemn averments or information of persons in such station, as affords them the most clear and complete knowledge of the truth.

4. As therefore such evidence, if given to a jury, must have been conclu-sive, the law, to save trouble and circuity, permits the fact to be determined upon such certificate merely. 3 Bl. Com. 333; Steph. Pl. 122.

5. Trial by the grand assise. This kind of trial is very similar to the common trial by jury. There is only one case in which it appears ever to have been applied, and there it is still in force.

6. In a writ of right, if the defendant by a particular form of plea appropriate to the purpose, (see the plea, 3 Chitty, 652,) denied the right of the demandant, as claimed, he had the option, till the recent abolition of the extravagant and barbarous method of wager by battel, of either offering battel or putting himself on the grand assise, to try whether he or the demandant "had the greater right." The latter course he may still take; and, if he does, the court award a writ for summoning four knights to make the election of twenty other recognitors. The four knights and twelve of the recognitors so elected, together making a jury of sixteen, constitute what is called the grand assise; and when assembled, they proceed to try the issue, or (as it is called in this case) the mise, upon the question of right. The trial, as in the case of a common jury, may be either at the bar or nisi prius; and if at nisi prius, a nisi prius record is made up; and the proceedings are in either case, in general, the same as where there is a common jury. See Wils. R. 419, 541; 1 Holt's N. P. Rep. 657; 3 Chitty's Pl. 635; 2 Saund. 45 e; 1 Arch. 402. Upon the issue or mise of right, the wager of battel or the grand assise was, till the abolition of the former, and the latter still is, the only legitimate method of trial; and the question cannot be tried by a jury in the common form. 1 B. & P. 192. See 3 Bl. Com. 351.

7. Trial by inspection or examination. This trial takes place when for the greater expedition of a cause, in some point or issue being either the principal question or arising collaterally out of it, being evidently the object of sense, the judges of the court, upon the testimony of their own senses, shall decide the point in dispute. For where the affirmative or negative of a question is matter of such obvious

determination, it is not thought necessary to summon a jury to decide it; who are properly called in to inform the conscience of the court in respect of dubious facts, and, therefore, when the fact, from its nature, must be evident to the court either from ocular demon-stration or other irrefragable proof, there the law departs from its usual resort, the verdict of twelve men, and relies ou the judgment alone. For example, if a defendant pleads in abatement of the suit that the plaintiff is dead, and one appears and calls himself the plaintiff, which the defendant denies; in this case the judges shall determine by inspection and examination whether be be the plaintiff or not. 9 Co. 30; 3 Bl. Com. 331; Steph. Pl. 123.

8. Judges of courts of equity frequently decide facts upon mere inspection. The most familiar examples are those of cases where the plaintiff prays an injun ction on an allegation of piracy or infringement of a patent or copyright. 5 Ves. 709; 12 Ves. 270, and the cases there cited. And see 2 Atk. 141; 2 B. & C. 80; 4 Ves. 681; 2 Russ. R. 385; 1 V. & B. 67; Cro. Jac. 230; 1 Dall. 166.

9. Trial by the record. This trial applies to cases where an issue of nul tiel record is joined in any action. If, on one side, a record be asserted to exist, and the opposite party deny its existence, under the form of traverse, that there is no such record remaining in court, as alleged, and issue be joined thereon, this is called an issue of nul tiel record; and the court awards, in such case, a trial by inspection and examination of the record: Upon this the party, affirming its existence, is bound to produce it in court, on a day given for the purpose, and if he fail to do so, judgment is given for his adversary.

10. The trial by record is not only in use when an issue of this kind happens to arise for decision, but it is the only legitimate mode of trying such issue, and the parties cannot put themselves upon the country. Steph. Pl. 122; 2 Bl. Com. 330.

11. Trial by wager of battel. In the old English law, this was a barbarous mode of trying facts, among a rude people, founded on the supposition that heaven would always interpose, and give the victory to the champions of truth and innocence. This mode of trial was abolished in England as late as the stat. 59 Geo. III., c. 46, A. D. 1818. It never was in force in the United States. See 8 Bl. Com. 337; 1 Hale's Hist. 188; see a modern case, 1 B. & A. 405.

12. Trial by wager of law. This mode of trial has fallen into complete disuse; but in point of law, it seems, in England, to be still competent in most cases to which is anciently applied. The most important and best established of these cases, is, the issue of nil debet, arising in action of debt of simple contract, or the issue of non detinet, in an action of detinue. In the declaration in these actions, as in almost all others, the plaintiff concludes by offering his suit (of which the ancient meaning was followers or

witnesses, though the words are now refained as mere form,) to prove the truth of his claim. On the other hand, if the defendant, by a plea of nil debet or non detinet, deny the debt or detention, be may conclude by offering to establish the truth of such plea, "against the plaintiff and his suit, in such manner as the court shall direct." Upon this the court awards the wager of law; Co. Ent. 119 a; Lill. Ent. 467; 3 Chit. Pl. 479; and the form of this proceeding, when so awarded, is that the defendant brings into court with him eleven of his neighbors, and for himself, makes oath that he does not owe the debt or detain the property alleged and then the eleven also swear that they believe him to speak the truth; and the defendant is then entitled to judgment. 3 Bl. Com. 343; Steph. Pl. 124. Blackstone compares this mode of trial to the canonical purgation of the catholic clergy, and to the decisory oath of the civil, law. See Oath, decisory.

13. Trial by witnesses. This species of trial by witnesses, or per testes, is without the intervention of a jury

14. This is the only method of trial known to the civil law, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but it is very rarely used in the common law, which prefers the trial by jury in almost every instance.

15. In England, when a widow brings a writ of dower, and the tenant pleads that the tenant is not dead, this being looked upon as a dilatory plea, is, in favor of the widow, and for greater expedition, allowed to be tried by witnesses examined before the judges; and so, says Finch, shall no other case in our law. Finch's Law, 423. But Sir Edward Coke mentions others: as to try whether the tenant in a real action was duly summoned; or the validity of a challenge to a juror; so that Finch's observation must be confined to the trial of direct and not collateral issues. And in every case, Sir Edward Coke lays it down, that the affirmative must be proved by two witnesses at least. 3 Bl. Com. 336.

TRIAL LIST. A list of cases marked down for trial for any one term.

TRIBUNAL. The seat of a judge; the place where he administers justice; but by this term is more usually understood the whole body of judges who compose a jurisdiction sometimes it is taken for the jurisdiction which they exercise.

2. This term is Latin, and derives its origin from the elevated seat where the tribunes administered justice.

TRIBUTE. A contribution which is sometimes raised by the sovereign from his subject, to sustain the expenses of the state. It is also a sum of money paid by one nation to another under some pretended right. Wolff, §1145.

TRINEPOS. This term was used among the Romans to denote the male descendant in the sixth degree in a direct line. It is still employed in making genealogical tables.

TRINITY TERM, Eng. law. One of the four terms of the courts; it begins on the 22d day of May, and ends on the 12th of June. St. 11 G. IV., and 1 W. IV., c. 70. It was formerly a movable term.

TRIORS, practice. Persons appointed according to law to try whether a person challenged to the favor is or is not qualified to serve on the jury. They do not exceed two in number without the consent of the prosecutor and defendant, or some special case is alleged by one of them, or when only one juror has been sworn and two triors are appointed with him. Co. Litt. 158 a; Bac. Ab. Juries, E 12.

2. Where the challenge is made to the first juror, the court will appoint two indifferent persons to be triors if they find him indifferent he shall be sworn, and join the triors in determining the next challenge. But when two jurors have been found impartial and have been sworn, then the office of the triors will cease, and every subsequent challenge will be decided upon by the jurymen. If more than two, jurymen have been sworn, the court may assign any two of them to determine the challenges. To the triors thus chosen no challenges can be admitted.

3. The following oath or affirmation is administered to them: "You shall well and truly try whether A B, the juror challenged, stands indifferent between the parties to this issue, so help you God" or to this you affirm. The trial then proceeds by witnesses before them; and they may examine, the juryman challenged on his voire dire, but he cannot be interrogated as to circumstances which may tend to his own disgrace, discredit, or the injury of his character. The finding of the triors is final. Being officers of the court, the triors may be punished for any mishehaviour in their office. Vide 2 Hale, 275; 4 Bl. Com. by Chitty, 353, n. 8; Tr. per Pais, 200; 1 Chit. Cr. Law, 549, 450; 4 Harg. St. Tr. 740, 750; 15 Serg. & Rawle, 156; 21 Wend. 509; 2 Green, 195.

TRIPARTITE. Consisting of three parts, as a deed tripartite, between A of the first part, B of the second part, and C of the third part.

TRIPLICATION, pleading. This was formerly used in pleading instead of rebutter. 1 Bro. Civ. Law, 469, n.

TRITAVUS. The male ascendant in the sixth degree was so called among the Romans. For the female ascendant in the same degree, the term is tritavia. In forming genealogical tables this convenient term is still used.

TRIUMVIRI CAPITALES or TREVIRI or TRESVIRI, Rom, civ. law. Officers who had charge of the prison, through whose intervention punishments were inflicted. Sallust in Catalin. They had eight lictors to execute their orders. Vicat, ad voc.

TRIVIAL. Of small importance. It is a rule in equity that a demurrer will lie to a bill on the ground of the triviality of the matter in dispute, as being below the dignity of the court. 4 Bouv. Inst. n. 4237. See Hopk. R. 112; 4 John. Ch. 183; 4 Paige, 364.

TRONAGE, Engl. law. A customary duty or toll for weighing wool, so called because it was weighed by a common trona, or beam. Fleta, lib. 2, c. 12.

TROVER, remedies. Trover signifies finding. The remedy is called an action of trover; it is brought to recover the value of personal chattels, wrongfully converted by another to his own use; the form supposed that the defendant might have acquired the possession of the property lawfully, namely, by finding, but if he did not, by bringing the action the plaintiff waives the trespass; no damages can therefore be recovered for the taking, all must be for the conversion. 17 Pick. 1; Anthon, 156; 21 Pick. 559; 7 Monr. 209; 1 Metc. 172.

2. It will be proper to consider the subject with reference, 1. To the thing converted. 2. The plaintiff's right. 3. The nature of the injury. 4. The pleadings. 5. The verdict and judgment.

3. - 1. The property affected must be some personal chattel; 3, Serg. & Rawle, 513; and it has been decided that trover lies for title deeds; 2 Yeates, R. 537; and for a copy of a record. Hardr. 111. Vide 2 T. R. 788; 2 Salk. 654; 2 New Rep. 170; 3 Campb. 417; 3 Johns. R. 432; 10 Johns. R. 172; 12 Johns. R. 484; 6 Mass. R. 394; 17 Serg. & Rawle, 285; 2 Rawle, R. 241. Trover will be sustained for animals ferae naturae, reclaimed. Hugh. Ab. Action upon the case of Trover and Conversion, pl. 3. But trover will not lie for personal property in the custody of the law, nor when the title to the property can be settled only by a peculiar jurisdiction; as, for example, property taken on the high seas, and claimed as lawful prize, because in such case, the courts of admiralty have exclusive jurisdiction. Cam. & N. 115, 143; but see 14 John. 273. Nor will it lie where the property bailed has been lost by the bailee, or stolen from him, or been destroyed by accident or from negligence case is the proper remedy. 2 Iredell, 98.

4.-2. The plaintiff must at the time of the conversion have had a property in the chattel either general or special; 1 Yeates, R. 19; 3 S. & R. 509; 15 John. R. 205, 349; 16 John. R. 159; 1 Humph. R. 199; he must also have had actual possession or right to immediate possession. The person who has the absolute or general property in a personal chattel may support this action, although he has never had possession, for it

is a rule that the general property of personal chattels creates a constructive possession. 2 Saund. 47 a, note 1; Bac. Ab. Trover, C; 4 Rawle, R. 185. One who has a special property, which consists in the lawful custody of goods with a right of detention against the general owner, may maintain trover. Story, Bailm. 93 n.

5. - 3. There must have been a conversion, which may have been effected, 1st. By the wrongful taking of a personal chattel. 2d. By some other illegal assumption of ownership, or by illegally using or misusing it; or, 3d. By a wrongful detention., Vide Conversion.

6. - 4. The declaration should state that the plaintiff Was possessed of the goods (describing them) as of his own property, and that they came to the defendant's possession by finding; and the conversion should be properly averred, as that is the gist of the action. It is not indispensable to state the price or value of the thing converted. 2 Wash. 192. See 2 Cowen, 592 13 S. & R. 99; 3 Watts, 333; 1 Blackf. 51; 1 South 211; 2 South. 509. Vide form, 2 Chitty's Pl. 370, 371. The usual plea is not guilty, which is the general issue. Bull. N. P. 48.

7. - 5. The verdict should be for the damages sustained, and the measure of such damages is the value of the property at the time of the conversion, with interest. 17 Pick. 1; 7 Monr. 209; 1 Mete. 172; 8 Port. R. 191; 2 Hill, 132; 8 Dana, 192. The judgment, when for the plaintiff, is that he recover his damages and costs; 1 Chit. Pl. 157; when for the defendant, the judgment is that he recover his costs. Vide, generally, 1 Chit. Pl. 147 to 157 Chit. Pr. Index, h. t.; Bac. Ab. h. t.; Dane's Ab. h. t. Vin. Ab. h. t.; Com. Dig. Action upon the case upon trover; Id. Pleader, 2 I; Doct. Pl. 494; Amer. Digests, h. t.; Bouv. Inst. Index, h. t. As to the evidence to be given in actions of trover, see Rose. Civ. Ev. 395 to 412.

TROY WEIGHT. A weight less ponderous than the avoirdupois weight, in the proportion of seven thousand, for the latter, to five thousand seven hundred and sixty, to the former. Dane's Ab. Index, h. t. Vide Weights.

TRUCE, intern. law. An agreement between belligerent parties, by which they mutually engage to forbear all acts of hostility against each other for some time, the war still continuing. Burlamaqui's N. & P. Law, part 4, c. 11, §1.

2. Truces are of several kinds: general, extending to all the territories and dominions of both parties; and particular, restrained to particular places; as, for example, by sea, and not by land, &c. Id. part 4, c. 11, §5. They are also absolute, indeterminate and general; or limited and determined to certain things, for example, to bury the dead. Ib. idem. Vide 1 Kent, Com. 159; Com. Dig. Admiralty, E 8; Bac. Ab.;Prerogative, D 4; League; Peace; War.

TRUE BILL, practice. These words are endorsed on a bill of indictment, when a grand jury, after having heard the witnesses for the government, are of opinion that there is sufficient cause to put the defendant on his trial. Formerly, the endorsement was Billa vera, when legal proceedings were in Latin; it is still the practice to write on the back of the bill Ignoramus, when the jury do not find it to be a true bill. Vide Grand Jury.

TRUST, contracts, devises. An equitable right, title or interest in property, real or personal, distinct from its legal ownership; or it is a personal obligation for paying, delivering or performing anything, where the person trusting has no real. right or security, for by, that act he confides altogether to the faithfulness of those intrusted. This is its most general meaning, and includes deposits, bailments, and the like. In its more technical sense, it may be defined to be an obligation upon a person, arising out of a confidence reposed in him, to apply property faithfully, and according to such confidence. Willis on Trustees, 1; 4 Kent, Com. 295; 2 Fonb. Eq. 1; 1 Saund. Uses and Tr. 6; Coop. Eq. Pl. Introd. 27; 3 Bl. Com. 431.

2. Trusts were probably derived from the civil law. The fidei commissum, (q. v.) is not dissimilar to a trust.

3. Trusts are either express or implied. 1st. Express trusts are those which are created in express terms in the deed, writing or will. The terms to create an express trust will be sufficient, if it can be fairly collected upon the face of the instrument that a trust was intended. Express trusts are usually found in preliminary sealed agreements, such as marriage articles, or articles for the purchase of land; in formal conveyances, such as marriage settlements, terms for years, mortgages, assignments for the payment of debts, raising portions or other purposes; and in wills and testaments, when the bequests involve fiduciary interests for private benefit or public charity,, they may be created even by parol. 6 Watts & Serg. 97.

4. - 2d. Implied trusts are those which without being expressed, are deducible from the nature of the transaction, as matters of intent; or which are superinduced upon the transaction by operation of law, as matters of equity, independently of the particular intention of the parties.

5. The most common form of an implied trust is where property or money is delivered by one person to another, to be by the latter delivered to a third person. These implied trusts greatly extend over the business and pursuits of men: a few examples will be given.

6. When land is purchased by one man in the name of another, and the former pays the consideration money, the land will in general be held by the grantee in Trust for

the person who so paid the consideration money. Com. Dig. Chancery, 3 W 3; 2 Fonbl. Eq. book 2, c. 5, §1, note a. Story, Eq. Jur. §1201.

7. When real property is purchased out of partnership funds, and the title is taken in the name of one of the partners, he will hold it in trust for all the partners. 7 Ves. jr. 453; Montague on Partn. 97, n.; Colly. Partn. 68.

8. When a contract is made for the sale of land, in equity the vendor is immediately deemed a trustee for the vendee of the estate; and the vendee, a trustee for the vendor of the purchase money; and by this means there is an equitable conversion of the property. 1 Fonbl. Eq. book 1, ch. 6, §9, note t; Story, Eq. Jur. SSSS 789, 790, 1212. See Conversion. For the origin of trusts in the civil law, see 5 Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 18; 1 Brown's Civ. Law, 190. Vide Resulting Trusts. See, generally, Bouv. Inst. Index, h. t.

TRUSTEE, estates. A trustee is one to whom an estate has been conveyed in trust.

2. The trust estate is not subject to the specialty or judgment debts of the trustee, to the dower of his wife, or the curtesy of the hushand of a female trustee.

3. With respect to the duties of trustees, it is held, in conformity to the old law of uses, that pernancy of the profits, execution of estates, and defence of the land, are the three great properties of a trust, so that the courts of chancery will compel trustees, 1. To permit the cestui que trust to receive the rents and profits of the land. 2. To execute such conveyances, in accordance with the provisions of the trust, as the cestui que trust shall direct. 3. To defend the title of the land in any court of law or equity. Cruise, Dig. tit. 12, c. 4, s. 4.

4. It has been judiciously remarked by Mr. Justice Story, 2 Eq. Jur. §1267, that in a great variety of cases, it is not easy to say what the duty of a trustee is; and that therefore, it often becomes indispensable for him, before he acts, to seek, the aid and direction of a court of equity. Fonbl. Eq. book 2, c. 7, §2, and note c. Vide Vin. Ab. tit. Trusts, O, P, Q, R, S, T; Bouv. Inst. Index, h. t.

TRUSTEE PROCESS, practice. In Massacchusetts, this is a process given by statute, in imitation of the foreign attachment of the English law.

2. By this process, a creditor may attach any property or credits of his debtor in the hands of a third person. This third person is, in the English law, called the garnishee; in Massachusetts, he is the trustee. White's Dig. tit. 148. Vide Attachment.

TRUSTER. He who creates a trust. A convenient term used in the laws of Scotland. 1 Bell's Com. 321, 6th ed.

TRUTH. The actual state of things.

2. In contracts, the parties are bound to toll the truth in their dealings, and a deviation from it will generally avoid the contract; Newl. on Contr. 352-3; 2 Burr. 1011; 3 Campb. 285; and even concealment, or suppressio veri, will be considered fraudulent in the contract of insurance. 1 Marsh. on Ins. 464; Peake's N. P. C. 115; 3 Campb. 154, 506.

3. In giving his testimony, a witness is required to tell the truth, the whole truth, and nothing but the truth; for the object in the examination of matters of fact, is to ascertain truth.

4. When a defendant is sued civilly for slander or a libel, he may justify by giving the truth in evidence; but when a criminal prosecution is instituted by the commonwealth for a libel, he cannot generally justify by giving the truth in evidence.

5. The constitutions of several of the United States have made special provisions in favor of giving the truth in evidence in prosecutions for libels, under particular circumstances. In the constitutions of Pennsylvania, Delaware, Tennessee, Kentucky, Ohio, Indiana and Illinois, it is declared, that in publications for libels on men in respect to their public official conduct, the truth may be given in evidence, when the matter published was proper for public information. The constitution of New York declares, that in all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous, is true, and was published with good motives and for justifiable ends, the party shall be acquitted. By constitutional provision in Mississippi and Missouri, and by legislative enactment in New Jersey, Arkansas, Tennessee, Act of 1805, c. 6: and Vermont, Rev. Stat. tit. 11, c. 25, s. 68; the right to give the truth in evidence has been more extended; it applies to all prosecutions or indictments for libels, without any qualifications annexed in restraint of the privilege. Cooke on Def. 61.

TUB, measures. In mercantile law, a tub is a measure containing sixty pounds weight of tea; and from fifty-six to eighty-six pounds of camphor. Jacob's Law Dict. h. t.

TUB-MAN, Eng. law. A barrister who has a pre-audience in the Exchequer, and also one who has a particular place in court, is so called.

TUMBREL, punishment. A species of cart; according to Lord Coke, a dung-cart.

2. This instrument, like the pillory, was used as a means of exposure; and according to some authorities, it seems to have been synonymous with the trebucket or ducking stool. 1 Chit. Cr. Law, 797; 3 Inst. 219; 12 Serg. & Rawle, 220. Vide Com. Dig. h. t.; Burn's Just. Pillory and Tumbrel.

TUN, measure. A vessel of wine or oil, containing four hogsheads.

TURBARY, Eng. law. A right to dig turf; an easement.

TURNKEY. A person under the superintendence of a jailor, whose employment is to open and fasten the prison doors and to prevent the prisoners from escaping.

2. It is his duty to use due diligence, and he may be punished for gross neglect or wilful misconduct in permitting prisoners to escape.

TURNPIKE. A public road paved with stones or other hard substance.

2. Turnpike roads are usually made by corporations to which a power to make them has been granted. The grant of such power passes not only an easement for the road itself, but also so much land as is connected with it; as, for instance, for a toll house and a cellar under it, and a well for the use of the family. 9 Pick. R. 109. A turnpike is a public highway, and a building erected before the turnpike was made, though upon a part out of the travelled path, if continued there is a nuisance. 16 Pick. R. 175. Vide Road; Street; Way.

TURPIS CAUSA, contracts. A base or vile consideration, forbidden by law, which makes the contract void; as a contract, the consideration of which is the future illegal cohabitation of the obligee with the obligor.

TURPITUDE. Everything done contrary to justice, honesty, modesty or good morals, is said to be done with turpitude.

TUTELAGE. State of guardianship; the condition of one who is subject to the control of a guardian.

TUTOR, civil law. A person who has been lawfully appointed to the care of the person and property of a minor.

2. By the laws of Louisiana minors under the age of fourteen years, if males, and under the age of twelve years, if females, are both, as to their persons and their estates, placed under the authority of a tutor. Civ. Code, art. 263. Above that age, and until their, majority or emancipation, they are placed under the authority of a curator. Ibid.

TUTOR ALIENUS, Eng. law. The name given to a stranger who enters into the lands of an infant within the age of fourteen), and takes the profits.

2. He may be called to an account by the infant, and be charged as guardian in socage. Litt. s. 124; Co. Litt. 89 b, 90 a Hargr. n. 1.

TUTOR PROPRTUS. The name given to one who is rightly a guardian in socage in contradistinction, to a tutor alienus. (q. v.)

TUTORSHIP. The power which an individual, sui juris, has to take care of the person of one who is unable to take care of himself. Tutorship differs from curatorship, (q. v.) Vide Pro-curator; Pro-tutor; Undertutor.

TUTRIX. A woman who is appointed to the office of a tutor.

TWELVE TABLES. The name given to a code of Roman laws, commonly called the Law of the Twelve Tables. (q. v.)

TWENTY YEARS. The lapse of twenty years raises a presumption of certain facts, and after such a time, the party against whom the presumption has been raised, will be required to prove a negative to establish his rights.

2. After twenty years from the time it became due, a bond will be presumed to have been paid. 2 Cranch, 180; 3 Day, 289; 1 McCord, 145; 2 N. & McC. 160; 1 Bay. 482; 9 Watts, 441; 2 Speers, 357. And the same presumption arises that a judgment has been paid, if no steps have been taken by the plaintiff for twenty years after its rendition. 3 Brev. 476; 5 Conn. 1.

3. But the presumption of such payment is easily rebutted, by showing that interest has been regularly paid. 1 Bailey, 148; that the obliger has admitted it has not been paid 2 Harring, 124; 9 N. H. Rep. 398; or other circumstances calculated to rebut the presumption. The proof of facts which show that the obligor was poor and not likely to be able to pay the debt, is not sufficient. 5 Verm. 236.

4. When a debt is payable in instalments and secured by a penal bond, the presumption of payment arising from lapse of time applies to each instalment as it falls due. 3 Harring. 421.

5. By the English act of limitation, 21 Jac. 1, c. 16, the period during which a possessory action for land can be sustained is fixed at twenty years, so that an adverse possession of twenty years is a bar to an action of ejectment, and such lapse of time

gives a possessory title to the land. This period has been adopted in many of the states of the Union, but there has been some variation in others. See Limitation of actions.

6. But this statute did not affect incorporeal hereditaments, which remained as before. In analogy to the act of limitation the courts presumed a grant after twenty years adverse possession. Ana new grants are presumed upon proof of an adverse, exclusive, and uninterrupted enjoyment of an incorporeal hereditament at the end of twenty years. And the burden of proving that the possession was adverse, that is, under a claim of title, with the knowledge or acquiescence of the owner of the land; and also that it was uninterrupted, rests on the party claiming such incorporeal hereditaments. 3 Kent, 441; 1 Cheves, R. 2; 4 Mason, 402; 2 Roll. Ab. 269; 2 Greenl. Ev. 444.

7. The time of enjoyment of a former owner who is in privity with the claimant, can, in general, be joined to his own in order to make up the period of twentv years, as in the case of the heir and ancestor, of grantor and grantee. 9 Pick. 251. But the enjoyment of a former owner whose title has escheated to the state by forfeiture, cannot be added to the time of the enjoyment of the grantee of the state. 2 Greenl. Ev. 543.

TYBURN TICKET, Eng. late. A certificate given to the prosecutor of a felon to conviction, is so called.

2. By the 10 & 11. W. III., c. 23, the original proprietor or first assignee of such certificate is exempted from all and all manner of parish and ward offices within the parish or ward where the felony shall have been committed. Bac. Ab. Constable, C.

TYRANNY, government. The violation of those laws which regulate the division and the exercises of the sovereign power of the state. It is a violation of -its constitution.

TYRANT, government. The chief magistrate of the state, whether legitimate or otherwise, who violates the constitution to act arbitrarily contrary to justice. Toull. tit. prel. n. 32.

2. The term tyrant and usurper, are sometimes used as synonymous, because usurpers are almost always tyrants; usurpation is itself a tyrannical act, but properly speaking, the words usurper and tyrant convey different ideas. A king may become a tyrant, although legitimate, when he acts despotically; while a usurper may cease to be a tyrant by governing according to the dictates of justice.

3. This term is sometimes applied to persons in authority who violate the laws and act arbitrarily towards others. Vide Despotism.

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UBERRIMA FIDES. Perfect good faith; abundant good faith.

2. This phrase is used to express that a contract must be made in perfect good faith, concealing nothing; as in the case of insurance, the insured must observe the most perfect good faith towards the insurer. 1 Story, Eq. Jur. §317; 3 Kent, Com. 283, 4th ed.

UKAAS, or UKASE. The name of a law or ordinance emanating from the czar of Russia.

ULLAGE, com. law. When a cask is gauged, what it wants of being full is called ullage.

ULTIMATUM. The last proposition made in making a contract, a treaty, and the like; as, the government of the United States has given its ultimatum, has made the last proposition it will make to complete the proposed treaty. The word also means the result of a negotiation, and it comprises the final determination of the parties concerned in the object in dispute.

ULTIMUM SUPPLICIUM. The last or extreme punishment; the penalty of death.

ULTIMUS HAERES. The last or remote heir; the lord. So called in contra-distinction to the haeredes proximus, (q. v.) and the haeredes remotiores. (q. v.) Dalr Feud. Pr. 110.

UMPIRAGE. The decision of an umpire. This word is used for the judgment of an umpire, as the word award is employed to designate that of arbitrators.

UMPIRE. A person selected by two or more arbitrators. When they are authorize to do so by the submission of the parties, and they cannot agree as to the subject-matter

referred to them, whose duty it is to decide the matter in dispute. Sometimes the term is applied to a single arbitrator, selected by the parties themselves. Kyd on Awards, 6, 75, 77 Caldw. on Arb. 38; Dane's Ab. Index, h. t.; 3 Vin. Ab. 93; Com. Dig. Arbitrament, F; 4 Dall. 271, 432; 4 Sco. N. S. 378; Bouv. Inst. Index, h. t.

UNA VOCE. With one voice unanimously.

UNALIENABLE. The state of a thing or right which cannot be sold.

2. Things which are not in commerce, as public roads, are in their nature unalienable. Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. The natural rights of life and liberty are unalienable.

UNANIMITY. The agreement of all the persons concerned in a thing in design and opinion.

2. Generally a simple majority (q. v.) of any number of persons is sufficient to do such acts as the whole number can do; for example, a majority of the legislature can pass a law: but there are some cases in which unanimity is required; for example, a traverse jury, composed of twelve individuals, cannot decide an issue submitted to them, unless they are unanimous.

UNCERTAINTY. That which is unknown or vague. Vide Certainty.

UNCONDITIONAL. That which is without condition; that which must be performed without regard to what has happened or may happen.

UNCONDITIONAL CONTRACT, contracts. One which does not depend upon any condition whatever. 1 Bouv. Inst. n. 730.

UNCONSCIONABLE BARGAIN, contracts. A contract which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other. 4 Bouv. Inst. n. 3848.

UNCONSTITUTIONAL. That which is contrary to the constitution.

2. When an act of the legislature is repugnant or contrary to the constitution, it is, ipso facto, void. 2 Pet. R. 522; 12 Wheat. 270; 3 Dall. 286; 4 Dall. 18.

3. The courts have the power, and it is their duty, when an act is unconstitutional, to declare it to be so; but this will not be done except in a clear case and, as an additional

guard against error, the supreme court of the United States refuses to take up a case involving constitutional questions, when the court is not full. 9 Pet. 85. Vide 6 Cranch, 128; 1 Binn. 419; 5 Binn. 355; 2 Penns 184; 3 S. & R. 169; 7 Pick. 466; 13 Pick. 60; 2 Yeates, 493; 1 Virg. Cas. 20; 1 Blackf. 206 6 Rand. 245 1 Murph. 58; Harper, 385 1 Breese, 209 Pr. Dee. 64, 89; 1 Rep. Cons. Ct. 267 1 Car. Law Repos. 246 4 Munr. 43; 5 Hayw. 271; 1 Cowen, 550; 1 South. 192; 2 South. 466; 7 N H. Rep. 65, 66; 1 Chip, 237, 257; 10 Conn. 522; 7 Gill & John. 7; 2 Litt. 90; 3 Desaus. 476.

UNCORE PRIT, pleading. This barbarous phrase of old French, which is the same with encore pret, yet ready, is used in a plea in bar to an action of debt on a bond due at a day past; when the defendant pleads a tender on the day it became due, and adds that he is uncore prit, still ready to pay the same. 3 Bl. Com. 303; Doct. Pl. 526 Dane's Ab. Index, h. t. Vide tout temps prist.

UNDE NIHIL HABET. Of which she has nothing. When no dower had been assigned to the widow during the time prescribed by law, she could, at common law, sue out a writ of dower unde nihil habet. 3 Bl. Com. 183.

UNDERLEASE, contracts. An alienation by a tenant of a part of his lease, reserving to himself a reversion; it differs from an assignment, which is a transfer of all the tenant's interest in the lease. 3 Wils. 234; S. C. Bl. Rep. 766. And even a conveyance of the whole estate by the lessee, reserving to himself the rent, with a power of re-entry for non-payment, was held to be, not an assignment, but an underlease. Str. 405. In Ohio it has been decided that the transfer of only a part of the lands, though for the whole term, is an underlease; 2 Ohio, R. 216; in Kentucky, such a transfer, on the contrary, is considered as an assignment. 4 Bibb. R. 538.

2. In leases there is frequently introduced a covenant on the part of the lessee, that he will not underlet the premises, nor assign the lease. This refers to the voluntary act of the tenant, and the covenant is not broken when the lease is transferred without any act on his part; as, if it be sold by the sheriff on execution, or by assignees in bankruptcy, or by an executor. 8 T. R. 57; 3 M. & S. 353; 1 Ves. 295.

3. The underlessor has a right to distrain for the rent due to him, which, the assignor of a lease has not. The under-lessee is not liable personally to the original lessor, nor is his property subject to his claim for rent longer than while it is on the leased premises, when it may be distrained upon. The assignee of the lessee stands in a different situation. He is liable to an action by the landlord or his assignee for the rent, upon the ground of privity of estate. 1 Hill. Ab. 125, 6; 4 Kent, Com. 95; 9 Pick. R. 52; 14 Mass. 487; 5 Watts, R. 134. Vide 2 Bl. R. 766; 3 Wils. 234; 4 Campb. 73; Bouv. Inst. Index, tit. Underletting. Vide Estate for years; Lease; Lessee; Notice to quit; Tenant for years.

UNDER-SHERIFF. A deputy of a sheriff. The principal is called high-sheriff, and the deputy the under-sheriff. Vide 1 Phil . Ev. Index, h. t.

UNDER-TENANT. One who holds by virtue of an underlease. (q. v.) See Subtenant.

UNDERTAKING, contracts. An engagement by one of the parties to a contract to the other, and not the mutual engagement of the parties to each other; a promise. 5 East, R. 17; 2 Leon. 224, 5; 4 B, & A. 595.

UNDERTOOK. Assumed; promised.

2. This is a technical word which ought to be inserted in every declaration of assumpsit, charging that the defendant undertook to perform the promise which is the foundation of the suit; and this though the promise be founded on a legal liability, or would be implied in evidence. Bac. Ab Assumpsit, F; 1 Chit. Pl. 88, note p.

UNDER-TUTOR, law of Louisiana. In every tutorship, there shall be an undertutor, whom it shall be the duty of the judge to appoint at the time letters of tutorship are certified for the tutor.

2. It is the duty of the under-tutor to act for the minor, whenever the interest of the minor is in opposition to the interest of the tutor. Civil Code, art. 300, 301; 1 N. S. 462; 9 M. R. 643; 11 L. R. 189; Poth. Des Personnes, partie prem. tit. 6, s. 5, art. 2. Vide Pro-curator; Protutor.

UNDERWRITER, insurances. One who signs a policy of insurance, by which he becomes an insurer.

2. By this act he places himself as to his responsibility, in the place of the insured. He may cause a re-insurance (q. v.) to be made for his benefit; and it is his duty to act with good faith, and, without quibbling, to pay all just demands against him for losses. Marsh. Ins. 45,

UNDIVIDED. That which is held by the same title by two or more persons, whether their rights are equal, as to value or quantity, or unequal.

2. Tenants in common, joint-tenants, and partners, hold an undivided right in their respective properties, until partition has been made. The rights of each owner of an undivided thing extends over the whole and every part of it, totum in toto, et totum in qualibet parte. Vide Partition; Per my et per tout.

UNICA TAXATIO, practice. The ancient language of a special award of venire, where of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default. Lee's Dict. h. t.

UNILATERAL CONTRACT, civil law. When the party to whom an engagement is made, makes no express agreement on his part, the contract is called uni-lateral, even in cases where the law attaches certain obligations to his acceptance. Civ. Code of Lo. art. 1758. Code Nap. 1103. A loan of money, and a loan for use, are of this kind. Poth. Obl. part 1, c. 1, s. 1, art. 2; Lee. Elemen. §781.

UNINTELLIGIBLE. That which cannot be understood.

2. When a law, a contract, or will, is unintelligible, it has no effect whatever. Vide Construction, and the authorities there referred to.

UNIO PROLIUM. A species of adoption used among the Germans; it signifies union of descent. It takes place when a widower, having children, marries a widow, who also has children. These parents then agree that the children of both marriages shall have the rights to their succession, as those which may be the fruits of their marriage. Lec. Elem. §187.

UNION. By this word is understood the United States of America; as, all good citizens will support the Union.

UNITED STATES OF AMERICA. The name of this country. The United States, now thirty-one in number, are Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Wisconsin, and California.

2. The territory of which these states are composed was at one time dependent generally on the crown of Great Britain, though governed by the local legislatures of the country. It is not within the plan of this work to give a history of the colonies; on this subject the reader is referred to Kent's Com. sect. 10; Story on the Constitution, Book 1; 8 Wheat. Rep. 543; Marshall, Hist. Colon.

3. The neglect of the British government to redress grievances which had been felt by the people, induced the colonies to form a closer connexion than their former isolated state, in the hopes that by a union they might procure what they had separately endeavored in vain, to obtain. In 1774, Massachusetts recommended that a congress

of the colonies should be assembled to deliberate upon the state of public affairs; and on the fourth of September of the following year, the delegates to such a congress assembled in Philadelphia. Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia, were represented by their delegates; Georgia alone was not represented. This congress, thus organized, exercised de facto and de jure, a sovereign authority, not as the delegated agents of the governments de facto of the colonies, but in virtue of the original powers derived from the people. This, which was called the revolutionary government, terminated only when superseded by the confederated government under the articles of confederation, ratified in 1781. Serg. on the Const. Intr. 7, 8.

4. The state of alarm and danger in which the colonies then stood induced the formation of a second congress. The delegates, representing all the states, met in May, 1775. This congress put the country in a state of defence, and made provisions for carrving on the war with the mother country; and for the internal regulations of which they were then in need; and on the fourth day of July, 1776, adopted and issued the Declaration of Independence. (q. v.) The articles of confederation, (q. v.) adopted on the first day of March, 1781, 1 Story on the Const. §225; 1 Kent's Comm. 211, continued in force until the first Wednesday in March, 1789, when the present constitution was adopted. 5 Wheat. 420.

5. The United States of America are a corporation endowed with the capacity to sue and be sued, to convey and receive property. 1 Marsh. Dec. 177, 181. But it is proper to observe that no suit can be brought against the United States without authority of law.

6. The states, individually, retain all the powers which they possessed at the formation of the constitution, and which have not been given to congress. (q. v.)

7. Besides the states which are above enumerated, there are various territories, (q. v.) which are a species of dependencies of the United States. New states may be admitted by congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of congress. Const. art. 4, s. 3. And the United States shall guaranty to every state in this union, a republican form of government. Id. art. 4, s. 4. See the names of the several states; and Constitution of the United States.

UNITY, estates. An agreement or coincidence of certain qualities in the title of a joint estate or an estate in common.

2. In a joint estate there must exist four unities; that of interest, for a joint-tenant cannot be entitled to one period of duration or quantity of interest in lands, and the other to a different; one cannot be tenant for life, and the other for years: that of title, and therefore their estate must be created by one and, the same act; that of time, for their estates must be vested at one and the same period, as well as by one and the same title; and lastly, the unity of possession: hence joint-tenants are seised per my et per tout, or by the half or moiety and by all: that is, each of them has an entire possession, as well of every parcel as of the whole. 2 Bl. Com. 179-182; Co. Litt. 188.

3. Coparceners must have the unities of interest, title, and possession.

4. In tenancies in common, the unity of possession is alone required. 2 Bl. Com. 192; 2 Bouv. Inst. n. 1861-83. Vide Estate in Common; Estate in Joint-tenancy; Joint-tenants; Tenant in Common; Tenants, Joint.

UNITY OF POSSESSION. This term is used to designate the possession by one person of several estates or rights. For example, a right to an estate to which an easement is attached, or the dominant estate, and to an estate which an easement encumbers, or the servient estate, in such case the easement is extinguished. 3 Mason, Rep. 172; Poph. 166; Latch, 153; and vide Cro. Jac. 121. But a distinction has been made between a thing that has being by prescription, and one that has its being ex jure naturae; in the former case unity of possession will extinguish the easement; in the latter, for example, the case of a water course, the unity will not extinguish it. Poth. 166.

2. By the civil code of Louisiana, art. 801, every servitude is extin-guished, when the estate to which it is due, and the estate owing it, are united in the same hands. But it is necessary that the whole of the two estates should belong to the same proprietor; for if the owner of one estate only acquires the other in part or in common with another person, confusion does not take effect. Vide Merger.

UNIVERSAL LEGACY. A term used among civilians. An universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease. Civil Code of Lo. art. 1599; Code Civ. art. 1003; Poth. Donations testamentaires, c. 2, sect. 1, §2.

UNIVERSAL PARTNERSHIP. The name of a specie's of partnership by which all the partners agree to put in common all their property, universorum bonorum, not only what they then have, but also what they shall acquire. Poth. Du Contr. de Societe, n. 29.

2. In Louisiana, universal partnerships are allowed, but properly which may accrue to one of the parties, after entering into the partnership, by donation, succession, or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void. Civ. Code, art. 2800.

UNIVERSITY. The name given to certain societies or corporations which are seminaries of learning where youth are sent to finish their education. Among the civilians by this term is understood a corporation.

UNJUST. That which is done against the perfect rights of another; that which is against the established law; that which is opposed to a law which is the test of right and wrong. 1 Toull. tit. prel. n. 5; Aust. Jur. 276, n.; Hein. Lec. El. §1080.

UNKNOWN. When goods have been stolen from some person unknown, they may be so described in the indictment; but if the owner be really known, an indictment alleging the property to belong to some person unknown is improper. 2 East's P. C. 651 1 Hale, P. C. 512; Holt's N. P. C. 596 S. C. 3 Engl. Common Law Rep. 191; 8 C. & P. 773. Vide Indictment; Quidam.

UNLAWFUL. That which is contrary to law.

2. There are two kinds of contracts which are unlawful; those which are void, and those which are not. When the law expressly prohibits the transaction in respect of which the agreement is entered into and declares it to be void, it is absolutely so. 3 Binn. R. 533. But when it is merely prohibited, without being made void, although unlawful, it is not void. 12 Serg. & Rawle, 237; Chitty, Contr. 230; 23 Amer. Jur. 1 to 23; 1 Mod. 35; 8 East, R. 236, 237; 3 Taunt. R. 244; Hob. 14. Vide Condition; Void.

UNLAWFUL ASSEMBLY, crim. law. A disturbance of the public peace by three or more persons who meet together with an intent mutually to assist each other in the execution of some unlawful enterprise of a private nature, with force and violence; if they move forward towards its execution, it is then a rout (q. v.) and if they actually execute their design, it amounts to a riot. (q. v.) 4 Bl. Com. 140; 1 Russ. on Cr. 254; Hawk. c. 65, s. 9; Com. Dig. Forcible Entry, D 10; Vin. Abr. Riots, &c., A.

UNLAWFULLY, pleadings. This word is frequently used in indictments in the description of the offence; it is necessary when the crime did not exist at common law, and when a statute, in describing an offence which it creates, uses the word, 1 Moody, Cr. Cas. 339; but it is unnecessary whenever the crime existed at common law, and is manifestly illegal. 1 Chitty, Crim. Law, *241; Hawk. B. 2, c. 95, s. 96; 2 Roll. Ab. 82; Bac. Abr. Indictment, G 1 Cro. C. C. 38, 43.

UNLIQUIDATED DAMAGES. Such damages, as are unascertained. In general such damages cannot be set-off. No interest will be allowed on unliquidated damages. 1 Bouv. Inst. n. 1108. See Liquidated, Liquidated Damages.

UNQUES, law French. Yet. This barbarous word is frequently used in pleas as, Ne unques executor, Ne unquas guardian, Ne unques accouple; and the like.

UNSOUND MIND; UNSOUND MEMORY. These words have been adopted in several statutes, and sometimes indiscriminately used to signify, not only lunacy, which is periodical madness, but also a permanent adventitious insanity as distinguished from idiocy. 1 Ridg. Parl. Cases, 518; 3 Atk. 171.

2. The term unsound mind seems to have been used in those statutes in the same sense as insane; but they have been said to import that the party was in some such state as was contradistinguished from idiocy and from lunacy, and yet such is made him a proper subject of a commission to inquire of idiocy and lunacy. Shelf. on Lun. 5; Ray, Med. Jur. Prel. §8; Hals. Med. Jur. 336; 8 Ves. 66; 19 Ves. 286; 1 Beck's Med. Jur. 573; Coop. Ch. Cas. 108; 12 Ves. 447; 2 Mad. Ch. Pr. 731, 732.

UNSOUNDNESS. Vide Crib-biting; Roaring; Soundness.

UNWHOLESOME FOOD. Food not fit to be eaten; food which, if eaten, would be injurious.

2. Although the law does not in general consider a sale to be a warranty or goodness of the quality of a personal chattel, yet it is otherwise with regard to food and liquor when sold for consumption. 1 Roll. Ab. 90, pl. 1 and 2.

UPLIFTED HAND. When a man accused of a crime is arraigned, he is required to raise his hand, probably in order to identify the person who pleads. Perhaps for the same reason when a witness adopts a particular mode of taking an oath, as when he does not swear upon the gospel, but upon Almighty God, he is requested to hold up his hand.

URBAN. Relating to a city; but in a more general sense it signifies relating to houses.

2. It is used in this latter sense in the civil code of Louisiana, articles 706 and 707. All servitudes are established either for the use of houses or for the use of lands. Those of the first kind are called urban servitudes, whether the buildings to which they are due be situated in the city or in the country. Those of the second kind are called rural servitudes.

3. The principal kinds of urban servitudes are the following: the right of support; that of drip; that of drain, or of preventing the drain, that of view or of lights, or of preventing the view or lights from being obstructed: that of raising buildings or walls, or of preventing them from being raised that of passage and that of drawing water. Vide 3 Toull. p. 441; Poth. Introd. au tit. 13 de la Coutume d'Orleans, n. 2; Introd. Id. n. 2.

USAGE. Long and uniform practice. In its most extensive meaning this term includes custom and prescription, though it differs from them in a narrower sense, it is applied to the habits, modes, and course of dealing which are observed in trade generally, as to all mercantile transactions, or to some particular branches of trade.

2. Usage of trade does not require to be immemorial to establish it; if it be known, certain, uniform, reasonable, and not contrary to law, it is sufficient. But evidence of a few instances that such a thing has been done does not establish a usage. 3 Watts, 178; 3 Wash. C. C. R. 150; 1 Gallis. 443; 5 Binn. 287; 9 Pick. 426; 4 B. & Ald. 210; 7 Pet. 1; 2 Wash. C. C. R. 7.

3. The usages of trade afford ground upon which a proper construction may be given to contracts. By their aid the indeterminate intention of parties and the nature and extent of their contracts arising from mere implications or presumptions, and act of an equivocal character may be ascertained; and the meaning of words and doubtful expressions may become known. 2 Mete. 65; 2 Sumn. 569; 2 G. & J. 136; 13 Pick. 182; Story on Ag. §77; 2 Kent, Com. 662, 3d ed.; 5 Wheat. 326; 2 Car. & P. 525; 3 B. & Ald. 728; Park. on Ins. 30; 1 Marsh. Ins. 186, n. 20; 1 Caines, 45 Gilp. 356, 486; 1 Edw. Ch. R. 146; 1 N. & M. 519; 15 Mass. 433; 1 Rill, R. 270; Wright, R. 573; Pet. C. C. R. 230; 5 Hamm. 436 6 Pet. 715; 2 Pet. 148; 6 Porter, 123 1 Hall, 612; 9 Mass. 155; 9 Wheat. 582 11 Wheat. 430; 1 Pet. 25, 89.

4. Courts will not readily adopt these usages, because they are not unfrequently founded in mistake. 2 Sumn. 377. See 3 Chitt. Pr. 55; Story, Confl. of Laws, §270; 1 Dall. 178; Vaugh. 169, 383; Bouv. Inst. Index, h. t.

USANCE, commercial law. The term usance comes from usage, and signifies the time which by usage or custom is allowed in certain countries, for the payment of a bill of exchange. Poth. Contr. du Change, n. 15.

2. The time of one, two or three mouths after the date of the bill, according to the custom of the places between which the exchanges run.

3. Double or treble is double or treble the usual time, and half usance is half the time. Where it is necessary to divide a month upon a half usance, which is the case when

the usance is for one month or three, the division, notwithstanding the difference in the length of the months, contains fifteen days.

USE, estates. A confidence reposed in another, who was made tenant of the land or terre tenant, that he should dispose of the land according to the intention of the cestui que use, or him to whose use it was granted, and suffer him to take the profits. Plowd. 352; Gilb. on Uses, 1; Bac. Tr. 150, 306; Cornish on Uses, 1 3; 1 Fonb. Eq. 363; 2 Id. 7; Sanders on Uses, 2; Co. Litt. 272, b; 1 Co. 121; 2 Bl. Com. 328; 2 Bouv. Inst. n. 1885, et seq.

2. In order to create a use, there must always be a good Consideration; though, when once raised, it may be passed by grant to a stranger, without consideration. Doct. & Stu. , Dial. ch. 22, 23; Rob. Fr. Conv. 87, n.

3. Uses were borrowed from the fidei commissum (q. v.) of the civil law; it was the duty of a Roman magistrate, the praetor fidei commissarius, whom Bacon terms the particular chancellor for uses, to enforce the observance of this confidence. Inst. 2, 23, 2.

4. Uses were introduced into England by the ecclesiastics in the reign of Edward Ill or Richard II, for the purpose of avoiding the statutes of mortmain; and the clerical chancellors of those times held them to be fidei commissa, and binding in conscience. To obviate many inconveniencies and difficulties, which had arisen out of the doctrine and introduction of uses, the statute of 274 Henry VIII, c. 10, commonly called the statute of uses, or in conveyances and pleadings, the statute for transferring uses into possession, was passed. It enacts, that "when any person shall be seised of lands, &c., to the use, confidence or trust of any other person or body politic, the person or corporation entitled to the use in fee simple, fee tail, for life, or years, or otherwise, shall from thenceforth stand and be seised or possessed of the land, &c., of and in the like estate as they have in the use, trust or confidence; and that the estates of the persons so seised to the uses, shall be deemed to be in him or them that have the use, in such quality, manner, form and condition, as they had before in the use." The statute thus executes the use; that is, it conveys the possession to the use, and transfers the use to the possession; and, in this manner, making the cestui que use complete owner of the lands and tenements, as well at law as in equity. 2 Bl. Com. 333; 1 Saund. 254, note 6.

5. A modern use has been defined to be an estate of right, which is acquired through the operation of the statute of 27 Hen. VIII., c. 10; and which, when it may take effect according to the rules of the common law, is called the legal estate; and when it may not, is denominated a use, with a term descriptive of its modification. Cornish on Uses, 35.

6. The common law judges decided, in the construction of this statute, that a use could not be raised upon a use; Dyer, 155 A; and that on a feoffment to A and his heirs, to the use of B and his heirs, in trust for C and his heirs, the statute executed only the first use, and that the second was a mere nullity. The judges also held that, as the statute mentioned only such persons as were seised to the use of others, it did not extend to a term of years, or other chattel interests, of which a termor is not seised but only possessed. Bac. Tr. 336; Poph. 76; Dyer, 369; 2 Bl. Com. 336; The rigid literal construction of the statute by the courts of law again opened the doors of the chancery courts. 1 Madd. Ch. 448, 450.

USE, civil law. A right of receiving so much of the natural profits of a thing as is necessary to daily sustenance; it differs from usufruct, which is a right not only to use but to enjoy. 1 Browne's Civ. Law, 184; Lecons Elem. du Dr. Civ. Rom. §414, 416.

USE AND OCCUPATION. When a contract has been made, either by express or implied agreement, for the use of a house or other real estate, where there was no amount of rent fixed and ascertained, the landlord can recover a reasonable rent in an action of assumpsit for use and occupation. 1 Munf. R. 407; 2 Aik. R. 252; 7 J. J. Marsh. 6; 4 Day, R. 228; 13 John. R. 240; 13 John. R. 297; 4 H. & M. 161; 15 Mass. R. 270; 2 Whart. R. 42; 10 S. & R. 251.

2. The action for use and occupation is founded not on a privity of estate, but on a privity of contract; 3 S. & R. 500; C. & N. 19; therefore it will not lie where the possession is tortious. 2 N. & M. 156; 3 S. & R. 500; 6 N. H. Rep. 298; 6 Ham. R. 371; 14 Mass. R. 95. See Arch. L. & T. 148.

USEFUL. That which may be put into beneficial practice.

2. The patent act of congress of July 4, 1836, sect. 6, in describing the subjects of patents, mentions "new and useful art," and "new and useful improvement." To entitle the inventor to a patent, his invention must, to a certain extent, be beneficial to the community, and not be for an unlawful object, or frivolous, or insignificant. 1 Mason, 182; 1 Pet. C. C. R. 322; 1 Bald. 303; 14 Pick. 217; Paine, 203.

USHER. This word is said to be derived from a huissier, and is the name of an inferior officer in some English courts of law Archb. Pr. 25.

USUCAPTION, civil law. The manner of acquiring property in things by the lapse of time required by law.

2. It differs from prescription, which has the same sense, and means, in addition, the manner of acquiring and losing, by the effect of time regulated by law, all sorts of

rights and actions. Merl. Repert. mot Prescription, tom. xii. page 671; Ayl. Pand. 320; Wood's Inst. Civ. Law, 165; Lecons Elem. du Dr. Rom. §437; 1 Browne's Civ. Law, 264, n.; vattel, ii. 2, c. 2, §140.

USUFRUCT, civil law. The right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantage which it may produce, provided it be without altering the substance of the thing.

2. The obligation of not altering the substance of the thing, however, takes place only in the case of a complete usufruct.

3. Usufructs are of two kinds; perfect and imperfect. Perfect usufruct, which is of things which the usufructuary can enjoy without altering their substance, though their substance may be diminished or deteriorated naturally by time or by the use to which they are applied; as a house, a piece of land, animals, furniture and other movable effects. Imperfect or quasi usufruct, which is of things which would be useless to the usufructuary if be did not consume and expend them, or change the substance of them, as money, grain, liquors. Civ. Code of Louis. art. 525, et seq.; 1 Browne's Civ. Law, 184; Poth. Tr. du Douaire, n. 194; Ayl. Pand. 319; Poth. Pand. tom. 6, p. 91; Lecons El. du Dr. Civ. Rom. 414 Inst. lib. 2, t. 4; Dig. lib. 7, t. 1, 1. 1 Code, lib. 3, t. 33; 1 Bouv. Inst. Theolo. ps. 1, c. 1, art. 2, p. 76.

USUFRUCTUARY, civil law. One who has the right and enjoyment of an usufruct.

2. Domat, with his usual clearness, points out the duties of the usufructuary, which are, 1. To make an inventory of the things subject to the usu-fruct, in the presence of those having an interest in them. 2. To give secur-ity for their restitution; when the usufruct shall be at an end. 3. To take good care of the things subject to the usufruct. 4. To pay all taxes, and claims which arise while the thing is in his possession, as a ground-rent. 5. To keep the thing in repair at his own expense. Lois Civ. liv. 1, t. 11, s. 4. See Estate for life.

USURPATION, torts. The unlawful assumption of the use of property which belongs to another; an interruption or the disturbing a man in his right and possession. Toml. Law Dict. h. t.

2. According to Lord Coke, there are two kinds of usurpation. 1. When a stranger, without right, presents to a church, and his clerk is admitted; and, 2. When a subject uses a franchise of the king without lawful authority. Co. Litt. 277 b.

USURPATION, government. The tyrannical assumption of the government by force contrary to and in violation of the constitution of the country.

USURPED POWER, insurance. By an article of the printed proposals which are considered as making a part of the contract of insurance it is provided, that "No loss of damage by fire, happening by any invasion, foreign enemy, or any military or usurped power whatsoever will be made good by this company." Lord Chief J. Wilmot, Mr. Justice Clive, and Mr. Justice Bathurst, against the opinion of Mr. Justice Gould, determined that the true import of the words usurped power in the proviso, was an invasion, from abroad, or an internal rebellion, where armies are drawn up against each other, when the laws are silent, and when the firing of towns becomes unavoidable; but that those words could not mean the power of a common mob. 2 Marsh. Ins. 390.

USURPER, government. One who assumes the right of government by force, contrary to and in violation of the constitution of the country. Toull. Dr. Civ. n. 32. Vide Tyranny,

USURY, contracts. The illegal profit which is required and received by the lender of a sum of money from the borrower for its use. In a more extended and improper sense, it is the receipt of any profit whatever for the use of money: it is only in the first of these senses that usury will be here considered.

2. To constitute a usurious contract the following are the requisites: 1. A loan express or implied. 2. An agreement that the money lent shall be returned at all events. 3. Not only that the money lent shall be returned, but that for such loan a greater interest than that fixed by law shall be paid.

3. - 1. There must be a loan in contemplation of the parties; 7 Pet. S. C. Rep. 109, 1 Clarke R. 252; and if there be a loan, however disguised, the contract will be usurious, if it be so in other respects. Where a loan was made of depreciated bank notes to be repaid in sound funds, to enable the borrower to pay a debt he owed dollar for dollar, it was considered as not being usur-ious. 1 Meigs, R. 585. The bona fide sale of a note, bond or other security at a greater discount than would amount to legal interest, is not per se, a loan, although the note may be endorsed by the seller, and he remains responsible. 9 Pet. S. C. Rep. 103; 1 Clarke, R. 30. But, if a note, bond; or other security be made with a view to evade the laws of usury, and afterwards sold for a less amount than the interest, the transaction will be considered a loan; 2 Johns. Cas. 60; 3 Johns. Cas. 66; 15 Johns. R. 44 2 Dall. 92; 12 Serg. & Rawle, 46 and a sale of a man's own note, endorsed by himself, will, be considered a loan. lt is a general rule that a contract, which, in its inception, is unaffected by usury, can never be invalidated by any subsequent usurious transaction. 7 Pet. S. C. Rep. 109. On the contrary, when the contract was originally usurious, and there is a substitution by a new contract, the latter will generally be considered usurious. 15 Mass. R. 96.

4. - 2. There must be a contract for the return of the money at all events; for if the return of the principal with interest, or of the principal only, depend upon a contingency, there can be no usury; but if the contingency extend only to interest, and the principal be beyond the reach of hazard, the lender will be guilty of usury, if he received interest beyond the amount allowed by law. As the principal is put to hazard in insurances, annuities and bottomry, the parties may charge and receive greater interest than is allowed by law in common cases, and the transaction will not be usurious.

5. - 3. To constitute usury the borrower must not only be obliged to return the principal at all events, but more than lawful interest: this part of the agreement must be made with full consent and knowledge of the contracting parties. 3 Bos. & Pull, 154. When the contract is made in a foreign country the rate of interest allowed by the laws of that country may be charged, and it will not be usurious, although greater than the amount fixed by law in this. Story, Confl. of Laws, §292. Vide, generally, Com. Dig. h. t.; Bac. Ab. h. t.; 8 Com. Dig. h. t.; Lilly's Reg. h. t.; Dane's Ab. h. t.; Petersdorff's Ab. h. t.; Vin. Ab. h. t.; 2 Bl. Com. 454; Comyn on Usury, passim; 1 Pt. S. C Rep. Index, h. t.; 1 Supp. to Yes. jr. 307, 337; Yelv. 47; 1 Ves. jr. 527; 1 Saund 295, note 1; Poth. h. t.; and the article Anatocism; Interest.

UTERINE BROTHER, domestic relations. A brother by the mother's side.

UTI POSSIDETIS. This phrase, which means as you possess, is used in international law to signify that the parties to a treaty are to retain possession of what they have acquired by force during the war.

TO UTTER, crim. law. To offer, to publish.

2. To utter and publish a counterfeit note is to assert and declare, directly or indirectly, by words or actions, that the note offered is good. It is not necessary that it should be passed in order to complete the offence of uttering. 2. Binn. R. 338, 9. It seems that reading out a document, although the party refuses to show it, is a sufficient uttering. Jebb's Ir. Cr. Cas. 282. Vide East, P. C. 179; Leach, 251; 2 Stark. Ev. 378 1 Moody, C. C. 166; 2 East, P. C. 974 Russ. & Ry. 113; 1 Phil. Ev. Index, h. t.; Roscoe's Cr. Ev. 301. The merely showing a false instrument with intent to gain a credit when there was no intention or attempt made to pass it, it seems would not amount to an uttering. Russ. & Ry. 200. Vide Ringing the charge.

UTTER BARRISTER, English law, Those barristers who plead without the bar, and are distinguished from benchers, or those who have been readers and who are allowed to plead within the bar, as the king's counsel are. The same as ouster barrister. See Barrister. civil law. A woman lawfully married.

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Bouvier's Law Dictionary

1856 Edition

V

VACANCY. A place which is empty. The term is principally applied to cases where an office is not filled.

2. By the constitution of the United States, the president has the power to fill up vacancies that may happen during the recess of the senate. Whether the president can create an office and fill it during the recess of the senate, seems to have been much questioned. Story, Const. §1553. See Serg. Const. Law, ch. 31; 1 Breese, R. 70.

VACANT POSSESSION, estates. An estate which has been abandoned by the tenant; the abandonment must be complete in order to make the possession vacant, and therefore if the tenant have goods on the premises, it will not be so considered. 2 Chit. Rep. 17 7; 2 Str. 1064; Bull. N. P. 97; Comyn on Landl. & Ten. 507, 517.

VACANT SUCCESSION. An inheritance for which the heirs are unknown.

VACANTIA, BONA, civil law. Goods without an owner. Such goods escheat.

TO VACATE. To annul, to render an act void; as to vacate an entry which has been made on a record when the court has been imposed upon by fraud, or taken by surprise.

VACATION. That period of time between the end of one term and beginning of another. During vacation, rules and orders are made in such cases as are urgent, by a judge at his chambers.

VACCARIA, old Engl. law. A word which is derived from vacca, a cow, and signifies a dairy-house. Co. Litt. 5 b.

VADIUM, contracts. A pledge, or surety.

VADIUM MORTUUM, contracts. A mortgage or dead-pledge; it is a security given by the borrower of a sum of money, by which he grants to the lender an estate in fee, on condition that if the money be not repaid at the time appointed, the estate so put in pledge shall continue to the lender as dead or gone from the mortgagor. 2 Bl. Com. 257; 1 Pow. Mortg. 4.

VADIUM VIVUM, contracts. A species of security by which the borrower of a sum of money, made over his estate to the lender, until he had received that sum out of the issues and profits of the land; it was so called because neither the money nor the lands were lost, and were not left in lead pledge, but this was a living pledge, for the profits of the land were constantly paying off the debt. Litt. sect. 206; 1 Pow. on Mort. 3; Termes de la Ley, h. t.

VAGABOND. One who wanders about idly, who has no certain dwelling. The ordonnances of the French define a vagabond almost in the same terms. Dalloz, Dict. Vagabondage. See Vattel, liv. 1, §219, n.

VAGRANT. Generally by the word vagrant is understood a person who lives idly without any settled home; but this definition is much enlarged by some sta-tutes, and it includes those who refuse to work, or go about begging. See 1 Wils. R. 331; 5 East, R. 339: 8 T. R. 26.

VAGUENESS. Uncertainty.

2. Certainty is required in contracts, wills, pleadings, judgments, and indeed in all the acts on which courts have to give a judgment, ana if they be vague, so as not to be understood, they are in general invalid. 5 B. & C. 583; 1 Russ. & M. 116 1 Ch. Pract. 123. A charge of "frequent intemperance" and "habitual indolence" are vague and too general. 2 Mart. Lo. Rep. N. S. 530. See Certainty; Nonsense; Uncertainty.

VALID. An act, deed, will, and the like, which has received all the formalities required by law, is said to be valid or good in law.

VALUABLE CONSIDERATION, contracts. An equivalent for a thing purchased. Vide Vin. Ab. Consideration, B; 2 Bl. Com. 297; Consideration.

VALUATION. The act of ascertaining the worth of a thing; or it is the esti-mated worth of a thing.

2. It differs from price, which does not always afford a true criterion of value, for a thing may be bought very dear or very cheap. In some contracts, as in the case of bailments or insurances, the thing bailed or insured is sometimes valued at the time of making the contract, so that if lost, no dispute may arise as to the amount of the loss. 2 Marsh. Ins. 620; 1 Caines, 80; 2 Caines 30; Story, Bailm. §253, 4; Park Ins. 98; Wesk. Ins. h. t.; Stev. on Av. part 2; Ben. on Ins. ch. 4.

VALUE, common law. This term has two different meanings. It sometimes expresses the utility of an object, and some times the power of purchasing other good with it. The first may be called value in use, the latter value in exchange.

2. Value differs from price. The latter is applied to live cattle and ani-mals; in a declaration, therefore, for taking cattle, they ought to be said to be of such a price; and in a declaration for taking dead chattels or those which never had life, it ought to lay them to be of such a value. 2 Lilly's Ab. 620.

VALUE RECEIVED. This phrase is usually employed in a bill of exchange or promissory note, to denote that a consideration has been given for it.

2. The expression value received, when put in a bill of exchange, will bear two interpretations: the drawer of the bill may be presumed to acknowledge the fact that he has received value of the payee; 3 M. & S. 351; or when the bill has been made payable to the order of the drawer, it implies that value has been received by the acceptor. 5 M. & S. 65. In a promissory note, the expression imports value received from the payee. 5 B. & C. 360.

VALUED POLICY. A valued policy is one where the value has been set on the ship or goods insured, and this value has been inserted in the policy in the nature of liquidated damages, to save the necessity of proving it in case of loss. 1 Bouv. Inst. n. 1230.

VARIANCE, pleading, evidence. A disagreement or difference between two parts of the same legal proceeding, which ought to agree together. Variances are between the writ and the declaration, and between the declaration and the evidence.

2. - 1. When the variance is a matter of substance, as if the writ sounds in contract, and the other in tort, and e converso, or if the writ demands one thing or subject, and the declaration another, advantage may be taken of it, even in arrest of judgment; for it is the writ which gives authority to the court to proceed in any given suit, and, therefore, the court can have no authority to hear and determine a cause substaatially different from that in the writ. Hob. 279; Cro. Eliz. 722. But if the variance is in matter of mere form, as in time or place, when that circumstance is immaterial,

advantage can only be taken of it by plea in abatement. Yelv. 120; Latch. 173; Bac. Ab. Abatement, I; Gould, Pl. c. 5, §98 1 Chit. Pl. 438.

3. - 2. A variance by disagreement in some particular point or points only between the allegation and the evidence, when upon a material point, is as fatal to the party on whom the proof lies, as a total failure of evidence. For example; the plaintiff declared in covenant for not repairing, pursuant to the covenant in a lease, and stated the covenant, as a covenant to "repair when and as need should require;" and issue was joined on a traverse of the deed alleged. The plaintiff at the trial produced the deed in proof, and it appeared that the covenant was to "repair when and as need should require, and at farthest after notice:" the latter words having been omitted in the declaration. This was held to be a variance, because the additional words were material, and qualified the effect of the contract. 7 Taunt. 385. But a variance in mere form or in matter quite immaterial, will not be regarded. Str. 690. Vide 1 Vin. Ab. 41; 12 Vin. Ab. 63; 21 Vin. Ab. 538 Com. Dig. Abatement, G 8, H 7; Id.; Amendment, D 7, 8, V 3: Bail, R 7; Obligation, B 4; Pleader, C 14, 15, L 24, 30; Record, C, D, F; Phil. Ev. Index, 11. t. Stark. Ev. Index, h. t., Roscoe's Ev. Index, h. t.; 18 E. C. L. R. 139, 149, 153 1 Dougl. 194; 2 Salk. 659; Harr. Dig. h. t. Chit. Pl. Index, h. t.; United States Dig. Pleading II, d and e; Bouv. Inst. Index: h. t.

VASSAL, feudal law. This was the name given to the holder of a fief, bound to perform feudal service; this word was then always correlative to that of lord, entitled to such service.

2. The vassal himself might be lord of some other vassal.

3. In aftertimes, this word was used to signify a species of slave who owed servitude, and was in a state of dependency on a superior lord. 2 Bl. Com. 53; Merl. Repert. h. t.

VECTIGALIA. Among the Romans this word signified duties which were paid to the prince for the importation and exportation of certain merchandise. They differed from tribute, which was a tax paid by each individual . Code, 4, 61, 5 and 13.

VEJOURS. An obsolete word, which signified viewers or experts. (q. v.)

VENAL. Something that is bought. The term is generally applied in a bad sense; as, a venal office is an office which has been purchased.

VENDEE, contr. A purchaser; (q. v.) a buyer.

VENDITION. A sale; the act of selling.

VENDITIONI EXPONAS, practice. That you expose to sale. The name of a writ of execution, directed to the sheriff, commanding him to sell goods or chattels, and in some states, lands, which he has taken in execution by virtue of a fieri facias, and which remain unsold.

2. Under this writ the sheriff is bound to sell the property in his hands, and he cannot return a second time, that he can get no buyers. Cowp. 406; and see 2 Saund. 47, 1. 2 Chit. Rep. 390; Com. Dig. Execution, C 8; Grab. Pr. 359; 8 Bouv. Inst. n. 3395.

VENDOR, contracts. A seller. (q. v.) One wbo disposes of a thing in consideration of money. Vide Purchaser; Seller.

VENIRE FACIAS, practice, crim. law. According to the English law, the proper process to be issued on an indictment for any petit misdemeanor, on a penal statute, is a writ called venire facias. 2. It is in the nature of a summons to cause the party to appear. 4 Bl. Com. 18 1 Chit. Cr. Law, 351.

VENIRE, OR VENIRE PACIAS JURATORES, practice. The name of a writ directed to the sheriff commanding him to cause to come from the body of the county before the court from which it issued, on some day certain and therein specified, a certain number of qualified citizens wbo are to act as jurors in the said court. Steph. Pl. 104; 2 Graydon's Forms, 314; and see 6 Serg. & Rawle, 414; 21 Vin. Ab. 291; Com. Dig. **Enquest, C 1, &c.; Id. Pleader, 2 S 12, 3 0 20; Id. Process, D 8; 3 Chit. Pr. 797.**

VENIRE FACIAS DE NOVO, practice. The name of a new writ of venire facias; this is awarded when, by reason of some irregularity or defect in the proceeding on the first venire, or the trial, the proper effect of that which has been frustrated, or the verdict become void in law: as, for example, when the jury has been improperly chosen, or an uncertain, ambiguous or defective verdict has been rendered. Steph. Pl. 120 21 Vin. Ab. 466 1 Sell. Pr. 495.

VENTE A REMERE. A term used in Louisiana, which signifies a sale made reserving a right to the seller to repurchase the property gold by returning the price paid for it.

2. The time during which a repurchase may be made cannot exceed ten years, and if by the agreement it so exceed, it shall be reduced to ten years. The time fixed for redemption must be strictly adhered to and cannot be enlarged by the judge, nor exercised afterwards. Code 1545-1549.

3. The following is an instance, of a vente a remere. A sells to B, for the purpose of securing B against endorsement, with a clause that "whenever A should relieve B from such endorsements, without B's, having recourse on the land, then B would reconvey the same to A, for A's own use." This is a vente a remere, and until A releases B from his endorsements, the property is B's, and forms no part of A's estate. 7 N. S. 278. See 1 N. S. 528; 3 L. R. 153; 4 L. R. 142; Troplong, Vente, ch. 6; 6 Toull. p. 257.

VENTER or VENTRE. Signifies literally the belly. In law it is used figuratively for the wife: for example, a man has three children by the first, and one by the second venter.

2. A child is said to be in ventre sa mere before it is born; while it is a foetus.

VENTER INSPICIENDO, Eng. law. A writ directed to the sheriff, commanding him that, in the presence of twelve men, and as many women, he cause examination to be made, whether a woman therein named is with child or not; and if with child, then about what time it will be born; and that he certify the same. It is granted in a case when a widow, whose husband had lands in fee simple, marries again soon after her husband's death, and declares herself pregnant by her first husband and, under that pretext, withholds the lands from the next heir. Cro. Eliz. 506; Fleta, lib. 1, c, 15.

VENUE, pleading. The venue is the county from which the jury are to come, who are to try the issue. Gould, Pl. c. 3, §102; Archb. Civ. Pl. 86.

2. As it is a general rule, that the place of every traversable fact stated in the pleadings must be distinctly alleged, or at least that some certain place must be alleged for every such fact, it follows that a venue must be stated in every declaration.

3. In local actions, in which the subject or thing to be recovered is local, the true venue must be laid; that is, the action must be brought in that county where the cause of action arose: among these are all real actions, and actions which arise out of some local subject, or the violation of some local rights or interest; as the common law action of waste, trespass quare clausum fregit, trespass for nuisances to houses or lands disturbance of right of way, obstruction or diversion of ancient water courses, &c. Com. Dig. Action, N 4; Bac. Abr. Actions Local, A a.

4. In a transitory action, the plaintiff may lay the venue in any county he pleases; that is, he may bring suit wherever he may find the defendant and lay his cause of action to have arisen there even though the cause of action arose in a foreign jurisdiction. Cowp. 161; Cro. Car. 444; 9 Johns. R. 67; Steph. Pl. 306; 1 Chitty, Pl. 273; Archb. Civ. Pl. 86. Vide, generally, Chit. Pl. Index, h. t.; Steph. Pl. Index, h. t.; Tidd's Pr.

Index, h. t.; Graham's Practice, Index, h. t.; Com. Dig. Abatement, H 13; Id. Action, N 13; Id. Amendment, H 1 Id. Pleader, S 9; 21 Vin. Ab. 85 to 169 1 Vern. 178; Yelv. 12 a; Bac. Ab. Actions, Local and Transitory, B; Local Actions; Transitory Actions.

VERAY. This is an ancient manner of spelling urai, true.

2. In the English law, there are three kinds of tenants: 1. Veray, or true tenant, who is one who holds in fee simple. 2. Tenant by the manner, (q. v.) who is one who has a less estate than a fee which remains in the reversioner. 3. Veray tenant by the manner, who is the same as tenant by the manner, with this difference only, that the fee simple, instead of remaining in the lord, is given by him or by the law to another. Hamm. N. P. 394.

VERAY TENANT, or TRUE TENANT, Eng. law. One who holds a fee simple; in pleadings, he is called simply tenant. He differs from a tenant by the manner in this, that the latter holds a less estate than a fee which remains in the reversioner.

2. A veray tenant by the manner is the same as tenant by the manner, with this difference only, that the fee simple, instead of remaining in the land, is given by him or by the law, to another. Ham. N. P. 394.

VERBAL. Parol; by word of mouth; as verbal agreement; verbal evidence. Not in writing.

VERBAL NOTE. In diplomatic language, memorandum or note not signed, sent when an affair has continued a long time without any reply, in order to avoid the appearance of an urgency, which, perhaps, the affair does not require; and, on the other hand, not to afford any ground for supposing that it is forgotten, or that there is no intention of not prosecuting it any further, is called a verbal note.

VERBAL PROCESS. In Louisiana, by this term is understood a written account of any proceeding or operation required by law, signed by the person commissioned to perform the duty, and attested by the signature of witnesses. Vide Proces Verbal.

VERDICT, Practice. The unanimous decision made by a jury and reported to the court on the matters lawfully submitted to them in the course of the trial of a cause.

2. Verdicts are of several kinds, namely, privy and public, general, partial, and special.

3. A privy verdict is one delivered privily to a judge out of court. A verdict of this kind is delivered to the judge after the jury have agreed, for the convenience of the jury, who after having given it, separate. This verdict is of no force whatever; and this

practice being exceedingly liable to abuse, is seldom if ever allowed in the United States.

4. A public verdict is one delivered in open court. This verdict has its full effect, and unless set aside is conclusive on the facts, and when judgment is rendered upon it, bars all future controversy in personal actions. A private verdict must afterwards be given publicly in order to give it any effect.

5. A general verdict is one by which the jury pronounce at the same time on the fact and the law, either in favor of the plaintiff or defendant. Co. Lit. 228; 4 Bl. Com. 461; Code of Prac. of Lo. art. 519. The jury may find such a verdict whenever they think fit to do so.

6. A partial verdict in a criminal case is one by which the jury acquit the defendant of a part of the accusation against him, and find him guilty of the residue: the following are examples of this kind of a verdict, namely: when they acquit the defendant on one count and find him guilty on another, which is indeed a species of general verdict, as he is generally acquitted on one charge, and generally convicted on another; when the charge is of an offence of a higher, and includes one of an inferior degree, the jury may convict of the less atrocious by finding a partial verdict. Thus, upon an indictment for burglary, the defendant may be convicted of larceny, and acquitted of the nocturnal entry; upon an indictment for murder, he may be convicted of manslaugh-ter; robbery may be softened to simple larceny; a battery, into a common assault. 1 Chit. Cr. Law, 638, and the cases there cited.

7. A special verdict is one by which the facts of the case are put on the record, and the law is submitted to the judges. Lit. Sel. Cas. 376; Breese, 176; 4 Rand. 504; 1 Hen. & Munf. 235; 1 Wash. C. C. 499; 2 Mason, 31. The jury have an option, instead of finding the negative or affirmative of the issue, as in a general verdict, to find all the facts of the case as disclosed by the evidence before them, and, after so setting them forth, to conclude to the following effect: "that they are ignorant, in point of law, on which side they ought upon those facts to find the issue; that if upon the whole matter the court shall be of opinion that the issue is proved for the plaintiff, they find for the plaintiff accordingly, and assess the damages at such a sum, &c.; but if the court are of an opposite opinion, then they find vice versa." This form of finding is called a special verdict. In practice they have nothing to do with the formal preparation of the special verdict. When it is agreed that a verdict of that kind is to be given, the jury merely declare their opinion as to any fact remaining in doubt, and then the verdict is adjusted without their further interference. It is settled, uncler the correction of the judge, by the counsel and, attorneys on either, side, according to the state of the facts as found by the jury, with respect to all particulars on which they have delivered an opinion, and, with respect to other particulars, according to the state of facts, which it

is agreed, that they ought to find upon the evidence before them. The special verdict, when its form is thus settled is, together with the whole proceedings on the trial, then entered on record; and the question of law, arising on the facts found, is argued before the court in bank, and decided by that court as in case of a demurrer. If either party be dissatisfied with their decision, he may afterwards resort to a court of error. Steph. Pl. 113; 1 Archb. Pr. 189; 3 Bl. Com. 377; Bac. Abr. Verdict, D, E.

8. There is another method of finding a special verdict this is when the jury find a verdict generally for the plaintiff, but subject nevertheless to the opinion of the judges or the court above on a special case stated by the counsel on both sides with regard to a matter of law. 3 Bl. Com. 378; and see 10 Mass. R. 64; 11 Mass. R. 358. See, generally, Bouv. Inst. Index, h. t..

VERIFICATION, pleading. Whenever new matter is introduced on either side, the plea must conclude with a verification or averment, in order that the other party may have an opportunity of answering it. Carth. 337; 1 Lutw. 201; 2 Wils. 66; Dougl. 60; 2 T. R. 576; 1 Saund, 103, n. 1; Com. Dig. Pleader, E.

2. The usual verification of a plea containing matter of fact, is in these words, "And this he is ready to verify," &c. See 1 Chit. Pl. 537, 616; Lawes, Civ. Pl. 144; 1 Saund, 103, n. 1; Willes, R. 5; 3 Bl. Com. 309.

3. In one instance however, new matter need not conclude with a verification and then the pleader may pray judgment without it; for example, when the matter pleaded is merely negative. Willes, R. 5; Lawes on Pl. 145. The reason of it is evident, a negative requires no proof; and it would therefore be imper-tinent or nugatory for the pleader, who pleads a negative matter, to declare his readiness to prove it.

VERIFICATION, practice. The examination of the truth of a writing; the certificate that the writing is true. Vide Authentication.

VERMONT. The name of one of the new states of the United States of America. lt was admitted by virtue of "An act for the admission of the state of Vermont into this Union," approved February, 18, 1791, 1 Story's L. U. S. 169, by which it is enacted, that the state of Vermont having petitioned the congress to be admitted a member of the United States, Be it enacted, &c., That on the fourth day of March, one thousand seven hundred and ninety-one, the said state, by the name and style of "the state of Vermont," shall be received and admitted into this Union, as a new and entire member of the United States of America.

2. The constitution of this state was adopted by a convention holden at Windsor on the ninth day of July, one thousand seven hundred and ninety-three. The powers of the

government are divided into three distinct branches; namely, the legislative, the executive, and the judicial.

3. - 1. The supreme legislative power is vested in a house of representatives of the freemen of the commonwealth or state of Vermont, ch. 2, §2. The house of representatives of the freemen of this state shall consist of persons most noted for wisdom and virtue, to be chosen by ballot, by the freemen of every town in this state respectively, on the first Tuesday in September, annually forever. Ch. 2, §8. The representatives so chosen, a majority of whom shall constitute a quorum for transacting any other business than raising a state tax, for which two-thirds of the members elected shall be present, shall meet on the second Thursday of the succeeding October, and shall be styled The General Assembly of the State of Vermont: they shall have power to choose their speaker, secretary of state, their clerk, and other necessary officers of the house - sit on their own adjournrments prepare bills, and enact them into laws - judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their own constituents antecedent to their elections; they may administer oaths and affirmations in matters depending before them, redress grievances, impeach state criminals, grant charters of incorporation, constitute towns, boroughs, cities, and counties: they may annually, on their first session after their election, in conjunction with the council, or oftener if need be, elect judges of the supreme and several county and probate courts, sheriffs, and justices of the peace; and also, with the council may elect major generals and brigadier generals, from time to time, as often as there shall be occasion; and they shall have all other powers necessary for the legislature of a free and sovereign state: but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. Ch. 2 §9.

4. - 2. The supreme executive power is vested in a governor, or in his absence a lieutenant-governor, and council. Ch. 2, §3. The duties of the executive are pointed out by the second chapter of the constitution as follows:

5. - §10. The supreme executive council of this state shall consist of a governor, lieutenant-governor, and twelve persons, chosen in the following manner, viz. The freemen of each town shall, on the day of the election, for choosing representatives to attend the general assembly, bring in their votes for governor, with his name fairly written, to the constable, who shall seal them up, and write on them, votes for the governor, and deliver them to the representatives chosen to attend the general assembly; and at the opening of the general assembly there shall be a committee appointed out of the council and assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count the votes for the governor, and declare the person who has the major part of the votes to be governor for the year ensuing. And if there be no choice made, then the council and general

assembly, by their joint ballot, shall make choice of a governor. The lieu-tenant-governor and treasurer shall be chosen in the manner above directed. And each freeman shall give in twelve votes, for twelve counsellors, in the same manner, and the twelve highest in nomination shall serve for the ensuing year as counsellors.

6. - §11. The governor, and, in his absence, the lieutenant-governor, with the council, a major part of whom, including the governor, or lieutenant-gov-ernor, shall be a quorum to transact business, shall have power to commission all officers, and also to-appoint officers, except where provision is, or shall be otherwise made by law, or this frame of government; and shall supply every vacancy in. any office, occasioned by, death, or otherwise, until the office can be filled in the manner directed by law or this constitution.

7. They are to correspond with other states, transact business with officers of government, civil and military, and to prepare such business as may appear to them necessary to lay before the general assembly. They shall sit as judges to hear and determine on impeachments, taking to their assistance, for advice only, the judges of the supreme court. And shall have power to grant pardons, and remit fines, in all cases whatsoever, except in treason and murder; in which they shall have power to grant reprieves, but not to pardon, until after the end of the next session of the assembly; and except in cases of impeachment, in which there shall be no remission or mitigation of punishment, but by act of the legislature.

8. They are also to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by the general assembly. And they may draw upon the treasury for such sums as may be appropriated by the house of representatives. They may also lay embargoes, or probibit the exportation of any commodity, for any time not exceeding thirty days, in the recess of the house only. They may grant such licenses as shall be directed by law; and shall have power to call together the general assembly, when necessary, before the day to which they shall stand. adjourned. The governor shall be captain general and commander-in-chief of the forces of the state, but shall not command in person, except advised thereto by the council, and then only so long as they shall approve thereof. And the lieutenant-governor shall, by virtue of his office, be lieutenant-general of all the forces of the state. The governor or lieutenant-governor, and council shall meet at the time and place with the general assembly; the lieutenant-governor shall, during the presence of the commander-in-chief, vote and act as one of the council: and the governor and, in his absence, the lieutenant-governor, shall, by virtue of their offices, preside in council, and have a casting, but no other vote. Every member of the council shall be a justice of the peace, for the whole state, by virtue of his office. The governor and council shall have a secretary, and keep fair books of their proceedings, wherein any

councillor may enter his dissent, with his reasons to support it; and the governor may appoint a secretary for himself and his council.

9. - §16. To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determinations, as much as possible, prevented, all bills which originate in the assembly shall be laid before the governor and council for their revision and concurrence, or proposals of amendment; who shall return the same to the general assembly, with their proposals of amendment, if any, in writing; and if the same are not agreed to by the assembly, it shall be in the power of the governor and council to suspend the passing of such bill until the next session of the legislature: Provided, that if the governor and council shall neglect or refuse to return any such bill to the assembly with written proposals of amendment, within five days, or before the rising of the legislature, the same shall become a law.

10. - §24. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal, for mal-administration. All impeachments shall be before the governor, or lieutenant governor and council, who shall hear and determine the same, and may award costs; and no trial or impeachment shall be a bar to a prosecution at law.

11. - 3. The judicial power is regulated by the second chapter of the constitution, as follows

12. - §4. Courts of justice shall be maintained in every county in this state, and also in new counties, when formed: which courts shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay. The judges of the supreme court shall be justices of the peace throughout the state; and the several judges of the county courts, in their respective counties, by virtue of their office, execpt in the trial of such causes as may be appealed to the county court.

13. - §5. A future legislature may, when they shall conceive the same to be expedient and necessary, erect a court of chancery, with such powers as are usually exercised by that court or as shall appear for the interest of the commonwealth: Provided, they do not constitute themselves the judges of the said court.

VERSUS. Against; as A B versus C D. This is usually abbreviated v.

VERT. Everything bearing green leaves in a forest. Bac. Ab. Courts of the Foreat; Manwood, 146.

VESSEL, mar. law. A ship, brig, sloop or other craft used in navigation . 1 Boul. Paty, tit. 1, p. 100 . See sup.

2. By an act of congress, approved July 29, 1850, it is provided that any person, not being an owner, who shall on the high seas, wilfully, with. intent to burn or destroy, set fire to any ship or other vessel, or otherwise attempt the destruction of such ship or other vessel, being the property of any citizen or citizens of the United States, or procure the same to be done, with the intent aforesaid, and being thereof lawfully convicted, shall suffer imprisonment to hard labor, for a term not exceeding ten years, nor less than three years, according to the aggravation of the offence.

TO VEST, estates. To give an immediate fixed right of present or future enjoyment; an estate is vested in possession when there exists a right of present enjoyment; and an estate is vested in interest, when there is a present fixed right of future, enjoyment. Feame on Rem. 2; vide 2 Rop on Leg. 757; 8 Com. Dig. App. h. t.; 1 Vern. 323, n.; 10 Vin. Ab. 230; 1 Suppl. to Ves. jr. 200, 242, 315, 434; 2 Id. 157 5 Ves. 511.

VESTED REMAINDER, estates. One by which a present interest passes to the party, though to be enjoyed in future, and by which the estate is invariably fixed to remain to a determinate person, after the particular estate has been spent. 2 Bouv. Inst. n. 1831. Vide Remainder.

VESTURE OF LAND. By this phrase is meant all things, trees excepted, which grow upon the surface of the land, and clothe it externally.

2. He who has the vesture of land has a right, generally, to exclude others from entering upon the superficies of the soil. 1 Inst. 4, b; Hamm. N. P. 151; pee. 7 East, R. 200; 1 Ventr. 393; 2 Roll. Ab. 2.

VETERA STATUTA. The name of vetera statuta, ancient statutes, has been given to the statutes commencing with Magna Charta', and ending with those of Edward II. Crabb's Eng. Law, 222.

b legislation. This is a Latin word signifying, I forbid.

2. It is usually applied to the power of the president of the United States to negative a bill which has passed both branches of the legislature. The act of refusing to sign such a bill, and the message which is sent to congress assigning the reasons for a refusal to sign it, are each called a veto.

3. When a bill is engrossed, and has received the sanction of both houses, it is transmitted to the president for his approbation. If he approves of it, he signs it. If he

does not, he sends it, with his objections, to the house in which it originated, and that house enter the objections on their journals, and proceed to reconsider the bill. Coast. U. S. art. I, s. 7, cl. 2. Vide Story on the Const. §878; 1 Kent, Com. 239.

4. The governors of the several states have generally a negative on the acts of the legislature. When exercised with due caution, the veto power is some additional security against inconsiderate and hasty legislation, or where bills have passed through prejudice or want of due reflection. It was, however, mainly intended as a weapon in the hands of the chief magistrate to defend the executive department from encroachment and usurpation, as well as a just balance of the constitution.

5. The veto power of the British sovereign has not been exercised for more than a century. It was exercised once during the, reign of Queen Anne. Edinburgh Rev. 10th vol. 411, &c.; Parke's Lectures, 126. But anciently the king frequently replied Le roy s'avisera, which was in effect withholding his assent. In France the king had the initiative of all laws, but not the veto. See 1 Toull. art. 39; and see Nos. 42, 52, note 3.

VEXATION. The injury or damage which, is suffered in consequence of the tricks of another.

VEXATIOUS SUITS, torts. A vexatictus suit is one which has been instituted maliciously, and without probable cause, whereby a damage has ensued to the defendant.

2. The suit is either a criminal prosecution, a conviction before a magistrate, or a civil action. The suit need not be altogether without foundation; if the part which is groundless has subjected the party to an inconvenience, to which he would not have been exposed had the valid cause of complaint alone have been insisted on, it is injurious. 4 Taunt. 616; 4 Rep. 14 1 Pet. C. C. Rep. 210; 4 Serg. & Rawle, 19, 23.

3. To make it vexatious, the suit must have been instituted maliciously. As malice is not in any case of injurious conduct necessarily to be inferred from the total absence of probable cause for exciting it, and in the present instance the law will not allow it to be inferred from that circumstance, for fear of being mistaken, it casts upon the suffering party the onus of proving express malice. 2 Wils. R. 307; 2 Bos. & Pull. 129; Carth. 417; but see what Gibbs, C. J., says in Berley v. Bethune, 5, Taunt. 583; see also 1 Pet. C. C. R. 210; 2 Browne's R. Appx. 42, 49; Add. R. 270.

4. It is necessary that the prosecution should have been carried on without probable cause. The law presumes that probable cause existed until the party aggrieved can show to the contrary. Hence he is bound to show the total absence of probable cause. 5 Taunt. 580; 1 Campb. R. 199. See 3 Dow. Rep. 160; 1 T. Rep. 520; Bul. N. P. 14; 4

Burr. 1974; 2 Bar. & C. 693; 4 Dow. & R. 107; 1 Car. R. 138, 204; 1 Gow, Rep. 20; 1 Wils. 232; Cro. Jac. 194. He is also under the same obligation when the original proceeding was a civil action. 2 Wils. 307.

5. The damage which the party injured sustains from a vexatious suit for a crime, is either to his person, his reputation, his estate or his relative rights. 1. whenever imprisonment is occasioned by a malicious unfounded criminal prosecution, the injury is complete, although the detention may have been momentary, and the party released on bail. Carth. 416. 2. When the bill of indictment contains scandalous aspersions likely to impair the reputation of the accused, the damage is complete. See 12 Mod. 210; 2 B. & A. 494; 3 Dow., & R. 669. 3. Notwithstanding his person is left at liberty, and his character is unstained by the proceedings, (as where the indictment is for a trespass, Carth. 416,) yet if he necessarily incurs expense in defending himself against the charge, he has a right to have his losses made good. 10 Mod. 148,; Id. 214; Gilb. 185; S. C. Str. 978. 4. If a master loses the services and assistance of his domestics, in consequence of a vexatious suit, he may claim a compensation. Ham. N. P. 275. With regard to a damage resulting from a civil action, when prosecuted in a court of competent jurisdiction, the only detriment the party can sustain, is the imprisonment of his person, or the seizure of his property, for as to any expense, he may be put to, this, in contemplation of law, has been fully compensated to him by the costs adjudged. 4 Taunt. 7; 2 Mod. 306; 1 Mod. 4. But where the original suit was coram non judice, the party as the law formerly stood, necessarily incurred expense without the power of remuneration, unless by this action, because any award of costs the court might make would have been a nullity. However, by a late decision such an adjudication was holden unimpeachable, land that the party might well have an action of debt to recover the amount. 1 Wils. 316. So that the law, in this respect, seems to have taken a new turn, and, perhaps, it would now be decided, that no action can under any other circumstances but imprisonment of the person or seizure of the property, be maintained for suing in an improper court. Vide Carth. 189.

See, in general, Bac. Abr. Action on the case, H; Vin. Abr. Actions, H c; Com. Dig. Action upon the case upon desceit; 5 Amer. Law Journ. 514; Yelv. 105, a note 2; Bull. N. P. 13; 3 Selw. N. P. 535; Notes on Co. Litt. 161, a, (Day's edit.); 1 Saund. 230, n. 4; 3 Bl. Com. 126, n. 21, (Chit. edit.); this Dict. tit. Malicious Prosecution.

VEXED QUESTION, vexata quaestio. A question or point of law often discussed or agitated, but not determined nor settled.

VI ET ARMIS. With force and arms. When man breaks into another's close vi et armis, he may be opposed force by force, for there is no time to request him to go away. 2 Salk. 641; 8 T. R. 78, 357.

2. These words are universally inserted in a writ of trespass, because they point out that the act has been done with force, and they are technical words to designate this offence. Ham. N. P. 4, 10, 12; 1 Chit. Pl. 122 to 125; and article Force.

VIA. A cart-way, which also includes a foot-way and a horse-way. Vide Way.

VIABLE, Vitae habilis, capable of living. This is said of a child who is born alive in such an advanced state of formation as to be capable of living. Unless be is born viable he acquires no rights and cannot transmit them to his heirs, and is considered as if he bad never been born.

2. This term is used In the French law, Toull. Dr. Civ. Fr. tome 4, p. 101 it would be well to engraft it on our own Vide Traill. Med. Jur. 46, and Dead Born.

VIABILITY, med. jur. An aptitude to live after birth; extra uterine life. 1 Briand. Med. Leg. 1ere partie, c. 6, art. 2. See 2 Sav. Dr. Rom. Append. III. for a learned discussion of this subject.

VICE. A term used in the civil law and in Louisiana, by which is meant a defect in a thing; an imperfection. For example, epilepsy in a slave, roaring and crib-biting in a horse, are vices. Redhibitory vices are those for which the seller will be compelled to annul a sale, and take back the thing sold. Poth. Vente, 203; Civ. Code of Lo. art. 2498 to 2507; 1 Duv. n. 396.

VICE-ADMIRAL. The title of an officer in the navy; the next in rank after the admiral. In the United States we have no officer by this name.

VICE-CHANCELLOR. The title of a judicial officer who decides causes depending in the court of chancery; his opinions may be reversed, discharged or altered by the chancellor.

VICE-CONSUL. An officer who performs the duties of a consul within a part of the district of a consul, or who acts in the place of a consul. Vide 1 Phil. Ev. 306.

VICE-PRESIDENT OF THE UNITED STATES. The title of the second officer, in point of rank, in the government of the United States.

2. To obtain a correct idea of the law relating to this officer, it is proper to consider; 1. His election. 2. The duration of his office. 3. His duties.

3. - 1. He is to be elected in the manner pointed out under the article President of the United States. (q. v.) See, also, 3 Story on the Const. 1447 et seq.

4. - 2. His office in point of duration is coextensive with that of the president.

5. - 3. The fourth clause of the third section of the first article of the constitution of the United States, directs, that "the vicepresident of the United States shall be presidont of the. senate, but shall have no vote unless they be equally divided." And by article 2, s. 1, clause 6, of the constitution, it is provided, that "in case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vicepresident."

6. When the vice-president exercises the office of president, he is called the President of the United States.

VICE VERSA. On the contrary; on opposite sides.

VICECOMES. The sheriff.

VICECOMES NON MISIT BREVE. The sheriff did not send the writ. An entry made on the record when nothing has been done by virtue of a writ which has been directed to the sheriff.

VICENAGE. The neighborhood; the venue. (q. v.)

VICINETUM. The neighborhood; vicenage; the venue. Co. Litt. 158 b.

VICONTIEL. Belonging to the sheriff.

VIDELICET. A Latin adverb signifying to wit, that is to say, namely, scilicet. (q. v.) This word is usually, abbreviated Viz.

2. The office of the videlicet is to mark, that the party does not undertake to prove the precise circumstances alleged, and in such case he is not required to prove them. Steph. Pl. 309'; 7 Cowen, R. 42; 4 John. R. 450; 3 T. R. 67, 643; 8 Taunt. 107; Greenl. Ev. §60; 1 Litt. R. 209. Vide Yelv. 94; 3 Saund. 291 a, note; New Rep. *465, note; Dane's Ab. Iudex, h. t.; 2 Pick. 214, 222; 16 Mass. 129.

VIEW. A prospect.

2. Every one is entitled to a view from his premises, but he thereby acquires no right over the property of his neighbors. The erection of buildings which obstruct a man's view, therefore, is not unlawful, and such buildings cannot be considered a nuisance. 9 Co. R. 58 b. Vide Ancient Lights; Nuisance,

VIEW, DEMAND OF, practice. In most real and mixed actions, in order to ascertain the identity of land claimed with that in the tenant's possession, the tenant is allowed, after the demandant has counted, to demand a view of the land in question; or if the subject of claim be rent, or the like, a view of the land out of which it issues; Vin. Abr. View; Com. Dig. View; Booth, 37; 2 Saund. 45 b; 1 Reeves' Hist 435, This, however, is confined to real or mixed actions; for in personal actions the view does not lie. In the action of dower unde nihil habet, it has been much questioned whether the view be demandable or not; 2 Saund. 44, n, 4; and there are other real and mixed actions in which it is not allowed. The view being granted, the course of proceeding is to issue a writ, commanding the sheriff to cause the defendant to have a view of the land, It being the interest of the demandant to expedite the proceedings, the duty of suing out the writ lies upon him, and not upon the tenant; and when, in obedience to its exigency, the sheriff causes view to be made, the demandant is to show to the tenant, in all ways possible, the thing in demand with its metes and bounds. On the return of the writ into court, the demandant must count de novo; that is, declare again Com. Dig. Pleader, 2 Y 3; Booth, 40; and the pleadings proceed to issue.

2. This proceeding of demanding view, is, in the present rarity of real actions, unknown in practice.

VIEWERS. Persons appointed by the courts to see and examine certain matters, and make a report of the facts together with their opinion to the court. In practice they are usually appointed to lay out roads and the like. Vide Experts.

VIGILANCE. Proper attention in proper time.

2. The law requires a man who has a claim to enforce it in proper time, while the adverse party has it in his power to defend himself; and if by his neglect to do so, he cannot afterwards establish such claim, the maxim vigilantibus non dormientibus leges subserviunt, acquires full force in such case. For example, a claim not sued for within the time required by the acts of limitation, will be presumed to be paid; and the mere possession of corporeal real property, as if in fee simple, and without admitting any other ownership for sixty years, is a sufficient title against all the world, and cannot be impeached by any dormant claim. See 3 Bl. Com. 196, n; 4 Co. 11 b. Vide Twenty years.

VILL. In England this word was used to signify the parts into which a hundred or wapentake was divided. Fortesc. De Laud, ch. 24. See Co. Litt. 115 b. It also signifies a town or city. Barr. on the Stat. 133.

VILLAIN., An epithet used to cast contempt and contumely on the person to whom it is applied.

2. To call a man a villain in a letter written to a third person, will entitle him to an action without proof of special damages. 1 Bos. & Pull. 331.

VILLEIN, Engl. law. A species of slave during the feudal times.'

2. The feudal villein of the lowest order was unprotected as to property, and subjected to the post ignoble services; but his circumstances were very different from the slave of the southern states, for no person was, in the eye of the law, a villein, except as to his master; in relation to all other persons he was a freeman. Litt. Ten. s. 189, 190; Hallam's View of the Middle Ages, vol. i. 122, 124; vol. ii. 199.

VILLENOUS JUDGMENT, punishments. In the English law it was a judgment given by the common law in attaint, or in cases of conspiracy.

2. Its effects were to make the object of it lose his liberam legem, and become infamous. He forfeited his goods and chattels, and his lands during life; and this barbarous judgment further required that his lands should be wasted, his houses razed, his trees rooted up, and that his body should be cast into-prison. He 'could not be a juror or witness. Burr. 996, 1027; 4 Bl. Com. 136.

VINCULO MATRIMONII. A divorce. A vinculo matrimonii, is one from the bonds of matrimony. Such a divorce generally enables the parties to marry again.

VINDICATION, civil law. The claim made to property by the owner of it. 1 Bell's Com. 281, 5th ed. See Revendication.

VIOLATION. An act done unlawfully and with force. In the English stat. of 25 E. III., st. 5, c. 2, it is declared to be high treason in any person who shall violate the king's companion; and it is equally high treason in her to suffer willingly such violation. This word has been construed under this statute to mean carnal knowledge. 3 Inst. 9; Bac. Ab, Treason, E.

VIOLENCE. The abuse of force. Theorie des Lois Criminelles, 32. That force which is employed against common right, against the laws, and against public liberty. Merl. h. t, 2. In cases of robbery, in order to convict the accused, it is requisite to prove that the act was done with violence; but this violence is not confined to an actual assault of the person, by beating, knocking down, or forcibly wresting from him on the contrary, whatever goes to intimidate or overawe, by the apprehension of personal violence, or by fear of life, with a view to compel the delivery of propert equally falls within its limits. Alison, Pr. Cr. Law of Scotl. 228; 4 Binn. R. 379; 2 Russ. on Cr. 61; 1 Hale P. C. 553. When an article is merely snatched, as by a sudden pull, even though a

momentary force be exerted, it is not such violence as to constitute a robbery. 2 East, P. C. 702; 2 Russ. Cr. 68; Dig. 4, 2, 2 and 3.

VIOLENT PROFITS, Scotch law. The gains made by a tenant holding over, are so called. Ersk. Inst. R. 2, tit. 6, s. 54.

VIOLENTLY, pleading. This word was formerly supposed to be necessary in an indictment, in order to charge a robbery from the person, but it has been holden unnecessary. 2 East, P. C. 784; 1 Chit. Cr. Law, *244. The words " feloniously and against the will," usually introduced in such indictments, seem to be sufficient. It is usual also to aver a putting in fear, though this does not seem to be requisite. Id.

VIRGA. An obsolete word, which signifies a rod or staff, such as sheriffs, bailiffs, and constables carry, as a badge or ensign of their office.

VIRGINIA. The name of one of the original states of the United States of America. This colony was chartered in 1606, by James the First, and this charter was afterwards altered in 1609 and 1612; and in 1624 the charter was declared to be forfeited under proceedings under a writ of quo warranto. After the fall of the charter, Virginia continued to be a royal province until the period of the American Revolution.

2. A constitution, or rather bill of rights, was adopted by a convention of the representatives of the good people of Virginia, on the 12th day of June, 1776. An amended constitution or form of government for Virginia was adopted January 14, 1830, which has been superseded by the present constitution, which was adopted August 1, 1851.

3. The legislative, executive, and judiciary departments , shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to either house of assembly. Art 2.

4. - §1. The legislature is composed of two branches, the house of delegates and the senate, which together are called the general assembly of Virginia.

5. - 1. The house of delegates will be considered with reference, 1. To the qualifications of the electors. 2. The qualifications of members. 3. The number of members. 4. Time of their election.

6. - 1st. Every white male citizen of the commonwealth, of the age of twenty-one years, who has been a resident of the state for two years, and of the county, city, or town where he offers to vote for twelve months next preceding an election, and no

other person, shall be qualified to vote for members of the general assembly, and all officers elective by the people: but no person in the military, naval, or marine service of the United States shall be deemed a resident of this state, by reason of being staationed therein. And no person shall have the right to vote, who is of unsound mind, or a pauper, or a non-commissioned officer, soldier, seaman, or marine in the service of the United States, or who has been convicted of bribery in an election, or of any infamous offence.

7. - 2. The general assembly at its first session after the; adoption of this constitution, and afterwards as occasion may require, shall cause every city or town, the white population of which exceeds five thousand, to be laid off into convenient wards, and a separate place of voting to be established in each, and thereafter no inhabitant of such city or town shall be allowed to vote except in the ward in which be resides.

8. - 3. No voter, during the time for holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger; to work upon the public roads, or to attend any court as suitor, juror or witness; and no voter shall be subject to arrest under any civil process during his attendance at elections, or in going to and returning from them.

9. - 4. ln all elections votes shall be given openly, or viva voce, and not by ballot. But dumb persons, entitled to suffrage, may vote by ballot. Art. 3.

10. - 2d. Any person may be elected a delegate who shall have attained the age of twenty-one years, and shall be actually a resident within the city, county, town, or election district, qualified by this constitution to vote for members of the general assembly: but no person holding a lucrative office, no minister of the gospel, or priest of any religious denomination, no salaried officer of any banking corporation or company, and no attorney for the commonwealth shall be capable of being elected a member of either house of assembly. The removal of any person elected to neither branch of the general assembly, from the county, city, town, or district for which he was elected, shall vacate his office. Art. 4, s. 5, §7.

11.-3d. The house of delegates is to consist of one hundred and fity-two members. Art. 4, §2.

12. - 4th. The members of the general assembly are to be chosen biennially. Art. 4, §2.

13.- 2. The senate will be considered in the same order that the house of delegates has been. 1. The qualifications of electors are the same as for electors of delegates. 2. Any person may be elected a senator who has attained the age of twenty-five years, and shall be actually a resident within the district, and qualified to vote for members of the

general assembly. The other qualifications are the, same as those for delegates. Art. 4, s. 5, §7. 3. The number of senators is fifty. Art. 4, §3.

4. Senators are to be elected for the term of four years. Upon the assembling of the senators so elected, they shall be divided into two equal classes to be numbered by lot. The term of service of the senators of the first class shall expire with that of the delegates first elected under this constitution; and of the senators of the second class, at the expiration of two years thereafter; and this alternation shall, be continued, so that one-half of the senators may be chosen every second year. Art. 4, §3.

14. - 1. The chief executive ower of this commonwealth shall be vested in a governor. He shall hold the office for the term of four years, to commence on the ____ day of _____ next succeeding his election, and be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

15. - 2. The governor shall be elected by the voters at the times and places of choosing members of the general assembly. Returns of the election shall be transmitted under seal by the proper officers to the secretary of the commonwealth, who shall deliver them to the speaker of the house of delegates, on the first day of the next session of the general assembly. The speaker of the house of delegates shall within one week thereafter, in the presence of a majority of the senate and house of delegates, open the said retuns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number, of votes, one of them shall be chosen governor by the joint vote of the two houses of the general assembly. Contested elections for governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

16. - 3. No person shall be eligible to the office of governor unless he has attained the age of thirty years, is a native citizen of the United States, and has been a citizen of Virginia, for five years next preceding his election.

17. - 4. The governor shall reside at the seat of government; shall receive five thousand dollars for each year of his service, and, while in office, shall receive no other emolument from this or any other government.

18. - 5. He shall take care that the laws be faithfully executed; communicate to the general assembly at every session the condition of the commonwealth; recommend to their consideration such measures as he may deem expedient; and convene the general assembly on application of a majority of the members of both houses thereof, or when in his opinion the interest of the commonwealth may require it. He shall be commander-in-chief of the land and naval forces of the state; have power to embody

the militia to repel invasion, suppress insurrection and enforce the execution of the laws; conduct, either in person or in such other manner as shall be prescribed by law, all intercourse with other and foreign states; and, during the recess of the general assembly, fill pro tempore all vacancies in those offices for which the constitution and laws make no provision but his appointments to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the next session of the general assembly. He shall have power to remit fines and pen-alties in such cases and under such rules and regulations as may be prescribed by law; and, except when the prosecution has been carried on by the house of delegates or the law shall otherwise particularly direct, to grant reprieves and pardons after conviction, and to commute capital punishment. But be shall communicate to the general assembly at each session, the particulars of every case of fine or penalty remitted, of reprieve or pardon granted and of punishment commuted, with his reasons for remitting, granting or commuting the same.

19. - 6. He may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices; and may also require the opinion in writing of the attorney-general upon any question of law connected with his official duties.

20. - 7. Commissions and grants shall run in the name of the commonwealth of Virginia, and be attested by the governor with the seal of the commonwealth annexed.

21. - 8. A lieutenant governor shall be elected at the same time, and for the same term, as the governor: and his qualification and the manner of his election in all respects shall be the same.

22. - 9. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant governor; and the general as- sembly shall provide by law for the discharge of the executive functions in other necessary cases.

23. - 10 The lieutenant governor shall be president of the senate, but shall have no vote; and while. acting as such, shall receive a compensation equal to that allowed to the speaker of the house of delegates. Art. 5, §§1-10.

24. - §3. The judicial powers are regulated by the sixth article of the constitution, as follows:

25. - 1. There shall be a supreme court of appeals, district courts and circuit courts. The jurisdiction of these tribunals, and of the judges thereof, except so far as the same is conferred by this constitution, shall, be regulated by law.

26. - 2. The state shall be divided into twenty-one judicial circuits, ten districts and five sections.

27. - 3. The general assembly may, at the end of eight years after the adoption of this constitution, and thereafter at intervals of eight years, re-arrange the said circuits, districts and sections, and place any number of circuits in a district, and of districts in a section; but each circuit shall be altogether in one district, and each district in one section; and there shall not be less than two districts and four circuits in a section, and the number of sections shall not be increased or diminished.

28. - 6 For each circuit, a judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this constitution. He shall at the time of his election be at least thirty years of age, and during his continuance in office, shall reside in the circuit of which he is judge.

29. - 7. A circuit court shall be held at least twice a year by the judge of each circuit, in every county and corporation thereof, wherein a circuit court is now or may hereafter be established. But the judges in the same district may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit.

30. - 8. A district court shall be held, at least once a year in every district, by the judges of the circuits constituting the section and the judges of the supreme court of appeals for the section of which the district forms a part, any three of whom may hold a court; but no judge shall sit or decide upon any appeal taken from his own decision. The judge of the supreme court of appeals of one section, may sit in the district courts of another section, when required or authorized by law to do so.

31. - 9. The district courts shall not have original jurisdiction, except in cases of habeas corpus, mandamus and prohibition.

32. - 10. For each section, a judge shall be elected by the voters thereof, who shall hold his office for the term of twelve years, unless sooner removed in the manner prescribed by this constitution. He shall at the time of his election be at least thirty-five years of age, and during his continuance in office, reside in the section for which he is elected.

33. - 11. The supreme court of appeals shall consist of the five judges so elected, any three of whom may hold a court. It shall have appellate jurisdiction only, except in cases of, habeas corpus, mandamus and prohibition. It shall not have jurisdiction in civil causes where the matter in controversy, exclusive of costs, is less, in value or amount than five hundred dollars, except in controversies concerning the title or boundaries of land, the; probate of a will, the appointment or qualification of a personal representative, guardian, committee or curator; or concerning a mill, road, way, ferry or landing, or the right of a corporation, or of a county to levy tolls or taxes; and except in cases of habeas corpus, mandamus and probibition, and cases involving freedom, or the constitutionality of a law.

34. - 12. Special courts of appeals, to consist of not less than three nor more than five judges, may be formed of the judges of the supreme court of appeals, and of the circuit courts, or any of them, to try any cases remaining on the dockets of the present court of appeals when the judges thereof cease to hold their offices; or to try any cases which may be on the dockets of the supreme court of appeals established by this constitution, in respect to which a majority of the judges of said court may be so situated as to make it improper for them to sit on the bearing thereof.

35. - 13 When a judgment or decree is reversed or affirmed by the supreme court of appeals, the reasons therefor shall be stated in writing, and preserved with the record of the case.

36. - 14. Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries which shall not be diminished during their continuance in office. The salary of a judge of the supreme court of appeals shall not be less than three thousand dollars and that of a judge of a circuit court not less than two thousand dollars per annum, except that of the judge of the fifth circuit, which shall not be less than fifteen hundred dollars per annum; and each shall receive a reasonable allowance for necessary travel.

37. - 15. No judge during his term of service shall hold any other office, appointment or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he during such term, of within one year thereafter, be eligible to any political office.

38. - 16. No election of judge shall be held within thirty days of the time of holding any election of electors of president and vice-president of the United States, of members of congress or of the general assembly.

39. - 17. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote; and the cause of removal shall be entered. on the journal of each

house. The judge, against whom the general assembly may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

40. - 22. At every election of a governor, an attorney-general shall be elected by the voters of the commonwealth, for the term of four years. He shall be commissioned by the governor, shall perform such duties and receive such compensation as may be prescribed by law, and be removable in the manner prescribed for the removal of judges.

41. - 23. Judges and all other officers, whether elected or appointed, shall continue to discharge the duties of their respective offices after their terms of service, have expired, until their successors are qualified.

42. - 24. Writs shall run in the name of the commonwealth of Virginia and be attested by the clerks of the several courts. Indictments shall conclude, against the peace and dignity of the commonwealth.

43. - 25. There shall be in each county of the commonwealth, a county court, which shall be held monthly, by not less than three, nor more than, five justices, except when the law shall require the presence of a greater number.

44. - 26. The jurisdiction of the said court shall be the same as that of the existing county courts, except so far as it is modified by this constitution or may be changed by law.

45. - 27. Each county shall be laid off into districts, as nearly equal as may be in territory and population. In each district there shall be elected by the voters thereof, four justices of the peace, who shall be commissioned by the governor, reside in their respective districts, and hold their office for the term of four years. The justices so elected shall choose one of their own body, who shall be the presiding justice of the county court, and whose duty it shall be to attend each term of said court. The other justices shall be classified by law for the performance of their duties in court.

46. - 28. The justices shall receive for their services in court, a per diem compensation, to be ascertained by law, and paid out of the country treasury; and shall not receive any fee or emolument for other judicial services.

VIRILIA. The privy members of a man. Bract. lib. 3, p. 144.

VIRTUTE OFFICII. By virtue of his office. A sheriff, a constable, and some other officers may, virtute officii, apprehend a man who has been guilty of a crime in their presence.

VIS. A Latin word which signifies force. In law it means any kind of force, violence, or disturbance, relating to a man's person or his property.

VIS IMPRESSA. Immediate force; original force. This phrase is applied to cases of trespass when a question arises whether an injury has been caused by a direct force, or one which is indirect. When the original force, or vis impressa, had ceased to act before the injury commenced, then there is no force, the effect is mediate, and the proper remedy is trespass on the case.

2. When the injury is the immediate consequence of the force or vis proxima, trespass vi et armis lies. 3 Bouv. Inst. n. 3483; 4 Bouv. Inst. n. 3583.

VIS MAJOR, a superior force. In law it signifies inevitable accident.

2. This term is used in the civil law in nearly the same same way that the words act of God, (q. v.) are used in the common law. Generally, no one is responsible for an accident which arises from the vis major; but a man may be so where he has stipulated that he would; and when he has been guilty of a fraud or deceit. 2 Kent, Com. 448; Poth. Pret a Usage, n. 48, n. 60 Story Bailm. §25.

VISA, civ. law. The formula put upon an act; a register; a commercial book, in order to approve of it and authenticate it.

VISITATION. The act of examining into the affairs of a corporation.

2. The power of visitation is applicable only to ecclesiastical and eleemo-synary corporations. 1 Bl. Com. 480; 2 Kid on Corp. 174. The visitation of civil corporations is by the government itself, through the medium of the courts of justice Vide 2 Kent, Com. 240.

VISITER. An inspector of the government, of corporations or bodies politic. 1 Bl. Com. 482. Vide Dane's Ab. Index, h. t.; 7 Pick. 303; 12 Pick. 244.

VISNE. The neighborhood; a neighboring place; a place near at hand; the venue. (q. v.)

2. Formerly the visne was confined to the immediate neighborhood, where the cause of action arose, and many verdicts were disturbed because the visne was too large,

which, becoming a great grievance several statutes were passed to remedy the evil. The 21 James I, c. 13, gives aid after verdict where the visne is partly wrong, that is, where it is warded out of too many or too few places in the county named. The 16 and 17 Charles II. c. 8, goes further, and cures defects of the visne wholly, so that the cause is tried by a jury of the proper county. Vide Venue.

VIVA VOCE. Living voice; verbally. It is said a witness delivers his evidence viva voce, when he does so in open court; the term is opposed to deposition. It is sometimes opposed to ballot; as, the people vote by ballot, but their representatives in the legislature, vote viva voce.

VIVARY. A place where living things are kept; as a park, on land; or in the water, as a pond.

VIVUM VADIUM, or living pledge, contracts. When a man borrows a sum of money (suppose two hundred dollars) of another, and grants him an estate, as of twenty dollars per annum, to hold till the rents and profits shall repay the sum so borrowed.

2. This is an estate conditioned to be void as soon as such sum is raised. And in this case the land or pledge is said to be living; it subsists, and survives the debt, and immediately on the discharge, of that, results back to the borrower. 2 Bl. Com. 157. See Antichresis; Mortgage.

VOCATIO IN JUS, Roman civ. law. According to the practice in the legis actiones of the Roman law, a person having a demand against another, verbally cited him to go with him to the praetor in jus eamus. In jus te voco. This was denominated vocatio in jus. If a person thus summoned refused to go, he could be compelled by force to do so unless he found a vindex, that is, a procurator or a person to undertake his cause. When the parties appeared before the praetor, they went through the particular formalities required by the action applicable to the cause. If the cause was not ended the same day, the parties promised to appear again at another day, which was called vadimonium. See Math. V. 25.

VOID, contracts, practice. That which has no force or effect.

2. Contracts, bequests or legal proceedings may be void; these will be severally considered.

3. - 1. The invalidity of a contract may arise from many causes. 1. When the parties have no capacity to contract; as in the case of idiots, lunatics, and in some states, under their local regulations, habitual drunkards. Vide Par-ties to contracts, §1; 1 Hen.

& Munf 69; 1 South. R. 361; 2 Hayw. R. 394; Newl. on Contr. 19; 1 Fonbl. Eq. 46; 3 Camp. 128; Long on Sales, 14; Highm. on Lunacy, 111, 112 Chit. on Contr. 29, 257.

4. - 2. When the contract has for its object the performance of an act malum in se; as a covenant to rob or kill a man, or to commit a breach of the peace. Shep. To. 163; Co. Lit. 206, b 10 East, R. 534.

5. - 3. When the thing to be performed is impossible; as, if a man were to covenant to go from the United States to Europe in one day. Co. Lit. 206, b. But in these cases, the impossibility must exist at the time of making the contract; for although subsequent events may excuse the performance, the contract is not absolutely void; as, if John contract to marry Maria, and, before the time appointed, the covenantee marry her himself, the contract will not be enforced, but it was not void in its creation. It differs from a contract made by John, who, being a married man, and known to the coveiaantee, enters into a contract to marry Maria during the continuance of his existing marriage, for in that case the contract is void.

6. - 4. Contracts against public policy; as, an agreement not to marry any one, or not to follow any business; the one being considered in restraint of marriage, and the other in restraint of trade. 4 Burr. 2225; S. C. Wilm. 364; 2 Vern. 215; Al. 67: 8 Mass. R. 223; 9 Mass. R. 522; 1 Pick. R. 443; 3 Pick. R. 188.

7. - 5. When the contract is fraudulent, it is void, for fraud vitiates everything. 1 Fonbl. Equity, 66, note Newl. on Contr. 352; and article Fraud. As to cases when a condition consists of several parts, and some are lawful and others are not, see article Condition.

8. - 2. A devise or bequest is void:. 1. When made by a person not lawfully authorized to make a will; as, a lunatic or idiot, a married woman, and an infant before arriving at the age of fourteen, if a male, and twelve if a female. Harg. Co. Lit. 896, If; Rob. on Wills, 28; Godolph. Orph. Leg. 21. 2. When there is a defect in the form of the will, or when the devise is forbidden by law; as, when a perpetuity is given, or when the devise in unintellig-ible. 3. When it has been obtained by fraud. 4. When, the devisee is dead. 5. And when there has been an express or implied revocation of the will. Vide Legacy; Will.

9. - 3. A writ or process is void when there was not any authority for issuing it, as where the court had no jurisdiction, In such case, the officers acting under it become trespassers, for they are required, notwithstanding it may sometimes be a difficult question of law, to decide whether the court has or has not jurisdiction. 2 Brownl. 124; 10 Co. 69; March's R. 118; 8 T. R. 424; 3 Cranch, R. 330; 4 Mass. R. 234. Vide articles Irregularity; Regular and Irregular Process. Vide, generally, 8 Com. Dig. 644;

Bac. Ab. Conditions, K; Bac. Ab. Infancy, &c. I; Bac. Ab. h. t.; Dane's Ab. Index, h. t.; 3 Chit. Pr. 75; Yelv. 42, a, note 1; 1 Rawle, R. 163; Bouv. Inst Index, h. t.

VOIDABLE. That which has some force or effect, but which, in consequence of some inherent quality, may be legally annulled or avoided.

2. As a familiar example, may be mentioned the case of a contract, made by an infant with an adult, which maybe avoided or confirmed by the former on his coining of age. Vide Parties, contracts.

3. Such contracts are generally of binding force until avoided by the party having a right to annul them. Bac. Ab. Infancy, 1 3; Com. Dig. Enfant; Fonbl. Eq. b. 1, c. 2, §4, note b; 3 Burr. 1794 Nels. Ch. R. 5 5; 1 Atk. 3 5 4; Stra. 9 3 7; Perk. §12. VOIR. An old French word, which signifies the same as the modern word vrai, true. Voir dire, to speak truly, to tell the truth.

2. When a witness is supposed to have an interest in the cause, the party against whom he is called has the choice to prove such interest by calling another witness to that fact, or be may require the witness produced to be sworn on his voir dire as to whether he has an interest in the cause, or not, but the party against whom he is called will not be allowed to have recourse to both methods to prove the witness interest. If the witness answers he has no interest, he is competent, his oath being conclusive; if he swears he has an interest, he will be rejected.

3. Though this is the rule established beyond the power of the courts to change, it seems not very satisfactory. The witness is sworn on his voir dire to ascertain whether he has an interest, which would disqualify him, because he would be tempted to perjure himself, if he testified when interested. But when he is asked whether he has such an interest, if he is dishonest and anxious to be sworn in the case, he will swear falsely he has none, and his answer being conclusive, he will be admitted as competent; if, on the contrary, he swears truly he has an interest, when he knows that will exclude him, he is told that for being thus honest, he must be rejected. See, generally, 12 Vin. Ab. 48; 22 Vin. Ab. 14; 1 Dall, 375; Dane's Ab. Index, h. t.; and Interest.

VOLUNTARY. Willingly; done with one's consent; negligently. Wolff, §5.

2. To render an act criminal or tortious it must be voluntary. If a man, therefore, kill another without a will on his part, while engaged in the performance of a lawful act, and having taken proper care to prevent it, he is not guilty of any crime. And if he commit an injury to the person or property of another, he is not liable for damages, unless the act has been voluntary or through negligence, as when a collision takes

place between two ships without any fault in either. 2 Dobs. R. 83 3 Hagg. Adm. R. 320, 414.

3. When the crime or injury happens in the performance of an unlawful act, the party will be considered as having acted voluntarily.

4. A negligent escape permitted by an officer having the custody of a prisoner will be presumed as voluntary; under a declaration or count charging the escape to have been voluntary, the party will, therefore, be allowed to give a negligent escape in evidence. 1 Saund. 35, n. 1. So Will.

VOLUNTARY CONVEYANCE, contracts. The transfer of an estate made without any adequate consideration of value.

2. Whenever a voluntary conveyance is made, a presumption of fraud properly arises upon the statute of 27th Eliz. cap. 4, which presumption may be repelled by showing that the transaction on which the conveyance was founded, virtually contained some conventional stipulations, some compromise of interests or reciprocity of benefits, that point out an object and motive beyond the indulgence of affection or claims of kindred, and not reconcilable with the supposition of intent to deceive a purchaser. But unless so repelled, such a conveyance coupled with a subsequent negotiation for sale, is conclusive evidence of statutory fraud. 5 Day, 223, 341; 1 Johns. Cas. 161; 4 John. Ch. R. 450; 3 Conn. 450; 4 Conn. 1; 4 John. R. 536; 15 John. R. 14; 2 Munf. R. 363. A distinction has been made between previous and subsequent creditors; such a conveyance is void as to the former but not as to the latter. 8 Wheat. 229; 3 John. Ch. 481; and see 6 Alab. R. 506; 9 Alab. R. 937; 10 Conn. 69. And a conveyance by a father who, though in debt, is not in embarrassed circumstances, who makes a reasonable provision for a child, leaving property sufficient to pay his debts, is not per se, fraudulent. 4 Wheat. 27; 6 Watts & S. 97; 4 Verm. 889; 6 N. H. Rep. 67; 11 Leigh, 137; 5 Ohio, 121.

3. By the statute of 3 Henry VII. c. 4, all deeds of gifts of goods and chattels in trust for the donor were declared void; and by the statute of 13 Eliz. ch. 5, gifts of goods and chattels, as well as of lands, by writing or otherwise, made with intent to delay, hinder and defraud creditors, were rendered void as against the person to whom such frauds would be prejudicial.

4. The principles of these statutes, which indeed have been copied from the civil law, Dig. 42, 8 , 5, 11; 2 Bell's Com. 182, though they may not have been substantially reenacted, prevail throughout the United States. 8 Johns. Ch. R. 481; 1 Halst. R. 450; 5 Cowen, 87; 8 Wheat. R. 229; 11 Id. 199; 12 Serg. & Rawle, 448; 9 Mass. R. 390; 11 Id. 421; 4 Greenl. R. 52; 2 Pick. R. 411; 8 Com. Dig. App. h. t.; 22 Vin. Ab. 15; 1

Vern. 38, 101; Rob. on Fr. Conv. 65, 478 Dane's Ab. Index, h. t.; 14 Ves. 344; 4 McCord, 294; 1 Rawle. 231; 1 Rep, Const. Ct. 180; 1 N. & McCord, 334; Coxe, 56; Hare & Wall. Sel. Dee. 33-69. Vide Contracts; Indebtedness; Settlement.

5. As between the parties such conveyances are, in general, good. 2 Rand. 384; 1 John. Chan. R. 329, 336; 1 Wash. 274 And when it has once been executed and delivered, it cannot be recalled; even where an unmarried man executes a voluntary trust deed for the benefit of future children, nor can he relieve himself from a provision in the conveyance to the trustee, under which the income of the trust property is to be paid to him at. the discretion of a third person. 2 My. & Keen, 496. See 2 Moll. 257.

VOLUNTARY DEPOSIT, civil law. One which is made by the mere consent or agreement of the parties. 1 Bouv. Inst. n. 1054.

VOLUNTARY ESCAPE. The giving to a prisoner voluntarily, any liberty not authorized by law. 5 Mass. 310; 2 Chipm. 11; 3 Harr. & John. 559; 2 Harr. & Gill. 106; 2 Bouv. Inst. n. 2332.

VOLUNTARY JURISDICTION. In the ecclesiastical law, jurisdiction is either contentious jurisdiction, (q. v.) or voluntary jurisdiction. By the latter term is understood that kind of jurisdiction which requires no judicial proceedings, as, the granting letters of administration and receiving the probate of wills.

VOLUNTARY NONSUIT, practice. The abandonment of his cause by a plaintiff, and an agreement that a judgment for costs be entered against him. 3 Bouv. Inst. n. 3306.

VOLUNTARY SALE, contracts. One made freely, without constraint, by the owner of the thing &old. 1 Bouv. Inst. n. 974.

VOLUNTARY WASTE. That which is either active or wilful, in contradistinction to that which arises from mere negligence, which is called permissive waste. 2 Bouv. Inst. 2394, et seq. Vide Waste.

VOLUNTEERS, contracts. Persons who receive a voluntary conveyance. (q. v.)

2. It is a general rule of the courts of equity that they will not assist a mere volunteer who has a defective conveyance. Fonbl. B. 1, c. 5, s. 2, and See the note there for some exceptions to this rule. Vide, generally, 1 Madd. Ch. 271,. 1 Supp. to Ves. jr. 320; 2 Id. 321; Powell on Mortg. Index, h. t. 4 Bouv. Inst. n. 3968-73.

VOLUNTEERS, army. Persons who in time of war offer their services to their country and march in its defence.

2. Their rights and duties are prescribed by the municipal laws of the different states. But when in actual service they are subject to the laws of the United States and the articles of war.

VOTE. Suffrage; the voice of an individual in making a choice by many. The total number of voices given at an election; as, the presidential vote.

2. Votes are either given, by ballot, v.) or viva voce; they may be deli-vered personally by the voter himself, or, in some cases, by proxy. (q. v.)

3. A majority (q. v.) of the votes given carries the question submitted, unless in particular cases when the constitution or laws require that there shall be a majority of all the voters, or when a greater number than a simple majority is expressly required; as, for example in the case of the senate in making treaties by the president and senate, two-thirds of the senators present must concur. Vide Angell on Corpor. Index, h. t.

4. When the votes are equal in number, the proposed measure is lost.

VOTER. One entitled to a vote; an elector.

VOUCHEE. In common recoveries, the person who is called to warrant or defend the title, is called the vouchee. 2 Bouv. Inst. n. 2093.

VOUCHER, accounts. An account book in which are entered the acquittances, or warrants for the accountant's discharge. It also signifies any acquittance or receipt, which is evidence of payment, or of the debtor's being discharged. See 3 Halst. 299.

VOUCHER, common recoveries. The voucher in common recoveries, is the person on whom the tenant to the praecipe calls to defend the title to the land, because he is supposed to have warranted the title to him at the time of the original purchase.

2. The person usually employed for this purpose is the cryer of the court, who is therefore called the common voucher. Vide Cruise, Dig. tit. 36, c. 3, s. 1; 22 Vin. Ab. 26; Dane, Index, h. t.; and see Recovery.

VOUCHER TO WARRANTY, common recoveries. The calling one who has warranted lands, by the party warranted, to come and defend the suit for him. Co. Litt. 101, b. Vide Warranty, voucher to.

VOYAGE, marine law. The passage of a ship upon the seas, from one port to another, or to several ports.

2. Every voyage must have a terminus a quo and a terminus ad quem. When the insurance is for a limited time, the two extremes of that time are the termini of the vovage insured. When a ship is insured both outward and homeward, for one entire premium, this with reference to the insurance, is considered but one voyage; and the terminus a quo is also the terminus ad quem. Marsh. Ins. B. 1, c. 7, s. 1 to 5. As to the commencement and ending of the voyage, see Risk.

3. The voyage, with reference to the legality of it, is sometimes confounded with the traffic in which the ship is engaged, and is frequently said to be illegal, only because the trade is so. But a voyage may be lawful, and yet the transport of certain goods on board the ship may be prohibited or the voyage may be illegal, though the transport of the goods be lawful. Marsh. Ins. B. 1, c. 6, s. 1. See Lex Merc. Amer. c. 10, s. 14; Park. Ins. ch. 12; Wesk. his. tit. Voyages; and Deviation,

4. In the French law the Voyage de conserve, is the name given to designate an agreement made between two or more sea captains that they will not separate in their voyage, will lend aid to each other, and will defend themselves against a common enemy, or the enemy of one of them, in case of attack. This agreement is said to be a partnership. 8 Pardes. Dr. Com. n. 656; 4 Pardes. Dr. Com. n. 984; 20 Toull. n. 17.

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WADSET, Scotch law. A right, by which lands, or other heritable subjects, are impignorated by the proprietor to his creditor in security of his debt; and, like other heritable rights, is perfected by seisin.

2. Wadsets, by the present practice, are commonly made out in the form of mutual contracts, in which one party sells the land, and the other grants, the right of reversion. Ersk. Pr. L. Scot., B. 2, t. 8, s. 1, 2.

3. Wadsets are proper or improper. Proper, where the use of the land shall go for the use of the money. Improper, where the reverser agrees to make up the deficiency; and where it amounts to more, the surplus profit of the land is applied to the extinction of the principal. Id. B. 2, t. 8, s. 12, 13.

WADSETTER, Scotch law. A creditor to whom a wadset is made.

TO WAGE, contracts. To give a pledge or security for the performance of anything; as to wage or gage deliverance; to wage law, &c. Co. Litt. 294. This word is but little used.

WAGER OF BATTEL. A superstitious mode of trial which till lately disgraced the English law.

2. The last case of this kind was commenced in the year 1817, but not procceded in to judgment; and at the next session of the British parliament an act was passed to abolish appeals of murder, treason, felony or other offences, and wager of battel, or joining issue or trial by battel in writs of right. 59 Geo. III. c. 46. For the history of this species of trial the reader is referred to 4 Bl. Com. 347; 3 Bl. Com. 337; Encyclopedie, Gage de Bataille; Steph. Pl. 122, and App. note 35.

WAGER OF LAW, Engl. law. When an action of debt is brought against a man upon a simple contract, and the defendant pleads nil debit, and concludes his plea with this formula, "And this he is ready to defend against him the said A B and his suit, as the court of our lord the king here shall consider," &c., he is said to wage his law. He is then required to swear he owes the plaintiff nothing, and bring eleven compurgators who will swear they believe him. This mode of trial, is trial by wager of law.

2. The wager of law could only be had in actions of debt on simple contract, and actions of detinue; in consequence of this right of the defendant, now actions on simple contracts are brought in assumpsit, and instead of bridging detinue, trover has been substituted.

3. If ever wager of law had any existence in the United States, it is now completely abolished. 8 Wheat. 642. Vide Steph. on Plead. 124, 250, and notes, xxxix.; Co. Entr. 119; Mod. Entr. 179; Lilly's Entr. 467; 3 Ch it. Pl. 497; 13 Vin. Ab. 58; Bac. Ab. h. t.; Dane's Ab. Index, h. t. For the origin of this form of trial, vide Steph. on Pl. notes xxxix; Co. Litt. 294, 5 3 Bl. Com. 341.

WAGER POLICY, contracts. One made when the insured has no insurable interest.

2. It has nothing in common with insurance but the name and form. It is usually in such terms as to preclude the necessity of inquiring into the interest of the insured; as, "interest or no interest," or, "without further proof of interest than the policy."

3. Such contracts being against the policy of the law are void. 1 Marsh. Ins. 121 Park on Ins. Ind. h. t.; Wesk. Ins. h. t.; See 1 Sumn. 451; 2 Mass. 1 3 Caines, 141.

WAGERS. A wager is a bet a contract by which two parties or more agree that a certain sum of money, or other thing, shall be paid or delivered to one of them, on the happening or not happening of an uncertain event.

2. The law does not prohibit all wagers. 1 Browne's Rep. 171 Poth. du Jeu, n. 4.

3. To restrain wagers within the bounds of justice the following conditions must be observed: 1. Each of the parties must have the right to dispose of the thing which is the object of the wager. 2. Each must give a perfect and full consent to the contract, 3. There must he equality between the parties. 4. There must be good faith between them. 5. The wager must not be forbidden by law. Poth. du 4. In general, it seems that a wager is legal and maybe enforced in a court of law 3 T. R. 693, if it be not, 1st, Contrary to public policy, or immoral; or if it do not in some other respect tend to the detriment of the public. 2d. If it do not affect the interest, feelings, or character of a third person.

5. - 1. Wagers on the event of an election laid before the poll is open; 1 T. R. 56. 4 Johns. 426; 4 Harr. & McH. 284; or after it is closed; 8 Johns. 454, 147; 2 Browne's Rep. 182; are unlawful. And wagers are against public policy if they are in restraint of marriage; 10 East, R. 22; made as to the mode of playing an illegal game; 2 H. Bl. 43; 1 Nott & McCord, 180; 7 Taunt. 246; or on an abstract speculative question of law or judicial practice, not arising out of circumstances in which the parties have a real interest. 12 East, R. 247, and Day's notes, sed vide Cowp. 37.

6. - 2. Wagers as to the sex of an individual Cowp. 729; or whether an unmarried woman had borne or would have a child; 4 Campb. 152, are illegal; as unnecessarily leading to painful and indecent considerations. The supreme court of Pennsylvania have laid it down as a rule, that every bet about the age, or height, or weight, or wealth, or circumstances, or situation of any person, is illegal; and this whether the subject of the bet be man, woman, or child, married or single, native or foreigner, in this country or abroad. 1 Rawle, 42. And it seems that a wager between two coach-proprietors, whether or not a particular person would go by one of their coaches is illegal, as exposing that person to inconvenience. 1 B. & A. 683.

7. In the case even of a legal wager, the authority of a stakeholder, like that of an arbitrator, may be rescinded by either party before the event happens. And if after his authority has been countermanded, and the stake has been demanded, he refuse to deliver it, trover or assumpsit for money had and received is maintainable. 1 B. & A. 683. And where the wager is in its nature illegal, the stake may be recovered, even after the event, on demand made before it has been paid over. 4 Taunt. 474; 5 T. R. 405; sed vide 12 Johns. 1. See further on this subject, 7 Johns. 434; 11 Johns. 23; 10 Johns. 406,468; 12 Johns. 376; 17 Johns. 192; 15 Johns. 5; 13 Johns. 88; Mann. Dig. Gaming; Harr. Dig. Gaining; Stakeholder.

WAGES, contract. A compensation given to a hired person for his or her services. As to servants wages, see Chitty, Contr. 171 as to sailors' wages, Abbott on Shipp. 473; generally, see 22. Vin. Abr. 406; Bac. Abr. Master, &c., H; Marsh. Ins. 89; 2 Lill. Abr. 677; Peters' Dig. Admiralty, pl. 231, et seq.

WAIFS. Stolen goods waived or scattered by a thief in his flight in order to effect his escape.

2. Such goods by the English common law belong to the king. 1 Bl. Com. 296; 5 Co. 109; Cro. Eliz. 694. This prerogative has never been adopted here against the true owner, and never put in practice against the finder, though against him there would be better reason for adopting it. 2 Kent, Com. 292. Vide Com. Dig. h. t.; 1 Bro. Civ. Law, 239, n.

WAIVE. A term applied to a woman as outlaw is applied to a man. A man is an outlaw, a woman is a waive. T. L., Crabb's Tech. Dict. h. t.

To WAIVE. To abandon or forsake a right.

2. To waive signifies also to abandon without right; as "if the felon waives, that is, leaves any goods in his flight from those who either pursue him, or are apprehended by him so to do, he forfeits them, whether they be his own goods, or goods stolen by him." Bac. Ab . Forfeiture, B.

WAIVER., The relinquishment or refusal to accept of a right.

2. In practice it is required of every one to take advantage of his rights at a proper time and, neglecting to do so, will be considered as a waiver. If, for example, a defendant who has been misnamed in the writ and declaration, pleads over, he cannot afterwards take advantage of the error by pleading in abatement, for his plea amounts to a waiver.

3. In seeking for a remedy the party injured may, in some instances, waive a part of his right, and sue for another; for example, when the defendant has committed a trespass on the property of the plaintiff, by taking it away, and afterwards he sells it, the injured party may waive the trespass, and bring an action of assumpsit for the recovery of the money thus received by the defendant. 1 Chit. Pl. 90.

4. In contracts, if, after knowledge of a supposed fraud, surprise or mistake, a party performs the agreement in part, he will be considered as having waived the objection. 1 Bro. Parl. Cas. 289.

5. It is a rule of the civil law, consonant with reason, that any one may renounce or waive that which has been established in his favor: Regula est juris antique omnes licentiam habere his quae pro se introducta sunt, renunciare. Code 2, 3, 29. As to what will amount to a waiver of a forfeiture, see 1 Conn. R. 79; 7 Conn. R. 45; 1 Jo Cas. 125; 8 Pick. 292; 2 N. H, Rep. 120 163; 14 Wend. 419; 1 Ham. R. 21. Vide Verdict.

WAKENING, Scotch law. The revival of an action.

2. An action is said to sleep, when it lies over, not insisted on for a year in which case it is suspended. 4, t. 1, n. 33. With us a revival is by scire facias. (q. v.)

WALL. A building or erection so well known as to need no definition. In general a man may build a wall on any part of his estate, to any height he may deem proper, and in such form as may best accommodate him; but he must take care not to erect a wall contrary to the local regulations, nor in such a manner as to be injurious to his neighbors. See Dig. 50, 16, 157. Vide Party Wall.

WANTONNESS, crim. law. A licentious act by one man towards the person of another without regard to his rights; as, for example, if a man should attempt to pull off another's hat against his will in order to expose him to ridicule, the offence would be an assault, and if he touched him it would amount to a battery. (q. v.)

2. In such case there would be no malice, but the wantonness of the act would render the offending party liable to punishment.

WAPENTAKE. An ancient word used in England as synonymous with hundred. (q. v.) Fortesc. De Laud. ch. 24.

WAR. A contention by force; or the art of paralysing the forces of an enemy.

2. It is either public or private. It is not intended here to speak of the latter.

3. Public war is either civil or national. Civil war is that which is waged between two parties, citizens or members of the same state or nation. National war is a contest between two or more independent nations) carried on by au-thority of their respective governments.

4. War is not only an act, but a state or condition, for nations are said to be at war not only when their armies are engaged, so as to be in the very act of contention, but also when, they have any matter of controversy or dispute subsisting between them which they are determined to decide by the use of force, and have declared publicly, or by their acts, their determination so to decide it.

5. National wars are said to be offensive or defensive. War is offensive on the part of that government which commits the first act of violence; it is defensive on the part of that government which receives such act; but it is very difficult to say what is the first act of violence. If a nation sees itself menaced with an attack, its first act of violence to prevent such attack, will be considered as defensive.

6. To legalize a war it must be declared by that branch of the government entrusted by the constitution with this power. Bro. tit., Denizen, pl. 20. And it seems it need not be declared by both the belligerent powers. Rob. Rep. 232. By the constitution of the United States, art. 1, s. 7, congress are invested with power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; and they have also the power to raise and support armies, and to provide and maintain a navy." See 8 Cranch, R. 110, 154; 1 Mason, R. 79, 81; 4 Binn. R 487. Vide, generally, Grot. B, 1, c. 1, s. 1 Rutherf. Inst. B. 1, c. 19; Bynkershoeck, Quest. Jur. Pub. lib. 1, c. 1; Lee on Capt. c. 1; Chit. Law of Nat. 28; Marten's Law of Nat. B. 8, c. 2; Phil. Ev. Index, h., t. Dane's Ab. Index, h. i.; Com. Dig. h. t. Bac. Ab. Prerogative, D 4; Merl. Repert. mot Guerre; 1 Inst. 249; Vattel, liv. 3, c. 1, §1; Mann. Com. B. 3, c. 1.

WARD, domestic relations. An infant placed by authority of law under the care of a guardian.

2. While under the care of a guardian a ward can make no contract whatever binding upon him, except for necessaries. When the relation of guardian and ward ceases, the latter is entitled to have an account of the administration of his estate from the former. During the existence of this relation, the ward is under the subjection of his guardian, who stands in locoparentis.

WARD, a district. Most cities are divided for various purposes into districts, each of which is called a ward.

WARD, police. To watch in the day time, for the purpose of preventing violations of the law.

2. It is the duty of all police officers and constables to keep ward in their respective districts.

WARD IN CHANCERY. An infant who is under the superintendence of the chancellor.

WARDEN. A guardian; a keeper. This is the name given to various officers: as, the warden of the prison; the wardens of the port of Philadelphia; church wardens.

WARDSHIP, Eng. law. Wardship was the right of the lord over the person and estate of the tenant, when the latter was under a certain age. When a tenant by knight's service died, and his heir was under age, the lord was entitled to the custody of the person and the lands of the heir, without any account, until the ward, if a male, should arrive at the age of twenty-one years, and, if a female, at eighteen. Wardship was also incident to a tenure in socage, but in this case, not the lord, but the nearest relation to whom the inheritance could not descend, was entitled to the custody of the person and estate of the heir till he attained the age of fourteen years; at which period the wardship ceased and the guardian was bound, to account. Wardship in copyhold estates partook of that in chivalry and that guardian like the latter, he was required lib. 7, c. 9; Grand Cout. c. 33; Reg. Maj. c. 42.

WAREHOUSE. A place adapted to the reception and storage of goods and merchandise. 9 Shepl. 47.

2. The act of congress of February 25, 1799, 1 Story's Laws U. S. 565, authorizes the purchase of suitable warehouses, where goods may be unladen and deposited from any vessel which shall be subject to quarantine or other re-straint, pursuant to the health laws of any state, at such convenient place or places as the safety of the revenue and the observance of such health laws may require.

3. And the act of 2d March, 1799, s. 62, 1 Story's Laws U. S. 627, authorizes an importer of goods, instead of, securing the duties to be paid to the United States, to deposit so much of such goods as the collector may in his judgment deem sufficient security for the duties and the charges of safe keeping, for which the importer shall give his own bond; which goods shall be kept by the collector with due care, at the expense and risk of the party on whose account they have been deposited, until the sum specified, in such bond becomes due; when, if such sum shall not be paid, so much of such deposited goods shall be sold at public sale, and the proceeds, charges of safe keeping and sale being deducted, shall be applied to the payment of such sum,

rendering the overplus, and the residue of the goods so deposited, if there be any, to the depositor or his representatives.

WAREHOUSEMAN. A warehouseman is a person who receives goods and merchandise to be stored in his warehouse for hire.

2. He is bound to use ordinary care in preserving such goods and merchan-dise, and his neglect to do so will render him liable to the owner. Peake, R. 114; 1 Esp. R. 315; Story, Bailm. §444; Jones' Bailm. 49, 96, 97; 7 Cowen's R. 497; 12 John. Rep. 232; 2 Wend. R. 593; 9 Wend. R. 268; 1 Stew. Rep. 284. The warehouseman's liability commences as soon as the goods arrive, and the crane of the warehouse is applied to raise them into the warehouse. 4 Esp. R. 262.

WARRANDICE, Scotch law. A clause in a charter of heritable rights by which the grantor obliges himself, that the right conveyed shall be effectual to the receiver. It is either personal or real. A warranty. Ersk. Pr. B. 2, t. 3, n. 11.

WARRANT, crim. law, Practice. A writ issued by a justice of the peace or other authorized officer, directed to a constable or other proper person, requiring him to arrest a person therein named, charged with committing some offence, and to bring him before that or some other justice of the peace.

2. It should regularly be made under the hand and seal of the justice and dated. No warrant ought to be issued except upon the oath or affirmation of a witness charging the defendant with, the offence. 3 Binn. Rep. 88.

3. The reprehensible practice of issuing blank warrants which once prevailed in England, was never adopted here. 2 Russ. on Cr. 512; Ld. Raym. 546; 1 Salk. 175; 1 H. Bl. R. 13; Doct. Pl. 529; Wood's Inst. 84; Com. Dig. Forcible Entry, D 18, 19; Id. Imprisonment, H 6,; Id. Pleader, 3 K 26; Id. Pleader, 3 M 23. Vide Search warrant.

4. A bench warrant is a process granted by a court authorizing a proper officer to apprehend and bring before it some on charged with some contempt, crime or misdemeanor. See Bench warrant.

5. A search warrant is a process issued by a competent court or officer authorizing an officer therein named or described, to examine a house or other place for the purpose of finding goods which it is alleged have been stolen. See Search warrant.

WARRANT OF ATTORNEY, practice. An instrument in writing, addressed to one or more attorneys therein named, authorizing them generally to appear in any court, or in some specified court, on behalf of the person giving it, and to confess judgment in

favor of some particular person therein named, in an action of debt, and usually containing a stipulation not to bring any writ of error, or file a bill in equity, so as to delay him.

2. This general authority is usually qualified by reciting a bond which commonly accompanies it, together with the condition annexed to it, or by a written defeasance stating the terms upon which it was given, and restraining the creditor from making immediate use of it. 31. In form it is generally by deed; but it seems, it need not necessarily be so. 5 Taunt. 264.

4. This instrument is given to the creditor as a security. Possessing it, he may sign judgment and issue an execution, without its being necessary to wait the termination. of an action. Vide 14 East, R. 576; 2 T. R. 100; 1 H. Bl. 75; 1 Str 20; 2 Bl. Rep. 1133; 2 Wils. 3; 1 Chit. Rep. 707.

5. A warrant of attorney given to confess a judgment is not revocable, and, notwithstanding a revocation, judgment may be entered upon it. 2 Ld. Raym. 766, 850; 1 Salk. 87; 7 Mod. 93; 2 Esp, Rep. 563. The death of the debtor is, however, generally speaking, a revocation. Co. Litt. 62 b; 1 Vent. 310. Vide Hall's Pr. 14, n.

6. The virtue of a warrant of attorney is spent by the entry of one judgment, and a second judgment entered on the same warrant is irregular. 1 Penna. R. 245; 6 S. & R. 296: 14 S. & R. 170; Addis. R. 267; 2 Browne's R. 321, 3 Wash. C. C. R. 558. Vide, generally, 18 Eng. Com. Law Rep. 94, 96, 179, 209; 1 Salk. 402; 3 Vin. Ab. 291; 1 Sell. Pr. 374; Com. Dig. Abatement, E 1, 2; Id. Attorney, B 7, 8; 2 Archbold's Pr. 12; Bingh. on Judgments, 38; Grah. Pr. 618; l Crompt. Pr. 316; 1 Troub. & Haly's Pr. 96.

7. A warrant of attorney differs from a cognovit, actionem. (q. v.) See Metc. & Perk. Dig. Bond, IV.

WARRANTEE. One to whom a warranty is made. Touchst. 181.

WARRANTIA CHARTAE. An ancient and now obsolete writ, which was issued when a man was enfeoffed of land with warranty, and then he was sued or impleaded in assize or other action, in which he could not vouch or call to warranty.

2. It was brought by the feoffor pending the first suit against him, and had this valuable incident, that when the warrantor was vouched, and judgment passed against the tenant, the latter obtained judgment simultaneously against the warrantor, to recover other lands of equal value. Termes de la Ley, h. t.; F. N. B. 134; Dane's Ab. Index, h. t.; Rand. 141, 148, 156; 4 Leigh's R. 132; 11 S. & R. 115 Vin. Ab. h. t. Co. Litt. 100; Hob. 22, 217.

WARRANTOR. One who makes a warranty. Touchst, 181.

WARRANTY, contracts. This word has several significations, as it is applied to the conveyance and sale of lands, to the sale of goods, and to the contract of insurance.

2. - 1. The ancient law relating to warranties of land was full of subtleties and intricacies; it occupied the attention of the most eminent writers on the English law, and it was declared by Lord Coke, that the learning of warranties was one of the most curious and cunning learnings of the law; but it is now of little use even in England. The warranty was a covenant real, whereby the grantor of an estate of freehold, and his heirs, were bound to warrant the title; and either upon voucher, or judgment in, a writ of warrantia chartae, to yield other lands to the value of those from which there had been an eviction by paramount title Co. Litt. 365; Touchst.; 181 Bac. Ab. h. t.; the heir of the warrantor was bound only on condition that he had, as assets, other lands of equal value by descent.

3. Warranties were lineal and collateral.

4. Lineal, when the heir derived title to the land warranted, either from or through the ancestor who made the warranty.

5. Collateral warranty was when the heir's title was not derived from the warranting ancestor, and yet it barred the heir from claiming the land by any collateral title, upon the presumption that he might thereafter have assets by descent from or through the ancestor; and it imposed upon him the obligation of giving the warrantee other lands, in case of eviction, provided he had assets. 2 Bl. Com. 301, 302.

6. The statute of 4 Anne, c. 16, annulled these collateral warrantees, which bid become a great grievance. Warranty in its original form, it is presumed, has never been known in the United States. The more plain and pliable form of a covenant has been adopted in its place and this covenant, like all other covenants, has always been held to sound in damages which after judgment may be recovered out of the personal or real estate, as in other cases. Vide 4 Kent, Com. 457; 3 Rawle's R. 67, n.; 2 Wheat-. R. 45; 9 Serg. & Rawle, 268; 11 Serg. & Rawle, 109; 4 Dall. Rep. 442; 2 Saund. 38, n. 5.

7. - 2. Warranties in relation, to the sale of personal chattels are of two kinds, express or implied.

8. An express warranty is one by which the warrantor covenants or undertakes to insure that the thing which is the subject of the. contract, is or is not as there mentioned; as, that a horse is sound; that he is not five years old.

9. An implied warranty is one which, not being expressly made, the law implies by the fact of the sale; for example, the seller is, understood to warrant the title of goods be sells, when they are in his possession at the time of the sale; Ld. Raym. 593; 1 Salk.. 210; but if they are not then in his possession, the rule of caveat emptor applies, and the buyer purchases at his risk. Cro. Jac. 197.

10. In general there is no implied warranty of the quality of the goods sold. 2 Kent, Com. 374; Co. Litt. 102, a; 2 Black Comm. 452; Bac. Abr. Action on the case E; 2 Com. Contr. 263; Dougl. 20; 2 East, 31 4; Id. 448, n.; Ross on Vend. c. 6; 1 Johns. R. 274; 4 Conn. R. 428; 1 Dall. Rep. 91; 10 Mass. R. 197; 20 Johns. Rep., 196; 3 Yeates, R. 262; 1 Pet. Rep. 317; 12 Serg. & Rawle, 181; 1 Hard. Kent. Rep. 531; 1 Murphy, Rep. 138; 2 Id. 245; 4 Haywood's Term. R. 227; 2 Caines' Rep. 48. The rule of the civil law was, that a fair price implied a warranty of title; Dig. 21, 2, 1; this rule, has been adopted in Louisiana; Code, art. .247 7; and in South Carolina. 1 Bay, R. 324; 2 Bay, R. 380 1 Const. R. 182; 2 Const. R. 353. Vide Harr. Dig. Sale, II. 8; 12 East, R. 452.

11. - 3. In the contract of insurance, there are certain warranties which are inducements to the insurer to enter into it. A warranty of this kind is a stipulation or agreement on the part of the insured, in the nature of a condition precedent. It may be affirmative; as where the insured undertakes for the truth of some positive allegation: as, that the thing insured is neutral property: or, it may be promissory; as, that the ship shall sail on or before a given day. 6 N. S. 53.

12. Warranties are also express or implied. An express warranty is a particular stipulation introduced into the written contract, by the agreement of the parties; an implied warranty is an agreement which necessarily results from the nature of the contract: as, that the ship shall be seaworthy when she sails on the voyage insured.

13. The warranty being in the nature of a condition precedent, it is to be performed by the insured, before he can demand the performance of the contract on the part of the insurer. Marsh. Inst. B. 1, c. 9. See, generally, Bouv. Inst. Index, h. t.

WARRANTY, VOUCHER TO, practice. A warranty is a contract real, annexed to lands and tenements, whereby a man is bound to defend such lands and tenements from another person; and in case of eviction by title paramount, to give him lands of equal value.

2. Voucher to warranty is the calling of such warrantor into court by the party warranted, (when tenant in a real action brought for recovery of such lands,) to defend the suit for him; Co. Litt. 101, b; Com. Dig. Voucher, A 1; Booth, 43 2 Saund. 32, n. 1; and the time of such voucher is after the deman-dant has counted. It lies in most

real and mixed actions, but not in personal. Where the voucher has been made and allowed by the court, the vouchee either voluntarily appears, or there issues a judicial writ (called a summons ad warrantizandum,) commanding the sheriff to summon him. Where he, either voluntar-ily or in obedience to this writ, appears and offers to warrant the land to the tenant, it is called entering into the warranty; after which he is considered as tenant in the action, in the place of the original tenant. The deman-dant then counts against him de novo, the vouchee pleads to the new count, and the cause proceeds to issue. 2 Inst. 241 a; 2 Saund. 32, n. 1; Booth, 46.

3. Voucher of warranty is, in the present rarity of real actions, unknown in practice. Steph. Plead. 85.

WASTE. A spoil or destruction houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee simple or fee tail 2 Bl. Comm. 281.

2. The doctrine of waste is somewhat different in this country from what it is in England. It is adapted to our circumstances. 3 Yeates, R. 261; 4 Kent, Com. 76; Walk. Intr. 278; 7 John. Rep. 227; 2 Hayw. R. 339; 2 Hayw. R. 110; 6 Munf. R. 134; 1 Rand. Rep. 258; 6 Yerg. Rep. 334. Waste is either voluntary or permissive.

3. - §1. Voluntary waste. A voluntary waste is an act of commission, as tearing down a house. This kind of waste is committed in houses, in timber, and in land. It is committed in houses by removing wainscots, floors, benches, furnaces, window-glass, windows, doors, shelves, and other things once fixed to the freehold, although they may have been erected by the lessee himself, unless they were erected for the purposes of trade. See Fixtures; Bac. Ab. Waste, C 6. And this kind of waste may take place not only in pulling down houses, or parts of them, but also in changing their forms; as, if the tenant pull down a house and erect a new one in the place, whether it be larger or smaller than the first; 2 Roll. Ab. 815 , 1. 33; or convert a parlor into a stable; or a grist-mill into a fulling-mill; 2 Roll. Abr. 814, 815; or turn two rooms into one. 2 Roll. Ab. 815, 1. 37. The building of a house where there was none before is said to be a waste; Co. Litt. 53, a; and taking it down after it is built, is a waste. Com. Dig. Waste, D 2. It is a general rule that when a lessee has annexed anything to the freehold during the term, and afterwards takes it away, it is waste. 3 East, 51. This principle is established in the French law. Lois des Bit. part. 2,

3, art. 1; 18 Toull. n. 457.

4. But at a very early period several exceptions were attempted to be made to this rule, which were at last effectually engrafted upon it in favor of trade, and of those vessels and utensils, which are immediately subservient to the purposes of trade. Ibid.

5. This relaxation of the old rule has taken place between two descriptions of persons; that is, between the landlord and tenant, and between the tenant for life or tenant in tail and the remainder-man or reversioner.

6. As between the landlord and tenant it is now the law, that if the lessee annex any chattel to the house for the purpose of his trade, he may disunite it during the continuance of his interest, 1 H. B. 258. But this relation extends only to erections for the purposes of trade.

7. It has been decided that a tenant for years may remove cider-mills, orna-mental marble chimney pieces, wainscots fixed only by screws, and such like. 2 Bl. Com. 281, note by Chitty. A tenant of a farm cannot remove buildings which he has erected for the purposes of husbandry, and the better enjoyment of the profits of the land, though he thereby leaves the premises the same as when he entered. 2 East, 88; 3 East, 51; 6 Johns., Rep. 5; 7 Mass. Rep. 433.

8. Voluntary waste may be committed on timber, and in the country from which we have borrowed our laws, the law is very strict. In Pennsylvania, however, and many of the other states, the law has applied itself to our situation, and those acts which in England would amount to waste, are not so accounted here. Stark. Ev. part 4, p. 1667, n.; 3 Yeates, 251. Where wild and uncultivated land, wholly covered with wood and timber, is leased, the lessee may fell a part pf the wood and timber, so as to fit the land for cultivation, without being liable to waste, but he cannot cut down the whole so as permanently to injure the inheritance. And to what extent the wood and timber on such land may be cut down without waste, is a question of fact for the jury under the direction of the court. 7 Johns. R. 227. The tenant may cut down trees for the reparation of the houses, fences, hedges, stiles, gates, and the like; Co. Litt. 53, b; and for mixing and repairing all instruments of husbandry, as ploughs, carts, harrows, rakes, forks, &c. Wood's Inst. 344. The tenant may, when he is unrestrained by the terms of his lease, out down timber, if there be not enough dead timber. Com. Dig Waste, D 5; F. N. B. 59 M. Where the tenant, by the conditions of his lease, is entitled to cut down timber, he is restrained nevertheless from cutting down ornamental trees, or those planted for shelter; 6 Ves. 419; or to exclude objects from sight. 16 Ves. 375.

9. Windfalls are the property of the landlord, for whatever is severed by inevitable necessity, as by a tempest, or by a trespasser, and by wrong, belongs to him who has the inheritance. 3 P. Wms. 268; 11 Rep. 81, Bac. Abr. Waste, D 2.

10. Waste is frequently committed on cultivated fields, orchards, gardens, meadows, and the like. It is proper here to remark that there is an implied covenant or agreement on the part of the lessee to use a farm in a husbandman-like manner, and not to exhaust the soil by neglectful or improper tillage. 5 T. R. 373. See 6 Ves. 328. It is

therefore waste to convert arable to woodland and the contrary, or meadow to arable; or meadow to orchard. Co. Lit. 53, b. Cutting down fruit trees; 2 Roll. Abr. 817, l. 30; although planted by the tenant himself, is waste; and it was held to be waste for an outgoing tenant of garden ground to plough up strawherry beds which be had bought of a former tenant when he entered. i Camp. 227.

11. It is a general rule that when lands are leased on which there are open mines of metal or coal or pits of gravel, lime, clay, brick, earth, stone, and the like, the tenant may dig out of such mines, or pits. Com. Dig. Waste, D 4. But he cannot open any new mines or pits without being guilty of waste Co. Lit. 53 b; and carrying away the soil, is waste. Com. Dig. Waste, D 4.

12. - §2. Permissive waste. Permissive waste in houses is punishable where the tenant is expressly bound to repair, or where he is so bound on an implied covenant. See 2 Esp. R. 590; 1 Esp. Rep. 277; Bac. Abr. Covenant, F. It is waste if the tenant suffer a house leased to him to remain uncovered so long that the rafters or other timbers of the house become rotten, unless the house was uncovered when the tenant took possession. Com. Dig. Waste, D 2.

13. - §3. Of remedies for waste. The ancient writ of waste has been superseded. It is usual to bring case in the nature of waste instead of the action of waste, as well for permissive as voluntary waste.

14. Some decisions have made it doubtful whether an action on the case for permissive waste can be maintained against any tenant for years. See 1 New Rep. 290; 4 Taunt. 764; 7 Taunt. 392; S. C. 1 Moore, 100; 1 Saund. 323, a, n. i. Even where the lessee covenants not to do waste, the lessor has his election to bring either an action on the case, or of, covenant, against the lessee for waste done by him during the term. 2 Bl. Rep. 1111; 2 Saund. 252, c. n. In an action on the case in the nature of waste, the plaintiff recovers only damages for the waste.

15. The latter action has this advantage over an action of waste, that it may be brought by him in reversion or remainder for life or years, as well as in fee or in tail; and the plaintiff is entitled to costs in this action, which he cannot have in an action of waste., 2 Saund. 252, n. See, on the subject in general, Woodf. Landl. & T. 217, ch. 9, s. 1; Bac. Abr. Waste; Vin. Abr. Waste; Com. Dig. Waste; Supp. to Ves. jr. 50, 325, 441; 1 Vern. R. 23, n.; 2 Saund. 252, a, n. 7, 259, n. 11; Arch. Civ. Pl. 495; 2 Sell. Pr. 234; 3 Bl. Com. 180, note by Chitty; Anier. Dig. Waste; Whart. Dig. Waste; Bouv. Inst. Index, h. t.

As to remedies against waste by injunction, see 1 Vern. R. 23, n.; 5 P. Wms. 268, n. F; 1 Eq. Cas. Ab. 400; 6 Ves. 787, 107, 419; 8 Ves. 70; 16 Ves. 375; 2 Swanst. 251; 3

Madd. 498; Jacob's R. 70; Drew. on Inj. part 2, c. 1, p. 134. As between tenants in common, 5 Taunt. 24; 19 Ves. 159; 16 Ves. 132; 3 Bro. C. C. 622; 2 Dick. 667; Bouv. Inst. Index, h. t.; and the article Injunction. As to remedy by writ of estrepement to prevent waste, see Estrepement; Woodf Landl. & T. 447; 2 Yeates, 281; 4 Smith's Laws of Penn. 89; 3 Bl. Com. 226. As to remedies in cases of fraud in committing waste, see Hov. Fr. ch. 7, p. 226 to 238.

WASTE BOOK, com. law. A book used among merchants. All the dealings of the merchant are recorded in this book in chronological order as they occur.

WATCH, police. To watch is, properly speaking, to stand sentry and attend guard during the night time: certain officers called watchmen are appointed in most of the United States, whose duty it is to arrest all persons who are violating the law, or breaking the peace. (q. v.) Vide 1 Bl. Com. 356; 1 Chit. Cr. Law, 14, 20.

WATCH AND WARD. A phrase used in the English law, to denote the superintendence and care of certain officers, whose duties are to protect the public from harm.

WATCHMAN. An officer in many cities and towns, whose duty it is to watch during the night and take care of the property of the inhabitants.

2. He possesses generally the common law authority of a constable (q. v.) to make arrests, where there is reasonable ground to suspect a felony, though there is no proof of a felony having been committed. 1 Chit. Cr. L. 24; 2 Hale, 96; Hawk. B. 2, c. 13, s. 1, &c.; 1 East, P. C. 303; 2 Inst. 52; Com. Dig. Imprisonment, H 4; Dane's Ab. Index, h. t.; 3 Taunt. R. 14; 1 B. & A. 227; Peake, R. 89; 1 Moody's Cr. Cas. 334; 1 Esp. R. 294; and vide Peace.

3. By an act of congress, approved Sept. 30, 1850, the compensation of watchmen in the various departments of government, shall be five hundred dollars per annum.

WATER. That liquid substance of which the sea, the rivers, and creeks are composed.

2. A pool of water, or a stream or water course, is considered as part of the land, hence a pool of twenty acres, would pass by the grant of twenty acres of land, without mentioning the water. 2 Bl. Com. 18; 2 N. H. Rep. 255; 1, Wend. R. 255; 5 Paige, R. 141; 2 N. H. Rep. 371; 2 Brownl. 142; 5 Cowen, R. 216; 5 Conn. R. 497; 1 Wend. R. 237. A mere grant of water passes only a fishery. Co. Lit. 4 b.

3. Like land, water is distinguishable into different parts, as the sea, (q. v.) rivers, (q. v.) docks, (q. v.) canals, (q. v.) ponds, q v.) and sewers, (q. v.) and to these may be added at water course. (q. v.) Vide 4 Mason, R. 397 River; Water course.

WATER BAILIFF, English law. An officer appointed to search ships in ports. 10 H. vii., 30.

WATER COURSE. This term is applied to the flow or movement of the water in rivers, creeks, and other streams.

2. In a legal sense, property In a water course is comprehended under the general name of land; so that a grant of land conveys to the grantee not only fields, meadows, and the like, but also all the rivers and streams, which naturally pass over the surface of the land. 1 Co. Lit. 4; 2 Brownl. 142; 2 N. Hamp. Rep. 255; 5 Wend. Rep. 128.

3. Those who own land bounding upon a water course, are denominated by the civilians riparian proprietors, and this convenient term has been adopted by judges and writers on the common law. Ang. on Water Courses, 3; 3 Kent, Com. 354; 4 Mason's R. 397.

4. Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (currere solebat) without diminution or alteration.

5. No proprietor has a right to use the water to the prejudice of other proprietors, above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment. He has no property in the water itself, but a simple usufruct as it passes along. Agua currit et debet currere, is the language of the law. 3 Rawle, Rep. 84; 9 Co. 57, b.

6. Though he may use the water while it runs over his lands, he cannot unreasonably detain it or give it another direction, and he must return it to its ordinary channel when it leaves his estate. Without the consent of the adjoining proprietors, he cannot divert or diminish the quantity of the water, which would otherwise descend to the proprietor below, nor throw the water back upon the proprietor above, without a grant, or an uninterrupted enjoyment of twenty years, which is evidence of it. 3 Kent, Com. 353; 1 Wils. R. 178; 6 East, 203; 1 Simon & Stuart, 190; 2 John. Ch R. 162, 463; 4 Mass. R. 401 17 John. R. 321; 5 Ohio R. 822; 3 Fairf. R. 407; 8 Greenl. R. 268; 16 Pick. Rep. 247; 1 Coxes Rep, 460; Dig. 39, 3, 4, and 10; Pothier, Traite du Contrat de Societe, 2e app. n. 236, 237; Bell's Law of Scotland, 691; Ang. on' Water Courses, 12; 2 Conn. R. 584.

7. When there are two opposite riparian proprietors, each owns that portion of the bed of the river which is adjoining his land usque ad filum aquae; or, in other words, to the thread or central line of the stream; Harg. Tracts, 5; Holt's Rep. 499; and if hydraulic

works be erected on both banks, each is entitled to an equal share of the water. 1 Paige's Chanc. Rep. 448.

8. The water can only be used by each as an entire stream, in its natural channel; for of the property in the water there can be no severance. 13 John. R. 212.

9. But it seems that when an island is on the side of a river, so as to give the riparian owner on that side one-fourth of the water, the other is entitled to the whole of the three-fourths of the river. 10 Wend. Rep. 260. See, also, 13 Mass. Rep. 507; 2 Caines' Cas. 87; 9 Pick. R. 528; 3 Kent, Com. 344, 345; 3 Rawle's R. 84; 2 Watts, R. 327; 8 Greenl. R. 138, 253; 9 Pick. Rep. 59; 10 Pick. R. 348; 10 Wend. R. 167; Com. Dig. Action for Nuisance, A; 4 D. & R. 583; S. C. 2 B. & C. 910; 1 Campb. R. 463; 6 East, R. 208; 1 Wils. Rep. 174;; 1 B. & A. 258; 5 Taunt. R. 454; 2 Esp. R. 679; 2 Hill. Abr. c. 14, 16, 17; Ham. N. P. 199; 1 Vin. Ab. 557 22 Vin. Abr. 525; 2 Chit. Bl. 403, n. 7; 3 Roll. 140, l. 40; Lois des Bat. part 1, c. 3, sed. 1, art. 3; Crabb on R. P. §398 to 443. Vide River.

WATER ORDEAL. An ancient form of trial, now abolished, by which the accused, tied band and foot, were cast into cold water, and if they did not sink they were deemed innocent or they were compelled to plunge their limbs into hot water, and if they came out unhurt they were considered innocent. Vide Ordeal.

WAVESON. This name is given to such goods as after shipwreck appear upon the waves. Jacob, Law Dict. h. t.

WAY, estates. A passage, street or road. A right of way is a privilege which an individual or a particular description of persons, such as the inhabitants of a particular place, or the owners or occupiers of such place may have, of going over another person's ground.

2. It is an incorporeal hereditament of a real nature, a mere easement, entirely different from public or private roads.

3. A right of way may arise, 1. By prescription and immemorial usage. 2 McCord, 447 5 Har. & John. 474; Co. Litt. 113, b; Br. Chem. 2; 1 Roll. Ab. 936. 2. By grant. 3 Lev. 305; 1 Ld. Raym. 75; 17 Mass. 416; Crabb on R. P. §366. 3. By reservation 4. By custom. 5. By acts of the legislature. 6. From necessity, when a man's ground is enclosed and completely blocked up, so that he cannot, without passing over his neighbor's land, reach the public road. For example, should A grant a piece of land to B, surrounded by land belonging to A; a right of way over A's land passes of necessity to B, otherwise he could not derive any benefit from the acquisition. Vide 3 Rawle, 495; 2 Fairf. R. 1,56; 2 Mass. 203; 2 McCord, 448; 3 McCord, 139; 2 Pick. 577; 14

Mass. 56; 2 Hill, S. C. R. 641; and Necessity. The way is to be taken where it will be least injurious to the owner. 4 Kent, Com. 338. 4. Lord Coke, adopting the civil law, says there are three kinds of ways. 1. A foot-way, called iter. 2. A foot-way and horse-way, called adus. 3. A cart-way, which contains the other two, called via. Co. Lit. 56, a; Pothier, Pandectae, lib. 8, t. 3, §1; Dig. 8, 3; 1 Bro. Civ. Law, 177. Vide Yelv. 142, n; Id. 164; Woodf. Landl. & Ten. 544; 4 Kent, Com. 337; Ayl. Pand. 307; Cruise's Dig. tit. 24; 1 Taunt. R. 279; R. & M. 151; 1 Bail. R. 58; 2 Hill. Abr. c. 6; Crabb on Real Prop. §360 to 397; Bouv. Inst. Index, h. t.; Easement; Servitude.

WAY BILL, contracts. A writing in which is set down the names of passengers, who are carried in a public conveyance, or the description of goods sent with a common carrier by land; when the goods are carried by water, the instrument is called a bill of lading. (q. v.)

WAY GOING CROP. In Pennsylvania, by the custom of the, country, a tenant for a term certain is entitled after the expiration of his Iease, to enter and take away the crop of grain which he had put into the ground the preceding fall. This is called the way going crop. 5 Binn. R. 289; 2 S. & R. 14; 1 P. R. 224.

WAYS AND MEANS. In legislative assemblies there is usually appointed a committee whose duties are to inquire into, and propose to the house, the ways and means to be adopted to raise funds for the use of the government. This body is called the committee of ways and means.

WEAR. A great dam made across a river, accommodated for the taking of fish, or to convey a stream to a mill. Jacob's Law Dict. h. t. Vide Dam.

WED. A covenant or agreement; whence a wedded husband.

WEEK. Seven days of time.

2. The week commences immediately after twelve o'clock, on the night between Saturday and Sunday, and ends at twelve o'clock, seven days of twenty-four hours each thereafter.

3. The first day of the week is called Sunday; (q. v.) the second, Monday; the third, Tuesday; the, fourth, Wednesday; the fifth, Thursday; the sixth, Friday; and the seventh, Saturday. Vide 4 Pet. S. C. Rep. 361.

WEIGHAGE, mer. law. In the English law it is a duty or toll paid for weighing merchandise; it is called tronage, (q. v.) for weighing wool at the king's beam, or pesage, for weighing other avoirdupois goods. 2 Chit. Com: Law, 16.

WEIGHT. A quality in natural bodies, by which they tend towards the centre of the earth.

2. Under the article Measure, (q. v.) it is said that by the constitution congress possesses the power "to fix the standard of weights and measures," and that this power has not been exercised.

3. The weights now generally used in the United States, are the same as those of England; they are of two kinds:

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1. AVOIRDUPOIS WEIGHT.
1st. Used in almost all commercial transactions,
and in the comwon dealings of life.
27 1/3 1/2 grains          = 1 dram
16 drams                   = 1 ounce
16 ounces                  = 1 pound, (lb.)
28 pounds                  = 1 quarter, (qr.)
4 quarters                 = 1 hundred weight, (cwt.)
20 hundred weight          = 1 ton.
    2d. Used for meat and fish.
8 pounds                  = 1 stone
    3d. Used in the wool trade.
    Cwt. qr. lb.
7 pounds                = 1 clove
14 pounds               = 1 stone     = 0 0 14
2 stones                = 1 tod       = 0 1 0
6 1/2 tods              = 1 wey       = 1 2 14
2 weys                  = 1 sack      = 3 1 0
12 sacks                = 1 last      = 39 0 0
    4th. Used for butter and cheese.
8 pounds                = 1 clove
56 pounds               = 1 firkin.
        2. TROY WEIGHT.
24 grams               = 1 pennyweight
20 pennyweights        = 1 ounce
12 ounces              = 1 pound.
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4. These are the denominations of troy weight, when used for weighing gold, silver and precious stones, except diamonds. Troy weight is also used by apo-thecaries in compounding medicines; and by them the ounce is divided into eight drams, and the drain into three scruples, so that the latter is equal to twenty grains. For scientific purposes, the grain only is used, and sets of weights are constructed in decimal progression, from 10,000 grains downward to one-hundredth of a grain. The caret, used for weighing diamonds, is three and one-sixth grains.

5. A short account of the French weights and measures is given under the article Measure.

WEIGHT OF EVIDENCE. This phrase is used to signify that the proof on one side, of a cause is greater than on the other.

2. When a verdict has been rendered against the weight of the evidence, the court may, on this ground, grant a new trial, but the court will exercise this power not merely with a cautious, but a strict and sure judgment, before they send the case to a second jury.

3. The general rule under such circumstances is, that the verdict once found shall stand: the setting aside is the exception, and ought to be an exception, of rare and almost singular occurrence. A new trial will be granted on this ground for either party; the evidence, however, is not to be weighed in golden scales. 2 Hodg. R. 125; S. C. 3 Bingh. N. C. 109; Gilp. 356; 4 Yeates, 437; 3 Greenl. 276; 8 Pick. 122; 5 Wend. 595; 7 Wend. 380; 2 Vir. Cas. 235.

WELCH MORTGAGE, Eng. law, contracts. A species of security which partakes of the nature of a mortgage, as there is a debt due, and an estate is given as a security for the repayment, but differs from it in the circumstances that the rents and profits are to be received without account till the principal money is paid off, and there is no remedy to enforce payment, while the mortgagor has a perpetual power of redemption.

2. It is a species of vivum vadium. Strictly, however, there is this distinction between a Welch mortgage and a vivum vadium. In the latter the rents and profits of the estate are applied to the discharge of the principal, after paying the interest; while in the former the rents and profits are received in satisfaction of his interest only. 1 Pow. Mortg. 373, a.

WELL. A hole dug in the earth in order to obtain water.

2. The owner of the estate has a right to dig in his own ground, at such a distance as is permitted by law, from his neighbor's land; he is not restric-ted as to the size or depth, and is not liable to any action for rendering the well of his neighbor useless by so doing. Lois des Bat. part. 1, c. 3, sect. 2, art. 2, §2.

WELL KNOWING. These words are used in a declaration when the plaintiff sues for an injury which is not immediate and with force, and the act or nonfea-sance complained of was not prima facie actionable, not only the injury, but the circumstances under which it was committed, ought to be stated, as where the injury was done by an animal. In such case, the plaintiff after stating the injury, continues, the defendant well knowing the mischievous propensity of his dog, permitted him to go at large. Vide Scienter.

WERE. The name of a fine among the Saxons imposed upon a murderer.

2. The life of every man, not excepting that of the king himself, was esti-mated at a certain price, which was called the were, or vestimatio capitis. The amount varied according to the dignity of the person murdered. The price of wounds was also varied according to the nature of the wound, or the member injured.

WERGILD, or WEREGILD, old Eng. law. The price which in a barbarous age, a person guilty of homicide or other enormous offence was required to pay, instead of receiving other punishment. 4 Bl. Com. 188. See, for the etymology of this word, and a tariff which was paid for the murder of the different classes of men, Guizot, Essais sur l'Histoire de France, Essai 4eme, c. 2, §2.

WETHER. A castrated ram, at least one year old in ark indictment it may be called a sheep. 4 Car. & Payne, 216; 19 Eng. Com. Law Rep. 351.

WHALER, mar. law. A vessel employed in the whale fishery.

2. It is usual for the owner of the vessel, the captain and crew, to divide the profits in just proportions, under an agreement similar to the contract Di Colonna. (q. v.)

WHARF. A space of ground artificially prepared for the reception of merchan-dise from a ship or vessel, so as to promote the convenient loading and discharge of such vessel.

WHARFAGE. The money paid for landing goods upon, or loading them from a wharf. Dane's Ab. Index, h. t.

WHARFINGER. One who owns or keeps a wharf, for the purpose of receiving and shipping merchandise to or from it, for hire.

2. Like a warehouseman, (q.v.) a wharfinger is responsible for ordinary neglect, and is therefore required to take ordinary, care of goods entrusted to him as such. The responsibility of a wharfinger begins when he acquires, and ends when he ceases to have the custody of the goods in that capacity.

3. When he begins and ceases to have such custody depends generally upon the usages of trade and of the business. When goods are delivered at a wharf, and the wharfinger has agreed, expressly or by implication, to take the custody of them, his responsibility commences; but a mere delivery at the wharf, without such assent, does not make him liable. 3 Campb. R. 414; 4 Campb. R. 72; 6 Cowen, R. 757. When goods are in the wharfinger's possession to be sent on board of a vessel for a voyage,

as soon as he delivers the possession and the care of them to the proper officers of the vessel, although they are not actually removed, he is, by the usages of trade, deemed exonerated from any further responsibility. 5 Esp. R. 41; Story, Bailm. §453 Abbott on Shipp. 226; Molloy, B. 2. 2, s. 2; Roccus, Not. 88; Dig. 9, 4, 3.

WHEEL. The punishment of the wheel was formerly to put a criminal on a wheel, and then to break his bones until he expired. This barbarous punishment was never used in the United States, and it has been abolished in almost every civilized country.

WHELPS. The young of certain animals of a base nature, or ferae naturae.

2. It is a rule that when no larceny can be committed of any creatures of a base nature, which are ferae naturae, though tame and reclaimed, it cannot be committed of the young of such creatures in the nest, kennel, or den. 3 Inst. 109; 1 Russ. on Cr. 153.

3. The owner of the land is, however, considered to have a qualified property in such animals, ratione impotentia. 2 Bl. Com. 394.

WHEN. At which time, in wills, standing by itself unqualified and unexplained, this is a word of condition denoting the time at which the gift is to continence. 6 Ves. 243; 2 Meriv. 286.

2. The context of a will may show that the word when is to be applied to the possession only, not to the vesting of a legacy; but to justify this construction, there must be circumstances, or other expressions in the will, showing such to have been the testator's intent. 7 Ves. 422; 9 Ves. 230 Coop. 145; 11 Ves. 489; 3; Bro. C. C. 471. For the effect of the word when in contracts and in wills in the French law, see 6 Toull. n. 520.

WHEN AND WHERE. These words are used in a plea when full defence is made the form is, "when and were it shall behove him." This acknowledges the jurisdiction of the court. 1 Chit. Pl. *414.

WHEREAS. This word implies a recital, and in general cannot be used in the direct and positive averment of a fact in a declaration or plea. Those facts which are directly denied by the terms of the general issue, or which may, by the established usage of pleading, be specially traversed, must be averred in positive and direct terms; but facts, however material, which are not directly denied by the terms of the general issue, though liable to be contested under it, and which, according to the usage of pleading, cannot be specially tra-versed, may be alleged in the declaration by way of recital, under a whereas. Gould, Pl. c. 43, §42; Bac. Ab. Pleas, &c., B. 5, 4; 2 Chit. Pl. 151, 178, 191; Gould, Pl. c. 3, §47.

WHIPPING, punishment. The infliction of stripes.

2. This mode of punishment, which is still practiced in some of the states, is a relict of barbarism; it has yielded in most of the middle and northern states to the penitentiary system.

3. The punishment of whipping, so far as the same was provided by the laws of the United States, was abolished by the act of congress of February 28, 1839, s. 5. Vide 1 Chit. Cr. Law, 796; Dane's Ab. Index, h. t.

WHITE PERSONS. The acts of congress which authorize the naturalization of aliens, confine the description of such aliens to free white persons.

2. This of course excludes the African race when pure, but it is not easy to say what shade of color or mixture of blood will make a white person.

3. The constitution of Pennsylvania, as amended, confines the right of citi-zenship to free white persons; and these words, white persons, or similar words, are used in most of the constitutions of the southern states, in describing the electors.

WHITE RENT, English law. Rents paid in silver, and called white rents or redditus albi, to distinguish them from other rents which were not paid in money. 12 Inst. 19. Vide Alba firma.

WHOLE BLOOD. Being related by both the father and mother's side; this phrase is used in contradistinction to half, blood, (q. v.) which is relation only on one side. See Blood.

WHOLESALE. To sell by wholesale, is to sell by large parcels, generally in original packages, and not by retail. (q. v.)

WIDOW. An unmarried woman whose husband is dead.

2. In legal writings, widow is an addition given to a woman who is unmarried and whose husband is dead. The addition of spinster is given to a woman who never was married. Lovel. on Wills, 269. See Addition. As to the rights of a widow, seq Dower.

WIDOW'S CHAMBER, Eng. law. In London the apparel of a widow and the furniture of her chamber, left by her deceased husband, is so called, and the widow is **entitled to it. 2 Bl. Com. 518.**

WIDOWHOOD. The state of a man whose wife is dead or of a woman whose husband is dead. In general there is no law to regulate the time during whichh a man must remain a widower, or a woman a widow, before they marry a second time. The term widowhood is mostly applied to the state or condition of a widow.

WIDOWER. A man whose wife is dead. A widower has a right to administer to his wife's separate estate, and as her administrator to collect debts due to her, generally for his own use.

WIFE, domestic relations. A woman who has a husband.

2. A wife, as such, possesses rights and is liable to obligations. These will be considered. 1st. She may make contracts for the purchase of real estate for her own benefit, unless her husband expressly dissents. 6 Binn. R. 427. And she is entitled to a legacy directly given to her for her separate use. 6 Serg. & Rawle, R. 467. In some places, by statutory provision, she may act as a feme sole trader, and as such acquire personal property. 2 Serg. & Rawle, R. 289.

3. 2d. She may in Pennsylvania, and in most other states, convey her interest in her own or her husband's lands by deed acknowledged in a form prescribed by law. 8 Dowl. R. 630.

4. - 3d. She is under obligation to love, honor and obey her husband and is bound to follow him wherever he may desire to establish himself: 5 N. S. 60; (it is presumed not out of the boundaries of the United States,) unless the husband, by acts of injustice and such as are contrary to his marital duties, renders her life or happiness insecure.

5. - 4th. She is not liable for any obligations she enters into to pay money on any contract she makes, while she lives with her husband; she is presumed in such case to act as the agent of her husband. Chitty, Contr. 43

6. - 5th. The incapacities of femes covert, apply to their civil rights, and are intended for their protection and interest. Their political rights stand upon different grounds, they can, therefore, acquire and lose a national char-acter. These rights stand upon the general principles of the law of nations. Harp. Eq. R. 5 3 Pet. R. 242.

7. - 6th. A wife, like all other persons, when she acts with freedom, may be punished for her criminal acts. But the law presumes, when she commits in his presence a crime, not malum in se, as murder or treason, that she acts by the command and coercion of her husband, and, upon this ground, she is exempted from punishment. Rose. on Cr. Ev. 785. But this is only a presumption of law, and if it appears, upon the evidence, that she did not in fact commit the act under compulsion, but was herself a

principal actor and inciter in it, she may be punished. 1 Hale, P. C. 516; 1 Russ. on Cr. 16, 20. Vide Contract; Divorce; Husband; Incapacity; Marriage; Necessaries; Parties to actions; Parties to contracts; Women and, generally, Bouv. Inst. Index,

WIFE'S EQUITY. By this phrase is understood the equitable right of a wife to have settled upon her and her children a suitable provision out of her estate whenever the husband cannot obtain it, without the aid of a court of equity. Shelf. on M. and D., 605.

2. By the marriage the husband acquires an interest in the property of his wife in consideration of the obligation which he contracts by the marriage, of maintaining her and their children. The common law enforces this duty thus voluntarily assumed by him, and he can alien the property to which he is thus entitled jure mariti, or in case of his bankruptcy or insolvency it would vest in his assignee for the benefit of his creditors, and the wife would be left with her children, entirely destitute, notwithstanding her fortune may have been great. To remedy this evil, courts of equity, in certain cases, give a provision to the wife, which is called the wife's equity.

3. The principle upon which courts of equity act is, that he who seeks the aid of equity must do equity, and that will be withheld until an adequate settlement has been made. 1 P. Wms. 459, 460. See 5 My. & Cr. 105; 11 Sim. 569; 4 Hare, 6.

4. It will be proper to consider, 1. Out of what property the wife has a right to claim her equity to a settlement. 2. Against whom she may make such a claim. 3. Her rights. 4. The rights of her children. 5. When her rights to a settlement will be barred.

5. - 1. Where the property is equitable and not recoverable at law, it cannot be obtained without making a settlement upon a wife and children, if one be required by her 2 P. Wins. 639; and where, though the property be legal in its nature, it becomes, from collateral circumstances, the subject of a suit in equity, the wife's right to a settlement will attach. 5 My. & Cr. 97. See 2 Ves. jun., 607, 680; 4 Bro. C. C, 338; 3 Ves. 166, 421; 9 Ves. 87; 5 Madd. R. 149; 5 Ves. 517; 13 Maine, 124 10 Ala. R. 401; 9 Watts, 90; 5 John. Ch. R. 464; 3 Cowen, 591; 6 Paige, 366; 2 Bland. 545; 2 Paige, 303.

6. - 2. The wife's equity to a settlement is binding not only upon the husband, but upon his assignee under the bankrupt or insolvent laws. 2 Atk. 420; 3 Ves. 607; 4 Bro. C. C. 138; 6 John. Ch. R. 25; 1 Paige, 620; 4 Metc. 486; 4 Gill & John. 283; 5 Monr. 338; 10 Ala. R. 401 1 Kelly, 637. And even where the husband assigned the wife's equitable right for a valuable consideration, the assignee was considered liable. 4 Ves. 19.

7. - 3. As to the amount of the rights of the wife, the general rule is that one half of the wife's property shall be settled upon her. 2 Atk. 423; 3 Ves. 166. But it is in the discretion of the court to give her, an adequate settlement for herself and children. 5 John. Ch. R. 464; 6 John. Ch. R. 25; 3 Cowen, 591; 1 Desaus. 263: 2 Bland. 545; 1 Cox, R. 153; 5 B. Monr. 31; 3 Kelly, 193; 1 D, & W. 407; 9 Sim, 597; 1 S. & S. 250.

8. - 4. Whenever the wife insists upon her equity, the right will be exten-ded to her children, but the right is strictly personal to the wife, and her children cannot insist upon it after her death. 2 Eden, 337; 1 J. & W. 472; 1 Madd. R. 467; 11 Bligh, N. S. 104; 2 John. Ch. R. 206; 3 Cowen, 591; 10 Ala. R. 401; 1 Sanf. 129.

9. - 5. The wife's equity will be barred, first, by an adequate settlement having been made upon her; 2 Ves. 675; when she lives in adultery apart from her husband 4 Ves. 146; but a female ward of court, married without its consent, will not be barred, although she should be living in adultery. 1 V. & B. 302.

WILD ANIMALS. Animals in a state of nature; animals ferae naturae. Vide Animals; Ferae naturae.

WILFULLY, intentionally.

2. In charging certain offences it is required that they should be stated to be wilfully done. Arch. Cr. Pl. 51, 58; Leach's Cr. L. 556.

3. In Pennsylvania it has been decided that the word maliciously was an equivalent for the word wilfully, in an indictment for arson. 5 Whart. R. 427.

WILL, criminal law. The power of the mind which directs the actions of a man.

2. In criminal law it is necessary that there should be an act of the will to commit a crime, for unless the act is wilful it is no offence.

3. It is the consent of the will which renders human actions commendable or culpable, and where there is no win there can be no transgression.

4. The defect or want of will may be classed as follows: 1. Natural, as that of infancy. 2. Accidental; namely, 1st. Dementia. 2d. Casualty or chance. 3d. Ignorance. (q. v.) 3. Civil; namely, 1st. Civil subjection. 2d. Compulsion. 3d. Necessity. 4th. Well-grounded fear. Hale's P. C. c. 2 Hawk. P. C. book 1, c. 1.

WILL or TESTAMENT. The legal declaration of a man's intentions of what he wills to be performed after his death. Co. Litt. 111; Swinb. Pt. 1, s. II. 1; Shep. Touch. 398; Bac. Abr. Wills, A.

2. The terms will and testament are synonymous, and they are used indifferently by common lawyers, or one for the other. Swinb. p. 1, s. 1. 5; Bac. Ab. Wills. A. Civilians use the term testament only. See Testament.

3. There are five essential requisites to make a good will.

4. - 1. The testator must be legally capable of making a will. Generally all persons who may make valid contracts can dispose of their property by will. See Parties to contracts. This act requires a power of the mind freely to dispose of property. Infants, because of their tender age, and married women, on account of the supposed influence and control of their husbands, have no capacity to make a will, with these exceptions, that infants at common law may dispose of their personal estate, the males when over fourteen years of age, and the females when over twelve; this rule in relation to infants is not uniform in the United States. Swinb. p. 2, s. 2; Bac. Ab. Wills, B. Persons devoid of understanding, as idiots and lunatics, cannot make a will.

5. - 2. The testator at the time of making his will must have animum test-andi, or a serious intention to make such will. If a man therefore jestingly or boastingly and not seriously, writes or says that such a person shall have his goods or be his executor, this is no will. Bac. Ab. Wills, C; Com. Dig. Estates by Devise, D 1. See 4 Serg. & Rawle, 545; 2 Yeates, 324; 5 Binn. 490; 1 Des. R. 543.

6. - 3. The mind of the testator in making his will must be free, and not moved by fear, fraud or flattery. In such cases the will is void or at least voidable. Bac. Ab. Wills, C; see 3 Serg. & Rawle, 269. Vide influence.

7. - 4. There must be a person to take, capable of taking; for to render a devise or bequest valid there must be a donee in esse, or in rerum natura, and one that shall have capacity to take the thing given, when it is to vest, or the gift shall be void. Plowd. 345. See Legatee.

8. - 5. The will must be put in proper form., Wills are either written or nuncupative.

9. - 1. A will in writing must be, 1. Written on paper or parchment; it may be in any language, and in any character, provided it can be read or understood. 2. It must be signed by the testator or some person authorized by him; but a sealing has been held to be a sufficient signing. 2 Str. 764. But see 3 Lev. R. 1; 1 Const. R. 343; 18 Ves. R. 183; 2 Ball & B. 104 5 Mood. R. 484, and article To sign. And it ought to be signed

by the attesting witnesses. In some states three witnesses are required, who should sign the will as such at the request and in the presence of the testator and of each other. This formality should generally be pursued, as the testator may have lands in such states which would not pass without it. See, as to the attestation of wills, Bac. Ab. Wills, D; Rob. on Wills, c. 1, part 15. 3. It must be published, that is, the testator must do some act from which it can be concluded that he intended the instrument to operate as his will. 6 Cruise, 79; 4 Burn's Eccl. Law, 119. As to the republication of wills, see Bac. Abr. Wills, D 3; and article Publication. 4. To make a good will of goods and chattels there must be an executor named in it, otherwise it will be a codocil only, and the party is said to die intestate; in such a case administration must be granted. Bac. Abr. Wills, D 2.

10. - 2. A nuncupative will or testament, is a verbal declaration by a tes-tator of his will before a competent number of legal witnesses.

11. Before the statute of frauds they were very common, but by that statute, 29 C. H. c. 3, which has been substantially adopted in a number of the states, these wills were laid under many restrictions. Vide Dane's Ab. chap. 127, a. 2; 3 Harr. & John. 208; 6 Munf. R. 123; 1 Munf. R. 456; 4 Hen. & Munf. 91-100.

12. In New York nuncupative wills have been abolished, except made by a soldier while in actual military service, or by a mariner while at sea. 2 New York Revised Statutes, 60, sec. 22. As to nuncupative wills in Louisiana, see Testament nuncupative; and Civil Code of Louisiana, article 1574.

13. It is a rule that the last will revokes all former wills. It follows then that a man cannot by any testamentary act impose upon himself the inability of making another inconsistent with and revoking the first will. Bac. Ab. Wills, E; Swinb. pt. 7, s. 14.

14. A will voluntarily and intentionally made by a competent testator, according to the form required by law, may be avoided, 1st. By revocation, see Revocation; Bac. Abr. Wills, G 1; Vin. Abr. Devise, P; 1 Rolle, Ab. 615; Com. Dig. Estates by Dev. F; and, 2d. By fraud.

15. Among the civilians they have two other kinds of wills, namely: the mystic, which is a will enveloped in a paper and sealed, and the witnesses attest that fact, the other is the olographic; which is wholly written by the testator himself. See Testament. As to wills and testaments, see Swinburne on Wills; Roberts on Wills; Lovelass on Wills; Roper on Legacies; Lowndes on Legacies; Will. on Ex. pt. 1; Vin. Abr. Devise; Rolle's Abr. Devise; Bac. Abr. Wills and Testaments; Com. Dig. Estates by Devise; Nels. Abr. h. t.; Amer. Dig. Wills; Whart. Dig. Wills; Toll. on Executors; Off. Ex.;

Orph. Legacy; Touchst, ch. 23 Civil Code of Louisiana, B. 3, tit. 2; Bouv. Inst. Index, h. t.; and the articles Devise; Legacy; Testament.

WINCHESTER MEASURE. The standard measure originally kept at Winchester, in England.

WINDOW. An opening made in the wall of a house to admit light and air, and to enable those who are in to look out.

2. The owner has a right to make as many windows in his house when not built on the line of his property as he may deem proper, although by so doing be may destroy the privacy of his neighbors. Bac. Ab. Actions in general, B.

3. In cities and towns it is evident that the owner of a house cannot open windows in the partition wall without the consent of the owner of the adjoining property, unless he possesses the right of having ancient lights. (q. v.) The opening of such windows and destroying the privacy of the adjoining property, is not, however, actionable; the remedy against such encroachment is by obstructing them, without encroaching upon the rights of the party who opened them, so as to prevent a right from being acquired by twenty years use. 3 Camp. 82.

WISCONSIN. The name of one of the new states of the United States, of America.

2. The constitution of Wisconsin was adopted by a convention, at Madison, on the first day of February, 1848.

3. The right of suffrage is vested by the third article of the constitution, as follows: Sect. 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in this state for one year next preceding any election, shall be deemed a qual-ified elector at such election. 1st. White citizens of the United States. 2d. White persons of foreign birth who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization. 3d. Persons of Indian blood who have once been declared by law of congress to be citizens of the United States, any subsequent act of congress to the contrary notwithstanding.

4th. Civilized persons of Indian descent, not members of any tribe; Provided, that the legislature may at any time extend by law the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election.

Sect. 2. No person under guardianship, non compos mentis, or insane shall be qualified to vote at any election; nor shall any person, convicted of treason or felony, be qualified to vote at any election, unless restored to civil rights.

Sect. 3. All votes shall be given by ballot, except for such township officers as may by law be directed or allowed to be otherwise chosen.

Sect. 4. No person shall be deemed to have lost his residence in this state by reason of absence on business of the United States or of this state.

Sect. 5. No soldier, seaman or marine, in the army or navy of the United States, shall be deemed a resident in this state, in consequence of being stationed within the same.

Sect. 6. Laws may be passed excluding from the right of suffrage all persons who have been, or may be convicted of bribery, or larceny, or any infamous crime, and depriving every person who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, of the right to vote at such election. 4, The fourth article vests the legislative power in a senate and assembly. These will be separately considered, by taking a view, 1. Of the senate. 2. Of the assembly.

5. - §1. The senate. It will be proper to examine, first, the qualification of the senators; secondly, the time of their election; third, the duration of their office fourth, the number of senators.

6. - 1. The senators must have resided one year within the state, and be qualified electors in the district which they may be chosen to represent. Sect. 6.

7. - 2. Senators are elected on the Tuesday following the first Monday of November by the qualified electors of the several districts. One half every year.

8. - 3. They hold their office for two years.

9. - 4. The senate shall consist of a number of members not more than one-third, nor less than one-fourth of the number of the members of the assembly. Sect. 2.

10. - §2. The assembly will be, considered in the same order.

11. - 1. Members of the assembly must have resided one year in the state, and be qualified electors for the district for which they may be chosen.

12. - 2. Members of the assembly are elected at the same time senators are elected.

13. - 3. They are elected annually.

14. - 4. The number of members of the assembly shall never be less than fifty-four nor more than one hundred.

15. The two houses are invested severally with the following powers:

Sect. 7. Each house shall be the judge of the elections, returns and quali-fications of its own members; and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Sect. 8. Each house may determine the rules of its own proceedings, punish for contempts and disorderly behaviour; and, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

Sect. 9. Each house shall choose its own officers, and the senate shall choose a temporary president when the lieutenant-governor shall not attend as president, or shall act as governor.

Sect. 10. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than three days.

16. By the fifth article, the executive power is vested in a governor.

17. - Sect. 1. The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be elected at the same time, and for the same term.

18. - Sect. 2. No person, except a citizen of the United States, and a qua-lified elector of the state, shall be eligible to the office of governor or lieutenant governor.

19. - Sect. 3. The governor and lieutenant governor shall be elected by the qualified electors of the state, at the times and places of choosing members of the legislature. The persons respectively having the highest, number of votes for governor and lieutenant-governor shall be elected, but in case two or more shall have an equal and the highest number of votes for governor or lieutenant-governor, the two houses of the legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the persons so having an equal and the higbest number of votes, for governor or lieutenant

governor. The returns of election for governor or lieutenant governor shall be made in such manner as shall be provided by law.

20. - Sect. 4. The governor shall be commander-in-chief of the military. and naval forces of the state. He shall have power to convene the legislature on extra-ordinary occasions; and in case of invasion, or danger from the preva-lence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature at every session, the condition of the state; and recommend such matters to them for their consideration as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

21. - Sect. 5. The governor shall receive during his continuance in office an annual compensation of one thousand two hundred and fifty dollars.

22. - Sect. 6. The governor shall have the power to grant reprieves, commutations and pardons after conviction for all offences, except treason, and cases of impeachment, upon such conditions and with such restrictions and lim-itations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have the power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or re-prieve, with his reasons for granting the same.

23. - Sect. 7. In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation or absence from the state, the powers and the duties of the office shall devolve upon the lieutenant-governor for the residue of the term, until the governor, absent or impeached, shall have returned, or the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of the military force thereof, he shall continue commander-in-chief of the military force of the state.

24. - Sect. 8. The lieutenant-governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease, become incapable of performing the duties of his office, or be absent

from the state the secretary of state shall act as governor until the vacancy shall be filled, or the disability shall cease.

25. - Sect. 9. The lieutenant governor shall receive double the per them allowance of members of the senate, for every day's attendance as president of the senate, and the same mileage as shall be allowed to members of the legislature.

26. - Sect. 10. Every bill which shall have passed the legislature, shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it, but if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections It large upon the journal, and proceed to reconsider it. If after such reconsideration, two-thirds. of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by, yeas and nays, and the names of the members, voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall by their adjournment prevent its return, in which case it shall not be a Iaw.

27. The seventh article establishes the judiciary as follows:

Sect. 1. The court for the trial of impeachments shall be composed of the senate. The house of representatives shall have the power of impeaching all civil officers of this state, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached until his acquittal. Before the trial of an impeachment, the members, of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence; and no person shall be convicted without a concurrence of two-thirds of the members present. Judgment in case of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the state; but the party impeached shall be liable to indictment, trial and punishment according to law.

28. - Sect. 2. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts and shall have power to establish inferior courts in the several counties with limited civil and criminal jurisdiction: Provided, that the

jurisdiction which may be vested in municipal courts shall not exceed, in their respective municipalities, that of circuit courts, in their respective circuits, as prescribed in this constitution: And that the legislature shall provide as well for the election of judges of the municipal courts, as of the judges of inferior courts, by the qualified electors of the respective jurisdictions. The term of office of the judges of the said municipal and inferior courts shall not be longer than that of the judges of the circuit court.

29. - Sect, 3. The supreme court, except in cases otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state; but in no case removed to the supreme court shall a trial by jury be allowed. The supreme court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto certiorari, and other original and remedial writs, and to hear and determine the same.

30. - Sect. 4. For the term of five years and thereafter until the legislature shall otherwise provide, the judges of the several courts shall be judges of the supreme court, four of whom shall constitute a quorum, and the concurrence of a majority of the judges present shall be necessary to a decision. The legislature shall have power, if they should think it expedient and necessary to provide by law for the organization of a separate supreme court, with the jurisdiction and powers prescribed in this constitution, to consist of one chief justice and two associate justices, to be elected by the qualified electors of the state, at such time and in such manner as the legislature may provide. The separate supreme court, when so organized, shall not be changed or discontinued by the legislature; the judges thereof shall be so classified that but one of them shall go out of office at the same time, and the term of office shall be the same as provided for the judges of the circuit court. And whenever the legislature may consider it necessary to establish a separate supreme court, they shall have power to reduce the number of circuit court judges to four, and subdivide the judicial circuits, but no such subdivision or reduction shall take effect till after the expiration of the term of some one of the said judges, or till a vacancy occur by some other means.

31. Circuits are established, and they may be changed by the legislature.

Sec. 7. For each circuit there shall be a judge chosen by the qualified electors therein, who shall hold his office as is provided in this constitution until his successor shall be chosen and qualified, and after he shall have been elected, he shall reside in the circuit for which he was elected. One of said judges shall be designated as chief justice, in such manner as the legislature shall provide. And the legislature shall, at its first session, provide by law as well for the election of, as for classifying, the judges of the circuit court to be elected under this constitution, in such manner, that one of the said

judges shall go out of office in two years, one in three years, one in four years, one in five years and one in six years, and thereafter the judge elected to fill the office, shall bold the same for six years.

32. - 8. The circuit courts shall have original jurisdiction in all matters civil and criminal within this state, not excepted in this constitution, and not hereafter prohibited by law, and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control over the same. They shall also have the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their orders, judgments and decrees, and give them a general control over inferior courts and jurisdictions.

33. - Sect. 9. When a vacancy shall happen in the office of a judge of the supreme or circuit court, such vacancy shall be filled by an appointment of the governor, which shall continue until a successor is elected and qualified; and when elected, such successor shall hold his office the residue of the unexpired term. There shall be no election for a judge or judges at any general election for state or county officers, nor within thirty days either before or after such election.

34. - Sect. 10. Each of the judges of the supreme and circuit courts shall receive a salary, payable quarterly, of not less than one thousand five hundred dollars annually; they shall receive no fees of office or other compensation than their salaries; they shall hold no office of public trust, except a judicial office, during the term for which they are respectively elected, and all votes for either of them for any office except a judicial office, given by the legislature or the people, shall be void. No person shall be eligible to the office of judge who shall not at the time of his election be a citizen of the United States, and have attained the age of twenty-five years, and be a qualified elector within the jurisdiction for which he may be chosen.

35. - Sect. 11. The supreme court shall hold at least one term annually at the seat of government of the state at such times as shall be provided by law, and the legislature may provide for holding other terms, and at other places when they may deem it necessary. A circuit court shall be held at least twice a year, in each county of this state, organized for judicial purposes. The judges of the circuit court may hold courts for each other, and shall do so when required by law.

WISTA. Among the Saxons, this was a measure of land; it contained a half hide, or sixty acres.

TO WIT. To know, that is to say, namely. See Scilicet.

WITH STRONG HAND, pleading. This is a technical phrase indispensable in describing a forcible entry in an indictment. No other word or circumlocution will answer the same purpose. 8 T. R. 357.

WITHDRAWING A JUROR, practice. An agreement made between the parties in a suit to require one of the twelve juror's impanneled to try a cause to leave the jury box; the act of leaving the box by such a juror is also called the withdrawing a juror.

2. This arrangement usually takes place at the recommendation of the judge, when it is obviously improper the case should proceed any further.

3. The effect of withdrawing a juror puts an end to that particular trial, and each party must pay his own costs. 3 T. R. 657; 2 Dowl. R. 721; S. C. 1 Crom. M. & R. 64.

4. But the plaintiff may bring a new suit for the same cause of an action. R. & M. 402; S. C. 21 E. C. L. R. 472; 3 Barn. & Adolph. 349; S. C. 23 E. C. L. R. 91. See 3 Chit. Pr. 916.

WITHERNAM, practice. The name of a writ which issues on the return of elon-gata to an alias or pluries writ of replevin, by which the sheriff is commanded to take the defendant's own goods which may be found in his bailiwick, and keep them safely, not to deliver them to the plaintiff until such time as the defendant chooses to submit himself, and allow the distress, and the whole of it, to be reprevied, and he is thereby further commanded that he do return to the court in what manner he shall have executed the writ. Hamm. N. P. 453; 2 Inst. 140; F. N. B. 68, 69; 19 Vin. Ab. 7; 7 Com. Dig. 674; Grotius, 3, 2, 4, n. 1.

WITHOUT, pleading. This word is adopted in formal traverses, and is a negative signifying "and not for;" accordingly the language of the elder entries sometimes is, It et nemy pur tiel cause," &c. Hamm. N. P. 120.

WITHOUT DAY. This signifies that the cause or thing to which it relates is indefinitely adjourned; as when a case is adjourned without day, it is not again to be inquired into; when the legislature adjourn without day they are not to meet again. This is usually expressed in Latin, sine die.

WITHOUT IMPEACHMENT OF WASTE. When a tenant for life holds the land without impeachment of waste, he is of course dispunishable for waste whether wilful or otherwise. But still this right must not be wantonly abused so as to destroy the estate, and he will be enjoined from committing malicious waste. Dane's Ab. c. 78, a. 14, §7; Bac. Ab. Waste, N; 2 Eq. Cas. Ab. tit. Waste, A. pl, 8; 2 Bouv. Inst. n. 2402. See Impeachment of Waste and Waste.

WITHOUT RECOURSE. Vide Sans Recours and Indorsement; Chit. on Bills, 179; 14 S. & R. 325; 3 Cranch, 193; 7 Cranch, 159; 1 Cowen, 538; 12 Mass. 172; 6 Shipl. R. 354.

WITHOUT RESERVE, contracts. These words are frequently used in conditions of sale at public auction, that the property offered, or to be offered for sale, will be sold without reserve.

2. When a property is advertised to be sold without reserve, if a puffer be employed to bid, and actually bid at the sale, the courts will not enforce a contract against a purchaser, into which he may have been drawn by the vendor's want of faith. 5 Madd. R. 34. Vide Puffer.

WITHOUT THIS, THAT, pleading. These are technical words used in a traverse, (q. v.) for the purpose of denying a material fact in the preceding pleadings, whether declaration, plea, replication, &c. In Latin it is called absque hoc. (q. v.) Lawes on Pl. in Civ. Act. 119; Com. Dig. Pleader, G 1; Summary of Pleading, 75; 1 Saund. 103, n.; Ld. Raym. 641; 1 Burr. 320; 1 Chit. Pl. 576, note a.

WITNESS. One who, being sworn or affirmed, according to law, deposes as to his knowledge of facts in issue between the parties in a cause.

2. In another sense by witness is understood one who is called upon to be present at a transaction, as a wedding, or the making of a will. When a person signs his name to an instrument, as a deed, a bond, and the like, to signify that the same was executed in his presence, he is called an attesting witness.

3. The testimony of witnesses can never have the effect of a demonstration, because it is not impossible, indeed it frequently happens, that they are mistaken, or wish themselves to deceive. There can, therefore, result no other certainty from their testimony than what arises from analogy. When in the calm of the passions, we listen only to the voice of reason and the impulse of nature we feel in ourselves a great repugnance to betray the truth, to the pre-judice of another, and we have observes that honest, intelligent and disinterested persons never combine to deceive others by a falsehood. We conclude then, by analogy, with a sort of moral certainty, that a fact attested by several witnesses, worthy of credit, is true. This proof derives its whole force from a double presumption. We presume, in the first place, on the good sense of the witnesses that they have not been mistaken; and, secondly, we presume on their probity that they wish not to deceive. To be certain that they have not been deceived, and that they do not wish to mislead, we must ascertain, as far as possible, the nature and the quality of the facts proved; the quality and the person of the witness; and the

testimony itself, by comparing it with the deposition of other witnesses, or with known facts. Vide Circumstances.

4. It is proper to consider, 1st. The character of the witness. 2d. The quality of the witness. 3d. The number of witnesses required by law.

5. - 1. When we are called upon to rely on the testimony of another in order to form a judgment as to certain facts, we must be certain, 1st. That he knows the facts in question, and that he is not mistaken; and, 2d. That he is disposed to tell the truth, and has no desire to impose on those who are to form a judgment on his testimony. The confidence therefore, which we give to the witness must be considered, in the first place, by his capacity or his organization, and in the next, by the interest or motive which he has to tell or not to tell the truth. When the facts to which the witness testifies agree with the circumstances which are known to exist, he becomes much more credible than when there is a contradiction in this respect. It is true that until impeached one witness is as good as another; but when a witness is impeached, although he remains competent, he is not as credible as before. Vide Circumstances; Competency; Credibility.

6. - 11. As to the quality of the witnesses, it is a general rule that all persons way be witnesses. To this there are various exceptions. A witness may be incompetent, 1. For want of understanding. 2. On account of interest. 3. Because his admission is contrary to public policy. 4. For want of religious principles; and, 5. On account of infamy.

7. - §1. Persons who want understanding, it is clear, cannot be witnesses, because they are to depose to facts which they know; and if they have no understanding, they cannot know the facts. There are two classes of persons of this kind.

8. - 1. Infants. A child of any age capable of distinguishing between good and evil may be examined as a witness; and in all cases, the examination must be under oath or affirmation. 1 Phil. Ev. 19; 1 Const. R. 354. This appears to be the rule in England; though formerly it was held by some judges that it was a presumption of law that the child was incompetent when he was under seven years of age. Gilb. Ev. 144; 1 East, R. 422; 1 East, P. C. 443; 1 Leach, 199. When the child is under fourteen, he is presumed incapable until capacity is shown; 2 Tenn. Rep. 80; 19 Mass. R. 225; and see 18 John. R. 105; when he is over fourteen he may be sworn without a previous examination. 2 South. R. 589.

9. - 2. Idiots and lunatics. An idiot cannot be examined as a witness, but a lunatic, (q. v.) during a lucid interval, (q. v.) may be examined. A person in a state of intoxication cannot be admitted as a witness. 15 Serg. & Rawle, 235. See Ray, Med. Jur. c. 22, §300 to 311.

10. - §2. Interest in the event of the suit excludes the witness from examination, unless under certain circumstances. See article Interest. The exceptions are the cases of informers, (q. v.) when the statute makes them witnes-ses, although they may be entitled to a penalty; 1 Phil. Ev. 96; persons enti-tled to a reward, (q. v.) are sometimes competent; agents are also admitted in order to prove a contract made by them on the part of the principal, 1 Phil. Ev. 99; and see 1 John. Cas. 408; 2 John. Cas. 60; 2 John. R. 189; 13 Mass. R. 380; 11 Mass. R. 60; 2 Marsh. In 706 b; 1 Dall. R. 7; 1 Caines' R. 167. A mere trustee may be examined by either party. 1 Clarke, R. 281. An interested witness competency may be restored by a release. 1 Phil. Ev. 101. Vide, generally, 1 Day's R. 266, 269; 1 Caines' R. 276; 8 John. R. 518; 4 Mass. R. 488; 3 John. Cas. 82, 269; 1 Hayw. 2; 5 Halst. R. 297; 6 Binn. R. 319; 4 Binn. 83; 1 Dana's R. 181; 1 Taylor's R. 55; Bac. Ab. Evidence B; Bouv. Inst. Index, h. t.

11. - §3. There are some persons who cannot be examined as witnesses, because it is inconsistent with public policy that they should testify against certain persons; these are,

12. - 1. Husband and wife. The reason for excluding them from giving evidence, either for or against each other, is founded partly on their identity of interest, partly on a principle of public policy which deems it necessary to guard the security and confidence of private life, even at the risk of an occasional failure of justice. They cannot be witnesses for each other because their interests are absolutely the same; they are not witnesses against each other, because it is against the policy of marriage. Co. Litt. 6, b; 2 T. R. 265, 269; 6 Binn. 488. This is the rule when either is a party to a civil suit or action.

13. But where one of them, not being a party, is interested in the result, there is a distinction between the giving evidence for and against the other. It is an invariable rule that neither of them is a witness for the other who is interested in the result, and that where the husband is disqualified by his interest, the wife is also incompetent. 1 Ld. Raym. 744; 2 Str. 1095; 1 P. Wms. 610.

14. On the other hand, where the interest of the husband, consisting in a civil liability, would not have protected him from examination, it seems that the wife must also answer, although the effect may be to subject her husband to an action. This case differs very materially from those where the husband himself could not have been examined, either because he was a party or because he would criminate himself. The party to whom the testimony of the wife is essential, has a legal interest in her evidence; and as he might insist on examining the husband, it would, it seems, be straining the rule of policy too far to deprive him of the benefit of the wife's testimony. In an action for goods sold and delivered, it has been held that the wife of a third person is competent to prove that the credit was given to her husband. 1 Str. 504;

B. N. P. 287. See 1 H. & M. 154; 11 Mass. 286; 1 Har. & J. 478; 1 Tayl. 9; 6 Binn. 488; 1 Yeates; 390, 534.

15. When neither of them is either a party to the suit, nor interested in the general result, the husband or wife is, it seems, competent to prove any fact, provided the evidence does not directly criminate, or tend to criminate, the other. 2 T. R. 263.

16. It has been held in Pennsylvania that the deposition of a wife on her death-bed, charging her husband with murdering her, was good evidence against him, on his trial for murder. Addis. 332. On an indictment for a conspiracy in inveigling a young girl from her mother's house, and she being intoxicated, procuring the marriage ceremony to be recited between her and one of the de-fendants, the girl is a competent witness to prove the facts. 2 Yeates, 114.

17. See, as to the competency of a wife de facto, but not de jure, Stark. Ev, pt. 4, p. 711. And on an indictment for forcible entry, the wife of the prosecutor was examined as a witness to prove the force, but only the force. 1 Dall. 68.

18. 2. Attorneys. They cannot be examined as witnesses as to confidential communications which they have received from their clients, made while the relation of attorney and client subsisted. 3 Johns. Cas. 198. See 3 Yeates, 4. Communications thus protected must have been made to him as instructions ne-cessary for conducting the cause, and not any extraneous or impertinent matter; 3 Johns. Cas. 198; they must have been made to him in the character of a counsel and not as a friend merely; 1 Caines' R. 15 7; they must have been made while the relation of counsel and client existed, and not after. 13 John. Rep. 492. An attorney may be examined as to the existence of a paper entrusted to him by his client, and as to the fact that it is in his possession, but he cannot be compelled to produce it, or disclose its date or contents. 17 Johns. R. 335. See 18 Johns. R. 330. He may also be called to prove a collateral fact not entrusted to him by his client; as to prove. his client's handwriting. 19 Johns. R. 134: 3 Yeates, 4. He is a competent witness for his client, although his judgment fee depends upon his success; 1 Dall. 241; or he expects to receive a larger fee from his client if the latter succeeds. 4 S. & R. 82. In Louisiana, the reverse has been decided. It is there held that an attorney cannot become a witness for his client in a cause in which he was employed, by renouncing his fee, and having his name struck off from the record, in that case. 3 N. S. 88. Vide Confidential Communications.

19. - 3. Confessors. In New York it has been held that a confessor could not be compelled to disclose secrets which he had received in auricular confession. City Hall Rec. 80 n. Vide Confessor; Confidential Communications.

20. - 4. Jurors. A juror is not competent to prove his own or the conduct of his fellow jurors to impeach a verdict they have rendered. 5 Conn. R. 348. See Coxe, R. 166, and article Grand Jury. And a judge in a cause which is on trial before him cannot be a witness, as he cannot decide on his own competency, nor on the weight of his own testimony, compared with that of another; 2 Mart. R. N. S. 312; 1 Greenl. Ev. §364.

21. - 5. Slaves. It is said that a slave could not be a witness at common law because of the unbounded influence his master had over him. 4 Dall. R. 145, note 1; but see 1 St. Tr. 113 Macnally's Ev. 156. By statutory provisions in the slave states, a slave is generally held incompetent in actions between white persons. See 7 Monr. R. 91; 4 Ham. R. 353; 5 Litt. R. 171; 3 Harr. & John. 97; 1 McCord, R. 430. In New York a free black man is competent to prove facts happening while he was a slave. 1 John. R. 508; see 10 John. R. 132.

22. - 6. A party to a negotiable instrument, is not allowed to give evidence to invalidate it. 1 T. R. 300. But the rule is confined to negotiable instruments. 1 Bl. R. 365. This rule does not appear to be very firmly established in England. In the state courts of some of the United States it has been adopted, and may now be considered to be law. 2 Dall. R. 194; ld. 196; 2 Binn. R. 154; 2 Dall. R. 242; 1 Cain. R. 258, 267; 2 Johns. R. 165; Id. 258; 1 John. R. 572; 3 Mass R. 559; Id. 565; Id. 27; Id. 31; 1 Day, R. 17; 6 Pet. 51; 8 Pet. 12; 5 Greenl. 374; 1 Bailey, 479; 2 Dall. 194. But flee 16 John. 70; 8 Wend. 90; 20 John. 285. The witness may however testify to subsequent facts, not tending to show that the instrument was originally invalid. Peake's N. P. C. 6. See 2 Wash. 63; 1 Hen. & Munf. 165, 166, 175; 1 Cranch, R. 194.

23. - §4. When the witness has no religious principles to bind his conscience, the law rejects his testimony; but there is not such defect of religious principles, when the witness believes in the existence of a God, who will reward or punish in this world or that which is to come. Willes' R. 550. Vide the article Infidel where the subject is more fully examined and Atheist; Future state.

24. - §5. Infamy (q. v.) is a disqualification while it remains.

25. - III. As to the number of witnesses, it is a general rule that one witness is sufficient to establish a fact, but to this there are exceptions, both in civil and criminal cases.

26. - 1. In civil cases. The laws of perhaps all the states of the Union require two witnesses and some require even more, to prove the execution of a last will and testament devising lands.

27. - 2. In criminal cages, there are several instances where two witnesses at least are required. The constitution of the United States, art. 3, s. 3, provides that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. In cases of perjury there must evidently be two witnesses, or one witness, and such circumstances as have the effect of one witness; for if there be but one witness, then there is oath against oath, and therefore uncertainty.

28. A witness may be compelled to attend court. In the first place a subpoena requiring his attendance must be served upon him personally, and on his neglect to attend, an attachment for contempt will be issued. See, generally, Bouv. Inst. Index, h. t.

WITNESS, AGED. It has been laid down as a rule that to be considered an aged witness, a person must be at least seventy years old. See Aged Witness.

WITNESS, GOING. A going witness is one who is about to leave the jurisdiction of the court in which a cause is depending. See Going Witness.

WITNESS INSTRUMENTARY, Scotch law. He who has attested a deed or other writing.

2. When witnesses attest a deed without knowing the grantor, and seeing him subscribe, or bearing him own his subscription, and the deed happens to be forged, the witnesses are declared accessory to forgery. Ersk. Pr. L. Scot, 4, 4, 37; 6 Hill, N. Y. Rep. 303.

WOMEN, persons. In its most enlarged sense, this word signifies all the females of the human species; but in a more restricted sense, it means all such females who have arrived at the age of puberty. Mulieris appellatione etiam virgo viri potens continetur. Dig. 50, 16, 13.

2. Women are either single or married. 1. Single or unmarried women have all the civil rights of men; they may therefore enter into contracts or engagements; sue and be sued; be trustees or guardians, they may be witnesses, and may for that purpose attest all papers; but they are generally, not possessed of any political power; hence they cannot be elected representatives of the people, nor be appointed to the offices of judge, attorney at law, sheriff, constable, or any other office, unless expressly authorized by law; instances occur of their being appointed post-mistresses nor can they vote at any election. Wooddes. Lect. 31; 4 Inst. 5; but see Callis, Sew. 252; 2 Inst 34; 4 Inst. 311, marg.

3. - 2. The existence of a married woman being merged, by a fiction of law, in the being of her husband, she is rendered incapable, during the coverture, of entering into any contract, or of suing or being sued, except she be joined with her husband; and she labors under all the incapacities above mentioned, to which single women are subject. Vide Abortion; Contract; Divorce; Feminine; Foetus; Gender; Incapacity; Man; Marriage; Masculine; Mother; Necessaries; Parties to Actions Parties to Contracts; Pregnancy; Wife.

WOODGELD, old Eng. law. To be free from the payment of money for taking of wood in any forest. Co. Litt. 233 a. The same as Pudzeld. (q. v.)

WOODS, A piece of land on which forest trees in great number naturally grow. According to Lord Coke, a grant to another of omnes boscos suos, all his woods, will pass not only all his trees, but the land on which they grow. Co. Litt. 4 b.

WORD, construction. One or more syllables which when united convey an idea a single part of speech.

2. Words are to be understood in a proper or figurative sense, and they are used both ways in law. They are also used in a technical sense. It is a general rule that contracts and wills shall be construed as the parties understood them; every person, bowever, is presumed to understand the force of the words be uses, and therefore technical words must be taken according to their legal import, even iii wills, unlesh the testator manifests a clear intention to the contrary. 1 Bro. C. C. 33; 3 Bro. C. C. 234; 5 Ves. 401 8 Ves. 306.

3. Every one is required to use words in the sense they are generally understood, for, as speech has been given to man to be a sign of his thoughts, for the purpose of communicating them to others, he is bound in treating with them, to use such words or signs in the sense sanctioned by usage, that is, in the sense in which they themselves understand them, or else he deceives them. Heinnec. Praelect. in Puffendorff, lib. 1, cap. 17, §2 Heinnec. de Jure Nat. lib. 1, §197; Wolff, lust. Jur. Nat. §7981.

4. Formerly, indeed, in cases of slander, the defamatory words received the mildest interpretation of which they were susceptible, and some ludicrous decisions were the consequence. It was gravely decided, that to say of a merchant, "he is a base broken rascal, has broken twice, and I will make him break a third time," that no action could be maintained, because it might be intended that he had a hernia: ne poet dar porter action, car poet estre intend de burstness de belly. Latch, 104. But now they are understood in their usual signification. Comb. 37; Ham. N. P. 282. Vide Bouv. Inst. Index, h. t.; Construction; Interpretation.

WORK AND LABOR. In actions of assumpsit, it is usual to put in a count, commonly called a common count, for work and labor done, and materials furnished by the plaintiff for the defendant; and when the work was not done under a special contract, the plaintiff will be entitled to recover on the common count for work, labor, and materials. 4 Tyr. R. 43; 2 C. & M. 214. Vide Assumpsit; Quantum meruit.

WORKHOUSE. A prison where prisoners are kept in employment; a penitentiary. A house provided where the poor are taken care of, and kept in employment.

WORKING DAYS. In settling laydays, (q. v.) or days of demurrage, (q. v.) sometimes the contract specifies working days in the computation, Sundays and custom-house holidays are excluded. 1 Bell's Com. 577, 5th ed.

WORKMAN. One who labors, one who is employed to do business for another.

2. The obligations of a workman are to perform the work he has undertaken to do; to do it in proper time; to do it well to employ the things furnished him according to his contract.

3. His rights, are to be paid what his work is worth, or what it deserves; to have all the facilities which the employer can give him for doing his work. 1 Bouv. Just. n. 1000 to 1006.

WORSHIP. The honor and homage rendered to the Creator.

2. In the United States, this is free, every one being at liberty to worship God according to the dictates of his conscience. Vide Christianity; Religious test.

WORSHIP, Eng. law. A title or addition given to certain persons. 2 Inst. 666; Bac. Ab. Misnomer, A 2.

WORTHIEST OF BLOOD. All expression to designate that, in descent, the sons are to be preferred to daughters, which is the law of England. See some singular reasons given for this, in Plowd. 305.

WOUND, med. jur. This term, in legal medicine, comprehends all lesions of the body, and in this it differs from the meaning of the word when used in surgery. The latter only refers to a solution of continuity, while the former comprises not only these, but also every other kind of accident, such as bruises, contusions, fractures, dislocations, and the like. Cooper's Surgical Dict. h. t.; Dunglison's Med. Dict. h. t.; vide Dictionnaire des Sciences Medicales, mot Blessures 3 Fodere, Med. Leg. §687-811.

2. Under the statute 9 Geo. IV. c. 21, sect. 12, it has been held in England, that to make a wound, in criminal cases, there must be "an injury to the person by which the skin is broken." 6 C. & P. 684; S. C. 19 Engl. C. L. Rep. 526. Vide Beck's Med. Jur. c. 15; Ryan's Med. Jur. Index, h. t.; Roscoe's Cr. Ev. 652; 19 Engl. Com. L. Rep. 425, 430, 526, 529; Dane's Ab. Index, h. t.; 1 Moody's Cr. Cas. 278; 4 C. & P. 381; S. C. 19 E. C. L. R. 430; 4 C. & P. 446; S. C. 19 E. C. L. R. 466; 1 Moody's Cr. C. 318; 4 C. & P. 558; S. C. 19 E. C. L. R. 526; Carr. Cr. L. 239; Guy, Med. Jur. ch. 9, p. 446; Merl. Repert. mot Blessure.

3. When a person is found dead from wounds, it is proper to inquire whether they are the result of suicide, accident, or homicide. In making the examination, the greatest attention should be bestowed on all the circumstances. On this subject some general directions have been given under the article Death. The reader is referred to 2 Beck's Med. Jur. 68 to 93. As to, wounds on the living body, see Id. 188.

WRECK, mar. law. A wreck (called in law Latin, wreccum maris, and in law French, wrec de mer,) signifies such goods, as after a shipwreck, are cast upon land by the sea, and left there within some county, so as not to belong to the jurisdiction of the admiralty, but to the common law. 2 Inst. 167; Bract. 1. 3, c. 3; Mirror, c. 1, s. 13, and c. 3.

2. The term `wreck of the sea' includes, 1. Goods found at low water, between high and low water mark; and 2. Goods between the same limits, partly resting on the ground, but still moved by the water. 3 Hagg. Adm. R. 257.

3. When goods have touched the ground, and have again been floated by the tide, and are within low water mark; whether they are to be considered wreck will depend upon the circumstances whether they were, seized by a person wading, or swimming, or in a boat. 3 Hagg. Adm. R. 294. But if a human being, or even an animal, as a dog, cat, hawk, &c. escape alive from the ship, or if there be any marks upon the goods by which they may be known again, they are not, at common law, considered as wrecked. 5 Burr. 2738-9; 2 Chit. Com. Law, c. 6, p. 102; 2 Kent, Com. 292; 22 Vin. Ab. 535; 1 Bro. Civ. Law, 238; Park, Ins. Index, h. t.; Molloy, Jur. Mar. Index, h. t.

4. The act of congress of March 1, 1823, provides, §21, That, before any goods, wares or merchandise, which may be taken from any wreck, shall be admitted to an entry, the same shall be appraised in the manner prescribed in the sixteenth section of this act and the same proceedings shall be ordered and executed in all cases where a reduction of duties shall be claimed on account of damage which any goods, wares, or merchandise, shall have sustained in the course of the voyage and in all cases where the owner, importer, consignee, or agent, shall be dissatisfied with such appraisement,

he shall be entitled to the privileges provided in the eighteenth section of this act. Vide Naufrage.

WRIT, practice. A mandatory precept issued by the authority, and in the name of the sovereign or the state, for the purpose of compelling the defendant to do something therein mentioned.

2. It is issued by a court or other competent jurisdiction, and is return-able to the same. It is to be under seal and tested by the proper officer, and is directed to the sheriff, or other officer lawfully authorized to execute the same. Writs are divided into, 1. Original. 2. Of mesne process. 3. Of execution. Vide 3 Bl. Com. 273; 1 Tidd, Pr. 93; Gould on Pl. c. 2, s. 1. There are several kinds of writs, some of which are mentioned below.

WRIT DE BONO ET MALO. An ancient writ which was issued in the case of each prisoner, instead of a general commission of general jail delivery for all the prisoners. This writ has not been used for a very long time, and is obsolete. 4 Bl. Com. 210.

WRIT OF CONSPIRACY. The name of an ancient writ, now superseded by the more convenient remedy of an action on the case, which might have been sued against parties guilty of a conspiracy. F. N. B. 260. See Conspiracy.

WRIT OF DECEIT. The name of a writ which lies where one man has done anything in the name of another, by which the latter is damnified and deceived. F. N. B. 217.

2. The modern practice is to sue a writ of trespass on the case to remedy the injury. See Deceit.

WRIT DE EJECTIONE FIRMAE. A writ of ejectment. Vide Ejectment, and 3 Bl. Com. 199.

WRIT DE HAERETICO COMBURENDO, Engl. law. The name of a writ formerly issued by the secular courts, when a man was turned over to them by the ecclesiastical tribunals, after having been condemned for heresy.

2. It was founded on the statute 2 Hen. IV. c. 15; it was first used, A. D. 1401, and as late as the year 1611. By virtue of this writ, the unhappy man against whom it was issued, was burned to death. See 12 Co. R. 92.

WRIT DE HOMINE RELEGIANDO, practice. A writ which lies to replevy a man out of prison, or out of the custody of any private person, in the same manner in which

cattle taken in distress may be replevied, upon giving security to the sheriff that the man shall be forthcoming to answer to any charge against him.

2. This writ is almost entirely superseded by the more effectual writ of habeas corpus. 3 Bl. Com. 129; Com. Dig. Imprisonment, L 4; Lord Raym. 613; F. N. B. 66; 1 Atk. 633; 14 Vin. Ab. 305; Dane's Ab. h. t.; 7 Com. Dig. 271; 5 Binn. R. 304; 1 John. R. 23; 14 John. R. 263 2 Cain. C. Err. 322.

WRIT DE ODIO ET ATIA, Engl. law. This writ is probably obsolete, and superseded by the writ of habeas corpus. It was anciently directed to the sheriff, commanding him to inquire whether a prisoner charged with murder was committed upon just cause or suspicion, or merely propter odium et atiam, for hatred and ill-will; and, if upon the inquisition due cause of suspicion did not appear, then there issued another writ for the sheriff to admit him to bail, 3 Bl. Com. 128; Com. Dig. Imprisonment, L 3.

WRIT OF COVENANTS, practice. A writ which lies where a party claims damage for breach of covenant, i. e. of a promise under seal.

WRIT OF DEBT, practice. A writ which lies where the party claims the re-covery of a debt, i. e. a liquidated or certain sum of money alleged to be due to him. This is debt in the debet, which is the principal and only common form. There is another species mentioned in the books, called the debt in the detinet, which lies for the specific recovery of goods, under a contract to deliver them. 1 Chit. Pl. 101.

WRIT OF DETINUE, practice. A writ which lies where a party claims the spe-cific recovery of goods and chattels, or deeds and writings detained from him. This is seldom used: trover is the more frequent remedy, in cases where it may be brought.

WRIT OF DOWER, practice. A writ which lies for a widow ciaiming the specific recovery of her dower, no part having been yet assigned to her. It is usually called a writ of dower unde nihil habet. 3 Chit. Pl. 393; Booth, 166.

2. There is another species, called a writ of right of dower, which applies to the particular case where the widow has received a part of her dower from the tenant himself, and of land lying in the same town in which she claims the residue. Booth, 166; Glanv. lib. 6, c. 4, 5. This latter writ is seldom used in practice.

WRIT OF EJECTMENT, practice. The name of a process issued by a party claiming land or other real estate, against one who is alleged to be unlawfully in possession. Vide Ejectment.

WRIT OF ENTRY, practice. A writ requiring the sheriff to command the tenant of land that he render to the demandant the premises in question, or to appear in court on such a day to show cause why he hath not done so. Co. Litt. 238. See 2 Pick. 473; 10 Pick. 359; 14 Mass. 20; 15 Mass. 305; 5 N. Hamp. R. 450; 6 N. Hamp. R. 555; 7 Pick. 36.

WRIT OF ERROR, practice. A writ issued out of a court of competent jurisdiction, directed to the judge of a court of record in which final judgment has been given, and commanding them, in some cases, themselves to examine the re-cord; in others to send it to another court of appellate jurisdiction, therein named, to be examined in order that some alleged error in the proceeding may be corrected. Steph. Pl. 138; 2 Saund. 100, n. 1; Bac. Ab. Error, in pr.

2. The first is called a writ of error coram nobis or vobis. When an issue in fact has been decided, there is not in general any appeal except by motion for a new trial; and although a matter. of fact should exist which was not brought into the issue, as for example, if the defendant neglected to Plead a release, which he might have pleaded, this is no error in the proceedings, though a mistake of the defendant. Steph. Pl. 139. But there are some facts which affect the validity and regularity of the proceeding itself, and to remedy these errors the party in interest may sue out the writ of error coram vobis. The death of one of the parties at the commencement of the suit; the appearance of an infant in a personal action, by an attorney, and not by guardian; the coverture of either party, at the commencement of the suit, when her husband is not joined with her, are instances of this kind. 1 Saund. 101; 1 Arch. Pr. 212; 2 Tidd's Pr. 1033; Steph. Pl. 140 1 Browne's Rep. 75.

3. The second species is called, generally, writ of error, and is the more common. Its object is to review and correct an error of the law committed in the proceedings, which is not amendable, or cured at common law, or by some of the statutes of amendment or jeofail. Vide, generally, Tidd's Pr. ob. 43; Graham's Pr. B. 4, o. 1; Bac. Ab. Error; 1 Vern. 169; Yelv. 76; 1 Salk. 322; 2 Saund. 46, n. 6, and 101, n. 1; 3 Bl. Com. 405; Serg. Const. Law, ch. 5.

4. In the French law the demande en cassation is somewhat similar to our proceeding in error; according to some of the best writers on French law, it is considered as a new suit, and it is less an action between the original parties, than a question between the judgment and the law. It is not the action which is to be judged, but the judgment; "la demande en cassation est un nouveau proces, bien moins entre les parties qui figuraient dans le premier, qu'entre l'arret et la loi." Henrion de Pansey, de l'Autorite judiciare dans les gouvernemens monarchiques, p. 270, edit. in 8vo.; 6 Toull. n. 193. Ce n'est point le' proces qu'il s'agit de juger, mais le jugement. Ib.

5. A writ of error is in the nature of a suit or action, when it is to restore the party who obtains it to the possession of any thing which is withheld from him, not when its operation is entirely defensive. 3 Story. Const. §1721. And it is considered generally as a new action. 6 Port 9.

WRIT OF EXECUTION, practice. A writ to put in force the sentence that the law has given: it is addressed to the Sheriff (and in the courts of the United States, to the marshal) commanding him, according to the nature of the case, either to give the plaintiff possession of lands; or to enforce the delivery of a chattel which was the subject of the action; or to levy for the plain-tiff, the debt, or damager, and costs recovered; or to levy for the defendant his costs; and that, either upon the body of the opposite party, his lands, or goods, or in some cases, upon his body, land, and goods; the extent and manner of the execution directed, always depending upon the nature of the judgment. 3 Bl. Com. 413.

2. Writs of execution are supposed to be actually awarded by the judges in court; but no such award is in general, actually made. The attorney, after signing final judgment, sues out of the proper office a writ of execution, in the form to which he conceives he would be entitled upon such judgment as he. has entered, if such entry has been actually made; and, if not made, then upon such as he thinks he is entitled to enter; and he does this, of course, upon peril that, if he takes a wrong execution, the proceeding is legal and void, and the opposite party entitled to redress. Steph. Pl, 137, 8. See Ca. Sa.; Execution; Fi. Fa.; Haberefa. possessionem; Vend. Exp.

WRIT OF EXIGI FACIAS. The name of a process issued in the course of proceedings in outlawry, and which immediately precedes the writ of capias agatum. See Exigent, or Exigi Facias.

WRIT OF FORMEDON, practice. This writ lies where a party claims the specific recovery of lands and tenements, as issue in tail; or as remainder-man or reversioner, upon the determination of an estate in tail. Co. Litt. 236 b; Booth, 139, 151, 154.

WRIT OF INQUIRY, practice. When in an action sounding in damages, (q. v.) as covenant, trespass, and the like, an interlocutory judgment is rendered, which is, that the plaintiff ought to recover his damages, without specifying the amount, it not yet being ascertained, the court does not in general undertake the office of assessing the damages, but issues a writ of inquiry, which is a writ directed to the sheriff of the county where the facts are alleged by the pleadings to have occured, commanding him to inquire into the amount of damages sustained "by the oath or affirmation of twelve good or lawful men of his county;" and to return such inquisition, when made, to the court.

2. The finding of the sheriff and jury under such a proceeding is called an inquisition. (q. v.)

3. The court will, on application, order that a writ of inquiry shall be executed before a judge, where it appears that important questions of law will arise. 2 John. R. 107.

4. When executed before the sheriff, he acts ministerially, and not judicially, and therefore, it may be executed before a deputy of the sheriff. 2 John R. 63. Vide Steph. Pl. 126; Grah. Pr. 639; 2 Archb. Pr. 19; Tidd's Pr. 513; Yelv. 152, n.; 18 Eng. Com. Law Rep. 181, n., 189, n.; 1 Marsh. R. 129; l Sell. Pr. 346; Watson on Sher. 221; 2 Saund. 107, n. 2.

WRITS, JUDICIAL, practice. In England those writs which issue from the common law courts during the progress of a suit, are described as judicial writs, by way of distinction from the original one obtained from chancery. 3 Bl. Com. 282.

WRIT OF MAINPRIZE, English law. A writ directed to the sheriff (either generally, when any man is imprisoned for a bailable offence, and bail has been refused; or specially, when the offence or cause of commitment is not properly bailable below) commanding him to take sureties for the prisoner's appearance, commonly called mainpernors, and to set him at large. 3 B]. Com. 128. Vide Mainprize.

WRIT OF MESNE, Breve' de medio, old English law. A writ which was so called, by reason of the words used in the writ, namely, Unde idem A qui medius est inter C et praefatum B; that is, A, who is mesne between C, the lord paramount, and B, the tenant paravail. Co. Litt. 100, a.

WRIT, ORIGINAL, practice, English law. An original writ is a mandatory letter issuing out of the court of chancery under the great seal and in a king's name, directed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him in most cases, to command the defendant to satisy the claim; and, on his failure to comply, then to summon him to appear in one of the superior courts of common law, there to account for his non-compliance. In some cases, however, it omits the former alternative, and requires the sheriff simply to enforce the appearance. Steph. Pl. 5.

WRIT OF REPLEVIN, practice. The name of a process issued for the recovery of goods and chattels. Vide Replevin.

WRIT OF PRAECIPE. This writ is also called a writ of covenant, and is sued out by the party to whom lands are to be conveyed by fine; the foundation of which is a

supposed agreement or covenant that the one shall convey the land to the other. 2 Bl. Com. 349, 350.

WRIT OF PREVENTION. This name is given to certain writs which may be issued in anticipation of suits which may arise. Co. Litt. 100. See Quia Timet.

WRIT OF RATIONABILI PARTE BONORUM. A writ which was sued out by a widow when the executors of her deceased husband refused to let her have a third part of her late husband's goods after the debts were paid. F. N. B. 284.

WRIT OF RESTITUTION. A writ which is issued on the reversal of a judgment, commanding the sheriff to restore to the defendant below, the thing levied upon, if it has not been sold, and if it has been sold, the proceeds. Bac. Ab. Execution, Q. Vide Restitution.

WRIT PRO RETORNO HABENDO, remedies, practice. The name of a writ which re-cites that the defendant was summoned to appear to answer the plaintiff in a plea whereof he took the cattle of the said plaintiff, specifying them, and that the said plaintiff afterwards made default, wherefore it was then considered that the said plaintiff and his pledges of prosecuting should be in mercy and that the said defendant should go without day, and that he should have re-turn of the cattle aforesaid. It then commands the sheriff, that he should cause to be returned the cattle aforesaid, to the said defendant without delay, &c. 2 Sell. Pr. 168. Vide Judgment in replevin.

WRIT OF PROCESS, Engl. law, pradice. If the defendant does not appear, in obedience to the original writ, there issue, when the time for appearance is past, other writs, returnable on some general return day in the term, called writs of process, enforcing the appearance of the defendant, either by attachment, or distress of his property, or arrest of his person, according to the nature of the case.

2. These differ from the original writ in the following particulars; they issue not out of chancery, but out of the court of common law, into which the original writ is returnable; and, accordingly, are not under the great seal, but the private seal of the court; and they bear teste in the named of the chief justice of that court, and not in the name of the king himself. It may also be observed, that in common with all other writs issuing from the court of common law, during the progress of the suit, they are described as judicial writs, by way of distinction from the original one obtained from the chancery. 4 Bl. Com. 282. See further, as to the nature of those writs, 1 Tidd's Pr. 106-193, 4th edit.; 1 Sellon's Pr. 64-102.

WRIT OF PROCLAMATION, Engl. practice. A writ which issues, at the same time with the exigi facias, by virtue of Stat. 31 Eliz. c. 3, s. 1, by which the sheriff is commanded to make proclamations in the statute prescribed.

2. When it is not directed to the same sheriff as the writ of exigi facias is, it is called a foreign writ of proclamation. Lee's Dict. of Pr.; 4 Reev. Inst. 261.

WRIT OF QUARE IMPEDIT, English law. The remedy by which, where the right of a party to benefice is obstructed, he recovers the presentation; and is the form of action now constantly adopted to try a disputed title to an advowson. Booth, 223 1 Arch. Civ. Pl. 34.

WRIT OF RECAPTION, practice. This writ lies where, pending an action of replevin, the same distrainor takes, for the same supposed cause, the cattle or goods of the same distrainee. See F. N. B. 169.

2. This writ is nearly obsolete, as trespass, which is found to be a pre-ferable remedy, lies for the second taking; and, as the defendant cannot justify, the plaintiff must necessarily recover damages proportioned to the injury.

WRIT OF RIGHT, practice. The remedly appropriate to the case where a party claims the specific recovery of corporeal hereditaments in fee simple; founding his title on the right of property, or mere right, arising either from his own seisin, or the seisin of his ancestor or predecessor. F. N. B. 1 B 3 Bl. Com. 391.

2. At common law, a writ of right lies only against the tenant of the free-hold demanded. 8 Cranch, 239.

3. This writ brings into controversy only the rights of the parties in the suit, and a defence that a third person has better title will not avail. Id.; 7 Wheat. 27; 3 Pet. 133. See 2 Wheat. 306; 4 Bing. N. S. 711; 3 Bing. N. S. 434; 4 Scott, R. 209; 6 Scott, R. 435; Id. 738; 1 Bing. N. S. 597; 5 Bing. N. S. 161; 6 Ad. & Ell. 103; 1 H. Bl. 1; 5 Taunt. R. 326; 1 Marsh. R. 68; 2 Bos. & P. 570; 1 N. R. 64; 4 Taunt. R. 572; 3 Bing. R. 167; 2 W. Bl. Rep. 1261; 1 B. & B. 17; 2 Car. & P. 187; Id. 271 Holt, R. 657; 8 Cranch, 229; 3 Fairf. 312; 7 Wend. 250; 3 Bibb, 57; 3 Rand. 568 2 J. J. Marsh. 104; 2 A. K. Marsh. 396; 1 Dana, 410; 2 Leigh, R. 1 4 Mass. 64; 17 Mass. 74.

WRIT OF TRESPASS, practice. This writ lies where a party claims damages for a trespass committed against his person, or tangible and corporeal property. See Trespass.

WRIT OF TRESPASS ON THE CASE, practice. A writ which lies where a party sues for damages for any wrong or cause of complaint to which covenant or trespass will not apply. See 3 Woodd. 167; Steph. Pl. 15.

2. This action originates in the power given by the statute of Westm. 2, to the clerks of chancery to frame new writs in consimili casu with writs already known. Under this power they constructed many writs for different injuries, which were considered as in consimili casu, with, that is, to bear a certain analogy to a trespass. The new writs invented for the cases supposed to bear such analogy, have received, accordingly, the appellation of writs of trespass on the case, as being founded on the particular circumstances of the case thus requiring a remedy, and, to distinguish them from the old writ of trespass; 3 Reeves, 89, 243, 391; and the injuries themselves, which are the subjects of such writs, are not called trespasses, but have the general name of torts, wrong or grievances.

3. The writs of trespass on the case, though invented thus, pro re nata, in various forms, according to the nature of the different wrongs which respectively called them forth began nevertheless, to be viewed as constituting collectively a new individual form of action; and this new genus took its place, by the name of Trespass on the case, among the more ancient actions of debt, covenant, trespass, &c. Such being the nature of this action, it comprises, of course, many different species. There are two, however, of more frequent use than any other species of trespass on the case, or, perhaps, than any other firm of action whatever. These are assumpsit and trover. Steph. Pl. 15, 16.

WRIT OF TOLT, Eng. law. The name of a writ to remove proceedings on a writ of right patent from the court baron into the county court. 3 Bl. Commen-taries, App. No. 1, §2.

WRIT OF WASTE. The name of a writ to be issued against a tenant who has committed waste of the premises. There are several forms of this writ, that against a tenant in dower differs from the others. F. N. B. 125.

WRITING. The act of forming by the hand letters or characters of a particular kind on paper or other suitable substance, and artfully putting them together so as to co nvey ideas. It differs from printing, which is the formation of words on paper or other proper substance by means of a stamp. Sometimes by writing ii understood printing, and sometimes printing and writing mixed.

2. Many contracts are required to be in writing; all deeds for real estate must be in writing, for it cannot be conveyed by a contract not in writing, yet it is the constant practice to make deeds partly in printing, and partly in writing. Wills, except nuncupative wills, must begin writing, and signed by the testator; and nuncupative

wills must be reduced to writing by the witnesses within a limited time after the testator's death.

3. Records, bonds, bills of exchange and many other engagements, must, from their nature, be made in writing, See Frauds, statute of; Language.

WRITING OBLIGATORY. A bond; an agreement reduced to writing, by which the party becomes bound to perform something, or suffer it to be done.

WRONG. An injury; (q. v.) a tort (q. v.) a violation of right. In its most usual sense, wrong signifies an injury committed to the person or property of another, or to his relative rights, unconnected with contract; and these wrongs are committed with or without force. But in a more extended signification, wrong includes the violation of a contract; a failure by a man to perform his undertaking or promise is a wrong or injury to him to whom it was made. 3 Bl. Com. 158.

2. Wrongs are divided into public and private. 1. A public wrong is an act which is injurious to the public generally, commonly known by the name of crime, misdemeanor, or offence, and it is punishable in various ways, such as indictments, summary proceedings, and upon conviction by death, imprisonment, fine, &c. 2. Private wrongs, which are injuries to individuals, unaffecting the public: these are redressed by actions for damages, &c.

WRONG-DOER. One who commits an injury, a tort-feasor. (q. v.) Vide Dane's Abridgment, Index, h. t.

WRONGFULLY INTENDING. These words are used in a declaration when in an action for an injury, the motive of the defendant in committing it can be proved, for then his malicious intent ought to be averred. This is sufficiently done if it be substantially alleged, in general terms, as wrongfully intending. 3 Bouv. Inst. n. 2871.

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Y

YARD. A measure of length, containing three feet, or thirty-six inches.

YARD, estates. A piece of land enclosed for the use and accommodation of the inhabitants of a house. In England it is nearly synonymous with backside. (q. v.) 1 Chitty, Pr. 176; 1 T. R. 701.

YARDLAND, old Eng. law. A quantity of land containing twenty acres. Co. Litt. 69 a.

YEAR. The period in which the revolution of the earth round the sun, and the accompanying changes in the order of nature, are completed.

2. The civil year differs from the astronomical, the latter being composed of 365 days, 5 hours, 48 seconds and a fraction, while the former consists, sometimes of three hundred and sixty-five days, and at others, in leap years, of three hundred and sixty-six days.

3. The year is divided into half-year which consists, according to Co. Litt. 135 b, of 182 days; and quarter of a year, which consists of 91 days, Ibid. and 2 Roll. Ab. 521, 1. 40. It is further divided into twelve months.

4. The civil year commences immediately after twelve o'clock at night of the thirty-first day of December, that is the first moment of the first day of January, and ends at midnight of the thirty-first day of December, twelve mouths thereafter. Vide Com. Dig. Ann.; 2 Bl. Com. by Chitty, 140, n.; Chitt. Pr. Index tit. Time alteration of the calendar (q. v.) from old to new style in England, (see Bissextile,) and the colonies of that country in America, the year in chronological reckoning was supposed to cornmence with the first day of January, although the legal year did not commence until March 25th, the intermediate time being doubly indicated: thus February 15, 1724, and so on. This mode of reckoning was altered by the statute 24 Geo. II. cap. 23, which gave rise to an act of assembly of Pennsylvania, passed March 11, 1752; 1 Sm. Laws, 217, conforming thereto, and also to the repeal of the act of 1710.

5. In New York it is enacted that whenever the term "year" or "years" is or shall be used in any statute, deed, verbal or written contract, or any public or private instrument whatever, the year intended shall be taken to consist of three hundred and sixty-five days; half a year of a hundred and eighty-two days; and a quarter of a year of ninety-two days; and the day of a leap year, and the day immediately preceeding, if they shall occur in any period so to be computed, shall be reckoned together as one day. Rev. Stat. part 1, c. 19, t. 1, §3.

YEAR AND DAY. This period of time is particularly recognized in the law. For example, when a judgment is reversed, a party, notwithstanding the lapse of time mentioned in the statute of limitations pending that action, may commence a fresh action within a year and a day of such reversal; 3 Chitty, Pract. 107; again, after a year and a day have elapsed from the day of signing a judgment, no execution can be issued until the judgment shall have been revived by scire facias. Id. Bac. Ab. Execution, H; Tidd, Pr. 1103.

2. In Scotland, it has been decided that in computing the term, the year and day is to be reckoned, not by the number of days which go to make up a year, but by the return of the day of the next year that bears the same denomination. 1 Bell's Com. 721, 5th edit.; 2 Stair, 842. See Bac. Ab. Descent, I 3; Ersk. Princ. B. 1, t. 6, n. 22.

YEAR BOOKS. These were books of reports of cases in a regular series from tho reign of the English King Ed. 11. inclusive, to the time of Henry VIII, which were taken by the prothonotaries or chief scribes of the courts, at the expense of the crown, and published annually, whence their name Year Books. They consist of eleven parts, namely: Part 1. Maynard's Reports, temp. Edw. II.; also divers Memoranda of the Exchequer, temp. Edward I. Part 2. Reports in the first ten years of Edw. 111. Part. 3. Reports from l7 to 39 Edward III. Part 4. Reports from 40 to 50 Edward 111. Part 5. Liber Assisarum; or Pleas of the Crown, temp. Edw. III. Part 6. Reports temp. Hen. TV. and Hen. V. Parts 7 and 8. Annals, or Reports of Hen. VI. during his reign, in 2 vols. Part 9. Annals of Edward IV. Part 10. Long Quinto; or Reports in 5 Edward IV. Part 11. Cases in the reigns of Edward V, Richard III, Henry VII, and Henry VIII.

YEARS, ESTATE FOR. Vide Estate for Years.

YEAS AND NAYS. The list of members of a legislative body voting in the affirmative and negative of a proposition is so called.

2. The constitution of the United States, art. 1, s. 5, directs that "the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal." Vide 2 Story, Cons. 301.

3. The power of calling the yeas and nays is given by all the constitutions of the several states, and it is not in general restricted to the request of one-fifth of the members present, but may be demanded by a less number and, in some, one member alone has the right to require the call of the yeas and nays.

YEOMAN. In the United States this word does not appear to have any very exact meaning. It is usually put as an addition to the names of parties in declarations and

indictments. In England it signifies a free man who has land of the value of forty shillings a year. 2 Inst. 668; 2 Dall. 92.

YIELDING AND PAYING, contracts. These words, when used in a lease, constitute a covenant on the part of the lessee to pay the rent; Platt on Coven. 50; 3 Penna. Rep. 464; 1 Sid. 447, pl. 9; 2 Lev. 206; 3 T. R. 402; 1 Barn. & Cres. 416; S. C. 2 Dow. & Ry. 670; but whether it be an express covenant or not, seems not to be settled. Sty. 387, 406, 451; Sid. 240, 266; 2 Lev. 206; S. C., T. Jones, 102 3 T. R. 402.

2. In Pennsylvania, it has been decided to be a covenant running with the land. 3 Penna. Reports, 464. Vide 1 Saund. 233, n. 1; 9 Verm. R. 191.

YORK, STATUTE OF. The name of an English statute, passed 12 Edw. II., Anno Domini 1318, and so called because it was enacted at York. It contains many wise provisions and explanations of former statutes. Barr. on the Stat. 174. There were other statutes made at York in the reign of Edw. III., but they do not bear this name.

YOUNG ANIMALS. It is a rule that the young of domestic or tame animals belong to the owner of the dam or mother, according to the maxim Partus sequitur ventrem. Dig. 6, 1, 5, 2; Inst. 2, 1, 9.

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A

LAW DICTIONARY

ADAPTED TO THE CONSTITUTION AND LAWS OF

THE UNITED STATES OF AMERICA

AND OF THE

SEVERAL STATES OF THE AMERICAN UNION

With References to the Civil and Other Systems of Foreign Law

by

John Bouvier

Ignoratis terminis ignoratur et ars. - Co. Litt. 2 a.

Je sais que chaque science et chaque art a ses termes propres, inconnu au commun des hommes. - Fleury

SIXTH EDITION, REVISED, IMPROVED, AND GREATLY ENLARGED.

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TO THE HONORABLE

JOSEPH STORY, L L.D.,

One of the Judges of the Supreme Court of the United States

THIS WORK is WITH HIS PERMISSION MOST RESPECTFULLY DEDICATED

AS A TOKEN OF

GREAT REGARD ENTERTAINED FOR HIS TALENTS, LEARNING, AND CHARACTER,

BY

THE AUTHOR.

ADVERTISEMENT

TO THE THIRD EDITION

Encouraged by the success of this work, the author has endeavored to render this edition as perfect as it was possible for him to make it. He has remoulded very many of the articles contained in the former editions, and added upwards of twelve hundred new ones.

To render the work as useful as possible, he has added a very copious index to the whole, which, at the same time that it will assist the inquirer, will exhibit the great number of subjects treated in these volumes.

As Kelham's Law Dictionary has been published in this city, and can be had by those who desire to possess it, that work has not been added as an appendix to this edition.

Philadelphia, November, 1848.

ADVERTISEMENT

TO THE FOURTH EDITION

Since the publication of the last edition of this work, its author, sincerely devoted to the advancement of his profession, has given to the world his Institutes of American Law, in 4 vols. Svo. Always endeavoring to render his Dictionary as perfect as possible, he was constantly revising it; and whenever he met with an article which he had omitted, he immediately prepared it for a new edition. After the completion of his Institutes, in September last, laboring to severely, he fell a victim to his zeal, and died on the 18th of November, 1851, at the age of sixty-four.

In preparing this edition, not only has the matter left by its author been made use of, but additional matter has been added, so that the present will contain nearly one-third more than the last edition. Under one head, that of Maxims, nearly thirteen hundred new articles have been added. The book has been carefully examined, a great portion of it by two members of the bar, in order that it might be purged, as far as possible, from all errors of every description. The various changes in the constitutions of the states made since the last edition, have been noticed, so far as was compatible with this work; and every effort made to render it as perfect as a work of the kind would permit, in order that it might still sustain the reputation given to it by a Dublin barrister, "of being a work of a most elaborate character, as compared with English works of a similar nature, and one which should be in every library."

That it may still continue to receive the approbation of the Bench and Bar of the United States, is the sincere desire of the widow and daughter of

its author.

PREFACE

To the difficulties which the author experienced on his admission to the bar, the present publication is to be attributed. His endeavours to get forward in his profession were constantly obstructed, and his efforts for a long time frustrated, for want of that knowledge which his elder brethren of the bar seemed to possess. To find among the reports and the various treatises on the law the object of his inquiry, was a difficult task; he was in a labyrinth without a guide: and much of the time which was spent in finding his way out, might, with the friendly assistance of one who was acquainted with the construction of the edifice, have been saved, and more profitably employed. He applied to law dictionaries and digests within his reach, in the hope of being directed to the source whence they derived their learning, but be was too often disappointed; they seldom pointed out the authorities where the object of his inquiry might be found. It is true such works contain a great mass of information, but from the manner in which they have been compiled, they sometimes embarrassed him more than if he had not consulted them. They were written for another country, possessing laws different from our own, and it became a question how far they were or were not applicable here. Besides, most of the matter in the English law dictionaries will be found to have been written while the feudal law was in its full vigor, and not fitted to the present times, nor calculated for present use, even in England. And there is a great portion which, though useful to an [vii] English lawyer, is almost useless to the American student. What, for example, have we to do with those laws of Great Britain which relate to the person of their king, their nobility, their clergy,

their navy, their army; with their game laws; their local statutes, such as regulate their banks, their canals, their exchequer, their marriages, their births, their burials, their beer and ale houses, and a variety of similar subjects?

The most modern law dictionaries are compilations from the more ancient, with some modifications and alterations and, in many instances, they are servile copies, without the slightest alteration. In the mean time the law has undergone a great change. Formerly the principal object of the law seemed to be to regulate real property, in all its various artificial modifications, while little or no attention was bestowed upon the rules which govern personal property and rights. The mercantile law has since arisen, like a bright pyramid, amid the gloom of the feudal law, and is now far more important in practice, than that which refers to real estate. The law of real property, too, has changed, particularly in this country.

The English law dictionaries would be very unsatisfactory guides, even in pointing out where the laws relating to the acquisition and transfer of real estate, or the laws of descent in the United States, are to be found. And the student who seeks to find in the Dictionaries of Cowel, Manly, Jacobs, Tomlins, Cunningham, Burn, Montefiore, Pott, Whishaw, Williams, the Termes de Ley, or any similar compilation, any satisfactory account in relation to international law, to trade and commerce, to maritime law, to medical jurisprudence, or to natural law, will probably not be fully gratified. He cannot, of course, expect to find in them anything in relation to our government, our constitutions, or our political or civil institutions.[viii]

It occurred to the author that a law dictionary, written entirely anew, and calculated to remedy those defects, would be useful to the profession. Probably overrating his strength, he resolved to undertake the

task, and if he should not fully succeed, he will have the consolation to know, that his effort may induce some more gifted individual, and better qualified by his learning, to undertake such a task, and to render the American bar an important service. Upon an examination of the constitution and laws of the United States, and of the several states of the American Union, he perceived many technical expressions and much valuable information which he would be able to incorporate in his work. Many of these laws, although local in their nature, will be found useful to every lawyer, particularly those engaged in mercantile practice. As instances of such laws the reader is referred to the articles Acknowledgment, Descent, Divorce, Letters of Administration, and Limitatio. It is within the plan of this work to explain such technical expressions as relate to the legislative, executive, or judicial departments of the government; the political and the civil rights and duties of the citizens; the rights and duties of persons, particularly such as are peculiar to our institutions, as, the rights of descent and administration; of the mode of acquiring and transferring property; to the criminal law, and its administration. It has also been an object with the author to embody in his work such decisions of the courts as appeared to him to be important, either because they differed from former judgments, or because they related to some point which was before either obscure or unsettled. He does not profess to have examined or even referred to all the American cases; it is a part of the plan, however, to refer to authorities, generally, which will lead the student to nearly all the cases.

The author was induced to believe, that an occasional comparison of the civil, canon, and other systems of foreign law, with our own,[ix] would be useful to the profession, and illustrate many articles which, without such aid, would not appear very clear; and also to introduce many terms from foreign laws, which may supply a deficiency in ours. The articles Condonation, Extradition, and Novation, are of this sort. He was induced to

adopt this course because the civil law has been considered, perhaps not without justice, the best system of written reason, and as all laws are or ought to be founded in reason, it seemed peculiarly proper to have recourse to this fountain of wisdom: but another motive influenced this decision; one of the states of the Union derives most of its civil regulations from the civil law; and there seemed a peculiar propriety, therefore, in introducing it into an American law dictionary. He also had the example of a Story, a Kent, Mr. Angell, and others, who have ornamented their works from the same source. And he here takes the opportunity to acknowledge the benefits which he has derived from the learned labors of these gentlemen, and of those of Judge Sergeant, Judge Swift, Judge Gould, Mr. Rawle, and other writers on American law and jurisprudence.

In the execution of his plan, the author has, in the first place, defined and explained the various words and phrases, by giving their most enlarged meaning, and then all the shades of signification of which they are susceptible; secondly, he has divided the subject in the manner which to him appeared the most natural, and laid down such principles and rules as belong to it; in these cases he has generally been careful to give an illustration, by citing a case whenever the subject seemed to require it, and referring to others supporting the same point; thirdly, whenever the article admitted of it, he has compared it with the laws of other countries within his reach, and pointed out their concord or disagreement; and, fourthly, he has referred to the authorities, the abridgments, digests, and the [x] ancient and modem treatises, where the subject is to be found, in order to facilitate the researches of the student. He desires not to be understood as professing to cite cases always exactly in point; on the contrary, in many instances the authorities will probably be found to be but distantly connected with the subject under examination, but still connected with it,

and they have been added in order to lead the student to matter of which he may possibly be in pursuit.

To those who are aware of the difficulties of the task, the author deems it unnecessary to make any apology for the imperfections which may be found in the work. His object has been to be useful; if that has been accomplished in any degree, he will be amply rewarded for his labor; and he relies upon the generous liberality of the members of the profession to overlook the errors which may have been committed in his endeavors to serve them.

PHILADELPHIA, September, 1839.

A

LAW DICTIONARY

A, the first letter of the English and most other alphabets, is frequently used as an abbreviation, (q.v.) and also in the marks of schedules or papers, as schedule A, B, C, &c. Among the Romans this letter was used in criminal trials. The judges were furnished with small tables covered with wax, and each one inscribed on it the initial letter of his vote; A, when he voted to absolve the party on trial; C, when he was for condemnation; and N L, (non liquet) when the matter did not appear clearly, and be desired a new argument.

A MENSA ET THORO, from bed and board. A divorce a mensa et thoro, is rather a separation of the parties by act of law, than a dissolution of the marriage. It may be granted for the causes of extreme cruelty or desertion of the wife by the husband. 2 Eccl. Rep. 208. This kind of divorce does not affect the legitimacy of children, nor authorize a second marriage. V. A

vinculo matrimonii; Cruelty Divorce.

A PRENDRE, French, to take, to seize, in contracts, as profits a prendre. Ham. N. P. 184; or a right to take something out of the soil. 5 Ad. & Ell. 764; 1 N. & P. 172 it differs from a right of way, which is simply an easement or interest which confers no interest in the land. 5 B. & C. 221.

A QUO, A Latin phrases which signifies from which; example, in the computation of time, the day a quo is not to be counted, but the day ad quem is always included. 13 Toull. n.52 ; 2 Duv. n.22. A court a quo, the court from which an appeal has been taken; a judge a quo is a judge of a court below. 6 Mart.Lo.R. 520; 1 Har.Cond.L.R. 501. See Ad quem.

A RENDRE, French, to render, to yield, contracts. Profits a rendre; under this term are comprehended rents and services. Ham N.P. 192.

A VINCULO MATRIMONII, from the bond of marriage. A marriage may be dissolved a vinculo, in many states, as in Pennsylvania, on the ground of canonical disabilities before marriage, as that one of the parties was legally married to a person who was then living; impotence(q.v.), and the like adultery cruelty and malicious desertion for two years or more. In New York a sentence of imprisonment for life is also a ground for a divorce a vinculo. When the marriage is dissolved a vinculo, the parties may marry again but when the cause is adultery, the guilty party cannot marry his or her paramour.

AB INITIO, from the beginning.

2. When a man enters upon lands or into the house of another by

authority of law, and afterwards abuses that authority, he becomes a trespasser ab initio. Bac. Ab. Trespass, B.; 8 Coke, 146 2 Bl. Rep. 1218 Clayt. 44. And if an officer neglect to remove goods attached within a reasonable time and continue in possession, his entry becomes a trespass ab initio. 2 Bl. Rep. 1218. See also as to other cases, 2 Stra. 717 1 H. Bl. 13 11 East, 395 2 Camp. 115, 2 Johns. 191; 10 Johns. 253; ibid. 369.

3. But in case of an authority in fact, to enter, an abuse of such authority will not, in general, subject the party to an action of trespass, Lane, 90 ; Bae. Ab. Trespass, B ; 2 T. It. 166. See generally 1 Chit. Pl. 146. 169. 180.

AB INTESTAT. An heir, ab intestat, is one on whom the law casts the inheritance or estate of a person who dies intestate.

AB IRATO, civil law. A Latin phrase, which signifies by a man in anger. It is applied to bequests or gifts, which a man makes adverse to the interest of his heir, in consequence of anger or hatred against him. Thus a devise made under these circumstances is called a testament ab irato. And the suit which the heirs institute to annul this will is called an action ab irato. Merlin, Repert. mots Ab irato.

ABANDONMENT, contracts. In the French law, the act by which a debtor surrenders his property for the benefit of his creditors. Merl. Rep. mot Abandonment.

ABANDONMENT, contracts. In insurances the act by which the insured relinquishes to the assurer all the property to the thing insured.

2. No particular form is required for an abandonment, nor need it be in writing; but it must be explicit and absolute, and must set forth the

reasons upon which it is founded.

3. It must also be made in reasonable time after the loss.

4. It is not in every case of loss that the insured can abandon. In the following cases an abandonment may be made: when there is a total loss; when the voyage is lost or not worth pursuing, by reason of a peril insured against or if the cargo be so damaged as to be of little or no value; or where the salvage is very high, and further expense be necessary, and the insurer will not engage to bear it or if what is saved is of less value than the freight; or where the damage exceeds one half of the value of the goods insured or where the property is captured, or even detained by an indefinite embargo ; and in cases of a like nature.

5. The abandonment, when legally made transfers from the insured to the insurer the property in the thing insured, and obliges him to pay to the insured what he promised him by the contract of insurance. 3 Kent, Com. 265; 2 Marsh. Ins. 559 Pard. Dr. Coin. n. 836 et seq. Boulay Paty, Dr. Com. Maritime, tit. 11, tom. 4, p. 215.

ABANDONMENT. In maritime contracts in the civil law, principals are generally held indefinitely responsible for the obligations which their agents have contracted relative to the concern of their commission but with regard to ship owners there is remarkable peculiarity; they are bound by the contract of the master only to the amount of their interest in the ship, and can be discharged from their responsibility by abandoning the ship and freight. Poth. Chartes part. s. 2, art. 3, Sec. 51; Ord. de la Mar. des proprietaires, art. 2; Code de Com. 1. 2, t. 2, art. 216.

ABANDONMENT, lights. The relinquishment of a right; the giving up of something to which we are entitled.

2. Legal rights, when once vested, must be divested according to law, but equitable rights may be abandoned. 2 Wash. R. 106. See 1 H. & M. 429; a mill site, once occupied, may be abandoned. 17 Mass. 297; an application for land, which is an inception of title, 5 S. & R. 215; 2 S. & R. 378; 1 Yeates, 193, 289; 2 Yeates, 81, 88, 318; an improvement, 1 Yeates, 515 ; 2 Yeates, 476; 5 Binn. 73; 3 S. & R. 319; Jones' Syllabus of Land Office Titles in Pennsylvania, chap. xx; and a trust fund, 3 Yerg. 258 may be abandoned.

3. The abandonment must be made by the owner without being pressed by any duty, necessity or utility to himself, but simply because he wishes no longer to possess the thing; and further it must be made without any desire that any other person shall acquire the same; for if it were made for a consideration, it would be a sale or barter, and if without consideration, but with an intention that some other person should become the possessor, it would be a gift: and it would still be a gift though the owner might be indifferent as to whom the right should be transferred; for example, he threw money among a crowd with intent that some one should acquire the title to it.

ABANDONMENT for torts, a term used in the civil law. By the Roman law, when the master was sued for the tort of his slave, or the owner for a trespass committed by his animal, he might abandon them to the person injured, and thereby save himself from further responsibility.

2. Similar provisions have been adopted in Louisiana. It is enacted by the civil code that the master shall be answerable for all the damages occasioned by an offence or quasi offence committed by his slave. He may, however, discharge himself from such responsibility by abandoning the slave to the person injured; in which case such person shall sell such slave at public auction in the usual form; to obtain payment of the damages and

costs; and the balance, if any, shall be returned to the master of the slave, who shall be completely discharged, although the price of the slave should not be sufficient to pay the whole amount of the damages and costs; provided that the master shall make abandonment within three days after the judgment awarding such damages, shall have been rendered; provided also that it shall not be proved that the crime or offence was committed by his order, for in such cases the master shall be answerable for all damages resulting therefrom, whatever be the amount, without being admitted to the benefit of abandonment. Art. 180, 181.

3. The owner of an animal is answerable for the damages he has caused; but if the animal had been lost, or had strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury, except where the master has turned loose a dangerous or noxious animal, for then he must pay for all the harm he has done, without being allowed, to make the abandonment. Ib. art. 2301.

ABANDONMENT, malicious. The act of a husband or wife, who leaves his or her consort willfully, and with an intention of causing perpetual separation.

2. Such abandonment, when it has continued the length of time required by the local statutes, is sufficient cause for a divorce. Vide 1 Hoff. R. 47; Divorce.

ABATEMENT, chancery practice, is a suspension of all proceedings in a suit, from the want of proper parties capable of proceeding therein. It differs from an abatement at law in this, that in the latter the action is in general entirely dead, and cannot be revived, 3 Bl. Com. 168 but in the former, the right to proceed is merely suspended, and may be revived by a bill of revivor. Mitf. Eq. Pl. by Jeremy, 57; Story, Eq. Pl. Sec. 354.

ABATEMENT, contracts, is a reduction made by the creditor, for the prompt payment of a debt due by the payor or debtor. Wesk. on Ins. 7.

ABATEMENT, merc. law. By this term is understood the deduction sometimes made at the custom-house from the duties chargeable upon goods when they are damaged See Act of Congress, March 2, 1799, s. 52, 1 Story L.U.S. 617.

ABATEMENT, pleading, is the overthrow of an action in consequence of some error committed in bringing or conducting it when the plaintiff is not forever barred from bringing another action. 1 Chit. Pl. 434. Abatement is by plea. There can be no demurrer in abatement. Willes' Rep. 479; Salk. 220.

2. Pleas in abatement will be considered as relating, 1, to the jurisdiction of the court; 2, to the person of the plaintiff; 3, to that of the defendant; 4, to the writ; 5, to the qualities of such pleas ; 6, to the form of such pleas; 7, to the affidavit of the truth of pleas in abatement.

3.-1. As to pleas relating to the jurisdiction of the court, see article Jurisdiction, and Arch. Civ. Pl. 290; 1 Chit. Pl. Index. tit, Jurisdiction. There is only one case in which the jurisdiction of the court may be inquired of under the general issue, and that is where no court of the country has jurisdiction of the cause, for in that case no action can be maintained by the law of the land. 3 Mass. Rep. Rea v. Hayden, 1 Dougl. 450; 3 Johns. Rep. 113; 2 Penn. Law Journal 64, Meredith v. Pierie.

4.-2. Relating to the person of the plaintiff. (1.) The defendant may plead to the person of the plaintiff that there never was any such person in rerum natura. Bro. Brief, 25 ; 19 Johns. 308 Com. Dig. Abatement, E 16. And if one of several plaintiffs be a fictitious person, it abates the writ. Com. Dig. Abatement, E 16; 1 Chit. Pl. 435; Arch. Civ. Pl. 304. But a

nominal plaintiff in ejectment may sustain an action. 5 Verm. 93; 19 John. 308. As to the rule in Pennsylvania, see 5 Watts, 423.

5.-(2.) The defendant may plead that the plaintiff is a feme covert. Co. Lit. 132, b.; or that she is his own wife. 1 Brown. Ent. 63; and see 3 T. R. 631; 6 T. R. 265; Com. Dig. Abatement, E 6; 1 Chit. Pl. 437; Arch. Civ. Pl. 302. Coverture occurring after suit brought is a plea in abatement which cannot be pleaded after a plea in bar, unless the matter arose after the plea in bar; but in that case the defendant must not suffer a continuance to intervene between the happening of this new matter, or its coming to his knowledge, and pleading it. 4 S & R. 238; Bac. Abr. Abatement, G; 4 Mass. 659; 4 S. & R. 238; 1 Bailey, 369; 4 Vern. 545; 2 Wheat. 111; 14 Mass. 295 ; 1 Blackf. 288; 2 Bailey, 349. See 10 S. & R. 208; 7 Verm. 508; 1 Yeates, 185; 2 Dall. 184; 3 Bibb, 246.

6.-(3.) That the plaintiff (unless he sue with others as executor) is an infant and has declared by attorney. 1 Chit. Pl. 436; Arch. Civ. Pi. 301; Arch. Pr. B. R. 142 ; 2 Saund. 212, a, n. 5; 1 Went. 58, 62; 7 John. R. 373; 3 N. H. Rep. 345; 8 Pick. 552; and see 7 Mass. 241; 4 Halst. 381 2 N. H. Rep. 487.

7.-(4.) A suit brought by a lunatic under guardianship, shall abate. Brayt. 18.

8.-(5.) Death of plaintiff before the purchase of the original writ, may be pleaded in abatement. 1 Arch. Civ. Pl. 304, 5; Com. Dig. Abatement, E 17. Death of plaintiff pending the writ might have been pleaded since the last continuance, Com. Dig. Abatement, H 32; 4 Hen. & Munf. 410; 3 Mass. 296 ; Cam. & Nor. 72; 4 Hawks, 433; 2 Root, 57; 9 Mass. 422; 4 H. & M. 410; Gilmer, 145; 2 Rand. 454; 2 Greenl. 127. But in some states, as in Pennsylvania, the, death of the plaintiff does not abate the writ; in such case the executor or administrator is substituted. The rule of the common

law is, that whenever the death of any party happens, pending the writ, and yet the plea is in the same condition, as if such party were living, then such death makes no alteration; and on this rule all the diversities turn. Gilb. Com. Pleas 242.

9.-(6.) Alienage, or that the plaintiff is an alien enemy. Bac. Abr. h.t.; 6 Binn. 241 ; 10 Johns. 183; 9 Mass. 363 ; Id. 377 ; 11 Mass. 119 ; 12 Mass. 8 ; 3 31. & S. 533; 2 John. Ch. R. 508; 15 East, 260; Com. Dig. Abatement, E 4; Id. Alien, C 5; 1 S. & R. 310; 1 Ch. Pl. 435; Arch. Civ. Pl. 3, 301.

10.-(7.) Misnomer of plaintiff may also be pleaded in abatement. Arch. Civ. Pi. 305; 1 Chitty's Pleading, Index, tit. Misnomer. Com. Dig. Abatement, E 19, E 20, E 21, E 22; l Mass. 75; Bac. Abr. h.t.

11.-(8.) If one of several joint tenants, sue in action ex contractu, Co. Lit. 180, b; Bac. Abr. Joint-tenants, K; 1 B. & P. 73; one of several joint contractors, Arch. Civ. Pl. 48-51, 53 ; one of several partners, Gow on Part. 150; one of several joint executors who have proved the will, or even if they have not proved the will, 1 Chit. Pl. 12, 13; one of several joint administrators, Ibid. 13; the defendant may plead the non-joinder in abatement. Arch. Civ. Pl. 304; see Com. Dig. Abatement, E 9, E 12, E 13, E 14.

12.-(9.) If persons join as plaintiffs in an action who should not, the defendant may plead the misjoinder in abatement. Arch. Civ. Pl. 304; Com. Dig. Abatement, E 15.

13.-(10.) When the plaintiff is an alleged corporation, and it is intended to contest its existence, the defendant must plead in abatement. Wright, 12; 3 Pick. 236; 1 Mass 485; 1 Pet. 450; 4 Pet. 501; 5 Pet. 231. To a suit brought in the name of the "judges of the county court," after such court has been abolished, the defendant may plead in abatement that there are no such judges. Judges, &c. v. Phillips; 2 Bay, 519.

14.-3. Relating to the person of the defendant. (1.) In an action against two or more, one may plead in abatement that there never was such a person in rerum natura as A, who is named as defendant with him. Arch. Civ. Pl. 312.

15.-(2.) If the defendant be a married woman, she may in general plead her coverture in abatement, 8 T. R. 545 ; Com. Dig. Abatement, F 2. The exceptions to this rule arise when the coverture is suspended. Com. Dig. Abatement, F 2, Sec. 3; Co. Lit. 132, b; 2 Bl. R. 1197; Co. B. L. 43.

16.-(3.) The death of the defendant abates the writ at common law, and in some cases it does still abate the action, see Com. Dig. Abatement, H 34; 1 Hayw. 500; 2 Binn. l.; 1 Gilm. 145; 1 Const. Rep. 83; 4 McCord, 160; 7 Wheat. 530; 1 Watts, 229; 4 Mass. 480; 8 Greenl. 128; In general where the cause of action dies with the person, the suit abates by the death of the defendant before judgment. Vide Actio Personalis moritur cum persona.

17.-(4.) The misnomer of the defendant may be pleaded in abatement, but one defendant cannot plead the misnomer of another. Com. Dig. Abatement, F 18; Lutw. 36; 1 Chit. Pl. 440; Arch. Civ. Pl. 312. See form of a plea in abatement for a misnomer of the defendant in 3 Saund. 209, b., and see further, 1 Show. 394; Carth. 307 ; Comb. 188 ; 1 Lutw. 10 ; 5 T. R. 487.

18.-(5.) When one joint tenant, Com. Dig. Abatement, F 5, or one tenant in common, in cases, where they ought to be joined, Ibid. F 6, is sued alone - he may plead in abatement. And in actions upon contracts if the plaintiff do not sue all the contractors, the defendant may plead the non-joinder in abatement. Ibid. F 8, a; 1 Wash. 9; 18 Johns. 459; 2 Johns. Cas. 382 ; 3 Caines's Rep. 99 ; Arch.. Civ. Pl. 309; 1 Chit. Pl. 441. When husband and wife should be sued jointly, and one is sued alone, the non-joinder may be pleaded in abatement. Arch. Civ. Pl. 309. The non-joinder of all the executors, who have proved the will; and the non-joinder of all the

administrators of the deceased, may be pleaded in abatement. Com. Dig. Abatement, F 10.

19.-(6.) In a real action if brought against several persons, they may plead several tenancy, that is, that they hold in severalty and not jointly, Com. Dig. Abatement, F 12; or one of them may take the entire tenancy on himself, and pray judgment of the writ. Id. F 13. But mis-joinder of defendant in a personal action is not the subject of a plea in abatement. Arch. Civ. Pl. 68, 310.

20.-(7.) In cases where the defendant may plead non-tenure, see Arch. Civ. Pl. 310; Cro. El. 559.

21.-(8.) Where he may plead a disclaimer, see Arch. Civ. Pl. 311; Com. Dig. Abatement, F 15.

22.-(9.) A defendant may plead his privilege of not being sued, in abatement. Bac. Ab. Abridgment C ; see this Dict. tit. Privilege.

23.-4. Plea in, abatement of the writ. (1.) Pleas in abatement of the writ or a bill are so termed rather from their effect, than from their being strictly such pleas, for as oyer of the writ can no longer be craved, no objection can be taken to matter which is merely contained in the writ, 3 B. & P. 399; 1 B. & P. 645-648; but if a mistake in the writ be carried into the declaration, or rather if the declaration, which is resumed to correspond with the writ or till, be incorrect in respect of some extrinsic matter, it is then open to the defendant to plead in abatement to the writ or bill, 1 B. & P. 648; 10 Mod. 210; and there is no plea to the declaration alone but in bar; 10 Mod. 210 ; 2 Saund. 209, d.

24.-(2.) Pleas in abatement of the writ or bill and to the form or to the action. Com. Dig. Abatement, H. 1, 17.

25.-(3.) Those of the first description were formerly either matter apparent on the face of the ;Writ, Com. Dig. Abatement, H l, or matters dehors. Id. H 17.

26.-(4.) Formerly very trifling errors were pleadable in abatement, 1 Lutw. 25; Lilly's Ent. 6 ; 2 Rich. C. P. 5, 8 ; 1 Stra. 556; Ld. Raym. 1541; 2 Inst. 668; 2 B. & P. 395. But as oyer of the writ can no longer be had, an omission in the defendant's declaration of the defendant's addition, which is not necessary to be stated in a declaration, can in no case be pleaded in abatement. 1 Saund. 318, n. 3; 3 B. & B. 395; 7 East, 882.

27.-(5.) Pleas in abatement to the form of the writ, are therefore now principally for matters dehors, Com. Dig. Abatement,H 17; Glib. C.P., 51, existing at the time of suing out the writ, or arising afterwards, such as misnomer of the plaintiff or defendant in Christian or surname.

28.-(6.) Pleas in abatement to the action of the writ, and that the action is misconceived, as that it is in case where it ought to have, been in trespass, Com. Dig. Abatement, G 5 ; or that it was prematurely brought, Ibid. Abatement, G 6, and tit. Action E ; but as these matters are grounds of demurrer or nonsuit, it is now very unusual to plead them in abatement. It may also be pleaded that there is another action pending. See tit. Autre action pendant. Com. Dig. Abatement, H. 24; Bac. Ab. Abatement, M; 1 Chitty's Pi. 443.

29.-6. Qualities of pleas in abatement. (1.) A writ is divisible, and may be abated in part, and remain good for the residue; and the defendant may plead in abatement to part, and demur or plead in bar to the residue of the declaration. 1 Chit. Pl. 444; 2 Saund. 210, n. The general rule is, that whatever proves the writ false at the time of suing it out, shall abate the writ entirely Gilb. C. P. 247 1 Saund. Rep. 286, (n) 7; 2 do. 72, (i) sub fin.

30.-(2.) As these pleas delay the trial of the merits of the action, the greatest accuracy and precision are required in framing them; they should be certain to every intent, and be pleaded without any repugnancy. 3

T. R. 186; Willes, 42 ; 2 Bl. R. 1096 2 Saund. 298, b, n. 1 ; Com. Dig. 1, 11 Co. Lit. 392; Cro. Jac. 82; and must in general give the plaintiff a better writ. This is the true criterion to distinguish a plea in abatement from a plea in bar. 8 T. IR. 615; Bromal. 139; 1 Saund. 274, n. 4 ; 284 n. 4; 2 B. & P. 125 ; 4 T. R. 227 ; 6 East) 600 ; Com. Dig. Abatement, J 1, 2; 1 Day, 28; 3 Mass. 24; 2 Mass. 362; 1 Hayw. 501; 2 Ld. Raym. 1178; 1 East, 634. Great accuracy is also necessary in the form of the plea as to the commencement and conclusion, which is said to make the plea. Latch. 178 ; 2 Saund. 209, c. d; 3 T. R. 186.

31.-6. Form of pleas in abatement. (1.) As to the form of pleas in abatement, see 1 Chit. Pl. 447; Com. Dig. Abatement, 1 19; 2 Saund. 1, n. 2.

32.-7. Of the affidavit of truth. (1.) All pleas in abatement must be sworn to be true, 4 Ann. c. 16, s. 11. The affidavit may be made by the defendant or a third person, Barnes, 344, and must be positive as to the truth of every fact contained in the plea, and should leave nothing to be collected by inference; Sayer's Rep. 293; it should be stated that the plea is true in substance and fact, and not merely that the plea is a true plea. 3 Str. 705, Litt. Ent. 1; 2 Chitt. Pl. 412, 417; 1 Browne's Rep. 77 ; see. 2 Dall. 184; 1 Yeates, 185.

See further on the subject of abatement of actions, Vin. Ab. tit. Abatement; Bac. Abr. tit. Abatement; Nelson's Abr. tit. Abatement; American Dig. tit. Abatement; Story's Pl. 1 to 70; 1 Chit. Pl. 425 to 458; Whart. Dig. tit. Pleading, F. (b.) Penna. Pract. Index, h.t.; Tidd's Pr. Index, h.t.; Arch. Civ. Pl. Index, h.t.; Arch. Pract. Index, h.t. Death; Parties to actions; Plaintiff; Puis darrein continuance.

ABATEMENT OF A FREEHOLD. The entry of a stranger after the death of the ancestor, and before the heir or devisee takes possession, by which the rightful possession of the heir or devisee is defeated. 3 Bl. 1 Com. 167;

Co. Lit. 277, a; Finch's Law, 1 195; Arch. Civ. Pl. 11.

2. By the ancient laws of Normandy, this term was used to signify the act of one who, having an apparent right of possession to an estate, took possession of it immediately after the death of the actual possessor, before the heir entered. Howard, Anciennes Lois des Frangais, tome 1, p. 539.

ABATEMENT OF LEGACIES, is the reduction of legacies for the purpose of paying the testator's debts.

2. When the estate is short of paying the debts and legacies, and there are general legacies and specific legacies, the rule is that the general legatees must abate proportionably in order to pay the debts; a specific legacy is not abated unless the general legacies cannot pay all the debts; in that case what remains to be paid must be paid by the specific legatees, who must, where there are several, abate their legacies, proportionably. 2 Bl. Com. 513; 2 Vessen. 561 to 564; 1 P. Wms. 680; 2 P. Wms. 283. See 2 Bro. C. C. 19; Bac. Abr. Legacies, H; Rop. on Leg. 253, 284.

ABATEMENT OF NUISANCES is the prostration or removal of a nuisance. 3 Bl.

2.-1. Who may abate a nuisance; 2, the manner of abating it. (1.) Who may abate a nuisance. (1.) Any person may abate a public nuisance. 2 Salk. 458; 9 Co. 454.

3.-(2.) The injured party may abate a private nuisance, which is created by an act of commission, without notice to the person who has committed it; but there is no case which sanctions the abatement by an individual of nuisances from omission, except that of cutting branches of trees which overhang a public road, or the private property of the person who cuts them.

4.-2. The manner of abating it. (1.) A public nuisance may be abated

without notice, 2 Salk. 458; and so may a private nuisance which arises by an act of commission. And, when the security of lives or property may require so speedy a remedy as not to allow time to call on the person on whose property the mischief has arisen to remedy it, an individual would be justified in abating a nuisance from omission without notice. 2 Barn. & Cres. 311; 3 Dowl. & R. 556.

5.-(2.) In the abatement of a public nuisance, the abator need not observe particular care in abating it, so as to prevent injury to the materials. And though a gate illegally fastened, might have been opened without cutting it down, yet the cutting would be lawful. However, it is a general rule that the abatement must be limited by its necessity, and no wanton or unnecessary injury must be committed. 2 Salk. 458.

6.-3. As to private nuisances, it has been held, that if a man in his own soil erect a thing which is a nuisance to another, as by stopping a rivulet, and so diminishing the water used by the latter for his cattle, the party injured may enter on the soil of the other, and abate the nuisance and justify the trespass; and this right of abatement is not confined merely to a house, mill, or land. 2 Smith's Rep. 9; 2 Roll. Abr. 565; 2 Leon. 202; Com. Dig. Pleader, 3 M. 42; 3 Lev. 92; 1 Brownl. 212; Vin. Ab. Nuisance; 12 Mass. 420; 9 Mass. 316; 4 Conn. 418; 5 Conn. 210; 1 Esp. 679; 3 Taunt. 99; 6 Bing. 379.

7.-4. The abator of a private nuisance cannot remove the materials further than is necessary, nor convert them to his own use. Dalt. o. 50. And so much only of the thing as causes the nuisance should be removed; as if a house be built too high, so much. only as is too high should be pulled down. 9 Co. 53; God. 221; Str. 686.

8.-5. If the nuisance can be removed without destruction and delivered to a magistrate, it is advisable to do so; as in the case of a libellous print or paper affecting an individual, but still it may be

destroyed 5 Co. 125, b.; 2 Campb. 511. See as to cutting down trees, Roll. Rep. 394; 3 Buls 198; Vin. Ab. tit. Trees, E, and Nuisance W.

ABATOR is, 1st, he who abates or prostrates a nuisance; 2, he who having no right of entry, gets possession of the freehold to the prejudice of an heir or devisee, after the time when the ancestor died, and before the heir or devisee enters. See article Abatement. Litt. Sec. 897; Perk. Sec. 383; 1 Inst. 271; 2 Prest. Abst. 296. 300. As to the consequences of an abator dying in possession, See Adams' Eject. 43.

ABATUDA, obsolete. Any thing diminished; as, moneta abatuda, which is money clipped or diminished in value. Cowell, h.t.

ABAVUS, civil law, is the great grandfather, or fourth male ascendant. Abavia, is the great grandmother, or fourth female ascendant.

ABBEY, abbatia, is a society of religious persons, having an abbot or abbess to preside over them. Formerly some of the most considerable abbots and priors in England had seats and votes in the house of lords. The prior of St. John's of Jerusalem, was styled the first baron of England, in respect to the lay barons, but he was the last of the spiritual barons.

ABBREVIATION, practice. The omission of some words or letters in writing; as when fieri facias is written fi. fa.

2. In writing contracts it is the better practice to make no abbreviations; but in recognizances, and many other contracts, they are used; as John Doe tent to prosecute, &c. Richard Roe tent to appear, &c. when the recognizances are used, they are drawn out in extenso. See 4 Ca. &

P. 61; S.C.19E.C.L.R.268; 9 Co.48.

ABBREVIATIONS and abbreviated references. The following list, though necessarily incomplete, may be useful to some readers.

A, a, the first letter of the alphabet, is sometimes used in the ancient law books to denote that the paging is the first of that number in the book. As an abbreviation, A is used for anonymous.

A. & A. on Corp. Angell & Ames on Corporations. Sometimes cited Ang. on Corp.

A. B. Anonymous Reports, printed at the end of Bendloe's Reports.

A. D. Anno Domini, in the year of our Lord

A. & E. Adolphus and Ellis' Reports.

A. & E. N. S. Adolphus & Ellis' Queen's Bench Reports, New Series, commonly cited Q. B.

A. & F. on Fixt. Amos & Ferard on Fixtures.

A. K. Marsh. A. K. Marshall's (Kty.) Reports.

Ab. or Abr. Abridgement.

Abr. Ca. Eq. Abridgement of cases in Equity.

Abs. Absolute.

Ab. Sh. Abbott on Shipping.

Acc. Accord or Agrees.

Act. Acton's Reports.

Act. Reg. Acta Regia.

Ad. Eject. Adams on Ejectment.

Ad. & Ell. Adolphus & Ellis' Reports.

Ad. finn. Ad finem. At or near the ond.

Ads. Ad sectum, vide Ats.

Addam's R. Addam's Ecclesiastical Reports. In E. Eccl. Rep.

Addis on Contr. Addison on the Law of Contracts and on Parties to actions ex contractu.

Addis. R. Addison's Reports.

Admr. Administrator.

Ady. C. M. Adye on Courts Martial.

Aik. R. Aiken's Reports.

Al. Aleyn's Cases.

Al. Alinea. Al et. Et alii, and others.

Al.& N. R. Alcock & Napier's Reports.

Ala. R. Alabama Reports.

Alc. Reg. G. Alcock's Registration Cases

Ald. & Van Hoes. Dig. A Digest of the Laws of Mississippi, by T. J. Fox Alden and J. A. Yan Hoesen.

Aldr. Hilt. Aldridge's History of the Courts of Law.

Alis. Prin. Alison's Principles of the Criminal Law of Scotland.

All. & Mor. Tr. Allen and Morris' Trial.

Alley. L. D. of Mar. Alleyne's Legal Degrees of Marriage considered.

Alln. Part. Allnat on Partition.

Am. America, American, or Americana.

Amb. Ambler's Reports.

Am. & Fer. on. Fixt. Amos & Ferard on Fixture's.

Amer. America, American, or Americana.

Amer. Dig. American Digest.

Amer. Jur. American Jurist.

Anon. Anonymous.

And. Anderson's Reports.

Ander. Ch. War. Anderson on Church Wardens.

Andr. Andrew's Reports.

Ang. on Adv. Enj. Angell's Inquiry into the rule of law which creates a right to an incorporeal hereditament, by an adverse enjoyment of twenty years.

Ang. on Ass. Angell's Practical Summary of the Law of Assignment in trust for creditors.

Ang. on B. T. Angell on Bank Tax.

Ang. on Corp. Angell on the Law of Private Corporations.

Ang. on Limit. Angell's Treatise on the Limitation of Actions at Law, and Suits in Equity.

Ang. on Tide Wat. Angell on the right of property in Tide Waters.

Ang. on Water Courses. Angell on the Common Law in relation to Water Courses.

Ann. Anne; as 1 Ann. c. 7.

Anna. Annaly's Reports. This book is usually cited Cas. Temp. Hardw.

Annesl. on Ins. Annesley on Insurance.

Anstr. Anstruther's Reports.

Anth. Shep. Anthon's editon's of Sheppard's Touchstone.

Ap. Justin. Apud Justinianum, or Justinian's Institutes.

App. Apposition.

Appx. Appendix.

Arch. Archbold. Arch. Civ. Pl. Archbold's Civil Pleadings. Arch. Cr. Pl. Archbold's Criminal Pleadings. Arch. Pr. Archbold's Practice.

Arch. B. L. Archbold's Bankrupt law. Arch. L. & T. Archbold on the Law of Landlord and Tenant. Arch. N. P. Archbold's Law of nisi Prius.

Arg. Argumento, by an argument drawn from such a law. It also signifies arguendo.

Arg. Inst. Institution au Droit Francais, par M. Argou.

Ark. Rep. Arkansas Reports. See Pike's Rep.

Ark. Rev. Stat. Arkansas Revised Statutes.

Art. Article

Ashm. R. Ashmead's Reports

Aso & Man. Inst. Aso and Manuel's institutes of the Laws of Spain.

Ass. or Lib. Ass. Liber Assissarium, or Pleas of the Crown.

Ast. Ent. Aston's Entries.

Atherl. on Mar. Atherley on the Law of Marriage and other Family Settlements.

Atk. Atkyn's Reports.

Atk. P. T. Atkyn's Parliamentary Tracts.

Atk. on Con. Atkinson on Conveyancing.

Atk. on Tit. Atkinson on Marketable Titles.

Ats. in practice, is an abbreviation for the words "at suit of," and is used when the defendant files any pleadings; for example: when the defendant enters a plea he puts his name before that of the plaintiff, reversing the order in which they are on the record. C.D.(the defendant,) ats A.B. (the plaintiff.)

Aust. on Jur. The Province of Jurisprudence Determined, by John Austin

Auth. Authentica, in the Authentic; that is, the Summary of some of the Novels of the Civil Law inserted in the code under such a title.

Ay. Ayliff'es Pandect.

Ayl. Parerg. Ayliffe's Parergon juris canonici Anglicani.

Azun. Mar. Law. Azuni's Maritime Law of Europe.

B, b, is used to point out that a number, used at the head of a page to denote the folio, is the second number of the same volume.

B. B. Bail Bond.

B. or Bk. Book.

B. & A. Barnewall & Alderson's Reports.

B. & B. Ball & Beatty's Reports.

B. C. R. Brown's Chancery Reports.

B. Eccl. L. Burn's Ecclesiastical Law.

B. Just. Burn's Justice.

B. N. C. Brooke's New Cases.

B. P. C. or Bro. Parl. Cas. Brown's Parliamentry Cases.

B. & P. or Bos. & Pull. Bosanquet & Puller's Reports.

B. R. or K. B. King's Bench.

B. Tr. Bishop's Trial.

Bab. on Auct. Babington on the Law of Auctions.

Bab. Set off. Babington on Set off and mutual credit.

Bac. Abr. Bacon's Abridgement.

Bac. Comp. Arb. Bacon's (M.) Complete Arbitrator.

Bac. El. Bacon's Elements of the Common Law.

Bac. Gov. Bacon on Government.

Bac. Law Tr. Bacon's Law Tracts

Bac. Leas. Bacon (M.) on Leases and Terms of Years.

Bac. Lib Reg. Bacon's (John) Liber Regis, vel Thesaurus Rerum Eccleslasticarum.

Bac. Uses Bacon's Reading on the Statute of Uses. This is printed in his Law Tracts.

Bach. Man. Bache's Manual of a Pennsylvania Justice of the Peace

Bail. R. Bailey's Reports.

Bain. on M. & M. Bainbridge on Mines and Minerals.

Baldwin. R. Baldwin's Circuit Court Reports.

Ball & Beat. Ball and Beatty's Reports.

Ballan. Lim. Ballantine on Limitations.

Banc. Sup. Upper Bench.

Barb. Eq. Dig. Barbour's Equity Digest.

Barb. Cr. Pl. Barbour's Criminal Pleadings.

Barb. Pract. in Ch. Barbour's Treatise on the Practice of the Court of Chancery.

Barb. R. Barbour's Chancery Reports.

Barb. Grot. Grotius on War and Peace, with notes by Barbeyrac.

Barb. Puff. Puffendorf's Law of Nature and Nations, with notes by M. Barbeyrac.

Barb. on Set off. Barbour on the Law of Set off, with an appendix of Precedents.

Barn. C. Barnardiston's Chancery Reports.

Barn. Barnardiston's K. B. Reports.

Barn. & Ald. Barnewall & Alderson's Reports.

Barn. & Adolph. Barnewall & Adolphu's Reports.

Barn. & Cress. Barnewull & Cresswell's Reports.

Barn. Sher. Barnes' Sheriff.

Barne. Barne's Notes of Practice.

Barr. Obs. Stat. Barrington's Observations on the more ancient statutes.

Barr. Ten. Barry's Tenure.

Bart. El. Conv. Barton's Elements of Conveyancing.

Bart. Prec. Conv. Barton's Precedents of Conveyancing.

Bart. S. Eq. Barton's Suit in Equity.

Batty's R. Batty's Reports of Cases determined in the K. B. Ireland.

Bay's R. Bay's Reports.

Bayl. Bills. Bayley on Bills.

Bayl. Ch. Pr. Bayley's Chamber Practice.

Beam. Ne Exeat. Brief view of the writ of Ne Exeat Regno, as a equitable process, by J. Beam's.

Beam. Eq. Beames on Equity Pleading.

Beam. Ord. Chan. Beames' General Orders of the High Court of Chancery, from 1600 to 1815.

Beat. R. Beatty's Reports determined in the High Court of Chancery In Ireland.

Beav. R. Beavan's Chancery Reports.

Beawes. Beawe's Lex Mercatoria.

Beck's Med. Jur. Beck's Medical Jurisprudence.

Bee's R. Bee's Reports.

Bell's Com. Bell's Commentaries on the Laws of Scotland, and on the Principles of Mercantile Jurisprudence.

Bell. Del. U. L. Beller's Delineation of Universal Law.

Bell's Dict. Dictionary of the Law of Scotland By Robert Bell

Bell's Med. Jur. Bell's Medical Jurisprudence.

Bell. Bellewe's Cases in the time of K. Richard II. Bellewe's Cases in the time of Henry VIII, Edw VI., and Q. Mary, collected out of Brooke's Abridgment, and arranged under years, with a table, are cited as Brooke's New Cases.

Bellingh. Tr. Bellingham's Trial.

Belt's Sup. Belt's Supplement. Supplement to the Reports in Chancery of Francis Vesey, Senior, Esq, during the time of Lord Ch J. Hardwicke.

Belt's Ves. sen. Belt's editon of Vesey senior's Reports.

Benl. Benloe & Dalison's Reports. See New Benl.

Ben. on Av. Benecke on Average.

Benn. Diss. Bennet's Short Dissertation on the nature and various proceedings in the Master's Office, in the Court of Chancery. Sometimes this book is called Benn. Pract.

Benn. Pract. See Benn. Diss.

Benth. Ev. Bentham's Treatise on Judicial Evidence.

Best on Prc. Best's Treatise on Presumption of Law and Fact.

Bett's Adm. Pr. Bett's Admiralty Practice.

Bev. on Hom. Bevil on Homicide.

Bill. on Aw. Billing on the Law of Awards.

Bing. Bingham Bin. Inf; Bingham on Infancy.

Bing on Judg. Bingham on Judgments and Executions.

Bing L. & T. Bingham on the Law of Landlord and Tenant

Bing. R. Bing Bingham's Reports.

Bing. N. C. Bingham's New Cases.

Binn. Reports Of Cases adjudged in the Supreme Court of Pennsylvania By Horace Binney

Bird on Conv. Bird on Conveyancing

Bird L.& T. Bird on the Laws Respecting Landlords, Tenants and Lodgers.

Bird's Sol. Pr Bird's Solution of Precedents of Settlements.

Biret, De l'Abs. Traite de l'Absence et de ses effects, par M. Biret

Biss. on Est. or Biss. on Life Est. Bissett on the Law of Estates for Life.

Biss. on Partn. Bissett on Partnership.

Bl. Blounts Law Dictionary and Glossary

Bl. Comm. or Comm. Commentaries on the Laws of England by Sir Wlliam Blackstone.

Bl. Rep. Sir William Blackstone's Reports.

Bl. H. Henry Blackstone's Reports, sometime cited H. Bl.

Black. L. T. Blackstone's Law Tracts

Blackb on Sales. Blackburn on the Effect of the Contract of Sales.

Blackb. on Sales. Blackburn on the Law of Sales.

Blackf. R. Blackford's Reports.

Blak. Ch. Pr. Blake's Practice of the Court of Chancery of the State of New York.

Blan. on Ann. Blaney on Life Annuities

Bland's Ch. R. Bland's Chancery Reports.

Blansh. Lim. Blanshard on Limitations.

Bligh. R. Bligh's Reports of Cases decided in the House of Lords.

Blount. Blount's Law Dictionary and Glossary.

Bo. R. Act. Booth on Real Actions.

Boh. Dec. Bohun's Declarations.

Boh. Eng. L. Bohun's English Lawyer.

Boh. Priv. Lon. Bohun's Privilegia Londini.

Boote. Boote's Ch. Pr. Boote's Chancery Practice.

Boote's S. L. Boote's Suit at Law.

Booth's R. A. Booth on Real Action.

Borth. L. L. Borthwick on the Law of Libel.

Bos. & Pull. Bosanquet and Puller's Reports. Vide B. & P.

Bosc. on Con. Boscowen on Convictions.

Bott. Bott's Poor Laws.

Bouch Inst. Dr. Mar. Boucher, Institution au Droit Maritime.

Boulay Paty Dr. Com. Cours de Droit Commercial Maritime, par P. S Boulay Paty.

Bousq. Dict. de Dr. Bousquet, Dictionnaire de Droit.

Bouv. L. D. Bouvier's Law Dictionary.

Bouv. Inst. Institutiones Theologicae Auctore J. Bouvier.

Bouv. Inst. Am. Law. Bouvier's Institutes of American Law.

Bowl. on Lib. Bowles on Libels.

Br. or Brownl. Brownlow's Reports.

Br. or Br. Ab. Brooke's Abridgment.

Bra. Brady's History of the Succession of the Crown of England, &c.

Brac. Bracton's Treatise on the Laws and Customs of England.

Bra. Princ. Branche's Principia Legis et Aequitatis.

Brack. L. Misc. Brackenridge's Law Miscellany.

Bradb. Bradby on Distresses.

Bradl. P. B. Bradley's Point Book.

Bran. Prin. or Bran. Max. Branch's Principia Legis Aequitatis, being an alphabetical collection of maxims, &c.

Brayt. R. Brayton's Reports.

Breese's R. Breese's Reports.

Brev. Sel. Brevia Selecta, or Choice Writs.

Brid. Bridgman's Reports Reports from 12 to 19 K James. By Sir John Bridgman.

Brid. Dig. Ind. Bridgman's Digested Index.

Brid. Leg. Bib. Bridgman's Legal Bibliography.

Brid. Conv. Bridgman's Precedents of Conveyancing.

Brid. Refl. Bridgman's Reflections on the Study of the Law.

Brid. Synth. Bridgeman's Synthesis.

Brid. Thes. Jur. Bridgman's Thesaurus Juridic.

Bridg. O. Orlando Bridgmen's Reports.

Bridg. The. Jru. Bridgman's Thesaurus Juridicus.

Britton. Treatise on the Ancient Pleas of the Crown

Bro. or Brownl. Brownlow's Reports. Also, Reports by Richard Brownlow and John Goldeshorough. Cited 1 Bro. 2 Bro.

Bro. Ab. Brooke's Abridgement.

Bro. A. & C. L. Brown's Admiralty and Civil Law.

Bro. C. C. Brown's Chancery Cases.

Bro. Off. Not. A Treatise on the Office and Practice of a Notary in England, as connected with Mercantile Instruments, &c. By Richard Brooke.

Bro. P. C. Brown's Parliamentary Cases.

Bro. Read. Brooke's Reading on the Statute of Limitations.

Bro. on Sales. Brown on Sales

Bro. V.M. Brown's Vade Mecum.

Brock. R. Brockenbrough's Reports of Chief Justice Marshall's Decisions.

Brod. & Bing. Broderip & Bingham's Reports.

Broom on Part. Broom on Parties to Actions.

Brownl. Rediv. or Brownl. Ent. Brownlow Redivivus.

Bruce M. L. Bruce's Military Law.

Buck's Ca. Buck's Cases. Cases in Bankruptcy in 1817, 1818, by J.W. Buck.

Bull. Bull. N.P. Buller's Nisi Prius.

Bulst. Bulstrode's Reports.

Bunb. Bunbury's Reports.

Burge Col. Law. Burge's Colonial Law.

Burge Confl. of Law. Burge on the Conflict of Laws.

Burge on Sur. Burge's Commentaries on the Law of Suretyship. &c.

Burge For. Law. Burge on Foreign Law.

Burlam. Burlamaqui's Natural and Political Law.

Burn's L.D. Burn's Law Dictionary.

Burn's Just. Burn's Justice of the Peace.

Burn's Eccl. Law or Burn's E.L. Burn's Ecclesiastical Law.

Burn. C.L. Burnett's Treatise on the Criminal Law of Scotland.

Burn. Com. Burnett's Commentaries on the Criminal Law of Scotland.

Burr. Burrow's Reports.

Burr. Sett. Cas. Burrow's Settlement Cases.

Burr's Tr. Burr's Trial.

Burt. Man. Burton's Manual of the Law of Scotland. The work is in two parts, one relating to "public law," and the other to the law of "private rights and obligations." The former is cited Burt. Man. P.L.; the latter, Burt. Man. Pr.

Burt. on Real Prop. Burton on Real Property.

Butl. Hor. Jur. Butler's Horae Juridicae Subsecivae.

C. Codes, the Code of Justinian.

C. Code.

C. Chancellor.

C.& A. Cooke and Alcock's Reports.

C.B. Communi Banco, or Common Bench.

C.C. Circuit Court.

C.C. Cepi Corpus.

C.C.& B.B. Cepi Corpus and Bail Bond.

C.C. or Ch. Cas. Cases in Chancery in three parts.

C.C.C. or Cr. Cir. Com. Crown Circuit Companion.

C.C.& C. Cepi corpus et committitur. See Capias ad satisfaciendum, in the body of the work.

C.C.E. or Cain. Cas. Caines' Cases in Error.

C.D. or Com. Dig. Comyn's Digest.

C.& D. C. C. Crawford and Dix's Criminal Cases.

C.& D. Ab. C. Crawford and Dix's Abridged Cases.

C.& F. Clark & Findley's Reports.

C.& F. Clarke & Finelly's Reports.

C. J. Chief Justice.

C.& J. Crompton & Jervis' Exchequer Reports.

C.J.C.P. Chief Justice of the Common Pleas.

C.J.K.B. Chief Justice of the King's Bench.

C.J.Q.B. Chief Justice of the Queen's Bench.

C.J.U.B. Chief Justice of the Upper Bench. During the time of the commonwealth, the English Court of the King's Bench was called the Upper Bench.

C.& K. Carrington & Kirwan's Reports.

C.& M. Crompton & Meeson's Reports.

C.& M. Carrington & Marshman's Reports.

C.M.& R. Crompton, Meeson & Roscoe's Exchequer Reports.

C.N.P.C. Campbell's Nisi Prius Cases.

C. P. Common Pleas.

C.P. Coop. C.P. Cooper's Reports.

C.& P. or Car.& Payn. Carrington & Payne's Reports.

C.& P. Craig & Phillips' Reports.

C.R. or Ch. Rep. Chancery Reports.

C.& R. Cockburn & Rowe's Reports.

C.W. Dudl. Eq. C.W. Dudley's Equity Reports.

C. Theod. Codice Theodosiano, in the Theodosian code.

Ca. Case or placitum.

Ca. T.K. Select Cases tempore King.

Ca. T. Talb. Cases tempore Talbot.

Ca. res. Capias ad respondendum.

Ca. sa., in practice, is the abbreviation of capias ad satisfaciendum.

Caines' R. Caines' Term Reports.

Caines' Cas. Caines' Cases, in error.

Caines' Pr. Caines' Practice.

Cald. R. Caldecott's Reports.

Cald. S.C. Caldecott's Settlement Cases; sometimes cited Cald. R.

Caldw. Arbit. Caldwell on Arbitration.

Call. on Sew. Callis on the Law relating to Sewers.

Call's R. Call's REports.

Calth. R. Calthorp's Reports of Special Cases touching several customs and liberties of the City of London.

Calv. on Part. Calvert on Parties to Suits in Equity.

Cam.& Norw. Cameron & Norwood's Reports.

Campb. Campbell's Reports.

Can. Canon.

Cap. Capitulo, chapter.

Car. Carolus: as 13 Car. 2, st. 2, c.1.

Carr. Cr. L. Carrington's Criminal Law.

Carr.& Kirw. Carrington & Kriwan's Reports. See C.& K.

Carr.& Marsh. Carrington & Marshman's Reports.

Carr.& Oliv. R. and C.C. Carrow & Oliver's Railway and Canal Cases.

Cart. Carter's Reports. Reports in C.P. in 16, 17, 18, and 19, Charles II.

Cara de For. Carta de Foresta.

Carth. Carthew's Reports.

Cary. Cary's Reports.

Cary on Partn. Cary on the Law of Partnership.

Cas. of App. Cases of Appeals to the House of Lords.

Cas. L. Eq. Cases and Opinions in Law, Equity, and Conveyancing.

Cas. of Pr. Cases of Practice in the Court of the King's Bench, from the reign of Eliz. to the 14 Geo. 3.

Cas. of Sett. Cases of Settlement.

Cas. Temp. Hardw. Cases during the time of Lord Hardwicke.

Cas. Temp. Talb. Cases during the time of Lord Talbot.

Ch. Chancellor.

Ch. CAs. Cases in Chancery.

Ch. Pr. Precedents in Chancery.

Ch. R. REports in Chancery.

Ch. Rep. Vide Ch. Cases.

Chamb. on Jur. of Chan. Chambers on the Jurisdiction of the High Court of Chancery, over the Persons and Property of Infants.

Chamb. L.& T. Chambers on the Law of Landlord and Tenant.

Char. Merc. Charta mercatoria. See Bac. Ab. Smuggling, C.

Charlt. Charlton. T.U.P. Charl. T.U.P. Charlton's Reports. R.M. Charlton's Reports.

Chase's Tr. Chase's Trial.

Cher. Cas. Cherokee Case.

Chev. C.C. Cheves' Chancery Cases.

Chipm. R. Chipman's Reports. D. Chipm. D. Chipman's Reports.

Chipm. Contr. Essay on the Law of Contracts for the payment of Specific Articles. By Daniel Chipman.

Ch. Contr. A Practical Treatise on the Law of Contracts. By Joseph Chitty, Jr.

Chitty. on App. Chitty's Practical Treatise on the Law relating to Apprentices and Journeymen.

Chit. on Bills. Chitty on Bills.

Chit. Jr. on Bills. Chitty, junior, on Bills.

Chit. Com. L. Chitty's Treatise on Commerical Law.

Chit. Cr. L. Chitty's Criminal Law.

Chit. on Des. Chitty on the Law of Descents.

Chit. F. Chitt's Forms and Practical Proceedings.

Chit. Med. Jur. Chitty on Medical Jurisprudence.

Chit. Chitty's Reports.

Chit. Pl. A Practical Treatise on Pleading, by Joseph Chitty.

Chit. Pr. Chitty's General Practice.

Chit. Prerog. Chitty on the Law of the Prerogatives of the Crown.

Chris. B.L. Christian's Bankrupt Laws.

Christ. Med. Jur. Christison's Treatise on Poisons, relating to Medical Jurisprudence, Physiology, and the Practice of Physic.

Civ. Civil.

Civ. Code Lo. Civil Code of Louisiana.

Cl. The Clementines.

Cl. Ass. Clerk's Assistant.

Clan. H.& W. Clancy on the Rights, Duties, and Liabilities of Hushand and Wife.

Clark on Leas. Clark's Enquiry into the Nature of Leases.

Clarke, R. Clarke's Reports.

Clark & Fin. Clark & Finelly's Reports.

Clark. Adm. Pr. Clarke's Practice in the Admiralty.

Clark. Prax. Clarke's Praxis, being the manner of proceeding in the Ecclesiastical Courts.

Clay. Clayton's Reports.

Cleir. Us et Const. Cleirac, Us et Coustumes ae la Mer.

Clerke's Rud. Clerke's Rudiments of American Law and Practice.

Clift. Clift's Entries.

Co. A particle used before other words to imply that the person spoken of possesses the same character as other persons whose character is mentioned, as co-executor, and executor with other; co-heir, an heir with others; co-partner, a partner with others, etc. Co. is also an abbreviation for "company" as John Smith & Co. When so abbreviated, it also represents "county."

Co. Coke's Reports.

Co. or Co. Rep. Coke's Reports.

Co. Ent. Coke's Entries.

Co. B. L. Cooke's Bankrupt Law.

Co. on Courts. Coke on Courts; 4th Institute. See Inst.

Co. Litt. Coke on Littleton. See Inst.

Co. M. C. Coke's Magna Charta; 2d Institute. See. Inst.

Co. P. C. Coke's Pleas of the Crown. See Inst.

Cock & Rowe. Cockburn & Rowe's Reports.

Code Civ. Code Civil, or Civil Code of France. This work is usually cited by the article.

Code Nap. Code Napoleon. The same as Code Civil.

Code Com. Code de Commerce.

Code Pen. Code Penal.

Code Pro. Code de Procedure.

Col. Column, in the first or second column of the book quoted.

Col.& Cai. CAs. Coleman & Caines' Cases.

Cole on Inf. Cole on Criminal Informations, and Informations in the Nature of Quo Warranto.

Coll. on Pat. Collier on the Law of Patents.

Coll. on Idiots. Collinson on the Law concerning Idiots, &c.

Coll. Rep. Colle's Reports.

Coll. Collation.

Colly. Rep. Collyer's Reports.

Com. Communes, or Extravagantes Communes.

Com. or Com. Rep. Comyn's Reports.

Com. Contr. Comyn on Contract.

Com. on Us. Comyn on Usury.

Com. Dig. Comyn's Digest.

Com. L.& T. Comyn on the Law of Landlord and Tenant.

Com. Law. Commercial Law.

Com. Law. Rep. Common Law Reports, edited by Sergeant and Lowher.

Comb. Comberbach's Reports.

Comm. Blackstone's Commentaries.

Con. & Law. Connor & Lawson's Reports.

Cond. Condensed.

Cond. Ch. R. Condensed Chancery Reports.

Cond. Ex. R. Condensed Exchequer Reports.

Conf. Chart. Confirmatio Chartorum.

Cong. Congress.

Conkl. Pr. Conkling's Practice of the Courts of the United States.

Conn. R. Connecticut Reports.

Conr. Cust. R. Contoy's Custodian Reports.

Cons. del Mar. Consolato del Mare.

Cons. Ct. R. Constitutional Court REports.

Cont. Contra.

Cooke on Defam. Cooke on Defamation.

Coop. Eq. R. Cooper's Equity Reports.

Coop. Cas. Cases in the High Court of Chancery. By George Cooper.

Coop. on Lib. Cooper on the Law of Libels.

Coop. Eq. Pl. Cooper's Equity Pleading.

Coop. Just. Cooper's Justinian's Institutes.

Coop. Med. Jur. Cooper's Medical Jurisprudence.

Coop. t. Brough. Cooper's Cases in the time of Brougham.

Coop. P.P. Cooper's Points of Practice.

Cote. Mrtg. Coote on Mortgages.

Corb. & Dan. Corbet & Daniel's Election Cases.

Corn. on Uses. Cornish on Uses.

Corn. on REm. Cornish on REmainders.

Corp. Jur. Civ. Corpus Juris Civilus.

Corp. Jur. Can. Corpus Juris Canonicus.

Corvin. Corvinus. See Bac. Ab. Mortgage A, where this author is cited.

Cot. Abr. Cotton's Abridgement of Records.

Cov. on Conv. Evi. Coventry on Conveyancers' Evidence.

Cow. Int. Cowel's Law Dictionary, or the Interpreter of words and terms, used either in the common or statute laws of Great Britain.

Cowp. Cowper's Reports.

Cow. R. Cowen's Reports, N.Y.

Cox's Cas. Cox's Cases.

Coxe's R. Coxe's Reports.

Crabb's C.L. Crabb's Common Law. A History of English Law. By George Crabb.

Crabb, R. P. Crabb on the Law of Real Property.

Craig & Phil. Craig & Phillip's Reports.

Cranch, R. Cranch's Reports.

Cressw. R. Cresswell's Reports of Cases decided in the Court for the Relief of Insolvent Debtors.

Crim. Con. Criminal Conversation: adultery.

Cro. Croke's Reports.

Cro. Eliz. Croke's Reports, during the time of Queen Elizabeth, also cited as 1 Cro.

Cro. Jac. Croke's Reports during the time of King James I., also cited as 2 Cro.

Cro. Car. Croke's Reports, during the time of Charles I., also cited as 3 Cro.

Crompt. Ex. Rep. Crompton's Exchequer Reports.

Crompt. J.C. Crompton's Jurisdiction of Courts.

Crompt. & Mees. Crompton & Meeson's Exchequer Reports.

Crompt. Mees. & Rosc. Crompton, Meeson, and Roscoe's Exchequer Reports.

Cross on Liens. Cross' Treatise on the Law of Liens and Stoppage in Transitu.

Cru. Dig. or Cruise's Dig. Cruise's Digest of the Law of Real Property.

Cul. Culpablilis, guilty; non cul. not guilty; a plea entered in actions of trespass.

Cul. prit., commonly written culprit; cul., as above mentioned, means culpabilis, or culpable; and prit, which is a corruption of pret, signifies ready. 1 Chitty Cr. Law. 416.

Cull. Bankr. L. Cullen's Principles of the Bankrupt Law.

Cun. Cunningham's Reports.

Cunn. Dict. Cunningham's Dictionary.

Cur. adv. vult. Curia advisare vult. Vide Ampliation.

Cur. Scacc. Cursus Scaccarii, the Court of the Star Chamber.

Cur. Phil. Curia Philipica.

Curs. Can. Cursus Cancellariae.

Curt. R. Curteis' Ecclesiastical Reports.

Curt. Am. Sea. Curtis on American Seamen.

Curt. on Copyr. Curtis on Copyrights.

Cush. Trust. Pr. Cushing on Trustee Process, or Foreign Attachment, of the Laws of Massachusetts and Maine.

Cust. de Norm. Custome de Normandie.

D. dialogue; as, Dr. and Stud. D. 2, c. 24, or Doctor and Student, dialogue 2, chapter 24.

D. dictum; D. Digest of Justinian.

D. The Digest or Pandects of the Civil Law, is sometimes cited thus, D.6.1.5.

D. C. District Court; District of Columbia.

D. C. L. Doctor of the Civil Law.

D. Chipm. R. D. Chipman's Reports.

D. S. B. Debit sans breve.

D. S. Deputy Sheriff.

D.& C. Dow and Clark's Reports.

D.& C. Deacon & Chitty's Reports.

D.& E. Durnford & East's Reports. This book is also cited as Term Reports, abbreviated as T.R.

D.& L. Danson & Lloyd's Mercantile Cases.

D.& M. Davidson's & Merivale's Reports.

D.& R. Dowling and Ryland's Reports.

D.& R. N. P. C. Dowling and Ryland's Reports of Cases decided at Nisis Prius.

D.& S. Doctor and Student.

D.& W. Drury & Walsh's Reports.

D;Aguesseau, Oeuvres. Oeuvres completes du Chancellier D'Aguesseau.

Dat. Cr. L. Dagge's Criminal Law.

Dal. Dalison's Reports. See Benl.

Dall. Dallas' Reports.

Dall. Dallas' Laws of Pennsylvania.

Dalloz, Dict. Dictionaire General et raisonne de legilation, de Doctrine, et de Jurisprudence, en matiere civile, commerciale, criminelle, administrative, et de Droit Public. Par Armand Dalloz, jeune.

Dalr. Feud. Pr. Dalrymple's Essay, or History of Feudal Property in Great Britain. Sometimes cited Dalr. F.L.

Dalr. on Ent. Dalrymple on the Polity of Entails.

Dalr. F. L. Dalrymple's Feudal law.

Dalt. Just. Dalton's Justice.

Dalt. Sh. Dalton's Sheriff.

D'Anv. D'Anvers' Abridgement.

Dan. Ch. Pr. Caniell's Chancery Practice.

Dan. Ord. Danish Ordinances.

Dan. Rep. Daniell's Reports.

Dan.& Ll. Danson & Lloyd's Reports.

Dana's R. Dana's Reports.

Dane's Ab. Dane's Abridgment of American Law.

Dav. Davies' Reports.

Dav. on Pat. Davies' Collection of Cases respecting patents.

Daw. Land. Pr. Dawe's Epitome of the Law of Landed Property.

Daw. Real Pr. Dawe's Introduction to the Knowledge of the Law on Real Estates.

Daw. on Arr. Dawe's Commentaries on the Law of Arrest in Civil Cases.

Daws. Or. Leg. Dawson's Origo Legum.

Deac. R. Deacon's Reports. Deac.& Chit. Deacon & Chitty's Reports.

Deb. on Jud. Debates on the Judiciary.

Dec. temp. H.& M. Decisions in Admiralty during the time of Hay & Marriott.

Deft. Defendant.

De Gex & SM. R. De Gex & Smale's Reports.

Den. Cr. Cas. Denison's Crown Cases.

Den. Rep. Denio's New York Reports.

Desaus. R. Desaussure's Chancery Reports.

Dev. R. Devereux's Reports.

Dev. Ch. R. Devereux's Chancery Reports.

Dev.& Bat. Devereux & Battle's Reports.

Di. or Dy. Dyer's Reports.

Dial. de Scac. Dialogus de Scaccario.

Dick. Just. Dickinson's Justice.

Dick. Pr. Dickinson's Practice of the Quarter of and other Sessions.

Dick. Dicken's Reports.

Dict. Dictionary.

Dict. Dr. Can. Dictionnaire de Droit Canonique.

Dict. de' Jur. Dictionnaire de Jurisprudence.

Dig. Digest of writs. Dig. The Pandects or Digest of the Civil Law, cited as Dig. 1,2,5,6, for Digest, book 1, 2, law 5, sections 6.

Disn. on Gam. Disney's Law of Gaming.

Doct. & Stud. Doctor and Student.

Doct. Pl. Doctrina Placitandi.

Doder. Eng. Law. Doderidge's English Lawyer.

Dods. R. Dodson's Reports.

Dom. Domat, Lois Civilles.

Dom. Proc. Domo Procerum. In the House of Lords.

Domat. Lois Civilles dans leur ordre naturel. Par M. Domat.

Dougl. Douglas' Reports.

Doug. El. Cas. Dougls' Election Cases.

Dougl. (Mich.) R. Dougls' Michigan Reports.

Dow. or Dow. P.C. Dow's Parliamentary Cases.

Dow & Clarke, Dow and Clarke's Reports of Cases in the House of Lords.

Dowl. P. C. Dowling's Practical Cases.

Dow.& R. N. P. Dowling and Ryan's Nisi Prius Cases.

Dow.& Ry. M.C. Dowling & Ryan's Cases for Magistrates.

Dow.& Ry. Dowling and Ryland's Reports.

Dr.& St. Doctor and Student.

Drew. on Inj. Drewry on Injunctions.

Dru.& Wal. Drury and Walsh's Reports.

Dru.& War. Drury & Warren's Reports.

Dub. Dubitatur.

Dudl. R. Dudley's Law and Equity Reports.

Dug. S. or Dugd. Sum. Dugdale's Summons.

Dugd. Orig. Dugdale's Origines.

Dug. Sum. Dugdale's Summonses

Duke. or Duke's Ch. Uses. Duke's Law of Charitable Uses.

Dunl. Pr. Dunlap's Practice.

Dunl. Admr. Pr. Dunlap's Admiralty Practice.

Duponc. on Jur. Duponceau on Jurisdictions.

Duponc. Const. Duponceau on the Constitution.

Dur. Dr. FR. Duranton, Droit Francais.

Durnf.& East. Durnford & East's Reports, also cited D.& E. or T.R.

Duv. Dr. Civ. Fr. Duvergier, Droit Civil Francais. This is a continuation of Touiller's Droit Civil Francais. The first volume of Duvergier is the sixteenth volume of the continuation. The work is sometimes cited 16 Toull. or 16 Toullier, instead of being cited 1 Duv. or 1 Duvergier, etc.

Dwar. on Stat. Dwarris on Statutes.

Dy. Dyer's Reports.

E. Easter Term.

E. Edward; as 9 E. 3, c. 9.

E. of Cov. Earl of Coventry's Case.

E.C.L.R. English Common Law Reports, sometimes cited Eng. Com. Law Rep. (q.v.)

E.g., usually written e.g., exempli gratia; for the sake of an instance or example.

E.P.C. or East, P.C. East's Pleas of the Crown.

East, P.C. East's Pleas of the Crown.

Eccl. Ecclesiastical.

Eccl. Law. Ecclesiastical Law.

Eccl. Rep. Ecclesiastical Reports. Vide Eng. Eccl. Rep.

Ed. or Edit. Edition.

Ed. Edward; as, 3 Ed. 1, c. 9.

Ed. Inj. Eden on Injunction.

Ed. Eq. Reps. Eden's Equity Reports.

Ed. Prin. Pen. Law. Eden's Principles of Penal Law.

Edm. Exch. Pr. Edmund's Exchequer Practice.

Edw. Ad. Rep. Edward's Admiralty Reports.

Edw. Lead. Dec. Edward's Leading Decisions.

Edw. on Part. Edward's on Parties to Bills in Chancery.

Edw. on Rec. Edwards on Receivers in Chancery.

Eliz. Elizabeth; as, 13 Eliz. c. 15.

Ellis on D. and Cr. Ellis on the Law relating to Debtor and Creditor.

Elm on Dil. Elmes on Ecclesiastical and Civil Dilapidations.

Elsyn on Parl. Elsynge on Parliaments.

Encycl. Encyclopedia, or Encyclopedie.

Eng. English.

Eng. Ch. R. English Chancery Reports. Vide Cond. Ch. R. (See App. A.)

Eng. Com. Law Rep. English Common Law Reports.

Eng. Ecc. R. English Ecclesiastical Reports.

Eng. Plead. English Pleader.

Engl. Rep. English's Arkansas Reports.

Eod. Eodem, under the same title.

Eod. tit. In the same title.

Eq. Ca. Ab. Equity Cases Abridged.

Eq. Draft. Equity Draftsman.

Ersk. Inst. Erskin's Institute of the Law of Scotland.

Ersk. Prin. of Laws of Scotl. Erskine's Principles of the Laws of Scotland.

Esp. N.P. Espinasse's Nisi Prius.

Esp. N. P. R. Espinasse's Nisi Prius Reports.

Esp. on Ev. Espinasse on Evidence.

Esp. on Pen. Ev. Espinasse on Penal Evidence.

Esq. Esquire.

Et. al. Et alii, and others.

Eunom. Eunomus.

Ev. Col. Stat. Evan's Collection of Statutes.

Ev. on Pl. Evans on Pleading.

Ev. Tr. Evans' Trial.

Ex. or Exor. Executor.

Execx. Executrix.

Exch. Rep. Exchequer Reports. Vide Cond. Exch. Rep.

Exec. Execution. Exp. Expired.

Exton's Mar. Dicaeo. Exton's Maritime Dicaeologie.

Extrav. Extravagants.

F. Finalis, the last or latter part.

F. Fitzherbert's Abridgment.

F. & F. Falconer & Fitzherbert's Reports.

F. R. Forum Romanum.

F. & S. Fox & Smith's Reports.

F. N. B. Fitzherbert's Natura Brevium.

Fairf. R. Fairfield's Reports.

Fac. Coll. Faculty Collection; the name of a set of Scotch Reports.

Falc. & Fitzh. Falconer & Fitzherbert's Election Cases.

Far. Farresly, (7 Mod. REp.) is sometimes so cited.

Farr's Med. Jur. Farr's Elements of Medical Jurisprudence.

Fearn. on Rem. Fearne on Remainders.

Fell. on Mer. Guar. Fell on Mercantile Guaranties.

Ferg. on M. & D. Fergusson on Marriage and Divorce.

Ferg. R. Fergusson's Reports of the Consistorial Court of Scotland.

Ff. or ff. Pandects of Justinian: a careless way of writing the Greek ã.

Ferr. Hist. Civ. L. Ferriere's History of the Civil Law.

Ferr. Mod. Ferriere Moderne, on Nouveau Dictionnaire des Termes de Droit et de Pratique.

Fess. on Pat. Fessenden on Patents.

Fi. fa. Fieri Facias.

Field's Com. Law. Field on the Common Law of England.

Field. on Penal Laws. Fielding on Penal Laws.

Finch. Finch's Law; or a Discourse thereof, in five books.

Finch's Pr. Finch's Precedents in Chancery.

Finl. L. C. Finlayson's Leading Cases on Pleading.

Fish. Copyh. Fisher on Copyholds.

Fitz. C. Fitzgibbon's Cases.

Fitzh. Fitzherbert's Abridgment

Fitzh. Nat. Bre. Fitzherbert's Natura Brevium.

Fl. or Fleta. A Commentary on the English Law, written by an anonymous author, in the time of Edward I., while a prisoner in the Fleet.

Fletch. on Trusts. Fletcher on the Estates of Trustees.

Floy. Proct. Pr. Floyer's Proctor's Practice.

Fol. Foley's Poor Laws.

Fol. Folio.

Fonb. Fonblanque on Equity.

Fonb. Med. Jur. Fonblanque on Medical Jurisprudence.

Forr. Forrester's Cases during the time of Lord Talbot, commonly cited Cas. Temp. Talb.

For. Pla. Brown's Formulae Placitandi.

Forb. on Bills. Forbes on Bills of Exchange.

Forb. Inst. Forbes' Institutes of the Law of Scotland.

Forr. Exch. Rep. Forrest's Exchequer Reports.

Fors. on Comp. Forsyth on the Law relating to Composition with Creditors.

Fortesc. Fortescue, De Laudibus Legum Angliae.

Fortesc. R. Fortescue's Reports, temp. Wm. and Anne.

Fost. or Fost. C.L. Foster's Crown Law.

Fox. & Sm. Fox & Smith's Reports.

Fr. Fragmentum.

Fra. or Fra. Max. Francis' Maxims.

Fr. Ord. French Ordinance. Sometimes cited Ord. de la Mar.

Fras. Elect. Cas. Fraser's Election Cases.

Fred. Co. Frederician Code.

Freem. Freeman's Reports.

Freem. C. C. Freeman's Cases in Chancery.

Freem. (Mis.) R. Freeman's Reports of Cases decided by the Superior Court of Chancery of Mississippi.

G. George; as, 13 G. 1, c. 29.

G. & J. Glyn & Jameson's Reports.

G. & J. Gill & Johnson's Reports.

G. M. Dudl. Repo. G. M. Dudley's Reports.

Gale & Dav. Gale & Davidson's Reports.

Gale's Stat. Gale's Statutes of Illinois.

Gall. or Gall. Rep. Gallison's Reports.

Garde on Ev. Garde's Practical Treatise on the General Principles and Elementary Rules of the Law of Evidence.

Geo. George; as, 13 Geo. 1, c. 29.

Geo. Dec. Georgia Decisions.

Geo. Lib. George on the Offence of Libel.

Gib. on D. & N. Gibbons on the Law of Dilapidations and Nuisances.

Gibs. Codex. Gibson's Codex Juris Civilis.

Gilb. R. Gilbert's Reports.

Gilb. Ev. Gilbert's Evidence.

Gilb. U. & T. Gilbert on Uses and Trusts.

Gilb. Ten. Gilbert on Tenures.

Gilb. on Rents. Gilbert on Rents.

Gilb. on Rep. Gilbert on Replevin.

Gilb. Ex. Gilbert on Executions.

Gilb. Exch. Gilbert's Exchequer.

Gilb. For. Rom. Gilbert's Forum Romanum.

Gilb. K. B. Gilbert's King's Bench.

Gilb. Rem. Gilbert on REmainders.

Gilb. on Dev. Gilbert on Devises.

Gilb. Lex. praet. Gilbert's Lex Praetoria.

Gill & John. Gill & Johnson's Reports.

Gill's R. Gill's Reports.

Gilm. R. Gilmer's Reports.

Gilp. R. Gilpin's Circuit Court Reports.

Gl. Glossa, the Gloss.

Glanv. Glanville's Treatise of the Laws and Customs of England.

Glassf. Ev. Glassford on Evidence.

Glov. Mun. Corp. Glover on Municipal Corporations, or Glov. on Corp. Glover on the Law of Municipal Corporations.

Glyn. & Jam. Glyn & Jameson's Reports of Cases in Bankruptcy.

Godb. Godbolt's Reports.

Godolph. Ad. Jr. Godolphin's View of the Admiralty Jurisdiction.

Godolph. Rep. Can. Godolphin's Repertorium Canonicum.

Godolph. Godolphin's Orphan's Legacy.

Gods. on Pat. Godson's Treatise on the Law of Patents.

Goldesh. Goldeshorought's Reports.

Golds. Goldsborough's Reports.

Gord. on Dec. Gordon on the Law of Decedents in Pennsylvania.

Gould on Pl. Gould on the Principles of Pleading in Civil Actions.

Gow on Part. Gow on Partnership.

Grah. Pr. Graham's Practice.

Grah. N.T. Graham on New Trials.

Grand. Cout. Grand Coutumier de Normandie, (q.v.)

Grady on Fixt. Grady on the law of Fixtures.

Grant on New. Tr. Grant on New Trials.

Grant's Ch. Pr. Grant's Chancery Practice.

Gratt. R. Grattan's Virginia Reports.

Green's B.L. Green's Bankrupt Laws.

Green's R. Green's Reports.

Greenl. on Ev. Greenleaf's Treatise on the Law of Evidence.

Greenl. Ov. Cas. Greenleaf's Overruled Cases.

Greenl. R. Greenleaf's Reports.

Greenw on Courts. Greenwood on Courts.

Gres. Eq. Ev. Gresley's Equity Evidence.

Grif. Reg. Griffith's Law Register.

Grimk. on Ex. Grimke on the Duty of Executors and Administrators.

Grisw. Rep. Griswold's Reports.

Grot. Grotius de Jure Belli.

Gude's Pr. Gude's Practice on the Crown side of King's Bench, &c.

Gwill. Gwillim's Tithe Cases.

H. Henry; as, 18 H. 7, c. 15.

H. Hilary Term.

H.A. Hoc Anno

H.V. commonly written in small letters h.v. hoc verbo.

H. of L. House of Lords.

H. of R. House of Representatives.

H. & B. Hudson & Brooke's Reports.

H. & G. Harris & Gill's Reports.

H. & J. Harris & Johnson's Reports.

H. Bl. Henry Blackstone's Reports.

H. H. C. L. Hale's History of the Common Law.

H. & M. Henning and Munford's Reports.

H. & McH. or Harr. & McHen. Harris & McHenry's Reports.

Hab. fa. seis. Habere facias seisinam.

H. P. C. Hales' Pleas of the Crown.

H.t. usually put in small letters, h.t. hoc titulo.

Hab. Corp. Habeas Corpus.

Hab. fa. pos. Habere facias possessionem.

Hagg. Ad. R. Haggard's Admiralty Reports.

Hagg. Ecc. R. Haggard's Ecclesiastical Reports.

Hagg. C. R. Haggard's REports in the Consistory Court of London.

Hale, P.C. Hale's Pleas of the Crown.

Hale's Sum. Hale's Summary of Pleas.

Hale's Jur. J. L. Hale's Jurisdiction of the House of Lords.

Hale's Hist. C.L. Hale's History of the Common Law.

Halif. Civ. Law. Halifax's Analysis of the Civil Law.

Hall's R. Hall's Reports of Cases decided in the Superior Court of the city of New York.

Halk. dig. Halkerton's digest of the Law of Scotland relating to Marriage.

Hall's Adm. Pr. Hall's Admiralty Practice.

Halst. R. Halstead's Reports.

Hamm. N. P. Hammond's Nisi Prius.

Hamm. R. Hammond's (Ohio) Reports.

Hamm. on Part. Hammond on Parties to Actions.

Hamm. Pl. Hammond's Analysis of the Principles of Pleading.

Hamm. on F.I. Hammond on Fire Insurance.

Han. Hansard's Entries.

Hand's ch. Pr. Hand's Chancery Practice.

Hand on Fines. Hand on Fines and Recoveries.

Hand's Cr. Pr. hand's Crown Practice.

Hand on Pat. Hand on Patents.

Hans. Parl. Deb. Hansard's Parliamentary Debates.

Hard. Hardress' Reports.

Hardin's R. Hardin's Reports.

Hare R. Hare's Reports.

Hare & Wall. Sel. Dec. Hare & Wallace's Select Decisions of American Cases, with Notes.

Hare on Disc. Hare on the Discovery of Evidence by Bill and Answer in Equity.

Harg. Coll. Hargrave's Juridical Arguments and collection.

Harg. St. Tr. Hargrave's State Trials.

Harg. Exer. Hargrave's Exercitations.

Harg. Law Tr. Hargrave's Law Tracts.

Harp. L. R. Harper's Law Reports.

Harp. Eq. R. Harper's Equity Reports.

Harr. Ch. Harrison's Chancery Practice.

Harr. Cond. Lo. R. Harrison's condensed Report of Cases in Superior Court of the Territory of Orleans, and in the Supreme Court of Louisiana.

Harr. Dig. Harrison's Digest.

Harr. Ent. Harris' Entries.

Harr. (Mich.) R. Harrington's Reports of Cases in the Supreme Court of Michigan.

Harr. & Gill. Harris & Gill's Reports.

Harr. & John. Harris & Johnson's Reports.

Harr. & M'H. Harris & M'Henry's Reports.

Harringt. R. Harrington's Reports.

Hasl. Med. Jur. Haslam's Medical Jurisprudence.

Hawk. P.C. Hawkins' Pleas of the Crown.

Hawk's R. Hawk's Reports.

Hay on Est. An Elementary View of the Common Law of uses, Devises, and Trusts, with reference to the Creation and Conveyance of Estates, by William Hayes.

Hay. on Lim. Hayes on Limitations.

Hay. Exch. R. Hayes' Exchequer Reports.

Hays on R. P. Hays on Real Property.

Heath's Max. Heath's Maxim's.

Hein. Elem. Juris. civ. Heineccii, Elementa juris Civilis, secundum ordinem Institutionum.

Hein. Elem. Juris. Nat. Heineccii, Elementa juris Naturae et gentium.

Hen on For. Law. Henry on Foreign Law.

Hen. J. P. Henning's Virginia Justice of the Peace.

Hen. & Munf. Henning & Munford's Reports.

Herne's Ch. Uses. Herne's law of Charitable Uses.

Herne's Plead. Herne's Pleader.

Het. Hetley's Reports.

Heyw. on El. Heywood on Elections.

Heyw. (N.C.) R. Heywood's North Carolina Reports.

Heyw. (Tenn.) R. Heywood's Tennessee Reports.

High. Highmore.

High on Bail. Highmore on Bail.

High. on Lun. Highmore on Lunacy.

High. on Mortm. Highmore on ortmain.

Hill. Ab. Hilliard's Abridgment of the Law of Real Property.

Hill's R. Hill's Reports.

Hill's Ch. R. Hill's Chancery Reports.

Hill on Trust. A Practical Treatise on the Law relating to Trustees, &c.

Hind's Pr. Hind's Practice.

Hob. Hobart's Reports.

Hodg. R. Hodge's Reports.

Hodges on Railw. Hodges on the Law of Railways.

Hoffm. Outl. Hoffman's Outlines of Legal Studies.

Hoffm. Leg. St. Hoffman's Legal Studies.

Hoffm. Ch. Pr. Hoffman's Chancery Practice.

Hoffm. Mas. Ch. Hoffman's master in Chancery.

Hoffm. R. Hoffman's Reports.

Hog. R. Hogan's Reports.

Hog. St. Tr. Hogan's State Trials.

Holt on Lib. Holt on the Law of Libels.

Holt on Nav. Holt on Navigation.

Holt. R. Holt's Reports.

Holt on Sh. Holt on the Law of Shipping.

Hopk. R. Hopkins' Chancery Reports.

Hopk. Adm. Dec. Hopkinson's Admiralty Decisions.

Houard's Ang. Sax. Laws. Houard's Anglo Saxon laws and Ancient Laws of the French.

Houard's dict. Houard's Dictionary of the Customs of normandy.

Hough C. M. Hough on Courts Martial.

Hov. Fr. Hovenden on Frauds.

Hov. Supp. Hovenden's Supplement to Vesey Junior's Reports.

How. St. Tr. Howell's State Trials.

Howe's Pr. Howe's Practice in Civil Actions and Proceedings at Law in Massachusetts.

How. Pr. R. Howard's Practice Reports.

Hub. on Suc. Hubback on Successions.

Huds. & Bro. Hudson & Brooke's Reports.

Hugh. Ab. Hughes' Abridgment.

Hugh. Entr. Hughes' Entries.

Hugh. on Wills. Hughes on Wills.

Hugh. R. Hughes' Reports.

Hugh. Or. Writs. Hughes' Comments upon Original Writs.

Hugh. Ins. Hughes on Insurance.

Hugh. on Wills. Hughes' Practical Directions for Taking Instructions for Drawing Wills.

Hull. on Costs. Hullock on the Law of Costs.

Hult. on Conv. Hulton on Convictions.

Humph. R. Humphrey's Reports.

Hume's com. Hume's Commentaries on the Criminal Law of Scotland.

Hut. Hutton's Reports.

I. The Institutes of Justinian (q.v.) are sometimes cited, I.1, 3, 4.

I. Infra, beneath or below.

Ib. Ibidem.

Ictus. Jurisconsultus. This abbreviation is usually written with an I, though it would be more proper to write it with a J, the first letter of the word Jurisconsultus; c is the initial letter of the third syllable, andtus is the end of the word.

Id. Idem.

Il Cons. del Mar. Il Consolato del Mare. See Consolato del Mare, in the body of the work.

Imp. Pr. C. P. Impey's Practice in the common Pleas.

Imp. Pr. K. B. Impey's Practice in the King's Bench.

Imp. Pl. Impey's Modern Pleader.

Imp. Sh. Impey's Office of Sheriff.

In f. In fine, at the end of the title, law, or paragraph quoted.

In pr. In principio, in the beginning and before the first paragraph of a law.

In princ. In principio. In the beginning.

In sum. Insumma, in the summary.

Ind. Index.

Inf. Infra, beneath or below.

Ing. Dig. Ingersoll's Digest of the laws of the United States.

Ing. Roc. Ingersoll's Roccus.

Ingr. on Insolv. Ingraham on Insolvency.

Inj. Injunction.

Ins. Insurance.

Inst. Coke on Littleton, is cited Co. Lit. or 1 Inst., for First Institute. Coke's magna Charta, is cited Co. M.C. or 2 Inst., for Second Institute. Co. P. C. Coke's Pleas of the Crown, is cited 3 Inst., for Third Institute. Co. on Courts. Coke on Courts, is cited 4 Inst., for Fourth Institute.

Inst. Institutes. When the Institutes of Justinian are cited, the citation is made thus; Inst. 4, 2, 1; or Inst. lib. 4, tit. 2, 1. 1; to signify Institutes, book 4, tit. 2, law 1. Coke's Institutes are cited, the first, either Col Lit. or 1 Inst., and the others 2 Inst., 3 Inst., and 4 Inst.

Inst. Cl. or Inst. Cler. Instructor Clericalis.

Inst. Jur. Angl. Institutiones Juris Anglicani, by Doctor Cowell.

Introd. Introduction.

Ir. Eq. R. Irish Equity Reports.

Ir. T. R. Irish Term Reports. Sometimes cited Ridg. Irish. T. R. (q.v.)

J. Justice.

J. institutes of Justinian.

J. C. Juris Consultus.

J. C. P. Justice of the common Pleas.

J. Glo. Juncta Glossa, the Gloss joined to the text quoted.

J. J. Justices.

J. J. Marsh. J.J. Marsh's (Kentucky) Reports.

J. K. B. Justice of the King's Bench.

J. P. Justice of the Peace.

J. Q. B. Justice of the Queen's Bench.

J. U. B. Justice of the Upper Bench. During the Commonwealth of the English Court of the King's Bench was called the Upper Bench.

Jac. Jacobus, James; as, 4 Jac. 1, c. 1.

Jac. Introd. Jacob's Introduction to the Comm, Civil, and Canon Law.

Jac. L. D. Jacob's law Dictionary.

jac. L. G. Jacob's law Grammar.

Jac. Lex. Mer. jacob's Lex Mercatoria, or the Merchant's Companion.

Jac. R. Jacob's Chancery Reports.

Jac. & Walk. Jacob & Walker's Chancery Reports.

Jack. Pl. Jackson on Pleading.

Jarm. on Wills. Jarman on the Law of Wills.

Jarm. Pow. Dev. Powell on Devises, with Notes by Jarman.

Jebb's Ir. Cr. Cas. Jebb's Irish Criminal Cases.

Jeff. Man. Jefferson's Manual.

Jeff. R. Thomas Jefferson's Reports.

Jenk. Jenkins' Eight Centuries of Reports; or Eight Hundred Cases solemnly adjudged in the Exchequer Chamber, or upon Writs of Error, from K. Henry III, to 21 K. James I.

Jer. Jeremy.

Jer. on Carr. Jeremy's Law of Carriers.

Jer. Eq. Jur. Jeremy on the Equity Jurisdiction of the High Court of Chancery.

Jer. on Cor. Jervis on Coroners.

John. Cas. Johnson's Cases.

John. R. Johnson's Reports.

John. Ch. R. Johnson's Chancery Reports.

John. Eccl. Law. Johnson's Ecclesiastical Law.

Johns. Civ. L. of Sp. Johnson's Civil Law of Spain.

Johns. on Bills. The Law of Bills of Exchange, Promissory Notes, Checks, &c., by Cuthbert W. Johnson.

Jon. Sir Wm. Jones' Reports.

Jon. & Car. Jones and Carey's Reports.

Jon. on Lib. Jones, De Libellis Famosis, or the Law of Libels.

Jon. Inst. HInd. L. Jones' Institutes of Hindoo Laws.

Jon. (1) Sir W. Jones' Reports.

Jon. (2) Sir T. Jones' Reports.

Jon. T. Thomas Jones' REports.

Jon. on Bailm Jones' Law of Bailments.

Jones' Intr. Jones' Introduction to Legal Science.

Joy on Ev. Acc. Joy on the Evidence of Accomplices.

Joy on Chal. Joy on Challenge to Jurors.

Joy Leg. Ed. Joy on Legal Education.

Jud. Chr. Judicial Chronicle.

Jud. Repos. Judicial Repository.

Judg. Judgments.

Jr. Eccl. Jura Ecclesiastica, or a Treatise of the Ecclesiastical Law and Courts, interspersed with various cases of Law and Equity.

Jr. Mar. Molloy's Jure Maritimo. Sometimes cited Molloy.

Jus. Nav. Thod. Jus Navale Thodiorum.

Just. Inst. Justinian's Institutes.

K. B. King's Bench.

K. C. R. Reports in the time of Chancellor King.

K.& O. Knapp & Omber's Election Cases.

Kames on Eq. Kames' Principles of Equity.

Kames' Ess. Kames' Essays.

Kames' Hist. L. T. Kames' HIstorical Law Tracts.

Keat. Fam. Settl. Keating on Family Settlements.

Keb. Keble's Reports.

Keb. Stat. Keble's English Statutes.

Keen's R. Keen's Reports.

Keil or Keilw. Keilways' Reports.

Kel. Sir John Kelyng's Reports.

Kel. 1,2, or W. Kel. William Kelyng's Reports, two parts.

Kelh. Norm L. D. Kelham's Norman French Law Dictionary.

Kell. R. Kelly's Reports.

Ken. on Jur. Kennedy on Juries.

Kent. Com. Kent's Commentaries on American Law.

Keny. Kenyon's Reports of the Court of King's Bench.

Kit. or Kitch. Kitchen on Courts.

Kna.& Omb. Knapp & Omber's Election Cases.

Knapp's A. C. Knapp's Appeal Cases.

Knapp's R. Knapp's Privy Council Reports.

Kyd on Aw. Kyd on the Law of Awards.

Kyd on Bills. Kyd on the Law relating to Bills of Exchange.

Kyd on Corp. Kyd on the Law of Corporations.

L, in citation means law, as L. 1, 33. Furtum, ff de Furtis, i.e. law 1, section or paragraph beginning with the word Furtum; ff, signifies the Digest, and the words de Furtis denote the title.

L. signifies also liber, book.

L.& G. Lloyd's & Goold's Reports.

L.& W. Lloyd & Welshy's Mercantile Cases.

LL. Laws, as LL. Gul. 1, c. 42. Laws of William I. chapter 42; LL. of U.S., Laws of the United States.

L.S. Locus sigili.

L.R. Louisiana Reports.

La. Lane's REports.

Lalaure, des Ser. Traite des Servitudes reelles, par M. laalaure.

Lamb. Archai. Lambard's Archaionomia.

Lamb. Eiren. Lambard's Eirenarcha.

Lamb. on Dow. Lambert on Dower.

Lat. Latch's Reports.

Laus. on Eq. laussat's Essay on Equity Practice in Pennsylvania.

Law. on Chart. part. Lawes on the Law of Charter Parties.

Law. Lib. Law Library.

Law Rep. Law Reporter.

Laws Eccl. Law. Laws' Ecclesiastical Law.

Law Intel. Law Intelligencer.

Law Fr. & latin Dict. Law French and Latin Dictionary.

Law. Pl. lawes' Elementary Treatise on Pleading in Civil Actions.

Law. Pl. in Ass. Lawes' Treatise on Pleading in Assumpsit.

Laws of Wom. Laws of Women.

Lawy. Mag. lawyer's magazine.

Le. Ley's Reports.

Leach. Leach's Cases in Crown Law.

Lec. Elm. Lecons Elementaire du Droit Civil Romain.

Lee Abst. Tit. Lee on the Evidence of Abstracts of Title to REal Property.

Lee on Capt. Lee's Treatise of Captures in War.

Lee's Dict. Lee's Dictionary of Practice.

Lee's Eccl. R. Lee's Ecclesiastical Reports.

Leg. Bibl. Legal Bibliography, by J.G. Marvin.

Leg. Legibus.

Leg. Obs. Legal Observer.

Leb. Oler. The Laws of Oleron.

Leg. on Outl. Legge on Outlawry.

Leg. Rhod. The Laws of Rhodes.

Leg. ult. The Last Law.

Leg. Wish. Lawas of Wishury.

Leigh & Dal. on Conv. Leigh & Dalzell on Conversion of Property.

Leigh's R. Leigh's Reports.

Leigh's N.P. Leigh's Nisi Prius.

Leo. or Leon. Leonard's Reports.

Lev. Levinz' Reports.

Lev. Ent. Levinz's Entries.

Lew. C. C. Lewin's Crown Cases.

Lew. Cr. Law. An Abridgment of the Criminal Law of the United States, by

Ellis Lewis.

Lew. on Tr. Lewin on Trusts.

Lew. on Perp. Lewin on the Law of Perpetuities.

Lex Man. Lex maneriorum.

Lex Mer. Lex Mercatoria.

Lex Mer. Am. Lex Mercatoria Americana.

Lex Parl. Lex Parliamentaria.

Ley. Ley's Reports.

Lib. Liber, book.

Libb. Ass. Liber Assisarum.

Lib. Ent. Old Book of Entries.

Lib. Feud. Liber Feudorum.

Lib. Intr. Liber Intrationum; or Old Book of Entries.

Lib. Nig. Liber Niger.

Lib. Pl. Liber Placitandi.

Lib. Reg. Register Books.

Lib. Rub. LIber Ruber.

Lib. Ten. Liberum Tenementum.

Lid. Jud. Adv. Liddel's Detail of the Duties of a Deputy Judge Advocate.

Lill. Entr. Lilly's Entries.

Lill. Reg. Lilly's Register.

Lill. Rep. Lilly's Reports.

Lill. Conv. Lilly's conveyancer.

Lind. Lindewooode's Provinciale; or Provincial Constitutions of England,

with the Legantine Constitutions of Otho and Othobond.

Litt. S. Littleton, section.

Litt. R. Littell's Reports.

Litt. Littleton's Reports.

Litt. Sel. Cas. Littell's Select Cases.

Litt. Ten. Littleton's Tenures.

Liv. Livre, book.

Liv. on Ag. Livermore on the Law of Principal and Agent.

Liv. Syst. Livingston's System of Penal Law for the State of Louisiana. This work is sometimes cited Livingston's Report on the Plan of a Penal Code.

Liverm. Diss. Livermore's dissertations on the Contrariety of Laws.

Llo.& Go. Lloyd & Goold's Reports.

Llo.& Go. t. Sudg. Lloyd & Goold's Reports, during the time of Sugden.

Llo.& Go. t. Plunk. Lloyd & Goold during the time of Plunkett.

Llo.& Welsh. Lloyd & Welshy's Reports of Cases relating to Commerce, Manufactures, &c., determined in the Courts of Common Law.

Loc. cit. Loco citato, the place cited.

Log. Comp. Compendium of the Law of England, Scotland, and Ancient Rome, by James Logan.

Lofft. Lofft's Reports.

Lois des Batim. Lois des Batimens.

Lom. Dig. Lomax's Digest of the Law of Real Property in the United States.

Lom. Ex. Lomax on Executors.

Long. Quint. Year Book, part 10 Vide Year Book.

Louis Code. Civil Code of Louisiana.

Louis. R. Louisiana Reports.

Lovel. on Wills. Lovelass on Wills.

Lown. Leg. Lowndes on the Law of Legacies.

Lube, Pl. Eq. An Analysis of the Principles of Equity Pleading, by D. G. Lube.

Luder's elec. Cas. Luder's Election Cases.

Luml. Ann. Lumley on Annuities.

Luml Parl. Pr. Lumley's Parliamentary Practice.

Luml on Settl. Lumley on Settlements and Removal.

Lut. Ent. Lutwyche's entries.

Lutw. Lutwyches' Reports.

M. Michaelmas Term.

M. Maxim, or Maxims.

M. Mary; as 4 Mary st.3, c.1.

M.& A. Montagu & Ayrton's Reports of Cases of Bankruptcy.

M.& B. Montagu and Bligh's Cases in Bankruptcy.

M.& C. Mylne & Craig's Reports.

M.& C. Montagu & Chittys' Reports.

M.& G. Manning & Granger's Reports.

M.& G. Maddock & Geldart's Reports.

M.G.& S. Manning, Granger & Scott's Reports.

M.& K. Mylne & Keen's chancery Reports.

M.& M. or Mo.& Malk. Rep. Moody & Malkin's Nisi Prius Reports.

M. P. Exch. Modern Practice Exchequer.

M.& P. Moore & Payne's Reports.

M.R. Master of the Rolls.

M. R. Martin's Reports of the Supreme Court of the State of Louisiana.

M.& R. Manning & Ryland's Reports.

M.& S. Moore & Scott's Reports.

M.& S. Maule & Selwyn's Reports.

M.& Y. or Mart. & Yerg. Martin & Yerger's Reports.

M.& W. Meeson & Welshy's Reports.

M. D.& G. Montagu, Daecon & Gex's Reports of Cases in Bankruptcy.

M'Arth. C. M. M'Arthur on Courts Martial.

M'Cl & Yo. M'Clelland & Younge's Exchequer Reports.

M'Clel. E. R. M'Clelland's Exchequer Reports.

M'Cord's Ch. R. M'Cord's Chancery Reports.

M'Cord's R. M'Cord's Reports

M'Kin. Phil. Ev. M'Kinnon's Philosophy of Evidence.

M'Naght. C. M. M'Naghton on Courts Martial.

McLean & Rob. McLean & Robinson's Reports.

M'Lean R. M'Lean's Reports.

Macn. on Null. MacNamara on Nullities and Irregularities in the Practice of the Law.

Macnal. Ev. Macnally's Rules of Evidence on Pleas oft he Crown.

Macph. on Inf. Macpherson on Infants.

Macq. on H.& W. Macqueen on Husband and Wife.

Mad. Exch. Madox's History of the Exchequer.

Mad. Form. Madox's Formulare Anglicanum.

Madd.& Geld. Maddock's & Geldart's Reports.

Madd., Madd. R. Maddock's chancery REports.

Madd. Pr. or Madd. Ch. Maddock's Chancery Practice.

Mag. Ins. Magens on Insurance.

Mal. Malyne's Lex Mercatoria.

Man. Manuscript.

Man.& Gra. Manning & Granger's Reports.

Man. Gr.& Sc. Manning, Granger & Scott's Reports.

Man.& Ry. Manning & Ryland's Reports.

Manb. on Fines. Manby on Fines.

Man. Comm. Manning's Commentaries of the Law of Nations.

Mann. Exch. Pr. Manning's Exchequer Practice.

Mans. on Dem. Mansel on Demurrers.

Mans. on Lim. Mansel of the Law of Limitations.

Manw. Manwood's Forest Laws.

Mar. Maritime.

mar. N.C. March's New Cases.

Mar. R. march's Reports.

Marg. margin.

Marr. Adm. Dec. Marriott's Admiralty Decisions.

Marr. Form. Inst. Marriott's Formulare Instrumentorum; or a Formulary of Authentic Instruments, Writs, and Standing orders used in the Court of Admiralty of Great Britain, of Prize and Instance.

Marsh. Marshall's Reports in the Court of Common Pleas. A. Marsh. Marshall's (Kty.) Reports. J. J. Marsh. J. J. Marshall's Reports.

Marsh. Ins. Marshall on the Law of Insurance.

Marsh. Decis. Brockenbrought's Reports of Chief Justice Marshall's Decisions.

Mart. law Nat. Martin's Law of Nations.

Mart. (N.C.) R. Martin's North Carolina Reports.

Mart. (Lo.) R. Martin's Louisiana Reports.

Marv. Leg. Bibl. Marvin's Legal Bibliography.

Mart.& Yerg. Martin & Yerger's Reports.

Mart. N. S. Martin's Louisiana Reports, new series.

Mason R. Mason's Circuit Court Reports.

Mass. R. Massachusetts Reports.

Math. on Pres. Mathew on the Doctrine of Presumption and Presumptive Evidence.

Matth. on Prt. Matthews on Portion.

Matth. on Ex. Matthews on Executors.

Maugh. Lit. Pr. Maughan on Literary Property.

Maule & Selw. Maule & Selwyn's Reports.

Max. Maxims.

Maxw. L. D. Maxwell's Dictionary of the Law of Bills of Exchange, &c.

Maxw. on Mar. L. Laxwell's Spirit of the Marine Laws.

@Mayn. Maynard's Reports. See Year Books in the body of the work. The first part of the Y. B. is sometimes so cited.

Med. Jr. Medical Jurisprudence.

Mees. & Wels. Meeson & Welshy's Reports.

Meigs, R. Meigs' Tennessee Reports.

Mer. R. Merivale's Reports.

Merch. Dict. Merchant's Dictionary.

Merl. Quest. Merlin, Questions de Droit.

Merl. Repert. Merlin, Repertoire.

Merrif. Law of Att. Merrifield's Law of Attorneys.

Merrif. on Costs. Merrifield's Law of costs.

Metc. R. Metcalf's Reports.

Metc. & Perk. Dig. Digest of the Decisions of the Courts of Common Law and Admiralty in the United States. By Theron Metcalf and Jonathan C. Perkins.

Mich. Michaelmas.

Mich. Rev. St. Michigan Revised Statutes.

Miles' R. Miles' Reports.

Mill. Civ. Law. Miller's civil Law.

Mill. Ins. Millar's Elements of the Law relating to Insurances. Sometimes this work is cited Mill. El.

Mill. on Eq. Mort. Miller on Equitable Mortgages.

Minor's Rep. Minor's Alabama Reports, sometimes cited Ala. Rep.

Mirch. on Adv. Mirehead on Advowsons.

Mirr. Mirroir des Justices.

Misso. R. Missouri Reports.

Mitf. Pl. Mitford's Pleadings in Equity. Also cited Redesd. Pl. Redesdale's

Pleadings.

Mo. Sir Francis Moore's Reports in the reign of K. Henry VIII., Q. Elizabeth, and K. James.

Mo. & Malk. Moody & Malkin's Reports.

Mo. C. C. Moody's Crown Cases.

Mo. Cas. Moody's Nisi Prius and Crown Cases.

Mod. or Mod. R. Modern Reports.

Mod. Cas. Modern Cases.

Mod. C. L.& E. Modern Cases in Law and Equity. The 8 & 9 Modern Reports are sometimes so cited; the 8th cited as the 1st, and the 9th as the 2d.

Mod. Entr. Modern entries.

Mod. Int. Modus Intrandi.

Mol. Molloy, De jure Maritimo.

Moll. R. Molloy's chancery Reports.

Monr. R. Monroe's Reports.

Mont. & Ayrt. Montagu & Ayrton's Reports.

Mont. B. C. Montagu's Bankrupt Cases.

Mont. & Bligh. Montagu & Bligh's Cases in Bankruptcy.

Mont. & Chit. Montagu & Chitty's Reports.

Mont. on Comp. Montagu on the Law of Composition.

Mont. B. L. Montagu on the Bankrupt Laws.

Mont. on Set-off. Montagu on Set-off.

Mont. Deac. & Gex. Montagu, Deacon & Gex's Reports of Cases in Bankruptcy, argued and determined in the Court of Review, and on Appeals to the Lord Chancellor.

Mont. Dig. Montagu's digest of Pleadings in EQuity.

Mont. Eq. Pl. Montagu's Equity Pleading.

Mont. & Mac. Montagu & MacArthur's Reports.

Mont. Sp. of Laws. Montesquieu's Spirit of Laws.

Montesq. Montesquieu, Esprit des Lois.

Moo. & Malk. Moody & Malkin's Reports.

Moo. & Rob. Moody & Robinson's Reports.

Moore, R. J. B. Moore's Reports of Cases decided in the Court of Common Pleas.

Moore's A. C. Moore's Appeal Cases.

Moore & Payne. Moore & Payne's Reports of Cases in C. P.

Moore & Scott. Moore & Scott's Reports of Cases in C. P.

Mort. on Vend. Morton's law of Vendors and Purchasers of Chattels Personal.

Mos. Mosely's Reports.

Mss. Manuscripts; as, Lord Colchester's Mss.

Much. D.& S. Muchall's Doctor and Student.

Mun. Municipal.

Munf. R. Munford's Reports.

Murph. R. Murphy's Reports.

My. & Keen. Mylne & Keen's Chancery Reports.

Myl.& Cr. Mylne & Craig's Reports.

N. Number.

N. or Nov. Novellae: the Novels.

N. A. Non allocatur.

N. B. Nulla bona.

N. Benl. New Benloe.

N. C. Cas. North Carolina Cases.

N. C. Law Rep. North Carolina Law Repository.

N. C. Term R. North Carolina Term Reports. This volume is sometimes cited 2 Tayl.

N. Chipm. R. N. Chipman's Reports.

N. E. I. Non est Inventus.

N. H. Rep. New Hampshire Reports.

N. H. & G. Nicholl, Hare & Garrow's Reports.

N. L. Nelson's edition of Lutwyche's Reports.

N. L. Non liquet. Vide Ampliation.

N.& M. Neville & Manning's Reports.

N.& P. Neville & Perry's Reports.

N. P. Nisi Prius.

N.& M'C. Nott & M'Cord's Reports.

N. R. or New R. New Reports; the new series, or 4 & 5 Bos. & Pull. Reports, are usually cited N. R.

N. S. New Series of the Reports of the Supreme Court of Louisiana.

N. Y. R. S. New York Revised Statutes.

Nar. Conv. Nares on Convictions.

Neal's F.& F. Neal's Feasts and Fasts; an Essay on the Rise, Progress and Present State of the Laws relating to Sundays and other Holidays, and other days of fasting.

Nels. Ab. Nelson's Abridgment.

Nels. Lex Maner. Nelson's Lex Maneriorum.

Nels. R. Nelson's Reports.

Nem. con. Nemine contradicente, (q.v.)

Nem. Dis. nemine dissentiente.

Nev. & Mann. Neville & Manning's Reports.

Nev. & Per. Neville & Perry's Reports.

New Benl. Benloe's Reports. Reports in the Reign of Henry VIII., Edw. VI., Phil. and Mary, and Elizabeth, and other Cases in the times of Charles. By William Benloe. See Benl.

New Rep. New Reports. A continuation of Bosanquet & Puller's Reports. See

B.& P.

Newf. Rep. Newfoundland Reports.

Newl. Contr. Newland's Treatise on Contracts.

Newl. Ch. Pr. Newland's Chancery Practice.

Newn. Conv. Newnam on Conveyancing.

Ni. Pri. Nisi Prius.

Nich. Adult. Bast. Nicholas on Adulterine Bastardy.

Nich. Har. & Gar. Nicholl, Hare & Garrow's Reports.

Nient Cul. Nient Culpable, old French, not guilty.

Nol. P. L. Nolan's Poor Laws.

Nol. R. Nolan's Reports of Cases relative to the Duty and Office of Justice of the Peace.

Non Cul. Non culpabilis, not guilty.

North. Northington's Reports.

Nott.& M'cord. Nott & M'Cord's reports.

Nov. Novellae, the Novels.

Nov. REc. Novisimi Recopilacion de las Leyes de Espana.

Noy's Max. Nou's Maxims.

Noy's R. Noy's Reports.

O. Benl. Old Benloe.

O. Bridg. Orlando Bridgman's Reports.

O. C. Old Code: so is denominated the Civil Code of Louisiana, 1808.

O. N. B. Old Natura Brevium. Vide Vet. N. B., in the abbreviations, and "Old Natura Brevium," in the body of the work.

O. Ni. These letters, which are an abbreviation for overatur nisis habent sufficientem exonerationem, are, according to the practice of the English Exchequer, marked upon each head of a Sheriff's account for issues, amerciaments and mean profits. 4 Inst. 116.

Oblig. Obligations.

Observ. Observations.

Off. Office.

Off. Br. Officina Brevium.

Off. Ex. Wentworth's Office of Executors.

Ohio R. Ohio Reports.

Oldn. Oldnall's Welsh Practice.

Onsl. N. P. Onslow's Nisi Prius.

Ord. Anst. Ordinance of Amsterdam.

Ord. Antw. Ordinance of Antwerp.

Ord. Bilb. Ordinance of Bilboa.

Ord. Ch. Orders in Chancery.

Ord. Cla. Lord Clarendon's Orders.

Ord. Copenh. Ordinance of Copenhagen.

Ord. Cor. Orders of Court.

Ord. Flor. Ordinances of Florence.

Ord. Gen. Ordinance of Genoa.

Ord. Hamb. Ordinance of Hamburgh.

Ord. Konigs. Ordinance of Konigsberg.

Ord. Leg. Ordinances of Leghorn.

Ord. de la Mar. Ordonnance de la marine, de Louis XIV.

Ord. Prot. Ordinances of Portugal.

Ord. Prus. Ordinances of Prussia.

Ord. Rott. Ordinances of Rotterdam.

Ord. Swed. Ordinances of Sweden.

Ord. on Us. Ordinances on the Law of Usury.

Orfil. Med. Jur. Orfila's Medical Jurisprudence.

Orig. Original.

Ought. Oughton's Ordo Judiciorum.

Overt. R. Overton's Reports.

Ow. Owen's Reports.

Owen, Bankr. Owen on Bankruptcy.

P. Page or part. Pp. Pages.

P. Pachalis, Easter term.

P.C. Pleas of the Crown.

P.& D. Perry & Davison's Reports.

P.& K. Perry & Knapp's Election Cases.

P.& M. PHilip and mary; as, 1 & 2 P.& M. c. 4.

P.N.P. Peake's Nisi Prius.

P. P. Propria persona; in his own person.

Pa. R. Pennsylvania Reports.

P. R. or P. R. C. P. Practical REgister in the Common Pleas.

P. Wms. Peere Williams' Reports.

Paige's R. Paige's Chancery Reports.

Paine's R. Paine's Reports.

Pal. Palmer's Reports.

Pal. AG. Paley on the Law of Principal and Agent.

Pal. Conv. Paley on Convictions.

Palm. Pr. Lords. Palmer's Practice in the House of Lords.

Pand. Pandects. Vide Dig.

Par. Paragraph; as, 29 Eliz. cap. 5, par. 21.

Par.& Fonb. M. J. Paris & Fonblanque on Medical Jurisprudence.

Pardess. Pardessus, Cours de Droit Commercial. In this work Pardessus is cited in several ways, namely: Pardes. Dr. Com Part 3, tit. 1, c. 2, s. 4, n. 286; or 2 Pardes. n. 286, which is the same reference.

Park on Dow. Park on Dower.

Park, Ins. Park on Insurance.

Park. R. Sir Thomas Parker's Reports of Cases concerning the Revenue, in the Exchequer.

Park. on Ship. Parker on Shipping and Insurance.

Parl. Hist. Parliamentary History.

Patch. on Mortg. Patch's Treatise on the Law of Mortgages.

Paul's Par. Off. Paul's Parish Officer.

Pay. Mun. Rights. Payne's Municipal Rights.

Peak. Add. Cas. Peake's Additional Cases.

Peak. C. N. P. Peake's Cases determined at Nisi Prius, and in the K. B.

Peake, Ev. Peake on the Law of Evidence.

Peck. R. Peck's Reports.

Peck's Tr. Peck's Trial.

Peckw. E. C. Peckwell's Election Cases.

Penn. Bl. Pennsylvania Blackstone, by John Read, Esq.

Penn. law Jo. Pennsylvania Law JOurnal.

Penn. R. Pennington's Reports. The Pennsylvania Reports are sometimes cited Penn. R., but more properly, for the sake of distinction, Penna. R.

Penn. St. R. Pennsylvania State Reports.

Penna. Pr. Pennsylvania Practice; also cited Tro. & Hal. Pr., Troubat & Haly's Practice.

Penna. R. Pennsylvania Reports.

Pennsylv. Pennsylvania Reports.

Penr. Anal. Penruddocke's Analysis of the Criminal Law.

Penult. The last but one.

Per.& Dav. Perry & Davison's Reports.

Per.& Knapp. Perry & Knapp's Election Cases.

Perk. Perkins on conveyancing.

Perk. Prof. B. Perkins' Profitable Book.

Perpig. on Pat. Perpigna on Patents. The full title of this work is, "The French Law and Practice of Patents for Inventions, Improvements, and Importations. by A. Perpigna, A.M.L.B., Barrister in the Royal Court of Paris, Member of the Society for the Encouragement of Arts, &c." The work is well written in the English language. The author is a French lawyer, and has written another work on the same subject in French.

Pet. Ab. Petersdorff's Abridgment.

Pet. Adm. Dec. Peters' Admiralty Decisions.

Pet. on Bail, or Petersd. on Bail. Petersdorff on the Law of Bail.

Pet. R. Peters' Supreme Court Reports.

Pet. C. C. R. Peters' Circuit Court Reports.

Petting. on Jur. Pettingal on Juries.

Phil. Ev. Phillips' Evidence.

Phil. Ins. PHillips on Insurance.

Phil. St. Tr. Phillips' State Trials.

Phill. Civ. and Can. Laws. Phillimore on the Study of the Civil and Canon Law, considered in relation to the state, the church, and the universities, and in connexion with the college of advocates.

Phill. on Dom. Phillimore on the Law of Domicil.

Phillim. or Phillim E. R. Phillimore' Ecclesiastical Reports.

Pick. R. Pickering's Reports.

Pig. Pigot on Recoveries.

Pike's Rep. Reports of Cases argued and determined in the Supreme Court of Law and Equity of the State of Arkansas. By Albert Pike. These Reports are cited Ark. Rep.

Pitm. Prin. and Sur. Pitman on Principal and Surety.

Pl. Placitum or plea.

Pl. or Plow. or Pl. Com. Plowden's Commentaries, or Reports.

Plff. Plaintiff.

Platt on Cov. Platt on Law of Covenants.

Platt on Lea. Platt on Leases.

Pol. Pollexfen's Reports.

Poph. Popham's Reports. The cases at the end of Pophams' Reports are cited 2 Poph.

Port. R. Porter's Reports.

Poth. Pothier. The numerous works of Pothier are cited by abbreviating his name Poth. and then adding the name of the treatise; the figures generally refer to the number, as Poth. Ob. n. 100, which signifies Pothier's Treatise on the Law of Obligations, number 100.

Poth. du Mar. Pothier du Mariage.

Poth. Vente. Pothier Traite de Vente, & c. His Pandects, in 24 vols. are cited Poth. Pand. with the book, title, law, &c.

Pott's L. D. Pott's Law Dictionary.

Pow. Powell.

Pow. Contr. Powell on Contracts.

Pow. Dev. Powell on Devises.

Pow. Mortg. Powell on Mortgages.

Pow. Powers. Powell on Powers.

Poyn. on M. and D. Poynter on the Law of Marriage and Divorce.

Pr. Principio. In pr. In principio; in the beginning.

Pr. Ex. Rep. or Price's E. R. Prices' Exchequer Reports.

Pr. Reg. Cha. Practical Register in Chancery.

Pr. St. Private Statute.

Pr. Stat. Private Statute.

Pract. Reg. C. P. Practical Register of the Common Pleas.

Pract. Reg. in Ch. Practical Register in Chancery.

Prat. on H.& W. Prater on the Law of Husband and Wife.

Pref. Preface.

Prel. Preliminaire.

Prest. Preston.

Prest. on Est. Preston on Estates.

Prest. Abs. Tit. Preston's Essay on Abstracts of Title.

Prest. on Conv. Preston's Treatise on Conveyancing.

Prest. on Leg. Preston on Legacies.

Pri. Price's Reports.

Price's Ex. Rep. Price's Exchequer Reports.

Price's Gen Pr. Price's General Practice.

Prin. Principium, the beginning of a title or law.

Prin. Dec. Printed Decisions.

Priv. Lond. Customs or Privileges of London.

Pro. L. Province Laws.

Pro quer. Pro querentum, for the plaintiff.

Proct. Pr. Proctor's Practice.

Puff. Puffendorff's law of nature.

Q. Quaestione, in such a Question.

Q. B. Queen's Bench.

Q. B. R. Queen's Bench Reports, by Adolphus & Ellis. New series.

Q.t. Qui tam.

Qu. Quere.

Q. Van Weyt. Q. Van Weytsen on Average.

Q. Warr. Quo Warranto; (q.v.) The letters (q.v.) quod vide, which see, refer to the article mentioned immediately before them.

Qu. Quaestione, in such a Question.

Quest. Questions.

Quinti Quinto. Yearbook, 5 Henry V.

Quon. Attach. Quoniam Attachiamenta. See Dalr. F.L. 47.

R. Resolved, ruled, or repealed.

R. Richard; as, 2 R. 2, c. 1.

Rich. Rep. Richardson's (S.C.) Reports.

RC. Rescriptum.

R.& M. Russell and Milne's Reports.

R.& M. C. C. Ryan and Moody's Crown Cases.

R.& M. N. P. Ryan & Moody's Nisi Prius Cases.

R.& R. Russell & Ryans' Crown Cases.

R. M. Charlt. R. M. Charlton's Reports.

RS. Responsum.

R. S. L. Reading on Statute Law.

Ram on Judgm. Ram on the Law relating to Legal Judgments

Rand. Perp. Randall on the Law of Perpetuities.

Rand. R. Randolph's Reports.

Rast. Rastall's Entries.

Rawle's R. Rawle's Reports.

Rawle, Const. Rawle on the Constitution.

Ray's Med. Jur. Ray's Medical Jurisprudence on Insanity.

Raym. or, more usually, Ld. Raym. lrod Raymond's Reports. T. Raym. Sir Thomas Raymond's Reports.

Re. Fa. lo. Recordari facias loquelam. Vide Refalo in the body of the work.

Rec. Recopilation.

Rec. Recorder; as, City Hall Rec.

Redd. on Mar. Com. Reddie's Historical View of the Law of Maritime Commerce.

Redesd. Pl. Redesdale's Equity Pleading. This work is also and must usually

cited Mitf. Pl.

Reeves' H. E. L. Reeves' History of the English Law.

Reeves on Ship. Reeves on the Law of Shipping and Navigation.

Reeves on Des. Reeves on Descents.

Reg. Regula, rule.

Reg. Register.

Reg. Brev. Registrum Brevium, or Register of Writs.

Reg. Gen. Regulae Generales.

Reg. Jud. Registrum Judiciale.

Reg. Mag. Regiam Magestatem.

Reg. Pl. Regula Placitandi.

Renouard, des Brev. d'Inv. Traite des Brevets d'Invention, de Perfectionement, et d'Importation, par Augustin Charles Renouard.

Rep. The Reports of Lord Coke are frequently cited 1 Rep., 2 Rep., &c. and sometimes they are cited Co.

Rep. Repertoire.

Rep. Eq. Gilbert's Reports in Equity.

Rep. Q. A. Reports of Cases during the time of Queen Anne.

Rep. T. Finch. Reports tempore Finch.

Rep. T. Hard. Reports during the time of Lord Hardwicke.

Rep. T. Holt. Reports tempore Holt.

Rep. T. Talb. Reports of Cases decided during the time of Lord Talbot.

Res. Resolution. The cases reported in Coke's Reports, are divided into resolutions on the different points of the case, and are cited 1 Res. &c.

Ret. Brev. Retorna Brevium.

Rev. St. or REv. Stat. REvised Statutes.

Rey, des Inst. de l'Anglet. Des Institutions Judiciaries de l'Angleterre comparees avec celles de la France. Par Joseph Rey.

Reyn. Inst. Institutions du Droit des Gens, &c. par Gerard de Reyneval.

Ric. Richard; as, 12 Ric. 2, c. 15.

Rice's Rep. Reports of Cases in Chancery argued and determined in the Court of Appeals and Court of Error of South Carolina. By William Rice, State Reporter.

Rich. Pr. C. P. Richardson's Practice in the Common Pleas.

Rich. Pr. K. B. Richardson's Practice in the King's Bench.

Rich Eq. R. Richardson's Equity Reports.

Rich. on Wills. Richardson on Wills.

Ridg. Irish. T. R. Ridgeway, Lapp & Schoales' Term Reports in the K.B., Dublin. Sometimes this is cited Ridg. L.& S.

Ridg. P. C. Ridgeway's Cases in Parliament.

Ridg. Rep. Ridgeway's Reports of Cases in K. B. and Chancery.

Ridg. St. Tr. Ridgeway's Reports of State Trials in Ireland.

Ril. Ch. Cas. Riley's chancery Cases.

Rob. Adm. REp. Robinson's Admiralty Reports.

Rob. Cas. Robertson's Cases in Parliament, from Scotland.

Rob. Dig. Robert's Digest of the English Statutes in force in Pennsylvania.

Rob. Entr. Robinson's Entries.

Rob. on Fr. Roberts on Frauds.

Rob. on Fraud. Conv. Roberts on Fraudulent Conveyances.

Rob. on Gavelk. Robinson on Gavelkind.

Rob. Lo. Rep. Robinson's Louisiana Reports.

Rob. Just. Robinson's Justice of the Peace.

Rob. Pr. Robinson's Practice in Suits at Law, in Virginia.

Rob. V. Rep. Robinson's (Virginia) Reports.

Rob. on Wills. Robert's Treatise on the Law of Wills and Codicils.

Roc. Ins. Roccus on Insurance. Vide Ing. Roc.

Rog. Eccl. Law. Rogers' Ecclesiastical law.

Rog. Rec. Roger's City Hall Recorder.

Roll. Rolle's Abridgment.

Roll. R. Rolle's Reports.

Rom. Cr. Law. Romilly's Observations on the Criminal Law of England, as it relates to capital punishment.

Rop. on H.& W. A Treatise on the Law of Property, arising from the relation between Husband and Wife. By R. S. Donnison Roper.

Rop. Leg. Roper on Legacies.

Rop. on Revoc. Roper on Revocations.

Rosc. Roscoe.

Rosc. on Act. Roscoe on Actions relating to Real Property.

Rosc. Civ. Ev. Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.

Rosc. Cr. Ev. Roscoe on Criminal Evidence.

Rosc. on Bills. Roscoe's Treatise on the Law relating to Bills of Exchange, Promissory Notes, Banker's Checks, &c.

Rose's R. Rose's Reports of Cases in Bankruptcy.

Ross on V.& P. Ross on the Law of Vendors and Purchasers.

Rot. Parl. Rotulae Parliamentariae.

Rowe's Sci. Jur. Rowe's Scintilla Juris.

Rub. or Rubr. Rubric, (q.v.)

Ruffh. Ruffhead's Statutes at Large.

Runn. Ej. Runnington on Ejectments.

Runn. Stat. Runnington's Statutes at Large.

Rus.& Myl. Russell & Mylne's Chancery Reports.

Rush. Rushworth's Collections.

Russ. Cr. Russell on Crimes and Misdemeanors.

Rus.& Myl. Russell & Mylne's Reports of Cases in Chancery.

Russ. on Fact. Russell on the Laws relating to Factors and Brokers.

Russ. R. Russell's Reports of Cases in Chancery.

Russ.& Ry. Russell & Ryan's Crown Cases.

Rutherf. Inst. Rutherford's Institutes of Natural Law.

Ry. F. Rymer's Foedera.

Ry.& Mo. Ryan & Moody's Nisi Prius Reports.

Ry.& Mo. C. C. Ryan & Moody's Crown Cases.

Ry. MEd. Jur. Ryan on Medical Jurisprudence.

S. , section.

S. B. Upper Bench.

S.& B. Smith & Batty's Reports.

S. C. Same Case.

S. C. C. Select Cases in Chancery.

S. C. Rep. South Carolina Reports.

S.& L. Schoales & Lefroy's Reports.

S.& M. Shaw & Maclean's Reports.

S.& M. Ch. R. Smedes & Marshall's Reports of Cases decided by the Superior Court of Chancery of Mississippi.

S.& M. Err. & App. Smedes & Marshall's Reports of Cases in the High Court of Errors and Appeals of Mississippi.

S. P. Same Point.

S.& R. Sergeant & Rawle's Reports.

S.& S. Sausse & Scully's Reports.

S.& S. Simon & Stuart's Chancery Reports.

Sa.& Scul. Sausse & Scully's Reports.

Sandl. St. Pap. Sandler's State Papers.

Salk. Salkeld's Reports.

Sandf. Rep. Reports of Cases argued and determined in the Court of Chancery

of the State of New York, before the Hon. Lewis H. Sandford, Assistant vice Chancellor of the First Circuit.

Sand. U.& T. Sanders on Uses and Trusts.

Sanf. on Ent. Sanford on Entails.

Sant. de Assoc. Santerna, de Asecurationibus.

Saund. Saunders' Reports.

Saund. Pl. & ev. Saunders' Treatise on the Law of Pleading and Evidence.

Sav. Saville's Reports.

Sav. Dr. Rom. Savigny, Droit Romain.

Sav. Dr. Rom. M. A. Savigny, Droit Romain au Moyen Age.

Sav. Hist. Rom. Law. Savigny's History of the Roman Law during the Middle Ages. Translated from the German of Carl Von Savigny, by E. Cathcart.

Say. Costs. Sayer's Law of Costs.

Say. Sayer's Reports.

SC. Senatus consultum.

Scad. de Cam. Scaddia de Cambiis.

Scam. Rep. Scammon's Reports of Cases argued and determined in the Supreme Court of Illinois.

Scan. Mag. Scandalum Magnatum.

Sch.& Lef. Schoales & Lefroy's Reports.

Scheiff. Pr. Scheiffer's Practice.

Schul. Aq. R. Schultes on Aquatic Rights.

Sci. Fa. Scire Facias.

Sci. fa. ad. dis. deb. Scire facias ad disprobandum debitum, (q.v.)

Scil. Scilicet, i.e. scire licet, that is to say.

Sco. N.R. Scott's new Reports.

Scott's R. Scott's Reports.

Scriv. Copyh. Scriven's Copyholds.

Seat. F. Ch. Seaton's Forms in Chancery.

Sec. Section.

Sec. Leg. Secundum legem; according to law.

Sec. Reg. Secundum regulam; according to rule.

Sedgw. on Dam. Sedgwick on Damages.

Sel. Ca. Chan. Select Cases in Chancery. Vide S. C. C.

Seld. mar. Cla. Selden's Mare Clausum.

Self. Tr. Selfridge's Trial.

Sell. Pr. Sellon's Practice in K. B. and C. P.

Selw. N. P. Selwyn's Nisi Prius.

Selw. R. Selwyn's Reports. These Reports are usually cited M.& S. Maule & Selwyn's Reports.

Sem. or Semb. Semble, it seems.

Sen. Senate.

Seq. Sequentia.

Serg. on Att. Sergeant on the Law of Attachment.

Serg. Const. Law. Sergeant on constitutional Law.

Serg. on Land L. Sergeant on the Land Laws of Pennsylvania.

Serg.& Loub. Sergeant & Louber's edition of the English Common Law Reports; more usually cited Eng. Com. Law Rep.

Serg.& Rawle. or S.R. Reports of Cases adjudged in the Supreme Court of Pennsylvania. By Thomas Sergeant and William Rawle, Jun.

Sess. Ca. Sessions Cases in K. B., chiefly touching Settlements.

Set. on Dec. Seton on Decrees.

Shaw & Macl. Shaw & Maclean's Reports.

Shelf. Lun. Shelford on Lunacy.

Shelf. on Mort. Shelford on the Law of Mortmain.

Shelf. on Railw. Shelford on Railways.

Shelf. on R. Pr. Shelford on Real Property.

Shep. To. Sheppard's Touchstone.

Shepl. R. Shepley's Reports.

Sher. Sheriff.

Show. P. C. Shower's Parliamentary Cases.

Show. R. Shower's Reports in the Court of King's Bench.

Shub. Jur. Lit. Shuback de Jure Littoris.

Sid. Siderfin's Reports.

Sim. Simon's Chancery Reports. In Con. C.R.

Sim.& Stu. Simon & Stuart's Chancery Reports.

Skene, Ver. Sign. Skene de Verborum Significatione; an explanation of terms, difficult words, &c.

Skin. Skinner's Reports.

Skirr. Und. Sher. Skirrow's Complete Practical Under Sheriff.

Slade's Rep. Slade's Reports. More usually cited Vermont Reports.

Smed & Marsh. Ch. R. Smedes & Marshall's Reports of Cases decided by the High Court of Errors and Appeals of Mississippi.

Smith & Batty. Smith & Batty's Reports.

Smith's Ch. Pr. Smith's Chancery Practice.

Smith's For. Med. Smith's Forensic Medicine.

Smith's Hints. Smith's Hints for the Examination of Medical Witnesses.

Smith on M. L. Smith on Mercantile Law.

Sm. on Pat. Smith on the Law of Patents.

Smith's R. Smith's Reports in K. B., together with Cases in the Court of Chancery.

Sol. Solutio, the answer to an objection.

South. Car. R. South Carolina Reports.

South. R. Southard's Reports.

Sp. of Laws. Spirit of Laws, by Montesquieu.

Spelm. Feuds. Spelman on Feuds.

Spel. Gl. Spelman's Glossary.

Spence on Eq. Jur. of Ch. Spence on the Equitable Jurisdiction of Chancery.

Spenc. R. Spencer's Reports.

Speers' Eq. Cas. Equity Cases argued and determined in the Court of Appeals of South Carolina. By R. H. Speers.

Speers' Rep. Speers' Reports.

Ss. usually put in small letters, ss. Scilicet, that is to say.

St. or Stat. Statute.

St. Armand. Hist. Ess. St. Armand's Historical Essay on the Legislative Power of England.

Stant. R. Stanton's Reports.

Stath. Ab. Statham's Abridgment.

St. Cas. Stillingfleet's Cases.

St. Tr. State Trials.

Stair's Inst. Stair's Inst. Stair's Institutions of the Law of Scotland.

Stallm. on Elec. & Sat. Stallman on Election and Satisfaction.

Stark. Starkie's Ev. Starkie on the Law of Evidence.

Stark. Cr. Pl. Starkie's Criminal Pleadings.

Stark. R. Starkie's Reports.

Stark. on Sl. Starkie on Slander and Libel.

Stat. Statutes.

Stat. Wes. Statute of Westminster.

Staunf or Staunf. P. C. Staunford's Pleas of the Crown.

Stearn. on R. A. Stearne on Real Actions.

Steph. Comm. Stephen's New Commentaries on the Law of England.

Steph. Cr. Law. Stephen on Criminal Law.

Steph. Pl. Stephen on Pleading.

Steph. Proc. Stephen on Procurations.

Steph. on Slav. Stephens on Slavery.

Stev. on Av. Stevens on Average.

Stev.& B. on Av. Stevens & Beneke on Average.

Stew. Adm. Rep. Stewart's Reports of Cases argued and determined in the Court of Vice Admiralty at Halifax.

Stew. R. Stewart's Reports.

Stew.& Port's. Stewart & Porter's Reports.

Story on Bail. Story's Commentaries on the Law of Bailments.

Story on Const. Story on the Constitution of the United States.

Story on Eq. Story's Commentaries on Equity Jurisprudence.

Story's L. U. S. Story's edition of the Laws of the United States, in 3 vols. The 4th and 5th volumes are a continuation of the same work by George Sharswood, Esq.

Story on Partn. Story on Partnership.

Story on Pl. Story on Pleading.

Story, R. Story's Reports.

Str. Strange's Reports.

Stracc. de Mer. Straccha de Mercatura, Navibus Assecurationibus.

Strah. Dom. Straham's Translation of Domat's Civil Law.

Strob. R. Strobhart's Reports.

Stroud's Dig. Stroud's Digest of the Laws of Pennsylvania.

Stuart's (L.C.) R. Reports of Cases in the Court of King's bench in the Provincial Court of Appeals of Lower Canada, and Appeals before the Lords of the Privy Council. By George O'Kill Stuart, Esq.

Sty. Style's Reports.

Sugd. Lett. Sugden's Letters.

Sugd., Sugd. Pow. Sugden on Powers.

Sugd. Vend. Sugden on Vendors.

Sull. Lect. Sullivan's Lectures on the Feudal Law, and the Constitution and

Laws of England.

Sull. on Land Tit. Sullivan's History of Land Titles in Massachusetts.

Sum. Summa, the Summary of a law.

Sumn. R. Sumner's Circuit Court Reports.

Supers. Supersedeas.

Supp. Supplement.

Supp. to Ves. Jr. Supplement to Vesey Junior's Reports.

Swan on Eccl. Cts. Swan on the Jurisdiction of Ecclesiastical Courts.

Swanst. Swanston's Reports.

Sweet on Wills. Sweet's Popular Treatise on Wills.

Swift's Dig. Swift's Digest of the Laws of Connecticut.

Swift's Ev. Swift's Evidence.

Swift's Sys. Swift's System of the Laws of Connecticut.

Swinb. Swinburn on the Law of Wills and testaments. This work is generally cited by reference to the part, book, chapter, &c.

Swinb. on Desc. Swinburne on the Law of Descents.

Swinb. on Mar. Swinburne on Marriage.

Swinb. on Spo. Swinburne on Spousals.

Sw. Swinburne on Wills.

Syst. Plead. System of Pleading.

T. Title.

T.& G. Tyrwhitt & Granger's Reports.

T.& P. Turner & PHillips' Reports.

T. Jo. Sir Thomas Jones' Reports.

T. L. Termes de la Ley, or Terms of the Law.

T. R. Term Reports. Ridgeway's Reports are sometimes cited Irish Tr.

T. R. Teste Rege.

T.& R. Turner & Russell's Chancery Reports.

T.& R. Turner & Russell's Reports.

T. R. E. or T. E. R. Tempore Regis Edwardi. This abbreviation is frequently used in Domesday Book, and in the more ancient Law writers. See Tyrrel's Hist. Eng., introd. viii. p. 49. See also Co. Inst. 86, a,where in a quotation from Domesday Book, this abbreviation is interpreted Terra Regis Edwardi; but in Cowell's Dict. verb. Reveland, it is said to be wrong.

T. Raym. Sir Thomas Raymond's Reports.

T. U. P. Charlt. T. U. P. Charlton's Reports.

Tait on Ev. Tait on Evidence.

Taml. on Ev. Tamlyn on Evidence, principally with reference to the Practice of the Court of Chancery, and in the Master's office.

Taml. R. Tamlyn's Reports of Cases decided in Chancery.

Taml. T. Y. Tamlyn on Terms for Years.

Tapia. Jur. Mer. Tratade de Jurisprudentia Mercantil.

Taunt. Taunto's Reports. Tayl. on Ev. Taylor on Evidence.

Tayl Cir. L. Taylor's Civil Law.

Tayl. Law glo. Taylor's Law Glossary.

Tayl. L.&T. Taylor's Treatise on the American Law of Landlord and Tenant.

Tech. Dict. Crabb's Technological Dictionary.

Thach. Crim. Cas. Thacher's Criminal Cases.

Th. Br. Thesaurus brevium.

Th. Dig. Theloall's Digest.

Theo. of Pres. Pro. Theory of Presumptive Proof.

Theo. Pres. Pro. Theory of Presumptive Proof, or an Inquiry into the Nature of Circumstantial Evidence.

Tho. Co. Litt. Coke upon Littleton' newly arranged on the plan of Sir Matthew Hale's Analysis. By J. H. Thomas, Esq.

Thomp. on Bills. Thompson on Bills.

Tho. U. J. Thomas on Universal Jurisprudence.

Tidd's Pr. Tidd's Practice.

tit. Title.

Toll. Ex. Toller's Executors.

Toml. L. D. Tomlin's Law dictionary.

Toth. Tothill's reports.

Touchs. Sheppard's Touchstone.

Toull. Le Droit civil Francais suivant Pordre du Code; ouvrage dans lequel on a tache de reunir la eorie a la practique. Par M. C. B. M. Toullier. This work is sometimes cited Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 6; at other times, 3 Toull. n. 86, which latter signifies vol. 3 of Toullier's work, No. 86.

Tr. Eq. Treatise of Equity; the same as Fonblanque on Equity.

Traill, Med. Jur. Outlines of a Course of Lectures on Medical Jurisprudence. By Thomas Stewart Traill, M.D.

Treb. Jur. de la Med. Jurisprudence de la Medecine, de la Chirurgie, et de la Pharmacie. Par Adolphe Trebuchet.

Trem. Tremaine's Pleas of the Crown.

Tri. of 7 Bish. Trial of the Seven Bishops.

Tri. per Pais. Trials per Pais.

Trin. Trinity Term.

Tuck. Bl. Com. Blackstone's Commentaries, edited by Judge Tucker.

Turn. R. Turner's Reports of Cases determined in Chancery.

Turn.& Russ. Turner & Russell's Chancery Reports.

Tuck. Com. Tucker's Commentaries.

Turn.& Phil Turner & PHillips' Reports.

Tyl. R. Tyler's Reports.

Tyrw. Tyrwhitt's Exchequer Reports.

Tyrw.& Gra. Tyrwhitt & Granger's Reports.

Tyt. Mil. Law. Tytler's Essay on Military Law and the Practice of Military Courts Martial.

U.S. United States of America.

U.S. Dig. United States Digest. See Metc.& Perk. Dig.

Ult. Ultimo, ultima, last, usually applied to last title, paragraph or law.

Umfrev. Off of Cor. Umfreville's Office of Coroner.

Under Sher. Under Sheriff, containing the office and duty of High Sheriff, Under Sheriffs and Bailiffs.

Ux. et. Et uxor, et uxorem, and wife.

V. Versus, against; as AB. v. CD.

V. Versiculo, in such a verse.

V. Vide, see.

V. or v. Voce; as Spelm Gloss. v. Cancelarious.

V.& B. Vesey & Beames' Reports.

V. C. Vice Chancellor.

Vac. Voce, or Vocem.

V.& S. Vernon & Scriven's Reports.

Val. Com. Valin's Commentaries.

Van. Heyth. Mar. Ev. Van Heythuysen's Essay upon marine Evidence, in Courts of Law and Equity.

Vand. Jud. Pr. Vanderlinden's Judicial Practice.

Vat. or Vattel. Battle's Law of Nations.

Vaug. Vaughan's Reports.

Vend. Ex. Venditioni Exponas.

Ventr. Ventris' Reports.

Verm. R. Vermont Judges' Reports.

Vern. Vernon's Reports.

Vern.& Scriv. Vernon & Scriven's Reports of Cases in the King's Courts, Dublin.

Verpl. Contr. Verplanck on Contracts.

Verpl. Ev. Verplanck on Evidence.

Ves. Vesey Senior's Reports.

Ves. Jr. Vesey Junior's Reports.

Ves.& Bea. Vesey & Beames' Reports.

Vet. N. B. Old Natura Brevium.

Vid. Vidian's Entries.

Vin. Ab. Viner's Abridgment.

Vin. Supp. Supplement to Viner's Abridgment.

Vinn. Vinnius.

Viz. Videlicet, that is to say.

Vs. Versus.

W. 1, W. 2. Statutes of Westminster, 1 and2.

W. C. C. R. Washington's Circuit Court Reports.

W.& C. Wilson & Courtenay's Reports.

W. Jo. Sir William Jones' Reports.

W. Kel. William Kelynge's Reports.

W.& M. William and Mary.

W.& M. Rep. Woodbury & Minot's Reports.

W.& S. Wilson & Shaw's Reports of Cases decided in the House of Lords.

Walf. on Part. Walford's Treatise on the Law respecting Parties to Actions.

Walk. Ch. Ca. Walker's Chancery Cases.

Walk. Am. R. or Walk. Introd. Walker's Introduction to American Law.

Walk. R. Walker's Reports.

Wall. R. Wallace's Circuit Court Reports.

Ward, on Leg. Ward on Legacies.

Ware's R. Reports of Cases argued and determined in the District Court of the United States, for the District of Maine.

Warr. L. S. Warren's Law Studies.

Wash. C. C. Washington's Circuit Court Reports.

Washb. R. Washburn's Vermont Reports.

Wat. Cop. Watkin's Copyhold.

Watk. Conv. Watking's Principles of conveyancing.

Wats. Cler. Law. Watson's Clergyman's Law.

Wats. on Arb. Watson on the Law of Arbitrations and Awards.

Wats. on Partn. Watson on the Law of Partnership.

Wats. on Sher. Watson on the Law relating to the office and duty of Sheriff.

Watt's R. Watt's Reports.

Watts & Serg. Watts & Sergeant's Reports.

Welf. on Eq. Plead. Welford on Equity Pleading.

Wellw. Ab. Wellwood's Abridgment of Sea Laws.

Wend. R. Wendell's Reports.

Wentw. Wentworth.

Wentw. Off. Ex. Wentworth's Office of Executor.

Wentw. Pl. Wentworth's System of Pleading.

Wesk. Ins. Weskett on the Law of Insurance.

West's Parl. Rep. West's parliamentary Reports.

West's Rep. West's Reports of Lord Chancellor Hardwicke.

West's Symb. West's Symboliography, or a description of instruments and precedents, 2 parts.

Westm. Westminister;

Westm. I. Westminister primer.

Weyt. on Av. Quintin Van Weytsen on Average.

Whart. Cr. Law. Wharton on the Criminal Law of the United States.

Whart. Dig. Wharton's Digest.

Whart. Law Lex. Wharton's Law Lexicon, or Dictionary of Jurisprudence.

Whart. R. Wharton's Reports.

Wheat. Wheaton.

Wheat. R. Wheatons' Reports.

Wheat. on Capt. Wheaton's Digest of the Law of Maritime Captures and Prizes.

Wheat. Hist. of L. of N. Wheaton's History of the Law of Nations in Europe and America.

Wheel. Ab. Wheeler's Abridgments.

Wheel Cr. Cas. Wheeler's Criminal Cases.

Wheel on Slav. Wheeler on Slavery.

Whish. L. D. Whishaw's Law Dictionary.

Whit. on Liens. Whitaker on the Law of Liens.

Whit. on Trans. Whitaker on Stoppage in Transitu.

White's New Coll. A New Collections of the Laws, Charters, and Local Ordinances of the Governments of Great Britain, France, Spain, &c.

Whitm. B. L. Whitmarsh's Bankrupt Law.

Wicq. L'Ambassadeur et ses fonctions, par de Wicquefort.

Wightw. Wightwich's Reports in the Exchequer.

Wigr. on Disc. Wigram on Discovery.

Wilc. on Mun. Cor. Wilcock on Municipal Corporations.

Wilc. R. Wilcox's Reports.

Wilk Leg. Ang. Sax. Wilkin's leges Anglo-Saxionicae.

Wilk. on Lim. Wilkinson on Limitations.

Wilk on Publ. Funds. Wilkinson on the Law relating to the Public Funds,

including the Practice of Distringas, &c.

Wilk. on Repl. Wilkinson on the Law of Replevin.

Will. Auct. Williams on the Law of Auctions.

Will. on Eq. Pl. Willis' Treatise on Equity Pleadings.

Will. on Inter. Willis on Interrogatories.

Will. L. D. Williams' Law Dictionary.

Will. Per. Pr. Williams' Principles of the Law of Personal Property.

Will. (P.) Rep. Peere Williams' Reports.

Willc. Off. of Const. Willcock on the Office of Constable.

Willes' R. Willes' Reports.

Wills on Cir. Ev. Wills on Circumstantial Evidence.

Wils. on uses. Wilson on Springing Uses.

Wilm on Mortg. Wilmot on Mortgages.

Wilm. Judg. Wilmot's NOtes of Opinions and Judgments.

Wils. on Arb. Wilson on Arbitration.

Wils. Ch. R. Wilson's Chancery Reports.

Wils.& Co. Wilson & courtenay's Reports.

Wils. Ex. R. Wilson's Exchequer Reports.

Wils.& Sh. Wilson & Shaw's Reports decided by the House of Lords.

Wils. R. Wilson's Reports.

Win. Winch's Entries.

Win. R. Winch's Reports.

Wing. Max. Wingate's MAxims.

Wins. Just. Williams' Justice.

Wms. R., more usually, P. Wms. Peere Williams' Reports.

Wolff. Inst. Wolffius Institutiones Juris Naturae.

Wood's Inst., or Wood's Inst. Com.. L. Wood's Institutes of the Common Law of England.

Wood's Inst. Civ. Law. Wood's Institutes of the Civil Law.

Wood & Min. Rep. Woodbury and Minot's Reports.

Woodes. Wooddesson.

Woodes. El Jur. Woodesson's Elements of Jurisprudence.

Woodes. Lect. Wooddesson's Vinerian Lectures.

Woodf. L. and T. Woodfall on the Law of Landlord and Tenant.

Woodm. R. Woodman's Reports of Criminal Cases tried in the Municipal Court of the City of Boston.

Wool. Com. L. Woolrych's commercial Law.

Wool. L. W. Woolrych's law of Waters.

Woolr. on Com. Law. Woolrych's Treatise on the Commercial and Mercantile Law of England.

Wool. on Ways. Woolrych on Ways.

Worth. on Jur. Worthington's Inquiry into the Power of Juries to decide incidentally on Questions of Law.

Worth. Pre. Wills. Worthington's General Precedents for Wills, with practical notes.

Wright's R. Wright's Reports.

Wright, Fr. Soc. Wright on Friendly Societies.

Wright, Ten. Sir Martin Wright's Law of Tenures.

Wy. Pr. Reg. Wyatt's Practical REgister.

X. The decretals of Gregory the ninth are denoted by the letter X, thus, X.

Y. B. Year Books, (q.v.)

Y.& C. Younge & Collyer's Exchequer Reports.

Y.& C. N. C. Younge & Collyer's New Cases.

Y.& J. Younge & Jervis' Exchequer Reports.

Yeates, R. Yeates' Reports.

Yearb. Year Book.

Yelv. Yelverton's Reports.

Yerg. R. Yerger's Reports.

Yo.& Col. Younge & Collyer's Exchequer Reports.

Yo.& Col. N. C. Younge and Collyer's New Cases.

Yo. Rep. Younge's Reports.

Yo.& Jer. Younge & Jervis' Reports.

Zouch's Adm. Zouch's Jurisdiction of the Admiralty of England, asserted.

ABBREVIATORS, eccl. law. Officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions into proper form, to be converted into Papal Bulls. Vide Bulls.

ABBROACHMENT, obsolete. The forestalling of a market or fair.

ABDICATION, government. 1. A simple renunciation of an office, generally understood of a supreme office. James II. of England; Charles V. of Germany; and Christiana, Queen of Sweden, are said to have abdicated. When James III of England left the kingdom, the Commons voted that he had abdicated the government, and that thereby the throne had become vacant. The House of Lords preferred the word deserted, but the Commons thought it not comprehensive enough, for then, the king might have the liberty of returning. 2. When inferior magistrates decline or surrender their offices, they are said to make a resignation. (q.v.)

ABDUCTION, crim. law. The carrying away of any person by force or fraud. This is a misdemeanor punishable by indictment. 1 East, P.C. 458; 1 Russell,

569. The civil remedies are recaption, (q.v.) 3 Inst. 134; Hal. Anal. 46; 3 Bl. Com 4; by writ of habeas corpus; and an action of trespass, Fitz. N. B. 89; 3 Bl. Com 139, n. 27; Roscoe, Cr. Ev. 193.

ABEARANCE. Behaviour; as, a recognizance to be of good abearance, signifies to be of good behaviour. 4 Bl. Com.,251, 256.

ABEREMURDER, obsolete. An apparent, plain, or downright murder. It was used to distinguish a willful murder, from a chance-medley, or manslaughter. Spelman; Cowell; Blount.

TO ABET, crim. law. To encourage or set another on to commit a crime. This word is always taken in a bad sense. To abet another to commit a murder, is to command, procure, or counsel him to commit it. Old Nat. Brev 21; Col Litt. 475.

ABETTOR, crim. law. One who encourages or incites, persuades or sets another on to commit a crime. Such a person is either a principal or, an accessory to the crime. When present, aiding, where a felony is committed, he is guilty as principal in the second degree ; when absent, he is merely an accessory. 1. Russell, 21; 1 Leach 66; Foster 428.

ABEYANCE, estates, from the French aboyer, which in figurative sense means to expect, to look for, to desire. When there is no person in esse in whom the freehold is vested, it is said to be in abeyance, that is, in expectation, remembrance and contemplation.

2. The law requires, however, that the freehold should never, if possible, be in abeyance. Where there is a tenant of the freehold, the

remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance. 9 Serg. & R.. 367; 8 Plowd. 29 a. b 35 a.

3. Thus, if sn estate be limited to A for life, remainder to the right heirs of B, the fee simple is in abeyance during the life of B, because it is a maxim of law, that nemo est hoeres viventis. 2 Bl. Com. 107; 1 Cruise, 67-70; 1 Inst. 842, Merlin, Repertoire, mot Abeyance; 1 Com. Dig. 176; 1 Vin. Abr. 101.

4. Another example may be given in the case of a corporation. When a charter is given, and the charter grants franchises or property to a corporation which is to be brought into existence by some future acts of the corporators, such franchises or property are in abeyance until such acts shall be done, and when the corporation is thereby brought into life, the franchises instantaneously attach. 4 Wheat. 691. See, generally, 2 Mass. 500; 7 Mass. 445; 10 Mass. 93; 15 Mass. 464; 9 Cranch, 47. 293; 5 Mass. 555.

ABIDING BY PLEA. English law. A defendant who pleads a frivolous plea, or a plea merely for the purpose of delaying the suit; or who for the same purpose, shall file a similar demurrer, may be compelled by rule in term time, or by a Judge's order in vacation, either to abide by that plea, or by that demurrer, or to plead peremptorily on the morrow; or if near the end of the term, and in order to afford time for notice of trial, the motion may be made in court for rule to abide or plead instanter; that is, within twenty-four hours after rule served, Imp. B.R. 340, provided that the regular time for pleading be expired. If the defendant when ruled, do not abide, he can only plead the general issue; 1 T.R. 693; but he may add notice of set-off. Ib. 694, n. See 1 Chit. Rep. 565, n.

ABIGEAT, civ. law, A particular kind of larceny, which is committed not by

taking and carrying away the property from one place to another, but by driving a living thing away with an intention of feloniously appropriating the same. Vide Taking.

ABIGEI, civil law. Stealers of cattle, who were punished with more severity than other thieves. Dig. 47, 14; 4 Bl. Com. 239.

ABJURATION. 1. A renunciation of allegiance to a country by oath.

2.-1. The act of Congress of the 14th of April, 1802, 2 Story's Laws, U.S. 850, requires that when an alien shall apply to be admitted a citizen of the United States, he shall declare on oath or affirmation before the court where the application shall be made, inter alia, that he doth absolutely and entirely renounce and abjure all allegiance and fidelity which he owes to any foreign prince, &c., and particularly, by name, the prince, &c., whereof he was before a citizen or subject. Rawle on the Const. 98.

3.-2. In England the oath of abjuration is an oath by which an Englishman binds himself not to acknowledge any right in the Pretender to the throne of England.

4.-3 It signifies also, according to 25 Car. H., an oath abjuring to certain doctrines of the church of Rome.

5.-4. In the ancient English law it was a renunciation of one's country and taking an oath of perpetual banishment. A man who had committed a felony, and for safety flea to a sanctuary might within forty days' confess the fact, and take the oath of abjuration and perpetual banishment; he was then transported. This was abolished by Stat. 1 Jac. 1, c. 25. Ayl. Parerg. 14.

ABLEGATI, diplomacy. Papal ambassadors of the second rank, who are sent with a less extensive commission to a court where there are no nuncios. This title is equivalent to envoy (q.v.).

ABNEPOS, civil law. The grandson of a grandson or granddaughter, or fourth descendant. Abneptis, is the granddaughter of a grandson or granddaughter. These terms are used in making genealogical tables.

ABOLITION. An act by which a thing is extinguished, abrogated or annihilated. Merl. Repert, h.t., as, the abolition of slavery is the destruction of slavery.

2. In the civil and French law abolition is used nearly synonymously with pardon, remission, grace. Dig. 39, 4, 3, 3. There is, however, this difference; grace is the generic term; pardon, according to those laws, is the clemency which the prince extends to a man who has participated in a crime, without being a principal or accomplice; remission is made in cases of involuntary homicides, and self-defence. Abolition is different: it is used when the crime cannot be remitted. The prince then may by letters of abolition remit the punishment, but the infamy remains, unless letters of abolition have been obtained before sentence. Encycl. de d'Alembert, h.t.

3. The term abolition is used in the German law in the same sense as in the French law. Encycl. Amer. h.t. The term abolition is derived from the civil law, in which it is sometimes used synonymously with absolution. Dig. 39, 4, 3, 3.

ABORTION, med jur. and criminal law. The expulsion of the foetus before the seventh mouth of utero-gestation, or before it is viable. q.v.

2. The causes of this accident are referable either to the mother, or to the foetus and its dependencies. The causes in the mother may be: extreme

nervous susceptibility, great debility, plethora, faulty conformation, and the like; and it is frequently induced immediately by intense mental emotion. The causes seated in the foetus are its death, rupture of the membranes, &c.

3. It most frequently occurs between the 8th and 12th weeks of gestation. When abortion is produced with a malicious design, it becomes a misdemeanor, at common law, 1 Russell, 553; and the party causing it may be indicted and punished.

4. The criminal means resorted to for the purpose of destroying the foetus, may be divided into general and local. To the first belong vivisection, emetics, cathartics diuretics, emmenagogues &c. The second embraces all kinds of violence directly applied.

5. When, in consequence of the means used to produce abortion, the death of the woman ensues, the crime is murder.

6. By statute a distinction is made between a woman quick with child, (q.v.) and one who, though pregnant, is not so, 1 Bl. Com. 129. Physiologists, perhaps with reason, think that the child is a living being from the moment of conception. 1 Beck. Med. Jur. 291.

General References. 1 Beck, 288 to 331; and 429 to 435; where will be found an abstract of the laws of different countries, and some of the states punishing criminal abortion; Roscoe, Cr. Ev. 190; 1 Russ. 553; Vilanova y Manes, Materia Criminal Forense, Obs. 11, c. 7 n. 15-18. See also 1 Briand, Med. Leg. 1 ere partie, c. 4, where the question is considered, how far abortion is justifiable, and is neither a crime nor a misdemeanor. See Alis. Cr. L. of Scot. 628.

ABORTUS. The fruit of an abortion; the child born before its time, incapable of life. See Abortion; Birth; Breath; Dead born; Gestation; Life.

ABOVE. Literally higher in place: But in law this word is sometimes used to designate the superior court, or one which may revise proceedings of an inferior court error, from such inferior jurisdiction. The court of error is called the court above; the court whose proceedings are to be examined is called the court below.

2. By bail above, is understood bail to the action entered with the prothonotary or clerk, which is an appearance. See Bail above. The bail given to the Sheriff, in civil cases, when the defendant is arrested on bailable process, is called bail below; (q.v.) vide Below.

TO ABRIDGE, practice. To make shorter in words, so as to retain the sense or substance. In law it signifies particularly the making of a declaration or count shorter, by taking or severing away some of the substance from it. Brook, tit. Abridgment; Com. Dig. Abridgment; 1 Vin. Ab. 109.

2. Abridgment of the Plaint is allowed even after verdict and before judgment (Booth on R. A.) in an cases of real actions where the writ is de lib. ten. generally, as in assize, dower; &c.; because, after the abridgment the writ is still true, it being liberum tenementum still. But it is not allowed in a proecipe quod reddat, demanding a certain number of acres; for this would falsify the writ. See 2 Saund. 44, (n.) 4 ; Bro. Abr. Tit. Abr.; 12 Levin's Ent. 76; 2 Saund. 330; Gilb. C. P. 249-253; Thel. Dig. 76, c. 28, pl. 15, lib. 8.

AN ABRIDGMENT. An epitome or compendium of another and larger work, wherein the principal ideas of the larger work are summarily contained. When fairly made, it may justly be deemed, within the meaning of the law, a new work, the publication of which will not infringe the copyright of the work abridged. An injunction, however, will be granted against a mere colorable

abridgment. 2 Atk. 143; 1 Bro. C. C. 451; 5 Ves. 709; Lofft's R. 775; Ambl. 403; 5 Ves. 709.; 1 Story, R. 11. See Quotation.

2. Abridgments of the Law or Digests of Adjudged Cases, serve the very useful purpose of an index to the cases abridged, 5 Co. Rep. 25. Lord Coke says they are most profitable to those who make them. Co. Lit. in preface to the table at the end of the work. With few exceptions, they are not entitled to be considered authoritative. 2 Wils. R. 1, 2; 1 Burr. Rep. 364; 1 Bl. Rep. 101; 3 T. R. 64, 241. See North American Review, July, 1826, pp. 8, 13, for an account of the principal abridgments.

ABROGATION, in the civil law, legislation. The destruction or annulling of a former law, by an act of the legislative power, or by usage. A law may be abrogated or only derogated from; it is abrogated when it is totally annulled; it is derogated from when only a part is abrogated: derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur. Dig lib.. 50, t. 17, 1, 102. Lex rogatur dum fertur; abrogatur dum tollitur; derogatur eidem dum quoddam ejus caput aboletuer; subrogatur dum aliquid ei adjicitur; abrogatur denique, quoties aliquid in ea mutatur. Dupin, Proleg. Juris, Art. iv.

2. Abrogation is express or implied; it is express when it, is literally pronounced by the new law, either in general terms, as when a final clause abrogates or repeals all laws contrary to the provisions of the new one, or in particular terms, as when it abrogates certain preceding laws which are named.

3. Abrogation is implied when the new law contains provisions which are positively, contrary to the former laws, without expressly abrogating such laws: for it is a posteriora derogant prioribus. 3 N. S. 190; 10 M. R. 172. 560. It is also implied when the order of things for which the law had been

made no longer exists, and hence the motives which had caused its enactment have ceased to operate; ratione legis omnino cessante cessat lex. Toullier, Droit Civil Francais, tit. prel. Sec. 11, n. 151. Merlin, mot Abrogation.

ABSCOND. To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed in order to avoid their process.

ABSENTEE. One who is away from his domicil, or usual place of residence.

2. After an absence of seven years without being heard from, the presumption of death arises. 2 Campb. R. 113; Hardin's R. 479; 18 Johns. R. 141 15 Mass. R. 805; Peake's Ev. c. 14, s. 1; 2 Stark. Ev. 457 8; 4 Barn. & A. 422; 1 Stark. C. 121 Park on Ins. 433; 1 Bl. R. 404; Burr v. Simm, 4 Wh. 150; Bradley v. Bradley, 4 Wh. 173.

3. In Louisiana, when a person possessed of either movable or immovable property within the state, leaves it, without having appointed somebody to take care of his estate; or when the person thus appointed dies, or is either unable or unwilling to continue to administer that estate, then and in that case, the judge of the place where the estate is situated, shall appoint a curator to administer the same. Civ. Code of Lo. art. 50. In the appointment of this curator the judge shall prefer the wife of the absentee to his presumptive heirs, the presumptive heirs to other relations; the relations to strangers, and creditors to those who are not otherwise interested, provided, however, that such persons be possessed of the necessary qualifications. Ib. art. 51. For the French law on this subject, vide Biret, de l'Absende; Code Civil, liv. l tit.. 4. Fouss. lib. 13 tit. 4, n. 379-487; Merl. Rep. h.t.; and see also Ayl. Pand. 269; Dig. 50, 16, 198; Ib. 50, 16, 173; Ib. 3, 3,,6; Code, 7 32 12.

ABSOLUTE. Without any condition or encumbrance, as an "absolute bond,"

simplex obligatio, in distinction from a conditional bond; an absolute estate, one that is free from all manner of condition or incumbrance. A rule is said to be absolute, when, on the hearing, it is confirmed. As to the effect of an absolute conveyance, see 1 Pow. Mortg. 125; in relation to absolute rights, 1 Chitty, Pl. 364; 1 Chitty, Pr. 32.

ABSOLUTION. A definite sentence whereby a man accused of any crime is acquitted.

ABSQUE HOC, pleading. When the pleadings were in Latin these words were employed in a traverse. Without this, that, (q.v.) are now used for the same purpose.

ABSQUE IMPETITIONE VASTI. Without impeachment of waste. (q.v.) Without any right to prevent waste.

ABSQUE TALI CAUSA. This phrase is used in a traverse de injuria, by which the plaintiff affirms that without the cause in his plea alleged he did commit the said trespasses, &c. Gould on Pl. c. 7, part 2, Sec. 9.

ABSTENTION, French law. This is the tacit renunciation by an heir of a succession Merl. Rep. h.t.

ABSTRACT OF TITLE. A brief account of all the deeds upon which the title to an estate rests. See Brief of Title.

ABUSE. Every thing which is contrary to good order established by usage. Merl. Rep. h.t. Among the civilians, abuse has another signification; which

is the destruction of the substance of a thing in using it. For example, the borrower of wine or grain, abuses the article lent by using it, because he cannot enjoy it without consuming it. Leg ; El. Dr. Rom. Sec. 414. 416.

ABUTTALS. The buttings and boundings of land, showing on what other lands, rivers, highways, or other places it does abut. More properly, it is said, the sides of land, are adjoining and the ends abutting to the thing contiguous. Vide Boundaries, and Cro. Jac. 184.

AC ETIAM, Eng. law. In order to give jurisdiction to a court, a cause of action over which the court has jurisdiction is alleged, and also,, (ac etiam) another cause of action over which, without being joined with the first, the court would have no jurisdiction; for example, to the usual complaint of breaking the plaintiff's close, over which the court has jurisdiction, a clause is added containing the real cause of action. This juridical contrivance grew out of the Statute 13 Charles H. Stat. 2, c. 2. The clause was added by Lord North, Ch. J. of the C. P. to the clausum fregit writs of that court upon which writs of capias might issue. He balanced awhile whether he should not use the words nec non instead of ac etiam. The matter is fully explained in Burgess on Insolvency, 149. 155. 156. 157.

ACCEDAS AD CURIAM, Eng. law. That you go to court. An original writ, issuing out of chancery, now of coarse, returnable in K. B. or C. P. for the removal of a replevin sued by plaint in court of any lord, other than the county before the sheriff See F. N. B. 18; Dyer, 169.

ACCEDAS AD VICECOMITEM, Eng. law. The name of a writ directed to the coroner, commanding him to deliver a writ to the sheriff, who having a pone

delivered to him, suppresses it.

ACCEPTANCE, contracts. An agreement to receive something which has been offered.

2. To complete the contract, the acceptance must be absolute and past recall, 10 Pick. 826; 1 Pick. 278; and communicated to the party making the offer at the time and place appointed. 4. Wheat. R. 225; 6 Wend. 103.

3. In many cases acceptance of a thing waives the right which the party receiving before had; as, for example, the acceptance of rent after notice to quit, in general waives. the notice. See Co. Litt. 211, b; Id. 215, a.; and Notice to quit.

4. The acceptance may be express, as when it is openly declared by the party to be bound by it; or implied, as where the party acts as if he had accepted. The offer, and acceptance must be in some medium understood by, both parties; it may be language, symbolical, oral or written. For example, persons deaf and dumb may contract by symbolical or written language. At auction sales, the contract, generally symbolical; a nod, a wink, or some other sign by one party, imports that he makes an offer, and knocking down a hammer by the other, that he agrees to it. 3 D. & E. 148. This subject is further considered under the articles Assent and Offer, (q v.)

5. Acceptance of a bill of exchange the act by which the drawee or other person evinces his assent or intention to comply with and be bound by, the request contained in a bill of exchange to pay the same; or in other words, it is an engagement to pay the bill when due. 4 East, 72. It will be proper to consider, 1, by whom the acceptance ought to be made; 2, the time when it is to be made; 3, the form of the acceptance; 4, its extent or effect.

6.-1. The acceptance must be made by the drawee himself, or by one

authorized by him. On the presentment of a bill, the holder has a right to insist upon such an acceptance by the drawee as will subject him at all events to the payment of the bill, according to its tenor; consequently such drawee must have capacity to contract, and to bind himself to pay the amount of the bill, or it, may be treated as dishonored. Marius, 22. See 2 Ad. & EH. N. S. 16, 17.

7.-2. As to the time when, a bill ought to be accepted, it may be before the bill is drawn; in this case it must be in writing; 3 Mass. 1; or it may be after it is drawn; when the bill is presented, the drawee must accept the bill within twenty-four hours after presentment, or it should be treated as dishonored. Chit. Bills, 212. 217. On the refusal to accept, even within the twenty-four hours, it should be protested. Chit. Bills, 217. The acceptance may be made after the bill is drawn, and before it becomes due or after the time appointed for payment 1 H. Bl. 313; 2 Green, R. 339 ; and even after refusal to accept so as to bind the acceptor.

8. The acceptance may also be made supra protest, which is the acceptance of the bill, after protest for non-acceptance by the drawee, for the honor of the drawer, or a particular endorser. When a bill has been accepted supra protest for the honor of one party to the bill, it may be accepted supra protest, by another individual, for the honor of another. Beawes, tit. Bills of Exchange, pl. 52; 5 Campb. R. 447.

9.-3. As to the form of the acceptance, it is clearly established it may be in writing on the bill itself, or on another paper, 4 East, 91; or it may be verbal, 4 East, 67; 10 John. 207; 3 Mass. 1; or it may be expressed or implied.

10. An express acceptance is an agreement in direct and express terms to pay a bill of exchange, either by the party on whom it is drawn, or by some other person, for the honor of some of the parties. It is Usually in the words accepted or accepts, but other express words showing an engagement to

pay the bill will be equally binding.

11. An implied acceptance is an agreement to pay a bill, not by direct and express terms, but by any acts of the party from which an express agreement may be fairly inferred. For example, if the drawee writes "seen," "presented," or any, other thing upon it, (as the day on which it becomes due,) this, unless explained by other circumstances, will constitute an acceptance.

12.-4. An acceptance in regard to its extent and effect, may be either absolute, conditional, or partial.

13. An absolute acceptance is a positive engagement to pay the bill according to its tenor, and is usually made by writing on the bill "accepted," and subscribing the drawee's name; or by merely writing his name either at the bottom or across the bill. Comb. 401; Vin. Ab. Bills of Exchange, L 4; Bayl. 77; Chit. Bills, 226 to 228. But in order to bind another than the drawee, it is requisite his name should appear. Bayl. 78.

14. A conditional acceptance is one which will subject the drawee or acceptor to the payment of the money on a contingency, Bayl. 83, 4, 5; Chit. Bills, 234; Holt's C. N. P. 182; 5 Taunt, 344; 1 Marsh. 186. The holder is not bound to receive such an acceptance, but if he do receive it he must observe its terms. 4 M.& S. 466; 2 W. C. C. R. 485; 1 Campb. 425.

15. A partial acceptance varies from the tenor of the bill, as where it is made to pay part of the sum for which the bill is drawn, 1 Stra. 214; 2 Wash. C. C. R. 485; or to pay at a different time, Molloy, b. 2, c. 10, s. 20; or place, 4. M.& S. 462.

ACCEPTILATION, contracts. In the civil law, is a release made by a creditor to his debtor of his debt, without receiving any consideration. Ayl. Pand. tit. 26, p. 570. It is a species of donation, but not subject to the forms

of the latter, and is valid, unless in fraud of creditors. Merlin, Repert. de Jurisp. h.t. Acceptilation may be defined verborum conceptio qua creditor debitori, quod debet, acceptum fert; or, a certain arrangement of words by which on the question of the debtor, the creditor, wishing to dissolve the obligation, answers that he admits as received, what in fact, he has not received. The acceptilation is an imaginary payment. Dig. 46, 4, 1 and 19; Dig. 2, 14, 27, 9; Inst. 3, 30, 1.

ACCEPTOR, contracts. The person who agrees to pay a bill of exchange drawn upon him. There cannot be two separate acceptors of a bill of exchange, e. g. an acceptance by the drawee, and another for the honor of some party to the bill. Jackson v. Hudson, 2 Campb. N. P. C. 447.

2. The acceptor of a bill is the principal debtor, and the drawer the surety. He is bound, though he accepted without consideration, and for the sole accommodation of the drawer. By his acceptance he admits the drawer's handwriting, for, before acceptance it was incumbent upon him to inquire into the genuineness of the drawer's handwriting. 3 Burr. 1354; 1 Bla. Rep. 390, S. C.; 4 Dall. 234; 1 Binn. 27, S. C. When once made, the obligation of the acceptor is irrevocable. As to what amounts to an acceptance, see ante, Acceptance; Chitty on Bills, 242, et. seq.; 3 Kent, Com. 55, 6; Pothier, Traite du Contrat de Change, premiere part. n. 44.

3. The liability of the acceptor cannot in general be released or discharged, otherwise than by payment, or by express release or waiver, or by the act of limitations. Dougl. R. 247. What amounts to a waiver and discharge of the acceptor's liability, must depend on the circumstances of each particular case. Dougl. 236, 248; Bayl. on Bills, 90; Chitty on Bills, 249.

ACCEPTOR SUPRA PROTEST, in contracts, is a third person, who, after protest

for non-acceptance by the drawee, accepts the bill for the honor of the drawer, or of the particular endorser.

2. By this acceptance he subjects himself to the same obligations as if the bill had been directed to him. An acceptor supra protest has his remedy against the person for whose honor he accepted, and against all persons who stand prior to that person. If he takes up the bill for the honor of the endorser, he stands in the light of an endorsee paying full value for the bill, and has the same remedies to which an endorsee would be entitled against all prior parties, and he can, of course, sue the drawer and endorser., 1 Ld. Raym. 574; 1 Esp. N. P. Rep. 112; Bayly on Bills, 209; 3 Kent. Com. 57; Chitty on Bills, 312. The acceptor supra protest is required to give the same notice, in order to charge a party, which is necessary to be given by other holders. 8 Pick. 1. 79; 1 Pet. R. 262. Such acceptor is not liable, unless demand of payment is made on the drawee, and notice of his refusal given. 3 Wend. 491.

ACCESS, persons. Approach, or the means or power of approaching. Sometimes by access is understood sexual intercourse; at other times the opportunity of communicating together so that sexual intercourse may have taken place, is also called access. 1 Turn. & R. 141.

2. In this sense a man who can readily be in company with his wife, is said to have access to her; and in that case, her issue are presumed to be his issue. But this presumption may be rebutted by positive evidence that no sexual intercourse took place. lb.

3. Parents are not allowed to prove non-access, for the purpose of bastardizing the issue of the wife; nor will their declarations be received after their deaths, to prove the want of access, with a like intent. 1 P. A. Bro. R. App. xlviii.; Rep. tem. Hard. 79; Bull. N. P. 113; Cowp. R. 592; 8

East, R. 203; 11 East, R. 133. 2 Munf. R. 242; 3 Munf. R. 599; 7 N. S. 553; 4 Hayw R. 221, 3 Hawks, R 623 1 Ashm. R. 269; 6 Binn. R. 283; 3 Paige's R. 129; 7 N. S. 548. See Shelf. on Mar. & Div. 711; and Paternity.

ACCESSARY, criminal law. He who is not the chief actor in the perpetration of the offence, nor present at its performance, but is some way concerned therein, either before or after the fact committed.

2. An accessary before the fact, is one who being absent at the time of, the crime committed, yet procures, counsels, or commands another to commit it. 1 Hale, P. C. 615. It is, proper to observe that when the act is committed through the agency of a person who has no legal discretion nor a will, as in the case of a child or an insane person, the incitor, though absent when the crime was committed, will be considered, not an accessary, for none can be accessary to the acts of a madman, but a principal in the first degree. Fost. 340; 1 P. C. 118.

3. An accessary after the fact, is one who knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. 4 Bl. Com. 37.

4. No one who is a principal (q.v.) can be an accessary.

5. In certain crimes, there can be no accessaries; all who are concerned are principals, whether they were present or absent at the time of their commission. These are treason, and all offences below the degree of felony. 1 Russ. 21, et seq.; 4 Bl. Com. 35 to 40; 1 Hale, P. C. 615; 1 Vin. Abr. 113; Hawk. P. C. b. 2, c. 29, s. 16; such is the English Law. But whether it is law in the United States appears not to be determined as regards the cases of persons assisting traitors. Serg. Const. Law, 382; 4 Cranch, R. 472, 501; United States v. Fries, Parnphl. 199.

6. It is evident there can be no accessary when there is no principal; if a principal in a transaction be not liable under our laws, no one can be

charged as a more accessary to him. 1 W.& M. 221.

7. By the rules of the common law, accessaries cannot be tried without their consent, before the principals. Foster, 360. The evils resulting from this rule, are stated at length in the 8th vol. of Todd's Spencer, pp. 329, 330.

ACCESSION, property. The ownership of a thing, whether it be real or personal, movable or immovable, carries with it the right to all that the thing produces, and to all that becomes united to it, either naturally or artificially; this is called the right of accession.

2.-1. The doctrine of property arising from accession, is grounded on the right of occupancy.

3.-2. The original owner of any thing which receives an accession by natural or artificial means, as by the growth of vegetables, the pregnancy of animals; Louis. Code, art. 491; the embroidering of cloth, or the conversion of wood or metal into vessels or utensils, is entitled to his right of possession to the property of it, under such its state of improvement; 5 H. 7, 15; 12 H. 8, 10; Bro. Ab. Propertie, 23; Moor, 20; Poph. 88. But the owner must be able to prove the identity of the original materials; for if wine, oil, or bread, be made out of another man's grapes, olives, or wheat, they belong to the new operator, who is bound to make satisfaction to the former proprietor for the materials which he has so converted. 2 Bl. Com. 404; 5 Johns. Rep. 348; Betts v. Lee, 6 Johns. Rep. 169; Curtiss v. Groat, 10 Johns. 288; Babcock v. Gill, 9 Johns. Rep. 363; Chandler v. Edson, 5 H. 7, 15; 12 H. 8, 10; Fits. Abr. Bar. 144; Bro. Abr. Property, 23; Doddridge Eng. Lawyer, 125, 126, 132, 134. See Adjunction; Confusion of Goods. See Generally, Louis. Code, tit. 2, c. 2 and 3.

ACCESSION, international law, is the absolute or conditional acceptance by one or several states, of a treaty already concluded between one or several states, of a treaty already concluded between other sovereignties. Merl. Rep. mot Accession.

ACCESSORY, property. Everything which is joined to another thing, as an ornament, or to render it more perfect, is an accessory, and belongs to the principal thing. For example, the halter of a horse, the frame of a picture, the keys of a house, and the like; but a bequest of a house would not carry the furniture in it, as accessory to it. Domat, Lois Civ. Part. 2, liv. 4, tit. 2, s. 4, n. 1. Accesiorium non ducit, sed sequitur principale. Co. Litt. 152, a. Co. Litt. 121, b. note (6). Vide Accession; Adjunction; Appendant; Appurtenances; Appurtenant; Incident.

ACCESSORY CONTRACT. One made for assuring the performance of a prior contract, either by the same parties, or by others; such as suretyship, mortgages, and pledges.

2. It is a general rule, that payment of the debt due, or the performance of a thing required to be performed by the first or principal contract, is a full discharge of such accessory obligation. Poth. Ob. part. 1, c. 1, s. 1, art. 2, n. 14. Id. n. 182, 186. See 8 Mass. 551; 15 Mass. 233; 17 Mass. 419; 4 Pick. 11; 8 Pick. 522.

3. An accessory agreement to guaranty an original contract, which is void, has no binding effect. 6 Humph. 261.

ACCIDENT. The happening of an event without the concurrence of the will of the person by whose agency it was caused or the happening of an event without any human agency; the burning of a house in consequence of a fire

being made for the ordinary purpose of cooking or warming the house, which is an accident of the first kind; the burning of the same house by lightning would have been an accident of the second kind. 1 Fonb. Eq. 374, 5, note.

2. It frequently happens that a lessee covenants to repair, in which case he is bound to do so, although the premises be burned down without his fault. 1 Hill. Ab. c. 15, s. 76. But if a penalty be annexed to the covenant, inevitable accident will excuse the former, though not the latter. 1 Dyer, 33, a. Neither the landlord nor the tenant is bound to rebuild a house burned down, unless it has been so expressly agreed. Amb. 619; 1 T. R. 708; 4 Paige, R. 355; 6 Mass. R. 67; 4 M'Cord, R. 431; 3 Kent, Com. 373.

3. In New Jersey, by statute, no action lies against any person on the ground that a fire began in a house or room occupied by him, if accidental. But this does not affect any covenant. 1 N. J. Rev. C. 216.

ACCIDENT, practice. This term in chancery jurisprudence, signifies such unforeseen events, misfortunes, losses, acts or omissions, as are not the result of any negligence or misconduct in the party. Francis' Max. M. 120, p. 87; 1 Story on Eq. Sec. 78.

Jeremy defines it as used in courts of equity, to be "an occurrence in relation to a contract, which was not anticipated by the parties, when the same was entered into, and which gives an undue advantage to one of them over the other in a court of law." Jer. on Eq. 358. This definition is objected to, because as accident may arise in relation to other things besides contracts, it is inaccurate in confining accidents to contracts; besides, it does not exclude cases of unanticipated occurrences, resulting from the negligence or misconduct of the party seeking relief. 1 Story on Eq. Sec. 78, note 1.

2. In general, courts of equity will relieve a party who cannot obtain

justice in consequence of an accident, which will justify the interposition of a court of equity. The jurisdiction being concurrent, will be maintained only, first, when a court of law cannot grant suitable relief; and, secondly, when the party has a conscientious title to relief.

3. Many accidents are redressed in a court of law; as loss of deeds, mistakes in receipts and accounts, wrong payments, death, which makes it impossible to perform a condition literally, and a multitude of other contingencies; and many cannot be redressed even in a court of equity; is if by accident a recovery is ill suffered, a contingent remainder destroyed, or a power of leasing omitted in a family settlement. 3 Bl. Comm. 431. Vide, generally, Com. Dig. Chancery, 3 F 8; 1 Fonb. Eq. B. 1, c. 3, s. 7; Coop. Eq. Pl. 129; 1 Chit. Pr. 408; Harr. Ch. Index, h.t.; Dane's Ab. h.t.; Wheat. Dig. 48; Mitf. Pl. Index, h.t.; 1 Madd. Ch. Pr. 23; 10 Mod. R. 1, 3; 3 Chit. Bl. Com. 426, n.

ACCOMENDA, mar. law. In Italy, is a contract which takes place when an individual entrusts personal property with the master of a vessel, to be sold for their joint account. In such case, two contracts take place; first, the contract called mandatum, by which the owner of the property gives the master power to dispose of it, and the contract of partnership, in virtue of which, the profits are to be divided between them. One party runs the risk of losing his capital, the other his labor. If the sale produces no more than first cost, the owner takes all the proceeds; it is only the profits which are to be divided. Emer. on Mar. Loans, B. 5.

ACCOMODATION, com. law. That which is done by one merchant or other person for the convenience of some other, by accepting or endorsing his paper, or by lending him his notes or bills.

2. In general the parties who have drawn, endorsed or accepted bills or

other commercial paper for the accommodation, of others, are, while in the hands of a holder who received them before they became due, other than the person for whom the accomodation was given, responsible as if they had received full value. Chit. Bills, 90; 91. See 4 Cranch, 141; 1 Ham. 413; 7 John. 361; 15 John. 355, 17 John. 176; 9 Wend. 170; 2 Whart. 344; 5 Wend. 566; 8 Wend. 437; 2 Hill, S. C. 362; 10 Conn. 308; 6 Munfd. 381.

ACCOMMODATION, contracts. An amicable agreement or composition between two contending parties. It differs from accord and satisfaction, which may take place without any difference having existed between the parties.

ACCOMPLICE, crim. law. This term includes in its meaning, all persons who have been concerned in the commission of a crime, all particepes crimitis, whether they are considered in strict legal propriety, as principals in the first or second degree, or merely as accessaries before or after the fact. Foster, 341; 1 Russell, 21; 4 Bl. Com. 331; 1 Phil. Ev. 28; Merlin, Repertoire, mot Complice. U. S. Dig. h.t.

2. But in another sense, by the word accomplice is meant, one who not being a principal, is yet in some way concerned in the commission of a crime. It has been questioned, whether one who was an accomplice to a suicide can be punished as such. A case occurred in Prussia where a soldier, at the request of his comrade, had cut the latter in pieces; for this he was tried capitally. In the year 1817, a young woman named Leruth received a recompense for aiding a man to kill himself. He put the point of a bistouri on his naked breast, and used the hand of the young woman to plunge it with greater force into his bosom; hearing some noise he ordered her away. The man receiving effectual aid was soon cured of the wound which had been inflicted; and she was tried and convicted of having inflicted the

wound, and punished by ten years' imprisonment. Lepage, Science du Droit, ch. 2 art. 3, Sec. 5. The case of Saul, the king of Israel, and his armor bearer, (1 Sam. xxxi. 4,) and of David and the Amelekite, (2 Sam. i. 2-16,) will doubtless occur to the reader.

ACCORD, in contracts. A satisfaction agreed upon between the party injuring and the party injured, which when performed is a bar to all actions upon this account. 3 Bl. Com. 15; Bac. Abr, Accord.

2. In order to make a good accord it is essential:

1. That the accord be legal. An agreement to drop a criminal prosecution as a satisfaction for an assault and imprisonment, is void. 5 East, 294. See 2 Wils. 341 Cro. Eliz. 541.

3.-2. It must be advantageous to the contracting party; hence restoring to the plaintiff his chattels, or his land, of which the defendant has wrongfully dispossessed him, will not be any consideration to support a promise by the plaintiff not to sue him for those injuries. Bac. Abr. Accord, &c. A; Perk. s. 749; Dyer, 75; 5 East, R. 230; 1 Str. R. 426; 2 T. R. 24; 11 East, R. 390; 3 Hawks, R. 580; 2 Litt. R. 49; 1 Stew. R. 476; 5 Day, R. 360; 1 Root, R. 426; 3 Wend. R. 66; 1 Wend, R. 164; 14 Wend. R. 116; 3 J. J. Marsh. R. 497.

4.-3. It must be certain; hence an agreement that the defendant shall relinquish the possession of a house in satisfaction, &c., is not valid, unless it is also agreed at what time it shall be relinquished. Yelv. 125. See 4 Mod. 88; 2 Johns. 342; 3 Lev. 189.

5.-4. The defendant must be privy to the contract. If therefore the consideration for the promise not to sue proceeds from another, the defendant is a stranger to the agreement, and the circumstance that the promise has been made to him will be of no avail. Str. 592; 6, John. R. 37; 3 Monr. R. 302 but in such case equity will grant relief by injunction. 3

Monr. R. 302; 5 East, R. 294; 1 Smith's R. 615; Cro. Eliz. 641; 9 Co. 79, b; 3 Taunt. R. 117; 5 Co. 117, b.

6.-5. The accord must be executed. 5 Johns. R. 386; 3 Johns. Cas. 243; 16 Johns. R. 86; 2 Wash. C. C. R. 180; 6 Wend. R. 390; 5 N. H. Rep. 136; Com. Dig. Accord, B 4.

7. Accord with satisfaction when completed has two effects; it is a payment of the debt; and it is a species of sale of the thing given by the debtor to the creditor, in satisfaction; but it differs from it in this, that it is not valid until the delivery of the article, and there is no warranty of the thing thus sold, except perhaps the title; for in regard to this, it cannot be doubted, that if the debtor gave on an accord and satisfaction the goods of another, there would be no satisfaction. See Dation, en paiement. See in general Com. Dig. h.t.; Bac. Ab. h.t.; Com. Dig. Pleader, 2 V 8; 5 East, R. 230; 4 Mod. 88 ; 1 Taunt. R. 428; 7 East, R. 150; 1 J. B. Moore, 358, 460; 2 Wils. R. 86; 6 Co. 43, b; 3 Chit. Com. Law, 687 to 698; Harr. Dig. h.t.; 1 W. Bl. 388; 2 T. R. 24; 2 Taunt. 141; 3 Taunt. 117; 5 B.& A. 886; 2 Chit. R. 303 324; 11 East, 890; 7 Price, 604; 2 Greenl. Ev. Sec. 28; 1 Bouv. Inst. n. 805; 3 Bouv. Inst. n. 24 78-79-80-81. Vide Discharge of Obligations.

ACCOUCHEMENT. The act of giving birth to a child. It is frequently important to prove the filiation of an individual; this may be done in several ways. The fact of the accouchement may be proved by the direct testimony of one who was present, as a physician, a midwife, or other person. 1 Bouv. Inst. u. 314.

ACCOUNT, remedies. This is the name of a writ or action more properly called account render.

2. It is applicable to the, case of an unliquidated demand, against a person who is chargeable as bailiff or receiver. The use of it, is where the plaintiff wants an account and cannot give evidence of his right without it. 5 Taunt. 431 It is necessary where the receipt was directed to a merchandising which makes all uncertainty of the net remain, till the account is finished; or where a man is charged as bailiff, whereupon the certainty of his receipt appears not till account. Hob. 209.; See also 8 Cowen, R. 304; 9 Conn. R. 556; 2 Day, R. 28; Kirby, 164; 3 Gill & John. 388; 3 Verm. 485; 4 Watts, 420; 8 Cowen, 220. It is also the proper remedy by one partner against another. 15 S. & R. 153 3 Binn. 317; 10 S. & R. 220; 2 Conn. 425; 4 Verm. 137; 1 Dall. 340; 2 Watts 86.

3. The interlocutory judgment in this action is (quod computet) that the defendant render an account upon which judgment auditors are assigned to him to hear and report his account. (See I Lutwych, 47; 3 Leon. 149, for precedents) As the principal object of the action is to compel a settlement of the account in the first instance, special bail cannot be demanded, (2 Roll. Rep. 53; 2 Keble, 404,) nor are damages awarded upon the first judgment, nor given except ratione interplacitationis, (Cro. Eliz. 83; 5 Binn. 664; 24 Ed. 3. 16; 18 Ed. 3. 55; Reg. Brev. 136 b,) although it is usual to conclude the count with a demand of damages. (Lib. Int. fo. 16. fo. 20; 1 Lutw. 51. 58; 2 H. 7. 13.) The reason assigned for this rule, is, that it may be the defendant will not be found in arrears after he has accounted, and the court cannot know until the settlement of the account whether the plaintiff has been endamaged or not. 7 H. 6. 38.

4. This action combines the properties of a legal and equitable action.

The proceedings up to the judgment quod computet, and subsequent to the account reported by the auditors are conducted upon the principles of the common law. But the account is to be adjusted upon the most liberal

principles of equity and, good faith. (Per Herle, Ch. J. 3 Ed. 3. 10.) The court it is said are judges of the action - the auditors of the account, Bro. Ab. Ace. 48, and both are judges of record, 4 H. 6. 17; Stat. West. 2. c. 11. This action has received extension in Pennsylvania. 1 Dall. 339, 340.

5. The fist judgment (quod computet) is enforced by a capias ad computandum where defendant refuses to appear before the auditors, upon which he may be held to bail, or in default of bail be made to account in prison. The final judgment quod recuperet is enforced by fi. fa. or such other process as the law allows for the recovery of debts.

6. If the defendant charged as bailiff is found in surplusage, no judgment can be entered thereon to recover the amount so found in his favor against the plaintiff, but as the auditors are judges of record, he may bring an action of debt, or by some authorities a sci. fac. against the plaintiff, whereon he may have judgment and execution against the plaintiff. See Palm. 512; 2 Bulst. 277-8; 1 Leon. 219; 3 Keble Rep. 362; 1 Roll. Ab. 599, pl. 11; Bro. Ab. Acc. 62; 1 Roll. Rep. 87. See Bailiff, in account render.

7. In those states where they have courts of chancery, this action is nearly superseded by the better remedy which is given by a bill in equity, by which the complainant can elicit a discovery of the acts from the defendant under his oath, instead of relying merely on the evidence he may be able to produce. 9 John. R. 470; 1 Paige, R. 41; 2 Caines' Cas. Err. 38, 62; 1 J. J. Marsh. R. 82; Cooke, R. 420; 1 Yerg. R. 360; 2 John. Ch. R. 424; 10 John. R. 587; 2 Rand. R. 449; 1 Hen. & M9; 2 M'Cord's Ch. R. 469; 2 Leigh's R. 6.

8. Courts of equity have concurrent jurisdiction in matters of account with courts of law, and sometimes exclusive jurisdiction at least in some

respects: For example; if a plaintiff be entitled to an account, a court of equity will restrain the defendant from proceeding in a claim, the correctness of which cannot be ascertained until the account be taken; but not where the subject is a matter of set-off. 1 Sch. & Lef. 309; Eden on Injunct. 23, 24.

9. When an account has voluntarily been stated between parties, an action of assumpsit may be maintained thereon. 3 Bl. Com. 162; 8 Com. Dig. 7; 1 Com. Dig. 180; 2 Ib. 468; 1 Vin. Ab. 135; Bac. Ab. h.t.; Doct. Pl. 26; Yelv. 202; 1 Supp. to Ves. Jr, 117; 2 Ib. 48, 136. Vide 1 Binn. R. 191; 4 Dall. R. 434; Whart. Dig. h.t. ; 3 Wils. 73, 94; 8 D.& R. 596; Bull. N. P. 128; 5 Taunt. 431; U. S. Dig. h.t.; 2 Greenl. Ev. Sec. 34-39.

ACCOUNT, practice. A statement of the receipts and payments of an executor, administrator, or other trustee, of the estate confided to him.

2. Every one who administers the affairs of another is required at the end of his administration to render an account of his management of the same. Trustees of every description can, in general, be compelled by courts of chancery to settle accounts, or otherwise fully execute their trusts. Where there are no courts of chancery, the courts of common law are usually invested with power for the same purposes by acts of legislation. When a party has had the property of another as his agent, he may be compelled at common law to account by an action of account render.

3. An account is also the statement of two merchants or others who have dealt together, showing the debits and credits between them.

ACCOUNT-BOOK. A book kept by a merchant, trader, mechanic, or other person, in which are entered from time to time the transactions of his trade or business. Vide Books; Entry; Original entry.

ACCOUNT CURRENT. A running or open account between two persons.

ACCOUNT IN BANK, com. law. 1: A fund which merchants, traders and others have deposited into the common cash of some bank, to be drawn out by checks from time to time as the owner or depositor may require. 2. The statement of the amount deposited and drawn, which is kept in duplicate, one in the depositor's bank book, and the other in the books of the bank.

ACCOUNT STATED. The settlement of an account between the parties, by which a balance is struck in favor of one of them, is called an account stated.

2. An acknowledgment of a single item of debt due from the defendant to the plaintiff is sufficient to support a count on an account stated. 13 East, 249; 5 M.& S. 65.

3. It is proposed to consider, 1st, by whom an account may, be stated; 2d, the manner of stating the account; 3d, the declaration upon such, an account; 4th, the evidence.

4.-1. An account may be stated by a man and his wife of the one part, and a third person; and unless there is an express promise to pay by the husband, Foster v. Allanson, 2 T. R. 483, the action must be brought against husband and wife. Drue v. Thorne, Aleyn, 72. A plaintiff cannot recover against a defendant upon an account stated by him, partly as administrator and partly in his own private capacity. Herrenden v. Palmer, Hob. 88. Persons wanting a legal capacity to make a contract cannot, in general, state an account; as infants, Truman v. Hurst, 1 T. R. 40; and persons non compos mentis.

5. A plaintiff may recover on an account stated with the defendant, including debts due from the defendant alone, and from the defendant and a deceased partner jointly. Riebards v. Heather, 1 B.& A. 29, and see Peake's

Ev. 257. A settlement between partners, and striking a balance, will enable a plaintiff to maintain an action on such stated account for the balance due him, Ozeas v. Johnson, 4 Dall. 434; S. C. 1 Binn. 191; S. P. Andrews v. Allen, 9 S. & R. 241; and see Lamelere v Caze, 1 W. C.C.R. 435.

6.-2. It is sufficient, although the account be stated of that which is due to the plaintiff only without making any deduction for any counter-claim for the defendant, Styart v. Rowland, 1 Show. 215. It is not essential that there should be cross demands between the parties or that the defendant's acknowledgment that a certain sum was due from him to the plaintiff, should relate to more than a single debt, or transaction. 6 Maule & Selw. 65; Knowles et al. 13 East, 249. The acknowledgment by the defendant that a certain sum is due, creates an implied promise to pay the amount. Milward v. Ingraham, 2 Mod. 44; Foster v. Allanson, 2 T. R. 480.

7.-3. A count on an account stated is almost invariably inserted in declarations in assumpsit for the recovery of a pecuniary demand. See form, 1 Chit. Pl. 336. It is advisable, generally, to insert such a count, Milward, v. Ingraham, 2 Mod. 44; Trueman v. Hurst, 1 T. R. 42; unless the action be against persons who are incapable in law to state an account. It is not necessary to set forth the subject-matter of the original debt, Milward v. Ingraham, 2 Mod. 44; nor is the sum alleged to be due material. Rolls v. Barnes, 1 Bla. Rep. 65; S. C. 1 Burr. 9.

8.-4. The count upon an account stated, is supported by evidence of an acknowledgment on the part of the defendant of money due to the plaintiff, upon an account between them. But the sum must have been stated between the parties; it is not sufficient that the balance may be deduced from partnership books. Andrews v. Allen, 9 S.&. R. 241. It is unnecessary to prove the items of which the account consists; it is sufficient to prove some existing antecedent debt or demand between the parties respecting which an account was stated, 5 Moore, 105; 4 B.& C. 235, 242; 6 D.& R. 306; and

that a balance was struck and agreed upon; Bartlet v. Emery, 1 T. R. 42, n; for the stating of the account is the consideration of the promise. Bull. N. P. 129. An account stated does not alter the original debt; Aleyn, 72; and it seems not to be conclusive against the party admitting the balance against him. 1 T. R. 42. He would probably be allowed to show a gross error or mistake in the account, if he could adduce clear evidence to that effect. See 1 Esp. R. 159. And see generally tit. Partner's; Chit. Contr. 197; Stark. Ev. 123; 1 Chit. Pl. 343.

9. In courts of equity when a bill for an account has been filed, it is a good defence that the parties have already in writing stated and adjusted the items of the account, and struck a balance; for then an action lies it law, and there is no ground for the interference of a court of equity. 1 Atk. 1; 2 Freem. 62; 4 Cranch, 306; 11 Wheat. 237; 9 Ves. 265; 2 Bro. Ch. R. 310; 3 Bro. Ch. R. 266; 1 Cox, 435.

10. But if there has been any mistake, omission, fraud, or undue advantage, by which the account stated is in fact vitiated, and the balance incorrectly fixed, a court of equity will open it, and allow it to be re-examined; and where there has been gross fraud it will direct the whole account to be opened, and examined de novo. Fonbl. Eq. b. 1, c. 1 Sec. 3, note (f); 1 John. Ch. R. 550.

11. Sometimes the court will allow the account to stand, with liberty to the plaintiff to surcharge and falsify it; the effect of this is, to leave the account in full force and vigor, as a stated account, except so far as it can be impugned by the opposing party. 2 Ves. 565; 11 Wheat. 237. See Falsification; Surcharge.

ACCOUNT OF SALES. comm. law. An account delivered by one merchant or tradesman to another, or by a factor to his principal, of the disposal,

charges, commissions and net proceeds of certain merchandise consigned to such merchant, tradesman or factor, to be sold.

ACCOUNTANT. This word has several significations: 1. One who is versed in accounts; 2. A person or officer appointed to keep the accounts of a public company; 3. He who renders to another or to a court a just and detailed statement of the administration of property which he holds as trustee, executor, administrator or guardian. Vide 16 Vin. Ab. 155.

ACCOUPLE. To accouple is to marry. See Ne unquas accouple.

TO ACCREDIT, international law. The act by which a diplomatic agent is acknowledged by the government near which he is sent. This at once makes his public character known, and becomes his protection.

ACCRETION. The increase of land by the washing of the seas or rivers. Hale, De Jure Maris, 14. Vide Alluvion; Avulsion.

TO ACCRUE. Literally to grow to; as the interest accrues on the principal. Accruing costs are those which become due and are created after judgment of an execution.

2.-To accrue means also to arise, to happen, to come to pass; as the statute of limitations does not commence running until the cause of action has accrued. 1 Bouv. Inst. n. 861; 2 Rawle, 277; 10 Watts, 363; Bac. Abr. Limitation of Actions, D 3.

ACCUMULATIVE JUDGMENT. A second or additional judgment given against one, who has been convicted, the execution or effect of which is to commence after the first has expired; as, where a man is sentenced to an imprisonment

for six months on conviction of larceny, and, afterwards he is convicted of burglary, he may be sentenced to undergo an imprisonment for the latter crime, to commence after the expiration of the first imprisonment; this is called an accumulative judgment.

ACCUSED. One who is charged with a crime or misdemeanor.

ACCUSATION, crim. law. A charge made to a competent officer against one who has committed a crime or misdemeanor, so that he may be brought to justice and punishment.

2. A neglect to accuse may in some cases be considered a misdemeanor, or misprision. (q.v.) 1 Bro. Civ. Law, 247; 2 Id. 389; Inst. lib. 4, tit. 18.

3. It is a rule that no man is bound to accuse himself, or to testify against himself in a criminal case. Accusare nemo se debet nisi coram Deo. Vide Evidence; Interest; Witness.

ACCUSER. One who makes an accusation.

ACHAT. This French word signifies a purchase. It is used in some of our law books, as well as achetor, a purchaser, which in some ancient statutes means purveyor. Stat. 36 Edw. III.

ACHERSET, obsolete. An ancient English measure of grain, supposed to be the same with their quarter or eight bushels.

ACKNOWLEDGMENT, conveyancing. The act of the grantor going before a competent officer, and declaring the instrument to be his act or deed, and

desiring the same to be recorded as such. The certificate of the officer on the instrument, that such a declaration has been made to him, is also called an acknowledgment. The acknowledgment or due proof of the instrument by witnesses, must be made before it can be put upon record.

2. Below will be found the law of the several states relating to the officer before whom the acknowledgment must be made. Justice requires that credit should be here given for the valuable information which has been derived on this subject from Mr. Hilliard's Abridgment of the American Law of Real Property, and from Griffith's Register. Much valuable information has also been received on this subject from the correspondents of the author.

3. Alabama. Before one of the judges of the superior court, or any one of the justices of the county court; Act of March 3, 1803; or before any one of the superior judges or justices of the quorum of the territory (state); Act of Dec. 12, 1812; or before the clerks of the circuit and county courts, within their respective counties; Act of Nov. 21, 1818; or any two justices of the peace; Act of Dec. 17, 1819; or clerks of the circuit courts, for deeds conveying lands anywhere in the state; Act of January 6, 1831; or before any notary public, Id, sec. 2; or before one justice of the peace; Act of January 5, 1836; or before the clerks of the county courts; Act of Feb. 1, 1839; See Aiken's Dig. 88, 89, 90, 91, 616; Meek's Suppl. 86.

4. When the acknowledgment is out of the state, in one of the United States or territories thereof, it may be made before the chief justice or any associate judge of the supreme court of the United States, or any judge or or justice of the superior court of any state, or territory in the Union. Aiken's Dig. 89.

5. When it is made out of the United States, it may be made before and certified by any court of law, mayor or other chief magistrate of any city, borough or corporation of the kingdom, state, nation, or colony, where it is

made. Act of March 3,1803.

6. When a feme covert is a grantor, the officer must certify that she was examined "separately and apart from her said husband and that on such private examination, she acknowledged that she signed, sealed and delivered the deed as her voluntary act and deed, freely and without any threat, fear, or compulsion, of her said husband."

7. Arkansas. The proof or acknowledgment of every deed or instrument of writing for the conveyance of real estate, shall be taken by some one of the following courts or officers: 1. When acknowledged or proven within this state, before the supreme court, the circuit court, or either of the judges thereof, or of the clerk of either of the said courts, or before the county court, or the judge thereof, or before an justice of the peace or notary public.

8.-2. When acknowledged or proven without this state, and within the United States or their territories, before any court of the United States, or of any state or territory having a seal, or the clerk of any such court, or before the mayor of any city or town, or the chief officer of any city or town having a seal of office.

9.-3.When acknowledged or proven without the United States, before any court of any state, kingdom or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any, officer of any foreign country, who by the laws of such country, is authorized to take probate of the conveyance of real estate of his own country, if such officer has by law an official seal.

10. The conveyance of any real estate by any married woman, or the relinquishment of her dower in any of her husband's real estate, shall be authenticated, and the title passed, by such married woman voluntarily appearing before the proper court or officer, and, in the absence of her

husband, declaring that she had of her own free will executed the deed or instrument in question, or that she had signed and sealed the relinquishment of dower for the purposes therein contained and set forth, without any compulsion or undue influence of her husband. Act of Nov. 30, 1837, s. 13, 21; Rev. Stat. 190, 191.

11. In cases of acknowledgment or proof of deeds or conveyances of real estate taken within the United States or territories thereof, when taken before a court or officer, having a seal of office, such deed or conveyance shall be attested under such seal of office; and if such officer have no seal of office, then under the official signature of such officer, Idem, s. 14; Rev. Stat. 190.

12. In all cases of deeds, and conveyances proven or acknowledged without the United States or their territories, such acknowledgment or proof must be attested under the official seal of the court or officer before whom such probate is had. Idem, s. 15.

13. Every court or officer that shall take the proof or acknowledgment of any deed or conveyance of real estate, or the relinquishment of dower of any married woman in any conveyance of the estate of her husband, shall grant a certificate thereof, and cause such certificate to be endorsed on the said deed, instrument, conveyance or relinquishment of dower, which certificate shall be signed by the clerk of the court where the probate is taken in court, or by the officer before whom the same is taken and sealed, if he have a seal of office. Idem, s. 16.

14. Connecticut. In this state, deeds must be acknowledged before a judge of the supreme or district court of the United States, or the supreme or superior court, or court of common pleas or county court of this state, or a notary public.

15. When the acknowledgment is made in another state or territory of the United States, it must be before some officer or commissioner having power

to take acknowledgments there.

16. When made out of the United States before a resident American consul, a justice of the peace, or notary public, no different form is used, and no different examination of a feme covert from others. See Act of 1828; Act of 1833; 1 Hill. Ab. c. 34, s. 82.

17. Delaware. Before the supreme court, or the court of common pleas of any county, or a judge of either court, or the chancellor, or two justices of the peace of the same county.

18. The certificate of an acknowledgment in court must be under the seal of the court.

19. A feme covert may also make her acknowledgment before the same officers, who are to examine her separately from her husband.

20. An acknowledgment out of the state, may be made before a judge of any court of the United States, the chancellor or judge of a court of record, of the said court itself, or the chief officer of a city or borough, the certificate to be under the official seal; if by a judge, the seal to be affixed to his certificate, or to that of the clerk or keeper of the seal. Commissioners appointed in other states may also take acknowledgments. 2 Hill. Ab. 441 ; Griff. Reg. h.t.

21. Florida. Deeds and mortgages must be acknowledged within the state before the officer authorized by law to record the same, or before some judicial officers of this state. Out of the state, but within some other state or territory of the United States, before a commissioner of Florida, appointed under the act passed January 24, 1831; and where there is no commissioner, or he is unable to attend) before the chief justice, judge, presiding judge, or president of any court of record of the United States or of any state or territory thereof having a seal and a clerk or prothonotary. The certificate must show, first, that the acknowledgment was taken within

the territorial jurisdiction of the officer; secondly, the court of which he is such officer. And it must be accompanied by the certificate of the clerk or prothonotary of the court of which he is judge, justice or president, under the seal of said court that he is duly appointed and authorized as such. Out of the United States. If in Europe, or in North or South America, before. any minister plenipotentiary, or minister extraordinary, or any charge d'affaires, or consul of the United States, resident or accredited there. If in any part of Great Britain and Ireland, or the dominions thereunto belonging, before the consul of the United States, resident or accredited therein, or before the mayor or other chief magistrate of London, Bristol, Liverpool, Dublin or Edinburgh, the certificate to be under the hand and seal of the officer. In any other place out of the United States, where there is no public minister, consul or vice consul, commercial agent or vice commercial agent of the United States, before two subscribing witnesses and officers of such place, and the identity of such civil officer and credibility, shall be certified by a consul or vice consul of the United States, of the government of which such place is a part.

22. The certificate of acknowledgment of a married, woman must state that she was examined apart from her husband, that she executed such deeds, &c., freely and without any fear or compulsion of her husband.

23. Georgia. Deeds of conveyance of land in the state must be executed in the presence of two witnesses, and proved before a justice of the peace, a justice of the inferior court, or one of the judges of the superior courts. If executed in the presence of one witness and a magistrate, no probate is required. Prince's Dig. 162; 1 Laws of Geo. 115.

24. When out of the state, but in the United States, they may be proved by affidavit of one or more of the witnesses thereto, before any governor, chief justice, mayor, or other justice, of either of the United States, and

certified accordingly, and transmitted under the common or public seal of the state, court, city or place, where the same is taken. The affidavit must express the place of the affiant's abode. Idem.

25. There is no state law, directing how the acknowledgment shall be made when it is made out of the United States.

26. By an act of the legislature passed in 1826, the widow is barred, of her dower in all lands of her deceased husband, that he aliens or conveys away during the coverture, except such lands as he acquired by his intermarriage with his wife; So that no relinquishment of dower by the wife is necessary, unless the lands came to her husband by her. Prince's Dig.249; 4 Laws of Geo. 217. The magistrate should certify that the wife did declare that freely, and without compulsion, she signed, sealed and delivered the instrument of writing between the parties, naming them and that she did renounce all title or claim to dower that she might claim or be entitled to after death of her husband, (naming him.) 1 Laws of. Geo. 112; Prince's Dig. 160.

27. Indiana. Before the recorder of the county in which the lands may, be situate, or one of the judges of the supreme court of this state, or before one of the judges of the circuit court, or some justice of the peace of the county within which the estate may be situate, before notaries public, or before probate judges. Ind. Rev. Stat. c. 44, s. 7; Id. eh. 74; Act of Feb. 24, 1840.

28. All deeds and conveyances made and executed by any person without this state and brought within it to be recorded, the acknowledgment having been lawfully made before any judge or justice of the peace of the proper county in which such deed may have been made and executed, and certified under the seal of such county by the proper officer, shall be valid and effectual in law. Rev. Code, c. 44, s. 11 App. Jan. 24, 1831.

29. When acknowledged by a feme covert, it must be certified that she was examined separate and apart from her husband; that the full contents of the deed were made known to her; that she did then and there declare that she had, as her own voluntary act and deed, signed, sealed and executed the said deed of her own free will and accord, without any fear or compulsion from her said husband.

30. Illinois. Before a judge or justice of the supreme or district courts of the United States, a commissioner authorized to take acknowledgments, a judge or justice of the supreme, superior or district court of any of the United States or territories, a justice of the peace, the clerk of a court of record, mayor of a city, or notary public; the last three shall give a certificate under their official seal.

31. The certificate must state that the party is known to the officer, or that his identity has been proved by a credible witness, naming him. When the acknowledgment is taken by a justice of the peace of the state, residing in the county where the lands lie, no other certificate is required than his own; when he resides in another county, there shall be a certificate of the clerk of the county commissioners court of the proper county, under seal, to his official capacity.

32. When the justice of the peace taking the acknowledgment resides out of the state, there shall be added to the deed a certificate of the proper clerk, that the person officiating is a justice of the peace.

33. The deed of a feme covert is acknowledged before the same officers. The certificate must state that she is known to the officer, or that her identity has been proved by a witness who must be named; that the officer informed her of the contents of the deed; that she was separately examined; that she acknowledged the execution and release to be made freely, voluntarily, and without the compulsion of her husband.

34. When the husband and wife reside in the state, and the latter is

over eighteen years of age, she may convey her lands, with formalities substantially the same as those used in a release of dower; she acknowledges the instrument to be her act and deed, and that she does not wish to retract.

35. When she resides out of the state, if over eighteen, she may join her husband in any writing relating to lands in the state, in which case her acknowledgment is the same as if she were a feme sole. Ill. Rev. L. 135-8; 2 Hill Ab. 455, 6.

36. Kentucky. Acknowledgments taken in the State must be before the clerk of a county court, clerk of the general court, or clerk of the court of appeals. 4 Litt. L. of K. 165 ; or before two justices of the peace, 1 Litt. L. of K. 152.; or before the mayor of the city of Louisville. Acts of 1828, p. 219, s. 12.

37. When in another state or territory of the United States, before two justices of the peace, 1 Litt. L. of K. 152; or before any court of law, mayor, or other chief magistrate of any city, town or corporation of the county where the grantors dwell, Id. 567; or before any justice or judge of a superior or inferior court of law. Acts of 1831, p. 128.

38. When made out of the United States, before a mayor of a city, or consul of the U. S. residing there' or, before the chief, magistrate of such state or country, to be authenticated in the usual manner such officers authenticate the official act's. Acts of 1831, p. 128, s. 5.

39. When a feme covert acknowledges the deed, the certificate must state that she was examined by the officer separate and apart from her husband, that she declared that she did freely and willingly seal and deliver the said writing, and wishes not to retract it, and acknowledged the said writing again shown and explained to her, to be her act and deed, and consents that the same may be recorded.

40. Maine. Before a justice of the peace in this state, or any justice of the peace, magistrate, or notary public, within the United States, or any commissioner appointed for that purpose by the governor of this state, or before any minister or consul of the United States, or notary public in any foreign country. Rev. St. t. 7, c. 91, 7; 6 Pick. 86.

41. No peculiar form for the certificate of acknowledgment is prescribed; it is required that the husband join in the deed. "The joint deed of husband and wife shall be effectual to convey her real estate, but not to bind her to any covenant or estoppel therein." Rev. St. t. 7, c. 91, Sec. 5.

42. Maryland. Before two justices of the peace of the county where the lands lie, or where the grantor lives, or before a judge of the county court of the former county, or the mayor of Annapolis for Anne Arundel county. When the acknowledgment is made in another county than that in which the lands are situated, an in which the party Eves, the clerk of the court must certify under the court seal, the official capacity of the acting justices or judge.

43. When the grantor resides out of the state, a commission issues on, application of the purchaser, and with the written consent of the grantor, from the clerk of the county court where the land lies, to two or more commissioners at the grantee's residence; any two of whom may take the acknowledgment, and shall certify it under seal and return the commission to be recorded with the deed; or the grantor may empower an attorney in the state to acknowledge for him, the power to be incorporated in the deed, or annexed to it, and proved by a subscribing witness before the county court, or two justices of the peace where the land lies, or a district judge, or the governor or a mayor, notary public, court or judge thereof, of the place where it is executed; in each case the certificate to be under an official seal. By the acts of 1825, c. 58, and 1830, c. 164 the acknowledgment in

another state may be before a judge of the U. S. or a judge of a court of record of the state. and county where the grantor may be the clerk to certify under seal, the official character of the magistrate.

44. By the act of 1837, c. 97, commissioners may be appointed by authority of the state, who shall reside in the other states or territories of the United States who shall be authorized to take acknowledgment of deeds. The act of 1831, c. 205, requires that the officer shall certify knowledge of the parties.

45. The acknowledgment of a feme covert must be made separate and apart from her husband. 2 Hill. Ab. 442; Griff. Reg. h.t. See also, 7 Gill & J. 480; 2 Gill. & J. 173 6 Harr. & J. 336; 3 Harr. & J.371 ; 1 Harr. & J. 178; 4 Harr. & M'H. 222.

46. Massachusetts. Before a justice of the peace or magistrate out of the state. It has been held that an American consul at a foreign port, is a magistrate. 13 Pick. R. 523. An acknowledgment by one of two grantors has been held, sufficient to authorize the registration of a deed; and a wife need not, therefore, acknowledge the conveyance when she joins with her husband. 2 Hill. Ab. c. 34, s. 45.

47. Michigan. Before a judge of a court of record, notary public, justice of the peace, or master in chancery; and in case of the death of the grantor, or his departure from the state, it may be proved by one of the subscribing witnesses before any court of record in the state. Rev. St. 208 Laws of 1840, p. 166.

48. When, the deed is acknowledged out of the state of Michigan, but in the United States, or an of the territories of the U. S., it is to be acknowledged according to the laws of such state or territory, with a certificate of the proper county clerk, under his seal of office, that such deed is executed according to the laws of such state or territory, attached

thereto.

49. When acknowledged in a foreign country, it may be executed according to the laws of such foreign country, but, it must in such. case, be acknowledged before a minister plenipotentiary, consul, or charge d'affaires of the United States and the acknowledgment must be certified by the officer before whom the same was taken. Laws of 1840, p. 166, sec. 2 and 3.

50. When the acknowledgment is made by a feme covert, the certificate must state that on a private examination of such feme' covert, separate and apart from her husband, she acknowledged that she executed the deed without fear or compulsion from any one. Laws of 1840, p. 167, sec. 4.

51. Mississippi. When in the state, deeds may be acknowledged, or proved by one or more of the subscribing witnesses to them, before any judge of the high court of errors and appeals, or a judge of the circuit courts, or judge of probate, and certified by such judge; or before any notary public, or clerk of any court of record in this state, and certified by such notary or clerk under the seal of his office; How. & Hutch. c. 34, s. 99, p. 868, Law of 1833 ; or before any justice of that county, where the land, or any part thereof, is situated; Ib. p. 343, s. 1, Law of 1822; or before any, member of the board of police, in his respective county. Ib. p. 445, c. 38, s. 50, Law of 1838.

52. When in another state or territory of the United States, such deeds must be acknowledged, or proved as aforesaid, before a judge of the supreme court or of the district courts of the United States, or before any judge of the supreme or superior court of any state or territory in the Union; How. & Hutch. 846) c. 34, s. 13, Law of 1832; or before and certified by any judge of any inferior or county court of record, or before any justice of the peace of the state or territory and county, wherein such person or witness or witnesses may then be or reside, and authenticated by the certificate of

the clerk or register of the superior county or circuit court of such county, with a seal of his office thereto affixed; or if taken before or certified by a justice of the peace, shall be authenticated by the certificate of either the clerk of the Said inferior or county court of record of such county, with the seal of his office thereto affixed. Laws of Mississippi, Jan. 27, 1841, p. 132.

53. When out of the United States, such acknowledgment, or proof as, aforesaid, must be made before an court of law, or mayor, or other chief magistrate of any city, borough or corporation of such foreign kingdom, state, nation, or colony, in which the said parties or witnesses reside; certified by the court, mayor, or chief magistrate, in a manner such acts are usually authenticated by him. How. & Hutch, 346, c. 34, s. 14, Law of 1822.

54. When made by a feme covert, the certificate must state that she made previous acknowledgment, on a private examination, apart from her husband before the proper officer, that she sealed and delivered the same as her act and deed, freely, without any fear, threat or compulsion of her husband. How. & Hutch. 347, c. 34, s. 19, Law of 1822.

55. Missouri. In the state, before some court having a seal, or some judge, justice or clerk thereof, or a justice of the peace in the county where the land lies. Rev. Code, 1835, Sec. 8, p. 120.

56. Out of the state, but in the United States, before any court of the United States, or of any state or territory, having a seal, or the clerk thereof. Id. cl. 2.

57. Out of the United States, before any court of any state, kingdom or empire having a seal, or the mayor of any city having an official seal.

58. Every court or officer taking the acknowledgment of such instrument or relinquishment of dower or the deed of the wife of the husband's land,

shall endorse a certificate thereof upon the instrument; when made before a court, the certificate shall be under its seal; if by a clerk, under his band and the seal of the court; when before an officer having an official seal, under his hand and seal; when by an officer having no seal, under his hand. The certificate must state that the party was personally known to the judge or other officer as the signer, or proved to be such by two credible witnesses. Misso. St. 120-122 ; 2 Hill. Ab. 453; Griff. h.t.

59. When the acknowledgment is made by a feme covert, releasing her dower, the certificate must state that she is personally known to a judge of the court, or the officer before whom the deed is acknowledged, or that, her identity was proved by two credible witnesses; it must also state that she was informed of the contents of the deed; that it was acknowledged separate and apart from her husband; that she releases her dower freely without compulsion or undue conveyance of her own lands, the acknowledgment may be made before any court authorized to take acknowledgments. It must be done as in the cases of release of dower, and have a similar certificate. Ib.

60. New Hampshire. Before a justice of the peace or a notary public; and the acknowledgment of a deed before a notary public in another state is good. 2 N. H. Rep. 420 2 Hill. Ab. c. 34, s. 61.

61. New Jersey. In the state, before the chancellor, a justice of the supreme court of this state, a master in chancery, or a judge of any inferior court of common pleas, whether in the same or a different county; Rev. Laws, 458, Act of June 7, 1799 ; or before a commissioner for taking the acknowledgments or proofs of deeds, two of whom are appointed by the legislature in each township, who are authorized to take acknowledgments or proofs of deeds in any part of the state. Rev. Laws, 748, Act of June 5, 1820.

62. In another state or territory of the United States, before a judge of the supreme court of the United States, or a district judge of the United

States, or any judge or justice of the supreme or superior court of any state in the Union; Rev. Laws, 459, Act of June 7, 1799; or before a mayor or other chief magistrate of any city in any other state or territory of the U. S., and duly certified under the seal of such city; or before a judge of any, superior court, or court of common pleas of any state or territory; when, taken before a judge of a court of common pleas, it must be accompanied by a certificate under the great seal of the state, or the seal of the county court in which it is made, that he is such officer; Rev. Laws, 747, Act of June 5, 1820; or before a commissioner appointed by the governor, who resides in such state; Harr. Comp. 158, Act of December 27, 1826; two of whom may be appointed for each of the States of New York and Pennsylvania. Elmer's Dig. Act of Nov. 3, 1836.

63. When made out of the United States, the acknowledgment may be before any court of law, or mayor, or other magistrate, of any city, borough or corporation of a foreign kingdom, state, nation or colony, in which the party or his witnesses reside, certified by the said court, mayor, or chief magistrate, in the manner in which such acts are usually authenticated by him. Rev. Laws, 459, Act of June 7, 1799. The certificate in all cases must state that the officer who makes it, first made known the contents of the deed to the person making the acknowledgment, and that he was satisfied such person was the grantor mentioned in the deed.Rev. Laws, 749, Act of June 5, 1820.

64. When the acknowledgment is made by a feme covert, the certificate must state that on a private examination, apart from her husband, before a proper officer, (ut supra,) she acknowledged that she signed, sealed, and delivered the deed, as her voluntary act and deed, freely, without any fear, threats or compulsion of her husband. Rev. Laws, 459, Act of June 7, 1799..

65. New York. Before the chancellor or justice of the supreme court,

circuit judge, supreme court commissioner, judge of the county court, mayor or recorder of a city, or, commissioner of deeds; a county judge or commissioner of deeds for a city or county, not to act out of the same.

66. When the party resides in another state, before a judge of the United States, or a judge or justice of the supreme, superior or circuit court of any state or territory of the United States, Within his own jurisdiction. By a statute passed in 1840, chap. 290, the governor is authorized to appoint commissioners in other states, to take the acknowledgment and proof of deeds and other instruments.

67. When the party is in Europe or other parts of America, before a resident minister or charge d'affaires of the United States; in France, before the United States consul at Paris; in Russia, before the same officer at St. Petersburg; in the British dominions, before the Lord Mayor of London, the chief magistrate of Dublin, Edinburgh, or Liverpool, or the United States consul at London. The certificate to be under the hand and official seal of such officer. It may also be made before any person specially authorized by the court of chancery of this state.

68. The officer must in all cases be satisfied of the identity of the party, either from his own knowledge or from the oath or affirmation of a witness, who is to be named in the certificate.

69. A feme covert must be privately examined; but if out of the state this is unnecessary. 2 Hill. Ab. 434; Griff. Reg. h.t.

70. By the act passed April 7, 1848, it is provided, that: Sec. 1. The proof or acknowledgment of any deed or other written, instrument required to be proved or acknowledged, in order to entitle the same to be recorded or read in evidence, when made by any person residing out of this state and within any other state or territory of the United States, may be made before any officer of such state or territory, authorized by the laws thereof to take the proof and acknowledgment of deeds and when so taken and

certified as by the act is provided, shall be entitled to be recorded in any county in this state, and may be read in evidence in any court in this state, in the same manner and with like effect, as proofs and acknowledgments taken before any of the officers now authorized by law to take such proofs and acknowledgments: Provided that no such acknowledgment shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in, and who executed the deed or instrument.

71.-2. To entitle any conveyance or other written instrument acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined to the certificate of proof or acknowledgment, signed by such officer, a certificate under the name and official seal of the clerk or register of the county in which such officer resides, specifying that such officer was at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such clerk or register is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof and acknowledgment, is genuine.

72. North Carolina. The acknowledgment or proof of deeds for the conveyance of lands, when taken or made in the state, must be before one of the judges of the supreme court, or superior court, or in the court of the county where the land lieth. 1 Itev. Stat. c. 37, s.. 1.

73. When in another state or territory of the United States, or the District of Columbia, the deed must be acknowledged, or proved, before some one of the judges of the superior courts of law, or circuit courts of law of superior jurisdiction, within the said state, &c., with a certificate of the governor of the said state or territory, or of the secretary of state of the United States, when in the District of Columbia, of the official character

of the judge; or before a commissioner appointed by the governor of this state according to law. 1 Rev. Stat. c. 37, s. 5.

74. When out of the United States, the deeds must be acknowledged, or proved, before the chief magistrate of some city, town, or corporation of the countries where the said deeds were executed; or before some ambassador, public minister, consul, or commercial agent, with proper certificate under their official seals; 1 Rev. Stat. c. 37 s. 6. and 7; or before a commissioner in such foreign country, under a commission from the county court where the land lieth. See. 8.

75. When acknowledged by a feme covert, the certificate must state that she was privily examined by the proper officer, that she acknowledged the due execution of the deed, and declared that she executed the same freely, voluntarily, and without the fear or compulsion of her husband, or any other person, and, that she then assented thereto. When she is resident of another county, or so infirm that she cannot travel to the judge, or county court, the deed may be acknowledged by the husband, or proved by witnesses, and a commission in a prescribed form may be issued for taking the examination of the wife. 1 Rev. Stat. c. 37, s. 6, 8, 9, 10, 11, 13, and 14.

76. Ohio. In the state, deeds and other instruments affecting lands must be acknowledged before a judge of the supreme court, a judge of the court of common pleas, a justice of the peace, notary public, mayor, or other presiding officer of an incorporated town or city. Ohio Stat. vol. 29, p. 346, Act of February 22, 1831, which went in force June 1, 1831 Swan's Coll. L. 266, s. 1.

77. When made out of the state, whether in another state or territory, or out of the U. S., they must be acknowledged, or proved, according to the laws of the state, territory or country, where they are executed, or according to the laws of the state of Ohio. Swan's Coll. L. 265, 8. 5.

78. When made by a feme covert, the certificate must state that she was

examined by the officer, separate and apart from her husband, and the contents of the deed were fully made known to her; that she did declare upon such separate examination, that she voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

79. Pennsylvania. Before a judge of the supreme court, or of the courts of common pleas, the district courts, or before any mayor or alderman, or justice of the peace of the commonwealth, or before the recorder of the city of Philadelphia.

80. When made out of the state, and within the United States, the acknowledgment may be before one of the judges of the supreme or district courts of the United States, or before an one of the judges or justices of the supreme or superior courts, or courts of common pleas of any state or territory within the United States; and so certified under the hand of the said judge, and the seal of the court. Commissioners appointed by the governor, residing in either of the United States or of the District of Columbia, are also authorized to take acknowledgment of deeds.

81. When made out of the United States, the acknowledgment may, be made before any consul or vice-consul of the United States, duly appointed for and exercising consular functions in the state, kingdom, country or place where such an acknowledgment may be made, and certified under the public or official seal of such consul or vice-consul of the United States. Act of January 16, 1827. By the act May 27th, 1715, s. 4, deeds made out of the province [state] may be proved by the oath or solemn affirmation of one or more of the witnesses thereunto, before one or more of the justices of the peace of this province [state], or before any mayor or chief magistrate or officer of the cities, towns or places, where such deed or conveyances are so proved. The proof must be certified by the officer under the common or public seal of the cities, towns, or places where such conveyances are so

proved. But by construction it is now established that a deed acknowledged before such officer is valid, although the act declares it shall be proved. 1 Pet. R. 433.

82. The certificate of the acknowledgment of a feme covert must state, 1, that she is of full age; 2, that the contents of the instrument have been made known to her; 3, that she has been examined separate and apart from her husband; and, 4, that she executed the deed of her own free will and accord, without any coercion or compulsion of her husband. It is the constant practice of making the certificate, under seal, though if it be merely under the hand of the officer, it will be sufficient. Act of Feb. 19, 1835.

83. By the act of the 16th day of April, 1840, entitled "An act incorporating the Ebenezer Methodist Episcopal congregation for the borough of Reading, and for other purposes," Pamph. Laws, 357, 361, it is provided by Sec. 15, "That any and every grant, bargain and sale, release, or other deed of conveyance or assurance of any lands, tenements, or hereditaments in this commonwealth, heretofore bona fide made, executed and delivered by husband and wife within any other of the United States, where the acknowledgment of the execution thereof has been taken, and certified by any officer or officers in any of the states where made and executed, who, was, or were authorized by the laws of such state to take and certify the acknowledgment of deeds of conveyance of lands therein, shall be deemed and adjudged to be as good, valid and effectual in law for transferring, passing and conveying the estate, right, title and interest of such husband and wife of, in, and to the lands; tenements and hereditaments therein mentioned, and be in like manner entitled to be recorded, as if the acknowledgment of the execution of the same deed had been in the same and like way, manner and form taken and certified by any judge, alderman, or justice of the peace, of and within this commonwealth. Sec. 16. That no grant, bargain and sale, feoffment, deed of conveyance, lease, release, assignment, or other

assurance of any lands, tenements and hereditaments whatsoever, heretofore bona fide made and executed by husband and wife, and acknowledged by them before some judge, justice of the peace, alderman, or other officer authorized by law, within this state, or an officer in one of the United

States, to take such acknowledgment, or which may be so made, executed and acknowledged as aforesaid, before the first day of January next, shall be deemed, held or adjudged, invalid or, defective, or insufficient in law, or avoided or prejudiced, by reason of any informality or omission in setting forth the particulars of the acknowledgment made before such officer, as aforesaid, in the certificate thereof, but all and every such grant, bargain and sale, feoffment, deed of conveyance, lease, release, assignment or other assurance so made, executed and acknowledged as aforesaid, shall be as good, valid and effectual in law for transferring, passing and conveying the estate, right, title and interest of such husband and wife of, in, and to the lands, tenements and hereditaments mentioned in the same, as if all the requisites and particulars of such acknowledgment mentioned in the act, entitle an act for the better confirmation of the estates of persons holding or claiming under feme coverts, and for establishing a mode by which husband and wife may hereafter convey their estates, passed the twenty-fourth day of February, one thousand seven hundred and seventy, were particularly set forth in the certificate thereof, or appeared upon the face of the same."

84. By the act of the 3d day of April, 1840, Pamph. L. 233, it is enacted, "That where any deed, conveyance, or other instrument of writing has been or shall be made and executed, either within or out of this state, and the acknowledgment or proof thereof, duly certified, by any officer under seal, according to the existing laws of this commmonwealth, for the purpose of being recorded therein, such certificate shall be deemed prima

facie evidence of such execution and acknowledgment, or proof, without requiring proof of the said seal, as fully, to all intents and purposes, and with the same effect only, as if the same had been so acknowledged or proved before any judge, justice of the peace, or alderman within this commonwealth."

85. The act relating to executions and for other purposes, passed 16th April, 1840, Pamph. L. 412, enacts, Sec. 7, " That the recorders of deeds shall have authority to take the acknowledgment and proof of the execution of any deed, mortgage, or other conveyance of any lands, tenements, or hereditaments lying or being in the county, for which they are respectively appointed as recorders of deeds, or within every city, district, or part thereof, or for any contract, letter of attorney, or any other writing, under seal, to be used or recorded within their respective counties and such acknowledgment or proof, taken or made in the manner directed by the laws of this state, and certified by the said recorder, under his hand and seal of office; which certificate shall be endorsed or annexed to said deed or instrument aforesaid, shall have the same force and effect, and be as good and available in law, for all purposes, as if the same had been made or taken before any judge of the supreme court, or president or associate judge of any of the courts of common pleas within this commonwealth."

86. Rhode Island. Before any senator, judge, justice of the peace, or town clerk. When the acknowledgment is made in another state or country, it must be before a judge, justice, mayor or, notary public therein, and certified under his hand and seal.

87. A wife releasing dower need not acknowledge the deed; but to a conveyance an acknowledgment and private examination are necessary. 2 Hill. Ab. c. 34, s. 94.

88. South Carolina. Before a judge of the supreme court. A feme covert may release her dower or convey her own estate, by joining with her hushand

in a deed, and being privately examined, in the latter case, seven days afterwards, before a judge of law or equity, or a justice of the quorum; she may also release dower by a separate deed.

89. The certificate of the officer is under seal and signed by the woman. Deeds may be proved upon the oath of one witness before a magistrate, and this is said to be the general practice.

90. When the deed is to be executed out of the state, the justices of the county where the land lies, or a judge of the court of common pleas, may by dedimus empower two or more justices of the county where the grantor resides, to take his acknowledgment upon the oath of two witnesses to the execution. 2 Hill. Ab. 448, 9; Griff. Reg. b. t.

91. Tennessee. A deed or power of attorney to convey land must be acknowledged or proved by two subscribing witnesses, in the court of the county, or the court of the district where the land lies. The certificate of acknowledgment must be endorsed upon the deed by the clerk of the court.

93. The acknowledgment of a feme covert is made before a court of record in the state, or, if the parties live out of it, before a court of record iu another state or territory; and if the wife is unable to attend court, the acknowledgment may be before commissioners empowered by the court of the county in which the husband acknowledges the commission to be returned certified with the court seal, and recorded.

94. In all these cases the certificate must state that the wife has been privately examined. The seal of the court is to be annexed when the deed is to be used out of the state, when made in it, and vice versa; in which case there is to be a seal and a certificate of the presiding judge or justice to the official station, of the clerk, and the due formality of the attestation. By the statute of 1820, the acknowledgment in other states may be conformable to the laws of the state, in which the grantor resides.

95. By the act of 1831, c, 90, s. 9, it is provided, that all deeds or conveyances for land made without the limits of this state, shall be proved as heretofore, or before a notary public under his seal of office. Caruthers & Nicholson's Compilation of the Stat. of Tenn. 593.

96. The officer must certify that he is acquainted with the grantor, and that he is an inhabitant of the state. There must also be a certificate of the governor or secretary under the great seal, or a judge of the superior court that the acknowledgment is in due form. Griff. Reg. h.t.; 2 Hill. Ab. 458.

97. By an act passed during the session of 1839-1840, chap. 26, it is enacted, "1. That deeds of every description may be proved by two subscribing witnesses, or acknowledged and recorded, and may then be read in evidence. 2. That deeds executed beyond the limits of the United States may be proved or acknowledged before a notary public, or before any consul, minister, or ambassador of the United States, or before a commissioner of the state. 3. That the govornor may appoint commissioners in other states and in foreign countries for the proof, &c. of deeds. 4. Affidavits taken as above, as to pedigree or heirship, may be received as evidence, by executors or administrators, or in regard to the partition and distribution of property or estates." See 2 Yerg. 91, 108, 238, 400, 520; 3 Yerg. 81; Cooke, 431.

98. Vermont. 1. All deeds and other conveyances of lands, or any estate or interest therein, shall be signed and sealed by the party granting the same, and signed by two or more witnesses, and acknowledged by the grantor, before a justice of the peace. Rev. Stat. tit. 14, c. 6, s. 4.

99. Every deed by the husband and wife shall contain an acknowledgment by the wife, made apart from her husband, before a judge of the supreme court, a judge of the county court, or some justice of the peace, that she executed such conveyance freely, and without any fear or compulsion of her husband; a

certificate of which acknowledgment, so taken, shall be endorsed on the deed by the authority taking the same. Id. s. 7.

100.-2. All deeds and other conveyances, and powers of attorney for the conveyance of lands, the acknowledgment or proof of which shall have been, or hereafter shall be taken without this state, if certified agreeably to the laws of the state, province, or kingdom in which it was taken, shall be as valid as though the same were taken before some proper officer or court, within this state; and the proof of the same may be taken, and the same acknowledged with like effect, before any justice of the peace, magistrate, or notary public, within the United States, or in any foreign country, or before any commissioner appointed for that purpose by the governor of this state, or before any minister, charge d'affaires, or consul of the United States in any foreign country and the acknowledgment of a deed a feme in the form required by covert, by this chapter may be taken by either of the said persons Id. 9.

101. Virginia. Before the general court, or the court of the district, county, city, or corporation where some part of the land lies; when the party lives out of the state or of the district or county where the land lies, the acknowledgment may be before any court of law, or the chief magistrate of any city, town, or corporation of the country where the party resides, and certified by him in the usual form.

102. When a married woman executes the deed, she appears in court and is examined privately by one of the judges, as to her freely signing the instrument, and continuing satisfied with it, the deed being shown and explained to her. She acknowledges the deed before the court, or else before two justices of the county where she dwells, or the magistrate of a corporate town, if she lives within the United States; these officers being empowered by a commission from the clerk of the court where the deed, is to

be recorded, to examine her and to take her acknowledgment. If she is out of the United States, the commission authorizes two judges or justices of any court of law, or the chief magistrate of any city, town, or corporation, in her county, and is executed as by two justices in the United States.

103. The certificate is to be authenticated in the usual form. 2 Hill. Ab. 444, 5; Griff. Reg. h.t.; 2 Leigh's R, 186; 2 Call. R. 103 ; 1 Wash. R. 319.

ACQUETS, estates in the civil law. Property which has been acquired by purchase, gift or otherwise than by succession. Merlin Rep. h.t., confines acquets to immovable property.

2. In Louisiana they embrace the profits of all the effects, of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations, made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two, and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. Civ. Code, art. 2371.

3. This applies to all marriages contracted in that state, or out of it, when the parties afterward go there to live, as to acquets afterward made there. Id. art. 2370.

4. The acquets are divided into two equal portions between the husband and wife, or between their heirs at the dissolution of their marriage. Id. art. 2375.

5. The Parties may, however, lawfully stipulate there shall be no community of profits or gains. Id. art. 2369.

6. But the parties have no right to agree that they shall be governed by

the laws of another country. 3 Martin's Rep. 581. Vide 17 Martin's Rep. 571 2 Kent's Com. 153, note.

ACQUIESCENCE, contracts. The consent which is impliedly given by one or both parties, to a proposition, a clause, a condition, a judgment, or to any act whatever.

2. When a party is bound to elect between a paramount right and a testamentary disposition, his acquiescence in a state of things which indicates an election, when he was aware of his rights will be prima facie evidence of such election. Vide 2 Ves. Jr. 371; 12 Ves. 136 1 Ves. Jr. 335; 3 P. Wms. 315. 2 Rop. Leg. 439.

3. The acts of acquiescence which constitute an implied election, must be decided rather by the circumstances of each case than by any general principle. 1 Swanst. R. 382, note, and the numerous cases there cited.

4. Acquiescence in the acts of an agent, or one who has assumed that character, will be equivalent to an express authority. 2 Bouv. Inst. n. 1309; Kent, Com. 478; Story on Eq. Sec. 255; 4 W. C. C. R. 559; 6 Miss. R. Sec. 193; 1 John. Cas. 110; 2 John. Cas. 424 Liv. on Ag. 45; Paley on, Ag. by Lloyd, 41 Pet. R. 69, 81; 12 John. R. 300; 3 Cowen's R. 281; 3 Pick. R. 495, 505; 4 Mason's R. 296. Acquiescence differs from assent. (q.v.)

ACQUIETANDIS PLEGIIS, obsolete. A writ of justices, lying, for the surety against a creditor, who refuses to acquit him after the debt has been satisfied. Reg. of Writs, 158; Cowell; Blount.

TO ACQUIRE, descents, contracts. To make property one's own.

2. Title to property is acquired in two ways, by descent, (q.v.) and by purchase (q.v.). Acquisition by purchase, is either by, 1. Escheat. 2.

Occupancy. 3. Prescription. 4. Forfeiture. 5. Alienation, which is either by deed or by matter of record. Things which cannot be sold, cannot be acquired.

ACQUISITION, property, contracts, descent. The act by which the person procures the property of a thing.

2. An acquisition, may be temporary or perpetual, and be procured either for a valuable consideration, for example, by buying the same; or without consideration, as by gift or descent.

3. Acquisition may be divided into original and derivative. Original acquisition is procured by occupancy, 1 Bouv. Inst. n. 490; 2 Kent. Com. 289; Menstr. Leg. du Dr. Civ. Rom. Sec. 344 ; by accession, 1 Bouv. Inst. n. Sec. 499; 2 Kent., Com. 293; by intellectual labor, namely, for inventions, which are secured by patent rights and for the authorship of books, maps, and charts, which is protected by copyrights. 1. Bouv. Inst. n. 508.

4. Derivative acquisitions are those which are procured from others, either by act of law, or by act of the parties. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy. And by act of the parties, by gift or sale. Property may be acquired by a man himself, or by those who are in his power, for him; as by his children while minors; 1 N. Hamps. R. 28; 1 United States Law Journ. 513 ; by his apprentices or his slaves. Vide Ruth. Inst. ch. 6 & 7; Dig. 41, 1, 53; Inst. 2,9; Id. 2,9,3.

ACQUITTAL, contracts. A release or discharge from an obligation or engagement. According to Lord Coke there are three kinds of acquittal, namely; 1. By deed, when the party releases the obligation; 2. By prescription; 3. By tenure. Co. Lit. 100, a.

ACQUITTAL, crim. law practice. The absolution of a party charged with a crime or misdemeanor.

2. Technically speaking, acquittal is - the absolution of a party accused on a trial before a traverse jury. 1 N. & M. 36; 3 McCord, 461.

3. Acquittals are of two kinds, in fact and in law. The former takes place when the jury upon trial finds a verdict of not guilty; the latter when a man is charged merely as an accessary, and the principal has been acquitted. 2 Inst. 384. An acquittal is a bar to any future prosecution for the offence alleged in the first indictment.

ACQUITTANCE, contracts. An agreement in writing to discharge a party from an engagement to pay a sum of money. It is evidence of payment. It differs from a release in this, that the latter must be under seal, while an acquittance need not be under seal. Poth. Oblig. n. 781. In Pennsylvania, a receipt, (q.v.) though not under seal, has nearly the same effect as a release. 1 Rawle, R. 391. Vide 3 Salk. 298, pl. 2; Off. of Ex. 217 ; Co. Litt. 212 a, 273 a.

ACRE, measures. A quantity of land containing in length forty perches, and four in breadth, or one hundred and sixty square perches, of whatever shape may be the land. Serg. Land Laws of Penn., 185. See Cro. Eliz. 476, 665; 6 Co. 67; Poph. 55; Co. Litt. 5, b, and note 22.

ACREDULITARE, obsolete. To purge one's self of an offence by oath. It frequently happens that when a person has been arrested for a contempt, he comes into court and purges himself, on oath, of having intended any contempt. Blount, Leges. Inac. c. 36.

ACT, civil law, contracts. A writing which states in a legal form that a thing has been said, done, or agreed. In Latin, Instrumentum. Merl. Rep.

ACT. In the legal sense, this word may be used to signify the result of a public deliberation, the decision of a prince, of a legislative body, of a council, court of justice, or a magistrate. Also, a decree, edict, law, judgment, resolve, award, determination. Also, an instrument in writing to verify facts, as act of assembly, act of congress, act of parliament, act and deed. See Webster's Dict. Acts are civil or criminal, lawful or unlawful, public or private.

2. Public acts, usually denominated authentic, are those which have a public authority, and which have been made before public officers, are authorized by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records.

3. Acts under private signature are those which have been made by private individuals, under their hands. An act of this kind does not acquire the force of an authentic act, by being registered in the office of a notary. 5 N. S. 693; 8 N. S. 568 ; 3 L. R. 419 ; 8 N. S. 396 ; 11 M. R. 243; unless it has been properly acknowledged before the officer, by the parties to it. 5 N. S. 196.

4. Private acts are those made by private persons, as registers in relation to their receipts and expenditures, schedules, acquittances, and the like. Nov. 73, c. 2 ; Code, lib. 7, tit. 32, 1. 6; lib. 4, t. 21; Dig. lib. 22, tit.. 4; Civ. Code of Louis. art. 2231 to 2254; Toull. Dr. Civ. Francais, tom. 8, p. 94.

ACT, evidence. The act of one of several conspirators, performed in pursuance of the common design, is evidence against all of them. An overt

act of treason must be proved by two witnesses. See Overt.

2. The terra. acts, includes written correspondence, and other papers relative to the design of the parties, but whether it includes unpublished writings upon abstract questions, though of a kindred nature, has been doubted, Foster's Rep. 198 ; 2 Stark. R. 116, 141.

3. In cases of partnership it is a rule that the act or declaration of either partner, in furtherance of the common object of the association, is the act of all. 1 Pet. R. 371 5 B. & Ald. 267.

4. And the acts. of an agent, in pursuance of his authority, will be binding on his principal. Greenl. Ev. Sec. 113.

ACT, legislation. A statute or law made by a legislative body; as an act of congress is a law by the congress of the United States; an act of assembly is a law made by a legislative assembly. If an act of assembly expire or be repealed while a proceeding under it is in fieri or pending, the proceeding becomes abortive; as a prosecution for an offence, 7 Wheat. 552; or a proceeding under insolvent laws. 1 Bl. R. 451; Burr. 1456 ; 6 Cranch, 208 ; 9 Serg. & Rawle, 283.

2. Acts are general or special; public or private. A general or public act is a universal rule which binds the whole community; of which the courts are bound to take notice ex officio.

3. Explanatory acts should not be enlarged by equity Blood's case, Comb. 410; although such acts may be allowed to have a retrospective operation. Dupin, Notions de Droit, 145. 9.

4. Private or special acts are rather exceptions, than rules; being those which operate only upon particular persons and private concerns; of these the courts are not bound to take notice, unless they are pleaded. Com. 85, 6; 1 Bouv. Inst. n. 105.

ACT IN PAIS. An act performed out of court, and not a matter of record. Pais, in law French, signifies country. A deed or an assurance transacted between two or more private persons in the country is matter in pais. 2 Bl. Com. 294.

ACT OF BANKRUPTCY. An act which subjects a person to be proceeded against as a bankrupt. The acts of bankruptcy enumerated in the late act of congress, of 19th Aug. 1841, s. 1, are the following: 1. Departure from the state, district, or territory of which a person, subject to the operation of the bankrupt laws, is an inhabitant, with intent to defraud his creditors. See, as to what will be considered a departure, 1 Campb. R. 279; Dea. & Chit. 4511 Rose, R. 387 9 Moore, R. 217 2 V. & B. 177; 5 T. R. 512; 1 C. & P. 77; 2 Bini,. R. 99; 2 Taunt. 176; Holt, R. 175.

2. Concealment to avoid being arrested. 1 M. & S. 676 ; 2 Rose, R. 137; 15 Ves. 4476 Taunt. R. 540; 14 Ves. 86 Taunt. 176;1 Rose, R. 362; 5 T. R. 512; 1 Esp. 334.

3. Willingly or fraudulently procuring himself to be arrested, or his goods and chattels, lands, or tenements to be attached, distrained, sequestered, or taken in execution.

4. Removal of his goods, chattels and effects, or concealment of them to prevent their being levied upon, or taken in execution, or by other process.

5. Making any fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods, or chattels, credits, or evidences of debt. 15 Wend. R. 588; 5 Cowen, R. 67; 1 Burr. 467, 471, 481; 4 C. & P. 315; 18 Wend. R. 375; 19 Wend. R. 414; 1 Dougl. 295; 7 East, 137 16 Ves. 149; 17 Ves. 193; 1 Smith R. 33; Rose, R. 213.

ACT OF GOD, in contracts. This phrase denotes those accidents which arise from physical causes, and which cannot be prevented.

2. Where the law casts a duty on a party, the performance shall be excused, if it be rendered impossible by the act of God; but where the party, by his own contract, engages to do an act, it is deemed to be his own fault and folly that he did not thereby provide against contingencies, and exempt himself from responsibilities in certain events and in such case, (that is, in the instance of an absolute general contract the performance is not excused by an inevitable accident, or other contingency, although not foreseen by, nor within the control of the party. Chitty on Contr. 272, 8; Aleyn, 27, cited by Lawrence; J. in 8 T. R. 267; Com. Dig. Action upon the Case upon Assumpsit, G; 6 T. R. 650 ; 8 T. R. 259; 3 M. & S. 267 ; 7 Mass. 325; 13 Mass. 94; Co. Litt. 206; Com. Dig. Condition, D 1, L 13; 2 Bl. Com. 340; 1 T. R. 33; Jones on Bailm 104, 5 ; 1 Bouv. Inst. n. 1024.

3. Special bail are discharged when the defendant dies, Tidd, 243 ; actus Dei nemini facit injuriam being a maxim of law, applicable in such case; but if the defendant die after the return of the case and before it is filed, the bail are fixed. 6 T. R. 284; 6 Binn. 332, 338. It is, however, no ground for an exonerator, that the defendant has become deranged since the suit was brought, and is confined in a hospital. 2 Wash. C. C. R. 464, 6 T. It. 133 Bos. & Pull. 362 Tidd, 184. Vide 8 Mass. Rep. 264; 3 Yeates, 37; 2 Dall. 317; 16 Mass. Rep. 218; Stra. 128; 1 Leigh's N, P. 508; 11 Pick. R. 41; 2 Verm. R. 92; 2 Watt's Rep. 443. See generally, Fortuitous Event; Perils of the Sea.

ACT OF GRACE, Scotch law. The name by which the statute which provides for the aliment of prisoners confined for civil debts, is usually known.

2. This statute provides that where a prisoner for debt declares upon

oath, before the magistrate of the jurisdiction, that he has not wherewith to maintain himself, the magistrate may set him it liberty, if the creditor, in consequence of whose diligence he was imprisoned, does not aliment him within ten days after intimation for that purpose. 1695, c. 32; Ersk. Pr. L. Scot. 4, 3, 14. This is somewhat similar to a provision in the insolvent act of Pennsylvania.

ACT 0F LAW. An event which occurs in consequence of some principle of law. If, for example, land out of which a rent charge has been granted, be recovered by an elder title, and thereby the rent charge becomes avoided; yet the grantee, shall have a writ of annuity, because the rent charge is made void by due course or act of law, it, being a actus legis nemini est damnosus. 2 Inst. 287.

ACT OF MAN. Every man of sound mind and discretion is bound by his own acts, and the law does not permit him to do any thing against it; and all acts are construed most strongly against him who does them. Plowd. 140.

2. A man is not only bound by his own acts, but by those of others who act or are presumed to act by his authority, and is responsible civilly in all such cases; and, in some cases, even when there is but a presumption of authority, he may be made responsible criminally; for example, a bookseller may be indicted for publishing a libel which has been sold in his store, by his regular salesmen, although he may possibly have had no knowledge of it.

ACTIO BONAE FIDEI, civil law. An action of good faith.

ACTIO COMMODATI CONTRARIA. The name of an action in the civil law, by the borrower against the lender, to compel the execution of the contract. Poth. Pret Usage, n. 75.

ACTIO COMMODATI DIRECTA. In the civil law, is the name of an action, by a lender against a borrower, the principal object of which is to obtain restitution of the thing lent. Poth. Pret. 5, Usage, n. 65, 68.

ACTIO CONDICTIO INDEBITI. The name of an action in the civil law, by which the plaintiff recovers the amount of a sum of money or other thing be paid by mistake. Poth. Promutuum, n. 140. See Assumpsit.

ACTIO EXCONDUCTIO, civil law. The name of an action which the bailor of a thing for hire may bring against the bailee, in order to compel him to redeliver the thing hired. Poth. du Contr. de Louage, n. 59.

ACTIO DEPOSITI CONTRARIA. The name, of an action in the civil law which the depositary has against the depositor to compel him to fulfill his engagement towards him. Poth. Du Depot, la. 69.

ACTIO DEPOSITI DIRECTA. the civil law, this is the name of an action which is brought by the depositor against the depositary, in order to get back the, thing deposited. Poth. Du Depot, n. 60.

ACTIO JUDICATI, civil law. Was an action instituted, after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and, if at the end of two mouths, the debt was not paid, the land was sold. Dig. 42, t. 1. Code, 8, 34.

ACTIO NON, pleading. After stating the appearance and defence, special pleas begin with this allegation, "that the said plaintiff ought not to have or maintain his aforesaid action thereof against him," actio non habere debet. This is technically termed the actio non. 1 Ch. Plead. 531 2 Ch. Plead. 421; Steph. Plead. 394.

ACTIO NON ACCREVIT INFRA SEX ANNOS. The name of a plea to the statute of limitations when the defendant insists that the plaintiff's action has not accrued within six years. It differs from non assumpsit in this: non assumpsit is the proper plea to an action on a simple contract, when the action accrues on the promise but when it does not accrue on the promise but subsequently to it, the proper plea is actio non accrevit, &c. Lawes, Pl. in Ass. 733; 5 Binn. 200, 203; 2 Salk. 422; 1 Saund. Rep. 83 n. 2; 2 Saund, 63, b; 1 Sell. N.P. 121.

ACTIO PERSONALIS MIORITUR CUM PERSONA. That a personal action dies with the person, is an ancient and uncontested maxim. But the term personal action, requires explanation. In a large sense all actions except those for the recovery of real property may be called personal. This definition would include contracts for the payment of money, which never were supposed to die with the person. See 1 Saund. Rep. 217, note 1.

2. The maxim must therefore be taken in a more restricted meaning. It extends to all wrongs attended with actual force, whether the affect the person or property and to all injuries to the person only, though without actual force. Thus stood originally the common law, in which an alteration was made by the statute 4 Ed. III. c. 7, which gave an action to an executor for an injury done to the personal property of his testator in his lifetime,

which was extended to the executor of an executor, by statute of 25 Ed. III. c. 5. And by statute 31 Ed. III. c. 11, administrators have the same remedy as executors.

3. These statutes received a liberal construction from the judges, but they do not extend to injuries to the person of the deceased, nor to his freehold. So that no action lies by an executor or administrator for an assault and battery of the deceased, or trespass, vi et armis on his land, or for slander, because it is merely a personal injury. Neither do they extend to actions against executors or administrators for wrongs committed by the deceased. 13 S. 184; Cowp. 376; 1 Saund. 216, 217, n. 1; Com. Dig 241, B 13; 1 Salk. 252; 6 S. & R. 272; W. Jones, 215.

4. Assumpsit may be maintained by executors or administrators, in those cases where an injury has been done to the personal, property of the deceased, and he might in his lifetime have waived the tort and sued in assumpsit. 1 Bay's R. 61; Cowp. 374; 3 Mass. 321; 4 Mass. 480; 13 Mass. 272; 1 Root, 2165. An action for a breach of a promise of marriage cannot be maintained by an executor, 2 M. & S. 408; nor against 13 S. & R. 183; 1 Picker. 71; unless, perhaps, where the plaintiff's testator sustained special damages. 13 S. & R. 185. See further 12.S. & R. 76; 1 Day's Cas. 180; Bac. Abr. Ejectment, H11 Vin. Abr. 123; 1 Salk. 314; 2 Ld. Raym. 971 1 Salk. 12 Id. 295; Cro. Eliz. 377, 8 1 Str. 60 Went. Ex. 65; 1 Vent. 176 id. so; 7 Serg. & R. 183; 7 East, 134-6 1 Saund. 216, a, n. 1; 6 Mass. 394; 2 Johns. 227; 1 Bos. & Pull. 330, n. a.; 1 Chit. Pi. 86; 3 Bouv. Inst. n. 2750; this Dictionary, tit. actions; Death; Parties to actions; Survivor.

ACTIO PRO SOCIO. In the civil law, is the name of an action by which either partner could compel his co-partners to perform their social contract. Poth. Contr. de Societe, n. 134.

ACTION. Conduct, behaviour, something done. Nomen actionis latissime patere vulgo notum est ac comprehenders omnem omnino viventis operationem quae passioni opponitur. Vinnius, Com. lib. 4, tit. 6. De actionibus.

2. Human actions have been divided into necessary actions, or those over which man has no control; and into free actions, or such as he can control at his pleasure. As man is responsible only when he exerts his will, it is clear lie can be punished only for the latter.

3. Actions are also divided into positives and negative the former is called an act of commission the latter is the omission of something which ought to be done, and is called an act of omission. A man may be responsible as well for acts of omission, as for acts of commission.

4. Actions are voluntary and involuntary. The former are performed freely and without constraint - the latter are performed not by choice, against one's will or in a manner independent of the will. In general a man is not responsible for his involuntary actions. Yet it has been ruled that if a lunatic hurt a man, he shall be answerable in trespass, although, if he kill a man, it is not felony. See Hob. Rep. 134; Popham, 162; Pam. N. P. 68. See also Duress; Will.

ACTION, French com. law. Stock in a company, shares in a corporation.

ACTION, in practice. Actio nihil aliud est, quam jus persequendi in judicio quod sibi debetur. Just. Inst. Lib. 4, tit. 6; Vinnius, Com. Actions are divided into criminal and civil. Bac. Abr. Actions, A.

2.-1. A criminal action is a prosecution in a court of justice in the name of the government, against one or more individuals accused of a crime. See 1 Chitly's Cr. Law.

3.-2. A civil action is a legal demand of one's right, or it is the

form given by law for the recovery of that which is due. Co. Litt. 285; 3 Bl. Com. 116; 9 Bouv. Inst. n. 2639; Domat. Supp. des Lois Civiles, liv. 4, tit. 1, No. 1; Poth. Introd. generale aux Coutumes, 109; 1 Sell. Pr. Introd. s. 4, p. 73. Ersk. Princ. of Scot. Law, B. 41 t. 1. Sec. 1. Till judgment the writ is properly called an action, but not after, and therefore, a release of all actions is regularly no bar of all execution. Co. Litt. 289 a; Roll. Ab. 291. They are real, personal and mixed. An action is real or personal, according as realty or personalty is recovered; not according to the nature of the defence. Willes' Rep. 134.

4.-1. Real actions are those brought for the specific recovery of lands, tenements, or hereditaments. Steph. Pl. 3. They are either procedural, when the demandant seeks to recover the property; or possessory when he endeavors to obtain the possession. Finch's Law, 257, 8. See Bac. Abr. Actions, A, contra. Real Actions are, 1st. Writs of right; 2dly, Writs of entry, which lie in the per, the per et cui, or the post, upon disseisin, intrusion, or alienation. 3dly. Writs ancestral possessory, as Mort d' ancester, aid, vbesaiel[?], cosinage, or Nuper obiit. Com. Dig. Actions, D 2. By these actions formerly all disputes concerning real estate, were decided; but now they are pretty generally laid aside in practice, upon account of the great nicety required in their management, and the inconvenient length of their process; a much more expeditious, method of trying titles being since introduced by other actions, personal and mixed. 3 Bl. Com. 118. See Booth on Real Actions.

5.-2. Personal actions are those brought for the specific recovery of goods and chattels; or for damages or other redress for breach of contract, or other injuries, of whatever description; the specific recovery of lands, tenements, and hereditaments only excepted. Steph. Pl. 3; Com. Dig. Actions, D 3; 3 Bouv. Inst. n. 2641. Personal actions arise either upon contracts, or

for wrongs independently of contracts. The former are account, assumpsit, covenant, debt, and detinue; see these words. In Connecticut and Vermont there is, an action used which is peculiar to those states, called the action of book debt. 2 Swift's Syst. Ch. 15. The actions for wrongs, injuries, or torts, are trespass on the case, replevin, trespass, trover. See these words, and see Actio personalis moritur cum persona.

6.-3. Mixed actions are such as appertain, in some degree, to both the former classes, and, therefore, are properly reducible to neither of them, being brought for the specific recovery of lands, tenements, or hereditaments, and for damages for injury sustained in respect of such property. Steph. Pl. 3; Co. Litt. 284, b; Com. Dig. Actions, D 4. Every mixed action, properly so called, is also a real action. The action of ejectment is a personal action, and formerly, a count for an assault and battery might be joined with a count for the recovery of a term of Years in land.

7. Actions are also divided into those which are local and such as are transitory.

1. A local action is one in which the venue must still be laid in the county, in which the cause of action actually arose. The locality of actions is founded in some cases, on common law principles, in others on the statute law.

8. Of those which continue local, by the common law, are, 1st, all actions in which the subject or thing to be recovered is in its nature local. Of this class are real actions, actions of waste, when brought on the statute of Gloucester, (6 Edw. I.) to recover with the damages, the locus in quo or place wasted; and actions of ejectment. Bac. Abr. Actions Local, &c. A, a; Com. Dig. Actions, N 1; 7 Co. 2 b; 2 Bl. Rep. 1070. All these are local, because they are brought to recover the seisin or possession of lands or tenements, which are local subjects.

9.-2dly. Various actions which do not seek the direct recovery of lands or tenements, are also local, by the common law; because they arise out of some local subject, or the violation of some local right or interest.

For example, the action of quare impedit is local, inasmuch as the benefice, in the right of presentation to which the plaintiff complains of being obstructed, is so. 7 Co. 3 a; 1 Chit. Pl. 271; Com. Dig. Actions, N 4. Within this class of cases are also many actions in which only pecuniary damages are recoverable. Such are the common law action of waste, and trespass quare clausum fregit; as likewise trespass on the case for injuries affecting things real, as for nuisances to houses or lands; disturbance of rights of way or of common; obstruction or diversion of ancient water courses, &c. 1 Chit. Pl. 271; Gould on Pl. ch. 3, Sec. 105, 106, 107. The action of replevin, also, though it lies for damages only, and does not arise out of the violation of any local right, is nevertheless local. 1 Saund. 347, n. 1. The reason of its locality appears to be the necessity of giving a local description of the taking complained of. Gould on Pl. ch. 3, Sec. 111. A scire facias upon a record, (which is an action, 2 Term Rep. 46,) although to some intents, a continuation of the original suit, 1 Term Rep. 388, is also local.

10.-2. Personal actions which seek nothing more than the recovery of money or personal chattels of any kind, are in most cases transitory, whether they sound in tort or in contract; Com. Dig. Actions, N 12; 1 Chit. Pl. 273; because actions of this class are, in most instances, founded on the violation of rights which, in contemplation of law, have no locality. 1 Saund. 241, b, note 6. And it will be found true, as a general position, that actions ex delicto, in which a mere personalty is recoverable, are, by the common law, transitory; except when founded upon, or arising out of some

local subject. Gould on Pl. ch. 3, Sec. 112. The venue in a transitory action may be laid in any county which the plaintiff may prefer. Bac. Abr. Actions Local, &c. A. (a.)

11. In the civil law actions are divided into real, personal, and mixed.

A real action, according to the civil law, is that which he who is the owner of a thing, or, has a right in it, has against him who is in possession of it, to compel him to give up the plaintiff, or to permit him to enjoy the right he has in it. It is a right which a person has in a thing, follows the thing, and may be instituted against him who possesses it; and this whether the thing be movable or immovable and, in the sense of the common law, whether the thing be real or personal. See Domat, Supp. des Lois Civiles, Liv. 4, tit. 1, n. 5; Pothier, Introd. Generales aux Coutumes 110; Ersk. Pr. Scot. Law, B. 4, t. 1, Sec. 2.

12. A personal action is that which a creditor has against his debtor, to compel him to fulfill his engagement. Pothier, lb. Personal actions are divided into civil actions and criminal actions. The former are those which are instituted to compel the payment or to do some other thing purely civil the latter are those by which the plaintiff asks the reparation of a tort or injury which he or those who belong to him have sustained. Sometimes these two kinds of actions are united when they assume the name of mixed personal actions. Domat, Supp. des Lois Civiles, Liv. 4, tit. 1, n. 4; 1 Brown's Civ. Law, 440.

13. Mixed actions participate both of personal and real actions. Such are the actions of partition, and to compel the parties to put down landmarks or boundaries. Domat, ubi supra.

ACTION AD EXHIBENDUM, civil law. This was an action instituted for the purpose of compelling the defendant to exhibit a thing or title, in his

power. It was preparatory to another action, which was always a real action in the sense of the Roman law, that is, for the recovery of a thing, whether it was movable or immovable. Merl. Quest. de Dr. tome i. 84. This is not unlike a bill of discovery. (q.v.)

ACTION OF ADHERENCE, Scotch law. An action competent to a husband or Wife to compel either party to adhere in case of desertion.

ACTION OF BOOK DEBT. The name of an action in Connecticut and Vermont, resorted to for the purpose of recovering payment for articles usually charged on book. 1 Day, 105; 4 Day, 105; 2 Verm, 66. See 1 Root, 59; 1 Conn. 75; Kirby, 89; 2 Robt, 130; 11 Conn. 205.

ACTION, PROHIBITORY, civil law. An action instituted to avoid a sale on account of some Vice or defect in the thing sold which readers it either absolutely useless, or its use so inconvenient and, imperfect, that it must be, supposed the buyer would not have purchased it, had he known of the vice. Civ. Code of Louis. art. 2496.

ACTION OF A WRIT. This phrase is used when one pleads some matter by which he shows that the plaintiff had no cause to have the writ which he brought, and yet he may have a writ or action for the same matter. Such a plea is called: a plea to the action of the writ, whereas if it should appear by the plea that the plaintiff has no cause to have action for the thing demanded, then it is called a plea to the action. Termes de la ley.

ACTIONS ORDINARY. Scotch law. By this term is understood all actions not recissory. Ersk. Pr. L. Scot. 4, 1, 5.

ACTIONS RESCISSORY, Scotch law. Are divided into, 1, Actions of proper improbation; 2, Actions of reduction-improbation; 3, Actions of simple reduction. Ersk. Pr. L. Scot. 4 1, 5,

2.-1. Proper improbation is an action brought for declaring writing false or forged.

3.-2. Reduction-improbation is an action whereby a person who may be hurt, or affected by a writing, insists for producing or exhibiting it in court, in order to have it set aside or its effects ascertained, under the certification, that the writing if not produced, shall be declared false and forged.

4.-3. In an action of simple reduction, the certification is only temporary, declaring the writings called for, null, until they be produced; so that they recover their full force after their production. Ib. 4, 1, 8.

ACTIONARY. A commercial term used among foreigners, to signify stockholders.

ACTIONES NOMINATAE. Formerly the English courts of chancery would make no writs when there was no precedent, and the cases for which there were precedents were called actiones nominatoe. The statute of Westm. 2, c. 24, gave chancery authority to form new writs in consimili casu. Hence arose the action on the case. Bac. Ab. Court of Chancery, A; 17, Serg. R. 195.

ACTIVE. The opposite, of passive. We say active debts, or debts due to us; passive debts are those we owe.

ACTON BURNELL. Statute of Vide de Mercatoribus. Cruise, Dig. tit. 14, s. 6.

ACTOR, practice. 1. A plaintiff or complainant. 2. He on whom the burden of proof lies. In actions of replevin both parties are said to be actors. The proctor or advocate in the courts of the civil law, was called actor.

ACTS OF COURT. In courts of admiralty, by this phrase is understood legal memoranda of the nature of pleas. For example, the English court of admiralty disregards all tenders, except those formally made by acts of court. Abbott on Ship. pi. 3, c. 10, Sec. 2, p. 403; 4 Rob. R. 103; 1 Hagg. R. 157; Dunl. Adm. Pr. 104, 6.

ACTS OF SEDERUNT. In the laws of Scotland, are ordinances for regulating the forms of proceeding, before the court of session, in the administration of justice, made by the judges, who have a delegated power from the legislature for that purpose. Ersk. Pr. L. Scot. B. 1, t. 1, s. 14.

ACTUAL. Real; actual.

2. Actual notice. One which has been expressly given by which knowledge of a fact has been brought home to a party directly ; it is opposed to constructive notice.

3. Actual admissions. Those which are expressly made; they are plenary or partial. 4 Bouv. Inst. n. 4405.

4. An actual escape takes place when a prisoner in fact gets out of prison, and unlawfully regains his liberty. Vide Escape.

ACTUARIUS. An ancient name or appellation of a notary.

ACTUARY. A clerk in some corporations vested with various powers. In the ecclesiastical law he is a clerk who registers the acts and constitutions of

the convocation.

ACTUS. A foot way and horse way. Vide Way.

AD DAMNUM, pleading. To the damage. In all personal and mixed actions, with the exception of actions of debt qui tam, where the plaintiff has sustained no damages, the declaration concludes ad damnum. Archb. Civ. Pl. 169.

AD DIEM. At the day, as a plea of payment ad diem, on the day when the money became due. See Solvit ad diem, and Com. Dig. Pleader, 2 W. 29.

AD INQUIRENDUM, practice. A judicial writ, commanding inquiry to be made of any thing relating to a cause depending in court.

AD INTERIM. In the mean time. An officer is sometimes appointed ad interim, when the principal officer is absent, or for some cause incapable of acting for the time.

AD LARGUM. At large; as, title at large, assize at large. See Dane's Abr. ch. 144,

AD QUEM. A Latin expression which signifies to which, in the computation of time or distance, as the day ad quem. The last day of the term, is always computed. See A quo.

QUOD DAMNUM, Eng. law. The name of a writ issuing out of and returnable into chancery, directed to the sheriff, commanding him to inquire by a jury 'What damage it will be to the king, or any other, to grant a liberty, fair, market, highway, or the like.

AD SECTAM. At the suit of, commonly abbreviated ads. It is usual in filing pleas, and other papers, for a defendant, instead of putting the name of the plaintiff first, as Peter v. Paul to put his own first, and instead of v. to put ads., as Paul ads. Peter.

AD TERMINUM QUI PRETERIIT. The name of a writ of entry which lay for the lessor or his heirs, when a lease had been made of lands or tenements, for term of life or years, and, after the term had expired, the lands were withheld from the lessor by the tenant, or other person possessing the same. F. N. B. 201. The remedy now applied for holding over (q, v.) is by ejectment, or under local regulations, by summary proceedings.

AD TUNC ET IBIDEM. That part of an indictment, where it is stated that the object-matter of the crime or offence" then and there being found," is technically so called. N. C. Term R. 93; Bac. Ab. Indictment, G 4.

AD VITAM AUT CULPAM. An office to be so held as to determine only by the death or delinquency of the possessor; in other words it is held quam diu se benegesserit.

AD VALOREM. According to the value. This Latin term is used in commerce in reference to certain duties, called ad valorem duties, which are levied on commodities at certain rates per centum on their value. See Duties; Imposts; Act of Cong. of March 2, 1799, s. 61 of March 1, 1823 s. 5.

ADDITION. Whatever is added to a man's name by way of title, as additions of estate, mystery, or place. 10 Went. Plead. 871; Salk. 6; 2 Lord Ray. 988; :1

WUS. 244, 5.

2. Additions of an estate or quality are esquire, gentleman, and the like; these titles can however be claimed by none, and may be assumed by any one. In Nash v. Battershy (2 Lord Ray. 986 6 Mod. 80,) the plaintiff declared with the addition of gentleman. The defendant pleaded in abatement that the plaintiff was no gentleman. The plaintiff demurred, and it was held ill; for, said the court, it amounts to a confession that the plaintiff is no gentleman, and then not the person named in the count. He should have replied that he is a gentleman.

3. Additions of mystery are such as scrivener, painter, printer, manufacturer, &c.

4. Additions of places are descriptions by the place of residence, as A. B. of Philadelphia and the like. See Bac. Ab. b. t.; Doct. Pl. 71; 2 Vin. Abr. 77; 1 Lilly's Reg. 39; 1 Metc. R. 151.

5. At common law there was no need of addition in any case, 2 Lord Ray. 988; it was, required only by Stat. 1 H. 5. c. 5, in cases where process of outlawry lies. In all other cases it is only a description of the person, and common reputation is sufficient. 2 Lord Ray. 849. No addition is necessary in a Homine Replegiando. 2 Lord Ray. 987; Salk. 5; 1 Wils. 244, 6; 6 Rep. 67.

ADDITIONALES, in contracts. Additional terms or propositions to be added to a former agreement.

ADDRESS, chan. plead. That part of a bill which contains the appropriate and technical description of the court where the plaintiff seeks his remedy. Coop. Eq. Pl. 8; Bart. Suit in Eq. Story, Eq. Pl. Sec. 26 Van Hey. Eq. Draft. 2.

ADDRESS, legislation. In Pennsylvania it is a resolution of both, branches of the legislature, two-thirds of each house concurring, requesting the governor to remove a judge from office. The constitution of that state, art. 5, s. 2, directs that "for any reasonable cause, which shall not be, ground for impeachment, the governor may remove any of them [the judges], on the address of two-third's of each branch of the legislature." The mode of removal by address is unknown to the constitution of the, United States, but it is recognized in several of the states. In some of the state constitutions the language is imperative; the governor when thus addressed shall remove; in others it is left to his discretion, he may remove. The relative proportion of each house that must join in the address, varies also in different states. In some a bare majority is sufficient; in others, two-thirds are requisite; and in others three-fourths. 1 Journ. of Law, 154.

ADEMPTION, wills. A taking away or revocation of a legacy, by the testator.

2. It is either express or implied. It is the former when revoked in express terms by a codicil or later will; it is implied when by the acts of the testator it is manifestly his intention to revoke it; for example, when a specific legacy of, a chattel is made, and afterwards the testator sells it; or if a father makes provision for a child by his will and afterwards gives to such child, if a daughter, a portion in marriage; or, if a son, a sum of money to establish him in life, provided such portion or sum of money be equal to or greater than the legacy. 2 Fonbl. 368 et, seq. Toll. Ex. 320; 1 Vern. R. by Raithby, 85 n. and the cases there cited. 1 Roper, Leg. 237, 256, for, the distinction between specific and general legacies.

ADHERING. Cleaving to, or joining; as, adhering to the enemies of the United States.

2. The constitution of the United States, art. 3, s 3, defines treason against the United States, to consist only in levying war against them or in adhering to their enemies, giving them aid and comfort.

3. The fact that a citizen is cruising in an enemy's ship, with a design to capture or destroy American ships, would be an adhering to the enemies of the United States. 4 State Tr. 328 ; Salk. 634; 2 Gilb. Ev. by Lofft, 798.

4. If war be actually levied, that is, a body of men be actually assembled for the purpose of effecting by force a treasonable enterprise, all those who perform any part, however minute, or however remote from the scene of action, and who are leagued in the general conspiracy are to be considered as traitors. 4 Cranch. 126.

ADJOURNMENT. The dismissal by some court, legislative assembly, or properly authorized officer, of the business before them, either finally, which is called an adjournment sine die, without day; or, to meet again at another time appointed, which is called a temporary adjournment. 2. The constitution of the United States, art. 1, s. 5, 4, directs that "neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, that that in which the two houses shall be sitting." Vide Com. Dig. h.t.; Vin. Ab. h.t.; Dict. de Jur. h.t.

ADJOURNMENT-DAY. In English practice, is a day so called from its being a further day appointed by the judges at the regular sittings, to try causes at nisi prius.

ADJOURNMENT-DAY IN ERROR. In the English courts, is a day appointed some days before the end of the term, at which matters left undone on the

affirmance day are finished. 2 Tidd, 1224.

ADJUDICATION, in practice. The giving or pronouncing a judgment in a cause; a judgment.

ADJUDICATIONS, Scotch law. Certain proceedings against debtors, by way of actions, before the court of sessions and are of two kinds, special and general.

2.-1. By statute 1672, c. 19, such part only of the debtor's lands is to be adjudged to the principal sum and interest of the debt, with the compositions due to the superior, and the expenses of infeoffment, and a fifth part more, in respect the creditor is obliged to take lands for his money but without penalties or sheriff fees. The debtor must deliver to the creditor a valid right to the lands to be adjudged, or transumpts thereof, renounce the possession in his favor, and ratify the decree of adjudication: and the law considers the rent of the lands as precisely commensurate to the interest of the debt. In this, which is called a special adjudication, the time allowed the debtor to redeem the lands adjudged, (called the legal reversion or the legal,) is declared to be five years.

3.-2. Where the debtor does not produce a sufficient right to the lands, or is not willing to renounce the possession and ratify the decree, the statute makes it lawful for the creditor to adjudge all right belonging to the debtor, in the same manner, and under the same reversion of ten years. In this kind, which is called a general adjudication, the creditor must limit his claim to the principal sum, interest and penalty, without demanding a fifth part more. See Act 1 Feb. 1684; Ersk. Pr. L. Scot,. (????) s. 15, 16. See Diligences.

ADJUNCTION. in civil law. Takes place when the thing belonging to one person is attached or united to that which belongs to another, whether this union is

caused by inclusion, as if one man's diamond be encased in another's ring; by soldering, as if one's guard be soldered on another's sword; by sewing, as by employing the silk of one to make the coat of another; by construction; as by building on another's land; by writing, as when one writes on another's parchment; or by painting, when one paints a picture on another's canvas.

2. In these cases, as a general rule, the accessory follows the principal; hence these things which are attached to the things of another become the property of the latter. The only exception which the civilians made was in the case of a picture, which although an accession, drew to itself the canvas, on account of the importance which was attached to it. Inst. lib. 2, t. 1, Sec. 34; Dig. lib. 41, t. 1, 1. 9, Sec. 2. See Accession, and 2 Bl. Comm. 404; Bro. Ab. Propertie; Com. Dig. Pleader, M. 28; Bac. Abr. Trespass, E 2. 1 Bouv. Inst. n. 499.

ADJUNCTS, English law. Additional judges appointed to determine causes in the High Court of Delegates, when the former judges cannot decide in consequence of disagreement, or because one of the law judges of the court was not one of the majority. Shelf. on Lun. 310.

ADJURATION. The act by which one person solemnly charges another to tell or swear to the truth. Wolff. Inst. Sec. 374.

ADJUSTMENT, maritime law. The adjustment of a loss is the settling and ascertaining the amount of the indemnity which the insured after all proper allowances and deductions have been made, is entitled to receive, and the

proportion of this, which each underwriter is liable to pay, under the policy Marsh. Ins. B. 1, c. 14, p. 617 or it is a written admission of the amounts of the loss as settled between the parties to a policy of insurance. 3 Stark. Ev. 1167, 8.

2. In adjusting a loss, the first thing to be considered is, how the quantity of damages for which the underwriters are liable, shall be ascertained. When a loss is a total loss, and the insured decides to abandon, he must give notice of this to the underwriters iii a reasonable time, otherwise he will waive his right to abandon, and must be content to claim only for a partial loss. Marsh. Ins. B.1, c.3, s.2; 15 East, 559; 1 T. R. 608; 9 East, 283; 13 East 304; 6 Taunt. 383. When the loss is admitted to be total, and the policy is a valued one, the insured is entitled to receive the whole sum insured, subject to such deductions as may have been agreed by the policy to be made in case of loss.

3. The quantity of damages being known, the next point to be settled, is, by what rule this shall be estimated. The price of a thing does not afford a just criterion to ascertain its true value. It may have been bought very dear or very cheap. The circumstances of time and place cause a continual variation in the price of things. For this reason, in cases of general average, the things saved contribute not according to prune cost, but according to the price for which they may be sold at the time of settling the average. Marsh. Ins. B. 1, c. 14, s. 2, p. 621; Laws of Wisbury,
art. 20 Laws of Oleron, art. 8 this Dict. tit. Price. And see 4 Dall. 430; 1 Caines' R. 80; 2 S. & R. 229 2 S.& R. 257, 258.

4. An adjustment being endorsed on the policy, and signed by the underwriters, with the promise to pay in a given time, is prima facie evidence against them, and amounts to an admission of all the facts

necessary to be proved by the insured to entitle him to recover in an action on the policy. It is like a note of hand, and being proved, the insured has no occasion to go into proof of any other circumstances. Marsh. Ins. B. 1, c. 14, s. 3, p. 632; 3 Stark. Ev. 1167, 8 Park. ch. 4; Wesk. Ins, 8; Beaw. Lex. Mer. 310; Com. Dig. Merchant, E 9; Abbott on Shipp. 346 to 348. See Damages.

ADJUTANT. A military officer, attached to every battalion of a regiment. It is his duty to superintend, under his superiors, all matters relating to the ordinary routine of discipline in the regiment.

ADJUTANT-GENERAL. A staff officer; one of those next in rank to the Commander-in-chief.

ADJUNCTUM ACCESSORIUM, civil law. Something which is an accessory and appurtenant to another thing. 1 Chit. Pr. 154.

ADMEASUREMENT OF DOWER, remedies. This remedy is now nearly obsolete, even in England; the following account of it is given by Chief Baron Gilbert. "The writ of admeasurement of dower lieth where the heir when he is within age, and endoweth the wife of more than she ought to have dower of; or if the guardian in chivalry, [for the guardian in socage cannot assign dower,] endoweth the wife of more than one-third part of the land of which she ought to have dower, then the heir, at full age, may sue out this writ against the wife, and thereby shall be admeasured, and the surplusage she hath in dower shall be restored to the heir; but in such case there shall not be assigned anew any lands to hold to dower, but to take from her so much of the lands as surpasseth the third part whereof she ought to be endowed; and he need not set forth of whose assignments she holds." Gilb. on Uses, 379; and see

F. N. B. 148; Bac. Ab. Dower, K; F. N. B. 148; Co. Litt. 39 a; 2 Inst. 367 Dower; Estate in Dower.

ADMEASUREMENT OF PASTURE, Eng. law. The name of a writ which lies where any tenants have common appendant in another ground and one overcharges the common with beasts. The other commoners, to obtain their just rights, may sue out this writ against him.

ADMINICLE 1. A term, in the Scotch and French law, for any writing or deed referred to by a party, in an action at law, for proving his allegations. 2. An ancient term for aid or support. 3. A term in the civil, law for imperfect proof. Tech. Dict. h.t.; Merl. Repert. mot Adminicule.

ADMINICULAR EVIDENCE, eccl. law. This term is used in the ecclesiastical law to signify evidence, which is brought to explain or complete other evidence. 2 Lee, Eccle.R. 595.

TO ADMINISTER, ADMINISTERING. The stat. 9 G. IV. c. 31, S. 11, enacts "that if any person unlawfully and maliciously shall administer, or attempt to administer to any person, or shall cause to be taken by any person any poison or other destructive things," &c. every such offender, &c. In a case which arose under this statute, it was decided that to constitute the act of administering the poison, it was not absolutely necessary there should have been a delivery to the party poisoned, but that if she took it from a place where it had been put for her by the defendant, and any part of it went into her stomach, it was an administering. 4 Carr. & Payne, 369; S. C. 19 E. C. L. R. 423; 1 Moody's C. C. 114; Carr. Crim. L. 23. Vide Attempt to Persuade.

TO ADMINISTER, trusts. To do some act in relation to an estate, such as none but the owner, or some one authorized by him or by the law, in case of his decease, could legally do. 1 Harr. Cond. Lo. R. 666.

ADMINISTRATION, trusts. The management of the estate of an intestate, a minor, a lunatic, an habitual drunkard, or other person who is incapable of managing his own affairs, entrusted to an administrator or other trustee by authority of law. In a more confined sense, and in which it will be used in this article, administration is the management of an intestate's estate, or of the estate of a testator who, at the time administration was granted, had no executor.

2. Administration is granted by a public officer duly authorized to delegate the trust; he is sometimes called surrogate, judge of probate, register of wills and for granting letters of administration. It is to be granted to such persons as the statutory provisions of the several states direct. In general the right of administration belongs to him who" has the right to the venue of the personalty: as if A make his will, and appoint B his executor, who dies intestate, and C is the legatee of the residue of A's estate, C has the right of administration cum testamento annexo. 2 Strange, 956; 12 Mod. 437, 306; 1 Jones, 225; 1 Croke. 201; 2 Leo. 55; 1 Vent. 217.

3. There are several kinds of administrations, besides the usual kind which gives to the administrator the management of all the personal estate of the deceased for an unlimited time. Administration durante minore oetate, administration durante absentia, administration pendente lite, administration de bonis non, administration cum testamento annexo.

ADMINISTRATION, government. The management of the affairs of the government; this word is also applied to the persons entrusted with the management of the public affairs.

ADMINISTRATOR, trusts. An administrator is a person lawfully appointed, with his assent, by an officer having jurisdiction, to manage and settle the estate of a deceased person who has left no executor, or one who is for the time incompetent or unable to act.

2. It will be proper to consider, first, his rights; secondly, his duties.; thirdly, the number of administrators, and their joint and several powers; fourthly, the several kinds of administrators.

3.-1. By the grant of the letters, of administration, the administrator is vested with full and ample power, unless restrained to some special administration, to take possession of all the personal estate of the deceased and to sell it; to collect the debts due to him; and to represent him in all matters which relate to his chattels real or personal. He is authorized to pay the debts of the, intestate in the order dire ted by law; and, in the United States, he is generally entitled to a just compensation, which is allowed him as commissions on the amount which passes through his hands.

4.-2. He is bound to use due diligence in the management of the estate; and he is generally on his appointment required to give security that he will do so; he is responsible for any waste which. may happen for his default. See Devastavit.

5. Administrators are authorized to bring and defend actions. They sue and are sued in their own names; as, A B, administrator of C D, v. E F; or E F v. A B, administrator of C D.

6.-3. As to the number of administrators. There may be one or more. When there are several they must, in general, act together in bringing suits, and they must all be sued ; but, like executors, the acts of each, which relate to the delivery, gift, sale, payment, possession. or release of

the intestate's goods, are considered as of equal validity as the acts of all, for they have a joint power and authority over the whole. Bac. Ab. Executor, C 4; 11 Vin. Ab. 358; Com. Dig. Administration, B 12; 1 Dane's Ab. 383; 2 Litt. R. 315. On the death of one of several joint administrators, the whole authority is vested in the survivors.

7.-4. Administrators are general, or those who have right to administer the whole estate of the intestate; or special, that is, those who administer it in part, or for a limited time.

8.-1. General administrators are of two kinds, namely: first, when the grant of administration is unlimited, and the administrator is required to administer the whole estate, under the intestate laws, secondly, when the grant is made with the annexation of the will, which is the guide to the administrator to administer and distribute the estate. This latter administration is granted when the deceased has made a will, and either he has not appointed an executor, or having appointed one he refuses to serve, or dies, or is incompetent to act; this last kind is called an administrator cum testamento annexo. 1 Will. on Wills, 309.

9.-2. Special administrators are of two kinds; first, when the administration is limited to part of the estate, as for example, when the former administrator has died, leaving a part of the estate unadministered, an administrator is appointed to administer the remainder, and he is called an administrator de bonis non. He has all the powers of a common administrator. Bac. Ab. Executors, B 1; Sw. 396; Roll. Ab. 907; 6 Sm. & Marsh. 323. When an executor dies leaving a part of the estate unadministered, the administrator appointed to complete the execution of the win is called an administrator de bonis non, cum testamento annexo. Com. Dig. Administrator, B 1. Secondly, When the authority of the administrator is limited as to time. Administrators of this kind are, 1. An administrator durante minore oetate. This administrator is appointed to act as such during

the minority of an infant executor, until the latter shall, attain his lawful age to act. Godolph. 102; 5 Co. 29. His powers extend to administer the estate so far as to collect the same, sell a sufficiency of the personal property to pay the debts, sell bona peritura, and perform such other acts as require immediate attention. He may sue and be sued. Bac. Ab. Executor, B 1 ; Roll. Ab. 110; Cro. Eliz. 718. The powers of such an administrator cease, as soon as the infant executor attains the age at which the law authorizes him to act for himself, which, at common law, is seventeen years, but by statutory provision in several states twenty-one years.

10.-2. An administrator durante absentia, is one who is appointed to administer the estate during the absence of the executor, before he has proved the will. The powers of this administrator continue until the return of the executor, and. then his powers cease upon the probate of the will by the executor. 4 Hagg. 860. In England it has been holden, that the death of the executor abroad does not determine the authority of the administrator durante absentia. 3 Bos. & Pull. 26.

11.-3. An administrator pendente lite. Administration pendente lite may be granted pending the controversy respecting an alleged will and it has been granted pending a contest as to, the right to administration. 2 P. Wms. 589; 2 Atk. 286; 2 Cas. temp. Lee, 258. The administrator pendente lite is merely an officer of the court, and holds the property only till the suit terminates. 1 Hagg. 313. He may maintain suits, 1 Ves. sen. 325; 2 Ves. & B. 97; 1 Ball & B. 192; though his power does not extend to the distribution of the assets. 1 Ball & B. 192.

ADMINISTRATRIX. This term is applied to a woman to whom letters of administration have been granted. See Administrator.

ADMIRAL, officer. In some countries is the commander in chief of the naval forces. This office does not exist in the United States.

ADMIRALTY. The name of a jurisdiction which takes cognizance of suits or actions which arise in consequence of acts done upon or relating to the sea; or, in other words, of all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea. 2 Gall. R. 468. In the great maritime nations of Europe, the term "admiralty jurisdiction," is, uniformly applied to courts exercising jurisdiction over maritime contracts and concerns. It is as familiarly known among the jurists of Scotland, France, Holland and Spain, as of England, and applied to their own courts, possessing substantially the same jurisdiction as the English Admiralty had in the reign of Edward III. Ibid., and the authorities there cited; and see, also, Bac. Ab. Court of Admiralty; Merl. Repert. h.t. Encyclopedie, h.t.; 1 Dall. 323.

2. The Constitution of the United States has delegated to the courts of the national government cognizance "of all cases of admiralty and maritime jurisdiction;" and the act of September 24, 1789, ch. 20 s. 9, has given the district court" cognizance of all civil causes of admiralty and maritime jurisdiction," including all seizures under laws of imposts, navigation or trade of the United States, where the seizures are made on waters navigable from the sea, by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas.

3. It is not within the plan of this work to enlarge upon this subject.

The reader is referred to the article Courts of the United States, where he will find all which has been thought necessary to say upon it as been the subject. Vide, generally, Dunlap's Adm. Practice; Bett's Adm. Practice; 1 Kent's Com. 353 to 380; Serg. Const. Law, Index, h.t.; 2 Gall. R. 398. to

476; 2 Chit. P. 508; Bac. Ab. Courts of Admiralty; 6 Vin. Ab. 505; Dane's Ab. Index b. t; 12 Bro. Civ. and Adm. Law; Wheat. Dig. 1; 1 Story L. U. S. 56, 60; 2 Id. 905, 3 Id. 1564, 1696; 4 Sharsw. cont. of Story's L. U. S. 2262; Clerke's Praxis; Collectanea Maritima; 1 U. S. Dig. tit. Admiralty Courts, XIII.

ADMISSION, in corporations or companies. The act of the corporation or company by which an individual acquires the rights of a member of such corporation or company.

2. In trading and joint stock corporations no vote of admission is requisite; for any person who owns stock therein, either by original subscription or by conveyance, is in general entitled to, and cannot be refused, the rights and privileges of a member. 3 Mass. R. 364; Doug. 524; 1 Man. & Ry. 529.

3. All that can be required of the person demanding a transfer on the books, is to prove to the corporation his right to the property. See 8 Pick. 90.

4. In a Mutual Insurance Company, it has been held, that a person may become a member by insuring his property, paying the premium and deposit-money, and rendering himself liable to be assessed according to the rules of the corporation. 2 Mass. R. 315.

ADMISSIONS, in evidence. Concessions by a party of the existence of certain facts. The term admission is usually applied to civil transactions, and to matters of fact in criminal cases, where there is no criminal intent the term confession, (q.v.) is generally considered as an admission of guilt.

2. An admission is the testimony which the party admitting bears to the truth of a fact against himself. It is a voluntary act,which he acknowledges

as true the fact in dispute. [An admission and consent are, in fact, one and the same thing, unless indeed for more exactness we say, that consent is given to a present fact or agreement, and admission has reference to au agreement or a fact anterior for properly speaking, it is not the admission which forms a contract, obligation or engagement, against the party admitting. The admission is, by its nature, only the proof of a pre-existing obligation, resulting from the agreement or the fact, the truth of which is acknowledged. There is still another remarkable difference between admission and consent: the first is always free in its origin, the latter, always morally forced. I may refuse to consent to a proposition made to me, abstain from a fact or an action which would subject me to an obligation ; but once my consent is given, or the action committed, I am no longer at liberty to deny or refuse either; I am constrained to admit, under the penalty of dishonor and infamy. But notwithstanding all these differences, admission is identified with consent, and they are both the manifestation of the will. These admissions are generally evidence of those facts, when the admissions themselves are proved.]

3. The admissibility and effect of evidence of this description will be considered generally, with respect to the nature and manner, of the admission itself and, secondly, with respect to the parties to be affected by it.

4. In the first place, as to the nature and manner of the admission; it is either made with a view to evidence; or, with a view to induce others to act upon the representation; or, it is an unconnected or casual representation.

5.-1. As an instance of admission made with a view to evidence may be mentioned the case where a party has solemnly admitted a fact under his hand and seal, in which case he is, estopped, not only from disputing the deed itself, but every fact which it recites. B. N. P. 298; 1 Salk. 186; Com.

Dig. Estoppel, B 5; Stark. Ev. pt. 4, p. 3 1.

6.-2. Instances of thing second class of admissions which have induced others to act upon them are those where a man has cohabited with a woman, and treated her in the front of the world as his wife, 2 Esp. 637; or where he has held himself out to the world in a particular character; Ib. 1 Camp. 245 ; he cannot in the one case deny her to be his Wife when sued by a creditor who has supplied her with goods as such, nor in the other can he divest himself of the character be has assumed.

7.-3. Where the admission or declaration is not direct to the question pending, although admissible, it is not in general conclusive evidence; and though a party may by falsifying his former declaration, show that he has acted illegally and immorally, yet if he is not guilty of any breach of good faith in the existing transaction, and has not induced others, to act upon his admission or declaration, nor derived any benefit from it against his adversary, be is not bound by it. The evidence in such cases is merely presumptive, and liable to be rebutted.

8. Secondly, with respect to the parties to be affected by it. 1. By a party to a suit, 1 Phil. Ev. 74; 7 T. R. 563; 1 Dall. 65. The admissions of the party really interested, although he is no party to the suit, are evidence. 1 Wils. 257.

9.-2. The admissions of a partner during the existence of a partnership, are evidence against both. 1 Taunt. 104; Peake's C. 203 1 Stark. C. 81. See 10 Johns. R. 66 Ib. 216; 1 M. & Selw. 249. As to admissions made after the dissolution. of the partnership, see 3 Johns. R. 536; 15 Johns. R. 424 1 Marsh. (Kentucky) R. 189. According to the English decisions, it seems, the admissions of one partner, after the dissolution, have been holden to bind the other partner; this rule has been partially changed by act of parliament. Colly. on Part. 282; Stat. 9 Geo. IV. c. 14,

(May 9, 1828.) In the Supreme Court of the United States, a rule, the reverse of the English, has been adopted, mainly on the ground, that the admission is a new contract or promise, springing out of, and supported by the original consideration. 1 Pet. R. 351; 2 M'Lean, 87. The state courts have varied in their decisions some have adopted the English rule; and, in others it has been overruled. 2 Bouv. Inst. ii. 1517; Story, Partn. Sec. 324; 3 Kent, Com. Lect. 43, p. 49, 4th ed.; 17 S. & R. 126; 15 Johns. R. 409; 9 Cowen, R. 422; 4 Paige, R. 17; 11 Pick. R. 400; 7 Yerg. R. 534.

10.-3. By one of several persons who have a community of interest. Stark, Ev. pt. 4, p. 47; 3 Serg. & R. 9.

11.-4. By an agent, 1 Phil. Ev. 77-82 3 Paley Ag. 203-207.

12.-5. By an attorney, 4 Camp. 133; by wife, Paley, Ag. 139, n. 2 Whart.Dig. tit. Evidence, 0 7 T. R. 112 ; Nott & M'C. 374.

13. Admissions are express or implied. An express admission is one made in direct terms. An admission may be implied from the silence of the party, and may be presumed. As for instance, when the existence of the debt, or of the particular right, has been asserted in his presence, and he has not contradicted it. And an acquiescence and endurance, when acts are done by another, which if wrongfully done, are encroachments, and call for resistance and opposition, are evidence, as a tacit admission that such acts could not be legally resisted. See 2 Stark. C. 471. See, generally, Stark. Ev. part 4, tit. Admissions; 1 Phil. Ev. part 1, c. 5, s. 4; 1 Greenl. Ev. Sec. 169-212; 2 Evans' Pothier, 319; 8 East, 549, ii. 1; Com. Dig. Testemoigne, Addenda, vol. 7, p. 434; Vin. Abr. Evidence, A, b. 2, A, b. 23 Ib. Confessions; this Dict. tit. Confessions, Examination; Bac. Abr. Evidence L.; Toullier, Droit, Civil Francais, tome 10, p. 375, 450; 3 Bouv. Inst. n. 3073.

ADMISSIONS, of attorneys and counselors. To entitle counselors and

attorneys to practice in court, they must be admitted by the court to practice there. Different statutes and rules have been made to regulate their admission; they generally require a previous qualification by study under the direction of some practicing counsellor or attorney. See 1 Troub. & Haly's Pr. 18; 1 Arch. Pr. 16; Blake's Pr. 30.

ADMISSIONS. in pleading. Where one party means to take advantage of, or rely upon some matter alleged by his adversary, and to make it part of his case, he ought to admit such matter in his own pleadings; as if either party states the title under which his adversary claims, in which instances it,is directly opposite in its nature to a protestation. See Prote stando. But where the party wishes to prevent the application of his pleading to some matter contained in the pleading of his adversary, and therefore makes an express admission of such matter (which is sometimes the case,) in order to exclude it from the issue taken or the like, it is somewhat similar in operation and effect, to a protestation.

2. The usual mode of making an express admission in pleading, is, after saying that the plaintiff ought not to have or maintain his action, &c., to proceed thus, "Because he says that although it be true that" &c. repeating such of the allegations of the adverse party as are meant to be admitted. Express admissions are only matters of fact alleged in the pleadings; it never being necessary expressly to admit their legal sufficiency, which is always taken for granted, unless some objection be made to them. Lawes' Civ. Pl. 143, 144. See 1 Chit Pl. 600; Archb. Civ. Pl. 215.

3. In chancery pleadings, admissions are said to be plenary and partial. They are plenary by force of terms not only when the answer runs in this form, "the defendant admits it to be true," but also when he simply asserts, and generally speaking, when be says, that "he has been informed,

and believes it to be true," without adding a qualification such as, "that he does not know it of his own knowledge to be so, and therefore does not admit the same." Partial admissions are those which are delivered in terms of uncertainty, mixed up as they frequently are, with explanatory or qualifying circumstances.

ADMISSIONS, in practice, It, frequently occurs in practice, that in order to save expenses as to mere formal proofs, the attorneys on each side consent to admit, reciprocally, certain facts in the cause without calling for proof of them.

2. These are usually reduced to writing, and the, attorneys shortly, add to this effect, namely, "We agree that the above facts shall on the trial of this cause be admitted, and taken as proved on each side;" and signing two copies now called, "admissions" in the cause, each attorney takes one. Gresl. Eq. Ev. c. 2, p. 38.

ADMITTANCE, Eng. law. The act of giving possession of a copyhold estate, as livery of seisin is of a freehold; it is of three kinds, namely upon a voluntary grant by the lord) upon a surrender by the former tenant and

upon descent.

ADMIITENDO IN SOCIUM. Eng. law. A writ associating certain persons to justices of assize.

ADMONITION. A reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him, that should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. Merlin, Repert. h.t.

2. The admonition was authorized by the civil law, as a species of punishment for slight misdemeanors. Vide Reprimand

ADNEPOS. A term employed by the Romans to designate male descendants in the fifth degree, in a direct line. This term is used in making genealogical tables.

ADOLESCENCE, persons. That age which follows puberty and precedes the age of majority; it commences for males at fourteen, and for females at twelve years completed, and continues till twenty-one years complete.

ADOPTION, civil law. The act by which a person chooses another from a strange family, to have all the rights of his own child. Merl. Repert. h.t.; Dig. 1, 7, 15, 1; and see Arrogation. By art. 232, of the civil code of Louisiana, it is abolished in that state. It never was in use in any other of the United States.

ADROGATION, civil law. The adoption of one who was impubes, that is, if a male, under fourteen years of age; if a female, under twelve. Dig. 1, 7, 17, 1.

ADULT, in the civil law. An infant who, if a boy, has attained his full age of fourteen years, and if a girl, her full age of twelve. Domat, Liv. Prel. t. 2, s. 2, n. 8. In the common law an adult is considered one of full age. 1 Swanst. R. 553.

ADULTERATION. This term denotes the act of mixing something impure with something pure, as, to mix an inferior liquor with wino; au inferior article

with coffee, tea,.and the like.

ADULTERINE. A term used in the civil law to denote the issue of an adulterous intercourse. See Nicholas on Adulterine Bastardy.

ADULTERIUM. In the old records this word does not signify the offence of adultery, but the fine imposed for its commission. Barr. on the Stat. 62, note.

ADULTERY, criminal law. From ad and alter, another person; a criminal conversation, between a man married to another woman, and a woman married to another man, or a married and unmarried person. The married person is guilty of adultery, the unmarried of fornication. (q.v.) 1 Yeates, 6; 2 Dall. 124; but see 2 Blackf. 318.

2. The elements of this crime are, 1st, that there shall be an unlawful carnal connexion; 2dly, that the guilty party shall at the time be married; 3dly, that he or she shall willingly commit the offence; for a woman who has been ravished against her will is not guilty of adultery. Domat, Supp. du Droit Public, liv. 3, t. 10, n. 13.

3. The punishment of adultery, in the United States, generally, is fine and imprisonment.

4. In England it is left to the feeble hands of the ecclesiastical courts to punish this offence.

5. Adultery in one of the married persons is good cause for obtaining a divorce by the innocent partner. See 1 Pick. 136; 8 Pick. 433; 9 Mass. 492: 14 Pick. 518; 7 Greenl. 57; 8 Greenl. 75; 7 Conn. 267 10 Conn. 372; 6 Verm. 311; 2 Fairf. 391 4 S. & R. 449; 5 Rand. 634; 6 Rand. 627; 8 S. & R. 159; 2 Yeates, 278, 466; 4 N. H. Rep. 501; 5 Day, 149; 2 N. & M. 167.

6. As to proof of adultery, see 2 Greenl. Sec. 40, Marriage.

ADVANCEMENT. That which is given by a father to his child or presumptive heir, by anticipation of what he might inherit. 6 Watts, R. 87; 17 Mass. R. 358; 16 Mass. R. 200; 4 S. & R. 333; 11 John. R. 91; Wright, R. 339. See also Coop Just. 515, 575; 1 Tho. Co. Lit. 835, 6; 3 Do. 345, 348; Toll. 301; 5 Vez. 721; 2 Rob. on Wills, 128; Wash. C. C. Rep. 225; 4 S. & R. 333; 1 S. & R. 312; 3 Conn. Rep. 31; and post Collatio bonorum.

2. To constitute an advancement by the law of England, the gift must be made by the father and not by another, not even by the mother. 2 P. Wms. 856. In Pennsylvania a gift of real or personal estate by the father or mother may be an advancement. 1 S. & R. 427; Act 19 April 1794, Sec. 9; Act 8 April, 1833, Sec. 16. There are in the statute laws of the several states provisions relative to real and personal estates, similar in most respects to those which exist in the English statute of distribution, concerning an advancement to a child. If any child of the intestate has been advanced by him by settlement, either out of the real or personal estate, or both, equal or superior to the amount in value of the share of such child which would be due from the real and personal estate, if no such advancement had been made, then such child and his descendants, are excluded from any share in the real or personal estate of the intestate.

3. But if the advancement be not equal, then such child, and in case of his death, his descendants, are entitled to receive, from the real and personal estate, sufficient to make up the deficiency, and no more.

4. The advancement, is either express or implied. As to what is an implied advancement, see 2 Fonb. Eq. 121; 1 Supp. to Ves. Jr. 84; 2 lb. 57; 1 Vern. by Raithby, 88, 108, 216; 5 Ves. 421; Bac. Ab. h.t.; 4 Kent, Com. 173.

5. A debt due by a child to his father differs from an advancement. In

case of a debt, the money due may be recovered by action for the use of the estate, whether any other property be left by the deceased or not; whereas, an advancement merely bars the child's right to receive any part of his father's estate, unless he brings into hotch pot[?] the property advanced. 17 Mass. R. 93, 359. See, generally, 17 Mass. R. 81, 356; 4 Pick. R. 21; 4 Mass. R. 680; 8 Mass. R. 143; 10. Mass. R. 437; 5 Pick. R. 527; 7 Conn. R. 1; 6 Conn. R. 355; 5 Paige's R. 318; 6 Watts' R. 86, 254, 309; 2 Yerg. R. 135; 3 Yerg. R. 95; Bac. Ab. Trusts, D; Math. on Pres. 59; 5 Hayw. 137; 11 John. 91; l Swanst. 13; 1 Ch. Cas. 58; 3 Conn. 31; 15 Ves. 43, 50; U. S. Dig. h.t.; 6 Whart. 370; 4 S. & R. 333; 4 Whart. 130, 540; 5 Watts, 9; 1 Watts & Serg. 390; 10 Watts, R. 158; 5 Rawle, 213; 5 Watts, 9, 80; 6 Watts & Serg. 203. The law of France in respect to advancements is stated at length in Morl. Rep. de Jurisp. Rapport a succession.

ADVANCES, contracts. Said to take place when, a factor or agent pays to his principal, a sum of, money on the credit of goods belonging to the principal, which are placed, or are to be placed, in the possession of the factor or agent, in order to reimburse himself out of the proceeds of the sale. In such case the factor or agent has a lien to the amount of his claim. Cowp. R. 251; 2 Burr. R. 931; Liverm. on Ag. 38; Journ. of Law, 146.

2. The agent or factor has a right not only to advances made to the owner of goods, but also for expenses and disbursements made in the course of his agency, out of his own moneys, on account of, or for the benefit of his principal; such as incidental charges for warehouse-room, duties, freight, general average, salvage, repairs, journeys, and all other acts done to preserve the property of the principal, and to enable the agent to accomplish the objects of the principal, are to be paid fully by the latter.

Story on Bailm. 197; Story on Ag. Sec. 335.

3. The advances, expenses and disbursements of the agent must, however, have been made in good faith, without any default on his part Liv. on Ag. 14-16; Smith on Merc. 56 Paley on Ag. by Lloyd, 109; 6 East, R. 392; 2 Bouv. list. n. 1340.

4. When the advances and disbursements have been properly made, the agent is entitled not only to the return of the money so advanced, but to interest upon such advances and disbursements, whenever from the nature of the business, or the usage of trade, or the particular agreement of the parties, it may be fairly presumed to be stipulated for, or due to the agent. 7 Wend. R. 315; 3 Binn. R. 295; 3 Caines' R. 226; 1 H. Bl. 303; 3 Camp. R. 467 15 East, R. 223; 2 Bouv. Inst. n. 1341. This just rule coincides with the civil law on this subject. Dig. 17, 1, 12, 9; Poth. Pand. lib. 17, t. 1, n. 74.

ADVENTITIOUS, adventitius. From advenio; what comes incidentally; us adventitia bona, goods that, fall to a man otherwise than by inheritance; or adventitia dos, a dowry or portion given by some other friend beside the parent.

ADVENTURE, bill of. A writing signed by a merchant, to testify that the goods shipped on board a certain vessel are at the venture of another person, he himself being answerable only for the produce. Techn. Dict.

ADVENTURE, crim. law. See Misadventure.

ADVENTURE, mer. law. Goods sent abroad under the care of a supercargo, to be disposed of to the best advantage for the benefit of his employers, is called an adventure.

ADVERSARY. One who is a party in a writ or action opposed to the other party.

ADVERSE POSSESSION, title to lands. The enjoyment of land, or such estate as lies in grant, under such circumstances as indicate that such enjoyment has been commenced and continued, under an assertion or color of right on the part of the possessor. 3 East, R. 394; 1 Pick. Rep. 466; 1 Dall. R. 67; 2 Serg. & Rawle, 527; 10 Watts R, 289; 8 Con R. 440; 3 Penn. 132; 2 Aik. 364; 2 Watts, 23; 9, John. 174; 18 John. 40, 355; 5 Pet. 402; 4 Bibb, 550. Actual possession is a pedis possessio which can be only of ground enclosed, and only such possession can a wrongdoer have. He can have no constructive possession. 7 Serg. & R. 192; 3 Id. 517; 2 Wash. C. Rep. 478, 479.

2. When the possession or enjoyment has been adverse for twenty years, of which the jury are to judge from the circumstances the law raises the presumption of a grant. Ang. on Wat. Courses, 85, et seq. But this presumption arises only when the use or occupation would otherwise have been unlawful. 3 Greenl. R. 120; 6 Binn. R. 416; 6 Cowen, R. 617, 677; Cowen, R. 589; 4 S. & R. 456. See 2 Smith's Lead. Cas. 307-416.

3. There are four general rules by which it may be ascertained that possession is not adverse; these will be separately considered.

4.-1. When both parties claim under the same title; as, if a man seised of certain land in fee, have issue two sons and die seised, and one of the sons enter by abatement into the land, the statute, of limitations will not operate against the other son; for when the abator entered into the land of his father, before entry made by his brother, the law intends that he entered claiming as heir to his father, by which title the other son also claims. Co. Litt s. 396.

5.-2. When the possession of the one party is consistent with the

title of the other; as, where, the rents of a trust state were received by a cestui que trust for more than twenty years after the creation of the trust, without any interference, of the trustee, such possession being consistent with and secured to the cestui que trust by the terms of the deed, the receipt was held not to be adverse to the title of the trustee. 8 East. 248.

6.-3. When, in contemplation of law, the claimant has never been out of possession; as, where Paul devised lands to John and his heirs, and died, and John died, and afterwards the heirs of John and a stranger entered, and took the profits for twenty years; upon ejectment brought by the devisee of the heir of John against the stranger, it was held that the perception of the rents and profits by the stranger was not adverse to the devisee's title; for when two men are in possession, the law adjudges it to be the possession of him who has the right. Lord Raym. 329.

7.-4. When the occupier has acknowledged the claimant's titles; as, if a lease be granted for a term, and, after paying the rent for the land during such term, the tenant hold for twenty years without paying rent, his possession will not be adverse. See Bos. & P. 542; 8 B. & Cr. 717; 2 Bouv. Inst. n. 2193-94, 2351.

ADVERTISEMENT. A 'notice' published either in handbills or in a newspaper.

2. The law in many instances requires parties to advertise in order to give notice of acts which are to be done; in these cases, the advertisement is in general equivalent to notice.

3. When an advertisement contains the terms of sale, or description of the property to be sold, it will bind the seller; and if there be a material misrepresentation, it may avoid the contract, or at least entitle the purchaser to a compensation and reduction from the agreed, price. Kapp's R. 344; 1 Chit. Pr. 295.

ADVICE, com. law. A letter containing information of any circumstances unknown to the person to whom it is written; when goods are forwarded by sea or land, the letter transmitted to inform the consignee of the fact, is termed advice of goods, or letter of advice. When one merchant draws upon another, he generally advises him of the fact. These letters are intended to give notice of the facts they contain.

ADVICE, practice. The opinion given by counsel to their clients; this should never be done but upon mature deliberation to the best of the counsel's ability; and without regard to the consideration whether it will affect the client favorably or unfavorably.

ADVISEMENT. Consideration, deliberation, consultation; as the court holds the case under advisement.

ADVOCATE, civil and ecclesiastical law. 1. An officer who maintains or de fends the rights of his client in the same manner as the counsellor does in the common law.

2. Lord Advocate. An, officer of state in Scotland, appointed by the king, to advise about the making and executing the law, to prosecute capital crimes, &c.

3. College or faculty of advocates. A college consisting of 180 persons, appointed to plead in. all actions before the lords of sessions.

4. Church or ecclesiastical advocates. Pleaders appointed by the church to maintain its rights.

5.-2. A patron who has the advowson or presentation to a church. Tech. Dict.; Ayl. Per. 53; Dane Ab. c.,31, Sec. 20. See Counsellor at law; Honorarium.

ADVOCATIA, civil law. This sometimes signifies the quality, or functions, and at other times the privilege, or the territorial jurisdiction of an advocate, See Du Cange, voce Advocatia, Advocatio.

ADVOCATION, Scotch law. A writing drawn up in the form of a petition, called a bill of advocation, by which a party in an action applies to the supreme court to advocate its cause, and to call the action out of an inferior court to itself. Letters of advocation, are the decree or warrant of the supreme court or court of sessions, discharging the inferior tribunal from all further proceedings in the matter, and advocating the action to itself. This proceeding is similar to a certiorari (q.v.) issuing out of a superior court for the removal of a cause from an inferior.

ADVOCATUS. A pleader, a narrator. Bract. 412 a, 372 b.

ADVOWSON, ecclesiastical law. From advow or advocare, a right of presentation to a church or benefice. He who possesses this right is called the patron or advocate, (q.v.) when there is no patron, or he neglects to exercise his right within six months, it is called a lapse, i. e. a title is given to the ordinary to collate to a church; when a presentation is made by one who has no right it is called a usurpation.

2. Advowsons are of different kinds, as Advowson appendant, when it depends upon a manor, &c. - Advowson in gross, when it belongs to a person and not to a manor. - Advowson presentative, where the patron presents to the bishop. - Advowson donative, where the king or patron puts the clerk into possession without presentation. - Advowson of the moiety of the church, where there are two several patrons and two incumbents in the same

church. - A moiety of advowson, where two must join the presentation, of one incumbent. - Advowson of religious houses, that which is vested in the person who founded such a house. Techn. Dict.; 2 Bl. Com. 21; Mirehouse on Advowsons; Com. Dig. Advowson, Quare Impedit; Bac. Ab. Simony; Burn's Eccl. Law, h.t.; Cruise's Dig. Index, h.t.

AFFECTION, contracts. The making over, pawning, or mortgaging a thing to assure the payment of a sum of money, or the discharge of some other duty or service. Techn. Diet.

AFFEERERS, English law. Those who upon oath settle and moderate fines in courts leet[?]. Hawk. 1. 2, c. 112.

TO AFFERE, English law. Signifies either "to affere an amercement," i. e. to mitigate the rigor of a fine; or "to affere an account," that is, to confirm it on oath in the exchequer.

AFFIANCE, contracts. From affidare or dare fidem, to give a pledge. A plighting of troth between a man and woman. Litt. s. 39. Pothier, Traite du Mariage, n. 24, defines it to be a an agreement by which a man and a woman promise each other that they will marry together. This word is used by some authors as synonymous with marriage. Co. Litt. 34, a, note 2. See Dig. 23, 1 Code 5, 1, 4; Extrav. 4, 1.

AFFIDARE. To plight one's faith, or give fealty, i. e. fidelity by making oath, &c. Cunn. Dict. h.t.

AFFIDATIO DOMINORUM, Eng. law. An oath taken by a lord in parliament.

AFFIDAVIT, practice. An oath or affirmation reduced to writing, sworn or affirmed to before some officer who has authority to administer it. It differs from a deposition in this, that in the latter the opposite party has had an opportunity to cross-examine the witness, whereas an affidavit is always taken ex parte. Gresl. Eq. Ev. 413. Vide Harr. Dig. h.t.

2. Affidavit to hold to bail, is in many cases required before the defendant can be arrested; such affidavit must be made by a person who is acquainted with the fact, and must state, 1st, an indebtedness from the defendant to the plaintiff; 2dly, show a distinct cause of action; 3dly, the whole must be clearly and certainly, expressed. Sell. Pr. 104; 1 Chit. R. 165; S. C. 18 Com. Law, R. 59 note; Id. 99.

3. An affidavit of defence, is made by a defendant or a person knowing the facts, in which must be stated a positive ground of defence on the merits. 1 Ashm. R. 4, 19, n. It has been decided that when a writ of summons has been served upon three defendants, and only one appears, a judgment for want of an affidavit of defence may be rendered against au. 8 Watts, R. 367. Vide Bac. Ab. h.t.

AFFINITAS AFFINITATIS. That connexion between two persons which has neither consanguinity nor affinity; as, the connexion between the husband's brother and the wife's sister. This connexion is formed not between the parties themselves, nor between one of spouses and the kinsmen of the other, but between the kinsmen of both. Ersk. Inst. B, 1, tit. 6, s. 8.

AFFINITY. A connexion formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife, as that in which she herself stands towards them, and gives to the wife the same reciprocal connexion with the relations of the husband. It is used in

contradistinction to consanguinity. (q.v.) It is no real kindred.

2. Affinity or alliance is very different from kindred. Kindred are relations. by blood; affinity is the tie which exists between one of the spouses with the kindred of the other; thus, the relations, of my wife, her brothers, her sisters, her uncles, are allied to me by affinity, and my brothers, sisters, &c., are allied in the same way to my wife. But my brother and the sister of my wife are not allied by the ties of affinity: This will appear by the following paradigms

3. A person cannot, by legal succession, receive an inheritance from a relation by affinity; neither does it extend to the nearest relations of husband and wife, so as to create a mutual relation between them. The degrees of affinity are computed in the same way as those of consanguinity.

See Pothier, Traite du Mariage, part 3, ch. 3, art. 2, and see 5 M. R. 296; Inst. 1, 10, 6; Dig. 38, 10, 4, 3; 1 Phillim. R. 210; S. C. 1 Eng. Eccl. R. 72; article Marriage.

TO AFFIRM, practice. 1. To ratify or confirm a former law or judgment, as when the supreme court affirms the judgment of the court of common pleas.

2. To make an affirmation, or to testify under an affirmation.

AFFIRMANCE. The confirmation of a voidable act; as, for example, when an infant enters into a contract, which is not binding upon him, if, after attaining his full age, he gives his affirmance to it, he will thereafter be bound, as if it had been made when of full age. 10 N. H. Rep. 194.

2. To be binding upon the infant, the affirmance must be made after arriving of age, with a full knowledge that it would be void without such confirmation. 11 S. & R. 305.

3. An affirmance may be express, that is, where the party declares his determination of fulfilling the contract; but a more acknowledgment is not sufficient. Dudl. R, 203. Or it may be implied, as, for example, where an infant mortgaged his land and, at full age, conveyed it, subject to the mortgage. 15 Mass. 220. See 10 N. H. Rep. 561.

AFFIRMANCE-DAY, GENERAL. In the English Court of Exchequer, is a day appointed by the judges of the common pleas, and barons of the exchequer, to be held a few days after the beginning of every term for the general affirmance or reversal of judgments. 2 Tidd. 1091.

AFFIRMANT, practice. One who makes affirmation instead of making oath that the evidence which he is about to give shall be the truth, as if he had been

sworn. He is liable to all the pains and penalty of perjury, if he shall be guilty of willfully and maliciously violating his affirmation.

AFFIRMATION, practice. A solemn declaration and asseveration, which a witness makes before an officer, competent to administer an oath in a like case, to tell the truth, as if be had been sworn.

2. In the United States, generally, all witnesses who declare themselves conscientiously scrupulous against taking a corporal oath, are permitted to make a solemn affirmation, and this in all cases, as well criminal as civil.

3. In England, laws have been enacted which partially relieve persons who, have conscientious scruples against taking an oath, and authorize them to make affirmation. In France, the laws which allow freedom of religious opinion, have received the liberal construction that all persons are to be sworn or affirmed according to the dictates of their consciences; and a quaker's affirmation has been received and held of the same effect as an oath. Merl. Quest. de Droit, mot Serment, Sec. 1.

4. The form is to this effect: "You, A B, do solemnly, sincerely, and truly declare and affirm," &c. For the violation of the truth in such case, the witness is subject to the punishment of perjury as if he had been sworn.

5. Affirmation also means confirming; as, an affirmative statute.

AFFIRMATIVE. Averring a fact to be true; that which is opposed to negative. (q.v.)

2. It is a general rule of evidence that the affirmative of the issue must be proved. Bull. N. P. 298 ; Peake, Ev. 2.

3. But when the law requires a person to do an act, and the neglect of it, will render him guilty and punishable, the negative must be proved, because every man is presumed to do his duty and in that case they who

affirm he did not, must prove it. B. N. P. 298; 1 Roll. R. 83; Comb. 57; 3 B.& P. 307; 1 Mass. R. 56.

AFFIRMATIVE PREGNANT, Pleading. An affirmative allegation, implying some negative, in favor of the adverse party, for example, if to an action of assumpsit, which is barred by the act of limitations of six years, the defendant pleads that be did not undertake &c. within ten years; a replication that he did undertake, &c. within ten years, would be an affirmative pregnant; since it would impliedly admit that the defendant had not promised within six years. As no proper issue could be tendered upon such plea the plaintiff should, for that reason, demur to it. Gould, Pl. c. 6 29, 37; Steph. Pl. 381; Lawes, Civ. Pl. 113; Bac. Ab. Pleas, N 6.

AFFORCE, AFFORCEMENT OF THE ASSIZE, Old English law, practice. An ancient practice in trials by jury, which is explained by Bracton, (fo. 185, b. 292 a) and by the author of Fleta, lib. 4, cap. 9, Sec. 2. It consisted in adding other jurors to the panel of jurors, after the cause had been committed to them, in case they could not agree in a verdict. The author of Fleta (ubi sup) thus describes it. The oath having been administered to the jury, the (prenotarius) prothonotary, addressed them thus: "You will say upon the oath you have taken, whether such a one unjustly and without judgment disseised such a one of his freehold in such a ville within three years or not." The justices also repeat for the instruction of, the jurors the plaint of the plaintiff, &c. The jurors then retire and confer together, &c. If the jurors differ among themselves and cannot agree in one (sententiam) finding, it will be in the discretion of the judges, &c; to afforce the assize by others, provided there remain of the jurors summoned many as the major party of the dissenting jurors; or they may compel the

same jurors to unanimity, viz. by directing the sheriff to keep them safely without, meat or drink until they agree. The object of adding to the panel a number equal to the major party of the dissenting jurors, was to ensure a verdict by twelve of them, if the jurors thus added to the panel should concur with the minor party of the dissenting jurors. This practice of afforcing the assize, was in reality a second trial of the cause, and was abandoned, because the courts found it would save delay and trouble by insisting upon unanimity. The practice of confining jurors without meat and drink in order to enforce unanimity, has in more modern times also been abandoned and the more rational practice adopted of discharging the jury and summoning a new one for the trial of the cause, in cases where they cannot agree. This expedient for enforcing unanimity was probably introduced from the canon law, as we find it was resorted to on the continent, in other cases where the unanimity of a consultative or deliberative body was deemed indispensable. See Barring. on Stats. 19, 20; 1, Fournel, Hist. des Avocats, 28, note.

TO AFFRANCHISE. To make free.

AFFRAY, criminal law. The fighting of two or more persons, in some public place, to the terror of the people.

2. To constitute this offence there must be, 1st, a fighting; 2d, the fighting must be between two or more persons; 3d, it must be in some public place ; 4th, it must be to the terror of the people.

3. It differs from a riot, it not being premeditated; for if any persons meet together upon any lawful or innocent occasion, and happen on a sudden to engage in fighting, they are not guilty of a riot but an affray only; and in that case none are guilty except those actually engaged in it. Hawk. b. 1, c. 65, s. 3 ; 4 Bl. Com. 146; 1 Russell, 271.

AFFREIGHTMENT, Com. law. The contract by which a vessel or the use of it, is let out to hire. See Freight; General ship.

AFORESAID. Before mentioned; already spoken of. This is used for the purpose of identifying a person or thing; as where Peter, of the city of Philadelphia, has been mentioned; when it is necessary to speak of him, it is only requisite to say Peter aforesaid, and if the city of Philadelphia, it may be done as the city of Philadelphia, aforesaid.

AFORETHOUGHT, crim. law. Premeditated, prepense; the length of time during which the accused has entertained the thought of committing the offence is not very material, provided he has in fact entertained such thought; he is thereby rendered criminal in a greater degree than if he had committed the offence without. premeditation. Vide Malice; aforethought; Premeditation 2 Chit. Cr. 785; 4 Bl. Com. 199; Fost. 132, 291, 292; Cro. Car. 131; Palm. 545; W. Jones, 198; 4 Dall. R. 146; 1 P. A. Bro. App. xviii.; Addis. R. 148; 1 Ashm. R. 289.

AFTERMATH. A right to have the last crop of grass or pasturage. 1 Chit. Pr. 181.

AGAINST THE FORM OF THE STATUTE. When a statute prohibits a thing to be done, and an action is brought for the breach of the statute, the declaration or indictment must conclude against the form of the statute. See Contra formam statuti.

AGAINST THE WILL, pleadings. In indictments for robbery from the person, the

words "feloniously and against the will," must be introduced; no other words or phrase will sufficiently charge the offence. 1 Chit. Cr. 244.

AGARD. An old word which signifies award. It is used in pleading, as nul agard, no award;

AGE. The time when the law allows persons to do acts which, for want of years, they were prohibited from doing before. See Coop. Justin. 446.

2. For males, before they arrive at fourteen years they are said not to be of discretion; at that age they may consent to marriage and choose a guardian. Twenty-one years is full age for all private purposes, and the may then exercise their rights as citizens by voting for public officers; and are eligible to all offices, unless otherwise provided for in the constitution. At 25, a man may be elected a representative in Congress; at 30, a senator; and at 35, he may be chosen president of the United States. He is liable to serve in the militia from 18 to 45. inclusive, unless exempted for some particular reason.

3. As to females, at 12, they arrive at years of discretion and may consent to marriage; at 14, they may choose a guardian; and 21, as in males, is fun Age, when they may exercise all the rights which belong to their sex.

4. In England no one can be chosen member of parliament till he has attained 21 years; nor be ordained a priest under the age of 24; nor made a bishop till he has completed his 30th year. The age of serving in the militia is from 16 to 45 years.

5. By the laws of France many provisions are made in respect to age, among which are the following. To be a member of the legislative body, the person must have attained 40 years; 25, to be a judge of a tribunal de remiere instance; 27, to be its president, or to be judge or clerk of a court royale ; 30, to be its president or procurer general; 25, to be a

justice of the peace; 30, to be judge of a tribunal of commerce, and 35, to be its president; 25, to be a notary public; 21, to be a testamentary witness; 30, to be a juror. At 16, a minor may devise one half of his, property as if he were a major. A male cannot contract marriage till after the 18th year, nor a female before full 15 years. At 21, both males and females are capable to perform all the act's of civil life. Toull. Dr. Civ. Fr. Liv. 1, Intr. n. 188.

6. In the civil law, the age of a man was divided as follows: namely, the infancy of males extended to the full accomplishment of the 14th year; at 14, he entered the age of puberty, and was said to have acquired full puberty at 18 years accomplished, and was major on completing his 25th year. A female was an infant til 7 years; at 12, she entered puberty, and acquired full puberty at 14; she became of fall age on completing her 25th year. Lecons Elem. du Dr. Civ. Rom. 22.

See Com. Dig. Baron and Feme, B 5, Dower, A, 3, Enfant, C 9, 10, 11, D 3, Pleader, 2 G 3, 2 W 22, 2 Y 8; Bac. Ab. Infancy and Age; 2 Vin. Ab. 131; Constitution of the United States; Domat. Lois Civ. tome 1, p. 10; Merlin, Repert. de Jurisp. mot Age; Ayl. Pand. 62; 1 Coke Inst. 78; 1 Bl. Com. 463. See Witness.

AGE-PRAYER, AGE-PRIER, oetatis precatio. English law, practise. When an action is brought against an infant for lands which he hath by descent, he may show this to the court, and pray quod loquela remaneat until he shall become of age; which is called his age-prayer. Upon this being ascertained, the proceedings are stayed accordingly. When the lands did not descend, he is not allowed this privilege. 1 Lilly's Reg. 54.

AGED WITNESS. When a deposition is wanted to be taken on account of the age

of a witness, he must be at least seventy years old to be considered an aged witness. Coop. Eq. Pl. 57; Amb. R. 65; 13 Ves. 56, 261.

AGENCY, contracts. An agreement, express, or implied, by which one of the parties, called the principal, confides to the other, denominated the agent, the management of some business; to be transacted in his name, or on his account, and by which the agent assumes to do the business and to render an account of it. As a general rule, whatever a man do by himself, except in virtue of a delegated authority, he may do by an agent. Combee's Case, 9 Co. 75. Hence the maxim qui facit per alium facit per se.

2. When the agency express, it is created either by deed, or in writing not by deed, or verbally without writing. 3 Chit. Com. Law 104; 9 Ves. 250; 11 Mass. Rep. 27; Ib. 97, 288; 1 Binn. R. 450. When the agency is not express, it may be inferred from the relation of the parties and the nature of the employment, without any proof of any express appointment. 1 Wash. R. 19; 16 East, R. 400; 5 Day's R. 556.

3. The agency must be antecedently given, or subsequently adopted; and in the latter case there must be an act of recognition, or an acquiescence in the act of the agent, from which a recognition may be fairly implied. 9 Cranch, 153, 161; 26 Wend. 193, 226; 6 Man. & Gr. 236, 242; 1 Hare & Wall. Sel. Dec. 420; 2 Kent, Com. 478; Paley on Agency; Livermore on Agency.

4. An agency may be dissolved in two ways - 1, by the act of the principal or the agent; 2, by operation of law.

5.-1. The agency may be dissolved by the act of one of the parties. 1st. As a general rule, it may be laid down that the principal has a right to revoke the powers which he has given; but this is subject to some exception, of which the following are examples. When the principal has expressly stipulated that the authority shall be irrevocable, and the agent has an interest in its execution; it is to be observed, however, that

although there may be an express agreement not to revoke, yet if the agent has no interest in its execution, and there is no consideration for the agreement, it will be considered a nude pact, and the authority may be revoked. But when an authority or power is coupled with an interest, or when it is given for a valuable consideration, or when it is a part of a security, then, unless there is an express stipulation that it shall be revocable, it cannot be revoked, whether it be expressed on the face of the instrument giving the authority, that it be so, or not. Story on Ag. 477; Smith on Merc. L. 71; 2 Liv. on Ag. 308; Paley on Ag. by Lloyd, 184; 3 Chit. Com. f. 223; 2 Mason's R. 244; Id. 342; 8 Wheat. R. 170; 1 Pet. R. 1; 2 Kent, Com. 643, 3d edit.; Story on Bailm. Sec. 209; 2 Esp. R. 665; 3 Barnw. & Cressw. 842; 10 Barnw. & Cressw. 731; 2 Story, Eq. Jur. Sec. 1041, 1042, 1043

6.-2. The agency may be determined by the renunciation of the agent. If the renunciation be made after it has been partly executed, the agent by renouncing it, becomes liable for the damages which may thereby be sustained by his principal. Story on Ag. Sec. 478; Story on Bailm. Sec. 436; Jones on Bailm. 101; 4 John r. 84.

7.-2 The agency is revoked by operation of law in the following cases: 1st. When the agency terminates by the expiration of the period, during which it was to exist, and to have effect; as, if an agency be created to endure a year, or till the happening of a contingency, it becomes extinct at the end or on the happening of the contingency.

8.-2. When a change of condition, or of state, produces an incapacity in either party; as, if the principal, being a woman, marry, this would be a revocation, because the power of creating an agent is founded on the right of the principal to do the business himself, and a married woman has no such power. For the same reason, when the principal becomes insane, the agency is

ipso facto revoked. 8 Wheat. R. 174, 201 to 204; Story on Ag. Sec. 481; Story on Bailm. Sec. 206. 2 Liv. on Ag. 307. The incapacity of the agent also amounts to a revocation in law, as in case of insanity, and the like, which renders an agent altogether incompetent, but the rule does not reciprocally apply in its full extent. For instance, an infant or a married woman may in some cases be agents, although they cannot act for themselves. Co. Litt. 52a.

9.-3. The death of either principal or agent revokes the agency, unless in cases where the agent has an interest in the thing actually vested in the agent. 8 Wheat. R. 174; Story on Ag. Sec. 486 to 499; 2 Greenl. R. 14, 18; but see 4 W. & S. 282; 1 Hare & Wall. Sel. Dec. 415.

10.-4. The agency is revoked in law, by the extinction of the subject-matter of the agency, or of the principal's power over it, or by the complete execution of the trust. Story on Bailm. Sec. 207, Vide generally, 1 Hare & Wall. Sel. Dec. 384, 422; Pal. on Ag.; Story on Ag.; Liv. on Ag.; 2 Bouv. Inst. n. 1269-1382.

AGENT, practice. An agent is an attorney who transacts the business of another attorney.

2. The agent owes to his principal the unremitted exertions of his skill and ability, and that all his transactions in that character, shall be distinguished by punctuality, honor and integrity. Lee's Dict. of Practice.

AGENT, international law. One who is employed by a prince to manage his private affairs, or, those of his subjects in his name, near a foreign, government. Wolff, Inst. Nat. Sec. 1237.

AGENT, contracts. One who undertakes to manage some affair to be transacted

for another, by his authority on account of the latter, who is called the principal, and to render an account of it.

2. There are various descriptions of agents, to whom different appellations are given according to the nature of their employments; as brokers, factors, supercargoes, attorneys, and the like; they are all included in this general term. The authority is created either by deed, by simple writing, by parol, or by mere employment, according to the capacity of the parties, or the nature of the act to be done. It is, therefore, express or implied. Vide Authority.

3. It is said to be general or special with reference to its object, i.e., according as it is confined to a single act or is extended to all acts connected with a particular employment.

4. With reference to the manner of its execution, it is either limited or unlimited, i. e. the agent is bound by precise instructions, (q.v.) or left to pursue his own discretion. It is the duty of an agent, 1, To perform what he has undertaken in relation to his agency. 2, To use all necessary care. 3, To render an account. Pothier, Tr. du Contrat de Mandat, passim; Paley, Agency, 1 and 2; 1 Livrm. Agency, 2; 1 Suppl. to Ves. Jr. 67, 97, 409; 2 Id. 153, 165, 240; Bac. Abr. Master and Servant, 1; 1 Ves. Jr. R. 317. Vide Smith on Merc. Law, ch. 3, p. 43,. et seq. and the articles Agency, Authority, and Principal.

5. Agents are either joint or several. It is a general rule of the common law, that when an authority is given to two or more persons to do an act, and there is no several authority given, all the agents must concur in doing it, in order to bind the principal. 3 Pick. R. 232; 2 Pick. R. 346; 12 Mass. R. 185; Co. Litt. 49 b, 112 b, 113, and Harg. n. 2; Id. 181 b. 6 Pick. R. 198 6 John. R. 39; 5 Barn. & Ald. 628.

6. This rule has been so construed that when the authority is given

jointly and severally to three person, two cannot properly execute it; it must be done by all or by one only. Co. Litt. 181 b; Com. Dig. Attorney, C 11; but if the authority is so worded that it is apparent, the principal intended to give power to either of them, an execution by two will be valid. Co. Litt. 49 b; Dy. R. 62; 5 Barn. & Ald. 628. This rule applies to private agencies: for, in public agencies an authority executed by a major would be sufficient. 1 Co. Litt. 181b; Com. Dig. Attorney, C 15; Bac. Ab. Authority, C; 1 T. R. 592.

7. The rule in commercial transactions however, is very different; and generally when there are several agents each possesses the whole power. For example, on a consignment of goods for sale to two factors, (whether they are partners or not,) each of them is understood to possess the whole power over the goods for the purposes of the consignment. 3 Wils. R. 94, 114; Story on Ag. Sec. 43.

8. As to the persons who are capable of becoming agents, it may be observed, that but few persons are excluded from acting as agents, or from exercising authority delegated to them by others. It is not, therefore, requisite that a person be sui juris, or capable of acting in his own right, in order to be qualified to act for others. Infants, femes covert, persons attainted or outlawed, aliens and other persons incompetent for many purposes, may act as agents for others. Co. Litt. 62; Bac. Ab. Authority, B; Com. Dig. Attorney, C 4; Id. Baron and Feme, P 3; 1 Hill, S. Car. R. 271; 4 Wend. 465; 3 Miss. R. 465; 10 John. R. 114; 3 Watts, 39; 2 S. & R. 197; 1 Pet. R. 170.

9. But in the case of a married woman, it is to be observed, that she cannot be an agent for another when her husband expressly dissents, particularly when he may be rendered liable for her acts. Persons who have clearly no understanding, as idiots and lunatics cannot be agents for

others. Story on Ag. Sec. 7.

10. There is another class who, though possessing understanding, are incapable of acting as agents for others; these are persons whose duties and characters are incompatible with their obligations to the principal. For example, a person cannot act as agent in buying for another, goods belonging to himself. Paley on Ag. by Lloyd, 33 to 38; 2 Ves. Jr. 317. 11. An agent has rights which he can enforce, and is, liable to obligations which he must perform. These will be briefly considered:

11. The rights to which agents are entitled, arise from obligations due to them by their principals, or by third persons.

12 - 1. Their rights against their principals are, 1., to receive a just compensation for their services, when faithfully performed, in execution of a lawful agency, unless such services, are entirely gratuitous, or the agreement between the parties repels such a claim; this compensation, usually called a commission, is regulated either by particular agreement, or by the usage of trade, or the presumed intention of the parties. 8 Bing. 65; 1 Caines, 349; 2 Caines, 357.

2. To be reimbursed all their just advances, expenses and disbursements made in the course of their agency, on account of, or for the benefit of their principal; 2 Liverm. on Ag. 11-23; Story on Ag. Sec. 335; Story on Bailm. Sec. 196; Smith on Mer. Law, 56; 6 East, 392; and also to be paid interest upon such advances, whenever from the nature of the business, or the usage of trade, or the particular agreement of the parties, it may be fairly presumed to have been stipulated for, or due to the agent. 7 Wend. 315; 3 Binn. 295; 3 Caines, 226; 3 Camp. 467; 15 East, 223.

13. Besides the personal remedies which an agent has to enforce his claims against his principal for his commissions and, advancements, he has a lien upon the property of the principal in his hand. See Lien, and Story on

Ag. Sec. 351 to 390.

14.-2. The rights of agents against third persons arise, either on contracts made between such third persons and them, or in consequence of torts committed by the latter. 1. The rights of agents against third persons on contracts, are, 1st, when the contract is in writing and made expressly with the agent, and imports to be a contract personally with him, although he may be known to act as an agent; as, for example, when a promissory note is given to the agent as such, for the benefit of his principal, and the promise is to pay the money to the agent, oe nomine. Story on Ag. 393, 394; 8 Mass. 103; see 6 S.& R. 420; 1 Lev. 235; 3 Camp. 320; 5 B.& A. 27. 2d. When the agent is the only known or ostensible principal, and therefore, is in contemplation of law, the real contracting party. Story on Ag. Sec. 226, 270, 399. As, if an agent sell goods of his principal in his own name, as if he were the owner, he is entitled to sue the buyer in his own name; although his principal may also sue. 12 Wend. 413; 5 M.& S. 833. And on the other hand, if he so buy, he may enforce the contract by action. 3d. When, by the usage of trade, the agent is authorized to act as owner, or as a principal contracting party, although his character as agent is known, he may enforce his contract by action. For example, an auctioner, who sells the goods of another may maintain an action for the price, because he has a possession coupled with an interest in the goods, and it is a general rule, that whenever an agent, though known as such, has a special property in the subject-matter of the contract, and not a bare custody, or when he has acquired an interest, or has a lien upon it, he may sue upon the contract. 2 Esp. R. 493; 1 H. Bl. 81, 84; 6 Wheat. 665; 3 Chit. Com. Law, 10; 3 B. & A. 276. But this right to bring an action by agents is subordinate to the rights of the principal, who may, unless in particular cases, where the agent has a lien, or some other vested right, bring a suit himself, and suspend or extinguish the right of the agent. 7 Taunt. 237, 243; 2 Wash. C.

C. R. 283. 2. Agents are entitled to actions against third persons for torts committed against them in the course of their agency. 1st. They may maintain actions, of trespass or trover against third persons for any torts or injuries affecting their possession of the goods which they hold as agents. Story on Ag. Sec. 414; 13 East, 135; 9 B. & Cressw. 208; 1 Hen. Bl. 81. 2d. When an agent has been induced by the fraud of a third person to sell or buy goods for his principal, and he has sustained loss, he may maintain an action against such third person for such wrongful act, deceit, or fraud. Story on Ag. Sec. 415.

15.-2. Agents are liable for their acts, 1, to their principals; and 2, to third person.

16.-1. The liabilities of agents to their principals arise from a violation of their duties and obligations to the principal, by exceeding their authority, by misconduct, or by any negligence or omission, or act by which the principal sustains a loss. 3 B. & Adol. 415; 12 Pick. 328. Agents may become liable for damages and loss under a special contract, contrary to the general usages of trade. They may also become responsible when charging a del credere commission. Story on Ag. Sec. 234.

17.-2. Agents become liable to third persons; 1st, on their contract; 1, when the agent, undertakes to do an act for another, and does not possess a sufficient authority from the principal, and that is unknown to the other party, he will be considered as having acted for himself as a principal. 3 B. 9 Adol. 114. 2. When the agent does not disclose his agency, he will be considered as a principal; 2 Ep. R. 667; 15 East, 62; 12 Ves. 352; 16 Martin's R. 530; and, in the case of agents or factors, acting for merchants in a foreign country, they will be considered liable whether they disclose their principal or not, this being the usage of the trade; Paley on Ag. by Lloyd, 248, 373; 1 B.& P. 368; but this presumption may be rebutted by proof

of a contrary agreement. 3. The agent will be liable when he expressly, or by implication, incurs a personal responsibility. Story on Ag. Sec. 156-159. 4. When the agent makes a contract as such, and there is no other responsible as principal, to whom resort can be had; as, if a man sign a note as "guardian of AB," an infant; in that case neither the infant nor his property will be liable, and the agent alone will be responsible. 5 Mass. 299; 6 Mass., 58. 2d. Agents become liable to third persons in regard to torts or wrongs done by them in the course of their agency. A distinction has been made, in relation to third persons, between acts of misfeasance and non-feasance: an agent is, liable for the former, under certain circumstances, but not for the latter; he being responsible for his non-feasance only to his principal. Story on Ag. Sec. 309, 310. An agent is liable for misfeasance as to third persons, when, intentionally or ignorantly, he commits a wrong, although authorized by his principal, because no one can lawfully authorize another to commit a wrong upon the rights or property of another. 1 Wils. R. 328; 1 B. & P. 410. 3d. An agent is liable to refund money, when payment to him is void ab initio, so that, the money was never received for the use of his principal, and he is consequently not accountable to the latter for it, if he has not actually paid it over at the time he receives notice of the take. 2 Cowp. 565; 10 Mod. 233; M.& S. 344. But unless "caught with the money in his possession," the agent is not responsible. 2 Moore, 5; 8 Taunt. 136; 9 Bing. 878; 7 B.& C. 111; 1 Cowp. 69; 4 Taunt. 198. This last rule is, however, subject to this qualification, that the money shall have been lawfully received by the agent; for if, in receiving it, the agent was a wrongdoer, he will not be exempted from liability by payment to his principal. 1 Campb. 396; 8 Bing. 424; 1 T. R. 62; 2 Campb. 122; 1 Selw. N. P. 90, n.; 12 M. & W. 688; 6 A.& Ell. N. S. 280; 1 Taunt. 359; 3 Esp. 153.

See Diplomatic Agent.

AGENT AND PATIENT. This phrase is used to indicate the state of a person who is required to do a thing, and is at the same time the person to whom it is done; as, when a man is indebted to another, and he appoints him his executor, the latter is required to pay the debt in his capacity of executor, and entitled to receive it in his own right, he is then agent and patient. Termes de la ley.

AGGRAVATION, crimes, torts. That which increases the enormity of a crime or the injury of a wrong. The opposite of extenuation.

2. When a crime or trespass has been committed under aggravating circumstances, it is punished with more severity; and, the damages given to vindicate the wrong are greater.

AGGRAVATION, in pleading. The introduction of matter into the declaration which tends to increase the amount of damages, but does not affect the right of action itself. Steph. Pl. 257; 12 Mod. 597. See 3 An. Jur. 287, 313. An example of this is found in the case where a plaintiff declares in trespass for entering his house, and breaking his close, and tossing his goods about; the entry of the house is the principal ground and foundation of the action, and the rest is only stated by way of aggravation; 3 Wils. R. 294; and this matter need not be proved by the plaintiff or answered by the defendant.

AGGREGATE. A collection of particular persons or items, formed into one body; as a corporation aggregate, which is one formed of a number of natural persons; the union of individual charges make an aggregate charge.

AGGRESSOR, crim. law. He who begins, a quarrel or dispute, either by threatening or striking another. No man may strike another because he has threatened, or in consequence of the use of any words.

AGIO, aggio. This term is used to denote the difference of price between the value of bank notes and nominal money, and the coin of the country. Encyc.

AGIST, in contracts. The taking of other men's cattle on one's own ground at a certain rate. 2 Inst. 643; 4 Inst. 293.

AGISTER. One who takes horses or other animals to agist.

2. The agister is not, like an innkeeper, bound to take all horses offered to him, nor is he liable for any injury done to such animals in his care, unless he has been guilty of negligence, or from his ignorance, negligence may be inferred. Holt's R. 457.

AGISTMENT, contracts. The taking of another person's cattle into one's own ground to be fed, for a consideration to be paid by the owner. The person who receives the cattle is called an agister.

2. An agister is bound to ordinary diligence, and of course is responsible for loses by ordinary negligence; but he does not insure the safety of the cattle agisted. Jones, Bailm. 91; I Bell's Com. 458; Holt's N. P. Rep. 547; Story, Bail. Sec. 443; Bac. Ab. Tythes, C l.

AGNATES. In the sense of the Roman law were those whose propinquity was connected by males only; in the relation of cognates, one or more females were interposed.

2. By the Scotch law, agnates are all those who are related by the father, even though females intervene; cognates are those who are related by the mother. Ersk. L. Scot. B. 1, t. 7, s. 4.

AGNATI, in descents. Relations on the father's side: they are different from the cognati, they being relations on the mother's side, affines, who are allied by marriage, and the propinqui, or relations in general. 2 Bl. Com. 235; Toull. Dr. Civ. Fr. tome 1, p. 139; Poth. Pand. Tom. 22, p. 27. Calvini Lex.

AGNATION, in descents. The relation by blood which exists between such males as are descended from the same father; in distinction from cognation or consanguinity, which includes the descendants from females. This term is principally used in the civil law.

AGRARIAN LAW. Among the Romans, this name was given to a law, which had for its object, the division among the people of all the lands which had been conquered, and which belonged to the domain of the state.

AGREEMENT, contract. The consent of two or more persons concurring, respecting the transmission of some property, right or benefit, with a view of contracting an obligation. Bac. Ab. h.t.; Com. Dig. h.t.; Vin. Ab. h.t.; Plowd. 17; 1 Com. Contr. 2; 5 East's R. 16. It will be proper to consider, 1, the requisites of an agreement; 2, the kinds of agreements; 3, how they are annulled.

2.-1. To render an agreement complete six things must concur; there must be, 1, a person able to contract; 2, a person able to be contracted with; 3, a thing to be contracted for; 4, a lawful consideration, or quid

pro quo; 5, words to express the agreement; 6, the assent of the contracting parties. Plowd. 161; Co. Litt. 35, b.

3.-2. As to their form, agreements are of two kinds; 1, by parol, or, in writing, as contradistinguished from specialties; 2, by specialty, or under seal. In relation to their performance, agreements are executed or executory. An agreement is said to be executed when two or more persons make over their respective rights in a thing to one another, and thereby change the property therein, either presently and at once, or at a future time, upon some event that shall give it full effect, without either party trusting to the other; as where things are bought, paid for and delivered. Executory agreements, in the ordinary acceptation of the term, are such contracts as rest on articles, memorandums, parol promises, or undertakings, and the like, to be performed in future, or which are entered into preparatory to more solemn and formal alienations of property. Powell on Cont. Agreements are also conditional and unconditional. They are conditional when some condition must be fulfilled before they can have full effect; they are unconditional when there is no condition attached;

4.-3. Agreements are annulled or rendered of no effect, first, by the acts of the parties, as, by payment; release - accord and satisfaction; rescission, which is express or implied; 1 Watts & Serg. 442; defeasance; by novation: secondly, by the acts of the law, as, confusion; merger; lapse of time; death, as when a man who has bound himself to teach an apprentice, dies; extinction of the thing which is the subject of the contract, as, when the agreement is to deliver a certain horse and before the time of delivery he dies. See Discharge of a Contract.

5. The writing or instrument containing an agreement is also called an agreement, and sometimes articles of agreement.(q.v.)

6. It is proper, to remark that there is much difference between an agreement and articles of agreement which are only evidence of it. From the

moment that the parties have given their consent, the agreement or contract is formed, and, whether it can be proved or not, it has not less the quality to bind both contracting parties. A want of proof does not make it null, because that proof may be supplied aliunde, and the moment it is obtained, the contract may be enforced.

7. Again, the agreement may be mull, as when it was obtained by fraud, duress, and the like; and the articles of agreement may be good, as far as the form is concerned. Vide Contract. Deed; Guaranty; Parties to Contracts.

AGRI. Arable land in the common fields. Cunn. Dict. h.t.

AGRICULTURE. The art of cultivating the earth in order to obtain from it the divers things it can produce; and particularly what is useful to man, as grain, fruit's, cotton, flax, and other things. Domat, Dr. Pub. liv. tit. 14, s. 1, n. 1.

AID AND COMFORT. The constitution of the United States, art. 8, s. 3, declares, that adhering to the enemies of the United States, giving them aid and comfort, shall be treason. These words, as they are to be understood in the constitution, have not received a full judicial construction. They import, however, help, support, assistance, countenance, encouragement. The word aid, which occurs in the Stat. West. 1, c. 14, is explained by Lord Coke (2 just. 182) as comprehending all persons counselling, abetting, plotting, assenting, consenting, and encouraging to do the act, (and he adds, what is not applicable to the Crime to treason,) who are not present when the act is done, See, also, 1 Burn's Justice, 5, 6; 4 Bl. Com. 37, 38.

AID PRAYER, English law. A petition to the court calling in help from another person who has an interest in the matter in dispute. For example, a tenant for life, by the courtesy or for years, being impleaded, may pray aid of him in reversion; that is, desire the court that he may be called by writ, to allege what he thinks proper for the maintenance of the right of the person calling him, and of his own. F. N. B. 60; Cowel.

AIDERS, crim. law. Those who assist, aid, or abet the principal, and who are

principals in the second degree. 1. Russell, 21.

AIDS, Engl. law. Formerly they were certain sums of money granted by the tenant to his lord in times of difficulty and distress, but, as usual in such cases, what was received as a gratuity by the rich and powerful from the weak and poor, was soon claimed as a matter of right; and aids became a species of tax to be paid by the tenant to his lord, in these cases: 1. To ransom the lord's person, when taken prisoner; 2. To make the lord's eldest son a knight; 3. To marry the lord's eldest daughter, by giving her a suitable portion. The first of these remained uncertain; the other two were fixed by act of parliament at twenty shillings each being the supposed twentieth part of a knight's fee, 2 Bl. Com. 64.

AILE or AYLE, domestic relations. This is a corruption of the French word aieul, grandfather, avus. 3.Bl. Com. 186.

AIR. That fluid transparent substance which surrounds our globe.

2. No property can be had in the air it belongs equally to all men, being indispensable to their existence. To poison or materially to change the air, to the annoyance of the public, is a nuisance. Cro. Cr. 610; 2 Ld.

Raym 1163; I Burr. 333; 1 Str. 686 Hawk. B. 1, c. 75, s. 10; Dane's Ab. Index h.t. But this must be understood with this qualification, that no one has a right to use the air over another man's land, in such a manner as to be injurious to him. See 4 Campb. 219; Bowy. Mod. Civ. Law, 62; 4 Bouv. Inst. n. 36 1; Grot. Droit de la Guerre et de la Paix, liv. 2, c. 2, Sec. 3, note, 3 et 4.

3. It is the right of the proprietor of an estate to enjoy the light and air that will come to him, and, in general, no one has a right to deprive him of them; but sometimes in building, a man opens windows over his neighbor's ground, and the latter, desirous of building on his own ground, necessarily stops the windows already built, and deprives the first builder of light and air; this he has the right to do, unless the windows are ancient lights, (q.v.) or the proprietor has acquired a right by grant or prescription to have such windows open. See Crabb on R. P. Sec. 444 to 479 and Plan. Vide Nuisance.

AJUTAGE. A conical tube, used in drawing water through an aperture, by the use of which the quantity of water drawn is much increased. When a privilege to draw water from a canal through the forebay or tunnel by means of in aperture has been granted, it is not lawful to add an adjutage, unless such was the intention of the parties. 2 Whart. R. 477.

ALABAMA. The name of one of the new states of the United States of America. This state was admitted into the Union by the resolution of congress, approved December 14th, 1819, 3 Sto. L. U. S. 1804, by which it is resolved that the state of Alabama shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever. The convention

which framed the constitution in this state, assembled at the town of Huntsville on Monday the fifth day of July, 1819, and continued in session by adjournment, until the second day of August, 1819, when the constitution was adopted.

2. The powers of the government are divided by the constitution into three distinct, departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to a third. Art. 2,

3.-1. The legislative power of the state is vested in two distinct branches; the one styled the senate, the other the house of representatives, and both together, the general assembly of the state of Alabama. 1. The senate is never to be less than one-fourth nor more than one-third of the whole number of representatives. Senators are chosen by the qualified electors for the term of three years, at the same time, in the same manner, and at the same place, where they vote for members of the house of representatives; one-third of the whole number of senators are elected every year. Art. 3, s. 12. 2. The house of representatives is to consist of not less than forty-four, nor more than sixty members, until the number of white inhabitant's shall be one hundred thousand; and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred. Art. 3, B. 9. The members of the house of representatives are chosen by the qualified electors for the term of one year, from the commencement of the general election, and no longer.

4.-2. The supreme executive power is vested in a chief magistrate, styled the governor of the state of Alabama. He is elected by the qualified electors, at the time and places when they respectively vote for representatives; he holds his office for the term of two years from the time of his installation, and until a successor is duly qualified; and is not eligible more than four years in any term of six years. t. 4. He is

invested, among other things, with the veto power. Ib. s. 16. In cases of vacancies, the president of the senate acts as governor. Art. 4, s. 18.

5.-3. The judicial power is vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and, equity, to consist of not more than five members, as the general assembly may, from time to time direct, ordain, and establish. Art. 6, S. 1.

ALBA FIRMA. Eng. law. When quit rents were reserved payable in silver or white money, they were called white rents, or blanch farms reditus albi. When they were reserved payable in work, grain, or the like, they were called reditus nigri or black mail. 2 Inst. 19.

ALCADE, Span. law. The name of a judicial officer in Spain, and in those countries which have received the body of their laws from those of Spain.

ALDERMAN. An officer, generally appointed or elected in towns corporate, or cities, possessing various powers in different places.

2. The aldermen of the cities of Pennsylvania, possess all the powers and jurisdictions civil and criminal of justices of the peace. They are besides, in conjunction with the respective mayors or recorders, judges of the mayor's courts.

3. Among the Saxons there was an officer called the ealderman. ealdorman, or aldernwn, which appellation signified literally elderman. Like the Roman senator, he was so called, not on account of his age, but because of his wisdom and dignity, non propter oetatem sed propter sapientism et dignitatem. He presided with the bishop at the scyregemote, and was, ex officio, a member of the witenagemote. At one time he was a military officer, but afterwards his office was purely judicial.

4. There were several kinds of aldermen, as king's aldermen, aldermen of all England, aldermen of the county, aldermen of the hundred, &c., to denote difference of rank and jurisdiction.

ALEA; civil law. The chance of gain or loss in a contract. This chance results either from the uncertainty of the thing sold, as the effects of a succession; or from the uncertainty of the price, as when a thing is sold for an annuity, which is to be greater or less on the happening of a future event; or it sometimes arises in consequence of the uncertainty of both. 2 Duv. Dr. Civ. Fr. n. 74.

ALEATORY CONTRACTS, civil law. A mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties, or to some of them, depend on an uncertain event. Civ. Code of Louis. art. 2951.

2.-1. These contracts are of two kinds; namely, 1. When one of the parties exposes himself to lose something which will be a profit to the other, in consideration of a sum of money which the latter pays for the risk. Such is the contract of insurance; the insurer takes all the risk of the sea, and the assured pays a premium to the former for the risk which he runs.

3.-2. In the second kind, each runs a risk which is the consideration of the engagement of the other; for example, when a person buys an annuity, he runs the risk of losing the consideration, in case of his death soon after, but he may live so as to receive three times the amount of the price he paid for it. Merlin, Rep. mot Aleatoire.

ALER SANS JOUR, or aller sans jour, in practice. A French phrase which means

go without day; and is used to signify that the case has been finally dismissed the court, because there is no further day assigned for appearance. Kitch. 146.

ALFET, obsolete. A vessel in which hot water was put, for the purpose of dipping a criminal's arm in it up to the elbow.

ALIA ENORMIA, pleading. And other wrongs. In trespass, the declaration ought to conclude "and other wrongs to the said plaintiff then and there did, against the peace," &c.

2. Under this allegation of alia enormia, some matters may be given in evidence in aggravation of damages, though not specified in other parts of the declaration. Bull. N. P. 89; Holt, R. 699, 700. For example, a trespass for breaking and entering a house, the plaintiff may, in aggravation of damages, give in evidence the debauching of his daughter, or the beating of his servants, under the general allegation alia enormia, &c. 6 Mod. 127.

3. But under the alia nomia no evidence of the loss of service, or any other matter which would of itself sustain an action; for if it would, it should be stated specially. In trespass quare clausum fregit, therefore, the plaintiff would not, under the above general allegation, be permitted to give evidence of the defendant's taking away a horse, &c. Bull. N. P. 89; Holt, R. 700; 1 Sid. 225; 2 Salk. 643; 1 Str. 61; 1 Chit. Pl. 388; 2 Greenl. Ev. Sec. 278.

ALIAS, practice. This word is prefixed to the name of a second writ of the same kind issued in the same cause; as, when a summons has been issued and it is returned by the sheriff, nil, and another is issued, this is called an alias summons. The term is used to all kinds of writs, as alias fi. fa.,

alias vend. exp. and the like. Alias dictus, otherwise called; a description of the defendant by an addition to his real name of that by which he is bound in the writing; or when a man is indicted and his name is uncertain, he may be indicted as A B, alias dictus C D. See 4 John. 1118; 1 John. Cas. 243; 2 Caines, R. 362; 3 Caines, R. 219.

ALIBI, in evidence. This is a Latin word which signifies, elsewhere.

2. When a person, charged with a crime, proves (se eadem die fuisse alibi,) that he was, at the time alleged, in a different place from that in which it was committed, he is said to prove an alibi, the effect of which is to lay a foundation for the necessary inference, that he could not have committed it. See Bract. fo. 140, lib. 3, cap. 20, De Corona.

3. This proof is usually made out by the testimony of witnesses, but it is presumed it might be made out by writings; as if the party could prove by a record properly authenticated, that on the day or at the time in question, he was in another place.

4. It must be admitted that mere alibi evidence lies under a great and general prejudice, and ought to be heard with uncommon caution; but if it appear, to be founded in truth, it is the best negative evidence that can be offered; it is really positive evidence, which in the nature of things necessarily implies a negative; and in many cases it is the only evidence which an innocent man can offer.

ALIEN, persons. One born out of the jurisdiction of the United States, who has not since been naturalized under their constitution and laws. To this there are some exceptions, as this children of the ministers of the United States in foreign courts. See Citizen, Inhabitant.

2. Aliens are subject to disabilities, have rights, and are bound to perform duties, which will be briefly considered. 1. Disabilities. An alien

cannot in general acquire title to real estate by the descent, or by other mere operation of law; and if he purchase land, he may be divested of the fee, upon an inquest of office found. To this general rule there are statutory exceptions in some of the states; in Pennsylvania, Ohio, Louisiana, New Jersey, Rev. Laws, 604, and Michigan, Rev. St. 266, s. 26, the disability has been removed; in North Carolina, (but see Mart. R. 48; 3 Dev. R. 138; 2 Hayw. 104, 108; 3 Murph. 194; 4 Dev. 247; Vermont and Virginia, by constitutional provision; and in Alabama, 3 Stew R. 60; Connecticut, act of 1824, Stat. tit. Foreigners, 251; Indiana, Rev. Code, a. 3, act of January 25, 1842; Illinois, Kentucky, 1 Litt. 399; 6 Mont. 266 Maine, Rev. St,. tit. 7, c. 93, s. 5 Maryland, act of 1825, ch. 66; 2 Wheat. 259; and Missouri, Rev. Code, 1825, p. 66, by statutory provision it is partly so.

3. An alien, even after being naturalized, is ineligible to the office of president of the United States; and in some states, as in New York, to that of governor; he cannot be a member of congress, till the expiration of seven years after his naturalization. An alien can exercise no political rights whatever; he cannot therefore vote at any political election, fill any office, or serve as a juror. 6 John. R. 332.

4.-2. An alien has a right to acquire personal estate, make and enforce contracts in relation to the same - he is protected from injuries, and wrongs, to his person and property, his relative rights and character; he may sue and be sued.

5.-3. He owes a temporary local allegiance, and his property is liable to taxation. Aliens are either alien friends or alien enemies. It is only alien friends who have the rights above enumerated; alien enemies are incapable, during the existence of war to sue, and may be ordered out of the country. See generally, 2 Kent. Com. 43 to 63; 1 Vin. Ab. 157; 13 Vin. ab.

414; Bac. Ab. h.t.; 1 Saund. 8, n.2; Wheat. Dig. h.t.; Bouv. Inst. Index, h.t.

ALIENAGE. The condition or state of alien.

ALIENATE, aliene, alien. This is a generic term applicable to the various methods of transferring property from one person to another. Lord Coke, says,

(1 Inst. 118 b,) alien cometh of the verb alienate, that is, alienum facere vel ex nostro dominio in alienum trawferre sive rem aliquam in dominium alterius transferre. These methods vary, according to the nature of the property to be conveyed and the particular objects the conveyance is designed to accomplish. It has been held, that under a prohibition to alienate, long leases are comprehended. 2 Dow's Rep. 210.

ALIENATION, estates. Alienation is an act whereby one man transfers the property and possession of lands, tenements, or other things, to another. It is commonly applied to lands or tenements, as to alien (that is, to convey) land in fee, in mortmain. Termes de la ley. See Co. Litt. 118 b; Cruise Dig. tit. 32, c. 1, Sec. 1-8.

2. Alienations may be made by deed; by matter of record; and by devise.

3. Alienations by deed may be made by original or primary conveyances, which are those by means of which the benefit or estate is created or first arises; by derivative or secondary conveyances, by which the benefit or estate originally created, is enlarged, restrained, transferred, or extinguished. These are conveyances by the common law. To these may be added some conveyances which derive their force and operation from the statute of uses. The original conveyances are the following: 1. Feoffment; 2. Gift; 3. Grant; 4. Lease; 6. Exchange; 6. Partition. The derivative are, 7. Release;

8. Confirmation; 9. Surrender; 10. Assignment; 11. Defeasance. Those deriving their force from the statute of uses, are, 12. Covenants to stand seised to uses; 13. Bargains and sales; 14. Lease and release; 15. Deeds to lend or declare the uses of other more direct conveyances; 16. Deeds of revocation of uses. 2 Bl. Com. ch. 20. Vide Conveyance; Deed. Alienations by matter of record may be, 1. By private acts of the legislature; 2. By grants, as by patents of lands; 3. By fines; 4. By common recovery. Alienations may also be made by devise (q.v.)

ALIENATION, med. jur. The term alienation or mental alienation is a generic expression to express the different kinds of aberrations of the human understanding. Dict. des Science Med. h.t.; 1 Beck's Med. Jur. 535.

ALIENATION OFFICE, English law. An office to which all writs of covenants and entries are carried for the recovery of fines levied thereon. See Alienate.

TO ALIENE, contracts. See Alienate.

ALIENEE. One to whom an alienation is made.

ALIEXI JURIS. Words applied to persons who are subject to the authority of another. An infant who is under the authority of his father or guardian, and a wife under the power of her husband, are said to be alieni juris. Vide sui juris.

ALIENOR. He who makes a grant or alienation.

ALIMENTS. In the Roman and French law this word signifies the food and other things necessary to the support of life, as clothing and the like. The same name is given to the money allowed for aliments. Dig. 50, 16, 43.

2. By the common law, parents and children reciprocally owe each other aliments or maintenance. (q.v.) Vide 1 Bl. Com. 447; Merl. Rep. h.t.; Dig. 25, 3, 5. In the common law, the word alimony (q.v.) is used. Vide Allowance to a Prisoner.

ALIMONY. The maintenance or support which a husband is bound to give to his wife upon separation from her; or the support which either father or mother is bound to give to his or her children, though this is more usually called maintenance.

2. The causes for granting alimony to the wife are, 1, desertion, (q.v.) or cruelty of the husband; (q.v.) 4 Desaus. R. 79,; 1 M'Cord's Ch. R. 205; 4 Rand. R. 662; 2 J. J; Marsh. R. 324.; 1 Edw. R. 62; and 2, divorce. 4 Litt. R. 252; 1 Edw. R. 382; 2 Paige, R. 62; 2 Binn. R. 202; 3 Yeates, R. 50; S.& R. 248; 9 S.& R. 191; 3 John. Ch. R. 519; 6 John. Ch. 91.

3. In Louisiana by alimony is meant the nourishment, lodging and support of the person who claims it. It includes education when the person to whom alimony is due is a minor. Civil Code of L. 246.

4. Alimony is granted in proportion to the wants of the person requiring it, and the circumstances of those who are to pay it. By the common law, parents and children owe each other alimony. 1 Bl. Com. 447; 2 Com. Dig. 498;. 3 Ves. 358; 4 Vin. Ab. 175; Ayl. Parerg. 58; Dane's Ab. Index. h.t.; Dig. 34, 1. 6.

5. Alimony is allowed to the wife, pendente lite, almost as a matter of course whether she be plaintiff or defendant, for the obvious reason that she has generally no other means of living. 1 Clarke's R. 151. But there are

special cases where it will not be allowed, as when the wife, pending the progress of the suit, went to her father's, who agreed with the husband to support her for services. 1 Clarke's R. 460. See Shelf. on Mar. and Div. 586; 2 Toull. n. 612.

ALITER, otherwise. This term is frequently used to point out a difference between two decisions; as, a point of law has been decided in a particular way, in such a case, aliter in another case.

ALIUNDE. From another place; evidence given aliunde, as, when a will contains an ambiguity, in some cases, in order to ascertain the meaning of the testator, evidence aliunde will be received.

ALL FOURS. This is a metaphorical expression, to signify that a case agrees in all its circumstances with another case; it goes as it were upon its four legs, as an animal does.

ALLEGATA. A word which the emperors formerly signed at the bottom of their rescripts and constitutions; under other instruments they usually wrote nata or testate. Ency. Lond.

ALLEGATA AND PROBATA. The allegations made by a party to a suit, and the proof adduced in their support. It is a general rule of evidence that the allegata and probata must correspond; that is, the proof must at least be sufficiently extensive to cover all the allegations of the party. Greenl. Ev. Sec. 51; 3 R. s. 636.

ALLEGATION, English ecclesiastical law. According to the practice of the

prerogative court, the facts intended to be relied on in support of the contested suit are set forth in the plea, which is termed an allegation; this is submitted to the inspection of the counsel of the adverse party, and, if it appear to them objectionable in form or substance, they oppose the admission of it. If the opposition goes to the substance of the allegation, and is held to be well founded, the court rejects it; by which mode of proceeding the suit is terminated without, going into any proof of the facts. 1 Phil. 1, n.; 1 Eccl. Rep. ll, n. S. C. See 1 Brown's Civ. Law, 472, 3, n.

ALLEGATION, common law. The assertion, declaration or statement of a party of what he can prove.

ALLEGATION, civil law. The citation or reference to a voucher to support a proposition. Dict. de jurisp.; Encyclopedie, mot Allegation; 1 Brown's Civ. Law, 473, n.

ALLEGATION OF FACULTIES When a suit is instituted in the English ecclesiastical courts, in order to obtain alimony, before it is allowed, an allegation must be made on the part of the wife, stating the property of the husband. This allegation is called an allegation of faculties. Shelf. on Mar. and Div. 587.

ALLEGIANCE. The tie which binds the citizen to the government, in return for the protection which the government affords him.

2. It is natural, acquired, or local. Natural allegiance is such as is due from all men born within the United States; acquired allegiance is that which is due by a naturalized citizen. It has never been decided whether a citizen can, by expatriation, divest himself absolutely of that character. 2

Cranch, 64; 1 Peters' C. C. Rep. 159; 7 Wheat. R. 283; 9 Mass. R. 461. Infants cannot assume allegiance, (4 Bin. 49) although they enlist in the army of the United States. 5 Bin. 429.

3. It seems, however, that he cannot renounce his allegiance to the United States without the permission of the government, to be declared by law. But for commercial purposes he may acquire the rights of a citizen of another country, and the place of his domicil determines the character of a party as to trade. 1 Kent, Com. 71; Com. Rep. 677; 2 Kent, Com. 42.

4. Local allegiance is that which is due from an alien, while resident in the United States, for the protection which the government affords him. 1 Bl. Com. 366, 372; Com. Dig. h.t; Dane's Ab. Index, h.t.; 1 East, P.C. 49 to 57.

ALLIANCE, relationship. The union or connexion of two persons or families by marriage, which is also called affinity. This is derived from the Latin preposition ad and ligare, to bind. Vide Inst 1, 10, 6; Dig 38, 10, 4, 3; and Affinity.

ALLIANCE, international law. A contract, treaty, or league between two sovereigns or states, made to insure their safety and common defence.

2. Alliances made for warlike purposes are divided in general into defensive and offensive; in the former the nation only engages to defend her ally in case he be attacked; in the latter she unites with him for the purpose of making an attack, or jointly waging the war against another nation. Some alliances are both offensive and defensive; and there seldom is an offensive alliance which is not also defensive. Vattel, B. 3, c. 6, Sec. 79; 2 Dall. 15.

ALLISION, maritime law. The running of one vessel against another. It is distinguished from collision in this, that the latter means the running of two vessels against each other; this latter term is frequently used for allision.

ALLOCATION, Eng. law. An allowance upon account in the Exchequer; or rather, placing or adding to a thing. Ency. Lond.

ALLOCATIONE FACIENDA. Eng. law. A writ commanding that an allowance be made to an accountant, for such moneys as he has lawfully expended in his office. It is directed to the lord treasurer and barons of the exchequer.

ALLOCATUR, practice. The allowance of a writ; e. g. when a writ of habeas corpus is prayed for, the judge directs it to be done, by writing the word allowed and signing his name; this is called the allocator. In the English courts this word is used to indicate the master or prothonotary's allowance of a sum referred for his consideration, whether touching costs, damages, or matter of account. Lee's Dict. h, t.

ALLODIUM estates. Signifies an absolute estate of inheritance, in contradistinction to a feud.

2. In this country the title to land is essentially allodial, and every tenant in fee simple has an absolute and perfect title, yet in technical language his estate is called an estate in fee simple, and the tenure free and common socage. 3 Kent, Com. 390; Cruise, Prel. Dis. c. 1, Sec. 13; 2 Bl. Com. 45. For the etymology of this word, vide 3 Kent Com. 398 note; 2 Bouv. Inst. n. 1692.

ALLONGE, French law. When a bill of exchange, or other paper, is too small

to receive the endorsements which are to be made on it, another piece of paper is added to it, and bears the name of allonge. Pard. n. 343; Story on P. N. Sec. 121, 151; Story on Bills, 204. See Rider.

ALLOTMENT. Distribution by lot; partition. Merl. Rep. h.t.

TO ALLOW, practice. To approve; to grant; as to allow a writ of error, is to approve of it, to grant it. Vide Allocatur. To allow an amount is to admit or approve of it.

ALLOWANCE TO A PRISONER. By the laws of, it is believed, all the states, when a poor debtor is in arrest in a civil suit, the plaintiff is compelled to pay an allowance regulated by law, for his maintenance and support, and in default of such payment at the time required, the prisoner is discharged. Notice must be given to the plaintiff before the defendant can be discharged.

ALLOY, or ALLAY. An inferior metal, used with gold. and silver in making coin or public money. Originally, it was one of the allowances known by the name of remedy for errors, in the weight and purity of coins. The practice of making such allowances continued in all European mints after the reasons, upon which they were originally founded, had, in a great measure, ceased. In the imperfection of the art of coining, the mixture of the metals used, and the striking of the coins, could not be effected with, perfect accuracy. There would be some variety in the mixture of metals made at different times, although intended to be in the same proportions, and in different pieces of coin, although struck by the same process and from the same die. But the art of coining metals has now so nearly attained perfection, that

such allowances have become, if not altogether, in a great measure at least, unnecessary. The laws of the United States make no allowance for deficiencies of weight. See Report of the Secretary of State of the United States, to the Senate of the U. S., Feb. 22, 1821, pp. 63, 64.

2. The act of Congress of 2d of April, 1792, sect. 12, directs that the standard for all gold coins of the United States, shall be eleven parts fine to one part of alloy; and sect. 13, that the standard for all silver coins of the United States, shall be one thousand four hundred and eighty-five parts fine, to one hundred and seventy-nine parts alloy. 1 Story's L. U. S. 20. By the act of Congress, 18th Feb. 1831, Sec. 8, it is provided, that the standard for both gold and silver coin of the United States, shall be such, that of one thousand parts by weight, nine hundred shall be of pure metal, and one hundred of alloy; and the alloy of the silver coins shall be of copper, and the alloy of gold coins shall be of copper and silver, provided, that the silver do not exceed one-half of the whole alloy. See also, Smith's Wealth of Nations, vol. i., pp. 49, 50.

ALLUVION. The insensible increase of the earth on a shore or bank of a river by the force of the, water, as by a current or by waves. It is a part of the definition that the addition, should be so gradual that no one can judge how much is added at each moment of time. Just. Inst. lib. 2, tit. 1, Sec. 20; 3 Barn. & Cress. 91; Code Civil Annote No. 556. The proprietor of the bank increased by alluvion is entitled to the addition. Alluvion differs from avulsion in this: that the latter is sudden and perceptible. See avulsion. See 3 Mass. 352; Coop. Justin. 458; Lord Raym. 77; 2 Bl. Com. 262, and note by Chitty; 1 Swift's Dig. 111; Coop. Just. lib. 2, t. 1; Angell on Water Courses, 219; 3 Mass. R. 352; 1 Gill & Johns. R. 249; Schultes on Aq. Rights, 116; 2 Amer. Law Journ. 282, 293; Angell on Tide Waters, 213; Inst. 2, 1, 20; Dig. 41, 1, 7; Dig. 39, 2, 9; Dig. 6, 1, 23; Dig. 1, 41, 1, 5; 1

Bouv. Inst. pars 1, c. 1 art. 1, Sec. 4, s. 4, p. 74.

ALLY, international law. A power which has entered into an alliance with another power. A citizen or subject of one of the powers in alliance, is sometimes called an ally; for example, the rule which renders it unlawful for a citizen of the United States to trade or carry on commerce with an enemy, also precludes an ally from similar intercourse. 4 Rob. Rep. 251; 6 Rob. Rep. 406; Dane's Ab, Index, h.t.; 2 Dall. 15.

ALMANAC. A table or calendar, in which are set down the revolutions of the seasons, the rising and setting of the sun, the phases of the moon, the most remarkable conjunctions, positions and phenomena of the heavenly bodies, the months of the year, the days of the month and week, and a variety of other matter.

2. The courts will take judicial notice of the almanac; for example, whether a certain day of the month was on a Sunday or not. Vin. Ab. h.t.; 6 Mod. 41; Cro. Eliz. 227, pl. 12; 12 Vin. Ab. Evidence (A, b, 4.) In dating instruments, some sects, the Quakers, for example, instead of writing January, February, March, &c., use the terms, First month, Second month, Third month, &c., and these are equally valid in such writings. Vide 1 Smith's Laws of Pennsylvania, 217.

ALLODARII, Eng. law, Book of Domesday. Such tenants, who have as large an estate as a subject can have. 1 Inst. 1; Bac. Ab Tenure, A.

ALMS. In its most extensive sense, this comprehends every species of relief bestowed upon the poor, and, therefore, including all charities. In a more, limited sense, it signifies what is given by public authority for the relief

of the poor. Shelford on Mortmain, 802, note (x); 1 Dougl. Election Cas. 370; 2 Id. 107; Heywood on Elections, 263.

ALTA PRODITIO, Eng. law. High treason.

ALTARAGE, eccl. law. Offerings made on the altar; all profits which accrue to the priest by means of the altar. Ayl. Par. 61; 2 Cro. 516.

TO ALTER. To change. Alterations are made either in the contract itself, or in the instrument which is evidence of it. The contract may at any time be altered with the consent of the parties, and the alteration may be either in writing or not in writing.

2. It is a general rule that the terms of a contract under seal, cannot be changed by a parol agreement. Cooke, 500; 3 Blackf. R. 353; 4 Bibb. 1. But it has been decided that an alteration of a contract by specialty, made by parol, makes it all parol. 2 Watts, 451; 1 Wash. R. 170; 4 Cowen, 564; 3 Harr. & John. 438; 9 Pick. 298; 1 East, R. 619; but see 3 S.& R. 579.

3. When the contract is, in writing, but not under seal, it may be varied by parol, and the whole will make but one agreement. 9 Cowen, 115; 5.N. H. Rep. 99; 6 Harr. & John, 38; 18 John. 420; 1 John. Cas. 22; 5 Cowen, 606; Pet. C. C. R. 221; 1 Fairf. 414.

4. When the contract is evidenced by a specialty, and it is altered by parol, the whole will be considered as a parol agreement. 2 Watt 451; 9 Pick. 298. For alteration of instruments see Erasure; Interlineation. See, generally, 7 Greenl. 76, 121, 394; 15 John. 200; 2 Penna. R. 454.

ALTERATION. An act done upon an instrument in writing by a party entitled under it, without the consent of the other party, by which its meaning or

language is changed; it imports some fraud or design on the part of him who made it. This differs from spoliation, which is the mutilation of the instrument by the act of a stranger.

2. When an alteration has a tendency to mislead, by so changing the character of the instrument, it renders it void; but if the change has not such tendency, it will not be considered an alteration. 1 Greenl. Ev. 566.

3. A spoliation, on the contrary, will not affect the legal character of the instrument, so long as the original writing remains legible; and, if it be a deed, any trace of the seal remains. 1 Greenl. Ev. Sec. 566. See Spoliation.

ALTERNAT. The name of a usage among diplomatists by which the rank and places of different powers, who have the same rights and pretensions to precedence, are changed from time to time, either in a certain regular order, or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. Wheat. Intern. Law, pt. 2, c. 3, Sec. 4..

ALTERNATIVE. The one or the other of two things. In contracts a party has frequently the choice to perform one of several things, as, if he is bound to pay one hundred dollars, or to deliver a horse, he has the alternative. Vide Election; Obligation; Alternative.

ALTIUS NON TOLLENDI, civil law. The name of a servitude due by the owner of a house, by which he is restrained from building beyond a certain height. Dig. 8, 2, 4, and 1, 12, 17, 25.

ALTIUS TOLLENDI, civil law. The name of a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he, is restrained by home contrary title.

ALTO ET BASSO. High and low. This phrase is applied to an agreement made between two contending parties to submit all matters in dispute, alto et basso, to arbitration. Cowel.

ALTUM MARE. The high sea. (q.v.)

ALUMNUS, civil law. A child which one has nursed; a foster child. Dig. 40, 2, 14.

AMALPHITAN CODE. The name given to a collection of sea-laws, complied about the end of the eleventh century, by the people of Amalphi. It consists of the laws on maritime subjects which were, or had been, in force in countries bordering on the Mediterranean; and, on account of its being collected into one regular system, it was for a long time received as authority in those countries. 1 Azun. Mar. Law, 376.

AMANUENSIS. One who write another dictates. About the beginning of the sixth century,, the tabellions (q.v.) were known by this name. 1 Sav. Dr. Rom. Moy. Age, n. 16.

AMBASSADOR, international law. A public minister sent abroad by some sovereign state or prince, with a legal commission and authority to transact business on behalf of his country with the government to which he is sent.

He is a minister of the highest rank, and represents the person of his sovereign.

2. The United States have always been represented by ministers plenipotentiary, never having sent a person of the rank of an, ambassador in the diplomatic sense. 1 Kent's Com. 39, n.

3. Ambassadors, when acknowledged as such, are exempted, absolutely from all allegiance, and from all responsibility to the laws. If, however, they should be so regardless of their duty, and of the object of their privilege, as to insult or openly to attack the laws of the government, their functions may be suspended by a refusal to treat with them, or application can be made to their own sovereign for their recall, or they may be dismissed, and required to depart within a reasonable time. By fiction of law, an ambassador is considered as if he were out of the territory of the foreign power; and it is an implied agreement among nations, that the ambassador, while he resides in the foreign state, shall be considered as a member of his own country, and the government he represents has exclusive cognizance of his conduct, and control of his person. The attendants of the ambassador are attached to his person, and the effects in his use are under his protection and privilege, and, generally, equally exempt from foreign jurisdiction.

4. Ambassadors are ordinary or extraordinary. The former designation is exclusively applied to those sent on permanent missions; the latter, to those employed on particular or extraordinary occasions, or residing at a foreign court for an indeterminate period. Vattel, Droit des Gens, 1. 4, c. 6, Sec. 70-79.

5. The act of Congress of April 30th, 1790, s. 25, makes void any writ or process sued forth or prosecuted against any ambassador authorized and received by the president of the United States, or any domestic servant of

such ambassador; and the 25th section of the same act, punishes any person who shall sue forth or prosecute such writ or process, and all attorneys and soliciters prosecuting or soliciting in such case, and all officers executing such writ or process, with an imprisonment not exceeding three years, and a fine at the discretion of the court. The act provides that citizens or inhabitants of the United States who were indebted when they went into the service of an ambassador, shall not be protected as to such debt; and it requires also that the names of such servants shall be registered in the office of the secretary of state. The 16th section imposes the like punishment on any person offering violence to the person of an ambassador or other minister. P Vide 1 Kent, Com. 14, 38, 182; Rutherf. Inst. b. 2, c. 9; Vatt. b. 4, c. 8, s. 113; 2 Wash. C. C. R. 435; Ayl. Pand. 245; 1 Bl. Com. 253; Bac. Ab. h.t.; 2 Vin. Ab. 286; Grot. lib. 2, c. 8, 1, 3; 1 Whart. Dig. 382; 2 Id. 314; Dig. l. 50, t. 7; Code I. 10, t. 63, l. 4; Bouv. Inst. Index, h.t.

6. The British statute 7 Ann, cap. 12; is similar in its provisions; it extends to the family and servants of an ambassador, as well when they are the natives of the country in which the ambassador resides, as when they are foreigners whom he brings with him. (3 Burr. 1776-7) To constitute a domestic servant within the meaning of the statute, it is not necessary that the servant should lodge, at night in the house of the ambassador, but it is necessary to show the nature of the service he renders and the actual performance of it. 3 Burr. 1731; Cases Temp. Hardw. 5. He must, in fact, prove that he is bona fide the ambassador's servant. A land waiter at the custom house is not such, nor entitled to the privilege of the statute. 1 Burr. 401. A trader is not entitled to the protection of the statute. 3 Burr. 1731; Cases Temp. Hardw. 5. A person in debt cannot be taken into an ambassador's service in order to protect him. 3 Burr. 1677.

AMBIDEXTER. It is intended by this Latin word, to designate one who plays on both sides; in a legal sense it is taken for a juror or embraceor who takes money from the parties for giving his verdict. This is seldom or never done in the United States.

AMBIGUITY, contracts, construction. When au expression has been used in an instrument of writing which may be understood in more than one sense, it is said there is an ambiguity,

2. There are two sorts of ambiguities of words, ambiguitas latens and ambiguitas patens.

3. The first occurs when the deed or instrument is sufficiently certain and free from ambiguity, but the ambiguity is produced by something extrinsic, or some collateral matter out of the instrument; for example, if a man devise property to his cousin A B, and he has two cousins of that name, in such case parol evidence will be received to explain the ambiguity.

4. The second or patent ambiguity occurs when a clause in a deed, will, or other instrument, is so defectively expressed, that a court of law, which has to put a construction on the instrument, is unable to collect the intention of the party. In such case, evidence of the declaration of the party cannot be submitted to explain his intention, and the clause will be void for its uncertainty. In Pennsylvania, this rule is somewhat qualified. 3 Binn. 587; 4 Binn. 482. Vide generally, Bac. Max. Reg. 23; 1 Phu. Ev. 410 to 420; 3 Stark. Ev. 1021 ; I Com. Dig. 575; Sudg. Vend. 113. The civil law on this subject will be found in Dig. lib. 50, t. 17, 1. 67; lib. 45, t. 1, 1. 8; and lib. 22, t. 1, 1. 4.

AMBULATORIA VOLUNTAS. A phrase used to designate that a man has the power to alter his will or testament as long as he lives. This form of phrase

frequently occurs in writers on the civil law; as ambulatoria res, ambulatoria actio, potestas, conditio, &c. Calvini Lexic.

AMENABLE. Responsible; subject to answer in a court of justice liable to punishment.

AMENDE HONORABLE, English law. A penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offence, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about the neck, and a torch in the hand, and begging the pardon of God, or the king, or any private individual, for some delinquency.

2. A punishment somewhat similar to this, and which bore the same name, was common in France; it was abolished by the law of the 25th of September, 1791. Merlin Rep. de Jur. h.'t.

3. For the form of a sentence of amende horrorable, see D'Agaesseau, Oeuvres, 43 Plaidoyer, tom. 4, p. 246.

AMENDMENT, legislation. An alteration or change of something proposed in a bill.

2. Either house of the legislature has a right to make amendments; but, when so made, they must be sanctioned by the other house before they can become a law. The senate has no power to originate any money bills, (q. v,) but may propose and make amendments to such as have passed the House of representatives. Vide Congress; Senate.

3. The constitution of the United States, art. 5, and the constitutions of some of the states, provide for their amendment. The provisions contained in tho constitution of the United States, are as follows: "Congress, whenever two-thirds of both houses shall deem it necessary, shall propose

amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

AMENDMENT, practice. The correction, by allowance of the court, of an error committed in the progress of a cause.

2. Amendments at common law, independently of any statutory provision on the subject, are in all cases in the discretion of the court, for the furtherance of justice they may be made while the proceedings are in paper, that is, until judgment is signed, and during the term in which it is signed; for until the end of the term the proceedings are considered in fieri, and consequently subject to the control of the court; 2 Burr. 756; 3 Bl. Com. 407; 1 Salk. 47; 2 Salk. 666 ; 8 Salk. 31; Co. Litt. 260; and even after judgment is signed, and up to the latest period of the action, amendment is, in most cases, allowable at the discretion of the court under certain statutes passed for allowing amendments of the record; and in later times the judges have been much more liberal than formerly, in the exercise of this discretion. 3 McLean, 379; 1 Branch, 437; 9 Ala. 647. They may, however, be made after the term, although formerly the rule was otherwise; Co. Litt. 260, a; 3 Bl. Com. 407; and even after error brought, where there

has been a verdict in a civil or criminal case. 2 Serg. & R. 432, 3. A remittitur damna may be allowed after error; 2 Dall. 184; 1 Yeates, 186; Addis, 115, 116; and this, although error be brought on the ground of the excess of damages remitted. 2 Serg. & R. 221. But the application must be made for the remittitur in the court below, as the court of error must take the record as they find it. 1 Serg. & R. 49. So, the death of the defendant may be suggested after errer coram nobis. 1 Bin. 486; I Johns. Cases, 29; Caines' Cases, 61. So by agreement of attorneys, the record may be amended after error. 1 Bin. 75; 2 Binn. 169.

3. Amendments are, however, always limited by due consideration of the rights of the opposite party; and, when by the amendment he would be prejudiced or exposed to unreasonable delay, it is not allowed. Vide Bac. Ab Com. Dig. h.t.; Viner's. Ab. h.t.; 2 Arch. Pr. 200; Grah. Pt. 524; Steph. Pl. 97; 2 Sell. Pr. 453; 3 Bl. Com. 406; Bouv. Inst. Index, h.t.

AMENDS. A satisfaction, given by a wrong doer to the party injured for a wrong committed. 1 Lilly's Reg. 81.

2. By statute 24 Geo. II. c. 44, in England, and by similar statutes in some of the United States, justices of the peace, upon being notified of an intended suit against them, may tender amends fore the wrong alleged or done by them in their official character, and if found sufficient, the tender debars the action. See Act of Penn. 21 March, 1772, Sec. 1 and.2; Willes' Rep. 671, 2; 6 Bin. 83; 5 Serg. & R. 517, 299; 3 Id. 295; 4 Bin. 20.

AMERCEMENT, practice. A pecuniary penalty imposed upon a person who is in misericordia; as, for example, when the defendant se retaxit, or recessit in contemptum curioe. 8 Co. 58; Bar. Ab. Fines and Amercements. By the common law, none can be amerced in his absence, except for his default. Non licet aliquem in sua absentia amerciare nisi per ejus defaltas. Fleta, lib. 2,

cap. 65, Sec. 15.

2. Formerly, if the sheriff failed in obeying the writs, rules, or orders of the court, he might be amerced; that is, a penalty might be imposed upon him; but this practice has been superseded by attachment. In New Jersey and Ohio, the sheriff may, by statutory provision, be amerced for making a return contrary to the provision of the statute. Coxe, 136, 169; 6 Halst. 334; 3 Halst. 270, 271; 5 Halst. 319; 1 Green, 159, 341; 2 Green, 350; 2 South. 433; 1 Ham. 275; 2 Ham. 603; 6 Ham. 452; Wright, 720.

AMERCIAMENT, AMERCEMENT, English law. A pecuniary punishment arbitrarily imposed by some lord or count, in distinction from a fine which is expressed according to the statute. Kitch. 78. Amerciament royal, when the amerciament is made by the sheriff, or any other officer of the king. 4 Bl. Com. 372.

AMI. A friend; or, as it is written in old works, amy. Vide Prochein amy.

AMICABLE ACTION, Pennsylvania practice. An action entered by agreement of parties on the dockets of the courts; when entered, such action is considered as if it, had been adversely commenced, and the defendant had been regularly summoned. An amicable action may be entered by attorney, independently of the provisions of the act of 1866. 8 Er & R. 567.

AMICUS CURIAE, practice. A friend of the court. One, who as a stander by, when a judge is doubtful or mistaken in a matter of law, may inform the court. 2 Inst. 178; 2 Vin. Abr. 475; and any one, as amicus curia, may make an application to the court in favor of an infant, though he be no relation. 1 Ves. Sen. 313.

AMITA. A paternal aunt; the sister of one's father. Inst. 3, 6, 3.

AMNESTY, government. An act of oblivion of past offences, granted by the government to those who have been guilty of any neglect or crime, usually upon condition that they return to their duty within a certain period.

2. An amnesty is either express or implied; it is express, when so declared in direct terms; and it is implied, when a treaty of peace is made between contending parties. Vide Vattel, liv. 4, c. 2, Sec. 20, 21, 22; Encycl. Amer. h.t.

3. Amnesty and pardon, are very different. The former is an act of the sovereign power, the object of which is to efface and to cause to be forgotten, a crime or misdemeanor; the latter, is an act of the same authority, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. 7 Pet. 160. Amnesty is the abolition and forgetfulness of the offence; pardon is forgiveness. A pardon is given to one who is certainly guilty, or has been convicted; amnesty, to those who may have been so.

4. Their effects are also different. That of pardon, is the remission of the whole or a part of the punishment awarded by the law; the conviction remaining unaffected when only a partial pardon is granted: an amnesty on the contrary, has the effect of destroying the criminal act, so that it is as if it had not been committed, as far as the public interests are concerned.

5. Their application also differs. Pardon is always given to individuals, and properly only after judgment or conviction: amnesty may be granted either before judgment or afterwards, and it is in general given to whole classes of criminals or supposed criminals, for the purpose of restoring tranquillity in the state. But sometimes amnesties are limited, and certain classes are excluded from their operation.

AMORTIZATION, contracts, English law. An alienation of lands or tenements in mortmain. 2 Stat. Ed. I.

2. The reduction of the property of lands or tenements to mortmain.

AMORTISE, contracts. To alien lands in mortmain.

AMOTION. In corporations and companies, is the act of removing an officer from his office; it differs from disfranchisement, which is applicable to members, as such. Wille. on Corp. n. 708. The power of amotion is incident to a corporation. 2 Str. 819; 1 Burr. 639.

2. In Rex v. Richardson, Lord Mansfield specified three sorts of offences for which an officer might be discharged; first, such as have no immediate relation to the office, but are in themselves of so infamous a nature, as to render the offender unfit to execute any public franchise; secondly, such as are only against his oath, and the duty of his office as a corporator, and amount to breaches of the tacit condition annexed to his office; thirdly, the third offence is of a mixed nature; as being an offence not only against the duty of his officer but also a matter indictable at common law. 2 Binn. R. 448. And Lord Mansfield considered the law as settled, that though a corporation has express power of amotion, yet for the first sort of offences there must be a previous indictment and conviction; and that there was no authority since Bagg's Case, 11 Rep. 99, which says; that the power of trial as well as of amotion, for the second offense, is not incident to every corporation. He also observed: "We think that from the reason of the thing, from the nature of the corporation, and for the sake of order and good government, this power is incident as much as the power of making bylaws." Doug. 149.

See generally, Wilcock on Mun. Corp. 268; 6 Conn. Rep. 632; 6 Mass. R. 462; Ang. & Am. on Corpor. 236.

AMOTION, tort. An amotion of possession from an estate, is an ouster which happens by a species of disseisin or turning out of the legal proprietor before his estate is determined. 3 Bl. Com. 198, 199. Amotion is also applied to personal chattels when they are taken unlawfully out of the possession of the owner, or of one who has a special property in them.

AMPLIATION, civil law. A deferring of judgment until the cause is further examined. In this case, the judges pronounced the word amplius, or by writing the letters N.L. for non liquet, signifying that the cause was not clear. In practice, it is usual in the courts when time is taken to form a judgment, to enter a curia advisare vult; cur. adv. vult. (q.v.)

AMPLIATION, French law. Signifies the giving a duplicate of an acquittance or other instrument, in order that it may be produced in different places. The copies which notaries make out of acts passed before them, and which are delivered to the parties, are also called ampliations. Dict. de Jur. h.t.

AMY or ami, a French word, signifying, friend. Prochein amy, (q.v.) the next friend. Alien amy, a foreigner, the citizen or subject of some friendly power or prince.

AN, JOUR, ET WASTE. See Year, day, and waste.

ANALOGY, construction. The similitude of relations which exist between things

compared.

2. To reason analogically, is to draw conclusions based on this similitude of relations, on the resemblance, or the connexion which is perceived between the objects compared. "It is this guide," says Toollier, which leads the law lawgiver, like other men, without his observing it. It is analogy which induces us, with reason, to suppose that, following the example of the Creator of the universe, the lawgiver has established general and uniform laws, which it is unnecessary to repeat in all analogous cases." Dr. Civ. Fr. liv. 3, t. 1, c. 1. Vide Ang. on Adv. Enjoym. 30, 31; Hale's Com. Law, 141.

3. Analogy has been declared to be an argument or guide in forming legal judgments, and is very commonly a ground of such judgments. 7 Barn. & Cres. 168; 3 Bing. R. 265; 8 Bing R. 557, 563; 3 Atk. 313; 1 Eden's R. 212; 1 W. Bl. 151; 6 Ves. jr. 675, 676; 3 Swanst. R. 561; 1 Turn. & R. 103, 338; 1 R. & M. 352, 475, 477; 4 Burr. R. 1962; 2022, 2068; 4 T. R. 591; 4 Barn. & Cr. 855; 7 Dowl. & Ry. 251; Cas. t. Talb. 140; 3 P. Wms. 391; 3 Bro. C. C. 639, n.

ANARCHY. The absence of all political government; by extension, it signifies confusion in government.

ANATHEMA, eccl. law. A punishment by which a person is separate from, the body of the church, and forbidden all intercourse with the faithful: it differs from excommunication, which simply forbids the person excommunicated, from going into the church and communicating with the faithful. Gal. 1. 8, 9.

ANATOCISM, civil law. Usury, which consists in taking interest on interest, or receiving compound interest. This is forbidden. Code, lib. 4, t. 32, 1,

30; 1 Postlethwaite's Dict.

2. Courts of equity have considered contracts for compounding interest illegal, and within the statute of usury. Cas. t. Talbot, 40; et vide Com. Rep. 349; Mass. 247; 1 Ch. Cas. 129; 2 Ch. Cas. 35. And contra, 1 Vern. 190. But when the interest has once accrued, and a balance has been settled between the parties, they may lawfully agree to turn such interest into principal, so as to carry interest in futuro. Com. on Usury, ch. 2, s. 14, p. 146 et eq.

ANCESTOR, descents. One who has preceded another in a direct line of descent; an ascendant. In the common law, the word is understood as well of the immediate parents, as, of these that are higher; as may appear by the statute 25 Ed. III. De natis ultra mare, and so in the statute of 6 R. III. cap. 6, and by many others. But the civilians relations in the ascending line, up to the great grandfather's parents, and those above them, they term, majores, which common lawyers aptly expound antecessors or ancestors, for in the descendants of like degree they are called posteriores. Cary's Litt.45. The term ancestor is applied to natural persons. The words predecessors and successors, are used in respect to the persons composing a body corporate. See 2 Bl. Com. 209; Bac. Abr. h.t.; Ayl. Pand. 58.

ANCESTRAL. What relates to or has, been done by one's ancestors; as homage ancestral, and the like.

ANCHOR. A measure containing ten gallons. Lex, Mereatoria.

ANCHORAGE, merc. law. A toll paid for every anchor cast from a ship into a river, and sometimes a toll bearing this name is paid, although there be no anchor cast. This toll is said to be incident to almost every port. 1 Wm.

Bl. 413; 2 Chit. Com. Law, 16.

ANCIENT. Something old, which by age alone has acquired some force; as ancient lights, ancient writings.

ANCIENT DEMESNE, Eng. law. Those lands which either were reserved to the crown at the original distribution of landed property, or such as came to it afterwards, by forfeiture or other means. 1. Sal. 57; hob. 88; 4 Inst. 264; 1 Bl. Com. 286; Bac. Ab. h.t.; F. N. B. 14.

ANCIENT LIGHTS, estates. Windows which have been opened for twenty years or more, and enjoyed without molestation by the owner of the house. 5 Har. & John. 477; 12 Mass. R. 157,.220.

2. It is proposed to consider, 1. How the right of ancient light is gained. 2, What amounts to interruption of an ancient light. 3, The remedy for obstructing an ancient light.

3.-1. How the right of opening or keeping a window open is gained. 1. By grant. 2. By lapse of time. Formerly it was holden that a party could not maintain an action for a nuisance to an ancient light, unless he had gained a right to the window by prescription. 1 Leon. 188; Cro. Eliz. 118. But the modern doctrine is, that upon proof of an adverse enjoyment of light; for twenty years or upwards, unexplained, a jury may be directed to presume a right by grant, or otherwise. 2 Saund. 176, a; 12 Mass. 159; 1 Esp. R. 148. See also 1 Bos. & Pull. 400.; 3 East, 299; Phil. Ev. 126; 11 East, 372; Esp. Dig. 636. But if the window was opened during the seisin of a mere tenant for life, or a tenancy for years, and the owner in fee did not acquiesce in, or know of, the use of the light, he would not be bound. 11 East, 372; 3 Camp. 444; 4 Camp. 616. If the owner of a close builds a house upon one half

of it, with a window lighted from the other half, he cannot obstruct lights on the premises granted by him; and in such case no lapse of time necessary to confirm the grantee's right to enjoy them. 1 Vent. 237, 289; 1 Lev. 122; 1 Keb. 553; Sid. 167, 227; L. Raym. 87; 6 Mod. 116; 1 Price, 27; 12 Mass. 159, Rep. 24; 2 Saund. 114, n. 4; Hamm. N. P. 202; Selw. N. P. 1090; Com. Dig. Action on the Case for a Nuisance, A. Where a building has been used twenty years to one purpose, (as a malt house,) and it is converted to another, (as a dwelling-house,) it is entitled in its new state only to the same degree of light which was necessary in its former state. 1 Campb. 322; and see 3 Campb. 80. It has been justly remarked, that the English doctrine as to ancient lights can hardly be regarded as applicable to narrow lots in the new and growing cities of this country; for the effect of the rule would be greatly to impair the value of vacant lots, or those having low buildings upon them, in the neighborhood of other buildings more than twenty years old. 3 Kent, Com. 446, n.

4.-2. What amounts to an interruption of an ancient light. Where a window has been completely blocked up for twenty years, it loses its privilege. 3 Camp. 514. An abandonment of the right by express agreement, or by acts from which an abandonment may be inferred, will deprive the party having such ancient light of his right to it. The building of a blank wall where the lights formerly existed, would have that effect. 3 B. & Cr. 332. See Ad. & Ell. 325.

5.-3. Of the remedy for interrupting an ancient light. 1. An action on the case will lie against a person who obstructs an ancient light. 9 Co. 58; 2 Rolle's Abr. 140, 1. Nusans, G 10. And see Bac. Ab. Actions on the Case, D; Carth. 454; Comb. 481; 6 Mod. 116.

6. Total deprivation of light is not necessary to sustain this action, and if the party cannot enjoy the light in so free and ample a manner as he did before, he may sustain the action; but there should be some sensible

diminution of the light and air. 4. Esp. R. 69. The building a wall which merely obstructs the right, is not actionable. 9 Ca. 58, b; 1 Mod. 55.

7.-4. Nor is the opening windows and destroying, the privacy of the adjoining property; but such new window may be immediately obstructed to prevent a right to it being acquired by twenty years use. 3 Campb. 82.

8.-5. When the right is clearly established, courts of equity will grant an injunction to restrain a party from building so near the plaintiff's house as to darken his windows. 2 Vern. 646; 2 Bro. C. C. 65; 16 Ves. 338; Eden on Inj. 268, 9; 1 Story on Eq Sec. 926; 1 Smith's Chan. Pr. 593.; 4 Simm. 559; 2 Russ. R. 121. See Injunction; Plan.

See generally on this subject, 1 Nels. Abr. 56, 7; 16 Vin. Abr. 26; 1 Leigh's N. P. C. 6, s. 8, p. 558; 12 E. C. L. R. 218; 24 Id. 401; 21 Id. 373; 1 id. 161; 10 Id. 99; 28 Id. 143; 23 Am. Jur. 46 to 64; 3 Kent, Com. 446, 2d ed. 7 Wheat. R. 106; 19 Wend. R. 309; Math on Pres. 318 to 323; 2 Watts, 331; 9 Bing. 305; 1 Chit. Pr. 206, 208; 2 Bouv. Inst. n. 1619-23.

ANCIENT WRITINGS, evidence. Deeds, wills, and other writings more than thirty years old, are considered ancient writings. They may in general be read in evidence, without any other proof of their execution than that they have been in the possession of those claiming rights under them. Tr. per Pais, 370; 7 East, R. 279; 4 Esp. R. 1; 9 Ves. Jr. 5; 3 John. R. 292; 1 Esp. R. 275; 5 T. R. 259; 2 T. R. 466; 2 Day's R. 280. But in the case of deeds, possession must have accompanied them. Plowd. 6, 7. See Blath. Pres. 271, n. (2.)

ANCIENTLY, English law. A term for eldership or seniority used in the statute of Ireland, 14 Hen. Vni.

ANCIENTS, English law. A term for gentlemen in the Inns of Courts who are of a certain standing. In the Middle Temple, all who have passed their readings are termed ancients. In Gray's Inn, the ancients are the oldest barristers; besides which the society consists of benchers, barristers and students. In the Inas of Chancery, it consists of ancients, and students or clerks.

ANCILLARY. That which is subordinate on, or is. subordinate to, some other decision. Encyc. Lond. 1

ANDROLEPSY. The taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former. Wolff. Sec. 1164; Molloy, de Jure Mar. 26.

ANGEL. An ancient English coin of the value of ten shillings sterling. Jac. L. D. h.t.

ANIENS. In some of our law books signifies void, of no force. F. N. B. 214.

ANIMAL, property. A name given to every animated being endowed with the power of voluntary motion. In law, it signifies all animals except those of the him, in species.

2. Animals are distinguished into such as are domitae, and such as are ferae naturae.

3. It is laid down, that in tame or domestic animals, such as horse, swine, sheep, poultry, and the like, a man may have an absolute property, because they continue perpetually in his possession and occupation, and will not stray from his house and person unless by accident or fraudulent enticement, in either of which cases the owner does not lose his property. 2 Bl. Com. 390; 2 Mod. 319. 1.

4. But in animals ferae naturae, a man can have no absolute property; they belong to him only while they continue in his keeping or actual possession; for if at any they regain their natural liberty, his property instantly ceases, unless they have animum revertendi, which is only to be known by their usual habit of returning. 2 Bl. Com. 396; 3 Binn. 546; Bro. Ab. Propertie, 37; Com. Dig. Biens, F; 7 Co. 17 b; 1 Ch. Pr. 87; Inst. 2, 1, 15. See also 3 Caines' Rep. 175; Coop. Justin. 457, 458; 7 Johns. Rep. 16; Bro. Ab. Detinue, 44.

5. The owner of a mischievous animal, known to him to be so, is responsible, when he permits him to go at large, for the damages he may do. 2 Esp. Cas. 482; 4 Campb. 198; 1 Starkie's Cas. 285; 1 Holt, 617; 2 Str.1264; Lord Raym. 110; B. N. P. 77; 1 B. & A. 620; 2 C. M.& R. 496; 5 C.& P. 1; S. C. 24 E. C. L. R. 187. This principle agrees with the civil law. Domat, Lois Civ. liv. 2, t. 8, s. 2. And any person may justify the killing of such ferocious animals. 9 Johns. 233; 10. Johns. 365; 13 Johns. 312. The owner, of such an animal may be indicted for a common nuisance. 1 Russ. Ch. Cr. Law, 643; Burn's Just., Nuisance, 1.

6. In Louisiana, the owner of an animal is answerable for the damage he may cause; but if the animal be lost, or has strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury; except where the master turns loose a dangerous or noxious animal; for then he must pay all the harm done, without being allowed to make the abandonment. Civ. Code, art. 2301. See Bouv. Inst. Index, h.t.

ANIMALS OF A BASE NATURE. Those which, though they may be reclaimed, are not Such that at common law a larceny may be committed of them, by reason of the baseness of their nature. Some animals, which are now usually tamed,

come within this class; as dogs and cats; and others which, though wild by nature, and oftener reclaimed by art and industry, clearly fall within the same rule; as, bears, foxes, apes, monkeys, ferrets, and the like. 3 Inst. 109,; 1 Hale, P. C. 511, 512; 1 Hawk. P. C. 33, s. 36; 4 Bl. Com. 236; 2 East, P. C. 614. See 1 Saund. Rep. 84, note 2.

ANIMUS. The intent; the mind with which a thing is done, as animus cancellandi, the intention of cancelling; animus farandi, the intention of stealing; animus maiaendi, the intention of remaining; animus morandi, the intention or purpose of delaying.

2. Whether the act of a man, when in appearance criminal, be so or not, depends upon the intention with which it was done. Vide Intention.

ANIMUS CANCELLANDI. An intention to destroy or cancel. The least tearing of a will by a testator, animus cancellandi, renders it invalid. See Cancellation.

ANIMUS FURANDI, crim. law. The intention to steal. In order to constitute larceny, (q.v.) the thief must take the property animo furandi; but this, is expressed in the definition of larceny by the word felonious. 3 Inst. 107; Hale, 503; 4. Bl. Com. 229. Vide 2 Russ. on Cr. 96; 2 Tyler's R. 272. When the taking of property is lawful, although it may afterwards be converted animo furandi to the taker's use, it is not larceny. 3 Inst. 108; Bac. Ab. Felony, C; 14 Johns. R. 294; Ry. & Mood. C. C. 160; Id. 137; Prin. of Pen. Law, c. 22, Sec. 3, p. 279, 281.

ANIMUS MANENDI. The intention of remaining. To acquire a domicil, the party must have his abode in one place, with the intention of remaining there; for without such intention no new domicil can be gained, and the old will not be

lost. See Domicile.

ANIMUS RECIPIENDI. The intention of receiving. A man will acquire no title to a thing unless he possesses it with an intention of receiving it for himself; as, if a thing be bailed to a man, he acquires no title.

ANIMUS REVERTENDI. The intention of returning. A man retains his domicil, if he leaves it animo revertendi. 3 Rawle, R. 312; 1 Ashm. R. 126; Fost. 97; 4 Bl. Com. 225; 2 Russ. on Cr. 18; Pop. 42,. 62; 4 Co. 40.

ANIMUS TESTANDI. An intention to make a testament or will. This is required to make a valid will; for whatever form may have been adopted, if there was no animus testandi, there can be no will. An idiot for example, can make no will, because he has no intention.

ANN, Scotch law. Half a year's stipend over and above what is owing for the incumbency due to a minister's relict, or child, or next of kin, after his decease. Wishaw. Also, an abbreviation of annus, year; also of annates. In the old law French writers, ann or rather an, signifies a year. Co. Dig h.v.

ANNATES, ecc. law. First fruits paid out of spiritual benefices to the pope, being, the value of one year's profit.

ANNEXATION, property. The union of one thing to another.

2. In the law relating to fixtures, (q.v.) annexation is actual or constructive. By actual annexation is understood every movement by which a chattel can be joined or united to the freehold. By constructive annexation is understood the union of such things as have been holden parcel of the

realty, but which are not actually annexed, fixed, or fastened to the freehold; for example, deeds, or chattels, which relate to the title of the inheritance. Shep. Touch. 469. Vide Anios & Fer. on Fixtures, 2.

3. This term has been applied to the union of one country, to another; as Texas was annexed to the United States by the joint resolution of Congress of larch 1, 1845., See Texas.

ANNI NUBILES. The age at which a girl becomes by law fit for marriage, which is twelve years.

ANNIENTED. From the French aneantir; abrogated or made null. Litt. sect. 741.

ANNO DOMINI, in the year of our Lord, abbreviated, A. D. The computation of time from the incarnation of our Saviour which is used as the date of all public deeds in the United States and Christian countries, on which account it is called the "vulgar vera."

ANNONAE CIVILES, civil law. A species of rent issuing out of certain lands, which were paid to Rome monasteries.

ANNOTATION, civil law. The designation of a place of deportation. Dig. 32, 1, 3 or the summoning of an, absentee. Dig. lib. 5.

2. In another sense, annotations were the answers of the prince to questions put to him by private persons respecting some doubtful point of law. See Rescript.

ANNUAL PENSION, Scotch law. Annual rent. A yearly profit due to a creditor

by way of interest for a given sum of money. Right of annual rent, the original right of burdening land with payment yearly for the payment of money.

ANNUITY, contracts. An annuity is a, yearly sum of money granted by one party to another in fee for life or years, charging the person of the grantor only. Co. Litt. 144; 1 Lilly's Reg. 89; 2 Bl. Com. 40; 5 M. R. 312; Lumley on Annuities. 1; 2 Inst. 293; Davies' Rep. 14, 15.

2. In a less technical sense, however, when the money is chargeable on land and on the person, it is generally called an annuity. Doet. and Stud Dial. 2, 230; Roll. Ab. 226. See 10 Watts, 127.

3. An annuity is different from a rent charge, with which it is frequently confounded, in this; a rent charge is a burden imposed upon and issuing out of lands, whereas an annuity is chargeable only upon the person of the grantee. Bac. Abr. Annuity, A. See, for many, regulations in England relating to annuities, the Stat,. 17 Geo. III. c. 26.

3. An annuity may be created by contract, or by will. To enforce the payment of an annuity, the common law gives a writ of annuity which may be brought by the grantee or his heirs, or their grantees, against the grantor and his heirs. The action of debt cannot be maintained at the common law, or by the Stat. of 8 Anne, c. 14, for the arrears of an annuity devised to A, payable out of lands during the life of B, to whom the lands are devised for life, B paying the annuity out of it, so long as the freehold estates continues. 4 M. & S. 113; 3 Brod. & Bing. 30; 6 Moore, 336. It has been ruled also, that if an action of annuity be brought, and the annuity determines pending the suit, the writ faileth forever because no such action

is maintainable for arrearages only, but for the annuity and the arrearages. Co. Litt. 285, a.

4. The first payment of an annuity is to be made at the time appointed in the instrument creating it. In cases where testator directs the annuity to be paid at the end of the first quarter, or other period before the expiration of the first year after his death, it is then due; but in fact it is not payable by the executor till the end of the year. 3 Mad. Ch. R. 167. When the time is not appointed, as frequently happens in will, the following distinction is presumed to exist. If the bequest be merely in the form of an annuity as a gift to a man of "an annuity of one hundred dollars for life" the first payment will be due at the end of the year after the testator's death. But if the disposition be of a sum of money, and the interest to be given as an annuity to the same man for life, the first payment will not accrue before the expiration of the second year after the testator's death. This distinction, though stated from the bench, does not appear to have been sanctioned by express decision. 7 Ves. 96, 97.

5. The Civil Code of Louisiana makes the following provisions in relation to annuities, namely: The contract of annuity is that by which one party delivers to another a sum of money, and agrees not to reclaim it, so long as the receiver pays the rent agreed upon. Art. 2764.

6. This annuity may be perpetual or for life. Art. 2765.

7. The amount of the annuity for life can in no case exceed the double of the conventional interest. The amount of the perpetual annuity cannot exceed the double of the conventional interest. Art. 2766.

8. Constituted annuity is essentially redeemable. Art. 2767.

9. The debtor of a constituted annuity may be compelled to redeem the same: 1, If he ceases fulfilling his obligations during three years: 2, If he does not give the lender the securities promised by the contract. Art. 2768.

10. If the debtor should fail, or be in a state of insolvency, the capital of the constituted annuity becomes exigible, but only up to the amount at which it is rated, according to the order of contribution amongst the creditors. Art. 2769.

11. A similar rule to that contained in the last article has been adopted in England. See stat. 6 Geo. IV., c. 16, s. 54 and 108; note to Ex parte James, 5 Ves. 708; 1 Sup. to Ves. Jr. 431; note to Franks v. Cooper, 4 Ves. 763; 1 Supp. to Ves. Jr. 308. The debtor, continues the Code, may be compelled by his security to redeem the annuity within the time which has been fixed in the contract, if any time has been fixed, or after ten years, if no mention be made of the time in the act. Art. 2770.

12. The interest of the sums lent, and the arrears of constituted and life annuity, cannot bear interest but from the day a judicial demand of the same has been made by the creditor, and when the interest is due for at least one whole year. The parties may only agree, that the same shall not be redeemed prior to a time which cannot exceed ten years, or without having warned the creditor a time before, which they shall limit. Art. 2771. See generally, Vin. Abr. Annuity; Bac. Abr. Annuity and Rent; Com. Dig. Annuity; 8 Com. Dig. 909; Doct. Plac. 84; 1 Rop. on Leg. 588; Diet. de Jurisp. aux mots Rentes viageres, Tontine. 1 Harr. Dig. h.t.

ANNUM DIEM ET VASTUM, English law. The title which the king acquires in land, when a party, who held not of the king, is attainted of felony. He acquires the power not only to take the profits for a full year, but to waste and demolish houses, and to extirpate woods and trees.

2. This is but a chattel interest.

ANONYMOUS. Without name. This word is applied to such.books, letters or

papers, which are published without the author's name. No man is bound to publish his name in connexion with a book or paper he has published; but if the publication is libellous, he is equally responsible as if his name were published.

ANSWER, pleading in equity. A defence in writing made by a defendant, to the charges contained in a bill or information, filed by the plaintiff against him in a court of equity. The word answer involves a double sense; it is one thing when it simply replies to a question, another when it meets a charge; the answer in equity includes both senses, and may be divided into an examination and a defence. In that part which consists of an examination, a direct and full answer, or reply, must in general be given to every question asked. In that part which consists of a defence, the defendant must state his, case distinctly; but is not required to give information respecting the proofs that are to maintain it. Gresl. Eq. Ev. 19.

2. As a defendant is called by a bill or information to make a discovery of the several charges it contains, he must do so, unless he is protected either by a demurrer a plea or disclaimer. It may be laid down as an invariable rule, that whatever part of a bill or information is not covered by one of these, must be defended by answer. Redesd. Tr. Ch. Pl. 244.

3. In form, it usually begins, 1st, with its title, specifying which of the defendants it is the answer of, and the names of the plaintiffs in the cause in which it is filed as answer; 2d, it reserves to the defendant all the advantages which might be taken by exception to the bill; 3d, the substance of the answer, according to the defendant's knowledge, remembrance, information and belief, then follows, in which the matter of the bill, with the interrogatories founded thereon, are answered, one after the other, together with such additional matter as the defendant thinks

necessary to bring forward in his, defence, either for the purpose of qualifying, or adding to, the case made by the bill, or to state a new case on his own behalf; 4th, this is followed by a general traverse or denial of all unlawful combinations charged in the bill, and of all other matters therein contained 5th, the answer is always upon oath or affirmation, except in the case of a corporation, in which case it is under the corporate seal.

4. In substance, the answer ought to contain, 1st, a statement of facts and not arguments 2d, a confession and avoidance, or traverse and denial of the material parts of the bill 3d, its language ought to be direct and without evasion. Vide generally as to answers, Redes. Tr. Ch. Pl. 244 to 254; Coop. Pl. Eq. 312 to 327; Beames Pl. Eq. 34 et seq.; Bouv. Inst. Index, h.t. For an historical account of this instrument, see 2 Bro. Civ. Law, 371, n. and Barton's Hist. Treatise of a Suit in Equity.

ANSWER, practice. The declaration of a fact by a witness after a question has been put asking for it.

2. If a witness unexpectedly state facts against the interest of the party calling him, other witnesses may be called by the same party, to disprove those facts. But the party calling a witness cannot discredit him, by calling witnesses to prove his bad character for truth and veracity, or by proving that he has made statements out of court contrary to what he has sworn on the trial; B. N. P.; for the production of the witness is virtually an assertion by the party producing him, that he is credible.

ANTECEDENT. Something that goes before. In the construction of laws, agreements, and the like, reference is always to be made to the last antecedent; ad proximun antecedens fiat relatio. But not only the antecedents but the subsequent clauses of the instrument must be considered:

Ex antecedentibus et consequentibus fit optima interpretatio.

ANTE LITEM MOTAM. Before suit brought, before controversy moved.

ANTEDATE. To, put a date to an instrument of a time before the time it was written. Vide Date.

ANTENATI. Born before. This term is applied to those who were born or resided within the United States before or at the time of the declaration of independence. These had all the rights of citizens. 2 Kent, Com. 51, et seq.

ANTE-NUPTIAL. What takes place before marriage; as, an ante-nuptial agreement, which is an agreement made between a man and a woman in contemplation of marriage. Vide Settlement.

ANTHETARIUS, obsolete See Anti-thetarius.

ANTI-MANIFESTO. The declaration of the reasons which one of the belligerents publishes, to show that the war as to him is defensive. Wolff, Sec. 1187. See Manifesto.

ANTICIPATION. The act of doing or taking a thing before its proper time.

2. In deeds of trust there is frequently a provision that the income of the estate shall be paid by the trustee as it shall accrue, and not by way of anticipation. A payment made contrary to such provision would not be considered as a discharge of the trustee.

ANTICHRESIS, contracts. A word used in the civil law to denote the contract by which a creditor acquires the right of reaping the fruit or other

revenues of the immovables given to him in pledge, on condition of deducting, annually, their proceeds from the interest, if any is due to him, and afterwards from the principal of his debt. Louis. Code, art. 3143 Dict. de Juris. Antichrese, Mortgage; Code Civ. 2085. Dig. 13, 7, 7 ; 4, 24, 1 Code, 8, 28, 1.

ANTINOMY. A term used in the civil law to signify the real or apparent contradiction between two laws or two decisions. Merl. Repert. h.t. Vide Conflict of Laws.

ANTIQUA CUSTOMA, Eng. law. A duty or imposition which was collected on wool, wool-felts, and leather, was so called. This custom was called nova customa until the 22 Edw. I., when the king, without parliament, set a new imposition of 40s. a sack, and then, for the first time, the nova customa went by the name of antiqua customa. Bac. Ab. Smuggling &c. B.

ANTIQUA STATUTA. In England the statutes are divided into new and ancient statutes; since the time of memory; those from the time 1 R. I. to E. III., are called antiqua statuta - those made since, nova statuta.

ANTITHETARIUS, old English law. The name given to a man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver (q, v.) in this, that the latter does not charge the accuser, but others. Jacob's Law Dict.

APARTMENTS. A part of a house occupied by a person, while the rest is occupied by another, or others. 7 Mann. & Gr. 95 ; 6 Mod. 214 ; Woodf. L. & T. 178. See House.

APOSTACY, Eng. law. A total renunciation of the Christian religion, and differs from heresy. (q.v.) This offence is punished by the statute of 9 and 10 W. III. c. 32. Vide Christianity.

APOSTLES. In the British courts of admiralty, when a party appeals from a decision made against him, he prays apostles from the judge, which are brief letters of dismission, stating the case, and declaring that the record will be transmitted. 2 Brown's Civ. and Adm. Law, 438; Dig. 49. 6.

2. This term was used in the civil law. It is derived from apostolos, a Greek word, which signifies one sent, because the judge from whose sentence an appeal was made, sent to the superior judge these letters of dismission, or apostles. Merl. Rep. mot Apotres.

APPARATOR or APPARITOR, eccles. law. An officer or messenger employed to serve the process of the spiritual courts in England.

APPARENT. That which is manifest what is proved. It is required that all things upon which a court must pass, should be made to appear, if matter in pays, under oath if matter of record, by the record. It is a rule that those things which do not appear, are to be considered as not existing de non apparentibus et non existentibus eadem est ratio. Broom's Maxims, 20, What does not appear, does not exist; quod non apparet, non est.

APPARLEMENT. Resemblance. It is said to be derived from pareillement, French, in like manner. Cunn. Dict. h.t.

APPEAL, English crim. law. The accusation of a person, in a legal form, for a crime committed by him; or, it is the lawful declaration of another man's

crime, before a competent judge, by one who sets his name to the declaration, and undertakes to prove it, upon the penalty which may ensue thereon. Vide Co. Litt. 123 b, 287 b; 6 Burr. R. 2643, 2793; 2 W. Bl. R. 713; 1 B. & A. 405. Appeals of murder, as well as of treason, felony, or other offences, together with wager of battle, are abolished by stat. 59 Geo. M. c. 46.

APPEAL, practice. The act by which a party submits to the decision of a superior court, a cause which has been tried in an inferior tribunal. 1 S. & R. 78 Bin. 219; 3 Bin. 48.

2. The appeal generally annuls the judgment of the inferior court, so far that no action can be taken upon it until after the final decision of the cause. Its object is to review the whole case, and to secure a just judgment upon the merits.

3. An appeal differs from proceedings in error, under which the errors committed in the proceedings are examined, and if any have been committed the first judgment is reversed; because in the appeal the whole case is examined and tried as if it had not been tried before. Vide Dane's Ab. h.t.; Serg. Const. Law Index, h.t. and article Courts of the United States.

APPEARANCE, practice. Signifies the filing common or special bail to the action.

2. The appearance, with all other subsequent pleadings supposed to take place in court, should (in accordance with the ancient practice) purport to be in term time. It is to be observed, however, that though the proceedings are expressed as if occurring in term time, yet, in fact, much of the business is now done, in periods of vacation.

3. The appearance of the parties is no longer (as formerly) by the

actual presence in court, either by themselves or their attorneys; but, it must be remembered, an appearance of this kind is still supposed, and exists in contemplation of law. The appearance is effected on the part of the defendant (when be is not arrested) by making certain formal entries in the proper office of the court, expressing his appearance; 5 Watts & Serg. 215; 1 Scam. R. 250; 2 Seam. R. 462; 6 Port. R. 352; 9 Port. R. 272; 6 Miss. R. 50; 7 Miss. R. 411; 17 Verm. 531; 2 Pike, R. 26; 6 Ala. R. 784; 3 Watts & Serg. 501; 8 Port. R. 442; or, in case of arrest, it may be considered as effected by giving bail to the action. On the part of the plaintiff no formality expressive of appearance is observed.

4. In general, the appearance of either party may be in person or by attorney, and, when by attorney, there is always supposed to be a warrant of attorney executed to the attorney by his client, authorizing such appearance.

5. But to this general rule there are various exceptions; persons devoid of understanding, as idiots, and persons having understanding, if they are by law deprived of a capacity to appoint an attorney, as married women, must appear in person. The appearance of such persons must purport, and is so entered on the record, to be in person, whether in fact an attorney be employed or not. See Tidd's Pr. 68, 75; 1 Arch. Pract. 22; 2 John. 192; 8 John. 418; 14 John. 417; 5 Pick. 413; Bouv. Inst. Index, h.t.

6. There must be an appearance in person in the following cases: 1st. An idiot can appear only in person, and as, a plaintiff he may sue in person or by his next friend 2d. A married woman, when sued without her husband, should defend in person 3 Wms. Saund. 209, b and when the cause of action accrued before her marriage, and she is afterwards sued alone, she must plead her coverture in person, and not by attorney. Co. Litt. 125. 3d. When the party pleads to the jurisdiction, be must plead in person. Summ.on Pl. 51; Merrif. Law of Att. 58. 4th. A plea of misnomer must always be in

person, unless it be by special warrant of attorney. 1 Chit. Pl. 398; Summ. on Pl. 50; 3 Wms. Saund. 209 b.

7. An infant cannot appoint an attorney; he must therefore prosecute or appear by guardian, or prochein ami.

8. A lunatic, if of full age, may appear by. attorney; if, under age, by guardian. 2 Wms. Saund. 335; Id. 332 (a) n. (4.)

9. When an appearance is lawfully entered by the defendant, both parties are considered as being in court. Imp. Pr. 215. And if the defendant pleads to issue, defects of process are cured but not, if he demurs to the process, (I Lord Raym. 21,) or, according to the practice of some courts, appears de bene esse, or otherwise conditionally.

10. In criminal cases, the personal presence of the accused is often necessary. It has been held, that if the record of a conviction of a misdemeanor be removed by certiorari, the personal presence of the defendant is necessary, in order to move in arrest. of judgment: but, after a special verdict, it is not necessary that the defendant should be personally present at the argument of it. 2 Burr. 931 1 Bl. Rep. 209, S. C. So, the defendant must appear personally in court, when an order of bastardy is quashed and the reason is, he must enter into a recognizance to abide the order of sessions below. 1 Bl. Rep. 198. So, in a case, when two justices of the peace, having confessed an information for misbehavior in the execution of their office, and a motion was made to dispense with their personal appearance, on their clerks undertaking in court to answer for their flues, the court declared the rule to be, that although such a motion was subject to the discretion of the court either to grant or refuse it, in cases where it is clear that the punishment would not be corporal, yet it ought to be denied in every case where it is either probable or possible that the punishment would be corporal; and therefore the motion was overruled in that

case. And Wilmot and Ashton, Justices, thought, that even where the punishment would most probably be pecuniary only, yet in offences of a very gross and public nature, the persons convicted should appear in person, for the sake of example and prevention of the like offences being committed by other persons; as the notoriety of being called up to answer criminally for such offences, would very much conduce to deter others from venturing to commit the like. 3 Burr. 1786, 7.

APPEARANCE DAY. The day on which the parties are bound to appear in court. This is regulated in the different states by particular provisions.

APPELLANT, practice. He who makes an appeal from one jurisdiction to another.

APPELLATE JURISDICTION. The jurisdiction which a superior court has to bear appeals of causes which have been tried in inferior courts. It differs from original jurisdiction, which is the power to entertain suits instituted in the first in stance. Vide Jurisdiction; Original jurisdiction.

APPELLEE, practice. The party in a cause against whom an appeal has been taken.

APPELLOR. A criminal who accuses his accomplices; one who challenges a jury.

APPENDANT. An incorporeal inheritance belonging to another inheritance.

2. By the word appendant in a deed, nothing can be conveyed which is itself substantial corporeal real property, and capable of passing by feoffment and livery of seisin: for one kind of corporeal real property cannot be appendant to another description of the like real property, it

being a maxim that land cannot be appendant to land. Co. Litt. 121; 4 Coke, 86; 8 Barn. & Cr. 150; 6 Bing. 150. Only, such things can be appendant as can consistently be so, as a right of way, and the like. This distinction is of importance, as will be seen by the following case. If a wharf with the appurtenances be demised, and the water adjoining the wharf were in tended to pass, yet no distress for rent on the demised premises could be made on a barge on the water, because it is not a place which could pass as a part of the thing demised. 6 Bing. 150.

3. Appendant differs from appurtenant in this, that the former always arises from prescription, whereas an appurtenance may be created at any time. 1 Tho. Co. Litt. 206; Wood's Inst. 121; Dane's Abr. h.t.; 2 Vin. Ab. 594; Bac. Ab. Common, A 1. And things appendant must have belonged by prescription to another principal substantial thing, which is considered in law as more worthy. The principal thing and the appendant must be appropriate to each other in nature and quality, or such as may be properly used together. 1 Chit. Pr. 154.

APPENDITIA. From appendo, to hang at or on; the appendages or pertinances of an estate the appurtenances to a dwelling, &c.; thus penthouses, are the appenditia domus, &c.

APPLICATION. The act of making a request for something; the paper on which the request is written is also called an application; as, an application to chancery for leave to invest trust funds; an application to an insurance company for insurance. In the land law of Pennsylvania, an application is understood to be a request in writing to have a certain quantity of land at or near a certain place therein mentioned. 3 Binn. 21; 5 Id. 151; Jones on Land Office Titles, 24.

2. An application for insurance ought to state the facts truly as to the object to be insured, for if any false representation be made with a fraudulent intent, it will avoid the policy. 7 Wend. 72.

3. By application is also meant the use or disposition of a thing; as the application of purchase money.

4. In some cases a purchaser who buys trust property is required, to see to the application of thee purchase money, and if be neglects to do so, and it be misapplied, he will be considered as a trustee of the property he has so purchased. The subject will be examined by considering, 1, the kind of property to be sold; 2, the cases where the purchaser is bound to see to the application of the purchase money in consequence of the wording of the deed of trust.

5.-1. Personal property is liable, in the hands of the executor, for the payment of debts, and the purchaser is therefore exempted from seeing to the application of the purchase money, although it may have been bequeathed to be sold for the payment of debts. 1 Cox, R. 145; 2 Dick. 725; 7 John. Ch. Rep., 150, 160; 11 S. & R. 377, 385; 2 P. Wms. 148; 4 Bro. C. C. 136; White's L. C. in Eq. 54; 4 Bouv. Inst. n. 3946.

6. With regard to real estate, which is not a fund at law for the payment of debt's, except where it is made so by act of assembly, or by direction in the will of the testator or deed of trust, the purchaser from an executor or trustee may be liable for the application of the purchase money. And it will now be proper to consider the cases where such liability exists.

7.-2. Upon the sale of real estate, a trustee in whom the legal title is vested, can it law give a valid discharge for the purchase money, because he is the owner at law. In equity, on the contrary, the persons among whom the produce of the sale is to be distributed are considered the owners; and a purchaser must obtain a discharge from them, unless the power of giving

receipts is either expressly or by implication given to the trustees to, give receipts for the purchase money. It is, for this reason, usual to provide in wills and trust deeds that the purchaser shall not be required to see to the application of the purchase money.

APPOINTEE. A person who is appointed or selected for a particular purpose; as the appointee under a power, is the person who is to receive the benefit of the trust or power.

APPOINTOR. One authorized by the donor under the statute of uses, to execute a power. 2 Bouv. Ins. n. 1923.

APPOINTMENT, chancery practice. The act of a person authorized by a will or other instrument to direct how trust property shall be disposed of, directing such disposition agreeably to the general directions of the trust.

2. The appointment must be made in such a manner as to come within the spirit of the power. And although at law the rule only requires that some allotment, however small, shall be given to each person, when the power is to appoint to and among several persons; the rule in equity differs, and requires a real and substantial portion to each, and a mere nominal allotment to one is deemed illusory and fraudulent. When the distribution is left to discretion, without any prescribed rule, Is to such of the children as the trustee shall think proper, he may appoint to one only; 5 Ves. 857; but if the words be, 'amongst' the children as he should think proper, each must have a share, and the doctrine of illusory appointment applies. 4 Ves. 771 Prec. Ch. 256; 2 Vern. 513. Vide, generally, 1 Supp. to Ves. Jr. 40, 95, 201, 235, 237; 2 Id. 1 27; 1 Vern. 67, n.; 1 Ves. Jr. 31 0, n.; 4 Kent, Com. 337; Sugd. on Pow. Index, h.t.; 2 Hill. Ab. Index, h.t.; 2 Bouv. Inst. n.

1921, et seq.

APPOINTMENT, government, wills. The act by which a person is selected and invested with an office; as the appointment of a judge, of which the making out of his commission is conclusive evidence. 1 Cranch, 137, 155; 10 Pet. 343. The appointment of an executor, which is done by nominating him as such in a will or testament.

2. By appointment is also understood a public employment, nearly synonymous with office. The distinction is this, that the term appointment is of a more extensive signification than office; for example, the act of authorizing a man to print the laws of the United States by authority, and the right conveyed by such an act, is an appointment, but the right thus conveyed is not an office. 17 S. & R. 219, 233. See 3 S. & R. 157; Coop. Just. 599, 604.

APPORTIONMENT, contracts. Lord Coke defines it to be a division or partition of a rent, common, or the like, or the making it into parts. Co. Litt. 147. This definition seems incomplete. Apportionment frequently denotes, not, division, but distribution ; and in its ordinary technical sense, the distribution of one subject in proportion to another previously distributed. 1 Swanst. C. 87, n.

2. Apportionment will here be considered only in relation to contracts, by talking a view, 1, of such as are purely personal and, 2, of such as relate to the realty.

3.-1. When a Purely personal contract is entire and not divisible in its nature, it is manifest it cannot be apportioned; as when the subject of the contract is but one thing, and there is but one creditor and one debtor, neither can apportion the obligation without the consent of the other. In such case the creditor cannot force his debtor to pay him a part of his debt

only, and leave the other part unpaid, nor can the debtor compel his creditor to receive a part only of what is due to him on account of his claim. Nor can the assignee of a part sustain an action for such part. 5 N. S. 192.

4. When there is a special contract between the parties, in general no compensation can be received unless the whole contract has been actually fulfilled. 4 Greenl. 454; 2 Pick. R. 267; 10 Pick. R. 209; 4 Pick. R. 103; 4 M'Cord, R. 26, 246; 6 Verm. R. 35. The subject of the contract being a complex event, constituted by the performance of various acts, the imperfect completion of the event, by the performance of only some of those acts, cannot, by virtue of that contract, of which it is not the subject, afford a title to the whole, or any part of the stipulated benefit. See 1 Swanst. C. 338, n. and the cases there cited; Story, Bailm. Sec. 441; Chit. Contr. 168; 3 Watts, 331; 2 Mass. 147, 436; 3 Hen. & Munf. 407; 2 John. Cas. 17; 13 John. R. 365; 11 Wend. 257; 7 Cowen, 184; 8 Cowen, 84; 2 Pick. 332. See generally on the subject of the apportionment, of personal obligations, 16 Vin. Ab. 138; 22 Vin. Ab. 13; Stark. Ev. part 4, p. 1622; Com. Dig. Chancery, 2 E and 4 N 5; 3 Chit. Com. Law 129; Newl. Contr. 159; Long on Sales, 108. And for the doctrine of the civil law, see Dumoulin, de dividuo et individuo, part 2, n. 6, 7; Toull. Dr. Civ. Fr. liv. 3, tit 3, c. 4, n. 750, et seq.

5.-2. With regard to rents, the law is different. Rents may in general be apportioned, and this may take place in several ways; first, by the act of the landlord or reversioner alone, and secondly, by virtue of the statute of 11 Geo. II., c. 19, s. 15, or by statutes in the several states in which its principles have been embodied.

6.-1. When there is a subsisting obligation on the part of the tenant to pay a certain rent, the reversioner may sell his estate in different

parts, to as many persons as he may deem proper, and the lessee or tenant will be bound to pay to each a proportion of the rent. 3 Watts, 404; 3 Kent Com. 470, 3d. ed.; Co. Litt. 158 a; Gilb. on Rents, 173; 7 Car. 23; 13 Co. 57 Cro. Eliz. 637, 651; Archb. L. &. T. 172 5 B. & A. 876; 6 Halst. 262. It is usual for the owners of the reversion to agree among themselves as to the amount which each is to receive; but when there is no agreement, the rent will be apportioned by the jury. 3 Kent, Com. 470; 1 Bouv. Inst. n. 697.

7.-2. Rent may be apportioned as to time by virtue of the stat. 11 Geo. H., C. 19, s. 15, by which it is provided that the rent due by a tenant for life, who dies during the currency of a quarter, of a year, or other division of time at which the rent was made payable, shall be apportioned to the day of his death. In Delaware, Missouri, New Jersey, and New York, it is provided by statutes, that if the tenant for life, lessor, die on the rent day, his executors may recover the whole rent; if before, a proportional part. In Delaware, Kentucky, Missouri, and New York, when one is entitled to rents, depending on the life of another, he may recover them notwithstanding the death of the latter. In Delaware, Kentucky, Missouri, and Virginia, it is specially provided, that the husband, after the death of his wife, may recover the rents of her lands. 1 Hill. Ab. c. 16, Sec. 50. In Kentucky, the rent is to be apportioned when the lease is determined upon any contingency.

8. When the tenant is deprived of the land, as by eviction, by title paramount, or by quitting the premises with the landlord's consent, in the absence of any agreement to the contrary, his obligation to pay rent ceases, as regards the current quarter or half year, or other day of payment, as the case may be. But rent which is due may be recovered. Gilb. on Rents, 145; 3 Kent, Comm. 376; 4 Wend. 423; 8 Cowen, 727 1 Har. & Gill, 308; 11 Mass. 493. See 4 Cruise's Dig. 206; 3 Call's R. 268; 4 M'Cord 447; 1 Bailey's R. 469; 2 Bouv. Inst. n. 1675, et seq.

APPOSAL OF SHERIFFS, English law. The charging them with money received upon account of the Exchequer. 22 Car. II.

APPOSER, Eng. law. An officer of the Court of Exchequer, called the foreign apposer.

APPOSTILLE, French law. Postil. In general this means an addition or annotation made in the margin of an act, [contract in writing,] or of some writing. Mer. Rep.

APPRAISEMENT. A just valuation of property.

2. Appraisements are required to be made of the property of persons dying intestate, of insolvents and others; an inventory (q.v.) of the goods ought to be made, and a just valuation put upon them. When property real or personal is taken for public use, an appraisement of it is made, that the owner may be paid it's value.

APPRAISER, practice. A person appointed by competent authority to appraise or value goods; as in case of the death of a person, an appraisement and inventory must be made of the goods of which he died possessed, or was entitled to. Appraisers are sometimes appointed to assess the damage done to property, by some public work, or to estimate its value when taken for public use.

APPREHENSION, practice. The capture or arrest of a person. The term apprehension is applied to criminal cases, and arrest to civil cases; as, one having authority may arrest on civil process, and apprehend on a criminal warrant.

APPRENTICE, person, contracts. A person bound in due form of law to a master, to learn from him his art, trade or business, and to serve him during the time of his apprenticeship. (q.v.) 1 Bl. Com. 426; 2 Kent, Com. 211; 3 Rawle, Rep. 307; Chit. on Ap. 4 T. R. 735; Bouv. Inst. Index, h.t.

2. Formerly the name of apprentice en la ley was given indiscriminately to all students of law. In the reign of Edward IV. they were sometimes called apprentice ad barras. And in some of the ancient law writers, the term apprentice and barrister are synonymous. 2 Inst. 214; Eunom. Dial, 2, Sec. 53, p. 155.

APPRENTICESHIP, contracts. A contract entered into between a person who understands some art, trade or business, and called the master, and another person commonly a minor, during his or her minority, who is called the apprentice, with the consent of his or her parent or next friend by which the former undertakes to teach such minor his art, trade or business, and to fulfill such other covenants as may be agreed upon; and the latter agrees to serve the master during a definite period of time, in such art, trade or business. In a common indenture of apprenticeship, the father is bound for the performance of the covenants by the son. Daug. 500.

2. The term during which the apprentice is to serve is also called his apprenticeship. Pardessus,)Dr. Com. n. 34.

3. This contract is generally entered into by indenture or deed, and is to continue no longer than the minority of the apprentice. The English statute law as to binding out minors as apprentices to learn some useful art,. trade or business, has been generally adopted in the United States, with some variations which cannot, be noticed here. 2 Kent, Com. 212.

4. The principal duties of the parties are as follows: 1st, Duties of

the master. He is bound to instruct the apprentice by teaching him, bona fide, the knowledge of the art of which he has undertaken to teach him the elements. He ought to, watch over the conduct of the apprentice, giving him prudent advice and showing him a good example, and fulfilling towards him the duties of a father, as in his character of master, he stands in loco parentis. He is also required to fulfill all the covenants he has entered into by the indenture. He must not abuse his authority, either by bad treatment, or by employing his apprentice in menial employments, wholly unconnected with the business he has to learn. He cannot dismiss his apprentice except by application to a competent tribunal, upon whose, decree the indenture may be cancelled. But an infant apprentice is not capable in law of consenting to his own discharge. 1 Burr. 501. Nor can the justices, according to some authorities, order money to be returned on the discharge of an apprentice. Strange, 69 Contra, Salk. 67, 68, 490; 11 Mod. 110 12 Mod. 498, 553. After the apprenticeship is at an end, he cannot retain the apprentice on the ground that he has not fulfilled his contract, unless specially authorized by statute.

5.-2d. Duties of the apprentice. An apprentice is bound to obey his master in all his lawful commands, take care of his property, and promote his interest, endeavor to learn his trade or business, and perform all the covenants in his indenture not contrary to law. He must not leave his master's service during the term of the apprenticeship. The apprentice is entitled to payment for extraordinary services, when promised by the master; 1 Penn. Law Jour. 368. See 1 Whart. 113; and even when no express promise has been made, under peculiar circumstances. 2 Cranch, 240, 270; 3 Rob. Ad. Rep. 237; but see 1 Whart, 113. See generally, 2 Kent, Com. 211-214; Bac. Ab. Master and Servant; 1 Saund. R. 313, n. 1, 2, 3, and 4; 3 Rawle, R. 307 3 Vin. Ab. 19; 1 Bouv. Inst. n. 396, et seq. The law of France on this

subject is strikingly similar to our own. Pardessus, Droit Com. n. 518-522.

6. Apprenticeship is a relation which cannot be assigned at the common law 5 Bin. 428 4 T. R. 373; Doug. 70 3 Keble, 519; 12 Mod. 554; although the apprentice may work with a second master by order and consent of the first, which is a service to the first under the indenture. 4 T. R. 373. But, in Pennsylvania and some other states the assignment of indentures of apprenticeship is authorized by statute. 1 Serg. & R. 249; 3 Serg. & R. 161, 164, 166.

APPRIZING. A name for an action in the Scotch law, by which a creditor formerly carried off the estates of his debtor in payment of debts due to him in lieu of which, adjudications are now resorted to.

APPROBATE AND REPROBATE. In Scotland this term is used to signify to approve and reject. It is a maxim quod approbo non reprobo. For example, if a testator give his property to A, and give A's property to B, A shall not be at liberty to approve of the will so far as the legacy is given to him, and reject it as to the bequest of his property to B in other words, he cannot approve and reject the will. 1 Bligh. 21; 1 Bell's Com. 146.

APPROPRIATION, contracts. The application of the payment of a sum of money, made by a debtor to his creditor, to one of several debts.

2. When a voluntary payment is made, the law permits the debtor in the first place, or, if he make no choice, then it allows the creditor to make an appropriation of such payment to either of several debts which are due by the debtor to the creditor. And if neither make an appropriation, then the law makes the application of such payment. This rule does not apply to payments made under compulsory process of law. 10 Pick. 129. It will be proper to consider, 1, when the debtor may make the appropriation; 2, when

the creditor may make it; 3, when it will be made by law.

3.-1. In general the appropriation may be made by the debtor, but this must be done by his express declaration, or by circumstances from which his intentions can be inferred. 2 C. M. & R. 723; 14 East, 239; 1 Tyrw. & Gr. 137; 15 Wend. 19; 5 Taunt. 7 Wheat. 13; 2 Ear. & Gill, 159; S. C. 4 Gill & Johns. 361; 1 Bibb, 334; 5 Watts, 544; 12 Pick. 463; 20 Pick. 441; 2 Bailey, 617; 4 Mass. 692; 17 Mass. 575. This appropriation, it seems, must be notified to the creditor at the time; for an entry made by the debtor in his own books, is not alone sufficient to determine the application of the payment. 2 Vern. 606; 4 B. & C. 715. In some cases, in consequence of the circumstances, the presumption will be that the payment was made on account of one debt, in preference to another. 3 Caines, 14; 2 Stark. R. 101. And in some cases the debtor has no right to make the appropriation, as, for example, to apply 4 partial payment to the liquidation of the principal, when interest is due. 1 Dall. 124; 1 H. & J. 754; 2 N. & M'C. 395; 1 Pick. 194; 17 Mass. 417.

4.-2. When the debtor has neglected to make an appropriation, the creditor may, in general, make it, but this is subject to some exceptions. If, for example, the debtor owes a debt as executor, and one in his own right, the creditor cannot appropriate a payment to the liquidation of the former, because that may depend on the question of assets. 2 Str. 1194. See 1 M. & Malk. 40; 9 Cowen, 409; 2 Stark. R. 74; 1 C. & Mees. 33.

5. Though it is not clearly settled in England whether a creditor is bound to make the appropriation immediately, or at a subsequent time Ellis on D. and C. 406-408 yet in the United States, the right to make the application at any time has been recognized, and the creditor is not bound to make an immediate election. 4 Cranch, 317; 9 Cowen, 420, 436. See 12 S. & R. 301 2 B. & C. 65; 2 Verm. 283; 10 Conn. 176.

6. When once made, the appropriation cannot be changed; and, rendering an account, or bringing suit and declaring in a particular way, is evidence of such appropriation. 1 Wash. 128 3 Green. 314; 12

APPROPRIATION, contracts. The application of the payment of a sum of money, made by a debtor to his creditor, to one of several debts.

2. When a voluntary payment is made, the law permits the debtor in the first place, or, if he make no choice, then it allows the creditor to make an appropriation of such payment to either of several debts which are due by the debtor to the creditor. And if neither make an appropriation, then the law makes the application of such payment. This rule does not apply to payments made under compulsory process of law. 10 Pick. 129. It will be proper to consider, 1, when the debtor may make the appropriation; 2, when the creditor may make it; 3, when it will be made by law.

3.-1. In general the appropriation may be made by the debtor, but this must be done by his express declaration, or by circumstances from which his intentions can be inferred. 2 C. M. & R. 723; 14 East, 239; 1 Tyrw. & Gr. 137; 15 Wend. 19; 5 Taunt. 7 Wheat. 13; 2 Ear. & Gill, 159; S. C. 4 Gill & Johns. 361; 1 Bibb, 334; 5 Watts, 544; 12 Pick. 463; 20 Pick. 441; 2 Bailey, 617; 4 Mass. 692; 17 Mass. 575. This appropriation, it seems, must be notified to the creditor at the time; for an entry made by the debtor in his own books, is not alone sufficient to determine the application of the payment. 2 Vern. 606; 4 B. & C. 715. In some cases, in consequence of the circumstances, the presumption will be that the payment was made on account of one debt, in preference to another. 3 Caines, 14; 2 Stark. R. 101. And in some cases the debtor has no right to make the appropriation, as, for example, to apply 4 partial payment to the liquidation of the principal, when interest is due. 1 Dall. 124; 1 H. & J. 754; 2 N. & M'C. 395; 1 Pick. 194; 17 Mass. 417.

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7. When no application of the payment has been made by either party, the law will appropriate it, in such a way as to do justice and equity to both parties. 6 Cranch, 8, 28; 4 Mason, 333; 2 Sumn. 99, 112; 5 Mason, 82; 1 Nev. & Man. 746; 5 Bligh, N. S. 1; 11 Mass. 300;1 H. & J. 754; 2 Vern. 24; 1 Bibb. 334; 2 Dea. & Chit. 534; 5 Mason, 11. See 6 Cranch, 253, 264; 7 Cranch, 575; 1 Mer. 572, 605; Burge on Sur. 126-138; 1 M. & M. 40. See 1 Bouv Inst. n. 8314. 8. In Louisiana, by statutory enactment, Civ. Code, art. 1159, et seq., it is provided that the debtor of several debts has a right to declare, when he makes a payment, what debt he means to discharge. The debtor of a debt which bears interest or produces rents, cannot, without the consent of the creditor, impute to the reduction of the capital, any

payment he may make, when there is interest or rent due. When the debtor of several debts has accepted a receipt, by which the creditor has imputed what he has received to one of the debts especially, the debtor can no longer require the imputation to be made to a different debt, unless there have been fraud or surprise on the part of the creditor. When the receipt bears no imputation, the payment must be imputed to the debt which the debtor had at the time most interest in discharging of those that are equally due, otherwise to the debt which has fallen due, though less burdensome than those which are not yet payable. If the debts be of a like nature, the imputation is made to the less burdensome; if all things are equal, it is made proportionally." This is a translation of the Codo Napoleon, art. 1253-1256 slightly altered. See Poth. Obl. n. 528 translated by Evans, and the notes; Bac. Ab. Obligations, F; 6 Watts & Amer. Law Mag. 31; 1 Hare & Wall. Sel. Dec. 123-158.

APPROPRIATION, eccl. law. The setting apart an ecclesiastical benefice, which is the general property of the church, to the perpetual and proper use of some religious house, bishop or college, dean and chapter and the like. Ayl. Pat. 86. See the form of an appropriation in Jacob's Introd. 411.

TO APPROVE, approbare. To increase the profits upon a thing; as to approve land by increasing the rent. 2 Inst. 784.

APPROVEMENT, English crim. law. The act by which a person indicted of treason or felony, and arraigned for the same, confesses the same before any plea pleaded, and accuses others, his accomplices, of the same crime, in order to obtain his pardon. 2 This practice is disused. 4 Bl. Com. 330 1 Phil. Ev. 37. In modern practice, an accomplice is permitted to give evidence against his associates. 9 Cowen, R. 707; 2 Virg. Cas. 490; 4 Mass.

R. 156; 12 Mass. R. 20; 4 Wash. C. C. R. 428; 1 Dev. R. 363; 1 City Hall Rec. 8. In Vermont, on a trial for adultery, it was held that a particeps criminis was not a competent witness, because no person can be allowed to testify his own guilt or turpitude to convict another. N. Chap. R. 9.

APPROVEMENT, English law. 1. The inclosing of common land within the lord's waste, so as to leave egress and regress to a tenant who is a commoner. 2. The augmentation of the profits of land. Stat. of Merton, 20 Hen. VIII.; F. N. B. 72 Crompt. Jus. 250; 1 Lilly's Reg. 110.

APPROVER, Engl. crim. law. One confessing himself guilty of felony, and approving others of the same crime to save himself. Crompt. Inst. 250 3 Inst. 129.

APPURTENANCES. In common parlance and legal acceptation, is used to signify something belonging to another thing as principal, and which passes as incident to the principal thing. 10 Peters, R. 25; Angell, Wat. C. 43; 1 Serg. & Rawle, 169; 5 S. & R. 110; 5 S. & R. 107; Cro. Jac. 121 3 Saund. 401, n. 2; Wood's Inst. 121 Rawle, R. 342; 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 b, 56 a, b; 1 Plowd. 171; 2 Saund. 401, n. 2; 1 Lev. 131; 1 Sid. 211; 1 Bos. & P. 371 1 Cr. & M. 439; 4 Ad., & Ell. 761; 2 Nev. & M. 517; 5 Toull. n. 531. 2. The word appurtenances, at least in a deed, will not pass any corporeal real property, but only incorporeal easements, or rights and privileges. Co. Lit. 121; 8 B. & C. 150; 6 Bing. 150; 1 Chit. Pr. 153, 4. Vide Appendant.

APPURTENANT. Belonging to; pertaining to of right.

AQUA. Water. This word is used in composition, as aquae ductus, &c. 2. It is a rule that water belongs to the land which it covers, when it is stationary: aqua cedit solo. But the owner of running water, or of a water course, cannot stop it the inferior inheritance having a right to the flow: aqua currit et debet currere, ut currere solebat.

AQUAE DUCTUS, civil law. The name of a servitude which consists in the right to carry water by means of pipes or conduits over or through the estate of another. Dig. 8, 3, 1; Inst. 2, 3; Lalaure, Des Serv. c. 5, p. 23.

AQUAE HAUSTUS, civil law. The name of a servitude which consists in the right to draw water from the fountain, pool, or spring of another. Inst. 2, 3, 2; Dig. 8, 3, 1, 1.

AQUAE IMMITTENDAE, Civil law. The name of a servitude, which frequently occurs among neighbors. It is the right which the owner of a house, built in such a manner as to be surrounded with other buildings, so that it has no outlet for its waters, has, to cast water out of his windows on his neighbor's roof court or soil. Lalaure, Des. Serv. 23.

AQUAGIUM, i. e. aquae agium. 1. A water course. 2. A toll for water.

AQUATIC RIGHTS. This is the name of those rights which individuals have in water, whether it be running, or otherwise.

ARBITER. One who, decides without any control. A judge with the most extensive arbitrary powers; an arbitrator.

ARBITRAMENT. A term nearly synonymous with arbitration. (q.v.)

ARBITRAMENT AND AWARD. The name of a plea to an action brought for the same cause which had been submitted to arbitration, and on which an award had been made. Wats. on Arb. 256.

ARBITRARY. What depends on the will of the judge, not regulated or established by law. Bacon (Aphor. 8) says, Optima lex quae minimum relinquit arbitrio judicis et (Aph. 46) optimus judex, qui mi nimum sibi

2. In all well adjusted systems of law every thing is regulated, and nothing arbitrary can be allowed; but there is a discretion which is sometimes allowed by law which leaves the judge free to act as he pleases to a certain extent. See Discretion

ARBITRARY PUNISHMENTS, practice. Those punishments which are left to the decision of the judge, in distinction from those which are defined by statute.

ARBITRATION, practice. A reference and submission of a matter in dispute concerning property, or of a personal wrong, to the decision of one or more persons as arbitrators.

2. They are voluntary or compulsory. The voluntary are, 1. Those made by mutual consent, in which the parties select arbitrators, and bind themselves by bond abide by their decision; these are made without any rule of court. 3 Bl. Com. 16.

3.-2. Those which are made in a cause depending in court, by a rule of court, before trial; these are arbitrators at common law, and the award is enforced by attachment. Kyd on Awards, 21.

4.-3. Those which are made by virtue of the statute, 9 & 10 Will.

III., c. 15, by which it is agreed to refer a matter in dispute not then in court, to arbitrators, and agree that the submission be made a rule of court, which is enforced as if it had been made a rule of court; Kyd on Aw. 22; there are two other voluntary arbitrations which are peculiar to Pennsylvania.

5.-4. The first of these is the arbitration under the act of June 16, 1836, which provides that the parties to, any suit may consent to a rule of court for referring all matters of fact in controversy to referees, reserving all matters of law for the decision of the court, and the report of the referees shall have the effect of a special verdict, which is to be proceeded upon by the court as a special verdict, and either party may have a writ of error to the judgment entered thereupon

6.-5. Those by virtue of the act of 1806, which authorizes "any person or persons desirous of settling any dispute or controversy, by themselves, their agents or attorneys, to enter into an agreement in writing, or refer such dispute or controversy to certain persons to be by them mutually chosen; and it shall be the duty of the referees to make out an award and deliver it to the party in whose favor it shall be made, together with the written agreement entered into by the parties; and it shall be the duty of the prothonotary, on the affidavit of a subscribing witness to the agreement, that it was duly executed by the parties, to file the same in his office; and on the agreement being so filed as aforesaid, he shall enter the award on record, which shall be as available in law as an award made under a reference issued by the court, or entered on the docket by the parties."

7. Compulsory arbitrations are perhaps confined to Pennsylvania. Either party in a civil suit or action,, or his attorney, may enter at the prothonotary's office a rule of reference, wherein be shall declare his determination to have arbitrators chosen, on a day certain to be mentioned

therein, not exceeding thirty days, for the trial of all matters in variance in the suit between the parties. A copy of this rule is served on the opposite party. On the day. appointed they meet at the prothonotary's, and endeavor to agree upon arbitrators; if they cannot, the prothonotary makes out a list on which are inscribed the names of a number of citizens, and the parties alternately strike each one of them from the list, beginning with the plaintiff, until there are but the number agreed upon or fixed by the prothonotary left, who are to be the arbitrators; a time of meeting is then agreed upon or appointed by the prothonotary, when the parties cannot agree, at which time the arbitrators, after being sworn or affirm and equitably to try all matters in variance submitted to them, proceed to bear and decide the case; their award is filed in the office of the prothonotary, and has the effect of a judgment, subject, however, to appeal, which may be entered at any time within twenty days after the filing of such award. Act of 16th June, 1836, Pamphl. p. 715.

8. This is somewhat similar to the arbitrations of the Romans; there the praetor selected from a list Of citizens made for the purpose, one or more persons, who were authorized to decide all suits submitted to them, and which had been brought before him; the authority which the proctor gave them conferred on them a public character and their judgments were without appeal Toull. Dr. Civ. Fr. liv. 3, t. 3, ch. 4, n. 820. See generally, Kyd on Awards; Caldwel on Arbitrations; Bac. Ab. h.t.; 1 Salk. R. 69, 70-75; 2 Saund. R. 133, n 7; 2 Sell. Pr. 241; Doct. Pl. 96; 3 Vin. Ab. 40; 3 Bouv. Inst. n. 2482.

ARBITRATOR. A private extraordinary judge chosen by the parties who have a matter in dispute, invested with power to decide the same. Arbitrators are so called because they have generally an arbitrary power, there being in

common no appeal from their sentences, which are called awards. Vide Caldw. on Arb. Index,. h.t.; Kyd on Awards, Index, h.t. 3 Bouv. Inst. n. 2491.

ARBOR CONSANGUINITATIS. A table, formed in the shape of a tree, in order to show the genealogy of a family. The progenitor is placed beneath, as if for the root or stem the persons descended from him are represented by the branches, one for each descendant. For example : if it be desired to form the genealogical tree of Peter's family, Peter will be made the trunk of the tree; if he has two sons, John and James, their names will be written on the first two branches, which will themselves shoot as many twigs as John and James have children; these will produce others, till the whole family shall be represented on the tree.

ARCHAIONOMIA. The name of a collection of Saxon laws, published during the reign of the English Queen Elizabeth, in the Saxon language, with a Latin version, by Mr. Lambard. Dr. Wilkins enlarged this. collection in his work, entitled Leges Anglo Saxonicae, containing all the Saxon laws extant, together with those ascribed to Edward the Confessor, in Latin; those of William the Conqueror, in Norman and Latin; and of Henry I., Stephen, and Henry II., in Latin.

ARCHBISHOP, eccl. law. The chief of the clergy of a whole province. He has the, inspection of the bishops of that province, as well as of the inferior clergy, and may deprive them on notorious cause. The archbishop has also his own diocese, in which he exercises, episcopal jurisdiction, as in his province he exercises archiepiscopal authority. 1 Bl. Com. 380; L. Raym. 541; Code, 1, 2.

ARCHES COURT. The name of one of the English ecclesiastical courts. Vide

Court of Arches.

ARCHIVES. Ancient charters or titles, which concern a nation, state, or community, in their rights or privileges. The place where the archives are kept bears the same name. Jacob, L. D. h.t.; Merl. Rep. h.t.

ARCHIVIST. One to whose care the archives have been confided.

ARE. A French measure of surface. This is a square, the sides of which are of the length of ten metres. The are is equal to 1076.441 square feet. Vide Measure.

AREA. An enclosed yard or opening in a house; an open place adjoining to a house. 1 Chit. Pr. 176.

AREOPAGITE. A senator, or a judge of the Areopagus. Solon first established the Areopagites; although some say, they were established in the time of Cecrops, (Anno Mundi, 2553,) the year that Aaron, the brother of Moses, died; that Draco abolished the order, and Solon reestablished it. Demosthenes, in his harangue against Aristocrates, before the Areopagus, speaks of the founders of that tribunal as unknown. See Acts of the Apostles, xviii. 34.

AREOPAGUS. A tribunal established in ancient Athens, bore this name. It is variously represented; some considered as having been a model of justice and perfection, while others look upon it as an aristocratic court, which had a very extended jurisdiction over all crimes and offences, and which exercised an absolute power. See Acts 17, 19 and 22.

ARGENTUM ALBUM. White money; silver coin. See Alba Firma,

ARGUMENT, practice. Cicero defines it ii probable reason proposed in order to induce belief. Ratio probabilis et idonea ad faciendam fidem. The logicians define it more scientifically to be a means, which by its connexion between two extremes) establishes a relation between them. This subject belongs rather to rhetoric and logic than to law.

ARGUMENT LIST. A list of cases put down for the argument of some point of law.

ARGUMENTATIVENESS. What is used by way of reasoning in pleading is so called.

2. It is a rule that pleadings must not be argumentative. For example, when a defendant is sued for taking away the goods of the plaintiff, he must not plead that "the plaintiff never had any goods," because although this may be an infallible argument it is not a good plea. The plea should be not guilty. Com. Dig. Pleader R 3; Dougl. 60; Co. Litt. 126 a.

ARGUMENTUM AB INCONVENIENTI. An argument arising from the inconvenience which the construction of the law would create, is to have effect only in a case where the law is doubtful where the law is certain, such an argument is of no force. Bac. Ab. Baron and Feme, H.

ARISTOCRACY. That form of government in which the sovereign power is exercised by a small number of persons to the exclusion of the remainder of the people.

ARISTODEMOCRACY. A form of government where the power is divided between the great men of the nation and the people.

ARKANSAS. The name of one of the new states of the United States. It was admitted into the Union by the act of congress of June 15th, 1836, 4 Sharsw. cont. of Story's L. U. S. 2444, by which it is declared that the state of Arkansas shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

2. A convention assembled at Little Rock, on Monday, the 4th day of January, 1836, for the purpose of forming a constitution, by which it is declared that "We, the people of the Territory of Arkansas, by our representatives in convention assembled, in order to secure to ourselves and our posterity the enjoyments of all the rights of life, liberty and property, and the free pursuit of happiness do mutually agree with each other to form ourselves into a free and independent state, by the name and style of `The State of Arkansas.'" The constitution was finally adopted on the 30th day of January, 1836.

3. The powers of the government are divided into three departments; each of them is confided to a separate body of magistry, to wit; those which are legislative, to one; those which are executive, to another and those which are judicial, to a third.

4.-1. The legislative authority of the state is vested in a general assembly, which consists of a senate and house of representatives. Each house shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner, and

under such penalties, as each house shall provide. Sect. 15. Each house may determine the rules of its own proceedings, punish its own members for disorderly behaviour, and with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offence. They shall each from time to time publish a journal of their proceedings, except such parts as, in their opinion, require secrecy; and the yeas and nays shall be entered on the journal, at the desire of any five members. Sect. 16.

5. The doors of each house while in session, or in a committee of the whole shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence, during, their session; but such imprisonment shall not extend beyond the final adjournment of that session. Sect. 17.

6. Bills may originate in either house, and be amended or rejected in the other and every bill shall be read on three different days in each house, unless two-thirds of, the house where the same is pending shall dispense with the rules : and every bill having passed both houses shall be signed by the president of the senate, and the speaker of the house of representatives. Sect. 81.

7. Whenever an officer, civil or military, shall be appointed by the joint concurrent vote of both houses, or by the separate vote of either house of the general assembly, the vote shall be taken viva voce, and entered on the journal. Sect. 19.

8. The senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech

or debate in either house, they shall not be questioned in any other place. Sect. 20.

9. The members of the general assembly shall severally receive, from the public treasury, compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made. Sect. 21.

10.-1. The senate shall never consist of less than seventeen nor more than thirty-three members. Art. 4, Sect. 31. The members shall be chosen for four years, by the qualified electors of the several districts. Art. 4, Sect. 5. No person shall be a senator who shall not have attained the age of thirty years; Who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state for one year; and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent. Art. 4, Sect. 6.

11. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the chief justice of the supreme court shall preside; and no person shall be convicted without the concurrence of two-thirds of the senators elected. Art. 4, Sect. 27.

12.-2. The house of representatives shall consist of not less than fifty-four, nor more than one hundred representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as the ratio, until the number of representatives amounts to seventy-five; and when they amount to seventy-five, they shall not be further increased until the population of the state amounts to five hundred thousand souls. Provided that each county now organized shall, although its population may not give the existing

ratio, always be entitled to one representative. The members are chosen every second year, by the qualified electors of the several counties. Art. 4, Sect. 2.

13. The qualification of an elector is as follows: he must 1, be a free, white male citizen of the United States; 2, have attained the age of twenty-one years; 3, have been a citizen of this state six months; 4, be must actually reside in the county, or district where he votes for an office made elective under this state or the United States. But no soldier, seaman, or marine, in the army of the United States, shall be entitled to vote at any election within this state. Art. 4, Sect. 2.

14. No person shall be a member of the house of representatives, who shall not have attained the age of twenty-five years; who shall not be a free, white male citizen of the United States; who shall not have been an inhabitant of this state one year; and who shall not, at the time of his election, have an, actual residence in the county he may be chosen to represent. Art. 4, Sect. 4.

15. The house of representatives shall have the sole power of impeachment. Art. 4, Sect. 27.

16.-2. The supreme executive power of this state is vested in a chief magistrate, who is styled "The Governor of the State of Arkansas." Art. 5, Sect. 1.

17.-1. He is elected by the electors of the representatives.

18.-2. He must be thirty years of age a native born citizen of Arkansas, or a native born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States; and, shall have been a resident of the same at least four years next before his election. Art. 4, s. 4.

19.-3. The governor holds his office for the term of four years from the time of, his installation, and until his successor shall be duly

qualified; but he is not eligible for more than eight years in any term of twelve years. Art. 5, sect. 4.

20.-4. His principal duties are enumerated in the fifth article of the constitution, and are as follows: He Shall be commander-in-chief of the army of this state, and of the militia thereof, except when they shall be called into the service of the United States; s. 6: He may require information, in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices; s. 7. He may by proclamation, on extraordinary occasions, convene the general assembly, at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious diseases. In case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the general assembly; s, 8. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient; s. 9. He shall take care that the laws be faithfully executed s. 10. In all criminal and penal cases, except those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law in cases of treason, he shall have power, by and with the advice and consent of the senate, to grant reprieve sand pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly s. 11. He is the keeper of the seal of the' state, which is to be used by him officially; s. 12. Every bill which shall have passed both houses, shall be presented to the governor. If he approve, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it Shall

have originated, who shall enter his objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered; and if approved by a majority of the whole number elected to that house it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays; and the names of persons voting for or against the bill, shall be entered on the journals of each house respectively. If the bill shall not be returned by the governor within three days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if be had signed it, unless the general assembly, by their adjournment, prevent its return; in such case it shall not be a law; s. 16. 5. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, or absence from the state, the president of the senate shall exercise all the authority appertaining to the office of governor, until another governor shall have been elected and qualified, or until the governor absent or impeached, shall return or be acquitted; s. 18. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government; s. 19.

21.-3. The judicial power of this state is vested by the sixth article of the constitution, as follows

22.-1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts, and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary, in corporation courts; and, when they deem it expedient, may establish courts of chancery.

23.-2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, any two of whom shall constitute a quorum and the concurrence of any two of the said judges shall, in every case, be necessary to a decision. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under such rules and regulations as may, from time to time, be prescribed by law; it shall have a general superintending control over all inferior and other courts of law and equity it shall have power to issue writs of error and Supersedeas, certiorari and habeas corpus, mandamus, and quo warranto, and other remedial writs, and to hear and determine the same; said judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

24.-3. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law and exclusive original jurisdiction of all crimes amounting to felony.at common law; and original jurisdiction of all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly; and original jurisdiction in all matters of contract) when the sum in controversy is over one hundred dollars. It shall hold its terms at such place in each county, as may be by law directed.

25.-4. The state shall be divided into convenient circuits, each to consist of not less than five, nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

26.-5. The circuit courts shall exercise a superintending control over the county courts, and over justices of the peace, in each county in their

respective circuits; and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

27.-6. Until the general assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.

28.-7. The general assembly shall, by joint vote of both houses, elect the judges of the supreme and circuit courts, a majority of the whole number in joint vote being necessary to a choice. The judges of the supreme court shall be at least thirty years of age; they shall hold their offices for eight years from the date of their commissions. The judges of the circuit courts shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions.

29.-8. There shall be established in each county, a court to be holden by the justices of the peace, and called the county court, which shall have jurisdiction in all matters relating, to county taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

30.-9. There shall be elected by the justices of the peace of the respective counties, a presiding judge of the county court, to be commissioned by the governor, and hold his office for the term of two years, and until his successor is elected or qualified. He shall, in addition to the duties that may be required of him by law, as presiding judge of the county court, be a judge of the court of probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators, and guardians, as may be prescribed by law, until otherwise directed by the general assembly.

31.-10. No judge shall preside in the trial of any cause, in the event of which he may be interested, or where either of the parties shall be

connected with him by affinity or consanguinity, within such degrees as may be proscribed by law, or in which he shall have been of counsel, or have presided in any inferior court, except by consent of all the parties.

32.-11. The qualified voters in each township shall elect the justices of the peace for their respective townships. For every fifty voters there may be elected one justice of the peace, provided, that each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for two years, and shall be commissioned by the governor, and reside in the townships for which they shall have been elected, during their continuance in office. They shall have individually, or two or more of them jointly, exclusive original jurisdiction in all matters of contract, except in actions of covenant, where the sum in controversy is of one hundred dollars and under. Justices of the peace shall in no case have jurisdiction to try and determine any criminal case or penal offence against the state; but may sit as examining courts, and commit, discharge, or recognize to the court having jurisdiction, for further trial, offenders against the peace. For the foregoing purposes they shall have power to issue all necessary process they shall also have power to bind to keep the peace, or for good behaviour.

ARM OF THE SEA. Lord Coke defines an arm of the sea to be where the sea or tide flows or reflows. Constable's Case, 5 Co. 107. This term includes bays, roads, creeks, coves, ports, and rivers where the water flows and reflows, whether it be salt or fresh. Ang. Tide Wat. 61. Vide Creek; Haven; Navigable; Port; Reliction; River; Road.

ARMISTICE. A cessation of hostilities between belligerent nations for a considerable time. It is either partial and local, or general. It differs

from a mere suspension of arms which takes place to enable the two armies to bury their dead, their chiefs to hold conferences or pourparlers, and the like. Vattel, Droit des Gens, liv. 3, c. 16, Sec. 233. The terms truce, (q.v.)
and armistice, are sometimes used in the same sense. Vide Truce.

ARMS. Any thing that a man wears for his defence, or takes in his hands, or uses in his anger, to cast at, or strike at another. Co. Litt. 161 b, 162 a; Crompt. Just. P. 65; Cunn. Dict. h.t.

2. The Constitution of the United States, Amendm. art. 2, declares, "that a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." In Kentucky, a statute "to prevent persons from wearing concealed arms," has been declared to be unconstitutional; 2 Litt. R. 90; while in Indiana a similar statute has been holden valid and constitutional. 3 Blackf. R. 229. Vide Story, Const. Sec. 1889, 1890 Amer. Citizen, 176; 1 Tuck. Black. App. 300 Rawle on Const. 125.

ARMS, heraldry. Signs of arms, or drawings painted on shields, banners, and the like. The arms of the United States are described in the Resolution of Congress, of June 20, 1782. Vide Seal of the United States.

ARPENT. A quantity of land containing a French acre. 4 Hall's Law Journal, 518.

ARPENTATOR, from arpent. A measurer or surveyor of land.

ARRAIGNMENT, crim. law practice. Signifies the calling of the defendant to the bar of the court, to answer the accusation contained in the indictment.

It consists of three parts.

2.-1. Calling the defendant to the bar by his name, and commanding him to hold up his hand; this is done for the purpose of completely identifying the prisoner, as the person named in the indictment; the holding up his hand is not, however, indispensable, for if the prisoner should refuse to do so, he may be identified by any admission that he is the person intended. 1 Bl. Rep. 3.

3.-2. The reading of the indictment to enable him fully to understand, the charge to be produced against him; The mode in which it is read is, after' saying, "A B, hold up your hand," to proceed, "you stand indicted by the name of A B, late of, &c., for that you on, &c." and then go through the whole of the indictment.

4.-3. After this is concluded, the clerk proceeds to the third part, by adding, "How say you, A B, are you guilty or not guilty?" Upon this, if the prisoner, confesses the charge, the confession is recorded, and nothing further is done till judgment if, on the contrary, he answers "not guilty", that plea is entered for him, and the clerk or attorney general, replies that he is guilty; when an issue is formed. Vide generally, Dalt. J. h.t.; Burn's J. h.t.; Williams; J. h.t.; 4 Bl. Com. 322; Harg. St. Tr. 4 vol. 777, 661; 2 Hale, 219; Cro. C. C. 7; 1 Chit. Cr. Law, 414.

ARRAMEUR, maritime law. The name of an ancient officer of a port, whose business was to load and unload vessels.

2. In the Laws of Oleron, art 11, (published in English in the App. to 1 Pet. Adm. R. xxv.) some account of arrameurs will be found in these words: "There were formerly, in several ports of Guyenne, certain officers called arrameurs, or stowers, who were master-carpenters by profession, and were paid by the merchants, who loaded the ship. Their business was to dispose

right, and Stow closely, all goods in casks, bales, boxes, bundles or otherwise to balance both sides, to fill up the vacant spaces, and manage every thing to the best advantage. It was riot but that the greatest part of the ship's crew understood this as well as these stowers but they would not meddle with it, nor undertake it, to avoid falling under the merchant's displeasure, or being accountable for any ill accident that might.happen by that means. There were also sacquiers, who were very ancient officers, as may be seen in the 14th book of the Theodosian code, Unica de Saccariis Portus Romae, lib. 14. Their business was to load and unload vessels loaded with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandise otherwise." See Sacquier; Stevedore.

ARRAS, Span. law. The property contributed by the husband, ad sustinenda onera matrimonii, is called arras. The husband is under no obligation to give arras, but it is a donation purely voluntary. He is not permitted to give in arras more than a tenth of his property. The arras is the exclusive property of the wife, subject to the husband's usufruct during his life. Burge on the Confl. of Laws, 417.

2. By arras is also understood the donation which the husband makes to his wife, by reason or on account of marriage, and in consideration of the dote, or portion, which be receives from her. Aso & Man. Inst. h.t. 7, c. 3.

ARRAY, practice. The whole body of jurors summoned to attend a court, as they are arrayed or arranged on the panel. Vide Challenges, and Dane's Ab. Index, h.t.; 1 Chit. Cr. Law, 536; Com. Dig. Challenge, B.

ARREARAGE. Money remaining unpaid after it becomes due as rent unpaid

interest remaining due Pow. Mortgages, Index, h.t.; a sum of money remaining in the hands of an accountant. Merl. Rep. h.t.; Dane's Ab. Index, h.t.

ARREST. To stop; to seize; to deprive one of his liberty by virtue of legal authority.

ARREST IN CIVIL CASES, practice. An arrest is the apprehension of a person by virtue of a lawful authority, to answer the demand against him in a civil action.

2. To constitute an arrest, no actual force or manual touching of the body is requisite; it is sufficient if the party be within the power of the officer, and submit to the arrest. 2 N. H. Rep. 318; 8 Dana, 190; 3 Herring. 416; 1 Baldw. 239; Harper, 453; 8 Greenl. 127; 1 Wend. 215 2 Blackf. 294. Barewords, however, will not make an arrest, without laying the person or otherwise confining him. 2 H. P. C. 129 1 Burn's Just. 148; 1 Salk. 79. It is necessarily an assault, but not necessarily a battery. Cases Temp. Hardw. 300.

3. Arrests are made either on mesne or final process. An arrest on mesne process is made in order that the defendant shall answer, after judgment, to satisfy the claim of the plaintiff; on being arrested, the defendant is entitled to be liberated on giving sufficient bail, which the officer is bound to take. 2. When the arrest is on final process, as a ca. sa., the defendant cannot generally be dis charged on bail; and his discharge is considered as an escape. Vide, generally, Yelv. 29, a, note; 3 Bl. Com. 288, n.; 1 Sup. to Ves. Jr. 374; Wats. on Sher. 87; 11 East, 440; 18 E. C. L. R. 169, note.

4. In all governments there are persons who are privileged from arrest

in civil cases. In the United States this privilege continues generally while the defendant remains invested with a particular character. Members of congress and of the state legislatures are exempted while attending the respective assemblies to which they belong parties and witnesses, while lawfully attending court; electors, while attending a public election; ambassadors and other foreign ministers; insolvent debtors, when they have been lawfully discharged; married women, when sued upon their contracts, are generally privileged; and executors and administrators, when sued in their representative characters, generally enjoy the same privilege. The privilege in favor of members of congress, or of the state legislatures, of electors, and of parties and witnesses in a cause, extend to the time of going to, remaining at, and returning from, the places to which they are thus legally called.

5. The code of civil practice of Louisiana enacts as follows, namely: Art. 210. The arrest is one of the means which the law gives the creditor to secure the person of his debtor while the suit is pending, or to compel him to give security for his appearance after judgment. Art. 211. Minors of both sexes, whether emancipated or not, interdicted persons, and women, married or single, cannot be arrested. Art. 212. Any creditor, whose debtor is about to leave the state, even for a limited time, without leaving in it sufficient property to satisfy the judgment which he expects to obtain in the suit he intends to bring against him, may have the person of such debtor arrested and confined until he shall give sufficient security that be shall not depart from the state without the leave of the court. Art. 213. Such arrest may be ordered in all demands brought for a debt, whether liquidated or not, when the term of payment has expired, and even for damages for any injury sustained by the plaintiff in either his person or property. Art. 214. Previous to obtaining an order of arrest against his debtor, to compel him to give sufficient security that be shall not depart from the state, the

creditor must swear in the petition which he presents to that effect to any competent judge, that the debt, or the damages which he claims, and the amount of which he specifies, is really due to him, and that he verily believes that, the defendant is about to remove from the state, without leaving in it and lastly, that he does not take this oath with the intention of vexing the defendant, but only in order to secure his demand. Art. 215. The oath prescribed in the preceding article, shall be taken either

by the creditor himself, or in his absence, by his attorney in fact or his agent, provided either the one or the other can swear to the debt from his personal and direct knowledge of its being due, and not by what he may know or have learned from the creditor he represent. Art. 216. The oath which the creditor is required to take of the existence and nature of the debt of which he claims payment, in the cases provided in the two preceding articles, may be taken either before any judge or justice of the peace of the place where the court is held, before which he sues, or before the judge of any other place, provided the signature of such judge be proved or duly authenticated. Vide Auter action pendant; Lis pendens: Privilege; Rights.

ARREST, in criminal cases. The apprehending or detaining of the person, in order to be forthcoming to answer an alleged or suspected crime. The word arrest is more properly used in civil cases, and apprehension in criminal. A man is arrested under a capias ad respondendum, apprehended under a warrant charging him with a larceny.

2. It will be convenient to consider, 1, who may be arrested; 2, for what crimes; 3, at what time; 4, in what places; 5, by whom and by what authority.

3.-1. Who may be arrested. Generally all persons properly accused of

a crime or misdemeanor, may be arrested; by the laws of the United States, ambassadors (q.v.) and other public ministers are exempt from arrest.

4.-2. For what offences an arrest may be made. It may be made for treason, felony, breach of the peace, or other misdemeanor.

5.-3. At what time. An arrest may be made in the night as well as in the day time and for treasons, felonies, and breaches of the peace, on Sunday as well as on other days. It may be made before as well as after indictment found. Wallace's R. 23.

6.-4. At what places. No place affords protection to offenders against the criminal law; a man may therefore be arrested in his own house, (q.v.) which may be broken into for the purpose of making the arrest.

7.-5. Who may arrest and by what authority. An offender may be arrested either without a warrant or with a warrant. First, an arrest may be made without a warrant by a private individual or by a peace officer. Private individuals are enjoined by law to arrest an offender when present at the time a felony is committed, or a dangerous wound given. 11 Johns. R. 486 and vide Hawk. B. 1, c, 12, s. 1; c. 13, F3. 7, 8; 4 Bl. Com. 292; 1 Hale, 587; Com. Dig. Imprisonment, H 4; Bac. Ab. Trespass, D.

3. Peace officers may, a fortiori, make an arrest for a crime or misdemeanor committed in their view, without any warrant. 8 Serg. & R. 47. An arrest may therefore be made by a constable, (q.v.) a justice of the peace, (q.v.) sheriff, (q.v.) or coroner. (q.v.) Secondly, an arrest may be made by virtue of a warrant, (q.v.) which is the proper course when the circumstances of the case will permit it. Vide, generally, 1 Chit. Cr. Law, 11 to 71; Russ. on Cr. Index, h.t.

ARREST OF JUDGMENT. The act of a court by which the judges refuse to give judgment, because upon the face of the record, it appears that the plaintiff is not entitled to it. See Judgment, arrest of.

ARRESTANDIS bonis ne dissipentur. In the English law, a writ for him whose cattle or goods, being taken during a controversy, are likely, to be wasted and consumed.

ARRESTEE, law of Scotland. He in whose hands a debt, or property in his possession, has been arrested by a regular arrestment. If, in contempt of the arrestment, he shall make payment of the sum, or deliver the goods arrested to the common debtor, he is not only liable criminally for breach of the arrestment, but he must pay the debt again to the arrester. Ersk. Pr. L. Scot. 3, 6, 6.

ARRESTER, law of Scotland. One who sues out and obtains an arrestment of his debtor's goods or movable obligations. Ersk. Pr. L. Soot. 3, 6, 1.

ARRESTMENT, Scotch law. By this term is sometimes meant the securing of a criminal's person till trial, or that of a debtor till he give security judicio sisti. Ersk. Pr. L. Scot. 1, 2, 12. It is also the order of a judge, by which he who is debtor in a movable obligation to the arrester's debtor, is prohibited to make payment or delivery till the debt due to the arrester be paid or secured. Ersk. Pr. L. Scot. 3, 6, 1. See Attachment, foreign. where arrestment proceeds on a depending action, it may be loosed by the common debtor's giving security to the arrester for his debt, in the event it shall be found due. Id. 3, 6, 7.

ARRET, French law. An arret is a judgment, sentence, or decree of, a court of competent jurisdiction. Saisie-arret is an attachment of property in the hands of a third person. Code of Pract. of Lo. art. 209.

ARRETTED, arrectatus, i. e. ad rectum vocatus. Convened before a judge and charged with a crime. Ad rectum malefactorem, is, according to Bracton, to have a malefactor forthcoming to be put on his trial. Sometimes it is used for imputed or laid to his charge; as, no folly may be arretted to any one under age. Bract. l. 3, tr. 2, c. 10; Cunn. Dict. h.t.

ARRHAE, contracts, in the civil law. Money or other valuable things given by the buyer to the seller, for the purpose of evidencing the contract earnest.

2. There are two kinds of arrhae; one kind given when a contract has only been proposed; the other when a sale has actually taken place. Those which are given when a bargain has been merely proposed, before it has been concluded, form the matter of the contract, by which he who gives the arrhae consents and agrees to lose them, and to transfer the title to them in the opposite party, in case he should refuse to complete the proposed bargain; and the receiver of arrhae is obliged on his part to return double the amount to the giver of them in case be should fail to complete his part of the contract. Poth. Contr. de Vente, n. 498. After the contract of sale has been completed, the purchaser usually gives arrbae as evidence that the contract has been perfected. Arrbae are therefore defined quod ante pretium datur, et fidem fecit contractus, facti totiusque pecuniae solvendae. Id. n. 506; Code, 4, 45, 2.

TO ARRIVE. To come to a particular place; to reach a particular or certain place as, the ship United States arrived in New York. See 1 Marsh. Dec. 411.

ARROGATION, civil law. Signifies nearly the same as adoption; the only difference between them is this, that adoption was of a person under full age but as arrogation required the person arrogated, sui juris, no one could

be arrogated till he was of full age. Dig. 1, 7, 5; Inst. 1, 11, 3 1 Brown's Civ. Law, 119.

ARSER IN LE MAIN. Burning in the hand. This punishment was inflicted on those who received the benefit of clergy. Terms de la Ley.

ARSON, criminal law. At common law an offence of the degree of felony; and is defined by Lord Coke to be the malicious and voluntary burning of the house of another, by night or day. 3 Inst. 66.

2. In order to make this crime complete, there must be, 1st, a burning of the house, or some part of it; it is sufficient if any part be consumed, however small it may be. 9 C. & P. 45; 38 E. C. L. R. 29; 16 Mass. 105. 2d. The house burnt must; belong to another; but if a man set fire to his own house with a view to burn his neighbor's, and does so, it is at least a great misdemeanor, if not a felony. 1 Hale, P. C. 568; 2 East, P. C. 1027; 2 Russ. 487. 3d. The burning must have been both malicious and willful.

3. The offence of arson at common law, does not extend further than the burning of the house of another. By statute this crime is greatly enlarged in some of the states, as in Pennsylvania, where it is extended to the burning of any barn or outhouse having bay or grain therein; any barrack, rick or stack of hay, grain, or bark; any public buildings, church or meeting-house, college, school or library. Act 23d April, 1829; 2 Russell on Crimes, 486; 1 Hawk. P. C. c. 39 4 Bl. Com. 220; 2 East, P. C. c. 21, s. 1, p. 1015; 16 John. R. 203; 16 Mass. 105. As to the extension of the offence by the laws of the United States, see Stat. 1825, c. 276, 3 Story's L. U. S. 1999.

ARSURA. The trial of money by fire after it was coined. This word is

obsolete.

ART. The power of doing. something not taught by nature or instinct. Johnson. Eunomus defines art to be a collection of certain rules for doing anything in a set form. Dial. 2, p. 74. The Dictionaire des Sciences Medicales, q.v., defines it in nearly the same terms.

2. The arts are divided into mechanical and liberal arts. The mechanical arts are those which require more bodily than mental labor; they are usually called trades, and those who pursue them are called artisans or mechanics. The liberal are those which have for the sole or principal object, works of the mind, and those who are engaged in them are called artists. Pard. Dr. Com. n. 35.

3. The act of Congress of July 4, 1836, s. 6, in describing the subjects of patents, uses the term art. The sense of this word in its usual acceptation is perhaps too comprehensive. The thing to be patented is not a mere elementary, principle, or intellectual discovery, but a principle put in practice, and applied to some art, machine, manufacture, or composition of matter. 4 Mason, 1.

4. Copper-plate printing on the back of a bank note, is an art for which a patent may be granted. 4 Wash. C. C. R. 9.

ART AND PART, Scotch law. Where one is accessory to a crime committed by another; a person may be guilty, art and part, either by giving advice or counsel to commit the crime; or, 2, by giving warrant or mandate to commit it; or, 3, by actually assisting the criminal in the execution.

2. In the more atrocious crimes, it seems agreed, that the adviser is equally punishable with the criminal and that in the slighter offences, the circumstances arising from the adviser's lesser age, the jocular or careless manner of giving the advice, &c., may be received as pleas for softening the

punishment.

3. One who gives a mandate to commit a crime, as he is the first spring of the action, seems more guilty than the person employed as the instrument in executing it.

4. Assistance may be given to the committer of a crime, not only in the actual execution, but previous to it, by furnishing him, with a criminal intent, with poison, arms, or other means of perpetrating it. That sort of assistance which is not given till after the criminal act, and which is commonly called abetting, though it be itself criminal, does not infer art and part of the principal crime. Ersk. Pr. L; Scot. 4, 4, 4 ; Mack. Cr. Treat. tit. Art and Part.

ARTICLES. A division in some books. In agreements and other writings, for the sake of perspicuity, the subjects are divided into parts, paragraphs, or articles.

ARTICLES, chan. practice. An instrument in writing, filed by a party to a proceeding in chancery, containing reasons why a witness in the cause should be discredited.

2. As to the matter which ought to be contained in these articles, Lord Eldon gave some general directions in the case of Carlos v. Brook, 10 Ves. 49. "The court," says he, "attending with great caution to an application to permit any witness to be examined after publication, has held where the proposition was to examine a witness to credit, that the examination is either to be confined to general credit; that is, by producing witnesses to swear, that the person is not to be believed upon his oath; or, if you find him swearing to a matter, not to issue in the cause, (and therefore not thought material to the merits,) in that case, as the witness is not

produced to vary the case in evidence by, testimony that relates to matters in issue, but is to speak only to the truth or want of veracity, with which a witness had spoken to a fact not, in issue, there is no danger in permitting him to state that such fact, not put in issue, is false and, for the purpose of discrediting a witness, the court has not considered itself at liberty to sanction such a proceeding as an examination to destroy the credit of another witness, who had deposed only to points put in issue. In Purcell v. M'Namara, it was agreed that after publication it was competent to examine any witness to the point, whether he would believe that man upon his oath. It is not competent, even at law, to ask the ground of that opinion; but the general question only is permitted. In Purcell v. M'Namara, the witness went into the history of his whole life and as to his solvency, & c. It was not at all put at issue whether he had been insolvent, or had compounded with his creditors; but, having sworn the contrary, they proved by witnesses, that he, who had sworn to a, matter not in issue, had sworn falsely to that fact; and that he had been insolvent, and had compounded with his creditors; and it would be lamentable, if the court could not find means of getting at it; for he could not be indicted for perjury, though swearing falsely, the fact not being material. The rule is, in general cases the cause is heard upon evidence given before publication; but that you may examine after publication, provided you examine to credit only, and do not go to matters in issue in the cause, or in contradiction of them, under pretence of examining to credit only. Those depositions," he continued, "appear to me material to what is in issue in the cause; and therefore must be suppressed," See a form of articles in Gresl. Eq. Ev. 140, 141; and also 8 Ves. 327; 9 Ves. 145; 1 S. & S. 469.

ARTICLES, eccl. law. A complaint in the form of a libel, exhibited to an ecclesiastical court.

ARTICLES OF AGREEMENT, contracts. Relate either to real or personal estate, or to both. An article is a memorandum or minute of an agreement, reduced to writing to make some future disposition or modification of property; and such an instrument will create a trust or equitable estate, of which a specific performance will be decreed in chancery. Cruise on Real Pr. tit. 32 c. 1, s. 31. And see Id. tit. 12, c. 1.

2. This instrument should contain: 1, the name and character of the parties; 2, the subject-matter of the contracts; 3, the covenants which each of the parties bind themselves to perform; 4, the date; 5, the signatures of the parties.

3.-1. The parties should be named, and their addition should also be mentioned, in order to identify them. It should also be stated which persons are of the first, second, or other part. A confusion, in this respect, may occasion difficulties.

4.-2. The subject-matter of the contract ought to be set out in clear and explicit language, and the time and place of the performance of the agreement ought to be mentioned and, when goods are to be delivered, it ought to be provided at whose expense they shall be removed, for there is a difference in the delivery of light and bulky articles. The seller of bulky articles is not in general bound to deliver them unless he agrees to do so. 5 S. & R. 19 12 Mass. 300; 4 Shepl. 49.

5.-3. The covenants to be performed by each party should be specially and correctly stated, as a mistake in this respect leads to difficulties which might have been obviated had they been properly drawn.

6.-4. The instrument should be truly dated.

7.-5. It should be signed by the parties or their agents. When signed by an agent he should state his authority, and sign his principal's name,

and then his own, as, A B, by his agent or attorney C D.

ARTICLES OF CONFEDERATION. The compact which was made by the original thirteen states of the United States of America, bore the name of the "Articles of Confederation and perpetual union between, the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia." It was adopted and went into force on the first day of March, 1781, and remained as the supreme law until the first Wednesday of March, 1789. 5 Wheat. R. 420. The following analysis of this celebrated instrument is copied from Judge Story's Commentaries on the Constitution of the United States, Book 2, c. 3.

2. "In pursuance of the design already announced, it is now proposed to give an analysis of the articles of confederation, or, as they are denominated in the instrument itself, the Articles of Confederation and Perpetual Union between the States, as they were finally adopted by the thirteen states in 1781.

3. "The style of the Confederacy was, by the first article, declared to be, `The United States of America.' The second article declared, that each state retained its sovereignty, freedom, and independence, and every power, jurisdiction and right, which was not by this confederation expressly delegated to the United States, in congress assembled. The third article declared, that the states severally entered into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever. The fourth article declared, that the free inhabitants of each of the states, (vagabonds and fugitives from justice excepted,) should be entitled to all

the privileges of free citizens in the several states; that the people of each state should have free ingress and regress to any from any other state, and should enjoy all the privileges of trade and commerce, subject to the same duties and restrictions, as the inhabitants; that fugitives from justice should, upon the demand of the executive of the state, from which they fled, be delivered up; and that full faith and credit should be given, in each of the states, to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

4. "Having thus provided for the security and intercourse of the states, the next article (5th) provided for the organization of a general congress, declaring that delegates should be chosen in such manner, as the legislature of each state should direct; to meet in congress on the first Monday in every year, with a power, reserved to each state, to recall any or all of the delegates, and to send others in their, stead. No state was to be represented in congress by less than two, nor than seven members. No delegate was eligible for more than three, in any term of six years; and no delegate was capable of holding any office of emolument under the United States. Each state was to maintain its own delegates; and, in determining questions in congress, was to have one vote. Freedom of speech and debate in congress was not to be impeached or questioned in any other place; and the members were to be protected from arrest and imprisonment, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

5. "By subsequent articles, congress was invested with the sole and exclusive right and power of determining on peace and war, unless in case of an invasion of a state by enemies, or an imminent danger of an invasion by Indians; of sending and receiving ambassadors; entering into treaties and alliances, under certain limitations, as to treaties of commerce; of

establishing rules for deciding all cases of capture on land and water, and for the division and appropriation of prizes taken by the land or naval forces, in the service of the United States of granting letters of marque and reprisal in times of peace; of appointing courts for the trial of piracies and felonies committed on the high seas; and of establishing courts for receiving and finally determining appeals in all cases of captures.

6. "Congress was also invested with power to decide in the last resort, on appeal, all disputes and differences between two or more states concerning boundary, jurisdiction, or any other cause whatsoever; and the mode of exercising that authority was specially prescribed. And all controversies concerning the private right of soil, claimed under different grants of two or more states before the settlement of their jurisdiction, were to be finally determined in the same manner, upon the petition of either of the grantees. But no state was to be deprived of territory for the benefit of the United States.

7. "Congress was also invested with the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or that of the United States; of fixing the standard of weights and measures throughout the United States; of regulating the trade and managing all affairs with the Indians, not members of any of the states, provided, that the legislative right of any state within its own limits should not be infringed or violated of establishing and regulating post offices from one state to another, and exacting postage to defray the expenses; of appointing all officers of the land forces in the service of the United States, except regimental officers; of appointing all officers of the naval forces, and commissioning all officers whatsoever in the service of the United States; and of making rules for the government and regulation of the land and naval forces, and directing their operations.

8. "Congress was also invested with authority to appoint a committee of

the states to sit in the recess of congress, and to consist of one delegate from each state, and other committees and civil officers, to manage the general affairs under their direction; to appoint one of their number to preside, but no person was to serve in the office of president more than one year in the term of three years; to ascertain the necessary sums for the, public service, and to appropriate the same for defraying the public expenses; to. borrow money and emit bills of credit of the United States to build and equip a navy; to agree upon the number of land forces, and make requisitions upon each state for its quota, in proportion to the number of white inhabitants in such state. The legislatures of each state were to appoint the regimental officers, raise the men, and clothe, arm, and equip them at the expense of the United States.

9. "Congress was also invested with power to adjourn for any time not exceeding six months, and to any place within the United States and provision was made for the publication of its journal, and for entering the yeas and nays thereon, when desired by any delegate.

10. "Such were the powers confided in congress. But even these were greatly restricted in their exercise; for it was expressly. provided, that congress should never engage in a war; nor grant letters of marque or reprisal in, time of peace; nor enter into any treaties or alliances; nor coin money or regulate the value thereof; nor ascertain the sums or expenses necessary for the, defence and welfare of the United States, nor emit bills nor borrow money on the credit of the United States nor appropriate money; nor agree upon the number of vessels of war to be built, or purchased; or the number of land or sea forces to be raised; nor appoint a commander-in-chief of the army or navy; unless nine states should assent to the same. And no question on any other point, except for adjourning from day to day, was to

be determined, except by vote of the majority of the states.

11. "The committee of the states or any tine of them, were authorized in the recess of congress to exercise such powers, as congress, with the assent of nine states, should think it expedient to vest them with, except such powers for the exercise of which, by the articles of confederation, the assent of nine states was required, which could not be thus delegated.

12. "It was further. provided, that all bills of credit, moneys borrowed, and debts contracted by or under the authority of congress before the confederation, should be a charge against the United States; that when land forces were raised by any state for the common defence, all officers of or under the rank of colonel should be appointed by the legislature of the state, or in such manner as the state should direct; and all vacancies should be filled up in the same manner that all charges of war, and all other expenses for the common defence or general welfare, should be defrayed out of a common treasury, which should be supplied by the several states, in proportion to the value of the land within each state granted or surveyed, and the buildings and improvements thereon, to be estimated according to the mode prescribed by congress; and the taxes for that proportion were to be laid and levied by the legislatures of the states within the time agreed upon by congress.

13. "Certain prohibitions were laid upon the exercise of powers by the respective states. No state, without the consent of the United States, could send an embassy to, or receive an embassy from, or enter into, any treaty with any king, prince or state; nor could any person holding any office under the United States, or any of them, accept any present, emolument, office or title, from any foreign king, prince or state; nor could congress itself grant any title of nobility. No two states could enter into any treaty, confederation, or alliance with each other, without the consent of congress. No state could lay any imposts or duties, which might interfere

with any proposed treaties. No vessels of war were to be kept up by any state in time of peace, except deemed necessary by congress for its defence, or trade; nor any body of forces, except such as should be deemed requisite by congress to garrison its forts, and necessary for its defence. But every state was required always to keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and to be provided with suitable field-pieces, and tents, and arms, and ammunition, and camp equipage. No state could engage in war without the consent of congress, unless actually invaded by enemies, or in danger of invasion by the Indians. Nor could any state grant commissions to any ships of war, nor letters of marque and reprisal, except after a declaration of war by congress, unless such state were infested by pirates, and then subject to the determination of congress. No state could prevent the removal of any property imported into any state to any other state, of which the owner was an inhabitant. And no imposition, duties, or restriction, could be laid by any state on the Property of the United States or of either of them.

14. "There was also provision made for the admission of Canada, into the Union, and of other colonies with the assent of nine states. And it was finally declared, that every state should abide by the determinations of congress on all questions submitted to it by the confederation; that the articles should be inviolably observed by every state; that the union should be perpetual; and that no alterations should. be made in any of the articles, unless agreed to by congress, and 'Confirmed by the legislatures of every state.

15. "Such is the substance of this celebrated instrument, under which the treaty of peace, acknowledging our independence, was negotiated, the war of the revolution concluded, and the union of the states maintained until the adoption of. the present constitution."

ARTICLES OF IMPEACHMENT. An instrument which, in cases of impeachment, (q.v.) is used, and performs the same office which an indictment does, in a common criminal case, is known by this name. These articles do not usually pursue the strict form and accuracy of an indictment., Wood. Lect. 40, p. 605; Foster, 389, 390; Com. Dig. Parliament, L 21. They are sometimes quite general in the form of the allegations, but always contain, or ought to contain, so much certainty, as to enable the party to put himself on the proper defence, and in case of an acquittal, to avail himself of it, as a bar to another impeachment. Additional articles may, perhaps, be exhibited at any stage of the prosecution. Story on the Sec. 806; Rawle on the Const. 216.

2. The answer to articles of impeachment is exempted from observing great strictness of form; and it may contain arguments as well as facts. It is usual to give a full and particular answer to each article of the accusation. Story, Sec. 808.

ARTICLES OF PARTNERSHIP. The name given to an instrument of writing by which the parties enter into a partnership, upon the conditions therein mentioned. This instrument generally contains certain provisions which it is the object here to point out.

2. But before proceeding more particularly to the consideration of the Subject, it will be proper to observe that sometimes preliminary agreements to enter into a partnership are formed, and that questions, not unfrequently, arise as to their effects. These are not partnerships, but agreements to enter into partnership at a future time. When such an agreement has been broken, the parties may apply for redress to a court of law, where damages will be given, as a compensation. Application is sometimes made to courts of equity for their more efficient aid to compel a

specific performance. In general these courts will not entertain bills for specific performance of such preliminary contracts; but in order to suppress frauds, or manifestly mischievous consequences, they will compel such performance. 3 Atk. 383; Colly. Partn. B. 2, c. 2, Sec. 2 Wats. Partn. 60; Gow, Partn. 109; Story, Eq. Jur. Sec. 666, note; Story, Partn. Sec. 189; 1 Swanst. R. 513, note. When, however, the partnership may be immediately dissolved, it seems the contract cannot be specifically enforced. 9 Ves. 360.

3. It is proper to premise that under each particular head, it is intended briefly to examine the decisions which have been made in relation to it.

4. The principal parts of articles of partnership are here enumerated. 1. The names of the contracting parties. These should all be severally set out.

5.-2. The agreement that the parties actually by the instrument enter into partnership, and care must be taken to distinguish this agreement from a covenant to enter into partnership at a future time.

6.-3. The commencement of the partnership. This ought always to be expressly provided for. When no other time is fixed by it, the commencement will take place from the date of the instrument. Colly. Partn. 140 5 Barn. & Cres. 108.

7.-4. The duration of the partnership. This may be. for life, or for a, specific period of time; partnerships may be conditional or indefinite in their duration, or for a single adventure or dealing; this period of duration is either express or implied, but it will not be presumed to be beyond life. 1 Swanst. R. 521. When a term is fixed, it is presumed to endure until that period has elapsed; and, when no term is fixed, for the life of the parties, unless sooner dissolved by the acts of one of them, by

mutual consent, or operation of law. Story, Part. Sec. 84.

8. A stipulation may lawfully be introduced for the continuance of the partnership after the death of one of the parties, either by his executors or administrators, or for the admission of one or more of his children into the concern. Colly. Partn. 147; 9 Ves. 500. Sometimes this clause provides, that the interest of the partner shall go to such persons, as be shall by his last will name and appoint, and for want of appointment to such persons as are there named. In these cases it seems that the executors or administrators have an option to continue the partnership or not. Colly. Partn. 149; 1 McCl. & Yo. 569; Colles, Parl. Rep. 157.

9. when the duration of the partnership has been fixed by the articles, and the partnership expires by mere effluxion of time, and, after such determination it is carried on by the partners without any new agreement, in the absence of all circumstances which may lead as to the true intent of the partners, the partnership will not, in general, be deemed one for a definite period; 17 Ves. 298; but in other respects, the old articles of the expired partnership are to be deemed adopted, by implication as the basis of the new partnership during its continuance. 5 Mason, R. 176, 185; 15 Ves. 218; 1 Molloy, R. 466.

10.-5. The business to be carried on and the place where it is to be conducted. This clause ought to be very particularly written, as courts of equity will grant an injunction when one or more of the partners attempt, against the wishes of one or more of them, to extend such business beyond the provision contained in the articles. Story, Partn. Sec. 193; Gow, Partn 398.

11 - 6. The name of the firm, as for example, John Doe and Company, ought to be ascertained. The members of the partnership are required to use the name thus agreed upon, and a departure from it will make them individually liable to third persons or to their partners, in particular

cases. Colly. Partn. 141; 2 Jac. & Walk. 266; 9 Adol. & Ellis, 314; 11 Adol. & Ellis, 339; Story, Partn. Sec. 102, 136, 142, 202.

12.-7. A provision is not unfrequently inserted that the business shall be managed and administered by a particular partner, or that one of its departments shall be under his special care. In this case, courts of equity will protect such partner in his rights. Story, Partn. Sec. 172, 182, 193, 202, 204 Colly. Partn. 753. In Louisiana, this provision is incorporated in it's civil code, art. 2838 to art. 2840. The French and civil law also agree as to this provision. Poth. de Societe, n. 71; Dig. 14, 1, 1, 13; Poth. Pand. 14, 1, 4.

13. Sometimes a provision is introduced that a majority of the partners shall have the management of the affairs of the partnership. This is requisite, particularly when the associates are numerous, As to the rights of the majority, see Partners.

14.-8. A provision should be inserted as to the manner of furnishing the capital or stock of the partnership. When a partner is required to furnish his proportion of the stock at stated periods, or pay by installments, he will, where there are no stipulations to the contrary, be considered a debtor to the firm. Colly. Partn. 141; Story, Partn. Sec. 203; 1 Swanst. R. 89, Sometimes a provision is inserted that real estate, and fixtures belonging to the firm shall be considered, as between the partners, not as partnership but as several property. In cases of bankruptcy this property will be treated as the separate property of the partners. Colly. Partn. 141, 595, 600; 5 Ves. 189; 3 Madd. R. 63.

15.-9. A provision for the apportionment of the profits a and losses among the partners should be introduced. In the absence of all proof, and controlling circumstances, the partners are to share in both equally, although one may have furnished all the capital, and the other only his

skill, Wats. Partn. 59; Colly. Partn. 105; Story, Partn. Sec. 24; 3 Kent, Com. 28; 4th ed.; 6 Wend. R. 263; but see 7 Bligh, R. 432; 5 Wils. & Shaw, 16.

16.-10. Sometimes a stipulation for an annual account of the Property of the partnership whether in possession or in action, and of the debts due by partnership is inserted. These accounts when settled are at least prima facie evidence of the facts they contain. Colly. Partn. 146 Story Partn. Sec. 206; 7 Sim. R. 239.

17.-11. A provision is frequently introduced forbidding any one partner to carry on any other business. This should be provided for, though there is an implied provision in every partnership that no partner shall carry. on any separate business inconsistent or contrary to the true interest of the partnership. Story, Partn. Sec. 178, 179, 209.

18.- 12. When the partners are numerous, a provision is often made for the expulsion of a partner for gross misconduct, for insolvency, bankruptcy, or other causes particularly enumerated. This provision will govern when the case occurs.

19.-13. This instrument should always contain a provision for winding up the business. This is generally provided for in one of three modes: first, by turning all the assets into cash, and, after paying all the liabilities of the partnership, dividing such money in proportion to the several interests of the parties; secondly, by providing that one or more of the partners shall be entitled to purchase the shares of the others at a valuation; thirdly, that all the property of partnership shall be appraised, and that after paying the partnership debts, it shall be divided in the proper proportions. The first of these modes is adopted by courts of equity in the absence of express stipulations. Colly. Partn. 145 Story, Partn. Sec. 207 8 Sim. R. 529.

20.-14. It is not unusual to insert in these articles, a provision

that in case of disputes the matter shall be submitted to arbitration. This clause seems nugatory, for no action will lie for a breach of it, as that would deprive the courts of their jurisdiction, which the parties cannot do. Story, Partn. Sec. 215; Gow, Partn. 72; Colly. Partn, 165 Wats. Partn. 383.

21.-15. The articles should be dated, and executed by the parties. It is not requisite that the instrument, should be under seal. Vide Parties to contracts; Partners Partnership.

ARTICLES OF THE PEACE, Eng. practice. An instrument which is presented to a court of competent jurisdiction, in which the exhibitant shows the grievances under which be labors, and prays the protection of the court. It is made on oath. See a form in 12 Adol. & Ellis, 599; 40 E. C. L. R. 125, 126; 1 Chit. Pr. 678.

2. The truth of the articles cannot be contradicted, either by affidavit or otherwise; but the defendant may either except to their sufficiency, or tender affidavits in reduction of the amounts of bail. 13 East. 171.

ARTICLES OF WAR. The name commonly given to a code made for the government of the army. The act of April 10, 1806, 2 Story's Laws U. S. 992, contains the rules and articles by which the armies of the United States shall be governed. The act of April 23, 1800, 1 Story's L. U. S. 761, contains the rules and regulations for the government of the navy of the United States.

ARTICULATE ADJUDICATION. A term used in Scotch, law in cases where there is more than the debt due to the adjudging creditor, when it is usual to accumulate each debt by itself, so that any error that may arise in ascertaining one of the debts need not reach to all the rest.

ARTIFICERS. Persons whose employment or business consists chiefly of bodily labor. Those who are masters of their arts. Cunn. Dict. h.t. Vide Art.

ARTIFICIAL. What is the result of, or relates to, the arts; opposed to natural; thus we say a corporation is an artificial person, in opposition to a natural person. Artificial accession is the uniting one property to another by art, opposed to a simple natural union. 1 Bouv. Inst. n. 503.

ARTIFICIAL PERSON. In a figurative sense, a body of men or company are sometimes called an artificial person, because the law associates them as one, and gives them various powers possessed by natural persons. Corporations are such artificial persons. 1 Bouv. Inst. n. 177.

AS. A word purely Latin. It has two significations. First, it signifies weight, and in this sense, the Roman as, is the same thing as the Roman pound, which was composed of twelve ounces. It was divided also into many other parts (as may be seen in the law, Servum de hoeredibus, Inst. Lib. xiii. Pandect,) viz. uncia, 1 ounce; sextans, 2 ounces; quodrans, 3 ounces; triens, 4 ounces quincunx, 5 ounces; semis, 6 ounces; septunx, 7 ounces; bes, 8 ounces, dodrans, 9 ounces; dextans, 10 ounces; deunx, 11 ounces.

2. From this primitive and proper sense of the word another was derived: that namely of the totality of a thing, Solidum quid. Thus as signified the whole of an inheritance, so that an heir ex asse, was an heir of the whole inheritance. An heir ex triente, ex semisse, ex besse, or ex deunce, was an heir of one-third, one-half, two-thirds, or eleven-twelfths.

ASCENDANTS. Those from whom a person is descended, or from whom he derives his birth, however remote they may be.

2. Every one has two ascendants at the first degree, his father and mother; four at the second degree, his paternal grandfather and grandmother, and his maternal grandfather and grandmother; eight at the third. Thus in going up we ascend by various lines which fork at every generation. By this progress sixteen ascendants are found at the fourth degree; thirty-two, at the fifth sixty-four, at the sixth; one hundred and twenty-eight at the seventh, and so on; by this progressive increase, a person has at the twenty-fifth generation, thirty-three millions five hundred and fifty-four thousand, four hundred and thirty-two ascendant's. But as many of the ascendants of a person have descended from the same ancestor, the lines which were forked, reunite to the first common ancestor, from whom the other descends; and this multiplication thus frequently interrupted by the common ancestors, may be reduced to a few persons. Vide Line.

ASCRIPTITIUS, civil law. Among the Romans, ascriptitii were foreigners, who had been naturalized, and who had in general the same rights as natives. Nov. 22, ch.17 Code 11, 47.

ASPHYXY, med. jur. A temporary suspension of the motion of the heart and arteries; swooning, fainting. This term includes persons who have been asphyxiated by submersion or drowning; by breathing mephitic gas; by the effect of lightning; by the effect of cold; by heat; by suspension or strangulation. In a legal point of view it is always proper to ascertain whether the person who has thus been deprived of his senses is the victim of another, whether the injury has been caused by accident, or whether it is. the act of the sufferer himself.

2. In a medical point of view it is important to ascertain whether the person is merely asphyxiated, or whether he is dead. The following general

remarks have been made as to the efforts which ought to be made to restore a person thus situated,

1st. Persons asphyxiated are frequently in a state of only apparent death.

2d. Real from apparent death, can be distinguished only by putrefaction.

3d. Till putrefaction commences, aid ought to be rendered to persons asphyxiated.

4th. Experience proves that remaining several hours under water does not always produce death.

5th. The red, violet, or black color of the face, the coldness of the body, the stiffness of the limbs, are not always signs of death.

6th. The assistance to persons thus situated, maybe administered by any intelligent person; but to insure success, it must be done without discouragement for several hours together.

7th. All unnecessary persons should be sent away; five or six are in general sufficient.

8th. The place where the operation is performed should not be too warm.

9th. The assistance should be rendered with activity, but without precipitation.

ASPORTATION. The act of carrying a thing away; the removing a thing from one place to another. Vide Carrying away; Taking.

ASSASSIN, crim, law. An assassin is one who attacks another either traitorously, or with the advantage of arms or place) or of a number of persons who support him, and kills his victim. This being done with malice, aforethought, is murder. The term assassin is but little used in the common law, it is borrowed from the civil law.

ASSASSINATION, crim. law. A murder committed by an assassin. By assassination is understood a murder committed for hire in money, without any provocation or cause of resentment given by the person against whom the crime is directed. Ersk. Inst. B. 4, t. 4, n. 45.

ASSAULT, crim. law. An assault is any unlawful attempt or offer with force or violence to do a corporal hurt to another, whether from malice or wantonness; for example, by striking at him or even holding up the fist at him in a threatening or insulting manner, or with other circumstances as denote at the time. an intention, coupled with a present ability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it. 6 Rogers Rec: 9. When the injury is actually inflicted, it amounts to a battery. (q.v.)

2. Assaults are either simple or aggravated. 1. A simple assault is one Where there is no intention to do any other injury. This is punished at common law by fine and imprisonment. 2. An aggravated assault is one that has in addition to the bare intention to commit it, another object which is also criminal; for example, if a man should fire a pistol at another and miss him, the former would be guilty of an assault with intent to murder; so an assault with intent to rob a man, or with intent to spoil his clothes, and the like, are aggravated assaults, and they are more severely punished than simple assaults. General references, 1 East, P. C. 406; Bull. N. P. 15; Hawk. P. B. b. 1, c. 62, s. 12; 1 Russ. Cr. 604; 2 Camp. Rep. 650 1 Wheeler's Cr. C. 364; 6 Rogers' Rec. 9; 1 Serg. & Rawle, 347 Bac. Ab. h.t.; Roscoe. Cr. Ev. 210.

ASSAY. A chemical examination of metals, by which the quantity of valuable

or precious metal contained in any mineral or metallic mixture is ascertained. 2. By the acts of Congress of March 3, 1823, 3 Story's L. U. S. 1924; of June 25, 1834, 4 Shars. cont. Story's L. U. S. 2373; and of June 28, 1834, Id. 2377, it is made the duty of the secretary of the treasury to cause assays to be made at the mint of the United States, of certain coins made current by the said acts, and to make report of the result thereof to congress.

ASSEMBLY. The union of a number of persons in the same place. There are several kinds of assemblies.

2. Political assemblies, or those authorized by the constitution and laws; for example, the general assembly, which includes the senate and house of representatives; the meeting of the electors of the president and vice-president of the United States, may also be called an assembly.

3. Popular assemblies are those where the people meet to deliberate upon their rights; these are guaranteed by the constitution. Const. U. S. Amend. art. 1 Const. of Penn. art. 9, s. 20.

4. Unlawful assemblies. An unlawful assembly is the meeting of three or more persons to do an unlawful act, although they may not carry their purpose into execution. It differs from a riot or rout, (q.v.) because in each of the latter cases there is some act done besides the simple meeting.

ASSENT, contracts. An agreement to something that has been done before.

2. It is either express, where it is openly declared; or implied, where it is presumed by law. For instance, when a conveyance is made to a man, his assent to it is presumed, for the following reasons; cause there is a strong intendment of law, that it is for a person's benefit to take, and no man can be supposed to be unwilling to do that which is for his advantage. 2. Because it would seem incongruous and absurd, that when a conveyance is

completely executed on the part of the grantor, the estate should continue in him. 3. Because it is contrary to the policy of law to permit the freehold to remain in suspense and uncertainty. 2 Ventr. 201; 3 Mod. 296A 3 Lev. 284; Show. P. C. 150; 3 Barn. & Alders. 31; 1 Binn. R. 502; 2 Hayw. 234; 12 Mass IR. 461 4 Day, 395; 5 S. & R. 523 20 John. R. 184; 14 S. & R. 296 15 Wend. R. 656; 4 Halst. R. 161; 6 Verm. R. 411.

3. When a devise draws after it no charge or risk of loss, and is, therefore, a mere bounty, the assent of the devisee to, take it will be presumed. 17 Mass. 73, 4. A dissent properly expressed would prevent the title from passing from the grantor unto the grantee. 1 2 Mass. R. 46 1. See 3 Munf. R. 345; 4 Munf. R. 332, pl. 9 5 Serg. & Rawle, 523; 8 Watts, R. 9, 11 20 Johns. R. 184. The rule requiring an express dissent, does not apply, however, when the grantee is bound to pay a consideration for the thing granted. 1 Wash. C. C. Rep. 70.

4. When an offer to do a thing has been made, it is not binding on the party making it, until the assent of the other party has been given and such assent must be to the same subject-matter, in the same sense. 1 Summ. 218. When such assent is given, before the offer is withdrawn, the contract is complete. 6 Wend. 103. See 5 Wend. 523; 5 Greenl. R. 419; 3 Mass. 1; 8 S. R. 243; 12 John. 190; 19 John. 205; 4 Call, R. 379 1 Fairf. 185; and Offer.

5. In general, when an assignment is made to one for the benefit of creditors the assent of the assignees will be presumed. 1 Binn. 502, 518; 6 W. & S. 339; 8 Leigh, R. 272, 281. But see 24 Wend. 280.

ASSERTORY COVENANT. One by which the covenantor affirms that a certain fact is in a particular way, as that the grantor of land is lawfully seised; that it is clear of encumbrances, and the like. If the assertion is false, these covenants are broken the moment that the instrument is signed. See 11 S. &

R. 109, 112.

TO ASSESS. 1. To rate or to fix the proportion which every person has to pay of any particular tax. 2. To assess damages is to ascertain what damages are due to the plaintiff; in actions founded on writings, in many cases after interlocutory judgment, the prothonotary is directed to assess the damages; in cases sounding in tort the damages are frequently assessed on a writ of inquiry by the sheriff and a jury.

2. In actions for damages, the jury are required to fix the amount or to assess the damages. In the exercise of this power or duty, the jury must be guided by sound discretion, and, when the circumstances will warrant it, may give high damages. Const. Rep. 500. The jury must, in the assessment of damages be guided by their own judgment, nd not by a blind chance. They cannot lawfully, therefore, in making up their verdict, each one put down a sum, add the sums together, divide the aggregate by the number of jurors, and adopt the quotient for their verdict. 1 Cowen, 238.

ASSESSMENT. The making out a list of property, and fixing its valuation or appraisement; it is also applied to making out a list of persons, and appraising their several occupations, chiefly with a view of taxing the said persons and their property.

ASSESSMENT OF DAMAGES. After an interlocutory judgment has been obtained, the damages must be, ascertained; the act of thus fixing the amount of damages is called the assessment of damages.

2. In cases sounding in damages, (q.v.) that is, when the object of the action is to recover damages only, and not brought for the specific recovery of lands, goods, or sums of money, the usual course is to issue a writ of inquiry, (q.v.) and, by virtue of such writ, the sheriff, aided by

twelve lawful men, ascertains the amount of damages, and makes return to the court of the inquisition, which, unless set aside, fixes the damages, and a final judgment follows.

3. When, on the contrary, the action is founded on a promissory note, bond, or other contract in writing, by which the amount of money due may be easily computed, it is the practice, in some courts, to refer to the clerk or prothonotary the assessment of damages,. and in such case no writ of inquiry is issued. 3 Bouv. Inst. n. 8300.

ASSESSORS, civil law. So called from the word adsidere, which Signifies to be seated with the judge. They were lawyers who were appointed to assist, by their advice, the Roman magistrates, who were generally ignorant of law. being mere military men. Dig. lib. 1, t. 22; Code, lib. 1, t. 51.

2. In our law an assessor is one who has been legally appointed to value and appraise property, generally. with a view of laying a tax on it.

ASSETS. The property in the hands of an heir, executor, administrator or trustee, which is legally or equitably chargeable with the obligations, which such heir, executor, administrator or other trustee, is, as such, required to discharge, is called assets. The term is derived from the French word assez, enough; that is, the heir or trustee has enough property. But the property is still called assets, although there may not be enough to discharge all the obligations; and the heir, executor, &c., is chargeable in distribution as far as such property extends.

2. Assets are sometimes divided by all the old writers, into assets enter mains and assets per descent; considered as to their mode of distribution, they are legal or equitable; as to the property from which they arise, they are real or personal.

3. Assets enter maim, or assets in hand, is such property as at once comes to the executor or other trustee, for the purpose of satisfying claims against him as such. Termes de la Ley.

4. Assets per descent, is that portion of the ancestor's estate which descends to the heir, and which is sufficient to charge him, as far as it goes, with the specialty debts of his ancestor. 2 Williams on Ex. 1011.

5. Legal assets, are such as constitute the fund for the payment of debts according to their legal priority.

6. Equitable assets, are such as can be reached only by the aid of a court of equity, and are to be divided,, pari passu, among all the creditors; as when a debtor has made his property subject to his debts generally, which, without his act would not have been so subject. 1 Madd. Ch. 586; 2 Fonbl. 40 1, et seq.; Willis on Trust, 118.

7. Real assets, are such as descend to the heir, as in estate in fee simple.

8. Personal assets, are such goods and chattels to which the executor or administrator is entitled.

9. In commerce, by assets is understood all the stock in trade, cash, and all available property belonging to a merchant or company. Vide, generally, Williams on Exec. Index, h.t.; Toll. on Exec. Index, h.t.; 2 Bl. Com. 510, 511; 3 Vin. Ab. 141; 11 Vin. Ab. 239; 1 Vern. 94; 3 Ves. Jr. 117; Gordon's Law of Decedents, Index, h.t.; Ram on Assets.

ASSEVERATION. The proof which a man gives of the truth of what be says, by appealing to his conscience as a witness. It differs from an oath in this, that by the latter he appeals to God as a witness of the truth of what he says, and invokes him as the avenger of falsehood and perfidy, to punish him if he speak not the truth. Vide Affirmation; Oath; and Merl. Quest. de Droit, mot Serment.

TO ASSIGN, contracts; practice. 1. To make a right over to another; as to assign an estate, an annuity, a bond, &c., over to another. 5 John. Rep: 391. 2. To appoint; as, to appoint a deputy,, &c. Justices are also said to be assigned to keep the peace. 3. To set forth or point out; as, to "assign errors," to show where the error is committed; or to assign false judgment, to show wherein it was unjust. F. N. B. 19.

ASSIGNATION, Scotch law. The ceding or yielding a thing to another of which intimation must be made.

ASSIGNEE. One to whom an assignment has been made.

2. Assignees are either assignees in fact or assignees in law. An assignee in fact is one to whom an assignment has been made in fact by the party having the right. An assignee in law is one in whom the law vest's the right, as an executor or administrator. Co. Litt. 210 a, note 1; Hob. 9. Vide Assigns, and 1 Vern. 425; 1 Salk. 81 7 East, 337; Bac. Ab. Covenant, E; a Saund. 182, note 1; Arch. Civ. Pl. 50, 58, 70 Supp, to Ves. Jr, 72 2 Phil. Ev. Index, h.t.

ASSIGNMENT, contracts. In common parlance this word signifies the transfer of all kinds of property, real, personal, and mixed, and whether the same be in possession or in action; as, a general assignment. In a more technical sense it Is usually applied to the transfer of a term for years; but it is more properly used to signify a transfer of some particular estate or interest in lands.

2. The proper technical words of an assignment are, assign, transfer, and set over; but the words grant, bargain, and sell, or any other words

which will show the intent of the parties to make a complete transfer, will amount to an assignment.

3. A chose in action cannot be assigned at law, though it may be done in equity; but the assignee takes it subject to all the equity to which it was liable in the hands of the original party. 2 John. Ch. Rep. 443, and the cases there cited. 2 Wash. Rep. 233.

4. The deed by which an assignment is made,, is also called an assignment. Vide, generally, Com. Dig. h.t.; Bac. Ab. h.t. Vin. Ab. h.t.; Nelson's Ab. h.t.; Civ. Code of Louis. art. 2612. In relation to general assignments, see Angell on Assignments, passim; 1 Hate & Wall. Sel. Dec. 78-85.

5. By an assignment of a right all the accessories which belong to it, will pass with it as, if the assignor of a bond had collateral security, or a lien on property, the collateral security and the lien will pass with the assignment of the bond. 2 Penn. 361; 3 Bibb, 291; 4 B. Munroe, 529; 2 Drev. n. 218; 1 P. St. R. 454. 6. The assignment of a thing also carries with it all that belongs to it by right of accession; if, therefore, the thing produce interest or rent, the interest or the arrearages of the rent since the assignment, will belong to the assignee. 7 John. Cas. 90 6 Pick. 360.

ASSIGNMENT OF DOWER. The act by which the rights of a widow, in her deceased husband's real estate, are ascertained and set apart for her benefit. 2 Bouv. Inst. 242.

ASSIGNMENT OF ERRORS. The act by which the plaintiff in error points out the errors in the record of which he complains.

2. The errors should be assigned in distinct terms, such as the defendant in error may plead to; and all the errors of which the plaintiff complains should be assigned. 9 Port. 186; 16 Conn. 83; 6 Dana, 242 3 How.

(Miss.) R. 77.

ASSIGNOR. One who makes an assignment; one who transfers property to another.

2. In general the assignor can limit the operation of his assignment, and impose whatever condition he may think proper, but when he makes a general assignment in trust for the use of his creditors, he can impose no condition whatever which will deprive them of any right; 14 Pick. 123; 15 John. 151; 7 Cowen, 735; 5 Cowen, 547 20 John. 442; 2 Pick. 129; nor any condition forbidden by law; as giving preference when the law forbids it.

3. Ad assignor may legally choose his own trustees. 1 Binn. 514.

ASSIGNS, contracts. Those to whom rights have been transmitted by particular title, such as sale, gift, legacy, transfer, or cession. Vide Ham. Paities, 230; Lofft. 316. These words, and also the word forever, are commonly added to the word heirs in deeds conveying a fee simple, heirs and assigns forever "but they are in such cases inoperative. 2 Barton's Elem. Convey. 7, (n.) But see Fleta, lib. 3, cap. 14, Sec. 6. The use of naming them, is explained in Spencer's Case, 5 Rep. 16; and Ham. Parties, 128. The word heirs, however, does not include or imply assigns. 1 Anderson's Rep. 299.

ASSISES OF JERUSALEM. The name of a code of feudal law, made at a general assembly of lords, after the conquest of Jerusalem. It was compiled principally from the laws and customs of France. They were reduced to form about the year 1290, by Jean d'Iblin, comte de Japhe et d'Ascalon. Fournel (Hist. des Avocats, vol. i. p. 49,) calls them the most precious monument of our (French) ancient law. He defines the word assises to signify the assemblies of the great, men of the realm. See also, 2 Profession d'Avocat,

par Dupin, 674 to 680; Steph. on Plead. App. p. xi.

ASSISORS, Scotch law. This term corresponds nearly to that of jurors.

ASSIZE, Eng. law. This was the name of an ancient court; it derived its name from assideo, to sit together. Litt. s. 234; Co. Litt. 153 b., 159 b. It was a kind of jury before which no evidence was adduced, their verdict being regarded as a statement of facts, which they knew of their own knowledge. Bract. iv. 1, 6.

2. The name of assize was also given to a remedy for the restitution of a freehold, of which the complainant had been disseised. Bac. Ab. h.t. Assizes were of four kinds: Mort d'ancestor Novel Disseisin Darrien Presentment; and Utrum. Neale's F. & F. 84. This remedy has given way to others less perplexed and more expeditious. Bac. Ab. h.t.; Co. Litt. 153-155.

3. The final judgment for the plaintiff in an assize of Novel Disseisin, is, that he recover per visum recognitorum, and it is sufficiently certain. if the recognitors can put the demandant in possession. Dyer, 84 b; 10 Wentw. Pl. 221, note. In this action, the plaintiff cannot be compelled to be nonsuited. Plowd. 11 b. See 17 Serg. & R. 187; 1 Rawle, Rep. 48, 9.

4. There is, however, in this class of actions, an interlocutory judgment, or award in the nature of a judgment, and which to divers intents and purposes, is a judgment; 11 Co. Rep. 40 b; like the judgment of quod computet, in account render; or quod partitio fiat, in partition; quod mensuratio fiat; ouster of aid; award of a writ of inquiry, in waste.; of damages in trespass; upon these and the like judgments, a writ of error does not lie. 11 Co. Rep. 40 a; Metcalf's Case, 2 Inst. 344 a: 24 Ed. III, 29 B 19.

ASSIZE OF MORT D' ANCESTOR. The name, of an ancient writ, now obsolete. It might have been sued out by one whose father, mother, brother, &c., died seised of lands, and tonements, which they held in fee, and which, after their death, a stranger abated. Reg. Orig. 223. See Mort d' Ancestor.

ASSOCIATE. This term is applied to a judge who is not the president of a court; as associate judge.

ASSOCIATION. The act of a number of persons uniting together for some purpose; the persons so joined are also called an association. See Company.

ASSUMPSIT, contracts. An undertaking either express or implied, to perform a parol agreement. 1 Lilly's Reg. 132.

2. An express assumpsit is where one undertakes verbally or in writing, not under seal, or by matter of record, to perform an act, or to pa a sum of money to another.

3. An implied assumpsit is where one has not made any formal promise to do an act or to pay a sum of money to another, but who is presumed from his conduct to have assumed to do what is in point of law just and right; for, 1st, it is to be presumed that no one desires to enrich himself at the expense of another; 2d, it is a rule that he who desires the antecedent, must abide by the consequent; as, if I receive a loaf of bread or a newspaper daily sent to my house without orders, and I use it without objection, I am presumed to have accepted the terms upon which the person sending it had in contemplation, that I should pay a fair price for it; 3d, it is also a rule that every one is presumed to assent to what is useful to him. See Assent

ASSUMPSIT, remedies, practice., A form of action which may be defined to be an action for the recovery of damages for the non-performance of, a parol or simple contract; or, in other words, a contract not under seal, nor of record; circumstances which distinguish this remedy from others. 7 T. R. 351; 3 Johns. Cas. 60. This action differs from the action of debt; for, in legal consideration, that is for the recovery of a debt eo nomine, and in numero, and may be upon a deed as well as upon any other contract. 1 h. Bl. 554; B. N. P. 167. If differs from covenant, which, though brought for the recovery of damages, can only be supported upon a contract under seal. See Covenant.

2. It will be proper to consider this subject with reference, 1, to the contract upon which this action may be sustained; 2, the declaration 3, the plea; 4, the judgment.

3.-1. Assumpsit lies to recover damages for the breach of all parol or simple contracts, whether written or not written express or implied; for the payment of money, or for the performance or omission of any other act. For example, to recover, money lent, paid, or had and received, to the use of the plaintiff; and in some cases, where money has been received by the defendant, in consequence of some tortious act to the plaintiff's property, the plaintiff may waive the tort, and sue the defendant in assumpsit. 5 Pick. 285; 1 J. J. Marsh. 543 3 Watts, R. 277; 4 Binn. 374; 3 Dana, R. 552; 1 N. H. Rep. 151; 12 Pick. 120 4 Call. R. 461; 4 Pick. 452. It is the proper remedy for work and. labor done, and services rendered 1 Gill, 95; 8 S. & M. 397 2 Gilman, 1 3 Yeates, 250 9 Ala. 788 but such work, labor, or services, must be rendered at the request, express or implied, of the defendant; 2 Rep. Cons. Ct. 848; 1 M'Cord, 22; 20 John. 28 11 Mass. 37; 14 Mass. 176; 5 Monr. 513 1 Murph. 181; for goods sold and delivered; 6 J. J. Marsh. 441; 12 Pick. 120; 3 N. H. Rep. 384; 1 Mis. 430; for a breach of promise of

marriage. 3 Mass. 73 2 Overton, 233 2 P. S. R. 80. Assumpsit lies to recover the purchase money for land sold; 14 Johns. R. 210; 14 Johns. R. 162; 20 Johns. R. 838 3 M'Cord, R. 421; and it lies, specially, upon wagers; 2 Chit. Pl. 114; feigned issues; 2 Chit. Pl. 116; upon foreign judgments; 8 Mass. 273; Dougl. 1; 3 East, 221; 11 East, 124; 3 T. R. 493; 5 Johns. R. 132. But it will not lie on a judgment obtained in a sister state. 1 Bibb, 361 19 Johns. 162; 3 Fairf. 94; 2 Rawle, 431. Assumpsit is the proper remedy upon an account stated. Bac. Ab. Assumpsit, A. It will lie for a corporation, 2 Lev. 252; 1 Camp. 466. In England it does not lie against a corporation, unless by express authority of some legislative act; 1 Chit. Pl. 98; but in this country it lies against a corporation aggregate, on an express or implied promise, in the same manner as against an individual. 7 Cranch, 297 9 Pet. 541; 3 S. & R. 117 4 S. & R. 16 12 Johns. 231; 14 Johns. 118; 2 Bay, 109 1 Chipm. 371, 456; 1 Aik. 180 10 Mass, 397. But see 3 Marsh. 1; 3 Dall. 496.

4.-2. The declaration must invariably disclose the consideration of the contract, the contract itself, and the breach of it; Bac. Ab. h.t. F 5 Mass. 98; but in a declaration on a negotiable instrument under the statute of Anne, it is not requisite to, allege any consideration; 2 Leigh, R. 198; and on a note expressed to have been given for value received, it is not necessary to aver a special consideration. 7 Johns. 321. See Mass. 97. The gist of this action is the promise, and it must be averred. 2 Wash. 187 2 N. H. Rep. 289 Hardin, 225. Damages should be laid in a sufficient amount to cover the real amount of the claim. See 4 Pick. 497; 2 Rep. Const. Ct. 339; 4 Munf. 95; 5 Munf. 23; 2 N. H. Rep. 289; 1 Breese, 286; 1 Hall, 201; 4 Johns. 280; 11 S. & R. 27; 5 S. & R. 519 6 Conn. 176; 9 Conn. 508; 1 N. & M. 342; 6 Cowen, 151; 2 Bibb, 429; 3 Caines, 286.

5.-3. The usual plea is non-assumpsit, (q.v.) under which the

defendant may give in evidence most matters of defence. Com. Dig. Pleader, 2 G 1. When there are several defendants they cannot plead the general issue severally; 6 Mass. 444; nor the same plea in bar, severally. 13 Mass. 152. The plea of not guilty, in an action of assumpsit, is cured by verdict. 8 S. & R. 541; 4 Call. 451. See 1 Marsh, 602; 17 Mass. 623. 2 Greenl. 362; Minor, 254 Bouv. Inst. Index, h.t.

6.-4. Judgment. Vide Judgment in Assumpsit. Vide Bac. Ab. h.t.; Com. Dig. Action upon the Case upon Assumpsit; Dane's Ab. Index, h.t.; Viner's Ab. h.t.; 1 Chit. Pi. h.t.; Petersd. h.t.; Lawes Pl. in Assumpsit the various Digests, h.t. Actions; Covenant; Debt; Indebitatus assumpsit; Padum Constitutiae pecuniae.

ASSURANCE, com. law. Insurance. (q.v.)

ASSURANCE, conveyancing. This is called a common assurance. But the term assurances includes, in an enlarged sense, all instruments which dispose of property, whether they be the grants of private persons, or not; such are fines and recoveries, and private acts of the legislature. Eunom. Dial. 2, s. 5.

ASSURED. A person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance. Vide Insured.

ASSURER. One who insures another against certain perils and dangers. The same as underwriter. (q.v.) Vide Insurer.

ASSYTHMENT, Scotch law. An indemnification which a criminal is bound to make to the party injured or his executors, though the crime itself should be

extinguished by pardon. Ersk. Pr. L. Scot. 4, 3, 13.

ASYLUM. A place, of refuge where debtors and criminals fled for safety.

2. At one time, in Europe, churches and other consecrated places served as asylums, to the disgrace of the law. These never protected criminals in the United States. It may be questioned whether the house of an ambassador (q.v.) would not afford protection temporarily, to a person who should take refuge there.

AT LAW. This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity.

2. In many cases when there is no remedy at law, one will be afforded in equity. See 3 Bouv. Inst. n. 2411.

ATAVUS. The male ascendant in the fifth degree, was so called among the Romans, and in tables of genealogy the term is still employed.

ATHEIST. One who denies the existence of God.

2. As atheists have not any religion that can bind their consciences to speak the truth, they are excluded from being witnesses. Bull. N. P. 292; 1 Atk. 40; Gilb. Ev. 129; 1 Phil. Ev. 19. See also, Co. Litt. 6 b.; 2 Inst. 606; 3 Inst. 165; Willes, R. 451 Hawk. B. 2, c. 46, s. 148; 2 Hale's P. C. 279.

TO ATTACH, crim. law, practice. To an attachment for contempt for the non-take or apprehend by virtue of the order of a writ or precept, commonly called an attachment. It differs from an arrest in this, that he who arrests

a man, takes him to a person of higher power to be disposed of; but be who attaches, keeps the party attached, according to the exigency of his writ, and brings him into court oh the day assigned. Kitch. 279; Bract. lib. 4; Fleta, lib. 5, c. 24; 17 S. & R. 199.

ATTACHE'. Connected with, attached to. This word is used to signify those persons who are attached to a foreign legation. An attache is a public minister within the meaning of the Act of April 30, 1790, s. 37, 1 Story's L. U. S. 89, which protects from violence "the person of an ambassador or other public minister." 1 Bald. 240 Vide 2 W. C. C. R. 205; 4 W. C. C. R. 531; 1 Dall. 117; 1 W. C. C. R. 232; 4 Dall. 321. Vide Ambassador; Consul; Envoy; Minister.

ATTACHMENT, crim. law, practice. A writ requiring a sheriff to apprehend a particular person, who has been guilty of. a contempt of court, and to bring the offender before the court. Tidd's Pr. Index, h.t.; Grab. Pr. 555.

2. It may be awarded by the court upon a bare suggestion, though generally an oath stating what contempt has been committed is required, or on their own knowledge without indictment or information. An attachment may be issued against officers of the court for disobedience or contempt of their rules and orders, for disobedience of their process, and for disturbing them in their lawful proceedings. Bac. Ab. h.t. A. in the nature of a civil execution, and it was therefore held it could not be executed on Sunday; 1 T. R. 266; Cowper, 394; Willes, R. 292, note (b); yet, in. one case, it was decided, that it was so far criminal, that it could not be granted in England on the affirmation of a Quaker. Stra. 441. See 5 Halst. 63; 1 Cowen, 121, note; Bac. Ab. h.t.

ATTACHMENT, remedies. A writ issued by a court of competent jurisdiction,

commanding the sheriff or other proper officer to seize any property; credit, or right, belonging to the defendant, in whatever hands the same may be found, to satisfy the demand which the plaintiff has against him.

2. This writ always issues before judgment, and is intended to compel an appearance in this respect it differs from an execution. In some of the states this process can be issued only against absconding debtors, or those who conceal themselves; in others it is issued in the first instance, so that the property attached may respond to the exigency of the writ, and satisfy the judgment.

3. There are two kinds of attachment in Pennsylvania, the foreign attachment, and the domestic attachment. 1. The foreign attachment is a mode of proceeding by a creditor against the property of his debtor, when the debtor is out of the jurisdiction of the state, and is not an inhabitant of the same. The object of this process is in the first instance to compel an appearance by the debtor, although his property may even eventually be made liable to the amount of the plaintiff Is claim. It will be proper to consider, 1. by whom it be issued; 2. against what property 3. mode of proceeding. 1. The plaintiff must be a creditor of the defendant; the claim of the plaintiff need not, however, be technically a debt, but it may be such on which an action of assumpsit would lie but an attachment will not lie for a demand which arises ex delicto; or when special bail would not be regularly required. Serg. on Att. 51. 2. The writ of attachment may be issued against the real and personal estate of any person not residing within the commonwealth, and not being within the county in which such writ may issue, at the time. of the issuing thereof. And proceedings may be had against persons convicted of crime, and sentenced to imprisonment. 3. The writ of attachment is in general terms, not specifying in the body of it the name of the garnishee, or the property to be attached, but commanding the

officer to attach the defendant, by all and singular his goods and chattels, in whose hands or possession soever the same may be found in his bailiwick, so that he be and appear before the court at a certain time to answer, &c. The foreign attachment is issued solely for the benefit of the plaintiff.

4.-2. The domestic attachment is issued by the court of common pleas of the county in which any debtor, being an inhabitant of the commonwealth, may reside; if such debtor shall have absconded from the place of his usual abode within the same, or shall have remained absent from the commonwealth, or shall have confined himself to his own house, or concealed himself elsewhere, with a design, in either case, to defraud his creditors. It is issued on an oath or affirmation, previously made by a creditor of such person, or by some one on his behalf, of the truth of his debt, and of the facts upon which the attachment may be founded. Any other creditor of such person, upon affidavit of his debt as aforesaid, may suggest his name upon the record, and thereupon such creditor may proceed to prosecute his said writ, if the person suing the same shall refuse or neglect to proceed thereon, or if he fail to establish his right to prosecute the same, as a creditor of the defendant. The property attached is vested in trustees to be appointed by the court, who are, after giving six months public notice of their appointment, to distribute the assets attached among the creditors under certain regulations prescribed by the act of assembly. Perishable goods way be sold under an order of the court, both under a foreign and domestic attachment. Vide Serg. on Attachments Whart. Dig. title Attachment.

5. By the code of practice of Louisiana, an attachment in the hands of third person is declared to be a mandate which a creditor obtains from a competent officer, commanding the seizure of any property, credit or right, belonging to his debtor, in whatever hands they may be found, to satisfy the demand which he intends to bring against him. A creditor may obtain such attachment of the property of his debtor, in the following cases. 1. When

such debtor is about permanently leaving the state, without there being a possibility, in the ordinary course of judicial proceedings, of obtaining or executing judgment against him previous to, his departure; or when such debtor has already left the state never again to return. 2. When such debtor resides out of the state. 3. When he conceals himself to avoid being cited or forced to answer to the suit intended to be brought against him. Articles 239, 240.

6. By the local laws of some of the New England states, and particularly of the states of Massachusetts, New Hampshire and Maine, personal property and real estate may be attached upon mesne process to respond the exigency of the writ, and satisfy the judgment. In such cases it is the common practice for the officer to bail the goods attached, to some person, who is usually a friend of the debtor, upon an express or implied agreement on his part, to have them forthcoming on demand, or in time to respond the judgment, when the execution thereon shall be issued. Story on Bailm. Sec. 124. As to the rights and duties of the officer or bailor in such cases, and as to the rights and duties of the bailee, who is commonly called the receiptor, see 2 Mass. 514; 9 Mass. 112 11 Mass. 211; 6 Johns. R. 195 9 Mass. 104, 265; 10 Mass. 125 15 Mass. 310; 1 Pick. R. 232, 389. See Metc. & Perk. Dig. tit. Absent and Absconding Debtors.

ATTACHMENT OF PRIVILEGE, Eng. law. A process by which a man by virtue of his privilege, calls another to litigate in that court to which he himself belongs; and who has the privilege to answer there.

ATTAINDER, English criminal law. Attinctura, the stain or corruption of blood which arises from being condemned for any crime.

2. Attainder by confession, is either by pleading guilty at the bar

before the judges, and not putting one's self on one's trial by a jury; or before the coroner in sanctuary, when in ancient times, the offender was obliged to abjure the realm.

3. Attainder by verdict, is when the prisoner at the bar pleads not guilty to the indictment, and is pronounced guilty by the verdict of the jury.

4. Attainder by process or outlawry, is when the party flies, and is subsequently outlawed. Co. Lit. 391.

5. Bill of attainder, is a bill brought into parliament for attainting persons condemned for high treason. By the constitution of the United States, art. 1, sect. 9, Sec. 3, it is provided that no bill of attainder or ex post facto law shall be passed.

ATTAINT, English law. 1. Atinctus, attainted, stained, or blackened. 2. A writ which lies to inquire whether a jury of twelve men gave a false verdict. Bract. lib. 4, tr. 1, c. 134; Fleta, lib. 5, c. 22, Sec. 8.

2. It was a trial by jury of twenty-four men empanelled to try the goodness, of a former verdict. 3 Bl. Com. 351; 3 Gilb. Ev. by Lofft, 1146. See Assize.

ATTEMPT, criminal law. An attempt to commit a crime, is an endeavor to accomplish it, carried beyond mere preparation, but falling short of execution of the ultimate design, in any part of it.

2. Between preparations and attempts to commit a crime, the distinction is in many cases, very indeterminate. A man who buys poison for the purpose of committing a murder, and mixes it in the food intended for his victim, and places it on a table where he may take it, will or will not be guilty of an attempt to poison, from the simple circumstance of his taking back the poisoned food before or after the victim has had an opportunity to take it;

for if immediately on putting it down, he should take it up, and, awakened to a just consideration of the enormity of the crime, destroy it, this would amount only to preparations and certainly if before he placed it on the table, or before he mixed the poison with the food, he had repented of his intention there would have been no attempt to commit a crime; the law gives this as a locus penitentiae. An attempt to commit a crime is a misdemeanor; and an attempt to commit a misdemeanor, is itself a misdemeanor. 1 Russ. on Cr. 44; 2 East, R. 8; 3 Pick. R. 26; 3 Benth. Ev. 69; 6 C. & P. 368.

ATTENDANT. One who owes a duty or service to another, or in some sort depends upon him. Termes de la Ley, h.t. As to attendant terms, see Powell on Morts. Index, tit. Attendant term; Park on Dower, c. 1 7.

ATTENTAT, In the language of the civil and canon laws, is anything whatsoever in the suit by the judge a quo, pending an appeal. 1 Addams, R. 22, n.; Ayl. Par. 100.

ATTERMINING. The granting a time or term for the payment of a debt. This word is not used. See Delay.

ATTESTATION, contracts and evidence. The act of witnessing an instrument of writing, at the request of the party making the same, and subscribing it as a witness. 3 P. Wms. 254 2 Ves. 454 1 Ves. & B. 362; 3 Marsh. 146; 3 Bibb. 494; 17 Pick. 373.

2. It will be proper to consider, 1. how it is to be made 2. bow it is proved; 3. its effects upon the witness; 4. its effect upon the parties.

3.- 1. The attestation should be made in the case of wills, agreeably to the direction of the statute; Com. Dig. Estates, E 1 and in the case of

deeds or other writings, at the request of the party executing the same. A person who sees an instrument executed, but is not desired by the parties to attest it, is not therefore an attesting witness, although he afterwards subscribes it as such. 3 Camp. 232. See, as to the form of attestation, 2 South. R. 449.

4.-2. The general rule is, that an attested instrument must be proved by the attesting witness. But to this rule there are various exceptions, namely: 1. If he reside out of the jurisdiction of the court; 22 Pick. R. 85; 2. or is dead; 3. or becomes insane; 3 Camp. 283; 4. or has an interest; 5 T. R. 371; 5. or has married the party who offers the instrument; 2 Esp. C. 698 6. or refuses to testify 4 M. & S. 353; 7. or where the witness swears he did not see the writing executed; 8. or becomes infamous; Str. 833; 9. or blind; 1 Ld. Raym. 734. From these numerous cases, and those to be found in the books, it would seem that, whenever from any cause the attesting witness cannot be had secondary evidence may be given. But the inability to procure the witness must be absolute, and, therefore, when be is unable to attend from sickness only, his evidence cannot be dispensed with. 4 Taunt. 46. See 4 Halst. R. 322; Andr. 236 2 Str. 1096; 10 Ves. 174; 4 M. & S. 353 7 Taunt. 251; 6 Serg. & Rawle, 310; 1 Rep. Const.; Co. So. Ca. 310; 5 Cranch, 13; Com. Dig. tit. Testmoigne, Evidence, Addenda; 5 Com. Dig. 441; 4 Yeates, 79.

5.-3. When the witness attests an instrument which conveys away, or disposes of his property or rights, he is estopped from denying the effects of such instrument; but in such case he must have been aware of its contents, and this must be proved. 1 Esp. C. 58.

6.-4. Proof of the attestation is evidence of the sealing and delivery. 6 Serg. & Rawle, 311; 2 East, R. 250; 1 Bos. & Pull. 360; 7 T. R. 266. See, in general, Starkie's Ev. part 2, 332; 1 Phil. Ev. 419 to 421; 12 Wheat. 91; 2 Dall. 96; 3 Rawle's Rep. 312 1 Ves. Jr. 12; 2 Eccl. Rep. 60,

214, 289, 367 1 Bro. Civ, Law, 279, 286; Gresl. Eq. Ev. 119 Bouv. Inst. n. 3126.

ATTESTATION CLAUSE, wills and contracts. That clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same. The usual attestation clause to a will, is in the following formula, to wit: "Signed, sealed, published and declared by the above named A B, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names as the witnesses thereto, in the presence of the said testator, and of each other." That of deeds is generally in these words "Sealed and delivered in the presence of us."

2. When there is an attestation clause to a will, unsubscribed by witnesses, the presumption, though slight, is that the will is in an unfinished state; and it must be removed by some extrinsic circumstances. 2 Eccl. Rep. 60. This 'presumption is infinitely slighter, where the writer's intention to have it regularly attested, is to be collected only from the single word "witnesses." Id. 214. See 3 Phillim. R. 323; S. C. 1 Eng. Eccl. R. 407.

ATTESTING WITNESS. One who, upon being required by the parties to an instrument, signs his name to it to prove it, and for the purpose of identification.

2. The witness must be desired by the parties to attest it, for unless this be done, he will not be an attesting witness, although he may have seen the parties execute it. 3 Campb. 232. See Competent witness; Credible witness; Disinterested witness; Respectable witness; Subscribing witness; and Witness; Witness instrumentary; 5 Watts, 399; 3 Bin. 194.

ATTORNEY. One who acts for another by virtue of an appointment by the latter. Attorneys are of various kinds.

2. Attorney in fact. A person to whom the authority of another, who is called the constituent, is by him lawfully delegated. This term is employed to designate persons who act under a special agency, or a special letter of attorney, so that they are appointed in factum, for the deed, or special act to be performed; but in a more extended sense it includes all other agents employed in any business, or to do any act or acts in pais for another. Bac. Ab. Attorney; Story, Ag. Sec. 25.

3. All persons who are capable of acting for themselves, and even those who are disqualified from acting in their own capacity, if they have sufficient understanding, as infants of a proper age and femes coverts, may act as attorneys of others. Co. Litt. 52, a; 1 Esp. Cas. 142; 2 Esp. Cas. 511 2 Stark. Cas. N. P. 204.

4. The form of his appointment is by letter of attorney. (q.v.)

5. The object of his appointment is the transaction of some business of the constituent by the attorney.

6. The attorney is bound to act with due diligence after having accepted the employment, and in the end, to 'render an account to his principal of the acts which be has performed for him. Vide Agency; Agent; Authority; and Principal.

7. Attorney at law. An officer in a court of justice, who is employed by a party in a cause to manage the same for him. Appearance by an attorney has been allowed in England, from the time of the earliest records of the courts of that country. They are mentioned in Glanville, Bracton, Fleta, and Britton; and a case turning upon the party's right to appear by attorney, is reported, B. 17 Edw. III., p. 8, case 23. In France such appearances were first allowed by letters patent of Philip le Bel, A. D. 1290. 1 Fournel, Hist. des Avocats, 42; 43, 92, 93 2 Loisel Coutumes, 14, 15. It results from

the nature of their functions, and of their duties, as well to the court as to the client, that no one can, even by consent, be the attorney of both the litigating parties, in the same controversy. Farresly, 47.

8. In some courts, as in the supreme court of the United States, advocates are divided into counsellors at law, (q.v.) and attorneys. The business of attorneys is to carry on the practical and formal parts of the suit. 1 Kent, Com. 307. See as to their powers, 2 Supp. to Ves. Jr. 241, 254; 3 Chit. Bl. 23, 338; Bac. Ab. h.t.; 3 Penna. R. 74; 3 Wils. 374; 16 S. & R. 368; 14 S. & R. 307; 7 Cranch, 452; 1 Penna. R. 264. In general, the agreement of an attorney at law, within the scope of his employment, binds his client; 1 Salk. 86 as to amend the record, 1 Binn. 75; to refer a cause 1 Dall. Rep. 164; 6 Binn. 101; 7 Cranch, 436; 3 Taunt. 486; not to sue out a writ of error; 1 H. Bl. 21, 23 2 Saund. 71, a, b; 1 Term Rep. 388 to strike off a non pros; 1 Bin. 469-70 to waive a judgment by default; 1 Arcb. Pr. 26; and this is but just and reasonable. 2 Bin. 161. But the act must be within the scope of their authority. They cannot, for example, without special authority, purchase lands for the client at sheriff's sale. 2 S. & R. 21 11 Johns. 464.

9. The name of attorney is given to those officers who practice in courts of common law; solicitors, in courts. of equity and proctors, in courts of admiralty, and in the English ecclesiastical courts.

10. The principal duties of an attorney are, 1. To be true to the court and to his client; 2. To manage the business of his client with care, skill and integrity. 4 Burr. 2061 1 B. & A. 202; 2 Wils. 325; 1 Bing. R. 347; 3. To keep his client informed as to the state of his business; 4. To keep his secrets confided to him as such. See Client Confidential Communication.

11. For a violation of his duties, an action will in general lie; 2 Greenl. Ev. Sec. 145, 146; and, in some cases, he may be punished by an

attachment. His rights are, to be justly compensated for his services. Vide 1 Keen's R. 668; Client; Counsellor at law.

12. Attorney-general of the United States, is an officer appointed by the president. He should be learned in the law, and be sworn or affirmed to a faithful execution of his office.

13. His duties are to prosecute and conduct all suits in the supreme court, in which the United States shall be concerned; and give his advice upon questions of law, when required by the president, or when requested by the heads of any of the departments, touching matters that may Concern their departments. Act of 24th Sept. 1789.

14. His salary is three thousand five hundred dollars per annum, and he is allowed one clerk, whose compensation shall not exceed one thousand dollars per annum. Act 20th Feb. 1819, 3 Story's Laws, 1720, and Act 20th April, 1818, s. 6, 3 Story's Laws, 1693. By the act of May 9, 1830, 4 Sharsw. cont. of Story, L. U. S. 2208, Sec. 10, his salary is increased five hundred dollars per annum.

ATTORNMENT, estates. Was the agreement of the tenant to the grant of the seignory, or of a rent, or the agreement of the donee in tail, or tenant for life, or years, to a grant of a reversion or of a remainder made to another. Co. Litt. 309; Touchs. 253. Attornments are rendered unnecessary, even in England, by virtue of sundry statutes, and they are abolished in the United States. 4 Kent, Com. 479; 1 Hill. Ab. 128, 9. Vide 3 Vin. Ab. 317; 1 Vern. 330, n.; Saund. 234, n. 4; Roll. Ab. h.t.; Nelson's Ab. h.t.; Com. Dig. h.t.

AU BESOIN. This is a French phrase, used in commercial law. When the drawer of a foreign bill of exchange wishes as a matter of precaution, and to save expenses, he puts in the corner of the bill, "Au besoin chez Messieurs or, in other words, "In case of need, apply to Messrs. at _____

"_____." 1 Bouv. Inst. n. 1133 Pardess Droit Com. 208.

AUBAINE, French law. When a foreigner died in France, the crown by virtue of a right called droit d'aubaine, formerly claimed all the personal property such foreigner had in France at the time of his death. This barbarous law was swept away by the French revolution of 1789. Vide Albinatus Jus. 1 Malleville's Analyse de la Discussion du Code Civil, pp. 26, 28 1 Toullier, 236, n. 265.

AUCTION, commerce, contract. A public sale of property to the highest bidder. Among the Romans this kind of sale, was made by a crier under a spear (sub hasta) stuck in the ground.

2. Auctions are generally held by express authority, and the person who conducts them is licensed to do so under various regulations.

3. The manner of conducting an auction is immaterial; whether it be by public outcry or by any other manner. The essential part is the selection of a purchaser from a number of bidders. In a case where a woman continued silent during the whole time of the sale, but whenever anyone bid she gave him a glass of brandy, and when the sale broke up, the person who received the last glass of brandy was taken into a private room, and he was declared to be the purchaser; this was adjudged to be an auction. 1 Dow. 115.

4. The law requires fairness in auction sales, and when a puffer is employed to raise the property offered for sale on bona fide bidders, or a combination is entered into between two or more persons not to overbid each other, the contract may in general be avoided. Vide Puffer, and 6 John. R. 194; 8 John. R. 444; 3 John. Cas. 29; Cowp. 395; 6 T. R. 642; Harr. Dig. Sale, IV.; and the article Conditions Sale. Vide Harr. Dig. Sale, IV.; 13 Price, R. 76; M'Clel. R. 25; 6 East, R. 392; 5 B. & A. 257; S. C. 2 Stark.

R. 295; 1 Esp. R. 340; 5 Esp. R. 103 4 Taunt. R. 209; 1 H. Bl. R. 81; 2 Chit. R. 253; Cowp. R. 395; 1 Bouv. Inst., n. 976.

AUCTIONEER, contracts, commerce. A person authorized by law to sell the goods of others at public sale.

2. He is the agent of both parties, the seller and the buyer. 2 Taunt. 38, 209 4 Greenl. R. 1; Chit. Contr. 208.

3. His rights are, 1. to charge a commission for his services; 2. be has an interest in the goods sold coupled with the possession; 3. he has a lien for his commissions; 4. he may sue the buyer for the purchase-money.

4. He is liable, 1. to the owner for a faithful discharge of his duties in the sale, and if he gives credit without authority, for the value of the goods; 2. he is responsible for the duties due to the government; 3. he is answerable to the purchaser when he does not disclose the name of the principal; 4. be may be sued when he sells the goods of a third person, after notice not to sell them. Peake's Rep. 120; 2 Kent, Com. 423, 4; 4 John. Ch. R. 659; 3 Burr. R. 1921;.2 Taunt. R. 38; 1, Jac. & Walk. R. 350; 3 V. & B. 57; 13 Ves. R. 472; 1 Y. & J. R. 389; 5 Barn, & Ald. 333; 1 H. Bl. 81; 7 East, R. 558; 4 B. & Adolph. R. 443; 7 Taunt. 209; 3 Chit. Com. L. 210; Story on Ag. Sec. 27 2 Liv. Ag. 335 Cowp. 395; 6 T. R. 642; 6 John. 194; Bouv. Inst. Index, h.t.

AUCTOR. Among the Romans the seller was called auctor; and public, sales were made by fixing a spear in the forum, and a person who acted as crier stood by the spear the catalogue of the goods to be sold was made in tables called auctionariae.

AUDIENCE. A hearing. It is usual for the executive of a country to whom a minister has been sent, to give such minister an audience. And after a

minister has been recalled, au audience of leave usually takes place.

AUDIENCE COURT, Eng. eccl. law. A court belonging to the archbishop of Canterbury, having the same authority with the court of arches. 4 Inst. 337.

AUDIENDO ET TERMINANDO, oyer and terminer, English crim. law. A writ, or rather a commission, directed to certain persons for the trial and punishment of such persons as have been concerned in a riotous assembly, insurrection or other heinous misdemeanor.

AUDITA QUERELA. A writ applicable to the case of a defendant against whom a judgment has been recovered, (and who is therefore in danger of execution or perhaps actually in execution,) grounded on some matter of discharge which happened after the judgment, and not upon any matter which might have been pleaded as a defence to the action. 13 Mass. 453; 12 Mass. 270; 6 Verm. 243; Bac. Ab. h.t.; 2 Saund. 148, n. 1; 2 Sell. Pr. 252.

2. It is a remedial process, which bears solely on the wrongful acts of the opposite party, and not upon the erroneous judgments or acts of the court. 10 Mass. 103; 17 Mass. 159; 1 Aik. 363. It will therefore, where the cause of complaint is a proper subject for a writ of error. 1 Verm. 433, 491; Brayt. 27.

3. An audita querela is in the nature of an equitable suit, in which the equitable rights of the parties will be considered. 10 Mass. 101; 14 Mass. 448 2 John. Cas. 227.

4. An audita querela is a regular suit, in which the parties may plead, take issue, &c. 17 John. 484. But the writ must be allowed in open court, and is not, of itself, a supersedeas, which may or may not be granted, in the discretion of the court, according to circumstances. 2 John. 227.

5. In modern practice, it is usual to grant the same relief, on motion, which might be obtained by audita querela: 4 John. 191 11 S. & R. 274 and in Virginia, 5 Rand. 639, and South Carolina, 2 Hill, 298; the summary remedy, by motion, has superseded this ancient remedy. In Pennsylvania this writ. It seems, may still be maintained, though relief is more generally obtained on motion. 11 S. & R. 274. Vide, generally, Pet. C. C. R. 269; Brayt. 2 or, 28; Walker, 66 1 Chipm. 387; 3 Conn. 260; 10 Pick. 439 1 Aik. 107; 1 Overt. 425 2 John. Cas. 227 1 Root; 151; 2 Root, 178; 9 John. 221 Bouv. Inst. Index, h.t.

AUDITOR. An officer whose duty is to examine the accounts of officers who have received and disbursed public moneys by lawful authority. See Acts of Congress, April 3, 1817; 3 Story's Laws U. S. 1630; and the Act of February 24, 1819, 3 Story's L. U. S. 1722.

AUDITORS, practice. Persons lawfully appointed to examine and digest accounts referred to them, take down the evidence in writing, which may be lawfully offered in relation to such accounts, and prepare materials on which a decree or judgment may be made; and to report the whole, together with their opinion, to the, court in which such accounts originated. 6 Cranch, 8; 1 Aik. 145; 12 Mass. 412.

2. Their report is not, per se, binding and conclusive, but will become so, unless excepted to. 5 Rawle, R. 323. It may be set aside, either with or without exceptions to it being filed. In the first case, when errors are apparent on its face, it may be set aside or corrected. 2 Cranch, 124; 5 Cranch, 313. In the second case, it may be set aside for any fraud, corruption, gross misconduct, or error. 6 Cranch, 8; 4 Cranch, 308; 1 Aik. 145. The auditors ought to be sworn, but this will be presumed. 8 Verm. 396.

3. Auditors are also persons appointed to examine the accounts

subsisting between the parties in an action of account render, after a judgment quod computet. Bac. Ab. Accompt, F.

4. The auditors are required to state a special account, 4 Yeates, 514, and the whole is to be brought down to the time when they make an end of their account. 2 Burr. 1086. And auditors are to make proper charges and credits without regard to time, or the verdict. 2 S. & R. 317. When the facts or matters of law are disputed before them, they are to report them to the court, when the former will be decided by a jury, and the latter by the court, and the result sent to the auditors for their guidance. 5 Binn. 433.

AUGMENTATION, old English law. The name of a court erected by Henry VIII., which was invested with the power of determining suits and controversies relating to monasteries and abbey lands.

AULA REGIS. The name of an English court, so called because it was held in the great hall of the king's palace. Vide Curia Regis.

AUNT, domestic relations. The sister of one's father or mother; she is a relation in the third degree. Vide 2 Com. Dig. 474 Dane's Ab. c. 126, a. 3. Sec. 4.

AUTER. Another. This word is frequently used in composition, us auter droit, auter vie, auter action, &c.

AUTRE ACTION PENDANT. A plea that another action is pending for the same cause.

2. It is evident that a plaintiff cannot have two actions at the same time, for the same cause, against the same defendant; and when a second

action is so commenced, and this plea is filed, the first action must be discontinued, and the costs paid, and this ought to be done before the plaintiff replies nul tiel record. Grah. Pr. 98. See Lis Pendens.

3. But the suit must be for the same cause, in order to take advantage of it under these circumstances, for if it be for a different cause, as, if the action be for a lien, as, a proceeding in, rem to enforce a mechanic's lien, it cannot be pleaded in abatement in an action for the labor and materials. 3 Scamm. 201. See 16 Verm. 234; 1 Richards, 438; 3 Watts & S. 395 7 Mete. 570; 9 N. H. Rep. 545.

4. In general, the pending of another action must be pleaded in abatement; 3 Rawle, 320; 1 Mass. 495; 5 Mass. 174, 179; 2 N. H. Rep. 36 7 Verm. 124; 3 Dana, 157; 1 Ashm. 4, 2 Browne, 175 4 H. & M. 487; but in a penal action, at the suit of a common informer, the priority of a former suit for the same penalty in the name of a third person, may be pleaded in bar, because the party who first sued is entitled to the penalty. 1 Chit. Pl. 443.

5. Having once arrested a defendant, the plaintiff cannot, in general, arrest him again for the same cause of action. Tidd. 184. But under special circumstance's, of which the court will judge, a defendant may be arrested a second time. 2 Miles, 99, 100, 141, 142. Vide Bac. Ab. Bail in civil cases, B 3; Grah. Pr. 98; Troub. & H. Pr. 44; 4 Yeates, 206, 1 John. Cas. 397; 7 Taunt. 151; 1 Marsh. 395; and Lis Pendens.

AUTER DROIT, or more properly, Autre Droit, another's right. A man may sue Or be sued in another's right; this is the case with executors and administrators.

AUTHENTIC. This term signifies an original of which there is no doubt.

AUTHENTIC ACT, civil law, contracts, evidence. The authentic act is that which has been executed before a notary or other public officer authorized to execute such functions, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register. Nov. 73, c. 2; Code, 7, 52; 6; Id. 4, 21; Dig. 22, 4.

2. In Louisiana, the authentic act, as it relates to contracts, is that which has been executed before a notary public or other officer authorized to execute such functions, in presence of two witnesses, free, male, and aged at least fourteen years, or of three witnesses, if the party be blind. If the party does not know how to sign, the notary must cause him to affix his mark to the instrument. Civil Code of Lo., art. 2231.

3. The authentic act is full proof of the agreement contained in it, against the contracting parties and their. heirs or assigns, unless it be declared and proved to be a forgery. Id. art. 2233. Vide Merl. Rep. h.t.

AUTHENTICATION, practice. An attestation made by a proper officer, by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed by law to do so.

2. The Constitution of the U. S., art. 4, s. 1, declares, "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And congress may by general laws prescribe the manner in which such acts,, records and proceedings shall be proved, and the effect thereof." The object of the authentication is to supply all other proof of the record. The laws of the United States have provided a mode of authentication of public records and office papers; these acts are here transcribed.

3. By the Act of May 26, 1790, it is provided, "That the act of the

legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: That the records and judicial proceedings of the courts of any state shall be proved or admitted, in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the state from whence the said records are, or shall be taken."

4. The above act having provided only for one species of record, it was necessary to pass the Act of March 27, 1804, to provide for other cases. By this act it is enacted, Sec. 1. "That, from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be proved or admitted in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the; governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of

the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the state from whence the same are or shall be taken."

5.-2. That all the provisions of this act, and the act to which this is, a supplement, shall apply, as well to the public acts, records, office books, judicial proceedings, courts, and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several states."

6. The Act of May 8, 1792, s. 12, provides: That all the records and proceedings of the court of appeals, heretofore appointed, previous to the adoption of the present constitution, shall be deposited in the office of the clerk of the supreme court of the United States, who is hereby authorized and directed to give copies of all such records and proceedings, to any person requiring and paying for the same, in like manner as copies of the records and other proceedings of the said court are by law directed to be given; which copies shall have like faith and credit as all other proceedings of the said court."

7. By authentication is also understood whatever act is done either by the party or some other person with a view of causing an instrument to be known and identified as for example, the acknowledgment of a deed by the grantor; the attesting a deed by witnesses. 2 Benth. on Ev. 449.

AUTHENTICS, civ. law. This is the name given to a collection of the Novels of Justinian, made by an anonymous author. It is called authentic on account of its authority.

2. There is also another collection which bears the name of authentics. It is composed of extracts made from the Novels, by a lawyer named Irnier, and which he inserted in the code at such places as they refer; these extracts have the reputation of not being correct. Merlin, Repertoire, mot Authentique.

AUTHORITIES, practice. By this word is understood the citations which are made of laws, acts of the legislature, and decided cases, and opinions of elementary writers. In its more confined sense, this word means, cases decided upon solemn argument which are said to 'be authorities for similar judgments iii like cases. 1 Lilly's Reg. 219. These latter are sometimes called precedents. (q.v.) Merlin, Repertoire, mot Autorites.

2. It has been remarked, that when we find an opinion in a text writer upon any particular point, we must consider it not merely as the opinion of the author, but as the supposed result of the authorities to which he refers; 3 Bos. & Pull. 361; but this is not always the case, and frequently the opinion is advanced with the reasons which support it, and it must stand or fall as these are or are not well founded. A distinction has been made between writers who have, and those who have not holden a judicial station; the former are considered authority, and the latter are not so considered unless their works have been judicially approved as such. Ram. on Judgments, 93. But this distinction appears not to be well founded; some writers who have occupied a judicial station do not possess the talents or the learning of others who have not been so elevated, and the works or writings of the latter are much more deserving the character of an authority than those of the former. See 3 T. R. 4, 241.

AUTHORITY, contracts. The delegation of power by one person to another.

2. We will consider, 1. The delegation 2. The nature of the authority.

3. The manner it is to be executed. 4. The effects of the authority.

3.-1. The authority may be delegated by deed, or by parol. 1. It may be delegated by deed for any purpose whatever, for whenever an authority by parol would be sufficient, one by deed will be equally so. When the authority is to do something which must be performed through the medium of a deed, then the authority must also be by deed, and executed with all the forms necessary, to render that instrument perfect; unless, indeed, the principal be present, and verbally or impliedly authorizes the agent to fix his name to the deed; 4 T. R. 313; W. Jones, R. 268; as, if a man be authorized to convey a tract of land, the letter of attorney must be by deed. Bac. Ab. h.t.; 7 T. R. 209; 2 Bos. & Pull, 338; 5 Binn. 613;. 14 S. & A. 331; 6 S. & R. 90; 2 Pick. R. 345; 6 Mass. R. 11; 1 Wend. 424 9 Wend. R. 54, 68; 12 Wend. R. 525; Story, Ag. Sec. 49; 3 Kent, Com. 613, 3d edit.; 3 Chit. Com. Law, 195. But it does not require a written authority to sign an unscaled paper, or a contract in writing not under seal. Paley on Ag. by Lloyd, 161; Story, Ag. Sec. 50.

4.-2. For many purposes, however, the authority may be by parol, either in writing not under seal, or verbally, or by the mere employment of the agent. Pal. on Agen. 2. The exigencies of commercial affairs render such an appointment indispensable; business would be greatly embarrassed, if a regular letter of attorney were required to sign or negotiate a promissory note or bill of exchange, or sell or buy goods, or write a letter, or procure a policy for another. This rule of the common law has been adopted and followed from the civil law. Story, Ag. Sec. 47; Dig. 3, 3, 1, 1 Poth. Pand. 3, 3, 3; Domat, liv. 1, tit. 15, Sec. 1, art. 5; see also 3 Chit. Com. Law, 5, 195 7 T. R. 350.

5.-2. The authority given must have been possessed by the person who delegates it, or it will be void; and it must be of a thing lawful, or it

will not justify the person to whom it is given. Dyer, 102; Kielw. 83. It is a maxim that delegata potestas non potest delegari, so that an agent who has a mere authority must execute it himself, and cannot delegate his authority to a sub-agent. See 5 Pet. 390; 3 Story, R. 411, 425; 11 Gill & John. 58; 26 Wend. 485; 15 Pick. 303, 307; 1 McMullan, 453; 4 Scamm. 127, 133; 2 Inst. 597. See Delegation.

6. Authorities are divided into general or special. A general authority is one which extends to all acts connected with a particular employment; a special authority is one confined to "an individual instance." 15 East, 408; Id. 38.

7. They are also divided into limited and unlimited. When the agent is bound by precise instructions, it is limited; and unlimited when be is left to pursue his own discretion. An authority is either express or implied.

8. An express authority may be by deed of by parol, that is in writing not under seal, or verbally.. The authority must have been actually given.

9. An implied authority is one which, although no proof exists of its having been actually given, may be inferred from the conduct of the principal; for example, when a man leaves his wife without support, the law presumes he authorizes her to buy necessaries for her maintenance; or if a master, usually send his servant to buy goods for him upon credit, and the servant buy some things without the master's orders, yet the latter will be liable upon the implied authority. Show. 95; Pal. on Ag. 137 to 146.

10.-3. In considering in what manner the authority is to be executed, it will be necessary to examine, 1. By whom the authority must be executed. 2. In what manner. 3. In what time.

11.-1. A delegated authority can be executed only by the person to whom it is given, for the confidence being personal, cannot be assigned to a stranger. 1 Roll. Ab. 330 2 Roll. Ab. 9 9 Co. 77 b.; 9 Ves. 236, 251 3 Mer. R. 237; 2 M. & S. 299, 301.

12. An authority given to two cannot be executed by one. Co. Litt. 112 b, 181 b. And an authority given to three jointly and separately, is not, in general, well executed by two. Co. Litt. 181 b; sed vide 1 Roll. Abr. 329, 1, 5; Com. Dig. Attorney, C 8 3 Pick. R. 232; 2 Pick. R. 345; 12 Mass. R. 185; 6 Pick. R. 198; 6 John. R. 39; Story, Ag. Sec. 42. These rules apply to on authority of a private nature, which must be executed by all to whom it is given; and not to a power of a public nature, which may be executed by all to whom majority. 9 Watts, R. 466; 5 Bin. 484, 5; 9 S, & R. 99. 2. When the authority is particular, it must in general be strictly pursued, or it will be void, unless the variance be merely circumstantial. Co. Litt. 49 b, 303, b; 6 T. R. 591; 2 H. Bl. 623 Co. Lit. 181, b; 1 Tho. Co. Lit. 852.

13.-2. As to the form to be observed in the execution of an authority, it is a general rule that an act done under a power of attorney must be done in the name Of the person who gives a power, and not in the attorney's name. 9 Co. 76, 77. It has been holden that the name of the attorney is not requisite. 1 W. & S. 328, 332; Moor, pl. 1106; Str. 705; 2 East, R. 142; Moor, 818; Paley on Ag. by Lloyd, 175; Story on Ag. Sec. 146 T 9 Ves. 236: 1 Y. & J. 387; 2 M. & S. 299; 4 Campb. R. 184; 2 Cox, R. 84; 9 Co. R. 75; 6 John. R. 94; 9 John. Pi,. 334; 10 Wend. R. 87; 4 Mass. R. 595; 2 Kent, Com. 631, 3d ed. But it matters not in what words this is done, if it sufficiently appear to be in the name of the principal, as, for A B, (the principal,) C D, (the attorney,) which has been held to be sufficient. See 15 Serg. & R. 55; 11 Mass. R. 97; 22 Pick. R. 168; 12 Mass. R. 237 9 Mass. 335; 16 Mass. R. 461; 1 Cowen, 513; 3 Wend. 94; Story, Ag. Sec. 154,275, 278, 395; Story on P. N., 69; 2 East, R. 142; 7 Watt's R. 121 6 John. R. 94. But see contra, Bac. Ab. Leases, J 10; 9 Co, 77; l Hare & Wall. Sel. Dec. 426.

14.-3. The execution must take place during the continuance, of the

authority, which is determined either by revocation, or performance of the commission.

15. In general, an authority is revocable, unless it be given as a security, or it be coupled with an interest. 3 Watts & Serg. 14; 4 Campb. N. P. 272; 7 Ver. 28; 2 Kent's Com. 506; 8 Wheat. 203; 2 Cowen, 196; 2 Esp. N. P. Cases, 565; Bac. Abr. h.t. The revocation (q.v.) is either express or implied; when it is express and made known to the person authorized, the authority is at an end; the revocation is implied when the principal dies, or, if a female, marries; or the subject of the authority is destroyed, as if a man have authority to sell my house, and it is destroyed by fire or to buy for me a horse, and before the execution of the authority, the horse dies.

16. When once the agent has exercised all the authority given to him, the authority is at an end.

17.-4. An authority is to be so construed as to include all necessary or usual means of executing it with effect 2 H. Bl. 618; 1 Roll. R. 390; Palm. 394 10 Ves. 441; 6 Serg. & R. 149; Com'. Dig. Attorney, C 15; 4 Campb. R. 163 Story on Ag. 58 to 142; 1 J. J. Marsh. R. 293 5 Johns. R. 58 1 Liv. on Ag. 103, 4 and when the agent acts, avowedly as such, within his authority, he is not personally responsible. Pal. on Ag. 4, 5. Vide, generally, 3 Vin. Ab. 416; Bac. Ab. h. f.; 1 Salk. 95 Com. Dig. h.t., and the titles there referred to. 1 Roll. Ab. 330 2 Roll. Ab. 9 Bouv. Inst. Index, h.t. and the articles, Attorney; Agency; Agent; Principal.

AUTHORITY, government. The right and power which an officer has in the exercise of a public function to compel obedience to his lawful commands. A judge, for example, has authority to enforce obedience to his not being correct. Merlin, Repertoire, mot Authentique.

AUTOCRACY. The name of a government where the monarch is unlimited by law. Such is the power of the emperor of Russia, who, following the example of his predecessors, calls himself the autocrat of all the Russias.

AUTRE VIE. Another's life. Vide, Pur autre vie.

AUTREFOIS. A French word, signifying formerly, at another time; and is usually applied to signify that something was done formerly, as autrefois acquit, autrefois convict, &c.

AUTREFOIS ACQUIT, crim. law, pleading. A plea made by a defendant, indicted for a crime or misdemeanor, that he has formerly been tried and acquitted of the same offence. See a form of this plea in Arch. Cr. Pl. 90.

2. To be a bar, the acquittal must have been by trial, and by the verdict of a jury on a valid indictment. Hawk. B. 2, c. 25, s. 1; 4 Bl. Com. 335. There must be an acquittal of the offence charged in law and in fact. Stark. Pl. 355; 2 Swift's Dig. 400 1 Chit. Cr. Law, 452; 2 Russ. on Cr. 41.

3. The Constitution of the U. S., Amend. Art. 5, provides that no person shall be subject for the same offence to be put twice in jeopardy of life or limb. Vide generally, 12 Serg. & Rawle, 389; Yelv. 205 a, note.

AUTREFOIS ATTAINT, crim. law. Formerly attainted.

2. This is a good plea in bar, where a second trial would be quite superfluous. Co. Litt. 390 b, note 2; 4 Bl. Com. 336. Where, therefore, any advantage either to public justice, or private individuals, would arise from a second prosecution, the plea will not prevent it; as where the criminal is indicted for treason after an attainder of felony, in which case the punishment will be more severe and more extensive. 3 Chit. Cr. Law, 464.

AUTREFOIS CONVICT, crim. law, pleading. A plea made by a defendant, indicted for a crime or misdemeanor, that he has formerly been tried and convicted of the same.

2. As a man once tried and acquitted of an offence is not again to be placed in jeopardy for the same cause, so, a fortiori, if he has suffered the penalty due to his offence, his conviction ought to be a bar to a second indictment for the same cause, least he should be punished twice for the same crime. 2 Hale, 251; 4 Co, 394; 2 Leon,. 83.

3. The form of this plea is like that of autrefois acquit; (q.v.) it must set out the former record, and show the identity of the offence and of the person by proper averments. Hawk. B. 2, c. 36; Stark. Cr. Pi. 363; Arcb. Cr, PI, 92; 1 Chit. Cr. Law, 462; 4 Bl. Com. 335; 11 Verm. R. 516.

AVAIL. Profits of land; hence tenant paravail is one in actual possession, who makes avail or profits of the land. Ham. N. P. 393.

AVALUM. By this word is understood the written engagement of a third person to guaranty and to become security that a bill of exchange shall be paid when due.

AVERAGE. A term used in commerce to signify a contribution made by the owners of the ship, freight and goods, on board, in proportion to their respective interests, towards any particular loss or expense sustained for the general safety of the ship and cargo; to the end that the particular loser may not be a greater sufferer than the owner of the ship and the other owners of goods on board. Marsh. Ins. B. 1, c. 12, s. 7; Code de Com. art. 397; 2 Hov. Supp. to Ves. jr. 407; Poth. Aver. art. Prel.

2. Average is called general or gross average, because it falls

generally upon the whole or gross amount of the ship, freight and cargo; and also to distinguish it from what is often though improperly termed particular average, but which in truth means a particular or partial, and not a general loss; or has no affinity to average properly so called. Besides these there are other small charges, called petty or accustomed averages; such as pilotage, towage, light-money, beaconage, anchorage, bridge toll, quarantine, river charges, signals, instructions, castle money, pier money, digging the ship out of the ice, and the like.

3. A contribution upon general average can only be claimed in cases where, upon as much deliberate on and consultation between the captain and his officers as the occasion will admit of, it appears that the sacrifice at the time it was made, was absolutely and indispensably necessary for the preservation of the ship and cargo. To entitle the owner of the goods to an average contribution, the loss must evidently conduce to the preservation of the ship and the rest of the cargo; and it must appear that the ship and the rest of the cargo were in fact saved. Show. Ca. Parl. 20. See generally Code de Com. tit. 11 and 12; Park, Ins. c. 6; Marsh. Ins. B. 1, c. 12, s. 7 4 Mass. 548; 6 Mass. 125; 8 Mass. 467; 1 Caines' R. 196; 4 Dall. 459; 2 Binn. 547 4 Binn. 513; 2 Serg. & Rawle, 237, in note; 2 Serg. & Rawle, 229 3 Johns. Cas. 178; 1 Caines' R. 43; 2 Caines' R. 263; Id. 274; 8 Johns. R. 237, 2d edit 9 Johns. R. 9; 11 Johns. R 315 1 Caines' R. 573; 7 Johns R. 412; Wesk. Ins. tit. Average; 2 Barn. & Crest. 811 1 Rob. Adlm. Rep. 293; 2 New Rep. 378 18 Ves. 187; Lex. Mer. Armer. ch. 9; Bac Abr. Merchant, F; Vin. Abr. Contribution and' Average; Stev. on Av.; Ben. on Av.

AVERIA. Cattle. This word, in its most enlarged signification is used to include horses of the plough, oxen and cattle. Cunn. Dict. h.t.

AVERIIS CAPTIS IN WITHERNAM, Eng. law. The name of a writ which lies in favor of a man whose cattle have been unlawfully taken by another, and driven out of the county where they were taken, so that they cannot be replevied.

2. This writ issues against the wrong doer to take his cattle to the plaintiff's use. Reg. of Writs, 82.

AVERMENT, pleading. Comes from the Latin verificare, or the French averrer, and signifies a positive statement of facts in opposition to argument or inference. Cowp. 683, 684.

2. Lord Coke says averments are two-fold, namely, general and particular. A general averment is that which is at the conclusion of an offer to make good or prove whole pleas containing new affirmative matter, but this sort of averment only applies to pleas, replications, or subsequent pleadings for counts and a vowries which are in the nature of counts, need not be averred, the form of such averment being et hoc paratus. est verificare.

3. Particular averments are assertions of the truth of particular facts, as the life of tenant or of tenant in tail is averred: and, in these, says Lord Coke, et hoc, &c., are not used. Co. Litt. 362 b. Again, in a particular averment the party merely protests and avows the truth of the fact or facts averred, but in general averments he makes an offer to prove and make good by evidence what he asserts.

4. Averments were formerly divided into immaterial and impertinent; but these terms are now treated as synonymous. 3 D. & R. 209. A better division may be made of immaterial or impertinent averments, which are those which need not be stated, and, if stated, need not be proved; and unnecessary averments, which consist of matters which need not be alleged, but if alleged, must be proved. For example, in an action of assumpsit, upon a

warranty on the sale of goods, allegation of deceit on the part of the seller is impertinent, and need not be proved. 2 East, 446; 17 John. 92. But if in an action by a lessor against his tenant, for negligently keeping his fire, a demise for seven years be alleged, and the proof be a lease at will only, it will be a fatal variance; for though an allegation of tenancy generally would have been sufficient, yet having unnecessarily qualified it, by stating the precise term, it must be proved as laid. Carth. 202.

5. Averments must contain not only matter, but form. General averments are always in the same form. The most common form of making particular averments is in express and direct words, for example: And the party avers or in fact saith, or although, or because, or with this that, or being, &c. But they need not be in these words, for any words which necessarily imply the matter intended to be averred are sufficient. See, in general, 3 Vin. Abr. 357 Bac. Abr. Pleas, B 4 Com. Dig. Pleader, C 50, C 67, 68, 69, 70; 1 Saund. 235 a, n. 8 3 Saund. 352, n. 3; 1 Chit. Pl. 308; Arch. Civ. Pl. 163; Doct. Pl. 120; 1 Lilly's Reg. 209 United States Dig. Pleading II (c); 3 Bouv. Inst. n. 2835-40.

AVOIDANCE, eccl. law. It is when a benefice becomes vacant for want of an incumbent; and, in this sense, it is opposed to plenarty. Avoidances are in fact, as by the death of the incumbent or in law.

AVOIDANCE, pleading. The introduction of new or special matter, which, admitting the premises of the opposite party, avoids or repels his conclusions. Gould on Pl. c. 1 Sec. 24, 42.

AVOIR DU POIS, comm. law. The name of a peculiar weight. This kind of weight is so named in distinction from the Troy weight. One pound avoir du pois

contains 7000 grains Troy; that is, fourteen ounces, eleven pennyweights and sixteen grains Troy a pound avoir du pois contains sixteen ounces; and an ounce sixteen drachms. Thirty-two cubic feet of pure spring-water, at the temperature of fifty-six degrees of Fahrenheit's thermometer, make a ton of 2000 pounds avoir du pois, or two thousand two hundred and forty pounds net weight. Dane's Abr. c. 211, art. 12, Sec. 6. The avoir du pois ounce is less than the Troy ounce in the proportion of 72 to 79; though the pound is, greater. Eneye. Amer. art. Avoir du pois., For the derivation of this phrase, see Barr. on the Stat. 206. See the Report of Secretary of State of the United States to the Senate, February 22d, 1821, pp. 44, 72, 76, 79, 81, 87, for a learned exposition of the whole subject.

AVOUCIIER. The call which the tenant makes on another who is bound to him by warranty to come into court, either to defend the right against the demandant, or to yield him other land in value. 2 Tho. Co. Lit. 304.

AVOW or ADVOW, practice. Signifies to justify or maintain an act formerly done. For example, when replevin is brought for a thing distrained, and the distrainer justifies the taking, he is said to avow. Termes de la Ley. This word also signifies to bring forth anything. Formerly when a stolen thing was found in the possession of any one" he was bound advocare, i. e. to produce the seller from whom he alleged he had bought it, to justify the sale, and so on till they found the thief. Afterwards the word was taken to mean anything which a man admitted to be his own or done by him, and in this sense it is mentioned in Fleta, lib. 1, c. 5, par 4. Cunn., Dict. h.t.

AVOWANT, practice, pleading. One who makes an avowry.

AVOWEE, eccl. law. An advocate of a church benefice.

AVOWRY, pleading. An avowry is where the defendant in an action of replevin, avows the taking of the distress in his own right, or in right of his wife, and sets forth the cause of it, as for arrears of rent, damage done, or the like. Lawes on Pl. 35 Hamm. N. P. 464; 4 Bouv. Inst. n. 3571.

2. An avowry is sometimes said to be in the nature of an action or of. a declaration, and privity of estate is necessary. Co. Lit. 320 a; 1 Serg. & R. 170-1. There is no general issue upon an avowry and it cannot be traversed cumulatively. 5 Serg. & R. 377. Alienation cannot be replied to it without notice; for the tenure is deemed to exist for the purposes of an avowry till notice be given of the alienation. Ham. Parties, 131-2; Ham. N. P. 398, 426.

AVOWTERER, Eng. law. An adulterer with whom a married woman continues in adultery. T. L.

AVOWTRY, Eng. law. The crime of adultery.

AVULSION. Where, by the immediate and manifest power of a river or stream, the soil is taken suddenly from one man's estate and carried to another. In such case the property belongs to the first owner. An acquiescence on his part, however, will in time entitle the owner of the land to which it is attached to claim it as his own. Bract. 221; Harg. Tracts, De jure maris, &c. Toull. Dr. Civ. Fr. tom. 3, p. 106; 2. Bl. Com. 262; Schultes on Aq. Rights, 115 to 138. Avulsion differs from alluvion (q.v.) in this, that in the latter case the change of the soil is gradual and imperceptible.

AVUS. Grandfather. This term is used in making genealogical tables.

AWAIT, crim. law. Seems to signify what is now understood by lying in wait, or way-laying.

AWARD. The judgment of an arbitrator or arbitrators on a matter submitted to him or them : arbitrium est judicium. The writing which contains such judgment is also called an award.

2. The qualifications requisite to the validity of an award are, that it be consonant to the submission; that it be certain; be of things possible to be performed, and not contrary to law or reason; and lastly, that it be final.

3.-1. It is manifest that the award must be confined within the powers given to the arbitrators, because, if their decisions extend beyond that authority, this is all assumption of, power not delegated, which cannot legally affect the parties. Kyd on Aw. 140 1 Binn. 109; 13 Johns. 187 Id. 271; 6 Johns. 13, 39 11 Johns. 133; 2 Mass. 164; 8 Mass. 399; 10 Mass. 442 Caldw. on Arb. 98; 2 Harring. 347; 3 Harring. 22; 5 Sm. & Marsh. 172; 8 N. H. Rep. 82; 6 Shepl. 251; 12 Gill & John. 456; 22 Pick. 144. If the arbitrators, therefore, transcend their authority, their award pro tanto will be void but if the void part affect not the merits. of the submission, the residue will be valid. 1 Wend. 326; 13 John. 264; 1 Cowen, 117 2 Cowen, 638; 1 Greenl. 300; 6 Greenl. 247; 8 Mass. 399; 13 Mass. 244; 14 Mass.43; 6 Harr. & John. 10; Doddr. Eng, Lawyer, 168-176; Hardin, 326; 1 Yeates, R. 513.

4.-2. The award ought to be certain, and so expressed that no reasonable doubt can arise on the face of it, as to the arbitrator's meaning, or as to the nature and extent of the duties imposed by it on the parties. An example of such uncertainty may be found in the following cases: An award, directing one party to bind himself in an obligation for the quiet

enjoyment of lands, without expressing in what sum the obligor should be bound. 5 Co. 77 Roll. Arbit. Q 4. Again, an award that one should give security to the other, for the payment of a sum of money, or the performance of any particular, act, when the kind of security is not specified. Vin. Ab. Arbitr. Q 12; Com. Dig. Arbitrament, E 11 Kyd on Aw. 194 3 S. & R. 340 9 John. 43; 2 Halst. 90; 2 Caines, 235 3 Harr. & John. 383; 3 Ham. 266 1 Pike, 206; 7 Metc. 316 5 Sm. & Marsh. 712 13 Verm. 53; 5 Blackf. 128; 2 Hill, 75 3 Harr 442.

5.-3. It must be possible to be performed, be lawful and reasonable. An award that could not by any possibility be performed, as if it directed that the party should deliver a deed not in his possession, or pay a sum of money at a day past, it would of course be void. But the, award that the party should pay a sum of money, although he might not then be able to do so, would be binding. The award must not direct anything to be done contrary to law, such as the performance of an act which would render the party a trespasser or a felon, or would subject him to an action. It must also be reasonable, for if it be of things nugatory in themselves, and offering no advantage to either of the parties, it cannot be enforced. Kirby, 253.

6.-4. The award must be final that is, it must conclusively adjudicate all the matters submitted. 1 Dall. 173 2 Yeates, 4 Rawle, 304; 1 Caines, 304 Harr. & Gill, 67 Charlt. 289; 3 Pike) 324; 3 Harr. 442; 1 P. S. R. 395; 4 Blackf. 253; 11 Wheat. 446. But if the award is as final as, under the circumstances of the case it might be expected, it will be considered as valid. Com. Dig. Arbitrament, E 15. As to the form, the award may be by parol or by deed, but in general it must be made in accordance with the provisions and requirements of the submission. (q.v.) Vide, generally, Kyd on Awards, Index, h.t.; Caldwell on Arbitrations, Index, h.t.; Dane's Ab.

c. 13; Com. Dig. Arbitrament, E; Id Chancery, 2 K 1, &c.; 3 Vin. Ab. 52, 372 1 158 15 East, R. 215; 1 Ves. Jr. 364 1 Saund. 326, notes 1, 2, and 3; Wats. on Arbitrations and Awards; 3 Bouv. Inst., n. 2402 to 2500.

AWM, or AUME. An ancient measure, used in measuring Rhenish wines it contained forty gallons.

AYANT CAUSE. French law. This term, which is used in Louisiana, signifies one to whom a right has been assigned, either by will, gift, sale, exchange, or the like. An assignee. An ayant cause differs from an heir who acquires the right by inheritance. 8 Toull. n. 245.

AYUNTAMIENTO, Spanish law. A congress of persons the municipal council of a city or town. 1 White's Coll. 416; 12 Pet. 442, notes.

B.

BACHELOR. The first degree taken at the universities in the arts and sciences, as bachelor of arts, & c. It is called, in Latin, Baccalaureus, from bacalus, or bacillus, a staff, because a staff was given, by way of distinction, into the hands of those who had completed their studies. Some, however, have derived the word from baccalaura, others from bas chevalier, as designating young squires who aspire to the knighthood. (Dupin.) But the derivation. of the word is uncertain.

BACK-BOND. A bond given by one to a surety, to indemnify such surety in case of loss. In Scotland, a back-bond is an instrument which, in conjunction with another which gives an absolute disposition, constitutes a trust. A declaration of trust.

BACK-WATER. That water in a stream which, in consequence of some obstruction below, is detained or checked in its course, or reflows.

2. Every riparian owner is entitled to the benefit of the water in its natural state. Whenever, therefore, the owner of land dams or impedes the water in such a manner as to back it on his neighbor above, he is liable to an action; for no one has a right to alter the level of the water, either where it enters, or where it leaves his property. 9 Co. 59; 1 B. & Ald. 258; 1 Wils. R. 178; 6 East, R. 203; 1 S. & Stu. 190.; 4 Day, R. 244; 7 Cowen, R. 266; 1 Rawle, R. 218; 5 N. R. Rep. 232; 9 Mass. R. 316; 7 Pick. R. 198; 4 Mason, R. 400; 1 Rawle, R. 27; 2 John. Ch. R. 162, 463; 1 Coxe's. R. 460. Vide, Dam; Inundation; Water-course; and 5 Ohio R. 322.

BACKING, crim. law practice. Backing a warrant occurs whenever it becomes

necessary to execute it out of the jurisdiction of the magistrate who granted it; as when an offender escapes out of the county in which he committed the offence with which he is charged, into another county. In such a case, a magistrate of the county in which the offender may, be found, endorses, or writes his name on the back of the warrant, and thereby gives authority to execute it within his jurisdiction. This is called backing the warrant. This may be from county to county, if necessary.

BACKSIDE, estates. In England this term was formerly used in conveyances and even in pleadings, and is still, adhered to with reference to ancient descriptions in deeds, in continuing the transfer of the same. property. It imports a yard at the back part of, or behind a house, and belonging thereto: but although formerly used in pleadings, it is now unusual to adopt it, and the word yard is preferred. 1 Chitty's Pr. 177; 2 Ld. Raym. 1399.

BADGE. A mark or sign worn by some persons, or placed upon certain things for the purpose of designation. Some public officers, as watchmen, policemen, and the like, are required to wear badges that they may be readily known. It is used figuratively when we say, possession of personal property by the seller, is. a badge of fraud.

BAGGAGE. Such articles as are carried by a traveller; luggage. Every thing which a passenger, carries, with him is not baggage. Large sums of money, for example, carried in a travelling trunk, will not be considered baggage, so as to render the carrier responsible. 9 Wend. R. 85. But a watch deposited in his trunk is part of his baggage. 10 Ohio R. 145. See, as to what is baggage, 6 Hill, R. 586 5 Rawle, 188, 189; 1 Pick. 50.

2. In general a common carrier of passengers is responsible for

baggage, if lost, though no distinct price be paid for transporting it, it being included in the passenger's fare. Id. The carrier's responsibility for the baggage begins as soon as it has been delivered to him, or to his servants, or to some other person authorized by him to receive it. Then the delivery is complete. The risk and responsibility of the carrier is at an end as soon as he has delivered the baggage to the owner or his agent; and if an offer to deliver it be made at a proper time, the carrier will be discharged from responsibility, us 'such yet, if the baggage remain in his custody afterwards, he will hold as, bailee, and be responsible for it according to the terms of such bailment ana, R. 92. Vide Common Carriers

3. By the act of congress of March 2, 1799, sect. 46, 1 Story's L. U. S. 612, it is declared that all wearing apparel and other personal baggage, &c., of persons who shall arrive in the United States, shall be free and exempted from duty.

BAIL, practice, contracts. By bail is understood sureties, given according to law, to insure the appearance of a party in court. The persons who become surety are called bail. Sometimes the term is applied, with a want of exactness, to the security given by a defendant, in order to obtain a stay of execution, after judgment, in civil cases., Bail is either civil or criminal.

2.- 1. Civil bail is that which is entered in civil cases, and is common or special bail below or bail above.

3. Common bail is a formal entry of fictitious sureties in the proper office of the court, which is called filing. common bail to the action. It is in the same form as special bail, but differs from it in this, that the sureties are merely fictitious, as John Doe and Richard Roe: it has, consequently, none of, the incidents of special bail. It is allowed to the defendant only when he has been discharged from arrest without bail, and it

is necessary in such cases to perfect the appearance of the defendant. Steph. Pl. 56, 7; Grah. Pr. 155; Highm. on Bail 13.

4. Special bail is an undertaking by one or more persons for another, before some officer or court properly authorized for that purpose, that he shall appear at a certain time and place, to answer a certain charge to be exhibited against him. The essential qualification to enable a person to become bail, are that he must be, 1. a freeholder or housekeeper; 2. liable to the ordinary process of the court 3. capable of entering into a contract; and 4. able to pay the amount for which he becomes responsible.

1. He must be a freeholder or housekeeper. (q. v.) 2 Chit. R. 96; 5 Taunt. 174; Lofft, 148 3 Petersd. Ab. 104.

2. He must be subject to the ordinary process of the court; and a person privileged from arrest, either permanently or temporarily, will not be taken. 4 Taunt. 249; 1 D. & R. 127; 2 Marsh. 232.

3. He must be competent to enter into a contract; a feme covert, an infant, or a person non compos mentis, cannot therefore become bail.

4. He must be able to pay the amount for which he becomes responsible. But it is immaterial whether his property consists of real or personal estate, provided it be his own, in his own right; 3 Peterd. Ab. 196; 2 Chit. Rep. 97; 11 Price, 158; and be liable to the ordinary process of the law; 4 Burr. 2526; though this rule is not invariably adhered to, for when part of the property consisted of a ship, shortly expected, bail was permitted to justify in respect of such property. 1 Chit. R. 286, n. As to the persons who cannot be received because they are not responsible, see 1 Chit. R. 9, 116; 2 Chit. R. 77, 8; Lofft, 72, 184; 3 Petersd. Ab. 112; 1 Chit. R. 309, n.

5. Bail below. This is bail given to the sheriff in civil cases, when the defendant is arrested on bailable process; which is done by giving him a

bail bond; it is so called to distinguish it from bail above. (q. v.) The sheriff is bound to admit a man to bail, provided good and sufficient sureties be tendered, but not otherwise. Stat. 23 H. VI. C. 9, A. D. 1444; 4 Anne, c. 16, Sec. 20; B. N. P. 224; 2 Term Rep., 560. The sheriff, is not, however, bound-to demand bail, and may, at his risk, permit the defendant to be at liberty, provided he will appear, that is, enter bail above, or surrender himself in proper time. 1 Sell. Pr. 126, et seq. The undertaking of bail below is, that the defendant will appear or put in bail to the action on the return day of the writ.

6. Bail above, is putting in bail to the action, which is an appearance of the defendant. Bail above are bound either to satisfy the plaintiff his debt and costs, or to surrender the defendant into custody, provided judgment should be against him and he should fail to do so. Sell. Pr. 137.

7. It is a general rule that the defendant having been held to bail, in civil cases, cannot be held a second time for the same cause of action. Tidd' s Pr. 184 Grah. Pr. 98; Troub. & Hal. 44; 1 Yeates, 206 8 Ves. Jur. 594. See Auter action Pendent; Lis pendens.

8. - 2. Bail in criminal cases is defined to be a delivery or bailment of a person to sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to be in their friendly custody, instead of going to prison.

9. The Constitution of the United States directs that "excessive bail shall not be required." Amend. art. 8.

10. By the acts of congress of September, 24, 1789, s. 33, and March 2, 1793, s. 4, authority is given to take bail for any crime or offence against the United States, except where the punishment is death, to any justice or judge of the United States, or to any chancellor, judge of the supreme or superior court, or first judge of any court of common pleas, or mayor of any city of any state, or to any justice of the peace or other magistrate of any

state, where the offender may be found the recognizance @tal,-en by any of the persons authorized, is to be returned to the court having cognizance of the offence.

11. When the punishment by the laws of the United States is death, bail can be taken only by the supreme or circuit court, or by a judge of the district court of the United States. If the person committed by a justice of the supreme court, or by the judge of a district court, for an offence not punishable with death, shall, after commitment, offer bail, any judge of the supreme or superior court of law, of any state, (there being no judge of the United States in the district to take such bail,) way admit such person to bail.

12. Justices of the peace have in general power to take bail of persons accused; and, when they have such authority they are required to take such bail There are many cases, however, under the laws of the several states, as well as under the laws of the United States,, as above mentioned, where justices of the peace cannot take bail, but must commit; and, if the accused offers bail, it must be taken by a judge or other,, officer lawfully authorized.

13. In Pennsylvania, for example, in cases of murder, or when the defendant is charged with the stealing of any horse, mare, or gelding, on the direct testimony of one witness; or shall be taken having possession of such horse, mare, or gelding, a justice of the peace cannot admit the party to bail. 1 Smith's L. of Pa. 581.

14. In all cases where the party is admitted to bail, the recognizance is to be returned to the court having @jurisdict on of the offence charged. Vide Act of God. Arrest; Auter action pendent; Deat Lis pendens.

BAIL BOND, practice, contracts. A specialty by which the defendant and other

persons, usually not less than two, though the sheriff may take only one, become bound to the sheriff in a penalty equal to that for which bail is demanded, conditioned for the due appearance of such defendant to the legal process therein described, and by which the sheriff has been commanded to arrest him. It is only where the defendant is arrested or in the custody of the sheriff, under other than final process, that the sheriff can take such bond. On this bond being tendered to him, which he is compelled to take if the sureties are good, he must discharge the defendant. Stat. 23 H. VI. c. 9.

2. With some exceptions, as for example, where the defendant surrenders; 5 T. R. 754; 7 T. R. 123; 1 East, 387; 1 Bos. & Pull. 326; nothing can be a performance of the condition of the bail bond, but putting in bail to the action. 5 Burr. 2683.

3. The plaintiff has a right to demand from the sheriff an assignment of such bond, so that he may sue it for his own benefit. 4 Ann. c. 16, Sec. 20; Wats. on Sheriff, 99; 1 Sell. Pr. 126, 174. For the general requisites of a bail bond, see 1 T. R. 422; 2 T. R. 569 15 East. 320; 2 Wils. 69; 6 T. R. 702; 9 East, 55; . D. & R. 215; 4 M. & S. 338; 1 Moore, R. 514; 6 Moore, R. 264 East, 568; Hurls. on Bonds, 56; U. S. Dig. Bail V.

BAIL PIECE. A certificate given by a judge or the clerk of the court, or other person authorized to keep the record, in which it is certified that A B, the bail, became bail, for C D, the defendant, in a certain sum, and in a particular case. It was the practice formerly, to write these certificates upon small pieces of parchment, in the following form: (See 3 Bl. Com. Appendix.)

In the Court of _____, of the Term of _____, in the year of our Lord, _____, _____City and County of _____, ss.

Theunis Thew is delivered to bail upon the taking of his body, to Jacobus Vanzant, of the city of_____, merchant, and to John Doe, of the same city, yeoman. SMITH, JR. At the suit of Attorney for Deft. PHILIP CARSWELL. Taken and acknowledged the ____ day of _____, A. D. _____, before me. D. H.

2. As the bail is supposed to have the custody of the defendant, when he is armed with this process, he may arrest the latter, though he is out of the jurisdiction of the court in which he became bail, and even in a different state. 1 Baldw. 578; 3 Com. 84, 421; 2 Yeates, 263 8 pick. 138; 7 John. 145; 3 Day, 485. The bail may take him even while attending court as a suitor, or any time, even on Sunday. 4 Yeates, 123; 4 Conn. 170. He may break even an outer door to seize him; and command the assistance of the sheriff or other officers; 8 Pick. 138; and depute his power to others.. 1 John. Cas. 413; 8 Pick. 140. See 1 Serg. & R. 311.

BAILABLE ACTION. One in which the defendant is entitled to be discharged from arrest, only upon giving bail to answer.

BAILABLE PROCESS. Is that process by which an officer is required to arrest a person, and afterwards to take bail for his appearance. A capias ad respondendum is bailable, but a capias ad satisfaciendum is not.

BAILEE, contracts. One to whom goods are bailed.

2. His duties are to act in good faith he is bound to use extraordinary diligence in those contracts or bailments, where he alone receives the benefit, as in loans; he must observe ordinary diligence of those bailments, which are beneficial to both parties, as hiring; and he will be responsible

for gross negligence in those bailments which are only for the benefit of the bailor, is deposit and mandate. Story's Bailm. Sec. 17, 18, 19. He is bound to return the property as soon as the purpose for which it was bailed shall have been accomplished.

3. He has generally a right to retain and use the thing bailed, according to the contract, until the object of the bailment shall have been accomplished.

4. A bailee with a mere naked authority, having a right to remuneration for his trouble, but coupled with no other interest, may support trespass for any injury, amounting to a trespass, done while he was in the actual possession of the thing. 4 Bouv. Inst. n. 3608.

BAILIFF, account render. A bailiff is a person who has, by delivery, the custody and administration of lands or goods for the benefit of the owner or bailor, and is liable to render an account thereof. Co. Lit. 271; 2 Leon. 245; 1 Mall . Ent. 65. The word is derived from the old French word bailler, to bail, that is, to deliver. Originally, the word implied the delivery of real estate, as of land, woods, a house, a part of the fish in a pond; Owen, 20; 2 Leon. 194; Keilw. 114 a, b; 37 Ed. III. 7; 10 H. VII. 7, 30; but was afterwards extended to goods and chattels. Every bailiff is a ,receiver, but every receiver is not a bailiff. Hence it is a good plea that the defendant never was receiver, but as bailiff. 18 Ed. III. 16. See Cro. Eliz. 82-3; 2 Anders. 62-3, 96-7 F. N. B. 134 F; 8 Co. 48 a, b.

2. From a bailiff is required administration, care, management, skill. He is, therefore, entitled to allowance for the expense of administration, and for all things done in his office, according to his own judgment, without the special direction of his principal, and also for casual things done in the common course of business: 1 Mall. Ent. 65, (4) 11; 1 Rolle, Ab. 125, 1, 7; Co. Lit. 89 a; Com. Dig. E 12 Bro. Ab. Acc. 18 Lucas, Rep. 23 but

not for things foreign to his office. Bro. Ab. Acc .26, 88; Plowd. 282b, 14; Com. Dig. Acc. E13; Co. Lit. 172; 1 Mall. Ent. 65, (4) 4. Whereas, a mere receiver, or a receiver who is not also a bailiff, is not entitled to allowance for any expenses. Bro. Ab. Acc. 18; 1 Mall. Ent. 66, (4) 10; 1 Roll. Ab. 118; Com. Dig. E 13; 1 Dall. 340.

3. A bailiff may appear and plead for his principal in an assize; " and his plea com- @mences " thus, " J. S., bailiff of T. N., comes " &c., not " T. N., by his bailiff, J. S., comes," &c. 2 Inst. 415; Keilw. 117 b. As to what matters he may plead, see 2 Inst. 414.

BAILIFF, office. Magistrates who for @merly administered justice in the parliaments or courts of France, answering to the English sheriffs as mentioned by Bracton. There are still bailiffs of particular towns in England as the bailiff of Dover Castle, &c., otherwise bailiffs are now only officers or stewards, &c. as Bailiffs of liberties, appointed by every lord within his liberty, to serve writs, &c. Bailiff errent or itinerant, appointed to go about the country for the same purpose. Sheriff 's bailies, sheriff's officers to execute writs; these are also called bound bailiffs because they are usually bound in a bond to the sheriff for the due execution of their office. Bailiffs of court baron, to summon the court, &c. Bailiffs of husbandry, appointed by private persons to collect their rents and manage their estates. Water bailiffs, officers in port towns for searching ships, gathering tolls, &c. Bac. Ab. h. t.

BAILMENT, contracts. This word is derived from the French, bailler, to deliver. 2 Bl. Com. 451; Jones' Bailm. 90 Story on Bailm. c. 1, Sec. 2. It is a compendious expression, to signify a contract resulting from delivery. It has been defined to be a delivery of goods on a condition, express or

implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purposes for which they are bailed shall be answered. 1 Jones' Bailm. 1. Or it is a delivery of goods in trust, on a contract either expressed or implied, that the trust shall be duly executed, and the goods redelivered, as soon as the time or use for which they were bailed shall have elapsed or be performed. Jones' Bailm. 117.

2. Each of these definitions, says Judge Story, seems redundant and inaccurate if it be the proper office of a definition to include those things only which belong to the genus or class. Both these definitions suppose that the goods are to be restored or redelivered; but in a bailment for sale, as upon a consignment to a factor, no redelivery is contemplated between the parties. In some cases, no use is contemplated by the bailee, in others, it is of the essence of the contract: in some cases time is material to terminAte the contract; in others, time is necessary to give a new accessorial right. Story,on Bailm. c. 1, Sec. 2.

3. Mr. Justice Blackstone has defined a bailment to be a delivery of goods in trust, upon contract, either expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 Bl. Com. 451. And in another place, as the delivery of goods to another person for a particular use. 2 Bl. Com. 395. Vide Kent's Comm. Lect. 40, 437.

4. Mr. Justice Story says, that a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Story on Bailm. c. 1, Sec. 2. This corresponds very nearly with the definition of Merlin. Vide Repertoire, mot Bail.

5. Bailments are divisible into three kinds: 1. Those in which the trust is for the benefit of the bailor, as deposits and mandates. 2. Those in which the trust is for the benefit of the bailee, as gratuitous loans for

use. 3. Those in which the trust is for the benefit of both parties, as pledges or pawns, and hiring and letting to hire. See Deposit; Hire; Loans; mandates and Pledges.

6. Sir William Jones has divided bailments into five sorts, namely: 1. Depositum, or deposit. 2. Mandatum, or commission without recompense. 3. Commodatum, or loan for use, without pay. 4. Pignori acceptum, or pawn. 5. Locatum, or hiring, which is always with reward. This last is subdivided into, 1. Locatio rei, or hiring, by which the hirer gains a temporary use of the thing. 2. Locatio operis faciendi, when something is to be done to the thing delivered. 3. Locatio operis mercium vehendarum, when the thing is merely to be carried from one place to another. See these several words. As to the obligations and duties of bailees in general, see Diligence, and Story on Bailm. c. 1; Chit. on Cont. 141; 3 John. R. 170; 17 Mass. R. 479; 5 Day, 15; 1 Conn. Rep. 487; 10 Johns. R. 1, 471; 12 Johns. R. 144, 232; 11 Johns. R. 107; 15 Johns. R. 39; 2 John. C. R. 100; 2 Caines' Cas. 189; 19 Johns. R. 44; 14 John. R. 175; 2 Halst. 108; 2 South. 738; 2 Harr. & M'Hen. 453; 1 Rand. 3; 2 Hawks, 145; 1 Murphy, 417; 1 Hayw. 14; 1 Rep. Con. Ct. 121, 186; 2 Rep. Con. Ct. 239; 1 Bay, 101; 2 Nott & M'Cord, 88, 489; 1 Browne, 43, 176; 2 Binn. 72; 4 Binn. 127; 5 Binn. 457; 6 Binn. 129; 6 Serg. & Rawle, 439; 8 Serg. & Rawle, 500, 533; 14 Serg. & R. 275; Bac. Ab. h. t.; 1 Bouv. Inst. n. 978-1099.

BAILOR, contracts. He who bails a thing to another.

2. The bailor must act with good faith towards the bailee; Story's Bailm. Sec. 74, 76, 77; permit him to enjoy the thing bailed according to contract; and, in some bailments, as hiring, warrant the title and possession of the thing hired, and probably, to keep it in suitable order and repair for the purpose of the bailment. Id. Sec. Vide Inst. lib. 3, tit.

BAILIWICK. The district over which a sheriff has jurisdiction; it signifies also the same as county, the sheriff's bailiwick extending over the county.

2. In England, it signifies generally that liberty which is exempted from the sheriff of the county over which the lord of the liberty appoints a bailiff. Vide Wood's Inst. 206.

BAIR-MAN, Scottish law. A poor insolvent debtor left bare.

BAIRN'S PART, Scottish, law. Children's part a third part of the defunct's free movables, debts deducted, if the wife survive, and a half if there be no relict.

BALANCE, com. law. The amount which remains due by one of two persons, who have been dealing together, to the other, after the settlement of their accounts.

2. In the case of mutual debts, the balance only can be recovered by the assignee of an insolvent, or the executor of a deceased person. But this mutuality must have existed at the time of the assignment by the insolvent, or at the death of the testator.

3. The term general balance is sometimes used to signify the difference which is due to a party claiming a lien on goods in his hands, for work or labor done, or money expended in relation to those and other goods of the debtor. 3 B. & P. 485; 3 Esp. R. 268.

BALANCE SHEET. A statement made by merchants and others to show the true state of a particular business. A balance sheet should exhibit all the balances of debits and credits, also the value of merchandize, and the

result of the whole. Vide Bilan.

BALANCE OF TRADE, Com. law. The difference between the exports and importations, between two countries. The balance of trade is against that country which has imported more than it has exported, for which it is debtor to the other country.

BALIVA. A bailiwick or jurisdiction.

BALIVO AMOVENDO, Eng. practice. A writ to remove a bailiff out of his office.

BALLASTAGE, mar. law. A toll paid for the privilege, of taking up ballast from the bottom of the port. This arises from the property in the soil. 2 Chit. Com. Law, 16.

BALLOT, government. A diminutive ball, i. e. a little ball used in giving votes; the act itself of giving votes. A little ball or ticket used in voting privately, and, for that purpose, put, into a box, (commonly called a ballot-box,) or into some other contrivance.

BALNEARII, civil law. Stealers of the clothes of person who were washing in the public baths. Dig. 47, 17; 4 Bl. Com. 239; Calviui Lex. Jurid.

BAN, A proclamation, or public notice any summons or edict by which a thing is forbidden or commanded. Vide Bans of Matrimony; Proclamation; Cowell's Interp.

BANC or BANK. The first of these is a French word signifying bench, pronounced improperly bank. 1. The seat of judgment, as banc le roy, the king's bench banc le common pleas, the bench of common pleas.

2. The meeting of all the judges or such as may form a quorum, as, the court sit in banc. Cowell's Interp.

BANCO. A commercial term, adopted from the Italian, used to distinguish bank money from the common currency; as $1000,

BANDIT. A man outlawed; one who is said to be under ban.

BANE. This word was formerly used to signify a malefactor. Bract. 1. 2, t. 8, c. 1.

BANISHMENT, crim. law. A punishment inflicted upon criminals, by compelling them to quit a city, place, or country, for, a specified period of time, or for life. Vide 4 Dall. 14. Deportation; Relegation.

BANK, com. law. 1. A place for the deposit of money. 2. An institution, generally incorporated, authorized to receive deposits of money, to lend money, and to issue promissory notes, usually known by the name of bank notes. 3. Banks are said to be of three kinds, viz : of deposit, of discount, and of circulation; they generally perform all these operations. Vide Metc. & Perk. Dig. Banks and Banking.

BANKBOOK ,commerce. A book which persons dealing with a bank keep, in which the officers of the bank enter the amount of money deposited by them, and all notes or bills deposited by them, or discounted for their use.

BANK NOTE, contracts. A bank note resembles a common promissory note, (q. v.) issued by a bank or corporation authorized to act as a bank. It is in fact a promissory note, but such notes are not, for many purposes, to be considered as mere securities for money; but are treated as money, in the ordinary course and transactions of business, by the general consent of mankind and, on payment of them, when a receipt is required, the receipts are always given as for money, not as for securities or notes. 1 Burr. R. 457; 12 John. R. 200; 1 John. Ch. R. 231; 9 John. R. 120; 19 John. 144; 1 Sch. & Lef. 318, 319; 11 Ves. 662; 1 Roper, Leg. 3; 1 Ham. R. 189, 524; 15 Pick. 177; 5 G. & John. 58; 3 Hawks, 328; 5 J. J. Marsh. 643.

2. Bank notes are assignable by delivery. Rep. Temp. Hard. 53 9 East, R. 48; 4 East, R. 510 Dougl. 236. The holder of a bank note is prima facie entitled to prompt payment of it, and cannot be affected by the fraud of any former holder in obtaining it, unless evidence be given to bring it home to his privity. 1 Burr. 452; 4 Rawle, 185 13 East, R. 135 Dane's Ab. Index, h. t.; Pow. on Mortg. lndex, h. t. U. S. Dig. h. t. Vide Bouv. Inst. Index, h. t. Note; Promissory note; @Reissuable note.

3. They cannot be taken in execution. Cunning. on Bills, 537; Hardw. Cases, 53; 1 Arch. Pr. 268 1 Wils. Rep. 9 Cro. Eliz. 746, pl. 25

BANK STOCK. The capital of a bank. It is usually divided in shares of a certain amount. This stock is generally transferable on the books of the bank, and considered as personal property. Vide Stock.

BANKER, com. law. A banker is one engaged in the business of receiving other persons money in deposit, to be returned on demand discounting other persons' notes, and issuing his own for circulation. One who performs the business usually transacted by a bank. Private bankers are generally not

permitted.

2. The business of bankers is generally performed through the medium of incorporated banks.

3. A banker may be declared a bankrupt by adverse proceedings against him. Act of Congress of 19th Aug. 1841. See 1 Atk. 218; 2 H. Bl. 235; 1 Mont. B. L. 12.

4. Among the ancient Romans there were bankers called argentarii, whose office was to keep registers of contracts between individuals, either to loan money, or in relation to sales and stipulations. These bankers frequently agreed with the creditor to pay him the debt due to him by the debtor. Calvini Lex. Jurid.

BANKERS' NOTE, contracts. In England a distinction is made between bank notes, (q. v.) and bankers' notes. The latter are promissory notes, and resemble bank notes in every respect, except that they are given by persons acting as private bankers. 6 Mod. 29; 3 Chit. Com. Law, 590; 1 Leigh's N. P. 338.

BANKRUPT. A person who has done, or suffered some act to be done, which is by law declared an act of bankruptcy; in such case he may be declared a bankrupt.

2. It is proper to notice that there is much difference between a bankrupt and an insolvent. A man may be a bankrupt, and yet be perfectly solvent; that is, eventually able to pay all his debts or, he may be insolvent, and, in consequence of not having done, or suffered, an act of bankruptcy. He may not be a bankrupt. Again, the bankrupt laws are intended mainly to secure creditors from waste, extravagance, and mismanagement, by seizing the property out of the hands of the debtors, and placing it in the custody of the law; whereas the insolvent laws only relieve a man from

imprisonment for debt after he has assigned his property for the benefit of his creditors. Both under bankrupt and insolvent laws the debtor is required to surrender his property, for the benefit of his creditors. Bankrupt laws discharge the person from imprisonment, and his property, acquired after his discharge, from all liabilities for his debts insolvent laws simply discharge the debtor from imprisonment, or liability to be imprisoned, but his after-acquired property may be taken in satisfaction of his former debts. 2 Bell, Com. B. 6, part 1, c. 1, p. 162; 3 Am. Jur. 218.

BANKRUPTCY. The state or condition of a bankrupt.

2. Bankrupt laws are an encroachment upon the common law. The first in England was the stat. 34 and 35 H. VIII., c. 4, although the word bankrupt appears only in the title, not in the body of the act. The stat. 13 Eliz. c. 7, is the first that defines the term bankrupt, and discriminates bankruptcy from mere insolvency. Out of a great number of bankrupt laws passed from time to time, the most considerable are the statutes 13 Eliz. c. 7; 1 James I., c. 19 21 James I., c. 19 5 Geo. II., c. 30. A careful consideration of these statutes is sufficient to give am adequate idea of the system of bankruptcy in England. See Burgess on Insolvency, 202-230.

3. The Constitution of the United States, art. 1, s. 8, authorizes congress "to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States." With the exception of a short interval during which bankrupt laws existed in this country, this power lay dormant till the passage of the act of 1841, since repealed.

4. Any one of the states may pass a bankrupt law, but no state bankrupt or insolvent law can be permitted to impair the obligation of contracts; nor can the several states pass laws conflicting with an act of congress on this

subject 4 Wheat. and the bankrupt laws of a state cannot affect the rights of citizens of another state. 12 Wheat. It. 213. Vide 3 Story on the Const. Sec. 1100 to 1110 2 Kent, Com. 321 Serg. on Const. Law, 322 Rawle on the Const. c. 9 6 Pet. R. 348 Bouv. Inst. Index, h. t. Vide Bankrupt.

BANKS OF RIVERS, estates. By this term is understood what retains the river in its natural channel, when there is the greatest flow of water.

2. The owner of the bank of a stream, not navigable, his in general the right to the middle of the stream. Vide Riparian Proprietor.

3. When by imperceptible increase the banks on one side extend into the river, this addition is called alluvion. (q. v.) When the increase is caused by the sudden transfer of a mass of earth or soil from the opposite bank, it is called an increase by avulsion. (q. v.)

BANNITUS. One outlawed or banished. See Calvini Lex.

BANS OF MATRIMONY. The giving public notice or making proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract, to the end that persons objecting to the same, may have an opportunity to declare such objections before the marriage is solemnized. Poth. Du Mariage, partie 2, c. 2. Vide Ban.

BAR, actions. A perpetual destruction or temporary taking away of the action of the plaintiff. In ancient authors it is called exceptio peremptorid. Co. Litt. 303 b Steph. Pl. Appx. xxviii. Loisel (Institutes Coutumieres, vol. ii. p. 204) says, "Exceptions (in pleas) have been called bars by our ancient practitioners, because, being opposed, they arrest the party who has sued out the process, as in war (une barriere) a barrier arrests an enemy; and as there have always been in our tribunals bars to separate the

advocates from the judges, the place where the advocates stand (pour parler) when they speak, has been called for that reason (barreau) the bar."

2. When a person is bound in any action, real or personal, by judgment on demurrer, confession or verdict, he is barred, i. e. debarred, as to that or any other action of the like nature or degree, for the same thing, forever; for expedit reipublicae ut sit finis litim.

3. But there is a difference between real and personal actions.

4. In personal actions, as in debt or account, the bar is perpetual, inasmuch as the plaintiff cannot have an action of a higher nature, and therefore in such actions he has generally no remedy, but by bringing a writ of error. Doct. Plac. 65; 6 Co. 7, 8 4 East, 507, 508.

5. But if the defendant be barred in a real action, by judgment on a verdict, demurrer or confession, &c., he may still have an action of a higher nature, and try the same right again. Lawes, Pl. 39, 40. See generally, Bac. Ab. Abatement, N; Plea in bar. Also the case of Outram v. Morewood, 3 East, Rep. 346-366; a leading case on this subject.

BAR, practice. A place in a court where the counsellors and advocates stand to make their addresses to the court and jury; it is so called because formerly it was closed with a bar. Figuratively the counsellors and attorneys at law are called the bar of Philadelphia, the New York bar.

2. A place in a court having criminal jurisdiction, to which prisoners are called to plead to the indictment, is also called, the bar. Vide Merl. Repert. mot Barreau, and Dupin, Profession d'Avocat, tom. i. p. 451, for some eloquent advice to gentlemen of the bar.

BAR, contracts. An obstacle or opposition. 2. Some bars arise from circumstances, and others from persons. Kindred within the prohibited

degree, for example, is a bar to a marriage between the persons related; but the fact that A is married, and cannot therefore marry B, is a circumstance which operates as a bar as long as it subsists; for without it the parties might marry.

BAR FEE, Eng. law. A fee taken time out of mind by the sheriff for every prisoner who is acquitted. Bac. Ab. Extortion.

BARBICAN. An ancient word to signify a watch-tower. Barbicanage was money given for the support of a barbican.

BARGAIN AND SALE, conveyancing, contracts. A contract in writing to convey lands to another person; or rather it is the sale of a use therein. In strictness it is not an absolute conveyance of the seisin, as a feoffment. Watk. Prin. Conv. by Preston, 190, 191. The consideration must be of money or money's worth. Id. 237.

2. In consequence of this conveyance a use arises to a bargainee, and the statute 27 Henry VIII. immediately transfers the20legal estate and possession to him.

3. A bargain and sale, may be in fee, for life, or for years.

4. The proper and technical words of this conveyance are bargain and sale, but any other words that would have been sufficient to raise a use, upon a valuable consideration, before the statute, are now sufficient to constitute a good bargain and sale. Proper words of limitation must, however, be inserted. Cruise Dig. tit. 32, c. 9; Bac. Ab. h. t. Com. Dig. h. t.; and the cases there cited; Nels. Ab. h. t. 2 Bl. Com. 338.

5. This is the most common mode of conveyance in the United States. 4 Kent, Com. 483; 3 Pick. R. 529; 3 N. H. Rep. 260; 6 Harr. & John. 465; 3 Wash. C. C. Rep. 376; 4 Mass. R. 66; 4 Yeates, R. 295; 1 Yeates, R. 828; 3

John. R. 388; 4 Cowen's R. 325; 10 John. R. 456, 505; 3 N. H. Rep. 261; 14 John. R. 126; 2 Harr. & John. 230; 2 Bouv. Inst. n. 207 7 8.

BARGAINEE. A person to whom a bargain is made; one who receives the advantages of a bargain.

BARGAINOR. A person who makes a a bargain, and who becomes bound to perform it.

BARGEMEN. Persons who own and keep a barge for the purpose of carrying the goods of all. such other persons who may desire to employ them. They are liable as common, carriers. Story, Bailm. 496.

BARLEYCORN. A lineal measure, containing one-third of an inch. Dane's Ab. c. 211, a. 13, s. 9. The barleycorn was the first measure, with its division and multiples, of all our measures of length, superfices, and capacity. Id. c. 211, a. 1 2, s. 2.

BARN, estates. A building on a farm used to receive the crop, the stabling of animals, and other purposes.

2. The grant or demise of a barn, without words superadded to extend its meaning, would pass no more than the barn itself, and as much land as would be necessary for its complete enjoyment. 4 Serg. & Rawle, 342.

BARON. This word has but one signification in American law, namely, husband: we use baron and feme, for husband and wife. And in this sense it is going out of use.

2. In England, and perhaps some other countries, baron is a title of

honor; it is the first degree of nobility below a viscount. Vide Com. Dig. Baron and Feme; Bac. Ab. Baron and Feme; and the articles. Husband; Marriage; Wife.

3. In the laws of the middle ages, baron or bers, (baro) signifies a great vassal; lord of a fief and tenant immediately from the king: and the words baronage, barnage and berner, signify collectively the vassals composing the court of the king; as Le roi et son barnage, The king and his court. See Spelman's Glossary, verb. Baro.

BARONS OF EXCHEQUER, Eng. law. The name given to the five judges of the Exchequer formerly these were baros of the realm, but now they are chosen from persons learned in the law.

BARRACK. By this term, as used in Pennsylvania, is understood an erection of upright posts supporting a sliding roof, usually of thatch. 5 Whart. R. 429.

BARRATOR, crimes. One who has been guilty of the offence of barratry.

BARRATRY, crimes. In old law French barat, barraterie, signifying robbery, deceit, fraud. In modern usage it may be defined as the habitual moving, exciting, and maintaining suits and quarrels, either at law or otherwise. 1 Inst. 368; 1 Hawk. 243.

2. A man cannot be indicted as a common barrator in respect of any number of false and groundless actions brought in his own right, nor for a single act in right of another; for that would not make him a common barrator.

3. Barratry, in this sense, is different from maintenance (q. v.) and champerty. (q. v.)

4. An attorney cannot be indicted for this crime, merely for

maintaining another in a groundless action. Vide 15 Mass. R. 229 1 Bailey's R. 379; 11 Pick. R. 432; 13 Pick. R. 362; 9 Cowen, R. 587; Bac. Ab. h. t.; Hawk. P. C. B. 1, c. 21; Roll. Ab. 335; Co. Litt. 368; 3 Inst. 175.

BARRATRY, maritime law, crimes. A fraudulent act of the master or mariners, committed contrary to their duty as such, to the prejudice of the owners of the ship. Emer. tom. 1, p. 366; Merlin, Repert. h. t.; Roccus, h. t.; 2 Marsh. Insur. 515; 8 East, R. 138, 139. As to what will amount to barratry, see Abbott on Shipp. 167, n. 1; 2 Wash. C. C. R. 61; 9 East, R. 126; 1 Str. 581; 2 Ld. Raym. 1349; 1 Term R. 127; 6 Id. 379; 8 Id. 320; 2 Cain. R. 67, 222; 3 Cain. R. 1; 1 John. R. 229; 8 John. R. 209, n. 2d edit.; 5 Day. R. 1; 11 John. R. 40; 13 John. R, 451; 2 Binn. R. 274; 2 Dall. R. 137; 8 Cran. R. 39; 3 Wheat. R. 168; 4 Dall. R. 294; 1 Yeates, 114.

2. The act of Congress of April, 30, 1790, s. 8, 1 Story's Laws U. S. 84, punishes with death as piracy, "any captain or mariner of any ship or other vessel who shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifty dollars; or yield up such ship or vessel to any pirate or if any such seamen shall lay violent hands upon his commander, thereby to binder or prevent his fighting in defence of his ship, or goods, committed to his trust, or shall make a revolt in the said ship."

BARREL. A measure of capacity, equal to thirty-six gallons.

BARREN MONEY, civil law. This term is used to denote money which bears no interest.

BARRENNESS. The incapacity to produce a child. This, when arising from

impotence, is a cause for dissolving a marriage. 1 Fodere, Med. Leg. Sec. 254.

BARRISTER, English law. A counsellor admitted to plead at the bar.

2. Ouster barrister, is one who pleads ouster or without the bar.

3. Inner barrister, a sergeant or king's counsel who pleads within the bar.

4. Vacation barrister, a counsellor newly called to the bar, who is to attend for several long vacations the exercise of the house.

5. Barristers are called apprentices, apprentitii ad legem, being looked upon as learners, and not qualified until they obtain the degree of sergeant. Edmund Plowden, the author of the Commentaries, a volume of elaborate reports in the reigns of Edward VI., Mary, Philip and Mary, and Elizabeth, describes himself as an apprentice of the common law.

BARTER. A contract by which the parties exchange goods for goods. To complete the contract the goods must be delivered, for without a delivery, the right of property is not changed.

2. This contract differs from a sale in this, that barter is always of goods for goods, whereas a sale is an exchange of goods for money. In the former there never is a price fixed, in the latter a price is indispensable. All the differences which may be pointed out between these two contracts, are comprised in this; it is its necessary consequence. When the contract is an exchange of goods on one side, and on the other side the consideration is partly goods and partly money, the contract is not a barter, but a sale. See Price; Sale.

3. If an insurance be made upon returns from a country where trade is carried on by barter, the valuation of the goods in return shall be made on the cost of those given in barter, adding all charges. Wesk. on Ins. 42. See

3 Camp. 351 Cowp. 818; 1 Dougl. 24, n.; 1 N. R. 151 Tropl. de l'Echange.

BARTON, old English law. The demesne land of a manor; a farm distinct from the mansion.

BASE. Something low; inferior. This word is frequently used in composition; as base court, base estate, base fee, &c.

BASE COURT. An inferior court, one not of record. Not used.

BASE ESTATE, English law. The estate which base tenants had in their lands. Base tenants were a degree above villeins, the latter being compelled to perform all the commands of their lords; the former did not hold their lands by the performance of such commands. See Kitch. 41.

BASE FEE, English law. A tenure in fee at the will of the lord. This was distinguished from socage free tenure. See Co. Litt. 1, 18.

BASILICA, civil law. This is derived from a Greek word, which signifies imperial constitutions. The emperor Basilius, finding the Corpus Juris Civilis of Justinian too long and obscure, resolved to abridge it, and under his auspices the work proceeded to the fortieth book, which, at his death, remained unfinished. His son and successor, Leo, the philosopher, continued the work, and published it in sixty books, about the year 880. Constantine Porphyro-genitus, younger brother of Leo, revised the work, re-arranged it, and republished it, Anno Domini, 910. From that time the laws of Justinian ceased to have any force in the eastern empire, and the Basilica were the foundation of the law observed there till Constantine XIII, the last of the

Greek emperors, under whom, in 1453, Constantinople was taken by Mahomet the Turk, who put an end to the empire and its laws. Histoire de la Jurisprudence Etienne, Intr. a 1'etude du Droit Romain, Sec. LIII. The Basilica were written in Greek. They were translated into Latin by J. Cujas (Cujacius) Professor of Law in the University of Bourges, and published at Lyons, 22d of January, 1566, in one vol. fo.

BASTARD. A word derived from bas or bast, signifying abject, low, base; and aerd, nature. Minshew, Co. Lit. 244; a. Enfant de bas, a child of low birth. Dupin. According to Blackstone, 1 Com. 454, a bastard in the law sense of the word, is a person not only begotten, but born out of lawful matrimony. This definition does not appear to be complete, inasmuch as it does not embrace the case of a person who is the issue of an illicit connection, during the coverture of his mother. The common law, says the Mirror, only taketh him to be a son whom the marriage proveth to be so. Horne's Mirror, c. 2, Sec. 7; see Glanv. lib 8, cap. 13 Bract. 63, a. b.; 2 Salk. 427;, 8 East, 204. A bastard may be perhaps defined to be one who is born of an illicit union, and before the lawful marriage of his parents.

2. A man is a bastard if born, first) before the marriage of his parents; but although he may have been begotten while his parents were single, yet if they afterwards marry, and he is born during the coverture, he is legitimate. 1 Bl. Com. 455, 6. Secondly, if born during the coverture, under circumstances which render it impossible that the husband of his mother can be his father. 6 Binn. 283; 1 Browne's R. Appx. xlvii.; 4 T. R. 356; Str. 940 Id. 51 8 East, 193; Hardin's R. 479. It seems by the Gardner peerage case, reported by Dennis Le Marebant, esquire, that strong moral improbability that the husband is not the father, is sufficient to bastardize the issue. Bac. Ab. tit. Bastardy, A, last ed. Thirdly, if born beyond a competent time after the coverture has determined. Stark. Ev. part

4, p. 221, n. a Co. Litt. 123, b, by Hargrave & Butler in the note. See Gestation.

3. The principal right which bastard children have, is that of maintenance from their parents. 1 Bl. Com. 458; Code Civ. of Lo. 254 to 262. To protect the public from their support, the law compels the putative father to maintain his bastard children. See Bastardy; Putative father.

4. Considered as nullius filius, a bastard has no inheritable blood in him, and therefore no estate can descend. to him; but he may take by testament, if properly described, after he has obtained a name by reputation. 1 Rop. Lew. 76, 266; Com. Dig. Descent, C, l2; Ie. Bastard, E; Co. Lit. 123, a; Id. 3, a; 1 T. R. 96 Doug. 548 3 Dana, R. 233; 4 Pick. R. 93; 4 Desaus. 434. But this hard rule has been somewhat mitigated in some of the states, where, by statute, various inheritable qualities have been conferred upon bastards. See 5 Conn. 228; 1 Dev. Eq. R. 345; 2 Root, 280; 5 Wheat.. 207; 3 H. & M. 229, n; 5 Call. 143; 3 Dana, 233.

5. Bastards can acquire the rights of legitimate children only by an act of the legislature. 1 Bl. Com. 460; 4 Inst. 36.

6. By the laws of Louisiana, a bastard is one who is born of an illicit union. Civ. Code of Lo. art. 27, 199. There are two sorts of illegitimate children; first, those who are born of two persons, who, at the moment such children were conceived, might have legally contracted marriage with each other; and, secondly, those who are born from persons, to whose marriage there existed at the time, some legal impediment. Id. art. 200. An adulterous bastard is one produced by an unlawful connexion between two persons, who, at the time he was conceived, were, either of them, or both, connected by marriage with some other person or persons. Id. art. 201. Incestuous bastards are those who are produced by the illegal connexion of two persons who are relations within the degrees prohibited by law. Id. art.

202.

7. Bastards, generally speaking, belong to no family, and have no relations; accordingly they are not subject to paternal authority, even when they have been acknowledged. See 11 East, 7, n. Nevertheless, fathers and mothers owe alimony. to their children when they are in need. Id. art. 254, 256. Alimony is due to bastards, though they be adulterous or incestuous, by the mother and her ascendants. Id. art. 262.

8. Children born out of marriage, except those who are born from an incestuous or adulterous connexion, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before the marriage or by the contract of marriage itself. Every other mode of legitimating children is abolished. Id. art. 217. Legitimation may even be extended to deceased children who have left issue, and in that ease, it enures to the benefit of that issue. Id. art. 218. Children legitimated by a subsequent marriage, have the same rights as if born during the marriage. Id. art. 219. See, generally, Vin. Abr. Bastards Bac. Abr. Bastard; Com. Dig. Bastard; Metc. & Perk. Dig. h. t.; the various other American Digests, h. t.; Harr. Dig. h. t.; 1 Bl. Com. 454 to 460; Co. Litt. 3, b.; Bouv. Inst. Index, h. t., And Access; Bastardy; Gestation; Natural Children.

BASTARD EIGNE', Eng. law. Elder bastard. By the old English law, when, a man had a bastard son, and he afterwards married the mother, and by her had a legitimate son, the first was called a bastard eigne, or, as it is now spelled, aine, and the second son was called puisne, or since born, or sometimes he was called mulier puisne. See Mulier; Eigne, 2 Bl. Com. 248.

BASTARDY, crim. law. The offence of begetting a bastard child.

BASTARDY, persons. The state or condition of a bastard. The law presumes every child legitimate, when born of a woman in a state of wedlock, and casts the onus probandi (q. v.) on the party who affirms the bastardy. Stark. Ev. h. t.

BASTON. An old French word, which signifies a staff, or club, In some old English statutes the servants or officers of the wardens of the Fleet are so called, because they attended the king's courts with a red staff. Vide Tipstaff.

BATTEL, in French Bataille; Old English law. An ancient and barbarous mode of trial, by Bingle combat, called wager of battel, where, in appeals of felony, the @appellee might fight with the appellant to prove his innocence. It was also used in affairs of chivalry or honor, and upon civil cases upon certain issues. Co. Litt. 294. Till lately it disgraced the English code. This mode of trial was abolished in England by stat. 59 Geo.,III. c. 46.

2. This mode of trial was not peculiar to England. The emperor Otho, A. D. 983, held a diet at Verona, at which several sovereigns and great lords of Italy, Germany and France were present. In order to put a stop to the frequent perjuries in judicial trials, this diet substituted in all cases, even in those which followed the course of the Roman law, proof by combat for proof by oath. Henrion de Pansey, Auth. Judic. Introd. c. 3; and for a detailed account of this mode of trial see Herb. Antiq. of the Inns of Court, 119-145.

BATTERY. It is proposed to consider, 1. What is a battery; 2. When a battery, may be justified.

2. - 1. A battery is the unlawful touching the person of another by the

aggressor himself, or any other substance put in motion by him. 1 Saund. 29, b. n. 1; Id. 13 & 14, n. 3. It must be either willfully committed, or proceed from want of due care. Str. 596; Hob. 134; Plowd. 19 3 Wend. 391. Hence an injury, be it never so small, done to the person of another, in an angry, spiteful, rude or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him, are batteries in the eye of the law. 1 Hawk. P. C. 263. See 1 Selw. N. P. 33, 4. And any thing attached to the person partakes of its inviolability if, therefore, A strikes a cane in the hands of B, it is a battery. 1 Dall. 1 14 1 Ch. Pr. 37; 1 Penn. R. 380; 1 Hill's R. 46; 4 Wash. C. C. R. 534 . 1 Baldw. R. 600.

3. - 2. A battery may be justified, 1. on the ground of the parental relation 2. in the exercise of an office; 3. under process of a court of justice or other legal tribunal 4. in aid of an authority in law; and lastly, as a necessary means of defence.

4. First. As a salutary mode of correction. For example: a parent may correct his child, a master his apprentice, a schoolmaster his scholar; 24 Edw. IV.; Easter, 17, p. 6 and a superior officer, one under his command. Keilw. pl. 120, p. 136 Bull. N. P. 19 Bee, 161; 1 Bay, 3; 14 John. R. 119 15 Mass. 365; and vide Cowp. 173; 15 Mass. 347.

5. - 2. As a means to preserve the peace; and therefore if the plaintiff assaults or is fighting with another, the defendant may lay hands upon him, and restrain him until his anger is cooled; but he cannot strike him in order to protect 'the party assailed, as he way in self-defence. 2 Roll. Abr. 359, E, pl. 3.

6. - 3. Watchmen may arrest, and detain in prison for examination, persons walking in the streets by might, whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. 3 Taunt. 14.

7. - 4. Any person has a right to arrest another to prevent a felony.

8. - 5. Any one may arrest another upon suspicion of felony, provided a felony has actually been committed and there is reasonable ground for suspecting the person arrested to be the criminal, and that the party making the arrest, himself entertained the suspicion.

9. - 6. Any private individual may arrest a felon. Hale's P. C. 89.

10. - 7. It is lawful for every man to lay hands on another to preserve public decorum; as to turn him out of church, and to prevent him from disturbing the congregation or a funeral ceremony. 1 Mod. 168; and see 1 Lev. 196; 2 Keb. 124. But a request to desist should be first made, unless the urgent necessity of the case dispenses with it.

11. Secondly. A battery may be justified in the exercise of an office. 1. A constable may freshly arrest one who, in, his view, has committed a breach of the peace, and carry him before a magistrate. But if an offence has been committed out of the constable's sight, he cannot arrest, unless it amounts to a felony; 1 Brownl. 198 or a felony is likely to ensue. Cro. Eliz. 375.

12. - 2. A justice of the peace may generally do all acts which a constable has authority to perform hence he may freshly arrest one who, in his view has broken the peace; or he may order a constable at the moment to take him up. Kielw. 41.

13. Thirdly. A battery may be justified under the process of a court of justice, or of a magistrate having competent jurisdiction. See 16 Mass. 450; 13 Mass. 342.

14. Fourthly. A battery may be justified in aid of an authority in law. Every person is empowered to restrain breaches of the peace, by virtue of the authority vested in him by the law.

15. Lastly. A battery may be justified as a necessary means of defence. 1. Against the plaintiffs assaults in the following instances: In defence of

himself, his wife, 3 Salk. 46, his child, and his servant. Ow. 150; sed vide 1 Salk. 407. So, likewise, the wife may justify a battery in defending her husband; Ld. Raym. 62; the child its parent; 3 Salk. 46; and the servant his master. In these situations, the party need not wait until a blow has been given, for then he might come too late, and be disabled from warding off a second stroke, or from protecting the person assailed. Care, however, must be taken, that the battery do not exceed the bounds of necessary defence and protection; for it is only permitted as a means to avert an impending evil, which might otherwise overwhelm the party, and not as a punishment or retaliation for the injurious attempt. Str. 953. The degree of force necessary to repel an assault will naturally depend upon, and be proportioned to, the violence of the assailant; but with this limitation any degree is justifiable. Ld. Raym. 177; 2 Salk. 642.

16. - 2. A battery may likewise be justified in the necessary defence of one's property; if the plaintiff is in the act of entering peaceably upon the defendant's land, or having entered, is discovered, not committing violence, a request to depart is necessary in the first instance; 2 Salk. 641; and if the plaintiff refuses, the defendant may then, and not till then, gently lay hands upon the plaintiff to remove him from the close and for this purpose may use, if necessary, any degree of force short of striking the plaintiff, as by thrusting him off. Skinn. 228. If the plaintiff resists, the defendant may oppose force to force. 8 T. R. 78. But if the plaintiff is in the act of forcibly entering upon the land, or having entered, is discovered subverting the soil, cutting down a tree or the like, 2 Salk. 641, a previous request is unnecessary, and the defendant may immediately lay hands upon the plaintiff. 8 T. R. 78. A man may justify a battery in defence of his personal property, without a previous request, if another forcibly attempt to take away such property. 2 Salk. 641. Vide Rudeness; Wantonness.

BATTURE. An elevation of the bed of a river under the surface of the water; but it is sometimes used to signify the same elevation when it has risen above the surface. 6 M. R. 19, 216. The term battures is applied, principally, to certain portions of the bed of the river Mississippi, which are left dry when the water is low, and are covered again, either in whole or in part by the annual swells. The word battures, in French, signifies shoals or shallows, where there is not water enough for a ship to float. They are otherwise called basses or brisans. Neuman's Marine Pocket Dict.; Dict. de Trevoux.

BAWDY-HOUSE, crim. law. A house of ill-fame, (q. v.) kept for the resort and unlawful commerce of lewd people of both sexes.

2. Such a house is a common nuisance, as it endangers the public peace by drawing together dissolute and debauched persons; and tends to corrupt both sexes by an open profession of lewdness. 1 Russ. on Cr.; 299: Bac. Ab. Nuisances, A; Hawk. B. 1, c. 74, Sec. 1-5.

3. The keeper of such a house may be indicted for the nuisance; and a married woman, because such houses are generally kept by the female sex, may be indicted with her husband for keeping such a house. 1 Salk. 383; vide Dane's Ab. Index, h. t. One who assists in establishing a bawdyhouse is guilty of a misdemeanor. 2 B. Monroe, 417.

BAY. Is an enclosure to keep in the water for the supply of a mill or other contrivance, so that the water may be able to, drive the wheels of such mill. Stat. 27 Eliz. c. 19.

2. A large open water or harbor where ships may ride, is also called a bay; as, the Chesapeake Bay, the, Bay of New York.

BEACH. The sea shore. (q. v.)

BEACON. A signal erected as a sea mark for the use of mariners; also, to give warning of the approach of an enemy. 1 Com. Dig. 259; 5 Com. Dig. 173.

TO BEAR DATE. In the description of a paper in a declaration, to say it bears date such a day, is to aver that such date is upon it; and if, on being produced, it is dated at another day, the variance will be fatal. But if it be averred it was made on such a day, and upon its production it bears date on another day, it will not be a variance, because it might have been made one day and dated another. 3 Burr. 904.

BEADLE. Eng. law. A messenger or apparitor of a court, who cites persons to appear to what is alleged against them, is so called.

BEARER. One who bears or carries a thing.

2. If a bill or note be made payable to bearer, it will pass by delivery only, without endorsement; and whoever fairly acquires a right to it, may maintain an action against the drawer or acceptor.

3. It has been decided that the bearer of a bank note, payable to bearer, is not an assignee of a chose in action within the 11th section of the judiciary act of, 1789, c. 20, limiting the jurisdiction of the circuit court. 3 Mason, R. 308.

4. Bills payable to bearer are contra-distinguished from those payable to order, which can be transferred only by endorsement and delivery.

5. Bills payable to fictitious payees, are considered as bills payable to, bearer.

BEARERS, Eng. crim. law. Such as bear down or oppress others; maintainers. In Ruffhead's Statutes it is employed to translate the French word emparnours, which signifies, according to Kelham, undertakers of suits. 4 Ed. III. c. 11. This word is no longer used in this sense.

BEARING DATE. These words are frequently used in conveyancing and in pleading; as, for example, a certain indenture bearing date the first day of January, 1851, which signifies not that the indenture was made on that day, but simply that such date has been put to it.

2. When in a declaration the plaintiff alleges that the defendant made his promissory note on such a day, he will not be considered as having alleged it bore date on that day, so as to cause a variance between the declaration and the note produced bearing a different date. 2 Greenl. Ev. Sec. 1610; 2 Dowl. & L. 759.

BEAU PLEADER, Eng. law. Fair pleading. See Stultiloquium.

2. This is the name of a writ upon the statute of Marlbridge, 52 H. III. c. 11, which enacts, that neither in the circuit of justices, nor in counties, hundreds, or courts baron, any fines shall be taken for fair pleading; namely, for not pleading fairly or aptly to the purpose. Upon this statute this writ was ordained, directed to the sheriff, bailiff, or him who shall demand the fine; and it is a prohibition or command not to do it. Now Nat. Br. 596 2 Inst. 122; Termes de la Le 2 Reeves' Hist. Eng. Law, 70 Cowel; Crabb's Hist. of the Eng. Law, 150. The explanations given of this term are not very satisfactory.

BEDEL, Eng. law. A cryer or messenger of a court, who cites men to appear and answer. There are also inferior officers of a parish or liberty who bear

this name.

BEE. The name of a well known insect.

2. Bees are considered ferae naturae while unreclaimed; and they are not more subjects of property while in their natural state, than the birds which have their nests on the tree of an individual. 3 Binn. R. 546 5 Sm. & Marsh. 333. This agrees with the Roman law. Inst. 2 1, 14; Dig. 41, 1, 5, 2; 7 Johns. Rep. 16; 2 Bl. Com. 392 Bro. Ab. Propertie, 37; Coop. Justin. 458.

3. In New York it has been decided that bees in a tree belong, to the owner of the soil, while unreclaimed. When they have been reclaimed, and the owner can identify them, they belong to him, and not to the owner of the soil. 15 Wend. R. 550. See 1 Cowen, R. 243.

BEGGAR. One who obtains his livelihood by asking alms. The laws of several of the states punish begging as an offence.

BEHAVIOUR. In old English, haviour without the prefix be. It is the manner of having, holding, or keeping one's self or the carriage of one's self with respect to propriety, morals, and the requirements of law. Surety to be of - good behaviour is a larger requirement than surety to keep the peace. Dalton, c. 122; 4 Burn's J. 355.

BEHOOF. As a word of discourse, Signifies need, (egestas, necessitas, indigentia.) It comes from behoove, (Sax. behoven,) to need or have need of. In a secondary sense, which is the law sense of the word, it signifies use, service, profit, advantage, (interesse, opus.) It occurs in conveyances of land in fee simple.

BELIEF. The conviction of the mind, arising from evidence received, or from

information derived, not from actual perception by our senses, but from. the relation or information of others who have had the means of acquiring actual knowledge of the facts and in whose qualifications for acquiring that knowledge, and retaining it, and afterwards in communicating it, we can place confidence. " Without recurring to the books of metaphysicians' "says Chief Justice Tilghman, 4 Serg. & Rawle, 137, "let any man of plain common sense, examine the operations of, his own mind, he will assuredly find that on different subjects his belief is different. I have a firm belief that, the moon revolves round the earth. I may believe, too, that there are mountains and valleys in the moon; but this belief is not so strong, because the evidence is weaker." Vide 1 Stark. Ev. 41; 2 Pow. Mortg. 555; 1 Ves. 95; 12 Ves. 80; 1 P. A. Browne's R 258; 1 Stark. Ev. 127; Dyer, 53; 2 Hawk. c. 46, s. 167; 3 Wil. 1, s. 427; 2 Bl. R. 881; Leach, 270; 8 Watts, R. 406; 1 Greenl. Ev. Sec. 7-13, a.

BELOW. Lower in place, beneath, not so high as some other thing spoken of, of tacitly referred to.

2. The court below is an inferior court, whose, proceedings may be examined on error by a superior court, which is called the court above.

3. Bail below is that given to the sheriff in bailable actions, which is so called to distinguish it from bail to t-he action, which is called bail above. See Above; Bail above; Bail below.

BENCH. Latin Bancus, used for tribunal. In England there are two courts to which this word is applied. Bancus Regius, King's Bench Bancus Communis, Com-mon Bench or Pleas. The jus banci, says Spelman, properly belongs to the king's judges, who administer justice in the last resort. The judges of the inferior courts, as of the barons, are deemed to, judge plano pede, and are

such as are called in the civil law pedanei judices, or by the Greeks Xauaidixastai, that is, humi judicantes. The Greeks called the seats of their higher judges Bumata, and of their inferior judges Bathra. The Romans used the word sellae and tribunalia, to designate the seats of their higher judges, and subsellia, to designate those of the lower. See Spelman's Gloss. (ad verb.) Bancus; also, 1 Reeves Hist. Eng. Law, 40, 4to ed., and postea Curia Regis.

BENCH WARRANT, crim. law. The name of a process sometimes given to an attachment issued by order of a criminal court, against an individual for some contempt, or for the purpose of arresting a person accused; the latter is seldom granted unless when a true bill has been found.

BENCHER, English law. A bencher is a senior in the inns of court, entrusted with their government and direction.

BENEFICE, eccles. law. In its most extended sense, any ecclesiastical preferment or dignity; but in its more limited sense, it is applied only to rectories and vicarages.

BENEFICIA. In the early feudal times, grants were made to continue only during the pleasure of the grantor, which were called munera, (q. v.) but soon afterwards these grants were made for life, and then they assumed the name of beneficia. Dalr. Feud. Pr. 199. Pomponius Laetus, as cited by Hotoman, De Feudis, ca. 2, says, " That it was an ancient custom, revived by the emperor Constantine, to give lands and villas to those generals, prefects, and tribunes, who had grown old in enlarging the empire, to supply their necessities as long as they lived, which they called. parochial parishes, &c. But, between (feuda) fiefs or feuds, and (parochias) parishes,

there was this difference, that the latter were given to old men, veterans, &c., who, as they had deserved well of the republic, sustained the rest of their life (publico beneficio) by the public benefaction; or, if any war afterwards arose, they were called out, not so much as soldiers, as leaders, (majistri militum.) Feuds, (feuda,) on the other hand, were usually given to robust young men who could sustain the labors of war. In later times, the word parochia was appropriated exclusively to ecclesiastical persons, while the word beneficium (militare) continued to be used in reference to military fiefs or fees.

BENEFICIAL. Of advantage, profit or interest; as the wife has a beneficial interest in property held by a trustee for her. Vide Cestui que trust.

BENEFICIAL INTEREST. That right which a person has in a contract made with another; as if A makes a contract with B that he will pay C a certain sum of money, B has the legal interest in the contract, and C the beneficial interest. Hamm. on Part. 6, 7, 25 2 Bulst. 70.

BENEFICIARY. This term is frequently used as synonymous with the technical phrase cestui que trust. (q. v.)

BENEFICIO PRIMO ECCLESIASTICO HABENDO, Eng. eccl. law. A writ directed from the king to the chancellor, commanding him to bestow the benefice which shall first fall in the king's gift, above or under a certain value, upon a particular and certain person.

BENEFICIUM COMPETENTIAE. The right which an insolvent debtor had, among the Romans, on making session of his property for the benefit of his creditors,

to retain what was required for him to live honestly according to his condition. 7 Toull. n. 258.

BENEFIT. This word is used in the same sense as gain (q. v.) and profits. (q. v.) 20 Toull. n. 199.

BENEFIT OF CESSION, Civil law. The release of a debtor from future imprisonment for his debts, which the law operates in his favor upon the surrender of his property for the benefit of his, creditors, Poth. Proced. Civ. 5@eme part., c. 2, Sec. 1. This was something like a discharge under the insolvent laws, which releases the person of the debtor, but not the goods he may acquire afterwards. See Bankrupt; Cessio Bo. Insolvent.

BENEFIT OF CLERGY, English law. An exemption of the punishment of death which the laws impose on the commission of certain crimes, on the culprit demanding it. By modern statute's, benefit of clergy was rather a substitution of a more mild punishment for the punishment of death.

2. It was lately granted, not only to the clergy, as was formerly the case, but to all persons. The benefit of clergy seems never to have been extended to the crime of high treason, nor to have embraced misdemeanors inferior to felony. Vide 1 Chit. Cr. Law, 667 to 668 4 Bl. Com. ch. 28. But this privilege improperly given to the clergy, because they had more learning than others) is now abolished by stat. 7 Geo. IV. c. 28, s. 6.

3. By the Act of Congress of April 30, 1790, it is provided, Sec. 30, that the benefit of clergy shall not be used or allowed, upon conviction of any crime, for which, by any statute of the United States, the punishment is, or shall be declared to be, death.

BENEFIT OF DISCUSSION, civil law. The right which a surety has to cause the

property of the principal debtor to be applied in satisfaction of the obligation in the first instance. See Civil Code of Lo. art. 3014 to 3020, and Discussion.

BENEFIT OF DIVISION. In the civil law, which, in this respect, has been adopted in Louisiana, although, when there are several sureties, each one is bound for the whole debt, yet when one of them is sued alone, he has a right to have the debt apportioned among all the solvent sureties on the same obligation, so that he shall be compelled to pay his own share only. This is called the benefit of division. Civil Code of Lo. art. 3014 to 3020. See 2 Bouv. Inst. n. 1414.

BENEFIT OF INVENTORY, civil law. The benefit of inventory is the privilege which the heir obtains of being liable for the charges and debts of the succession, only to the value of the effects of the succession, in causing an inventory of these effects within the time and manner proscribed by law. Civil Code of Louis. art. 1025. Vide Poth. Traits des Successions, c. 3, s. 3, a. 2.

BENEVOLENCE, duty. The doing a kind action to another, from mere good will, without any legal obligation. It is a moral duty only, and it cannot be enforced by law. A good wan is benevolent to the poor, but no law can compel him to be so.

BENEVOLENCE, English law. An aid given by the subjects to the king under a pretended gratuity, but in realty it was an extortion and imposition.

TO BEQUEATH. To give personal property by will to another.

BEQUEST. A gift by last will or testament; a legacy. (q. v.) This word is sometimes, though improperly used, as synonymous with devise. There is, however, a distinction between them. A bequest is applied, more properly, to a gift by will of a legacy, that is, of personal property; devise is properly a gift by testament of real property. Vide Devise.

BESAILE or BESAYLE, domestic relations. The great-grandfather, proavus. 1 Bl. Com. 186. Vide dile.

BEST EVIDENCE. Means the best evidence of which the nature of the case admits, not the highest or strongest evidence which the nature of the thing to be proved admits of: e. g. a copy of a deed is not the best evidence; the deed itself is better. Gilb. Ev. 15; 3 Campb.. 236; 2 Starkey, 473 2 Campb. 605; 1 Esp. 127.

2. The rule requiring the best evidence to be produced, is to be understood of the best legal evidence. 2 Serg. & R. 34; 3 Bl. Com. 368, note 10, by Christian. It is relaxed in some cases, as, e. g. where the words or the act of the opposite party avow the fact to be proved. A tavern keeper's sign avows his occupation; taking of tithes avows the clerical character; so, addressing one as The Reverend T. S." 2 Serg. & R. 440 1 Saund. on Plead. & Evid. 49.

BETROTHMENT. A contract between a man and a woman, by which they agree that at a future, time they will marry together.

2. The requisites of this contract are 1. That it be reciprocal. 2. That the parties be able to contract.

3. The contract must be mutual; the Promise of the one must be the consideration for the promise of the other. It must be obligatory on both

parties at the same instant, so that each may have an action upon it, or it will bind neither. 1 Salk. 24, Carth. 467; 5 Mod. 411; 1 Freem. 95; 3 Keb. 148; Co. Lit. 79 a, b.

4. The parties must be able to contract. if either be married at the time of betrothment, the contract is void; but the married party cannot take advantage of his own wrong, and set up a marriage or previous engagement, as an answer to the action for the breach of the contract, because this disability proceeds from the defendant's own act. Raym. 387 3 Just. 89; I Sid. 112 1 Bl. Com. 438.

5. The performance of this engagement or completion of the marriage, must be performed within a reasonable time. Either party may, therefore, call upon the other to fulfill the engagement, and in case of refusal or neglect to do so, within a reasonable time after request made, may treat the betrothment as at an end, and bring action for the breach of the contract. 2 C. & P. 631.

6. For a breach of the betrothment, without a just cause, an action on the case may be maintained for the recovery of damages. See Affiance; Promise of Marriage.

BETTER EQUITY. In England this term has lately been adopted. In the case of Foster v. Blackston, the master of the rolls said, be could no where find in the authorities what in terms was a better equity, but on a reference to all the cases, he considered it might be thus defined: If a prior incumbrancer did not take a security which effectually protected him against any subsequent dealing to his prejudice, by the party who had the legal estate, a second incumbrancer, taking a security which in its nature afforded him that protection, had what might properly be called a better equity. 1 Ch.

Pr. 470, note. Vide 4 Rawle, R. 144 3 Bouv. Inst. n. 2462.

BETTERMENTS. Improvement's made to an estate. It signifies such improvements as have been made to the estate which render it better than mere repairs. See 2 Fairf. 482; 9 Shepl. 110; 10 Shepl. 192; 13 Ohio, R. 308; 10 Yerg. Verm. 533; 17 Verm. 109.

BEYOND SEA. This phrase is used in the acts of limitations of several of the states, in imitation of the phraseology of the English statute of limitations. In Pennsylvania, the term has been construed to signify out of the United States. 9 S. & R. 288; 2 Dall. R. 217; 1 Yeates, R. 329. In Georgia, it is equivalent to without the limits of the state; 3 Wheat. R. 541; and the same construction prevails in Maryland; 1 Har. & John. 350; 1 Harr. & M'H. 89; in South Carolina; 2 McCord, Rep. 331; and in Massachusetts. 3 Mass. R. 271; 1 Pick. R. 263. Vide Kirby, R. 299; 3 Bibb. R. 510; 3 Litt. R. 48; 1 John. Cas. 76. Within the four seas, infra quatuor maria, and beyond the four seas, extra quatuor maria, in English law books signify within and without the kingdom of England, or the jurisdiction of the king of England. Co. Lit. 244 a; 1 Bl. Com. 457.

BIAS. A particular influential power which sways the judgment; the inclination or propensity of the mind towards a particular object.

2. Justice requires that the judge should have no bias for or against any individual; and that his mind should be perfectly free to act as the law requires.

3. There is, however, one kind of bias which the courts suffer to influence them in their judgments it is a bias favorable to a class of cases, or persons, as distinguished from an individual case or person. A few examples will explain this. A bias is felt on account of convenience. 1 Ves.

sen. 13, 14; 3 Atk. 524. It is also felt in favor of the heir at law, as when there is an heir on one side and a mere volunteer on the other. Willes, R. 570 1 W. Bl. 256; Amb. R. 645; 1 Ball & B. 309 1 Wils. R. 310 3 Atk. 747 Id. 222. On the other hand, the court leans against double portions for children; M'Clell. R. 356; 13 Price, R. 599 against double provisions, and double satisfactions; 3 Atk. R. 421 and against forfeitures. 3 T. R. 172. Vide, generally, 1 Burr. 419 1 Bos. & Pull. 614; 3 Bos. & Pull. 456 Ves. jr. 648 Jacob, Rep. 115; 1 Turn. & R. 350.

BID, contracts. A bid is an offer to pay a specified price for an article about to be sold at auction. The bidder has a right to withdraw his bid at any time before it is accepted, which acceptance is generally manifested by knocking down the hammer. 3 T. R. 148; Hardin's Rep. 181; Sugd. Vend. 29; Babington on Auct. 30, 42; or the bid may be withdrawn by implication. 6 Penn. St. R. 486; 8, Id. 408. Vide 0@ffer.

BIDDER, contracts. One who makes an offer to pay a certain price for an article which is for sale.

2. The term is applied more particularly to a person who offers a price for goods or other property, while up for sale at an auction. The bidder is required to act in good faith, and any combination between him and others, to prevent a fair competition, would avoid the sale made to himself.

3. But there is nothing illegal in two or more persons agreeing together to purchase a property at sheriff's sale, fixing a certain price which they are. willing to give, and appointing one of their number to be the bidder. 6 Watts & Serg. 122.

4. Till the bid is accepted, the bidder may retract it. Vide articles, Auction and Bid; 3 John. Cas. 29 6 John. R. 194; 8 John. R. 444 1 Fonbl. Eq.

b. 1, c. 4, Sec. 4, note (x).

BIENS. A French word, which signifies property. In law, it means property of every description, except estates of freehold and inheritance. Dane's Ab. c. 133, a, 3 Com. Dig. h. t.; Co. Litt. 118, b; Sugd. Vend. 495.

2. In the French law, this term includes all kinds of property, real and personal. Biens are divided into biens meubles, movable or personal property; and biens immeubles, immovable property or real estate. This distinction between movable and immovable property, is, however, recognized by them, and gives rise in the civil, as well as in the common law, to many important distinctions as to rights and remedies. Story, Confl. of Laws, Sec. 13, note 1.

BIGAMUS, Canon law, Latin. One guilty of bigamy.

BIGAMY, crim. law, domestic relations. The willful contracting of a second marriage when the contracting party knows that the first is still subsisting; or it is the state of a man who has two wives, or of a woman who has two husbands living at the same time. When the man has more than two wives, or the woman more than two husbands living at the same time, then the party is said to have committed polygamy, but the name of bigamy is more frequently given to this offence in legal proceedings. 1 Russ. on Cr. 187.

2. In England this crime is punishable by the stat. 1 Jac. 1, c. 11, which makes the offence felony but it exempts from punishment the party whose husband or wife shall continue to remain absent for seven years before the second marriage, without being heard from, and persons who shall have been legally divorced. The statutory provisions in the U. S. against bigamy or polygamy, are in general similar to, and copied from the statute of 1 Jac. 1, c. 11, excepting as to the punishment. The several exceptions to

this statute are also nearly the same in the American statutes, but the punishment of the offence is different in many of the states. 2 Kent, Com. 69; vide Bac. Ab. h. t.; Com. Dig. Justices, Sec. 5; Merlin, Repert. mot Bigamie; Code, lib. 9, tit. 9, 1. 18; and lib. 5, tit. 5, 1. 2.

3. According to the canonists, bigamy is three-fold, viz.: (vera, interpretative, et similitudinaria,) real, interpretative and similitudinary. The first consisted in marrying two wives successively, (virgins they may be,) or in once marrying a widow; the second consisted, not in a repeated marriage, but in marrying (v. g. meretricem vel ab alio corruptam) a harlot; the third arose from two marriages indeed, but the one metaphorical or spiritual, the other carnal. This last was confined to persons initiated in sacred orders, or under the vow Of continence. Deferriere's Tract, Juris Canon. tit. xxi. See also Bac. Abr. h. t.; 6 Decret, 1. 12. Also Marriage.

BILAN. A book in which bankers, merchants and traders write a statement of all they owe and all that is due to them. This term is used in the French law, and in the state of Louisiana. 5 N. S; 158. A balance sheet. See 3 N. S. 446, 504.

BILATERAL CONTRACT, civil law. A contract in which both the contracting parties are bound to fulfill obligations reciprocally towards each other; Lec. Elem. Sec. 781; as a contract of sale, where one becomes bound to deliver the, thing sold, and the other to pay the price of it. Vide Contract; Synallagmatic contract.

BILINGUIS, English law. One who uses two tongues or languages. Formerly a jury, part Englishmen and part foreigners, to give a verdict between an

Englishman and a foreigner. Vide Medietas Linguae, Plowd. 2. It is abolished in Pennsylvania. Act April 14, 1834, Sec. 149.

BILL, legislation. An instrument drawn or presented by a member or committee to a legislative body for its approbation and enactment. After it has gone through both houses and received the constitutional sanction of the chief magistrate, where such approbation is requisite, it becomes a law. See Meigs, R. 237.

BILL, chancery practice. A complaint in writing addressed to the chancellor, containing the names of the parties to the suit, both complainant and defendant, a statement of the facts on which the complainant relies, and the allegations which he makes, with an averment that the acts complained of are contrary to equity , and a prayer for relief and proper process. Its office in a chancery suit, is the same as a declaration in an action at law, a libel in a court of admiralty or an allegation in, the spiritual courts.

2. A bill usually consists of nine parts. 1. The address, which must be to the chancellor, court or judge acting as such. 2. The second part consists of the names of the plaintiffs and their descriptions; but the description of the parties in this part of the bill does not, it seems, constitute a sufficient averment, so as to put that fact in issue. 2. Ves. & Bea. 327. 3. The third part is called the premises or stating part of the bill, and contains the plaintiff's case. 4. In the fourth place is a general charge of confederacy. 5. The fifth part consists of allegations of the defendant's pretences, and charges in evidence of them. 6. The sixth part contains the clause of jurisdiction and in averment that the acts complained of are contrary to equity. 7. The seventh part consists of a prayer that the parties answer the premises, which is usually termed the interrogatory part. 8. The prayer for relief sought forms the eighth part. And, 9. The ninth

part is a prayer for process. 2 Mad. Ch. 166; Blake's Ch. P. 35; 1 Mitf. Pl. 41. The facts contained in the bill, as far as known to the complainant, must, in some cases, be sworn to be true; and such as are not known to him, he must swear he believes to be true; and it must be signed by counsel; 2 Madd. Ch. Pr. 167; Story, Eq. Pl. Sec. 26 to 47; and for cases requiring an affidavit, see, 3 Brow. Chan. Cas. 12, 24, 463; Bunb. 35; 2 Brow. 11 1 Fow. Proc. 256 Mitf. Pl. 51; 2 P. Wms. 451; 3 Id. 77; 1 Atk. 450; 3 Id. 17, 132; 3 Atk. 132 Preced. in Ch. 332 Barton's Equity, 48 n. 1, 53 n. 1, 56 n. 1 2 Brow. Ch. Cas. 281, 319; 4 Id. 480

3. Bills may be divided into three classes, namely: 1. Original bills. 2. Bills not original. 3. Bills in the nature of original bills.

4. - 1. An original bill is one which prays the decree of the court, touching some right claimed by the person exhibiting the bill, in opposition to some right claimed by the person against whom the bill is exhibited. Hinde, 19; Coop. Eq. Pl. 43. Original bills always relate to some matter not before litigated in the court by the same persons, and standing in the same interests. Mitf. Eq. Pl. by Jeremy, 34; Story, Eq. Pl., Sec. 16. They may be divided into those which pray relief, and those which do not pray relief.

5. - 1st. Original bills praying relief are of three kinds. First. Bills Praying the decree or order of the court, touching some right claimed by the party exhibiting the bill, in opposition to some right, real or supposed, claimed by the party against whom the bill is exhibited, or touching some wrong done in violation of the plaintiff's right. Mitf. Eq. Pl. 32.

6. - Secondly. A bill of interpleader, is one in which the person exhibiting it claims no right in opposition to the rights claimed by the person against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons, for the safety of the person

exhibiting the bill. Hinde, 20; Coop. Eq. Pl. 43; Mitf. Pl. 32. The Practical Register defines it to be a bill exhibited by a third person, who, not knowing to whom he ought of right to render a debt or duty, or pay his rent, fears he may be hurt by some of the claimants, and therefore prays be may interplead, so that the court may judge to whom the thing belongs, and he be thereby safe on the payment. Pr. Reg. 78; Harr. Ch. Pr. 45; Edw. Inj. 393; 2 Paige, 199 Id. 570; 6 John. Ch. R. 445.

7. The interpleader has been compared to the intervention (q. v.) of the civil law. Gilb. For. Rom. 47. But there is a striking difference between them. The tertius in our interpleader in equity, professes to have no interest in the subject, and calls upon the parties who allege they have, to come forward and discuss their claims: the tertius of the civil law, on the other hand, asserts a right himself in the 'Subject, which two persons are at the time actually contesting, and insists upon his right to join in the discussion. A bill of interpleader may be filed, though the party has not been sued at law, or has been sued by one only of the conflicting claimants, or though the claim of one of the defendants is actionable at law, and the other in equity. 6 Johns. Chan. R. 445. The requisites of a bill of this kind are, 1. It must admit the want of interest in the plaintiff in the subject matter of dispute. 2. The plaintiff must annex an affidavit that there is no collusion between him and either of the parties. 3. The bill must contain an offer to bring the money into court, when there is any due; the want of which is a ground of demurrer, unless the money has actually been paid into court. Mitf. Eq. Pl. 49; Coop. Eq. Pl. 49; Barton, Suit in Eq. 47, note 1. 4. The plaintiff should state his own rights, and thereby negative any interest in the thing in controversy; and also should state the several claims of the opposite parties; a neglect on this subject is good cause of demurrer. Mitf. Eq. Pl. by Jeremy, 142; 2 Story on Eq. Sec. 821; Story, Eq. Pl. 292. 5. The bill should also show that there are persons

in esse capable of interpleading, and setting up opposite claims. Coop. Eq. Pl. 46; 1 Mont. Eq. Pl. 234; Story, Eq. Pl. Sec. 295; Story on Eq. Sec. 821; 1 Ves. 248. 6. The bill should pray that the defendants set forth their several titles, and interplead, settle, and adjust their demands between themselves. The bill also generally prays an injunction to restrain the proceedings of the claimants, or either of them, at law; and, in this case, the bill should offer to bring the money into court and the court will not in general act upon this part of the prayer, unless the money be actually brought into court. 4 Paige's R. 384 6 John. Ch. R. 445.

8. Thirdly. A bill of certiorari, is one praying the writ of certiorari to remove a cause from an inferior court of equity. Coop. El q. 44. The requisites of this bill are that it state, 1st. the proceedings in the inferior court; 2d. the incompetency of such court, by suggesting that the cause is out of its jurisdiction; or that the witnesses live out of its jurisdiction; or are not able, by age or infirmity, or the distance of the place, to follow the suit there or that, for some other cause, justice is not likely to be done-, 3d. the bill must pray a writ of certiorari, to certify and remove the record and the cause to the superior court. Wyatt, Pr. Reg. 82; Harr. Ch. Pr. 49; Story, Eq. Pl. Sec. 298. This bill is seldom used in the United States.

9. - 2d. Original bills not praying relief are of two kinds. First,. Bills to secure evidence, which are bills to perpetuate the testimony of witnesses or bills to examine witnesses de bene esse. These will be separately considered.

10. - 1. A bill to perpetuate the testimony of witnesses, is one which prays leave to examine them, and states that the witnesses are old, infirm, or sick, or going beyond the jurisdiction of the court, whereby the party is in danger of losing the benefit of their testimony. Hinde, 20. It does not

pray for relief. Coop. Eq. Pl. 44.

11. In order to maintain such a bill, it is requisite to state on its face all the material facts to support the jurisdiction. It must state, 1. the subject-matter touching which the plaintiff is desirous of giving evidence. Rep. Temp. Finch, 391; 4 Madd. R. 8, 10. 2. It must show that the plaintiff has some interest in the subject-matter, which may be endangered if the testimony in support of it be lost; and a mere expectancy, however strong, is not sufficient. 6 Ves. 260 1 Vern. 105; 15 Ves. 136; Mitf. Eq. Pl. by Jeremy, 51 Coop. Eq. Pl., 52. 3. It must state that the defendant has, or pretends to have, or that he claims an interest to contest the title of the plaintiff in the subject-matter of the proposed testimony. Coop. Pl. 56; Story, Eq. Pl. Sec. 302. 4. It must exhibit some ground of necessity for perpetuating the evidence. Story, Eq. Pl. Sec. 303 Mitf. Eq. Pl. by Jeremy, 52, 148 and note y; Coop. Eq. Pl. 53. 5. The right of which the bill is brought to perpetuate the evidence or testimony, should be described with reasonable certainty in the bill, so as to point the proper interrogations on both sides to the true merits of the controversy. 1 Vern. 312; Coop. Eq. Pl. 56. 6. It should pray leave to examine the witnesses touching the matter stated, to the end that their testimony maybe preserved and perpetuated. Mitf. Pl

52. A bill to perpetuate testimony differs from a bill to take testimony de bene esse, in this, that the latter is sustainable only when there is a suit already depending, while the former can be maintained only when no present suit can be brought at law by the party seeking the aid of a court to try his right. Story, Eq. Pl. Sec. 307. The canonists had a similar rule. According to the canon law, witnesses could be examined before any action was commenced, for fear that their evidence might be lost. x, cap. 5 Boehmer, n. 5 8 Toull. n. 23.

12. - 2. Bill to take testimony de bene esse. This bill, the name of

which is sufficiently descriptive of its object, is frequently confounded with a bill to perpetuate testimony; but although it bears a close analogy to it, ,it is very different. Bills to perpetuate testimony can be maintained only, when no present suit can be maintained at law by the party seeking the aid of the court to try his right; whereas bills to take testimony de bene esse, are sustainable only in aid of a suit already depending. 1 Sim. & Stu. 83. The latter may be brought by a person who is in possession, or out of possession; and whether he be plaintiff or defendant in the action at law. Story, Eq Pl. Sec. 307 and 303, note; Story on Eq. 1813, note 3. In many respects the rules which regulate the framing of bills to perpetuate testimony, are applicable to bills to take testimony ae bene esse.

13. - Secondly. A bill of discovery, emphatically so called, is one which prays for the discovery of facts resting within the knowledge of the person against whom the bill is exhibited, or of deeds, writings, or other things in his custody or power. Hinde, 20; Blake's Ch. Pr. 37. Every bill, except the bill of certiorari, may in truth, be considered a bill of discovery, for every bill seeks a disclosure of circumstances relative to the plaintiff's case; but that usually and emphatically distinguished by this appellation is a bill for the discovery of facts, resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power, and seeking no relief in consequence of the discovery.

14. This bill is commonly used in aid of the jurisdiction of some other court as to enable the plaintiff to prosecute or defend an action at law. Mitf. Pl. 52. "The plaintiff, in this species of bill, must be entitled to the discovery he seeks, and shall only have a discovery of what is necessary for his own title, as of deeds he claims under, and not to pry into that of the defendant. 2 Ves. 445. See Blake's Ch. Pr. 45 Mitf. Pl. 52 Coop. Eq. Pl.

58 1 Madd. Ch. Pr. 196 Hare on Disc. passim Wagr. on Disc. passim.

15. The action ad exhibendum, in the Roman law, was not unlike a bill of discovery. Its object was to force the party against whom it was instituted, to exhibit a thing or a title in his power. It was always preparatory to another, which was always a real action in the sense of the word in the Roman law. See Action ad exhibendum; Merlin, Questions de Droit, tome i. 84.

16. - II . Bills not original. These are either in addition to, or a continuance of an original bill, or both. Mitf. c. 1, s . 2; Story, Eq. Pl. Sec. 388; .4 Bouv. Inst. n. 4100.

17. - 1st. Of the first class are, 1. A supplemental bill. This bill is occasioned by some defect in a suit already instituted, whereby the parties cannot obtain complete justice, to which otherwise the case by their bill would have entitled them. It is used for the purpose of supplying some irregularity discovered in the formation of the original bill, or some of the proceedings there upon; or some defect in a suit, arising from events happening since the points in the original were at issue, which give an interest to20persons not parties to the suit. Blake's Ch. Pr. 50. See 3 Johns. Ch. R. 423.

18. It is proper to consider more minutely 1. in what cases such a bill may be filed; 2. its particular requisites.

19.- 1. A supplemental bill may be filed, 1st. whenever the imperfection in the original bill arises from the omission of some material fact, which existed before the filing of the bill, but the time has passed in which it can be introduced into the bill by amendment,, Mitf. Eq. Pl. 55, 61, 325 but leave of court must be obtained, before a bill which seeks to change the original structure of the bill, and to introduce a new and different case, can be filed. 2d. When a party necessary to the proceedings has been omitted, and cannot be admitted by an amendment. Mitf. Eq. Pl. 61 6 Madd. R. 369; 4 John. Ch. R. 605. 3d. When, after the court has decided upon the suit

as framed, it appears necessary to bring some other matter before the court to obtain the full effect of the decision; or before a decision has been obtained, but after the parties are at issue upon the points in the original bill, and witnesses have been examined, (in which case, an amendment is not in general permitted,) some other point appears necessary to be made, or some additional discovery is found requisite. Mitf. Eq. Pl. by Jeremy, 55; Coop Eq. Pl. 73; 3 Atk. R. 110; 12 Paige, R. 200. 4th. When new events or new matters have occurred since the filing of the bill; Coop. Eq. Pl. 74; these events or matters, however, are confined to such as refer to and support the rights and interests already mentioned in the bill. Story, Eq. Pl. Sec. 336.

20. - 2. The supplemental bill must state the original bill, and the proceedings thereon and when it is occasioned by an event which has occurred subsequently to the original bill, it must state that event, and the consequent alteration with regard to the parties. In general, the supplemental bill must pray that all defendants appear and answer the charges it contains. Mitf. Eq. Pl. by Jeremy, 75 Story, Eq. Pl. Sec. 343.

21. - 2. A bill of revivor, which is a continuance of the original bill, when by death some party to it has become incapable of prosecuting or defending a suit, or a female plaintiff has by marriage incapacitated herself from suing alone. Mitf. Pl. 33, 70; 2 Madd. Ch. Pr. 526. See 3 Johns. Ch. R. 60: Story, Eq. Pl. Sec. 354, et. seq.

22. - 3. A bill of revivor and supplement. This is a compound of a supple-mental bill and bill of revivor, and not only continues the suit, which has abated by the death of the plaintiff, or the like, but supplies any defects in the original bill, arising from subsequent events, so as to entitle the party to relief on the whole merits of his case. 5 Johns. Ch R. 334; Mitf. Pl. 32, 74.

23. - 2d. Among the second class may be placed, 1. A cross bill. This is one which is brought by a defendant in a suit against the plaintiff, respecting the matter in question in that bill. Coop. Eq. Pl. 85 Mitf. Pl. 75.

24. A bill of this kind is usually brought to obtain, either a necessary discovery, or full relief to all the parties. It frequently happens, and particularly if any questions arises between two defendants to a bill, that the court cannot make a complete decree without a cross bill, or cross bills to bring every matter in dispute completely before the court, litigated by the proper parties, and upon proper proofs. In this case it becomes necessary for some one of the defendants to the original bill to file a bill against the plaintiff and other defendants in that bill, or some of them, and bring the litigated point properly before the court.

25. A cross bill should state the original bill, and the proceedings thereon, and the rights of the party exhibiting the bill which are necessary to be made the subject of a cross litigation, or the grounds on which he resists the claims of the plaintiff in the original bill, if that is the object of the new bill.

26. A cross bill may be filed to answer the purpose of a plea puis darrein continuance at the common law. For example, where, pending a suit, and after replication and issue joined, the defendant having obtained a release and attempted to prove it viva voce at the bearing, it was determined that the release not being in issue in the cause, the court could not try the facts, or direct a trial at law for that purpose, and that a new bill must be filed to put the release in issue. Mitf. Pl. 75, 76 Coop. Eq. Pl. 85; 1 Harr. Ch. Pr. 135.

27. A cross bill must be brought before publication is passed on the first bill, 1 Johns. Ch. R. 62, and not after, except the plaintiff in the cross bill go to the hearing on the depositions already published; because

of the danger of perjury and subornation, if the parties should, after publication of the former depositions, examine witnesses, de novo, to the same matter before examined into. 7 Johns. Ch. Rep. 250; Nels. Ch. R. 103.

28. - 2. A bill of review. Bills of review are in the nature of writs of error. They are brought to have decrees of the court reviewed, altered, or reversed, and there are two sorts of these bills. The first is brought where the decree has been signed and enrolled and the second, where the decree has not been signed and enrolled. 1 Ch. Cas. 54; 3 P. Wms. 371. The first of these is called, by way of preeminence, a bill of review; while the other is distinguished by the appellation of a bill in the nature of a bill of review, or a supplemental bill iii the nature of a bill of review. Coop. Eq. Pl. 88; 2 Madd. Ch. Pr. 537.

29. A bill of review must be either for error in point of law; 2 Johns. C. R. 488; Coop. Eq. Pl. 89; or for some new matter of fact, relevant to the case, discovered since publication passed in the cause; and which could not, with reasonable diligence, have been discovered before. 2 Johns. C. R. 488; Coop. Eq. Pl. 94. See 3 Johns. R. 124,

30. - 3. Bill to impeach a decree on the ground of fraud. When a decree has been obtained by fraud, it may be impeached by original bill, without leave of court. As the principal point in issue, is the fraud in obtaining it, it must be established before the propriety of the decree can be investigated, and the fraud must be distinctly stated in the bill. The prayer must necessarily be varied according to the nature of the fraud used, and the extent of its operation in obtaining an improper decision of the court. When the decree to set aside a fraudulent decree has been obtained, the court will restore the parties to their former situation, whatever their rights may be. Mitf. Eq. Pl. 84; Sto. Eq. Pl. Sec. 426.

31. - 4. Bill to suspend a decree. The operation of a decree may be

suspended under special circumstances, or avoided by matter subsequent to the decrees upon a new bill for that purpose. See 1 Ch. Cas. 3, 61 2 Ch . Cal 8 Mitf. Eq. Pl. 85 , 86.

32. - 5. Bill to carry a decree into execution. This is one which is filed when from the neglect of parties, or some other cause, it may become impossible to carry a decree into execution without the further decree of the court. Hinde, 68; 1 Harr. Ch. 148.

33. - 6. Bills partaking of the qualities of some one or more of other bills. These are,

34. First. Bill in the nature of a bill of revivor. A bill in the nature of a bill of revivor, is one which is filed when the death of a party, whose interest is not determined by his death, is attended with such a transmission of his interest, that the title to it, as well as the person entitled, may be litigated in the court of chancery, as in the case of a devise of real estate, the suit is not permitted to be continued by bill of revivor. 1 Ch. Cas. 123; Id. 174; 3 Ch. Rep. 39; Mosely, R. 44. In such cases an original bill, upon which the title may be litigated, must be filed, and this bill will have so far the effect of a bill of revivor, that if the, title of the representative by the act of the deceased party is established, the same benefit may be had of the proceedings upon the former bill, as if the suit had been continued by bill of revivor. 1 Vern. 427; 2 Vern. 548 Id. 672; 2 Bro. P. C. 529; 1 Eq. Cas. Ab. 83; Mitf. Pl. 66, 67.

35. Secondly. Bill in the nature. of a supplemental bill. An original bill in the nature of a supplemental bill, is one filed when the interest of the plaintiff or defendant, suing or defending, wholly determines, and the same property becomes vested in another person not claiming under him. Hinde, 71; Blake's Ch. Pr. 38. The principal difference between this and a supplemental bill, seems to be, that a supplemental bill is applicable to such cases only, where the same parties or the same interests remain before

the court; whereas, an original bill in the nature of a supplemental bill, is properly applicable where new parties, with new interests, arising from events occurring since the institution of the suit, are brought before the court. Coop. Eq. Pl. 75; Story, Eq. Pl. Sec. 345.

36. Thirdly. Bill in the nature of a bill of review. A bill in the nature of a bill of review, is one brought by a person not bound by a decree, praying that the same may be examined and reversed; as where a decree is made against a person who has no interest at all in the matter in dispute, or had not an interest sufficient to render the decree against him binding upon some person claiming after him. Relief may be obtained against error in the decree, by a bill in the nature of a bill of review. This bill in its frame resembles a bill of review, except that instead of praying that the former decree may be reviewed and reversed, it prays that the cause may be heard with respect to the new matter made the subject of the supplemental bill, at the same time that it is reheard upon the original bill; and that the plaintiff may have such relief as the nature of the case made by the supplemental bill may require. 1 Harr. Ch. P. 145.

37. There are also bills which derive their names from the object which the complainant has in view. These will be separately considered.

38.- 1. Bill of foreclosure. A bill of foreclosure is one filed by a mortgagee against the mortgagor, for the purpose of having the estate, sold, thereby to obtain the sum mortgaged on the premises, with interest and costs. 1 Madd. Ch. Pr. 528. As to the persons who are to be made parties to a bill of foreclosure, see Story, Eq. Pl. Sec. 199-202.

39. - 2. Bill of information. A bill of information is a bill instituted in behalf of the state, or those whose rights are the object of its care and protection. It is commenced by information exhibited in the name of the attorney-general, and differs from other bills little more than in name. If

the suit immediately concerns the right of the state, the information is generally exhibited without a relator. If it does not immediately concern those rights, it is conducted at the instance and under the immediate direction of, some person whose name is inserted in the information, and is termed the relator; the officers of the state, in such or the like cases, are not further concerned than as they are instructed and advised by those whose rights the state is called upon to protect and establish. Blake's Ch. Pl. 50; see Harr. Ch. Pr. 151.

40. - 3. Bill to marshal assets. A bill to marshal assets is one filed in favor of simple contract creditors, and of legatees, devisees, and heirs, but not in favor of next of kin, to prevent specialty. creditors from exhausting the personal estate. See Marshaling of Assets.

41. - 4. Bill to marshal securities. A bill to marshal securities is one which is filed against a party who has two funds by which his debt is secured, by a person having an interest in only one of those funds. As if A has two mortgages and B has but one, B has a right to throw A upon the security which B cannot touch. 2 Atk. 446; see 8 Ves. 388, 395. This last case contains a luminous exposition in all its bearings. In Pennsylvania, and perhaps in some other states, the object of this bill is reached by subrogation, (q. v.) that is, by substituting the creditor, having but one fund to resort to, to the rights of the other creditor, in respect to the other fund.

42. - 5. Bill for a new trial. This is a bill filed in a court of equity praying for an injunction after judgment at law, when there is any fact, which renders it against conscience to execute such judgment, and of which the injured party could not avail himself in a court of law-, or, if he could, was prevented by fraud or accident, unmixed with any fault or negligence of himself or his agents. Mitf. Pl. by Jer. 131; 2 Story Eq. Sec. 887. Of late years bills of this description are not countenanced. Id.201

John. Ch. R. 432 6 John. Ch. R. 479.

43. - 6. Bill of peace. A bill of peace is one which is filed when a person has a right which may be controverted by various persons, at different times, and by different actions. In such a case the court will prevent a multiplicity of suits, by directing an issue to determine the right, and ultimately grant an injunction. 1 Madd. Ch. Pr. 166; 1 Harr. Ch. Pr. 104; Blake's Ch. Pr. 48; 2 Story, Eq. Jur. Sec. 852 to 860; Jeremy on Eq. Jurisd. 343 2 John. Ch. R. 281; 8 Cranch, R. 426.

44. There is another class of cases in which a bill of peace is now ordinarily applied; namely, when the plaintiff, after repeated and satisfactory trials, has established his right at law, and is still in danger of new attempts to controvert it. In order to quiet the possession of the plaintiff, and to suppress future litigation, courts of equity, under such circumstances, will interfere, and grant a perpetual injunction. 3 John. R. 529; 8 Cranch, R. 462; Mit. Pl. by Jeremy, 143; 2 John. Ch. R. 281; Ed. on Inj. 356.

45. - 7. Bill quia timet. A bill quia timet, is one which is filed when a person is entitled to property of a personal nature after another's death, and has reason to apprehend it may be destroyed by the present possessor; or when he is apprehensive of being subjected to a future inconvenience, probable or even possible to happen or be occasioned by the neglect, inadvertence, or culpability of another. Upon a proper case being made out, the court will, in one case, secure the property for the use of the party (which is the object of the bill) by compelling the person in possession of it, to give a proper security against any subsequent disposition or willful destruction and in the other case, they will quiet the party's apprehension of future inconvenience, by removing the causes which may lead to it. 1 Harr. Ch. Pr. 107; 1 Madd. Ch. Pr. 218: Blake's Ch. Pr. 37, 47; 2 Story, Eq.

Jur. Sec. 825 to 851. Vide, generally, Bouv. Inst. Index, h. t.

BILL, merc. law. An account containing the items of goods sold, or of work done by one person against another. It differs from an account stated (q. v.) in this, that the latter is a bill approved and sanctioned by the debtor, whereas a bill is made out by the creditor alone.

BILL OF ADVENTURE, com. law, contracts. A writing signed by a merchant, to testify that the goods shipped on board a certain vessel belong to another person who is to take the hazard, the subscriber signing only to oblige himself to account to him, for the proceeds.

BILL OF ATTAINDER, legislation, punishment. An act of the legislature by which one or more persons are declared to be attainted, and their property confiscated.

2. The Constitution of the United States declares that no state shall pass any bill of attainder.

3. During the revolutionary war, bills of attainder, and ox post facto acts of confiscation, were passed to a wide extent. The evils resulting from them, in times of more cool reflection, were discovered to have far outweighed any imagined good. Story on Const. Sec. 1367. Vide Attainder; Bill of Pains and Penalties.

BILL-BOOK, commerce, accounts. One in in which an account is kept of promissory notes, bills of exchange, and other bills payable or receivable: it ought to contain all that a man issues or receives. The book should show the date of the bill, the term it has to run before it becomes due, the names of all the parties to it, and the time of its becoming due, together with the amount for which it was given.

BILL OF CONFORMITY. The name of a bill filed by an executor or administrator, who finds the affairs of the deceased so much involved that he cannot safely administer the estate, except under the direction of a court of chancery. This bill is filed against the creditors generally, for the purpose of having all their claims adjusted, and procuring a final decree settling the order of payment of the assets. 1 Story, Eq. Jur. 440.

BILL 0F COST, practice. A statement of the items which form the total amount of the costs of a suit or action. This is demandable as a matter of right before the payment of the costs.

BILL OF CREDIT. It is provided by the Constitution of the United States, art. 1, s. 10, that no state shall " emit bills of credit, or make anything but gold and silver coin a tender in payment or debts." Such bills of credit are declared to mean promissory notes or bills issued exclusively on the credit of the. state, and for the payment of which the faith of the state only is pledged. The prohibition, therefore, does not apply to the notes of a state bank, drawn on the credit of a particular fund set apart for the purpose. 2 M'Cord's R. 12; 2 Pet. R. 818; 11 Pet. R. 257. Bills of credit may be defined to be paper issued and intended to circulate through the community for its ordinary purposes, as money redeemable at a future day. 4 Pet. U. S. R. 410; 1 Kent, Com. 407 4 Dall. R. xxiii.; Story, Const. Sec. 1362 to 1364 1 Scam. R. 87, 526.

2. This phrase is used in another sense among merchants it is a letter sent by an agent or other person to a merchant, desiring him to give credit to the bearer for goods or money. Com. Dig. Merchant, F 3; 5 Sm. & Marsh. 491; R. M. Charlt. 151; 4 Pike, R. 44; 3 Burr. Rep. 1667.

BILL OF DEBT, BILL OBLIGATORY, contracts. When a merchant by his writing acknowledges himself in debt to another, in a certain sum to be paid on a certain day and subscribes it at a day and place certain. It may be under seal or not. Com. Dig. Merchant, F 2.

BILL OF EXCEPTION, practice. The statement in writing, of the objection made by a party in a cause, to the decision of the court on a point of law, which, in confirmation of its accuracy, is signed and sealed by the judge, or court who made the decision. The object of the bill of exceptions is to put the question of law on record, for the information of the court of error having cognizance of such cause.

2. The bill of exception is authorized by the statute of Westminster 2, 13 Ed. I. c. 31, the principles of which have, been adopted in all the states of the Union. It is thereby enacted, "when one impleaded before any of the justices, alleges an exception praying they will allow it, and if they will not, if he that alleges the exception writes the same, and requires 'that the justices will put their seals, the justices shall do so, and if one will not, another ,shall; and if, upon complaint made of the justice, the king cause the record to come before him, and the exception be not found in the roll, and the plaintiff show the written exception, with the seal of the justices thereto put, the justice shall be commanded to appear at a certain day, either to confess or deny his seal, and if he cannot deny his seal, they shall proceed to judgment according to the exception, as it ought to be allowed or disallowed." The statute extends to both plaintiff and defendant. Vide the, form of confessing a bill of exceptions, Burr. 1692. And for precedents see Bull. N. P. 317; Brownlow's Entries; Latine Redivio, 129; Trials per pais, 222, 3; 4 Yeates, 317, 18; 2 Yeates, 295, 6. 485, 6; 1 Morgan's Vade Mecum, 471-5. Bills of exception

differ materially from special verdicts; 2 Bin. 92; and from the opinions of the court filed in the cause. 10 S. & R. 114, 15.

3. Here will be considered, 1 the cases in which a bill of exceptions may be had; 2. the time of making the exception; 3. the form of the bill; 4. the effect of the bill.

4. - 1. In general a bill of exception can be had only in a civil case. When in the course of the trial of a cause, the judge, either in his charge to the jury, or in deciding an interlocutory question, mistakes the law, or is supposed by the counsel on either. side, to have mistaken the law, the counsel against whom the decision is made may tender an exception to his opinion, and require him to seal a bill of exceptions. 3 Bl. Com. 372. See Salk. 284, pl. 16 7 Serg. & Rawle, 178; 10 Id. 114, 115 Whart. Dig. Error, D, E 1 Cowen, 622; 2 Caines, 168; 2 Cowen, 479 5, Cowen, 243 3 Cranch, 298 4 Cranch, 62; 6 Cranch, 226; 17 Johns. R. 218; 3 Wend. 418 9 Wend. 674. In criminal cases, the judges, it seems, are not required to seal a bill of exceptions. 1 Chit. Cr. Law, 622; 13 John. R. 90; 1 Virg. Cas. 264; 2 Watts, R. 285; 2 Sumn. R. 19. In New York, it is provided by statute, that on the trial of any indictment, exceptions to any decision of the court may be made by the defendant, in the same cases and manner provided by law in civil cases and a bill thereof shall be settled, signed and sealed, and filed with the clerk of the court. But such bill of exception shall not stay or delay the rendering of judgment, except in some specified cases. Grah. Pr. 768, note.. Statutory provisions have been made in several other states authorizing the taking of exceptions in criminal cases. 2 Virg. Cas. 60 and note 14 Pick. R. 370; 4 Ham. R. 348; 6 Ham. R. 16 7 Ham. R. 214; 1 Leigh, R. 598; 14 Wend. 546. See also 1 Halst. R. 405; 2 Penn. R. 637.

5. - 2. The bill of exceptions must be tendered at the time the decision complained of is made or if the exception be to the charge of the

court, it must be made before the jury have given their verdict. 8 S. & R. 216 4 Dall. 249; S. C. 1 Binn. 38; 6 John. 279; 1 John. 312; 5 Watts, R. 69; 10 John. R. 312; 5 Monr. R. 177; 7 Wend. R. 34; 7 S. & R. 219; 11 S. & R. 267 4 Pet. R. 102; Ala. R. 66; 1 Monr. 215 11 Pet. R. 185; 6 Cowen, R. 189. In practice, however, the, point is merely noted, at the time, and the bill is afterwards settled. 8 S. & R. 216; 11 S. & R. 270; Trials per pais, 467; Salk. 288; Sir T. Ray. 405 Bull. N. P. 315-16; Jacob's Law Dict. They may be sealed by the judge after the record has been removed by a writ of error, and after the expiration of his office. Fitz. N. B. 21 N, note.

6. - 3. The bill of exception must be signed by the judge who tried the cause; which is to be done upon notice of the time and place, when and where it is to be done. 3 Cowen, 32; 8 Cowen, 766; Bull. N. P. 316 3 Bl. Com. 372. When the bill of exception is sealed, both parties are concluded by lit. 3 Dall. 38; Bull. N. P. 316.

7.- 4. The bill of exceptions, being part of the record, is evidence between the parties, as to the facts therein stated. 3 Burr. 1765. No notice can be taken of objections or exceptions not appearing on the bill. 8 East, 280; 3 Dall. 38, 422, n.; 2 Binn. 168. Vide, generally, Dunlap's Pr.; Grah. Pr.; Tidd's Pr.; Chit. Pr.; Penna. Pr.; Archibold's Pr. Sellon's Pr.; in their several indexes, h. t.; Steph. Pl. 111; Bac. Ab. h. t.; 1 Phil. Ev. 214; 12 Vin. Ab. 262; Code of Pract. of Louisiana, art. 487, 8, 9; 6 Watts & Serg, 386, 397; 3 Bouv. Inst. n. 3228-32.

BILL OF EXCHANGE, contracts. A bill of exchange is defined to be an open letter of request from, and order by, one person on another, to pay a sum of money therein mentioned to a third person, on demand, or at a future time therein specified. 2 Bl. Com. 466; Bayl. on Bills, 1; Chit. Bills, 1; 1 H. Bl. 586; 1 B. & P. 291, 654; Selw. N. P. 285. Leigh's N. P. 335; Byles on Bills, 1; 1 Bouv. Inst. n. 895.

2. The subject will be considered with reference, 1 . to the parties to a bill; 2. the form; 3. their different kinds 4. the indorsement and transfer; 5. the acceptance 6. the protest.

3. - 1. The parties to a bill of exchange are the drawer, (q. v.) or he who makes the order; the drawee, (q. v.) or the person to whom it is addressed; the acceptor, (q. v.) or he who accepts -the bill; the payee, (q. v.) or the party to whom, or in whose favor the bill is made. The indorser, (q. v.) is he who writes his name on the back of a bill; the indorsee, (q. v.) is one to whom a bill is transferred by indorsement; and the holder, (q. v.) is in general any one of the parties who is in possession of the bill, and entitled to receive the money therein mentioned.

4. Some of the parties are sometimes fictitious persons. When a bill is made payable to a fictitious person, and indorsed in the name of the fictitious payee, it is in effect a bill to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties, who were privy to the transaction. 2 H. Bl. 178, 288; 3 T. R. 174, 182, 481; 1 Camp. 130; 19 Ves. 311. In a case where the drawer and payee were fictitious persons, the acceptor was held liable to a bona fide holder. 10 B. & C. 468; S. C. 11 E. C. L. R. 116. Vide, as to parties to a bill, Chit. Bills, 15 to 76, (ed. of 1836.)

5. - 2. The form of the bill. 1. The general requisites of a bill of exchange, are, 1st. that it be in writing. R. T. Hardw. 2; 2 Stra. 955; 1 Pardess. 344-5.

6.- 2d. That it be for the payment of money, and not for the payment of merchandise. 5 T. R. 485; 3 Wils. 213; 2 Bla. Rep. 782; 1 Burr. 325; 1 Dowl. & Ry. N. P. C. 33; 1 Bibb's R. 502; 3 Marsh. (Kty.) R. 184; 6 Cowen, 108; 1 Caines, R. 381; 4 Mass. 245; 10 S. & R. 64; 14 Pet. R. 293; 1, M'Cord, 115; 2 Nott & M'Cord, 519; 9 Watts, R. 102. But see 9 John. R. 120; and 19 John.

R. 144, where it was held that a note payable in bank bills was a good negotiable note.

7. - 3d. That the money be payable at all events, not depending on any contingency, either with regard to the fund out of which payment is to be made, or the parties by or to whom payment is to be made. 8 Mod. 363; 4 Vin. Ab. 240, pl. 16; 1 Burr. 323; 4 Dougl. 9; 4 Ves. 372; Russ. & Ry. C. C. 193; 4 Wend. R. 576; 2 Barn. & Ald. 417.

8. - 2. The particular requisites of a bill of exchange. It is proper here to remark that no particular form or set of words is necessary to be adopted. An order " to deliver money," or a promise that " A B shall receive money," or a promise " to be accountable" or " responsible" for it, have been severally held to be sufficient for a bill or note. 2 Ld. Raym. 1396; 8 Mod, 364.

9. The several parts of a bill of exchange are, 1st. that it be properly dated as to place

10.- 2d. That it be properly dated as to the time of making. As the time a bill, becomes due is generally regulated by the time when it was made, the date of the instrument ought to be clearly expressed. Beawes, pl. 3 1 B . & C. 398; 2 Pardess. n. 333.

11. - 3d. The superscription of the sum for which the bill is payable is not indispensable, but if it be not mentioned in the bill, the superscription will aid. the omission. 2 East, P. C. 951.

12. - 4th. The time of payment ought to be expressed in the bill; if no time be mentioned, it is considered as payable on demand. 7 T. R. 427; 2 Barn. & C. 157.

13. - 5th. Although it is proper for the drawer to name the place of payment, either in the body or subscription of the bill, it is not essential; and it is the common practice for the drawer merely to write the address of the drawee, without pointing out any, place of payment; in such

case the bill is considered payable, and to be presented at the residence of the drawee, where the bill was made, or to him personally any where. 2 Pardess. n. 337 10 B. & C. 4; Moody & M. 381; 4 Car. & Paine, 35. It is at the option of the drawer whether or not to prescribe a particular place of payment, and make the payment there part of the contract. Beawes, pl. 8. The drawee, unless restricted by the drawer, may also fix a place of payment by his acceptance. Chit. Bills, 172.

14. - 6th. There must be an order or request to pay and that must be a matter of right, and not of favor. Mood. & M. 171. But it seems that civility in the terms of request cannot alter the legal effect of the instrument. "il vous plair a de payer," is, in France, the proper language of a bill. Pailliet, Manuel de Droit Francais, 841. The word pay is not indispensable, for the word deliver is equally operative. Ld. Raym. 1397.

15. - 7th. Foreign bills of exchange consist, generally, of several parts; a party who has engaged to deliver a foreign bill, is bound to deliver as many parts as may be requested. 2 Pardess. n. 342. The several parts of a bill of exchange are called a set; each part should contain a condition that it shall be paid, provided the others remain unpaid. Id. The whole set make but one bill.

16. - 8th. The bill ought to specify to whom it is to be paid. 2 Pardess. n. 338; 1 H. Bl. 608; Russ. & Ry. C. C. 195. When the name of the payee is in blank, and the bill has been negotiated by indorsement, the holder may fill the blank with his own name. 2 M. & S. 90; 4 Camp. 97. It may, however, be drawn payable to bearer, and then it is assignable by delivery. 3 Burr. 1526.

17. - 9th. To make a bill negotiable, it must be made payable to order, or bearer, or there must be other operative and equivalent words of transfer. Beawes, pl. 3; Selw. N. P. 303, n. 16; Salk. 133. if, however, it is not

intended to make the bill negotiable, these words need not be inserted, and the instrument will, nevertheless, be valid as a bill of exchange. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines' R. 137; 9 John. It. 217. In France, a bill must be made payable to order. Code de Com. art. 110; 2 Pardess. n. 339.

18. - 10th. The sum for which the bill is drawn, must be clearly expressed in the body of it, in writing at length. The sum must be fixed and certain, and not contingent. 2 Stark. R. 375. And it may be in the money of any country. Payment of part of the bill, the residue being unpaid, cannot be indorsed. The, contract is indivisible, and the acceptor would thereby be compelled to make two payments instead of one. But when part of a bill has been paid the residue may be assigned, since then it becomes a contract for the residue only. 12 Mod. 213; 1 Salk. 65; Ld. Ray. 360.

19. - 11th. It is usual to insert the words, value received, but it is. implied that every bill and indorsement has been made for value received, as much as if it had been expressed in totidem verbis. 3 M. & S. 352; Bayl. 40, n. 83.

20. - 12th. It is usual, when the drawer of the bill is debtor to the drawee, to insert in the bill these words: " and put it to my account but when the drawee, or the person to whom it is directed, is debtor to the drawer, then he inserts these words : "and put it to your account;" and, sometimes, where a third person is debtor to the drawee, it may be expressed thus: "and put it to the account of A B;" Marius, 27;. C, om. Dig. Merchant, F 5; R. T. Hardw. 1, 2, 3; but it is altogether unnecessary to insert any of these words. 1 B. & C. 398; S. C. 8 E. C. L. R. 108.

21. - 13th. When the drawer is desirous to inform the drawee that he has drawn a bill, he inserts in it the words, "as per advice;" but when he wishes the bill paid without any advice from him, he writes, "without further advice." In the former case the drawee is not authorized to pay the

bill till he has received the advice; in the latter he may pay before he has received advice.

22. - 14th. The drawee must either subscribe the bill, or, it seems, his name may be simply inserted in the body of the instrument. Beawes, pl. 3; Ld. Raym. 1376 1 Stra. 609.

23. - 15th. The bill being a letter of request from the maker to a third person, should be addressed to that person by the Christian name and surname, or by the full style of their firm. 2 Pardess. n. 335 Beawes, pl. 3; Chit. Bills, 186, 7.

24. - 16th. The place of payment should be stated in the bill.

25. - 17th. As a matter of precaution, the drawer of a foreign bin may, in order to prevent expenses, require the holder to apply to a third person, named in the bill for that purpose, when the drawee refuses to accept the bill. This requisition is usually in these words, placed in a corner, under the drawee's address: " Au besoin chez Messrs. - at -," in other words, ((In case of need apply to Messrs. at -. "

26. - 18th. The drawer may also add a request or direction, that in case the bill should not be honored by the drawee, it shall be returned without protest or without expense, by subscribing the words, " retour sans protet," or " sans frais;" in. this case the omission of the holder to protest, having been induced by the drawer, he, and perhaps the indorsers, cannot resist the payment on that account, and thus the expense is avoided. Chit. Bills, 188.

27. - 19th. The drawer may also limit the amount of damages, by making a memorandum on the bill, that they shall be a definite sum; as, for example: "In case of non-acceptance or non-payment, re-exchange and expenses not to, exceed dollars." Id.

28. - 3. Bills of, exchange are either foreign or inland. Foreign, when

drawn by a person out of, on another in, the United States, or vice versa; or by a person in a foreign country, on another person in another foreign country; or by a person in one state, on another in another of the United States. , 2 Pet. R. 589 .; 10 Pet. R. 572; 12 Pick. 483 15 Wend. 527; 3 Marsh. (Kty.) R. 488 1. Rep. Const.; Ct. 100 4 Leigh's R. 37 4 Wash. C. C. Rep. 148; 1 Whart. Dig. tit. Bills of Exchange, pl. 78. But see 5 John. R. 384, where it is said by Van Ness, Justice, that a bill drawn in the United States, upon any place within the United States, is an inland bill.

29. An inland bill is one drawn by a person in a state, on another in the same state. The principal difference between foreign and inland bills is, that the former must be protested, and the latter need not. 6 Mod. 29; 2 B. & A. 656; Chit Bills, (ed. of 1836,) p. 14. The English rule requiring protest and notice of non-acceptance of foreign bills, has been adopted and followed as the true rule of mercantile law, in the states of Massachusetts, Connecticut) New York, Maryland, and South Carolina. 3 Mass. Rep. 557; 1 Day's R. 11; 3 John. Rep. 202; 4 John. R. 144; 1 Bay's Rep. 468; 1 Harr. & John. 187. But the supreme court of the United States, in Brown v. Berry, 3 Dall. R. 365, and in Clark v. Russell, cited in 6 Serg. & Rawle, 358, held, that in an action on a foreign bill of exchange, after a protest for non-payment, protest for non-acceptance, or notice of non-acceptance need not be shown, inasmuch as they were not required by the custom of merchants in this country; and those decisions have been followed in Pennsylvania. 6 Serg. & Rawle, 356. It becomes a little difficult, therefore, to know what is the true rule of the law-merchant in the United States, on this point, after such contrary decisions." 3 Kent's Com. 95. As to what will be considered a foreign or an inland bill, when part of the bill is made in one place and part in another, see 1 M. & S. 87; Gow. R. 56; S. c. 5 E. C. L. R. 460; 8 Taunt., 679; 4 E. C. L. R. 245; 5 Taunt. 529; 1 E. C. L. R. 179.

30. - 4. The indorsement. Vide articles Indorsement; Indorser; Indorsee.

31. - 5. The acceptance. Vide article, Acceptance.

32. - 6. The protest. Vide article, Protest. Vide, generally, Chitty on Bills; Bayley on Bills; Byles on Bills; Marius on Bills; Kyd on Bills; Cunningham on Bills; Pothier, h. t.; Pardess. Index, Lettre de Change; 4 Vin. Ab. 238; Bac. Ab. Merchant and Merchandise, M.; Com. Digest, Merchant; Dane's Ab. Index, h. t.; 1 Sup: to Ves. Jr. 86, 514; Smith on Mer. Law, Book 3, c. 1; Bouv. Inst. Index,.h. t.

BILL OF GROSS ADVENTURE. A phrase used in French maritime law; it comprehends every instrument of writing which contains a contract of bottomry, respondentia, and every species of maritime loan. We have no word of similar import. Hall on Mar. Loans, 182, n. See Bottomry; Gross adventure; Respondentia.

BILL OF HEALTH; commercial law. A certificate, properly authenticated, that a certain ship or vessel therein named, comes from a place where no contagious distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper.

2. It is generally found on board of ships coming from the Levant, or from the coast of Barbary, where the plague so frequently prevails. 1 Marsh. on Ins. 408. The bill of health is necessary whenever a ship sails from a suspected port; or when it is required at the port of destination. Holt's R. 167; 1 Bell's Com. 553, 5th ed.

3. In Scotland the name of bill of health, has been given to an application.made by an imprisoned debtor for relief under the Act of Sederunt. When the want of health of the prisoner requires it, the prisoner is indulged, under proper regulations, with such a degree of liberty as may be necessary to restore him. 2 Bell's Com. 549, 5th ed.

BILL OF INDICTMENT. A written accusation of one or more persons, of a crime or misdemeanor, lawfully presented to a grand jury, convoked, to consider whether there is sufficient evidence of the charge contained therein to put the accused on trial. It is returned to the court with an indorsement of true bill (q. v.) when the grand jury are satisfied that the accused ought to be tried; or ignoramus, when they are ignorant of any just cause to put the accused upon hi.% trial.

BILL, contracts. A bill or obligation, (which are the same thing, except that in English it is commonly called bill, but in Latin obligatio, obligation,) is a deed whereby the obligor acknowledges himself to owe unto the obligee a certain sum of money or some other thing, in which, besides the names of the parties, are to be considered the sum or thing due, the time, place, and manner of payment or delivery thereof. It may be indented, or poll, and with or without a penalty. West's Symboleography s. 100, 101, and the various forms there given.

BILL OF LADING, contracts and commercial law. A memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order, on board of his ship or vessel, therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order, (the dangers of the seas excepted,) at the place therein appointed for the delivery of the same, to the consignee therein named or to his assigns, he or they paying freight for the same. 1 T. R. 745; Bac. Abr. Merchant L Com. Dig. Merchant E 8. b; Abbott on Ship. 216 1 Marsh. on Ins. 407; Code de Com. art. 281. Or it is the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. Per Lord Loughborougb, 1 H. Bl. 359.

2. A bill of lading ought to contain the name of the consignor; the name of the consignee the name of the master of the vessel; the name of the vessel; the place of departure and destination; the price of the freight; and in the margin, the marks and numbers of the things shipped. Code de Com. art. 281; Jacobsen's Sea Laws.

3. It is usually made in three original's, or parts. One of them is commonly sent to the consignee on board with the goods; another is sent to him by mail or some other conveyance; and the third is retained by the merchant or shipper. The master should also take care to have another part for his own use. Abbotton Ship. 217.

4. The bill of lading is assignable, and the assignee is entitled to the goods, subject, however, to the shipper's right, in some cases, of stoppage in transitu. See In transitu; Stoppage in transitu. Abbott on Shipping. 331; Bac. Ab. Merchant, L; 1 Bell's Com. 542, 5th ed.

BILLS OF MORTALITY. Accounts of births and deaths which have occurred in a certain district, during a definite space of time.

BILL OBLIGATORY. An instrument in common use and too well known to be misunderstood. It is a bond without condition, sometimes called a single bill, and differs in nothing from a promissory note, but the seal which is affixed to it. 2 Serg. & Rawle, 115. See Read's Pleaders' Assistant, 256, for a declaration setting forth such a bill. Also West's Symboleography, s. 100, 101, for the forms both with and without a penalty.

BILL OF PAINS AND PENALTIES. A special act of the legislature which inflicts a punishment, less than death, upon persons supposed to be guilty of high offences, Such as; treason and felony, without any conviction in the

ordinary course of judicial proceedings. 2 Wood. Law Lect. 625. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death.

2. The Constitution of the United States Provides that "no bill of attainder shall be passed." It has been judicially said by the supreme court of the United States, that " a bill of attainder may affect the life of an individual, or i-nay confiscate his property, or both." 6 Cranch, R. 138. in the sense of the constitution, then, it seems that bills of attainder include bills of pains and penalties. Story, Const. Sec. 1338. Vide Attainder; Bills of Attainder.

BILL OF PARCELS, merc. law. An account containing in detail the names of the items which compose a parcel or package of goods; it is usually transmitted with the goods to the purchaser, in order that if any mistake have been made, it may be corrected.

BILL OF PARTICULARS, practice. A detailed informal statement of a plaintiff is cause of action, or of the defendants's set-off.

2. In all actions in which the plaintiff declares generally, without specifying his cause of action, a judge upon application will order him to give the defendant a bill of the particulars, and in the meantime stay, proceedings. 3 John. R. 248. And when the defendant gives notice or pleads a set-off, he will be required to give a bill of the particulars of his set-off, on failure of which he will be precluded from giving any evidence in support of it at the trial. The object in both cases is to prevent surprise and procure a fair trial. 1 Phil. Ev. 152; 3 Stark Ev. 1055. The bill of particulars is an account of the items of the demand, and states in what manner they arose. Mete. & Perk. Dig. h. t. For forms, see Lee's Dict. of Pr., Particulars of demand.

BILL PENAL, contracts. A written obligation, by which a debtor acknowledges himself indebted in a certain sum, may one hundred dollars, and for the payment of the debt binds himself in a larger sum, say two hundred dollars. Bills penal do not frequently occur in modern practice; bonds, with conditions, have superseded them. Steph. on Pl. 265, note. See 2 Vent. 198. Bills-penal are sometimes called bills obligatory. Cro. Car. 515; 2 Vent. 106. But a bill obligatory is not necessarily a bill penal. Com. Dig. Obligations, D.

BILL OF PRIVILEGE, Eng. law. A process issued out of the court against an attorney, who is privileged from arrest, instead of process demanding bail. 3 Bl. Com. 289.

BILL OF PROOF. In the mayor's court, London, the claim made by a third person to the subject-matter in dispute between two others in a suit there, is called bill of Proof. It is somewhat similar to an intervention. (q. v.) 3 Chit. Com. Law, 633; 2 Chit. Pr. 492; 1 Marsh, R. 233.

BILL OF SUFFRANCE, Eng. law. The name of a license granted at the custom house to a merchant, authorizing him to trade from one English port to another without paying custom. Cunn. L. D.

BILL OF RIGHTS. English law. A statute passed in the reign of William and Mary, so called, because it declared the true rights of British subjects. W. & M. stat. 2, c. 2.

BILL OF SALE, Contracts. An agreement in writing, under seal, by which a man

transfers the right or interest he has in goods and chattels, to another. As the law imports a consideration when an agreement is made by deed, a bill of sale alters the property. Yelv. 196; Cro. Jac. 270 6 Co. 18.

2. The Act of Congress of January 14, 1793, 1 Story, L. U. S. 276, provides, that when any ship or vessel which shall have been registered pursuant to that act, or the act thereby partially repealed, shall in whole or in part be sold or transferred to a citizen of the United States, in every such sale or transfer, there shall be some instrument or writing in the nature of a bill of sale, which shall recite at length the certificate of registry; otherwise the said ship or vessel shall be incapable to be registered anew.

3. In England a distinction is made between a bill of sale for the transfer of a ship at sea, and one for the conveyance of a ship in the country; the former is called a grand bill of sale, the latter, simply, a bill of sale. In this country there does not appear to be such a distinction. 4 Mass. 661.

4. In general, the maritime law requires that the transfer of a ship should be evidenced by a bill of sale. 1 Mason, 306. But a contract to sell, accompanied by delivery of possession, is sufficient. 8 Pick. 86 16 Pick. 401; 16 Mass. 336; 7 John. 308. See 4 Mason, 515; 4 John. 54 16 Pet. 215; 2 Hall, 1; 1 Wash. C. C. 226.

BILL OF SIGHT, English commercial law. When a merchant i's ignorant of the real quantities or qualities of any goods consigned to him, so that he is unable to make a perfect entry of them, he is required to acquaint the collector or comptroller of the circumstances and such officer is authorized, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by bill of sight, for the packages, by the best description which can be given, and

to grant a warrant that the same be landed and examined by the importer in presence of the officer; and within three days after the goods have been so landed, the importer is required to make a perfect entry. See stat. 3 & 4 Will. IV. c . 52, Sec. 24.

BILL, SINGLE, contracts. A writing by which one person or more, promises to another or others, to pay him or them a sum of money at a time therein specified, without any condition. It is usually under seal; and when so, it is sometimes, if not commonly, called a bill obligatory. (q. v.) 2 S. & R. 115.

2. It differs from a promissory note in this, that the latter is always payable to order; and from a bond, because that instrument has always a condition attached to it, on the performance of which it is satisfied. 5 Com. Dig. 194; 7 Com. 357.

BILL OF STORE, English commercial law. A license granted by custom house officers to merchants, to carry such stores and provisions as are necessary for a voyage, free of duty. See stat. 3 and 4 Will. IV., c. 5 2.

BILL, TRUE. A true bill is an indictment approved of by a grand jury. Vide Billa Vera; True Bill.

BILLS PAYABLE, COMMERCE. Engagements which a merchant has entered into in writing, and which he is to pay on their becoming due. Pard. n. 85.

BILLS RECEIVABLE, Commerce. Promissory notes, bills of exchange, bonds, and other evidences or securities which a merchant or trader holds, and which are payable to him. Pard. n. 85.

BILLA VERA, practice. When the proceedings of the courts were recorded in Latin, and the grand jury found a bill of indictment to be supported by the evidence, they indorsed on it billa vera; now they indorse in plain English " a true bill."

TO BIND, BINDING, contracts. These words are applied to the contract entered into, between a master and an apprentice the latter is said to be bound.

2. In order to make a good binding, the consent of the apprentice must be had, together with that of his father, next friend, or some one standing in loco parentis. Bac. Ab. Master and Servant, A; 8 John. 328; 2 Pen. 977; 2 Yerg. 546 1 Ashmead, 123; 10 Sergeant & Rawle, 416 1 Massachusetts, 172; 1 Vermont, 69. Whether a father has, by the common law, a right to bind out his child, during his minority without his consent, seems not to be settled. 2 Dall. 199; 7 Mass. 147; 1 Mason, 78; 1 Ashm. 267. Vide Apprentice; Father; Mother; Parent.

3. The words to bind or binding, are also used to signify that a thing is subject to an obligation, engagement or liability; as, the judgment binds such an estate. Vide Lien.

TO BIND, OR TO BIND OVER, crim. law. The act by which a magistrate or a court hold to bail a party, accused of a crime or misdemeanor.

2. A person accused may be bound over to appear at a court having jurisdiction of the offence charged, to answer; or he may be bound over to be of good behaviour, (q. v.) or to keep the peace. See Surety of the Peace.

3. On refusing to enter into the requisite recognizance, the accused may be committed to prison.

BIPARTITE. Of two parts. This term is used in conveyancing as, this

indenture bipartite, between A, of the one part, and B, of the other part. But when there are only two parties, it is not necessary to use this word.

BIRRETUM or BIRRETUS. A cap or coif used formerly in England, by judges and sergeants at law. Spelm. h. t.; Cunn. Dict. Vide Coif.

BIRTH. The act of being wholly brought into the world. The whole body must be detached from that of the mother, in order to make the birth complete. 5 C. & P. 329; S. C. 24 E. C. L. R. 344 6 C. & P. 349; S. C. 25 E. C. L. R. 433.

2. But if a child be killed with design and maliciously after it has wholly come forth from the body of the mother, although still connected with her by means of the umbilical cord, it seems that such killing will be murder. 9 C. & P. 25 S . C. 38 E. C. L. R. 21; 7 C. & P. 814. Vide articles Breath; Dead Born; Gestation; Life; and 1 Beck' s Med. Jur. 478, et seq.; 1 Chit. Med. Jur. 438; 7 C. & P. 814; 1 Carr. & Marsh. 650; S. C. 41 E. C. L. R. 352; 9 C. & P. 25.

3. It seems that unless the child be born alive, it is not properly a birth, but a carriage. 1 Chit. Pr. 35, note z. But see Russ. & Ry. C. C. 336.

BISAILE, domestic relations. A corruption of the French word besaieul, the father of the grandfather or grandmother. In Latin he is called proavus. Inst. 3, 6, 3 Dig. 38, 10, 1, 5. Vide Aile.

BISHOP. An ecclesiastical officer, who is the chief of the clergy of his diocese, and is the archbishop's assistant. Happily for this country, these officers are not recognized by law. They derive all their authority from the

churches over which they preside. Bishop's COURT, Eng. law. An ecclesiastical court held in the cathedral of each diocese, the judge of which is the bishop's chancellor.

BISHOPRICK, eccl. law. The extent of country over which a bishop has jurisdiction a see; a diocese. For their origin, see Francis Duarenus de sacris Eccles. Ministeriis ac beneficiis, lib. 1, cap. 7; Abbe Fleury, 2d Discourse on Ecclesiastical History, Sec. v.

BISSEXTILE. The day which is added every fourth year to the month of February, in order to make the year agree with the course of the sun. It is called bissextile, because in the Roman calendar it was fixed on the sixth day before the calends of March, (which answers to the 24th day of February,) and this day was counted twice; the first was called bissextus prior, and the other bissextus posterior, but the latter was properly called bissextile or intersalary day. Although the name bissextile is still retained in its obsolete import, we intercalate the 29th of February every fourth Year, which is called leap year; and for still greater accuracy, make only one leap year out of every four centenary years. The years 1700 and 1800 were not leap years, nor will the .year A. D. 1900 be reckoned as one, but the year A. D. 2000 will be a leap year or bissextile. For a learned account of the Julian and Gregorian calendars, see Histoire du Calendrier Romain, by Mons. Blondel; also, Savigny Dr. Rom. Sec. 192; and Brunacci's Tract on Navigation, 275, 6. BLACK ACT, English law. An act of parliament made in the 9 Geo. II., which tears this name, to punish certain marauders who committed great outrages, in disguise, and with black faces. See Charlt. R. 166.

BLACK BOOK OF THE ADMIRALTY. An ancient book compiled in the reign of Edw.

III. It has always been deemed of the highest authority in matters concerning the admiralty. It contains the laws of Oleron, At large; a view of the crimes and offences cognizable in the admiralty; ordinances and commentaries on matters of prize and maritime torts, injuries and contracts, 2 Gall. R. 404.

BLACK BOOK OF THE EXCHEQUER. The name of a book kept in the English exchequer, containing a collection of treaties) conventions, charters, &c.

BLACK MAIL. When rents were reserved payable in work, grain, and the like, they were called reditus nigri, or black mail, to distinguish them from white rents or blanch farms, or such as were paid in money. Vide Alba firma.

BLANCH FIRMES. The same as white rent. (q. v.)

BLANK. A space left in writing to be filled, up with one or more words, in order to make sense. 1. In what cases the ambiguity occasioned by blanks not filled before execution of the writing may be explained 2. in what cases it cannot be explained.

2. - 1. When a blank is left in a written agreement which need not - have been reduced to writing, and would have been equally binding whether written or unwritten, it is presumed, in an action for the non-performance of the contract, parol evidence might be admitted to explain the blank. And where a written instrument, which was made professedly to record a fact, is produced as evidence of that fact which it purports to record, and a blank appears in a material part, the omission may be supplied by other proof. 1 Phil. Ev. 475 1 Wils. 215; 7 Verm. R. 522; 6 Verm. R. 411. Hence a blank left in an award for a name, was allowed to be supplied by parol proof. 2

Dall. 180. But where a creditor signs a deed of composition leaving the amount of his debt in blank, he binds himself to all existing debts. 1 B. & A. 101; S. C. 2 Stark. R. 195.

3. - 2. If a blank is left in a policy of insurance for the name of the place of destination of a ship, it will avoid the policy. Molloy, b. 2, c. 7, s. 14; Park, Ins. 22; Wesk. Ins. 42. A paper signed and sealed in blank, with verbal authority to. fill it up, which is afterwards done, is void, unless afterwards delivered or acknowledged and adopted. 1 Yerg. 69, 149; 1 Hill, 267 2 N. & M. 125; 2 Brock. 64; 2 Dev. 379 1 Ham. 368; 6 Gill & John. 250; but see contra, 17 S. & R. 438. Lines ought to be drawn wherever there are blanks, to prevent anything from being inserted afterwards. 2 Valin's Comm. 151.

4. When the filling up blanks after the execution of deeds and other writings will vitiate them or not, see 3 Vin. Abr. 268; Moore, 547; Cro. Eliz. 626; 1 Vent. 185; 2 Lev. 35; 2 Ch. R. 187; 1 Anst. 228; 5 Mass. 538; 4 Binn. 1; 9 Crancb, 28; Yelv. 96; 2 Show. 161; 1 Saund. Pl. & Ev. 77; 4 B. & A. 672; Com. Dig. Fait, F 1; 4 @Bing. 123; 2 Hill. Ab. c. 25, Sec. 80; n. 33, Sec. 54-and 72; 1 Ohio, R. 368; 4 Binn. R. 1; 6 Cowen, 118; Wright, 176.

BLANK BAR, pleading. The same with that called a common bar, which, in an action of trespass, is put in to oblige the plaintiff to assign the certain' place where the trespass was committed. Cro. Jac. 594, pl. 16.

BLANK INDORSEMENT, contracts. An indorsement which does not mention the name of the person in whose favor it is made; it is usually made by writing the name of the indorser on the back of the bill. Chit. Bills, 170.

2. When a bill or note has been indorsed in blank, its negotiability cannot afterwards be restrained. 1 Esp. N. P. Cas. 180; 1 Bl. Rep. 295. As many persons as agree may join in suing on a bill when indorsed in blank;

for although it was given to one alone, yet by allowing the others to join in the suit, he has 'Made them sharers in his rights. 8 Camp. N. P. Cas. 239. Vide Indorsement; Negotiable paper; Restrictive indorsement.

BLASPHEMY, crim. law. To attribute to God that which is contrary to his nature, and does not belong to him, and to deny what does or it is a false reflection uttered with a malicious, design of reviling God. Elym's Pref. to vol. 8, St. Tr.

2. This offence has been enlarged in Pennsylvania, and perhaps most of the states, by statutory provision. Vide Christianity; 11 Serg. & Rawle, 394. In England all blasphemies against God, the Christian religion, the Holy Scriptures, and malicious revilings of the established church, are punishable by indictment. 1 East, P. C. 3; 1 Russ. on Cr. 217.

3. In France, before the 25th of September, 1791, it was a blasphemy also to speak against the holy virgin and the saints, to deny one's faith, to speak with impiety of holy things, and to swear by things sacred. Merl. Rep. h. t. The law relating to blasphemy in that country was totally repealed by the code of 25th of September, 1791, and its present penal code, art. 262, enacts, that any person who, by words or gestures, shall commit any outrage upon objects of public worship, in the places designed or actually employed for the performance of its rites, or shall assault or insult the ministers of such worship in the exercise of their functions, shall be fined from sixteen to five hundred francs, and be imprisoned for a period not less than fifteen days nor more than six months.

4. The civil law forbad the crime of blasphemy; such, for example, as to swear by the hair or the head of God; and it punished its violation with death. Si enim contra homines factae blasphemiae impunitae non relinquuntur; multo magis qui ipsum Deum Blasphemant, digni sunt supplicia sustinere. Nov.

77, ch. 1, Sec. 1.

5. In Spain it is blasphemy not only to speak against God and his government, but to utter injuries against the Virgin Mary and the saints. Senen Villanova Y Manes, Materia Criminal, forense, Observ. 11, cap. 3, n

BLIND. One who is deprived of the faculty of seeing.

2. Persons who are blind may enter into contracts and make wills like others. Carth. 53; Barn. 19, 23; 3 Leigh, R. 32. When an attesting witness becomes blind, his handwriting may be proved as if he were dead. 1 Stark. Ev. 341. But before proving his handwriting the witness must be produced, if within the jurisdiction of the court, and examined. Ld. Raym. 734; 1 M. & Rob. 258; 2 M. & Rob. 262.

BLOCKADE, international law. The actual investment of a port or place by a hostile force fully competent to cut off all communication therewith, so arranged or disposed as to be able to apply its force to every point of practicable access or approach to the port or place so invested.

2. It is proper here to consider, 1. by what authority a blockade can be established; 2. what force is sufficient to constitute a blockade; 3. the consequences of a violation of the blockade.

3. - 1. Natural sovereignty confers the right of declaring war, and the right which nations at war have of destroying or capturing each other's citizens, subjects or goods, imposes on neutral nations the obligation not to interfere with the exercise of this right within the rules prescribed by the law of nations. A declaration of a siege or blockade is an act of sovereignty, 1 Rob. Rep. 146; but a direct declaration by the sovereign authority of the besieging belligerent is not always requisite; particularly when the blockade is on a distant station; for its officers may have power, either expressly or by implication, to institute such siege or blockade. 6

Rob. R. 367.

4. - 2. To be sufficient, the blockade must be effective, and made known. By the convention of the Baltic powers of 1780, and again in 1801, and by the ordinance of congress of 1781, it is required there should be a number of vessels stationed near enough to the port to make the entry apparently dangerous. The government of the United States has, uniformly insisted, that the blockade should be effective by the presence of a competent force, stationed and present, at or near the entrance of the port. 1 Kent, Com. 145, and the authorities by him cited; and see 1 Rob. R. 80; 4 Rob. R. 66; 1 Acton's R. 64, 5; and Lord Erskine's speech, 8th March, 1808, on the orders in council, 10 Cobber's Parl. Debates, 949, 950. But "it is not an accidental absence of the blockading force, nor the circumstance of being blown off by wind, (if the suspension and the-reason of the suspension are known,) that will be sufficient in law to remove a blockade." But negligence or remissness on the part of the cruisers stationed to maintain the blockade, may excuse persons, under circumstances, for violating the blockade. 3 Rob. R. 156 .) 1 Acton's R. 59. To involve a neutral in the consequences of violating a blockade, it is indispensable that he should have due notice of it: this information may be communicated to him in two ways; either actually, by a formal notice from the blockading power, or constructively by notice to his government, or by the notoriety of the fact. 6 Rob. R. 367; 2 Rob. R. 110; Id. 111, note; Id. 128; 1 Acton's R. 6 1.

4. - 3. In considering the consequences of the violation of a blockade, it is proper to take a view of what will amount to such a violation, and, then, of its effects. As all criminal acts require an intention to commit them, the party must intend to violate the blockade, or his acts will be perfectly innocent; but this intention will be judged of by the circumstances. This violation may be, either, by going into the place

blockaded, or by coming out of it with a cargo laden after the commencement of the blockade. Also placing himself so near a blockaded port as to be in a condition to slip in without observation, is a violation of the blockade, and raises the presumption of a criminal intent. 6 Rob. R. 30, 101, 182; 7 John. R. 47; 1 Edw. R. 202; 4 Cranch, 185. The sailing for a blockaded port, knowing it to be blockaded, is, it seems, such an act as may charge the party with a breach of the blockade. 5 Cranch, 335 9 Cranch, 440, 446; 1 Kent, Com. 150. When the ship has contracted guilt by a breach of the blockade, she may be taken at any time before the end of her voyage, but the penalty travels no further than the end of her return voyage. 2 Rob. R. 128; 3 Rob. R. 147. When taken, the ship is confiscated; and the cargo is always, prima facie, implicated in the guilt of the owner or master of the ship and the burden of rebutting the presumption that the vessel was going in for the benefit of the cargo, and with the direction of the owners, rests with them. 1 Rob. R. 67, 130 3 Rob. R. 173 4 Rob. R. 93; 1 Edw. It 39. Vide, generally, 2 Bro. Civ. & Adm. Law, 314 Chit. Com. Law, Index, h. t.; Chit. Law of Nations, 128 to 147; 1 Kent's Com. 143 to 151; Marsh. Ins. Index, h. t.; Dane's Ab. Index, h. t.; Mann. Com. B. 3, c. 9.

BLOOD, kindred. This word, in the law sense, is used to signify relationship, stock, or family; as, of the blood of the ancestor. 1 Roper on Leg. 103; 1 Supp. to Ves. jr. 365. In a more extended sense, it means kindred generally. Bac. Max. Reg. 18.

2. Brothers and sisters are said to be of the whole blood, (q. v.) if they have the same father and mother of the half blood, (q. v.) if they have only one parent in common. 5 Whart. Rep. 477.

BLOTTER, mer. law. A book among merchants, in which entries of sales, &c. are first made.

2. This book, containing the original entries, is received in evidence, when supported by the oaths or affirmations of those who keep it. See Original entry.

BOARD. This word is used to designate all the magistrates of a city or borough, or all the managers or directors of any institution; as, the board of aldermen; the board of directors of the Bank of North America. The majority of the board have in general the power to perform the acts of the whole board, but sometimes they are restrained by their charters, and it requires a greater number to perform certain acts.

BOARD OF CIVIL AUTHORITY. A used in Vermont. This board is composed of the selectmen and justices of the peace of their respective towns. They are authorized to abate taxes, and the like.

BOCKLAND, Eng. law. The name of an ancient allodial tenure, which was exempt from feudal services. Bac. Ab. Gavelkind, A Spelman's English Works, vol. 2, 233.

BODY. A person.

2. In practice, when the sheriff returns cepi corpus to a capias, the plaintiff may obtain a rule, before special bail has been entered, to bring in the body and this must be done either by committing the defendant or entering special bail. See Dead Body.

BODY POLITIC, government, corporations. When applied to the government this phrase signifies the state.

2. As to the persons who compose the body politic, they take

collectively the name, of people, or nation; and individually they are citizens, when considered in relation to their political rights, and subjects as being submitted to the laws of the state.

3. When it refers to corporations, the term body politic means that the members of such corporations shall be considered as an artificial person.

BOILARY. A term used to denote the water which arises from a salt well, belonging to one who has no right to the soil. Ejectment may be maintained for it. 2 Hill, Ab. c. 14, Sec. 5; Co. Litt. 4 b.

BONA, goods and chattels. In the Roman law, it signifies every kind of property, real, personal, and mixed, but chiefly it was applied to real estates; chattels being chiefly distinguished by the words, effects, movables, &c. Bona were, however, divided into bona mobilia, and bona immobilia. It is taken in the civil law in nearly the sense of biens (q. v.) in the French law.

BONA FIDE. In or with good faith.

2. The law requires all persons in their transactions to act with good faith and a contract where the parties have not acted bona fide is void at the pleasure of the innocent party. 8 John. R. 446; 12 John. R. 320; 2 John. Ch. R. 35. If a contract be made with good faith, subsequent fraudulent acts will not vitiate it; although such acts may raise a presumption of antecedent fraud, and thus become a means of proving the want of good faith in making the contract. 2 Miles' Rep. 229; and see also, Rob. Fraud. Conv. 33, 34; Inst. 2, 6 Dig. 41, 3, 10 and 44; Id. 41, 1, 48; Code, 7, 31; 9 Co. 11; Wingate's Maxims, max. 37; Lane, 47; Plowd. 473; 9 Pick. R. 265; 12 Pick. R. 545; 8 Conn. R. 336; 10 Conn. R. 30; 3 Watts, R. 25; 5 Wend. R. 20, 566. In the civil law these actions are called (actiones) bonae fidei, in

which the judge has a. more unrestrained power (liberior potestas) of estimating how much one person ought to give to or do, for another; whereas, those actions are said to be stricti juris, in which the power of the judge is confined to the agreement of the parties. Examples of the foraier are the actions empti-venditi, locati-conducti, negitiorum gestorum, &c.; of the latter, the actions ex mutus, ex chirographo, ex stipilatu, ex indebito, actions proescriptis verbis, &c.

BONA GESTURA. Good behaviour.

BONA MOBILIA. Movable goods, personal property.

BONA NOTABILIA Engl. ecclesiastical law. Notable goods. When a person dies having at the time of his death, goods in any other diocese, beside's the goods in the diocese where he dies, amounting to the value of five pounds in the whole, he is said to have bona notabilia; in which case proof of his will, or granting letters of administration, belongs to the archbishop of the province. 1 Roll. Ab. 908; Toll. Ex. 51 Williams on Ex. Index, h. t.

BONA PERITURA. Perishable goods.

2. An executor, administrator, or trustee, is bound to use due diligence in disposing of perishable goods, such as fattened cattle, grain, fruit, or any other article which may be worse for keeping. Bac. Ab. Executors, &c. D; 11 Vin. Ab. 102; 1 Roll. Ab. 910; 5 Cro. Eliz.518; Godb.104; 3 Munf. R. 288; 1 Beat. R. 5,14; Dane's Ab. Index, h. t.

3. In Pennsylvania, when goods are attached, they may be sold by order of court, when they are of a perishable nature. Vide Wesk. on Ins. 390; Serg. on Attachm. Index.

BONA VACANTIA. Goods to which no one claims a property, as, shipwrecks, treasure trove, &c.; vacant goods.

BONA WAVIATA. Goods waived or thrown away by a thief, in his flight, for fear of being apprehended.

BOND, contract. An obligation or bond is a deed whereby the obligor, obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed. But see 2 Shepl. 185. If this be all, the bond is called a single one, simplex obligatio; but there is generally a condition added, that if the obligor pays a smaller sum, or does, or omits to do some particular act, the obligation shall be void. 2 Bl. Com. 840. The word bond ex vi termini imports a sealed instrument. 2 S. & R. 502; 1 Bald. R. 129; 2 Porter, R. 19; 1 Blackf. R. 241; Harp. R. 434; 6 Verm. R. 40. See Condition; Interest of money; Penalty. It is proposed to consider: 1. The form of a bond, namely, the words by which it may be made, and the ceremonies required. 2. The condition. 3. The performance or discharge.

2.- I. 1. There must be parties to a bond, an obligor and obligee : for where a bond was made with condition that the obligor should pay twenty pounds to such person or persons; as E. H. should, by her last will and testament in writing, name and appoint the same to be paid, and E. H. did not appoint any person to, whom the same should be paid, it was held that the money was not payable to the executors of E. H. Hob. 9. No particular form of words are essential to create an obligation, but any words which declare the intention of the parties, and denote that one is bound to the other, will be sufficient, provided the ceremonies mentioned below have been observed. Shep. Touch. 367-8; Bac. Abr. Obligations, B; Com. Dig. Obligations, B 1.

3. - 2. It must be in writing, on paper or parchment, and if it be made on other materials it is void. Bac. Abr. Obligations, A.

4. - 3. It must be sealed, though it is not necessary that it should be mentioned in the writing that it is sealed. As to what is a sufficient sealing, see the above case, and the word Seal.

5. - 4. It must be delivered by the party whose bond it is, to the other. Bac. Abr. Obligations, C. But the delivery and acceptance may be by attorney. The date is not considered of the substance of a deed, and therefore a bond which either has no date or an impossible one is still good, provided the real day of its being dated or given, that is, delivered, can be proved. 2 Bl. Com. 304; Com. Dig. Fait, B 3; 3 Call, 309. See Date.

6. - II. The condition is either for the payment of money, or for the performance of something else. In the latter case, if the condition be against some rule of law merely, positively impossible at the time of making it, uncertain or insensible, the condition alone is void, and the bond shall stand single and unconditional; for it is the folly of the obligor to enter into such an obligation, from which he can never be released. If it be to do a thing malum in se, the obligation itself is void, the whole contract being unlawful. 2 Bl. Com. 340; Bac. Abr. Conditions, K, L; Com. Dig. Conditions, D 1, D 2, D 3, D 7, D 8.

7. - III. 1. When, by the condition of an obligation, the act to be done to the obligee is of its own nature transitory, as payment of money, delivery of charters, or the like, and no time is limited, it ought to be performed in convenient time. 6 Co. 31 Co. Lit. 208; Roll. Abr. 436.

8. - 2. A payment before the day is good; Co. Lit. 212, a; or before action brought. 10 Mass. 419; 11 Mass. 217.

9. - 3. If the condition be to do a thing within a certain time, it may be performed the last day of the time appointed. Bac. Abr. Conditions, P 3.

10. - 4. If the condition be to do an act, without limiting any time, he who has the benefit may do it at what time he pleases. Com. Dig. Conditions, G 3.

11. - 5. When the place where the act to be performed is agreed upon, the party who is to perform it, is not obliged to seek the opposite party elsewhere; nor is he to whom it is to be performed bound to accept of the performance in another place. Roll. 445, 446 Com. Dig. Conditions, G 9 Bac. Abr. Conditions, P 4. See Performance.

12. - 6. For what amounts to a breach of a condition in a bond see Bac. Abr. Conditions, 0; Com. Dig. Conditions, M; and this Dict. tit. Breach.

BOND TENANT, Eng. law. Copyholders and customary tenants are sometimes so called. Calth. on Copyh. 51, 54.

BONDAGE. Slavery.

BONIS NON AMOVENDIS. The name of a writ addressed to the sheriff, when a writ of error has been brought, commanding that the person against whom judgment has been obtained, be not suffered to remove his goods till the error be tried and determined. Reg. Orig. 131.

BONO ET MALO. The name of a special writ of jail delivery, which formerly issued of course for each particular prisoner. 4 Bl. Com. 270.

BONUS, contrads. A premium paid to a grantor or vendor; as, e. g. the bank paid a bonus to the state for its charter. A consideration given for what is received.

BOOK. A general name given to every literary composition which is printed;

but appropriately to a printed composition bound in a volume.

2. The copyright, (q. v.) or exclusive right to print and publish a book, may be secured to the author and his assigns for the term of twenty-eight years; and, if the author be living, and a citizen of the United States, or resident therein, the same right shall be continued to him for the further term of fourteen years, by complying with the conditions of the act of Congress; one of which is, that he shall, within three months after publication, deliver, or cause to be delivered, a copy of the same to the clerk of the said district. Act of February 3, 1831. 4 Sharsw. cont. of Story's L. U. S. 2223.

BOOK-LAND, English law. Land, also called charter-land, which was held by deed under certain rents and fee services, and differed in nothing from free socage land. 2 Bl. Com. 90. See 2 Spelman's English Works, 233, tit. Of Ancient Deeds and Charters.

BOOKS, commerce, accounts. Merchants, traders, and other persons, who are desirous of understanding their affairs, and of explaining them when necessary, keep, 1. a day book; 2. a journal; 3. a ledger; 4. a letter book; 5. an invoice book; 6. a cash book; 7. a bill book; 8. a bank book; and 9. a cheek book. The reader is referred to these several articles. Commercial books are kept by single or by double entry.

BOOTY, war. The capture of personal property by a public enemy on land, in contradistinction to prize, which is a capture of such property by such an enemy, on the sea.

2. After booty has been in complete possession of the enemy for twenty-four hours, it becomes absolutely his, without any right of postliminy in

favor of the original owner, particularly when it has passed, bona fide, into the hands of a neutral. 1 Kent, Com. 110.

3. The right to the booty, Pothier says, belongs to the sovereign but sometimes the right of the sovereign, or the public, is transferred to the soldiers, to encourage them. Tr. du Droit de Propriete, part 1, c. 2, art. 1, Sec. 2; Burl. Nat. and Pol. Law, vol. ii. part 4, o. 7, n. 12.

BOROUGH. An incorporated town; so called in the charter. It is less than a city. 1 Mann. & Gran. 1; 39 E. C. L. R. 323.

BOROUGH ENGLISH, English law. This, as the name imports, relates exclusively to the English law.

2. It is a custom, in many ancient boroughs, by which the youngest son succeeds to the burgage tenement on the death of the father. 2 Bl. Com. 83.

3. In some parts of France, there was a custom by which the youngest son was entitled to an advantage over the other children in the estate of their father. iller. Rep. mot Mainete.

BORROWER, contracts. He to whom a thing is lent at his request.

2. The contract of loan confers rights, and imposes duties on the borrower' 1. In general, he has the right to use the thing borrowed, during the time and for the purpose intended between the parties; the right of using the thing bailed, is strictly confined to the use, expressed or implied, in the particular transaction, and by any excess, the borrower will make himself responsible. Jones' Bailment, 58 6 Mass. R. 104; Cro. Jac. 244; 2 Ld. Raym. 909; Ayl. Pand. B. 4, t. 16, p. 517; Domat, B. 1, t. 5, Sec. 2, n. 10, 11, 12; Dio. 13, 6, 18 Poth. Pret a Usage, c. 2, Sec. 1, n. 22; 2 Bulst. 306; Ersk. Pr. Laws of ScotI. B. 3, t. 1, Sec. 9; 1 Const. Rep. So. Car. 121 Bracton, Lib. 3, c. 2, Sec. l, p. 99. The loan is considered

strictly personal, unless, from other circumstances, a different intention may be presumed. 1 Mod. Rep. 210; S. C. 3 Salk. 271.

3. - 2. The borrower is bound to take extraordinary care of the thing borrowed; to use it according to the intention of the lender, to restore it in proper time; to restore it in a proper condition. Of these, in their order.

4. - 1. The loan being gratuitous, the borrower is bound to extraordinary diligence, and is responsible for slight neglect in relation to the thing loaned. 2 Ld. Raym. 909, 916 Jones on Bailm. 65; 1 Dane's Abr. c. 17, art. 12; Dig. 44, 73 1, 4; Poth. Pret. a Usage, c. 2, Sec. 2, art. 21, n. 48.

5. - 2. The use is to be according to the condition of the loan; if there is an excess in the nature, time, manner, or quantity of the use, beyond what may be inferred to be within the intention of the parties, the borrower will be responsible, not only for any damages occasioned by the excess, but even for losses by accidents, which could not be foreseen or guarded against. 2 Ld. Raym. 909; Jones on Bailm. 68, 69.

6. - 3. The borrower is bound to make a return of the thing loaned, at the time, in the place, and in the manner contemplated by the contract.. Domat, Liv. 1, t. 5, Sec. 1, n. 11; Dig. 13, 6, 5, 17. If the borrower does not return the thing at the proper time, he is deemed to be in default, and is generally responsible for all injuries, even for accidents. Jones on Bailm. 70; Pothier, Pret a Usage , ch. 2, Sec. 3, art. 2, n. 60; Civil Code Of Louis. art. 2870; Code Civil, art. 1881; Ersk. Inst. B. 3, t. 1, Sec. 22 Ersk. Pr. Laws of Scotl. B. 3, t. 1, Sec. 9.

7. - 4. As to the condition in which the thing is to be restored. The borrower not being liable for any loss or deterioration of the thing, unless caused by his own neglect of duty, it follows, that it is sufficient if he

returns it in the proper manner, and at the proper time, however much it may be deteriorated from accidental or other causes, not connected with any such neglect. Story on Bailm. eh. 4, Sec. 268. See, generally, Story on Bailm. oh. 4; Poth. Pret A Usage; 2 Kent, Com. 446-449; Vin. Abr. Bailment, B 6; Bac. Abr. Bailment; Civil Code of Louis. art. 2869-2876; 1 Bouv. Inst. n. 1078-1090. Vide Lender.

BOSCAGE, Eng. law. That food which wood and trees yield to cattle.

BOTE, contracts A recompense, satisfaction, amends, profit or advantage : hence came the word man-bote, denoting a compensation for a man slain; house-bote, cart-bote, plough-bote, signify that a tenant is privileged to cut wood for these uses. 2 Bl. Com. 35; Woodf. L. & T. 232.

BOTELESS, or bootless. Without recompense, reward or satisfaction made unprofitable or without success.

BOTTOMRY, maritime law. A contract, in nature of a mortgage of a ship, on which the owner borrows money to enable him to fit out the ship, or to purchase a cargo, for a voyage proposed: and he pledges the keel or bottom of the ship, pars pro toto, as a security for the repayment; and it is stipulated that if the ship should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender also shall lose his money but if the ship should arrive in safety, then he shall receive back his principal, and also the interest agreed upon, which is generally called marine interest, however this may exceed the legal rate of interest. Not only the ship and tackle, if they arrive safe, but also the person of the borrower, is liable for the money lent and the marine interest. See 2 Bl. Com. 458; Marsh. Ins. B. 21 c. 1; Ord. Louis XIV. B. 3, tit. 5; Laws of

Wishuy, art. 45 Code de Com. B. 2, tit. 9.

2. The contract of bottomry should specify the principal lent, and the rate of marine interest agreed upon; the subject on which the loan is effected the names of the vessel and of the master those of the lender and borrower whether the loan be for an entire voyage; for what voyage and for what space of time; and the period of re-payment. Code de Com. art. 311 Marsh. Ins. B. 2.

3. Bottomry differs materially from a simple loan. In a loan, the money is at the risk of the borrower, and must be paid at all events. But in bottomry, the money is at the risk of the lender during the voyage. Upon a loan, only legal interest can be received; but upon bottomry, any interest may be legally reserved which the parties agree upon. See, generally, Metc. & Perk. Dig. h. t.; Marsh. Inst. B. 2; Bac. Abr. Merchant, K; Com. Dig. Merchant. E 4; 3 Mass. 443; 8 Mass. 340; 4 Binn. 244; 4 Cranch, 328; 3 John. R. 352 2 Johns. Cas. 250; 1 Binn. 405; 8 Cranch, 41 8; 1 Wheat. 96; 2 Dall. 194. See also this Dict. tit. Respondentia; Vin. Abr. Bottomry Bonds 1 Bouv. Inst. n. 1246-57.

BOUGHT NOTE, contracts. An instrument in writing, given by a broker to the seller of merchandise, in which it is stated that the goods therein mentioned have been sold for him. There appears, however, some confusion in the books, on the subject of these notes sometimes they are called sold notes. 2 B. & Ald. 144 Blackb. on Sales, 89.

2. This note is signed in the broker's name, as agent of the buyer and seller; and, if he has not exceeded his authority, the parties are thereby respectively bound. 1 Bell's Com. (5th ed.) 435; Holt's C. 170; Story on Agency, Sec. 28; 9 B. & Cr. 78; 17 E. C. L. R. 335; 5 B. & Ad. 521; 1 N. R. 252; 1 Moo. & R. 368; Moo. & M. 43; 22 E. C. L. R. 243; 2 M. & W. 440; Moo.

& M. 43; 6 A. & E. 486; 33 E. C. L. R. 122; 16 East, 62 Gow, R. 74; 1 Camp. R. 385; 4 Taunt. 209; 7 Ves. 265. Vide Sold Note.

BOUND BAILIFFS. Sheriff's officers, who serve writs and make arrests; they are so called because they are bound to the sheriff for the due execution of their office. 1 Bl. Com. 345.

BOUNDARY, estates. By this term is understood in general, every separation, natural or artificial, which marks the confines or line of division of two contiguous estates. 3 Toull. n. 171.

2. Boundary also signifies stones or other materials inserted in the earth on the confines of two estates.

3. Boundaries are either natural or artificial. A river or other stream is a natural boundary, and in that case the centre of the stream is the line. 20 John. R. 91; 12 John. R. 252; 1 Rand. R. 417; 1 Halst. R. 1; 2 N. H. Rep. 369; 6 Cowen, R. 579; 4 Pick. 268; 3 Randolph's R. 33 4 Mason's R. 349-397.

4. An artificial boundary is one made by man.

5. The description of land, in a deed, by specific boundaries, is conclusive as to the quantity; and if the quantity be expressed as a part of the description, it will be inoperative, and it is immaterial whether the quantity contained within the specific boundaries, be greater or less than that expressed; 5 Mass. 357; 1 Caines' R. 493; 2 John. R. 27; 15 John. 471; 17 John. R. 146; Id. 29; 6 Cranch, 237; 4 Hen. & Munf. 125; 2 Bay, R. 515; and the same rule is applicable, although neither the courses and distances, nor the estimated contents, correspond with such specific boundaries; 6 Mass. 131; 11 Mass. 193; 2 Mass. 380; 5 Mass. 497; but these rules do not apply in cases where adherence to them would be plainly absurd. 17 Mass. 207. Vide 17 S. & R. 104; 2 Mer. R. 507; 1 Swanst. 9; 4 Ves. 180; 1 Stark.

Ev. 169; 1 Phil. Ev. Index, h. t.; Chit. Pr. Index, h. t.; 1 Supp. to Ves. jr. 276; 2 Hill. Ab. c. 24, Sec. 209, and Index, h. t.

6. When a boundary, fixed and by mutual consent, has been permitted to stand for twenty-one years, it cannot afterwards be disturbed. In accordance with this rule, it has been decided, that where town lots have been occupied up to a line fence between them, for more than twenty-one years, each party gained an incontrovertible right to the line thus established, and this whether either party knew of the adverse claim or not; and whether either party has more or less ground than was originally in the lot he owns. 9 Watts, R. 565. See Hov. Fr. c. 8, p. 239 to 243; 3 Sum. R 170 Poth. Contr. de Societe, prem. app. n. 231.

7. Boundaries are frequently marked by partition fences, ditches, hedges, trees, &c. When such a fence is built by one of the owners of the land, on his own premises, it belongs to him exclusively; when built by both at joint expense, each is the owner of that part on his own land. 5 Taunt. 20. When the boundary is a hedge and a single ditch, it is presumed to belong to him on whose side the hedge is, because he who dug the ditch is presumed to have thrown the earth upon his own land, which was alone lawful to do, and that the hedge was planted, as is usual, on the top of the bank thus raised. 3 Taunt. 138. But if there is a ditch on each side of the hedge, or no ditch at all, the hedge is presumed to be the common property of both proprietors. Arch. N. P. 328; 2 Greenl. Ev. Sec. 617. A tree growing in the boundary line is the joint property of both owners of the land. 12 N. H. Rep. 454.

8. Disputes arising from a confusion of boundaries may be generally settled by an action at law. But courts of equity will entertain a bill for the settlement of boundaries, when the rights of one of the parties may be established upon equitable grounds. 4 Bouv. Inst. n. 3923.

BOUNTY. A sum of money or other thing, given, generally by' the government, to certain persons, for some service they have done or are about to do to the public. As bounty upon the culture of silk; the bounty given to an enlisted soldier; and the like. It differs from a reward, which is generally applied to particular cases; and from a payment, as there is no contract on the part of the receiver of the bounty.

BOVATA TERRAE. As much land as one ox can plough.

BRANCH. This is a metaphorical expression, which designates, in the genealogy of a numerous family, a portion of that family which has sprang from the same root or stock; these latter expressions, like the first, are also metaphorical.

2. The whole of a genealogy is often called the genealogical tree; and sometimes it is made to take the form of a tree, which is in the first place divided into as many branches as there are children, afterwards into as many branches as there are grand-children, then of great grandchildren, &c. If, for example, it be desired to have a genealogical tree of Peter's family, Peter will be made the trunk of the tree; if he has had two children, John and James, their names will be written on the first two branches; which will themselves shoot out as many smaller branches as John and James have children; from these other's proceed, till the whole family is represented on the tree; thus the origin, the application, and the use of the word branch in genealogy will be at once perceived.

BRANCHES. Those solid parts of trees which grow above the trunk.

2. In general the owner of a tree is the owner of the branches; but when they grow beyond his line, and extend over the adjoining estate, the

proprietor of the latter may cut them off as far as they grow over his land. Rolle's R. 394.; 3 Bulst. 198. But as this nuisance is one of omission, and, as in the case of such nuisances, it is requisite to give notice before abating them, it would be more prudent, and perhaps necessary, to give notice to the owner of the tree to remove such nuisance. 1 Chit. Pr. 649, 650, 652. See Root; Tree.

TO BRAND. An ancient mode of punishment, which was to inflict a mark on an offender with a hot iron. This barbarous punishment has been generally disused.

BRANDY. A spirituous liquor made of wine by distillation. See stat. 22 Car. H. c. 4.

BREACH, contract, torts. The violation of an obligation, engagement or duty; as a breach of covenant is the non-performance or violation of a covenant; the breach of a promise is non-performance of a promise; the breach of a duty, is the refusal or neglect to execute an office or public trust, according to law.

2. Breaches of a contract are single or continuing breaches. The former are those which are committed at one single time. Skin. 367; Carth. 289. A continuing breach is one committed at different times, as, if a covenant to repair be broken at one time, and the same covenant be again broken, it is a continuing breach. Moore, 242; 1 Leon. 62; 1 Salk. 141; Holt, 178; Lord Raym. 1125. When a covenant running with the land is assigned after a single breach, the right of action for such breach does not pass to the assignee but if it be assigned after the commencement of a continuing breach, the right of action then vests in such assignee. Cro. Eliz. 863; 8 Taunt. 227;,

2 Moore, 164; 1 Leon. 62.

3. In general the remedy for breaches of contracts, or quasi contracts, is by a civil action.

BREACH OF THE PEACE. A violation of public order; the offence of disturbing the public peace. One guilty of this offence may be held to bail for his good behaviour. An act of public indecorum is also a breach of the peace. The remedy for this offence is by indictment. Vide Pace,

BREACH OF PRISON. An unlawful escape out of prison. This is of itself a misdemeanor. 1 Russ. Cr. 378; 4 Bl. Com. 129 2 Hawk. P. C. c. 18, s. 1 7 Conn. 752. The remedy for this offence is by indictment. See Escape.

BREACH OF TRUST. The willful misappropriation, by a trustee, of a thing which had been lawfully delivered to him in confidence.

2. The distinction between larceny and a breach of trust is to be found chiefly in the terms or way in which the thing was taken originally into the party's possession; and the rule seems to be, that whenever the article is obtained upon a fair contract, not for a mere temporary purpose, or by one who is in the. employment of the deliverer, then the subsequent misappropriation is to be considered as an act of breach of trust. This rule is, however, subject to many nice distinctions. 15 S. & R. 93, 97. It has been adjudged that when the owner of goods parts with the possession for a particular purpose, and the person who receives them avowedly for that purpose, has at the time a fraudulent intention to make use of the possession as the weans of converting the goods to his own use, and does so convert them, it is larceny; but if the owner part with the property, although fraudulent means have been used to obtain it, the, act of conversion is not larceny. Id. Alis. Princ. c. 12, p. 354.

3. In the Year Book, 21 H. VII. 14, the distinction is thus stated: Pigot. If I deliver a jewel or money to my servant to keep, and he flees or goes from me with the jewel, is it felony ? Cutler said, Yes : for so long as he is with me or in my house, that which I have delivered to him is adjudged to be in my possession; as my butler, who has my plate in keeping, if he flees with it, it is felony. Same law; if he who keeps my horse goes away with, him: The reason is, they are always in my possession. But if I deliver a horse to my servant to ride to market or the fair and he flee with him, it is no felony; for e comes lawfully to the possession of the horse by delivery. And so it is, if I give him a jewel to carry to London, or to pay one, or to buy a thing, and he flee with it, it is not felony : for it is out of my possession, and he comes lawfully to it. Pigot. It can well be: for the master in these cases has an action against him, viz., Detinue, or Account. See this point fully discussed in Stamf. P. C. lib. 1; Larceny, c. 15, p. 25. Also, 13 Ed. IV. fo. 9; 52 H. III. 7; 21 H. VII. 15.

BREACH. pleading. That part of the declaration in which the violation of the defendant's contract is stated.

2. It is usual in assumpsit to introduce the statement of the particular breach, with the allegation that the defendant, contriving and fraudulently intending craftily and subtilely to deceive and defraud the plaintiff, neglected and refused to perform, or performed the particular act contrary to the previous stipulation. ?

3. In debt, the breach or cause of action. complained of must proceed only for the non-payment of money previously alleged to be payable; and such breach is nearly similar, whether the action be in debt on simple contract, specially, record or statute, and is usually of the following form: " Yet the said defendant, although often requested so to, do, hath not as yet paid

the said sum of ____ dollars, above demanded, nor any part thereof, to the said plaintiff, but bath hitherto wholly neglected and refused so to do, to the damage of the said plaintiff _____ dollars, and therefore he brings suit," &c.

4. The breach must obviously be governed by the nature of the stipulation; it ought to be assigned in the words of the contract, either negatively or affirmatively, or in words which are co-extensive with its import and effect. Com. Dig. Pleader, C 45 to 49; 2 Saund. 181, b, c; 6 Cranch, 127; and see 5 John. R. 168; 8 John. R. 111; 7 John. R. 376; 4 Dall. 436; 2 Hen. & Munf. 446.

5. When the contract is in the disjunctive, as, on a promise to deliver a horse by a particular day, or pay a sum of money, the breach ought to be assigned that the defendant did not do the one act nor the other. 1 Sid. 440; Hardr. 320; Com. Dig. Pleader, C.

BREAKING. Parting or dividing by force and violence a solid substance, or piercing, penetrating, or bursting through the same.

2. In cases of burglary and house-breaking, the removal, of any part of the house, or of the fastenings provided to secure it, with violence and a felonious intent, is called a breaking.

3. The breaking is actual, as in the above case; or constructive, as when the burglar or house-breaker gains an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 2; 2 Chit. Cr. Law, 1092; 1 Hale, P. C. 553; Alis. Prin. 282, 291. In England it has been decided that if the sash of a window be partly open, but not sufficiently so to admit a person, the raising of it so as to admit a person is not a breaking of the house. 1 Moody, Cr. Cas. 178. No reasons are assigned. It is difficult to conceive, if this case be law, what further opening will amount to a breaking. But see 1 Moody, Cr. Cas. 327, 377; and Burglary.

BREAKING DOORS. The act of forcibly removing the fastenings of a house, so that a person may enter.

2. It is a maxim that every man's house is his castle, and it is protected from every unlawful invasion. An officer having a lawful process, of a criminal nature, authorizing him to do so, may break an outer door, if upon making a demand of admittance it is refused. The house may also be broken open for the purpose of executing a writ of habere facias possessionem. 5 Co. 93; Bac. Ab. Sheriff, N 3.

3. The house protects the owner from the service of all civil process in the first instance, but not, if once lawfully arrested, he takes refuge in his own house; in that case the officer may pursue him, and break open any door for the Purpose. Foster, 320; 1 Rolle's R. 138 Cro. Jac. 555. Vide Door; House.

BREATH, med. juris. The air expelled from the chest at each expiration.

2. Breathing, though a usual sign of life, is not conclusive that a child was wholly born alive, as breathing may take place before the whole delivery of the mother is complete. 5 Carr. & Payn, 329; S. C. 24 E. C. L. R. 344. Vide Birth; Life; Infanticide.

BREPHOTROPHI, civil law. Persons appointed to take care of houses destined to receive foundlings. Clef des Lois Rom. mot Administrateurs.

BREVE, practice. A writ in which the cause of action is briefly stated, hence its name. Fleta, lib. 2, c. 13, Sec. 25; Co. Lit. 73 b.

2. Writs are distributed into several classes. Some are called brevia formata, others brevia de cursu, brevia judicialia, or brevia magistralia.

There is a further distinction with respect to real actions into brevia nominata and innominata. The former, says Bacon, contain the time, place and demand very particularly; and therefore by such writ several lands by several titles cannot be demanded by the same writ. The latter contain only a general complaint, without expressing time, damages, &c., as in trespass quare clausum fregit, &o., and therefore several lands coming to the demandant by several titles may be demanded in such writ. F. N. B. 209; 8 Co. 87; Kielw. 105; Dy. 145; 2 Brownl. 274; Bac. Ab. Actions in General, C. See Innominate contracts.

BREVE DE RECTO. A writ of right. (q. v.)

BREVE TESTATUM, feudal law. A declaration by a superior lord to his vassal, made in the presence of the pares curias, by which he gave his consent to the grant of land, was so called. Ersk. Inst. B. 2, tit. 3, s. 17. This was made in writing, and had the operation of a deed. Dalr. Feud. Pr. 239.

BREVET. In France, a brevet is a warrant granted by the government to authorize an individual to do something for his own benefit, as a brevet d'invention, is a patent to secure a man a right as inventor.

2. In our army, it signifies a commission conferring on an officer a degree of rank immediately above the one which he holds in his particular regiment, without, however conveying a right to receive a corresponding pay.

BREVIA, writs. They were called brevia, because of the brevity in which the cause of action was stated in them.

BREVIA ANTICIPANTIA. This name is given to a number of writs, which are also called writs of prevention. See Quia Ti. met.

BREVIA FORMATA, Eng law. The collection of writs found in the Registrum Brevium was so called. The author of Fleta says, these writs were formed upon their cases. They were different from the writs de cursu, which were approved by the council of the whole realm, and could not be changed without the will of the same. Fleta, lib. 2, c. 13, Sec. 2. See 17 S. & R. 194-5, and authorities there cited.

BREVIA JUDICIALIA. Subsidiary process issued pending a suit, or process issued in execution of the judgment. They varied, says the author of Fleta, according to the variety of the pleadings of the parties and of their responses. Lib. 2. c. 13, Sec. 3; Co. Lit. 73 b, 54 b. Many of them, however, long since became fixed in their forms, beyond the power of the courts to alter them, unless authorized to do so by the legislature. See 1 Rawle, Rep. 52; Act of Pennsylvania, June. 16, 1836, Sec. 3, 4, 5.

BREVIA MAGISTRALIA. These were writs formed by the masters in chancery, pursuant to the stat. West. 2, c. 24. They vary according to the diversity of cases and complaints, of which, says the author of Fleta, some are personal, some real, some mixed, according as actions are diverse or various, because so many will be the forms of writs as there are kinds of actions. Fleta, lib. 2, c. 13, Sec. 4; Co. Lit. 73 b, 54 b.

BREVIARIUM. The name of a code of laws of Alaric II., king of the Visigoths.

BREVIBUS ET ROTULIS LIBERANDIS, Eng. law. A writ or mandate directed to a sheriff, commanding him to deliver to his successor the county and the appurtenances, with all the briefs, rolls, remembrances, and all other

things belonging to his office.

BRIBE, crim. law. The gift or promise, which is accepted, of some advantage, as the inducement for some illegal act or omission; or of some illegal emolument, as a consideration, for preferring one person to another, in the performance of a legal act.

BRIBERY, crim. law. The receiving or offering any undue reward by or to any person whomsoever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behaviour in office, and to incline him to act contrary to his duty and the known rules of honesty and integrity. 3 Inst. 149; 1 Hawk. P. C. 67, s. 2 4 Bl. Com. 139; 1 Russ. Cr. 156.

2. The term bribery extends now further, and includes the offence of giving a bribe to many other officers. The offence of the giver and of the receiver of the bribe has the same name. For the sake of distinction, that of the former, viz : the briber, might be properly denominated active. bribery; while that of the latter, viz : the person bribed, might be called passive bribery.

3. Bribery at elections for members of parliament, has always been a crime at common law, and punishable by indictment or information. It still remains so in England notwithstanding the stat. 24 Geo. H. c. 14 3 Burr. 1340, 1589. To constitute the offence, it is not necessary that the person bribed should, in fact, vote as solicited to do 3 Burr. 1236; or even that he should have a right to vote at all both are entirely immaterial. 3 Bur. 1590-1.

4. An attempt to bribe, though unsuccessful, has been holden to be criminal, and the offender may be indicted. 2 Dall. 384; 4 Burr. 2500 3 Inst. 147; 2 Campb. R. 229; 2 Wash. 88; 1 Virg. Cas. 138; 2 Virg. Cas. 460.

BRIBOUR. One that pilfers other men's goods; a thief. See 28 E. II., c. 1.

BRIDGE. A building constructed over a river, creek, or other stream, or ditch or other place, in order to facilitate the passage over the same. 3 Harr. 108.

2. Bridges are of several kinds, public and private. Public bridges may be divided into, 1st. Those which belong to the public; as state, county, or township bridges, over which all the people have a right to pass, with or without paying toll these are built by public authority at the public expense, either of the state itself, or a district or part of the state.

3. - 2d. Those which have been built by companies, or at the expense of private individuals, and over Which all the people have a right to pass, on the payment of a toll fixed by law. 3d. Those which have been built by private individuals and which have been dedicated to public uses. 2 East, R. 356; 5 Burr. R. 2594; 2 Bl. R. 685 1 Camp. R. 262, n.; 2 M. & S. 262.

4. A private bridge is one erected for the use of one or more private persons; such a bridge will not be considered a public bridge, although it may be occasionally used by the public. 12 East, R. 203-4. Vide 7 Pick. R. 844; 11 Pet. R. 539; 7 N. H. Rcp. 59; 1 Pick. R. 432; 4 John. Ch. R. 150.

BRIEF, eccl. law. The name of a kind of papal rescript. Briefs are writings sealed with wax, and differ in this respect from bulls, (q. v.) which are scaled with lead. They are so called, because they usually are short compendious writings. Ayl. Parerg. 132. See Breve.

BRIEF, practice. An abridged statement of a party's case.

2. It should contain : 1st. A statement of the names of the parties,

and of their residence and occupation, the character in which they sue and are sued, and wherefore they prosecute or resist the action. 2d. An abridgment of all the pleadings. 3d. A regular, chronological, and methodical statement of the facts in plain common language. 4th. A summary of the points or questions in issue, and of the proof which is to support such issues, mentioning specially the names of the witnesses by which the facts are to be proved, or if there be written evidence, an abstract of such evidence. 5th. The personal character of the witnesses should be mentioned; whether the moral character is good or bad, whether they are naturally timid or over-zealous, whether firm or wavering. 6th. If known, the evidence of the opposite party, and such facts as are adapted to oppose, confute, or repel it. Perspicuity and conciseness are the most desirable qualities of a brief, but when the facts are material they cannot be too numerous when the argument is pertinent and weighty, it cannot be too extended.

3. Brief is also used in the sense of breve. (q. v.)

BRIEF OF TITLE, practice, conveyancing. An abridgment of all the patents, deeds, indentures, agreements, records, and papers relating to certain real estate.

2. In making a brief of title, the practitioner should be careful to place every deed and other paper in chronological order. The date of each deed; the names of the parties; the consideration; the description of the property; should be particularly, noticed, and all covenants should also be particularly inserted.

3. A vendor of an interest in realty ought to have his title investigated, abstracted, and evidence in proof of it ready to be produced and established before he sells; for if he sell with a confused title, or without being ready to produce deeds and vouchers, he must be at the expense of clearing it. 1 Chit. Pr. 304, 463.

BRINGING MONEY INTO COURT. The act of depositing money in the hands of the proper officer of the court, for the purpose of satisfying a debt or duty, or of an interpleader.

2. Whenever a tender of money is pleaded, and the debt is not discharged by the tender and refusal, money may be brought into court, without asking leave of the court; indeed, in such cases the money must be brought into court in order to have the benefit of the tender. In other cases, leave must be had, before the money can be brought into court.

3. In general, if the money brought into court is sufficient to satisfy the plaintiff 's claim, he shall not recover costs. See Bac. Ab. Tender, &c.

BROCAGE, contracts. The wages or commissions of a broker his occupation is also sometimes called brocage. This word is also spelled brokerage.

BROKERAGE, contracts. The trade or occupation of a broker; the commissions paid to a broker for his services.

BROKERS, commerce. Those who are engaged for others, in the negotiation of contracts, relative to property, with the custody of which they have no concern. Paley on Agency, 13; see Com. Dig. Merchant, C.

2. A broker is, for some purposes, treated as the agent of both parties; but in the first place, he is deemed the agent only of the person by whom he is originally employed; and does not become the agent of the other until the bargain or contract has been definitely settled, as to the terms, between the principals. Paley on Ag. by Lloyd, 171, note p; 1 Y. &, J. 387.

3. There are several kinds of brokers, as, Exchange Brokers, such as

negotiate in all matters of exchange with foreign countries.

4. Ship Brokers. Those who transact business between the owners of vessels, and the merchants who send cargoes.

5. Insurance Brokers. Those who manage the concerns both of the insurer and the insured.

6. Pawn Brokers. Those who lend money, upon goods, to necessitous people, at interest.

7. Stock Brokers. Those employed to buy and sell shares of stocks in corporations and companies. Vide Story on Ag. Sec. 28 to 32; T. L. h. t.; Maly. Lex Mer. 143; 2 H. Bl. 555; 4 Burr, R. 2103; 4 Kent, Com. 622, note d, 3d ed.; Liv. on Ag. Index, h. t.; Chit. Com. L. Index, h. t.; and articles Agency; Agent; Bought note; Factor; Sold note.

BROTHELS, crim. law. Bawdy-houses, the common habitations of prostitutes; such places have always been deemed common nuisances in the United States, and the keepers of them may be fined and imprisoned.

2. Till the time of Henry VIII, they were licensed in England, when that lascivious prince suppressed them. Vide 2 Inst. 205, 6; for the history of these pernicious places, see Merl. Rep. mot Bordel Parent Duchatellet, De la Prostitution dans la ville de Paris, c. 5, Sec. 1; Histoire de la Legislation sur les femmes publiques, & c., par M. Sabatier.

BROTHER, domest. relat. He who is born from the same father and mother with another, or from one of them only.

2. Brothers are of the whole blood, when they are born of the same father and mother, and of the half blood, when they are the issue of one of them only.

3. In the civil law, when they are the children of the same father and mother, they are called brothers germain; when they descend from the same

father, but not the same mother, they are consanguine brothers; when they are the issue of the same mother, but not the same father, they are uterine brothers. A half brother, is one who is born of the same father or mother, but not of both. One born of the same parents before they were married, a left-sided brother; and a bastard born of the same father or mother, is called a natural brother. Vide Blood; Half-blood; Line; and Merl. Repert. mot Frere; Dict. de Jurisp. mot Frere; Code, 3, 28, 27 Nov. 84, praef; Dane's Ab. Index, h. t.

BROTHER-IN-LAW, domestic relat. The brother of a wife, or the husband of a sister. There is no relationship, in the former case, between the husband and the brother-in-law, nor in the latter, between the brother and the husband of the sister; there is only affinity between them. See Vaughan's Rep. 302, 329.

BRUISE, med. jurisp. An injury done with violence to the person, without breaking the skin; it is nearly synonymous with contusion. (q . v.) 1. Ch. Pr. 38; vide 4 Car. & P. 381, 487, 558, 565; Eng. C. L. Rep. 430, 526, 529. Vide Wound.

BUBBLE ACT, Eng. law. The name given to the statute 6 Geo. I., c. 18, which was passed in 1719, and was intended " for restraining several extravagant and unwarrantable practices therein mentioned." See 2 P. Wms. 219.

BUGGERY, crim. law. The detestable crime of having commerce contrary to the order of nature, by mankind with mankind, or with brute beasts, or by womankind with brute beasts. 3 Inst. 58; 12 Co. 36; Dane's Ab. Index, h. t.; Merl. Repert. mot Bestialie. This is a highly penal offence.

BUILDING, estates. An edifice erected by art, and fixed upon or over the soil, composed of stone, brick, marble, wood, or other proper substance, 'Connected together, and designed for use in the position in which it is so fixed. Every building is an accessory to the soil, and is, therefore, real estate: it belongs to the owner of the soil. Cruise, tit. 1, S. 46. Vide 1 Chit. Pr. 148, 171; Salk. 459; Hob. 131; 1 Mete. 258; Broom's Max. 172.

BULK, contracts. Said to be merchandise which is neither counted) weighed, nor measured.

2. A sale by bulk, is a sale of a quantity of goods,, such as they are, without measuring, counting, or weighing. Civ. Code of Louis. a. 3522, n. 6.

BULL, eccles. law. A letter from the pope of Rome, written on parchment, to which is attached a leaden seal, impressed with the images of Saint Peter and Saint Paul.

2. There are three kinds of apostolical rescripts, the brief, the signature, and the bull, which last is most commonly used in legal matters. Bulls may be compared to the edicts and letters-patent of secular princes: when the bull grants a favor, the seal is attached by means of silken strings; and when to direct execution to be performed, with flax cords. Bulls are written in Latin, in a round and Gothic hand. Ayl. Par. 132; Ayl. Pand. 21; Mer. Rep. h. t.

BULLETIN. An official account of public transactions on matters of importance. In France, it is the registry of the laws.

BULLION. In its usual acceptation, is uncoined gold or silver, in bars, plates, or other masses. 1 East, P. C. 188.

2. In the acts of Congress, the term is also applied to copper properly

manufactured for the purpose of being coined into money. For the acts of Congress, authorizing the coinage of bullion for private individuals, see Act of April 2, 1792, s. 14, 1 Story, 230; Act of May 19, 1828, 4 Sharsw. cont. of Story's Laws U. S. 2120; Act of June 28, 1834, Id. 2376; Act of January 18, 1837, Id. 2522 to 2529. See, for the English law on the subject of crimes against bullion, 1 Hawk. P. C. 32 to 41.

BUOY. A piece of wood, or an empty barrel, floating on the water, to show the place where it is shallow, to indicate the danger there is to navigation. The act of Congress, approved the 28th September, 1850, enacts, " that all buoys along the coast, in bays, harbors, sounds, or channels, shall be colored and numbered, so that passing up the coast or sound, or entering the bay, harbor or channel, red buoys with even numbers, shall be passed on the starboard hand, black buoys, with uneven numbers, on the port hand, and buoys with red and black stripes on either hand. Buoys in channel ways to be colored with alternate white and black perpendicular stripes."

BURDEN OF PROOF. This phrase is employed to signify the duty of proving the facts in dispute on an issue raised between the parties in a cause.

2. The burden of proof always lies on the party who takes the affirmative in pleading. 1 Mass. 71, 335; 4 Mass. 593; 9 Pick. 39.

3. In criminal cases, as every man is presumed to be innocent until the contrary is proved, the burden of proof rests on the prosecutor, unless a different provision is expressly made by statute. 12 Wheat. See Onus probandi.

BUREAU. A French word, which literally means a large writing table. It is used figuratively for the place where business is transacted: it has been

borrowed by us, and used in nearly the same sense; as, the bureau of the secretary of state. Vide Merl. Repert. h. t.

BUREAUCRACY. The abuse of official influence in the affairs of government; corruption. This word has lately been adopted to signify that those persons who are employed in bureaus abuse their authority by intrigue to promote their own benefit, or that of friends, rather than the public good. The word is derived from the French.

BURGAGE, English law. A species of tenure in socage; it is where the king or other person is lord of an ancient borough, in which the tenements are held by a rent certain. 2 B1. Com. 82.

BURGESS. A magistrate of a borough; generally, the chief officer of the corporation, who performs, within the borough, the same kind of duties which a mayor does in a city. In England, the word is sometimes applied to all the inhabitants of a borough, who are called burgesses sometimes it signifies the representatives of a borough in parliament.

BURGH. A borough; (q. v.) a castle or town.

BURGLAR. One who commits a burglary. (q. v.)

BURGLARIOUSLY, pleadings. This is a technical word, which must be introduced into an indictment for burglary; no other word will answer the same purpose, nor will any circumlocution be sufficient. 4 Co. 39; 5 Co. 121; Cro. Eliz. 920; Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Chit. Cr. Law, 242.

BURGLARY, crim. law. The breaking and entering the house of another in the night time, with. intent to commit a felony therein, whether the felony be actually committed or not. 3 Inst. 63; 1 Hale, 549; 1 Hawk. c. 38, s. 1; 4 Bl. Com. 224; 2 East, P. C. C. 15, s. 1, p. 484; 2 Russell on Cr. 2; Roscoe, Cr. Ev. 252; Coxe, R. 441; 7 Mass. Rep. 247.

2. The circumstances to be considered are, 1. in what place the offence can be committed; 2. at what time 3. by what means; 4. with what intention.

3.- 1. In what place a burglary can be committed. It must, in general, be committed in a mansion house, actually occupied as a dwelling; but if it be left by the owner animo revertendi, though no person resides in it in his absence, it is still his mansion. Fost. 77; 3 Rawle, 207. The principal question, at the present day, is what is to be deemed a dwelling-house. 1 Leach, 185; 2 Leach, 771; Id. 876; 3 Inst. 64; 1 Leach, 305; 1 Hale, 558; Hawk. c. 38, s. 18; 1 Russ. on Cr. 16; 3 Berg. & Rawle, 199 4 John. R. 424 1 Nott & M'Cord, 583; 1 Hayw. 102, 242; Com. Dig. Justices, P 5; 2 East, P. C. 504.

4. - 2. At what time it must be committed. The offence must be committed in the night, for in the day time there can be no burglary. 4 Bl. Com. 224. For this purpose, it is deemed night when by the light of the sun a person cannot clearly discern the face or countenance of another 1 Hale, 550; 3 nst. 63. This rule, it is evident, does not apply to moonlight. 4 Bl. Com. 224; 2 Russ. on Cr. 32. The breaking and entering need not be done the same night 1 Russ. & Ry. 417; but it is necessary the breaking and entering should be in the night time, for if the breaking be in daylight and the entry in the night, or vice versa, it will not be burglary. 1 Hale, 551; 2 Russ. on Cr. 32. Vide Com. Dig. Justices, P 2; 2 Chit. Cr. Law, 1092.

5.-3. The means used. There must be both a breaking and an entry. First, of the breaking, which may be actual or constructive. An actual

breaking tal-,es place when the burglar breaks or removes ally part of, the house, or the fastenings provided for it, with violence. Breaking a window, taking a pane of glass out, by breaking or bending the nails, or other fastenings, raising a latch where the door is not otherwise fastened; picking open a lock with a false key; putting back the lock of a door or the fastening of a window, with an instrument; turning the key when the door is locked in the inside, or unloosening any other fastening which the owner has provided, are several instances of actual breaking. According to the Scotch law, entering a house by means of the true key, while in the door, or when it had been stolen, is a breaking. Alis. Pr. Cr. Law, 284. Constructive breakings occur when the burglar gams an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 22 Chit. Cr. Law, 1093. The breaking of an inner door of the house will be sufficient to constitute a burglary. 1 Hale, 553. Any, the least, entry, with the whole or any part of the body , hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, will be sufficient to constitute the offence. 3 Inst. 64; 4 Bl. Com. 227; Bac. Ab. Burglary, B Com. Dig. Justices, P 4. But the introduction of an instrument, in the act of breaking the house, will not be a sufficient entry, unless it be introduced for the purpose of committing a felony.

6. - 4. The intention. The intent of the breaking and entry must be felonious; if a felony however be committed, the act will be prima facie evidence of an intent to commit it. If the breaking and entry be with an intention to commit a bare trespass, and nothing further is done, the offence will not be a burglary. 1 Hale, 560; East, P., C. 509, 514, 515; 2 Russ. on Cr. 33.

BURGOMASTER. In Germany this is, the title by which an officer who performs the duties of a mayor is, called.

BURIAL. The act of interring the dead.

2. No burial is lawful unless made in conformity with the local regulations; an when a dead body has been found, it cannot be lawfully buried until the coroner has holden an inquest over it. In England. it is the practice for coroners to issue warrants to bury, after a view. 2 Umf. Lex. Coron. 497, 498.

BURNING. Vide Accident; Arson; Fire, accidental.

BURYING-GROUND. A place appropriated for depositing the dead; a cemetery. In Massachusetts, burying-grounds cannot, be appropriated to roads without the consent of the owners. Massachusetts Revised St. 239.

BUSHEL, measure. The Winchester bushel, established by the 13 W. III. c. 5, A. D. 1701, was made the standard of grain; a cylindrical vessel, eighteen and a half inches in diameter, and eight inches deep inside, contains a bushel; the capacity is 2145.42 cubic inches. By law or usage it is established in most of the United States. The exceptions, as far as known, are Connecticut, where the bushel holds 2198 cubic inches Kentucky, 2150 2/3; Indiana, Ohio, Mississippi and Missouri, where it contains 2150.4 cubic inches. Dane's Ab. c. 211, a. 12, s. 4. See the whole subject discussed in report of the Secretary of State of the United States to the Senate, Feb. 22, 1821.

BUSINESS HOURS. The time of the day during which business is transacted. In respect to the time of presentment and demand of bills and notes, business hours generally range through the whole day down to the hours of rest in the

evening, except when the paper is payable it a bank or by a banker. 2 Hill, N. Y. R. 835. See 3 Shepl. 67; 5 Shepl. 230.

BUTT. A measure of capacity, equal to one hundred and eight gallons. See Measure.

BUTTS AND BOUNDS. This phrase is used to express the ends and boundaries of an estate. The word butt, being evidently derived from the, French bout, the end; and bounds, from boundary.

TO BUY. To purchase. Vide Sale.

BUYER, contracts. A purchaser; (q. v.) a vendee.

BUYING OF TITLES. The purchase of the rights of a person to a piece of land when the seller is disseised.

2. When a deed is made by one who, though having a legal right to land, is at the time of the conveyance disseised, as a general rule of the common law, the sale is void; the law will not permit any person to sell a quarrel, or, as it is commonly termed, a pretended title. Such a conveyance is an offence at common law, and by a statute of Hen. VIII. This rule has been generally adopted in the United States, and is affirmed by express statute. In some of the states, it has been modified or abolished. It has been recognized in Massachusetts and Indiana. 1 Ind. R. 127. In Massacbusetts, there is no statute on the subject, but the act has always been unlawful. 5 Pick. R. 356. In Connecticut the seller and the buyer forfeit, each one half the value of the land. 4 Conn. 575. In New York, a person disseised cannot convey, except by way of mortgage. But the statute does not apply to judicial sales. 6 Wend. 224; see 4 Wend. 474; 2 John. Cas. 58; 3 Cow. 89; 5

Wend. 532; 5 Cow. 74; 13 John. 466; 8 Wend. 629; 7 Wend. 53, 152 11 Wend. 442; 13 John. 289. In North Carolina and South Carolina, a conveyance by a disseisee is illegal; the seller forfeits the land, and the buyer its value. In Kentucky such sale is void. 1 Dana, R. 566. But when the deeds were made since the passage of the statute of 1798, the grantee might, under that act, sue for land conveyed to him, which was adversely possessed by another, as the grantor might have done before. The statute rendered transfers valid to pass the title. 2 Litt. 393; 1 Wheat. 292; 2 Litt. 225; 3 Dana, 309. The statute of 1824, " to revive and amend the champerty and maintenance law," forbids the buying ot titles where there is an adverse possession. See 3 J. J. Marsh. 549; 2 Dana, 374; 6 J. J. Marsh. 490, 584. In Ohio, the purchase of land from one against whom a suit is pending for it, is void, except against himself, if he prevails. Walk. Intr. 297, 351, 352. In Pennsylvania. 2 Watts, R. 272 Illinois, 111. Rev. L. 130; Missouri, Misso. St. 119, a deed is valid, though there be an adverse possession. 2 Hill, Ab. c. 33, Sec. 42 to 52.

3. The Roman law forbade the sale of a right or thing in litigation. Code, 8. 37, 2.

BY ESTIMATION, contracts. In sales of land it not unfrequently occurs that the property is said to contain a certain number of acres, by estimation, or so many acres, more or less. When these expressions are used, if the land fall short by a small quantity, the purchaser will receive no relief. In one case of this kind, the land fell short two-fifths, and the purchaser received no relief. 2 Freem. 106. Vide 1 Finch, 109 1 Call, R. 301; 6 Binn. Rep. 106 1 Serg. & Pawle, R. 166; 1 Yeates, R. 322 2 John. R. 37 5 John. R. 508; 15 John. R. 471; 1 Caines, R. 493; 3 Mass. Rep. 380; 5 Mass. R. 355; 1 Root: R. 528; 4 Hen. & Munf. 184. The meaning of these words has never been

precisely ascertained by judicial decision. See Sugd. Vend. 231 to 236; Wolff, Inst. Sec. 658 and the cases cited under the articles Constitution; More or less; Subdivision.

BY-LAWS. Rules and ordinances made by a corporation for its own government.

2. The power to make by-laws is usually conferred by express terms of the charter creating the corporation, though, when not expressly granted, it is given by implication, and it is incident to the very existence of a corporation. When there is an express grant, limited to certain cases and for certain purposes, the corporate power of legislation is confined to the objects specified, all others being excluded by implication. 2 Kyd on Corp. 102; 2 P. Wms. 207; Ang. on Corp. 177. The power of making by-laws, is to be exercised by those persons in whom it is vested by the charter; but if that instrument is silent on that subject, it resides in the members of the corporation at large. Harris & Gill's R. 324; 4 Burr. 2515, 2521; 6 Bro. P. C. 519.

3. The constitution of the United States, and acts of congress made in conformity to it the constitution of the state in which a corporation is located, and acts of the legislature, constitutionally made, together with the common-law as there accepted, are of superior force to any by-law; and such by-law, when contrary to either of them, is therefore void, whether the charter authorizes the making of such by-law or not; because no legislature can grant power larger than they themselves possess. 7 Cowen's R. 585; Id. 604 5 Cowen's R. 538. Vide, generally, Aug. on Corp. ch. 9; Willc. on Corp. ch. 2, s. 3; Bac. Ab. h. t.; 4 Vin. Ab. 301 Dane's Ab. Index, h. t., Com. Dig. h. t.; and Id. vol. viii. h. t.

BY THE BYE, Eng. law. A declaration may be filed without a new process or writ, when the defendant is in court in another case, by the plaintiff in

that case having filed common bail for him; the declaration thus filed is called a declaration by the bye. 1 Crompt. 96; Lee's Diet. of Pr. Declaration IV.

C.

CABALLERIA, Spanish law. A measure of land, which is different in different provinces. Diccionario por la Real Academia. In those parts of the United States, which formerly belonged to Spain, the caballeria is a lot of one hundred feet front and two hundred feet deep, and equal, in all respects, to five peonias. (q.v.) 2 White's Coll. 49; 12 Pet. 444. note. See Fanegas.

CABINET. Certain officers who taken collectively make a board; as, the president's, cabinet, which is usually composed of the secretary of state, secretary of the treasury, the attorney general, and some others.

2. These officers are the advisers of the president.

CADASTRE. A term derived from the French, which has been adopted in Louisiana, and which signifies the official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 3 Am. St. Pap. 679; 12 Pet. 428, n.

CADET. A younger brother, one trained up for the army or navy.

CADI. The name of a civil magistrate among the Turks.

CALENDER. An almanac. Julius Caesar ordained that the Roman year should consist of 365 days, except every fourth year, which should contain 366, the additional day to be reckoned by counting the twenty-fourth day of February (which was the 6th of the calends of March) twice. See Bissextile is period of time exceeds the solar year by eleven minutes or thereabouts, which amounts to the error of a day in about 131 years. In 1582, the error

amounted to eleven days or more, which was corrected by Pope Gregory. Out of this correction grew the distinction between Old and New Style. The Gregorian or New Style was introduced into England in 1752, the 2d day of September (0. S.) of that year being reckoned as the 14th day of September, (N. S.) glee Almanac.

CALENDER, crim. law. A list of prisoners, containing their names, the time when they were committed, and by whom, and the cause of their commitments.

CALIFORNIA. The name of one of the states of the United States. It was admitted into the Union, by an Act of Congress, passed the 9th September, 1850, entitled "An act for the admission of the state of California into the Union."

Sec. 1. This section enacts and declares that the state of California shall be one of the United States, and admitted into the Union on an equal footing with the original states, in all respects whatever.

Sec. 2. Enacts that the state of California shall be entitled to two representatives, until the representatives in Congress shall be apportioned according to the actual enumeration of the inhabitants, of the United States.

Sec. 3. By this section a condition is expressly imposed on the said state that the people thereof shall never interfere with the primary disposal of the public lands within its limits, nor pass any law, nor do any act, whereby the title of the United States to, and right to dispose of the same, shall be impaired or questioned. It also provides that they shall never lay any tax, or assessment of any description whatever, upon the public domain of the United States; and that in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than

residents; that all navigable waters within the said state shall be common highways, forever free, as well to the inhabitants of said state, as to citizens of the United States, without any tax, impost or duty therefor; with this proviso, viz., that nothing contained in the act shall be construed as recognizing or rejecting the propositions tendered by the people of California, as articles of compact in the ordinance adopted by the convention which formed the constitution of that state.

2. The principal features of the constitution, of California, are similar to those of most, of the recently formed state constitutions. It establishes an elective judiciary, and: confers on the executive a qualified veto. It prohibits the creation of a state debt exceeding $300,000. It provides for the protection of the homestead from execution, and secures the property of married females separate from that of their husbands. It makes a liberal provision for the support of schools, prohibits the legislature from granting divorces, authorizing lotteries, and creating corporations, except by general laws, and from establishing any bank's of issue or circulation. It provides also that every stockholder of a corporation or joint-stock association, shall be individually and personally liable for his proportion of all its, debts or liabilities. There is also a clause prohibiting slavery, which, it is said, was inserted by the unanimous vote of the delegates.

CALLING THE PLAINTIFF, practice. When a plaintiff perceives that he has not given evidence to maintain his issue, and intends to become nonsuited, he withdraws himself, when the cryer is ordered to call the plaintiff, and on his failing to appear, he becomes nonsuited. 3 Bl. Com. 376.

CALUMNIATORS, civil law. Persons who accuse others, whom they know to be innocent, of having committed crimes. Code 9, 46, 9.

CAMBIST. A person skilled in exchange; one who deals or trades in promissory notes or bills of exchange.

CAMERA STELLATA, Eng. law. The court of the Star Chamber, now abolished.

CAMPARTUM. A part or portion of a larger field or ground, which would otherwise be in gross or common. Vide Champerty.

CANAL. A trench dug for leading water in a particular direction, and confining it.

2. Public canals are generally protected by the law which authorizes their being made. Various points have arisen under numerous laws authorizing the construction of canals, which have been decided in cases reported in 1 Yeates, 430; 1 Binn. 70; 1 Pennsyl. 462; 2 Pennsyl. 517; 7 Mass. 169; 1 Sumu. 46; 20 Johns. 103, 735; 2 Johns. 283; 7 John. Ch. 315; 1 Wend. 474; 5 Wend. 166; 8 Wend. 469; 4 Wend. 667; 6 Cowen, 698; 7 Cowen, 526 4 Hamm. 253; 5 Hamm. 141, 391; 6 Hamm. 126; 1 N. H. Rep. 339; See River.

CANCELLARIA CURIA. The name formerly given to the court of chancery.

CANCELLATION. Its general acceptation, is the act of crossing a writing; it is used sometimes to signify the manual operation of tearing or destroying the instrument itself. Hyde v. Hyde, 1 Eq. Cas. Abr. 409; Rob. on Wills, 367, n.

2. Cancelling a will, animo revocandi, is a revocation of it, and it is unnecessary to show a complete destruction or obliteration. 2 B. & B. 650; 3 B. & A. 489; 2 Bl. R. 1043; 2 Nott & M'Cord, 272; Whart. Dig. Wills, c.; 4

Mass. 462. When a duplicate has been cancelled, animo revocandi, it is the cancellation of both parts. 2 Lee, Ecc. R. 532.

3. But the mere act of cancelling a will is nothing, unless it be done animo revocandi, and evidence is admissible to show, quo animo, the testator cancelled it., 7 Johns. 394 2 Dall. 266; S. C. 2 Yeates, 170; 4 Serg. & Rawle, 297; cited 2 Dall. 267, n.; 3 Hen. & Munf. 502; Rob. on Wills, 365; Lovel, 178; Toll. on Ex'rs, Index, h.t.; 3 Stark. Ev. 1714; 1 Adams' Rep. 529 Mass. 307; 5 Conn. 262; 4 Wend. 474; 4 Wend. 585; 1 Harr. & M'H. 162; 4 Conn. 550; 8 Verm. 373; 1 N. H. Rep. 1; 4 N. H. Rep. 191; 2 Eccl. Rep. 23.

4. As to the effect of cancelling a deed, which has not been recorded, see 1 Adams' Rep. 1; Palm. 403; Latch. 226; Gilb. Law, Ev. 109, 110; 2 H. Bl. 263: 2 Johns. 87 1 Greenl. R. 78; 10 Mass. 403; 9 Pick. 105; 4 N. H. Rep. 191; Greenl. Ev. Sec. 265; 5 Conn. 262; 4 Conn. 450; 5 Conn. 86; 2 John. R. 84; 4 Yerg. 375; 6 Mass. 24; 11 Mass. 337; 2 Curt. Ecc. R. 458.

5. As to when a court of equity will order an agreement or other instrument to be cancelled and delivered up, see 4 Bouv. Inst. n. 3917-22.

CANDIDATE. One who offers himself or is offered by others for an office.

CANON, eccl. law. This word is taken from the Greek, and signifies a rule or law. In ecclesiastical law, it is also used to designate an order of religious persons. Francis Duaren says, the reason why the ecclesiastics called the rules they established canons or rules, (canones id est regulas) and not laws, was modesty. They did not dare to call them (leges) laws, lest they should seem to arrogate to themselves the authority of princes and magistrates. De Sacris Ecclesiae Ministeriis, p. 2, in pref. See Law, Canon.

CANONIST. One well versed in canon or ecclesiastical law.

CANNON SHOT, war. The distance which a cannon will throw a ball. 2. The whole space of the sea, within cannon shot of the coast, is considered as making a part of the territory; and for that reason, a vessel taken under the cannon of a neutral fortress, is not a lawful prize. Vatt. b. 1, c. 23, s. 289, in finem Chitt. Law of Nat. 113; Mart. Law of Nat. b. 8, c. 6, s. 6; 3 Rob. Adm. Rep. 102, 336; 5 Id. 373; 3 Hagg. Adm. R. 257. This part of the sea being considered as part of the adjacent territory, (q.v.) it follows that magistrates can cause the orders of their governments to be executed there. Three miles is considered as the greatest distance that the force of gunpowder can carry a bomb or a ball. Azun. far. Law, part 2, c. 2, art. 2, Sec. 15; Bouch. Inst. n. 1848. The anonymous author of the poem, Della Natura, lib. 5, expresses this idea in the following lines: Tanto slavanza in mar questo dominio, Quant esser puo d'antemurale e guardia, Fin dove puo da terra in mar vibrandosi Correr di cavo bronzo acceso fulinine. Far as the sovereign can defend his sway, Extends his empire o'er the watery way; The shot sent thundering to the liquid plain, Assigns the limits of his just domain. Vide League.

CAPACITY. This word, in the law sense, denotes some ability, power, qualification, or competency of persons, natural, or artificial, for the performance of civil acts, depending on their state or condition, as defined or fixed by law; as, the capacity to devise, to bequeath, to grant or convey lands; to take; or to take. and hold lands to make a contract, and the like. 2 Com. Dig. 294; Dane's Abr. h.t.

2. The constitution requires that the president, senators, and representatives should have attained certain ages; and in the case of the senators and representatives, that out these they have no capacity to serve in these offices.

3. All laws which regulate the capacity of persons to contract, are considered personal laws; such are the laws which relate to minority and majority; to the powers of guardians or parents, or the disabilities of coverture. The law of the domicil generally governs in cases of this kind. Burge. on Sureties, 89.

CAPAX DOLI. Capable of committing crime. This is said of one who has sufficient mind and understanding to be made responsible for his actions. See, Discretion.

CAPE, English law. A judicial writ touching a plea of lands and tenements. The writs which bear this name are of two kinds, namely, cape magnum, or grand, cape, and cape parvum, or petit cape. The petit cape, is so called, not so much on account of the smallness of the writ, as of the letter. Fleta, lib. 6, c. 55, Sec. 40. For the difference between the form and the use of these writs, see 2 Wms. Saund. Rep. 45, c, d; and Fleta, ubi sup.

CAPERS. Vessels of war owned by private persons, and different from ordinary privateers (q.v.) only in size, being smaller. Bea. Lex. Mer. 230.

CAPIAS, practice. This word, the signification of which is "that you take," is applicable to many heads of practice. Several writs and processes, commanding the sheriff to take the person of the defendant, are known by the name of capias. For example: there are writs of capias ad respondendum, writs of capias ad computandum, writs of capias ad satisfaciendum, &c., each especially adapted to the purposes indicated by the words used for its designation. See 3 Bl. Com. 281; 3 Bouv. Inst. n. 2794.

CAPIAS AD AUDIENDUM JUDICIUM, practice. A writ issued in a case of

misdemeanor, after the defendant has appeared and found guilty, and is not present when called. This writ is to bring him to judgment. 4 BI. Com. 368.

CAPIAS AD COMPUTANDUM, practice. A writ issued in the action of account render, upon the judgment quod computet, when the defendant refuses to appear, in his proper person, before the auditors, and enter into his account. According to the ancient practice, the defendant, after arrest upon this process, might be delivered on main-prize, or in default of finding mainpernors, he was committed to the Fleet prison, where the auditors attended upon him to hear and receive his account. As the object of this process is to compel the defendant to render an account, it does not appear to be within the scope of acts abolishing imprisonment for debt. For precedents, see Thesaurus Brevium, 38, 39, 40; 3 Leon. 149; 1 Lutw. 47, 51 Co. Ent. 46, 47; Rast. Ent. 14, b, 15.

CAPIAS AD RESPONDENDUM, practice. A writ commanding the sheriff, or other proper officer, to "take the body of the defendant and to keep the same to answer, ad respondendum, the plaintiff in a plea," &c. The amount of bail demanded ought to, be indorsed on the writ.

2. A defendant arrested upon this writ must be committed to prison, unless he give a bail bond (q.v.) to the sheriff. In some states, (as, until lately, in Pennsylvania,) it is the practice, when the defendant is liable to this process, to indorse on the writ, No bail required in which case he need only give the sheriff, in writing, an authority to the prothonotary to enter his appearance to the action, to be discharged from the arrest. If the writ has been served, and the defendant have not given bail, but remains in custody, it is returned C. C., cepi corpus; if he have given bail, it is returned C. C. B. B., cepi corpus, bail bond; if the

defendant's appearance have been accepted, the return is, "C. C. and defendant's appearance accepted." According to the course of the practice at common law, the writ bears teste, in the name of the chief justice, or presiding judge of the court, on some day in term time, when the judge is supposed to be present, not being Sunday, and is made returnable on a regular return day. 1 Penna. Pr. 36; 1 Arch. Pr. 67.

CAPIAS AD SATISFACIENDUM, practice. A writ of execution issued upon a judgment in a personal action, for the recovery of money, directed to the sheriff or coroner, commanding him to take the defendant, and him safely keep, so that he may have his body in court on the return day, to satisfy, ad satisfaciendum, the plaintiff. This writ is tested on a general teste day, and returnable on a regular return day.

2. It lies after judgment in most instances in which the defendant was subject to a capias ad respondendum before, and plaintiffs are subject to it, when judgment has been given against them for costs. Members of congress and of the legislature, (eundo, morando, et redezzndo,) going to, remaining at, and returning from the places of sitting of congress, or of the legislature, are not liable to this process, on account of their public capacity; nor are ambassadors, (q.v.) and other public ministers, and their, servants. Act of Congress of April 30, 1790, s. 25 and 26, Story's Laws United States, 88; 1 Dunl. Pr. 95, 96; Com. Dig. Ambassador, B; 4 Dall. 321. In Pennsylvania, women are not subject to this writ except in actions founded upon tort, or claims arising otherwise than ex contractu. 7 Reed's Laws of Pa. 150. In several of the United States, the use of this writ, as well as of the capias ad respondendum, has been prohibited in all actions instituted for the recovery of money due upon any contract, express or implied, or upon any judgment or decree, founded on any contract, or for the recovery of damages for the breach of any contract, with a few exceptions.

See Arrest.

3. It is executed by arresting the body of the defendant, and keeping him in custody. Discharging him upon his giving security for the payment of the debt, or upon his promise to return into custody again before the return day, is an escape, although he do return; 13 Johns. R. 366 8 Johns. R. 98; and the sheriff is liable for the debt. In England, a payment to the sheriff or other officer having the ca. sa., is no payment to the plaintiff. Freem. 842 Lutw. 587; 2 Lev. 203; 1 Arch. Pr. 278. The law is different in Pennsylvania. 3 Serg. & Rawle, 467. The return made by the officer is either C. C. & C., cepi corpus et comittitur, if the defendant have been arrested and held in custody; or N. E. I., non est inventus, if the officer has not been able to find him. This writ is, in common language, called a ca. sa.

CAPIAS PRO FINE, practice, crim. law. The name of a writ which issues against a defendant who has been fined, and who does not discharge it according to the judgment. This writ commands the sheriff to arrest the defendant and commit him to prison, there to remain till he pay the fine, or be otherwise discharged according to law.

CAPIAS UTLAGATUM English practice. A capias utlagatum is general or special; the former against the person only, the latter against the person, lands and goods.

2. This writ issues upon the judgment of outlawry being returned by the sheriff upon the exigent, and it takes its name from the words of the mandatory part of the writ, which states the defendant being outlawed utlagatum, which word comes from the Saxon utlagh, Latinized utlagatus, and signifies bannitus, extra legem. Cowel.

3. The general writ of capias utlagatum commands the sheriff to take

the defendant, so that he have him before the king on a general return day, wheresoever, &c., to do and receive what the court shall consider of him.

4. The special capias utlagatum, like the general writ, commands the sheriff to take the defendant. The defendant is discharged upon an attorney's undertaking, or upon giving bond to the sheriff, in the same manner as when the writ is general. But the special writ also commands the sheriff to inquire by a jury, of the defendant's goods and lands, to extend and appraise the same, and to take them in the king's hands and safely keep them, so that he may answer to the king for the value and issue's of the same. 2 Arch. Pr. 161. See Outlawry.

CAPIAS IN WITHERNAM, practice. A writ issued after a return of elongata or eloigned has been made to a writ of retorno habendo, commanding the sheriff to take so many of the distrainer's goods by way of reprisal, as will equal the goods mentioned in the retorno habendo. 2 Inst. 140; F. N. B. 68; and see form in 2 Sell. Pr. 169.

CAPIATUR, pro fine. The name of a writ which was issued to levy a fine due to the king. Bac. Ab. Fines and Amercements, in prin. See Judgment of Capiatur.

CAPITA, or PER CAPITA. By heads. An expression of frequent occurrence in laws regulating the distribution of the estates of persons dying intestate. When all the persons entitled to shares in the distribution are of the same degree of kindred to the deceased person, (e.g. when all are grandchildren,) and claim directly from him in their own right and not through an intermediate relation, they take per capita, that is, equal shares, or share and share alike. But when they are of different degrees of kindred, (e. g. some the children, others the grandchildren or the great grandchildren of

the, deceased,) those more remote take er stirpem or per stirpes, that is, they take respectively the shares their parents (or other relation standing in the same degree with them of the surviving kindred entitled) who are in the nearest degree of kindred to the intestate,) would have taken had they respectively survived the intestate. Reeves' Law of Descent, Introd. xxvii.; also 1 Rop. on Leg. 126, 130. See Per Capita; Per Stirpes; Stirpes;

CAPITAL, political economy, commerce. In political economy, it is that portion of the produce of a country, which may be made directly available either to support the human species or to the facilitating of production.

2. In commerce, as applied to individuals, it is those objects, whether consisting of money or other property, which a merchant, trader, or other person adventures in an undertaking, or which he contributes to the common stock of a partnership. 2 Bouv. Inst. n. 1458.

3. It signifies money put out at interest.

4. The fund of a trading company or corporation is also called capital, but in this sense the word stock is generally added to it; thus we say the capital stock of the Bank of North America.

CAPITAL CRIME. One for the punishment of which death is inflicted, which punishment is called capital punishment. Dane's Ab. Index, h.t.

2. The subject of capital punishment has occupied the attention of enlightened men for a long time, particularly since the middle of the last century; and none deserves to be more carefully investigated. The right of punishing its members by society cannot be denied; but how far this right extends, by the laws of nature or of God, has been much disputed by theoretical writers, although it cannot be denied, that most nations, ancient and modern, have deemed capital punishment to be within the scope of

the legitimate powers of government. Beccaria contends with zeal that the punishment of death ought not to be inflicted in times of peace, nor at other times, except in cases where the laws can be maintained in no other way. Bee. Chap. 28.

3. It is not within the plan of this work to examine the question, whether the punishment is allowed by the natural law. The principal arguments for and against it are here given.

4.-1. The arguments used in favor of the abolition of capital punishment, are;

5.-1st. That existence is a right which men hold from God, and which society in body can, no more than a member of that society, deprive them of, because society is governed by the immutable laws of humanity.

6.-2d. That, even should the right be admitted, this is a restraint badly selected, which does not attain its end, death being less dreaded than either solitary confinement for life, or the performance of hard labor and disgrace for life.

7.-3d. That the infliction of the punishment does not prevent crimes, any more than, other less severe but longer punishments.

8.-4th. That as a public example, this punishment is only a barbarous show, better calculated to accustom mankind to the contemplation of bloodshed, than to restrain them.

9.-5th. That the law by taking life, when it is unnecessary for the safety of society, must act by some other motive this can be no other than revenge. To the extent the law punishes an individual beyond what is requisite for the preservation of society, and the restoration of the offender, is cruel and barbarous. The law) to prevent a barbarous act, commits one of the same kind,; it kills one of the members of society, to convince the others that killing is unlawful.

10.-6th. That by depriving a man of life, society is deprived of the

benefits which he is able to confer upon it; for, according to the vulgar phrase, a man hanged is good for nothing.

11.-7th. That experience has proved that offences which were formerly punished with death, have not increased since the punishment has been changed to a milder one.

12.-2. The arguments which have been urged on the other side, are,

13.-1st. That all that humanity commands to legislators is, that they should inflict only necessary and useful punishments; and that if they keep within these bounds, the law may permit an extreme remedy, even the punishment of death, when it is requisite for the safety of society.

14.-2d. That, whatever be said to the contrary, this punishment is more repulsive than any other, as life is esteemed above all things, and death is considered as the greatest of evils, particularly when it is accompanied by infamy.

15.-3d. That restrained, as this punishment ought to be, to the greatest crimes, it can never lose its efficacy as an example, nor harden the multitude by the frequency of executions.

16.-4th. That unless this punishment be placed at the top of the scale of punishment, criminals will always kill, when they can, while committing an inferior crime, as the punishment will be increased only by a more protracted imprisonment, where they still will hope for a pardon or an escape.

17th.-5th. The essays which have been made by two countries at least; Russia, under the reign of Elizabeth, and Tuscany, under the reign of Leopold, where the punishment of death was abolished, have proved unsuccessful, as that punishment has been restored in both.

18. Arguments on theological grounds have also been advanced on both sides. See Candlish's Contributions towards the Exposition of the Book of

Genesis, pp. 203-7. Vide Beccaria on Crimes and Punishments; Voltaire, h.t.; Livingston's Report on a Plan of a Penal Code; Liv. Syst. Pen. Law, 22; Bentham on Legislation, part 3, c. 9; Report to the N. Y. Legislature; 18 Am. Jur. 334.

CAPITATION. A poll tax; an imposition which is yearly laid on each person according to his estate and ability.

2. The Constitution of the United States provides that "no capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, therein before directed to be taken." Art. 1, s. 9, n. 4. See 3 Dall. 171; 5 Wheat. 317.

CAPITE, descents. By the head. Distribution or succession per capita, is said to take place when every one of the kindred in equal degree, and not jure representationis, receive an equal part of an estate.

CAPITULARIES.The Capitularia or Capitularies, was a code of laws promulgated by Childebert, Clotaire, Carloman, Pepin, Charlemagne, and other kings. It was so called from the small chapters or heads into which they were divided. The edition by Baluze, published in 1677, is said to be the best.

CAPITULATION, war. The treaty which determines the conditions under which a fortified place is abandoned to the commanding officer of the army which besieges it.

2. On surrender by capitulation, all the property of the inhabitants protected by the articles, is considered by the law of nations as neutral, and not subject to capture on the high seas, by the belligerent or its ally. 2 Dall.

CAPITULATION, civ.law. An agreement by which the prince and the people, or those who have the right of. the people, regulate the manner in which the government is to be administered. Wolff, Sec. 989.

CAPTAIN or SEA CAPTAIN, mar. law. The name given to the master or commander of a vessel. He is known in this country very generally by the name of master. (q.v.) He is also frequently denominated patron in foreign laws and books.

2. The captains in the navy of the United States, are officers appointed by government. Those who are employed in the mercantile service, have not strictly an official character. They are appointed or employed by the owners on the vessels they command.

3. It is proposed to consider the duty of the latter. Towards the owner of the vessel he is bound by his personal attention and care, to take all the necessary precautions for her safety; to, proceed on the voyage in which such vessel may be engaged, and to obey faithfully his instructions; and by all means in his power to promote the interest of his owner. But he is not required to violate good faith, nor employ fraud even with an enemy. 3 Cranch, 242.

4. Towards others, it is the policy of the law to hold him responsible for all losses or damages that may happen to the goods committed to his charge; whether they arise from negligence, ignorance, or willful misconduct of himself or his mariners, or any other person on board the ship. As soon, therefore, as goods are put on board, they are in the master's charge, and he is bound to deliver them again in the same state in which they were shipped, and he is answerable for all losses or damages they may sustain, unless it proceed from an inherent defect in the article, or from some accident or misfortune which could not be prevented.

5. It may be laid down as a general rule, that the captain is responsible when any loss occurs in consequence of his doing what he ought not to do, unless he was forced by the act of God,. the enemies of the United States, or the perils of the sea.1 Marsh. Ins. 241; Pard. n. 658.

6. The rights of the captain are, to choose his crew as he is responsible for their acts, this seems but just, but a reasonable deference to the rights of the owner require that he should be consulted, as he, as well as the captain, is responsible for the acts of the crew. On board, the captain is invested with almost arbitrary power over the crew, being responsible for the abuse of his authority. Ab. on Shipp. 162. He may repair the ship, and, if he is not in funds to pay the expenses of such repairs, he may borrow money, when abroad, on the credit of his owners or of the ship. Abb. on Sh. 127-8. In such cases, although contracting within the ordinary scope of his powers and duties, he is generally responsible as well as the owner. This is the established rule of the maritime law, introduced in favor of commerce it has been recognized and adopted by the commercial nations of, Europe, and is derived from the civil or Roman law. Abbott, Ship. 90; Story, Ag. Sec. 116 to 123, Sec. 294; Paley, Ag. by Lloyd, 244; 1 Liverm. Ag. 70; Poth. Ob. n. 82; Ersk. Inst. 3, 3, 43; Dig. 4, 9, 1; Poth. Pand. lib. 14, tit. 1; 3 Summ. R. 228. See Bell's Com. 505, 6th ed; Bouv. Inst. Index, h.t.

CAPTATION, French law. The act of one who succeeds in controlling the will of another, so as to become master of it. It is generally taken in a bad sense.

2. Captation takes place by those demonstrations of attachment and friendship, by those assiduous attentions, by those services and officious little presents which are usual among friends, and by all those means which ordinarily render us agreeable to others. When those attentions are unattended by deceit or fraud, they are perfectly fair, and the captation is

lawful; but if, under the mask of friendship, fraud is the object, and means are used to deceive the person with whom you are connected, then the captation is fraudulent, and the acts procured by the captator are void. See Influence.

CAPTATOR, French law. The name which is sometimes given, to him who by flattery and artifice endeavors to surprise testators, and induce them to. give legacies or devices, or to make him some other gift. Diet. de Jur.

CAPTION, practice. That part of a legal instrument, as a 'Commission, indictment, &c., which shows where, when, and by what authority it was taken, found or executed. As to the forms and requisites of captions, see 1 Murph. 281; 8 Yerg. 514; 4 Iredell, 113; 6 Miss,. 469; 1 Scam. 456; 5 How. Mis. 20; 6 Blackf. 299; 1 Hawks, 354; 1 Brev. 169.

2. In the English practice, when an inferior court in obedience to the writ of certiorari, returns an indictment into the K. B., it is annexed to the caption, then called a schedule, and the caption concludes with stating, that "it is presented in manner and form as appears in a certain indictment thereto annexed," and the caption and indictment are returned on separate parchments. 1 Saund. 309, n. 2. Vide Dane's Ab. Index, h.t.

3. Caption is another name for arrest. CAPTIVE. By this term is understood one who has been taken; it is usually applied to prisoners of war. (q.v.) Although he has lost his liberty, a captive does not by his captivity lose his civil rights.

CAPTOR, war. One who has taken property from an enemy; this term is also employed to designate one who has taken an enemy.

2. Formerly, goods taken in war were adjudged to belong to the captor;

they are now considered to vest primarily, in the state or sovereign, and belong to the individual captors only to the extent that the municipal laws provide.

3. Captors are responsible to the owners of the property for all losses and damages, when the capture is tortious and without reasonable cause in the exercise of belligerent rights. But if the capture is originally justifiable, the captors will not be responsible, unless by subsequent misconduct they become trespassers ab initio. i Rob. R. 93, 96. See 2 Gall. 374; 1 Gall. 274; 1 Pet. Adm. Dee. 116; 1 Mason, R. 14.

CAPTURE, war. The taking of property by one belligerent from another.

2. To make a good capture of a ship, it must be subdued and taken by an enemy in open war, or by way of reprisals, or by a pirate, and with intent to deprive the owner of it.

3. Capture may be with intent to possess both ship and cargo, or only to seize the goods of the enemy, or contraband goods which are on board: The former is the capture of the ship in the proper sense of the word; the latter is only an arrest and detention, without any design to deprive the owner of it. Capture is deemed lawful, when made by a declared enemy, lawfully commissioned and according to the laws of war; and unlawful, when it is against the rules established by the law of nations. Marsh. Ins. B. 1, c. 12, s. 4.See, generally, Lee on Captures, passim; 1 Chitty's Com. Law, 377 to 512; 2 Woddes. 435 to 457; 2 Caines' C. Err 158; 7 Johns. R. 449; 3 Caines' R. 155; 11 Johns. R. 241; 13 Johns. R.161; 14 Johns. R. 227; 3 Wheat. 183; 4 Cranch, 436 Mass. 197; Bouv. Inst. Index, h.t.

CAPUT LUPINUM, Eng. law. Having the head of a wolf. An outlawed felon was said to have the head of a wolf, and might have been killed by any one legally. Now, such killing would be murder. 1. Hale, Pl. C. 497. The rules

of the common law on this subject are much more severe in their consequences, than the doctrine of the civil law relating to civil death. See 1 Toull. Droit Civil, n. 280, and pp. 254-5, note 3.

CARAT, weights. A carat is a weight equal to three and one-sixth grains, in diamonds, and the like. Jac. L. Dict. See Weight.

CARCAN, French law. A French word, which is applied to an instrument of punishment somewhat resembling a pillory. It sometimes signifies the punishment itself. Biret Vocab.

CARDINAL, eccl. law. The title given to one of the highest dignitaries of the court of Rome. Cardinals are next to the pope in dignity; he is elected by them and out of their body. There are cardinal bishops, cardinal priests, and cardinal deacons. See Fleury, Hist. Eccles. liv. xxxv. n. 17, II. n. 19 Thomassin, part ii. liv. i. oh. 53, part iv. liv. i. c. 79, 80 Loiseau, Traite des Ordres, c. 3, n. 31; Andre, Droit Canon, au mot.

CARDS, crim. law. Small square pasteboards, generally of a fine quality, on which are painted figures of various colors, and used for playing different games. The playing of cards for amusement is not forbidden, but gaming for money is unlawful. Vide Faro bank, and Gaming.

CARGO, mar. law. The entire load of a ship or other vessel. Abb. on Sh. Index, h.t.; 1 Dall. 197; Merl. Rep. h.t.; 2 Gill & John. 136. This term is usually applied to goods only, and does not include human beings. 1 Phill. Ins. 185; 4 Pick. 429. But in a more extensive and less technical sense, it includes persons; thus we say a cargo of emigrants. See 7 Mann.

Gr. 729, 744.

CARNAL KNOWLEDGE, crim. law. This phrase is used to signify a sexual connexion; as, rape is the carnal knowledge of a woman, &c. See Rape.

CARNALLY KNEW, pleadings. This is a technical phrase, essential in an indictment to charge the defendant with the crime of rape; no other word or circumlocution will answer the same purpose as these word's. Vide Ravished, and Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Hale, 632; 3 Inst. 60; Co. Litt. 137;) 1 Chit. Cr. Law, *243. It has been doubted whether these words were indispensible. 1 East, P. C. 448. But it would be unsafe to omit them.

CARRIERS, contracts. There are two kinds of carriers, namely, common carriers, (q.v.) who have been considered under another head; and private carriers. These latter are persons who, although they do not undertake to transport the goods of such as choose to employ them, yet agree to carry the goods of some particular person for hire, from one place to another.

2. In such case the carrier incurs no responsibility beyond that of any other ordinary bailee for hire, that is to say, the responsibility of ordinary diligence. 2 Bos. & Pull. 417; 4 Taunt. 787; Selw. N. P. 382 n.; 1 Wend. R. 272; 1 Hayw. R. 14; 2 Dana, R. 430; 6 Taunt. 577; Jones, Bailm. 121; Story on Bailm, Sec. 495. But in Gordon v. Hutchinson, 1 Watts & Serg. 285, it was holden that a Wagoner Who carries goods for hire, contracts,the responsibility of a common carrier, whether transportation be his principal and direct business, or only an occasional and incidental employment.

3. To bring a person within the description of a common carrier, he must exercise his business as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to

engage in the transportation of goods for hire, as a business; not as a casual occupation pro hac vice. 1 Salk. 249; 1 Bell's Com. 467; 1 Hayw. R. 14; 1 Wend. 272; 2, Dana, R. 430. See Bouv. Inst. Index, b. t.

CARRYING AWAY, crim. law. To complete the crime of larceny, the thief must not only feloniously tale the thing stolen, but carry it away. The slightest

carrying away will be sufficient; thus to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair. 1 Leach, 320. To remove sheets from a bed and carry them into an adjoining room. 1 Leach, 222 n. To take plate from a trunk, and lay it on the floor with intent to carry it away. Ib. And to remove a package from one part of a wagon to another, with a view to steal it; 1 Leach, 286; have respectively been holden to be felonies. 2 Chit. Cr. Law, 919. Vide 3 Inst. 108, 109 1 Hale, 507; Kel. 31 Ry. & Moody, 14 Bac. Ab. Felony, D 4 Bl. Com. 231 Hawk. c.32, s. 25. Where, however, there has not been a complete severance of the possession, it is not a complete carrying away. 2 East, P. C. 556; 1 Hale, 508; 2 Russ. on Cr. 96. Vide Invito Domino; Larceny; Robbery; Taking.

CART BOTE. An allowance to the tenant of wood, sufficient for carts and other instruments of husbandry.

CARTE BLANCHE. The signature of an individual or more, on a while. paper, with a sufficient space left above it to write a note or other writing.

2. In the course of business, it not unfrequently occurs that for the sake of convenience, signatures in blank are given with authority to fill them up.. These are binding upon the parties. But the blank must be filled up by the very person authorized. 6 Mart. L. R. 707. Vide Ch. on Bills, 702

Penna. R. 200. Vide Blank.

CARTEL,war. An agreement between two belligerent powers for the delivery of prisoners or deserters, and also a written challenge to a duel.

2. Cartel ship, is a ship commissioned in time of war, to exchange prisoners, or to carry any proposals between hostile powers; she must carry no cargo, ammunitions, or implements of war, except a single gun for signals. The conduct of ships of this description cannot be too narrowly watched. The service on which they are sent is so highly important to the interests of humanity, that it is peculiarly incumbent on all parties to take care that it should be conducted in such a manner as not to become a subject of jealousy and distrust between the two nations. 4 Rob. R. 357. Vide Merl. Rep. b. t.; Dane's Ab. c. 40, a. 6, 7; Pet. C. C. R. 106; 3 C. Rob. 141 C. Rob. 336; 1 Dods. R. 60.

CARTMEN. Persons who carry goods and merchandise in carts, either for great or short distances, for hire.

2. Cartmen who undertake to carry goods for hire as a common employment, are common carriers. Story on Bailm. Sec. 496; and see 2 Wend. 327 2 N. & M. 88; 1 Murph. 41 7; 2 Bailey, 421 2 Verm. 92; 1 M'Cord, 444; Bac. Ab. Carriers, A.

CASE practice. A contested question before a court of justice, a suit or action, a cause. 9 Wheat. 738.

CASE, remedies. This is the name of an action in very general use, which lies where a party sues for damages for any wrong or cause of complaint to which covenant or trespass will not lie. Steph. Pl. 153 Wodd. 167 Ham. N. P. 1. Vide Writ of trespass on the case. In its most comprehensive

signification, case includes assumpsit as well as an action in form ex delicto; but when simply mentioned, it is usually understood to mean an action in form ex delicto. 7 T. R. 36. It is a liberal action; Burr, 906, 1011 1 Bl. Rep. 199; bailable at common law. 2 Barr 927-8; founded on the justice and conscience of the Tiff's case, and is in the nature of a bill in equity 3 Burr, 1353, 1357 and the substance of a count in case is the damage assigned. 1 Bl. Rep. 200.

2. An action on the case lies to recover damages for torts not committed with force actual or implied, or having been occasioned by force, where the matter affected was not tangible, or where the injury was not immediate but consequential; 11 Mass. 59, 137 1 Yeates, 586; 6 S. & R. 348; 12 S. & R. 210; 18 John. 257 19 John. 381; 6 Call, 44; 2 Dana, 378 1 Marsh. 194; 2 H. & M. 423; Harper, 113; Coxe, 339; or where the interest in the property was only in reversion. 8 Pick. 235; 7 Conn. 3282 Green, 8 1 John. 511; 3 Hawks, 2462 Murph. 61; 2 N. H. Rep. 430. In these several cases trespass cannot be sustained. 4 T. 11. 489 7 T. R. 9. Case is also the proper remedy for a wrongful act done under legal process regularly issuing from a court of competent jurisdiction. 2 Conn. 700 11 Mass. 500 6 Greenl. 421; 1 Bailey, 441, 457; 9 Conn. 141; 2 Litt. 234; 3 Conn. 5373 Gill & John. 377. Vide Regular and irregular process.

3. It will be proper to consider, 1. in what cases the action of trespass on the case lies; 2. the pleadings 3. the evidence; 4. the judgment.

4.-1. This action lies for injuries, 1. to the absolute rights of persons 2. to the relative rights of persons; 3. to personal property; 4. to real property.

5.-1. When the injury has been done to the absolute rights of persons by an act not immediate but consequential, as in the case of special damages

arising from a public nuisance Willes, 71 to 74 or where an incumbrance had been placed in a public street, and the plaintiff passing there received an injury; or for a malicious prosecution. See malicious prosecution.

6.-2. For injuries to the relative rights, as for enticing away an infant child, per quod servitium amisit, 4 Litt. 25; for criminal conversation, seducing or harboring wives; debauching daughters, but in this case the daughter must live with her father as his servant, see Seduction; or enticing away or harboring apprentices or servants. 1 Chit. Pl. 137 2 Chit. Plead. 313, 319. When the seduction takes place in the husband's or father's house, he may, at his election, have trespass or case; 6 Munf. 587; Gilmer, but when the injury is done in the house of another, case is the proper remedy. 5 Greenl. 546.

7.-3. When the injury to personal property is without force and. not immediate, but consequential, or when the plaintiff Is right to it is in reversion, as, where property is injured by a third person while in the hands of a hirer; 3 Camp. 187; 2 Murph. 62; 3 Hawks, 246, case is the proper remedy. 8 East, 693; Ld. Raym. 1399; Str. 634; 1 Chit. Pl. 138.

8.-4. When the real property which has been injured is corporeal, and the injury is not immediate but consequential, as for example, putting a spout so near the plaintiff's land that the water runs upon it; 1 Chit. Pl. 126, 141; Str. 634; or where the plaintiff's property is only in reversion. When the injury has been done to, incorporeal rights, as for obstructing a private way, or disturbing a party in the use of a pew, or for injury to a franchise, as a ferry, and the like, case is the proper remedy. l Chit. Pl. 143.

9.-2. The declaration in case, technically so called, differs from a declaration in trespass, chiefly in this, that in case, it must not, in general, state the injury to have been committed vi et armis; 3 Conn. 64; see 2 Ham. 169; 11 Mass. 57; Coxe, 339; yet after verdict, the words "with

force and arms" will, be rejected as surplusage; Harp. 122; and it ought not to conclude contra pacem. Com. Dig. Action on the Case, C 3. The plea is usually the general issue, not guilty.

10.-3. Any matter may, in general, be given in evidence, under the plea of not guilty, except the statute of limitations. In cases of slander and a few other instances, however, this cannot be done. 1 Saund. 130, n. 1; Wilies, 20. When the plaintiff declares in case, with averments appropriate to that form of action and the evidence shows that the injury was trespass; or when he declares in trespass, and the evidence proves an injury for which case will lie, and not trespass, the defendant should be acquitted by the jury, or the plaintiff should be nonsuited. 5 Mass. 560; 16 Mass. 451; Coxe, 339; 3 John. 468.

11.-4. The judgment is, that the plaintiff recover a sum of money, ascertained by a jury, for his damages sustained by the committing of the grievances complained of in the declaration, and costs.

12. In the civil law, an action was given in all cases of nominate contracts, which was always of the same name. But in innominate contracts, which had always the same consideration, but not the same name, there could be no action of the same denomination, but an action which arose from the fact, in factum, or an action with a form which arose from the particular circumstance, praescriptis verbis actio. Lec. Elem. Sec. 779. Vide, generally, Bouv. Inst. Index, h.t.

CASE, STATED, practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as there agreed upon and mentioned, 3 Whart. 143.

2. The facts being thus ascertained, it is left for the court to decide for which party is the law. As no writ of error lies on a judgment rendered

on a case stated, Dane's Ab. c. 137, art. 4, n. Sec. 7, it is usual in the agreement to insert a clause that the case stated shall be considered in the nature of special verdict.

3. In that case, a writ of error lies on the judgment which may be rendered upon it. And a writ of error will also lie on a judgment on a case stated, when the parties have agreed to it. 8 Serg. & Rawle, 529.

4. In another sense, by a case stated is understood a statement of all the facts of a case, together with the names of the witnesses, and, a detail of the documents which are to support them. In other words, it is a brief. (q.v.)

CASH, commerce. Money on hand, which a merchant, trader or other person has to do business with.

2. Cash price, in contracts, is the price of articles paid for in cash, in contradistinction to the credit price. Pard. n. 85; Chipm. Contr. 110. In common parlance, bank notes are considered as cash; but bills receivable are not.

CASH-BOOK, Commerce, accounts. One in which a merchant or trader enters an account of all the money, or paper moneys he receives or pays. An entry of the same thing ought to be made under the proper dates, in the journal. The object of the cash-book is to afford a constant facility to ascertain the true state of a man's cash. Pard. n. 87.

CASHIER. An officer of a moneyed institution, who is entitled by virtue of his office to take care of the cash or money of such institution.

2. The cashier of a bank is usually entrusted with all the funds of the bank, its notes, bills, and other choses in action, to be used from time to time for the ordinary and extraordinary exigencies of the bank. He usually

receives directly, or through subordinate officers, all moneys and notes of the bank delivers up all discounted notes and other securities, when they have been paid draws checks to withdraw the funds of the bank where they have been deposited; and, as the executive officer of the bank, transacts much of the business of the institution. In general, the bank is bound by the acts of the cashier within the scope of his authority, expressed or implied. 1 Pet. R. 46, 70Wheat. R. 300, 361 5 Wheat. R. 326; 3 Mason's R. 505; 1 Breese, R. 45; 1 Monr. Rep. 179. But the bank is not bound by a declaration of the cashier, not within the scope of his authority; as when a note is about to be discounted by the bank, he tells a person that he will incur no risk nor responsibility by becoming an indorser upon such note. 6 Pet. R. 51; 8 Pet. R. 12.Vide 17 Mass. R. 1 Story on Ag. Sec. 114, 115; 3 Halst. R. 1; 12 Wheat. R. 183; 1 Watts & Serg. 161.

To CASHIER, punishment. To break; to deprive a military man of his office. Example: every officer who shall be convicted, before a general court martial, of leaving signed a false certificate relating to the absence of either officer or private soldier, or relative to his daily pay, shall be, cashiered. Articles of war, art. 14.

CASSATION, French law. A decision which emanates from the sovereign authority, and by which a sentence or judgment in the last resort is annulled., Merl. Rep. h.t. This jurisdiction is now given to the Cour de Cassation.

2. This court is composed of fifty-two judges, including four presidents, an attorney-general, and six substitutes, bearing the title of advocates general; a chief clerk, four subordinate clerks, and eight huissiers. Its jurisdiction extends to the examination and superintendence

of the judgments and decrees of the inferior court, both in civil and criminal cases. It is divided into three sections, namely, the section des requetes, the section civile, and the section criminelle. Merl. Rep. mots Cour de Cassation.

CASSETUR BREVE, practice. That the writ be quashed. This is the name of a judgment sometime sentered against a plaintiff when he cannot prosecute his writ with effect, in consequence of some allegation on the defendant's part. The plaintiff, in order to put an end to any further proceeding in the action,enters on the roll cassetur breve, the effect of which is to quash his own writ,which exonerates him from the liability to any future costs, and allows him to sue out new process. A cassetur bill a may be entered with like effect. 3 Bl. Com. 340; and vide 5 T. R. 634; Gould's Plead. c. 5, Sec. 139; 3 Bouv. Inst. n. 2913-14. Vide To quash.

CASTIGATORY, punishments. An engine used to punish women who have been convicted of being common scolds it is sometimes called the trebucket, tumbrel, ducking stool, or cucking stool. This barbarous punishment has perhaps never been inflicted in the United States. 12 S. & It. 225. Vide Common Scold.

CASTING VOTE, legislation. The vote given by the president or speaker of a deliberate assembly; when the votes of the other members are equal on both sides, the casting vote then decides the question. Dane's Ab. h.t.

CASTRATION, crim. law. The act of gelding. When this act is maliciously performed upon a man, it is a mayhem, and punishable as such, although the sufferer consented to it.

2. By the ancient law of England this crime was punished by retaliation, membrum pro membro. 3 Inst. 118. It is punished in the United

States generally by fine and imprisonment. The civil law punished it with death. Dig. 48, 8, 4, 2. For the French law, vide Code Penal, art. 316. 3. The consequences of castration, when complete, are impotence and sterility. 1 Beck's Med. Jur. 72.

CASUPROVISO, practice. A writ of entry given by the statute of Gloucester, c. 7, when a tenant in dower aliens in fee or for life. It might have been brought by the reversioner against the alienee. This, is perhaps an obsolete remedy, having yielded to the writ of ejectment. F. N. B. 205 Dane's Ab. Index, h.t.

CASUAL. What happens fortuitously what is accidental as, the casual revenue's of the government, are those which are contingent or uncertain.

CASUAL EJECTOR, practice, ejectment. A person, supposed to come upon land casually, (although usually by previous agreement,) who turns out the lessee of the person claiming the possession against the actual tenant or occupier of the land. 3 Bl. Com. 201, 202.

2. Originally, in order to try the right by ejectment, Several things were necessary to be made out before the court first, a title to the land, in question, upon which the owner was to make a formal entry; and being so in possession he executed a lease to some third person or lessee, leaving him in possession then the prior tenant or some other person, called the casual ejector, either by accident or by agreement beforehand, came upon the land and turned him out, and for this ouster or turning out, the action was brought. But these formalities are now dispensed with, and the trial relates merely to the title, the defendant being bound to acknowledge the lease,

entry, and ouster. 3 Bl. Com. 202;.Dane's Ab. Index, h.t.

CASUS FOEDORIS. When two nations have formed a treaty of alliance, in anticipation of a war or other difficulty with another, and it is required to determine the case in which the parties must act in consequence of the alliance, this is called the casus foederis, or case of alliance. Vattel, liv. 3, c. 6, Sec. 88.

CASUS FORTUITUS. A fortuitous case; an uncontrollable accident an act of God. See Act of God; Cas fortuit; Fortuitous event.

CASUS OMISSUS. An omitted case.

2. When a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a casus omissus.For example, when a statute provides for the descent of intestates estates, and omits a case, the estate descends as it did before the statute, whenever that, case occurs, although it appear to be within the general scope and intent of the statute. 2 Binn. R. 279.

3. When there has been a casus omissus in a statute, the subject is ruled by the common law: casus omissuset oblivioni datus dispositioni juris communis relinquitur. 5 Co. 38. Vide Dig. 38, 1, 44 and 55 Id. 38, 2, 10; Code, 6, 52, 21 and 30.

CATCHING BARGAIN, contracts, fraud. An agreement made with an heir expectant, for the purchase of his expectancy, at an inadequate price.

2. In such case, the heir is, in general, entitled to relief in equity, and way have the contract rescinded upon terms of redemption. 1 Vern. 167; 2 Cox, 80; 2 Cli. Ca. 136; 2 Vern., 121; 2 Freem. 111; 2 Vent. 329; 2 Rep. in

Ch. 396; 1 P.Wms. 312; 3 P.Wms. 290, 293, n.; 1 Cro. C. C. 7; 2 Atk. 133; 2 Swanst. 147, and the cases cited in the note; 1 Fonb.140 1 Supp. to Ves. Jr. 66 Id. 361 1 Vern. 320, n. It has been said that all persons dealing for a reversionary interest are subject to this rule, but it may be doubted whether the course of decisions authorizes so extensive a conclusion and whether, in order to constitute a title to relief, the reversioner must not combine the character of heir. 2 Swanst. 148, n. Vide 1 Ch. Pr. 112, 113, n., 458, 826, 838, 839. A mere hard bargain is not sufficient ground for relief.

3. The French law is in unison with these principles. An agreement, which has for its object the succession of a man yet alive, is generally void.Merl. Rep. mots Succession Future. Vide also Dig. 14,6, and Lesion.

CATCHPOLE, officer. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is not now in use as an official designation. Minshew ad verb.

CAUSA MATRIMONII PRAELOCUTI, Engl. law. An obsolete writ, which lies when a woman gives land to a man in fee simple, or for a less estate, to the intent that he should marry her and he refuses upon request. New. Nat. Bre. 455.

CAUSE, civ. law. This word has two meanings. 1. It signifies the delivery of

the thing, or the accomplishment of the act which is the object of a convention. Datio vel factum, quibus ab una parte conventio, impleri caepta est. 6 Toull. n. 13, 166. 2. it is the consideration or motive for making a contract. An obligation without a cause, or with a false or unlawful cause,

has no effect; but an engagement is not the less valid, though the cause be not expressed. The cause is illicit, when it is forbidden by law, when it is contra bones mores, or public order. Dig. 2, 14, 7, 4; Civ. Code of Lo. a. 1887-1894 Code Civil, liv. 3, c. 2, s. 4, art. 1131-1133; Toull. liv. 3, tit. 3, c. 2, s. 4.

CAUSE, contra torts, crim. That which produces an effect.

2. In considering a contract, an injury, or a crime, the law for many purposes looks to the immediate, and not to any remote cause. Bac. Max. Reg. 1; Bac. Ab. Damages, E; Sid. 433; 2 Taunt. 314. If the cause be lawful, the party will be justified; if unlawful, he will be condemned. The following is an example in criminal law of an immediate and remote cause. If Peter, of malice prepense, should discharge a pistol at Paul, and miss him, and then cast away the pistol and fly and, being pursued by Paul, he turn round, and kill him with a dagger, the law considers the first as the impulsive cause, and Peter would be guilty of murder. But if Peter, with his dagger drawn, had fallen down, and Paul in his haste had fallen upon it and killed himself, the cause of Paul's death would have been too remote to charge Peter as the murderer. Id.

3. In cases of insurance, the general rule is that the immediate and not the remote cause of the loss is to be considered; causa proximo non remota spedatur. This rule may, in some cases, apply to carriers. Story, Bailm. Sec. 515.

4. For the reach of contracts, the contractor is liable for the immediate effects of such breach, but not for any remote cause, as the failure of a party who was to receive money, and did not receive it, in consequence of which he was compelled to stop payment. 1 Brock. Cir. C. Rep. 103. See Remote; and also Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 6 Bing. R. 716; 6 Ves. 496; Pal. Ag. by Lloyd, 10; Story, Ag. Sec. 200;

3 Sumn. R. 38.

CAUSE, pleading.The reason; the motive.

2. In a replication de injuria, for example, the plaintiff alleges that the defendant of his own wrong, and without the cause by him in his plea alleged, did, &c. The word cause here means without the matter of excuse alleged, and though in the singular number, it puts in issue all the facts in the plea, which constitute but one cause. 8 Co. 67; 11 East, 451; 1 Chit. Pl. 585.

CAUSE, practice. A Contested question before a court of justice; it is a Suit or action. Causes are civil or criminal. Wood's Civ. Law, 302; Code, 2, 416.

CAUSE OF ACTION. By this phrase is understood the right to bring an action, which implies, that there is some person in existence who can assert, and also a person who can lawfully be sued; for example, where the payee of a bill was dead at the time when it fell due, it was held the cause of action did not accrue, and consequently the statute of limitations did not begin to run until letters of administration had been obtained by some one. 4 Bing. 686.

2. There is no cause of action till the claimant can legally sue, therefore the statute of limitations does not run from the making of a promise, if it were to perform something at a future time, but only from the expiration of that time, though, when the obligor promises to pay on demand, or generally, without specifying day, he may be sued immediately, and then the cause of action has accrued. 5 Bar. & Cr. 860; 8 Dowl. & R. 346.When a wrong has been committed, or a breach of duty has occurred, the cause of

action has accrued, though the claimant may be ignorant of it. 3 Barn. & Ald. 288, 626 5 B. & C. 259; 4 C. & P. 127.

CAUTIO PRO EXPENSIS. Security for costs or expenses.

2. This term is used among the civilians, Nov. 112, c. 2, and generally on the continent of Europe. In nearly all the countries of Europe, a foreign plaintiff, whether resident there or not, is required to give caution pro expenses; that is, security for costs. In some states this requisition is modified, and, when such plaintiff has real estate, or a commercial or manufacturing establishment within the state, he is not required to give such

caution. Faelix, Droit. Intern. Prive, n. 106.

CAUTION. A term of the Roman civil law, which is used in various senses. It signifies, sometimes, security, or security promised. Generally every writing is called cautio, a caution by which any object is provided for. Vicat, ad verb. In the common law a distinction is made between a contract and the security. The contract may be good and the security void. The contract may be divisible, and the security entire and indivisible. 2 Burr, 1082. The securities or cautions judicially required of the defendant, are, judicio sisti, to attend and appear during the pendency of the suit; de rato, to confirm the acts of his attorney or proctor; judicium solvi, to pay the sum adjudged against him. Coop. Just. 647; Hall's Admiralty Practice, 12; 2 Brown, Civ. Law, 356.

CAUTION, TURATORY, Scotch law. Juratory caution is that which a suspender swears is the best he can offer in order to obtain a suspension. Where the suspender cannot, from his low or suspected circumstances, procure unquestionable security, juratory caution is admitted. Ersk. Pr. L. Scot. 4,

3, 6.

CAUTIONER, Scotch law, contracts. One who becomes bound as caution or surety for another, for the performance of any obligation or contract contained in a deed.

CAVEAT, practice. That he beware. Caveat is the name of a notice given by a party having an interest, to some officer, not to do an act, till the party giving the notice shall have been heard; as, a caveat to the register of wills, or judge of probate, not to permit a will to be proved, or not to grant letters of administration, until the party shall have been heard. A caveat is also frequently made to prevent a patent for inventions being issued. 1 Bouv. Inst. 71, 534; 1 Burn's Ecc. Law, 19, 263; Bac. Abr. Executors and Administrators, E 8; 3 Bl. Com. 246; Proctor's Pract. 68; 3 Bin. Rep. 314; 1 Siderf. 371 Poph. 133; Godolph. Orph. Leg. 258; 2 Brownl. 119; 2 Fonbl. Eq. book 4, pt. 2, c. 1, Sec. 3; Ayl. Parer. 145 Nelson's Ab. h.t.; Dane's Ab. c. 223, a. 15, Sec. 2, and a. 8, Sec. 22. See 2 Chit. Pr. 502, note b, for a form.

CAVEAT EMPTOR. Let the purchaser take heed; that is, let him see to it, that the title he is buying is good. This is a rule of the common law, applicable to the sale and purchase of lands and other real estate. If the purchaser pay the consideration money, he cannot, as a general rule, recover it back after the deed has been executed; except in cases of fraud, or by force of some covenant in the deed which has been broken. The purchaser,if he fears a defect of title, has it in his power to protect himself by proper covenants, and if he fails to do so, the law provides for him no remedy. Cro. Jac. 197; 1 Salk. 211 Doug. 630, 654; 1 Serg. & R. 52, 53, 445. This rule is

discussed with ability in Rawle on Covenants for Title, p. 458, et seq. c. 13, and the leading authorities collected. See also 2 Kent, Com. Lect. 39, p. 478; 2 Bl. Com. 451; 1 Stor, Eq. Sec. 212 6 Ves. 678; 10 Ves. 505; 3 Cranch, 270; 2 Day, R. 128; Sugd. Vend. 221 1 Bouv. Inst. n. 954-5.

2. This rule has been severely assailed, as being the instrument of falsehood and fraud; but it is too well established to be disregarded. Coop., Just. 611, n. See 8 Watts, 308, 309.

CAVIL. Sophism, subtlety. Cavilis a captious argument, by which a conclusion evidently false, is drawn from a principle evidently true: Ea est natura cavillationis ut ab evidenter veris, per brevissimas mutationes disputatio, ad ea quce evidentur falsa sunt perducatur. Dig. 60, 16, 177 et 233; Id. 17, 65; Id. 33, 2, 88.

CAESARIAN OPERATION, med. juris. An incision made through the parietes of the abdomen and uterus to extract the foetus. It is said that Julius Caesar was born in this manner. When the child is cut out after the death of the mother, his coming into being in this way confers on other persons none of the rights to which they would have been entitled if he had been born, in the usual course of nature, during her life. For example, his father would not be tenant by the curtesy; for to create that title, it ought to begin by the birth of issue alive, and be consummated by the death of the wife. 8 Co. Rep. 35; 2 Bl. Com. 128 Co. Litt. 29 b.; 1 Beck's Med. Jur. 264 Coop. Med. Jur. 7; 1 Fodere, Med. Leg. Sec. 334. The rule of the civil law on this subject will be found in Dig. lib. 50, t. 16, 1. 132 et 141; lib. 5, t. 2, 1. 6; lib. 28, t. 2, 1. 12.

CAETERORUM. The name of a kind of administration, which, after an

administration has been granted for a limited purpose, is granted for the rest of the estate. 1 Will. on Ex. 357; 2 Hagg. 62; 4 Hagg. Eccl. R. 382, 386; 4 Mann. & Gr. 398. For example, where a wife had a right to devise or bequeath certain stock, and she made a will of the same, but there were accumulations that did not pass, the husband might take out letters of administration caeterorum. 4 Mann. & Grang.398;1 Curteis, 286.

TO CEDE, civil law. To assign; to transfer; as, France ceded Louisiana to the United States.

CEDENT, civil law, Scotch law. An assignor. The term is usually applied to the assignor of a chose in action. Kames on Eq. 43.

CELEBRATION, contracts. This word is usually applied, in law, to the celebration of marriage, which is the solemn act by which a man and woman take each other for husband and wife, conformably to the rules prescribed by law. Diet. de Juris. h.t.

CELL. A small room in a prison. See Dungeon.

CENOTAPH. An empty tomb. Dig. 11, 7, 42.

CENSUS. An enumeration of the inhabitants of a country.

2. For the purpose of keeping the representation of the several states in congress equal, the constitution provides, that "representatives and direct taxes shall be apportioned among the several states, which may be included in this Union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those

bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such a manner as they shall by law direct." Art. 1, s. 2; vide 1 Story, L. U. S., 73, 722, 751; 2 Id. 1134, 1139, 1169, 1194; 3 Id. 1776; 4 Sharsw. continuation, 2179.

CENT, money. A copper coin of the United States of the value of ten mills; ten of them are equal to a dime, and one hundred, to one dollar. Each cent is required to contain one hundred and sixty-eight grains. Act of January 18th, 1837, 4 Sharsw. cont. of Story',s L. U. S. 2524.

CENTIME. The name of a French money; the one hundredth part of a franc.

CENTRAL. Relating to the centre, or placed in the centre; as, the central courts of the United States, are those located in the city of Washington, whose jurisdiction extends over the whole country. These are, first, the Senate of the United States, when organized to try impeachments; secondly, the Supreme Court of the United States.

2. The government of the United States is the central government.

CENTUMVIRI, civil law. the citizens of Rome were distributed into thirty-five tribes, and three persons out of each tribe were elected judges, who were called centumviri, although they were one hundred and five in number. They were distributed into four different tribunals, but in certain causes called centumvirales causas, the judgments of the four tribunals were necessary. Vicat,.ad verb.; 3 Bl. Com. 315.

CENTURY, civil law. One hundred. The Roman people were divided into

centuries. In England they were divided into hundreds. Vide Hundred. Century also means one hundred years.

CEPI. A Latin word signifying I have taken. Cepi corpus, I have taken the body; cepi and B. B., I have taken the body and discharged him on bail bond; cepi corpus et est in custodia, I have taken the body and it is in custody; cepi corpus, et est languidus, I have taken the body of, &c. and he is sick. These are some of the various returns made by the sheriff to a writ of capias.

CEPI CORPUS, practice. The return which the sheriff, or other proper officer,

makes when he has arrested a defendant by virtue of a capias. 3 Bouv. Inst. n. 2804. See Capias. F. N. B. 26.

CEPIT. Took. This is a technical word, which cannot be supplied by any other in an indictment for larceny. The charge against the defendant must be that he took the thing stolen with a felonious design. Bac. Ab. Indictment, G 1.

CEPIT ET ABDUXIT. He took and led away. These words are applied to cases of trespass or larceny, where the defendant took a living chattel, and led it away. It is used in contradistinction to took and carried away, cepit et asportavit. (q.v.)

CEPIT ET ASPORTAVIT. Took and carried away. (q.v.)

CEPIT IN ALIO LOCO, pleadings. He took in another place. This is a plea in replevin, by which the defendant alleges, that he took the thing replevied in another place than that mentioned in the plaintiff's declaration. 1 Chit. Pl. 490, 4 Bouv. Inst. n. 3569 2 Chit. Pl. 558; Rast. 554, 555; Clift. 636 Willes, R. 475; Tidd's App. 686.

CERTAINTY, UNCERTAINTY, contracts. In matters of obligation, a thing is certain, when its essence, quality, and quantity, are described, distinctly set forth, Dig. 12, 1, 6. It is uncertain, when the description is not that of one individual object, but designates only the kind. Louis. Code, art. 3522, No. 8 5 Co. 121. Certainty is the mother of repose, and therefore the law aims at certainty. 1 Dick. 245. Act of the 27th of July, 1789, ii. 2, 1 Story's Laws, 6. His compensation for his servicer, shall not exceed two thousand dollars per annum. Gordon's Dig. art. 211.

2. If a contract be so vague in its terms, that its meaning cannot be certainly collected, and the statute of frauds preclude the admissibility of parol evidence to clear up the difficulty; 5 Barn. & Cr. 588; S. C. 12 Eng. Com. L. R. 827; or parol evidence cannot supply the defect, then neither at law, nor in equity, can effect be given to it. 1 Russ. & M. 116; 1 Ch. Pr. 123.

3. It is a maxim of law, that, that is certain which may be made certain; certum est quod certum reddi potest Co. Litt. 43; for example, when a man sells the oil he has in his store at so much a gallon, although there is uncertainty as to the quantity of oil, yet inasmuch as it can be ascertained, the maxim applies, and the sale is good. Vide generally, Story, Eq. El. Sec. 240 to 256; Mitf. Pl. by Jeremy, 41; Coop. Eq. Pl. 5; Wigr. on Disc. 77.

CERTAINTY, pleading. By certainty is understood a clear and distinct

statement of the facts which constitute the cause of action, or ground of defence, so that they may be understood by the party who is to answer them, by the jury who are to ascertain the truth of the allegations, and by the court who are to give the judgment. Cowp. 682; Co. Litt. 308; 2 Bos. & Pull. 267; 13 East, R. 107; Com. Dig. Pleader, C 17; Hob. 295. Certainty has been stated by Lord Coke, Co. Litt. 303, a, to be of three sorts namely, 1. certainty to a common intent 2. to a certain intent in general; and, 3. to a certain intent in every particular. In the case of Dovaston.v. Paine Buller, J. said he remembered to have heard Mr. Justice Ashton treat these distinctions as a jargon of words without meaning; 2 H. Bl. 530. They have, however, long been made, and ought not altogether to be departed from.

2.-1. Certainty to a common intent is simply a rule of construction. It occurs when words are used which will bear a natural sense, and also an artificial one, or one to be made out by argument or inference. Upon the ground of this rule the natural sense of words is adopted, without addition. 2 H. Bl. 530.

3.-2. Certainty to, a certain intent in general, is a greater degree of certainty than the last, and means what upon a fair and reasonable construction may be called certain, without recurring to possible facts which do not appear; 9 Johns. R. 317; and is what is required in declarations, replications, and indictments, in the charge or accusation, and in returns to writs of mandamus. See 1 Saund. 49, n. 1; 1 Dougl. 159; 2 Johns. Cas. 339; Cowp. 682; 2 Mass. R. 363 by some of which authorities, it would seem, certainty to a common intent is sufficient in a declaration.

4.-3. The third degree of certainty, is that which precludes all argument, inference, or presumption against the party, pleading, and is that technical accuracy which is not liable to the most subtle and scrupulous objections, so that it is not merely a rule of construction, but of

addition; for where this certainty is necessary, the party must not only state the facts of his case in the most precise way, but add to them such as show that they are not to be controverted, and, as it were, anticipate the case of his adversary. Lawes on Pl. 54, 55. See 1 Chitty on Pl. 235 to 241.

CERTIFICATE, practice. A writing made in any court, and properly authenticated, to give notice to another court of anything done therein; or it is a writing by which an officer or other person bears testimony that a fact has or has not taken place.

2. There are two kinds of certificates; those required by the law, and those which are merely voluntary. Of the first kind are certificates given to an insolvent of his discharge, and those given to aliens, that they have been naturalized. Voluntary certificates are those which are not required by law, but which are given of the mere motion of the party. The former are evidence of the facts therein mentioned, while the latter are not entitled to any credit, because the facts certified, may be proved in the usual way under the solemnity of an oath or affirmation. 2 Com. Dig. 306; Ayl. Parerg. 157; Greenl. Ev. Sec. 498.

CERTIFICATE, JUDGE'S, English practice. The judge who tries the cause is authorized by several statutes in certain cases to certify, so as to decide when the party or parties shall or shall not be entitled to costs. It is of great importance in many cases, that these certificates should be obtained at the time of trial. See 3 Camp. R. 316; 5 B. & A. 796; Tidd's Pr. 879; 3 Ch. Pr. 458, 486.

2. The Lord Chancellor often requires the opinion of the judges upon a question of law; to obtain this, a case is trained, containing the admissions on both sides, and upon these the legal question is stated; the case is then submitted to the judges, who, after hearing counsel, transmit

to the chancellor their opinion. This opinion, signed by the judges of the court, is called their certificate. See 3 Bl. Com. 453.

CERTIFICATE, ATTORNEY'S, Practice, English law. By statute 37 Geo. III., c. 90, s. 26, 28, attorneys are required to deliver to the commissioners of stamp duties, a paper or note in writing, containing the name and usual place of residence of such person, and thereupon, on paying certain duties, such person is entitled to a certificate attesting the payment of such duties, which must be renewed yearly. And by the 30th section, an attorney is liable to the penalty of fifty pounds for practising without.

CERTIFICATION or CERTIFICATE OF ASSISE. A term used in the old English law, applicable to a writ granted for the reexamination or retrial of a matter passed by assise before justices. F. N. B. 181 3 Bl. Com. 389. The summary motion for a new trial has entirely superseded the use of this writ, which was one of the means devised by the judges to prevent a resort to the remedy by attaint for a wrong verdict.

CERTIORARI, practice. To be certified of; to be informed of. This is the name of a writ issued from a superior court directed to one of inferior jurisdiction, commanding the latter to certify and return to the former, the record in the particular case. Bac. Ab. h.t.; 4 Vin. Ab. 330; Nels. Ab. h.t.; Dane's Ab. Index, h.t.; 3 Penna. R. 24. A certiorari differs from a writ of error. There is a distinction also between a hab. corp. and a certiorari. The certiorari removes the cause; the hab. corp. only supersedes the proceedings in below. 2 Lord Ray. 1102.

2. By the common law, a supreme court has power to review the proceedings of all inferior tribunals, and to pass upon their jurisdiction

and decisions on questions of law. But in general, the determination of such inferior courts on questions of fact are conclusive, and cannot be reversed on certiorari, unless some statute confers the power on such supreme court. 6 Wend. 564; 10 Pick. 358; 4 Halst. 209. When any error has occurred in the proceedings of the court below, different from the course of the common law, in any stage of the cause, either civil or criminal cases, the writ of certiorari is the only remedy to correct such error, unless some other statutory remedy has been given. 5 Binn. 27; 1 Gill & John. 196; 2 Mass. R. 245; 11 Mass. R. 466; 2 Virg. Cas. 270; 3 Halst. 123; 3 Pick. 194 4 Hayw. 100; 2 Greenl. 165; 8 Greenl. 293. A certiorari, for example, is the correct process to remove the proceedings of a court of sessions, or of county commissioners in laying out highways. 2 Binn. 250 2 Mass. 249; 7 Mass. 158; 8 Pick. 440 13 Pick. 195; 1 Overt. 131; 2 Overt. 109; 2 Pen. 1038; 8 Verm. 271 3 Ham. 383; 2 Caines, 179.

3. Sometimes the writ of certiorari is used as auxiliary process, in order to obtain a full return to some other process. When, for example, the record of an inferior court is brought before a superior court by appeal, writ of error, or other lawful mode, and there is a manifest defect, or a suggestion of diminution, a certiorari is awarded requiring a perfect transcript and all papers. 3 Dall. R. 413; 3 John. R. 23; 7 Cranch, R. 288; 2 South. R. 270, 551; 1 Blackf. R. 32; 9 Wheat. R. 526; 7 Halst. R. 85; 3 Dev. R. 117; 1 Dev. & Bat. 382; 11 Mass. 414; 2 Munf. R. 229; 2 Cowen, R. 38. Vide Bouv. Inst. Index, h.t.

CESSET EXECUTIO. The staying of an execution.

2. When a judgment has been entered, there is sometimes, by the agreement of the parties, a cesset executio for a period of time fixed upon and when the defendant enters security for the amount of the judgment, there is a cesset executio until the time allowed by law has expired.

CESSET PROCESSUS, practice. An entry made on the record that there be a stay of the procas or proceedings.

2. This is made in cases where the plaintiff has become insolvent after action brought. 2 Dougl. 627.

CESSAVIT, Eng. law. An obsolete writ, which could formerly have been sued out when the defendant had for two years ceased or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. F. N. B. 208.

CESSIO BONORUM, civil law. The relinquishment which a debtor made of his property for the benefit of his creditors.

2. This exempted the debtor from imprisonment, not, however, without leaving an ignominious stain on his reputation. Dig. 2, 4, 25; Id. 48, 19, 1; Nov. 4, c. 3, and Nov. 135. By the latter Novel, an honest unfortunate debtor might be discharged, by simply affirming that he was insolvent, without having recourse to the benefit of cession. By the cession the creditors acquired title to all the property of the insolvent debtor.

3. The cession discharged the debtor only to the extent of the property ceded, and he remained responsible for the difference. Dom. Lois Civ. liv. 4, tit. 5., s. 1, n. 2. Vide, for the law of Louisiana, Code, art. 2166, et seq. 2 M. R. 112; 2 L. R. 354; 11 L. R. 531; 5 N. S. 299; 2 L. R. 39; 2 N. S. 108; 3 M. R. 232; 4 Wheat. 122; and Abandonment.

CESSION, contracts. Yielding up; release.

2. France ceded Louisiana to the United States, by the treaty of Paris, of April 30, 1803 Spain made a cession of East and West Florida, by the

treaty of February 22, 1819. Cessions have been severally made of a part of their territory, by New York, Virginia, Massachusetts, Connecticut) South Carolina, North Carolina, and Georgia. Vide Gord. Dig. art. 2236 to 2250.

CESSION, civil law. The, act by which a party assigns or transfers property to a other; an assignment.

CESSION, eccl. law. When an ecclesiastic is created bishop, or when a parson takes another benefice, without dispensation, the first benefice becomes void by a legal cession, or surrender. Cowel, h.t.

CESTUI. He. This word is frequently used in composition as, cestui que trust, cestui que vie, &c.

CESTUI QUE TRUST, A barbarous phrase, to signify the beneficiary of an estate held in trust. He for whose benefit another person is enfeoffed or seised of land or tenements, or is possessed of personal property. The cestui que trust is entitled to receive the rents and profits of the land; he may direct such conveyances, consistent with the trust, deed or will, as he shall choose, and the trustee (q.v.) is bound to execute them: he may defend his title in the name of the trustee. 1 Cruise, Dig. tit. 12, c. 4, s. 4; vide Vin. Ab. Trust, U, W, X, and Y 1 Vern. 14; Dane's Ab. Index, h.t.: 1 Story, Eq. Jur. Sec. 321, note 1; Bouv. Inst. Index, h.t.

CESTUI QUE VIE. He for whose life land is holden by another person; the latter is called tenant per auter vie, or tenant for another's life. Vide Dane's Ab. Index, h.t.

CESTUI QUE USE. He to whose use land is granted to another person the latter

is called the terre-tenant, having in himself the legal property and possession; yet not to his own use, but to dispose of it according to the directions of the cestui que use, and to suffer him to take the profits. Vide Bac. Read. on Stat. of Uses, 303, 309, 310. 335, 349; 7 Com. Dig. 593.

CHAFEWAX, Eng, law. An officer in chancery who fits the wax for sealing, to the writs, commissions and other. instruments then made to be issued out. He is probably so called because he warms (chaufe) the wax.

CHAFFERS. Anciently signified wares and merchandise; hence the word chaffering, which is yet used for buying and selling, or beating down the price of an article. The word is used in stat. 3 Ed. III. c. 4.

CHAIRMAN. The presiding officer of a committee; as, chairman of the committee of ways and means. The person selected to preside over a popular meeting, is also called a chairman or moderator.

CHALDRON. A measure of capacity, equal to fifty-eight and two-third cubic feet nearly. Vide Measure.

CHALLENGE. This word has several significations. 1. It is an exception or objection to a juror. 2. A call by one person upon another to a single combat, which is said to be a challenge to fight.

CHALLENGE, criminal law. A request by one person to another, to fight a duel.

2. It is a high offence at common law, and indictable, as tending to a breach of the peace. It may be in writing or verbally. Vide Hawk. P. C. b.

1, c. 63, s. 3; 6 East, R. 464; 8 East, R. 581; 1 Dana, R. 524; 1 South.. R. 40; 3 Wheel. Cr. C. 245 3 Rogers' Rec. 133; 2 M'Cord, R. 334 1 Hawks. R. 487; 1 Const. R. 107. He who carries a challenge is also punishable by indictment. In most of the states, this barbarous practice is punishable by special laws.

3. In most of the civilized nations challenging another to fight. is a crime, as calculated to destroy the public peace; and those who partake in the offence are generally liable to punishment. In Spain it is punished by loss of offices, rents, and horrors received from the king, and the delinquent is incapable to hold them in future. Aso & Man. Inst. B. 2, t. 19, c. 2, Sec. 6. See, generally, 6 J. J. Marsh. 120; 1 Munf. 468; 1 Russ. on Cr. 275; 6 J. J. Marsh. 1 19; Coust. Rep. 10 7; Joy on Chal. passim.

CHALLENGE, practice. An exception made to jurors who are to pass on a trial; to a judge; or to a sheriff.

2. It will be proper here to consider, 1. the several kinds of challenges; 2. by whom they are to be made; 3. the time and manner of making them.

3.-1. The several kinds of challenges may be divided into those which are peremptory, and those which are for cause. 1. Peremptory challenges are those 'which are made without assigning any reason, and which the court must allow. The number of these which the prisoner was allowed at common law, in all cases of felony, was thirty-five, or one under three full juries. This is regulated by the local statutes of the different states, and the number except in capital cases, has been probably reduced.

4.-2. Challenges for cause are to the array or to the polls. 1. A challenge to the array is made on account of some defect in making the return to the venire, and is at once an objection to all the jurors in the panel. It is either a principal challenge, that is, one founded on some

manifest partiality, or error committed in selecting, depositing, drawing or summoning the jurors, by not pursuing the directions of the acts of the legislature; or a challenge for favor.

5.-2. A challenge to the polls is objection made separately to each juror as he is about to be sworn. Challenges to the polls, like those to the array, are either principal or to the favor.

6. First, principal challenges may be made on various grounds: 1st. propter defectum, on account of some personal objection, as alienage, infancy, old age, or the want of those qualifications required by legislative enactment. 2d. Propter affectum, because of some presumed or actual partiality in the juryman who is made the subject of the objection; on this ground a juror may be objected to, if he is related to either within the ninth degree, or is so connected by affinity; this is supposed to bias the juror's mind, and is only a presumption of partiality. Coxe, 446; 6 Greenl. 307; 3 Day, 491. A juror who has conscientious scruples in finding a verdict in a capital case, may be challenged. 1 Bald. 78. Much stronger is the reason for this challenge, where the juryman has expressed his wishes as to the result of the trial, or his opinion of the guilt or innocence of the defendant. 4 Harg. St. Tr. 748; Hawk. b. 2, c. 43, s. 28; Bac. Ab. Juries, E 5. And the smallest degree of interest in the matter to be tried is a decisive objection against a juror. 1 Bay, 229; 8 S. & R. 444; 2 Tyler, 401. But see 5 Mass. 90. 3d. The third ground of principal challenge to the polls, is propter delictum, or the legal incompetency of the juror on the ground of infamy. The court, when satisfied from their own examination, decide as to the principal challenges to the polls, without any further investigation and there is no occasion for the appointment of triers. Co. Litt. 157, b; Bac. Ab. Juries, E 12; 8 Watts. R. 304.

7.-Secondly. Challenges to the poll for favor may be made, when,

although the juror is not so evidently partial that his supposed bias will be sufficient to authorize. a principal challenge, yet there are reasonable grounds to suspect that he will act under some undue influence or prejudice. The causes for such challenge are manifestly very numerous, and depend, on a variety of circumstances. The fact to be ascertained is, whether the juryman is altogether indifferent as he stands unsworn, because, even unconsciously to himself, be may be swayed to one side. The line which separates the causes for principal challenges, and for challenge to the favor, is not very distinctly marked. That the juror has acted as godfather to the child of the prosecutor or defendant, is cause for a principal challenge; Co. Litt. 157, a; while the fact that the party and the juryman are fellow servants, and that the latter has been entertained at the house of the former, is only cause for challenge to the favor. Co. Litt. 147; Bac. Ab. Juries, E 5. Challenges to the favor are not decided upon by the court, but are settled by triers. (q.v.)

8.-2. The challenges may be made by the government, or those who represent it, or by the defendant, in criminal cases; or they may be made by either party in civil cases.

9.-3. As to the time of making the challenge, it is to be observed that it is a general rule, that no challenge can be made either to the array or to the polls, until a full jury have made their appearance, because if that should be the case, the issue will remain pro defectu juratorum; and on this account, the party who intends to challenge the array, may, under such a contingency, pray a tales to complete the number, and then object to the panel. The proper time, of challenging, is between the appearance and the swearing of the jurors. The order of making challenges is to the array first, and should not that be supported, then to the polls; challenging any one juror, waives the right of challenging the array. Co. Litt. 158, a; Bac. Ab. Juries, E 11. The proper manner of making the challenge, is to state all

the objections against the jurors at one time; and the party will not be allowed to make a second objection to the same juror, when the first has been overruled. But when a juror has been challenged on one side, and found indifferent, he may still be challenged on the other. When the juror has been challenged for cause, and been pronounced impartial, he may still be challenged peremptorily. 6 T. R. 531; 4 Bl. Com. 356; Hawk. b. 2, c. 46, s. 10.

10. As to the mode of making the challenge, the rule is, that a challenge to the array must be in writing; but when it is only to a single individual, the words "I challenge him" are sufficient in a civil case, or on the part of the defendant, in a criminal case when the challenge is made for the prosecution, the attorney-general says, "We challenge him." 4 Harg. St. Tr. 740 Tr. per Pais, 172; and see Cro. C. 105; 2 Lil. Entr. 472; 10 Wentw. 474; 1 Chit. Cr. Law, 533 to 551.

11. Interest forms the only ground at common law for challenging a judge. It is no ground of challenge that he has given an opinion in the case before. 4 Bin. 349; 2 Bin. 454. By statute, there are in some states several other grounds of challenge. See Courts of the U. S., 633 64.

12. The sheriff may be challenged for favor as well as affinity. Co. Litt. 158, a; 10 Serg. &. R. 336-7. And the challenge need not be made to the court, but only to the prothonotary. Yet the Sheriff cannot be passed by in the direction of process without cause, as he is the proper officer to execute writs, except in case of partiality. Yet if process be directed to the coroner without cause, it is not void. He cannot dispute the authority of the court, but must execute it at his peril, and the misdirection is aided by the statutes of amendment. 11 Serg. & R. 303.

CHAMBER. A room in a house.

2. It was formerly hold that no freehold estate could be had in a chamber, but it was afterwards ruled otherwise. When a chamber belongs to one person, and the rest of the house with the land is owned by another the two estates are considered as two separate but adjoining dwelling house's. Co. Litt. 48, b; Bro. Ab. Demand, 20; 4 Mass. 575; 6 N. H. Rep. 555; 9 Pick. R. 297; vide 3 Leon. 210; 3 Watts. R. 243.

3. By chamber is also understood the place where an assembly is held; and, by the use of a figure, the assembly itself is called a chamber.

CHAMBER OF COMMERCE. A society of the principal merchants and traders of a city, who meet to promote the general trade and commerce of the place. Some of these are incorporated, as in Philadelphia.

CHAMBERS, practice. When a judge decides some interlocutory matter, which has arisen in the course of the cause, out of court, he is said to make such decision at his chambers. The most usual applications at chambers take place in relation to taking bail, and staying proceedings on process.

CHAMPART, French law. By this name was formerly understood the grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. IS Toull. n. 182.

CHAMPERTOR, crim. law. One who makes pleas or suits, or causes them to be moved, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gain.

CHAMPERTY, crimes. A bargain with a plaintiff or defendant, campum partire, to divide the land or other matter sued for between them, if they prevail at law, the champertor undertaking to carry on the suit at his own expense. 1

Pick. 416; 1 Ham. 132; 5 Monr. 416; 4 Litt. 117; 5 John. Ch. R. 44; 7 Port. R. 488.

2. This offence differs from maintenance, in this, that in the latter the person assisting the suitor receives no benefit, while in the former he receives one half, or other portion, of the thing sued for. See Punishment; Fine; Imprisonment; 4 Bl. Com. 135.

3. This was an offence in the civil law. Poth. Pand. lib. 3, t. 1; App. n. 1, tom. 3, p. 104; 15 Ves. 139; 7 Bligh's R. 369; S. C. 20 E. C. L. R. 165; 5 Moore & P. 193; 6 Carr. & P. 749; S. C. 25 E. C. L. R. 631; 1 Russ. Cr. 179 Hawk. P. C. b. 1 c. 84, s. 5.

4. To maintain a defendant may be champerty. Hawk. P. C. b. 1, c. 84, s. 8 3 Ham. 541; 6 Monr. 392; 8 Yerg. 484; 8 John. 479; 1 John. Ch. R. 444;, 7 Wend. 152; 3 Cowen, 624; 6 Cowen, 90.

CHAMPION. He who fights for another, or takes his place in a quarrel; it also includes him who fights his own battles. Bract. lib. 4, t. 2, c. 12.

CHANCE, accident. As the law punishes a crime only when there is an intention to commit it, it follows that when those acts are done in a lawful business or pursuit by mere chance or accident, which would have been criminal if there had been an intention, express or implied, to commit them, there is no crime. For example, if workmen were employed in blasting rocks in a retired field, and a person not knowing of the circumstance should enter the field, and be killed by a piece of the rock, there would be no guilt in the workmen. 1 East, P. C. 262 Poster, 262; 1 Hale's P. C. 472; 4 Bl. Com. 192. Vide Accident.

CHANCE-MEDLEY, criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens se defendendo. (q.v.) 4 Bl. Com. 184.

CHANCELLOR. An officer appointed to preside over a court of chancery, invested with various powers in the several states.

2. The office of chancellor is of Roman origin. He appears, at first, to have been a chief scribe or secretary, but he was afterwards invested with judicial power, and had superintendence over the other officers of the empire. From the Romans, the title and office passed to the church, and therefore every bishop of the catholic church has, to this day, his chancellor, the principal judge of his consistory. When the modern kingdoms of Europe were established upon the ruins of the empire, almost every state preserved its chancellor, with different jurisdictions and dignities, according to their different constitutions. In all he seems to have had a supervision of all charters, letters, and such other public instruments of the crown, as were authenticated in the most solemn manner; and when seals came into use, he had the custody of the public seal.

3. An officer bearing this title is to be found in most countries of Europe, and is generally invested with extensive authority. The title and office of chancellor came to us from England. Many of our state constitutions provide for the appointment of this officer, who is by them, and by the law of the several states, invested with power as they provide. Vide Encyclopedie, b. t.; Encycl.. Amer. h.t.; Dict. de Jur. h.t.; Merl. Rep. h.t.; 4 Vin. Ab. 374; Blake's Ch. Index, h.t.; Woodes. Lect. 95.

CHANCERY. The name of a court exercising jurisdiction at law, but mainly in equity.

2. It is not easy to determine how courts of equity originally obtained

the jurisdiction they now exercise. Their authority, and the extent of it, have been subjects of much question, but time has firmly established them; and the limits of their jurisdiction seem to be in a great degree fixed and ascertained. 1 Story on Eq. ch. 2; Mitf. Pl. Introd.; Coop. Eq. Pl. Introd. See also Butler's Reminiscences, 38, 40; 3 Bl. Com. 435; 2 Bin. 135; 4 Bin. 50; 6 Bin. 162; 2 Serg. & R. 356; 9 Serg. & R. 315; for the necessity, origin and use of courts of chancery.

3. The judge of the court of chancery, often called a court of equity, bears the title of chancellor. The equity jurisdiction, in England, is vested, principally, in the high court of chancery. This court is distinct from courts of law. "American courts of equity are, in some instances, distinct from those of law, in others, the same tribunals exercise the jurisdiction both of courts of law and equity, though their forms of proceeding are different in their two capacities. The supreme court of the United States, and the circuit courts, are invested with general equity powers, and act either as court's of law or equity, according to the form of the process and the subject of adjudication. In some of the states, as New York, Virginia, and South Carolina, the equity court is a distinct tribunal, having its appropriate judge, or chancellor, and officers. In most of the states, the two jurisdictions centre in the same judicial officers, as in the courts of the United States; and the extent of equity jurisdiction and proceedings is very various in the different states, being very ample in Connecticut, New York, New Jersey, Maryland, Virginia, and South Carolina, and more restricted in Maine, Massachusetts, Rhode Island, and Pennsylvania. But the salutary influence of these powers on the judicial administration generally, by the adaptation of chancery forms and modes of proceeding to many cases in which a court of law affords but an imperfect remedy, or no remedy at all, is producing a gradual extension of them in those states

where they have been, heretofore, very limited."

4. The jurisdiction of a court of equity differs essentially from that of a court of law. The remedies for wrongs, or for the enforcement of rights, may be distinguished into two classes those which are administered in courts of law, and those which are administered in courts of equity. The rights secured by the former are called legal; those secured by the latter are called equitable. The former are said to be rights and remedies at common law, because recognized and enforced in courts of common law. The latter are said to be rights and remedies in equity, because they are administered in courts of equity or chancery, or by proceedings in other courts analogous to those in courts of equity or chancery. Now, in England and America, courts of common law proceed by certain prescribed forms, and give a general judgment for or against the defendant. They entertain jurisdiction only in certain actions, and give remedies according to the particular exigency of such actions. But there are many cases in which a simple judgment for either party, without qualifications and conditions, and particular arrangements, will not. do entire justice, ex aequo et bono, to either party. Some modification of the rights of both parties is required; some restraints on one side or the other; and some peculiar adjustments, either present or future, temporary or perpetual. Now, in all these cases, courts of common law have no methods of proceeding, which can accomplish such objects. Their forms of actions and judgment are not adapted to them. The proper remedy cannot be found, or cannot be administered to the full extent of the relative rights of all parties. Such prescribed forms of actions are not confined to our law. They were known in the civil law; and the party could apply them only to their original purposes. In other cases, he had a special remedy. In such cases, where the courts of common law cannot grant the proper remedy or relief, the law of England and of the United States (in those states where equity is administered) authorizes an

application to the courts of equity or chancery, which are not confined or limited in their modes of relief by such narrow regulations, but which grant relief to all parties, in cases where they have rights, ex aequo et bono, and modify and fashion that relief according to circumstances. The most general description of a court of equity is, that it has jurisdiction in cases where a plain, adequate and complete remedy cannot be had at law that is, in common law courts. The remedy must be plain; for, if it be doubtful and obscure at law, equity will assert a jurisdiction. So it must be adequate at law; for, if it fall short of what the party is entitled to, that founds a jurisdiction in equity. And it must be complete; that is, it must attain its full end at law it must reach the whole mischief and secure the whole right of the party, now and for the future otherwise equity will interpose, and give relief. The jurisdiction of a court of equity is sometimes concurrent with that of courts of, law and sometimes it is exclusive. It exercises concurrent jurisdiction in cases where the rights are purely of a legal nature, but where other and more efficient aid is required than a court of law can afford, to meet the difficulties of the case, and ensure full redress. In some of these cases courts of law formerly refused all redress but now will grant it. But the jurisdiction having been once justly acquired at a time when there was no such redress at law, it is not now relinquished. The most common exercise of concurrent jurisdiction is in cases of account, accident, dower, fraud, mistake, partnership, and partition. The remedy is here often more complete and effectual than it can be at law. In many cases falling under these heads, and especially in some cases of fraud, mistake and accident, courts of law cannot and do not afford any redress; in others they do, but not always in so perfect a manner. A court of equity also is assistant to the jurisdiction of courts of law, in many cases, where the latter have no like authority. It will remove legal

impediments to the fair decision of a question depending at law. It will prevent a party from improperly setting up, at a trial, some title or claim, which would be inequitable. It will compel him to discover, on his own oath, facts which he knows are material to the rights of the other party, but which a court of law cannot compel the party to discover. It will perpetuate the testimony of witnesses to rights and titles, which are in danger of being

lost, before the, matter can be tried. It will provide for the safety of property in dispute pending litigation. It will counteract and control, or set aside, fraudulent judgments. It will exercise, in many cases, an exclusive jurisdiction. This it does in all cases of morely equitable rights, that is, such rights as are not recognized in courts of law. Most cases of trust and confidence fall under this head. Its exclusive jurisdiction is also extensively exercised in granting special relief beyond the reach of the common law. It will grant injunctions to prevent waste, or irreparable injury, or to secure a settled right, or to prevent vexatious litigations, or to compel the restitution of title deeds; it will appoint receivers of property, where it is in danger of misapplication it will compel the surrender of securities improperly obtained; it will prohibit a party from leaving the country in order to avoid a suit it will restrain any undue exercise of a legal right, against conscience and equity; it will decree a specific performance of contracts respecting real estates; it will, in many cases, supply the imperfect execution of instruments, and reform and alter them according to the real intention of the parties; it will grant relief in cases of lost deeds or securities; and, in all cases in which its interference is asked, its general rule is, that he who asks equity must do equity. If a party, therefore, should ask to have a bond for a usurious debt given up, equity could not decree it, unless he could bring into court the money honestly due without usury. This is a very general and imperfect

outline of the jurisdiction of a court of equity; in respect to which it has been justly remarked, that, in matters within its exclusive jurisdiction, where substantial justice entitles the party to relief, but the positive law is silent, it is impossible to define the boundaries of that jurisdiction, or to enumerate, with precision, its various principles." Ency. Am. art. Equity. Vide Fonb. Eq.; Story on Eq.; Madd. Ch. Pr.; 10 Amer. Jur. 227; Coop. Eq. Pl.; Redesd. Pl.; Newl. Cb. Practice; Beame's Pl. Eq.; Jeremy on Eq.; Encycl. Amer. article Equity, Court.

CHANGE. The exchange of money for money. The giving, for example, dollars for eagles, dimes for dollars, cents for dimes. This is a contract which always takes place in the same place. By change is also understood small money. Poth. Contr. de Change, n. 1.

CHANGE TICKET. The name given in Arkansas to a species of promissory notes issued for the purpose of making change in small transactions. Ark. Rev. Stat. cb. 24.

CHAPLAIN. A clergyman appointed to say prayers and perform divine service. Each house of congress usually appoints it own chaplain.

CHAPMAN. One whose business is to buy and sell goods or other things. 2 Bl. Com. 476.

CHAPTER, eccl. law. A congregation of clergymen. Such an assembly is termed capitulum, which signifies a little head it being a kind of head, not only to govern the diocese in the vacation of the bishopric, but also for other purposes. Co. Litt. 103.

CHARACTER, evidence. The opinion generally entertained of a person derived from the common re 'port of the people who are acquainted with him. 3 Serg. & R. 336; 3 Mass. 192; 3 Esp. C. 236.

2. There are three classes of cases on which the moral character and conduct of a person in society may be used in proof before a jury, each resting upon particular and distinct grounds. Such evidence is admissible, 1st. To afford a presumption that a particular party has not been guilty of a criminal act. 2d. To affect the damages in particular cases, where their amount depends on the character and conduct of any individual; and, 3d. To impeach or confirm the veracity of a witness.

3.-1. Where the guilt of an accused party is doubtful, and the character of the supposed agent is involved in the question, a presumption of innocence arises from his former conduct in society, as evidenced by his general character, since it is not probable that a person of known probity and humanity, would commit a dishonest or outrageous act in the particular instance. Such presumptions, however, are so remote from fact, and it is frequently so difficult to estimate a person's real character, that they are entitled to little weight, except in doubtful cases. Since the law considers a presumption of this nature to be admissible, it is in principle admissible 'Whenever a reasonable presumption arises from it, as to the fact in question; in practice it is admitted whenever the character of the party is involved in the issue. See 2 St. Tr. 1038 1 Coxes Rep. 424; 5 Serg. & R. 352 3 Bibb, R. 195; 2 Bibb, R. 286; 5 Day, R. 260; 5 Esp. C. 13; 3 Camp. C. 519; 1 Camp. C. 460; Str. R. 925. Tha. Cr. Cas. 230; 5 Port. 382.

4.-2. In some instances evidence in disparagement of character is admissible, not in order to prove or disprove the commission of a particular fact, but with a view to damages. In actions for criminal conversation with the plaintiff's wife, evidence may be given of the wife's general bad

character, for want of chastity, and even of particular acts of adultery committed by her, previous to her intercourse with the defendant. B. N. P. 27, 296; 12 Mod. 232; 3 Esp. C. 236. See 5 Munf. 10. In actions for slander and libel, when the defendant has not justified, evidence of the plaintiff's bad character has also been admitted. 3 Camp. C. 251; 1 M. & S. 284; 2 Esp. C. 720; 2 Nott & M'Cord, 511; 1 Nott & M'Cord, 268; and see 11 Johns. R. 38; 1 Root, R. 449; 1 Johns. R. 46; 6 Penna. St. Rep. 170. The ground of admitting such evidence is, that a person of disparaged fame is not entitled to the same measure of damages with one whose character is unblemished. When, however, the defendant justifies the slander, it seems to be doubtful whether the evidence of reports as to the conduct and character of the plaintiff can be received. See 1 M. & S. 286, n (a) 3 Mass. R. 553 1 Pick. R. 19. When evidence is admitted touching the general character of a party, it is manifest that it is to be confined to matters in reference to the nature of the, charge against him. 2 Wend. 352.

5.-3. The party against whom a witness is called, may disprove the fact& stated by him, or may examine other witnesses as to his general character; but they will not be allowed to speak of particular facts or parts of his conduct. B. N. P. 296. For example, evidence of the general character of a prosecutrix for a rape, may be given, as that she was a street walker; but evidence of specific acts of criminality cannot be admitted. 3 Carr. & P. 589. The regular mode is to inquire whether the witness under examination has the means of knowing the former witness general character, and whether from such knowledge he would believe, him on his oath. 4 St. Tr. 693; 4 Esp. C. 102. In answer to such evidence against character, the other party may cross-examine the witness as to his means of knowledge, and the grounds of his opinion; or he may attack such witness general character, and by fresh evidence support the character of his own. 2

Stark. C. 151; Id. 241; St. Ev. pt. 4, 1753 to 1758; 1 Phil. Ev. 229. A party cannot give evidence to confirm the good character of a witness, unless his general character has been impugned by his antagonist. 9 Watts, R. 124. See, in general, as to character, Phil. Ev. Index, tit. Character; Stark. Ev. pl. 4, 364 Swift's Ev. 140 to 144 5 Ohio R. 227; Greenl. Ev. Sec. 54; 3 Hill, R. 178 Bouv. Inst. Index, h.t.

CHARGE, practice. The opinion expressed by the court to the jury, on the law arising out of a case before them.

2. It should contain a clear and explicit exposition of the law, when the points of the law in dispute arise out of the facts proved on the trial of the cause; 10 Pet. 657; but the court ought at no time to undertake to decide the facts, for these are to be decided by the jury. 4 Rawle's R. 195; 2 Penna. R. 27; 4 Rawle's R. 356 Id. 100; 2 Serg. & Rawle, 464; 1 Serg. & Rawle, 515; 8 Serg. & Rawle, 150. See 3 Cranch, 298; 6 Pet. 622 1 Gall. R. 53; 5 Cranch, 187; 2 Pet. 625; 9 Pet. 541.

CHARGE, contracts. An obligation entered into by the owner of an estate which makes the estate responsible for its performance. Vide 2 Ball & Beatty, 223; 8 Com. Dig. 306, Appendix, h.t. Any obligation binding upon him who enters into it, which may be removed or taken away by a discharge. T. de la Ley, h.t.

2. That particular kind of commission which one undertakes to perform for another, in keeping the custody of his goods, is called a charge.

CHARGE. wills, devises. An obligation which a testator imposes on his devisee; as, if the testator give Peter, Blackacre, and direct that he shall pay to John during his life an annuity of one hundred dollars, which shall be a charge" on said land; or if a legacy be and directed to be paid out of

the real property. 1 Rop. Leg. 446. Vide 4 Vin. Ab. 449; 1 Supp. to Ves. jr. 309; 2 Id. 31; 1 Vern. 45, 411; 1 Swanst. 28; 4 East, R. 501; 4 Ves. jr. 815; Domat, Loix Civ. liv. 3, t. 1, s. 8, n.

CHARGE' DES AFFAIRES or CHARGE' D'AFFAIRES, international law. These phrases, the first of which is used in the acts of congress, are synonymous.

2. The officer who bear; this title is a diplomatic representative or minister of an inferior grade, to whose care are confided the affairs of his nation. He has not the title of minister, and is generally introduced and admitted through a verbal presentation of the minister, at his departure, or through letters of credence addressed to the minister of state of the court to which they are sent. He has the essential rights of a minister. Mart. Law of Nat. 206; 1 Kent, Com. 39, n.; 4 Dall. 321.

3. The president is authorized to allow to any, charge des affaires a sum not greater than at the rate of four thousand five hundred dollars per annum, as a compensation for his personal services and expenses. Act of May 1, 1810, 2 Story's Laws U. S. 1171.

CHARGER, Scotch law. He in whose favor a decree suspended is pronounced; vet a decree may be suspended before a charge is given on it. Ersk. Pr. L. Scot. 4, 3, 7.

CHARGES. The term charges signifies the expenses which have been incurred in relation either to a transaction or to a suit; as the charges incurred for his benefit must be paid by a hirer; the defendant must pay the charges of a suit. The term charges, in relation to actions, includes something more than the costs, technically called.

CHARITY. In its widest sense it denotes all the good affections which men ought to bear towards each other; 1 Epistle to Cor. c. xiii.; in its most restricted and usual sense, it signifies relief to the poor. This species of charity is a mere moral duty, which cannot be enforced by the law. Kames on Eq. 17. But it is not employed in either of these senses in law; its signification is derived chiefly from the statute of 43 Eliz. c. 4. Those purposes are considered charitable which are enumerated in that act, or which by analogy are deemed within its spirit and intendment. 9 Ves. 405; 10 Ves, 541; 2 Vern. 387; Shelf. Mortm. 59. Lord Chancellor Camden describes a charity to be a gift to a general public use, which extends to the rich as well as to the poor. Ambl. 651; Boyle on Charities, 51; 2 Ves. sen. 52; Ambl. 713; 2 Ves. jr. 272; 6 Ves. 404; 3 Rawle, 170; 1 Penna. R. 49 2 Dana, 170; 2 Pet. 584; 3 Pet. 99, 498 9 Cow. 481; 1 Hawks, 96; 12 Mass. 537; 17 S. & R. 88; 7 Verm. 241; 5 Harr. & John. 392; 6 Harr. & John. 1; 9 Pet. 566; 6 Pet. 435; 9 Cranch, 331; 4 Wheat. 1; 9 Wend. 394; 2 N. H. Rep. 21, 510; 9 Cow. 437; 7 John. Cb. R. 292; 3 Leigh. 450; 1 Dev. Eq. Rep. 276; 4 Bouv. Inst. n. 3976, et seq.

CHARRE OF LEAD, Eng. law, commerce. A quantity of lead consisting of thirty pigs, each pig containing six stones wanting two pounds, and every stone being twelve pounds. Jacob.

CHARTA. An ancient word which signified not only a charter or deed in writing, but any signal or token by which an estate was held.

CHARTA CHYROGRAPIHATA VEL COMMUNIS. Signifies an indenture. Shep. Touch. 50; Beames, Glanv. 197-8; Fleta, lib. 3, c. 14, Sec. 3. It was so called, because each party had a part.

CHARTA DE UNA PARTE. A deed of one part; a deed poll.

2. Formerly, this phrase was used to distinguish, a deed poll, which is an agreement made by one party only, that is, only one of the parties does any act which is binding upon him, from a deed inter partes. Co. Litt. 229. Vide Deed poll; Indenture; Inter partes.

CHARTER. A grant made by the sovereign either to the whole people or to a portion of them, securing to them the enjoyment of certain rights. Of the former kind is the late charter of France, which extended to the whole country; the charters which were granted to the different American colonies by the British government were charters of the latter species. 1 Story, Const. L. Sec. 161; 1 Bl. Com. 108 Encycl. Amer. Charte Constitutionelle.

2. A charter differs from a CONSTITUTION in this, that the former is granted by the sovereign, while the latter is established by the people themselves : both are the fundamental law of the land.

3. This term is susceptible of another signification. During the middle ages almost every document was called carta, charta, or chartula. In this sense the term is nearly synonymous with deed. Co. Litt. 6; 1 Co. 1; Moor. Cas. 687.

4. The act of the legislature creating a corporation, is called its charter. Vide 3 Bro. Civ. and Adm. Law, 188; Dane's Ab. h.t.

CHARTER, mar. contr. An agreement by which a vessel is hired by the owner to another; as A B chartered the ship Benjamin Franklin to C D.

CHARTER-LAND, Eng. law. Land formerly held by deed under certain rents and free services, and it differed in nothing from free socage land. It was also called bookland. 2 Bl. Com. 90.

CHARTER-PARTY, contracts. A contract of affreightment in writing, by which the owner of a ship or other vessel lets the whole, or a part of her, to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. This term is derived from the fact, that the contract which bears this name, was formerly written on a card, and afterwards the card was cut into two parts from top to bottom, and one part was delivered to each of the parties, which was produced when required, and by this means counterfeits were prevented.

2. This instrument ought to contain, 1. the name and tonnage of the vessel; 2. the name of the captain; 3. the names of the letter to freight and the freighter; 4. the place and time agreed upon for the loading and discharge; 5. the price of the freight; 6. the demurrage or indemnity in case of delay; 7. such other conditions as the parties may agree upon. Abbott on Ship. pt. 3, c. 1, s. 1 to 6; Poth. h.t. n. 4; Pardessus, Dr. Coin. pt. 4, t. 4, c. 1, n. 708.

3. When a ship is chartered, this instrument serves to authenticate many of the facts on which the proof of her neutrality must rest, law. He must not leave his master's service during the term of the apprenticeship. The apprentice is entitled to payment for extraordinary services, when promised by the master; 1 Penn. Law Jour. 368. See 1 Whart. 113; and even when no express promise has been made, under peculiar circumstances. 2 Cranch, 240, 270; 3 Rob. Ad. Rep. 237; but see 1 Whart, 113. See generally, 2 Kent, Com. 211-214; Bac. Ab. Master and Servant; 1 Saund. R. 313, n. 1, 2, 3, and 4; 3 Rawle, R. 307 3 Vin. Ab. 19; 1 Bohip and Shipping, iv.

CHARTERED SHIP. When a ship is hired or freighted by one or more merchants for a particular voyage or on time, it is called a chartered ship. It is freighted by a special contract of affreightment, executed between the

owners, ship's husband, or master on the one hand, and the merchants on the other. It differs, from a general ship. (q.v.)

CHARTIS REDDENDIS, Eng. law. An ancient writ, now obsolete, which lays against one who had charters of feoffment entrusted to his keeping, and who refused to deliver them. Reg. Orig. 159.

CHASE, Eng. law. The liberty of keeping beasts of chase, or royal gaine, on another man's ground as well as on one's own ground, protected even from the owner of the land, with a power of hunting them thereon. It differs from a park, because it may be on another's ground, and because it is not enclosed. 2 Bl. Com. 38.

CHASE, property. The act of acquiring possession of animals ferae naturae by force, cunning or address. The hunter acquires a right to such animals by occupancy, and they become his property. 4 Toull. n. 7. No man has a right to enter on the lands of another for the purpose of hunting, without his consent. Vide 14 East, R. 249 Poth. Tr. du Dr. de Propriete, part 1, c. 2, art. 2. CHASTITY. That virtue which prevents the unlawful commerce of the sexes.

2. A woman may defend her chastity by killing her assailant. See Self Defence. And even the solicitation of her chastity is indictable in some of the states; 7 Conn. 267; though in England, and perhaps elsewhere, such act is not indictable. 2 Chit. Pr. 478. Words charging a woman with a violation of chastity are actionable in themselves. 2 Conn. 707.

CHATTELS, property. A term which includes all hinds of property, except the freehold or things which are parcel of it. It is a more extensive term than

goods or effects. Debtors taken in execution, captives, apprentices, are accounted chattels. Godol. Orph. Leg. part 3, chap. 6, Sec. 1.

2. Chattels are personal or real. Personal, are such as belong immediately to the person of a man; chattels real, are such as either appertain not immediately to the person, but to something by way of dependency, as a box with the title deeds of lands; or such as are issuing out of some real estate, as a lease of lands, or term of years, which pass like personally to the executor of the owner. Co. Litt. 118; 1 Chit. Pr. 90; 8 Vin. Ab. 296; 11 Vin. Ab. 166; 14 Vin. Ab. 109; Bac. Ab. Baron, &c. C 2; 2 Kent, Com. 278; Dane's Ab. Index, h.t.; Com. Dig. Biens, A; Bouv. Inst. Index, h.t. CHEAT, criminal law, torts. A cheat is a deceitful practice, of a public nature, in defrauding another of a known right, by some artful device, contrary to the plain rules of common honesty. 1 Hawk. 343.

2. To constitute a cheat, the offence must be, 1st. of a public nature for every species of fraud and dishonesty in transactions between individuals is not the subject-matter of a criminal charge at common law; it must be such as is calculated to defraud numbers, and to deceive the people in general. 2 East, P. C. 816; 7 John. R. 201; 14 John. R. 371; 1 Greenl. R. 387; 6. Mass. R. 72; 9 Cowen, R. 588; 9 Wend. R. 187; 1 Yerg. R. 76; 1 Mass. 137. 2. The cheating must be done by false weights, false measures, false tokens, or the like, calculated to deceive numbers. 2 Burr, 1125; 1 W. Bl. R. 273; Holt, R. 354.

3. That the object of the defendant in defrauding the prosecutor was successful. If unsuccessful, it is a mere attempt. (q.v.) 2 Mass. 139. When two or more enter into an agreement to cheat, the offence is a conspiracy. (q.v.) To call a man a cheat is slanderous. Hetl. 167; 1 Roll's Ab. 53; 2 Lev. 62. Vide Illiterate; Token.

CHECK, contracts. A written order or request, addressed to a bank or persons

carrying on the banking business, and drawn upon them by a party having money in their hands, requesting them to pay on presentment to a person therein named or to bearer, a named sum of money.

2. It is said that checks are uniformly payable to bearer Chit. on Bills, 411; but that is not so in practice in the United States. they are generally payable to bearer, but sometimes they are payable to order.

3. Cheeks are negotiable instruments, as bills of exchange; though, strictly speaking, they are due before payment has been demanded, i$n which respect they differ from promissory notes and bills of exchange payable on a particular day. 7 T. R. 430.

4. The differences between a common check and a bill of exchange, are, First, that a check may be taken after it is overdue, and still the holder is not subject to the equities which may exist between the drawer and the party 'from whom he receives it; in the case of bills of exchange, the holder is subject to such equity. 3 John. Cas. 5, 9; 9 B. & Cr. 388. Secondly, the drawer of a bill of exchange is liable only on the condition that it be presented in due time, and, if it be dishonored, that he has had notice; but such is not the case with a check, no delay will excuse the drawer of it, unless he has suffered some loss or injury on that account, and then only pro tanto. 3 Kent, Com. 104 n. 5th ed.; 8 John. Cas. 2; Story, Prom. Notes, Sec. 492.

5. There is a kind of check known by the name of memorandum cheeks; these are given in general with an understanding that they are not to be presented at the bank on which they are drawn for payment; and, as between the parties, they have no other effect than an IOU, or common due bill; but third persons who become the holders of them, for a valuable consideration, without notice, have all the rights which the holders of ordinary cheeks can lawfully claim. Story, Prom. Notes, Sec. 499.

6. Giving a creditor a cheek on a bank does not constitute payment of a debt. 1 Hall, 56, 78; 7 S. & R. 116; 2 Pick. 204; 4 John. 296. See 3 Rand. 481. But a tender was held good when made by a check contained in a letter, requesting a receipt in return, which the plaintiff sent back, demanding a larger sum, without objecting to the nature of the tender. 3 Bouv. Inst. n. 2436.

7. A cheek delivered by a testator in his lifetime to a person as a gift, and not presented till after his death, was considered as a part of his will, and allowed to be proved as such. 3 Curt. Ecc. R. 650. Vide, generally,4 John. R. 304; 7 John. R. 26; 2 Ves. jr. 111; Yelv. 4, b, note; 7 Serg. & Rawle, 116; 3 John. Cas. 5, 259; 6 Wend. R. 445; 2 N. & M. 251; 1 Blackf. R. 104; 1 Litt. R. 194; 2 Litt. R. 299; 6 Cowen, R. 484; 4 Har. & J. 276; 13 Wend. R. 133; 10 Wend. R. 304; 7 Har. & J. 381; 1 Hall, R. 78; 15 Mass. R. 74; 4 Yerg. R. 210; 9 S. & R. 125; 2 Story, R. 502; 4 Whart. R. 252.

CHECK BOOK, commerce. One kept by persons who have accounts in bank, in which are printed blank forms of cheeks, or orders upon the bank to pay money.

CHEMISTRY med. jur. The science which teaches the nature and property of all bodies by their analysis and combination. In considering cases of poison, the lawyer will find a knowledge of chemistry, even very limited in degree, to be greatly useful. 2 Chit. Pr. 42, n.

CHEVISANCE, contracts, torts. This is a French word, which signifies in that language, accord, agreement, compact. In the English statutes it is used to denote a bargain or contract in general. In a legal sense it is taken for an unlawful bargain or contract.

CHIEF, principal. One who is put above the rest; as, chief magistrate chief justice : it also signifies the best of a number of things. It is frequently used in composition.

CHIEF CLERK OF THE DEPARTMENT OF STATE. This officer is appointed by the secretary of state; his duties are to attend to the business of the ofFice under the superintendence of the secretary; and when the secretary shall be removed from office, by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books and papers appertaining to such department,

CHIEF JUSTICE, officer. The president of a supreme court; as the chief justice of the United States, the chief justice of Pennsylvania, and the like. Vide 15 Vin. Ab. 3.

CHIEF JUSTICIARY. An officer among the English, established soon after the conquest.

2. He had judicial power, and sat as a judge in the Curia Regis. (q.v.) In the absence of the king, he governed the kingdom. In the course of time, the power and distinction of this officer gradually diminished, until the reign of Henry III, when the office was abolished.

CHILD, CHILDREN, domestic relations. A child is the son or daughter in relation to the father or mother.

2. We will here consider the law, in general terms, as it relates to the condition, duties, and rights of children; and, afterwards, the extent which has been given to the word child or children by dispositions in wills

and testaments.

3.-1. Children born in lawful wedlock, or within a competent time afterwards, are presumed to be the issue of the father, and follow his condition; those born out of lawful wedlock, follow the condition of the mother. The father is bound to maintain his children and to educate them, and to protect them from injuries. Children are, on their part, bound to maintain their fathers and mothers, when in need, and they are of ability so to do. Poth. Du Marriage, n. 384, 389. The father in general is entitled to the custody of minor children, but, under certain circumstances, the mother will be entitled to them, when the father and mother have separated. 5 Binn. 520. Children are liable to the reasonable correction of their parents. Vide Correction

4.-2. The term children does not ordinarily and properly speaking comprehend grandchildren, or issue generally; yet sometimes that meaning is, affixed to it, in cases of necessity; 6 Co. 16; and it has been held to signify the same as issue, in cases where the testator, by using the terms children and issue indiscriminately, showed his intention to use the former term in the sense of issue, so as to entitle grandchildren, & c., to take under it. 1 Ves. sen. 196; Ambl. 555; 3 Ves. 258; Ambl. 661; 3 Ves. & Bea. 69. When legally construed, the term children is confined to legitimate children. 7 Ves. 458. The civil code of Louisiana, art. 2522, n. 14, enacts, that "under the, name of children are comprehended, not only children of the first degree, but the grandchildren, great-grand-children, and all other descendants in the direct line."

5. Children are divided into legitimate children, or those born in lawful wedlock; and natural or illegitimate children, who are born bastards. (q.v.) Vide Natural Children. Illegitimate children are incestuous bastards, or those which are not incestuous.

6. Posthumous children are those who are born after the death of their

fathers. Domat, Lois Civ. liv. prel. t. 2, s. 1, Sec. 7 L. 3, Sec. 1, ff de inj. rupt.

7. In Pennsylvania, the will of their fathers, in, which no provision is made for them, is revoked, as far as regards them, by operation of law. 3 Binn. R. 498. See, as to the law of Virginia on this subject, 3 Munf. 20, and article In ventre sa mere. Vide, generally, 8 Vin. Ab. 318; 8 Com. Dig. 470; Bouv. Inst. Index, h.t.; 2 Kent, Com. 172; 4 Kent, Com. 408, 9; 1 Rop. on Leg. 45 to 76; 1 Supp. to Ves. jr. 442 Id. 158; Natural children.

CHILDISHNESS. Weakness of intellect, such as that of a child.

2. When the childishness is so great that a man has lost his memory, or is incapable to plan a proper disposition of his property, he is unable to make a will. Swinb. part. 11, Sec. 1; 6 Co. 23. See 9 Conn. 102; 9 Phil. R. 57.

CHIMIN. This is a corruption of the French word chemin, a highway. It is used by old writers. Com. Dig. Chimin.

CHINESE INTEREST. Interest for money charged in China. In a case where a note was given in China, payable eighteen mouths after date, without, any stipulation respecting interest, the court allowed the Chinese interest of one per cent. per month, from the expiration of the eighteen months. 2 Watts & Serg. 227, 264.

CHIROGRAPH, conveyancing. Signifies a deed or public instrument in writing. Chirographs were anciently attested by the subscription and crosses of witnesses; afterwards, to prevent frauds and concealments, deeds of mutual covenant were made in a script and rescript, or in a part and counterpart;

and in the middle, between the two copies, they drew the capital letters of the alphabet, and then tallied, or cut asunder in an indented manner, the sheet or skin of parchment, one of which parts being delivered to each of the

parties, were proved authentic by matching with and answering to one another. Deeds thus made were denominated syngrapha, by the canonists, because that word, instead of the letters of the alphabet, or the word chirographum, was used. 2 Bl. Com. 296. This method of preventing counterfeiting, or of detecting counterfeits, is now used by having some ornament or some word engraved or printed at one end of certificates of stocks, checks, and a variety of other instruments, which are bound up in a book, and after they are executed, are cut asunder through such ornament or word.

2. Chirograph is also the last part of, a fine of land, commonly called the foot of the fine. It is an instrument of writing beginning with these. words: "This is the final agreement," &c. It includes the whole matter, reciting the parties, day, year and place, and before Whom the fine was acknowledged and levied. Cruise, Dig. tit. 35, c. 2, s. 52. Vide Chambers' Diet. h.t.; Encyclopaedia Americana, Charter; Encyclopedie de D'Alembert, h.t.; Pothier, Pand. tom. xxii. p. 73.

CHIROGRAPHER. A word derived from the Greek, which signifies "a writing with a man's hand." A chirographer is an officer of the English court of C. P.who engrosses the fines, and delivers the indentures of them to the parties, &c.

CHIVALRY, ancient Eng. law. This word is derived from the French chevelier, a horseman. It is. the name of a tenure of land by knight's service.

Chivalry was of two kinds: the first; which was regal, or held only of the king; or common, which was held of a common person. Co. Litt. h.t.

CHOICE. Preference either of a person or thing, to one of several other persons or things. Election. (q.v.)

CHOSE, property. This is a French word, signifying thing. In law, it is applied to personal property; as choses in possession, are such personal things of which one has possession; choses in action, are such as the owner has not the possession, but merely a right of action for their possession. 2 Bl. Com. 889, 397; 1 Chit. Pract. 99; 1 Supp. to Ves. Jr. 26, 59. Chitty defines choses in actions to be rights to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with contract, but which cannot be enforced without action, and therefore termed choses, or things in action. Com. Dig. Biens; Harr. Dig. Chose in Action Chitty's Eq. Dig. b. t. Vide 1 Ch. Pr. 140.

2. It is one of the qualities of a chose in action, that, at common law, it is not assignable. 2 John. 1; 15 Mass. 388; 1 Cranch, 367. But bills of exchange and promissory notes, though choses in action, may be assigned by indorsement, when payable to order, or by delivery when payable to bearer. See Bills of Exchange.

3. Bonds are assignable in Pennsylvania, and perhaps some other states, by virtue of statutory provisions.Inequity, however, all choses in action are assignable and the assignee has an equitable right to enforce the fulfilment of the obligation in the name of the assignor. 4 Mass. 511; 3 Day. 364; 1 Wheat. 236; 6 Pick. 316 9 ow. 34; 10 Mass. 316; 11 Mass. 157, n. 9 S. & R. 2441; 3 Yeates, 327; 1 Binn. 429; 5 Stew. & Port. 60; 4 Rand. 266; 7 Conn. 399; 2 Green, 510; Harp. 17; Vide, generally, Bouv. Inst. Index, h.t.

4. Rights arising ex delicto are not assignable either at law or in equity.

CHRISTIANITY. The religion established by Jesus Christ.

2. Christianity has been judicially declared to be a part of the common law of Pennsylvania; 11 Serg. & Rawle, 394; 5 Binn. R.555; of New York, 8 Johns. R. 291; of Connecticut, 2 Swift's System, 321; of Massachusetts, Dane's Ab. vol. 7, c. 219, a. 2, 19. To write or speak contemptuously and maliciously against it, is an indictable offence. Vide Cooper on the Law of Libel, 59 and 114, et seq.; and generally, 1 Russ. on Cr. 217; 1 Hawk, c. 5; 1 Vent. 293; 3 Keb. 607; 1 Barn. & Cress. 26. S. C. 8 Eng. Com. Law R. 14; Barnard. 162; Fitzgib. 66; Roscoe, Cr. Ev. 524; 2 Str. 834; 3 Barn. & Ald. 161; S. C. 5 Eng. Com. Law R. 249 Jeff. Rep. Appx. See 1 Cro. Jac. 421 Vent. 293; 3 Keb. 607; Cooke on Def. 74; 2 How. S. C. 11 ep. 127, 197 to 201.

CHURCH. In a moral or spiritual sense this word signifies a society of persons who profess the Christian religion; and in a physical or material sense, the place where such. persons assemble. The term church is nomen collectivum; it comprehends the chancel, aisles, and body of the church. Ham. N. P. 204.

2. By the English law, the terms church or chapel, and church-yard, are expressly recognized as in themselves correct and technical descriptions of the building and place, even in criminal proceedings. 8 B. & C. *25; 1 Salk. 256; 11 Co. 25 b; 2 Esp. 5, 28.

3. It is not within the plan of this work to give an account of the different local regulations in the United States respecting churches. References are here given to enable the inquirer to ascertain what they are, where such regulations are known to exist. 2 Mass. 500; 3 Mass. 166; 8 Mass.

96; 9 Mass. 277; Id. 254; 10 Mass. 323; 15 Mass. 296 16 Mass. 488; 6 Mass. 401; 10 Pick. 172 4 Day, C. 361; 1 Root Sec. 3, 440; Kirby, 45; 2 Caines' Cas. 336; 10 John. 217; 6 John. 85; 7 John. 112; 8 John. 464; 9 John. 147; 4 Desaus. 578; 5 Serg. & Rawle, 510; 11 Serg. & Rawle, 35; Metc. & Perk. Dig. h.t.; 4 Whart. 531.

CHURCH-WARDEN. An officer whose duties are, as the name implies, to take care of, or guard the church.

2. These officers are created in some ecclesiastical corporations by the charter, and their rights and duties are definitely explained.In England, it is said, their principal duties are to take care of, 1. the church or building; 2. the utensils and furniture; 3. the church-yard; 4. matters of good order concerning the church and church-yard; 5. the endowments of the church. Bac. Ab. h.t. By the common law, the capacity of church-wardens to hold property for the church, is limited to personal property. 9 Cranch, 43.

CINQUE PORTS, Eng. law. Literally, five ports. The name by which the five ports of Hastings, Ramenhale, Hetha or Hethe, Dover, and Sandwich, are known. 2. These ports have peculiar charges and services imposed upon them, and were entitled to certain privileges and liberties. See Harg. L. Tr. 106-113.

CIPHER. An arithmetical character, used for numerical notation. Vide Figures, and 13 Vin. Ab. 210; 18 Eng. C. L. R. 95; 1 Ch. Cr. Law, 176.

2. By cipher is also understood a mode of secret writing. Public ministers and other public agents frequently use ciphers in their correspondence, and it is sometimes very useful so to correspond in times of

war. A key is given to each minister before his departure, namely, the cipher for writing ciphers, (chiffre chiffrant,) and the cipher for deciphering (chiffre dechiffrant.) Besides these, it is usual to give him a common cipher, (chiffre banal,) which is known to all the ministers of the same power, who occasionally use it in their correspondence with each other.

3. When it is suspected that, a cipher becomes known to the cabinet where the minister is residing, recourse is had to a preconcerted sign in order to annul, entirely or in part, what has been written in cipher, or rather to indicate that the contents are to be understood in an inverted or contrary sense. A cipher of reserve is also employed in extraordinary cases.

CIRCUIT COURT. The name of a court of the United States, which has both civil and criminal jurisdiction. In several of the states there are courts which bear this name. Vide Courts of the United States.

CIRCUITY OFACTION, practice, remedies. It is where a party, by bringing an action, gives an action to the defendant against him.

2. As, supposing the obligee of a bond covenanted that he would not sue on it; if he were to sue he would give an. action against himself to the defendant for a breach of his covenant. The courts prevent such circuitous actions, for it is a maxim of law, so to judge of contracts as to prevent a multiplicity of actions; and in the case just put, they would hold that the covenant not to sue operated as a release. 1 T. R. 441. It is a favorite object of courts of equity to prevent a multiplicity of actions. 4 Cowen, 682.

CIRCUITS. Certain divisions of the country, appointed for particular judges to visit for the trial of causes, or for the administration of justice. See 3 Bl. Com. 58; 3 Bouv. Inst. n. 2532.

CIRCULATING MEDIUM. By this term is understood whatever is used in making payments, as money, bank notes, or paper which passes from hand to hand in payment of goods, or debts.

CIRCUMDUCTION, Scotch law. A term applied to the time allowed for bringing proof of allegiance, which being elapsed, if either party sue for circumduction of the time of proving, it has the effect that no proof can afterwards be brought; and the cause must be determined as it stood when circumduction was obtained. Tech. Dict.

CIRCUMSTANCES, evidence. The particulars which accompany a fact.

2. The facts proved are either possible or impossible, ordinary and probable, or extraordinary and improbable, recent or ancient; they may have happened near us, or afar off; they are public or private, permanent or transitory, clear and simple, or complicated; they are always accompanied by circumstances which more or less influence the mind in forming a judgment. And in some instances these circumstances assume the character of irresistible evidence; where, for example, a woman was found dead in a room, with every mark of having met with a violent death, the presence of another person at the scene of action was made manifest by the bloody mark of a left hand visible on her left arm. 14 How. St. Tr. 1324. These points ought to be carefully examined, in order to form a correct opinion. The first question ought to be, is the fact possible ? If so, are there any circumstances which render it impossible ? If the facts are impossible, the witness ought not to be credited. If, for example, a man should swear that he saw the deceased shoot himself with his own pistol, and upon an examination of the ball which killed him, it should be found too large to enter into the pistol, the

witness ought not to be credited. 1 Stark. Ev. 505; or if one should swear that another had been guilty of an impossible crime.

3. Toullier mentions a case, which, were it not for the ingenuity of the counsel, would require an apology for its introduction here, on account of its length. The case was this: La Veuve Veron brought an action against M. de Morangies on some notes, which the defendant alleged were fraudulently obtained, for the purpose of recovering 300,000 francs, and the question was, whether the defendant had received the money. Dujonquai, the grandson of the plaintiff, pretended he had himself, alone and on foot, carried this sum in gold to the defendant, at his hotel at the upper end of the rue Saint Jacques, in thirteen trips, between half past seven and about one o'clock, that is, in about five hours and a half, or, at most, six hours. The fact was improbable; Linquet, the counsel of the defendant, proved it was impossible; and this is his argument:

4. Dujonquai said that he had divided the sum in thirteen bags, each containing six hundred louis d'ors, and in twenty-three other bags, each containing two hundred. There remained twenty-five louis to complete the whole sum, which, Dujonquai said, he received from the defendant as a gratuity. At each of 'these trips, he says, he put a bag, containing two hundred louis, that is, about three pounds four ounces, in each of his coat pockets, which, being made in the fashion of those times, hung about the thighs, and in walking must have incommoded him and obstructed his speed; he took, besides, a bag containing six hundred louis in his arms; by this means his movements were impeded by a weight of near ten pounds.

5. The measured distance between the house where Dujonquai took the bags to the foot of the stairs of the defendant, "as five hundred and sixteen toises, which, multiplied by twenty-six, the thirteen trips going and returning, make thirteen thousand four hundred and sixteen toises, that is, more than five leagues and a half (near seventeen miles), of two

thousand four hundred toises, which latter distance is considered sufficient for an hour's walk, of a good walker. Thus, if Dujonquai had been unimpeded by any obstacle, he would barely have had time to perform the task in five or six hours, even without taking any rest or refreshment. However strikingly

improbable this may have been, it was not physically impossible. But

6.-1. Dujonquai, in going to the defendant's, had to descend sixty-three steps from his grandmother's, the plaintiff's chamber, and to ascend twenty-seven to that of the defendant, in the whole, ninety steps. In returning, the ascent and descent were changed, but the steps were the same; so that by multiplying, by twenty-six, the number of trips going and returning, it would be seen there were two thousand three hundred and forty steps. Experience had proved that in ascending to the top of the tower of Notre Dame (a church in Paris), where there are three hundred and eighty-nine steps, it occupied from eight to nine minutes of time. It must then have taken an hour out of the five or six which had been employed in making the thirteen trips.

7.-2. Dujonquai had to go up the rue Saint Jacques, which is very steep; its ascent would necessarily decrease the speed of a man, burdened and encumbered with the bags which he carried in his pockets and in his arms.

8.-3. This street, which is very public, is usually, particularly in the morning, encumbered by a multitude of persons going in every direction, so that a person going along must make an infinite number of deviations from a direct line; each by itself, is almost imperceptible, but at the end of five or six hours, they make a considerable sum, which may be estimated at a tenth part of the whole course in a straight line; this would make about half a league, to be added to the five and a half leagues, which is the

distance in a direct line.

9.-4. On the morning that Dujonquai made these trips, the daily and usual incumbrances of this street were increased by sixty or eighty workmen, who were employed in removing by hand and with machine, an enormous stone, intended for the church of Saint Genevieve, now the pantheon, and by the immense crowd which this attracted; this was a remarkable circumstance, which, supposing that Dujonquai had not yielded to the temptation of stopping a few moments to see what was doing, must necessarily have impeded his way, and made him lose seven or eight minutes each trip, which, multiplied by twenty-six would make about two hours and a half.

10.-5. The, witness was obliged to open and shut the doors at the defendant's house; it required time to take up the bags and place them in his pockets, to take them out and put them on the defendant's table, who, by an improbable supposition, counted the money in the intervals between the trips, and not in the presence of the witness. Dujonquai, too, must have taken receipts or acknowledgments at each trip, he must read them, and on arriving at home, deposited them in some place of safety all these distractions would necessarily occasion the loss of a few minutes. By adding these with scrupulous nicety, and by further adding the time employed in taking and depositing the bags, the opening and shutting of the doors, the reception of the receipts, the time occupied in reading and putting them away, the time consumed in several conversations, which he admitted he had with persons in the street; all these joined to the obstacles above mentioned, made it evident that it was physically impossible that Dujonquai should have carried the 300,000 francs to the house of the defendant, as he affirmed he had done. Toull. tom. 9, n. 241, p. 384. Vide, generally, 1 Stark. Ev. 502; 1 Phil. Ev. 116. See some curious cases of circumstantial evidence in Alis. Pr. Cr. Law, 313, 314; and 2 Theorie des Lois Criminelles, 147, n.; 3 Benth. Jud. Ev. 94, 223; Harvey's Meditations on the Night, note

35; 1 Taylor's Med. Jur. 372; 14 How. St. Tr. 1324; Theory of Presumptive Proof, passim; Best on Pres. SSSS 187, 188, 197. See Death; Presumption; Sonnambulism.

CIRCUMSTANDIBUS, persons, practice. Bystanders from whom jurors are to be selected when the panel has been exhausted. Vide Tales de circumstandibus.

CIRCUMVENTION, torts, Scotch law. Any act of fraud whereby a person is reduced to a deed by decree. Tech. Dict. It has the same sense in the civil law. Dig. 50, 17, 49 et 155; Id. 12, 6, 6, 2; Id. 41, 2, 34. Vide Parphrasis.

CITATIO AD REASSUMENDAM CAUSAM, civil law. The name of a citation, which issued when a party died pending a suit, against the heir of the defendant, or when the plaintiff died, for the heir of the plaintiff. Our bill of revivor is probably borrowed from this proceeding.

CITATION, practice. A writ issued out of a court of competent, jurisdiction, commanding a person therein named to appear and do something therein mentioned, or to show cause why he should not, on a day named. Proct. Pr. h.t. In the ecclesiastical law, the citation is the beginning and foundation of the whole cause; it is said to have six requisites, namely.: the insertion of the name of the judge; of the promovert; of the impugnant; of the cause of suit; of the place; and of the time of appearance; to which may be added the affixing the seal of the court, and the name of the register or his deputy. 1 Bro. Civ. Law, 453-4; Ayl. Parer. xliii. 175; Hall's Adm. Pr. 5; Merl. Rep. h.t. By, citation is also understood the act by which a person is summoned, or cited.

CITATION OF AUTHORITIES. The production or reference to the text of acts of legislatures and of treatises, and decided cases, in order to support what is advanced.

2. Works are sometimes surcharged with useless and misplaced citations; when they are judiciously made, they assist the reader in his researches. Citations ought not to be made to prove what is not doubted; but when a controverted point is mooted, it is highly proper to cite the laws and cases, or other authorities in support of the controverted proposition.

3. The mode of citing statutes varies in the United States; the laws of the United States are generally cited by their date, as the act of Sept. 24, 1789, s. 35; or act of 1819, eh. 170, 3 Story's U. S. Laws, 1722. In Pennsylvania, acts of assembly are cited as follows: act of 14th of April, 1834; in Massachusetts, stat. of 1808, c. 92. Treatises and books of reports, are generally cited by the volume and page, as, 2 Powell on Morts. 600; 3 Binn. R. 60. Judge Story and some others, following the examples of the civilians, have written their works and numbered the paragraphs; these are cited as follows: Story's Bailm. Sec. 494; Gould on Pl. c. 5, Sec. 30. For other citations the reader is referred to the article Abbreviations.

4. It is usual among the civilians on the continent of Europe, in imitation of those in the darker ages, in their references to the Institutes, the Code and the Pandects or Digest, to mention the number, not of the book, but of the law, and the first word of the title to which it belongs; and as there are more than a thousand of these, it is no easy task for one not thoroughly acquainted with those collections, to find the place to which reference is made. The American writers generally follow the natural mode of reference, by putting down the name of the collection, and then the number of the book, title, law, and section. For example, Inst. 4, 15, 2, signifies Institutes, book four, title fifteen, and section two; Dig.

41, 9, 1, 3, means Digest, book 41, title 9, law 1, section 3; Dig. pro dote, or ff pro dote, that is, section 3, law 1, of the book and title of the Digest or Pandects, entitled pro dote. It is proper to remark, that Dig. and ff are equivalent; the former signifies Digest, and the latter, which is a careless mode of writing the Greek letter it, the first letter of the word pavdectai, Pandects, and the Digest and Pandects are different names for one and the same thing. The Code is cited in the same way. The Novels are cited by their number, with that of the chapter and paragraph; for example, Nov. 185, 2, 4; for Novella Justiniani 185, capite 2, paragrapho 4. Novels are also quoted by the Collation, the title, chapter, and paragraph as follows: in Authentics, Collatione 1 titulo 1, cap. 281. The Authentics are quoted by their first words, after which is set down the title of the Code under which they are placed for example, Authentica cum testator, Codice ad legem fascidiam Sele Mackel. Man. Intro. Sec. 66. Modus Legendi Abbreviaturas passim in jure tam civili quam pontificii occurrentes, 1577.

CITIZEN, persons. One who, under the constitution and laws of the United States, has a right to vote for representatives in congress, and other public officers, and who is qualified to fill offices in the gift of the people. In a more extended sense, under the word citizen, are included all white persons born in the United States, and naturalized persons born out of the same, who have not lost their right as such. This includes men, women, and children.

2. Citizens are either native born or naturalized. Native citizens may fill any office; naturalized citizens may be elected or appointed to any office under the constitution of the United States, except the office of president and vice-president. The constitution provides, that "the citizens of each state shall be entitled to all the privileges and immunities of

citizens in the several states." Art. 4, s. 2.

3. All natives are not citizens of the United States; the descendants of the aborigines, and those of African origin, are not entitled to the rights of citizens. Anterior to the adoption of the constitution of the United States, each state had the right to make citizens of such persons as it pleased. That constitution does not authorize any but white persons to become citizens of the United States; and it must therefore be presumed that no one is a citizen who is not white. 1 Litt. R. 334; 10 Conn. R. 340; 1 Meigs, R. 331.

4. A citizen of the United States, residing in any state of the Union, is a citizen of that state. 6 Pet. 761 Paine, 594;1 Brock. 391; 1 Paige, 183 Metc. & Perk. Dig. h.t.; vide 3 Story's Const. Sec. 1687 Bouv. Inst. Index, b. t.; 2 Kent, Com. 258; 4 Johns. Ch. R. 430; Vatt. B. 1, c. Id, Sec. 212; Poth. Des Personnes, tit. 2, s. 1. Vide Body Politic; Inhabitant.

CITY, government. A town incorporated by that name. Originally, this word did not signify a town, but a portion of mankind who lived under the same government: what the Romans called civitas, and, the Greeks polis; whence the word politeia, civitas seu reipublicae status et administratio. Toull. Dr. Civ. Fr. 1. 1, t. 1, n. 202; Henrion de Pansey, Pouvoir Municipal, pp. 36, 37.

CIVIL. This word has various significations. 1. It is used in contradistinction to barbarous or savage, to indicate a state of society reduced to order and regular government; thus we speak of civil life, civil society, civil government, and civil liberty

2. It is sometimes used in contradistinction to criminal, to indicate the private rights and remedies of men, as members of the community, in contrast to those which are public and relate to the government; thus we

speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction.

3. It is also used in contradistinction to military or ecclesiastical, to natural or foreign; thus we speak of a civil station, as opposed to a military or ecclesiastical station, a civil death as opposed to a natural death; a civil war as opposed to a foreign war. Story on the Const. Sec. 789;

1 Bl. Coin. 6, 125, 251; Montesq. Sp. of Laws, B 1, c. 3; Ruth. Inst. B. 2, c. 2; Id. ch. 3Id. ch. 8, p. 359; Hein. Elem. Jurisp. Nat. B. 2, ch. 6.

CIVIL ACTION. In New York, actions are divided only into two kinds, namely, criminal and civil. A criminal action is prosecuted by the state, as a party, against a person charged with a public offence, for the punishment thereof. Every other action is a civil action. Code of Procedure, s. 4, 5, 6; 3 Bouv. Inst. n. 2638. In common parlance, however, writs of mandamus, certiorari, habeas corpus, &c., are not comprised by the expression, civil actions. 6 Bin. Rep. 9.

CIVIL COMMOTION. Lord Mansfield defines a civil commotion to be "an insurrection of the people for general purposes, though it may not amount to rebellion where there is an usurped power." 2 Marsh. lnsur. 793. In the printed proposals which are considered as making a part of the contract of insurance against fire, it is declared that the insurance company will not make good any loss happening by any civil commotion.

CIVIL DEATH, persons. The change of the state (q.v.) of a person who is declared civilly dead by judgment of a competent tribunal. In such case, the person against whom such sentence is pronounced is considered dead. 2 John.

R. 218. See Gilb. Uses, 150; 2 Bulst. 188; Co. tit. 132; Jenk. Cent. 250; 1 Keble, 398; Prest. on Convey. 140. Vide Death, civil.

CIVIL LAW. The municipal code of the Romans is so called. It is a rule of action, adopted by mankind in a state of society. It denotes also the municipal law of the land. 1 Bouv. Inst. n. 11. See Law, civil.

CIVIL LIST. The sum which is yearly paid by the state to its monarch, and the domains of which he is suffered to have the enjoyment.

CIVIL OBLIGATION, Civil law. One which binds in law, vinculum juris, and which may be enforced in a court of justice. Poth. Obl. 173, and 191. See Obligation.

CIVIL OFFICER. The constitution of the United States, art. 2, s. 4, provides, that the president, vice-president, and civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors. By this term are included all officers of the United States who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or the lowest departments; of the government, with the exception of officers of the army and navy. Rawle on the Const. 213; 2 Story, Const. Sec. 790; a senator of the United States, it was decided, was not a civil officer, within the meaning of this clause in the constitution. Senate Journals, 10th January, 1799; 4 Tuck. Bl. Com. Appx. 57, 58; Rawle, Const. 213; Serg. on Const. Law, 376; Story, Const. Sec. 791.

CIVIL REMEDY, practice. This term is used in opposition to the remedy given

by indictment in a criminal case, and signifies the remedy which the law gives to the party against the offender.

2. In cases of treason and felony, the law,, for wise purposes, suspends this remedy in order to promote the public interest, until the wrongdoer shall have been prosecuted for the public wrong. 1 Miles, Rep. 316-17; 12 East, 409; R. T. H. 359; 1 Hale's P. C. 546; 2 T. R. 751, 756; 17 Ves. 329; 4 Bl. Com. 363; Bac. Ab. Trepass, E 2; and Trover, D. This principle has been adopted in New Hampshire N. H. R. 239; but changed in New York by statutory provision; 2 Rev. Stat. 292, Sec. 2 and by decisions in Massachusetts, except perhaps in felonies punishable with death; 15 Mass. R. 333; in Ohio; 4 Ohio R. 377; in North Carolina; 1 Tayl. R. 58. By the common law, in cases of homicide, the civil remedy is merged in the felony. 1 Chit. Pr. 10. Vide art. Injuries; Merger.

CIVIL STATE. The union of individual men in civil society under a system of laws and a magistracy, or magistracies, charged with the administration of the laws. It is a fundamental law of the civil state, that no member of it shall undertake to redress or avenge any violation of his rights, by another person, but appeal to the constituted authorities for that purpose, in all cases in which is is possible for him to do so. Hence the citizens are justly considered as being under the safeguard of the law. 1 Toull. n. 201. Vide Self-defence.

CIVILIAN. A doctor, professor, or student of the civil law.

CIVILITER. Civilly; opposed to criminaliter or criminally.

2. When a person does an unlawful act injurious to another, whether with or without an intention to commit a tort, he is responsible civiliter.

In order to make him liable criminaliter, he must have intended to do the wrong; for it is a maxim, actus non facit reum nisi mens sit rea. 2 East, 104.

CIVILITER MORTUUS. Civilly dead; one who is considered as if he were naturally dead, so far as his rights are concerned.

CLAIM. A claim is a challenge of the ownership of a thing which a man has not in possession, and is wrongfully withheld by another. Plowd. 359; Wee i Dall.444; 12 S. & R. 179.

2. In Pennsylvania, the entry on of the demand of a mechanic or materialman for work done or material furnished in the erection of a building, in those counties to which the lien laws extend, is called a claim.

3. A continual c1aim is a claim made in a particular way, to preserve the' rights of a feoffee. See Continual claim.

4. Claim of conusance is defined to be an intervention by a third person, demanding jurisdiction of a cause against a plaintiff, who has chosen to commence his action out of the claimant's court. 2 Wils. 409; 1 Cit. Pb. 403; Vin. Ab. Conusance; Com. Dig. Courts, P; Bac. Ab. Courts, D 3; 3 Bl. Com. 298.

CLAIMANT. In the courts of admiralty, when the suit is in rem, the cause is entitled in the Dame of the libellant against the thing libelled, as A B v. Ten cases of calico and it preserves that title through the whole progress of the suit.When a person is authorized and admitted to defend the libel, he is called the claimant. The United States v. 1960 bags of coffee; 8 Cranch, R. 398; United States v. The Mars; 8 Cranch, R. 417; 30 hhds. of sugar, (Brentzon, claimant, v. Boyle. 9 Cranch, R. 191.

CLANDESTINE. That which is done in secret and contrary to law.

2.Generally a clandestine act in case of the limitation of actions will prevent the act from running. A clandestine marriage is one which has been contracted without the form which the law has prescribed for this important contract. Alis. Princ. 543

CLARENDON. The constitutions of Clarendon were certain statutes made in the reign of Henry H., of England, in a parliament holden at Clarendon, by which the king checked the power of the pope and his clergy. 4 Bl. Com. 415.

CLASS. The order according to which are arranged or distributed, or are supposed to be arranged or distributed, divers persons or things; thus we say, a class of legatees.

2. When a legacy is given to a class of individuals, all who answer the description at the time the will takes effect, are entitled; and though the expression be in the plural, yet if there be but one, he shall take the whole. 3 M'Cord, Ch. R. 440.

3. When a bond is given to a class of persons, it is good, and all composing that class are entitled to sue upon it; but if the obligor be a member of such class, the bond is void, because a man cannot be obligor and obligee at the same time; as, if a bond be given to the justices of the county court, and at the time the obligor is himself one of said justices. 3 Dev. 284, 287,289; 4 Dev. 882.

4. When a charge is made against a class of society, a profession, an order or body of men, and cannot possibly import a personal application to private injury, no action lies; but if any one of the class have sustained special damages in consequence of such charge, he may maintain an action. 17

Wend. 52, 23, 186. See 12 John. 475. When the charge is against one of a class, without designating which, no action lies; as, where three persons had been examined as witnesses, and the defendant said in addressing himself to them, "one of you three is perjured." 1 Roll. Ab. 81; Cro. Jac. 107; 16 Pick. 132.

CLAUSE, contracts. A particular disposition which makes part of a treaty; of an act of the legislature; of a deed, written agreement, or other written contract or will. When a clause is obscurely written, it ought to be construed in such a way as to agree with what precedes and what follows, if possible. Vide Dig. 50, 17, 77; Construction; Interpretation.

CLAUSUM FREGIT, torts, remedies. He broke the close. These words are used in a writ for an action of trespass to real estate, the defendant being summoned to answer quare clausum fregit, that is, why he broke the close of the plaintiff. 3 Bl. Com. 209.

2. Trespass quare clausum fregit lies for every unlawful intrusion into land, whether enclosed or not, though only grass may be trodden. 1 Dev. & Bat. 371. And to maintain this action there must be a possession in the plaintiff, and a right to that possession.9 Cowen 39; 4 Yeates, 418; 11 Conn. 60, 10 Conn. 225; 1 John. 511; 12 John. 1834 Watts, 377; 4 Bibb, 218; 15 Pick. 32; 6 Rand. 556; 2 Yeates, 210; 1 Har. & John. 295; 8 Mass. 411.

CLEARANCE, com. law. The name of a certificate given by the collector of a port, in which is stated the master or commander (naming him) of a ship or vessel named and described, bound for a port, named, and having on board goods described, has entered and cleared his ship or vessel according to law.

2. The Act of Congress of 2d March, 1790, section 93, directs, that the

master of any vessel bound to a foreign place, shall deliver to the collector of the [dis ot?] from which such vessel shall be about to depart, a manifest of all the cargo on board, and the value thereof, by him subscribed, and shall swear or affirm to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo; but without specifying the particulars thereof in such clearance, unless required by the master so to do. And if any vessel bound to any foreign place shall depart on her voyage to such foreign place, without delivering such a manifest and obtaining a clearance, the master shall forfeit and pay the sum of five hundred dollars for every such offence. Provided, anything to the contrary notwithstanding, the collectors and other officers of the customs shall pay due regard to the inspection laws of the states in which they respectively act, in such manner, that no vessel having on board goods liable to inspection, shall be cleared out, until the master or other person shall have produced such certificate, that all such goods have been duly inspected, as the laws of the respective states do or may require, to be produced to the collector or other officer of the customs. And provided, that receipts for the payment of all legal fees which shall have accrued on any vessel, shall, before any clearance is granted, be produced to the collector or other officer aforesaid.

3. According to Boulay-Paty, Dr. Com. tome 2, p. 19, the clearance is imperiously demanded for the safety of the vessel; for if a vessel should be found without it at sea, it may be legally taken and brought into some port for adjudication, on a charge of piracy. Vide Ship's papers.

CLEARING HOUSE, com. law. Among the English bankers, the clearing house is a place in Lombard street, in London, where the bankers of that city daily

settle with each other the balances which they owe, or to which they are entitled. Desks are placed around the room, one of which is appropriated to each banking house, and they are: occupied in alphabetical order. Each clerk has a box or drawer along side of him, and the name of the house he represents is inscribed over his head. A clerk of each house comes in about half past three o'clock in the afternoon, and brings the drafts or checks on the other bankers, which have been paid by his house that day, and deposits them in their proper drawers. The clerk at the desk credits their accounts separately which they have against him, as found in the drawer. Balances are thus struck from all the accounts, and the claims transferred from one to another, until they are so wound up and cancelled, that each clerk has only to settle with two or three others, and the balances are immediately paid. When drafts are paid at so late an hour that they cannot be cleared that day, they are sent to the houses on which they are drawn, to be marked, that is, a memorandum is made on them, and they are to be cleared the next day. See Gilbert's Practical Treatise on Banking, pp. 16-20, Babbage on the Economy of Machines, n. 173, 174; Kelly's Cambist; Byles, on Bills, 106, 110; Pulling's Laws and Customs of London, 437.

CLEMENCY. The disposition to treat with leniency. See Mercy; Pardon.

CLEMENTINES, eccl. law. The name usually given to the collection of decretals or constitutions of Pope Clement V., which was made by order of John XXII. his successor, who published it in 1317. The death of Clement V., which happened in 1314, prevented him from publishing this collection, which is properly a compilation, as well of the epistles and constitutions of this pope, as of the decrees of the council of Vienna, over which he presided. The Clementines are divided in five books, in which the matter is distributed nearly upon the same plan as the Decretals of Gregory IX. Vide La

Bibliotheque des auteurs ecclesiastiques, par Dupin.

CLERGY. All who are attached to the ecclesiastical ministry are called the clergy; a clergyman is therefore an ecclesiastical minister.

2. Clergymen were exempted by the emperor Constantine from all civil burdens. Baronius ad ann. 319, Sec. 30. Lord Coke says, 2 Inst. 3, ecclesiastical persons have more and greater liberties than other of the king's subjects, wherein to set down all, would take up a whole volume of itself.

3. In the United States the clergy is not established by law, but each congregation or church may choose its own clergyman.

CLERICAL ERROR. An error made by a clerk in transcribing or otherwise. This is always readily corrected by the court. 2. An error, for example, in the teste of a fi. fa.; 4 Yeates, 185, 205; or in the teste and return of a vend. exp.; 1 Dall. 197 or in writing Dowell for McDowell. 1 Serg. & R. 120; 8 Rep. 162 a; 9 Serg. & R. 284, 5. An error is amendable where there is something to amend by, and this even in a criminal case. 2 Bin. 5-16; 5 Burr. 2667; 1 Bin. 367-9; Dougl. 377; Cowp. 408. For the party ought not to be harmed by the omission of the clerk; 3 Bin. 102; even of his signature, if he affixes the seal. 1 Serg. & R. 97.

CLERK, commerce, contract. A person in the employ of a merchant, who attends only to a part of his business, while the merchant himself superintends the whole. He differs from a factor in this, that the latter wholly supplies the place of his principal in respect to the property consigned to him. Pard.

Dr. Com. n. 38, 1 Chit. Pract. 80; 2 Bouv. Inst. n. 1287.

CLERK, officer. A person employed in an office, public or private, for keeping records or accounts. His business is to write or register, in proper form, the transactions of the tribunal or body to which he belongs. Some clerks, however, have little or no writing to do in their offices, as, the clerk of the market, whose duties are confined chiefly to superintending the markets. In the English law, clerk also signifies a clergyman.

CLERK, eccl. law. Every individual, who is attached to the ecclesiastical state, and who has submitted to the ceremony of the tonsure, is a clerk.

CLIENT, practice. One who employs and retains an attorney or counsellor to manage or defend a suit or action in which he is a party, or to advise him about some legal matters.

2. The duties of the client towards his counsel are, 1st. to give him a written authority, 1 Ch. Pr. 19; 2. to disclose his case with perfect candor3. to offer spontaneously, advances of money to his attorney; 2 Ch. Pr. 27; 4. he should, at the end of the suit, promptly pay his attorney his fees. Ib. His rights are, 1. to be diligently served in the management of his business 2. to be informed of its progress and, 3. that his counsel shall not disclose what has been professionally confided to him. See Attorney at law; Confidential communication.

CLOSE. Signifies the interest in the soil, and not merely a close or enclosure in the common acceptation of the term. Doct. & Stud. 307 East, 207 2 Stra. 1004; 6 East, 1541 Burr. 133 1 Ch. R. 160.

2. In every case where one man has a right to exclude another from his land, the law encircles it, if not already enclosed, with an imaginary

fence; and entitles him to a compensation in damages for the injury he sustains by the act of another passing through his boundary, denominating the injurious act a breach of the enclosure. Hamm. N. P. 151; Doct. & Stud. dial. 1, c. 8, p. 30; 2 Whart. 430.

3. An ejectment will not lie for a close. 11 Rep. 55; 1 Rolle's R. 55 Salk. 254 Cro. Eliz. 235; Adams on Eject. 24.

CLOSE ROLLS, or close writs, Eng. law. Writs containing, grants from the crown, to particular persons, and for particular purposes, and, not being intended for public inspection, are closed up and sealed on the outside, and for that reason called close writs,in contradistinction. to grants relating to the public in general, which are left open and not sealed up, and are called letters patent. (q.v.) 2 Bl. Com. 346.

CLOSED DOORS. Signifies that something is done privately. The senate sits with closed doors on executive business.

2. In general the legislative business of the country is transacted openly. And the constitution and laws require that courts of justice shall be open to the public.

CLUB. An association of persons.It differs from a partnership in this, that the members of a club have no authority to bind each other further than they are authorized, either expressly or by implication, as each other's agents in the particular transaction; whereas in trading associations, or common partnerships, one partner may bind his co-partners, as each has a right of property in the whole. 2 Mees. & Welsh. 172; Colly, Partn. 31; Story, Partn. 144; Wordsworth on Joint Stock Companies, 154, et seq.; 6 W. & S. 67; 3, W. & S. 118.

CO. A prefix or particle in the nature of an inseparable proposition, signifying with or in conjunction. Con and the Latin cum are equivalent, as, co-executors, co-obligor. It is also used as an abbreviation for company as, John Smith & Co.

COADJUTOR, eccl. law. A fellow helper or assistant; particularly applied to the assistant of a bishop.

COAL NOTE, Eng. law. A species of promissory note authorized by the st. 3 Geo. H., c. 26, SSSS 7 and 8, which, having these words expressed therein, namely, "value received in coals," are to be protected and noted as inland bills of exchange.

COALITION, French law. By this word is understood an unlawful agreement among several persons, not to do a thing except on some conditions agreed upon.

2. The most usual coalitions are, 1st. those which take place among master workmen, to reduce, diminish or fix at a low rate the wages of journeymen and other workmen; 2d. those among workmen or journeymen, not to work except at a certain price. These offences are punished by fine and imprisonment. Dict. de Police, h.t. In our law this offence is known by the name of conspiracy. (q.v.)

CO-ADMINISTRATOR. One of several administrators. In general, they have, like executors, the power to act singly to the personal estate of the intestate. Vide Administrator.

CO-ASSIGNEE. One who is assignee with another.

2. In general, the rights and duties of co-assignees are equal.

CO-EXECUTOR. One who is executor of a will in company with another. In general each co-executor has the full power over the personal estate of the testator, that all the executors have jointly. Vide Joint Executors. But one cannot bring suit without joining with the others.

COAST. The margin of a country bounded by the sea. This term includes the natural appendages of the territory which rise out of the water, although they are not of sufficient firmness to be inhabited or fortified. Shoals perpetually covered with water are not, however, comprehended under the name of coast. The small islands, situate at the mouth of the Mississippi, composed of earth and trees drifted down by the river, which are not of consistency enough to support the purposes of life, and are uninhabited, though resorted to for shooting birds, were held to form a part of the coast. 5 Rob. Adm. R. 385. (c).

COCKET, commerce. In England the office at the custom house, where the goods to be exported are entered, is so called, also the custom house seal, or the parchment sealed and delivered by the officers of customs to merchants, as a warrant that their goods are customed. Crabbe's Tech. Dict.

COCKETTUM, commerce. In the English law this word signifies, 1. the custom-house seal; 2. the office at the custom where cockers are to be procured. Crabbe's Tech. Dict.

CODE, legislation. Signifies in general a collection of laws. It is a name given by way of eminence to a collection of such laws made by the

legislature. Among the most noted may be mentioned the following:

CODES, Les Cing Codes; French law. The five codes.

2. These codes are, 1st. Code Civil, which is divided into three books; book 1, treats of persons, and of the enjoyment and privation of civil rights; book 2, of property and its different modifications; book 3, of the different ways of acquiring property. One of the most perspicuous and able, commentators on this code is Toullier, frequently cited in this work.

3.-2d. Code de procedure civille, which is divided into two parts. Part 1, is divided into five books; 1. of justices of the. peace; 2. of inferior tribunals; 3. of royal courts; 4. of extraordinary means of proceeding; 5. of execution and judgment. Part 2, is divided into three books; 1. of tender and consignation; 2. of process in relation to the opening of a succession; 3. of arbitration.

4.-3d. Code de Commerce, in four books; 1. of commerce in general; 2. of maritime commerce; 3. of failures and bankruptcy; 4. of commercial jurisdiction. Pardessus is one of the ablest commentators on this code.

5.-4th. Code d'Instructions Criminelle, in two books; 1. of judiciary police, and its officers; 2. of the administration of justice.

6.-5th. Code Penal, in four books; 1. of punishment in criminal and correctional cases, and their effects; 2. of the persons punishable, excusable or responsible, for their crimes or misdemeanors; 3. of crimes, misdemeanors, (delits,) and their punishment; 4. of contraventions of police, and their punishment. For the history of these codes, vide Merl. Rep. h.t.; Motifs, Rapports, Opinions et Discours sur les Codes; Encyclop. Amer. h.t.

7. Henrion de Pansey, late a president of the Court of Cassation, remarks in reference to these codes: "In the midst of the innovations of these later times, a system of uniformity has suddenly engrossed all minds,

and we have had imposed upon us the same weights, the same measures, the same laws, civil, criminal, rural and commercial. These new codes, like everything which comes from the hand of man, have imperfections and obscurities. The administration of them is committed to nearly thirty sovereign courts and a multitude of petty tribunals, composed of only three judges, and yet are invested with the right of determining in the last resort, under many circumstances. Each tribunal, the natural interpreter of these laws, applies them according to its own view, and the new codes were scarcely in operation before this beautiful system of uniformity became nothing more than a vain theory. Authorite Judiciaire, c. 31, s. 10.

CODE HENRI. A digest of the laws of Hayti, enacted by Henri, king of Hayti. It is based upon the Code Napoleon, but not servilely copied. It is said to be judiciously adapted to the situation of Hayti. A collection of laws made by order of Henry III of France, is also known by the name of Code Henri.

CODE, JUSTINIAN, civil law. A collection of the constitutions of the emperors, from Adrian to Justinian; the greater part of those from Adrian to Constantine are mere rescripts; those from Constantine to Justinian are edicts or laws, properly speaking.

2. The code is divided into twelve books, which are subdivided into titles, in which the constitutions are collected under proper heads. They are placed in chronological order, but often disjointed. At the head of each constitution is placed the name of the emperor who is the author, and that of the person to whom it is addressed. The date is at the end. Several of these constitutions, which were formerly in the code were lost, it is supposed by the neglect of "copyists. Some of them have been restored by modern authors, among whom may be mentioned Charondas, Cugas, and Contius,

who translated them from Greek, versions.

CODE, OF LOUISIANA. In 1822, Peter Derbigny, Edward Livingston, and Moreau Lislet, were selected by the legislature to revise and amend the civil code, and to add to it such laws still in force as were not included therein. They were authorized to add a system of commercial law, and a code of practice. The code the prepared having been adopted, was promulgated in 1824, under the title of the "Civil Code of the State of Louisiana."

2. The code is based on the Code Napoleon, with proper and judicious modifications, suitable for the state of Louisiana. It is composed of three books: 1. the first treats of persons; 2. the second of things, and of the different modifications of property; 3. and the third of the different modes of acquiring the property of things. It contains 3522 articles, numbered from the beginning, for the convenience of reference.

3. This code, it is said, contains many inaccurate definitions. The legislature modified and changed many of the provisions relating to the positive legislation, but adopted the definitions and abstract doctrines of the code without material alterations. From this circumstance, as well as from the inherent difficulty of the subject, the positive provisions of the code are often at variance with the theoretical part, which was intended to elucidate them. 13 L. R. 237.

4. This code went into operation on the 20th day of May,. 1825. 11 L. R. 60. It is in both the French and English languages; and in construing it, it is a rule that when the expressions used in the French text of the code are more comprehensive than those used in English, or vice versa, the more enlarged sense will be taken, as thus full effect will be given to both clauses. 2 N. S. 582.

CODE, NAPOLEON. The Code Civil of France, enacted into law during the reign

of Napoleon, bore his name until the restoration of the Bourbons when it was deprived of that name, and it is now cited Code Civil.

CODE PAPIRIAN. The name of a collection of the Roman laws, promulgated by Romulus, Numa, and other kings who governed. Rome till the time of Tarquin, the Proud. It was so called in honor if Sextus Parrius, the compiler. Dig. 1, 2, 2.

CODE PRUSSIAN. Allgemeines Landrecht. This code is also known by the name of Codex Fredericianus, or Frederician code. It was compiled by order of Frederic H., by the minister of justice, Samuel V. Cocceji, who completed, a part of it before his death, in 1755. In 1780, the work was renewed under the superintendence of the minister Von Carmer, and prosecuted with unceasing activity and was published from 1784 to 1788, in six parts. The opinions of those who understood the subject were requested, and prizes offered on the best commentaries on it; and the whole was completed in June, 1791, under the title "General Prussian Code."

CODE THEODOSIAN. This code, which originated in the eastern empire, was adopted in the Western empire towards its decline. It is a collection of the legislation of the Christian emperors, from and including Constantine to Theodosius, the Younger; it is composed of sixteen books, the edicts, acts, rescripts, and ordinances of the two empires, that of the east and that of the west.

CO-DEFENDANT. One who is made defendant in an action with another person.

CODEX. Literally, a volume or roll. It is particularly applied to the volume

of the civil law, collected by the emperor Justinian, from all pleas and answers of the ancient lawyers, which were in loose scrolls or sheets of parchment. These he compiled into a book which goes by the name of Codex.

CODICIL, devises. An addition or supplement to a will; it must be executed with the same solemnities. A codicil is a part of the will, the two instruments making but one will. 4 Bro. C. C. 55; 2 Ves. sen. 242 4 Ves. 610; 2 Ridgw. Irish P. C. 11, 43.

2. There may be several codicils to one will, and the whole will be taken as one: the codicil does not, consequently, revoke the will further than it is in opposition to some of its particular dispositions, unless there be express words of revocation. 8 Cowen, Rep. 56.,

3. Formerly, the difference between a will and a codicil consisted in this, that in the former an executor was named, while in the latter none was appointed. Swinb. part 1, s. 5, pl. 2; Godolph. Leg. part 1, c. 6, s. 2. This is the distinction of the civil law, and adopted by the canon law. Vide Williams on Wills, ch. 2; Rob. on Wills, 154, n. 388, 476; Lovelass on Wills, 185, 289 4 Kent, Com. 516; 1 Ves. jr. 407, 497; 3 Ves. jr. 110; 4 Ves. jr. 610; 1 Supp. to Ves. jr. 116, 140.

4. Codicils were chiefly intended to mitigate the strictness of the ancient Roman law, which required that a will should be attested by seven Roman citizens, omni exceptione majores. A legacy could be bequeathed, but the heir could not be appointed by codicil, though he might be made heir indirectly by way of fidei commissum.

5. Codicils owe their origin to the following circumstances. Lucius Lentulus, dying in Africa, left. codicils, confirmed by anticipation in a will of former date, and in those codicils requested the emperor Augustus, by way of fidei commissum, or trust, to do something therein expressed. The emperor carried this will into effect, and the daughter of Lentulus paid

legacies which she would not otherwise have been legally bound to pay. Other persons made similar fidei-commissa, and then the emperor, by the advice of learned men whom he consulted, sanctioned the making of codicils, and thus they became clothed with legal authority. Just. 2, 25; Bowy. Com. 155, 156.

6. The form of devising by codicil is abolished in Louisiana; Code, 1563; and whether the disposition of the property be made by testament, under this title, or under that of institution of heir, of legacy, codicil, donation mortis causa, or under any other name indicating the last will, provided it be clothed with the forms required for the validity of a testament, it is, as far as form is concerned, to be considered a testament. Ib. Vide 1 Brown's Civil Law, 292; Domat, Lois Civ. liv. 4, t. 1, s. 1; Lecons Element, du Dr. Civ. Rom. tit. 25.

COERCION, criminal law, contracts. Constraint; compulsion; force.

2. It is positive or presumed. 1. Positive or direct coercion takes place when a man is by physical force compelled to do an act contrary to his will; for example, when a man falls into the hands of the enemies of his country, and they compel him, by a just fear of death, to fight against it.

3.-2. It is presumed where a person is legally under subjection to another, and is induced, in consequence of such subjection, to do an act contrary to his win. A married woman, for example, is legally under the subjection of her husband, and if in his company she commit a crime or offence, not malum in se, (except the offence of keeping a bawdy-house, In which case she is considered by the policy of the law as a principal, she is presumed to act under this coercion.

4. As will (q.v.) is necessary to the commission of a crime, or the making of a contract, a person coerced into either, has no will on the, subject, and is not responsible. Vide Roscoe's Cr. Ev. 7 85, and the cases

there cited; 2 Stark. Ev. 705, as to what will, amount to coercion in criminal cases.

CO-EXECUTOR. One who is executor with another.

2. In general, the rights and duties of co-executors are equal.

COGNATION, civil law. Signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

2. Cognation is of three kinds: natural, civil, or mixed. Natural cognation is that which is alone formed by ties of blood; such is the kindred of those who owe their origin to an illicit connexion, either in relation to their ascendants or collaterals.

3. Civil cognation is that which proceeds alone from the ties of families as the kindred between the adopted father and the adopted child.

4. Mixed cognation is that which unites at the same time the ties of blood and family, as that which exists between brothers, the issue of the same lawful marriage. 6; Dig. 38, 10.

COGNATI, cognates. This term occurs frequently in the Roman civil law, and denotes collateral heirs through females. It is not used in the civil law as it now prevails in France. In the common law it has no technical sense, but as a word of discourse in English it signifies, generally, allied by blood, related in origin, of the same family. See Vicat, ad verb.; also, Biret's Vocabulaire.

COGNISANCE, pleading. Where the defendant in an action of replevin (not being entitled to the distress or goods which are the subject of the replevin) acknowledges the taking of the distress, and insists that such taking was legal, not because he himself had a right to distrain on his own

account, but because he made the distress by the command of another, who had a right to distrain on the goods which are the subject of the suit. Lawes on Pl. 35, 36; 4 Bouv. Inst. n. 3571.

COGNISANCE, practice. Sometimes signifies jurisdiction and judicial power, an sometimes the hearing of a matter judicially. It is a term used in the acknowledgment of a fine. See Vaughan's Rep. 207.

COGNISANCE OF PLEAS, Eng. law. A privilege granted by the king to a city or town, to hold pleas within the same; and when any one is impleaded in the courts at Westminster, the owner of the franchise may demand cognisance of the plea. T. de la Ley.

COGNISEE. He to whom a fine of lands, &c. is acknowledged. See Cognisor.

COGNISOR, English law. One who passes or acknowledges,a fine of lands or tenements to another, in distinction from the cognisee, to whom the fine of the lands, &c. is acknowledged.

COGNITIONIBUS ADMITTENDIS, English law, practice. A writ to a justice,or other person, who has power to take a fine, and having taken the acknowledgment of a fine, delays to certify it in the court of common pleas, requiring him to do it. Crabbe's Tech. Dict.

COGNOMEN. A Latin word, which signifies a family name. The praenomen among the Romans distinguished the person, the nomen, the gens, or all the kindred descended from a remote common stock through males, while the cognomen denoted the particular family. The agnomen was added on account of some

particular event, as a further distinction. Thus, in the designation Publius Cornelius Scipio Africanus, Publius is the proenomen, Cornelius is the nomen, Scipio the cognomen, and Africanus the agnomen. Vicat. These several terms occur frequently in the Roman laws. See Cas. temp. Hardw. 286; 1 Tayl. 148. See Name; Surname.

COGNOVIT, contr. leading. A written confession of an action by a defendant, subscribed but not sealed, and authorizing the plaintiff to sign judgment and issue execution, usually for a sum named.

2. It is given after the action is brought to save expense.

3. It differs from a warrant of attorney, which is given before the commencement of any action, and is under seal. A cognovit actionem is an acknowledgment and confession of the plaintiff's cause of action against the defendant to be just and true. Vide 3 Ch. Pr. 664; 3 Bouv. Inst. n. 8299.

COHABITATION. Living together.

2. The law presumes that husband and wife cohabit, even after a voluntary separation has taken place between them; but where there has been a divorce a mensa et thoro, or a sentence of separation, the presumption then arises that they have obeyed the sentence or decree, and do not live together.

3. A criminal cohabitation will not be presumed by the proof of a single act of criminal intercourse between a man and woman not married. 10 Mass. R. 153.

4. When a woman is proved to cohabit with a man and to assume his name with his consent, he will generally be responsible for her debts as if she had been his wife; 2 Esp. R. 637; 1 Campb. R. 245; this being presumptive evidence of marriage; B. N. P. 114; but this liability will continue only while they live together, unless she is actually his were. 4 Campb. R. 215.

5. In civil actions for criminal conversation with the plaintiff's wife, after the husband and wife have separated, the plaintiff will not in general be entitled to recover. 1 Esp. R. 16; S. C. 5 T. R. 357; Peake's Cas. 7, 39; sed vide 6 East, 248; 4 Esp. 39.

CO-HEIR. One of several men among whom an inheritance is to be divided.

CO-HEIRESS. A woman who inherits an estate in common with other women. A joint heiress.

COIF. A head-dress. In England there are certain serjeants at law, who are called serjeants of the coif, from the lawn coif they wear on their heads under their thin caps when they are admitted to that order.

COIN, commerce, contracts. A piece of gold, silver or other metal stamped by authority of the government, in order to determine its value, commonly called money. Co. Litt. 207; Rutherf. Inst. 123. For the different kinds of coins of the United States, see article Money. As to the value of foreign coins, see article Foreign Coins.

COLLATERAL, collateralis. From latus, a side; that which is sideways, and not direct.

COLLATERAL ASSURANCE, contracts. That which is made over and above the deed itself.

COLLATERAL FACTS evidence. Facts unconnected with the issue or matter in dispute.

2. As no fair and reasonable inference can be drawn from such facts, they are inadmissible in evidence, for at best they are useless, and may be mischievous, because they tend to distract the attention of the jury, and to mislead them. Stark. Ev. h.t.; 2 Bl. Rep. 1169; 1 Stark Ev. 40; 3 Bouv. Inst. n. 3087.

3. It is frequently difficult to ascertain a priori, whether a particular fact offered in evidence, will, or will not clearly appear to be material in the progress of the cause, and in such cases it is usual in practice for the court to give credit to the assertion of the counsel who tenders such evidence, that the facts will turn out to be material; but this is always within the sound discretion of the court. It is the duty of the counsel, however, to offer evidence, if possible, in such order that each part of it will appear to be pertinent and proper at the time it is offered; and it is expedient to do so, as this method tends to the success of a good cause.

4. When a witness is cross-examined as to collateral facts, the party cross-examining will be bound by the answer, and he cannot, in general, contradict him by another witness. Rosc. Ev. 139.

COLLATERAL ISSUE, practice, pleading. Where a criminal convict pleads any matter, allowed by law, in bar of execution; as pregnancy, a pardon, and the like.

COLLATERAL KINSMEN, descent, distribution. Those who descend from one and the same common ancestor, but not from one another; thus brothers and sisters are collateral to each other; the uncle and the nephew are collateral kinmen, and cousins are the same. The term collateral is used in opposition to the phrase lineal kinsmen. (q.v.)

COLLATERAL SECURITY, contracts. A separate obligation attached to another contract, to guaranty its performance. By this term is also meant the transfer of property or of other contracts to insure the performance of a principal engagement. The property or securities thus conveyed are also called collateral securities. 1 Pow. Mortg. 393; 2 Id. 666, n. 871; 3 Id. 944, 1001.

COLLATERAL WARRANTY, contracts, descent. Where the heir's title to the land neither was, nor could have been, derived from the warranting ancestor; and yet barred the heir from ever claiming the land, and also imposed upon him the same obligation of giving the warrantee other lands, in case of eviction, as if the warranty were lineal, provided the heir had assets. 4 Cruise, Real Prop. 436.

2. The doctrine of collateral warranty, is, according to Justice Story, one of the most unjust, oppressive and indefensible, in the whole range of the common law. 1 Sumn. R. 262.

3. By the statute of 4 & 5 Anne, c. 16, Sec. 21, all collateral warranties of any land to be made after a certain day, by any ancestor who has no estate of inheritance in possession in the same, were made void against the heir. This Statute has been reenacted in New. York; 4 Kent, Com. 460, 3d ed.; and in New Jersey. 3 Halst. R. 106. It has been adopted and is in force in Rhode Island; 1 Sumn. R. 235; and in Delaware. Harring. R. 50. In Kentucky and Virginia, it seems that collateral warranty binds the heir to the extent of assets descended. 1 Dana, R. 59. In Pennsylvania, collateral warranty of the ancestor, with sufficient real assets descending to the heirs, bars them from recovering the lands warranted. 4 Dall. R. 168; 2 Yeates, R. 509; 9 S. & R. 275. See 1 Sumn. 262; 3 Halst. 106; Harring. 50; 3 Rand. 549; 9 S. & R. 275; 4 Dall. 168; 2 Yeates, 509; 1 Dana, 50.

COLLATIO BONORUM, descent, distribution. Where a portion or money advanced to a son or daughter, is brought into @botchpot, in order to have an equal distributive share of the ancestor's personal estate. The same rule obtains in the civil law. Civil Code of Louis. 1305; Diet. de Jur. mot Collation; Merlin Rep. mot Collation.

COLLATION, descents. A term used in the laws of Louisiana. Collation -of goods is the supposed or real return to the mass of the succession, which an heir makes of the property he received in advance of his share or otherwise, in order that such property may be divided, together with the other effects of the succession. Civil Code of Lo. art. 1305.

2. As the object of collation is to equalize the heirs, it follows that those things are excluded from collation, which the heir acquired by an onerous title from the ancestor, that is, where he gave a valuable consideration for them. And upon the same principle, if a co-heir claims no share of the estate, he is not bound to collate. Qui non vult hereditatem, non cogitur ad collationem. See Id. art. 1305 to 1367; And @Hotchpot.

COLLATION, eccl. law. The act by which the bishop, who has the bestowing of a benefice, gives it to an incumbent. T. L.

COLLATION, practice. The comparison of a copy with its original, in order to ascertain its correctness and conformity; the report of the officer who made the comparison, is also called a collation.

COLLATION OF SEALS. Where, on the same label, one seal was set on the back or reverse of the other, this was said to be a collation of seals. Jacob. L. D. h.t.

COLLECTOR, officer. One appointed to receive taxes or other impositions; as collector of taxes; collector of militia fines, &c. A collector is also a person appointed by a private person to collect the credits due him. Metc. & Perk. Dig. h.t.

COLLECTORS OF THE CUSTOMS. Officers of the United States, appointed for the term of four years, but removable at the pleasure of the president. Act of May 15, 1820, sect. 1, 3 Story's U. S. Laws, 1790.

2. The duties of a collector of customs are described in general terms, as follows: "He shall receive all reports, manifests and documents, to be made or exhibited on the entry of any ship or vessel, according to the regulations of this act shall record in books, to be kept for the purpose, all manifests; shall receive the entries of all ships or vessels, and of the goods, wares and merchandise imported in them; shall, together with the naval officer, where there is one, or alone, where there is none, estimate the amount of duties payable thereupon, endorsing the said amounts upon the respective entries; shall receive all moneys paid for duties, and shall take bonds for securing the payment thereof; shall grant all permits for the unlading and delivery of goods; shall, with the approbation of the principal officer of the treasury department, employ proper persons as weighers, gaugers, measurers and inspectors, at the several ports within his district; and also, with the like approbation, provide, at the public expense, storehouses for the safe keeping of goods, and such scales, weights and measures, as may be necessary." Act of March 2,1799) s. 21, 1 Story, U. S. Laws, 590. Vide, for other duties of collectors, 1 Story, U. S. Laws, 592, 612, 620, 632, 659, and vol. 3, 1650, 1697, 1759, 1761, 1791, 1811, 1848, 1854; 10 Wheat. 246.

COLLEGE. A civil corporation, society or company, authorized by law, having in general a literary object. In some countries by college is understood the union of certain voters in *one body; such bodies are called electoral colleges; as, the college of electors or their deputies to the diet of Ratisbon; the college of cardinals. The term is used in the United States; as, the college of electors of president and vice-president, of the United States. Act of Congress of January 23, 1845.

COLLISION, maritime law. It takes place when two ships or other vessels run foul of each other, or when one runs foul of the other. In such cases there is almost. always a damage incurred.

2. There are four possibilities under which an accident of this sort may occur. 1. It may happen without blame being imputable to either party, as when the loss is occasioned by a storm, or any other vis major; in that case the loss must be borne by the party on whom it happens to light, the other not being responsible to him in, any degree.

3. - 2. Both parties may be to blame, as when there has been a want of due diligence or of skill on both sides; in such cases, the loss must be apportioned between them, as having been occasioned by the fault of both of them. 6 Whart. R. 311..

4. - 3. The suffering party may have been the cause of the injury, then he must bear the loss.

5. - 4. It may have been the fault of the ship which ran down the other; in this case the injured party would be entitled to an entire compensation from the other. 2 Dodson's Rep. 83, 85; 3 Hagg. Adm. R. 320; 1 How. S. C. R. 89. The same rule is applied to steamers.. Id. 414.

6. - 5. Another case has been put, namely, when there has been some fault or neglect, but on which side the blame lies, is uncertain. In this

case, it does not appear to be settled whether the loss shall be apportioned or borne by the suffering party opinions on this subject are divided.

7. A collision between two ships on the high seas, whether it be the result of accident or negligence, is, in all cases, to be deemed a peril of the seas within the meaning of a policy of insurance. 2 Story, R. 176; 3 Sumn. R. 889. Vide, generally, Story, Bailm. Sec. 607 to 612; Marsh.. Ins. B. 1, c. 12, s. 2; Wesk. Ins. art. Running Foul; Jacobsen's Sea Laws, B. 4, c. 1; 4 Taunt. 126; 2 Chit. Pr. 513, 535; Code de Com. art. 407; Boulay-Paty, Cours de Dr. Commercial, tit. 12, s. 6; Pard. n. 652 to 654; Pothier, Avaries, n. 155; 1 Emerig. Assur. ch. 12, Sec. 14.

COLLISTRIGIUM. The pillory.

COLLOCATION, French law. The act by which the creditors of an estate are arranged in the order in which they are to be paid according to law. The order in which the creditors-are placed, is also called collocation. Merl. Rep. h.t. Vide Marshalling Assets.

COLLOQUIM, pleading. A discourse a conversation or conference.

2. In actions of slander, it is generally true that an action does not lie for words, on account of, their being merely disgraceful to a person in his office, profession or trade; unless it be averred, that at the time of publishing the words, there was a colloquium concerning the office, profession or trade of the plaintiff.

3. In its technical sense, the term colloquium signifies an averment in a declaration that there was a conversation or discourse on the part of the defendant, which connects the slander with the office, profession or trade of the plaintiff; and this colloquium must extend to the whole of the

prefatory matter to render the words actionable. 3 Bulst. 83. Vide Bac. Ab. Slander, S, n. 3; Dane's Ab. Index, h.t.; Com. Dig. Action upon the case for Defamation, 6, 7, 8, &c.; Stark. on Sland. 290, et seq.

COLLUSION, fraud. An agreement between two or more persons, to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law; as, for example, where the husband and wife collude to obtain a divorce for a cause not authorized by law. It is nearly synonymous with @covin. (q.v.)

2. Collusion and fraud of every kind vitiate all acts which are infected with them, and render them void. Vide Shelf. on Mar. & Div. 416, 450; 3 Hagg. Eccl. R. 130, 133; 2 Greenl. Ev. Sec. 51; Bousq. Dict. de Dr. mot Abordage.

COLONEL. An officer in the army, next below a brigadier general, bears this title.

COLONY. A union of citizens or subjects who have left their country to people another, and remain subject to the mother country. 3 W. C. C. R. 287. The country occupied by the colonists is also called a colony. A colony differs from a possession, or a dependency. (q.v.) For a history of the American colonies, the reader is referred to Story on the Constitution, book I.; 1 Kent, Com. 77 to 80; 1 Dane's Ab. Index, b. t.

COLOR, pleading. It is of two kinds, namely, express color, and implied color.

2. Express color. This is defined to be a feigned matter, pleaded by the defendant, in an action of trespass, from which the plaintiff seems to have a good cause of action, whereas he has in truth only an appearance or

color of cause. The practice of giving express color in pleas, obtained in the mixed actions of assize, the writ of entry in the nature of assize, as well as in the personal action of trespass. Steph. on Plead. 230; Bac. Ab. Trespass, 14.

3. It is a general rule in pleading that no man shall be allowed to plead specially such plea as amounts to the general issue, or a total denial of the charges contained in the declaration, and must in such cases plead the general issue in terms, by which the whole question is referred to the jury; yet, if the defendant in an action of trespass, be desirous to refer the validity of his title to the court, rather than to the jury; he may in his plea stated his title specially, by expressly giving color of title to the plaintiff, or supposing him to have an appearance of title, had indeed in point of law, but of which the jury are not competent judges. 3 Bl. Com. 309. Suppose, for example, that the plaintiff wag in wrongful possession of the close, without any further appearance of title than the possession itself, at the time of the trespass alleged, and that the defendants, entered upon him in assertion of their title: but being unable to set forth this title in the pleading, in consequence of the objection that would arise for want of color, are driven to plead the general issue of not guilty. By this plea an issue is produced whether the defendants are-guilty or not of the trespass; but upon the trial of the issue, it will be found that the question turns entirely upon a construction of law. The defendants say they are not guilty of the trespasses, because they are not guilty of breaking the close of the plaintiff, as alleged in the declaration; and that they are not guilty of breaking the close of the plaintiff, because they themselves had the property in that close; and their title is. this, that the father of one of the defendants being seised of the close in fee, gave it in tail to his eldest son, remainder in tail to one of the defendants; the eldest son

was disseised, but made continual claim till the death of the disseisor; after whose death, the descent being cast upon the heir, the disseisee entered upon the heir, and afterwards died, when the remainder took effect in the said defendant who demised to the other defendant. Now, this title involves a legal question; namely, whether continual claim will no preserve the right of entry in the disseisee, notwithstanding a descent cast on the heir of the disseisor. (See as to this point, Continual Claim.) The issue however is merely not guilty, and this is triable by jury; and the effect, therefore, would be, that a jury would have to decide this question of law, subject to the direction upon it, which they would receive from the court. But, let it be supposed that the defendants, in a view to the more satisfactory decision of the question, wish to bring it under the consideration of the court in bank, rather than have it referred to a jury. If they have any means of setting forth their title specially in the plea, the object will be attained; for then the plaintiff, if disposed to question the sufficiently of the title, may demur to the plea, and thus refer the question to the decision of the judges. But such plea if pleaded simply, according to the state of the fact, would be informal for want of color; and hence arises a difficulty.

4. The pleaders of former days, contrived to overcome this difficulty in the following singular manner. In such case as that supposed, the plea wanting implied color, they gave in lieu of it an express one, by inserting a fictitious allegation of some colorable title in the plaintiff, which they, at the same time avoided by the preferable title of the defendant. S Step. Pl. 225 Brown's Entr. 343, for a form of the plea. Plowd. Rep. 22 b.

5. Formerly various suggestions of apparent right, might be adopted according to the fancy of the pleader; and though the same latitude is, perhaps, still available, yet, in practice, it is unusual to resort to any except certain known fictions, which long usage has applied to the

particular case for example, in trespass to land, the color universally given is that of a defective charter of the demise. See, in general, 2 Saund. 410; 10 Co. 88; Cro. Eliz. 76; 1 East, 215; Doct. Pl. 17; Doct. & Stud. lib. 2, c. 53; Bac. Abr. Pleas, I 8; Trespass, I 4; 1 Chit. Pl. 500 Steph. on Pl. 220.

6. Implied color. That in pleading which admits by implication, an apparent right in the opposite party, and avoids it by pleading some new matter by which that apparent right is defeated. Steph. Pl. 225.

7. It is a rule that every pleading by way of confession and avoidance, must give color; that is, it must admit an apparent right in the opposite party, and rely, therefore, on some new matter by which that apparent right is defeated. For example, where the defendant pleads a release to an action for breach of covenant, the tendency of the plea is to admit an apparent right in the plaintiff, namely, that the defendant did, as alleged in the declaration, execute the deed and break the covenant therein contained, and would therefore, prima facie, be liable on that ground; but shows new matter not before disclosed, by which that apparent right is done away, namely, that the plaintiff executed to him a release. Again, if the plaintiff reply that Such release was obtained by duress, in his, replication, he impliedly admits that the defendant has, prima facie, a good defence, namely, that such release was executed as alleged in the plea; and that the defendant therefore would be discharged; but relies on new matter by which the plea is avoided, namely, that the release was obtained by duress. The plea, in this case, therefore, gives color to the declaration, and the replication, to the plea. But let it be supposed that the plaintiff has replied, that the release was executed by him, but to another person, and not to the defendant; this would be an informal replication wanting color; because, if the release were not to the defendant there would not exist even an apparent

defence, requiring the allegation of new matter to avoid it, and the plea might be sufficiently answered by a traverse, denying that the deed stated in the plea is the deed of the plaintiff. See Steph. Pl. 220; 1 Chit. Pl. 498; Lawes, Civ. Pl. 126; Arch. Pl. 211; Doct. Pl. 17; 4 Vin. Abr. 552; Bac. Abr. Pleas, &e. I 8; Com. Dig. Pleader, 3 M 40, 3-M 41. See an example of giving color in pleading in the Roman law, Inst. lib. 4, tit 14, De replicantionibus.

COLOR OR OFFICE, criminal law. A wrong committed by an officer under the pretended authority of his office; in some cases the act amounts to a misdemeanor, and the party may then be indicted. In other cases, the remedy to redress the wrong is by an action.

COLT. An animal of the horse species, whether male or female, not more than four years old. Russ. & Ry. 416.

COMBAT, Eng. law. The form of a forcible encounter between two or more persons or bodies of men; an engagement or battle. A duel.

COMBINATION. A union of different things. A patent may be taken out for a new combination of existing machinery, or machines. See 2 Mason, 112; and Composition of matter.

2. By combination is understood, in a bad sense, a union of men for the purpose of violating the law.

COMBUSTIO DOMORUM. Burning of houses; arson. Vide 4 Bl. Com. 372.

COMES, pleading. In a plea, the defendant says, "And the said C D, by E F, his attorney, comes, and defends, &c. The word comes, venit, expresses the

appearance of the defendant, in court. It is taken from the style of the entry of the proceedings on the record, and formed no part of the viva voce pleading. It is, accordingly, not considered as, in strictness, constituting a part of the Plea. 1 Chit. Pl. 411; Steph. Pl. 432.

COMES, offices. A Count. An officer during the middle ages, who possessed civil and military authority. Sav. Dr. Rom. Moy. age, n. 80.

2. Vice-comes, the Latin name for sheriff, was originally the lieutenant of the comes.

COMITATUS. A county. Most of the states are divided into counties; some, as Louisiana, are divided into parishes.

COMITES. Persons who are attached to a public minister, are so called. As to their privileges, see 1 Dall. 117; Baldw. 240; and Ambassador.

COMITY. Courtesy; a disposition to accommodate.

2. Courts of justice in one state will, out of comity, enforce the laws of another state, when by such enforcement they will not violate their laws or inflict. an injury on some one of their own citizens; as, for example, the discharge of a debtor under the insolvent laws of one state, will be respected in another state, where there is a reciprocity in this respect.

3. It is a general rule that the municipal laws of a country do not extend beyond its limits, and cannot be enforced in another, except on the principle of comity. But when those laws clash and interfere with the rights of citizens, or the laws of the countries where the parties to the contract seek to enforce it, as one or the other must give way, those prevailing where the relief is sought must have the preference. 2 Mart. Lo. Rep. N. S.

93; S. C. 2 Harr. Cond. Lo. Rep. 606, 609; 2 B. & C. 448, 471; 6 Binn. 353; 5 Cranch, 299; 2 Mass. 84; 6 Mass. 358; 7 Mart. Lo. R. 318. See Conflict of Laws; Lex loci contractus.

COMMAND. This word has several meanings. 1. It signifies an order; an apprentice is bound to obey the lawful command of his master; a constable may command rioters to keep the peace.

2. He who commands another to do an unlawful act, is accessary to it. 3 Inst. 51, 57; 2 Inst. 182; 1 Hayw.

3. Command is also equivalent to deputation or voluntary substitution; as, when a master employs one to do a thing, he is said to have Commanded him to do it; and he is responsible accordingly. Story Ag. Sec. 454, note.

COMMENCEMENT OF A SUIT OR ACTION. The suit is considered as commenced from the issuing of the writ; 3 Bl. Com. 273, 285; 7 T. R. 4; 1 Wils. 147; 18 John. 14; Dunl. Pr. 120; 2 Phil. Ev. 95; 7 Verm. R. 426; 6 Monr. R. 560; Peck's R. 276; 1 Pick. R. 202; Id. 227; 2 N. H. Rep. 36; 4 Cowen, R. 158; 8 Cowen, 203; 3 John. Cas. 133; 2 John. R. 342; 3 John. R. 42; 15 John. R. 42; 17 John. R. 65; 11 John. R. 473; and if the teste or date of the writ be fictitious, the true time of its issuing may be a and proved, whenever the purposes of justice require it; as in cases of a plea of tender or of the statute of limitations. Bac. Ab. Tender D; 1 Stra. 638; Peake's Ev. 259; 2 Saund. 1, n. 1. In Connecticut, the service of, the writ is the commencement of the action. 1 Root, R. 487; 4 Conn. 149; 6 Conn. R. 30; 9 Conn. R. 530; 7 Conn. R. 558; 21 Pick. R. 241; 2 C. & M. 408, 492 1 Sim. R. 393. Vide Lis Pendens.

COMENDAM, eccles. law. When a benefice or church living is void or vacant, it is commended to the. care of some sufficient clerk to be supplied, until

it can be supplied with a pastor. He to whom the church is thus commended is said to hold in commendam, and he is entitled to the profits of the living. Rob. 144; Latch, 236.

2. In Louisiana, there is a species of limited partnership called a partnership in commendam. It is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses, to the amount furnished, and no more. Civ. Code of Lo. 2810. A similar partnership exists in France. Code de Comm. 26, 33; Sirey, tom. 12, part 2, p. 25. He who makes this contract is called in respect to those to whom he makes the advance of capital, a partner in commendam. Civ. Code of Lo. art. 2811.

COMMENDATARY. A person who holds a church living or presentment in commendam.

COMMENDATION. The act of recommending, praising. A merchant who merely commends goods he offers for sale, does not by that act warrant them, unless there is some fraud: simplex commendatio non obligat.

COMMENDATORS, eccl. law. Secular persons upon whom ecclesiastical benefices are bestowed, because they were commended and instructed to their oversight: they are merely trustees.

COMMERCE, trade, contracts. The exchange of commodities for commodities; considered in a legal point of view, it consists in the various agreements

which have for their object to facilitate the exchange of the products of the earth or industry of man, with an intent to realize a profit. Pard. Dr. Coin. n. 1. In a narrower sense, commerce signifies any reciprocal agreements between two persons, by which one delivers to the other a thing, which the latter accepts, and for which he pays a consideration; if the consideration be money, it is called a sale; if any other thing than money, it is called exchange or barter. Domat, Dr. Pub. liv. 1, tit. 7, s. 1, n. 2. Congress have power by the constitution to regulate commerce with foreign nations and among the several states, and with the Indian tribes. 1 Kent. 431; Story on Const. Sec. 1052, et seq. The sense in which the word commerce is used in the constitution seems not only to include traffic, but intercourse and navigation. Story, Sec. 1057; 9 Wheat. 190, 191, 215, 229; 1 Tuck. Bl. App. 249 to 252. Vide 17 John. R. 488; 4 John. Ch. R. 150; 6 John. Ch. R. 300; 1 Halst. R. 285; Id. 236; 3 Cowen R. 713; 12 Wheat. R. 419; 1 Brock. R. 423; 11 Pet. R. 102; 6 Cowen, R. 169; 3 Dana, R. 274; 6 Pet. R. 515; 13 S. & R. 205.

COMMISSARIATE. The whole body of officers who act in the department of the commissary, are called the, commissariate.

COMMISSARY. An officer whose principal duties are to supply the army with provisions.

2. The Act of April 14, 1818, s. 6, requires that the president, by and with the consent of the senate, shall appoint a commissary general with the rank, pay, and emoluments of colonel of ordnance, and as many assistants, to be taken from the sub-alterns of the line, as the service may require. The commissary general and his assistants shall perform such duties, in the purchasing and issuing of rations to the armies of the United States, as the president may direct. The duties of these officers are further detailed in

the subsequent sections of this act,, and in the Act of March 2, 1821.

COMMISSION, contracts, civ. law. When one undertakes, without reward, to do something for another in respect to a thing bailed. This term is frequently used synonymously with mandate. (q.v.) Ruth. Inst. 105; Halifax, Analysis of the Civil Law, 70. If the service the party undertakes to perform for another is the custody of his goods, this particular sort of, commission is called a charge.

2. In a commission, the obligation on his part who undertakes it, is to transact the business without wages, or any other reward, and to use the same care and diligence in it, as if it were his own.

3. By commission is also understood an act performed, opposed to omission, which is the want of performance of such an act; is, when a nuisance is created by an act of commission, it may be abated without notice; but when it arises from omission, notice to remove it must be given before it is abated. 1 Chit. Pr. 711. Vide Abatement of Nuisances; Branches; Trees.

COMMISSION, office. Persons authorized to act in a certain matter; as, such a matter was submitted, to the commission; there were several meetings before the commission. 4 B. & Cr. 850; 10 E. C. L. R. 459.

COMMISSION, crim. law. The act of perpetrating an offence. There are crimes of commission and crimes of omission.

C0@MMISSION, government. Letters-patent granted by the government, under the public seal, to a person appointed to an office, giving him authority to perform the duties of his office. The commission is not the appointment, but

only evidence of it; and as soon as it is signed and sealed, vests the office in the appointee. 1 Cranch, 137; 2 N. & M. 357; 1 M'Cord, 233, 238. See Pet. C. C. R. 194; 2 Summ. 299; 8 Conn. 109; 1 Penn. 297; 2 Const. Rep. 696; 2 Tyler, 235.

COMMISSION, practice. An instrument issued by a court of, justice, or other competent tribunal, to authorize a person to take depositions, or do any other act by authority of such court, or tribunal, is called a commission. For a form of a commission to take. depositions, see Gresley, Eq. Ev. 72.

COMMISSION OF LUNACY, A writ issued out of chancery, or such court as may have jurisdiction of the case directed to a proper officer, to inquire whether a person named therein is a lunatic or not. 1 Bouv. Inst. n. 382, et seq.

COMMISSION MERCHANT. One employed to sell goods for another on commission; a factor. He is sometimes called. a consignee, (q.v.) and the goods he receives are a consignment. 1 Bouv. Inst. n. 1013.

COMMISSION OF @REB @ELLION, chan. prac. The name of a writ issuing out of chancery, generally directed to four special commissioners, named by the plaintiff, commanding them to attach the defendant wheresoever he may be found within the state, as a rebel and contemner of the law, so as to have him in chancery on a certain day therein named. This writ may be issued after an attachment with proclamation, and a return of non est inventus. Blake's Ch. Pr. 102; Newl. Ch. Pr. 14.

COMMISSIONER, officer. One who has a lawful commission to execute a public office. In a more restricted sense it is one who is authorized to execute. a

particular duty, as, commissioner of the revenue, canal commissioner. The term when used in this latter sense is not applied, for example, to a judge. There are commissioners, too, who have no regular commissions and derive their author from the elections held by the people. County commissioners, in Pennsylvania, are officers of the latter kind.

COMMISSIONER OF PATENTS. The name of an officer of the United States whose duties are detailed in the act to promote the useful arts, &c., which will be found under the article Patent.

COMMISSIONERS OF BAIL, practice. Officers appointed by some courts to take recognizances of bail in civil cases.

COMMISSIONERS OF SEWERS, Eng. law. Officers whose duty it is to repair sea banks and walls, survey rivers, public streams, ditches, &c.

C0@MMISSlONS, contracts, practice. An allowance of compensation to an agent, factor, executor, trustee or other person who manages the affairs of others, for his services in performing the same.

2. The right of agents, factors or other contractors to commissions, may either be the subject of a special contract, or rest upon the quantum meruit. 9 C. & P. 559; 38 E. C. L. R. 227; 3 Smith's R. 440; 7 C. & P. 584; 32 E. C. L. R. 641; Sugd. Vend. Index, tit. Auctioneer

3. This compensation is usually the allowance of a certain, per @centage upon the actual amount or value of the business done. When there is a usage of trade at the particular place, or in the particular business in which the agent is engaged, the amount of commissions allowed to auctioneers, brokers

and factors, is regulated by such usage. 3 Chit. Com. Law, 221; Smith on Mere. Law, 54; Story, Ag. Sec. 326; 3 Camp. R. 412; 4 Camp. R. 96; 2 Stark. 225, 294.

4. The commission of an agent is either ordinary or del credere. (q.v.) The latter is an increase of the ordinary commission, in consideration of the responsibility which the agent undertakes, by making himself answerable for the solvency of those with whom he contracts. Liverm. Agency, 3, et seq.; Paley, Agency, 88, et seq.

5. In Pennsylvania, the amount missions allowed to executors and trustees is generally fixed at five per centum on the sum received and paid out, but this is varied according to circumstances. 1 9 S. & R. 209, 223; 4 Whart. 98; 1 Serg. & Rawle, 241. In England, no commissions are allowed to executors or trustees. 1 Vern. R. 316, n. and the cases there: cited. 4 Ves. 72, n.

TO COMMIT. To send a person to prison by virtue of a warrant or other lawful writ, for the commission of a crime, offence or misdemeanor, or for a contempt, or non-payment of a debt.

COMMITMENT, criminal law, practice. The warrant. or order by which a court or magistrate directs a ministerial officer to take a person to prison. The commitment is either for further hearing, (q.v.) or it is final.

2. The formal requisites of the commitment are, 1st. that it be in writing, under hand, and seal, and show the authority of the magistrate, and the time and place of making it. 3 Har. & McHen. 113; Charl. 280; 3 Cranch, R. 448; see Harp. R. 313. In this case it is said a seal is not indispensable.

3. - 2d. It must be made in the name of the United States, or of the commonwealth, or people, as required by the constitution of the United

States or, of the several states.

4. - 3d. It should be directed to the keeper of the prison, and not generally to carry the party to prison. 2 Str. 934; 1 Ld. Raym. 424.

5. - 4th. The prisoner should be described by his name and surname, or the name he gives as his.

6. - 5th. The commitment ought to state that the party has been charged on oath. 3 Cranch, R.448. But see 2 Virg. Cas. 504; 2 Bail. R. 290.

7. - 6th. The particular crime charged against the prisoner should be mentioned with convenient certainty. 3 Cranch, R. 449; 11 St. Tr. 304. 318; Hawk. B. 2, c. 16, s. 16 Chit. Cr. Law, 110.

8. - 7th. The commitment should point out the place of imprisonment, and not merely direct that the party be taken to prison. 2 Str. 934; 1 Ld. Ray. 424.

9. - 8th. In a final commitment, the command to the keeper of the prison should be to keep the prisoner "until he shall be discharged by due course of law," when the offence is not bailable; when it is bailable the gaoler should be, directed to keep the prisoner in his "said custody for want of sureties, or until he shall be discharged by due course of law." When the commitment is not final, it is usual to commit the prisoner "for further hearing." The commitment is also called a mittimus. (q.v.)

10. The act of sending a person to prison charged with the commission of a crime by virtue of such a warrant is also called a commitment. Vide, generally, 4 Vin. Ab. 576; Bac. Ab. h.t.; 4 Cranch, R. 129; 4 Dall. R. 412; 1 Ashm. R. 248; 1 Cowen, R. 144; 3 Conn. R. 502; Wright, R. 691; 2 Virg. Cas. 276; Hardin, R. 249; 4 Mass. R. 497; 14 John. R. 371 2 Virg. Cas. 594; 1 Tyler, R. 444; U. S. Dig. h.t.

COMMITTEE, practice. When a person has been found non compos, the law

requires that a guardian should be appointed to take care of his person and estate; this guardian is called the committee.

2. It is usual to select the committee from the next of kin; Shelf. on Lun. 137; and in case of the lunacy of the husband or wife, the one who is of sound mind is entitled, unless under very special circumstances, to be the committee of the other. Id. 140. This is the committee of the person. For committee of the estate, the heir at law is most favored. Relations are referred to strangers, but the latter may be appointed. Id. 144.

3. It is the duty of the committee of the person, to take care of the lunatic; and the committee of the estate is bound to administer the estate faithfully, and to account for his administration. He cannot in general, make contracts in relation to the estate of the lunatic, or bind it, without a Special order of the court or authority that appointed him. Id. 179; 1 Bouv. Inst. n. 389-91.

COMMITTEE, legislation. One or more members of a legislative body to whom is specially referred some matter before that body, in order that they may investigate and examine into it and report to those who delegated this authority to them.

COMMITTITUR PIECE, Eng. law. An instrument in writing, on paper or parchment, which charges a person already in prison, in execution at the suit of, the person who arrested him.

COMMIXTION, civil law. This term is used to signify the act by which goods are mixed together.

2. The matters which are mixed are dry or liquid. In the commixtion of the former, the matter retains its substance and individuality; in the latter, the substances no longer remain distinct. The commixtion of liquids

is called confusion, (q.v.) and that of solids, a mixture. Lec. Elem. du Dr. Rom. Sec. 370, 371; Story, Bailm. Sec. 40; 1 Bouv. Inst. n. 506.

COMMODATE, contracts. A term used in the Scotch law, which is synonymous to the Latin commodatum, or loan for use. Ersk. Inst. B. 3, t. 1, Sec. 20; 1 Bell's Com. 225; Ersk. Pr. Laws of Scotl. B. 3, t. 1, Sec. 9.

2. Judge Story regrets this term has not been adopted and naturalized, as mandate has been from mandatum. Story, Com. Sec. 221. Ayliffe, in his Pandects, has gone further, and terms the bailor the commodant, and the bailee the commodatory, thus avoiding those circumlocutions, which, in the common phraseology of our law, have become almost indispensable. Ayl. Pand. B. 4, t. 16, p. 517. Browne, in his Civil Law, vol. 1, 352, calls the property loaned "commodated property." See Borrower; Loan for use; Lender.

COMMODATUM. A contract, by which one of the parties binds himself to return to the other certain personal chattels which the latter delivers to him, to be used by him, without reward; loan -for use. Vide Loan for use.

COMMON. or right of common, English law. An encorporeal hereditament, which consists in a profit which a man has in the lands of another. 12 S. & R. 32; 10 Wend. R. 647; 11 John. R. 498; 2 Bouv. Inst. 1640, et seq.

2. Common is of four sorts; of pasture, piscary, turbary and estovers. Finch's Law, 157; Co. Litt. 122; 2 Inst. 86; 2 Bl. Com. 32.

3. - 1. Common of pasture is a right of feeding one's beasts on another's land, and is either appendant, appurtenant, or in gross.

4. Common appendant is of common right, and it may be claimed in pleading as appendant, without laying a prescription. Hargr. note to 2 Inst. 122, a note.

5. Rights of common appurtenant to the claimant's land are altogether independent of the tenure, and do not arise from any absolute necessity; but may be annexed to lands in other lordships, or extended to other beasts besides. such as are generally commonable.

6. Common in gross, or at large, is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. All these species of pasturable common, may be and usually are limited to number and time; but there are also commons without stint, which last all the year. 2 Bl. Com. 34.

7. - 2. Common of piscary is the liberty of fishing in another man's water. lb. See Fishery.

8. - 3. Common of turbary is the liberty of digging turf in another man's ground. Ib.

9.-4. Common of estovers is the liberty of taking necessary wood-for the use or furniture of a house or farm from another man's estate. Ib.; 10 Wend. R. 639. See Estovers.

10. The right of common is little known in the United States, yet there are some regulations to be found in relation to this subject. The constitution of Illinois provides for the continuance of certain commons in that state. Const. art. 8, s. 8.

11. All unappropriated lands on the Chesapeake Bay, on the Shore of the sea, or of any river or creek, and the bed of any river or creek, in the eastern parts of the commonwealth, ungranted and used as common, it is declared by statute in Virginia, shall remain so, and not be subject to grant. 1 Virg. Rev. C. 142.

12. In most of the cities and towns in the United States, there are considerable tracts of land appropriated to public use. These commons were generally laid out with the cities or towns where they are found, either by the original proprietors or by the early inhabitants. Vide 2 Pick. Rep. 475;

12 S. & R. 32; 2 Dane's. Ab. 610; 14 Mass. R. 440; 6 Verm. 355. See, in general, Vin. Abr. Common; Bac. Abr. Common; Com. Dig. Common; Stark. Ev. part 4, p. 383; Cruise on Real Property, h.t.; Metc. & Perk. Dig. Common, and Common lands and General fields.

C0@MMON APPENDANT, Eng. law. A right attached to arable land, and is an incident of tenure, and supposed to have originated by grant of the lord or owner of a manor or waste, in consideration of certain rents or services, or other value, to a freeholder or copyholder of plough land, and at the same time either expressly or by implication, and as of common right and necessity common appendant over his other wastes and commons. Co. Litt. 122 a; Willis, 222.

C0MMON APPURTENANT, Eng. law. A right granted by deed, by the owner of waste or other land, to another person, owner of other land, to have his cattle, or a particular description of cattle; levant and couchant upon the land, at certain seasons of the year, or at all times of the year. An uninterrupted usage for twenty years, is evidence of a grant. 15 East, 116.

COMMON ASSURANCES. Title by deeds are so called, because, it is said, every man ' s estate is assured to him; these deed's or instruments operate either as conveyances or as charges.

2.- 1. Deeds of conveyance are, first, at common law, and include feoffments, gifts, grants, leases, exchanges, partition's, releases, confirmations, surrenders, assignments, and defeasances; secondly, deeds of conveyance under the statute of uses, as covenants to stand seised to uses, bargains and sale, lease and release, deeds to lead or declare uses, and deeds of appointment and revocation.

3. - 2. Deeds which do not convoy, but only charge or discharge lands, are obligations, recognizances, and defeasances. Vide Assurance; Deed.

COMMON BAIL. The formal entry of fictitious sureties in the proper office of the court, which is called filing common bail to the action. See Bail.

COMMON BAR, pleading. A plea to compel the plaintiff to assign the particular place where the trespass has been Committed. Steph. Pl. 256. It i's sometime's called a blank bar. (q.v.)

COMMON BENCH, bancus communis. The court of common pleas was anciently called common bench, because the pleas and controversies there determined were between common persons. See Bench.

COMMON CARRIER, contracts. One who undertakes for hire or reward to transport the goods of any who may choose to employ him, from place to place. 1 Pick. 50, 53; 1 Salk. 249, 250; Story, Bailm. Sec. 495 1 Bouv. Inst. n. 1020.

2. Common carriers are generally of two descriptions, namely, carriers by land and carriers by water. Of the former description are the proprietors of stage coaches, stage wagons or expresses, which ply between different places, and' carry goods for hire; and truckmen, teamsters, cartmen, and porters, who undertake to carry goods for hire, as a common employment, from one part of a town or city to another, are also considered as common carriers. Carriers by water are the masters and owners of ships and steamboats engaged in the transportation of goods for persons generally, for hire and lightermen, hoymen, barge-owners, ferrymen, canal boatmen, and others employed in like manner, are so considered.

3. By the common law, a common carrier is generally liable for all

losses which may occur to property entrusted to his charge in the course of business, unless he can prove the loss happened in consequence of the act of God, or of the enemies of the United States, or by the act of the owner of the property. 8 S. & R. 533; 6 John. R. 160; 11 John. R. 107; 4 N. H. Rep. 304; Harp. R. 469; Peck. R. 270; 7 Yerg. R. 340; 3 Munf. R. 239; 1 Conn. R. 487; 1 Dev. & Bat. 273; 2 Bail. Rep. 157.

4. It was attempted to relax the rigor of the common law in relation to carriers by water, in 6 Cowen, 266; but that case seems to be at variance with other decisions. 2 Kent,. Com. 471, 472; 10 Johns. 1; 11 Johns. 107.

5. In respect to carriers by land, the rule of the common law seems every where admitted in its full rigor in the states governed by the jurisprudence of the common law. Louisiana follows the doctrine of the civil law in her code. Proprietors of stage coaches or wagons, whose employment is solely% to carry passengers, as hackney coachmen, are not deemed common carriers; but if the proprietors of such vehicles for passengers, also carry goods for hire, they are, in respect of such goods, to be deemed common carriers. Bac. Ab. Carriers, A; 2 Show. Rep. 128 1 Salk. 282 Com. Rep. 25; 1 Pick. 50 5 Rawle, 1 79. The like reasoning applies to packet ships and steam-boats, which ply between different ports, and are accustomed to carry merchandise as well as passengers. 2 Watts. R. 443; 5 Day's Rep. 415; 1 Conn. R. 54; 4 Greenl. R. 411; 5 Yerg. R. 427; 4 Har. & J. 291; 2 Verm. R. 92; 2 Binn. Rep. 74; 1 Bay, Rep. 99; 10 John. R. 1; 11 Pick. R. 41; 8 Stew. and Port. 135; 4 Stew. & Port. 382; 3 Misso. R. 264; 2 Nott. & M. 88. But see 6 Cowen, R. 266. The rule which makes a common carrier responsible for the loss of goods, does not extend to the carriage of persons; a carrier of slaves is, therefore, answerable only for want of care and skill. 2 Pet. S. C. R. 150. 4 M'Cord, R. 223; 4 Port. R. 238.

6. A common carrier of goods is in all cases entitled to demand the

price of carriage before he receives the goods, and, if not paid, he may refuse to take charge of them; if, however, he take charge of them without the hire being paid, he may afterwards recover it. The compensation which becomes due for the carriage of goods by sea, is commonly called freight (q.v.); and see also, Abb. on Sh. part 3, c. 7. The carrier is also entitled to a lien on the goods for his hire, which, however, he may waive; but if once waived, the right cannot be resumed. 2 Kent, Com. 497. The consignor or shipper is commonly bound to the carrier for the hire or freight of goods. 1 T. R. 659. But whenever the consignee engages to pay it, he also becomes responsible. It is usual in bills of lading to state, that the goods are to be delivered to the consignee or to his assigns, he or they paying freight, in which case the consignee and his assigns, by accepting the goods, impliedly become bound to pay the freight, and the fact that the consignor is also liable to pay it, will not, in such case, make any difference. Abbott on Sh. part 3, o. 7, Sec. 4.

7. What is said above, relates to common carriers of goods. The duties, liabilities, and rights of carriers of passengers, are now to be considered. These are divided into carriers of passengers on land, and carriers of passengers on water.

8. First, of carriers of passengers on land. The duties of such carriers are, 1st. those which arise on the commencement of the journey. 1. To carry passengers whenever they offer themselves and are ready to pay for their transportation. They have no more right to refuse a passenger, if they have sufficient room and accommodation, than an innkeeper has to refuse a guest. 3 Brod. & Bing. 54; 9 Price's R. 408; 6 Moore, R. 141; 2 Chit. R. 1; 4 Esp. R. 460; 1 Bell's Com. 462; Story, Bailm. Sec. 591.

9. - 2. To provide coaches reasonably strong and sufficient for the journey, with suitable horses, trappings and equipments.

10. - 3. To provide careful drivers of reasonable skill and. good habits

for the journey; and to employ horses which are steady and not vicious, or likely to endanger the safety of the passengers.

11. - 4. Not to overload the coach either with passengers or luggage.

12. - 5. To receive and take care of the usual luggage allowed to every passenger on the journey. 6 Hill, N. Y. Rep. 586.

13. - 2d. Their duties on the progress of the journey. 1. To stop at the usual places, and allow the..Usual intervals for the refreshment of the passengers. 5 Petersd. Ab. Carriers, p. 48, note.

14. - 2. To use all the ordinary precautions for the safety of passengers on the road.

15. - 3d. Their duties on the termination of the journey. 1. To carry the passengers to the end of the journey.

16. - 2. To put them down at the usual place of stopping, unless there has been a special contract to the contrary, and then to put them down at the place agreed upon. 1 Esp. R. 27.

17. The liabilities of such carriers. They are bound to use extraordinary care and diligence to carry safely those whom they take in their coaches. 2 Esp. R. 533; 2 Camp. R. 79; Peake's R. 80. But, not being insurers, they are not responsible for accidents, when all reasonable skill and diligence have been used.

18. The rights of such carriers. 1. To demand and receive their fare at the time the passenger takes his seat. 2. They have a lien on the baggage of the passenger for his fare or passage money, but not on the person of the passenger nor the clothes he has on. Abb. on Sh. part 3, c. 3, Sec. 11; 2 Campb. R. 631.

19. Second, carriers of passengers by water. By the act of Congress of 2d March, 1819, 3 Story's Laws U. S. 1722, it is enacted, 1. that no master of a vessel bound to or from the United States shall take more than two

passengers for every five tons of the ship's custom-house measurement. 2. That the quantity of water and provisions, which shall be taken on board and secured under deck, by every Ship bound from the United States to any port on the continent of Europe, shall be sixty gallons of water, one hundred pounds of salted provisions, one gallon of vinegar, and one hundred pounds of wholesome ship bread for each passenger, besides the stores of the crew. The tonnage here mentioned, is the measurement of the custom-house; and in estimating the number of passengers in a vessel, no deduction is to be made for children or persons not paying, but the crew is not to be included. Gilp. R. 334.

20. The act of Congress of February 22, 1847, section 1, provides: "That if the master of any vessel, owned in whole or in part by a citizen of the United States of America, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place, a greater number of passengers than in the following proportion to the space occupied by them and appropriated for their use, and unoccupied by stores or other goods, not being the personal luggage of such passengers, that is to say, on the lower deck or platform one passenger for every fourteen clear superficial feet of deck, if such vessel is not to pass within the tropics during such voyage; but if such vessel is to pass within the tropics during such voyage, then one passenger for every twenty such clear superficial feet of deck, and on the @orlop deck (if any) one passenger for every thirty such superficial feet in all cases, with intent to bring such passengers to the United States of America, and shall leave such port or, place with the same, and bring the same, or any number thereof, within the jurisdiction of the United States aforesaid, or if any such master of a vessel shall take on board of his vessel at any port or place within the jurisdiction of the United States aforesaid, any greater number of passengers than the proportions aforesaid admit, with intent to carry the same to any foreign port or place, every

such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any circuit or district court of the United States aforesaid, shall, for each passenger taken on board beyond the above proportions, be fined in the sum of fifty dollars, and may also be imprisoned for any term not exceeding one year: Provided, That this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel."

21. Children under one year of age not to be computed in counting the passengers, and those over one year and under eight, are to be counted as two children for one passenger, Sect. 4. But this section is repealed so far as authorizes shippers to estimate two children of eight years of age and under as one passenger by the act of March 2, 1847, s. 2.

22. In New York, statutory regulations have been made in relation to their canal navigation. Vide 6 Cowen's R. 698. As to the conduct of carrier vessels on the ocean, Vide Story, Bailm. Sec. 607 et seq; Marsh. Ins. B. 1, c. 12, s. 2. And see, generally, 1 Vin. Ab. 219; Bac. Ab. h.t.; 1 Com. Dig. 423; Petersd. Ab. h.t.; Dane's Ab. Index, h.t.; 2 Kent, Com. 464; 16 East, 247, note; Bouv. Inst. Index, h.t.

23. In Louisiana carriers and watermen are subject, with respect to the safe-keeping and preservation of the things entrusted to them, to the same obligations and duties, as are imposed on tavern keepers; Civ. Code, art. 2722; that is, they are responsible for the effects which are brought, though they were not delivered into their personal care; provided, however, they were delivered to a servant or person in their employment; art. 2937. They are responsible if any of the effects be stolen or damaged, either by their servants or agents, or even by strangers; art. 2938; but they are not responsible for what is stolen by force of arms or with exterior breaking open of doors, or by any other extraordinary violence; art. 2939. For the

authorities on the subject of Common carriers in the civil law, the reader is referred to Dig. 4, 9, 1 to 7; Poth. Pand. lib. 4, t. 9; Domat liv. 1, t. 16, S. 1 and 2; Pard. art. 537 to 555; Code Civil, art. 1782, 1786, 1952; Moreau & Carlton, Partidas 5, t. 8, 1. 26; Ersk. Inst. B. 2, t. 1, Sec. 28; 1 Bell's Com. 465; Abb. on Sh. part 3, c. 3, Sec. 3, note (1); 1 Voet, ad Pand. lib. 4, t. 9; Merl. Rep. mots Voiture, Voiturier; Dict. de Police, Voiture.

COMMON COUNCIL. In many cities the charter provides for their government, in imitation of the national and state governments. There are two branches of the legislative assembly; the less numerous, called the select, the other, the common council.

2. In English law, the common council of the whole realm means the parliament. Fleta, lib. 2, cap. 13.

COMMON COUNTS. Certain general counts, not founded on any special contract, which are introduced in a declaration, for the purpose of preventing a defeat of a just right by the accidental variance of the evidence. These are in an action of assumpsit; counts founded on express or implied promises to pay money in consideration of a precedent debt, and are of four descriptions: 1. The indebitatus assumpsit; 2. The quantum meruit; 3. The quantum valebant; and, 4. The account stated.

COMMON FISHERY. A fishery to which all persons have a right, such as the cod fisheries off Newfoundland. A common fishery is different from a common of fishery, which is the right to fish in another's pond, pool, or river. See Fishery.

COMMON HIGHWAY. By this term is meant a road to be used by the community at

large for any purpose of transit or traffic. Hamm. N. P. 239. See Highway.

COMMON INFORMER. One who, without being specially required by law, or by virtue of his office, gives information of crimes, offences or misdemeanors, which have been committed, in order to prosecute the offenders; a prosecutor. Vide Informer; Prosecutor.

COMMON INTENT, construction. The natural sense given to words.

2. It is a rule that when words are used which will bear a natural sense and an artificial one, or one to be made out by argument and inference, the natural sense shall prevail; it. is simply a rule of construction and not of addition common intent cannot add to a sentence words which have been omitted. 2 H. Black. 530. In pleading, certainty is required, but certainty to a common intent is sufficient; that is, what upon a reasonable construction may be called certain, without recurring to possible facts. Co. Litt. 203, a; Dougl. 163. See Certainty.

COMMON LAW. That which derives its force and authority from the universal consent and immemorial practice of the people. See Law, common.

COMMON NUISANCE. One which affects the public in general, and not merely some particular person. 1 Hawk. P. C. 197. See Nuisance.

COMMON PLEAS. The name of a court having jurisdiction generally of civil actions. For a historical account of the origin of this court in England, see Boote's Suit at Law, 1 to 10. Vide Common Bench and Bench.

2. By common pleas, is also understood, such pleas or actions as are brought by private persons against private persons; or by the government,

when the cause of action is of a civil nature. In England, whence we derived this phrase, common pleas are so called to distinguish them from pleas of the crown. (q.v.)

COMMON RECOVERY. A judgment recovered in a fictitious suit, brought against the tenant of the freehold, in consequence of a default made by the person who is last vouched to warranty in the suit., A common recovery is a kind of conveyance. 2 Bouv. Inst. n. 2088, 2092-3. Vide Recovery.

COMMON SCOLD, Crim. law, communes rixatrix. A woman, who, in consequence of her boisterous, disorderly and quarrelsome tongue, is a public nuisance to the neighborhood.

2. Such a woman may be indicted, and on conviction, punished. At common law, the punishment was by being placed in a certain engine of correction called the trebucket or cocking stool.

3. This punishment has been abolished in Pennsylvania, where the offence may be punished by fine and imprisonment. 12 Serg. & Rawle, 220; vide 1 Russ. on Cr. 802 Hawk. B. 2, c. 25, s. 59 1 T. R. 756 4 Rogers' Rec. 90; Roscoe on Cr. Ev. 665.

COMMON SEAL, A seal used by a corporation. See Corporation.

COMMON SENSE, med. jur. When a person possesses those perceptions, associations and judgments, in relation to persons and things, which agree with those of the generality of mankind, he is said to possess common sense. On the contrary, when a particular individual differs from the generality of persons in these respects, he is said not to have common sense, or not to be in his senses. 1 Chit. Med. Jur. 334.

COMMON, TENANTS IN. Tenants in common are such as hold an estate, real or personal, by several distinct titles, but by a unity of possession. Vide Tenant in common; Estate in common.

COMMON TRAVERSE. This kind of traverse differs from those called technical traverses principally in this, that it is preceded by no inducement general or special; it is taken without an absque hoc, or any similar words, and is simply a direct denial of the adverse allegations, in common language, and always concludes to the country. It can be used properly only when an inducement is not requisite; that is, when the party traversing has no need to allege any new matter. 1 Saund. 103 b. ii. 1.

2. This traverse derives its name, it is presumed, from the fact that common language is used, and that it is more informal than other traverses.

COMMON VOUCHEE. In common recoveries, the person who vouched to warranty. In this fictitious proceeding, the crier of the court usually performs the office of a common vouchee. 2 Bl. Com. 358; 2 Bouv. Inst. n. 2093.

COMMONALTY, Eng. law. This word signifies, 1st. the common people of England, as contradistinguished from the king and the nobles; 2d. the body of a society as the masters, wardens, and commonalty of such a society.

COMMONER. One who is entitled with others to the use of a common.

COMMONS, Eng. law. Those subjects of the English nation who are not noblemen. They are represented in parliament in the house of commons.

COMMONWEALTH, government. A commonwealth is properly a free state, or

republic, having a popular or representative government. The term has been, applied to the government of Great Britain. It is not applicable to absolute governments. The states composing the United States are, properly, so many commonwealths.

2. It is a settled principle, that no sovereign power is amenable to answer suits, either in its own courts or in those of a foreign country, unless by its own consent. 4 Yeates, 494.

COMMORANCY, persons. An abiding dwelling, or continuing as an inhabitant in any place. It consists, properly, in sleeping usually in one place.,

COMMORANT. One residing or inhabiting a particular place. Barnes, 162.

COMMORIENTES. This Latin word signifies those who die at the same time, as, for example, by shipwreck.

2. When several persons die by the same accident, and there is no evidence as to who survived, the presumption of law is, they all died at the same time. 2 Phillim. R. 261 Fearne on Rem. iv.; 5 B. & Adol. 91; Cro. Eliz. 503; Bac. Ab. Execution, D; 1 Mer. R. 308. See Death; Survivor.

COMMUNICATION, contracts. Information; consultation; conference.

2. In order to make a contract, it is essential there should be an agreement; a bare communication or conference will not, therefore, amount to a contract; nor can evidence of such communication be received in order to take from, contradict, or alter a written agreement. 1 Dall. 426; 4 Dall. 340; 3 Serg. & Rawle, 609. Vide Pour-parler; Wharton's Dig. Evid. R.

COMMUNINGS, Scotch law. This term is used to express the negotiations which have taken place before making a contract, in relation thereto. See

Pourparler.

2. It is a general rule, that such communings or conversations, and the propositions then made, are no part of the contract for no parol evidence will be allowed to be given to contradict, alter, or vary a written instrument. 1 Serg. & R. 464 Id. 27; Add. R. 361; 2 Dall. R. 172 1 Binn. 616; 1 Yeates, R. 140; 12 John. R. 77; 20 John. R. 49; 3 Conn. R. 9; 11 Mass. R. 30; 13 Mass. R. 443; 1 Bibb's R. 271; 4 Bibb's R. 473; 3 Marsh. (Kty.) R. 333; Bunb. 175; 1 M. & S. 21; 1 Esp. C. 58; 3 Campb. R. 57.

COMMUNIO BONORUM, civil law. Common goods.

2. When a person has the management of common property, owned by himself and others, not as partners, he is bound to account for the profits, and is entitled to be reimbursed for the expenses which he has sustained by virtue of the quasi-contract which is created by his act, called communio bonorum. Vicat; 1 Bouv. Inst. n. 907, note.

COMMUNITY. This word has several meanings; when used in common parlance it signifies the body of the people.

2. In the civil law, by community is understood corporations, or bodies politic. Dig. 3, 4.

3. In the French law, which has been adopted in this respect in Louisiana, Civ. Code, art. 2371, community is a species of partnership, which a man and woman contract when they are lawfully married to each other. It consists of the profits of all, the effects of which the husband has the administration and enjoyment, either of right or in fact; of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them, or by purchase, or in any other similar way, even although

the purchase he made in the name of one of the two, and not of both; because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. 10 L. R. 146; Id. 172, 181; 1 N. S. 325; 4 N. S. 212. The debts contracted during the marriage enter into the community, and must be acquitted out of the common fund; but not the debts contracted before the marriage.

4. The community is either, first, conventional, or that which is formed by an express agreement in the contract of marriage itself; by this contract the legal community may be modified, as to the proportions which each shall take, or as to the things which shall compose it; Civ. Code of L. art. 2393; second, legal, which takes place when the parties make no agreement on this subject in the contract of marriage; when it is regulated by the law of the domicil they had at the time of marriage.

5. The effects which compose the community of gains, are divided into two equal portions between the heirs, at the dissolution of the marriage. Civ. Code of L. art. 2375. See Poth. h.t.; Toull. h.t.; Civ. Code of Lo. tit. 6, c. 2, s. 4.

6. In another sense, community is the right which all men have, according to the laws of nature, to use all things. Wolff, Inst. Sec. 186.

COMMUTATION, punishments. The change of a punishment to which a person has been condemned into a less severe one. This can be granted only by the executive authority in which the pardoning power resides.

COMMUTATIVE CONTRACT, civil law. One in which each of the contracting parties gives and, receives an equivalent. The contract of sale is of this kind. The seller gives the thing sold, and receives the price, which is the equivalent. The buyer gives the price and receives the thing sold, which is the equivalent.

2. These contracts are usually distributed into four classes, namely; Do ut des; Facio ut facias; Facio ut des; Do ut facias. Poth. Obl. n. 13. See' Civ. Code of Lo. art. 1761.

COMMUTATIVE JUSTICE. That virtue whose object is, to render to every one what belongs to him, as nearly as may be, or that which governs contracts.

2. The word commutative is derived from commutare, which signifies to exchange. Lepage, El. du Dr. ch. 1, art. 3, Sec. 3. See Justice.

TO COMMUTE. To substitute one punishment in the place of another. For example, if a man be sentenced to be hung, the executive may, in some states, commute his punishment to that of imprisonment.

COMPACT, contracts. In its more general sense, it signifies an agreement. In its strict sense, it imports a contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. Story, Const. B. 3, c. 3; Rutherf. Inst. B. 2, c. 6, Sec. 1. 2. The constitution of the United States declares that "no state shall, without the consent of congress, enter into agreement or compact with another state, or with a foreign power." See 11 Pet: 1; 8 Wheat. 1 Bald. R. 60; 11 Pet. 185.

COMPANION, dom. rel. By 5 Edw. III., st. 5, c. 2, Sec. 1, it is declared to be high treason in any one who "doth compass or imagine the death of our lord the king, or our lady his companion," &c. See 2 Inst. 8, 9; 1 H. H. P. C. 124.

COMPANIONS, French law. This is a general term, comprehending all persons

who compose the crew of a ship or vessel. Poth. Mar. Contr. n. 163.

COMPANY. An association of a number of individuals for the purpose of carrying on some legitimate business.

2. This term is not synonymous with partnership, though every such unincorporated compass is a partnership.

3. Usage has reserved this term to associations whose members are in greater number, their capital more considerable, and their enterprises greater, either on account of their risk or importance.

4. When these companies are authorized by the government, they are known by the name of corporations. (q.v.)

5. Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm; as, A.B & Company. Vide, 12 Toull. n, 97; Mortimer on Commerce, 128. Vide Club; Corporation; Firm; Parties to actions; Partnership.

COMPARISON OF HANDWRITING, evidence. It is a general rule that comparison of hands is not admissible; but to this there are some exceptions. In some instances, when the antiquity of the writing makes it impossible for any living witness to swear that he ever saw the party write, comparison of handwriting, with documents known to be in his handwriting, has been admitted. For the general principle, see Skin. 579, 639; 6 Mod. 167; 1 Lord Ray. 39, 40; Holt. 291; 4 T. R. 497; 1 Esp. N. P. C. 14, 351; Peake's Evid. 69; 7 East, R. 282; B. N. P. 236; Anthon's N. P. 98, n.; 8 Price, 653; 11 Mass. R. 309 2 Greenl. R. 33 2 Johns. Cas. 211 1 Esp. 351; 1 Root, 307; Swift's Ev. 29; 1 Whart. Dig 245; 5 Binn. R. 349; Addison's R. 33; 2 M'Cord, 518; 1 Tyler, R. 4 6 Whart. R. 284; 3 Bouv. Inst. n. 3129-30. Vide Diploma.

TO COMPASS. To imagine; to contrive.

2. In England, to compass the death of the king is high treason. Bract. l. 3, c. 2 Britt. c. 8; Mirror, c. 1, s. 4.

COMPATIBILITY. In speaking of public offices it is meant by this term to convey the idea that two of them may be held by the same person at the same time. It is the opposite of incompatibility. (q.v.)

COMPENSATIO CRIMINIS. The compensation or set-off of one crime against another; for example, in questions of divorce, where one party claims the divorce on the ground of adultery of his or her companion, the latter may show that the complainant has been guilty of the same offence, and having himself violated the contract, he cannot complain of its violation on the other side. This principle is incorporated in the codes of most civilized nations. 1 Ought. Ord. per tit. 214; 1 Hagg. Consist. R. 144; 1 Hagg. Eccl. R. 714; 2 Paige, 108; 2 Dev. & Batt. 64. See Condonation.

COMPENSATION, chancery practice. The performance of that which a court of chancery orders to be done on relieving a party who has broken a condition, which is to place the opposite party in no worse situation than if the condition had not been broken.

2. Courts of equity will not relieve from the consequences of a broken condition, unless compensation can be made to the opposite party. Fonb. c. 6; s. 51 n. (k) Newl. Contr: 251, et. seq.

3. When a simple mistake, not a fraud, affects a contract, but does not change its essence, a court of equity will enforce it, upon making compensation for the error, The principle upon which courts of equity act," says Lord Chancellor Eldon, "is by all the authorities brought to the true standard, that though the party had not a title at law, because he had not

strictly complied with the terms so as to entitle him to an action, (as to time for instance,) yet if the time, though introduced, as some time must be fixed, where something is to be done on one side, as a consideration for something to be done on the other, is not the essence of the contract; a material object, to which they looked in the first conception of it, even though the lapse of time has not arisen from accident, a court of equity will compel the execution of the contract upon this ground, that one party is ready to perform, and that the other ma, have performance in substance if he will permit it." 13 Ves. 287. See 10 Ves. 505; 13 Ves. 73, 81, 426; 6 Ves. 675; 1 Cox, 59.

COMPENSATION, contracts. A reward for services rendered.

COMPENSATION, contracts, civil law. When two persons are equally indebted to each other, there takes place a compensation between them, which extinguishes both debts. Compensation is, therefore, a reciprocal liberation between two persons who are creditors and debtors to each other, which liberation takes place instead of payment, and prevents a circuity. Or it may be more briefly defined as follows; compensatio est debiti et crediti intter se contributio.

2. Compensation takes places, of course, by the mere operation of law, even unknown to the debtors the two debts are reciprocally extinguished, as soon as they exist simultaneously, to the, amount of their respective sums. Compensation takes place only between two debts, having equally for their object a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable. Compensation takes place, whatever be the cause of either of the debts, except in case, 1st. of a demand of restitution of a thing of which the owner has been unjustly deprived; 2d. of a demand of restitution of a deposit and a loan

for use; 3d. of a debt which has for its cause, aliments declared not liable to seizure. Civil Code of. Louis. 2203 to 2208. Compensation is of three kinds: 1. legal or by operation of law; 2. compensation by way of exception; and, 3. by reconvention. 8 L. R. 158; Dig. lib. 16, t. 2; Code, lib. 4, t. 31; Inst. lib. 4, t' 6, s. 30; Poth. Obl. partie. 3eme, ch. 4eme, n. 623; Burge on Sur., Book 2, c. 6, p. 181.

3. Compensation very nearly resembles the set-off (q.v.) of the common law. The principal difference is this, that a set-off, to have any effect, must be pleaded; whereas compensation is effectual without any such plea, only the balance is a debt. 2 Bouv. Inst. n. 1407.

COMPENSATION, crim. law; Compensatio criminura, or recrimination (q.v.)

2. In cases of suits for divorce on the ground of adultery, a compensation of the crime hinders its being granted; that is, if the defendant proves that the party has also committed adultery, the defendant is absolved as to the matters charged in the libel of the plaintiff. Ought. tit. 214, Pl. 1; Clarke's Prax. tit. 115; Shelf. on Mar. & Div. 439; 1 Hagg. Cons. R. 148. See Condonation; Divorce.

COMPENSATION, remedies. The damages recovered for an injury, or the violation of a contract.. See Damages.

COMPERUIT AD DIEM, pleading. He appeared at the day. This is the name of a plea in bar to an action of debt on a bail-bond. The usual replication to this plea is nul tiel record: that there is not any such record of appearance of the said. For forms of this plea, vide 5 Wentw. 470; Lil. Entr. 114; 2 Chit. Pl. 527.

2. When the issue is joined on this plea, the trial is by the record.

Vide 1 Taunt. 23; Tidd, 239. And see, generally, Com. Dig. Pleader, 2 W. 31; 7 B. & C. 478.

COMPETENCY, evidence. The legal fitness or ability of a witness to be heard on the trial of a cause. This term is also applied to written or other evidence which may be legally given on such trial, as, depositions, letters, account-books, and the like.

2. Prima facie every person offered is a competent witness, and must be received, unless Lis incompetency (q.v.) appears. 9 State Tr. 652.

3. There is a difference between competency and credibility. A witness may be competent, and, on examination, his story may be so contradictory and improbable that he may not be believed; on the contrary he may be incompetent, and yet be perfectly credible if he were examined.

4. The court are the sole judges of the competency of a witness, and may, for the purpose of deciding whether the witness is or is not competent, ascertain all the facts necessary to form a judgment. Vide 8 Watts, R. 227; and articles Credibility; Incompetency; Interest; Witness.

5. In the French law, by competency is understood the right in a court to exercise jurisdiction in a particular case; as, where the, law gives jurisdiction to the court when a thousand francs shall be in dispute, the court is competent if, the sum demanded is a thousand francs or upwards, although the plaintiff may ultimately recover less.

COMPETENT WITNESS. One who is legally qualified to be heard to testify in a cause. In Kentucky, Michigan, and Missouri, a will must be attested, for the purpose of passing lands, by competent witnesses; but if wholly written by the testator, in Kentucky, it need not be so attested. See Attesting witness; Credible witness; Disinterested witness; Respectable witness; and Witness.

COMPETITORS, French law. Persons who compete or aspire to the same office, rank or employment. As an English word in common use, it has a much wider application. Ferriere, Dict. de Dr. h.t.

COMPILATION. A literary production, composed of the works of others, and arranged in some methodical manner.

2. When a compilation requires in its execution taste, learning, discrimination and intellectual labor, it 'is an object of copyright; as, for example, Bacon's Abridgment. Curt. on Copyr. 186.

COMPLAINANT. One who makes a complaint. A plaintiff in a suit in chancery is so called.

COMPLAINT, crim. law. The allegation made to a proper officer, that some person, whether known or unknown, has been guilty of a designated offence, with an offer to prove the fact, and a request that the offender may be punished.

2. To have a legal effect, the complaint must be supported by such evidence as shows that an offence has been committed, and renders it certain or probable that it was committed by the person named or described in the complaint.

COMPOS MENTIS. Of sound mind. See non compos mentis.

COMPOSITION, contracts. An agreement, made upon a sufficient consideration, between a debtor and creditor, by which the creditor accepts part of the debt due to him in satisfaction of the whole. Montagu on Compos. 1; 3 Co.

118; Co. Litt. 212, b; 4 Mod. 88; 1 Str. 426; 2 T. R. 24, 26; 2 Chit. R. 541, 564; 5 D. & R. 56 3 B. & C. 242; 1 R. & M. 188; 1 B. & A. 103, 440; 3 Moore's R. 11; 6 T. R. 263; 1 D. & R. 493; 2 Campb. R. 283; 2 M. & S. 120; 1 N. R. 124; Harr. Dig. Deed VIII.

2. In England, compositions were formerly allowed for crimes and misdemeanors, even for murder. But these compositions are no longer allowed, and even a qui tam action cannot be lawfully compounded. Bac. Ab. Actions qui tam, See 2 John. 405; 9 John. 251; 10 John. 118; 11 John. 474; 6 N. H.-Rep. 200.

COMPOSITION OF MATTER. In describing the subjects of patents, the Act of Congress of July 4, 1836, sect. 6, uses the words "composition of matter;" these words are usually applied to mixtures and chemical compositions, and in these cases it is enough that the compound is new. Both the composition and the mode of compounding may be considered as included in the invention, when the compound is new.

COMPOUND INTEREST. Interest allowed upon interest; for example, when a sum of money due for interest, is added to the principal, and then bears interest. This is not, in general, allowed. See Interest for money.

COMPOUNDER, in Louisiana. He who makes a composition. An amicable compounder is one who has undertaken by the agreement of the parties to compound or settle differences. between them. Code of Pract. of Lo. art. 444.

COMPOUNDING A FELONY, The act of a party immediately aggrieved, who agrees with a thief or other felon that he will not prosecute him, on condition that he return to him the goods stolen, or who takes a reward not to prosecute. This is an offence punishable by fine and imprisonment. The mere

retaking by the owner of stolen goods is no offence, unless the offender is not to be prosecuted. Hale, P. C. 546 1 Chit. Cr. Law, 4.

COMPROMISE, contracts. An agreement between two or more persons, who, to avoid a lawsuit, amicably settle their differences, on such terms as they can agree upon. Vide Com. Dig. App. tit. Compromise.

2. It will be proper to consider, 1. by whom the compromise must be made; 2. its form; 3. the subject of the compromise; 4. its effects.

3. It must be made by a person having a right and capacity to enter into the contract, and carry out his part of it, or by one having lawful authority from such person.

4. The compromise may be by parol or in writing, and the writing may be under seal or not: though as a general rule a partner cannot bind his copartner by deed, unless expressly authorized, yet it would seem that a compromise with the principal is an act which a partner may do in behalf of his copartners, and that, though under seal, it would conclude the firm. 2 Swanst. 539.

5. The compromise may relate to a civil claim, either as a matter of contract, or for a tort, but it must be of something uncertain; for if the debt be certain and undisputed, a payment of a part will not, of itself, discharge the whole. A claim connected with a criminal charge cannot be compromised. 1 Chit. Pr. 17. See Nev. & Man. 275.

6. The compromise puts an end to the suit, if it be proceeding, and bars any Suit which may afterwards be instituted. It has the effect of res judicata. 1 Bouv. Inst. n. 798-9.

7. In the civil law, a compromise is an agreement between two or more persons, who, wishing to settle their disputes, refer the matter, in controversy to arbitrators, who are so called because those who choose them

give them full powers to arbitrate and decide what shall appear just and reasonable, to put an end -to the differences of which they are made the judges. 1 Domat, Lois Civ. lib. h.t. 14. Vide Submission; Ch. Pr. Index, h.t.

COMPROMISSARIUS, civil law. A name sometimes given to an arbitrator; because the parties to the submission usually agree to fulfill his award as a compromise.

COMPTROLLERS. There are officers who bear this name, in the treasury depart @ment of the United States.

2. There are two comptrollers. It is the duty of the first to examine all accounts settled by the first and fifth auditors, and certify the balances arising thereon to the register; to countersign all warrants drawn by the secretary.of the treasury, other than those drawn on the requisitions of the sec @retaries of the war and navy departments, which shall be warranted by law; to report to the secretary the official forms to be issued in the different offices for collecting the public revenues, and the manner and form of stating the accounts of the several persons employed therein; and to superintend the preservation of the public accounts, subject to his revision; and to provide for the payment of all moneys which may be collected. Act of March 3, 1817, sect. 8; Act of Sept. 2, 1789, s. 2 Act of March 7, 1822.

3. To superintend the recovery of all debts due to the United States; to direct suits and legal proceedings, and to take such measures as may be authorized by the laws, to enforce prompt payment of all such debt; Act of March 3, 1817, sect. 10; Act of Sept. 2, 1789, s. 2; to lay before congress annually, during the first week of their session, a list of such officers as shall have failed in that year to make the settlement required by law; and a

statement of the accounts in the treasury, war, and navy departments, which may have remained more than three years unsettled, or on which balances appear to have been due more than three years prior to the thirteenth day of September, then last past; together with a statement of the causes which have prevented a settlement of the accounts, or the recovery of the balances due to the United States. Act of March 3, 1809, sect. 2.

4. Besides these, this officer is required to perform minor duties, which the plan of this work forbids to be enumerated here.

5. His salary is three thousand five hundred dollars per annum. Act of Feb. 20, 1804, s. 1.

6. The duties of the second comptroller are to examine all accounts settled by the second, third and fourth auditors, and certify the balances arising -thereon to the secretary of the department in which the expenditure has been incurred; to counter-sign all the warrants drawn by the secretary of the treasury upon the requisition of the secretaries of the war and navy departments, which shall be warranted by law; to report to the said secretaries the official forms to be issued in the different offices for disbursing public money in those departments, and the manner and form of keeping and stating the accounts of the persons employed therein, and to superintend the preservation of public accounts subject to his revision. His salary is three thousand dollars per annum. Act of March 3, 1817, s. 9 and 15; Act of May 7, 1822.

7. A similar officer exists in several of the states, whose official title is comptroller of the public accounts, auditor general, or other title descriptive of the duties of the office.

COMPULSION. The forcible inducement to au act.

2. Compulsion may be lawful or unlawful. 1. When a man is compelled by

lawful authority to do that which be ought to do, that compulsion does not affect the validity of the act; as for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the grantor cannot object to it on the ground of compulsion. 2. But if the court compelled a party to do an act forbidden by law, or not having jurisdiction over the parties or the subject-matter, the act done by such compulsion would be void. Bowy. Mod. C. L. 305.

3. Compulsion is never presumed. Coercion. (q.v.)

COMPURGATOR. Formerly, when a person was accused of a crime, or sued in a civil action, he might purge himself upon oath of the accusation made against him, whenever the proof was not the most clear and positive; and if upon his oath he declared himself innocent, he was absolved.

2. This usage, so eminently calculated to encourage perjury by impunity, was soon found to be dangerous to the public safety. To remove this evil the laws were changed, by requiring that the oath should be administered with the greatest solemnity; but the form was soon disregarded, for the mind became. easily familiarized to those ceremonies which at first imposed on the imagination, and those who cared not to violate the truth did not hesitate to treat the form with contempt. In order to give a greater weight to the oath of the accused, the law was again altered so as to require that the accused should appear before the judge with a certain number of his neighbors, relations or friends, who should swear that they believed the accused had sworn truly. This new species of witnesses were called compurgators.

3. The number of compurgators varied according to the nature of the charge and other circumstances. Encyclopedie, h.t.. Vide Du Cange, Gloss. voc. Juramentum; Spelman's Gloss. voc. Assarth; Merl. Rep. mot Conjurateurs.

4. By the English law, when a party was sued in debt or simple

contract, @detinue, and perhaps some other forms of action, the defendant might wage his law, by producing eleven compurgators who would swear they believed him on his oath, by which he discharged himself from the action in certain cases. Vide 3 Bl. Com. 341-848; Barr. on the Stat. 344; 2 Inst. 25; Terms de la Ley; Mansel on Demurrer, 130, 131 Wager of Law.

COMPUTATION counting, calculation. It is a reckoning or ascertaining the number of any thing.

2. It is sometimes used in the common law for the true reckoning or account of time. Time is computed in two ways; first, naturally, counting years, days and hours; and secondly, civilly, that is, that when the last part of the time has once commenced, it is considered as accomplished. Savig. Dr. Rom. Sec. 182. See Infant; Fraction. For the computation of a year, see Com. Dig. Ann; of a mouth, Com. Dig. Temps. A; 1 John. Cas. 100 15 John. R. 120; 2 Mass. 170, n.; 4 Mass. 460; 4 Dall. 144; 3 S. & R. 169; of a day, vide Day.; and 3, Burr 1434; 11 Mass. 204; 2 Browne, 18; Dig. 3, 4, 5; Salk. 625; 3 Wils. 274.

3. It is a general rule that when an act is to be done within a certain time, one day is to be taken inclusively, and one exclusively. Vide Lofft, 276; Dougl. 463; 2 Chit. Pr. 69; 3 Id. 108, 9; 3 T. R. 623; 2 Campb. R. 294; 4 Man. and Ryl. 300, n. (b) 5 Bingh. R. 339; S. C. 15, E. C. L. R. 462; 3 East, R. 407; Hob. 139; 4 Moore, R. 465; Har. Dig. Time, computation of; 3 T. R. 623; 5 T. R. 283; 2 Marsh. R. 41; 22 E. C. L. R. 270; 13, E, C. L. R. 238; 24 E. C. L. R. 53; 4 Wasb. C. C. R. 232; 1 Ma-son, 176; 1 Pet. 60; 4 Pet. 349; 9 Cranch, 104; 9 Wheat. 581. Vide Day; Hour; Month; Year.

CONCEALMENT, contracts. The unlawful suppression of any fact or circumstance, by one of the parties to a contract, from the other, which in

justice ought to be made known. 1 Bro. Ch. R. 420; 1 Fonbl. Eq. B. 1, c. 3, Sec. 4, note (n); 1 Story, Eq. Jur. Sec. 207.

2. Fraud occurs when one person substantially misrepresents or conceals a material fact peculiarly within his own knowledge, in consequence of which a delusion exists; or uses a device naturally calculated to lull the suspicions of a careful man, and induce him to forego inquiry into a matter upon which the other party has information, although such information be not exclusively within his reach. 2 Bl. Com. 451; 3 Id. 166; Sugd. Vend. 1 to 10; 1 Com. Contr. 38; 3 B. & C. 623; 5 D. & R. 490; 2 Wheat. 183; 11 Id. 59; 1 Pet. Sup. C. R. 15, 16. The party is not bound, however, to disclose patent defects. Sugd. Vend. 2.

3. A distinction has been made between the concealment of latent defects in real and personal property. For example, the concealment by an agent that a nuisance existed in connexion with a house the owner had to hire, did not render the lease void. 6 IV. & M. 358. 1 Smith, 400. The rule with regard to personalty is different. 3 Camp. 508; 3 T. R. 759.

4. In insurances, where fairness is so essential to, the contract, a concealment which is only the effect of accident, negligence, inadvertence, or mistake, if material, is equally fatal to the contract as if it were intentional and fraudulent. 1 Bl. R. 594; 3 Burr. 1909. The insured is required to disclose all the circumstances within his own knowledge only, which increase the risk. He is not, however, bound to disclose general circumstances which apply to all policies of a particular description, notwithstanding they may greatly increase the risk. Under this rule, it has been decided that a policy is void, which was obtained by the concealment by the assured of the fact that he had heard that a vessel like his was taken. 2 P. Wms. 170. And in a case where the assured had information of "a violent storm" about eleven hours after his vessel had sailed, and had stated only that "there had been blowing weather and severe storms on the

coast after the vessel had sailed" but without any reference to the particular storm it was decided that this was a concealment, which vitiated the policy. 2 Caines R. 57. Vide 1 Marsh. Ins: 468; Park, Ins. 276; 14 East, R. 494; 1 John. R. 522; 2 Cowen, 56; 1 Caines, 276; 3 Wash. C. C. Rep. 138; 2 Gallis. 353; 12 John. 128.

5. Fraudulent concealment avoids the contract. See, generally, Verpl. on Contr. passim; Bouv. Inst. Index, h.t.; Marsh. Ins. B. 1, c. 9; 1 Bell's Com. B. 2, pt. 3, c. 15 s. 3, Sec. 1; 1 M. & S. 517; 2 Marsh. R. 336.

CONCESSI, conveyancing. This is a Latin word, signifying, I have granted. It was frequently used when deeds and other conveyances were written in Latin.. It is a word of general extent, and is said to amount to a grant, feoffment, lease, release, and the like. 2 Saund. 96; Co. Lift. 301, 302; Dane's Ab. Index, h.t.; 5 Whart. R. 278.

2. It has been held that this word in a feoffment or fine implies no - warranty. Co. Lit. 384 @Noke's Case, 4 Rep. 80; Vaughan's Argument in Hayes v. Bickoxsteth, Vaughan, 126; Butler's Note, Co. Lit. 3 84. But see 1 Freem. 339, 414.

CONCESSION. A grant. This word is frequently used in this sense when applied to grants made by the French and Spanish governments in Louisiana.

CONCESSIMUS. A Latin word, which signifies, we have granted. This word creates a covenant in law, for the breach of which the grantors may be jointly sued. It imports no warranty of a freehold, but as in case of a lease for years. Spencer's Case, 5 Co. Rep. 16 Brown v. Heywood, 3 Keble, Rep. 617 Bac. Ab. Covenant, B. See Bac. Ab. officers, &c. E.

CONCESSOR. A grantor; one who makes a concession to another.

CONCILIUM. A day allowed to a defendant to make his defence; an imparlance, 4 Bl. Com. 356, n.; 3 T. R. 530.

CONCILIUM REGIS. The name of a tribunal which existed in England during the times of Edward I. and Edward H., composed of the judges and sages of the law. To them were referred cases of great difficulty. Co. Litt. 804.

CONCLAVE. An assembly of cardinals for the purpose of electing a pope; the place where the assembly is held is also called a conclave. It derives this name from the fact that all the windows and doors are looked, with the exception of a single panel, which admits a gloomy light.

CONCLUSION, practice. Making the last argument or address to the court or jury. The party on whom the onus probandi is cast, in general has the conclusion.

CONCLUSION, remedies. An estoppel; a bar; the act of a man by which he has confessed a matter or thing which he can no longer deny; as, for example, the sheriff is concluded by his return to a writ, and therefore, if upon a capias he return cepi corpus, he cannot afterwards show that he did not arrest the defendant, but is concluded by his return. Vide Plowd. 276, b; 3 Tho. Co. Litt. 600.

CONCLUSION TO THE COUNTRY, pleading. The tender of. an issue to be tried by a jury is called the conclusion to the country.

2. This conclusion is in the following words, when the issue is tendered by the defendant: "And of this the said C D puts himself upon the

country." When it is tendered by the plaintiff, the formula is as follows: "And this the said A B prays may be inquired of by the country." It held, however, that there is no material difference between these two modes of expression, and that, if ponit se, be substituted for petit quod inquiratur, or vice versa, the mistake is unimportant. 10 Mod. 166.

3. When there is an affirmative on one side, and a negative on the other, or vice versa, the conclusion should be to the country. T. Raym. 98; Carth. 87; 2 Saund. 189; 2 Burr. 1022. So it is, though the affirmative and negative be not in express words, but only tantamount thereto. Co. Litt. 126, a; Yelv. 137; 1 Saund. 103; 1 Chit. Pl. 592; Com. Dig. Pleader, E 32.

CONCLUSIVE. What puts an end to a thing. A conclusive presumption of law, is one which cannot be contradicted even by direct and positive proof. Take, for example, the presumption that an infant is incapable of judging whether it is or is not against his interest; When infancy is pleaded and proved, the plaintiff cannot show that the defendant was within one day of being of age when the contract was made, and perfectly competent to make a contract. 3 Bouv. Inst. n. 3061.

CONCLUSIVE EVIDENCE. That which cannot be contradicted by any other evidence,; for example, a record, unless impeached for fraud, is conclusive evidence between the parties. 3 Bouv. Inst. n. 3061-62.

CONCLUSUM, intern. law. The form of an acceptance or conclusion of a treaty; as, the treaty was ratified purely and simply by a conclusum. It is the name of a decree of the Germanic diet, or of the aulic council.

CONCORD, estates, conveyances, practice. An agreement or supposed agreement

between the parties in levying a fine of lands, in which the deforciant (or he who keeps the other out of possession,) acknowledges that the lands in question, are the right of the complainant;. and from the acknowledgment or recognition of right thus made, the party who levies the fine is called the cognisor, and the person to whom it is levied, the cognisee. 2 Bl. Com. 350; Cruise, Dig. tit. 35, c. 2, s. 33; Com. Dig. Fine, E 9.

CONCORDATE. A convention; a pact; an agreement. The term is generally confined to the agreements made between independent government's; and, most usually applied to those between the pope and some prince.

CONCUBINAGE. This term has two different significations; sometimes it means a species of marriage which took place among the ancients, and which is yet in use in some countries. In this country it means the act or practice of cohabiting as man and woman, in sexual commerce, without the authority of law, or a legal marriage. Vide 1 Bro. Civ. Law, 80; Merl. Rep. b. t.; Dig. 32, 49, 4; Id. 7, 1, 1; Code, 5, 27, 12.

CONCUBINE. A woman who cohabits with a man as his wife, without being married.

TO CONCUR. In Louisiana, to concur, signifies, to claim a part, of the estate of an insolvent along with other claimants; 6 N. S. 460; as "the wife concurs with her husband's creditors, and claims a privilege over them."

CONCURRENCE, French law. The equality of rights, or privilege which several persons-have over the same thing; as, for example, the right which two judgment creditors, Whose judgments were rendered at the same time, have to

be paid out of the proceeds of real estate bound by them. Dict. de Jur. h.t.

CONCURRENT. Running together; having the same authority; thus we say a concurrent consideration occurs in the case of mutual promises; such and such a court have concurrent jurisdiction; that is, each has the same jurisdiction.

CONCUSSION, civ. law. The unlawful forcing of another by threats of violence to give something of value. It differs from robbery in this, that in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Hein. Lec. El, Sec. 1071

CONDEDIT, eccl. law. The name of a plea, entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Eccl. Rep. 438; 6 Eng. Eccl. Rep. 431.

CONDELEGATES. Advocates who have been appointed judges of the high court of delegates are so called. Shelf. on Lun. 310.

CONDEMNATION, mar. law. The sentence or judgment of a court of competent jurisdiction that a ship or vessel taken as a prize on the high seas, was liable to capture, and was properly and legally captured.

2. By the general practice of the law of nations, a sentence of condemnation is, at present, generally deemed necessary in order to divest the title of a vessel taken as a prize. Until this has been done the original owner may regain his property, although the ship may have been in possession of the enemy twenty-four hours, or carried infra praesidia. 1

Rob. Rep. 134; 3 Rob. Rep. 97, n.; Carth. 423; Chit. Law of Nat. 99, 100; 10 Mod. 79; Abb. on Sh. 14; Wesk. on Ins. h.t.; Marsh. on Ins. 402. A sentence of condemnation is generally binding everywhere. Marsh. on Ins. 402.

3. The term condemnation is also applied to the sentence which declares a ship to be unfit for service; this sentence and the grounds of it may, however, be re-examined and litigated by parties interested in disputing it. 5 Esp. N. P. C. 65; Abb. on Shipp. 4.

CONDEMNATION, civil law. A sentence of judgment which condemns some one to do, to give, or to pay something; or which declares that his claim or pretensions are unfounded. This word is also used by common lawyers, though it is more usual to say conviction, both in civil and criminal cases. It is a maxim that no man ought to be condemned unheard, and without the opportunity of being heard.

CONDICTIO INDEBITI, civil law. When the plaintiff has paid to the defendant by mistake what he was not bound to pay either in fact or in law, he may recover it back by an action called condictio indebiti. This action does not lie, 1. if the sum was due ex cequitate, or by a natural obligation; 2. if he who made the payment knew that nothing was due, for qui consulto dat quod non debetat, prcesumitur donare. Vide Quasi contract.

CONDICTION, Lat. condictio. This term is used in the civil law in the same sense as action. Condictio certi, is an action for the recovery of a certain thing, as our action of replevin, condictio incerti, is an action given for the recovery of an uncertain thing. Dig. 12, 1.

CONDITION, contracts, wills. In its most extended signification, a condition is a clause in a contract or agreement which has for its object to suspend,

to rescind, or to modify the principal obligation; or in case of a will, to suspend, revoke, or modify the devise or bequest. 1 Bouv. Inst. n. 730. It ii in fact by itself, in many cases, an agreement; and a sufficient foundation as an agreement in writing, for a bill in equity, praying for a specific performance. 2 Burr. 826. In pleading, according to the course of the common law, the bond and its condition are to some intents and purposes, regarded as distinct things. 1 Saund. Rep. by Wms. 9 b. Domat has given a definition of a condition, quoted by Hargrave, in these words: "A condition is any portion or agreement which regulates what the parties have a mind should be done, if a case they foresee should come to pass." Co. Litt. 201 a.

2. Conditions sometimes suspend the obligation; as, when it is to have no effect until they are fulfilled; as, if I bind myself to pay you one thousand dollars on condition that the ship Thomas Jefferson shall arrive in the United States from Havre; the contract is suspended until the arrival of the ship.

3. The condition sometimes rescinds the contract; as, when I sell you my horse, on condition that he shall be alive on the first day of January, and he dies before that time.

4. A condition may modify the contract; as, if I sell you two thousand bushels of corn, upon condition that my crop shall produce that much, and it produces only fifteen hundred bushels.

5. In a less extended acceptation, but in a true sense, a condition is a future and uncertain event, on the existence or non-existence of which is made to depend, either the accomplishment, the modification, or the rescission of an obligation or testamentary disposition.

6. There is a marked difference between a condition and a limitation. When a in is given generally, but the gift may defeated upon the happening

of an uncertain event, the latter is called a condition but when it is given to be enjoyed until the event arrives, it is a limitation. See Limitation; Estates. It is not easy to say when a condition will be considered a covenant and when not, or when it will be holden to be both. Platt on Cov. 71.

7. Events foreseen by conditions are of three kinds. Some depend on the acts of the persons who deal together, as, if the agreement should provide that a partner should not join another partnership. Others are independent of the will of the parties, as, if I sell you one thousand bushels of corn,. on condition that my crop shall not be destroyed by a fortuitous event, or act of God. Some depend in part on the contracting parties and partly on the act of God, as, if it be provided that such merchandise shall arrive by a certain day.

8. A condition may be created by inserting the very word condition, or on condition, in the deed or agreement; there are, however, other words that will do so as effectually, as proviso, if, &c. Bac. Ab. Conditions, A.

9. Conditions are of various kinds; 1. as to their form, they are express or implied. This division is of feudal origin. 2 Woodes. Lect. 138. 2. As to their object, they are lawful or unlawful; 3. as to the time when they are to take effect, they are precedent or subsequent; 4. as to their nature, they are possible or impossible 5. as to their operation, they are positive or negative; 6. is to their divisibility, they are copulative or disjunctive; 7. as to their agreement with the contract, they are consistent or repugnant; 8. as to their effect, they are resolutory or suspensive. These will be severally considered.

10. An express condition is one created by express words; as for instance, a condition in a lease that if the tenant shall not pay the rent at the day, the lessor may reenter. Litt. 328. Vide Reentry.

11. An implied condition is one created by law, and not by express

words; for example, at common law, the tenant for life holds upon the implied condition not to commit waste. Co. Litt. 233, b.

12. A lawful or legal condition is one made in consonance with the law. This must be understood of the law as existing at the time of making the condition, for no change of the law can change the force of the condition. For example, a conveyance was made to the grantee, on condition that he should not aliens until be reached the age of twenty-five years. Before he acquired this age be aliened, and made a second conveyance after he obtained it; the first deed was declared void, and the last valid. When the condition was imposed, twenty-five was the age of majority in the state; it was afterwards changed to twenty-one. Under these circumstances the condition was held to be binding. 3 Miss., R. 40.

13. An unlawful or illegal condition is one forbidden by law. Unlawful conditions have for their object, 1st. to do something malum in se, or malum prohibitum; 2d. to omit the performance of some duty required by law 3d. to encourage such act or omission. 1 P. Wms. 189. When the law prohibits, in express terms, the transaction in respect to which the condition is made, and declares it void, such condition is then void; 3 Binn. R. 533; but when it is prohibited, without being declared void, although unlawful, it is not void. 12 S. @ R. 237. Conditions in restraint of marriage are odious, and are therefore held to the utmost rigor and strictness. They are contrary to sound policy, and by the Roman law were all void. 4 Burr. Rep. 2055; 10 Barr. 75, 350; 3 Whart. 575.

14. A condition precedent is one which must be performed before the estate will vest, or before the obligation is to be performed. 2 Dall. R. 317. Whether a condition shall be considered as precedent or subsequent, depends not on the form or arrangement of the words, but on the manifest intention of the parties, on the fair construction of the contract. 2 Fairf.

R. 318; 5 Wend. R. 496; 3 Pet, R. 374; 2 John. R. 148; 2 Cain es, R. 352; 12 Mod. 464; 6 Cowen, R. 627 9 Wheat. R. 350; 2 Virg. Cas. 138 14 Mass. R. 453; 1 J. J. Marsh. R. 591 6 J. J. Marsh. R. 161; 2 Bibb, R. 547 6 Litt. R. 151; 4 Rand. R. 352; 2 Burr. 900

15. A subsequent condition is one which enlarges or defeats an estate or right, already created. A conveyance in fee, reserving a life estate in a part of the land, and made upon condition that the grantee shall pay certain sums of money at divers times to several persons, passes the fee upon condition subsequent. 6 Greenl. R. 106. See 1 Burr. 39, 43; 4 Burr. 1940. Sometimes it becomes of great importance to ascertain whether the condition is precedent or subsequent. When a precedent condition becomes impossible by the act of God, no estate or right vests; but if the condition is subsequent, the estate or right becomes absolute. Co. Litt. 206, 208; 1 Salk. 170.

16. A possible condition is one which may be performed, and there is nothing in the laws of nature to prevent its performance.

17. An impossible condition is one which cannot be accomplished according to the laws of nature; as, to go from the United States to Europe in one day.; such a condition is void. 1 Swift's Dig. 93; 5 Toull. n. 242-247. When a condition becomes impossible by the act of God, it either vests the estate, or does not, as it is precedent or subsequent: when it is the former, no estate vests when the latter, it becomes absolute. Co. Litt. 206, a, 218, a; 3 Pet. R. 374; 1 Hill. Ab. 249. When the performance of the condition becomes impossible by the act of the party who imposed it, the estate is rendered absolute. 5 Rep. 22; 3 Bro. Parl. Cas. 359. Vide 1 Paine's R. 652; Bac. Ab. Conditions, M; Roll. Ab. 420; Co. Litt. 206; 1 Rop. Leg. 505; Swinb. pt. 4, s. 6; Inst. 2, 4, 10; Dig. 28, 7, 1; Id. 44, 7, 31; Code 6, 25, 1; 6 Toull. n. 486, 686 and the article Impossibility.

18. A positive condition requires that the event contemplated shall

happen; as, If I marry. Poth. Ob. part 2, c. 3, art. 1, Sec. 1. 19. A negative condition requires that the event contemplated shall not happen as If I do not marry. Potb. Ob. n. 200.

20. A copulative condition, is one of several distinct-matters, the whole of which are made precedent to the vesting of an estate or right. In this case the entire condition must be performed, or the estate or right can never arise or take place. 2 Freem. 186. Such a condition differs from a disjunctive condition, which gives to the party the right to perform the one or the other; for, in this case, if one becomes impossible by the act of God, the whole will, in general, be excused. This rule, however, is not without exception. 1 B. & P. 242; Cro. Eliz. 780; 5 Co. 21; 1 Lord Raym. 279. Vide Conjunctive; Disjunctive.

21. A disjunctive condition is one which gives the party to be affected by it, the right to perform one or the other of two alternatives.

22. A consistent condition is one which agrees with other parts of the contract.

23. A repugnant condition is one which is contrary to the contract; as, if I grant to you a house and lot in fee, upon condition that you shall not aliene, the condition is repugnant and void, as being inconsistent with the estate granted. Bac. Ab. Conditions L; 9 Wheat. 325; 2 Ves. jr. 824.

24. A resolutory condition in the civil law is one which has for its object, when accomplished the revocation of the principal obligation. This condition does not suspend either the existence or the execution of the obligation, it merely obliges the creditor to return what he has received.

25. A suspensive condition is one which suspends the fulfilment of the obligation until it has been performed; as, if a man bind himself to pay one -hundred dollars, upon condition that the ship Thomas Jefferson shall arrive from Europe. The obligation, in this case, is suspended until the arrival of

the ship, when the condition having been performed, the obligation becomes absolute, and it is no longer conditional. A suspensive condition is in fact a condition precedent.

26. Pothier further divides conditions into potestative, casual and mixed.

27. A potestative condition is that which is in the power of the person in whose favor it is contracted; as, if I engage to give my neighbor a sum of money, in case he outs down a tree which obstructs my. prospect. Poth. Obl. Pt. 2, c. 3, art. 1, Sec. 1.

28. A casual condition is one which depends altogether upon chance, and not in the power of the creditor, as the following: if I have children; if I have no children; if such a vessel arrives in the United States, &c. Poth. Ob. n. 201.

29. A mixed condition is one which depends on the will of the creditor and of a third person; as, if you marry my cousin. Poth. Ob. n. 201. Vide, generally, Bouv. Inst. Index, h.t.

CONDITION, persons. The situation in civil society which creates certain relations between the individual, to whom it is applied, and one or more others, from which mutual rights and obligations arise. Thus the situation arising from marriage gives rise to the conditions of husband and wife that of paternity to the conditions of father and child. Domat, tom. 2, liv. 1, tit. 9, s. 1, n. 8.

2. In contracts every one is presume to know the condition of the person with whom he deals. A man making a contract with an infant cannot recover against him for a breach of the contract, on the ground that he was not aware of his condition.

CONDITIONAL OBLIGATION. One which is superseded by a condition under which

it was created and which is not yet accomplished. Poth. Obl. n. 176, 198.

CONDITIONS OF SALE, contracts. The terms upon which the vendor of property by auction pro poses to sell it; the instrument containing these terms, when reduced to writing or printing, is also called the conditions of sale.

2. It is always prudent and advisable that the conditions of sale should be printed and exposed in the auction room; when so done, they are binding on both parties, and nothing that is said at the time of sale, to add to or vary such printed conditions, will be of any avail. 1 H. Bl. 289 12 East, 66 Ves. 330; 15 Ves. 521; 2 Munf. Rep. 119; 1 Desauss. Ch. Rep. 573; 2 Desauss. Ch. R. 320; 11 John. Rep. 555; 3 Camp. 285. Vide forms of conditions of sale in Babington on Auctions, 233 to 243; Sugd. Vend. Appx. No. 4. Vide Auction; Auctioneer; Puffer.

CONDONATION. A term used in the canon law. It is a forgiveness by the husband of his wife, or by a wife of her husband, of adultery committed, with an implied condition that the injury shall not be repeated, and that the other party shall be treated with conjugal kindness. 1 Hagg. R. 773; 3 Eccl. Rep. 310. See 5 Mass. 320 5 Mass. 69; 1 Johns. Ch. R. 488.

2. It may be express or implied, as, if a husband, knowing of his wife's infidelity, cohabit with her. 1 Hagg. Rep. 789; 3 Eccl. R. 338.

3. Condonation is not, for many rea sons, held so strictly against a wife as against a husband. 3 Eccl. R. 830 Id. 341, n.; 2 Edw. R. 207. As all condonations, by operation of law, are expressly or impliedly conditional, it follows that the effect is taken off by the repetition of misconduct; 3 Eccl. R. 329 3 Phillim. Rep. 6; 1 Eccl. R. 35; and cruelty revives condoned adultery. Worsley v. Worsley, cited in Durant v. Durant, 1 Hagg. Rep. 733; 3 Eccl. Rep. 311.

4. In New York, an act of cruelty alone, on the part of the husband, does not revive condoned adultery, to entitle the wife to a divorce. 4 Paige's R. 460. See 3 Edw. R. 207.

5. Where the parties have separate beds, there must, in order to found condonation, be something of matrimonial intercourse presumed; it does not rest merely on the wife's not. withdrawing herself. 3 Eccl. R. 341, n.; 2 Paige, R. 108.

6. Condonation is a bar to a sentence of divorce. 1 Eccl. Rep. 284; 2 Paige, R. 108. In Pennsylvania, by the Act of the 13th of March, 1815, Sec. 7, 6 Reed's Laws of Penna. 288, it is enacted that "in any suit or action for divorce for cause of adultery, if the defendant shall allege and prove that the plaintiff has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the plaintiff (if the husband) allowed of his wife's prostitutions, or received hire, for them, or exposed his wife to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence, and perpetual bar against the same." The same rule may be found, perhaps, in the codes of most civilized countries. Villanova Y Manes, Materia Criminal Forense, Obs. 11, c. 20, n. 4. Vide, generally, 2 Edw. 207; Dev. Eq. R. 352 4 Paige, 432; 1 Edw. R. 14; Shelf. on M. & D. 445; 1 John. Ch. R. 488 4 N. Hamp. R. 462; 5 Mass. 320.

CONDUCT, law of nations. This term is used in the phrase safe conduct, to signify the security given, by authority of the government, under the great seal, to a stranger, for his quietly coming into and passing out of the territories over which it has jurisdiction. A safe conduct differs from a passport; the former is given to enemies, the latter to friends or citizens.

CONDUCT MONEY. The money advanced to a witness who has been subpoenaed to

enable him to attend a trial, i's so called.

CONDUCTOR OPERARUM, civil law. One who undertakes, for a reward, to perform a job or piece of work for another. See Locator Operis.

CONFEDERACY, intern. law. An agreement between two or more states or nations, by which they unite for their mutual protection and good. This term is applied to such agreement between two independent nations, but it is used to signify the union of different states of the same nation, as the confederacy of the states.

2. The original thirteen states, in 1781, adopted for their federal government the "Articles of confederation and perpetual union between the States," which continued in force until the present constitution of the United States went into full operation, on the 30th day of April, 1789, when president Washington was sworn into office. Vide 1 Story on the Const. B. 2, c. 3 and 4.

CONFEDERACY, crim. law. An agreement between two or more persons to do an unlawful act, or an act, which though not unlawful in itself, becomes so by the confederacy. The technical term usually employed to signify this offence, is conspiracy. (q.v.)

CONFEDERACY, equity pleading. The fourth part of a bill in chancery usually charges a confederacy; this is either general or special.

2. The first is by alleging a general charge of confederacy between the defendants and other persons to injure or defraud the plaintiff. The common form of the charge is, that the defendants, combining and confederating together, to and with divers other persons as yet to the plaintiff unknown,

but whose names, when discovered, he prays may be inserted in the bill, and they be made parties thereto, with proper and apt words to charge them with the premises, in order to injure and oppress the plaintiff in ti e premises, do absolutely refuse, &c. Mitf. Eq. Pl. by Jeremy, 40; Coop. Eq. Pl. 9 Story, Eq. Pl. Sec. 29; 1 Mont. Eq. Pl. 77; Barton, Suit in Eq. 33; Van Heyth. Eq. Drafts, 4.

3. When it is intended to rely on a confederacy or combination as a ground of equitable jurisdiction, the confederacy must be specially charged to justify an assumption of jurisdiction. Mitf. Eq. Pl. by Jeremy, 41; Story, Eq. Pl. Sec. 30.

4. A general allegation of confederacy is now considered as mere form. Story, Eq. Pl. Sec. 29; 4 Bouv. Inst. n. 4169.

CONFEDERATION, government. The name given to that form of government which the American colonies, on shaking off the British yoke, devised for their mutual safety and government.

2. The articles of confederation, (q.v.) were finally adopted on the 15th of November, 1777, and with the exception of Maryland, which, however, afterwards also agreed to them, were speedily adopted by the United States, and by which they were formed into a federal @bod y, and went into force on the first day of March, 1781; 1 Story Const. Sec. 225; and so remained until the adoption of the present constitution, which acquired the force of the supreme law of the land on the first Wednesday of March, 1789. 5 Wheat. R. 420. Vide Articles of Confederation.

CONFERENCE, practice, legislation. In practice, it is the meeting of the parties or their attorneys in a cause, for the purpose of endeavoring to settle the same.

2. In legislation, when the senate and house of representatives cannot

agree on a bill or resolution which it is desirable should be passed, committees are appointed by the two bodies respectively, who are called committees of conference, and whose duty it is, if possible, to -reconcile the differences between them.

3. In the French law, this term is used to signify the similarity and comparison between two laws, or two systems of law; as the Roman and the common law. Encyclopedie, h.t.

4. In diplomacy, conferences are verbal explanations between ministers of two nations at least, for the purpose of accelerating various difficulties and delays, necessarily attending written communications.

CONFESSION, crim. law, evidence. The voluntary declaration made by a person who has committed a crime or misdemeanor, to another, of the agency or participation which he had in the same.

2. When made without bias or improper influence, confessions are admissible in evidence, as the highest and most satisfactory proof: because it is fairly presumed that no man would make such a confession against himself, if the facts confessed were not true but they are excluded, if liable to the of having been unfairly obtained.

3. Confessions should be received with great caution, as they are liable to many objections. There is danger of error from the misapprehension of witnesses, the misuse of words, the failure of a party to express his own meaning, the prisoner being oppressed by his unfortunate situation, and influenced by hope, fear, and sometimes a worse motive, to male an untrue confession. See the case of the two Boorns in Greenl. Ev. Sec. 214, note 1; North American Review, vol. 10, p. 418; 6 Carr. & P. 451; Joy on Confess. s. 14, p. 100; and see 1 Chit. Cr. Law, 85.

4. A confession must be made voluntarily, by the party himself, to

another person. 1. It must be voluntary. A confession, forced from the mind by the flattery of hope, or the torture of fear, comes in so questionable a shape, when it is to be considered as evidence of guilt, that Lo credit ought to be given to it. 1 Leach, 263. This is the principle, but what amounts to a promise or a threat, is not so easily defined. Vide 2 East, P. C. 659; 2 Russ. on Cr. 644 4 Carr. & Payne, 387; S. C. 19 Eng. Com. L. Rep. 434; 1 Southard, R. 231 1 Wend. R. 625; 6 Wend. R. 268 5 Halst. R. 163 Mina's Trial, 10; 5 Rogers' Rec. 177 2 Overton, R. 86 1 Hayw. (N. C.) R, 482; 1 Carr. & Marsh. 584. But it must be observed that a confession will be considered as voluntarily made, although it was made after a promise of favor or threat of punishment, by a person not in authority, over the prisoner. If, however, a person having such authority over him be present at the time, and he express no dissent, evidence of such confession cannot be given. 8 Car. & Payne, 733.

5. - 2. The confession must be made by the party to be affected by it. It is evidence only against him. In case of a conspiracy, the acts of one conspirator are the acts of all, while active in the progress of the conspiracy, but after it is over, the confession of one as to the part he and others took in the crime, is not evidence against any but himself. Phil. Ev. 76, 77; 2 Russ. on Cr. 653.

6. - 3. The confession must be to another person. It may be made to a private individual, or under examination before a magistrate. The whole of the confession must be taken, together with whatever conversation took place at the time of the confession. Roscoe's Ev. N. P. 36; 1 Dall. R. 240 Id. 392; 3 Halst. 27 5 2 Penna. R. 27; 1 Rogers' Rec. 66; 3 Wheeler's C. C. 533; 2 Bailey's R. 569; 5 Rand. R. 701.

7. Confession, in another sense, is where a prisoner being arraigned for an offence, confesses or admits the crime with which he is charged, whereupon the plea of guilty is entered. Com Dig. Indictment, K; Id.

Justices, W 3; Arch. Cr. Pl. 1 2 1; Harr. Dig. b. t.; 20 Am. Jur. 68; Joy on Confession.

8. Confessions are classed into judicial and extra judicial. Judicial confessions are those made before a magistrate, or in court, in the due course of legal proceedings; when made freely by the party, and with a full and perfect knowledge of their nature and consequences, they are sufficient to found a conviction. These confessions are such as are authorized by a statute, as to take a preliminary examination in writing; or they are by putting in the plea of guilty to an indictment. Extra judicial confessions are those which are made by the part elsewhere than before a magistrate or in open court. 1 Greenl. Ev. Sec. 216. See, generally, 3 Bouv. Inst. n. 3081-2.

CONFESSIONS AND AVOIDANCE, pleadings. Pleas in confession and avoidance are those which admit the averments in the plaintiff Is declaration to be true, and allege new facts which obviate and repel their legal effects.

2. These pleas are to be considered, first, with respect to their division. Of pleas in confession and avoidance, some are distinguished (in reference to their subject matter) as pleas in justification or excuse, others as pleas in discharge. Com. Dig. Pleader, 3 M 12. The pleas of the former class, show some justification or excuse of the matter charged in the declaration; of the latter, some discharge or release of that matter. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful; the effect of the latter, to show that though he had once a right of action, it is discharged or released by some matter subsequent. Of those in justification or excuse, the plea of son assault demesne is an example; of those in discharge, a release. This division applies to pleas only; for replications and other

subsequent pleadings in confession and avoidance, are not subject to such Classification;

3. Secondly, they are to be considered in respect to their form. As to their form, the reader is referred to Stephens on Pleading, 72, 79, where forms are given. In common with all pleadings whatever, which do not tender issue, they always conclude with a verification and prayer of judgment.

4. Thirdly, with respect to the quality of these pleadings, it is a rule that every pleading by way of confession and avoidance must give color. (q.v.) And see, generally, 1 Chit. Pl. 599; 2 Chit. Pl, 644; Co. Litt. 282, b; Arch. Civ. Pl. 215; Dane's Ab. Index, ii. t.; 3 Bouv. Inst. n. 2921, 293 1.

CONFESSOR, evid. A priest of some Christian sect, who receives an account of the sins of his people, and undertakes to give them absolution of their sins.

2. The general rule on the subject of giving evidence of confidential communications is, that the privilege is confined to counsel, solicitors, and attorneys, and the interpreter between the counsel and the client. Vide Confidential Communications. Contrary to this general rule, it has been decided in New York, that a priest of the Roman Catholic denomination could not be compelled to divulge secrets which he had received in auricular confession. 2 City Hall Rec. 80, n.; Joy on Conf. Sec. 4, p. 49. See Bouv. Inst. n. 3174 and note.

CONFIDENTIAL COMMUNICATIONS, evidence. Whatever is communicated professedly by a client to his counsel, solicitor, or attorney, is considered as a confidential communication.

2. This the latter is not permitted to divulge, for this is the privilege of the client and not of the attorney.

3. The. rule is, in general, strictly confined to counsel, solicitors or attorneys, except, indeed, the case of an interpreter between the counsel and client, when the privilege rests upon the same grounds of necessity. 3 Wend. R. 339. In New York, contrary to this general rule, tinder the statute of that state, it has been decided that information disclosed to a physician while attending upon the defendant in his professional character, which information was necessary to enable the witness to prescribe for his patient, was a confidential communication which the witness need not have testified. about; and in a case where such evidence had been received by the master, it was rejected. 4 Paige, R. 460.

4. As to the matter communicated, it extends to all cases where the party applies for professional assistance. 6 Mad. R. 47; 14 Pick., R. 416. But the privilege does not extend to extraneous or impertinent communications; 3 John. Cas. 198; nor to information imparted to a counsellor in the character of a friend, and not as counsel. 1 Caines' R. 157.

5. The cases in which communications to counsel have been holden not to be privileged may be classed under the following heads: 1. When the communication was made before the attorney was employed as such; 1 Vent. 197; 2 Atk. 524; 2. after the attorney's employment has ceased 4 T. R. 431; 3. when the attorney was consulted because he was an attorney, yet he refused to act as such, and was therefore only applied to as a friend; 4 T. R. 753; 4. where a fact merely took place in the presence of the attorney, Cowp. 846; 2 Ves. 189; 2 Curt. Eccl. R. 866; but see Str. 1122; 5. when the matter communicated was not in its nature private, and could in no sense be termed the subject of a confidential communication; 7 East,, R. 357; 2 B. & B. 176; 3 John' Cas. 198; 6. when the things disclosed had no reference to professional employment, though disclosed while the relation of attorney and

client subsisted; Peake's R. 77; 7. when the attorney made himself a subscribing witness; 10 Mod. 40 2 Curt. Eccl. R. 866; 3 Burr. 1687

8. when he was directed to plead the facts to which he is called to testify. 7 N. S. 179. See a well written article! on this subject in the American Jurist, vol. xvii. p. 304. Vide, generally, Stark. Ev. h.t.; 1 Greenl. Ev. Sec. 236-247; 1 Peters' R. 356; 1 Root, 383; Whart. Dig. 275; Caryls' R. 88, 126, 143; Toth. R. 177; Peake's Cas. 77 2 Stark. Cas. 274; 4 Wash. C. C. R. 718; 11 Wheat. 280; 3 Yeates, R. 4; 4 Munf. R. 273 1 Porter, R. 433; Wright, R. 136; 13 John. R. 492. As to a confession made to a catholic priest, see 2 N. Y. City Hall Rec. 77. Vide 2 Ch. Pr. 18-21; Confessor.

CONFIRMATIO CHARTORUM. The name given to a statute passed during reign of the English king Edward I. 25 Ed. I., c. 6. See Bac. Ab. Smuggling, B.

CONFIRMATION, contracts, conveyancing. 1. A contract by which that which was voidable, is made firm and unavoidable.

2. A species of conveyance.

2. - 1. When a contract has been entered into by a stranger without authority, he in whose name it has been made may, by his own act, confirm it; or if the contract be made by the party himself in an informal and voidable manner, he may in a more formal manner confirm and render it valid; and in that event it will take effect, as between the parties, from the original making. To make a valid confirmation, the party must be apprised of, his rights, and where there has been a fraud in the transaction, he must be award of it, and intend to confirm his contract. Vide 1 Ball & Beatty, 353; 2 Scho. & Lef. 486; 12 Ves. 373; 1 Ves. Jr. 215; Newl. Contr. 496; 1 Atk. 301; 8 Watts. R. 280.

3. - 2. Lord Coke defines a confirmation of an estate, to be "a

conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable; or where a particular estate is increased."

4. The first part of this definition may be illustrated by the following case, put by Littleton, Sec. 516; where a person lets land to another for the term of his life, who lets the same to another for forty years, by force of which he is in possession; if the lessor for life confirms the estate of the tenant for years by deed, and afterwards the tenant for life dies, during the term; this deed will operate as a confirmation of the term for years.. As to the latter branch of the definition; whenever a confirmation operates by way of increasing the estate, it is similar in every respect to a release that operates by way of enlargement, for there must be privity of estate, and proper words of limitation. The proper technical words of a confirmation are, ratify and confirm; although it is usual and prudent to insert also the words given and granted. Watk. Prin. Convey. chap. vii.

5. A confirmation does not strengthen a void estate. Confirmatio est nulla, ubi donum precedens est invalidum, et ubi donatio nulla est nec valebit confirmatio. For confirmation may make a voidable or defeasible estate good, but cannot operate on an estate void in law. Co. Litt. 295. The canon law agrees with this rule, and hence the maxim, qui confirmat nihil dat. Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 6, n. 476. Vide Vin. Ab. h.t.; Com. Dig. 11. t.; Ayliffe's Pand. *386; 1 Chit. Pr. 315; 3 Gill & John. 290; 3 Yerg. R. 405; Co. Litt. 295; Gilbert on Ten. 75; 1 Breese's R. 236; 9 Co. 142, a; 2 Bouv. Inst. n. 2067-9.

6. An infant is said to confirm his acts performed during infancy, when, after coming to full age, be expressly approves of them, or does acts from which such confirmation way be implied. Sec Ratification.

CONFIRMEE. He to whom a confirmation is made.

CONFIRMOR. He who makes a confirmation to another.

CONFISCATION. The act by which the estate, goods or chattels of a person who has been guilty of some crime, or who is a public enemy, is declared to be forfeited for the benefit of the public treasury. Domat, Droit Public, liv. 1, tit. 6, s. 2, n. 1. When property is forfeited as a punishment for the commission of crime, it is usually called a forfeiture. 1 Bl. Com. 299.

2. It is a general rule that the property of the subjects of an enemy found in the country may be appropriated by the government, without notice, unless there be a treaty to the contrary. 1 Gallis. R. 563; 8 Dall. R. 199; N. Car. Cas. 79. It has been frequently provided by treaty that foreign subjects should be permitted to remain and continue their business, notwithstanding a rupture between the governments, so long as they conducted themselves innocently and when there was no such treaty, such a liberal permission has been announced in the very declaration of war. Vattel, liv. 3, c. 4, Sec. 63. Sir Michael Poster, (Discourses on High Treason, p. 185, 6, mentions several instances of such declarations by the king of Great Britain; and he says that aliens were thereby enabled to acquire personal chattels and to maintain actions for the recovery of their personal rights, in as full a manner as alien friends. 1 Kent, Coin. 57.

3. In the United States, the broad principle has been assumed "that war gives to the sovereign full right to take the persons and confiscate the property of the enemy, wherever found. The mitigations of this rigid rule, which the policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself." 8 Cranch, 122-3. Commercial nations have always considerable property in the possession of their neighbors: and when war breaks out the question, what

shall be done with enemies property found in the country, is one rather of policy than of law, and is properly addressed to the consideration of the legislature, and not to courts of law. The strict right of confiscation exists in congress; and without a legislative act authorizing the confiscation of enemies' property, it cannot be condemned. 8 Cranch, 128, 129. See Chit. Law of Nations, c. 3; Marten's Law of Nat. lib. 8, c. 3, s. 9; Burlamaqui, Princ. of Pol. Law, part 4, c. 7; Vattel, liv. 3, c. 4, Sec. 63.

4. The claim of a right to confiscate debts, contracted by individuals in time of peace, and which remain due to subjects of the enemy in time of war, rests very much upon the same principles as that concerning the enemy's tangible property, found in the country at the commencement of the war. But it is the universal practice to forbear to seize and confiscate debts and credits. 1 Kent, Com. 64, 5; vide 4 Cranch, R. 415 Charlt. 140; 2 Harr. & John. 101, 112, 471 6 Cranch, R. 286; 7 Conn. R. 428: 2 Tayl. R. 115; 1 Day, R. 4; Kirby, R. 228, 291 C. & N. 77, 492.

CONFLICT. The opposition or difference between two judicial jurisdictions, when they both claim the right to decide a cause, or where they both declare their incompetency. The first is called a positive conflict, and the, latter a negative conflict.

CONFLICT OF JURISDICTION. The contest between two officers, who each claim to have cognizance of a particular case.

CONFLICT OF LAWS. This phrase is used to signify that the laws of different countries, on the subject-matter to be decided, are in opposition to each other; or that certain laws of the same country are contradictory.

2. When this happens to be the case, it becomes necessary to decide which law is to be obeyed. This subject has occupied the attention and talents of some of the most learned jurists, and their labors are comprised in many volumes. A few general rules have been adopted on this subject, which will here be noticed.

3. - 1. Every nation possesses an exclusive sovereignty and jurisdiction within its own territory. The laws of every state, therefore, affect and bind directly all property, whether real or personal, within its territory; and all persons who are resident within it, whether citizens or aliens, natives or foreigners; and also all contracts made, and acts done within it. Vide Lex Loci contractus; Henry, For. Law, part 1, c. 1, 1; Cowp. It. 208; 2 Hag. C. R. 383. It is proper, however, to observe, that ambassadors and other public ministers, while in the territory of the state to, which they are delegates, are exempt from the local jurisdiction. Vide Ambassador. And the persons composing a foreign army, or fleet, marching through, or stationed in the territory of another state, with whom the foreign nation is in amity, are also exempt from the civil and criminal jurisdiction of the place. Wheat. Intern. Law, part 2, c. 2, Sec. 10; Casaregis, Disc. 136-174 vide 7 Cranch, R. 116.

4. Possessing exclusive authority, with the above qualification, a state may regulate the manner and circumstances, under which property, whether real or personal, in possession or in action, within it shall be held, transmitted or transferred, by sale, barter, or bequest, or recovered or enforced; the condition, capacity, and state of all persons within it the validity of contracts and other acts done there; the resulting rights and duties growing out of these contracts and acts; and the remedies and modes of administering justice in all cases. Story, Confl. of Laws, Sec. 18; Vattel, B. 2, c. 7, Sec. 84, 85; Wheat. Intern. Law, part 1, c. 2, Sec. 5.

5. - 2. A state or nation cannot, by its laws, directly affect or bind

property out of its own territory, or persons not resident therein, whether they are natural born or naturalized citizens or subjects, or others. This result flows from the principle that each sovereignty is perfectly independent. 13 Mass. R. 4. To this general rule there appears to be an exception, which is this, that a nation has a right to bind its own citizens or subjects by its own laws in every place; but this exception is not to be adopted without some qualification. Story, Confl. of Laws, Sec. 21; Wheat. Intern. Law, part 2, c. 2, Sec. 7.

6. - 3. Whatever force and obligation the laws of one, country have in another, depends upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent. Huberus, lib. 1, t. 3, Sec. 2. When a statute, or the unwritten or common law of the country forbids the recognition of the foreign law, the latter is of no force whatever. When both are silent, then the question arises, which of the conflicting laws is to have effect. Whether the one or the other shall be the rule of decision must necessarily depend on a variety of circumstances, which cannot be reduced to any certain rule. No nation will suffer the laws of another to interfere with her own, to the injury of her own citizens; and whether they do or not, must depend on the condition of the country in which the law is sought to be enforced, the particular state of her legislation, her policy, and the character of her institutions. 2 Mart. Lo. Rep. N. S. 606. In the conflict of laws, it must often be a matter of doubt which should prevail; and, whenever a doubt does exist, the court which decides, will prefer the law of its own country to that of the stranger. 17 Mart. Lo. R. 569, 595, 596. Vide, generally, Story, Confl. of Laws; Burge, Confl. of Laws; Liverm. on Contr. of Laws; Foelix, Droit Intern.; Huberus, De Conflictu Leguin; Hertius, de Collisions Legum; Boullenois, Traits de la personnalite' et de la realite de lois,

coutumes et statuts, par forme d'observations; Boullenois, Dissertations sur des questions qui naissent de la contrariete des lois, et des coutumes.

CONFRONTATION, crim. law, practice. The act by which a witness is brought in the presence of the accused, so that the latter may object to him, if he can, and the former may know and identify the accused, and maintain the truth in his presence. No man can be a witness unless confronted with the accused, except by consent.

CONFUSION. The concurrence of two qualities in the same subject, which mutually destroy each other. Potli. Ob. P. 3, c. 5 3 Bl. Com. 405; Story Bailm. Sec. 40.

CONFUSION OF GOODS. This takes place where the goods of two or more persons become mixed together so that they cannot be separated. There is a difference between confusion and commixtion; in the former it is impossible, while in the latter it is possible, to make a separation. Bowy. Comm. 88.

2. When the confusion takes place by the mutual consent of the owners, they have an interest in the mixture in proportion to their respective shares. 2 Bl. Com. 405; 6 Hill, N. Y. Rep. 425. But if one willfully mixes his money, corn or hay, with that of another man, without his approbation or knowledge, the law, to guard against fraud, gives the entire property without any account, to him whose original dominion is invaded land endeavored to be rendered uncertain, without his consent. Ib.; and see 2 Johns. Ch. It. 62 2 Kent's Comm. 297.

3. There may be a case neither of consent nor of willfulness, in the confusion of goods; as where a bailee by negligence or unskillfulness, or inadvertence, mixes up his own goods of the same sort with those bailed; and there may be a confusion arising from accident and unavoidable casualty.

Now, in the latter case of accidental intermixture, the rule, following the civil law, which deemed the property to be held in common, might be adopted; and it would make no difference whether the mixture produced a thing of the same sort or not; as, if the wine of two persons were mixed by accident. See Dane's Abr. ch. 76, art. 5, Sec. 19.

4. But in cases of mixture by unskilfulness, negligence, or inadvertence, the true principle seems to be, that if a man having undertaken to keep the property of another distinct from, mixes it with his own, the whole must, both at law and in equity, be taken to be the property of the other, until the former puts the subject under such circumstances, that it may be distinguished as satisfactorily as it might have been before the unauthorized mixture on his part. 15 Ves. 432, 436, 439, 440; 2 John. Ch. R. 62; Story on Bailm. c. l, Sec. 40. And see 7 Mass. 11. 123; Dane's Abr. c. 76, art. 3, Sec. 15; Com. Dig. Pleader, 3 M 28; Bac. Ab. Trespass, E 2; 2 Campb. 576; 2 Roll. 566, 1, 15 2 Bul. 323. 2 Cro. 366, 2 Roll. 393; 5 East, 7; 21 Pick. R. 298.

CONFUSION OF RIGHTS, contracts. When the qualities of debtor and creditor are united in the same person, there arises a confusion of rights, which extinguishes the two credits; for instance, when a woman obliges marries the obligor, the debt is extinguished. 1 Salk. 306; Cro. Car. 551; 1 Ld. Raym. 515; Ca. Ch. 21, 117. There is, however, an excepted case in relation to a bond given by the husband to the wife; when it is given to the intended wife for a provision to take effect after his death. 1 Ld. Raym. 515; 5 T. R. 381; Hut. 17 Hob. 216; Cro. Car. 376; 1 Salk. 326 Palm. 99; Carth. 512; Com. Dig. Baron & Feme, D. A further exception is the case of a divorce. If one be bound in an obligation to a feme sole and then marry her, and afterwards they are divorced, she may sue her former husband on the obligation,

notwithstanding, her action was in suspense during the marriage. 26 H. VIII. 1.

2. Where a person possessed of an estate, becomes in a different right entitled to a charge upon the estate; the charge is in general merged in the estate, and does not revive in favor of the personal representative against the heir; there are particular exceptions, as where the person in whom the interests unite is a minor, and can therefore dispose of the personalty, but not of the estate; but in the case of a lunatic the merger and confusion was ruled to have taken place. 2 Ves. jun. 261. See Louis. Code, art. 801 to 808; 2 Ld. R. 527; 3 L. R. 552 4 L. R. 399, 488. Burge on Sur. Book 2, c. 11, p. 253.

CONGE'. A French word which signifies permission, and is understood in that sense in law. Cunn. Diet. h.t. In the French maritime law, it is a species of passport or permission to navigate, delivered by public authority. It is also in the nature of a clearance. (q.v.) Bouch. Inst. n. 812; Repert. de la Jurisp. du Notoriat, by Rolland de Villargues. Conge'.

CONGEABLE, Eng. law. This word is nearly obsolete. It is derived from the French conge', permission, leave; it signifies that a thing is lawful or lawfully done, or done with permission; as entry congeable, and the like. Litt. s. 279.

CONGREGATION. A society of a number of persons who compose an ecclesiastical body. In the ecclesiastical law this term is used to designate certain bureaux at Rome, where ecclesiastical matters are attended to. In the United States, by congregation is meant the members of a particular church, who meet in one place worship. See 2 Russ. 120.

CONGRESS. This word has several significations. 1. An assembly of the deputies convened from different governments, to treat of peace or of other political affairs, is called a congress.

2. - 2. Congress is the name of the legislative body of the United States, composed of the senate and house of representatives. Const. U. S. art. 1, s. 1.

3. Congress is composed of two independent houses. 1. The senate and, 2. The house of representatives.

4.- 1. The senate is composed of two senators from each state, chosen by the legislature thereof for six years, and each senator has one vote. They represent the states rather than the people, as each state has its equal voice and equal weight in the senate, without any regard to the disparity of population, wealth or dimensions. The senate have been, from the first formation of the government, divided into three classes; and the rotation of the classes was originally determined by lots, and the seats of one class are vacated at the end of the second year, and one-third of the senate is chosen every second year. Const. U. S. art 1, s. 3. This provision was borrowed from a similar one in some of the state constitutions, of which Virginia gave the first example.

5. The qualifications which the constitution requires of a senator, are, that he should be thirty years of age, have been nine years a citizen of the United States, and, when elected, be an inhabitant of that state for which he shall be chosen. Art. 1, s. 3.

6.-2. The house of representatives is composed of members chosen every second year by the people of the several states, who are qualified electors of the most numerous branch of the legislature of the state to which they belong.

7. No person can be a representative until he has attained the age of

twenty-five years, and has been seven years a citizen of the United States, and is, at the time of his election, an inhabitant of the state in which he is chosen. Const. U. S. art. 1, Sec. 2.

8. The constitution requires that the representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. Art. 1, s. 1.

9. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative. Ib.

10. Having shown how congress is constituted, it is proposed here to consider the privileges and powers of the two houses, both aggregately and separately.

11. Each house is made the judge of the election, returns, and qualifications of its own members. Art. 1, s. 5. As each house acts in these cases in a judicial character, its decisions, like the decisions of any other court of justice, ought to be regulated by known principles of law, and strictly adhered to, for the sake of uniformity and certainty. A majority of each house shall constitute a quorum to do business but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as, each may provide. Each house may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member. Each house is bound to keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and to enter the yeas and nays on the journal, on any question, at the desire of one-fifth of the members present. Art. 1, s. 5.

12. The members of both houses are in all cases, except treason, felony, and breach of the peace, privileged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same. Art. 1, s. 6.

13. These privileges of the two houses are obviously necessary for their preservation and character; And, what is still more important to the freedom of deliberation, no member can be questioned in any other place for any speech or debate in either house. lb.

14. There is no express power given to either house to punish for contempts, except when committed by their own members, but they have such an implied power. 6 Wheat. R. 204. This power, however, extends no further than imprisonment, and that will continue no farther than the duration of the power that imprisons. The imprisonment will therefore terminate with the adjournment or dissolution of congress.

15. The house of representatives has the exclusive right of originating bills for raising revenue, and this is the only privilege that house enjoys in its legislative character, which is not shared equally with the other; and even those bills are amendable by the senate in its discretion. Art. 1, s. 7.

16. The two houses are an entire and perfect check upon each other, in all business appertaining to legislation and one of them cannot even adjourn, during the session of congress, for more than three days, without the consent of the either nor to any other place than that in which the two houses shall be sitting. Art. 1, s. 5.

17. The powers of congress extend generally to all subjects of a national nature. Congress are authorized to provide for the common defence and general welfare; and for that purpose, among other express grants, they have the power to lay and collect taxes, duties, imposts and excises; to

borrow money on the credit of the United States; to regulate commerce with foreign nations, and among the several states, and with the Indians; 1 McLean R. 257; to establish all uniform rule of naturalization, and uniform laws of bankruptcy throughout the United States; to establish post offices and post roads; to promote the progress of science and the useful arts, by securing for a limited time to authors and inventors, the exclusive right to their respective writings and discoveries; to constitute tribunals inferior to the supreme court; to define and punish piracies on the high seas, and offences against the laws of nations; to declare war; to raise and support armies; to provide and maintain a navy; to provide for the calling forth of the militia; to exercise exclusive legislation over the District of Columbia; and to give full efficacy to the powers contained in the constitution.

18. The rules of proceeding in each house are substantially the same; the house of representatives choose their own speaker; the vice-president of the United States is, ex officio, president of the senate, and gives the casting vote when the members are equally divided. The proceedings and discussions in the two houses are generally in public.

19. The ordinary mode of passing laws is briefly this; one day's notice of a motion for leave to bring in a bill, in cases of a general nature, is required; every bill must have three readings before it is passed, and these readings must be on different days; and no bill can be committed and amended until it has been twice read. In the house of representatives, bills, after being twice read, are committed to a committee of the whole house, when a chairman is appointed by the speaker to preside over the committee, when the speaker leaves the chair, and takes a part in the debate as an ordinary member.

20. When a bill has passed one house, it is transmitted, to tho other, and goes through a similar form, though in the senate there is less

formality, and bills are often committed to a select committee, chosen by ballot. If a bill be altered or amended in the house to which it is transmitted, it is then returned to the house in which it originated, and if the two houses cannot agree, they appoint a committee to confer on the subject See Conference.

21. When a bill is engrossed, and has received the sanction of both houses, it is sent to the president for his approbation. If he approves of the bill, he signs it. If he does not, it is returned, with his objections, to the house in which it originated, and that house enters the objections at large on their journal, and proceeds to re-consider it. If, after such re-consideration, two-thirds of the house agree to pass the bill, it is sent, together with the objections, to the other house, by which it is likewise re-considered, and if approved by two-thirds of that house, it becomes a law. But in all such cases, the votes of both houses are determined by yeas and nays; and the names of the persons voting for and against the bill, are to be entered on the journal of each house respectively.

22. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law. Art. 1, s. 7. See House of Representatives; President; Senate; Veto; Kent, Com. Lecture xi.; Rawle on the Const. ch. ix.

CONGRESS, med. juris. This name was anciently given in France, England, and other countries, to the-indecent intercourse between married persons, in the presence of witnesses appointed by the courts, in cases when the husband or wife was charged by the other with impotence. Trebuchet, Jurisp. de Med. 101 Dictionnaire des Sciences Medicales, art. Congres, by Marc.

CONJECTURE. Conjectures are ideas or notions founded on probabilities without any demonstration of their truth. Mascardus has defined conjecture: "rationable vestigium latentis veritatis, unde nascitur opinio sapientis;" or a slight degree of credence arising from evidence too weak or too remote to produce belief. De Prob. vol. i. quoest. 14, n. 14. See Dict. de Trevoux, h.v.; Denisart, h.v.

CONJOINTS. Persons married to each other. Story, Confl. of L. Sec. 71; Wolff. Dr. de la Nat. Sec. 858.

CONJUGAL. Matrimonial; belonging, to marriage as, conjugal rights, or the rights which belong to the husband or wife as such.

CONJUNCTIVE, contracts, wills, instruments. A term in grammar used to designate particles which connect one word to another, or one proposition to another proposition.

2. There are many cases in law, where the conjunctive and is used for the disjunctive or, and vice versa.

3. An obligation is conjunctive when it contains several things united by a conjunction to indicate that they are all equally the object of the matter or contract for example, if I promise for a lawful consideration, to deliver to you my copy of the Life of Washington, my Encyclopaedia, and my copy of the History of the United States, I am then bound to deliver all of them and cannot be discharged by delivering one only. There are, according to Toullier, tom. vi. n. 686, as many separate obligations Is there are things to be delivered, and the obligor may discharge himself pro tanto by delivering either of them, or in case of refusal the tender will be valid. It is presumed, however, that only one action could be maintained for the

whole. But if the articles in the agreement had not been enumerated; I could not, according to Toullier, deliver one in discharge of my contract, without the consent of the creditor; as if, instead of enumerating the, books above mentioned, I had bound myself to deliver all my books, the very books in question. Vide Disjunctive, Item, and the case, there cited; and also, Bac. Ab. Conditions, P; 1 Bos. & Pull. 242; 4 Bing. N. C. 463 S. C. 33 E. C. L. R. 413; 1 Bouv. Inst. n. 687-8.

CONJURATION. A swearing together. It signifies a plot, bargain, or compact made by a number of persons under oath, to do some public harm. In times of ignorance, this word was used to signify the personal conference which some persons were supposed to have had with the devil, or some evil spirit, to know any secret, or effect any purpose.

CONNECTICUT. The name of one of the original states of the United States of America. It was not until the year 1665 that the territory now known as the state of Connecticut was united under one government. The charter was granted by Charles II. in April, 1662, but as it included the whole colony of New Haven, it was not till 1665 that the latter ceased its resistance, when both the colony of Connecticut and that of New Haven agreed, and then they were indissolubly united, and have so remained. This charter, with the exception of a temporary suspension, continued in force till the American revolution, and afterwards continued as a fundamental law of the state till the year 1818, when the present constitution was adopted. 1 Story on the Const. Sec. 86-88.

2. The constitution was adopted on the fifteenth day of September, 1818. The powers of the government are divided into three distinct departments, and each of them confided to a separate magistracy, to wit:

those which are legislative, to one; those which are executive to another; and those which are judicial to a third. Art. 2.

3. - 1st. The legislative power is vested in two distinct houses or branches, the one styled the senate, and the other the house of representatives, and both together the general assembly. 1. The senate consists of twelve members, chosen annually by the electors. 2. The house of representatives consists of electors residing in towns from which they are elected. The number of representatives is to be the same as at present practised and allowed; towns which may be hereafter incorporated are to be entitled to one representative only.

4. - 2d. The executive power is vested in a governor and lieutenant-governor. 1. The supreme executive power of the state is vested in a governor, chosen by the electors of the state; he is to hold his office for one year from the first Wednesday of May, next succeeding his election, and until his successor be duly qualified. Art. 4, s. 1. The governor possesses the veto power, art. 4, s. 12. 2. The lieutenant-governor is elected immediately after the election of governor, in the same manner as is provided for the election of governor, who continues in office the same time, and is to possess the same qualifications as the governor. Art. 4, s. 3. The lieutenant-governor, by virtue of his office, is president of the senate; and in case of the death, resignation, refusal to serve, or removal from office of the governor, or of his impeachment or absence from the state, the lieutenant-governor exercises all the powers and authority appertaining to the office of governor, until another be chosen, at the next periodical election for governor, and be duly qualified; or until the governor, impeached or absent, shall be acquitted or return. Art. 4, s. 14.

5. - 3d. The judicial, power of the state is vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly may, from time to time, ordain and establish; the powers of which

courts shall be defined. A sufficient number of justices of the peace, with such jurisdiction, civil and criminal, as the general assembly may prescribe, are to be appointed in each county. Art. 5.

CONNIVANCE. An agreement or consent, indirectly given, that something unlawful shall be done by another.

2. The connivance of the husband to his wife's prostitution deprives him of the right of obtaining a divorce; or of recovering damages from the seducer. 4 T. R. 657. It may be satisfactorily proved by implication.

3. Connivance differs from condonation, (q.v.) though either may have the same legal consequences. Connivance necessarily involves criminality on the part of the individual who connives, condonation may take place without implying the slightest blame to the party who forgives the injury.

4. Connivance must be the act of the mind before the offence has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. 3 Hagg. Eccl. R. 350.

5. Connivance differs, also, from collusion (q. Y.); the former is generally collusion. for a particular purpose, while the latter may exist without connivance. 3 Hagg, Eccl. R. 130. Vide Shelf. on Mar. & Div. 449; 3 Hagg. R. 82; 2 Hagg. R. 376; Id. 278; 3 Hagg. R. 58, 107, 119, 131, 312; 3 Pick. R. 299; 2 Caines, 219; Anth. N.P. 196.

CONQUEST, feudal law. This term was used by the feudists to signify purchase.

CONQUEST, international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire.

2. It is a general rule, that where conquered countries have laws of their own, these laws remain in force after the conquest, until they are abrogated, unless they are contrary to our religion, or enact any malum in se. In all such cases the laws of the conquering country prevail; for it is not to be presumed that laws opposed to religion or sound morals could be sanctioned. 1 Story, Const. Sec. 150, and the cases there cited.

3. The conquest and military occupation of a part of the territory of the United States by a public enemy, renders such conquered territory, during such occupation, a foreign country with respect to the revenue laws of the United States. 4 Wheat. R. 246; 2 Gallis. R. 486. The people of a conquered territory change their allegiance, but, by the modern practice, their relations to each other, and their rights of property, remain the same. 7 Pet. R. 86.

4. Conquest does not, per se, give the conqueror plenum dominium et utile, but a temporary right of possession and government. 2 Gallis. R. 486; 3 Wash. C. C. R. 101. See 8 Wheat. R. 591; 2 Bay, R. 229; 2 Dall. R. 1; 12 Pet. 410.

5. The right which the English government claimed over the territory now composing the United States, was not founded on conquest, but discovery. Id. Sec. 152, et seq.

CONQUETS, French law. The name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, enures to the extent of one-half for the benefit of the other. Merl. Rep. mot Conquet; Merl. Quest. mot Conquet. In Louisiana, these gains are called aquets. (q.v.) Civ. Code of Lo. art. 2369.

CONSANGUINITY. The relation subsisting among all the different persons

descending from the same stock, or common ancestor. Vaughan, 322, 329; 2 Bl. Com. 202 Toull. Dr. Civ.. Fr. liv. 3, t. 1, ch. n 115 2 Bouv. Inst. n. 1955, et seq.

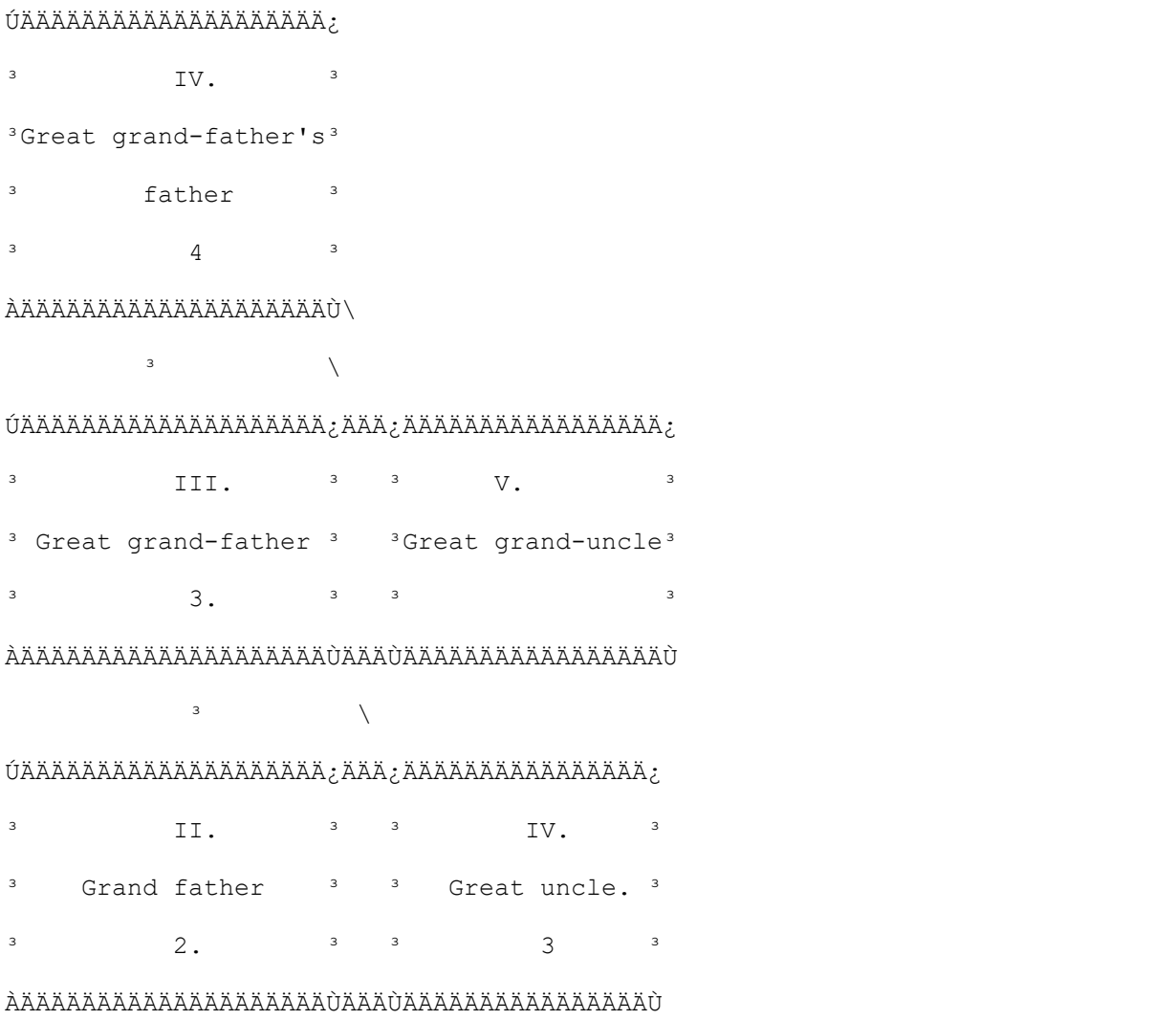
2. Some portion of the blood of the common ancestor flows through the veins of all his descendants, and though mixed with the blood flowing from many other families, yet it constitutes the kindred or alliance by blood between any two of the individuals. This relation by blood is of two kinds, lineal and collateral.

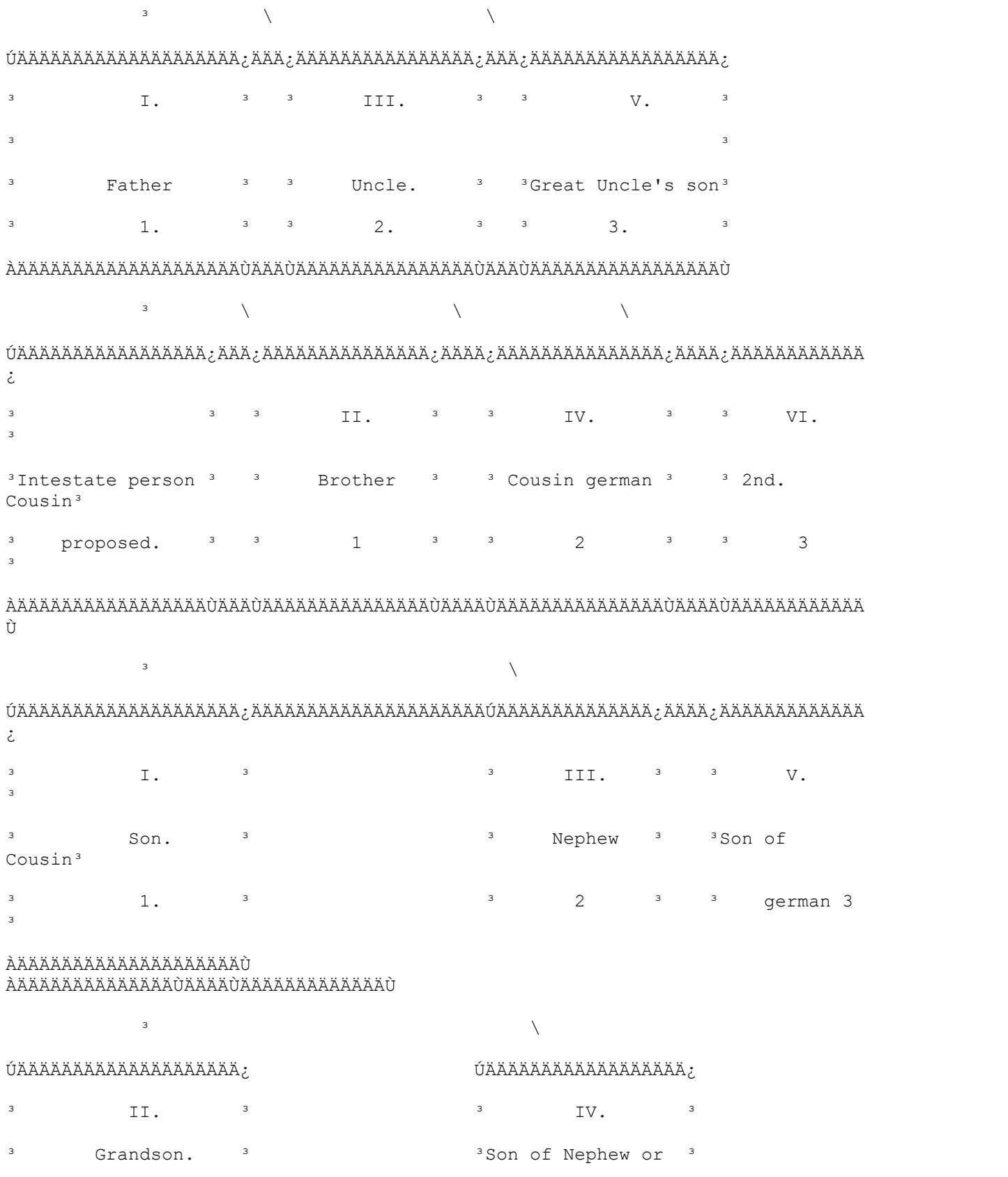
3. Lineal consanguinity is that relation which exists among persons, where one is descended from the other, as between the son and the father, or the grandfather, and so upwards in a direct ascending line; and between the father and the son, or the grandson, and so downwards in a direct descending line. Every generation in this direct course males a degree, computing either in the ascending or descending line. This being the natural mode of computing the degrees of lineal, consanguinity, it has been adopted by the civil, the canon, and the common law.

4. Collateral consanguinity is the relation subsisting among persons who descend from the same common ancestor, but not from each other. It is essential to constitute this relation, that they spring from the same common root or stock, but in different branches. The mode of computing the degrees is to discover the common ancestor, to begin with him to reckon downwards, and the degree the two persons, or the more remote of them, is distant from the ancestor, is the degree of kindred subsisting between them. For instance, two brothers are related to each other in the first degree, because from the father to each of them is one degree. An uncle and a nephew are related to each other in tho second degree, because the nephew is two degrees distant from the common ancestor, and the rule of computation is extended to the remotest degrees of collateral relationship. This is the

mode of computation by the common and canon law. The method of computing by the civil law, is to begin at either of the persons in question and count up to the common ancestor, and then downwards to the, other person, calling it a degree for each person, both ascending and descending, and the degrees they stand from each other is the degree in which they stand related. Thus, from a nephew to his father, is one degree; to the grandfather, two degrees and then to the uncle, three; which points out the relationship.

5. The following table, in which the Roman numeral letters express the degrees by the civil law, and those in Arabic figures at the bottom, those by the common law, will fully illustrate the subject.





³ 2. ³	³brother's grandson³
ÀÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÙ	³ 3 ³
³	ÀÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÙ
ÚÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄ¿	
³ III. ³	
³ Great grandson. ³	
³ 3. ³	
ÀÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÙ	

6. The mode of the civil law is preferable, for it points out the actual degree of kindred in all cases; by the mode adopted by the common law, different relations may stand in the same degree. The uncle and nephew stand related in the second degree by the common law, and so are two first cousins, or two sons of two brothers; but by the civil law the uncle and nephew are in the third degree, and the cousins are in the fourth. The mode of computation, however, is immaterial, for both will establish the same person to be the heir. 2 Bl. Com. 202; 1 Swift's Dig. 113; Toull. Civ. Fr. liv. 8, t. 1, o. 3, n. 115. Vide Branch; Degree; Line.

CONSCIENCE. The moral sense, or that capacity of our mental constitution, by which we irresistibly feel the difference between right and wrong.

2. The constitution of the United States wisely provides that "no religious test shall ever be required." No man, then, or body of men, have a right to control a man's belief or opinion in religious matters, or to forbid the most perfect freedom of inquiry in relation to them, by force or threats, or by any other motives than arguments or persuasion. Vide Story, Const. Sec. 1841-1843.

CONSENSUAL, civil law. This word is applied to designate one species of

contract known in the civil laws; these contracts derive their name from the consent of the parties which is required in their formation, as they cannot exist without such consent.

2. The contract of sale, among the civilians, is an example of a consensual contract, because the moment there is an agreement between the seller and the buyer as to the thing and the price, the vendor and the purchaser have reciprocal actions On the contrary, on a loan, there is no action by the lender or borrower, although there may have been consent, until the thing is delivered or the money counted. This is a real contract in the sense of the civil law. Lec. El. Dr: Rom. Sec. 895; Poth. Ob. pt. 1, c. 1, s. 1, art. 2; 1 Bell's Com. (5th ed.) 435. Vide Contract.

CONSENT. An agreement to something proposed, and differs from assent. (q.v.) Wolff, Ins. Nat. part 1, SSSS 27-30; Pard. Dr. Com. part 2, tit. 1, n. 1, 38 to 178. Consent supposes, 1. a physical power to act; 2. a moral power of acting; 3. a serious, determined, and free use of these powers. Fonb. Eq. B; 1, c. 2, s. 1; Grot. de Jure Belli et Pacis, lib. 2, c. 11, s. 6.

2. Consent is either express or implied. Express, when it is given viva voce, or in writing; implied, when it is manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been given.

3. - 1. When a legacy is given with a condition annexed to the bequest, requiring the consent of executors to the marriage of the legatee, and under such consent being given, a mutual attachment has been suffered to grow up, it would be rather late to state terms and conditions on which a marriage between the parties should take place;. 2 Ves. & Beames, 234; Ambl. 264; 2 Freem. 201; unless such consent was obtained by deceit or fraud. 1 Eden, 6; 1 Phillim. 200; 12 Ves. 19.

4. - 2. Such a condition does not apply to a second marriage. 3 Bro. C. C. 145; 3 Ves. 239.

5. - 3. If the consent has been substantially given, though not modo et forma, the legatee will be held duly entitled to the legacy. 1 Sim. & Stu. 172; 1 Meriv. 187; 2 Atk. 265.

6. - 4. When trustees under a marriage settlement are empowered to sell "with the consent of the husband and, wife," a sale made by the trustees without the distinct consent of the wife, cannot be a due execution of their power. 10 Ves. 378.

7. - 5. Where a power of sale requires that the sale should be with the consent of certain specified individuals, the fact of such consent having been given, ought to be evinced in the manner pointed out by the creator of the power, or such power will not be considered as properly executed. 10 Ves. 308. Vide, generally, 2 Supp. to Ves. jr. 161, 165, 169; Ayliffe's Pand. 117; 1 Rob. Leg.. 345, 539.

8. - 6. Courts of equity have established the rule, that when the true owner of property stands by, and knowingly suffers a stranger to sell the same as his own, without objection, this will be such implied consent as to render the sale valid against the true owner. Story on Ag. Sec. 91 Story on Eq. Jur. Sec. 385 to 390. And courts of law, unless restrained by technical formalities, act upon the principles of justice; as, for example, when a man permitted, without objection, the sale of his goods under an execution against another person. 6 Adolph. & El 11. 469 9 Barn. & Cr. 586; 3 Barn. & Adolph. 318, note.

9. The consent which is implied in every agreement is excluded, 1. By error in the essentials of the contract; ,is, if Paul, in the city of Philadelphia, buy the horse of Peter, which is in Boston, and promise to pay one hundred dollars for him, the horse at the time of the sale, unknown to either party, being dead. This decision is founded on the rule that he who

consents through error does not consent at all; non consentiunt qui errant. Dig. 2, 1, 15; Dig. lib. 1, tit. ult. 1. 116, Sec. 2. 2. Consent is excluded by duress of the party making the agreement. 3. Consent is never given so as to bind the parties, when it is obtained by fraud. 4. It cannot be given by a person who has no understanding, as an idiot, nor by one who, though possessed of understanding, is not in law capable of making a contract, as a feme covert. See Bouv. Inst. Index, h.t.

CONSENT RULE. In the English practice, still adhered to in some of the states of the American Union, the defendant in ejectment is required to enter on record that he confesses the lease, entry, and ouster of the plaintiff; this is called the consent rule.

2. The consent rule contains the following particulars, namely: 1. The person appearing consents to be made defendant instead of the casual ejector; 2. To appear at the suit of the plaintiff; and, if the proceedings are by bill, to file common bail; 3. To receive a declaration in ejectment, and plead not guilty; 4. At the trial of the case to confess lease, entry, and ouster, and insist upon his title only; 5. That if at the trial, the party appearing shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able to prosecute his suit, such party shall pay to the plaintiff the costs of the @nonpros, and suffer judgment to be entered against the casual ejector; 6. That if a verdict shall be given for the defendant, or the plaintiff shall not prosecute his suit for any other cause than the non-confession of lease, entry, and ouster, the lessor of the plaintiff shall pay costs to the defendant; 7. When the landlord appears alone, that the plaintiff shall be at liberty to sign judgment immediately against the casual ejector, but that execution shall be stayed until the court shall further order. Adams, Ej. 233, 234 and for a form see Ad. Ej.

Appx. No. 25. Vide 2 Cowen, 442; 4 John. R. 311; Caines' Cas. 102; 12 Wend. 105, 3 Cowen, 356; 6 Cowen, 587; 1 Cowen, 166; and Casual Ejector; Ejectment.

CONSEQUENTIAL DAMAGES, torts. Those damages or those losses which arise not from the immediate act of the party, but in consequence of such act; as if a man throw a log into the public streets, and another fall upon it and become injured by the fall or if a man should erect a dam over his own ground, and by that means overflow his neighbor's, to his injury.

2. The form of action to be instituted for consequential damages caused without force, is by action on the case. 3 East, 602; 1 Stran. 636; 5 T. R. 649; 5 Vin. Ab. 403; 1 Chit. Pl. 127 Kames on Eq. 71; 3 Bouv. Inst. n. 3484, et seq. Vide Immediate.

CONSERVATOR. A preserver, a protector.

2. Before the institution of the office of justices of the peace in England, the public order was maintained by officers who bore the name of conservators of the peace. All judges, justices, sheriffs and constables, are conservators of the peace, and are bound, ex officio, to be aiding and assisting in preserving older.

3. In Connecticut, this term is applied to designate a guardian who has the care of the estate of an idiot. 5 Conn. R. 280.

CONSIDERATIO CURLAE, practice. The judgment of the court. In pleadings where matters are determined by the court, it is said, therefore it is considered and adjudged by the court ideo consideratum est per curiam.

CONSIDERATION, contracts. A compensation which is paid, or all inconvenience suffered by the, party from whom it proceeds. Or it is the reason which

moves the contracting party to enter into the contract. 2 Bl. Com. 443. Viner defines it to be a cause or occasion meritorious, requiring a mutual recompense in deed or in law. Abr. tit. Consideration, A. A consideration of some sort or other, is so absolutely necessary to the forming a good contract, that a nudum pactum, or an agreement to do or to pay any thing on one side, without any compensation to the other, is totally void in law, and a man cannot be compelled to perform it. Dr. & Stud. d. 2, c. 24 3 Call, R. 439 7 Conn. 57; 1 Stew. R. 51 5 Mass. 301 4 John. R. 235; C. Yerg. 418; Cooke, R. 467; 6 Halst. R. 174; 4 Munf. R. 95. But contracts under seal are valid without a consideration; or, perhaps, more properly speaking, every bond imports in itself a sufficient consideration, though none be mentioned. 11 Serg. & R. 107. Negotiable instruments, as bills of exchange and promissory notes, carry with them prima facie evidence of consideration. 2 Bl. Com. 445.

3. The consideration must be some benefit to the party by whom the promise is made, or to a third person at his instance; or some detriment sustained at the instance of the party promising, by the party in whose favor the promise is made. 4 East, 455;1 Taunt. 523 Chitty on Contr. 7 Dr. & Stu. 179; 1 Selw. N. P. 39, 40; 2 pet. 182 1 Litt. 123; 3 John. 100; 6 Mass. 58 2 Bibb. 30; 2 J. J. Marsh. 222; 5 Cranch, 142, 150 2 N. H. Rep. 97 Wright, It. 660; 14 John. R. 466 13 S. & R. 29 3 M. Gr. & Sc. 321.

4. Considerations are good, as when they are for natural love and affection; or valuable, when some benefit arises to the party to whom they are made, or inconvenience to the party making them. Vin. Abr. Consideration, B; 5 How. U. S. 278; 4 Barr, 364; 3 McLean, 330; 17 Conn. 511; 1 Branch, 301; 8 Ala. 949.

5. They are legal, which are sufficient to support the contract or illegal, which render it void. As to illegal considerations, see 1 Hov.

Supp. to Ves. jr. 295; 2 Hov. Supp. to Ves. jr. 448; 2 Burr. 924 1 Bl. Rep. 204. If the, performance be utterly impossible, in fact or in law, the consideration is void. 2 Lev. 161; Yelv. 197, and note; 3 Bos. & Pull. 296, n. 14 Johns. R. 381.

6. A mere moral obligation to pay a debt or perform a duty, is a sufficient consideration for an express promise, although no legal liability existed at the time of making such promise. Cowp. 290 Bl. Com. 445 3 Bos. & Pull. 249, note; 2 East, 506; 3 Taunt. 311; 5 Taunt. 36; 13 Johns. R. 259; Yelv. 41, b, note; 3 Pick. 207. But it is to be observed, that in such cases there must have been a good or valuable consideration; for example, every one is under a moral obligation to relieve a person in distress, a promise to do so, however, is not binding in law. One is bound to pay a debt which he owes, although he has been released; a promise to pay such a debt is obligatory in law on the debtor, and can therefore be enforced by action. 12 S. & R. 177; 19 John. R. 147; 4 W. C. C. R. 86, 148; 7 John. R. 26; 14 John. R. 178; 1 Cowen, R. 249; 8 Mass. R. 127. See 7 Conn. R. 57; 1 Verm. R. 420; 5 Verm. R. 173; 5. Ham. R. 58; 3 Penna. R. 172; 5 Binn. R. 33.

7. In respect of time, a consideration is either, 1st. Executed, or Something done before the making of the obligor's promise. Yelv. 41, a. n. In general, an executed consideration is insufficient to support a contract; 7 John. R. 87; 2 Conn. R. 404; 7 Cowen, R. 358; but an executed consideration on request; 7 John. R. 87 1 Caines R. 584; or by some previous duty, or if the debt be continuing at the time, or it is barred by some rule of law, or some provision of a statute, as the act of limitation, it is sufficient to maintain an action. 4 W. C. C. R. 148 14 John. R. 378 17 S. & R. 126. 2d. Executory, or something to be done after such promise. 3d. Concurrent, as in the case of mutual promises; and, 4th. A continuing consideration. Chitty on Contr. 16.

8. As to cases where the contract has been set aside on the ground of a

total failure of the consideration, see 11 Johns. R. 50; 7 Mass. 14; 8 Johns. R. 458; 8 Mass. 46 6 Cranch, 53; 2 Caines' Rep. 246 and 1 Camp. 40, n. When the consideration turns out to be false and fails, there is no contract; as, for example, if my father by his will gives me all his estate, charged with the payment of a thousand dollars, and I promise to give you my house instead of the legacy to you, and you agree to buy it with the legacy, and before the contract is completed, and I make you a deed for the house, I discover that my father made a codicil to his will and by it be revoked the gift to you' I am not bound to complete the contract by making you a deed for my house. Poth. on Oblig. part 1, c. 1, art. 3, Sec. 6. See, in general, Obligation,, New Promise; Bouv. Inst. Index. b. t,; Evans' Poth. vol. ii. p. 19; 1 Fonb. Eq. 335; Newl. Contr. 65; 1 Com. Contr. 26; Fell on Guarrant. 337; 3 Chit. Com. Law, 63 to 99; 3 Bos. & Pull. 249, n; 1 Fonb. Eq. 122, note z; Id. 370, note g; 5 East, 20, n.; 2 Saund. 211, note 2; Lawes Pl. Ass. 49; 1 Com. Dig. Action upon the case upon Assumpsit, B Vin. Abr. Actions of Assumpsit, Q; Id. tit. Consideration.

CONSIDERATUM EST per curiam. It is considered by the court. This formula is used in giving judgments. A judgment is the decision or sentence of the law, given by a court of justice, as the result of proceedings instituted therein, for the redress of an injury. The language of the judgment is not, therefore, that "it is decreed," or "resolved," by the court; but that "it is considered by the court," consideratum est per curiam, that the plaintiff recover his debt, &c. 3 Bouv. Inst. n. 3298.

CONSIGNATION, contracts. In the civil law, it is a deposit which a debtor makes of the thing that he owes, into the hands of a third person, and under the authority of a court of justice. Poth. Oblig. P. 3, c. 1, art. 8.

2. Generally the consignation is made with a public officer it is very similar to our practice of paying money into court.

3. The term to consign, or consignation, is derived from the Latin consignare, which signifies to seal, for it was formerly the practice to seal up the money thus received in a bag or box. Aso & Man. Inst. B. 2, t. 11, c. 1, Sec. 5. See Burge on Sur. 138.

CONSIGNEE, contracts. One to whom a consignment is made.

2. When the goods consigned to him are his own, and they have been ordered to be sent, they are at his risk the moment the consignment is made according to his direction; and the persons employed in the transmission of the goods are his agents. 1 Liverm. on Ag, 9. When the goods are not his own, if he accept the consignment, he is bound to pursue the instructions of the consignor; as if the goods be consigned upon condition that the consignee will accept the consignor's bills, he is bound to accept them; Id. 139; or if he is directed to insure, he must do so. Id. 325.

3. It is usual in bills of lading to state that the goods are to be delivered to the consignee or his assigns, he or they paying freight; in such case the consignee or his assigns, by accepting the goods, by implication, become bound to pay the freight, Abbott on Sh. p. 3, c. 7, Sec. 4; 3 Bing. R, 383.

4. When a person acts, publicly as a consignee, there is an implied engagement on his part that he will be vigilant in receiving goods consigned to his care, so as to make him responsible for any loss which the owner may sustain in consequence of his neglect. 9 Watts & Serg. 62.

CONSIGNMENT. The goods or property sent by a common carrier from one or more persons called the consignors, from one place, to one or more persons, called the consignees, who are in another. By this term is also understood

the goods sent by one person to another, to be sold or disposed of by the latter for and on account of the former.

CONSIGNOR, contracts. One who makes a consignment to another.

2. When goods are consigned to be sold on commission, and the property remains in the consignor; or when goods have been consigned upon a credit, and the consignee has become a bankrupt or failed, the consignor has a right to stop them in transitu. (q.v.) Abbot on Sh. p. 3, c.

3. The consignor is generally liable for the freight or the hire for the carriage of goods. 1 T. R. 659.

CONSILIUM, or dies consilii, practice. A time allowed for the accused to make his defence, and now more commonly used for a day appointed to argue a demurrer. In civil cases, it is a special day appointed for the purpose of hearing an argument. Jer. Eq. Jur. 296; 4 Bouv. Inst. n. 3753.

CONSIMILI CASU. These words occur in the Stat. West. 21 C. 24, 13 Ed. 1. which gave authority to the clerks in chancery to form new writs in consimili casu simili remedio indigente sicut prius fit breve. In execution of the powers granted by this statute, many new writs were formed by the clerk's in chancery, especially in real actions, as writs of quod permittat prosternere, against the alienee of land after the erection of a nuisance thereon, according to the analogy of the assize of nuisance, writs of juris utrum, c. &c. In respect to personal actions, it has, long been the practice to issue writs in consimili casu, in the most general form, e. g. in trespass on the case upon promises, leaving it to the plaintiff to state fully, and at large, his case in the declaration the sufficiency of which in point of law is always a question for the court to consider upon the

pleadings and evidence. See Willes, Rep. 580; 2 Lord Ray. 957; 2 Durnf. & East, 51; 2 Wils. 146 17 Serg. & R.. 195; 3 Bl. Com. 51 7 Co. 4; F. N. B. 206; 3 Bouv. Inst. n. 3482.

CONSISTENT. That which agrees with something else; as a consistent condition, which is one which agrees with all other parts of a contract, or which can be reconciled with every other part. 1 Bouv. Just. n. 752,

CONSISTORY, ecclesiastical law. An assembly of cardinals convoked by the pope. The consistory is public or secret. It is public, when the pope receives princes or gives audience to ambassadors; secret, when he fills vacant sees, proceeds to the canonization of saints, or judges and settles certain contestations submitted to him.

2. A court which was formerly held among protestants, in which the bishop presided, assisted by some of his clergy, also bears this name. It is now held in England, by the bishop's chancellor or commissary, and some other ecclesiastical officers, either in the cathedral, church, or other place in his diocese, for the determination of ecclesiastical cases arising in that diocese. Merl. Rep. h.t.; Burns' Dict. h.t.

CONSOLATO DEL MARE, (IL). The name of a code of sea laws compiled by order of the ancient kings of Aragon. Its date is not very certain, but it was adopted on the continent of Europe, as the code of maritime law, in the course of the eleventh, twelfth, and thirteenth centuries. It comprised the ancient ordinances of the Greek and Roman emperors, and of the kings of France and Spain; and the laws of the Mediterranean islands, and of Venice and Genoa. It was originally written in the dialect of Catalonia, as its title plainly indicates, and it has been translated into every language of Europe. This code has been reprinted in the second volume of the "Collection

de Lois Maritimes Anterieures au XVIII. Siecle, par J. M. Pardessus, (Paris, 1831)." A collection of sea laws, which is very complete.

CONSOLIDATION, civil law. The union of the usufruct with the estate out of which it issues, in the same person which happens when the usufructuary acquires the estate, or vice versa. In either case the usufruct is extinct. In the common law this is called a merger. Ley. El. Dr. Rom. 424. U. S. Dig. tit. Actions, V.

2. Consolidation may take place in two ways: first, by the usufructuary surrendering his right to the proprietor, which in the common law is called a surrender; secondly, by the release of the. proprietor of his rights to the usufructuary, which in our law is called a release.

CONSOLIDATION RULE, practice, com. law. When a number of actions are brought on the same policy, it is the constant practice, for the purpose of saving costs, to consolidate them. by a rule of court or judge's order, which restrains the plaintiff from proceeding to trial in more than one, and binds the defendants in all the others to abide the event of that one; but this is done upon condition that the defendant shall not file any bill inequity, or bring any writ of error for delay. 2 Marsh. Ins. 701. For the history of this rule, vide Parke on Ins. xlix.; Marsh. Ins. B. 1, c. 1 6, s. 4. And see 1 John. Cas. 29; 19 Wend. 23; 13 Wend. 644 5 Cowen, 282,; 4 Cowen, 78; Id. 85; 1 John. 29; 9 John. 262.

2. The term consolidation seems to be rather misapplied in those cases, for in point of fact there is a mere stay of proceedings in all those cases but one. 3 Chit. Pr. 644. The rule is now extended to other cases: when several actions are brought on the same bond against several obligors, an order for a stay of proceedings in all but one will be made. 3 Chit. Pr. 645

3 Carr. & P. 58. See 4 Yeates, R. 128 3 S. & R. 262; Coleman, 62; 3 Rand. 481; 1 N. & M. 417, n.; 1 Cow n 89; 3 Wend. 441; 9 Wend. 451; M. 438, 440, n.; 5 Cowen, 282; 4 Halst. 335; 1 Dall. 145; 1 Browne, Appx. lxvii.; 1 Ala. R. 77; 4 Hill, R. 46; 19 Wend. 23 5 Yerg. 297; 7 Miss. 477; 2 Tayl. 200.,

3. The plaintiff may elect to join in the same suit several causes of action, in many cases, consistently with the rules of pleading, but having done so, his election is determined. He cannot ask the court to consolidate them; 3 Serg. & R. 266; but the court will sometimes, at the instance of the defendant, order it against the plaintiff. 1 Dall. Rep. 147, 355; 1 Yeates, 5; 4 Yeates, 128; 2 Arch. Pr. 180; 3 Serg. & R. 264.

CONSOLS, Eng. law. This is an abbreviation for consolidated annuities. Formerly when a loan was made, authorized by government, a particular part of the revenue was appropriated for the payment of the interest and of the principal. This was called the fund, and every loan had its fund. In this manner the Aggregate fund originated in 1715; the South Sea fund, in 1717; the General fund, 1617 and the Sinking fund, into which the surplus of these three funds flowed, which, although destined for the diminution of the national debt, was applied to the necessities of the government. These four funds were consolidated into one in the year 1787, under the name of consolidated fund.

2. The income arises from the receipts on account of excise, customs, stamps, and other, perpetual taxes. The charges on it are the interest on and the redemption of the public debt; the civil list; the salaries of the judges and officers of state, and the like.

3. The annual grants on account of the army and navy, and every part of the revenue which is considered temporary, are excluded from this fund.

4. Those persons who lent the money to the government, or their assigns, are entitled to an annuity of three per cent on the amount lent,

which, however, is not to be returned, except at the option of the government so that the holders of consols are simply annuitants.

CONSORT. A man or woman married. The man is the consort of his wife, the woman is the consort of her husband.

CONSPIRACY, crim. law, torts. An agreement between two or more persons to do an unlawful act, or an act which may become by the combination injurious to others. Formerly this offence was much more circumscribed in its meaning than it is now. Lord Coke describes it as "a consultation or agreement between two or more to appeal or indict an innocent person falsely and maliciously, whom accordingly they cause to be indicted or appealed and afterwards the party is acquitted by the verdict of twelve men."

2. The crime of conspiracy, according to its modern interpretation, may be of two kinds, Damely, conspiracies against the public, or such as endanger the public health, violate public morals, insult public justice, destroy the public peace, or affect public trade or business. See 3 Burr. 1321.

3. To remedy these evils the guilty persons may be indicted in the name of the commonwealth. Conspiracies against individuals are such as have a tendency to injure them in their persons, reputation, or property. The remedy in these cases is either by indictment or by a civil action.

4. In order to reader the offence complete, there is no occasion that any act should be done in pursuance of the unlawful agreement entered into between the parties, or that any one should have been defrauded or injured by it. The conspiracy is the gist of the crane. 2 Mass. R. 337; Id. 538 6 Mass. R. 74; 3 S. & R. 220 4 Wend. R. 259; Halst. R. 293 2 Stew. Rep. 360; 5 Harr. & John. 317 8 S. & R. 420. But see 10 Verm. 353.

5. By the laws of the United State's, St. 1825, c. 76, Sec. 23, 3 Story's L. U. S., 2006, a willful and corrupt conspiracy to cast away, burn or otherwise destroy any ship or vessel. with intent to injure any underwriter thereon, or the goods on board thereof, or any lender of money on such vessel, on bottomry or respondentia, is, by the laws of the United States, made felony, and the offender punishable by fine not exceeding ten thousand dollars, and by imprisonment and confinement at hard labor, not exceeding ten years.

6. By the Revised Statutes of New York, vol. 2, p. 691, 692, it is enacted, that if any two or more persons shall conspire, either, 1. To commit any offence; or, 2. Falsely and maliciously to indict another for any offence; or, 3. Falsely to move or maintain any suit; or, 4. To cheat and defraud any person of any property, by any means which are in themselves criminal; or, 5. To cheat and defraud any person of any property, by means which, if executed, would amount to a cheat, or to obtaining property by false pretences; or, 6. To commit any act injurious to the public health, to public morals, or to trade and commerce, or for the perversion or obstruction of justice, or the due administration of the laws; they shall be deemed guilty of a misdemeanor. No other conspiracies are there punishable criminally. And no agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

7. When a felony has been committed in pursuance of a conspiracy, the latter, which is only a misdemeanor, is merged in the former; but when a misdemeanor only has been committed in pursuance of such conspiracy, the two crimes being of equal degree, there can be no legal technical merger. 4 Wend. R. 265. Vide 1 Hawk. 444 to 454; 3 Chit. Cr. Law, 1138 to 1193 3 Inst. 143 Com. Dig. Justices of the Peace, B 107; Burn's Justice, Conspiracy;

Williams' Justice, Conspiracy; 4 Chit. Blacks. 92; Dick. Justice Conspiracy, Bac. Ab. Actions on the Case, G 2 Russ. on Cr. 553 to 574 2 Mass. 329 Id. 536 5 Mass. 106 2 D R. 205; Whart. Dig. Conspiracy; 3 Serg. & Rawle, 220; 7 Serg. & Rawle, 469 4 Halst. R. 293; 5 Harr. & Johns. 317 4 Wend. 229; 2 Stew. R. 360;1 Saund. 230, u. 4. For the French law, see Merl. Rep. mot Conspiration Code Penal, art. 89.

CONSPIRATORS. Persons guilty of a conspiracy. See 3 Bl. Com. 126-71 Wils. Rep. 210-11. See Conspiracy.

CONSTABLE. An officer, who is generally elected by the people.

2. He possess power, virture officii, as a conservator of the peace at common law, and by virtue of various legislative enactments; he. way therefore apprehend a supposed offender without a warrant, as treason, felony, breach of the peace, and for some misdemeanors less than felony, when committed in his view. 1 Hale, 587; 1 East, P. C. 303 8 Serg. & Rawle, 47. He may also arrest a supposed offender upon the information of others but he does so at his peril, unless he can show that a felony has been committed by some person, as well as the reasonableness of the suspicion that the party arrested is guilty. 1 Chit. Cr. L. 27; 6 Binn. R. 316; 2 Hale, 91, 92 1 East, P. C. 301. He has power to call others to his assistance; or he may appoint a deputy to do ministerial acts. 3 Burr. Rep. 1262.

3. A constable is also a ministerial officer, bound to obey the warrants and precepts of justices, coroners, and sheriffs. Constables are also in some states bound to execute the warrants and process of justices of the peace in civil cases.

4. In England, they have many officers, with more or less power, who

bear the name of constables; as, lord high constable of England, high constable 3 Burr. 1262 head constables, petty constables, constables of castles, constables of the tower, constables of the fees, constable of the exchequer, constable of the staple, &c.

5. In some of the cities of the United States there are officers who are called high constables, who are the principal police officers where they reside. Vide the various Digests of American Law, h.t.; 1 Chit. Cr. L. 20; 5 Vin. Ab. 427; 2 Phil. Ev. 253 2 Sell. Pr. 70; Bac. Ab. h.t.; Com. Dig. Justices of the Peace, B 79; Id. D 7; Id, Officer, E 2; Wille. Off. Const.

CONSTABLEWICK. In England, by this word is meant the territorial jurisdiction of a constable. 5 Nev. & M. 261.

CONSTAT, English law. The name of a certificate, which the clerk of the pipe and auditors of the exchequer make at the request of any person who intends to plead or move in the court for the discharge of anything; and the effect of it is, the certifying what constat (appears) upon record touching the matter in question.

2. A constat is held to be superior to an ordinary certificate, because it contains nothing but what is on record. An exemplification under the great seal, of the enrollment of any letters-patent, is called a constat. Co.

Litt. 225. Vide Exemplification; Inspeximus.

3. Whenever an officer gives a certificate that such a thing appears of record, it is called a constat; because the officer does not say that the fact is so, but it appears to be as he certifies. A certificate that it appears to the officer that a judgment has been entered, &c., is insufficient. 1 Hayw. 410.

CONSTITUENT. He who gives authority to another to act for him. 1 Bouv. Inst. n. 893.

2. The constituent is bound with whatever his attorney does by virtue of his authority. The electors of a member of the legislature are his constituents, to whom he is responsible for his legislative acts.

CONSTITUIMUS. A Latin word which signifies we constitute. Whenever the king of England is vested with the right of creating a new office, he must use proper words to do so, for example, erigimus, constituimus, c. Bac. Ab. Offices, &c. E.

TO CONSTITUTE, contr. To empower, to authorize. In the common form of letters of attorney, these words occur, I nominate, constitute and appoint."

CONSTITUTED AUTHORITIES. Those powers which the constitution of each people has established to govern them, to cause their rights to be respected, and to maintain those of each of its members.

2. They arc called constituted, to distinguish them from the constituting authority which has created or organized them, or has delegated to an authority, which it has itself created, the right of establishing or regulating their movements. The officers appointed under the constitution are also collectively called the constituted authorities. Dall. Dict. mots Contrainte par corps, n. 526.

CONSTITUTION, government. The fundamental law of the state, containing the principles upon which the government is founded, and regulating the divisions of the sovereign powers, directing to what persons each of these powers is to be confided, and the, manner it is to be exercised as, the

Constitution of the United States. See Story on the Constitution; Rawle on the Const.

2. The words constitution and government (q.v.) are sometimes employed to express the same idea, the manner in which sovereignty is exercised in each state. Constitution is also the name of the instrument containing the fundamental laws of the state.

3. By constitution, the civilians, and, from them, the common law writers, mean some particular law; as the constitutions of the emperors contained in the Code.

CONSTITUTION, contracts. The constitution of a contract, is the making of the contract as, the written constitution of a debt. 1 Bell's Com. 332, 5th ed.

CONSTITUTION OF THE UNITED STATES OF AMERICA. The fundamental law of the United States.

2. It was framed by a convention of the representatives of the people, who met at Philadelphia, and finally adopted it on the 17th day of September, 1787. It became the law of the land on the first Wednesday in March, 1789. 5 Wheat. 420.

3. A short analysis of this instrument, so replete with salutary provisions for insuring liberty and private rights, and public peace and prosperity, will here be given.

4. The preamble declares that the people of the United States, in order to form a more perfect union, establish justice, insure public tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, do ordain and establish this constitution for the United States of America.

5.-1. The first article is divided into ten sections. By the first

the legislative power is vested in congress. The second regulates the formation of the house of representatives, and declares who shall be electors. The third provides for the organization of the senate, and bestows on it the power to try impeachments. The fourth directs the times and places of holding elections and the time of meeting of congress. The fifth determines the power of the respective houses. The sixth provides for a compensation to members of congress, and for their safety from arrests and disqualifies them from holding certain offices. The seventh directs the manner of passing bills. The eighth defines the powers vested in congress. The ninth contains the following provisions: 1st. That the migration or importation of persons shall not be prohibited prior to the year 1808. 2d. That the writ of habeas corpus shall not be suspended, except in particular cases. 3d. That no bill of attainder, or ex post facto law, shall be passed. 4th. The manner of laying taxes. 5th. The manner of drawing money out of the treasury. 6th. That no title of nobility shall be granted. 7th. That no officer shall receive a present from a foreign government. The tenth forbids the respective states to exercise certain powers there enumerated.

6.-2. The second article is divided into four sections. The first vests the executive power in the president of the United States of America, and provides for his election, and that of the vice-president. The second section confers various powers on the president. The third defines his duties. The fourth provides for the impeachment of the president, vice-president, and all civil officers of the United States.

7.-3. The third article contains three sections. The first vests the judicial power in sundry courts, provides for the tenure of office by the judges, and for their compensation. The second provides for the extent of the judicial power, vests in the supreme court original jurisdiction in certain cases, and directs the manner of trying crimes. The third defines

treason, and vests in congress the power to declare its punishment.

8.-4. The fourth article is composed of four sections. The first relates to the faith which state records, &c., shall have in other states. The second secures the rights of citizens in the several states for the delivery of fugitives from justice or from labor. The third for the admission of new states, and the government of the territories. The fourth guaranties to every state in the Union the republican form of government, and protection from invasion or domestic violence.

9.-5. The Fifth Article provides for amendments to the constitution.

10.-6. The sixth article declares that the debts due under the confederation shall be valid against the United States; that the constitution and treaties made under its powers shall be the supreme law of the land that public officers shall be required by oath or affirmation to support the Constitution of the United States that no religious test shall be required as a qualification for office.

11.-7. The seventh article directs what shall be a sufficient ratification of this constitution by the states.

12. In pursuance of the fifth article of the constitution, articles in addition to, and amendment of, the constitution, were proposed by congress, and ratified by the legislatures of the several states. These additional articles are to the following import:

13.-1. Relates to religious freedom; the liberty of the press; the right of the people to assemble and petition.

14.-2. Secures to the people the right to bear arms.

15.-3. Provides for the quartering of soldiers.

16.-4. Regulates the right of search, and of arrest on criminal charges.

17.-5. Directs the manner of being held to answer for crimes, and provides for the security of the life, liberty and property of the citizens.

18.-6. Secures to the accused the right to a fair trial by jury.

19.-7. Provides for a trial by jury in civil cases.

20.-8. Directs that excessive bail shall not be required; nor excessive fines imposed nor cruel and unusual punishments inflicted.

21.-9. Secures to the people the rights retained by them.

22.-10. Secures the rights to the states, or to the people the rights they have not granted.

23.-11. Limits the powers of the courts as to suits against one of the United States.

24.-12. Points out the manner of electing the president and vice-president.

CONSTITUTIONAL. That which is consonant to, and agrees with the constitution.

2. When laws are made in violation of the constitution, they are null and void: but the courts will not declare such a law void unless there appears to be a clear and unequivocal breach of the constitution. 4 Dall. R. 14; 3 Dall. R. 399; 1 Cranch, R. 137; 1 Binn. R. 415 6 Cranch, R. 87, 136; 2 Hall's Law Journ. 96, 255, 262; 3 Hall's Law Journ. 267; Wheat. Dig. tit. Constitutional Law; 2 Pet. R. 522; 2 Dall. 309; 12 Wheat. R. 270; Charlt. R. 175,.235; 1 Breese, R. 70, 209; 1 Blackf. R. 206 2 Porter, R. 303; 5 Binn. 355; 3 S. & R. 169; 2 Penn. R. 184; 19 John. R. 58; 1 Cowen, R. 550; 1 Marsb. R. 290 Pr. Dec. 64, 89 2 Litt. R. 90; 4 Monr R. 43; 1 South. R. 192; 7 Pick. R. 466; 13 Pick. R. 60 11 Mass. R. 396; 9 Greenl. R. 60; 5 Hayw. R. 271; 1 Harr. & J. 236; 1 Gill & J. 473; 7 Gill & J. 7; 9 Yerg. 490; 1 Rep. Const. Ct. 267; 3 Desaus. R. 476; 6 Rand. 245; 1 Chip. R. 237, 257; 1 Aik. R. 314; 3 N. H. Rep. 473; 4 N. H. Rep. 16; 7 N. H. Rep. 65; 1 Murph. R. 58. See 8 Law Intell. 65, for a list of decisions made by the supreme court of

the United States, declaring laws to be unconstitutional.

CONSTITUTOR, civil law. He who promised by a simple pact to pay the debt of another; and this is always a principal obligation. Inst. 4, 6, 9.

CONSTRAINT. In the civil and Scottish law, by this term is understood what, in the common law, is known by the name of duress.

2. It is a general rule, that when one is compelled into a contract, there is no effectual consent, though, ostensibly, there is the form of it. In such case the contract will be declared void.

3. The constraint requisite thus to annul a contract, must be a vis aut me us qui cadet in constantem virum, such as would shake a man of firmness and resolution. 3 Ersk. 1, Sec. 16; and 4, 1, Sec. 26; 1 Bell's Conn. B. 3, part 1, o. 1, s. 1, art. 1, page 295.

CONSTRUCTION, practice. It is defined by Mr. Powell to be "the drawing in inference by the act of reason, as to the intent of an instrument, from given circumstances, upon principles deduced from men's general motives, conduct and action." This definition may, perhaps, not be sufficiently complete, inasmuch as the term instrument generally implies something reduced into writing, whereas construction, is equally necessary to ascertain the meaning of engagements merely verbal. In other respects it appears to be perfectly accurate. The Treatise of Equity, defines interpretation to be the collection of the meaning out of signs the most probable. 1 Powell on Con. 370.

2. There are two kinds of constructions; the first, is literal or strict; this is uniformly the construction given to penal statutes. 1 Bl. Com. 88; 6 Watt's & Serg. 276; 3 Taunt. 377. 2d. The other is liberal, and applied, usually, to remedial laws, in order to enforce them according to

their spirit.

3. In the supreme court of the United States, the rule which has been uniformly observed in construing statutes, is to adopt the construction made by the courts of the country by whose legislature the statute was enacted. This rule may be susceptible of some modification when applied to British statutes which are adopted in any of these states. By adopting them, they become our own, as entirely as if they had been enacted by the legislature of the state.

4. The received construction, in England, at the time they are admitted to operate in this country - indeed, to the time of our separation from the British empire - may very properly be considered as accompanying the statutes themselves, and forming an integral part of them. But, however we may respect the subsequent decisions (and certainly they are entitled to great respect,) we do not admit their absolute authority. If the English courts vary their construction of a statute, which is common to the two countries, we do not hold ourselves bound to fluctuate with them. 5 Pet. R. 280.

5. The great object which the law has in all cases, in contemplation, as furnishing the leading principle of the rules to be observed in the construction of contracts, is, that justice is to be done between the parties, by enforcing the performance of their agreement, according to the sense in which it was mutually understood and relied upon at the time of making it.

6. When the contract is in writing, the difficulty lies only in the construction of the words; when it is to be made out by parol testimony, that difficulty is augmented by the possible mistakes of the witnesses as to the words used by the parties; but still, when the evidence is received, it must be assumed as correct, when a construction is to be put upon it. The

following are the principal rules to be observed in the construction of contracts. When. the words used are of precise and unambiguous meaning, leading to no absurdity, that meaning is to be taken as conveying the intention of the parties. But should there be manifest absurdity in the application of such meaning, to the particular occasion, this will let in construction to discover the true intention of the parties: for example; 1st. When words are manifestly inconsistent with the declared purpose and object of the contract, they will be rejected; as if, in a contract of sale, the price of the thing sold should be acknowledged as received, while the obligation of the seller was not to deliver the commodity. 2 Atk. R. 32. 2d. When words are omitted so as to defeat the effect of the contract, they will be supplied by the obvious sense and inference from the context; as, if the contract stated that the seller, for the consideration of one hundred dollars, sold a horse, and the buyer promised to pay him for the said horse one hundred, the word dollars would be supplied. 1 3d. When the words, taken in one sense, go to defeat the contract, while they are susceptible of another construction which will give effect to the design of the parties, and not destroy it, the latter will be preferred. Cowp. 714.

8.-2. The plain, ordinary, and popular sense of the words, is to be preferred to the more unusual, etymological, and recondite meaning or even to the literal, and strictly grammatical construction of the words, where these last would lead to any inefficacy or inconsistency.

9.-3. When a peculiar meaning has been stamped upon the words by the usage of a particular trade or place in which the contract occurs, such technical or peculiar meaning will prevail. 4 East, R. 135. It is as if the parties in framing their contract had made use of a foreign language, which the court is not bound to understand, but which on evidence of its import, must be applied. 7 Taunt. R. 272; 1 Stark. R. 504. But the expression so made technical and appropriate, and the usage by which it has become so,

must be so clear that the court cannot entertain a doubt upon the subject. 2 Bos. & P. 164; 3 Stark. Ev. 1036: 6 T. R. 320. Technical words are to be taken according to their approved and known use in the trade in which the contract is entered into, or to which it relates, unless they have manifestly been understood in another sense by the parties. Vide 16 Serg. & R. 126.

10.-4. The place where a contract has been made, is a most material consideration in its construction. Generally its validity is to be decided by the law of the place where it is made; if valid there, it is considered valid every where. 2 Mass. R. 88; 1 Pet. R. 317 Story, Confl. of Laws, 2; 4 Cowen's R. 410, note; 2 Kent, p. 39, 457, in the notes 3 Conn. R. 253, 472; 4 Conn. R. 517. Its construction is to be according to the laws of the place where it is made for example, where a note was given in China, payable eighteen months after date, without any stipulation as to the amount of interest, the court allowed the Chinese interest of one per centum per month from the expiration of the eighteen mouths. 1 Wash. C. C. R. 253 see 12. Mass. R. 4, and the article Interest for Money.

11.-5. Previous conversations, and all that passes in the course of correspondence or negotiation leading to the contract, are entirely superseded by the written agreement. The parties having agreed to reduce the terms of their contract to writing, the document is constituted as the only true and final exposition of their admissions and intentions; and nothing which does not appear in the written agreement will be considered as a part of the contract. 5 Co. R. 26; 2 B. & C. 634; 4 Taunt. R. 779. But this rule admits of some exceptions; as, where a declaration is made before a deed is executed, showing the design with which it was to be executed, in cases of frauds; 1 S. & R. 464; 10 S. & R. 292; and trusts, though no trust was declared in the writing. 1 Dall. R. 426; 7 S. & R. 114.

12.-6. All contracts made in general terms, in the ordinary course of trade, are presumed to incorporate the usage and custom of the trade to which they relate. The parties are presumed to know such usages, and not to intend to exclude them. But when there is a special stipulation in opposition to, or inconsistent with the custom, that will of course prevail. Holt's R. 95.

13.-7. When there is an ambiguity which impedes the execution of the contract, it is first, if possible, to be resolved, on a view of the whole contract or instrument, aided by the admitted views of the parties, and, if indispensable, parol evidence may be admitted to clear it, consistently with the words. 1 Dall. R. 426; 4 Dall. R. 34 0; 8 S. & R. 609.

14.-8. When the words cannot be reconciled with any practicable or consistent interpretation, they are to be considered as not made use of "perinde sunt ac si scripts non essent."

15. It is the duty of the court to give a construction to all written instruments; 3 Binn. R. 337; 7 S. & R. 372; 15 S. & R. 100 4 S. & R. 279 8 S. & R. 381; 1 Watts. R. 425; 10 Mass. R. 384; 3 Cranch, R. 180 3 Rand. R. 586 to written evidence 2 Watts, R. 347 and to foreign laws, 1 Penna. R. 388. For general rules respecting the construction of contracts, see 2 Bl. Com. 379; 1 Bouv. Inst. n. 658, 669; 2 Com. on Cont. 23 to 28 3 Chit. Com. Law, 106 to 118 Poth. Oblig. P. 1, c. 1, art. 7; 2 Evans' Poth. Ob. 35; Long on Sales, 106; 1 Fonb. Eq. 145, n. b Id. 440, n. 1; Whart. Dig. Contract, F; 1 Powell on Contr. 370 Shepp. Touchst. c. 5 Louis. Code, art. 1940 to 1957; Corn. Dig. Merchant, (E 2,) n. j.; 8 Com. Dig. tit. Contract, iv.; Lilly's Reg. 794; 18 Vin. Abr. 272, tit. Reference to Words; 16 Vin. Abr. 199, tit. Parols; Hall's Dig. 33, 339; 1 Ves. Jun. 210, n.; Vattel, B. 2, c. 17; Chit. Contr. 19 to 22; 4 Kent. Com. 419; Story's Const. Sec. 397-456; Ayl. Pa d. B. 1, t. 4; Rutherf. Inst. B. 2, c. 7, Sec. 4-11; 20 Pick. 150; 1 Bell's Com. 5th ed. 431; and the articles, Communings; Evidence; Interpretation;

Parol; Pourparler. As to the construction of wills, see 1 Supp. to Ves. Jr. 21, 39, 56, 63, 228, 260, 273, 275, 364, 399; 1 United States Law Journ. 583; 2 Fonb. Eq. 309; Com. Dig. Estates by Devise. N 1; 6 Cruise's Dig. 171 Whart. Dig. Wills, D. As to the construction, of Laws, see Louis. Code, art. 13 to 21; Bac. Ab. Statutes, J; 1 Bouv. Inst. n. 86-90; 3 Bin. 858; 4 Bin. 169, 172; 2 S. & R. 195; 2 Bin. 347 Rob. Digest, Brit. Stat. 370; 7 Term. Rep. 8 2 Inst. 11, 136; 3 Bin. 284-5; 3 S. & R. 129; 1 Peere Wms. 207; 3 Burr. Rep. 1755-6; 3 Yeates, 108; 11 Co. 56, b; 1 Jones 26; 3 Yeates, 113 117, 118, 120; Dwarris on Statutes.

16. The following words and phrases have received judicial construction in the cases referred to. The references may be useful to the student and convenient to the practitioner.

A and his associates. 2 Nott.& M'Cord, 400.

A B, agent. 1 Breese's R. 172.

A B, (seal) agent for C D. 1 Blackf. R. 242.

A case. 9 Wheat. 738.

A piece of land. Moor. 702; S. C. Owen, 18.

A place called the vestry. 3 Lev. R. 96; 2 Ld. Raym. 1471.

A slave set at liberty. 3 Conn. R. 467.

A true bill. I Meigs, 109.

A two penny bleeder. 3 Whart. R. 138.

Abbreviations. 4 C. & P. 51; S. C. 19 Engl. C. L. R. 268.

Abide. 6 N. H. Rep. 162.

About. 2 Barn. & Adol. 106; 22 E. C. L. R. 36; 5 Greenl. R. 482. See 4 Greenl. 286. About _____ dollars. 5 Serg. & Rawles, 402.

About $150. 9 Shep. 121.

Absolute disposal. 2 Eden, 87; 1 Bro. P. C. 476; 2 Johns. R. 391; 12 Johns.

R. 389.

Absolutely. 2 Pa. St. R. 133.

Accept. 4 Gill & Johns. 5, 129

Acceptance. There is your bill, it is all right. 1 Esp. 17. If you will send it to the counting-house again, I will give directions for its being accepted. 3 Camp. 179. What, not accepted ? We have had the money, and they ought to have been paid; but I do not interfere; you should see my partner. 3 Bing. R. 625; S. C. 13 Eng. C. L. R. 78. The bill shall be duly honored, and placed to the drawer's credit. 1 Atk. 611. Vide Leigh's N. P. 420.

Accepted. 2 Hill, R. 582.

According to the bill delivered by the plaintiff to the defendant. 3 T. R. 575.

According to their discretion. 5 Co. 100; 8 How,. St. Tr. 55 n.

Account. 5 Cowen, 587, 593. Account closed. 8 Pick. 191. Account stated. 8 Pick. 193. Account dealings. 5 Mann. & Gr. 392, 398.

Account and risk. 4 East, R. 211; Holt on Sh. 376.

Accounts. 2 Conn. R. 433.

Across. 1 Fairf. 391.

Across a country. 3 Mann. & Gr. 759.

Act of God. 1 Cranch, 345; 22 E. C. L. R. 36; 12 Johns. R. 44; 4

Add. Eccl. R. 490.

Acts. Platt on Cov. 334.

Actual cost. 2 Mason, R. 48, 393, 2 Story's C. C. R. 422.

Actual damages. 1 Gall. R. 429.

Adhere. 4 Mod. 153.

Adjacent. Cooke, 129.

Adjoining. 1 Turn. R. 21.

Administer. 1 Litt. R. 93, 100.

Ad tunc et indem. I Ld. Raym. 576.

Advantage, priority or preference. 4 W. C. C. R. 447.

Adverse possession. 3 Watts, 70, 77, 205, 345; 3 Penna. R. 134; 2 Rawle's R. 305; 17 Serg. & Rawle, 104; 2 Penna. R. 183; 3 Wend. 337, 357; 4 Wend. 507; 7 Wend. 62; 8 Wend. 440; 9 Wend. 523; 15 Wend. 597; 4 Paige, 178; 2 Gill & John. 173; 6 Pet. R. 61, 291 11 Pet. R. 41; 4 Verm. 155; 14 Pick. 461.

Advice. As per advice. Chit. Bills, 185.

Affecting. 9 Wheat. 855.

Aforesaid. Ld. Baym. 256; Id. 405.

After paying debts. 1 Ves. jr. 440; 3 Ves. 738; 2 Johns. Ch. R. 614; 1 Bro. C. C. 34; 2 Sch. & Lef. 188.

Afterwards to wit. 1 Chit. Cr. Laws, 174.

Against all risks. 1 John. Cas. 337.

Aged, impotent, and poor people. Preamble to Stat. 43 Eliz. c. 4; 17 Ves. 173, in notes; Amb. 595; 7 Ves. 423; Scho. & Lef. 111; 1 P. Wims. 674; S. C. Eq. Cas. Ab. 192, pl. 9; 4 Vin. Ab. 485; 7 Ves. 98, note; 16 Ves. 206: Duke's Ch. Uses, by Bridgman, 361; 17 Ves. 371; Boyle on Charities, 31.

Agreed. 1 Roll's Ab. 519,

Agreement. 7 E. C. L. R. 331; 3 B. & B. 14; Fell on Guar. 262. Of a good quality and moderate price. 1 Mo. & Malk. 483; S. C. 22 E. C. L. R. 363.

Aiding and abetting. Act of Congress of 1818, c. 86, Sec. 3; 12 Wheat. 460.

Aliments. Dig. 34, 1, 1.

All. 1 Vern. 3; 3 P. Wms. 56; 1 Vern. 341; Dane's Ab. Index, h.t.

All debts due to me.; 1 Meriv. 541, n.; 3 Meriv. 434. All I am worth. 1 Bro. C. C. 487; 8 Ves. 604. All I am possessed of. 5 Ves. 816. All my clothes and linen whatsoever. 3 Bro. C. C. 311. All my household goods and furniture, except my plate and watch. 2 Munf. 234. All my estate. Cows,

299; 9 Ves. 604. All my real property. 18 Ves. 193. All my freehold lands. 6 Ves. 642. All and every other my lands, tenements, and hereditaments. 8 Ves. 256; 2 Mass. 56; 2 Caines' R. 345; 4 Johns. R. 398. All the inhabitants. 2 Conn. R. 20. All sorts of. 1 Holt's N. P. R. 69. All business. 8 Wendell. 498; 23 E. C. L. R. 398; 1 Taunt. R. 349; 7 B. & Cr. 278, 283, 284.

All claims and demands whatsoever. 1 Edw. Ch. R. 34. All baggage is at the owner's risk. 13 Wend. R. 611; 5 Rawle's R. 179; 1 Pick. R. 53; 3 Fairf R. 422; 4 Har. & John. 317. All civil suits. 4 S. & R. 76. All demands. 2 Caines' R. 320, 327; 15 John R. 197; 1 Ld. Raym. 114. All lots I own in the town of F. 4 Bibb, R, 288. All the buildings thereon. 4 Mass. R. 110; 7 John. R. 217. All my rents. Cro. Jac. 104. All I am worth. 1 Bro. C. C. 437. All and every other my lands, tenements, and hereditaments. 8 Ves. 246; 2 Mass. 56; 2 Caines' R. 345; 4 John. Ch. 388.

All other articles perishable in their own nature. 7 Cowen, 202.

All and every. Ward on Leg. 105; Cox, R. 213.

All minerals, or magnesia of any kind. 5 Watts, 34.

All my notes. 2 Dev. Eq. R. 489.

All that I possess, in doors and out of doors. 3 Hawks, R. 74.

All timber trees and other trees, but not the annual fruit thereof. 8 D. & R. 657; S. ic. 5 B. & C, R. 942.

All two lots. 7 Gill & Johns. 227.

All action. 5 Binn. 457.

Also. 4 Rawle, R. 69; 2 Bayw. 161

Amongst. 9 Ves. 445; 9 Wheat. R. 164; 6 Munf. 352.

And, construed or. 3 Ves. 450; 7 Ves. 454; 1 Supp. to Ves. jr. 435; 2 Supp. to Ves. jr. 9, 43, 114; 1 Yeates, 41, 319; 1 Serg. & Rawle, 141. Vide Disjunction, Or.

And all the buildings thereon. 4 Mass. R. 110; 7 John R. 217.

And also. 1 Hayw. 161.

And so on, from year to year, until the tenancy hereby created shall be determined as hereinafter mentioned. 1 P. & D. 454; and see 2 Campb. R. 573; 3 Campb. 510; 1 T. R. 378.

And the plaintiff doth the like. 1 Breese's R. 125.

Annual interest. 16 Verm. 44.

Annually, or in any way he may wish. 2 M'Cord's Ch. R. 281.

Any person or persons. 11 Wheat. R. 392; 3 Wheat. R. 631.

Any court of record. 6 Co. 19.

Any goods. 3 Campb. 321.

Any creditor. 5 B. & A. 869.

Any other fund. 1 Colly. R. 693.

Any other matter or thing from the beginning of the world. 4 Mason, 227.

Apartment. 10 Pick. 293.

Apparel. Goods and wearing apparel, in a will. 3 Atk. 61.

apparatus. 9 Law Rep. 207.

Appeals. 1 Breese's R. 261.

Appear. 2 Bailey's R. 513.

Appellate. 1 Breese's R. 261

Appropriation. 1 Scam. R. 344.

Approved paper. 4 Serg. & Rawle, 1; 20 Wend. R. 431; 2 Campb. 532.

Appurtenances. 1 Serg. & Rawle, 169; 8 Johns. R. 47, 2d edit.; Com. Dig. Grant, E 9; 5 Serg. & Rawle, 110; Holt on Shipp. 404; 9 Pick. 293; 7 Mass. 6; 12 Pick. 436.

Are. 2 B. & B. 223.

Arrears. Ward on Leg. 219; 2 Ves. 430.

Arrive. 17 Mass. 188.

Articles perishable in their own nature. 7 Cowen, 202.

As appears by the bond or by the books. 1 Wils. 339, 279, 121; 2 Str. 1157, 1209, 1219.

As appears by the master's allocator. 2 T. R. 55.

As executors are bound in law to do. 2 Ohio R. 346.

As follows. 1 Chit. Cr. Law 233.

As this deponent believes. 2 M. & S. 563.

Ass. 2 Moody, C. C. 3.

Asses-Cattle. 1 R. & M. C. C. 3; 2 Russ. Cr. & M. 498.

Assent to. 4 Gill & Johns. 5, 129.

Assignment, actual or potential. 5 M. & S. 228.

Assigns. 5 Co. 77 b.

At. 2 Caines' Err. 158.

At and from. 1 Marsh. Ins. 358, 261, a; 1 Caines' R. 75, 79; 1 New Rep. 23; 4 East, R. 130.

At any port or places. 1 Marsh. Ins. 191.

At his will. Roll's Ab. 845; Bac. Ab. Estate for life and occupancy, A.

At least. 8 W. & S. 470.

At such time and manner. 19 Ves. 387.

At twenty-one. Payable at twenty-one. 6 Ves. 245.; 7 ves. 412; 9 Ves. 225; 1 Bro. C. C. 91.

At the trial of the cause. 9 E. C. L. R. 202, 186.

At the wholesale factory price. 2 Conn. R. 69.

Attention, shall meet. 3 E. C. L. R. 407; 13 Id. 329.

Attest. 9 Mees. & W. 404.

Authority-Jurisdiction. 2 Bl. R. 1141.

Baggage. 6 Hill, N.Y. 586.

Baggage of Passengers at the risk of the owners. 19 Wend. 234, 251; 21 Wend. 153; 26 Wend. 591; 17 Verm. 151.

Bank money. 5 Humph. R. 140.

Bank notes. 5 Mason's R. 549; 6 Wend. 346, 354.

Bankruptcy. 6 T. R. 684.

Bar-keeper. 3 S. & R. 351.

Bargain and sell. 4 Monr. R. 463.

Barley. 4 C. & P. 548.

Barrels. 7 Cowen, R. 681.

Beans. Bac. Ab. Merchant, &c. I. 1 Mood. C. C. 323.

Bearing Interest. 1 Stark. r. 452; 2 E.C. L.R. 466.

Beast. 1 Russ. C. & M. 568; 1 Russ. on Cr. 568; Bac. Ab. Sodomy.

Beef. 6 W. & S. 279.

Before the next term. 1 Binn. 76; 4 Yeates, 511.

Before the first day of the term after the action has been commenced. 4 Dall. 433.

Before the sitting of the court. 5 Mass. R. 197.

Beginning to keep house. 6 Bing. R. 363; 19 Ves. 543.

Begotten. To be begotten. Co. Litt. 20 b, and n. 3; 3 Leon. 5.

Belongs - Belonging. 3 Conn. R. 467; 2 Bing. 76; Chit. Pr. 475 n.; 11 Conn. R. 240; 1 Coxe's R. 255.

Believe. 2 Wend. 298.

Belong. 3 Conn. R. 467.

Benefits of my real estate, construed, 4 Yates, 23.

Benevolent purposes. 3 Mer. 17; Amb. 585, n. (Blunt's Edit.)

Best of his knowledge and belief. 1 Paige, 404; 3 Id. 107, 212.

Between. 2 Saund. 158 b. n. 6; 1 Shipl. R. 201; 1 Mass. 91.

Between them. 2 Mer. R. 70.

Beyond sea. 3 Wheat. R. 541; 3 Cranch, R. 177; 14 Pet. C. 141; I Harr. & McHen. 89; 1 Har. & J. 350; 2 McCord, R. 331; 3 Mass. R. 271; 1 Pick. R.

263; 9 Serg. & Rawle, 288; 2 Dall. 217; 1 Yeates, 329. Vide Beyond 8ea, in the body of the work.

Beyond seas. 3 Wheat. 343; 9 S. & R. 291.

Bien. 2 Ves. 163.

Big. 2 Dev. R. 115.

Blubber. 1 Story, R. 603.

Board, boarding. 2 Miles, R. 323.

Bag. Cro. Car. 511.

Boiler. Wright, 143.

Book. 2 Campb. 25, 28, n.; 11 East, 244.

Book debt-Book entries. 2 Miles, R. 101, 102; 3 Ired. R. 77, 443; 4 Ired. 110.

Bona fide. 1 Leigh. N. P. 326.

Boons. Sugd. Pow. 633, 671.

Bound by surety. 5 Serg. & Rawle, 329.

Bound with surety, 6 Binn. 53.

Bounded on the margin. 6 Cowen, 526.

Bounded on the road. 13 Mass. 259.

Breach of good behaviour. 2 Mart. N. S. 683.

Brick factory. 21 Pick. R. 25.

Building. 16 John. R. 14; 13 John. R. 346; 9 Bing. 305; 5 Mann. & Gr. 9, 33.

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Butcher. 1 Barn. & A. 617; 6 Watts & Serg. 269, 277.

By act and operation of law. 3 Caines' R. 64.

By surety. 5 Serg. & Rawle, 329.

By a certain time. Penna. R. 48.

By any other means. 2 Co. 46

By virtue of his office. 3 E. C. L. R. 425.

By a stream. 3 Sumn. R. 170.

By next November. 3 Pa. 48.

By the year. 2 Miles, R. 302.

Cabinet of curiosities. 1 Cox, R. 77; 1 Bro. C. C. 467.

Came by descent, gift, or devise. 2 Pet. 58.

Cargo. 4 Pick. 433; 2 Gill & John. 134, 162.

Case-suit. 2 Murph. 320.

Catchings. 1 Story, R. 603.

Cattle. 1 R. & M. C. C. 3; 2 Russ. C. & M. 498; R. & R. C. C. 77; 2 East, P. C. 1074; 1 Leach, C, C. 72; 2 W. Black. 721; 2 Moody, C: C. 3.

Cause. 1 Supp. to Ves. jr. 510.

Cause of action. Wilk. on Lim. [49).

Cease. Coop. Ch. R. 14.5.

Cede. 1 liar. (N. J.) 181.

Certificate of deposit. 6 Watts & Sero,. 227.

Chamber or rooms. 3 Leon. 210.

Chambres. 5 Watts, R. 243,

Charged in execution. 4 T. R. 367.

Charges, costs, and expenses, 2 Wils. 267; 13 Serg. & Rawle, 79.

Charitable uses. Boyle on Charities, 281; 7 Ves. 79; 1 Mer. 86, 92, 93; 1 Sim. & Stu. 69; 1 Myl. & Craig, 286; 4 Wheat. App. p. 6.

Charity. 9 Ves. 399.,

Cheat. 2 Hale's Hist. P. C. 183: Bac. Ab. Indictment, G 3.

Chiefest and discreetest. 13 Ves. 13.

Child, grandchild, issue, son; see Legatee; 1 Ves. 290; Id. 335; Ambl. 397; Id. 701; 5 Burr. 2703; Cowp. 314; 3 Anstr. 684; Lofft, 19; 7 T. R. 322; 1 East, 120; 2 Eden, 194; 2 Bro. C. C. 33: 2 Ves. jr. 673; 3 Ves. 232; Id. 421; 4 Ves. 437; Id. 692; 5 Ves. 530; 6 Ves. 43, Id. 345; 7 Ves. 522; 10

Ves. 160, Id. 176; Id. 195; 13 Ves. 340; 1 Cox, 248; Id. 327; 2 Cox, 184; 1 Ves. & Bea. 422, 462, 469; 2 Ves. & Bea. 213; 3 Ves. & Bea. 59, 67, 69, 113; 1 Meriv. 654; 2 Meriv. 382; Dick. 344; 1 Eden, 64; 1 Bro. C. C. 530; 2 Bro. C. C. 68, 230, 658; 3 Bro. C. C. 148, 347, 352, 434: 1 Bro. C. C. 55; 19 Ves. 125; 1 Ball & B. 486; Com. Dig. App., Devise of real property, x. 5, 6, 7, 8, 9; Id. Devise of personal property, viii. 13.

Child's part. 2 Roll. R. 104; Poph. 148; 1 Roll. R. 193; Cro. Jac. 417.

Children. 3 Paige, 10; 5 Ves. 530; 1 Ves. & Bea. 434; 4 Eng. Ch. R. 565; 5 Conn. R. 228.

To such child or children, if more than one, as may happen to be enceinte by me. 17 Ves. 528.

To the children which I may have by A, living at my decease. 1 Ves. & Bea. 422.

Chromate of iron. 5 Watts, 34.

Civil action. 6 Binn. 5; 1 Binn. 197.

Civil suit. 4 S. & R. 76.

Chuck-a-luck. 3 J. J. Marsh. 133.

Claim. 16 Pet. 538, 575, 576, 604, 615.

Clear. Ambl. 273; 2 Ves. 500. Ward on Leg. 222; 2 Atk. 376.

Clear of all charges and assessments whatever. 4 Yeates, 386.

Clear deed. 3 W. & S. 563, 565.

Closing an account. 7 Serg. & Rawle, 128; 8 Pick. 187.

Clothes. All my clothes and linen whatsoever. 3 Bro. C. C. 311.

Coal mine. Cro. Jac. 150; Noy, 121; Gilb. Ej. 61, 2d ed.; Rosc. R. Act. 486.

Coasting trade. 3 Cowen, R. 713,

Coffer. 2 Hale's Hist. P. C. 3; Bac. Ab. Indictment, G 3.

Cohabitation. 1 Add. R. 476; 3 Add. R. 277; 2 Tyrw. 76; 2 Cr. & J. 66; Rogers' Eccl. Law, tit. Marriage.

Collateral. Sugd. Pow. 76.

Collectable. 8 Watts, R. 361.

Come to. 1 Serg. & Rawle, 224; 2 Pet. R. 69, 94.

Commenced. 14 East, 539.

Commerce - Navigation. 9 Wheat. 1.

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Commit. 3 Man. Gr. & Scott, 465, 477.

Commit suicide. 3 Man. Gr. & Scott, 477.

Commodities. 12 Mass 256.

Common law. 3 Pet. 447; 1 Gall. R. 19.

Complete Steam engine. 2 Hall, 3128.

Concealed. 12 Wheat. 493; 12 Wheat. R. 486.

Conclusive. 5 Binn. 387; 6 Binn. 128; 4 Yeates, 551.

Conditions performed. 1 Call. 567.

Confidence. Boyle on Char. 319; 2 Pa. St. R. 133.

Consent - Submission. 9 C. & P. 722.

Consentable lines. 10 Serg. & Rawles 110.

Construction. 3 Mont. 166.

Containing. 1 Murph. 348.

Contents unknown. 3 Taunt. R. 303.

Contrary to law. 1 Blackf. R. 318.

Convenient speed, or as soon as convenient. 19 Ves. 336, 390, notes; 1 Ves. jr. 366.

Convey. 3 A. K. Marsh, 618.

Conveyance. 2 Serg. & Rawle, 498; 3 Mass. 487.

Convicted. 1 Wheat. 461; 15 East, R. 570; 7 Mann. & Gr. 481, 508.

Copper-fastened. 24 E. C. L. IR. 415.

Coppered, ship. 8 Pet. 557.

Corrupt. 1 Benth. Ev. 351.

Correcting - revising. 2 Shepl. 205.

Cost. 2 Wash. C. C. R. 498.

Costs. Wright, 121. Pay his own costs. 1 Hayw. 485.

Cotton in bales. 2 C. & P. 525.

County aforesaid. 2 Bl. R. 847.

Court of record. 5 Ohio R. 546. Vide 3 Wend. 267.

Cousins. 2 Bro. R. 125; Ward on Leg. 121.

Covenants. Provided always, and it is agreed that the lessor shall find great timber, Bac. Ab Covenant, A. I oblige myself to pay so much money. Hard. 178. I am content to give A ten pounds at Michaelmas, and ten pounds at Ladyday. 3 Leon. 119. With usual covenants. 15 Ves. 528; 3 Anstr. 700.

Covenants Performed absque hoc. 6 Penn. St. Rep. 398.

Credible. Com. R. 91; S. C. 1 Freem. 510.

Credible witness. 5 Mass. 219; 12 Mass. 358; 17 Pick. 134; 2 Bailey, R. 24; 8 Conn. 254.

Credit. Mutual credit. 1 Atk. 228; 7 T. R. 378; Montag. on Set-off, 48; 8 Taunt. 22; S. C. 4 Eng. Com. Law Rep. 4; 1 Marsh. R. 190; S. C. 4 Eng. C. L. 335.

Creditors and subsequent purchasers. 5 Cranch, 165.

Criminal proceeding. 2 Q. B. 1.

Cross. 5 Pick. 163.

Cruise of three months. 2 Gallis. 526.

Cultivation. 2 N. H. Rep. 56.

Curby hock. Oliph. on Horses, 10.

Currency. 1 Ohio R. 119.

Current money. 1 Dall. 126, 176.

Current rate of exchange to be added. 2 Miles, R. 442, 443.

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Current bank notes. 1 Hamm. R. 178. See also 1 Hamm. R. 531; 1 Breese, R.

152; 3 Litt. R. 245; 19 John. R. 146; 1 Dall. 126, 176; 1 Ohio R. 119.

Current bank money. 5 Humph. R. 140.

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Damna. Bac. Ab. Costs, (L.)

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Dangers of the navigation. 9 Watts, R. 87.

Date. Co. Litt. 46, b, note (8); Bulstr. n. 177; Stiles, 382; Com. Dig. Estates, G 8; Id. Bargain and Sale, B 8; Id. Temps, A; Vin. A.b. Estates, Z a; Id. Time, A.

Day. (fraction of,) 1 Cowen, 594; 6 Cowen, 611; I Nott & McC. 405; 3 Penna. R. 245.

Day of the date. Co. Litt. 46 b, note, (8); Powell on Powers, 498, et seq. to 533. Vide Dale, above.

Day time. 9 Mass. 154.

Days. Running days. Working days. 1 Bell's Com. 577, 5th ed.

Dealings. M. & M. 137; 3 C. & P. 85; S. C. 14 E. C. L. R. 219.

Death. Swanst. 161.

Debt, contracted. 2 B. & C. 762; 9 E. C. L. R. 236.

Debts due to me at my decease. 9 Sim. 16.

Debts now due. 3 Leigh, R. 389. See 4 Rawle, R. 307.

Declare. 3 Co. 82, b i Co. Litt. 76, a, 290, b; 3 T. R. 546.

Deed. A good and sufficient deed. Wright's R. 644. A good and sufficient warranty deed. 15 Pick. R. 546.

Default. Platt on Cov. 335.

Definitive. 1 Watts, 257.

Delivered. 7 D. & R. 131; 16 E. C. L. R. 277.

Demands in full. 9 S. & R. 123.

Demise. 2 Caines' R. 188; 8 Cowan's R. 36; 4 Taunt. 329; 8 Mass. R. 201; 8 Cowen, 36.

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Value received. 3 M. & S. 351; 5 M. & S. 65; 5 B. & C. 360; S. C. 11 Engl. C. L. R. 252; 3 Kent, Com. 50; Maxw. L. Dict. h.t.; 1 Hall, 201; 1 Blackf. R. 41; 2 M'Lean, R. 213. True value. 11 Wheat. 419.

Vegetable production. 1 Mo. & Mal. 341.

Victual. 3 Inst. 195; Hale's P. C. 152; Cro. Car. 231 Bac. Ab. Forestalling, B; 1 East, R. 169.

Victualler. 9 E. & E. 406; 6 Watts & Serg. 278.

Videlicet. 8 Ves. 194.

Village or town. Co. Litt. 5; Plowd. 168; Touchst. 92.

Voluntary assignment. 3 Sumn. R. 345.

Wantonness. 1 Wheel. Cr. Cas. 365; 4 W. C. C. R. 534; 1 Hill, 46, 363.

Warbles. Oliph. on Law of Horses, 53; 9 M. & W. 670.

Warehouse. Cro. Car. 554; Gilb. Ej. 57; 2 Rosc. R. Act. 484; 8 Mass. 490. Waste. 1 Ves. 461; 2 Ves. 71.

Watch. Ward on Leg. 221; Mos. 112.

Water lots. 14 Pet. R. 302.

Way. In, through, and along. 1 T. R. 560.

Well and truly executes the duties of his office. 1 Pet. R. 69.

Well and truly to administer. 9 Mass. 114, 119, 370; 13 John. 441; 1 Bay, 328.

Well and truly to administer according to law. 1 Litt. R. 93, 100.

What I may die possessed of. 8 Ves. 604; 3 Call, 225.

What remains. 11 Ves. 330.

Wharf. 6 Mass. 332.

Wheat. An unthrashed parcel of wheat. 1 Leach, 494; 2 East, P. C. 1018; 2 T. R. 255.

Wheezing. Oliph. on Law of Horses, 61.

When. 6 Ves. 239; 11 Ves. 489; 3 Bro. C. C. 471.

When able. 3 Esp. 159; 3 E. C. L. R. 264, note; 4 Esp. 36.

When received. 13 Ves. 325.

When the same shall be recovered. lb.

When or if. 1 Hare, R. 10.

When paid. 15 S. & R. 114.

Wherefore he prays judgment, &c. 2 John. Cas. 312.

Whereupon. 6 T. R. 573.

Whilst. 7 Fast, 116.

Wholesale factory prices. 2 Conn. R. 69.

Widows and Orphans. 2 Sim. & Stu. 93.

Wife. 3 Ves. 570.

Willful. 1 Benth. Ev. 351.

Willful and corrupt. 1 Benth. Rat. Jud. Ev. 351.

Willfully. 8 Law Rep. 78.

Will. He will change. 2 B. & B. 223.

With. 2 Vern. 466; Prec. Ch. 200; 1 Atk. 469; 2 Sch. & Lef. 189; 3 Mer. 437; 2 B. & Ald. 710; 2 B. & P. 443.

With all faults. 5 B. & A. 240; 7 E. C. L. R. 82; 3 E. C. L. R. 475.

With surety. 6 Binn. 53; 12 Serg. & Rawle, 112.

With the prothonotary. 5 Binn. 461.

With all usual and reasonable covenants. 12 Ves. 179, 186; 3 Bro. C. C. 632; 15 Ves. 528; 3 Anstr. 700.

With sureties. 2 Bos. & Pull. 443.

With effect. 2 Watts & Serg. 33.

With liberty. 8 Gill & John. 190.

Within four days. 15 Serg. & Rawle, 43.

Within ___ days after. 3 Serg. & Rawle, 395.

Without fraud, deceit or oppression. 6 Wend. 454.

Without prejudice. 2 Chit. Pr. 24, note (x); 3 Mann. & Gr. 903.

Without recourse. 1 Cowen, 538; 3 Cranch, 193; 7 Cranch, 159; 12 Mass. 172; 14 Serg. & Rawle, 325; 8 W. & S. 353; 2 Penn. St. R. 200. Vide article Sans Recours, in the body of this work.

Without reserve. 5 Mass. R. 34.

Wm. William. 1 Scam. R. 451.

Wood. Cro. Jac. 166.

Wood-land. 1 Serg. & Rawle, 169.

Woods. 4 Mass. 268.

Working days. 1 Bell's Com. 577, 5th ed

Worldly labor. 4 Bing. 84; S. C. 13 R. 351.

Worth and value. 3 B. & C. 516.

Writing. 14 John. 484; 8 Ves. 504; 2 M. & S. 286; 17 Ves. 459.

Writing in pencil. 1 Eng. Eccl. Rep. 406.

Yard lane. Touchs. 93; Co. Litt. 5.

Yearly meeting of Quakers. 6 Conn. 393.

Yearly meeting. 6 Conn. 292.

You. 2 Dowl. R. 145; S. C. 6 Leg. Obs. 138.

CONSTRUCTIVE. That which is interpreted.

2. Constructive presence. The commission of crimes, is, when a party is not actually present, an eyewitness to its commission but, acting with others, watching while another commits the crime. 1 Russ. Cr. 22.

3. Constructive larceny. One where the taking was not apparently felonious, but by construction of the prisoner's acts it is just to presume he intended at the time of taking to appropriate the property feloniously to his own use; 2 East, P. C. 685; 1 Leach, 212; as when he obtained the delivery of the goods animo furandi. 2 N. & M. 90. See 15 S. & R. 93; 4 Mass. 580; I Bay, 242.

4. Constructive breaking into a house. In order to commit a burglary, there must be a breaking of the house; this may be actual or constructive. A constructive breaking is when the burglar gains an entry into the house by fraud, conspiracy, or threat. See Burglary, A familiar instance of constructive breaking is the case of a burglar who coming to the house under pretence of business, gains admittance, and after being admitted, commits such acts as, if there had been an actual brooking, would have amounted to a

burglary Bac. Ab. Burglary, A. See 1 Moody Cr. Cas. 87, 250.

5. Constructive notice. Such a notice, that although it be not actual, is sufficient in law; an example of this is the recording of a deed, which is notice to all the world, and so is the pendancy of a suit a general notice of an equity. 4 Bouv. Inst. n. 3874. See Lis pendens.

6. Constructive annexation. The annexation to the inheritance by the law, of certain things which are not actually attached to it; for example, the keys of a house; and heir looms are constructively annexed. Shep. Touch. 90; Poth. Traits des Choses, Sec. 1.

7. Constructive fraud. A contract or act, which, not originating in evil design and contrivance to perpetuate a positive fraud or injury upon other persons, yet, by its necessary tendency to deceive or mislead them, or to violate a public or private confidence, or to impair or injure public interest, is deemed equally reprehensible with positive fraud, and therefore is prohibited by law, as within the same reason and mischief as contracts and acts done malo animo. 1 Story, Eq. Sec. 258 to 440.

CONSUETUDINES FEUDORUM. The name of an institute of the feudal system and usages, compiled about the year 1170, by authority of the emperor Frederic, surnamed Barbarossa. Ersk. Inst. B. 2, t. 3, n. 5.

CONSUL, government, commerce. Consuls are commercial agent's appointed by a government to reside in the seaports of a foreign country, and commissioned to watch over the commercial rights and privileges of the nation deputing them. A vice-consul is one acting in the place of a consul.

2. Consuls have been greatly multiplied. Their duties and privileges are now generally limited, defined and secured by commercial treaties, or by the laws of the countries they represent. As a general rule, it may be laid

down that they represent the subjects or citizens of their own nation, not otherwise represented. Bee, R. 209 3 Wheat. R. 435; 6. Wheat. R., 152; 10 Wheat. 66; 1 Mason's R. 14.

3. This subject will be considered by a view, first, of the appointment, duties, powers, rights, and liabilities of American consuls; and secondly, of the recognition, duties, rights, and liabilities of foreign consuls.

4.-1. Of American consuls. First. The president authorized by the Constitution of the United States, art. 2, s. 2, el. 3, to nominate, and, by and with the advice and consent of the senate, appoint consuls.

5.-Secondly. Each consul and vice-consul is required, before he enters on the execution of his office, to give bond, with such sureties as shall be approved by the secretary of state, in a sum not less than two thousand nor more than ten thousand dollars, conditioned for the true and faithful discharge of the duties of his office, and also for truly accounting for all moneys, goods and effects which may come into his possession by virtue of the act of 14th April, 1792, which bond is to be lodged in the office of the secretary of State. Act of April 14, 1792, sect. 6.

6.-Thirdly. They have the power and are required to perform many duties in relation to the commerce of the United States and towards masters of ships, mariners, and other citizens of the United States; among these are the authority to receive protests or declarations which captains, masters, crews, passengers, merchants, and others make relating to American commerce; they are required to administer on the estate of American citizens, dying within their consulate, and leaving no legal representatives, when the laws of the country permit it; [see 2 Curt. Ecc. R. 241] to take charge and secure the effects of stranded American vessels in the absence of the master, owner or consignee; to settle disputes between masters of vessels

and the mariners; to provide for destitute seamen within their consulate, and send them to the United States, at the public expense. See Act of 14th April, 1792; Act of 28th February, 1803, ch. 62; Act of 20th July, 1840, Ch. 23. The consuls are also authorized to make certificates of certain facts in certain cases, which receive faith and credit in the courts of the United States. But those consular certificates are not to be received in evidence, unless they are given in the performance of a consular function; 2 Cranch, R. 187; Paine, R. 594; 2 Wash. C. C. R. 478; 1 Litt. R. 71; nor are they evidence, between persons not parties or privies to the transaction, of any fact, unless, either expressly or impliedly, made so by statute. 2 Sumn. R. 355.

7.-Fourthly. Their rights are to be protected agreeably to the laws of nations, and of the treaties made between the nation to which they are sent, and the United States. They are entitled, by the act of 14th April, 1792, s. 4, to receive certain fees, which are there enumerated. And the consuls in certain places, as London, Paris, and the Barbary states, receive, besides, a salary.

8.-Fifthly. A consul is liable for negligence or omission to perform, seasonably, the duties imposed upon him, or for any malversation or abuse of power, to any injured person, for all damages occasioned thereby; and for all malversation and corrupt conduct in office, a consul is liable to indictment, and, on conviction by any court of competent jurisdiction, shall be fined not less than one, nor more than ten thousand dollars; and be imprisoned not less than one nor more than five years. Act of July 20, 1840, ch. 23, cl. 18. The act of February 28, 1803, ss. 7 and 8, imposes heavy penalties for falsely and knowingly certifying that property belonging to foreigners is the property of citizens of the United States; or for granting a passport, or other paper, certifying that any alien, knowing him or her to

be such, is a citizen of the United States.

9. The duties of consuls residing on the Barbary coast are prescribed by a particular statute. Act of May 1, 1810, S. 4.

10.-2. Of foreign consuls. First. Before a consul can perform any duties in the United States, he must be recognized by the president of the United States, and have received his exequatur. (q.v.)

11.-Secondly. A consul is clothed only with authority for commercial purposes, and he has a right to interpose claims for the restitution of property belonging to the citizens or subjects of the country he represents; 10 Wheat. R. 66; 1 Mason R. 14; See, R. 209; 6 Wheat. R. 152; but he is not to be considered as a minister or diplomatic Agent, entrusted by virtue of his office to represent his sovereign in negotiations with foreign states. 3 Wheat, R. 435.

12.-Thirdly. Consuls are generally invested with special privileges by local laws and usages, or by international compact; but by the laws of nations they are not entitled to the peculiar immunities of ambassadors. In civil and criminal cases, they are subject to the local laws in the same manner with other foreign residents owing a temporary allegiance to the state. Wicquefort, De l'Ambassadeur, liv. 1, Sec. 5; Bynk. cap. 10 Martens, Droit des Gens, liv. 4, c. 3, Sec. 148. In the United States, the act of September 24th, 1789, s. 13 gives to the supreme court original, but not exclusive jurisdiction of all suits in which a consul or vice-consul shall be a party. The act last cited, section 9, gives to the district courts of the United States, jurisdiction exclusively of the courts of the several states, of all suits against consuls or vice-consuls, except for offences where whipping exceeding thirty stripes, a fine exceeding one hundred dollars, or a term of imprisonment exceeding six months, is inflicted. For offences punishable beyond these penalties, the circuit has jurisdiction in the case of consuls. 5 S. & R. 545. See 1 Binn. 143; 2 Dall. 299; 2 N. & M.

217; 3 Pick. R. 80; 1 Green, R. 107; 17 Johns. 10; 6 Pet. R. 41; 7 Pet. R. 276; 6 Wend. 327.

13.-Fourthly. His functions may be suspended at any time by the government to which he is sent, and his exequatur revoked. In general, a consul is not liable, personally, on a contract made in his official capacity on account of his government. 3 Dall. 384.

14. During the middle ages, the term consul was sometimes applied to ordinary judges; and, in the Levant, maritime judges are yet called consuls. 1 Boul. Paty, Dr. Mar. Tit. Prel. s. 2, p. 57.

15. Among the Romans, consuls were chief magistrates who were annually elected by the people, and were invested with powers and functions similar to those of kings. See, generally, Abbott on Ship. 210; 2 Bro. Civ. Law, 503; Merl. Repert. h.t.; Ayl. Pand. 160; Warden on Consuls; Marten on Consuls; Borel, de l'Origine, et des Fonctions des Consuls; Rawle on the Const. 222, 223; Story on the Const. Sec. 1654 Serg. Const. Law, 225; Azuni, Mar. Law, part 1, c. 4, art. 8, Sec. 7.

CONSULTATION, practice. A conference between the counsel or attorneys engaged on the same side of a cause, for the purpose of examining their case, arranging their proofs, and removing any difficulties there may be in their way.

2. This should be had sufficiently early to enable the counsel to obtain an amendment of the pleadings, or further evidence. At these consultations the exact course to be taken by the plaintiff in exhibiting his proofs should be adopted, in consultation, by the plaintiff's counsel. In a consultation on a defendant's case, it is important to ascertain the statement of the defence, and the evidence which may be depended upon to support it; to arrange the exact course of defence, and to determine on the

cross-examination of the plaintiff's witnesses; and, above all, whether or not evidence shall be given on the part of the defendant, or withheld, so as to avoid a reply on the part of the plaintiff. The wishes of the client should, in all cases, be consulted. 3 Chit. Pr. 864.

CONSULTATION, Eng. law. The name of a writ whereby a cause, being formerly removed by prohibition out of an inferior court into some of the king's courts in Westminster, is returned thither again for if the judges of the superior court, comparing the proceedings with the suggestion of the party, find the suggestion false or not proved, and that therefore the cause was wrongfully called from the inferior court, then, upon consultation and deliberation, they decree it to be returned, where upon this writ issues. T. de la Ley.

CONSULTATION, French law. The opinion of counsel, on a point of law submitted to them. Dict. de Jur. h.t.

CONSUMMATE. What is completed. A right is said to be initiate, when it is not

complete; and when it is perfected, it is consummated.

CONSUMMATION. The completion of a thing; as the consummation of marriage; (q.v.) the consummation of a contract, and the like.

2. A contract is said to be consummated, when everything to be done in relation to it, has been accomplished. It is frequently of great importance to know when a contract has been consummated, in order to ascertain the rights of the parties, particularly in the contract of sale. Vide Delivery, where the subject is more fully examined. It is also sometimes of consequence to ascertain where the consummation of the contract took place,

in order to decide by what law it is to be governed.

3. It has been established as a rule, that when a contract is made by persons absent from each other, it is considered as consummated in, and is governed by the law of, the country where the final assent is given. If, therefore, Paul in New Orleans, order goods from Peter in London, the contract is governed by the laws of the latter place. 8 M. R. 135; Plowd. 843. Vide Conflict of Laws;, Inception; Lex Loci Contractus; Lex Fori; Offer.

CONSUMMATION OF MARRIAGE. The first time that the husband and wife cohabit together, after the ceremony of marriage has been performed, is thus called.

2. The marriage, when otherwise legal, is complete without this; for it is a maxim of law, borrowed from the civil, law, that consensus, non concubitus, facit nuptias. Co. Litt. 33; Dig. 50, 17, 30; 1 Black. Com. 434.

CONTAGIOUS DISORDERS, police, crim. law. Diseases which are capable of being transmitted by mediate or immediate contact.

2. Unlawfully and injuriously to expose persons infected with the smallpox or other contagious disease in the public streets where persons are passing, or near the habitations of others, to their great danger, is indictable at common law. 1 Russ. Cr. 114. Lord Hale seems to doubt whether if a person infected with the plague, should go abroad with intent to infect another, and another should be infected and die, it would not be murder; and he thinks it clear that though there should be no such intent, yet if another should be infected, it would be a great misdemeanor. 1 Pl. Cor. 422. Vide 4 M. & S. 73, 272; Dane's Ab. h.t.

CONTEMPORANEOUS EXPOSITION. The construction of a law, made shortly after

its enactment, when the reasons for its passage were then fresh in the minds of the judges, is considered as of great weight: contemporanea expositio est optima et fortissima in lege. 1 Cranch, 299.

CONTEMPT, crim. law. A willful disregard or disobedience of a public authority.

2. By the Constitution of the United States, each house of congress may determine the rules of its proceeding's, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. The same provision is substantially contained in the constitutions of the several states.

3. The power to make rules carries that of enforcing them, and to attach persons who violate them, and punish them for contempts. This power of punishing for contempts, is confined to punishment during the session of the legislature, and cannot extend beyond it; 6 Wheat. R. 204, 230, 231 and, it seems this power cannot be exerted beyond imprisonment.

4. Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process, and for disturbing them in their proceedings. Bac. Ab. Courts and their jurisdiction in general, E; Rolle's Ab. 219; 8 Co. 38 11 Co. 43 b.; 8 Shepl. 550; 5 Ired. R. 199.

5. In some states, as in Pennsylvania, the power to punish for contempts is restricted to offences committed by the officers of the court, or in its presence, or in disobedience of its mandates, orders, or rules; but no one is guilty of a contempt for any publication made or act done out of court, which is not in violation of such lawful rules or orders, or disobedience of its process. Similar provisions, limiting the power of the courts of the United States to punish for contempts, are incorporated in the Act March 2, 1831. 4 Sharsw. cont. of Stor. L. U. S. 2256. See Oswald's

Case, 4 Lloyd's Debates, 141,. et seq.

6. When a person is in prison for a contempt, it has been decided in New York that he cannot be discharged by another judge, when brought before him on a habeas corpus; and, according to Chancellor Kent, 3 Com. 27, it belongs exclusively to the court offended to judge of contempts, and what amounts to them; and no other court or judge can, or ought to undertake, in a collateral way, to question or review an adjudication of a contempt made by another competent jurisdiction.

This way be considered as the established doctrine equally in England as in this country. 3 Wils. 188 14 East, R. 12 Bay, R. 182 6 Wheat. R. 204 7 Wheat. R. 38; 1 Breese, R. 266 1 J. J. Marsh. 575; Charlt. R. 136; 1 Blackf. 1669 Johns. 395 6 John. 337.

CONTENTIOUS JURISDICTION, eccl. law. In those cases where there is an action or judicial process, and it consists in hearing and determining the matter between party and party, it is said there is contentious jurisdiction, in contradistinction to voluntary jurisdiction, which is exercised in matters that require no judicial proceeding, as in taking probate of wills, granting letters of administration, and the like. 3 Bl. Com. 66.

CONTESTATIO LITIS, civil law. The joinder of issue in a cause. Code of Pr. of Lo. art. 357.

CONTESTATION. The act by which two parties to an action claim the same right, or when one claims a right to a thing which the other denies; a controversy. Wolff, Dr. de la Nat. 762.

CONTEXT. The general series or composition of a law, contract, covenant, or

agreement.

2. When, there is any obscurity in the words of an agreement or law, the context must be considered in its construction, for it must be performed according to the intention of its framers. 2 Cowen, 781,; 3 Miss. 447 1 Harringt. 154; 6 John. 43; 5 Gill & John. 239; 3 B. & P. 565; 8 East, 80 1 Dall. 426; 4 Dall. 340; 3 S. & R. 609 See Construction; Interpretation.

CONTINGENT. What may or may not happen;. what depends upon a doubtful event; as, a contingent debt, which is a debt depending upon some uncertain event. 9 Ves. It. 110; Co. Bankr. Laws, 245; 7 Ves. It. 301; 1 Ves. & Bea. 176; 8 Ves. R. 334; 1 Rose, R. 523; 3 T. R. 539; 4 T. R. 570. A contingent legacy is one which is not vested. Will. on Executors, h.t. See Contingent Remainder; Contingent Use.

CONTINGENT DAMAGES. Those given where the issues upon counts to which no demurrer has been filed, are tried, before demurrer to one or more counts in the same declaration has been decided. 1 Str. 431.

CONTINGENT ESTATE. A contingent estate depends for its effect upon an event which may or may not happen: as an estate limited to a person not in esse or not yet born. Crabb on Real Property, b. 3, c. 1, sect. 2. Sec. 946.

CONTINGENT REMAINDER, estates. An estate in remainder which is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event, by, which no present or particular interest passes to the remainder-man, so that the particular estate may chance to be determined and the remainder never take effect. 2, Bouv. Inst. n. 1832. Vide Remainder.

CONTINGENT USE, estates. A use limited in a deed or conveyance of land which

may or may not happen to vest, according to the contingency expressed in the limitation of such use. A contingent use is such as by possibility may happen in possession, reversion or remainder. 1 Rep. 121 Com. Dig. Uses, K. 6.

CONTINUAL CLAIM, English law. When the feoffee of land is prevented from taking possession by fear of menaces or bodily harm, he may make a claim to the land in the presence of the vares[?], and if this claim is regularly made

once every year and a day, which is then called a continual claim, it preserves to the feoffee his rights, and is equal to a legal entry. 3 Bl. Com. 175; 2 Bl. Com. 320; 1 Chit. Pr. 278 (a) in note; Crabbe's Inst. E. L. 403.

CONTINUANCE, practice. The adjournment of a cause from one day to another is called a continuance, an entry of which is made upon the record.

2. If these continuances are omitted, the cause is thereby discontinued, and the defendant is discharged sine die, (q.v.) without a day, for this term. By his appearance he has obeyed the command of the writ, and, unless he be adjourned over to a certain day, he is no longer bound to attend upon that summons. 3 Bl. Com. 316.

3. Continuances may, however, be entered at any time, and if not entered, the want of them is aided or cured by the appearance of the parties; and Is a discontinuance can never be objected to pendente placito, so after the judgment it is cured by the statute of jeofails[?]. Tidd's Pr. 628, 835.

4. Before the declaration the continuance is by dies datus prece partium; after the declaration and before issue joined, by imparlance; after

issue joined and before verdict, by vicecomes non misit breve; and after verdict or demurrer by curia advisare vult. 1 Chit. Pl. 421, n. (p); see Vin. Abr. 454; Bac. Abr. Pleas, &c. P; Bac. Abr. Trial, H.; Com. Dig. Pleader, V. See, as to the origin of continuances, Steph. Pl. 31; 1 Ch. Pr. 778, 779.

CONTINUANDO, plead. The Dame of an averment sometimes contained in a declaration in trespass, that the injury or trespass has been continued. For example, if Paul turns up the ground of Peter and tramples upon his grass, for three days together, and Peter desires to recover damages, as well for the subsequent acts of treading down the grass and subverting the soil, as for the first, he must complain of such subsequent trespasses in his actions brought to compensate the former. This he may do by averring that Paul, on such a day, trampled upon the herbage and turned up the ground, "continuing the said trespasses for three days following." This averment seems to impart a continuation of the same identical act of trespass; it has, however, received, by continued usage, another interpretation, and is taken, also, to denote a repetition of the same kind of injury. When the trespass is not of the same kind, it cannot be averred in a continuando; for example, when the injury consists in killing and carrying away an animal, there remains nothing to which a similar injury may again be offered. 1 Wms. Saund. 24, n. 1.

2. There is a difference between he continuando and the averment diversis diebus et temporibus, on divers days and times. In the former, the injuries complained of have been committed upon one and the same occasion; in the latter, the acts complained of, though of the same kind, are distinct and unconnected, See Gould, Pl. ch. 3, Sec. 86, et seq.; Ham. N. P. 90, 91 Bac. A. Trespass, I 2, n. 2.

CONTINUING CONSIDERATION. A continuing consideration is one which in point of time remains good and binding, although it may have served before to Support a contract. 1 Bouv. Inst. n. 628; 1 Saund. 320 e, note (5.)

CONTINUING DAMAGES. Those which are continued at different times, or which endure from one time to another. If a person goes upon successive day's and tramples the grass of the plaintiff, he commits continuing damages; or if one commit a trespass to the possession, and it is in fact injurious to him who has the reversion or remainder, this will be continuing damages. In this last case the person in possession may have an action of trespass against the wrong doer to his possession, and the reversioner has an action against him for an injury to the reversion. 1 Chit. Pr. 266, 268, 385; 4 Burr. 2141, 3 Car. & P. 817.

CONTRA. Over; against; opposite to anything: as, such a case lays down a certain principle; such other case, contra.

CONTRA BONOS MORES. Against good morals.

2. All contracts contra bonos mores, are illegal. These are reducible to Several classes, namely, those which are, 1. Incentive to crime. A claim cannot be sustained, therefore, on. a bond for compounding a crime; as, for example, a prosecution for perjury; 2 Wils. R. 341, 447; or for procuring a pardon. A distinction has been made between a contract made as a reparation for an injury to the honor of a female, and one which is to be the reward of future illicit cohabitation; the former is good and valid, and the latter is illegal. 3 Burr. 1568; 1 Bligh's R. 269.

3.-2. Indecent or mischievous consideration. An obligation or engagement prejudicial to the feelings of a third party; or offensive to

decency or morality; or which has a tendency to mischievous or pernicious consequences, is void. Cowp. 729; 4 Campb. R. 152; Rawle's R. 42; 1 B. & A. 683; 4 Esp. Cas. 97; 16 East R. 150; Vide Wagers.

4.-3. Gaming. The statutes against gaming render all contracts made for the purpose of gaming, void. Vide Gaming; Unlawful; Void.

CONTRA FORMAM STATUTI. Contrary to the form of the statute.

2.-1. When one statute prohibits a thing and another gives the penalty, in an action for the penalty, the declaration should conclude contra fornam statutorum. Plowd. 206; 2 East, R. 333; Esp. on Pen. Act. 111; 1 Gallis. R. 268. The same rule applies to informations and indictments. 2 Hale, P. C. 172; 2 Hawk. c. 25, Sec. 117 Owen, 135.

3.-2. But where a statute refers to a former one, and adopts and, continues the provisions of it, the declaration or indictment should conclude contraformam statuti. Hale, P. C, 172; 1 Lutw. 212.

4.-3. Where a thing is prohibited by several statutes, if one only gives the action, and the others are explanatory and restrictive, the conclusion should be contra formam statuti. Yelv. 116; Cro. Jac. 187 Noy, 125, S. C.; Rep. temp. Hard. 409 Andr. 115, S. C.; 2 Saund. 377.

5.-4. When the act prohibited was not an offence or ground of action at common law, it is necessary both in criminal and civil cases to conclude against the form of the statute or statutes. 1 Saund, 135, c.; 2 East, 333; 1 Chit. Pl. 358; 1 Saund. 249; 7 East, 516; 2 Mass. 116; 7 Mass. 9; 11 Mass. 280; 10 Mass. 36; 1 M'Cord, 121; 1 Gallis. 30.

6.-5. But if the act prohibited by the statute is an offence or ground of action at common law, the indictment or action may be in the common law form, and the statute need not be noticed, even though it prescribe a form of prosecution or of action - the statute remedy being merely

cumulative. 2 Inst. 200; 2 Burr. 803; 4 Burr. 2351; 3 Burr. 1418; 2 Wils. 146; 3 Mass. 515.

7.-6. When a statute only inflicts a punishment on that which was an offence at common law, the offence prescribed may be inflicted, though the statute is not noticed in the indictment. 2 Binn. 332.

8.-7. If an indictment for an offence at common law only, conclude "against the form of the statute in such case made and provided;" or "the form of the statute" generally, the conclusion will be rejected as surplusage, and the indictment maintained as at common. law. 1 Saund. 135, 3.

9.-8. But it will be otherwise if it conclude against the form of "the statute aforesaid," when a statute has been previously recited. 1 Chit. Cr. Law, 266, 289. See further, Com. Dig. Pleader C 76; 5 Vin. Abr. 552, 556 1 Gallis. 26, 257; 9 Pick. 162 5 Pick. 128 2 Yerg. 390; 1 Hawks. 192; 3 Conn. 1 11 Mass. 280; 5 Greenl. 79.

CONTRA PACEM, pleadings. Against the peace.

2. In actions of trespass, the words contra pacem should uniformly accompany the allegation of the injury; in some cases they are material to the foundation of the action. Trespass to lands in a foreign country cannot be sustained. 4 T. R. 503 2 Bl. Rep.. 1O58.

3. The conclusion of the declaration, in trespass or ejectment, should be contra pacem, though these are now mere words of form, and not traversable, and the omission of that allegation will be aided, if not specially demurred to. 1 Chit. Pl. 375, 6 vide Arch. Civ. Pl. 169; 5 Vin. Ab. 557 Com. Dig. Action upon the case, C 4 Pleader, 3, M 8; Prohibition, F 7.

CONTRABAND, mar. law. Its most extensive sense, means all commerce which is carried on contrary to the laws of the state. This term is also used to designate all kinds of merchandise which are used, or transported, against the interdictions published by a ban or solemn cry.

2. The term is usually applied to that unlawful commerce which is so carried on in time of war. Merlin, Repert. h.t. Commodities particularly useful in war are contraband as arms, ammunition, horses, timber for ship building, and every kind of naval stores. When articles come into use as implements of war, which were before innocent, they may be declared to be contraband. The greatest difficulty to decide what is contraband seems to have occurred in the instance of provisions, which have not been held to be universally contraband, though Vattel admits that they become so on certain occasions, when there is an expectation of reducing an enemy by famine.

3. In modern times one of the principal criteria adopted by the courts for the decision of the question, whether any particular cargo of provisions be confiscable as contraband, is to examine whether those provisions be in a rude or manufactured state; for all articles, in such examinations, are treated with greater indulgence in their natural condition than when wrought tip for the convenience of the enemy's immediate use. Iron, unwrought, is therefore treated with indulgence, though anchors, and other instruments fabricated out of it, are directly contraband. 1 Rob. Rep. 1 89. See Vattel, b. 3, c. 7 Chitty's L. of Nat. 120; Marsh. Ins. 78; 2 Bro. Civ., Law, 311; 1 Kent. Com. 135; 3 Id. 215.

4. Contraband of war, is the act by which, in times of war, a neutral vessel introduces, or attempts to introduce into the territory of, one of the belligerent parties, arms, ammunition, or other effects intended for, or which may serve, hostile operations. Merlin, Repert. h.t. 1 Kent, Com. 135; Mann. Comm. B. 3, c. 7; 6 Mass. 102; 1 Wheat. 382; 1 Cowen, 56 John. Cas. 77, 120.

CONTRACT. This term, in its more extensive sense, includes every description of agreement, or obligation, whereby one party becomes bound to another to pay a sum of money, or to do or omit to do a certain act; or, a contract is an act which contains a perfect obligation. In its more confined sense, it is an agreement between two or more persons, concerning something to be, done, whereby both parties are hound to each other, *or one is bound to the other. 1 Pow. Contr. 6; Civ. Code of Lo. art. 1754; Code Civ. 1101; Poth. Oblig. pt. i. c. 1, S. 1, Sec. 1; Blackstone, (2 Comm. 442,) defines it to be an agreement, upon a sufficient consideration, to do or not to do a particular thing. A contract has also been defined to be a compact between two or more persons. 6 Cranch, R. 136.

2. Contracts are divided into express or implied. An express contract is one where the terms of the agreement are openly uttered and avowed at the time of making, as to pay a stated price for certain goods. 2 Bl. Com. 443.

3. Express contracts are of three sorts 1. BI parol, or in writing, as contradistinguished from specialties. 2. By specialty or under seal. 3. Of record.

4.-1. A parol contract is defined to be a bargain or voluntary agreement made, either orally or in writing not under, seal, upon a good consideration, between two or more persons capable of contracting, to, do a lawful act, or to omit to do something, the performance whereof is not enjoined by law. 1 Com. Contr. 2 Chit. Contr. 2.

5. From this definition it appears, that to constitute a sufficient parol agreement, there must be, 1st. The reciprocal or mutual assent of two or more persons competent to contract. Every agreement ought to be so certain and complete, that each party may have an action upon it; and the agreement would be incomplete if either party withheld his assent to any of

its terms. Peake's R. 227; 3 T. R. 653; 1 B. & A. 681 1 Pick. R. 278. The agreement must, in general, be obligatory on both parties, or it binds neither. To this rule there are, however, some exceptions, as in the case of an infant's contract. He may always sue, though he cannot be sued, on his contract. Stra. 937. See other instances; 6 East, 307; 3 Taunt. 169; 5 Taunt. 788; 3 B. & C. 232.

6.-2d. There must be a good and valid consideration, motive or inducement to make the promise, upon which a party is charged, for this is of the very essence of a contract under seal, and must exist, although the contract be reduced to writing. 7 T. R. 350, note (a); 2 Bl. Coin. 444. See this Dict. Consideration; Fonb. Tr. Eq. 335, n. (a) Chit. Bills. 68.

7.-3d. There must be a thing to be done, which is not forbidden; or a thing to be omitted, the performance of which is not enjoined by law. A fraudulent or immoral contract, or one contrary to public policy is void Chit. Contr. 215, 217, 222: and it is also void if contrary to a statute. Id. 228 to 250; 1 Binn. 118; 4 Dall. 298 4 Yeates, 24, 84; 6 Binn. 321; 4 Serg & Rawle, 159; 4 Dall. 269; 1 Binn. 110 2 Browne's R. 48. As to contracts which are void for want of a compliance with the statutes of frauds, see Frauds, Statute of.

8.-2. The second kind of express contracts are specialties, or those which are made under seal, as deeds, bonds, and the like; they are not merely written, but delivered over by the party bound. The solemnity and deliberation with which, on account of the ceremonies to be observed, a deed or bond is presumed to be entered into, attach to it an importance and character which do not belong to a simple contract. In the case of a specially, no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 477; 4 B. & A. 652; 3 T. R. 438; 3 Bingh. 111, 112; 1 Fonb. Eq, 342, note When, a contract by specialty has been changed by a parol agreement, the whole of it becomes a parol contract.

2 Watts, 451; 9 Pick. 298; see 13 Wend. 71.

9.-3. The highest kind of express contracts are those of record, such as judgments, recognizances of bail, and in England, statutes merchant and staple, and other securities of the same nature, cutered into with the intervention of some public authority. 2 Bl. Com. 465. See Authentic Facts.

10. Implied contracts are such as reason and justice dictates, and which, therefore, the law presumes every man undertakes to perform; as if a man employs another to do any business for him, or perform any work, the law implies that the former contracted or undertook to pay the latter as much as his labor is worth; see Quantum merwit; or if one takes up goods from a tradesman, without any agreement of price, the law concludes that he contracts to pay their value. 2 Bl. Com. 443. See Quantum valebant; Assumpsit. Com. Dig. Action upon the case upon assumpsit, A 1; Id. Agreement.

11. By the laws of Louisiana, when considered as to the obligation of the parties, contracts are either unilateral or reciprocal. When the party to whom the engagement is made, makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. Civ. Code of Lo. art. 1758. A loan for use, and a loan of money, are of this kind. Poth. Ob. P. 1, c. 1, s. 1, art. 2. A reciprocal contract is where the parties expressly enter into mutual engagements such as sale, hire, and the like. Id.

12. Contracts, considered in relation to their substance, are either commutative or independent, principal or accessory.

13. Commutative contracts, are those in which what is done, given or promised by one party, is considered as equivalent to, or in consideration of what is done, given or promised by the other. Civ. Code of Lo. art. 1761.

14. Independent contracts are those in which the mutual acts or

promises have no relation to each other, either as equivalents or as considerations. Id. art. 1762.

15. A principal contract is one entered into by both parties, on their accounts, or in the several qualities they assume.

16. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledges. Id. art. 1764. Poth. Obl. p. 1, c. 1, s. 1, art. 2, n. 14.

17. Contracts, considered in relation to the motive for. making them, are

either gratuitous or onerous. To be gratuitous, the object of a contract must be to benefit the person with whom it is made, without any profit or advantage, received or promised, as a consideration for it. It is not, however, the less gratuitous, if it proceed either from gratitude for a benefit before received, or from the hope of receiving one hereafter, although such benefits be of a pecuniary nature. Id. art. 1766. Any thing given or promised, as a consideration for the engagement or gift; any service, interest, or condition, imposed on what is given or promised, although unequal to it in value, makes a contract onerous in its nature. Id. art. 1767.

18. Considered in relation to their effects, contracts are either certain or hazardous. A contract is certain, when the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. It is hazardous, when the performance.of that which is one of its objects, depends on an uncertain event. Id. art. 1769.

19. Pothier, in his excellent treatise on Obligations, p. 1, c. 1, s. 1, art. 2, divides contracts under the five following heads:

20.-1. Into reciprocal and unilateral.

21.-2. Into consensual, or those which are formed by the mere consent of the parties, such as sale, hiring and mandate; and those in which it is necessary there should be something more than mere consent, such as loan of money, deposit or pledge, which from their nature require a delivery of the thing, (rei); whence they are called real contracts. See Real Contracts.

22.-3. Into first, contracts of mutual interest, which are such as are entered into for the reciprocal interest and utility of each of the parties, as sales exchange, partnership, and the like.

23.-2d. Contracts of beneficence, which are those by which only one of the contracting parties is benefited, as loans, deposit and mandate. 3d. Mixed contracts, which are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge,

24.-4. Into principal and accessory.

25.-5. Into those which are subjected by the civil law to certain rules and forms, and those which ate regulated by mere natural justice. See, generally, as to contracts, Bouv. Inst. Index, h.t.; Chitty on Contracts; Comyn on Contracts; Newland on Contracts; Com. Dig. titles Abatement, E 12, F 8; Admiralty, E 10, 11; Action upon the Case upon Assumpsit; Agreement; Bargain and Sale; Baron and Feme, Q; Condition; Dett, A 8, 9; Enfant, B 5; Idiot, D 1 Merchant, E 1; Pleader, 2 W, 11, 43; Trade D 3; War, B 2; Bac. Abr. tit. Agreement; Id. Assumpsit; Condition; Obligation; Vin. Abr. Condition; Contracts and Agreements; Covenants; Vendor, Vendee; Supp. to Ves. jr. vol. 2, p. 260, 295, 376, 441; Yelv. 47; 4 Ves. jr., 497, 671; Archb. Civ. Pl. 22; Code Civ. L. 3, tit. 3 to 18; Pothier's Tr. of Obligations Sugden on Vendors and Purchasers; Story's excellent treatise on Bailments; Jones on Bailments; Toullier, Droit Civil Francais, tomes 6 et 7; Ham. Parties to Actions, Ch. 1; Chit. Pr. Index, h.t.; and the articles

Agreement; Apportionment; Appropriation; Assent; Assignment; Assumpsit; Attestation; Bailment; Bargain and sale; Bidder; Bilateral contract; Bill of Exchange; Buyer; Commodate; Condition; Consensual contract; Conjunctive; Consummation; Construction; Contracto of benevolence; Covenant; Cumulative contracts; Debt; Deed; Delegation. Delivery; Discharge Of a contract; Disjunctive; Equity of a redemption; Exchange; Guaranty; Impairing the obligation of contracts; Insurance; Interested contracts; Item; Misrepresentation; Mortgage; Mixed contract; Negociorum gestor; Novation; Obligation; Pactum constitutae, pecuniae; Partners; Partnership; Pledge; Promise; Purchaser; Quasi contract; Representation; Sale; Seller; Settlement; Simple contract; Synallagmatic contract; Subrogation; Title; Unilateral contract.

CONTRACT or BENEVOLENCE, Civil law. One which is made for the benefit of only one of the contracting parties; such as loan for use, deposit, and mandate. Poth. Obl. n. 12. See Contracts.

CONTRACTION. An abbreviation; a mode of writing or printing by which some of the letters of a word are omitted. See Abbreviations.

CONTRACTOR. One who enters into a contract this term is usually applied to persons who undertake to do public work, or the work for a company or corporation on a large scale, at a certain fixed price, or to furnish goods to another at a fixed or ascertained price. 2 Pardess. n. 300. Vide 5 Whart. 366.

CONTRADICTION. The incompatibility, contrariety, and evident opposition of two ideas, which are the subject of one and the same proposition.

2. In general, when a party accused of a crime contradicts himself, it

is presumed he does so because he is guilty for truth does not contradict itself, and is always consistent, whereas falsehood is in general inconsistent and the truth of some known facts will contradict the falsehood of those which are falsely alleged to be true. But there must still be much caution used by the judge, as there may be sometimes apparent contradictions which arise either from the timidity, the ignorance, or the inability of the party to explain himself, when in fact he tells the truth.

3. When a witness contradicts himself as to something which is important in the case, his testimony will be much weakened, or it may be entirely discredited and when he relates a story of facts which he alleges passed only in his presence, and he is contradicted as to other facts which are known to others, his credit will be much impaired.

4. When two witnesses, or other persons, state things directly opposed to each other, it is the duty of the judge or jury to reconcile these apparent contradictions; but when this cannot be done, the more improbable statement must be rejected; or, if both are entitled to the same credit, then the matter is as if no proof had been given. See Circumstances.

CONTRAFACTION, crim. law. Counterfeiting, imitating. In the French law contrafaction (contrefacon) is the illegal reprinting of a took for which the author or his assignee has a copyright, to the prejudice of the latter. Merl' Repert. mot Contrefacon.

CONTRAVENTION, French law. An act which violates the law, a treaty or an agreement which the party has made. The Penal Code, art. 1, denominates a contravention, that infraction of the law punished by a fine, which does not exceed fifteen francs, and an imprisonment not exceeding three days.

CONTRECTATION. The ability to be removed. In order to commit a larceny, the property must have been removed. When, from its nature, it is incapable of contrectation, as real estate, there can be no larceny. Bowy. Mod. Civ. Law, 268. See Larceny Furtum est contrectatio rei fraudulosa. Dig. 47, 2. See Taking.

CONTREFACON, French law. Counterfeit. This is a bookseller's term, which signifies the offence of those who print or cause to be printed, without lawful authority, a book of which the author or his assigns have a copyright. Merl. Rep. h.t.

CONTRIBUTION, civil law. A partition by which the creditors of an insolvent debtor divide, among themselves the proceeds of his property, proportionably to the amount of their respective credits. Civ. Code of Lo. art. 2522, n. 10. It is a division pro rata. Merl. Rep. h.t.

CONTRIBUTION, contracts. When two or more persons jointly owe a debt, and one is compelled to pay the whole of it, the others are bound to indemnify him for the payment of their shares; this indemnity is called a contribution. 1 Bibb. R. 562; 4 John. Ch. R. 545; 4 Bouv. Inst. n. 3935-6.

2. The subject will be considered by taking a view, 1. Of right of the creditors where there are several debtors. 2. Of the right of the debtor who pays the whole debt. 3. Of the liabilities of the debtors who are liable to contribution. 4. Of the liability of land owned by several owners, when it is subject to a charge. 5. Of the liability of owners of goods in a vessel, when part is thrown overboard to save the rest.

3.-1. The creditor of several debtors, jointly bound to him, has a right to compel the payment by any he may choose; but he cannot sue them severally, unless they are severally bound.

4.-2. When one of several debtors pays a debt, the creditor is bound in conscience, if not by contract, to give to the party paying the debt all his remedies against the other debtors. 1 Cox, R. 318 S. C. 2 B. & P. 270 2 Swanst. R. 189, 192; 3 Bligh, 59 14 Ves. 160; 1 Ves. 31 12 Wheat. 596 1 Hill, Ch. R. 844, 351 1 Term. St. It. 512, 517; 1 Ala. R. 23, 28; 11 Ohio It. 444, 449 8 Misso. It. 169, 175.

5.- 3. A debtor liable to contribution is not responsible upon a contract, but is so in equity. But courts of common law, in modern times, have assumed a jurisdiction to compel contribution among sureties, in the absence of any positive contract, on the ground of an implied assumpsit, and each of the sureties may be sued for his respective quota or proportion. White's L. C. in Eq. 66. The remedy in equity is, however, much more effective. For example, a surety who pays an entire debt, can, in equity, compel the solvent sureties to contribute towards the payment of the entire debt. 1 Chan. R. 34 1 Chan. Cas. 246; Finch, R. 15, 203. But at law he can recover no more than an aliquot part of the whole, regard being had to the number of co-sureties. 2 B. & P. 268; 6 B. & C. 697.

6.-4. When land is charged with the payment of a legacy, or an estate with the portion of a posthumous child, every part is bound to make contribution. 3 Munf. R. 29; 1 John. Ch. R. 425 2 Bouv. Inst. n. 1301.

7.-5. Contribution takes place in another case; namely, when in order to save a ship or cargo, a part of the goods are cast overboard, the ship and cargo are liable to contribution in order to indemnify the owner of the goods lost, except his just proportion. No contribution can be claimed between joint wrong doers. Bac. Ab. Assumpsit A; Vide 3 Com. Dig. 143; 8 Com. Dig. 373; 5 Vin. Ab. 561; 2 Supp. to Ves. jr. 159, 343; 3 Ves. jr. 64; Wesk. Ins. 130; 10 S. & R. 75; 5 B. & Ad. 936; S. C. 3 N. & M. 258; Rast. Entr. 161; 2 Ventr. 348; 2 Vern. 592; 2 B. & P. 268; 3 B. & P 235; 5 East,

225; 1 J. P. Smith 411 5 Esp. 194; 3 Campb. 480; Gow, N. P. C. 13; 2 A. & E. 57; 4 N. & M. 64; 6 N. & M. 494.

CONTRIBUTIONS, public law. Taxes or money contributed to the support of the government.

2. Contributions are of three kinds, namely: first, those which arise from persons on account of their property, real or personal, or which are imposed upon their industry; those which are laid on and paid by real estate without regard to its owner; and those to which personal property is subject, in its transmission from hand to hand, without regard to the owner. See Domat, Dr. Publ. 1. 1, t. 5, s. 2, n. 2.

3. this is a generic term which includes all kinds of impositions for the public benefit. See Duties; Imports; Taxes.

4. By contributions is also meant forced levy of money or property by a belligerent in a hostile country which he occupies, by which means the country is made to contribute to the support of the army of occupation. These contributions are usually taken instead of pillage. Vatt. Dr. des Gens, liv. 3, 9, Sec. 165; Id. liv. 4, c. 3, Sec. 29.

CONTROLLERS. Officers who are appointed, to examine the accounts of other officers. More usually written comptrollers. (q.v.)

CONTROVER, obsolete. One who invents false news. 2 Inst. 227.

CONTROVERSY. A dispute arising between two or more persons. It differs from case, which includes all suits criminal as well as civil; whereas controversy is a civil and not a criminal proceeding. 2 Dall. R. 419, 431, 432; 1 Tuck. Bl. Com. App. 420, 421; Story, Const. Sec. 1668.

2. By the constitution of the United States the judicial power shall

extend to controversies to which the United States shall be a party. Art. 2, 1. The meaning to be attached to the word controversy in the constitution, is that above given.

CONTUBERNIUM, civ. law. As among the Romans, slaves had no civil state, their marriages, although valid according to natural law, when contr acted with the consent of their masters, and when there was no legal bar to them, yet were without civil effects; they having none except what arose from natural law; a marriage of this kind was called contubernium. It was so called whether both or only one of the parties was a slave. Poth. Contr. de Mariage, part 1, c. 2, Sec. 4. Vicat, ad verb.

CONTUMACY, civil law. The refusal or neglect of a party accused to appear and answer to a charge preferred against him in a court of justice. This word is derived from the Latin contumacia, disobedience. 1 Bro. Civ. Law, 455; Ayl. Parer. 196; Dig. 50, 17, 52; Code Nap. art. 22.

2. Contumacy is of two kinds, actual and presumed: actual contumacy is when the party before the court refuses to obey some order of the court; presumed contumacy is the act of refusing or declining to appear upon being cited. 3 Curt. Ecc. R. 1.

CONTUMAX, civ. law. One accused of a crime who refuses to appear and answer to the charge. An outlaw.

CONTUSION, med. jurisp. An injury or lesion, arising from the shock of a body with a large surface, which presents no loss of substance, and no apparent wound. If the skin be divided, the injury takes the name of a contused wound. Vide 1 Ch. Pr, 38; 4 Carr. & P. 381, 487, 558, 565; 6 Carr.

& P. 684; 2 Beck's Med. Jur. 178.

CONUSANCE, CLAIM OF, English law. This is defined to be an intervention by a third person, demanding judicature in the cause against the plaintiff, who has chosen to commence his action out of claimant's court. 2 Wilson's R. 409.

2. It is a question of jurisdiction between the two courts Fortesc. R. 157; 5 Vin. Abr. 588; and not between the plaintiff and defendant, as in the case of plea to the jurisdiction, and therefore it must be demanded by the party entitled to conusance, or by his representative, and not by the defendant or his attorney. Id. ibid. A plea to the jurisdiction must be pleaded in person, but a claim of conusance may be made by attorney. 1 Chit. Pl. 403.

3. There are three sorts of conusance. 1. Tentere placita, which does not oust another court of its jurisdiction, but only creates a concurrent one. 2. Cognitio placitorum, when the plea is commenced in one court, of which conusance belongs to another. 3. A conusance of exclusive jurisdiction; as that no other court shall hold pica, &c. Hard. 509 Bac. Ab. Courts, D.

CONUSANT. One who knows as if a party knowing of an agreement in which he has an interest, makes no objection to it, he is said to be conusant. Co. Litt. 157.

CONUSOR. The same as cognizor; one who passes or acknowledges a fine of lands or tenements to another. See Consignor.

CONVENE, civil law. This is a technical term, signifying to bring an action.

CONVENTIO, canon law. The act of convening or calling together the parties, by summoning the defendant. Vide Reconvention. When the defendant was brought to answer, he was said to be convened, which the canonists called conventio, because the plaintiff and defendant met to contest. Sto. Eq. Pl. Sec. 402; 4 Bouv. Inst. n. 4117.

CONVENTION, contracts, civil law. A general term which comprehends all kinds of contracts, treaties, pacts, or agreements. It is defined to be the consent of two or more persons to form with each other an engagement, or to dissolve or change one which they had previously formed. Domat, Lois Civ. 1. 1, t. 1, s. 1 Dig. lib. 2, t. 14, 1. 1 Lib. 1, t. 1, 1. 1, 4 and 5; 1 Bouv. Inst. n. 100.

CONVENTION, legislation. This term is applied to a selecting of the delegates elected by the people for other purposes than usual legislation. It is mostly used to denote all assembly to make or amend the constitution of, a state, but it sometimes indicates an assembly of the delegates of the people to nominate officers to be supported at an election.

CONVERSANT. One who is in the habit of being in a particular place, is said to be conversant there. Barnes, 162.

CONVERSION. torts. the unlawful turning or applying the personal goods of another to the use of the taker, or of some other person than the, owner; or the unlawful destroying or altering their nature. Bull. N. P. 44; 6 Mass. 20; 14 Pick. 356; 3 Brod. & Bing. 2; Cro. Eliz. 219 12 Mod. 519; 5 Mass. 104; 6 Shepl. 382; Story, Bailm. Sec. 188, 269, 306; 6 Mass. 422; 2 B. & P. 488; 3 B. & Ald. 702; 11 M. & W. 363; 8 Taunt. 237; 4 Taunt. 24.

2. When a party takes away or wrongfully assumes the right to goods which belong to another, it will in general be sufficient evidence of a conversion but when the original taking was, lawful, as when the party found the goods, and the detention only is illegal, it is absolutely necessary to male a demand of the goods, and there must be a refusal to deliver them before the conversion will, be complete. 1 Ch. Pr. 566; 2 Saund. 47 e, note 1 Ch. Pl. 179; Bac. Ab. Trover, B 1 Com. Dig. 439; 3 Com. Dig. 142; 1 Vin. Ab. 236; Yelv. 174, n.; 2 East, R. 405; 6 East, R. 540; 4 Taunt. 799 5 Barn. & Cr. 146; S. C. 11 Eng. C. L. Rep. 185; 3 Bl. Com. 152; 3 Bouv. Inst. n. 3522, et seq. The refusal by a servant to deliver the goods entrusted to him by his master, is not evidence of a conversion by his master. 5 Hill, 455.

3. The tortious taking of property is, of itself, a conversion 15 John. R. 431 and any intermeddling with it, or any exercise of dominion over it, subversive of the dominion of the owner, or the nature of the bailment, if it be bailed, is, evidence of a conversion. 1 Nott & McCord, R. 592; 2 Mass. R. 398; 1 Har. & John. 519; 7 John. R. 254; 10 John. R. 172 14 John. R. 128; Cro. Eliz. 219; 2 John. Cas. 411. Vide Trover.

CONVERSION, in equity, The considering of one thing as changed into another; for example, land will be considered as converted into money, and treated as such by a court of equity, when the owner has contracted to sell his estate in which case, if he die before the conveyance, his executors and not his heirs will be entitled to the money. 2 Vern. 52; S., C. 3 Chan. R. 217; 1 B1. Rep. 129. On the other hand, money is converted into land in a variety of ways as for example, when a man agrees to buy land, and dies before he has received the conveyance, the money he was to pay for it will be considered as converted into lands, and descend to the heir. 1 P. Wms. 176 2 Vern. 227 10 Pet. 563; Bouv. Inst. Index, h.t.

CONVEYANCE, contracts. The transfer of the title to land by one or more persons to another or others. By the term persons is here understood not only natural persons but corporations. The instrument which conveys the property is also called a conveyance. For the several kinds of conveyances see Deed. Vide, generally, Roberts on Fraud. Conv. passim; 16 Vin. Ab. 138; Com. Dig. Chancery, 2 T 1; 3 M 2; 4 S 2; Id. Discontinuance, C 3, 4, 5; Id. Guaranty, D; Id. Pleader, C 37; Id. Poiar, C 5; Bouv. Inst. Index, h.t. The whole of a conveyance, when it consists of different parts or instruments, must be taken together, and the several parts of it relate back to the principal part; 4 Burr. Rep. 1962; as a fine; 2 Burr. R. 704; or a recovery; 2 Burr. Rep. 135. 2. When there is no express agreement to the contrary, the expense of the conveyance falls upon the purchaser; 2 Ves. Jr. 155, note; who must prepare and tender the conveyance but see contra, 2 Rand. 20. The expense of the execution of the conveyance is, on the contrary, always borne by the vendor. Sugd. Vend. 296; contra, 2 Rand. 20; 2 McLean, 495. Vide 5 Mass. R. 472; 3 Mass. 487; Eunom. Dial. 2, 12; Voluntary Conveyance.

CONVEYANCE OF VESSELS. The act of congress, approved the 29th July, 1850, entitled an act to provide for recording the conveyances of vessels and for other purposes, enacts that no bill of sale, mortgage, hypothecation or conveyance of any vessel, or part of any vessel of the United States, shall be valid against any person, other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof, unless such, bill of sale, mortgage, hypothecation or conveyance be recorded in the office of the collector of the customs, where such vessel is registered or enrolled. Provided, that the lien by bottomry on any vessel, created during her voyage, by a loan of money or materials necessary to repair or enable such vessel to prosecute a voyage, shall not lose its priority or be in any way

affected by the provisions of the act. See. 2 enacts, that the collectors of the customs shall record all such bills of sale, mortgages, hypothecations or conveyances, and also all certificates for discharging and cancelling any such conveyances, in a book or books to be kept for that purpose, in the order of their reception; noting in said book or books, and also on the bill of sale, mortgage, hypothecation or conveyance, the time when the same was received; and shall certify on the bill of sale, mortgage, hypothecation or conveyance, or certificate of discharge or cancellation, the number of the book and page where recorded and shall receive, for so recording such instrument of conveyance or certificate of discharge, fifty cents. Sec. 3 enacts, that the collectors of the customs shall keep an index of such records, inserting alphabetically the names of the vendor or mortgagor, and of the vendee or mortgagee, and shall permit said index and books of 'records to be inspected during office hours, under such reasonable regulations as they may establish and shall, when required, furnish to any person a certificate setting forth the names of the owners of any vessel registered or enrolled, the parts or proportions owned by each, if inserted in the register or enrollment, and also the material facts of any existing bill of sale, mortgage, hypothecation, or other incumbrance upon such vessel, recorded since the issuing of the last register or enrollment; viz. the date, amount of such incumbrance, and from and to whom or in whose favor made. The collector shall receive for each such certificate one dollar. Sec. 4. By this section it is enacted, that the collectors of the customs shall furnish certified copies of such records, on the receipt of fifty cents for each bill of sale, mortgage, or other conveyance. Sect. 5. This section provides that the owner or agent of the owner of any vessel of the United States, applying to a collector of the customs for a register or enrollment of a vessel, shall, in addition to the oath now prescribed by law, set forth, in the oath of ownership, the part or proportion of such vessel

belonging to each owner, and the same shall be inserted in the register of enrollment; and that all bills of sale of vessels registered or enrolled shall set forth the part of the vessel owned by each person selling, and the part conveyed to each person purchasing.

CONVEYANCER. One who makes it his business to draw deeds of conveyance of lands for others., 3 Bouv. Inst. n. 2422.

2. It is usual also for conveyancers to act as brokers for the seller. In these cases the conveyancer should examine with scrupulous exactness into the title of the lands which are conveyed by his agency, and, if this be good, to be very cautious that the estate be, not encumbered. In cases of doubt he should invariably propose to his employer to take the advice of his counsel.

3. Conveyancers also act as brokers for the loan of money on real estate, Secured by mortgage. The same care should be observed in these cases.

CONVICIUM, civil law. The name of a species of slander, or, in the meaning of the civil law, injury, uttered in pubic, and which charged some one with some act contra bonos mores. Vicat, ad verb; Bac. Ab. Slander.

CONVICT. One who has been condemned by a competent court. This term is wore commonly applied to one who has been convicted of a crime or misdemeanor. There are various local acts which punish the importation of convicts.

CONVICTION, practice. A condemnation. In its most extensive sense this word signifies the giving judgment against a defendant, whether criminal or civil. In a more limited sense, it means, the judgment given against the

criminal. And in its most restricted sense it is a record of the summary proceedings upon any penal statute before one or more justices of the peace, or other persons duly authorized, in a case where the offender has been convicted and sentenced: this last is usually termed a summary conviction.

2. As summary. convictions have been introduced in derogation of the common law, and operate to the exclusion of trial by jury, the courts have required that the strict letter of the statute should be observed 1 Burr. Rep. 613 and that the magistrates should have been guided by rules similar to those adopted by the common law, in criminal prosecution, and founded in natural justice; unless when the statute dispenses with the form of stating them.

3. The general rules in relation to convictions are, first, it must be under the hand and seal of the magistrate before whom it is taken; secondly, it must be in the present tense, but this, perhaps, ought to extend only to the judgment; thirdly, it must be certain; fourthly, although it is well to lay the offence to be contra pacem, this is not indispensable; fifthly, a conviction cannot be good in part and bad in part.

4. A conviction usually consists of six parts; first, the information; which should contain, 1. The day when it was taken. 2. The place where it was taken. 3. The name of the informer. 4. The name and style of the justice or justices to whom it was given. 5. The name of the offender. 6. The time of committing the offence. 7. The place where the offence was committed. 8. An exact description of the offence.

5. Secondly, the summons.

6. Thirdly, the appearance or non-appearance of the defendant.

7. Fourthly, his defence or confessions.

8. Fifthly, the evidence. Dougl. 469; 2 Burr. 1163; 4 Burr. 2064.

9. Sixthly, the judgment or adjudication, which should state, 1. That the defendant is convicted. 2. The forfeiture or penalty. Vide Bosc. on

Conviction; Espinasse on Penal Actions; 4 Dall. 266; 3 Yeates, 475; 1 Yeates, 471. As to the effect of a conviction as evidence in a civil case, see 1 Phil. Ev. 259; 8 Bouv. Inst. 3183.

CONVOCATION, eccles. law. This word literally signifies called together. The assembly of the representatives of the clergy. As to the powers of convocations, see Shelf. on M. & D. 23., See Court of Convocation.

CONVOY, mar. law. A naval force under the command of an officer appointed by government, for the protection of merchant ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. B. 1, c. 9, s. 5 Park. Ins. 388.

2. Warranties are sometimes inserted in policies of insurance that the ship shall sail with convoy. To comply with this warranty, five things are essential; first, the ship must sail with the regular convoy appointed by the government; secondly, she must sail from the place of rendezvous appointed by government; thirdly, the convoy must be for the Voyage; fourthly, the ship insured must have sailing instructions; fifthly, she must depart and continue with the convoy till the end of the voyage, unless separated by necessity. Marsh. Ins. B. 1, c. 9, s. 5.

CO-OBLIGOR, contracts. One who is bound together with one or more others to fulfill an obligation. As to what will constitute a joint obligation, see 5 Bin. 199; Windham's Case, 5 Co. 7; 2 Ev. Poth. 63; Ham. Parties, 29, 20, 24; 1 Saund. 155; Saunders, Arguendo and note 2; 5 Co. 18 b, 19 a, Slingsly's Case. He may be jointly, or severally bound.

2. When obligors are jointly and not severally bound to pay a joint debt, they must be sued jointly during their joint lives, and after the

death of some of them, the survivors alone can be sued; each is bound to pay the whole debt, having recourse to the others for contribution. See 1 Saund. 291, n. 4; Hardress, 198; 2 Ev. Poth. 63, 64, 66. Yet an infant co-obligor need not be joined, for his infancy may be replied to a plea of non-joinder in abatement. 3 Esp. 76; 5 Esp. 47; also, see 5 Bac. Abr. 163-4; 2 Vern. 99; 2 Moss. Rep. 577; 1 Saund. 291 b, n. 2; 6 Serg. & R. 265, 266; 1 Caines' Cases in Err. 122.

3. When co-obligors are severally bound, each may be sued separately; and in case of the death of any one of them, his executors or administrators may be sued.

4. On payment of the obligation by any one of them, when it was for a joint debt, the payer is entitled to contribution from the other co-obligors.

COOL BLOOD. A phrase sometimes used to signify tranquillity, or calmness; that is, the condition of one who has the calm and undisturbed use of his reason. In cases of homicide, it frequently becomes necessary to. ascertain whether the act of the person killing was done in cool blood or not, in order to ascertain the degree of his guilt. Bac. Ab. Murder, B; Kiel 56 Sid. 177 Lev. 180. Vide Intention; Murder; Manslaughter; Will.

CO-OPTATION. A concurring choice. Sometimes applied to the act of the members of a corporation, in choosing a person to supply a vacancy. in their body.

COPARCENERS, estates. Persons on whom lands of inheritance descend from their ancestor. According to the English law, there must be no males; that is no the rule in this country. Vide Estates in Coparcenary, and 4 Kent, Com. 262; 2 Bouv. Inst. n. 187 L 2.

COPARTNER. One who is a partner with one or more other persons; a member of a partnership.

COPARTNERSHIP. This word is frequently used in the sense of partnership. (q.v.)

CO-PLAINTIFF. One who is plaintiff in an action with another.

COPULATIVE TERM. One which is placed between two or more others to join them together: the word and is frequently used for this purpose. For example, a man promises to pay another a certain sum of money, and to give his note for another sum: in this case he must perform both.

2. But the copulative may sometimes be construed into a disjunctive, (q.v.) as, when things are copulated which cannot possibly be so; for example, "to die testate and intestate." For examples of construction of disjunctive terms, see the cases cited at the word Disjunctive, and Ayl. Pand. 55; 5 Com. Dig. 338; Bac. Ab. Conditions, P 5; Owen, 52; Leon. 74; Golds. 71; Roll. Ab. 444; Cro. Jac. 594.

COPY. A copy is a true transcript of an original writing.

2. Copies cannot be given in evidence, unless proof is made that the originals, from which they are taken, are lost, or in the power of the opposite party; and in the latter case, that notice has been given him to produce the original. See 12 Vin. Abr. 97; Phil. Ev. Index, h.t.; Poth. Obl. Pt. 4, c. 1, art. 33 Bouv. Inst. n. 3055. 3. To prove a copy of a record, the witness must be able to swear that he has examined it, line for line, with the original, or has examined the copy, while another person read

the original. 1 Campb. R. 469. It is not requisite that the persons examining should exchange, papers, and read them alternately. 2 Taunt. R. 470. Vide, generally, 3 Bouv. Inst. n. 3106-10; 1 Stark. R. 183; 2 E. C. L. Rep. 183; 4 Campb. 372; 2 Burr.1179; B.N.P.129; 1 Carr. & P. 578. An examined copy of the books of unincorporated banks are not, per se, evidence. 12 S. & R. 256. See 13 S. & R. 135, 334; 2 N. & McC. 299.

COPYRIGHT. The property which has been secured to the author of a book, map, chart, or musical composition, print, cut or engraving, for a limited time, by the constitution and laws of the United States. Lord Mansfield defines copy, or as it is now termed copyright, as follows: I use the word copy in the technical sense in which that name or term has been used for ages, to signify an incorporeal right to the sole printing and publishing of something intellectual, communicated by letters. 4 Burr. 3296; Merl. Repert. mot Contrefacon.

2. This subject will be considered by taking a view of, 1. The legislation of the United States. 2. Of the persons entitled to a copyright. 3. For what it is granted. 4. Nature of the right. 5. Its duration. 6. Proceedings to obtain Such right. 7. Requisites after the grant. 8. Remedies. 9. Former grants.

3.-1. The legislation of the United States. The Constitution of the United States, art. 1, s. 8, gives power to congress "to promote the progress of science, and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. In pursuance of this constitutional authority, congress passed the act of May 31, 1790; 1 Story's L. U. S. 94, and the act of April 29, 1802, 2 Story's L. U. S. 866, but now repealed by the act of February 3, 1831, 4 Shars. Cont. of Story, 2221, saving, always such rights as may have been obtained in conformity to their provision. By this last mentioned act,

entitled "An act to amend the several acts respecting copyrights," the subject is now regulated.

4.-2. Of the persons entitled to a copyright. Any person or persons, being a citizen or citizens of the United States, or resident therein, who is the author or authors of any book or books, map, chart, or musical composition, or who has designed, etched, engraved, worked, or caused to be engraved, etched or worked from his own design, any print or engraving, and the executors, administrators, or legal representatives of such person or persons. Sect. 1, and sect. 8.

5.-3. For what work the copyright is granted. The copyright is granted for any book or books, map, chart, or musical composition, which may be now, (February 3, 1831, the date of the act,) made or composed, and not printed or published, or shall hereafter be made or composed, or any print or engraving, which the author has invented, designed, etched, engraved or worked, or caused to be engraved, etched or worked from his own design. Sect. 1.

6.-4. Nature of the right. The person or persons to whom a copyright has been lawfully granted, have the sole right and liberty of printing, reprinting, publishing and vending such book or books, map, chart, musical composition, print, out or engraving, in whole or in part. Sect. 1.

7.-5. Duration of the copyright. The right extends for the term of twenty-eight Years from the time of recording the title of the book, &c., in the office of the clerk of the court, as directed by law. Sect. 1.

8. But this time may be extended by the following provisions of the act.

9. Sect. 2. If, at the expiration of the aforesaid term of years, such author, inventor, designer, engraver, or any of them, where the work had been originally composed and made by wore than one person, be still living,

and a citizen or citizens of the United States, or resident therein, or being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author, designer, or engraver, or if dead, then to such widow and child, or children, for the further term of fourteen years: Provided, that the title of the work so secured shall be a second time recorded, and all such other regulations as are herein required in regard to original copyrights, be complied with in respect to such renewed copyright, and that within six months before the expiration of the first term.

10. Sect. 3. In all cases of renewal of copyright under this act, such author or proprietor shall, within two months from the date of, said renewal, cause a copy of the record thereof to be published in one or more of the newspapers printed in the United States, for the space of four weeks.

11.-Sect. 16. Whenever a copyright has been heretofore obtained by an author or authors, inventor, designer, or engraver, of any book, map, chart, print, cut, or engraving, or by a proprietor of the same; if such author or authors, or either of them such inventor, designer, or engraver, be living at the passage of this act, then, such author or authors, or the survivor of them, such inventor, engraver, or designer, shall continue to have the same exclusive right to his book, chart, map, print, cut or engraving, with the benefit of each and all the provisions of this act, for the security thereof, for such additional period of time as will, together with the tune which shall have elapsed from the first entry of such copyright, make up the term of twenty-eight years, with the same right to his widow, child, or children, to renew the copyright, at the expiration thereof, as is provided in relation to copyrights originally secured under this act. And if such author or authors, inventor, designer, or engraver, shall not be living at the passage of this act, then, his or their heirs, executors and administrators, shall be entitled to the like exclusive enjoyment of said

copyright, with the benefit of each and all the provisions of this act for the security thereof, for the period of twenty-eight years from the first entry of said copyright with the like privilege of renewal to the widow, child, or children, of author or authors, designer, inventor, or engraver, as is provided in relation to copyrights originally secured under this act.

12.-6. Proceedings to obtain a copyright. No person shall be entitled to the benefit of this act, unless he shall, before publication, deposit a printed copy of the title of such book, or books, map, chart, musical composition, print, out, or engraving, in the clerk's office of the district court of the district wherein the author or proprietor shall reside, and the clerk of such court is hereby directed and required to record the same therein forthwith, in a book to be kept for that purpose, in the words following (giving a copy of the title under the seal of the court, to the said author or proprietor, whenever he shall require the same:) "District of_____to wit: Be it remembered, that on the _____ day of _____ Anno Domini, A. B. of the said district, hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be,) the title of which is in the words following, to wit; (here insert the title;) the right whereof he claims as author (or proprietor, as the case may be in conformity with an act of congress, entitled 'An act to amend the several acts respecting copyrights.' C. D. clerk of the district." For which record, the clerk shall be entitled to receive from the person claiming such right as aforesaid, fifty cents; and the like sum for every copy, under seal, actually given to such person or his assigns. The act to establish the Smithsonian Institution, for the increase and diffusion of knowledge among men, enacts, section 10, that the author or proprietor of any book, map, chart, musical composition, print, cut, or engraving, for, which a copyright shall be secured under the existing acts of congress, or those 'which shall

hereafter be enacted respecting copyrights, shall, within three months from the publication of said book, etc., deliver or cause to be delivered, one copy of the same to the librarian of the Smithsonian Institution, and one copy to the librarian, of Congress Library, for the use of the said libraries.

13.- 7. Requisites after the grant. No person shall be entitled to the benefit of this act, unless he shall give information of copyright being secured, by causing to be inserted, in the several copies of each and every edition published during the term secured, on the title page, or the page immediately following, if it be a book, or, if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music or engravings, upon the title or frontispiece thereof, the following words, viz: "Entered according to act of congress, in the year by A. B., in the clerk's office of the district court of _____" (as the case may be.)

14. The author or proprietor of any such book, map, chart, musical composition, print, cut, or engraving, shall, within three months from the publication of said book, map, chart, musical composition, print, cut, or engraving, deliver or cause to be delivered a copy. of the same to the clerk of said district. And it shall be the duty of the clerk of each district court, at least once in every year, to transmit a certified list of all such records of copyright, including the titles so recorded, and the date of record, and also all the several copies of books or other works deposited in his office, according to this act, to the secretary of state, to be preserved in his office.

15.-8. The remedies may be considered with regard, 1. To the penalties which may be incurred. 2. The issue in actions under this act. 3. The costs. 4. The limitation.

16.-1. The penalties imposed by this act relate, first, to the

violation of the copyright of books secondly, the violation of the copyright of prints, outs or engravings, maps, charts, or musical compositions thirdly, the printing or publishing of any manuscripts without the consent of the author or legal proprietor; fourthly, for inserting in any book, &c., that the copyright has been secured contrary to truth.

17.-First. If any other person or persons, from and after recording the title of any book or books, according to this act, shall, within the term or terms herein limited, print, publish, or import, or cause to be printed, published, or imported, any copy of such book or books, without the consent of the person legally entitled to the copyright thereof, first had and obtained in writing, signed in presence of two or more credible witnesses, or shall, knowing the same to be so printed or imported, publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such book, without such consent in writing, then such offender Shall forfeit every copy of such book to the person legally, at the time, entitled to the copyright thereof and shall also forfeit and pay fifty cents for every such sheet which may be found in his possession, either printed or printing, published, imported, or exposed to sale, contrary for the intent of this act; the one moiety thereof to such legal owner of the copyright as aforesaid, and the other to the use of the United States; to be recovered by action of debt in any court having competent jurisdiction thereof.

18.-Secondly. If any person or persons, after the recording the title of any print, cut or engraving, map, chart, or musical composition, according to the provisions of this act, shall, within the term or terms limited by this act, engrave, etch, or work, sell, or Copy, or cause to be engraved, etched, worked, or sold, or copied, either on the whole, or by varying, adding to, or diminishing the main design, with intent to evade the law, or shall print or import for sale, or cause to be printed or imported

for sale, any such map, chart, musical composition, print, cut, or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copyright thereof, first obtained in writing, signed in the presense of two credible witnesses; or, knowing the same to be so printed or imported, without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, musical composition, engraving, cut, or print, without such consent, as foresaid; then such offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, or print, shall be copied, and also all and every sheet thereof so copied or printed, as aforesaid, to the proprietor or proprietors of the copyright thereof; and shall further forfeit one dollar for every sheet of such map, chart, musical composition, print, cut, or engraving, which may be found in his or their possession, printed or published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the proprietor or proprietors, and the other moiety to the use of the United States, to be recovered in any court having competent jurisdiction thereof.

19. Nothing in this act shall be construed to extend to prohibit the importation or vending, printing or publishing, of any map, chart, book, musical composition, print, or engraving, written, composed, or made by any person not being a citizen of the United States, nor resident within the jurisdiction thereof.

20. Thirdly. Any person or persons, who shall print or publish any manuscript whatever, without the consent of the author or legal proprietor first obtained as aforesaid, (if such author or proprietor be a citizen of the United States, or resident therein,) shall be liable to suffer and pay to the author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, in any court having cognizance thereof; and the several courts of the United States

empowered to grant injunctions to prevent the violation of the rights of authors and inventors, are hereby empowered to grant injunctions, in like manner, according to the principles of equity, to restrain such publication of any manuscript, as aforesaid.

21.-Fourthly. If any person or persons, from and after the passing of this act, shall print or publish any book, map, chart, musical composition, print, cut, or engraving, not having legally acquired the copyright thereof, and shall insert or impress that the same hath been entered according to act of congress, or words purporting the same, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be recovered by action of debt, in any court of record leaving cognizance thereof.

22.-2. The issue. If any person or persons shall be sued or prosecuted, for any matter, act or thing done under or by virtue of this act, he or they may plead the general issue, and give the special matter in evidence.

23.-3. The costs. In all recoveries under this act, either for damages, forfeitures, or penalties, full costs shall be allowed thereon, anything in any former act to the contrary notwithstanding.

24.-4. The limitation of actions is regulated as follows. No action or prosecution shall be maintained in any case of forfeiture or penalty under this act, unless the same shall have been commenced within two years after the cause of action shall have arisen.

25.-9. Former grants. All and several the provisions of this act, intended for the protection and security of. copyrights, and providing remedies, penalties, and forfeitures in case of violation thereof, shall be held and construed to extend to the benefit of the legal proprietor or

proprietors of each and every copyright heretofore obtained, according to law, during the term thereof, in the same manner as if such copyright had been entered and secured according to the directions of this act. And by the 16th section it is provided that this act shall not extend to any copyright heretofore secured, the term of which has already expired.

26. Copyrights are secured in most countries of Europe. In Great Britain, an author has a copyright in his work absolutely for twenty-eight years, and if he be living at the end of that period, for the residue of his life. In France, the copyright of an author extends to twenty years after his death. In most, if not in all the German states, it is perpetual; it extends only over the state in which it is granted. In Russia, the right of an author or translator continues during his life, and his heirs enjoy the privilege twenty-five years afterwards. No manuscript or printed work of an author can be sold for his debts. 2 Am. Jur. 253, 4. Vide, generally, 2 Am. Jur. 248; 10 Am. Jur. 62; 1 Law Intell. 66; and the articles Literary property; Manuscript.

COPYHOLD, estate in the English law. A copyhold estate is a parcel of a manor, held at the will of the lord, according to the custom of the manor, by a grant from the lord, and admittance of the tenant, entered on the rolls of the manor court. Cruise, Dig. t. 10, c. 1, s. 3. Vide Ch. Pr. Index, h.t.

CORAM. In the presence of; before. Coram nobis, before us; coram vobis, before you; coram non judice, is said of those acts of a court which has no jurisdiction, either over the person, the, cause, or the process. 1 Con. 40. Such acts have no validity. Where a thing is required to be done before a particular person, it would not be considered as done before him, if he were asleep or non compos. Vide Dig. 4, 8, 27, 5; Dane's Ab. Index, h.t.; 5 Harr. & John. 42; 8 Cranch, 9; Paine's R. 55; Bouv. Inst. Index, h.t.

CORD, measures. A cord of wood must, when the wood is piled close, measure eight feet by four, and the wood must be four feet long. There are various local regulations in our principal cities as to the manner in which wood shall be measured and sold.

CORN. In its most comprehensive sense, this term signifies every sort of grain, as well as peas and beans, this is its meaning in the memorandum usually contained in policies of insurance. But it does not include rice. 1 Park. Ins. 112; Marsh. Ins. 223, note; Stev. on Av. part 4, art. 2; Ben. on Av. eh. 10; 1 Marsh. Ins. 223; Park on Ins. 112; Wesk. Ins. 145. Vide Com. Dig. Biens, G 1.

CORNAGE. The name of a species of tenure in England. The tenant by cornage was bound to blow a horn for the sake of alarming the country on the approach of an enemy. Bac. Ab. Tenure, N.

CORNET. A commissioned officer in a regiment of cavalry.

CORODY, incorporeal hereditaments. An allowance of meat, drink, money, clothing, lodging, and such like necessaries for sustenance. 1 Bl. Com. 282; 1 Ch. Pr. 225.

CORONER. An officer whose principal duty it is to hold an inquisition, with the assistance of a jury, over the body of any person who may have come to a violent death, or who has died in prison. It is his duty also, in case of the death of the sheriff, or when a vacancy happens in that office, to serve all the writs and process which the sheriff is usually bound to serve. The

chief justice of the King's Bench is the sovereign or chief coroner of all England, although it is not to be understood that he performs the active duties of that office in any one count. 4 Rep. 57, b. Vide Bac. Ab. h.t.; 6 Vin. Ab.242; 3 Com. Dig. 242; 5 Com. Dig. 212; and the articles Death; Inquisition.

2. The duties of the coroner are of the greatest consequence to society, both for the purpose of bringing to punishment murderers and other offenders against the lives of the citizens, and of protecting innocent persons from criminal accusations. His office, it is to be regretted, is regarded with too much indifference. This officer should be properly acquainted with the medical and legal knowledge so absolutely indispensable in the faithful discharge of his office. It not unfrequently happens that the public mind is deeply impressed with the guilt of the accused, and when probably he is guilty, and yet the imperfections of the early examinations leave no alternative to the jury but to acquit. It is proper in most cases to procure the examination to be made by a physician, and in some cases, it is his duty. 4 Car. & P. 571.

CORPORAL. An epithet for anything belonging to the body, as, corporal punishment, for punishment inflicted on the person of the criminal; corporal oath, which is an oath by the party who takes it being obliged to lay his hand on the Bible.

CORPORAL, in the army. A non-commissioned officer in a battalion of infantry.

CORPORAL TOUCH. It was once decided that before a seller of personal property could be said to have stopped it in transitu, so as to regain the possession of it, it was necessary that it should come to his corporal

touch. 3 T. R. 466 5 East, 184. But the contrary is now settled. These words were used merely as a figurative expression. 3 T. R. 464 5 East, 184.

CORPORATION. An aggregate corporation is an ideal body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues the same, notwithstanding the changes of the individuals who compose it, and which for certain purposes is considered as a natural person. Browne's Civ. Law, 99; Civ. Code of Lo. art. 418; 2 Kent's Com. 215. Mr. Kyd, (Corpor. vol. 1, p. 13,) defines a corporation as follows: "A corporation, or body politic, or body incorporate, is a collection of many; individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law, with a capacity of acting in several respects as an individual, particularly of taking and granting property, contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence." In the case of Dartmouth College against Woodward, 4 Wheat. Rep. 626, Chief Justice Marshall describes a corporation to be "an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law," continues the judge, "it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and if the expression may be allowed, individuality properties by which a perpetual succession of many persons are

considered, as the same, and may act as the single individual, They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyance for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use." See 2 Bl. Corn. 37.

2. The words corporation and incorporation are frequently confounded, particularly in the old books. The distinction between them is, however, obvious; the one is the institution itself, the other the act by which the institution is created.

3. Corporations are divided into public and private.

4. Public corporations, which are also called political, and sometimes municipal corporations, are those which have for their object the government of a portion of the state; Civil Code of Lo. art. 420 and although in such case it involves some private interests, yet, as it is endowed with a portion of political power, the term public has been deemed appropriate.

5. Another class of public corporations are those which are founded for public, though not for political or municipal purposes, and the, whole interest in which belongs to the government. The Bank of Philadelphia, for example, if the whole stock belonged exclusively to the government, would be a public corporation; but inasmuch as there are other owners of the stock, it is a private corporation. Domat's Civil Law, 452 4 Wheat. R. 668; 9 Wheat. R. 907 8 M'Cord's R. 377 1 Hawk's R. 36; 2 Kent's Corn. 222.

6. Nations or states, are denominated by publicists, bodies politic, and are said to have their affairs and interests, and to deliberate and resolve, in common. They thus become as moral persons, having an understanding and will peculiar to themselves, and are susceptible of obligations and laws. Vattel, 49. In this extensive sense the United States

may be termed a corporation; and so may each state singly. Per Iredell, J. 3 Dall. 447.

7. Private corporations. In the popular meaning of the term, nearly every corporation is public, inasmuch as they are created for the public benefit; but if the whole interest does not belong to the government, or if the corporation is not created for the administration of political or municipal power, the corporation is private. A bank, for instance, may be created by the government for its own uses; but if the stock is owned by private persons, it is a private corporation, although it is created by the government, and its operations partake of a private nature. 9 Wheat. R. 907. The rule is the same in the case of canal, bridge, turnpike, insurance companies, and the like. Charitable or literary corporations, founded by private benefaction, are in point of law private corporations, though dedicated to public charity, or for the general promotion of learning. Ang. & Ames on Corp. 22.

8. Private corporations are divided into ecclesiastical and lay.

9. Ecclesiastical corporations, in the United States, are commonly called religious corporations they are created to enable religious societies to manage with more facility and advantage, the temporalities belonging to the church or congregation.

10. Lay corporations are divided into civil and eleemosynary. Civil corporations are created for an infinite variety of temporal purposes, such as affording facilities for obtaining loans of money; the making of canals, turnpike roads, and the like. And also such as are established for the advancement of learning. 1 Bl. Com. 471.

11. Eleemosynary corporations are such as are instituted upon a principle of charity, their object being the perpetual distribution of the bounty of the founder of them, to such persons as he has directed. Of this

kind are hospitals for the relief of the impotent, indigent and sick, or deaf and dumb. 1 Kyd on Corp. 26; 4 Conn. R. 272; Angell & A. on Corp. 26.

12. Corporations, considered in another point of view, are either sole or aggregate.

13. A sole corporation, as its name implies, consists of only one person, to whom and his successors belongs that legal perpetuity, the enjoyment of which is denied to all natural persons. 1 Black Com. 469. Those corporations are not common in the United States. In those states, however, where the religious establishment of the church of England was adopted, when they were colonies, together with the common law on that subject, the minister of the parish was seised of the freehold, as persona ecclesiae, in the same manner as in England; and the right of his successors to the freehold being thus established was not destroyed by the abolition of the regal government, nor can it be divested even by an act of the state legislature. 9 Cranch, 828.

14. A sole corporation cannot take personal property in succession; its corporate capacity of taking property is confined altogether to real estate. 9 Cranch, 43.

15. An aggregate corporation consists of several persons, who are' united in one society, which is continued by a succession of members. Of this kind are the mayor or commonalty of a city; the heads and fellows of a college; the members of trading companies, and the like. 1 Kyd on Corp. 76; 2 Kent's Com. 221 Ang. & A. on Corp. 20. See, generally, Bouv. Inst. Index, h.t.

CORPORATOR. One who is a member of a corporation.

2. In general, a corporator is entitled to enjoy all the benefits and rights which belong to any other member of the corporation as such. But in some corporations, where the rights are of a pecuniary nature, each

corporator is entitles to those rights in proportion to his interest; he will therefore be entitled to vote only in proportion to the amount of his stock, and be entitled to dividends in the same proportion.

3. A corporator is not in general liable personally for any act of the corporation, unless he has been made so by the charter creating the corporation.

CORPOREAL PROPERTY, civil law. That which consists of such subjects as are palpable. In the common law, the term to signify the same thing is properly in possession. It differs from incorporeal property, (q.v.) which consists of choses in action and easements, as a right of way, and the like.

CORPSE. The dead body (q.v.) of a human being. Russ. & Ry. 366, n.; 2 T. R. 733; 1 Leach, 497; 16 Eng. Com. L. Rep. 413; 8 Pick. 370; Dig. 47, 12, 3, 7 Id. 11, 7, 38; Code, 3, 441.

2. As a corpse is considered as nullius bonis, or the property of no one, it follows that stealing it, is not, at common law, a larceny. 3 Inst. 203.

CORPUS. A Latin word, which signifies body; as, corpus delicti, the body of the offence, the essence of the crime; corpus juris canonis, the body of the canon law; corpus juris civilis, the body of the Civil law.

CORPUS COMITATUS. The body of the county; the inhabitants or citizens of a whole county, used in contradistinction to a part of a county, or a part of its citizens. See 5 Mason, R. 290.

CORPUS JURIS CIVILIS. The body of the civil law. This, is the name given to

a collection of the civil law, consisting of Justinian's Institutes, the Pandects or Digest, the Code, and the Novels.

CORPUS CUM CAUSA, practice. The writ of habeas corpus cum causa is a writ commanding the person to whom it is directed, to have the body, together with the cause for which he is committed, before the court or judge issuing the same.

CORPUS DELICTI. The body of the offence; the essence of the crime

2. It is a general rule not to convict unless the corpus delicti can be established, that is, until the dead body has been found. Best on Pres. Sec. 201; 1 Stark. Ev. 575, See 6 C. & P. 176; 2 Hale, P. C. 290. Instances have occurred of a person being convicted of having killed another, who, after the supposed criminal has been put to death for the supposed offence, has made his appearance alive. The wisdom of the rule is apparent; but it has been questioned whether, in extreme cases, it may not be competent to prove the basis of the corpus delicti by presumptive evidence. 3 Benth. Jud. Ev. 234; Wills on Circum. Ev. 105; Best on Pres. Sec. 204. See Death.

CORPUS JURIS CANONICI. The body of the canon law. A compilation of the canon law bears this name. See Law, canon.

CORRECTION,punishment. Chastisement by one having authority of a person who has committed some offence, for the purpose of bringing him to legal subjection.

2. It is chiefly exercised in a parental manner, by parents, or those who are placed in loco parentis. A parent may therefore justify the correction of the child either corporally or by confinement; and a schoolmaster, under whose care and instruction a parent has placed his

child, may equally justify similar correction; but the correction in both, cases must be moderate, and in proper manner. Com. Dig. Pleader, 3 M. 19; Hawk. c. 60, s. 23, and c. 62, s. 2 c. 29, s. 5.

3. The master of an apprentice, for disobedience, may correct him moderately 1 Barn. & Cres. 469 Cro. Car. 179 2 Show. 289; 10 Mart. Lo. It. 38; but he cannot delegate the authority to another. 9 Co. 96.

4. A master has no right to correct his servants who are not apprentices.

5. Soldiers are liable to moderate correction from their superiors. For the sake of maintaining their discipline on board of the navy, the captain of a vessel, either belonging to the United States, or to private individuals, may inflict moderate correction on a sailor for disobedience or disorderly conduct. Abbott on Shipp. 160; 1 Ch. Pr. 73; 14 John. R. 119; 15)lass. 365; 1 Bay, 3; Bee, 161; 1 Pet. Adm. Dec. 168; Molloy, 209; 1 Ware's R. 83. Such has been the general rule. But by a proviso to an act of congress, approved the 28th of September, l850, flogging in the navy and on board vessels of commerce was abolished.

6. Any excess of correction by the parent, master, officer, or captain, may render the party guilty of an assault and battery, and liable to all its consequences. In some prisons, the keepers have the right to correct the prisoners.

CORREGIDOR, Spanish law. A magistrate who took cognizance of 'various misdemeanors, and of civil matters. 2 White's Coll. 53.

CORRELATIVE. This term is used to designate those things, one of which cannot exist without another; for example, father and child; mountain and valley, &c. Law, obligation, right, and duty, are therefore correlative to

each other.

CORRESPONDENCE. The letters written by one to another, and the answers thereto, make what is called the correspondence of the parties.

2. In general, the correspondence of the parties contains the best evidence of the facts to which it relates. See Letter, contracts; Proposal.

3. When an offer to contract is made by letter, it must be accepted unconditionally for if the precise terms are changed, even in the slightest degree, there is no contract. 1 Bouv. Inst. n. 904. See, as to the power of revoking an offer made by letter, 1 Bouv. Inst. n. 933.

CORRUPTION. An act done with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another. Merl. Rep. h.t.

2. By corruption, sometimes, is understood something against law; as, a contract by which the borrower agreed to pay the lender usurious interest. It is said, in such case, that it was corruptly agreed, &c.

CORRUPTION OF BLOOD,, English crim. law. The incapacity to inherit, or pass an inheritance, in consequence of an attainder to which the party has been subject

2. When this consequence flows from an attainder, the party is stripped of all honors and dignities he possessed, and becomes ignoble.

3. The Constitution of the United States, Amendm. art. 5, provides, that no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval, forces, or in the militia, when in

actual service in time of war or public danger" and by art. 3, s. 3, n. 2, it is declared that "no attainder of treason shall work. corruption of blood, or forfeiture, except during the life of the person attainted."

4. The Constitution of Pennsylvania, art. 9, s. 19, directs that "no attainder shall work corruption of blood." 3 Cruise, 240, 378 to 381, 473 1 Cruise, 52 1 Chit. Cr. Law, 740; 4 Bl. Com. 388.

CORSNED, ancient Eng. law. This was a piece of accursed bread, which a person accused of a crime swallowed to test his innocence. It was supposed that, if he was guilty, it would choke him.

CORTES. The name of the legislative assemblies of Spain and Portugal.

COSENAGE, torts. Deceit, fraud: that kind of circumvention and wrong, which has no other specific name. Vide Ayl. Pand. 103 Dane's Ab. Index, h.t.

COSMOPOLITE. A citizen of the world; one who has no fixed. residence. Vide Citizen.

COSTS, practice. The expenses of a suit or action which may be recovered by law from the losing party.

2. At common law, neither the plaintiff nor the defendant could recover costs eonomine; but in all actions in which damages were recoverable, the plaintiff, in effect, recovered his costs when he obtained a verdict, for the jury always computed them in the damages. When the defendant obtained a verdict, or the plaintiff became non-suit, the former was wholly without remedy for any expenses he had incurred. It is true, the plaintiff was amerced pro falso clamore suo, but the amercement was given to the king.

Hull on Costs, 2 2 Arch. Pr. 281.

3. This defect was afterwards corrected by the statute of Gloucester, 6 Ed. I, c. 1, by which it is enacted that "the demandant in assise of novel disseisin, in writs of mort d'ancestor, cosinage, aiel and be sail, shall have damages. And the demandant shall have the costs of the writ purchased, together with damages, and this act shall hold place in all cases where the party recovers damages, and every person shall render damages where land is recovered against him upon his own intrusion, or his own act." About forty-six years after the passing of this statute, costs were for the first time allowed in France, by an ordinance of Charles le Bel, (January, 1324.) See Hardw. Cas. 356; 2 Inst. 283, 288 2 Loisel, Coutumes, 328-9.

4. The statute of Gloucester has been adopted, substantially, in all the United States. Though it speaks of the costs of the writ only, it has, by construction, been extended to the costs of the suit generally. The costs which are recovered under it are such as shall be allowed by the master or prothonotary upon taxation, and not those expenses which the. plaintiff may have. incurred for himself, or the extraordinary fees he may have paid counsel, or for the loss of his time. 2 Sell. Pr. 429.

5. Costs are single, when the party receives the same amount he has expended, to be ascertained by taxation; double, vide Double costs. and treble, vide Treble costs. Vide, generally, Bouv. Inst. Index, h.t.; Hullock on Costs; Sayer's Law of Costs; Tidd's Pr. c. 40; 2 Sell. Pr. c. 19; Archb. Pr. Index, h.t.; Bac. Ab. h.t.; Com. Dig. h.t.; 6 Vin. Ab. 321; Grah. Pr. c. 23 Chit. Pr. h.t. 1 Salk. 207 1 Supp. to Ves. jr. 109; Amer. Dig. h.t.; Dane's Ab. h.t.; Harr. Dig. h.t. As to the liability of executors and administrators for costs, see 1, Chit. R. 628, note; 18 E. C. L. R. 185; 2 Bay's R. 166, 399; 1 Wash. R. 138; 2 Hen. & Munf. 361, 369; 4 John. R. 190; 8 John. R. 389; 2 John. Ca. 209. As to costs in actions qui tam, see Esp. on Pen. Act. 154 to 165.

COTTAGE, estates. A small dwelling house. See 1 Tho. Co. Litt. 216; Sheph. Touchst. 94; 2 Bouv. Inst. n. 1571, note.

2. The grant of a cottage, it is said, passes a small dwelling-house, which has no land belonging to it. Shep. To. 94.

COUCHANT. Lying down. Animals are said to have been levant and couchant, when they have been upon another person's land, damage feasant, one night at least. 3 Bl. Com. 9.

COUNCIL, legislation. This word signifies an assembly.

2. It was used among the Romans to express the meeting of only a part of the people, and that the most respectable, in opposition to the assemblies of the whole people.

3. It is now usually applied to the legislative bodies of cities and boroughs.

4. In some states, as in Massachusetts, a body of men called the council, are elected, whose duties are to advise the governor in the executive part of the government. Const. of Mass. part 2, c. 2, s. 3, art. 1 and 2. See 14 Mass. 470; 3 Pick. 517; 4 Pick. 25 19 John. R. 58. In England, the king's council are the king's judges of his courts of justice. 3 Inst. 125; 1 Bl. Com. 229.

COUNSEL. Advice given to another as to what he ought to do or not to do.

2. To counsel another to do an unlawful act, is to become accessory to it, if it be a felony, or principal, if it be treason, or a misdemeanor. By the term counsel is also understood counsellor at law. Vide To open; Opening.

COUNSEL, an officer of court. One who undertakes to conduct suits and actions in court. The same as counsellor.

COUNSEL, practice, crim. law. In the oath of the grand jurors, there is a provision requiring them to keep secret "the commonwealth's counsel, their fellows, and their own." In this sense this word is synonymous with knowledge; therefore, all the knowledge acquired by grand jurors, in consequence of their office, either from the officers of the commonwealth, from their fellow jurors, or which they have obtained in any manner, in relation to cases which come officially before them, must be kept secret. See Grand Jury.

COUNSELLOR, government. A counsellor is a member of a council. In some of the states the executive power is vested in a governor, or a governor and lieutenant governor, and council. The members of such council are called counsellors. See the names of the several states.

COUNSELLOR AT LAW, offices. An officer in the supreme court of the United States, and in some other courts, who is employed by a party in a cause, to conduct the same on its trial on his behalf. He differs from an attorney at law. (q.v.)

2. In the supreme court of the United States, the two degrees of attorney and counsel are kept separate, and no person is permitted to practise both. It is the duty of the counsel to draft or review and correct the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the case. 1 Kent, Com. 307.

3. Generally in the other courts of the United States, as well as in

the courts of Pennsylvania, the same person perform's the duty of counsellor and attorney at law.

4. In giving their advice to their clients, counsel and others, professional men have duties to perform to their clients, to the public, and to themselves. In such cases they have thrown upon them something which they owe to the fair administration of justice, as well as to the private interests of their employers. The interests propounded for them ought, in their own apprehension, to be just, or at least fairly disputable; and when such interests are propounded, they ought not to be pursued per fas et nefas. Hag. R. 22.

5. A counsellor is not a hired person, but a mandatory; he does not render his services for a price, but an honorarium, which may in some degree recompense his care, is his reward. Doubtless, he is not indifferent to this remuneration, but nobler motives influence his conduct. Follow him in his study when he examines his cause, and in court on the trial; see him identify himself with the idea of his client, and observe the excitement he feels on his account; proud when he is, conqueror, discouraged, sorrowful, if vanquished; see his whole soul devoted to the cause he has undertaken, and which he believes to be just, then you perceive the elevated man, ennobled by the spirit of his profession, full of sympathy for his cause and his client. He may receive a reward for his services, but such things cannot be paid for with money. No treasures can purchase the sympathy and devotedness of a noble mind to benefit humanity; these things are given, not sold. See Honorarium. 6. Ridley says, that the law has appointed no stipend to philosophers and lawyers not because they are not reverend services and worthy of reward or stipend, but because either of them are most honorable professions, whose worthiness is not to be valued or dishonored by money. Yet, in these cases many things are honestly taken, which are not honestly

asked, and the judge may, according to the quality of the cause, and the still of the advocate, and the custom of the court, and, the worth of the matter that is in hand, appoint them a fee answerable to their place. View of the Civil and Eccles. Law, 38, 39.

COUNT, pleading. This word, derived from the French conte, a narrative, is in our old law books used synonymously with declaration but practice has introduced the following distinction: when the plaintiff's complaint embraces only a single cause of action, and he makes only one statement of it, that statement is called, indifferently, a declaration or count; though the former is the more usual term.

2. But when the suit embraces two or more causes of action, (each of which of course requires a different statement;) or when the plaintiff makes two or more different statements of one and the same cause of action, each several statement is called a count, and all of them, collectively, constitute the declaration.

3. In all cases, however, in which there are two or more counts, whether there is actually but one cause of action or several, each count purports, upon the face of it, to disclose a distinct right of action, unconnected with that stated in any of the other counts.

4. One object proposed, in inserting two or more counts in one declaration, when there is in fact but one cause of action, is, in some cases, to guard against the danger of an insufficient statement of the cause, where a doubt exists as to the legal sufficiency of one or another of two different modes of declaring; but the more usual end proposed in inserting more than one count in such case, is to accommodate the statement to the cause, as far as may be, to the possible state of the proof to be exhibited on trial; or to guard, if possible, against the hazard of the proofs varying materially from the statement of the cause of action; so that

if one or more or several counts be not adapted to the evidence, some other of them may be so. Gould on Pl. c. 4, s. 2, 3, 4; Steph. Pl. 279; Doct. Pl. 1 78; 8 Com. Dig. 291; Dane's Ab. Index, h.t.; Bouv. Inst. Index, h.t. In real actions, the declaration is most usually called a count. Steph. Pl. 36, See Common count; Money count.

COUNTER, Eng. law. The name of an ancient prison in the city of London, which has now been demolished.

COUNTER AFFIDAVIT. An affidavit made in opposition to one already made; this is allowed in the preliminary examination of some cases.

COUNTER SECURITY. Security given to one who has become security for another, the condition of which is, that if the one who first became surety shall be damnified, the one who gives the counter security will indemnity him.

TO COUNTERFEIT, criminal law. To make something false, in the semblance of that which is true; it always implies a fraudulent intent. Vide Vin. Ab. h.t. Forgery.

COUNTERMAND. This word signifies a. change or recall of orders previously given.

2. It may be express or implied. Express, when contrary orders are given and a revocation. of the former order is made. Implied, when a new order is given which is inconsistent with the former order: as, if a man should order a merchant to ship him in a particular vessel certain goods which belonged to him, and then, before the goods were shipped, he directed him to ship them in another vessel; this would be a countermand of the first

order.

3. While the first command is unrecalled, the person who gave it would be liable to all the consequences in case he should be obeyed; but if, for example, a man should command another to commit a crime and, before its perpetration, he should repent and countermand it, he would not be liable for the consequences if the crime should afterwards be committed.

4. When a command or order has been given, and property delivered, by which a right vests in a third person, the party giving the order cannot countermand it; for example, if a debtor should deliver to A a sum of money to be paid to B, his creditor, B has a vested right in the money, and unless he abandon that right, and refuse to take the money, the debtor cannot recover it from A. 1 Roll. Ab. 32, pl. 13; Yelv. 164 Sty. 296. See 3 Co. 26 b.; 2 Vent. 298 10 Mod. 432; Vin. Ab. Countermand, A 1; Vin. Ab. Bailment, D; 9 East, 49; Roll. Ab. 606; Bac. Ab. Bailment, D; Com. Dig. Attorney, B 9, c. 8; Dane's Ab. h.t.; and Command.

COUNTERPART, contracts. Formerly each party to an indenture executed a separate deed; that part which was executed by the grantor was called the original, and the rest the counterparts. It is now usual for all the parties to execute every part, and this makes them all originals. 2 Bl. Com. 296.

2. In granting lots subject to a ground rent reserved to the grantor, both parties execute the deeds, of which there are two copies; although both are original, one of them is sometimes called the counterpart. Vide 12 Vin. Ab. 104; Dane's Ab. Index, h.t.; 7 Com. Dig. 443; Merl. Repert. mots Double Ecrit.

COUNTERPLEA, pleading. When a tenant in any real action, tenant by the curtesy, or tenant in dower, in his answer and plea, vouches any one to warrant his title, or prays in aid another who has a larger estate, as of

the remainder-man or reversioner or when a stranger to the action comes and prays to be received to save his estate; then that which the defendant alleges against it, why it should not be admitted, is called a counterplea. T. de la Ley; Doct. Placit. 300 Com. Dig. h.t.; Dane's Ab. Index, h.t.

COUNTERS, English law. Formerly there were in London two prisons belonging to the sheriffs courts, which bore this name. They are now demolished. 4 Inst. 248.

COUNTERSIGN. To countersign is to sign on the opposite side of an instrument already signed by some other person or officer, in order to secure its character of a genuine paper; as a bank note is signed by the president and countersigned by the cashier.

COUNTRY. By country is meant the state of which one is a member.

2. Every man's country is in general the state in which he happens to have been born, though there are some exceptions. See Domicil; Inhabitant. But a man has the natural right to expatriate himself, i. e. to abandon his country, or his right of citizenship acquired by means of naturalization in any country in which he may have taken up his residence. See Allegiance; Citizen; Expatriation. in another sense, country is the same as pais. (q.v.)

COUNTY. A district into which a state is divided.

2. The United States are generally divided into counties; counties are divided into townships or towns.

3. In Pennsylvania the division of the province into three Counties, viz. Philadelphia, Bucks and Chester, was one of the earliest acts of William Penn, the original proprietary. There is no printed record of this

division, or of the original boundaries of these counties. Proud says it was made about the year 1682. Proud's Hist. vol. 1 p. 234 vol. 2, p. 258.

4. In some states, as Illinois; 1 Breese, R. 115; a county is considered as a corporation, in others it is only a quasi corporation. 16 Mass. R. 87; 2 Mass. R. 644 7 Mass. R. 461; 1 Greenl. R. 125; 3 Greenl. R. 131; 9 Greenl. R. 88; 8 John. R. 385; 3 Munf. R. 102. Frequent difficulties arise on the division of a county. On this subject, see 16 Mass. R. 86 6 J. J. Marsh. 147; 4 Halst. R. 357; 5 Watts, R. 87 1 Cowen, R. 550; 6 Cowen, R. 642; Cowen, R. 640; 4 Yeates, R. 399 10 Mass. Rep. 290; 11 Mass. Rep. 339.

5. In the English law this word signifies the same as shire, county being derived from the French and shire from the Saxon. Both these words signify a circuit or portion of the realm, into which the whole land is divided, for the better government thereof, and the more easy administration of justice. There is no part of England that is not within some county, and the shire-reve, (sheriff) originally a yearly officer, was the governor of the county. Four of the counties of England, viz. Lancaster, Chester, Durham and Ely, were called counties Palatine, which were jurisdictions of a peculiar nature, and held by, especial charter from the king. See stat. 27 H. VIII. c. 25.

COUNTY COMMISSIONERS. Certain officers generally entrusted with the superintendence of the collection of the county taxes, and the disbursements made. for the county. They are administrative officers, invested by the local laws with various powers.

2. In Pennsylvania the office of county commissioner originated in the act of 1717, which was modified by the act of 1721, and afterwards enlarged by the act of 1724. Before the office of county commissioner was established, assessors were elected who performed similar duties. See Act of 1700, 4 Votes of Assembly, 205, 209.

COUPONS. Those parts of a commercial instrument which are. to be cut, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payor.

COURIER. One who is sent on some public occasion as an express, to bear despatches, letters, and other papers.

2. Couriers sent by an ambassador or other public minister, are protected from arrest or molestation. Vattel, liv. 4, c. 9, Sec. 123.

COURSE. The direction in which a line runs in surveying.

2. When there are no monuments, (q.v.) the land must be bounded by the courses and distances mentioned in the patent or deed. 4 Wheat. 444; 3 Pet. 96; 3 Murph. 82; 2 Har. & John. 267; 5 Har. & John. 254. When the lines are actually marked, they must be adhered to, though they vary from the course mentioned in the deeds. 2 Overt. 304; 7 Wheat. 7. 1 See 3 Call, 239 7 Mont. 333. Vide Boundary; Line.

COURSE OF TRADE. What is usually done in the management of trade or business.

2. Men are presumed to act for their own interest, and to pursue the way usually adopted by men generally; hence it is presumed in law, that men in their actions will pursue the usual course of trade. For this reason it is presumed that a bank note was signed before it was issued, though the signature be torn off. 2 Rob. Lo. R. 112. That one having possession of a bill of exchange upon him, has paid it; that one who pays an order or draft

upon him, pays out of the funds of the drawer in his hands. But the case is different where the order is for the delivery of goods, they being presumed to have been sold by the drawee to the drawer. 9 Wend. 323; 1 Greenl. Ev. Sec. 38.

COURSE OF THE VOYAGE. By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. on Ins. 185.

COURT, practice. A court is an incorporeal political being, which requires for its existence, the presence of the judges, or a competent number of them, and a clerk or prothonotary, at the time during which, and at the place where it is by law authorized to be held; and the performance of some public act, indicative of a design to perform the functions of a court.

2. In another sense, the judges, clerk, or prothonotary, counsellors and ministerial officers, are said to constitute the court.

3. According to Lord, Coke, a court is a place where justice is judicially administered. Co. Litt. 58, a.

4. The judges, when duly convened, are also called the court. Vide 6 Vin. Ab. 484; Wheat. Dig. 127; Merl. Rep. h.t.; 3 Com. Dig. 300; 8 Id. 386; Dane's Ab. Index, h.t.; Bouv. Inst. Index, h.t.

5. It sometimes happens that the judges composing a court are equally divided on questions discussed before them. It has been decided, that when such is the case on an appeal or writ of error, the judgment or decree is affirmed. 10 Wheat. 66; 11 Id. 59. If it occurs on a motion in arrest of judgment, a judgment is to be entered on the verdict. 2 Dall. Rep. 388. If on a motion for a new trial, the motion is rejected. 6 Wheat. 542. If on a motion to enter judgment on a verdict, the judgment is entered. 6 Binn. 100. In England, if the house of lords be equally divided on a writ of error, the

judgment of the court below is affirmed. 1 Arch. Pr. 235. So in Cam. Scacc. 1 Arch. Pr. 240. But in error coram nobis, no judgment can be given if the judges are equally divided, except by consent. 1 Arch. Pr. 246. When the judges are equally divided on the admission of testimony, it cannot be received. But see 3 Yeates, 171. Also, 2 Bin. 173; 3 Bin. 113 4 Bin. 157; 1 Johns. Rep. 118 4 Wash. C. C. Rep. 332, 3. See Division of Opinion.

6. Courts are of various kinds. When considered as to their powers, they are of record and not of record; Bac. Ab. Courts, D; when compared. to each other, they are supreme, superior, and inferior, Id.; when examined as to their original jurisdiction, they are civil or criminal; when viewed as to their territorial jurisdiction, they are central or local; when divided as to their object, they are courts of law, courts of equity, courts martial, admiralty courts, and ecclesiastical courts. They are also courts of original jurisdiction, courts of error, and courts of appeal. Vide Open Court.

7. Courts of record cannot be deprived of their jurisdiction except by express negative words. 9 Serg. & R. 298; 3 Yeates, 479 2 Burr. 1042 1 Wm. Bl. Rep. 285. And such a court is the court of common pleas in Pennsylvania. 6 Serg. & R. 246.

8. Courts of equity are not, in general, courts of record. Their decrees touch the person, not lands. or goods. 3 Caines, 36. Yet, as to personalty, their decrees are equal to a judgment; 2. Madd. Chan. 355; 2 Salk., 507; 1 Ver. 214; 3 Caines, 35; and have preference according to priority. 3 P. Wms. 401 n.; Cas. Temp. Talb. 217; 4 Bro. P. C. 287; 4 Johns. Chan. Cas. 638. They are also conclusive between the parties. 6 Wheat. 109. Assumpsit will lie on a decree of a foreign court of chancery for a sum certain; 1 Campb. Rep. 253, per Lord Kenyon; but not for a sum not ascertained. 3 Caines, 37, (n.) In Pennsylvania, an action at law will lie

on a decree of a court of chancery, but the pleas nil debet and nul tiel record cannot be pleaded in such an action. 9 Serg. & R. 258.

COURT CHRISTIAN. An ecclesiastical judicature, known in England, so called from its handling matters of an ecclesiastical or religious nature. 2 Inst. 488. Formerly the jurisdiction of these courts was not thus limited. The emperor Theodosius promulgated a law that all suits (lites) and forensic controversies should be remitted to the judgment of the church, if either of the litigating parties should require it. Fr. Duaren De Sac. Minist. Eccl. lib. 1, c. 2. This law was renewed and confirmed by Charlemagne.

COURT OF ARCHES, eccl. law. The most ancient consistory court belonging to the archbishop of Canterbury for the trial of spiritual causes. It is so called, because it was anciently held in the church of Saint Mary le bow; which church had that appellation from its steeple, which was raised at the top with stone pillars, in the manner of an arch or bow. Termes de la Ley.

COURT OF ADMIRALTY. A court having jurisdiction of all maritime causes. Vide Admiralty; Courts of the United States; Instance Courts; Prize Court; 2 Chit. Pr. 508 to 538.

COURT OF AUDIENCE, Eng. eccl. law. The name of a court kept by the archbishop in his palace, in which are transacted matters of form only; as confirmation of bishops, elections, consecrations, and the like.

COURT OF COMMON PLEAS. The name of an English court which was established on the breaking up of the aula regis, for the determination of pleas merely civil. It was at first ambulatory, but was afterwards located. This jurisdiction is founded on original write issuing out of chancery, in the

cases of common persons. But when an attorney or person belonging to the court, is plaintiff, he sues by writs, of privilege, and is sued by bill, which is in the nature of a petition; both which originate in the common pleas. See Bench; Banc.

2. There are courts in most of the states of the United States which bear the name of common pleas; they have various powers and jurisdictions.

COURT OF CONSCIENCE, Eng. law. The name of a court in London. It has equity jurisdiction in certain cases. The reader is referred to Bac. Ab. Courts in London, 2.

COURT OF CONVOCATION, eccles. law. The name of an English ecclesiastical court. It is composed of every bishop, dean, and archdeacon, a proctor for the chapter, and two proctors for the clergy of each diocese in the province of Canterbury, for the province of York, there are two proctors for each archdeaconry.

2. This assembly meets at the time appointed in the king's writ, and constitute an ecclesiastical parliament. The archbishop and his suffragans, as his peers, are sitting together, and composing one house, called the upper house of convocation the deans, archdeacons, and a proctor for the chapter, and two proctors for the clergy, the lower house. In this house a prolocutor, performing the duty of a president, is elected.

3. The jurisdiction of this tribunal extends to matters of heresy, schisms, and other mere spiritual or ecclesiastical causes. Bac. Ab. Ecclesiastical Courts, A 1.

COURT OF EXCHEQUER, Eng. law. A court of record anciently established for the trial of all matters relating to the revenue of the crown. Bac. Ab. h.t.

COURT OF FACULTIES, Eng. eccl. law. The name of a court which belongs to the archbishop, in which his officer, called magister ad facultates, grants dispensations to marry, to eat flesh on days prohibited, or to ordain a deacon under age, and the like. 4 Inst. 337.

COURT, INSTANCE. One of the branches of the English admiralty is called an instance court. Vide Instance Court.

COURT OF INQUIRY. A court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction, accusation, or imputation against any officer or soldier; the said court shall consist. of one or more officers, not exceeding three, and a judge advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing, all of whom shall be sworn to the performance of their duty. Art. 91. Gord. Dig. Laws U. S., art. 3558 to 3560.

COURT OF KING'S BENCH. The name of the supreme court of law in England. Vide King's Bench.

COURT MARTIAL. A court authorized by the articles of war, for the trial of all offenders in the army or navy, for military offences. Article 64, directs that general courts martial may consist of any number of commissioned officers, from five to thirteen, inclusively; but they shall not consist of less than thirteen, where the number can be convened, without manifest injury to the service.

2. The decision of the commanding officer who appoints the court, as to the number that can be convened without injury to the service, is conclusive. 12 Wheat. R. 19. Such a court has not jurisdiction over a

citizen of the United States not employed in military service 12 John. R. 257. It has merely a limited jurisdiction, and to render its jurisdiction valid, it must appear to have acted within such jurisdiction. 3 S. & R. 590 11 Pick. R. 442; 19 John. R. 7; 1 Rawle, R. 143.

3. A court martial must have jurisdiction over the subject matter of inquiry, and over the person for a want of these will render its judgment null, and the members of the court and the officers who execute its sentence, trespassers. 3 Cranch, 331. See 5 Wheat. 1; 12 Wheat. 19; 1 Brock. 324. Vide Gord. Dig. Laws U. S., art. 3331 to 3357; 2 Story,. L. U. S. 1000; and also the Treatises of Adye, Delafon, Hough, J. Kennedy, M. V. Kennedy, McArthur, McNaghten, Simmons and Tyler on Courts Martial; and 19 John. R, 7; 12 John. R. 257; 20 John. R. 343; 5 Wheat. R. 1; 1 U. S. Dig. tit. Courts, V.

COURT OF PECULIARS, Eng. eccl. law. The name of a court, which is a branch of, and annexed to, the. court of arches.

2. It has jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses. In the other peculiars, the jurisdiction is exercised by commissaries. 1 Phill. R. 202, n.

3. There are three sorts of peculiars 1. Royal peculiars. 3 Phill. R. 245. 2. The second sort are those in which the bishop has no concurrent jurisdiction, and are exempt from his visitation. 3. The third are subject to the bishop's visitation, and liable to his superintendence and jurisdiction. 3 Phill. R. 245; Skinn. R. 589.

COURT PREROGATIVE. Vide Prerogative Court.

COURT, PRIZE. One of the branches of the English admiralty, is called a prize court. Vide Prize Court.

COURT OF RECORD. At common law, any jurisdiction which has the power to fine and imprison, is a court of record. Salk. 200; Bac. Ab. Fines and Amercements, A. And courts which do not possess this power are not courts of record. See Court.

2. The act of congress, to establish an uniform rule of naturalization, &c., approved April 14, 1802, enacts, that for the purpose of admitting aliens to become citizens, that every court of record in any individual state, having common law jurisdiction and a seal, and a clerk or prothonotary, shall be considered as a district court within. the meaning of this act.

COURT, SUPREME. Supreme court is the name of a court having jurisdiction over all other courts Vide Courts of the United States.

COURTS OF THE UNITED STATES. The judiciary of the United States is established by virtue of the following provisions, contained in the third article of the constitution, namely:

2.-1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

3.- 2. (1.) The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases

affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party to controversies between two or more states, between a state and a citizen of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

4.-(2.) In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as congress shall make.

5.-(3.) The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as congress may by law have directed.

6. By the amendments to the constitution, the following alteration has been made: "Art. 11. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commence or prosecuted against one of the United States by citizens of another state, or citizens or subjects of any foreign state."

7. This subject will be considered by taking a view of, 1. The central courts; an 2. The local courts.

Art. 1 The Central Courts of the United States.

8. The central courts of the United States are, the senate, for the trial of impeachments, and the supreme court. The territorial jurisdiction

of these courts extends over the whole country.

1. Of the Senate of the United States.

9.-1. The constitution of the United States, art. 1, Sec. 3, provides that the senate shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside and no person shall be convicted without the concurrence of two-thirds of the members present.

10. lt will be proper here to consider, 1. The organization of this extraordinary court; and, 2. Its jurisdiction.

11.-1. Its organization differs according as it has or, has not the president of the United States to try. For the trial of all impeachment of the president, the presence of the chief justice is required. There must also be a sufficient number of senators present to form a quorum. For the trial of all other impeachments, it is sufficient if a quorum be present.

12.-2. The jurisdiction of the senate, as a court for the trial of impeachments, extends to the following officers, namely; the president, vice-president, and all civil officers of the United States, art. 2, Sec. 4, when they shall have been guilty of treason, bribery, and other high crimes and misdemeanors. Id. The constitution defines treason, art.

3.-3, but recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by "other high crimes and misdemeanors," resort, it is presumed, must be had to parliamentary practice. and the common law, in order to ascertain what they are. Story, Const. Sec. 795.

2. Of the Supreme Court.

13. The constitution of the United States directs that the judicial power of the United States shall be vested in one supreme court; and in such inferior courts as congress may, from time to time, ordain and establish. It

will be proper to consider, 1st. Its organization; 2dly. Its Jurisdiction.

14.-1. Of the organization of the supreme court. Under this head will be considered, 1. The appointment of the judges. 2. The number necessary to form a quorum. 3. The time and place of holding the court.

15.-1. The judges of the supreme court are appointed by the president, by and with the consent of the senate, Const. art. 2, Sec. 2. They hold their office during good behaviour, and receive for their services a compensation, which shall not be diminished during their continuance in office. Const. art" 3, Sec. 1. They consist of a chief justice and eight associate justices. Act of March 3, 1837, Sec. 1.

16.-2. Five judges are required to make a quorum, Act of March 3, 1837, Sec. 1; but by the act of the 21st of January, 1829, the judges attending on the day appointed for holding a session of the court, although fewer than a quorum, at that time, four have authority to adjourn the court from day to day, for twenty days, after the time appointed for the commencement, of said session, unless a quorum shall sooner attend; and the business shall not be continued over till the next session of the court, until the expiration of the said twenty days. By the same act, if, after the judges shall have assembled, on any day less than a quorum shall assemble, the judge or judges. so assembling shall have authority to adjourn the said court, from day to day, until a quorum shall attend, and, when expedient and proper, may adjourn the same without day.

17-3. The supreme court is holden at the city of Washington. Act of April 29, 1 802. The session commences on the second Monday of January, in each and every year. Act of May, 4, 1826. The first Monday of August in each year is appointed as a return day. Act of April 29, 1802. In case of a contagious sickness, the chief justice or his senior associate may direct in what other place the court shall be held, and the court shall accordingly be

ad to such place. Act of February 25, 1799, Sec. 7. The officers of the court are a clerk, who is appointed by the court, a marshal, appointed by the president, by and with the advice and the consent of the senate, crier, and other inferior officers.

18.-2. Of the jurisdiction of the supreme. court. The jurisdiction of the supreme court is either civil or criminal.

19.-1. The civil jurisdiction is either original or appellate.

20.-(1.) The provisions of the constitution that relate to the original jurisdiction of the supreme court, are contained in the articles of the constitution already cited.

21. By the act of September 24th, 1789, Sec. 13, the supreme court shall have exclusive jurisdiction of all controversies of civil nature where a state is a party, except "between a state and it's citizens; and except also, between a state and citizens of other states or aliens, in which latter case it shall have original, but not exclusive jurisdiction. And shall have, exclusively, all such jurisdiction of suits, or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have or exercise consistently with the law of nations. And original, but not exclusive jurisdiction of all suits brought by ambassadors or other public ministers, or in which a consul or vice-consul shall be a party. And the trial of issues in fact, in the supreme court, in all actions at law, against citizens of the United States, shall be by jury.

22. In consequence of the decision of the case of Chisholm v. Georgia, where it was held that assumpsit might be maintained against a state by a citizen of a different state, the 11th article of the amendments of the constitution above quoted, was adopted.

23. In those cases in which original jurisdiction is given to the supreme court, the judicial power of the United States cannot be exercised

in its appellate form. With the exception of those cases in which original jurisdiction is given to this court, there is none to which the judicial power extends, from which the original jurisdiction of the inferior courts is excluded by the constitution.

24. The constitution establishes the supreme court and defines its jurisdiction. It enumerates the cases in which its jurisdiction is original and exclusive, and defines that which is appellate. See 11 Wheat. 467.

25. Congress cannot vest in the supreme court original jurisdiction in a case in which the constitution has clearly not given that court original jurisdiction; and affirmative words in the constitution, declaring in what cases the supreme court shall have original jurisdiction, must be construed negatively as to all other cases, or else the clause would be inoperative and useless. 1 Cranch, 137. See 5 Pet. 15 Pet. 284; 12 Pet. 657; 9 Wheat. 738 6 Wheat. 264.

26.-2. The supreme court exercises appellate jurisdiction in the following different modes:

(1.) By writ of error from the final judgments of the circuit courts; of the district courts, exercising the powers of circuit courts; and of the superior, courts of the territories, exercising the powers of circuit, courts, in certain cases. A writ of error does not lie to the supreme court to reverse the judgment of a circuit court, in a civil action by writ of error carried from the district court to the circuit court. The United States v. Goodwin, 7 Cranch, 108. But now, by the act of July 4, 1840, c. 20, Sec. 3, it is enacted that writs of error shall lie to the supreme court from all judgments of a circuit court, in cases brought there by writs of error from the district court, in like manner and under the same regulations, as are provided by law for writs of error for judgments rendered upon suits originally brought in the circuit court.

27.-(2.) The supreme court has jurisdiction by appeals from the final decrees of the circuit courts; of the district courts exercising the powers of circuit courts; and of the superior courts of territories, exercising the powers of circuit courts in certain cases. See 8 Cranch, 251 6 Wheat. 448.

28.-(3.) The supreme court has also jurisdiction by writ of error from the, final judgments and decrees of the highest courts of law or equity in a state, in the cases provided for by the twenty-fifth section of the act of September 24th, 1789, which enacts that a final judgment or decree, in any suit in the highest court of law, or equity of a, state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed in the supreme court of the United States, upon a writ of error, the citation being signed by the chief justice or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the supreme court of the United States, in the same manner, and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceeding upon the reversal shall also be the same, except that the supreme court, instead of remanding the cause for a final decision as before provided, may, at their discretion, if the

cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity, or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute. See 5 How. S. C. R. 20, 55

29. The appellate jurisdiction of the supreme court extends to all cases pending in the state courts and the twenty-fifth section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by writ of error, is supported by the letter and spirit of the constitution. 1 Wheat. 304.

30. When the construction or validity of a treaty of the United States is drawn in question in the state courts, and the decision is against its validity, or the title specially set up by either party under the treaty, the supreme court has jurisdiction to ascertain that title, and to determine its legal meaning. 1 Wheat. 358; 5 Cranch, 344; 9 Wheat. 738; 1 Pet. 94; 9 Pet. 224; 10 Pet. 368; 6 Pet. 515.

31. The supreme court has jurisdiction although one of the parties is a state, and the other a citizen of that state. 6 Wheat. 264.

32. Under the twenty-fifth section of the judiciary act, when any clause of the constitution or any statute of the United States is drawn in question, the decision must be against the title or right set up by the party under such clause or statute; otherwise the supreme court has no appellate jurisdiction of the case. 12 Wheat. 117, 129 6 Wheat. 598 3 Cranch, 268 4 Wheat. 311; 7 Wheat. 164; 2 Peters, 449; 2 Pet. 241; 11 Pet. 167; 1 Pet. 655; 6 Pet. 41; 5 Pet. 248.

33. When the judgment of the highest court of law of a state, decides in

favor of the validity of a statute of a state drawn in question, on the ground of its being repugnant to the constitution of the United States, it is not a final judgment within the twenty-fifth section of the judiciary act if the suit has been remanded to the inferior court, where it originated, for further proceedings, not inconsistent with the judgment of the highest court. 12 Wheat. 135.

34. The words "matters in dispute" in the act of congress, which is to regulate the jurisdiction of the supreme court, seem appropriated to civil causes. 3 Cranch, 159. As to the manner of ascertaining the matter in dispute, see 4 Cranch, 216; 4 Dall. 22; 3 Pet. 33; 3 Dall. 365; 2 Pet. 243; 7 Pet. 634; 5 Cranch, 13; 4 Cranch, 316.

35.-(4.) The supreme court has jurisdiction by certificate from the circuit court, that the opinions of the judges are opposed on points stated, as provided for by the sixth section of the act of April 29th, 1802. The provisions of the act extend to criminal as well as to civil cases. See 2 Cranch, 33; 10 Wheat. 20 2 Dall. 385; 4 Hall's Law Journ. 462; 5 Wheat. 434; 6 Wheat. 542; 12 Wheat. 212; 7 Cranch, 279.

36.-(5.) It has also jurisdiction by mandamus, prohibition, habeas corpus, certiorari, and procedendo.

37.-2. The criminal jurisdiction of the supreme court is derived from the constitution and the act of September 24th, 1789, s. 13, which gives the supreme court exclusively, all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, as a court of law can have or exercise consistently with the law of nations. But it must be remembered that the act of April 30tb, 1790, sections 25 and 26, declares void any writ or process whereby the person of any ambassador, or other public minister, their domestics or domestic servants, may be arrested or imprisoned. Art. 2. The local courts.

38. The local courts of the United States are, circuit courts, district

courts, and territorial courts., 1. The circuit courts.

39. In treating of circuit courts, it will be convenient to consider, 1st. Their organization; and, 2d. Their jurisdiction.

40.-1. Of the organization of the circuit courts. The circuit courts are the principal inferior courts established by congress. There are nine circuit courts, composed of the districts which follow, to wit:

41.-1. The first circuit consists of the districts of New Hampshire, Massachusetts, Rhode Island, and Maine. It consists of a judge of the supreme court and the district judge of the district where such court is holden. See Acts April 29, 1802 March 26, 1812 and March 30, 1820.

42.-2 The second circuit is composed of the districts of Vermont, Connecticut and New York. Act of March 3, 183 7.

43.-3. The third circuit consists of the districts of New Jersey, and eastern and western Pennsylvania;. Act of March 3, 1837.

44.-4. The fourth circuit is composed of Maryland, Delaware, and Virginia. Act of Aug. 16, 1842.

45.-5. The fifth circuit is composed of Alabama and Louisiana. Act of August 16, 1842.

46.-6. The sixth circuit consist of the districts of North Carolina, South Carolina, and Georgia. Act of Aug. 16, 1842.

47.-7. The seventh circuit is composed of Ohio, Indiana, Illinois, and Michigan. Act of March 3, 1837, Sec. 1.

48.-8. The eighth circuit includes Kentucky, East and West Tennessee, and Missouri. Act of March 3, 1837, Sec. 1. By the Act of April 14, 1842, ch. 20, Sec. 1, it is enacted that the district court of the United States at Jackson, in the district of West Tennessee, shall in future be attached to, and form a part of the eighth judicial district of the United States, with all the power and jurisdiction of the circuit court held at Nashville,

in the middle district of Tennessee.

49.-9. The ninth circuit is composed of the districts of Alabama, the eastern district of Louisiana, the district of Mississippi, and the district of Arkansas. Act of March 3, 1837, Sec. 1.

50. In several districts of the United States, owing to their remoteness from any justice of the supreme court, there are no circuit courts held. But in these, the district court there is authorized to act as a circuit court, except so far as relates to writs of error or appeals from judgments or decrees in such district court.

51. The Act of March 3, 1837, provides, "That so much of any act or acts of congress as vests in the district courts of the United States for the districts of Indiana, Illinois, Missouri, Arkansas, the eastern district of Louisiana, the district of Mississippi, the northern district of New York, the western district of Virginia, and the western district of Pennsylvania, and the district of Alabama, or either of them, the power and jurisdiction of circuit courts, be, and the same is hereby, repealed; and there shall hereafter be circuit courts held for said districts by the chief or associate justices of the supreme court, assigned or allotted to the circuit to which such districts may respectively belong, and the district judges of such districts, severally and respectively, either of whom shall constitute a quorum; which circuit courts, and the judges thereof, shall have like powers, and exercise like jurisdiction as other circuit courts and the judges thereof; and the said district courts, and the judges thereof, shall have like powers, and exercise like jurisdiction, as the district courts, and the judges thereof in the other circuits. From all judgments and decrees, rendered in the district courts of the United States for the western district of Louisiana, writs of error and appeals shall lie to the circuit court in the other district in said state, in the same manner as from decrees and judgments rendered in. the districts within which a circuit

court is provided by this act."

52. In all cases where the day of meeting of the circuit court is fixed for a particular day of the mouth, if that day happen on Sunday, then, by the Act of 29th April, 1802, and other acts, the court shall be held the next day.

53. The Act of April 29, 1802, Sec. 5, further provides, that on every appointment which shall be hereafter made, of a chief justice, or associate justice, the chief justice and associate justices shall allot among themselves the aforesaid circuits, as they shall think fit, and shall enter such allotment on record.

54. The Act of March 3, 1837, Sec. 4, directs that the allotment of the chief justice and the associate justices of the said supreme court to the several circuits shall be made as heretofore.

55. And by the Act of August 16, 1842, the justices of the supreme court of the United States, or a majority of the are required to allot the several districts among the justices of the said court.

56. And in case no such allotment shall be made by them, at their sessions next succeeding such appointment, and also, after the appointment of any judge as aforesaid, and before any other allotment shall have been made, it shall and may be lawful for the president of the United States, to make such allotment as he shall deem proper which allotment, in either case, shall be binding until another allotment shall be made. And the circuit courts constituted by this act shall have all the power, authority and jurisdiction, within the several districts of their respective circuits, that before the 13th February, 1801, belonged to the circuit courts of the United States.

57. The justices of the supreme court of the United States, and the district judge of the district where the circuit is holden, compose the

judges of the circuit court. The district judge may alone hold a circuit court, though no judge of the supreme court may be allotted to that circuit. Pollard v. Dwight, 4 Cranch, 421.

58. The Act of September 24th, 1789, Sec. 6, provides, that a circuit court may be adjourned from day to day, by one of its judges, or if none are present, by the marshal of the district, until a quorum be convened. By the Act of May 19, 1794, a circuit court in any district, when it shall happen that no judge of the supreme court attends within four days after the time appointed by law, for the commencement of the sessions, may be adjourned to the next stated term, by the judge of the district, or, in case of his absence also, by the marshal of the district. But by the 4th section of the Act of April 29, 1802, where only one of the judges thereby directed to hold the circuit courts shall attend, such circuit court may be held by the judge so attending.

59. By the Act of March 2, 1809, certain duties are imposed oil the justices of the supreme court, in case of the disability of a district judge within their respective circuits to hold a district court. Sect. 2, enacts, that in case of the disability of the district judge of either of the district courts of the United States, to hold a district court, and to perform the duties of his office, and satisfactory evidence thereof being shown to the justice of the supreme court allotted to that circuit, in which such district court ought, by law to be holden, and on application of the district attorney, or marshal of such district, in writing, the said justice of the supreme court shall, thereupon, issue his order in the nature of a certiorari) directed to the clerk of such district court, requiring him forthwith to certify unto the next circuit court, to be holden, in said district, all actions, suits, pauses, pleas, or processes, civil or criminal, of what nature or land soever, that may be depending in such district court, and undetermined, with all the proceedings thereon, and all

files, and papers relating, thereto, which said order shall be immediately published in one or more newspapers, printed in said district, and at least thirty days before the session of such circuit court, and shall be deemed a sufficient notification to all concerned. And the said circuit court shall, thereupon, have the same cognizance of all such actions, suits, causes, pleas, or processes, civil or criminal, of what nature or kind soever, and in the like manner, as the district court of said district by law might have, or the circuit court, had the same been originally commenced therein, and shall proceed to hear and determine the same accordingly; and the said justice of the supreme court, during the continuance of such disability, shall, moreover, be invested with, and exercise all and singular the, powers and authority, vested by law in the judge of the district court in said district. And all bonds and recognizances taken for, or returnable to, such district court, shall be construed and taken to be the circuit court to be holden thereafter, in pursuance of this act, and shall have the same force and effect in such court as they would have had in the district court to which they were taken. Provided, that nothing in this act contained shall be so construed, as to require of the judge of the supreme court, within whose circuit such district may lie, to hold any special court, or court of admiralty, at any other time than the legal time for holding the circuit court of the United States in and for such district.

60. Sect. 2, provides, that the clerk of such district shall, during the continuance of the disability of the district judge, continue to certify, as aforesaid, all suits or actions, of what nature or kind soever, which may thereafter be brought to such district court, and the same transmit to the circuit court next thereafter to be holden in the same district. And the said circuit court shall have cognizance of the same, in like manner as is hereinbefore provided in this act, and shall proceed to bear and determine

the same. Provided, nevertheless, that when the disability of the district judge shall cease, or be removed, all suits or actions then pending and undetermined in the circuit court, in which, by law, the district courts have an exclusive original cognizance, shall be remanded, and the clerk of the said circuit court shall transmit the same, pursuant to the order of the said court, with all matters and things relating thereto, to the district Court next thereafter to be holden in said district, and the same proceedings shall be had therein, as would have been, had the same originated, or been continued, in the said district court.

61. Sect. 3, enacts, that in case of the district judge in any district being unable to discharge his duties as aforesaid, the district clerk of such district shall be authorized and empowered, by leave or order of the circuit judge of the circuit in which such district is included, to take, during such disability of the district judge, all examinations, and depositions of witnesses, and to make all necessary rules and orders, preparatory to the final hearing of all causes of admiralty and maritime jurisdiction. See 1 Gall. 337 1 Cranch, 309 note to Hayburn's case, 3 Dall. 410.

62. If the disability of the district judge terminate in his death, the circuit court must remand the certified causes to the district court. Ex parte United States, 1 Gall. 337.

63. By the first section of the Act of March 3, 1821, in all suits and actions in any district court of the United States, in which it shall appear that the judge of such court is any ways concerned in interest, or has been of counsel for either party, or is so related to, or connected with, either party, as to render it improper for him, in his opinion, to sit on the trial of such suit or action, it shall be the duty of such judge, on application of either party, to cause the fact to be entered on the records of the court, and also an order that an authenticated copy the thereof, with all

the proceedings in such suit or action, shall be forthwith certified to the next circuit court of the district, and if there be no circuit court in such district, to the next circuit court in the state, and if there be no circuit court in such state, to the most convenient circuit court in an adjacent state; which circuit court shall, upon such record being filed with the clerk thereof, take cognizance thereof, in like manner as if such suit or action had been originally commenced in that court, and shall proceed to bear and determine the same accordingly, and the jurisdiction of such circuit court shall extend to all such cases to be removed, as were cognizable in the district court from which the same was removed.

64. And the Act of February 28, 1839, Sec. 8, enacts, "That in all suits and actions, in any circuit court of the United States, in which it shall appear that both the judges thereof, or the judge thereof, who is solely competent by law to try the same, shall be any ways concerned in interest therein, or shall have been of counsel for either party, or is, or are so related to, or connected with, either party as to render it improper for him or them, in his or their opinion, to sit in the trial of such suit or action, it shall be the duty of such judge, or judges, on application of either party, to cause the fact to be entered on the records of the court; and, also, to make an order that an authenticated copy thereof, with all the proceedings in such suit or action, shall be certified to the most convenient circuit court in the next adjacent state, or in the next adjacent circuit; which circuit court shall, upon such record and order being filed with the clerk thereof, take cognizance thereof in the same manner as if such suit or action had been rightfully and originally commenced therein, and shall proceed to hear and determine the same accordingly; and the proper process for the due execution of the judgment or decree rendered therein, shall run into, and may be executed in, the district where such judgment or

decree was rendered; and, also, into the district from which such suit or action was removed."

65. The judges of the supreme court are not appointed as circuit court judges, or, in other words, have no distinct commission for that purpose: but practice and acquiescence under it, for many years, were held to afford an irresistible argument against this objection to their authority to act, when made in the year, 1803, and to have fixed the construction of the judicial system. The court deemed the contemporary exposition to be of the most forcible nature, and considered the question at rest, and not to be disturbed then. Stuart v. Laird, 1 Cranch, 308. If a vacancy exist by the death of the justice of the supreme court to whom the district was allotted, the district judge may, under the act of congress, discharge the official duties, (Pollard v. Dwight, 4 Cranch, 428. See the fifth section of the Act of April 29, 1802,) except that he cannot sit upon a writ of error from a decision in the district court. United States v. Lancaster, 5 Wheat. 434.

66. It is enacted, by the Act of February 28, 1839, Sec. 2, that all the circuit courts of the United States shall have the appointment of their own clerks; and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court.

67. The marshal of the district is an officer of the court, and the clerk of the district court is also clerk of the circuit court in such district. Act of September 24, 1789, Sec. 7.

68. In the District of Columbia, there is a circuit court established by particular acts of congress, composed of a chief justice and two associates. See Act. of February 27, 1801; 12 Pet. 524; 7 Pet. 203; 7 Wheat. R. 534; 3 Cranch, 159; 8 Cranch, 251; 6 Cranch 233. Sec. 2. Of the Jurisdiction of the Circuit Courts.

69. The jurisdiction of the circuit courts is either civil or criminal. (1.) Civil Jurisdiction. The civil jurisdiction is either at law or in

equity. Their civil jurisdiction at law is, 1st. Original. 2d. By removal of actions from the state courts. 3d. By writ of mandamus. 4tb. By appeal.

70.-1st. The original jurisdiction of the circuit courts at law, may be considered, first, as to the matter in controversy second, with regard to the parties litigant. (1.) The Matter in Dispute.

71. By the Act of September 24, 1789, Sec. 11, to give jurisdiction to the circuit court, the matter in dispute must exceed $500. In actions to recover damages for torts, the sum laid in the declaration is the criterion as to the matter in dispute. 3 Dall. 358. In an action of covenant on an instrument under seal, containing a penalty less than $500, the court has jurisdiction if the declaration demand more than $500. 1 Wash. C. C. R. 1. In ejectment, the value of the land should appear in the declaration; 4 Wash. C. C. R. 624; 8 Cranch, 220; 1 Pet. 73; but though the jury do not find the value of the land in dispute, yet if evidence be given on the trial, that the value exceeds $500, it is sufficient to fix the jurisdiction; or the court may ascertain its value by affidavits. Pet. C. C. R. 73.

72. If the matter in dispute arise out of a local injury, for which a local action must be brought, in order to give the circuit court jurisdiction, it must be brought in the district where the lands lie. 4 Hall's Law Journal, 78.

73. By various acts of congress, jurisdiction is given to the circuit courts in cases where actions are brought to recover damages for the violation of patent and Copyrights, without fixing any amount as the limit. See Acts of April 17, 1800, Sec. 4; Feb. 15, 1819; 7 Johns. 144; 9 Johns. 507.

74. The circuit courts have jurisdiction in cases arising under the patent laws. By the Act of July 4, 1836, Sec. 17, it is enacted, "That all

actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court; which courts shall have power, upon bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor, as secured to him by any law of the United States, on such terms and conditions as said courts may deem reasonable. Provided, however, That from all judgments and decrees, from any such court rendered in. the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the game."

75. In general, the circuit court has no original jurisdiction of suits for penalties and forfeitures arising under the laws of the United States, nor in admiralty cases. 2 Dall. 365 4 Dall. 342; Bee, 19. (2.) The character of the parties.

76. Under this head will be considered 1. The United States. 2. Citizens of different states. 3. Suits where an alien is a party. 4. When an assignee is plaintiff. 5. Defendant must be an inhabitant of the circuit. (i.) The United States.

77. The United States may sue on all contracts in the circuit courts where the sum in controversy exceeds, besides costs, the sum of $500 but, in cases of penalties, the action must be commenced in the district court, unless the law gives express jurisdiction to the circuit courts. 4 Dall. 342. Under the Act of March 3, 1815, Sec. 4, the circuit court has

jurisdiction concurrently with the district court of all suits at common law where any officer of the United States sues under the authority of an act of congress; as where the postmaster general sues under an act of congress for debts or balances due to the general post-office. 12 Wheat. 136. See 2 Pet. 447; 1 Pet. 318.

78. The circuit court has jurisdiction on a bill in equity filed b the United States against the debtor of their debtor, they claiming priority under the statute of March 2, 1798, c. 28, Sec. 65, though the law of the state where the suit is brought permits a creditor to proceed against the debtor of his debtor by a peculiar process at law. 4 Wheat. 108. (ii.) Suits between citizens of different states.

79. The Act of September 24, 1789, Sec. 11, gives jurisdiction to the circuit court in suits of civil nature when the matter in dispute is of a certain amount, between a citizen of the state where the suit is brought, and a citizen of another state; one of the parties must therefore be a citizen of the state where the such is brought. See 4 Wash. C. C. R. 84; Pet. C. C. R. 431; 1 Sumn. 581; 1 Mason, 520; 5 Cranch, 288; 3 Mason, 185; 8 Wheat.'699; 2 Mason, 472; 5 Cranch, 57; Id. 51; 6 Wheat. 450; 1 Pet. 238; 4 Wash. C. C. R. 482, Id. 595.

80. Under this section the division of a state into two or more districts does not affect the jurisdiction of the circuit court, on account of citizenship. The residence of a party in a different district of a state from that in which the suit is brought, does not exempt him from the jurisdiction of the court; if he is found in the district where he is sued he is not within the prohibition of this section. 11 Pet. 25. A territory is not a state for the purpose of giving jurisdiction, and, therefore, a citizen of a territory cannot sue the citizen of a State in the circuit court. 1 Wheat. 91. (iii.) Suits where on alien is a party.

81. The Act of September 24, 1780, Sec. 11, gives the circuit court cognizance of all suits of a civil nature where an alien is a party; but these general words; must be restricted by the provision in the constitution which gives jurisdiction in controversies between a state, or the citizens of a state, and foreign states, citizens or subjects; and the statute cannot extend the jurisdiction beyond the limits of the constitution. 4 Dall. 11; 5 Cranch, 308. When both parties are aliens, the circuit court has no jurisdiction. 4 Cranch, 46; 4 Dall. 11. An alien who holds lands under a special law of the state in which he is resident, may maintain an action in relation to those lands, in the circuit court. 1 Baldw. 216. (iv.) When an assignee is the plaintiff.

82. The court has no jurisdiction unless a suit might have been prosecuted in such court to recover on the contract assigned, if no assignment had been made, except in cases of bills of exchange. Act of September 24, 1789, Sec. 11; see 2 Pet. 319; 1 Mason, 243; 6 Wheat. 146; 11 Pet. 83; 9 Wheat. 537; 6 Cranch, 332; 4 Wash. C. C. R. 349; 4 Mason, 435; 12 Pet. 164; 2 Mason, 252. It is said that this section of the act of congress has no application to the conveyance of lands from a citizen of one state to a citizen of another. The grantee in such, case may maintain his action in the circuit court, when otherwise properly qualified, to try the title to such lands. 2 Sumn. 252. (V.) The defendant must be an inhabitant of, or found in the circuit.

83. The circuit court has no jurisdiction of an action against a defendant unless he be an inhabitant of the district in which such court is located, or found therein, at the time of serving the writ. 3 Wash. C. C. R. 456. A citizen of one state may be sued in another, it the process be served upon him in the latter; but in such cases) the plaintiff must be a citizen of the latter state, or an alien. 1 Pet. C. C. R. 431. 2d. Removal of actions from the state court's.

84. The, Act of September 24, 1789, gives, in certain cases, the right of removing a suit instituted in a state court to the circuit court of the district. It is enacted by that law, that if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought, against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court, and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial, into the next circuit court, to be held in the district where the suit is pending, and offer good and sufficient security for his entering in such court, on the first day of its session, copies of the said process against him, and also for his then appearing and entering special bail in the cause, if special bail was originally required therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause. And any bail that may have been originally taken shall be discharged. And the said copies being entered as aforesaid in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process. And any attachment of the goods or estate of the defendant, by the original process, shall hold the goods or estate so attached, to answer the final judgment, in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the circuit court in which the suit commenced. Vide Act of September 24, 1789, Sec. 12; 4 Dall. 11; 5 Cranch, 303; 4 Johns. R. 493; 1 Pet. R. 220; 2 Yeates, R. 275; 4 W. C. C. R. 286, 344.

85. By the Constitution, art. 3, Sec. 2, 1, the judicial power shall extend to controversies between citizens of the same state, claiming lands under grants of different states.

86. By a clause of the 12th section of the Act of September 24th, 1789, it is enacted, that, if in any action commenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court, and make affidavit, if it require it, that he claims, and shall rely upon a right or title to the land, under grant from a state, other than that in which the suit is pending, and produce the original grant, or an exemplification of it, except where the loss of records shall put it out of his power, and shall move that the adverse party inform the court, whether he claims a right of title to the land under a grant from the state in which the suit is pending; the said adverse party shall give such information, otherwise not be allowed to plead such grant, or give it in evidence upon the trial; and if he informs that he does claim under any such grant, the party claiming under the grant first mentioned, may then, on motion, remove the cause for trial, to the next circuit court to be holden in such district. But if he is the defendant, he shall do it under the same regulations, as in the before mentioned case of the removal of a cause into such court by an alien. And neither party removing the cause shall be allowed to plead, or give evidence of, any other title than that by him stated as aforesaid, as the ground of his claim. See 9 Cranch, 292 2 Wheat. R. 378.

87. Application for removal must be made during the term at which the defendant enters his appearance. 1 J. J. Marsh. 232. If a state court agree to consider a petition to remove the cause as filed of the preceding term, yet if the circuit court see by the record, that it was not filed till a subsequent term, they will not permit the cause to be docketed. Pet. C.. C. R. 44 Paine, 410 but see 2 Penning. 625.

88. In chancery, when the defendant wishes to remove the suit, he must file his petition when he enters his appearance; 4 Johns. Ch. 94; and in an action in a court of law, at the time of putting in special bail. 12 Johns. 153. And if an alien file his petition when he filed special bail, he is in time, though the bail be excepted to. 1 Caines, 248; Coleman, 58. A defendant in ejectment may file his petition. when he is let in to defend. 4 Johns. 493. See Pet. C. C. R. 220; 2 Wash. C. C. R. 463; 2 Yeates, 275, 352; 3 Dall. 467; 4 Wash. C. C. R. 286; 2 Root 444; 5 John. Ch. R. 300 3 Harn. 48; 4 Wash. C. C. R. 84. 3d. Remedy by Mandamus.

89. The power of the circuit Court to issue a mandamus, is confined, exclusively, to cases in which it may be necessary for the exercise of a jurisdiction already existing; as, for instance, if the court below refuse to proceed to judgment, then a mandamus in the nature of a procedendo may issue. 7 Cranch, 504; 6 Wheat. R. 598. After the state court had refused to permit the removal of a cause on petition, the circuit court issued a mandamus to transfer the cause.

4th. Appellate Jurisdiction.

90. The appellate jurisdiction is exercised by means of, 1. Writs of error. 2 Appeals from the district courts in admiralty and maritime jurisdiction. 3. Certiorari. 4. Procedendo.

91.-[1.] This court has jurisdiction to issue writs of error to the district court, on judgments of that court in civil cases at common law.

92. The 11th section of the Act of September 24, 1789, provides, that the circuit courts shall also have appellate jurisdiction from the district courts, under the regulations and restrictions thereinafter provided.

93. By the 22d section, final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the, sum or value of fifty dollars, exclusive of costs, may be reexamined, and reversed or

affirmed in a circuit court holden in the same district, upon a writ of error, whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record and assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the supreme court, the adverse party having at least twenty days notice. But there shall be no reversal on such writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact. And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of; or, in case the person entitled to such writ of error be an infant, non compos mentis, or imprisoned, then within five years, as aforesaid, exclusive of the time of such disability. And every justice or judge signing a citation or any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs, if he fail to make his plea good.

94. The district judge cannot sit in the circuit court on a writ of error to the district court. 5 Wheat. R. 434.

95. It is observed above, that writs of error may be issued to the district court in civil cases at common law, but a writ of error does not lie from a circuit to a district court in an admiralty or maritime cause. 1 Gall. R. 5..

96.-[2.] Appeals from the district to the circuit court take place generally in civil causes of admiralty or maritime jurisdiction.

97. By the Act of March 3, 1803, Sec. 2, it is enacted, that from all final judgments or decrees in any of the district courts of the United States, an appeal where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the district court next to be holden in the district where such final judgment or

judgments, decree or decrees shall be rendered: and the circuit courts are thereby authorized and required, to hear and determine such appeals.

98.-[3.] Although no act of congress authorizes the circuit court to, issue a certiorari to the district court for the removal of a cause, yet if the cause be so removed, and instead of taking advantage of the irregularity in proper time and in a proper manner, the defendant makes the defence and pleads to issue, he thereby waives the objection, and the suit will be considered as an original one in the circuit court, made so by consent of parties. 2 Wheat. R. 221.

99.-[4.] The circuit court may issue a writ of procedendo to the district court.

Equity Jurisdiction of the Circuit Courts.

100. Circuit courts are vested with equity jurisdiction in certain cases. The Act of September, 1789, Sec. 11, gives original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or. the suit is between a citizen of the state where the suit is brought and a citizen of another state.

101. The Act of April 15, 1819, Sec. 1, provides, "That the circuit court of the United States shall. have original cognizance, as well in equity as at law, of all actions, suits, controversies, and cases arising under may law of the United States, granting or confirming to authors or inventors, the exclusive right to their respective writings, inventions, and discoveries; and upon any bill in equity filed by any party aggrieved, in such cases, shall have authority to grant injunctions according to the course and principles of courts of equity, to prevent the violation of the

rights of any authors or inventors, secured to them by any laws of the United States, on such terms and conditions as the said courts may deem fit and reasonable:.provided, however, that from all judgments and decrees of any circuit courts rendered in the premises, a writ of error or appeal as the case may. require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances, as is now provided by law, in other judgments and decrees of such circuit court."

102. By the Act of August 23, 1842, it is enacted, Sec. 5, "That the district courts, as courts of admiralty, and the circuit courts, as courts of equity, shall be deemed always open for the purpose of filing libels, bills, petitions, answers, pleas, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings whatever, preparatory to the hearing of all causes pending therein upon their merits. And it shall be competent for any. judge of the court, upon reasonable notice to the parties, in the clerk's office or at chambers, and in vacation as well as in term, to make and direct, and award all such process, commissions, and interlocutory orders, rules, and other proceedings, whenever the same are not grantable of course according to the rules and practice of the court."

(2.) Criminal Jurisdiction of the Circuit Courts.

103. The often cited 11th section of the Act of the 24th of September, 1789, gives the circuit courts exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where that act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable. therein. The jurisdiction of the circuit courts in criminal cases is confined to offences committed within the district for which those courts respectively sit when they are committed on

land. Serg. Const. Law, 129; 1 Gallis. 488.

2. Of the District Courts.

104. In treating of district courts, the same division which was made, in considering circuit courts, will here be adopted, by taking a view, 1. Of their organization and, 2. Of their jurisdiction. Sec. 1. Of the Organization of the District Courts.

105. The United States are divided into districts, in each of which is a court called a district court, which is to consist of one judge, who is to reside in the district for which he is appointed, and to hold annually four sessions. Act of September 24, 1789. By subsequent acts of congress, the number of annual sessions in particular districts, is sometimes more and sometimes less; and they are to be held at various places in the district. There is also a district court in the District of Columbia, held by the chief justice of the circuit court of that district. Sec. 2. Jurisdiction of the District Courts.

106. Their jurisdiction is either civil or criminal.

107.-(1.) Their civil jurisdiction extends, 1. To admiralty and maritime causes: the admiralty and maritime jurisdiction, is either the ordinary jurisdiction, which comprehends prize suits; cases of salvage actions for torts; and actions on contracts, such. as seamen's wages, pilotage, bottomry, ransom, materials, and the like; or the extraordinary or expressly vested jurisdiction, which includes cases of seizures under the revenue laws, &c.; and captures within the jurisdiction of the United States.

108.-2. To cases of seizure on land under the laws of the United States, and in suits for penalties and forfeitures, incurred under the laws of the United States.

109.-3. To cases in which an alien sues for a tort, in violation of the

laws of nations, or a treaty of the United States.

110.-4. To suits instituted by the United States.

111.-5. To actions by and against consuls.

112.-6. To certain cases in equity.

113.-1. The admiralty and maritime jurisdiction of the district court is ordinary or extraordinary.

114.-1st. The ordinary jurisdiction is granted by the Act of September 24th, 1789, It is there enacted, that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction. This jurisdiction is exclusive. Bee, 19; 3 Dall. 16; Paine, 111; 4 Mason, 139.

115. This ordinary jurisdiction is exercised in,

116.-1. Prize suits. The Act of September 24, 1789, Sec. 9, vests in the district courts as full jurisdiction of all prize causes as the admiralty of England; and this jurisdiction is an ordinary inherent branch of the powers of the court of admiralty, whether considered as prize courts or instance courts, 3 Dall. 16; Paine, 111.

117. The act of congress marks out not only the general jurisdiction of the district courts, but also that of the several courts in relation to each other, in cases of seizure on the waters of the United States, navigable, &c. When the seizure is made within the waters of one district, the court of that district has exclusive, jurisdiction, though the offence may have been committed out of the district. When the seizure is made on the high seas, the jurisdiction is in the court of the district where the property may be brought. 9 Wheat. 402; 6 Cranch; 281; 1 Mason, 360; Paine, 40.

118. When the seizure has been made within the waters of a foreign nation, the district court has jurisdiction, when the property has been brought into the district, and a prosecution has been instituted there. 9 Wheat. 402; 9 Cranch. 102.

119. The district court has jurisdiction of seizures, and of the question of who is entitled to their proceeds, as informers or otherwise; and the principal jurisdiction is exclusive; the question, as to who is the informer, is also exclusive. 4 Mason, 139.

120.-(2.) Cases of salvage. Under the constitution and laws of the United States, this court has exclusive original cognizance in cases of salvage; and, as a consequence, it has the power to determine to whom the residue of the property belongs, after deducting the salvage. 3 Dall. 183.

121.-(3.) Actions arising out of tort's and injuries. The district court has jurisdiction over all torts and injuries committed on the high seas, and in ports or harbors within the ebb and flow of the tide. Vide 1 Wheat. R. 304; 2 Gall. R. 389; 1 Mason, 96; 3 Mason., 242; 4 Mason, 380; 18 Johns. R. 257.

122. A court of admiralty has jurisdiction to redress personal wrongs committed on a passenger, on the high seas, by the master of a vessel, whether those wrongs be by direct force or consequential injuries. 3 Mason, 242.

123. The admiralty may decree damages for an unlawful capture of an American vessel by a French privateer, and may proceed by attachment in ? em. Bee, 60.

124. It has jurisdiction in cases of maritime torts, in personam as well as in rem. 10 Wheat. 473,

125. This court has also jurisdiction of petitory suits to reinstate owners of vessels who have been displaced from their possession. 5 Mason, 465. It exercises jurisdiction of all torts and injuries committed on the high seas, and in ports or harbors within the flow or ebb of the tide. 2 Gallis. 398; Bee, 51.

126. A father, whose minor son has been tortiously abducted and seduced

on a voyage on the high seas, may sue, in the admiralty, in the nature of an action per quod, &c., also for wages earned by such son in maritime service. 4 Mason, 380.

127.-(4.) Suits on contracts. As a court of admiralty, the district court has a jurisdiction, concurrent with the courts of common law, over all maritime contracts, wheresoever the same may be made or executed, or whatsoever be the form of the contract. 2 Gallis. 398. It may enforce the performance of charter parties for foreign voyages, and by proceeding in rem, a lien for freight under them. 1 Sumn. 551; 2 Sumn. 589. It has jurisdiction over contracts for the hire of seamen, when the service is substantially performed on the sea, or on waters within the flow and reflow of the tide 10 Wheat. 428; 7 Pet. 324; Bee, 199; Gilp. 529. But unless the services are essentially maritime, the jurisdiction does not attach. 10 Wheat. 428; Gilp. 529.

128. The master of a vessel may sue in the admiralty, for his wages; and the mate, who on his death succeeds him, has the same right. 1 Sumn. 157; 9 Mason, 161; 4 Mason, 196. But when the services for which he sues have not been performed by him as master, they cannot be sued for in admiralty. 3 Mason, 161.

129. The jurisdiction of the admiralty attaches when the services are performed on a ship in port where the tide ebbs and flows. 7 Pet. 324; Gilp. 529.

130. Seamen, employed on board of steamboats and lighters engaged in trade or commerce on tide-water, are within the admiralty jurisdiction. But those in ferryboats are not so. Gilp. 532 Gilp. 203.

131. Wages may be recovered in the admiralty by the pilot, deck-hands, engineer, and firemen, on board of a steamboat. Gilp. 505.

132. But unless the service of those employed contribute in navigating the vessel, or to its preservation, they cannot sue for their wages in the

admiralty; musicians on board of a vessel, who are hired and employed as such, cannot therefore enforce a payment of their wages by a suit in rem in the admiralty. Gilp. 516.

133.-2d. The extraordinary jurisdiction of the district court, as a court of admiralty, or that which is vested by various acts of congress, consists of:

(1.) Seizures under the laws of imposts, navigation, or trade of the United States. It is enacted, by the Act of September 24, 1789, Sec. 9, that the district court shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas; saving to suitors, in all cases, the right of a common law remedy, when the common law is competent to give it.

134. Causes of this kind are to be tried by the district court, and not by a jury. 4 Cranch, 438; 5 Cranch, 281; 1 Wheat. 9, 20: 7 Cranch, 112; 3 Dall. 297.

135. It is the place of seizure, and not the committing of the offence, that, under the Act of September 24, 1789, gives jurisdiction to the court; 4 Cranch, 443 5 Cranch, 304; for until there has been a seizure, the forum cannot be ascertained. 9 Cranch, 289.

136. When the seizure has been voluntarily abandoned, it loses its validity, and no jurisdiction attaches to any court, unless there be a new seizure. 10 Wheat. 325 1 Mason, 361.

137.-(2.) The. admiralty jurisdiction, expressly vested in the district court, embraces, also, captures made within the jurisdictional limits of the United States. By the Act of April. 20, 1818, Sec. 7, the district court

shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts and shores thereof.

138.-2. The civil jurisdiction of the district court extends to cases of seizure on land, under the laws of the United States, and in suits for penalties and forfeitures incurred under the laws of the United States.

139. The Act of September 24, 1789, Sec. 9, gives to the district court exclusive original cognizance of all seizures made on land, and other waters than as aforesaid, (that is, those which are navigable by vessels of ton or more tons burden, within their respective districts, or on the high seas,) and of all suits for penalties and forfeitures incurred under the laws of the United States.

140. In all cases of seizure on land, the district court sits as a court of common law, and its jurisdiction is entirely distinct from that exercised in case of seizure on waters navigable by vessels of ten tons burden and upwards. 8 Wheat. 395.

141. Seizures of this kind are triable by jury; they are not cases of admiralty and maritime jurisdiction. 4 Cranch, 443.

142.-3. The civil jurisdiction of the district court extends also to cases in which an alien sues for a tort, in violation of the law of nations, or a treaty of tho United States.

143. The Act of September 24, 1789, Sec. 9, directs that the district court shall have cognizance, concurrent with the courts of the several states, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only, in violation of the law of nations, or of a treaty of the United States.

144.-4. The civil jurisdiction of this court extends further to suits instituted by the United States. By the 9th section of the Act of September 24, 1789, the district court shall also have cognizance, concurrent as last

mentioned, of all suits at common law, where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And by the Act of March 3; 1815, Sec. 4, it has cognizance, concurrent with the courts and magistrates of the several states, and the circuit courts of the United States, of all suits at common law where the United States, or any officer thereof, under the authority of any act of congress sue, although the debt, claim, or other matter in dispute, shall not amount to one hundred dollars.

145. These last words do not confine the jurisdiction given by this act to one hundred dollars, but prevent it from stopping at that sum: and consequently, suits for sums over one hundred dollars are cognizable in the district, circuit, and state courts, and before magistrates, in the cases here mentioned. By virtue of this act, these tribunals have jurisdiction over suits brought by the postmaster-general, for debts and balances due the general post office. 12 Wheat. 147; 2 Pet. 447; 1 Pet. 318.

146.-5. This court has jurisdiction of actions by and against consuls or vice-consuls, exclusively of the courts of the several states, except for offences where other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is inflicted.

147. For offences above this description formerly the circuit court only had jurisdiction in cases of consuls. 5 S. & R. 545; 2 Dall. 299. But by the Act of August 23, 1842, the district courts shall have concurrent jurisdiction with the circuit courts of all crimes and offences against the United States, the punishment of which is not capital. And by the, Act of February 28, 1839, Sec. 5, the punishment of whipping is abolished. See also the Act of 28th Sept. 1850, making appropriations for the naval service, &c.

148.-6. The jurisdiction of the district court under the bankrupt laws

will be found under the title Bankrupt.

149.-7. The district courts have equitable jurisdiction in certain cases.

150. By the first section of the Act of February 13, 1807, the judges of the district courts of the United States shall have as full power to grant writs of injunctions, to operate within their respective districts, as is now exercised by any of the judges of the supreme court of the United States. under the same rules, regulations, and restrictions, as are prescribed by the several acts of congress establishing the judiciary of the United States, any law to the contrary notwithstanding. Provided, that the same shall not, unless so ordered by the circuit court, continue longer than to the circuit then next ensuing; nor shall an injunction be issued by a district judge in any case, where the party has had a reasonable time to apply to the circuit court for the writ.

151. An injunction may be issued by the district judge under the Act of March 3, 1820, SSSS 4, 5, where proceedings have taken place by warrant and distress against a debtor to the United States or his sureties, subject by Sec. 6, to appeal to the circuit court from the decision of such district judge in refusing or dissolving the injunction, if such appeal be allowed by a justice of the supreme court. On which, with an exception as to the necessity of an answer on the part of the United States, the proceedings are to be as in other cases.

152. The Act of September 24, 1789, Sec. 14, vests in the judges of the district courts, power to grant writs of habeas corpus, for the purpose of an inquiry into the cause of commitment.

153. Other acts give them power to issue writs, make rules, take depositions, &c. The acts of congress already treated of relating to the privilege of not being sued out of the district of which the defendant is an inhabitant, or in which he is found, restricting suits by assignees, and

various others, apply to the district court as well as to the circuit court.

154. By the 9th section of the Act of September 24, 1789, the trial of issues in fact in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury. Serg. Const. Law, 226, 227.

(2.) The criminal jurisdiction of the district court.

155. By the Act of August 23, 1842, Sec. 3, it is enacted that the district courts of the United States shall have concurrent jurisdiction with the circuit courts, of all crimes and offences against the United States, the punishment of which is not capital.

156. There is a class of district courts of a peculiar description. These exercise the power of a circuit court, under the same regulations as they were formerly exercised by the district court of Kentucky, which was the first of the kind.

157. The Act of September 24, 1789, Sec. 10, gives the district court of the Kentucky district, besides the usual jurisdiction of a district court, the jurisdiction of all causes, except of appeals and writs of error, thereinafter made cognizable in a circuit court, and writs of error and appeals were to lie from decisions therein to the supreme court, and under the, same regulations. By the 12th section, authority was given to remove cases from a state court to such court, in the same manner as to a circuit court.

3. The territorial courts.

158. The act to establish the territorial government of Oregon, approved August 14, 1848, establishes the judicial power of the said territory as follows: Sec. 9. The judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate

justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the just of the supreme court, at such times and places as may be prescribed by law; and the said judges shall after their appointments, respectively, reside in the districts which shall be assigned them The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: Provided, That justices of the peace shall not have jurisdiction of any case in which the title to land shall in anywise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery, as well as common law, jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of the said supreme court shall be allowed, and way be taken to the supreme court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of

either party, or other competent witness, shall exceed two thousand dollars; and in all cases where the constitution of the United States, or acts of congress, or a treaty of the United States, is brought in question; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States, and the laws of said territory, as is vested in the circuit and district courts of the United States writs of error and appeal in all such cases shall be made to the supreme court of said territory, the same as in other cases. Writs of error and, appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars; and each of said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States, and also of all cases arising under the laws of the said territory, and otherwise. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of the late Wisconsin Territory received for similar services.

159.-10. There shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as were provided by law for the attorney of the United States for the late territory of Wisconsin. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction

as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as were provided by law for the marshal of the district court of the United States, for the present [late] territory of Wisconsin; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

160. The act to establish a territorial government for Utah, approved September 9, 1850, contains the following provisions relative to this subject. They are the same in most respects with the preceding. Section 9 of this act provides, "That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: Provided, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be

held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which be shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, except only that, in all, cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said supreme court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal shall also be allowed to the supreme court of the United States, from the decisions of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom: and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes

arising under the said constitution and laws; and writs of error and appeal, in all such cases, shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon territory now receive for similar services.

161. "There shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Oregon. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States: he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees as the marshall of the district court of the United States for the present territory of Oregon; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services."

COURTESY, OR CURTESY, Scotch law. A right which vests in the husband, and is in the nature of a life-rent. It is a counterpart of the terce. Courtesy requires, 1st. That there shall have been a living child born of the marriage, who is heir of the wife, or who, if surviving, would have been entitled to succeed. 2d. That the wife shall have succeeded to the subjects in question as heir either of line, or of talzie, or of provision. 1 Bell's Com. 61; 2 Ersk. 9, 53. See Curtesy.

COURTESY OF ENGLAND. See Estates by the Courtesy.

COUSIN, domest. rel. Cousins are kindred who are the issue of two brothers

or two sisters, or of a brother and a sister. Those who descend from the brother or sister of the father of the person spoken of are called paternal cousins; maternal cousins are those who are descended from the brothers or sisters of the mother. Vide 2 Bro. C. C. 125; 1 Sim. & Stu. 301; 3 Russ. C. C. 140; 9 Sim. R. 386, 457.

COVENANT, remedies. The name of an action instituted for the recovery of damages for the breach of a covenant or promise under seal. 2 Ld. Raym. 1536 F; N. B. 145 Com. Dig. Pleader, 2 V 2 Id. Covenant, A 1; Bouv. Inst. Index, h.t.

2. The subject will be considered with reference, 1. To the kind of claim or obligation on which this action may be maintained. 2. The form of the declaration. 3. The plea. 4. The judgment.

3.-1. To support this action, there must be a breach of a promise under seal. 6 Port. R. 201; 5 Pike, 263; 4 Dana, 381; 6 Miss. R. 29. Such promise may be contained in a deed-poll, or indenture, or be express or implied by. law from the terms of the deed; or for the performance of something in futuro, or that something has been done; or in some cases, though it relate to something in presenti, as that the covenantor has, a good title. 2 Saund. 181, b. Though, in general, it is said that covenant will not lie on a contract inpresenti, as on a covenant to stand seized, or that a certain horse shall henceforth be the property of another. Plowd. 308; Com. Dig. Covenant, A 1; 1 Chit. PI.. 110. The action of covenant is the peculiar remedy for the non-performance of a promise under seal, where the damages are unliquidated, and depend in amount on the opinion of a jury, in which case neither debt nor assumpsit can be supported but covenant as well as the action of debt, may be maintained upon a single bill for a sum certain. When the breach of the covenant amounts to misfeasance, the

covenantee has an election to proceed by action of covenant, or by action on the case for a tort, as against a lessee, either during his term or afterwards, for waste; 2 Bl. R. 1111; 2 Bl. R. 848; but this has been questioned. When the contract under seal has been enlarged by parol, the substituted agreement will be considered, together with the original agreement, as a simple contract. 2 Watt's R. 451 1 Chit. Pl. 96; 3 T. R. 590.

4.-2. The declaration must state that the contract was under seal and it should make proffer of it, or show some excuse for the omission. 3 T. 11. 151. It is not, in general, requisite to state tho consideration of the defendant's promise, because a contract under seal usually imports a consideration; but when the performance of the consideration constitutes a condition precedent, such performance must be averred. So much only of the deed and covenant should be set forth as is essential to the cause of action: although it is usual to declare in the words of the deed, each covenant may be stated as to its legal effect. The breach may be in the negative of the covenant generally 4 Dall. R. 436; or, according to the legal effect, and sometimes in the alternative and several breaches may be assigned at common law. Damages being the object of the suit, should be laid sufficient to cover the real amount. Vide 3 Serg. & Rawle, 364; 4 Dall. R. 436 2 Yeates' R. 470 3 Serg. & Rawle, 564, 567; 9 Serg. & Rawle, 45.

5.-3. It is said that strictly there is no general issue in this action, though the plea of non est factum has been said by an intelligent writer to be the general issue. Steph. Pl. 174. But this plea only puts in issue the fact of scaling the deed. 1 Chit. Pl. 116. Non infregit conventionem, and nil debet, have both been held to be insufficient. Com. Dig. Pleader, 2 V 4. In Pennsylvania, by a practice peculiar to that state, the defendant may plead covenants and under this. plea, upon notice of the special matter, in writing, to the plaintiff, without form, he may give

anything in evidence which he might have pleaded. 4 Dall. 439; 2 Yeates, 107; 15 Serg. & Rawle, 105. And this evidence, it seems, may be given in the circuit courts of the United States in that state without notice, unless called for 2 W. C. C. R. 4 5 6.

6.-4. The judgment is that the plaintiff recover a named sum for his damages, which he has sustained by reason of the breach or breaches of covenant, together with costs.

COVENANT, contracts. A covenant, conventio, in its most general signification, means any kind of promise or contract, whether it be made in writing or by parol. Hawk. P. C. b. 1, c. 27, Sec. 7, s. 4. In a more technical sense, and the one in which it is here considered, a covenant is an agreement between two or more persons, entered into in writing and under seal, whereby either party stipulates for the truth of certain facts, or promises to perform or give something to the other, or to abstain from the performance of certain things. 2 Bl. Com. 303-4; Bac. Ab. Covenant, in pr.; 4 Cruise, 446; Sheppard, Touchs. 160; 1 Harring. 151, 233 1 Bibb, 379; 2 Bibb, 614; 3 John. 44; 20 John. 85; 4 Day, 321.

2. It differs from an express assumpsit in this, that the former may be verbal, or in writing not under seal, while the latter must always be by deed. In an assumpsit, a consideration must be shown; in a covenant no consideration is necessary to give it validity, even in a court of equity. Plowd. 308; 7 T. R. 447; 4 Barn. & Ald. 652; 3 Bingh. 111.

3. It is proposed to consider first, the general requisites of a covenant; and secondly, the several kinds of covenants.

4.-1. The general requisites are, 1st. Proper parties. 2d. Words of agreement. 3d A legal purpose. 4th. A proper form.

5.-1st. The parties must be such as by law can enter into a contract.

If either for want of understanding, as in the case of an idiot or lunatic; or in the case of an infant, where the contract is not for his benefit; or where there is understanding, but owing to certain causes, as coverture, in the case of a married woman, or duress, in every case, the parties are not competent, they cannot bind themselves. See Parties to Actions.

6.-2d. There must be an agreement. The assent or consent must be mutual for the agreement would be incomplete if either party withheld his assent to any of its terms. The assent of the parties to a contract necessarily supposes a free, fair, serious exercise of the reasoning faculty. Now, if from any cause, this free assent be not given, the contract is not binding. See Consent.

7.-3d. A covenant against any positive law, or public policy, is, generally speaking, void. See Nullity; Shep. Touchs. 163. As an example of the first, is a covenant by one man that he will rob another; and of the last, a covenant by a merchant or tradesman that he will not follow his occupation or calling. This, if it be unlimited, is absolutely void but, if the covenant be that he shall not pursue his business in a particular place, as, that he will not trade in the city of Philadelphia, the covenant is no longer against public policy. See Shep. Touchs. 164. A covenant to do an impossible thing is also void. Ib.

8.-4th. To make a covenant, it must, according to the definition above given, be by deed, or under seal. No particular form of words is necessary to make a covenant, but any words which manifest the intention of the parties, in respect to the subject matter of the contract, are sufficient. Sec numerous examples in Bac. Abr. Covenant, A Selw. N. P. 469; Com. Dig. Covenant, A 2; 3 Johns. R. 44; 5 Munf. 483.

9. In Pennsylvania, Delaware, and Missouri, it is declared by statute that the words grant, bargain, and sell, shall amount to a covenant that the grantor was seised of an estate in fee, free from all incumbrances done or

suffered by him, and for quiet enjoyment against his acts. But it has been adjudged that those words in the Pennsylvania statute of 1715, (and the decision will equally apply to the statutory language in the other two states,) did not amount to a general warranty, but merely to a covenant that the grantor had not done any act, nor created any incumbrance whereby the estate might be defeated. 2 Bin. 95; 11 S. & R. 111, 112; 4 Kent, Com. 460.

10.-2. The several kinds of covenants. They are, 1. Express or implied. 1. An express, covenant, or a covenant in fact, is one expressly agreed between the parties and inserted in the deed. The law does not require any particular form to create an express covenant. The formal word "covenant" is therefore not indispensably requisite. 2. Mod. 268; 3 Keb. 848; 1 Leon, 324; 1 Bing. 433; 8 J. B. Moore, 546; 1 Ch. Cas. 294; 16 East, 352; 12 East, 182 n.; 1 Bibb, 379; 2 Bibb 614; 3 John. 44; 5 Cowen, 170; 4 Day, 321 4 Conn. 508; 1 Harring. 233. The words "I oblige;" "agree," 1 Ves. 516; 2 Mod. 266; or, "I bind myself to pay so much such a day, and so much such another day;" Hardr. 178; 3 Leon. 119, Pl. 199; are held to be covenants; and so are the word's of a bond. 1 Ch. Cas. 194. But words importing merely an order or direction that other persons should pay a sum of money, are not a covenant. 6 J. B. Moore, 202, n. (a.)

11.-1. An implied covenant is one which the law intends and implies, though it be not expressed in words. 1 Common Bench Rep. 402; co. Lit. 139, b; Vaughan's Rep. 118; Rawle on Covenants, 364. There are some words which of themselves do not import an express covenant, yet being made use of in certain contracts, have a similar operation and are called covenants in law. They are as effectually binding on the parties as if expressed in the most unequivocal terms. Bac. Ab. Covenant, B. A few examples will fully explain this. If a lessor demise and grant to his lessee a house or lands for a certain term, the law will imply a covenant on the part of the lessor, that

the lessee shall during the term quietly enjoy the same against all incumbrances. Co. Litt. 384. When in a lease the words "grant," 1 Mod. 113 Freem. 367; Cro. Eliz. 214; 4 Taunt. 609; "grant and demise," 4 Wend. 502; "demise," 10 Mod. 162; 4 Co. 80; Hob. 12; or "demiserunt," I Show. 79 1 Salk. 137, are used, they are so many instances of implied covenants. And the words "yielding and paying" in a lease, imply a covenant on the part of lessee, that he will pay the rent. 9 Verm. 151; 3 Penn. 461, 464.

12.-2. Real and personal. 1st. A real covenant is one which has for its object something annexed to, or inherent in, or connected with land or other property. Co Litt. 334; enk 241; Cruise, Dig. tit. 32, c. 25, s. 22; Platt. on Cov. 60, 61; 2 Bl. Com. 304. A covenant real, which necessarily runs with the land, as to pay rent, not to cut timber, and the like, is said to be an inherent covenant. Shep. To. 161. A covenant real runs with the land and descends to the heir; it is also transferred to a purchaser. Such covenants are said to run with the land, so that he who has the one is subject to the other. Bac. Ab. Covenants, E 2. See 2 Penn. 507; 10 Wend 180; 12 Mass. 306; 17 Mass. 586; 5 Cowen, 137; 5 Ham. 156; 5 Conn. 497; 1 Wash. C. C. 375; 8 Cowen 206; 1 Dall. 210; 11 Shep. 283; 6 Met. 139; 3 Mete. 81; 3 Harring. 338; 17 Wend. 136.

13.-2. As commonly reckoned, there are five covenants for title, viz: 1. Covenant for seisin. 2. That the grantor has perfect right to convey. 3. That the grantee shall quietly possess and enjoy the premises without interruption, called a covenant for quiet enjoyment. 4. The covenant against incumbrances. 5. The covenant for further assurance. 6. Besides these covenants, there is another frequently resorted to in the United States, which is relied on more, perhaps, than any other, called the covenant of warranty. See Rawle on Covenants for Title, where the import and effect of these covenants are elaborately and luminously discussed.

14.-3. A personal covenant relates only to matters personal, as

distinguished from real, and is binding on the covenantor during life, and on his personal representatives after his decease, in respect of his assets. According to Sir William Blackstone, a personal covenant may be transformed into a real, by the mere circumstance of the heirs being named therein, and having assets by descent from the covenantor. 2 Bl. Com 304. A covenant is personal in another sense, where the covenantor is bound to fulfill the covenant himself; as, to teach an apprentice. F.N.B. 340, A.

15. Personal covenants are also said to be transitive and intransitive; the former, when the duty of performing them passes to the covenantor's representatives; the latter, when it is limited to himself; as, in the case of teaching an apprentice. Bac. Ab. h.t.

16. As they affect each other in the same deed, covenants may be divided into three classes. 1st. Dependent covenants are those in which the performance, of one depends on the performance of the other; there may be conditions which must be performed before the other party is liable to an action on his covenant. 8 S. & R. 268; 4 Conn. 3; 1 Blackf. 175; John. 209; 2 Stew. & Port. 60; 6 Cowen 296; 3 Ala. R. 330; 3 Pike 581; 2 W. & S. 227; 5 Shep. 232; 11 Verm. 549; 4 W. C. C. 714; Platt on Cov. 71; 2 Dougl. 689; Lofft, 191; 2 Selw. N. P. 443, 444. To ascertain whether covenants are dependent or not, the intention of the parties is to be sought for and regarded rather than the order or time in which the acts are to be done, or the structure of the instrument, or the arrangements of the covenant. 4 Wash. C. C. 714; 1 Root, 170; 4 Rand. 352; 4 Rawle, 26; 5 Wend. 496; 2 John. 145; 13 Mass. 410; 2 W. & S. 227; 4 W. & S. 527; Willis, 157; 7 T. R. 130; 8 T.R. 366; 5 B. & P. 223; 1 Saund. 320 n.

17.-2d. Some covenants are mutual conditions to be performed at the same time; these are concurrent covenants. When, in these cases, one party is ready and offers to perform his part, and the other refuses or neglects to

perform his, he who is ready and offers, has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. 4 Wash. C. C. 714; Dougl. 698; 2 Selw. N. P. 443; Platt. on Cov. 71.

18.-3d. Covenants are independent or mutual, when either party may recover damages from the other for the injury he may have received by a breach of the covenants in his favor, and when it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. 2 Wash. C. C. R. 456; 5 Shepl. 372; 4 Leigh, 21; 3 Watts & S. 300; 13 Mass. 410; 2 Pick. 300; 2 John. 145; 10 John. 203; Minor 21; 2 Bibb, 15; 3 Stew. 361; 1 Fairf. 49; 6 Binn. 166; 2 Marsh. 429; 7 John. 249; 5 Wend. 496; 3 Miss. 329; 2 Har. & J. 467; 4 Har. & J. 285; 2 Marsh. 429; 4 Conn. 3.

19. Covenants are affirmative and negative. 1st. An affirmative covenant is one by which the covenantor binds himself that something has already been done or shall be performed hereafter. Such a covenant will not deprive a man of a right lawfully enjoyed by him independently of the covenant; 5 as, if the lessor agreed with the lessee that he shall have thorns for hedges growing upon the land, by assignment of the lessor's bailiff; here no restraint is imposed upon the exercise of that liberty which the law allows to the lessee, and therefore he may take hedge-bote without assignment. Dy. 19 b, pl. 115; 1 Leon, 251.

20.-2d. A negative covenant is one where the party binds himself that he has not performed and will not perform a certain act; as, that he will not encumber. Such a covenant cannot be said to be performed until it becomes impossible to break it. On this ground the courts are unwilling to construe a covenant of this kind to be a condition precedent. Therefore, where a tailor assigned his trade to the defendant, and covenanted thenceforth to desist from carrying on the said business with any of the

customers, and the defendant in consideration of the performance thereof, covenanted to pay him a life annuity of 190, it was held that if the words "in consideration of the performance thereof," should be deemed to amount to a condition precedent, the plaintiff would never obtain his annuity; because as at anytime during his life he might exercise his former trade, until his death it could never be ascertained whether he had performed the covenant or not. 2 Saund. 156; 1 Sid. 464; 1 Mod. 64; 2 Keb. 674. The defendant, however, on a breach by plaintiff, might have his remedy by a cross action of

covenant. There is also a difference between a negative covenant, which is only in affirmance of an affirmative covenant precedent, and a negative covenant which is additional to the affirmative covenant. 1 Sid. 87; 1 Keb. 334, 372. To a covenant of the former class a plea of performance generally is good, but not to the latter; the defendant in that case must plead specially. Id.

21. Covenants, considered with regard to the parties who are to perform them, are joint or several.

1st. A joint covenant is one by which several parties agree to perform or do a thing together. In this case although there are several covenantors there is but one contract, and if the covenant be broken, all the covenantors living, must be sued; as there is not a separate obligation of each, they cannot be sued separately.

22.-2d. A several covenant is one entered into by one person only. It frequently happens that a number of persons enter into the same contract, and that each binds himself to perform the whole of it; in such case, when the Contract is under seal, the covenantors are severally bound for the performance of it. The terms usually employed to make a several covenant are "severally," or "each of us." In practice, it is common for the parties to

bind themselves jointly and severally, and then the covenant is both joint and several. Vide Hamm. on Parties 19; Cruise, Dig. tit. 32, c. 25, s. 18; Bac. Ab. Covenant D.

23. Covenants are executed or executory.

1st. An executed covenant is one which relates to an act already performed. Shep. To. 161.

24.-2d. An executory covenant is one to be performed at a future time. Shep. To. 161.

25. Covenants are obligatory or declaratory.

1st. An obligatory covenant is one which is binding on the party himself, and shall never be construed to raise a use. 1 Sid. 27; 1 Keb. 334.

26.-2d. A declaratory covenant is one which serves to limit and direct uses. 1 Sid. 27; 1 Heb. 334.

27. Covenants are principal and auxiliary.

1st. A principal covenant is one which relates directly to the principal matter of the contract entered into between the parties; as, if A covenants to serve B for one year.

28.-2d. An auxiliary covenant is one, which, not relating directly to the principal matter of the contract between the parties, yet relates to something connected with it; as, if A covenants with B, that C will perform his covenant to serve him for one year. In this case, if the principal covenant is void, the auxiliary is discharged. Anstr. 256.

29. Covenants are legal or illegal. 1st. A legal covenant is one not forbidden by law. Covenants of this kind are always binding on the parties.

30.-2d. An illegal covenant is one forbidden by law, either expressly or by implication. A covenant entered into, in violation of, the express provision of a statute is absolutely void. 5 Har. & J. 193; 5 N. H. Rep. 96; 6 N. H. Rep. 225; 4 Dall. 298; 6 Binn. 321; 4 S.& R. 159; 1 Binn. 118; 4 Halst. 252. A covenant is also void, if it be of immoral nature; as, a

covenant for future illicit intercourse and cohabitation; 3 Monr. 35; 3 Burr. 1568; S. C. 1 Bl. Rep. 517; 1 Esp. 13; 1 B. P. 340; or against public policy; 5 Mass. 385; 7 Greenl. 113; 4 Mass. 370; 5 Halst. 87; 4 Wash. C. C. 297; 11 Wheat. 258; 3 Day, 145; 2 McLean, 464; 7 Watts, 152; 5 Watts & S. 315; 5 How. Miss. 769; Geo. Decis. part 1, 39 in restraint of trade, when the restraint is general; 21 Wend. 166; 19 Pick. 51; 6 Pick. 206; 7 Cowen, 307; or fraudulent between the parties; 5 Mass. 16; 4 S. & R. 488; 4 Dall. 250; 7 W. & S. 111; or third persons; 3 Day, 450; 14 S. & R. 214; 3 Caines, 213; 15 Pick. 49; 2 John. 286 12 John. 306.

31. Covenants, in the disjunctive or alternative, are those which give the covenantor the choice of doing, or the covenantee the choice of having, performed one of two or more things at his election; as, a covenant to make a lease to Titus, or pay him one hundred dollars on the fourth day of July, as the covenantor, or the covenantee, as the case may be, shall prefer. Platt on Cov. 21.

32. Collateral covenants are such as concern some collateral thing, which does not at all, or not so immediately relate to the thing granted; as, to pay a sum of money in gross, that the lessor shall distrain for rent, on some other land than that which is demised, or the like. Touchs. 161; 4 Burr. 2446; 2 Wils. R. 27; 1 Ves. R. 56. These covenants are also termed covenants in gross. Vide 5 Barn. & Ald. 7, 8; Platt on Cov. 69, 70.

COVENANT NOT TO SUE. This is a covenant entered into by a party who had a cause of action at the time of making it, and by which he agrees not to sue the party liable to such action.

2. Covenants of this nature, are either covenants perpetual not to sue, or covenants not to sue for a limited time; for example, seven years.

3.-1. Covenants perpetual not to sue. These will be considered with

regard to their effect as relates, 1. To the covenantee; 2. To his partners or co-debtors.

4.-1. A covenant not to sue the covenantee at all, has the effect of a release to him, and may be pleaded as such to avoid a circuity of action. Cro. Eliz. 623; 1 T. R. 446; 8 T. R. 486; 1 Ld. Raym 688; S. C. Holt, 178; 2 Salk. 575; 3 Salk. 298; 12 Mod. 415, 548; 7 Mass. 153, 265; 16 Mass. 24; 17 Mass. 623. And see 11 Serg. & Rawle, 149.

5.-2. Where the covenantee is jointly and severally bound with another to the covenantor, a covenant not to sue him will be no protection to the other who may be sued on his several obligations and such a covenant does not mount to a release to him. 2 Salk. 575; S. C. 12 Mod. 551; 8 T. R. 168; 6 Munf. 6; 1 Com. 139; 4 Greenl. 421; 2 Dana, 107; 17 Mass. 623, 628; 16 Mass. 24; 8 Mass. 480. A covenant not to sue, entered into by only one of several partners, cannot be set up as a release in an action by all the partners. 3 P. & D. 149.

6.-2. Covenant not to sue for a limited time. Such a covenant does not operate as a release, nor can it be pleaded as such, but is a covenant only for a breach of which the obliger may bring his action. Carth. 63; 1 Show. 46; Comb 123, 4; 2 Salk. 573; 6 Wend. 471.

COVENANT FOR QUIET ENJOYMENT. A covenant usually contained in a lease, by which the lessor covenants or agrees that the tenant shall quietly enjoy the premises leased. 11 East, 641.

2. Such a covenant is express or implied; express, when it is so mentioned in the deed it is implied, either from the words used, or from the conduct of the lessor. The words "grant" or "demise" are held to amount to an implied covenant for quiet enjoyment, unless afterwards restrained by a qualified express covenant. 1 Chit. Pr. 344.

COVENANT TO STAND SEISED TO USES. A species of conveyance which derives its effect from the statute of uses, and operates without transmutation of possession.

2. By this conveyance, a person seised of lands, covenant's that he will stand seised of them to the use of another. On executing the covenant, the other party becomes seised of the use of the land, according to the terms of the use; and the statute immediately annexes the possession to the use. This conveyance has the same force and effect as a common deed of bargain and sale; the great distinction between them is, that the former can only be made use of among near domestic relations, for it must be founded on the consideration of blood or marriage. 2 Bl. Com. 338; 2 Bouv. Inst. n. 2080; 4 Kent Com 480; Lilly's Reg.h.t.; 1 Vern. by Raithby, 40, n.; Cruise, Dig. tit. 32, c. 10; 11 John. R. 337; 1 John. Cas. 91; 7 Pick. R. 111; 1 Hayw.,R. 251, 259, 271, note; 1 Conn. R. 354; 20 John. R. 85; 4 Mass. R. 135; 4 Hayw. R. 229; 1 Cowen, R. 622; 3 N. H. Rep. 234; 16 John. R. 515; 9 Wend. R. 641; 7 Mass. R. 384.

COVENANT FOR TITLE. An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey. 11 East, 642. See 4 Dall. Rep. 439.

COVENANTEE. One in whose favor a covenant is made.

COVENANTOR. One who becomes bound to perform a covenant.

2. To become a covenantor a person must be sui juris, and intend, at the time of becoming bound, to covenant to perform some act mentioned in the covenant. He can be discharged from his covenant by performance, or, by the act of the covenantee, as the non-performance of a condition precedent, a

release, or a rescission of the contract.

COVENANTS PERFORMED, pleading. In Pennsylvania, the defendant may plead covenants performed to an action of covenant, and upon this plea, upon informal notice to the plaintiff, he may give anything in evidence which he might have pleaded. 4 Dall. 439; 2 Yeates, 107; 15 S. & R. 105. And this evidence, it seems, may be given in the circuit court without notice unless called for. 2 Wash. C. C. R. 456.

COVENTRY ACT, criminal law. The common name for the statute 22 and 23 Car. II. c. 1; it having been enacted in consequence of an assault on Sir John Coventry in the street, and slitting his nose, in revenge, as was supposed, for some obnoxious words uttered by him in parliament.

2. By this statute it is enacted, that if any person shall, of malice aforethought, and by laying in wait, unlawfully cut or disable the tongue, put out an eye, slit the nose, cut off the nose or lip, or cut off or disable any limb, or member of any other person, with intent to maim or disfigure him, such person, his counsellors, aiders and abettors, shall be guilty of felony, without benefit of clergy. 4 Bl. Com. 207. This statute is copied by the act of the legislature of Pennsylvania, of April 22, 1794, s. 6, 3 Smith's Laws of Pa. 188; and the offence is punished by fine and imprisonment. For the act of Connecticut, see 2 Swift's Dig. 293.

COVERT, BARON. A wife; so called, from her being under the cover or protection of her husband, baron or lord.

COVERTURE. The state or condition of a married woman.

2. During coverture, the being of the wife is civilly merged, for many purposes, into that of her husband; she can, therefore, in general, make no

contracts without his consent, express or implied. Com. Dig. Baron and Feme, W; Pleader, 2 A 1; 1 Ch. Pl. 19, 45; Litt. s. 28; Chit. Contr. 39; 1 Bouv. Inst. n. 276.

3. To this rule there are some exceptions: she may contract, when it is for her benefit, as to save her from starvation. Chit. Contr. 40.

4. In some cases, when coercion has been used by the husband to induce her to commit crime, she is exempted from punishment. 1 Ha1e, P. C. 516; 1 Russ. Cr. 16.

COVIN, fraud. A secret contrivance between two or more persons to defraud and prejudice another of his rights. Co. Litt 357, b; Com. Dig. Covin, A; 1 Vin. Abr. 473. Vide Collusion; Fraud.

COW. In a penal statute which mentions both cows and beefer's, it was held that by the term cow, must be understood one that had a calf. 2 East, P. C. 616; 1 Leach, 105.

COWARDICE. Pusillanimity; fear.

2. By the act for the better government of the navy of the United States, passed April 21, 1800, 1 Story, L. U. S. 761; it is enacted, art. 5, "every officer or private who shall not properly observe the orders of his commanding officer, or shall not use his utmost exertions to carry them into execution, when ordered to prepare for, join in, or when actually engaged in battle; or shall, at such time, basely desert his duty or station, either then, or while in sight of an enemy, or shall induce others to do so, every person so offending, shall, on conviction thereof by a general court martial,

suffer death, or such other punishment as the said court shall adjudge.

3.-Art. 6. "Every officer or private who shall, through cowardice, negligence, or disaffection, in the time of action, withdraw from, or keep out of battle, or shall not do his utmost to take or destroy every vessel which it is his duty to encounter, or shall not do his utmost endeavor to afford relief to ships belonging to the United States, every such offender shall, on conviction thereof by a general court martial, suffer death, or such other punishment as the said court shall adjudge."

4. By the act for establishing rules and articles for the government of the armies of the United States, passed April 10, 1806, it is enacted, art. 52, "any officer or soldier, who shall misbehave himself before the enemy, run away, or shamefully abandon any fort, post, or guard, which he or they may be commanded to defend, or speak, words inducing others to do the like, or shall cast away his arms and ammunition, or who shall quit his post or colors to plunder and pillage, every such offender, being duly convicted thereof, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court martial."

CRANAGE. A toll paid for drawing merchandise out of vessels to the wharf, so called, because the instrument used for the purpose is called a crane. 8 Co. 46.

TO CRAVE. To ask; to demand.

2. This word is frequently used in pleading; as, to crave oyer of a bond on which the suit is brought; and in the settlement of accounts, the accountant general craves a credit or an allowance. 1 Chit. Pr. 520. See Oyer.

CRAVEN. A word of obloquy, which in trials by battle, was pronounced by the

vanquished; upon which judgment was rendered against him.

CREANCE. This is a French word, which, in its extensive sense, signifies claim; in a narrower sense it means a debt. 1 Bouv. Inst. n. 1040, note.

CREDENTIALS, international law. The instruments which authorize and establish a public minister in his character with the state or prince to whom they are addressed. If the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, mandatum manifestum. Vattel, liv. 4, c. 6, Sec. 76.

CREDIBILITY. Worthiness of belief. To entitle a witness to credibility, he must be competent. Vide Competency.

2. Human testimony can seldom acquire the certainty of demonstration. Witnesses not unfrequently are mistaken or wish to deceive; the most that can be expected is that moral certainty which arises from analogy. The credibility which is attached to such testimony, arises. from the double presumption that the witnesses have good sense and intelligence, and that they are not mistaken nor deceived; they are further presumed to have probity, and that they do not wish to deceive.

3. To gain credibility, we must be assured, first, that the witness has not been mistaken nor deceived. To be assured as far as possible on this subject, it is proper to consider the nature and quality of the facts proved; the quality and person of the witness; the testimony in itself; and to compare it with the depositions of other witnesses on the subject, and with known facts. Secondly, we must be satisfied that he does not wish to deceive: there are strong assurances of this, when the witness is under

oath, is a man of integrity, and disinterested. Vide Arch. Civ. Pl. 444; 5 Com. Dig. 449; 8 Watts, R. 227; Competency.

CREDIBLE WITNESS. A credible witness is one who is competent to give evidence, and is worthy of belief. 5 Mass. 219 17 Pick. 134; 2 Curt. Ecc. R. 336. In deciding upon the credibility of a witness, it is always pertinent to consider whether he is capable of knowing the thing thoroughly about which he testifies. 2. Whether he was actually present at the transaction. 3. Whether he paid, sufficient attention to qualify himself to be a reporter of it; and 4. Whether he honestly relates the affair fully as he knows it, without any purpose or desire to deceive, or suppress or add to the truth.

2. In some of the states, as Delaware, Illinois, Maine, Maryland, Rhode Island, Vermont, and Virginia, wills must be attested by credible witnesses. See Attesting Witness; Competent Witness; Disinterested Witness; Respectable Witness; and Witness.

CREDIT, common law, contracts. The ability to borrow, on the opinion conceived by the lender that he will be repaid. This definition includes the effect and the immediate cause of credit. The debt due in consequence of such a contract is also called a credit; as, administrator of an the goods, chattels, effects and credits, &c.

2. The time extended for the payment of goods sold, is also called a credit; as, the goods were sold at six months credit.

3. In commercial law, credit is understood as opposed to debit; credit is what is due to a merchant, debit, what is due by him

4. According to M. Duvergier, credit also signifies that influence acquired by intrigue connected with certain social positions. 20 Toull. n. 19. This last species of credit is not, of such value as to be the object of commerce. Vide generally, 5 Taunt. R. 338.

CREDITOR, persons, contracts. A creditor is he who has a right to require the fulfilment of an obligation. or contract.

2. Creditors may; be divided into personal and real.

3. The former are so called, because their claims are mainly against the person, who can reach the property of their debtors only by; virtue of the general rule by which he who has become personally obligated, is bound to fulfill his engagements, with all his property acquired and to be acquired, Which is a common guaranty for all his creditors.

4. The latter are called real, because they have mortgages or other securities binding on the real estates of their debtors.

5. It is proper to state that personal creditors may be divided into two classes first, those who have a right on all the property of their debtors, without considering the origin, or the nature of their claims; secondly, those who, in consequence of some provision of law, are entitled to some special prerogative, either in the manner of recovery, or in the rank they are to hold among creditors; these are entitled to preference. As an example, may be mentioned the case of the United State; when they are creditors, they have always a preference in case of insolvent estates.

6. A creditor sometimes becomes so, unknown to his debtor, as is the case when the former receives an assignment of commercial; paper, the title to recover which may be conveyed either by endorsement, or, in some cases, by mere delivery. But in general it is essential there should be a privity of contract between the parties. Vide, generally, 7 Vin. Ab. 42; 3 Com. Dig. 343; 8 Com. Dig. 388; 1 Supp. to Ves. Jr. 302 2 Sup. to Ves. Jr. 305 Code, 7, 72, 6; Id. 8, 18; Dig 42, 6, 17; Nov. 97 ch. t3 Bouv. Inst. Index, h.t.

CREEK, mar. law. Creeks are of two kinds, viz. creeks of the sea and creeks

of ports. The former sorts are such little inlets of the sea whether within the precinct or extent of a, port or without, which are narrow little passages and have shore on either side of them. The latter, Viz. breaks of ports, are by a kind of civil denomination such. They are such, that though possibly for their extent and. situation they might be ports, yet they are either members of or dependent upon other ports. In England it began thus: the king, could not conveniently have a customer and comptroller in every port or haven. But these custom officers were fixed at some eminent port; and the smaller adjacent ports became by that means creeks, or appendants. of that where these custom officers were placed. 1 Chit. Com. Law, 726; Hale's Tract. de Portibus Maris, part 2, c. 1, vol. 1, p. 46; Com. Dig. Navigation, C; Callis, 34.

2. In a more popular sense, creek signifies a small stream, less than a river. 12 Pick. R. 184,

CRETION, civil law.. The acceptance of a succession. Cretion was an act made before a magistrate, by which an instituted heir, who was required to accept of the succession within a certain time, declares within that time that he accepted the succession. Clef cles Lois Rom. h.t.

2. Cretion is also used to signify the term during which the heir is allowed to make his election to take or not to take the inheritance. It is so called, because the heir is allowed to see, cernere, examine, and decide. Gaii, lust. lib. 2, Sec. 164.

CREW. Those persons who are employed in the navigation of a vessel.

2. A vessel to be seaworthy must have a sufficient crew. 1 Caines, R. 32; 1 John. R. 184.

3. In general, the master or captain (q.v.) has the selection of the crew. Vide Muster roll; Seaman; Ship; Shipping articles.

CRIB-BITING. A defect in horses, which consists in biting the crib while in the stable. This is not, considered as a breach of general warranty of soundness. Holt's Cas. 630.

CRIER. An inferior officer of a court, whose duty it is to open and adjourn the court, when ordered by the judges; to make proclamations and obey the directions of the court in anything which concerns the administration of justice.

CRIME. A crime is an offence against a public law. This word, in its most general signification, comprehends all offences but, in its limited sense, it is confined to felony. 1 Chitty, Gen. Pr. 14.

2. The term misdemeanor includes every offence inferior to felony, but punishable by indictment or by particular prescribed proceedings.

3. The term offence, also, may be considered as, having the same meaning, but is usually, by itself, understood to be a crime not indictable but punishable, summarily, or by the forfeiture of, a penalty. Burn's Just. Misdemeanor.

4. Crimes are defined and punished by statutes and by the common law. Most common law offences are as well known, and as precisely ascertained, as those which are defined by statutes; yet, from the difficulty of exactly defining and describing every act which ought to be punished, the vital and preserving principle has been adopted, that all immoral acts which tend to the prejudice of the community are punishable by courts of justice. 2 Swift's Dig.

5. Crimes are mala in se, or bad in themselves; and these include. all offences against the moral law; or they are mala prohibita, bad because

prohibited, as being against sound policy; which, unless prohibited, would be innocent or indifferent. Crimes may be classed into such as affect:

6.-1. Religion and public worship: viz. blasphemy, disturbing public worship.

7.-2. The sovereign power: treason, misprision of treason.

8.-3. The current coin: as counterfeiting or impairing it.

9.-4. Public justice: 1. Bribery of judges or jurors, or receiving the bribe. 2. Perjury. 3. Prison breaking. 4. Rescue. 5. Barratry. 6. Maintenance. 7. Champerty. 8. Compounding felonies. 9. Misprision of felonies. 10. Oppression. 11. Extortion. 12. Suppressing evidence. 13. Negligence or misconduct in inferior officers. 14. Obstructing legal process. 15. Embracery.

10.-5. Public peace. 1. Challenges to fight a duel. 2. Riots, routs and unlawful assemblies. 3. Affrays. 4. Libels.

11.-6. Public trade. 1. Cheats. 2. Forestalling. S. Regrating. 4. Engrossing. 5. Monopolies.

12.-7. Chastity. 1. Sodomy. 2. Adultery. 3. Incest. 4. Bigamy. 5. Fornication.

13.-8. Decency and morality. 1. Public indecency. 2. Drunkenness. 3. Violating the grave.

14.-9. Public police and economy. 1. Common nuisances. 2. Keeping disorderly houses and bawdy houses. 3. Idleness, vagrancy, and beggary.

15.-10. Public. policy. 1. Gambling. 2. Illegal lotteries.

16.-11. Individuals. 1. Homicide, which is justifiable, excusable or felonious. 2. Mayhem. 3. Rape. 4. Poisoning, with intent to murder. 5. Administering drugs to a woman quick with child to cause, miscarriage. 6. Concealing death of bastard child. 7. Assault and battery, which is either simple or with intent to commit some other crime. 8. kidnapping. 9. False imprisonment. 10. Abduction.

17.-12. Private property. 1. Burglary. 2. Arson. 3. Robbery. 4., Forgery. Counterfeiting. 6. Larceny. 7. Receiving stolen goods, knowing them to have been stolen, or theft-bote. 8. Malicious mischief.

18.-13. The public, individuals, or their property, according to the intent of the criminal. 1. Conspiracy.

CRIME AGAINST NATURE. Sodomy. It is a crime not fit to be named; peccatum horribile, inter christianos non nominandum. 4 Bl. Com. 214. See Sodomy.

CRIMEN FALSI, civil law, crime. It is a fraudulent alteration, or forgery, to conceal or alter the truth, to the prejudice of another. This crime may, be committed in three ways, namely: 1. By forgery. 2. By false declarations or false oath, perjury. 3. By acts; as, by dealing with false weights and measures, by altering the current coin, by making false keys, and the like. Vide Dig. 48, 10, 22; Dig. 34, 8 2; Code, lib. 9, t. 22, 1. 2, 5, 9. 11, 16, 17, 23, and 24; Merl. Rep. h.t.; 1 Bro. Civ. Law, 426; 1 Phil. Ev. 26; 2 Stark. Ev. 715.

2. What is understood by this, term in the common law, is not very clearly defined. Peake's Ev. 133; 1 Phil. Ev. 24; 2 Stark. Ev. 715. It extends to forgery, perjury, subornation of perjury, suppression of testimony by bribery, and conspiracy to convict of perjury. See 12 Mod. 209; 2 S. & R. 552; 1 Greenl. Ev. Sec. 373; and article Faux.

CRIMINAL. Relating to, or having the character of crime; as, criminal law, criminal conversation, &c. It also signifies a person convicted of a crime.

CRIMINAL CONVERSATION, crim. law. This phrase is usually employed to denote the crime of adultery. It is abbreviated crim. con. Bac. Ab. Marriage, E 2;

4 Blackf. R. 157.

2. The remedy for criminal conversation is, by an action on the case for damages. That the plaintiff connived, or assented to, his wife's infidelity, or that he prostituted her for gain, is a complete answer to the action. See Connivance. But the facts that the wife's character for chastity was bad before the plaintiff married her; that he lived with her after he knew of the criminal intimacy with the defendant; that he had connived at her intimacy with other men;, or that the plaintiff had been false to his wife, only go in mitigation of damages. 4 N. Hamp. R. 501.

3. The wife cannot maintain an action for criminal conversation with her husband; and for this, among other reasons, because her husband, who is particeps criminis, must be joined with her as plaintiff.

CRIMINAL LETTERS. An instrument in Scotland, which contains the charges against a person accused of a crime. Criminal letters differ from an indictment, in that the former are not, like an indictment, the mere statement of the prosecutor, but sanctioned by a judge. Burt. Man. Pub. L. 301, 302.

CRIMINALITER. Criminally; opposed to civiliter, civilly.

2. When a person commits a wrong to the injury of another, he is answerable for it civiliter, whatever may have been his intent; but, unless his intent has been unlawful the is not answerable criminaliter. 1 East, 104.

TO CRIMINATE. To accuse of a crime; to admit having committed a crime or misdemeanor.

2. It is a rule, that a witness cannot be compelled to answer any question which has a tendency to expose him to a penalty, or to any kind of

punishment, or to a criminal charge. 3 Bouv. Inst. n. 3209-12; 4 St. Tr. 6; 10 How. St. Tr. 1096; 6 St. Tr. 649; 16 How. St. Tr. 1149; 2 Dougl. R. 593; 2 Ld. Raym. 1088; 24 How. St. Tr. 720; 16 Ves. jr. 242; 2 Swanst. Ch. R. 216; 1 Cranch. R. 144; 2 Yerg. R. 110 5 Day, Rep. 260; I Carr., & Payne, 11 2 Nott & M'C. 13; 6 Cowen, Rep. 254; 2 Peak. N. P. C. 106; 1 John. R. 498; 12 S. & R. 284; 8 Wend. 598.

3. An accomplice, admitted to give evidence against his associates in guilt, is bound to make a full and fair confession of the whole truth respecting the subject-matter of the prosecution; but he is not bound to answer with respect to his share in other offences, in which he was not concerned with the prisoner. 9 Cowen, R. 721, note (a); 2 Carr. & Payne, 411. Vide Disgrace,; Witness;

CRIMINATION. The act by which a party accused, is proved to be guilty.

2. It is a rule, founded in common sense, that no one is bound to criminate himself. A witness may refuse to answer a question, when the answer would criminate him, and subject him to punishment. And a party in equity is not bound to answer a bill, when the answer would form a step in the prosecution. Coop. Eq. Pl. 204; Mitf. Eq. Pl. by Jeremy, 194; Story, Eq,. Pl. Sec. 591; 14 Ves. 59.

CRITICISM. The art of judging skillfully of the merits or beauties, defects or faults of a literary or scientific performance, or of a production of art; when the criticism is reduced to writing, the writing itself is called a criticism.

2. Liberty of criticism must be allowed, or there would be neither purity of taste nor of morals. Fair discussion, is essentially necessary to, the truth of history and advancement of science. That publication therefore,

is not a libel, which has for its object, not to injure the reputation of an individual, but to correct misrepresentations of facts, to refute sophistical reasoning, to expose a vicious taste for literature, or to censure what is hostile to morality. Campb. R. 351-2. As every man who publishes a book commits himself to the judgment of the public, any one may comment on his performance. If the commentator does not step aside from the work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. And the critic does a good service to the public who writes down any vapid or useless publication such as ought never to have appeared; and, although the author may suffer a loss from it, the law does not consider such loss an injury; because it is a loss which the party ought to sustain. It is the loss of fame and profit, to which he was never entitled. 1 Campb. R. 358, n. See 1 Esp. N. P. Cas. 28; 2 Stark. Cas. 73; 4 Bing. N. S. 92; S. C. 3 Scott, 340;. 1 M. & M. 44; 1 M. & M. 187; Cooke on Def. 52.

CROFT, obsolete. A little close adjoining to a dwelling-house, and enclosed for pasture or arable, or any particular use. Jacob's Law Dict.

CROP. This word is nearly synonymous with emblements. (q.v.),

2. As between the landlord and tenant, the former has a lien; in some of the states, upon the crop for the rent, for a limited time, and, if sold on an execution against the tenant, the purchaser succeeds to the liability of the tenant, for rent and good husbandry, and the crop is still liable to be distrained. Tenn. St. 1825, c. 21; Misso. St. 377; Del. St. 1829, 366; 1 N. J. R. C. 187; Atk. Dig. 357; 1 N. Y. R. S. 746; 1 Ky. R. L. 639; 5 Watts, R. 134; 41 Griff. Reg. 671, 404; 1 Hill. Ab. 148, 9; 5 Penn. St. R. 211.

3. A crop is not considered is a part of the real estate, so as to make a sale of it void, when the contract has not been reduced to writing, within

the statute of frauds. 11 East, 362; 2 M. & S. 205; 5 B. & C. 829; 10 Ad. & El. 753; 9 B. & C. 561; but see 9 M. & W. 501.

4. If a husband sow land and die, and the land which was sown is assigned to the wife for her dower, she shall have the corn, and not the executors of the husband. Inst. 81.

CROPPER, contracts. One who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. 2 Rawle, R. 12.

CROSS. contracts. A mark made by persons who are unable to write, instead of their names.

2. When properly attested, and proved to have been made by the party whose name is written with the mark, it is generally admitted as evidence of the party's signature.

CROSS ACTION. An action by a defendant in an action, against the plaintiff in the same action, upon the same contract, or for the same tort; as, if Peter bring an action of trespass against Paul, and Paul bring another action of trespass against Peter, the subject of the dispute being an assault and battery, it is evident that Paul could not set off the assault committed upon him by Peter, in the action which Peter, had brought against him; therefore the cross action became necessary.

CROSS BILLS, practice. When an individual prosecutes a bill of indictment against another, and the defendant procures another bill to be found against the first prosecutor, the bills so found by the grand jury are called cross bills. The most usually occur in cases of assault and battery.

2. In chancery practice it is not unusual for parties to file cross bills. Vide Bill, cross.

CROSS-EXAMINATION, practice. The examination of a witness, by the party who did not call him, upon matters to which he has been examined in chief.

2. Every party has a right to cross-examine a witness produced by his antagonist, in order to test whether the witness has the knowledge of the things he testifies and if, upon examination, it is found that the witness had the means and ability to ascertain the facts about which he testifies, then his memory, his motives, everything may be scrutinized by the cross-examination.

3. In cross-examinations a great latitude is allowed in the mode of putting questions, and the counsel may put leading questions. (q.v.) Vide further on this subject, and for some rules which limit the abuse of this right, 1 Stark. Ev,. 96; 1 Phil. Ev. 210; 6 Watts & Serg. 75.

4. The object of a cross-examination is to sift the evidence, and try the credibility of a witness who has been called and given evidence in chief. It is one of the principal tests which the law has devised for the ascertainment of truth, and it is certainly one of the most efficacious. By this means the situation of the witness, with respect to the parties and the subject of litigation, his interest, his motives, his inclinations and his prejudices, his means of obtaining a correct and certain knowledge of the facts to which he testifies the manner in which he has used those means, his powers of discerning the facts in the first instance, and of his capacity in retaining and describing them, are fully investigated and ascertained. The witness, however artful he may be, will seldom be able to elude the keen perception of an intelligent court or jury, unless indeed his story be founded on truth. When false, he will be liable to detection at every step. 1 Stark. Ev. 96; 1 Phil. Ev. 227; Fortese. Rep. Pref. 2 to 4; Vaugh. R. 143.

5. In order to entitle a party to a cross-examination, the witness must have been sworn and examined; for, even if the witness be asked a question in chief, yet if he make no answer, the opponent has no right to cross-examine. 1 Cr. M. & Ros. 95; 1 16 S. & R. 77; Rosc. Cr. Ev. 128; 3 Car. & P. 16; S. C. 14 E. C. L. Rep. 189; 3 Bouv. Inst. n. 3217. Formerly, however, the rule seems to have been different. 1 Phil. Ev. 211.

6. A cross-examination of a witness is not always necessary or advisable. A witness tells the truth wholly or partially, or he tells a falsehood. If he tells the whole truth, a cross-examination may have the effect of rendering his testimony more circumstantial, and impressing the jury with a stronger opinion of its truth. If he tells only a part of the truth, and the part omitted is favorable to the client of the counsel cross-examining, he should direct the attention of the witness to the matters omitted. If the testimony of the witness be false, the whole force of the cross-examination should be directed to his credibility. This is done by questioning him as to his means of knowledge, his disinterestedness, and other matters calculated to show a want of integrity or veracity, if there is reason to believe the witness prejudiced, partial, or willfully dishonest.

Arch. Crim. Pl. 111. See Credible Witness.

CROWN. A covering for the head, commonly used by kings; figuratively, it signifies royal authority. By pleas of the crown, are understood criminal actions.

CRUELTY. This word has different meanings, as it is applied to different things. Cruelty may be, 1. From husband towards the wife, or vice versa. 2. From superior towards inferior, 3. From master towards slave. 4. To animals.

These will be separately considered.

2.-1. Between husband and wife, those acts which affect the life, the health, or even the comfort of the party aggrieved, and give a reasonable apprehension of bodily hurt, are called cruelty. What merely wounds the feelings is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; 17 Conn. 189; a fortiori, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessaries, is not cruelty. The negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. 1 Hagg. R. 35; S. C. 4 Eccles. R. 311, 312; 2 Hagg. Suppl. 1; S. C. 4 Eccles. R. 238; 1 McCord's Ch. R. 205; 2 J. J. Marsh. R. 324; 2 Chit. Pr. 461, 489; Poynt. on Mar. & Div. c. 15, p. 208; Shelf. on Mar. & Div. 425; 1 Hagg. Cons. R. 37, 458; 2 Ragg. Cons. Rep. 154; 1 Phillim. 111, 132; 8 N H. Rep. 307; 3 Mass. 321; 4 Mass. 487. It is to be remarked that exhibitions of passion and gusts of anger, which would be sufficient to create irreconcilable hatred between persons educated and trained to respect each other's feelings, would, with persons of coarse manners and habits, have but a momentary effect. An act which towards the latter would cause but a momentary difference, would with the former, be excessive cruelty. 1 Briand Med. Leg. 1 ere part. c. 2, art. 3.

3.-2. Cruelty towards weak and helpless persons takes place where a party bound to provide for and protect them, either abuses them by whipping them unnecessarily, or by neglecting to provide for them those necessaries which their helpless condition requires. To expose a person of tender years, under a party's care, to the inclemency of the weather; 2 Campb. 650; or to keep such a child, unable to provide for himself, without adequate food; 1

Leach, 137; Russ. & Ry. 20 or an overseer neglecting to provide food and medical care to a pauper having urgent and immediate occasion for them; Russ. & Ry. 46, 47, 48; are examples of this species of cruelty.

4.-3. By the civil code of Louisiana, art. 192, it is enacted, that when the master shall be convicted of cruel treatment of his slave, the judge may pronounce, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which his master has abused.

5.-4. Cruelty to animals is an indictable offence. A defendant was convicted of a misdemeanor for tying the tongue of a calf so near the root as to prevent its sucking, in order to sell the cow at a greater price, by giving to her udder the appearance of being full of milk, while affording the calf all he needed. 6 Rogers, City Hall Rec. 62. A man may be indicted for cruelly beating his horse. 3 Rogers, City Rec. 191.

CRUISE, mar. law. A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail through any particular track of the sea, at a certain season of the year the region in which these cruises are performed is usually termed the rendezvous or cruising latitude.

2. When the ships employed for this purpose, which are accordingly called cruisers, have arrived at the destined station, they traverse the sea, backwards and forwards, under an easy sail, and within a limited space, conjectured to be in the track of their expected adversaries. Wesk. Ins. h.t.; Lex Merc. Rediv. 271, 284; Dougl. 11. 509; Park. Ins. 58; Marsh. Ins. 196, 199, 520; 2 Gallis. 268.

CRY DE PAYS, OR CRI DE PAIS. Literally, cry of the country. In England, when a felony has been committed, hue and cry (q.v.) may be raised by the

country, in the absence of the constable. It is then cry de pays. 2 Hale, P. C. 100.

CRYER, practice. An officer in a court whose duty it is to make various proclamations ordered by the court.

CUEILLETTE. A term in French maritime law. Affreightment of a vessel a cueillette, is a contract by which the captain obligates himself to receive a partial cargo, only upon condition that he shall succeed in completing his cargo by other partial lading; that is, by gathering it (en recueillant) wherever he may be able to find it. If he fails to collect a cargo, such partial chartering is void. Code de Com. par M. Fournel, art. 286, n.

CUI ANTE DIVORTIUM. The name of an ancient writ, which was issued in favor of a woman divorced from her husband, to recover the lands and tenements which she had in fee simple, or in tail, or for life, from him to whom her husband alienated them during the marriage, when she could not gainsay it. F. N. B. 240. Vide Sur cui ante divortium.

CUI IN VITA. The name of a writ of entry for a widow against a person to whom the husband had, in his lifetime, aliened the lands of the wife. F. N. B. 193. This writ was founded sometimes on the stat. 13 Ed. 1. c. 3, and sometimes on the common law. The object of this statute, was to enable the wife to avoid a judgment to recover her land which had been rendered on the default or confession of her husband. It is now of no use in England, because the stat. 32 H. VIII. c. 28, Sec. 6, provides that no act of the husband, whether fine, feoffment, or other act of the husband during coverture, shall prejudice the wife. Both these statutes are reported as in force in Pennsylvania. 3 Bin. Appx. See Booth on Real Actions, 186; 6 Rep.

8, 9, Forrers' Case. Still, that part of the stat. 13 Ed. I. c. 8, which relates to the pleadings and evidence in such cases is important if it can be enforced in the modern action of ejectment, viz: that which requires the tenant of the lands to show his right according to the form of the writ he sued out against the husband. See Report of the Commissioners to revise the Civil Code of Pennsylvania, Jan. 16, 1835, pp. 90, 91.

CUL DE SAC. This is a French phrase, which signifies, literally, the bottom of a bag, and, figuratively, a street not open at both ends. It seems not to be settled whether a cul de sac is to be considered a highway. See 1 Campb. R. 260; 11 East, R. 376, note; 5 Taunt. R. 137; 5 B. & Ald. 456; Hawk. P. C. b. 1, c. 76, s. 1 Dig. lib. 50, tit. 16, l. 43; Dig. lib. 43, t. 12, 1. Sec. 13; Dig. lib. 47, tit. 10, 1. 15, Sec. 7.

CULPA. A fault committed without fraud, and this distinguishes it from dolus, which is a trick to deceive. See Dolus.

CULPRIT, crim. law. When a prisoner is arraigned, and he pleads not guilty, in the English practice, the clerk, who arraigns him on behalf of the crown, replies that the prisoner is guilty, and that he is ready to prove the accusation; this is done by two monosyllables, cul prit. Vide Abbreviations; 4 Bl. Com. 339; 1 Chit. Cr. Law, 416.

CUM PERTINENTIS. With the appurtenances. See Appurtenances.

CUM ONERE. This term is usually employed to show that something is taken, subject to a charge or burden.

CUM TESTAMENTO ANNEXO. With the testament or will annexed. It often happens that the deceased, although he makes a will, appoints no executor, or else the appointment fails; in either of which events he is said to die quasi intestatus. 2 Inst. 397. The appointment of an executor fails, 1st. When the person appointed refuses to act. 2d. When the person appointed dies before the testator, or before he has proved the will, or when, from any other legal cause, he is incapable of acting. 3d. When the executor dies intestate, (and in some places, as in Pennsylvania, whether he die testate or intestate,) after having proved the will, but before he has administered all the personal estate of the deceased. In all these cases, as well as when no executor has been appointed, administration, with the will annexed, must be granted by the proper officer. In the case where the goods are, not all administered before the death of the executor, the administration is also called an administration de bonis non.

2. The office of such an an administrator differs little from that of an executor. Vide Com. Dig. Administration; Will. Ex. p. 1, b. 5, c. 3, s. 1; 2 Bl. Com. 504-5; 11 Vin. Ab. 78; Toll. 92 Gord. Law of Deced. 98.

CUMULATIVE. Forming a heap; additional; as, cumulative evidence, or that which goes to prove the same point which has been established by other evidence. Cumulative legacy, or accumulative legacy, is a second bequest, given by the same testator to the same legatee. 2 Rop. Log. 19,. See 1 Saund. 134, n. 4; Remedy.

CUMULATIVE LEGACY. Vide Legacy accumulative; and 8 Vin. Ab. 308 1 Supp. to Ves. jr. 133, 282, 332.

CURATE, eccl. law. One who represents the incumbent of a church, person, or20 vicar, and takes care of the church, and performs divine service in his

stead.

CURATOR, persons, contracts. One who has been legally appointed to take care of the interests of one who, on account of his youth, or defect of his understanding, or for some other cause, is unable to attend to them himself.

2. There are curators ad bona, of property, who administer the estate of a minor, take care of his person, and intervene in all his contracts; curators ad litem, of suits, who assist the minor in courts of justice, and act as curator ad bona in cases where the interests of the curator are opposed to the interests of the minor. Civ. Code of Louis. art. 357 to 366. There are also curators of insane persons Id. art. 31; and of vacant successions and absent heirs. Id. art. 1105 to 1125.

3. The term curator is usually employed in the civil law, for that of guardian.

CURATORSHIP, offices, contracts, in the civil law. The power given by authority of law, to one or more persons, to administer the property of an individual who is unable to take care of his own estate and affairs, either on account of his absence without an authorized agent, or in consequence of his prodigality, or want of mind. Poth. Tr. des Personnes, t. 6, s. 5. As to the laws of Louisiana, which authorize a curatorship, vide Civ. Code, art. 31, 50, et seq. 357, et seq.; 382, 1105, et seq.

2. Curatorship differs from tutorship, (q.v.) in this, that the latter is instituted for the protection of property in the first place, and, secondly, of the person; while the former is intended to protect, first, the person, and, secondly, the property. 1 Lecons Elem. du Droit Civ. Rom. 241.

CURATRIX. A woman who has been appointed to the office of curator.

CURE. A restoration to health.

2. A person who had quitted the habit of drunkenness for the space of nine months, in consequence of medicines he had taken, and who had lost his appetite for ardent spirits, was held to have been cured. 7 Yerg. R. 146.

3. In a figurative sense, to cure is to remedy any defect; as, an informal statement of the plaintiff's cause of action in his declaration is cured by verdict, provided it be substantially stated.

CURFEW. The name of a law, established during the reign of the English king, William, the conqueror, by which the people were commanded to dispense with fire and candle at eight o'clock at night.

It was abolished in the reign of Henry I., but afterwards it signified the time at which the curfew formerly took place. The word curfew is derived, probably, from couvre few, or cover fire. 4 Bl. Com. 419, 420.

CURIA. A court of justice.

CURIA CLAUDENDA, WRIT DE, Eng. law. The name of a writ, used to compel a party to enclose his land. F. N. B. 297.

CURIA ADVISARE VULT, practice. The court will consider the matter. This entry is made on the record when the court wish to take time to consider of a case before they give a final judgment, which is made by an abbreviation, cur. ad vult, for the purpose of marking the continuance. In the technical sense, it is a continuance of the cause to another term.

CURIA REGIS. An English court, which assumed this name, during the reign of

Henry II. It was Curia or Aula Regis, because it was held in the great hall of the king's palace; and where the king, for some time, administered justice in person. But afterwards, the judicial power was more properly entrusted to the king's judges. The judges who sat in this court were distinguished by the name of justices, or justiciaries. Besides these, the chief justiciary, the stewart of all England, the chancellor, the chamberlain, and the treasurer, also took part in the judicial proceedings of this court.

CURIALITY, Scotch law. The same as courtesy. (q.v.) 1 Bell's Com. 61.

CURRENCY. The money which passes, at a fixed value, from hand to hand; money which is authorized by law.

2. By art. 1, s. 8, the Constitution of the United States authorizes congress "to coin money, and to regulate the value thereof." Changes in the currency ought not to be made but for the most urgent reason, as they unsettle commerce, both at home and abroad. Suppose Peter contracts to pay Paul one thousand dollars in six months-the dollar of a certain fineness of silver, weighing one hundred and twelve and a half grains-and afterwards, before the money becomes due, the value of the dollar is changed, and it weighs now but fifty-six and a quarter grains; will one thousand of the new dollars pay the old debt? Different opinion may be entertained, but it seems that such payment would be complete; because, 1. The creditor is bound to receive the public currency; and, 2. He is bound to receive it at its legal value. 6 Duverg. n. 174.

CURRENT, merc. law. A term used to express present time; the current month; i.e. the present month. Price current, is the ordinary price at the time

spoken of. A printed paper, containing such prices, is also called a price current.

2. Current, in another sense, signifies that which is readily received; as, current money.

CURSITOR BARON, Eng. law. An officer of the court of the exchequer, who is appointed by patent under the great seal, to be one of the barons of the exchequer.

CURTESY, or COURTESY, Scotch law. A life-rent given by law to the surviving husband, of all his wife's heritage of which she died intest, if there was a child of the marriage born alive. The child born of the marriage must be the mother's heir. If she had a child by a former marriage, who is to succeed to her estate, the husband has no right to the curtesy while such child is alive; so that the curtesy is due to the husband rather as father to the heir, than as husband to an heiress, conformable to the Roman law, which gives to the father the usufruct of what the child succeeds to by the mother. Ersk. Pr. L. Scot. B. 2, t. 9, s. 30. Vide Estate by the curtesy.

CURTILAGE, estates. The open space situated within a common enclosure belonging to a dwelling-house. Vide 2 Roll, Ab. 1, l. 30; Com. dig. Grant, E 7, E 9; Russ. & Ry. 360; Id. 334, 357; Ry & Mood. 13; 2 Leach, 913; 2 Bos. & Pull. 508; 2 East, P. C. 494; Russ. & Ry. 170, 289, 322; 22 Eng. Com. Law R. 330; 1 Ch. Pr. 175; Shep. Touchs. 94.

CUSTODY. The detainer of a person by virtue of a lawful authority. To be in custody, is to be lawfully detained under arrest. Vide 14 Vin. Ab. 359; 3 Chit. Pr. 355. In another sense, custody signifies having the care and

possession of a thing; as, the chancellor is entitled to the custody as the keeper of the seal.

CUSTOM. A usage which had acquired the force of law. It is, in fact, a lex loci, which regulates all local or real property within its limits. A repugnancy which destroys it, must be such as to show it never did exist. 5 T. R. 414. In Pennsylvania no customs have the force of law but those which prevail throughout the state. 6 Binn. 419, 20.

2. A custom derives its force from the tacit consent of the legislature and the people, and supposes an original, actual deed or agreement. 2 Bl. Com. 30, 31; 1 Chit. Pr. 283. Therefore, custom is the best interpreter of laws: optima est legum interpres consuetudo. Dig. 1, 8, 37; 2 Inst. 18. It follows, therefore, there; can be no custom in relation to a matter regulated by law. 8 M. R. 309. Law cannot be established or abrogated except by the sovereign will, but this will may be express or implied and presumed and whether it manifests itself by word or by a series of facts, is of little importance. When a custom is public, peaceable, uniform, general, continued, reasonable and certain, and has lasted "time whereof the memory of man runneth not to the contrary," it acquires the force of law. And when any doubts arise as to the meaning of a statute, the custom which has prevailed on the subject ought to have weight in its construction, for the manner in which a law has always been executed is one of its modes of interpretation. 4 Penn. St. Rep. 13.

3. Customs are general or, particular customs. 1. By general customs is meant the common law itself, by which proceedings and determinations in courts are guided.

2. Particular customs, are those which affect the inhabitants of some particular districts only. 1 Bl. Com. 68, 74. Vide 1 Bouv. Inst. n. 121 Bac.

Ab. h.t.; 1 Bl. Com. 76; 2 Bl. Com. 31; 1 Lill. Reg. 516; 7 Vin. Ab. 164; Com. Dig. h.t.; Nelson's Ab. h.t. the various Amer. Digs. h.t. Ayl. Pand. 15, 16; Ayl. Pareg. 194; Doct. Pl. 201; 3 W. C. C. R. 150; 1 Gilp. 486; Pet. C. C. R. 220; I Edw. Ch. R. 146; 1 Gall. R. 443; 3 Watts, R. 178; 1 Rep. Const. Ct. 303, 308; 1 Caines, R. 45; 15 Mass. R. 433; 1 Hill, R. 270; Wright, R. 573; 1 N. & M. 176; 5 Binn. R. 287; 5 Ham. R. 436; 3 Conn. R. 9; 2 Pet. R. 148; 6 Pet. R. 715; 6 Porter R. 123; 2 N. H. Rep. 93; 1 Hall, R. 612; 1 Harr. & Gill, 239; 1 N. S. 192; 4 L. R. 160; 7 L. R. 529; Id. 215.

CUSTOM OF MERCHANTS, lex mercatoria. A system of customs acknowledged and taken notice of by all nations, and are, therefore, a part of the general law of the land. See Law merchant, and 1 Chit. Bl. 76, note 9.

CUSTOM-HOUSE. A place appointed by law, in ports of entry, where importers of goods, wares and merchandise are bound to enter the same, in order to pay or secure the duties or customs due to the government.

CUSTOMARY RIGHTS. Rights which are acquired by custom. They differ from prescriptive rights in this, that the former are local usages, belonging to all the inhabitants of a particular place or district-the latter are rights of individuals, independent of the place of their residence. Best on Pres. Sec. 79; Cruise, Dig. t. 31, c. 1, Sec. 7; 2 Greenl. Evi 542.

CUSTOMS. This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. Story, Const. Sec. 949; Bac. Ab. Smuggling.

CUSTOS ROTULORUM, Eng. law. The principal justice of the peace of a county, who is the keeper of the records of the county. 1 Bl. Com. 349.

TO CUT, crim. law. To wound with an instrument having a sharp edge. 1 Russ. on Cr. 577. Vide To Stab; Wound.

CY PRES, construction. These are old French words, which signify "as near as."

2. In cases where a perpetuity is attempted in a will, the courts do not, if they can avoid it, construe the devise to be utterly void, but expound the will in such a manner as to carry the testator's intentions into effect, as far as the rules respecting perpetuities will allow; this is called construction cy pres. When the perpetuity is attempted in a deed, all the limitations are totally void. Cruise, Dig. t. 38, c. 9, s. 34; and vide 1 Vern. 250; 2 Ves. Jr. 380, 336, 357, 364; 3 Ves. Jr. 141, 220; 4 Ves. 13; Com. Dig. Condition, L. 1; 1 Rop. Leg. 514; Swinb. pt. 4, s. 7, a. 4; Dane's Ab. Index, h.t.; Toull. Dr. Civ. Fr. liv. 3, t. 3, n. 586, 595, 611; Domat, Loix Civ. liv. 6. t. 2, s. 1; 1 Supp. to Ves. Jr. 134, 259, 317; 2 Id. 316,473; Boyle on Charities, Index, h.t.; Shelford on Mortmain, Index, h.t.; 3 Bro. C. C. 166; 2 Bro. C. C. 492; 4 Wheat. R. 1; S. C. 3 Peters, R. App. 481; 3 Peters, R. 99; 15 Ves., 232; 2 Sto. Eq. Jur. Sec. 1169.

CZAR. A title of honor which is assumed by the emperor of all the Russias. See Autocracy.

CZARINA. The title of the empress of Russia.

CZAROWITZ.. The title of the eldest son of the czar and czarina of Russia.

D.

DAM. A construction of wood, stone, or other materials, made across a stream of water for the purpose of confining it; a mole.

2. The owner of a stream not navigable, may erect a dam across it, and employ the water in any reasonable manner, either for his use or pleasure, so as not to destroy or render useless, materially diminish, or affect the application of the water by the proprietors below on the stream. He must not shut the gates of his dams and detain the water unreasonably, nor let it off in unusual quantities to the annoyance of his neighbors. 4 Dall. 211; 3 Caines, 207; 13 Mass. 420; 3 Pick, 268; 2 N. H. Rep. 532; 17 John. 306; 3 John. Ch. Rep. 282; 3 Rawle, 256; 2 Conn. Rep. 584; 5 Pick. 199; 20 John. 90; 1 Pick. 180; 4 Id. 460; 2 Binn. 475; 14 Serg. & Rawle, 71; Id. 9; 13 John. 212; 1 McCord, 580; 3 N. H. Rep. 321; 1 Halst. R. 1; 3 Kents Com. 354.

3. When one side of the stream is owned by one person and the other by another, neither, without the consent of the other, can build a dam which extends beyond the filum aqua, thread of the river, without committing a trespass. Cro. Eliz. 269; 12 Mass. 211; Ang. on W. C. 14, 104, 141; vide Lois des Bat. P. 1, c. 3, s. 1, a. 3; Poth. Traite du Contrat de Societe, second app. 236; Hill. Ab. Index, h.t.; 7 Cowen, R. 266; 2 Watts, R. 327; 3 Rawle, R. 90; 17 Mass. R. 289; 5 Pick. R. 175; 4 Mass. R. 401. Vide Inundation.

DAMAGE, torts. The loss caused by one person to another, or to his property, either with the design of injuring him, with negligence and carelessness, or by inevitable accident.

2. He who has caused the damage is bound to repair it and, if he has done it maliciously, he may be. compelled to pay beyond the actual loss. When damage occurs by accident, without blame to anyone, the loss is borne

by the owner of the thing injured; as, if a horse run away with his rider, without any fault of the latter, and injure the property of another person, the injury is the loss of the owner of the thing. When the damage happens by the act of God, or inevitable accident, as by tempest, earthquake or other natural cause, the loss must be borne by the owner. Vide Com. Dig. h.t.; Sayer on Damages.

3. Pothier defines damage (dommiges et interets) to be the loss which some one has sustained, and the gain which he has failed of making. Obl. n. 159.

DAMAGE FEASANT, torts. This is a corruption of the French words faisant dommage, and signifies doing damage. This term is usually applied to the injury which animals belonging to one person do upon the land of another, by feeding there, treading down his grass, corn, or other production of the earth. 3 Bl. Com. 6; Co. Litt. 142, 161; Com. Dig. Pleader, 3 M 26. By the common law, a distress of animals or things damage feasant is allowed. Cow. Inst. 230; Gilb. on Distress and Replevin, 21. It was also allowed by the ancient customs of France. 11 Toull. 402 Repertoire de Jurisprudence, Merlin, au mot Fourriere; 1 Fournel, Traits de Voisinage, au mot Abandon. Vide Animals.

DAMAGED GOODS. In the language of the customs, are goods subject to duties, which have received some injury either in the voyage home, or while bonded in warehouses. See Abatement, merc. law.

DAMAGES, practice. The indemnity given by law, to be recovered from a wrong doer by the person who has sustained an injury, either in his person, property, or relative rights, in consequence of the acts of another.

2. Damages are given either for breaches of contracts, or for tortious acts.

3. Damages for breach of contract may be given, for example, for the non-performance of a written or verbal agreement; or of a covenant to do or not to do a particular thing.

4. As to the measure of damages the general rule is that the delinquent shall answer for all the injury which results from the immediate and direct breach of his agreement, but not from secondary and remote consequences.

5. In cases of an eviction, on covenant of seisin and warranty, the rule seems to be to allow the consideration money, with interest and costs. 6 Watts & Serg. 527; 2 Dev. R. 30; 3 Brev. R. 458. See 7 Shepl. 260; 4 Dev. 46. But in Massachusetts, on the covenant of warranty, the measure of damages is the value of the land at the time of eviction. 4 Kent's Com. 462, 3, and the cases there cited; 3 Mass. 523; 4 Mass. 108; 1 Bay, 19, 265; 3 Desaus. Eq. R. 247; 4 Penn. St. R. 168.

6. In estimating the measure of damages sustained in consequence of the acts of a common carrier, it frequently becomes a question whether the value of the goods at the place of embarkation or the port of destination is the rule to establish the damages sustained. It has been ruled that the value at the port of destination is the proper criterion. 12 S. & R. 186;. 8 John. R. 213; 10 John. R. 1; 14 John. R. 170; 15 John. R. 24. But contrary decisions have taken place. 3 Caines, R. 219 4 Hayw. R. 112; and see 4 Mass. R. 115; 1 T. R. 31; 4 T. R. 582.

7. Damages for tortious acts are given for acts against the person, as an assault and battery against the reputation, as libels and slander, against the property, as trespass, when force is used; or for the consequential acts of the tort-feasor, as, when a man, in consequence of building a dam on his own premises, overflows his neighbor's land; or against the relative rights of the party injured, as for criminal

conversation with his wife.

8. No settled rule or line of distinction can be marked out when a possibility of damages shall be accounted too remote to entitle a party to claim a recompense: each case must be ruled by its own circumstances. Ham. N. P. 40; Kames on Eq. 73, 74. Vide 7 Vin. Ab. 247; Yelv. 45, a; Id. 176, a; Bac. Ab. h.t.; 1 Lilly's Reg. 525; Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 2 Saund. 107, note; 1 Rawle's Rep. 27; Coop. Just. 606; Com. Dig. 11. t.; Bouv. Inst. Index, h.t. See, Cause; Remote.

9. Damages for torts are either compensatory or vindictive. By compensatory damages is meant such as are given morely to recompense a party who has sustained a loss in consequence of the acts of the defendant, and where there are no circumstances to aggravate the act, for the purpose of compensating the plaintiff for his loss; as, for example, Where the defendant had caused to be seized, property of A for the debt of B, when such property was out of A's possession, and there appeared reason to believe it was B's. Vindictive damages are such as are given against a defendant, who, in addition to the trespass, has been guilty of acts of outrage and wrong which cannot well be measured by a compensation in money; as, for example, where the defendant went to A's house, and with insult and outrage seized upon A's property, for a debt due by B, and carried it away, leaving A's family in distress. Sedgw. on Dam. 39; 2 Greenl. Ev. Sec. 253; 1 Gillis. 483; 12 Conn. 580; 2 M. & S. 77; 4 S. & R. 19; 5 Watts, 375; 5 Watts & S. 524; 1 P. S. R. 190, 197.

10. In cases of loss of which have been insured from maritime dangers, when an adjustment is made, the damages are settled by valuing the property, not according to prime cost, but at the price at which it may be sold at the time of settling the average. Marsh. Inst. B. 1, c. 14, s. 2, p. 621. See Adjustment; Price.

DAMAGES, EXCESSIVE. Such damages as are unreasonably great, and not warranted by law.

2. The damages are excessive in the following cases: 1. When they are greater than is demanded by the writ and declaration. 6 Call 85; 7 Wend. 330. 2. When they are greater than is authorized by the rules and principles of law, as in the case of actions upon contracts, or for torts done to property, the value of which may be ascertained by evidence. 4 Mass. 14; 5 Mass. 435; 6 Halst. 284.

3. But in actions for torts to the person or reputation of the plaintiff, the damages will not be considered excessive unless they are outrageous. 2 A. K. Marsh 365; Hard. 586; 3 Dana, 464; 2 Pick. 113; 7 Pick. 82; 9 John. 45; 10 John. 443; 4 Mass. 1; 9 Pick. 11; 2 Penn. 578.

4. When the damages are excessive, a new trial will be granted on that ground.

DAMAGES INADEQUATE. Such as are unreasonably low, and less than is required by law.

2. Damages are inadequate, when the plaintiff sues for a breach of contract, and the damages given are less than the amount proved. 9 Pick. 11.

3. In actions for torts, the smallness of damages cannot be considered by the court. 3 Bibb, 34. See 11 Mass. 150.

4. In a proper case, a new trial will be granted on the ground of inadequate damages.

DAMAGES ON BILLS OF EXCHANGE, contracts. A penalty affixed by law to the non-payment of a bill of exchange when it is not paid at maturity, which the parties to it are obliged to pay to the holder.

2. The discordant and shifting regulations on this subject which have

been enacted in the several states, render it almost impossible to give a correct view of this subject. The drawer of a bill of exchange may limit the amount of damages by making a memorandum in the bill, that they shall be a definite sum; as, for example, "In case of non-acceptance or non-payment, reexchange and expenses not to exceed _____ dollars. 1 Bouv. Inst. n. 1133. The following abstract of the laws of several of the United States, will be acceptable to the commercial lawyer.

3. Alabama. 1. When drawn on a person in the United States. By the Act of January 15, 1828, the damages on a protested bill of exchange drawn on a person, either in this or any other of the United States, are ten per cent. By the Act of December 21, 1832, the damages on such bills drawn on any person in this state, or upon any person payable in New Orleans, and purchased by the Bank of Alabama or its branches, are five per cent.

4.-2. Damages on protested bills drawn on on person out of the United States are twenty per cent.

5. Arkansas. 1. It is provided by the Act of February 28, 1838, s. 7, Ark. Rev. Stat. 150, that "every bill of exchange expressed to be for value received, drawn or negotiated within this state, payable after date, to order or bearer, which shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, shall be subject to damages in the following cases: first, if the bill have been drawn on any person at any place within this state, at the rate of two per centum on the principal sum specified in the bill; second, if the bill shall be drawn on any person, and payable in any of the states of Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, or any point on the Ohio river, at the rate of four per centum on the principal sum in such bill specified: third, if the bill shall have been drawn on any person, and payable at any place within the limits of the United States, not

hereinbefore expressed, at the rate of five per centum on the principal sum specified in the bill: fourth, if the bill shall have been drawn on any person, and payable at any point or place beyond the limits of the United States, at the rate of ten per centum on the sum specified in the bill.

6.-2. And by the 8th section of the same act, if any bill of exchange expressed to be for value received, and made payable to order or bearer, shall be drawn on any person at any place within this state, and accepted and protested for non-payment, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases: first, if the bill be drawn by any person at any place within this sate, at the rate of two per centum on the principal sum therein specified: second, if the bill be drawn at any place without this state, but within the limits of the United States, at the rate of six per centum on the sum therein specified: third, if the bill be drawn on any person at any place without the limits of the United Sates, at the rate of ten per centum on the sum therein specified. And, by sect 9, in addition to the damages allowed in the two preceding sections to the holder of any bill of exchange protested for non-payment or nonacceptance, he shall be entitled to costs of protest, and interest at the rate of ten per centum per annum, on the amount specified in the bill, from the date of the protest until the amount of the bill shall be paid."

7. Connecticut. 1. When drawn on another place in the United States. When drawn upon persons in the city of New York, two per cent. When in other parts of the state of New York, or the New England states (other than this,) New Jersey, Pennsylvania, Delaware, maryland, Virginia, or the District of Columbia, three per cent. When on persons in North or South Carolina, Georgia, or Ohio, five per cent. On other states, territories or districts, in the United States, eight per cent, on the principal sum in each case, with interest on the amount of such sum, with the damage after notice and demand. Stat. tit. 71, Notes and Bills, 413, 414. When drawn on persons

residing in Connecticut no damages are allowed.

8.-2. When the bill is drawn on person out of the United States, twenty per cent is said to be the amount which ought reasonably to be allowed. Swift's Ev. 336. There is no statutory provision on the subject.

9. Delaware. If any person shall draw or endorse any bill of exchange upon any person in Europe, or beyond seas, and the same shall be returned back unpaid, with a legal protest, the drawer there and all others concerned shall pay and discharge the contents of the said bill, together with twenty per cent advance f or the damage thereof; and so proportionably for a greater or less sum, in the sam specie as the same bill was drawn, or current money of this government equivalent to that which was first paid to the drawer or endorser.

10. Georgia. 1. Bills on persons in the United States. First, in the state. No damages are allowed on protested bills of exchange drawn in the state, on a person in the state, except bank bills, on which the damages are ten per cent for refusal to pay in specie. 4 Laws of Geo. 75. Secondly, upon bills drawn or negotiated in the state on persons out of the state, but within the United States, five per cent, and interest. Act of 1823, Prince's Dig. 454; 4 Laws of Geo. 212.

11.-2. When drawn upon a person out of the United States, ten per cent. damages and postage, protest and necessary expenses; also the premium, if any, on the face of the bill; but if at a discount, the discount must be deducted. Act of 1827, Prince's Dig. 462; 4 Laws of Geo. 221.

12. Indiana. 1. When drawn by a person in the state on another person in Indiana, no damages are allowed.

13.-2. When drawn on a person in another state, territory, or district, five per cent. 3. When drawn on a person out of the United States, ten percent. Rev. Code, c. 13, Feb. 17, 1838.

14. Kentucky. 1. When drawn by a person in Kentucky on a person in the state, or in any other state, territory, or district of the United States, no damages are allowed. See, Acts, Sessions of 1820, p. 823.

15.-2. When on a person in a foreign country, damages are given at the rate of ten per cent. per ann. from the date of the bill until paid, but not more than eighteen months interest to be collected. 2 Litt. 101.

16. Louisiana. The rate of damages to be allowed and paid upon the usual protest for non-acceptance, or for non-payment of bills of exchange, drawn or negotiated within this state in the following cases, is as follows: on all bills of exchange drawn on or payable in foreign countries, ten dollars upon the hundred upon the principal sum specified in such bills; on all bills of exchange, drawn on and payable in other states in the United States, five dollars upon the hundred upon the principal sum specified in such bill. Act of March 7, 1838, s. 1.

17. By the second section of the same act it is provided that such damages shall be in lieu of interest, charge of protest, and all other charges, incurred previous to the time of giving notice of non-acceptance or non-payment; but the principal and damages shall bear interest thereafter.

18. By section 3, it is enacted, that if the contents of such bill be expressed in the money of account of the United States, the amount of the principal and of the damages herein allowed for the non-acceptance or non-payment shall be ascertained and determined, without any reference to the rate of exchange existing between this state and the place on which such bill shall have been drawn, at the time of the payment, on notice of non-acceptance or non-payment.

19. Maine. 1. When drawn payable in the United States. The damages in addition to the interest are as follows: if for one hundred dollars or more, and drawn, accepted, or endorsed in the state, at a place, seventy-five miles distant from the place where drawn, one per cent.; if, for any sum

drawn, accepted, and endorsed in this state, and payable in New Hampshire, Vermont, Connecticut, Rhode Island, or New York, three per cent; if payable in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, or the District of Columbia, six per cent.; if payable in any other state, nine per cent. Rev. St. tit. 10 c. 115, Sec. 110, 111.

20.-2. Out of the United States, no statutory provision. It is the usage to allow the holder of the bill the money for which it was drawn, reduced to the currency of the state, at par, and also the charges of protest with American interest upon those sums from the time when the bill should have been paid and the further sum of one-tenth of the money for which the bill was drawn, with interest upon it from the time payment of the dishonored bill was demanded of the drawer. But nothing has been allowed for re-exchange, whether it is below or above par. Per Parsons, Ch. J. 6 Mass. 157, 161 see 6 Mass. 162.

21. Maryland. 1. No damages are allowed when the bill is drawn in the state on another person in Maryland.

22.-2. When it is drawn on any "person, company, or society, or corporation in any other of the United States," eight per cent. damages on the amount of the bill are allowed, and an amount to purchase another bill, at the current exchange, and interest and losses of protest.

24.-3. If the bill be drawn on a "foreign country," fifteen per cent. damages are allowed, and the expense of purchasing a new bill as above, besides interest and costs of protest. See Act of 1785, c. 88.

25. Michigan. 1. When a bill is drawn in the state on a person in the state, no damages are allowed.

26.-2. When drawn or endorsed within the state and payable out of it, within the United States, the rule is as follows: in addition to the contents of the bill, with interest and costs, if payable within the states

of Wisconsin, Illinois, Indiana, Ohio, and New York, three per cent. on the contents of the bill if payable within the states of Missouri, Kentucky, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, or the District of Columbia, five per centum; if payable elsewhere in the United States, out of Michigan, ten per cent. Rev. St. 156, S. 10.

27.-3. When the bill is drawn within this state, and payable out of the United States, the party liable must pay the same at the current rate of exchange at the time of demand of payment, and damages at the rate of five per cent. on the contents thereof, together with interest on the said contents, which must be computed, from the date of the protest, and are in full of all damages and charges and expenses. Rev. Stat. 156, s. 9.

28. Mississippi. 1. When drawn on a person in the state, five per cent. damages are allowed. How. & Hutch. 376, ch. 35, s. 20, L. 1827; How. Rep. 3. 195.

29.-2. When drawn on a person in another state or territory, no damages are given. Id. 3. When drawn on a person out of the United States, ten per cent. damages are given, and all charges incidental thereto, with lawful interest. How. & Hutch. 376, ch. 35, s. 19, L. 1837.

30. Missouri. 1. When drawn on a person within the state, four per cent. damages on the sum specified in the bill are given. Rev. Code, 1835, Sec. 8, cl. 1, p. 120.

31.-2. When on another state or territory, ten per cent. Rev. Code, 1835, Sec. 8, cl. 2, p. 120. 3. When on a person out of the United States, twenty per cent. Rev. Code, 1835, Sec. 8, cl. 3, p. 120.

32. New York. By the Revised Statutes, Laws of N. Y. sess. 42, ch. 34, it is provided that upon bills drawn or negotiated within the state upon any person, at any place within the six states east of New York, or in New Jersey, Pennsylvania, Ohio, Delaware, Maryland, Virginia, or the District of

Columbia, the damages to be allowed and paid upon the usual protest for non-acceptance or non-payment, to the holder of the bill, as purchase thereof, or of some interest therein, for a valuable consideration, shall be three per

cent. upon the principal sum specified in the bill; and upon any person at any place within the states of North Carolina, South Carolina, Georgia, Kentucky, and Tennessee, five percent; and upon any person in any other state or territory of the United States, or at any other place on, or adjacent to, this continent, and north of the equator, or in any British or foreign possessions in the West Indies, or elsewhere in the Western Atlantic Ocean, or in Europe, ten per cent. The damages are to be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of, giving notice of non-acceptance or non-payment. But the holder will be entitled to demand and recover interest upon the aggregate amount of the principal sum specified in the bill, and the damages from time of notice of the protest for non-acceptance, or notice of a demand and protest for non-payment. If the contents of the bill be expressed in the money of account of the United States, the amount due thereon, and the damages allowed for the non-payment, are to be ascertained and determined, without reference to the rate of exchange existing between New York and the place on which the bill is drawn. But if the contents of the bills be expressed in the money of account or currency of any foreign. country, then the amount due, exclusive of the damages, is to be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

33. Pennsylvania. The Act of March 30, 1821, entitled an act concerning bills of exchange, enacts, that, Sec. 1, "whenever any bill of exchange hereafter be drawn and endorsed within this commonwealth, upon any

person or persons, or body corporate, of, or in any other state, territory, or place, shall be returned unpaid with a legal protest, the person or persons to whom the same shall or may be payable, shall be entitled to recover and receive of and from the drawer or drawers, or the endorser or endorsers of such bill of exchange, the damages hereinafter specified, over and above the principal sum for which such bill of exchange shall have been drawn, and the charges of protest, together with lawful interest on the amount of such principal sum, damages and charges of protest, from the time at which notice of said protest shall have been given, and the payment of said principal sum and damages, and charges of protest demanded; that is to say, if such bill shall have been drawn upon any person or persons, or body corporate, of, or in any of the United States or territories thereof, excepting the state of Louisiana, five per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in Louisiana, or of, or in any other state or place in North America, or the islands thereof, excepting the northwest coast of America and Mexico, or of, or in any of the West India or Bahama Islands, ten per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in the island of Madeira, the Canaries, the Azores, the Cape de Verde Islands, the Spanish Main, or Mexico, fifteen per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in any state or place in Europe, or any of the island's thereof, twenty per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in any other part of the world, twenty-five per cent. upon such principal sum.

34.-2. "The damages, which, by this act, are to be recovered upon any bill of exchange, shall be in lieu of interest and all other charges, except the charges of protest, to the time when notice of the protest and demand of payment shall have been given and made, aforesaid; and the amount of such bill and of the damages payable thereon, as specified in this act, shall be

ascertained and determined by the rate, of exchange, or value of the money or currency mentioned in such bill, at the time of notice of protest and demand of payment as before mentioned."

35. Tennessee. 1. On a bill drawn or endorsed within the state upon any person or persons, or body corporate, of, or in, any other state, territory, or place, which shall be returned unpaid, with a legal protest, the holder shall be entitled to the damages hereinafter specified, over and above the principal sum for which such bill of exchange shall have been drawn, and the charge of protest, together with lawful interest on the amount of such principal sum, damages, and charges of protest, from the time at which notice of such protest shall have been given, and the payment of said principal sum, damages, and charges of protest demanded; that is to say, if such bill shall have been drawn on any person or persons, or body corporate, of, or in any of these United States, or the territories thereof, three per cent. upon such principal sum: if upon any other person or persons, or body corporate, of, or in, any other state or place in North America, bordering upon the Gulf of Mexico, or of, or in, any of the West India Islands, fifteen per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in, any other part of the world, twenty per cent. upon such principal sum.

36.-2. The damages which, by this act, are to be recovered upon any bill of exchange, shall be in lieu of interest and all other charges, except charges of protest, to the time when notice of the protest and demand of payment shall have been given and made as aforesaid. Carr. & Nich. Comp. 125; Act of 1827, c. 14.

DAMAGES, DOUBLE or TREBLE, practice. In cases where a statute gives a party double or treble damages, the jury are to find single damages, and the court

to enhance them, according to the statute Bro. Ab. Damages, pl. 70; 2 Inst. 416; 1 Wils. 126; 1 Mass. 155. In Sayer on Damages, p. 244, it is said, the jury may assess the statute damages and it would seem from some of the modern cases, that either the jury or the court may assess. Say. R. 214; 1 Gallis. 29.

DAMAGES, GENERAL, torts. General damages are such as the law implies to have accrued from the act of a tort-feasor. To call a man a thief, or commit an assault and battery upon his person, are examples of this kind. In the first case the law presumes that calling a man a thief must be injurious to him, with showing that it is so. Sir W. Jones, 196; 1 Saund. 243, b. n. 5; and in the latter case, the law implies that his person has been more or less deteriorated, and that the injured party is not required to specify what injury he has sustained, nor to prove it. Ham. N. P. 40; 1 Chit. Pl. 386; 2 L.R. 76; 4 Bouv. Inst. n. 3584.

DAMAGES, LAYING, pleading. In personal and mixed actions, (but not in penal actions, for obvious reason,) the declaration must allege, in conclusion, that the injury is to the damage of the plaintiff; and must specify the amount of damages. Com. Dig. Pleader, C 84; 10 Rep. 116, b.

2. In personal actions there is a distinction between actions that sound in damages, and those that do not; but in either of these cases, it is equally the practice to lay damages. There is, however, this difference: that, in the former case, damages are the main object of the suit, and are, therefore, always laid high enough to cover the whole demand; but in the latter, the liquidated debt, or the chattel demanded, being the main object, damages are claimed in respect of the detention only, of such debt or chattel; and are, therefore, usually laid at a small sum. The plaintiff cannot recover greater damages than he has laid in the conclusion of his

declaration. Com. Dig. Pleader, C 84; 10 Rep. 117, a, b; Vin. Ab. Damages, R.

3. In real actions, no damages are to be laid, because, in these, the demand is specially for the land withheld, and damages are in no degree the object of the suit. Steph. Pl. 426; 1 Chit. Pl. 397 to 400.

DAMAGES, LIQUIDATED, contracts. When the parties to a contract stipulate for the payment of a certain sum, as a satisfaction fixed and agreed upon by them, for the not doing of certain things particularly mentioned in the agreement, the sum so fixed upon is called liquidated damages. (q.v.) It differ from a penalty, because the latter is a forfeiture from which the defaulting party can be relieved. An agreement for liquidated damages can only be when there is an engagement for the performance of certain acts, the not doing of which would be an injury to one of the parties; or to guard against the performance of acts which, if done, would also be injurious. In such cases an estimate of the damages may be made by a jury, or by a previous agreement between the parties, who may foresee the consequences of a breach of the engagement, and stipulate accordingly. 1 H. Bl. 232; and vide 2 Bos. & Pul. 335, 350-355; 2 Bro. P. C. 431; 4 Burr, 2225; 2 T. R. 32. The civil law appears to agree with these principles. Inst. 3, 16, 7; Toull. liv. 3, n. 809; Civil Code of Louis. art. 1928, n. 5; Code Civil, 1152, 1153.

2. It is to be observed, that the sum fixed upon will be considered as liquidated damages, or a penalty, according to the intent of the parties, and the more use of the words "penalty," &c "forfeiture," or "liquidated damages," will not be regarded is at all decisive of the question, if the instrument discloses, upon the whole, a different intent. 2 Story, Eq. Sec. 1318; 6 B.& C. 224; 6 Bing. 141; 6 Iredell, 186; 3 Shepl. 273; 2 Ala. 425;

8 Misso. 467.

3. Rules have been adopted to ascertain whether such sum so agreed upon shall be considered a penalty or liquidated damages, which will be here enumerated by considering, first, those cases where it has been considered as a penalty and, secondly, where it has been considered as liquidated damages.

4.-1. It has been treated as penalty, 1st. where the parties in the agreement have expressly declared the sum intended as a forfeiture or a penalty, and no other intent can be collected from the instrument. 2 B. & P, 340, 350, 630; 1 McMullan, 106; 2 Ala. 425; 5 Metc. 61; 1 H. Bl. 227; 1 Campb. 78; 7 Wheat. 14; 1 Pick. 451; 4 Pick. 179; 3 Johns. Cas. 297. 2d. Where it is doubtful whether it was intended as a penalty or not, and a certain debt or damages, less than the penalty, is made payable on the face of the instrument. 3 C. & P. 240; 6 Humph. 186. 3d. Where the agreement was made, evidently, for the attainment of another object, to which the sum specified is wholly collateral. 11 Mass. 76; 15 Mass. 488; 1 Bro. C. C. 418. 4th. Where the agreement contains several matters, of different degrees of importance, and yet the sum named is payable for the breach of any, even the least. 6 Bing. 141; 5 Bing. N. C. 390; 7 Scott, 364; sed vide, 7 John. 72; 15 John. 200. 5th. Where the contract is not under seal, and the damages are capable of being certainly known and estimated. 2 B. & Al. 704; 6 B. & C. 216; 1 M. & Malk. 41; 4 Dall. 150; 5 Cowen, 144.

5.-2. The sum agreed upon has been considered as liquidated damages, 1st. Where the damages are uncertain, and are not capable of being ascertained by any satisfactory and known rule. 2 T. R. 32; 1 Alc. & Nap. 389; 2 Burr, 2225; 10 Ves. 429; 3 M. & W. 545; 8 Mass. 223; 3 C. & P. 240; 7 Cowen 307; 4 Wend. 468. 2d. Where, from the tenor of the agreement, or from the nature of the case, it appears that the parties have ascertained the amount of damages by fair calculation and adjustment. 2 Story, Eq. Juris.

Sec. 1318; 10 Mass. 459; 7 John. 72; 15 John. 200; 1 Bing. 302; 7 Conn. 291; 13 Wend. 507; 2 Greenl. Ev. Sec. 259; 11 N. H. Rep. 234; 6 Blackf. 206; 26 Wend. 630; 17 Wend. 447; 22 Wend. 201; 7 Metc. 583; 2 Ala. 425; 2 Shepl. 250.

Vide, generally, 7 Vin. Ab. 247; 16 Vin. Ab. 58; 2 W. Bl. Rep. 1190;. Coop. Just. 606; 1 Chit. Pr. 872; 2 Atk. 194; Finch. 117; Prec. in Ch. 102; 2 Bro. P. C. 436; Fonbl. 151, 2, note; Chit. Contr. 836; 11 N. Hamp. Rep. 234.

DAMAGES, SPECIAL, torts. Special damages are such as are in fact sustained, and are not implied by law; these are either superadded to general damages, arising from an act injurious in itself, as when some particular loss arises. from the uttering of slanderous words, actionable in themselves, or are such as arise from an act indifferent and not actionable in itself, but injurious only in its consequences, as when the words become actionable only by reason of special damage ensuing. To constitute special damage the legal and natural consequence must arise from the tort, and not be a mere wrongful act of a third person, or a remote consequence. 1 Camp. 58; Ham. N. P. 40; 1 Chit. Pl. 385, 6.

DAMAGES, SPECIAL, pleading. As distinguished from the gist of the action, signify that special damage which is stated to result from the gist; as, if a plaintiff in an action of trespass for breaking his close, entering his house, and tossing his goods about, were to state that by means of the damage done to his house, he was obliged to seek lodging elsewhere.

2. Sometimes the special damage is said to constitute the gist of the action itself; for example, in an action wherein the plaintiff declares for slanderous words, which of themselves are not a sufficient ground or

foundation for the suit, if any particular damage result to the plaintiff from the speaking of them, that damage is properly said to be the gist of the action.

3. But whether special damage be the gist of the action, or only collateral to it, it must be particularly stated in the declaration, as the plaintiff will not otherwise be permitted to go into evidence of it at the trial, because the defendant cannot also be prepared to answer it. Willes, 23. See Gist.

DAMAGES, UNLIQUIDATED. The unascertained amount which is due to a person by another for an injury to the person, property, or relative rights of the party injured. These damages, being unknown, cannot be set off against the claim which the tort feasor has against the party injured. 2 Dall. 237; S. C. 1 Yeates, 571; 10 Serg. & Rawle 14; 5 Serg. & Rawle 122.

DAMNIFICATION. That which causes a loss or damage to a society, or to one who has indemnified another. For example, when a society has entered into an obligation to pay the debt of the principal, and the principal has become bound in a bond to indemnify the surety, the latter has suffered a damnification the moment he becomes liable to be sued for the debt of the principal - and it has been held in an action brought by the surety, upon a bond of indemnity, that the terror of suit, so that the surety dare not go about his business, is a damnification. Ow. 19; 2 Chit. R. 487; 1 Saund. 116; 8 East, 593; Cary, 26.

2. A judgment fairly obtained against a party for a cause against which another person is bound to indemnify him, with timely notice to that person of the bringing of the action, is admissible as evidence in an action brought against the guarantor on the indemnity. 7 Cranch, 300, 322. See F. N. B. Warrantia Chartae; Lib. Int. Index, Warrantia Chartae; 2 S. & R. 12,

DAMNIFY. To cause damage, injury or loss.

DAMNOSA HAEREDITAS. A name given by Lord Kenyon to that species of property of a bankrupt, which, so far from being valuable, would be a charge to the creditors for example, a term of years, where the rent would exceed the revenue.

2. The assignees are not bound to take such property, but they must make their election, and, having once entered into possession, they cannot afterwards abandon the property. 7 East, R. 342; 3 Campb. 340.

DAMNUM ABSQUE INJURIA. A loss or damage without injury.

2. There are cases when the act of one man may cause a damage or loss to another, and for which the latter has no remedy; he is then said to have received damnum absque injuria; as, for example, if a man should set up a school in the neighborhood of another school, and, by that means, deprive the former of its patronage; or if a man should build a mill along side of another, and consequently reduce his custom. 9 Pick. 59, 528.

3. Another instance may be given of the case where a man using proper care and diligence, while excavating for a foundation, injures the adjoining house, owing to the unsuitable materials used in such house; here the injury is damnum absque injuria.

4. When a man slanders another by publishing the truth, the person slandered is said to have sustained loss without injury. Bac. Ab. Actions on the Case, C Dane's Ab. Index, h.t.

DAMNUM FATALE, civil law. Damages caused by a fortuitous event, or

inevitable accident; damages arising from the act of God. Among these were included losses by shipwreck, lightning, or other casualty; also losses by pirates or by vis major, by fire, robbery, and burglary; but theft was not numbered among these casualties.

2. In general, bailees are not liable for such damages. Story, Bailm. p. 471.

DANE-LAGE, Eng. law. That system of laws which was maintained in England while the Danes had possession of the country.

DANGERS OF THE SEA, mar. law. This phrase is sometimes put in bills of lading, the master of the ship agreeing to deliver the goods therein mentioned to the consignee, who is named, the dangers of the sea excepted. Sometimes the phrase is "Perils of the Sea." (q.v.) See 1 Brock. R. 187.

DARREIN. A corruption of the French word "dernier," the last. It is sometimes used as, "darrein continuance," the last continuance. When any matter has arisen in discharge of the defendant in action, he may take advantage of it, provided he pleads itpuis darrein continuance; for if he neglect to do so, he waives his right. Vide article darrein continuance.

DARREIN SEISIN. The name of a plea to a writ of entry or a writ of right. 3 Met. 175.

DATE. The designation or indication in an instrument of writing, of the time, and usually of the time and place, when and where it was made. When the place is mentioned in the date of a deed, the law intends, unless the contrary appears, that it was executed at the place of the date. Plowd. 7 b., 31 H. VI. This word is derived from the Latin datum, because when deeds

and agreements were written in that language, immediately before the day, month and year in which they were made, was set down, it was usual to put the word datum, given.

2. All writings ought to bear a date, and in some it is indispensable in order to make them valid, as in policies of insurance; but the date in these instruments is not inserted in the body of the writing because as each subscription makes a separate contract, each underwriter sets down the day, month and year he makes his subscription. Marsh. Ins. 336.

3. Deeds, and other writings, when the date is an impossible one, take effect from the time of deliver; the presumption of law is, that the deed was dated on the day it bears date, unless, as just mentioned, the time is impossible; for example, the 32d day of January.

4. The proper way of dating, is to put the day, month, and year of our Lord; the hour need not be mentioned, unless specially required; an instance of which may be taken from the Pennsylvania Act of the 16th June, 1836, sect. 40, which requires the sheriff, on receiving a writ of fieri facias, or other writ of execution, to endorse thereon the day of the month, the year, and the hour of the day whereon he received the same.

5. In public documents, it is usual to give not only the day, the month, and the year of our Lord, but also the year of the United States, when issued by authority of the general government; or of the commonwealth, when issued under its authority. Vide, generally, Bac. Ab. Obligations, C; Com. Dig, Fait, B 3; Cruise, Dig. tit, 32, c. 20, s. 1-6; 1 Burr. 60; 2 Rol. Ab. 27, 1. 22; 13 Vin. Ab. 34; Dane's Ab. Index, h.t. See Almanac.

DATION, civil law, contracts. The act of giving something. It differs from donation, which is a gift; dation, on the contrary, is giving something without any liberality; as, the giving of an office.

2. Dation in payment, datio in solutionem, which was the giving one thing in payment of another which was due, corresponds nearly to the accord and satisfaction of the common law.

DATION EN PAIEMENT, civil law. This term is used in Louisiana; it signifies that, when instead of paying a sum of money due on a pre-existing debt, the debtor gives and the creditor agrees to receive a movable or immovable.

2. It is somewhat like the accord and satisfaction of the common law. 16 Toull. n. 45 Poth. Vente, U. 601. Dation en paiement resembles in some respects the contract of sale; dare in solutum, est quasi vendere. There is, however, a very marked difference between a sale and a dation en paiement. 1st. The contract of sale is complete by the mere agreement of the parties the dation en paiement requires a delivery of the thing given. 2d. When the debtor pays a certain sum which he supposed he was owing, and be discovers he did not owe so much, he may recover back the excess, not so when property other than money has been given in payment. 3d. He who has in good faith sold a thing of which he believed himself to be the owner, is not precisely required to transfer the property of it to the buyer and, while he is not troubled in the possession of the thing, he cannot pretend that the seller has not fulfilled his obligations. On the contrary, the dation en paiement is good only when the debtor transfers to the creditor the property in the thing which he has agreed to take in, payment and if the thing thus delivered be the property of another, it will not operate as a payment. Poth. Vente, n. 602, 603, 604.

DATIVE. That which may be given or disposed of at will and pleasure. It sometimes means that which is not cast upon the party by the law, or by a testator, but which is given by the magistrate; in this sense it is that tutorship is dative, when the tutor is appointed by the magistrate. Lec.

Elem. Sec. 239; Civ. Code of L. art. 288, 1671.

DAUGHTER. An immediate female descendant. See Son.

DAUGHTER-IN-LAW. In Latin, nurus, is the wife of one's son.

DAY. A division of time. It is natural, and then it consists of twenty-four hours, or the space of time which elapses while the earth makes a complete revolution on its axis; or artificial, which contains the time, from the rising until the setting of the sun, and a short time before rising and after setting. Vide Night; and Co. Lit. 135, a.

2. Days are sometimes calculated exclusively, as when an act required that an appeal should be made within twenty days after a decision. 3 Penna. 200; 3 B. & A. 581; 15 Serg. & Rawle, 43. In general, if a thing is to be done within such a time after such a fact, the day of the fact shall be taken inclusively. Hob. 139; Doug. 463; 3 T. R. 623; Com. Dig. Temps, A; 3 East, 407.

3. The law, generally, rejects fractions of days, but in some cases it takes notice of such parts. 2 B. & A. 586. Vide Date.

4. By the custom of some places, the word day's is understood to be working days, and not including Sundays. 3 Espin. N. P. C. 121. Vide, generally, 2 Chit. Bl. 141, note 3; 1 Chit. Pr. 774, 775; 3 Chit. Pr. 110; Lill. Reg. h. t; 1 Rop. Leg. 518; 15 Vin. Ab. 554; Dig. 33, 1, 2; Dig. 50, 16, 2, 1; Id. 2, 12, 8; and articles Hour; Month; Year.

DAY BOOK, mer. law. An account book, in which merchants and others make entries of their daily transactions. This is generally a book of original entries, and as such may be given in evidence to prove the sale and

delivery, of merchandise or of work done.

DAY RULE, or DAY WRIT, English practice. A rule or order of the court, by which a prisoner on civil process, and not committed, is enabled, in term time, to go out of the prison, and its rule or bounds; a prisoner is enabled to quit the prison, for more or less time, by three kinds of rules, namely: 1. The day-rule. 2. The term-rule; and 3. The rules. See 9 East, R. 151.

DAYS IN BANK, Eng. practice. Days of appearance in the court of common pleas, usually called bancum. They are at the distance of about a week from each other, and are regulated by some festival of the church. 8 Bl. Com. 277.

DAYS OF GRACE. Certain days after the time limited by the bill or note, which the acceptor or drawer has a right to demand for payment of the bill or note; these days were so called because they were formerly gratuitously allowed, but now, by the custom of merchants, sanctioned by decisions of courts of justice, they are demandable of right. 6 Watts & Serg. 179. The number of these in the United States is generally three. Chitty on Bills, h.t. But where the established usage of the where the instrument is payable, or of the bank at which it is payable, or deposited for collection, be to make the demand on the fourth or other day, the parties to the note will be bound by such usage. 5 How. U. S. Rep. 317; 1 Smith, Lead. Cas. 417. When the last day of grace happens on the 4th of July; 2 Caines Cas. in Err. 195; or on Sunday; 2 Caines' R. 343; 7 Wend. 460; the demand must be made on the day previous. 13 John. 470; 7 Wend. 460; 12 Mass. 89; 6 Pick. 80; 2 Caines, 343: 2 McCord, 436. But see 2 Conn. 69. See 20 Wend. 205; 1 Metc. R. 43; 2 Cain. Cas. 195; 7 How. Miss. R. 129; 4 J. J. Marsh. 332.

2. In Louisiana, the days of grace are no obstacle to a set off, the

bill being due, for this purpose before the expiration of those days. Louis. Code, art. 2206.

3. In France all days of grace, of favor, of usage, or of local custom, for the payment of bills of exchange, are abolished. Code de Com. art. 185. See 8 Verm. 833; 2 Port. 286; 1 Conn. 329; 1 Pick. 401; 2 Pick. 125; 3 Pick. 414; 1 N. & M. 83.

DAYS OF THE WEEK. These are Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday. See Week.

2. The court will take judicial notice of the days of the week, for example, when a writ of inquiry was stated in the pleadings to have been executed on the fifteenth of June, and, upon an examination, it was found to be Sunday, the proceeding was held to be defective. Forteso. 373; S. C. Str. 387.

DE. A preposition used in many Latin phrases as, de bone esse, de bonis non.

DE ARBITRATIONE FACTA, WRIT. In the ancient English law, when an action was brought for the same cause of action which had been before settled by arbitration, this writ was brought. Wats. on Arb. 256.

DE BENE ESSE, practice. A technical phrase applied to certain proceedings which are deemed to be well done for the present, or until an exception or other avoidance, that is, conditionally, and in that meaning the phrase is usually accepted. For example, a declaration is filed or delivered, special bail put in, witness examined, &c. de bene esse, or conditionally; good for the present.

2. When a judge has a doubt as to the propriety of finding a verdict, h(, may direct the jury to find one de bene esse; which verdict, if the court shall afterwards be of opinion it ought to have been found, shall stand. Bac. Ab. Verdict, A. Vide 11 S. & R. 84.

DE BONIS NON. This phrase is used in cases where the goods of a deceased person have not all been administered. When an executor or administrator has been appointed, and the estate is not fully settled, and the executor or administrator is dead, has absconded, or from any cause has been removed, a second administrator is appointed to to perform the duty remaining to be done, who is called an administrator de bonis non, an administrator of the goods not administered and he becomes by the appointment the only representative of the deceased. 11 Vin. Ab. 111; 2 P. Wms. 340; Com. Dig. Administration, B I; 1 Root's 11. 425. And it seems that though the estate has been distributed, an administrator de nonis non may be appointed, if debts remain unsatisfied. 1 Root's R. 174.

DE BONIS PROPRIIS. Of his own goods. When an executor or administrator has been guilty of a devastavit, (q.v.) he is responsible for the loss which the estate has sustained, de bonis propriis. He may also subject himself to the payment of a debt of the deceased, de bonis propriis, by his false plea, when sued in a representative as, if he plead plene administravit, and it be found against him, or a release to himself, when false. In this latter case the judgment is de bonis testatoris si, et si non de bonis propriis. 1 Saund. 336 b, n. 10 Bac. Ab. Executor, B 8.

DE CONTUMACE CAPIENDO. The name of a writ issued for the arrest of a defendant who is in contempt of the ecclesiastical court. 1 Nev. & Per. 680, 685, 689; 5 Dowl. 213, 646.

DE DOMO REPARANDA. The name of an ancient common law writ, by which one tenant in common might compel his co-tenant to concur in the expense of repairing the property held in common. 8 B. & C. 269; 1 Tho. Co. Litt. 216, note 17, and p. 787.

DE DONIS, STATUTE. The name of an English statute passed the 13 Edwd. I. c. 1, the real design of which was to introduce perpetuities, and to strengthen the power of the barons. 6 Co. 40 a; Co. Litt. 21; Bac. Ab. Estates in tail, in prin.

DE FACTO, i. e. in deed. A term used to denote a thing actually done; a president of the United States de facto is one in the exercise of the executive power, and is distinguished from one, who being legally entitled to such power is ejected from it; the latter would be a president de jure. An officer de facto is frequently considered as an officer de jure, and his official acts are of equal validity. 10 S. & R. 250; 4 Binn. R. 371; 11 S. & R. 411, 414; Coxe, 318; 9 Mass. 231; 10 Mass. 290; 15 Mass. 180; 5 Pick. 487.

DE HOMINE REPLEGIANDO. The name of a writ which is used to replevy a man out of prison, or out of the custody of a private person. See Homine replegiando; Writ de homine replegiando.

DE INJURIA, pleading. The name of a replication in an action for a tort, that the defendant committed the trespasses or grievances of his own wrong, without the cause by,him in his plea alleged.

2. The import of this replication is to insist that the defendant

committed the act complained of, from a motive and impulse altogether different from that insisted on by the plea. For example, if the defendant has justified a battery under a writ of capias, having averred, as he must do, that the arrest was made by virtue of the writ; the plaintiff may rely de injuria sua propria absque tali causa, that the defendant did the act of his own wrong, without the cause by him alleged. This replication, then, has the effect of denying the alleged, motive contained in the plea, and to insist that the defendant acted from another, which was unlawful, and not in, consequence of the one insisted upon in his plea. Steph. Pl. 186; 2 Chit. Pl. 523,.642; Hamm. N. P. 120, 121; Arch. Civ. Pl. 264; Com. Dig. Pleader, F 19.

3. The form of this replication is, "precludi non, because he says that the said defendant at the same time when, &c., of his own wrong, and without the cause by him in his said second plea alleged, committed the said trespass in the introductory part of that plea, in manner and form as the said plaintiff hath above in his said declaration complained against the said defendant, and this the said plaintiff prays, may be inquired of by the country," &c. This is the uniform conclusion of such a replication. 1 Chit. Pl. 585.

4. The replication de injuria is only allowed when an excuse is offered for personal injuries. 1 B. & P. 76; 5 Johns. R. 112; 4 Johns. 150; 12 Johns. 491. Vide 7 Vin. Ab. 503; 3 Saund. 295, note; 1 Lilly's Reg. 587.

5. In England, where the extent of the general issues has been confined in actions on contracts, and special pleas have become common in assumpsit, it has become desirable, that the plaintiff, who has but one replication, should put in issue the several numerous allegations which the special pleas were found to contain; for, unless he could do this, he would labor under the hardship of being frequently compelled to admit the greater part of an entirely false story. It became, therefore, important to ascertain whether

de injuria could not be replied to cases of this description and, after numerous cases which were presented for adjudication, it was finally settled that de injuria may be replied in assumpsit, when the plea consists of matters of excuse. 3 C. M. &,R. 65; 2 Bing. N. C. 579 4 Dowl. 647.

6. The improper use of de injuria is ground of general demurrer. 2 Lev. 65; 4 Tyrw. 771. But if the defendant do not demur, the objection will not avail after verdict. Hob. 76: Sir T. Raym. 50.

7. De injuria puts in issue the whole of the defence contained in the plea. 5 B. & A. 420; 11 East, 451; 10 Bing. 157. But if the plea state some authority in law, which, prima facie, would be a justification of the act complained of, the plaintiff will not be allowed under the plea of de injuria to show an abuse of that authority so as to convert the defendant into a tort feasor ab initio. 1 Bing. 317; 1 Bing. N. S. 387. See 1 Smith's L. C. 53 to 61; 8 Co. 66.

DE JUDAISMO, STATUTUM. The name of a statute passed in the reign of Edw. I., which enacted severe and absurd penalties against the Jews. Barr. on Stat. 197.

2. The Jews were exceedingly oppressed during the middle ages throughout Christendom, and, are so still in some countries. In France, a Jew was a serf, and his person and goods belonged to the baron on whose demesnes he lived. He could not change his domicil without permission of the baron, who could pursue him as a fugitive even on the domains of the king. Like an article of commerce, he might be lent or hired for a time, or mortgaged. If he became a Christian, his conversion was considered a larceny of the lord, and his property and goods were confiscated. They were allowed to utter their prayers only in a low voice and without chanting. They were not allowed to appear in public without some badge or mark of distinction.

Christians were forbidden to employ Jews of either sex as domestics, physicians or surgeons. Admission to the bar was forbidden to Jews. They were obliged to appear in court in person, when they demanded justice for a wrong done them, and it was deemed disgraceful to an advocate to undertake the cause of a Jew. If a Jew appeared in court against a Christian, he was obliged to swear by the ten names of God, and invoke a thousand imprecations against himself, if he spoke not the truth. Sexual intercourse between a Christian man and a Jewess was deemed a crime against nature, and was punishable with death by burning. Quia est rem habere cum cane, rem habere a Christiano cum Judaea quae CANIS reputatur - sic comburi debet. 1 Fournel, Hist. des Avocats, 108, 110. See Merlin, Repert. au mot Juifs.

3. In the fifth book of the Decretals, it is provided, that if a Jew have a servant that desireth to be a Christian, the Jew shall be compelled to sell him to a Christian for twelve pence that it shall not be lawful for them to take any Christian to be their servant that they may repair their old synagogues, but not build new - that it shall not be lawful for them to open their doors, or windows on good Friday; that their wives neither have Christian nurses, nor themselves be nurses to Christian women - that they wear different apparel from the Christians, whereby they may be known, &c See Ridley's View of the Civ. and Eccl Law, part 1, chap. 5, sect. 7 and Madox Hist. of the Exchequer, Index, as to their condition in England.

DE JURE, by right. Vide De facto.

DE LUNATICO INQUIRENDO. The name of a writ directed to the sheriff, directing him to inquire by good and lawful men whether the party charged is, a lunatic or not. See 4 Rawle, 234; 1 Whart. 52; 5 Halst. 217; 6 Wend. 497.

DE MEDIETATE LINGUAE. Of half tongue. Vide Medietas linguae.

DE MELIORIBUS DAMNIS. Of the better damages. When a plaintiff has sued several defendants, and the damages have been assessed severally against each, he has the choice of selecting the best, as he cannot recover the whole. This is done by making, an election de melioribus damnis.

DE MERCATORIBUS. This is the name of a statute passed in the 11 Edw. I.; it is usually called the statute of Acton Burnell De Mercatoribus. It was passed in consequence of the complaints of foreign merchants, who could not recover the claims, because the lands of the debtors could not be sold for their debts. It enacted that the chattels and devisable burgages of the debtor might be sold for the payment of their debts. Cruise, Dig. t. 14, s. 6.

D.E NOVO. Anew. afresh. When a judgment upon an issue in part is reversed on error, for some mistake made by the court, in the course of the trial, a venire de novo is awarded in order that the case may again be submitted to the jury.

DE NOVI OPERIS NUNCIATIONE, Civil law. Where a thing is intended to be done against another man's right, the party aggrieved may have in many cases, according to the civilians, an interdict or injunction, to hinder that which is intended to his prejudice: as where one buildeth an house contrary to the usual and received form of building to the injury of his neighbor, there lieth an injunction de novi operis nunciatione, which being served, the offender is either to desist from his work or to put in sureties that he shall pull it down, if he do not in a short time avow, i. e. show, the

lawfulness thereof. Ridley's Civ. and Eccl. Law, part 1, chap 1, sect. 8.

DE ODIO ET ATIA. These words signify "from hatred and ill will." When a person was committed on a charge of a crime, from such a motive, he could sue the writ de otio et atia, and procure his liberty on giving bail. The object is now obtained by a writ of habeas corpus. Vide Writ de odio et atia.

DE PARTITIONE FACIENDA. The name of a writ for making partition. Vide Partition.

DE PROPRIETATE PROBANDA, Eng. Practice. The name of a writ which issues in a case of replevin when the defendant claims property in the chattels replevied, and the sheriff makes a return accordingly. The writ directs the sheriff to summon an inquest to determine on the validity of the claim, and, if they find for the defendant, the sheriff merely returns their finding. The plaintiff is not concluded by such finding, he may come into the court above and traverse it. Hamm. N. P. 456.

DE QUOTA LITIS. The name of a part or contract, in the civil law, by which one who has a claim difficult to recover, agrees with another to give a part

for the purpose of obtaining his services to recover the rest. 1 Duv. n. 201.

2. Whenever such an agreement amounts to champerty, it is void by law. 5 Monr. 416; 5 John. Ch. 44.

3. Attorneys cannot lawfully make a bargain with their clients to receive for their compensation, a part of the thing sued for; in New York, 2 Caines, 147; Ohio, 1 Ham. 132; Alabama, 755; and some other states - but in

some of the states such contracts are not unlawful.

DE REPARATIONE FACIENDA. The name of a writ which lies by one tenant in common against the other, to cause him to aid in repairing the common property. 8 B. & C. 269.

DE RETORNO HABENDO The name of a writ issued after a judgment has been given in replevin, that the defendant should have a return of the goods replevied. See 3 Bouv. Inst. n. 3376.

DE SON TORT. Of his own wrong. This term is usually applied to a person who, having no right to meddle with the affairs or estate of a deceased person, yet undertakes to do. so, by acting as executor of the deceased. Vide Executor de son tort.

DE SON TORT DEMESNE, Of his own wrong, pleading. The name of a replication in an action for a wrong or injury. When the defendant pleads a matter merely in excuse of an injury to the person or reputation of another, the plaintiff may reply de son tort demesne sans tiel cause; that it was the defendant's own wrong without such cause. Vide the articles, De Injuria, and Without, and also 8 Co. 69 a; Bro. h.t.; Com. Dig. Pleader, F 18.

DE UNA PARTE. A deed de una parte, is one where only one party grants, gives, or binds himself to do.a thing to another. It differs from a deed inter partes. (q.v.) 2 Bouv. Inst. n. 2001.

DE WARRANTIA DIEI, WRIT, Eng. law. Where a man is required to appear on a certain day in person, and before that day the king certifies that the party

is in the king's service, he may sue this writ, commanding the justices not to record his default for that day for the cause before mentioned. F. N. B. 36.

DEACON, Eccl. law. A minister or servant in the church whose office, in some churches, is to assist the priest in divine service, and the distribution of the sacrament.

DEAD Something which has no life; figuratively, something of no value.

DEAD BODY, crim. law. A corpse.

2. To take up a dead body without lawful authority, even for the purposes of dissection, is a misdemeanor, for which the offender may be indicted at common law. 1 Russ. on Cr. 414; 1 Dowl. & R. 13; Russ. & Ry. 366, ii. b; 2 Chit. Cr. Law, 35. This offence is punished by statute in New Hampshire, Laws of N. H. 339, 340 in Vermont, Laws of Vermont, 368. c. 361; in Massachusetts, stat. 1830, c. 51; 8 Pick. 370; 11 Pick. 350; in New York, 2 Rev. Stat. 688. Vide 1 Russ. 414, n. A.

3. The preventing a dead body from being buried, is also an indictable offence. 2 T. R. 734; 4 East, 460; 1 Russ. on Cr. 415 and 416, note A.

4. To inter a dead body found in a river, it seems, would render the offender liable to an indictment for a misdemeanor, unless he first sent for the coroner. 1 Kenyon's R. 250.

DEAD-BORN, descent, persons. Children dead-born are considered, in law, as if they had never been conceived, so that no one can claim a title, by descent, through such dead-born child. This is the doctrine of the civil law. Dig. 50, 16, 129. Non nasci, et natum mori, pare, sunt. Mortuus exitus, non est exitus. Civil Code of Louis. art. 28. A child in ventre sa mere is

considered in being, only when it is for its advantage, and not for the benefit of a third person. The rule in the common law is, probably, the same, that a dead-born child is to be considered as if he had never been conceived or born in other words, it is presumed he never had life. it being a maxim of the common law, that mortuus exitus non est exitus. Co. Litt. 29 b. See 2 Paige, R. 35; Domat, liv. prel. t. 2, s. 1, n. 4, 6; 4 Ves. 334.

DEAD FREIGHT, contracts. When the charterer of a vessel has shipped part of the goods on board, and is not ready to ship the remainder, the master, unless restrained by his special contract, may take other goods on board, and the amount which is not supplied, required to complete the cargo, is called dead freight.

2. The dead freight is to be calculated according to the actual capacity of the vessel. 3 Chit. Com. Law; 399 Stark. 450.

DEAD MAN'S PART, English law. By the custom of London, when a deceased freeman of the city left a widow and children, after deducting what was called the widow's chamber, (q.v.) his personal property was divided into three parts; one of which belonged to the widow, another tot he children, and the third to the administrator. When there was only a widow, or only children, in either case they respectively took one moiety, and the administrator the other; when there was neither widow nor child, the administrator took the whole for his own use and this portion was called the "dead man's part." By statute of 1 Jac. 2, c. 17, this was changed, and the dead man's part is declared to be subject to the statute of distribution. 2 Bl. Com. 518. See Bac. Ab. Customs of London, D 4.

DEAD LETTERS. Those which remain in the post-office, uncalled for. By the

Act of March 8, 1825, 3 Story. L. U. S. 1993, it is enacted, by Sec. 26, "That the postmasters shall, respectively, publish, at the expiration of every three months, or oftener, when the postmaster general shall so direct, in one of the newspapers published at, or nearest, the place of his residence, for three successive weeks, a list of all the letters remaining in their respective offices; or instead thereof, shall make out a number of such lists, and cause them to be posted at such public places, in their vicinity, as shall appear to them best adapted for the information of the parties concerned; and, at the expiration of the next three months, shall send such of the said letters as then remain on hand, as dead letters, to the general post office where the same shall be opened and inspected; and if any valuable papers, or matters of consequence, shall be found therein, it shall be the duty of the postmaster general to return such letter to the writer thereof, or cause a descriptive list thereof to be inserted in one of the newspapers published at the place most convenient to the supposed residence of the owner, if within the United States; and such letter, and the contents, shall be preserved, to be delivered to the person to whom the same shall be addressed, upon payment of the postage, and the expense of publication. And if such letter contain money, the postmaster general may appropriate it to the use of the department, keeping an account thereof, and the amount shall be paid by the department to the claimant as soon as he shall be found."

3. And by the Act of July 2, 1836, 4 Sharsaw. Cont. of Story, L. U. S. 2474, it is enacted by Sec. 35 that advertisements of letters remaining in the post-offices, may, under the direction of the postmaster general, be made in more than one newspaper: provided, that the whole cost of advertising shall not exceed four cents for each letter.

DEAD-PLEDGE. A mortgage of lands or goods - mortuum vadium.

DEAF AND DUMB. No definition is requisite, as the words are sufficiently known. A person deaf and dumb is doli capax but with such persons who have not been educated, and who cannot communicate, their ideas in writing, a difficulty sometimes arises on the trial.

2. A case occurred of a woman, deaf and dumb, who was charged with a crime. She was brought to the bar, and the indictment was then read to her, and the question, in the usual form, was put, guilty or not guilty ? The counsel for the prisoner then rose, and stated that he could not allow his client to plead to the indictment, until it was explained to her that she was at liberty to plead guilty or not guilty. This attempted to be done, but was found impossible, and she was discharged from the bar "simpliciter."

3. A person, deaf and dumb, may be examined as a witness, provided he can be sworn, that is, if he is capable of understanding the terms of the oath, and assents to it and if, after he is sworn, he can convey his ideas, with or without an interpreter, to the court and jury. Phil., Ev. 14.

DEAF, DUMB, AND BLIND. A man born deaf, dumb, and blind, is considered an idiot. (q.v.) 1 Bl. Com. 304; F. N. B. 233; 2 Bouv. Inst. n. 2111.

DEALINGS. Traffic, trade; the transaction of business between two or more persons.

2. The English statute 6 Geo. IV. c. 16, s. 81, declares all dealings with a bankrupt, within a certain time immediately before his bankruptcy, to be void. It has been held, under this statute, that payments were included under the term "dealings." M. & M. 137; 3 Car. & P. 85; S. C. 14 Eng. C. L. R. 219.

DEAN, eccl. law. An ecclesiastical officer, who derives his name from the fact that he presides over ten canons, or, prebondaries, at least. There are several kinds of deans, namely: 1. Deans of chapters. 2. Deans of peculiars. 3. Rural deans. 4. Deans in the colleges. 5. Honorary deans. 6. Deans of provinces.

DEATH, med. jur., crim. law, evidence. The cessation of life.

2. It is either natural, as when it happens in the usual course, without any violence; or violent, when it is caused either by the acts of the deceased, or those of others. Natural death will not be here considered further than may be requisite to illustrate the manner in which violent death occurs. A violent death is either accidental or criminal; and the criminal act was committed by the deceased, or by another.

3. The subject will be considered, 1. As it relates to medical jurisprudence; and, 2. With regard to its effects upon the rights of persons.

4.-1. It is the office of medical jurisprudence, by the light and information which it can bestow, to aid in the detection of crimes against the persons of others, in order to subject them to the punishment which is awarded by the criminal law. Medical men are very frequently called upon to make examinations of the bodies of persons. who have been found dead, for the purpose of ascertaining the causes of their death. When it is recollected that the honor, the fortune, and even the life of the citizen, as well as the distribution of impartial justice, frequently depend on these examinations, one cannot but be struck at the responsibility which rests upon such medical men, particularly when the numerous qualities which are indispensably requisite to form a correct judgment, are considered. In order to form a correct opinion, the physician must be not only skilled in his art, but he must have made such examinations his special study. A man may be

an enlightened physician, and yet he may find it exceedingly difficult to resolve, properly, the grave and almost always complicated questions which arise in cases of this kind. Judiciary annals, unfortunately, afford but too many examples of the fatal mistakes made by physicians, and others, when considering cases of violent deaths.

5. In the examination of bodies of persons who have come to a violent death, every precaution should be taken to ascertain the situation of the place where the body was found; as to whether the ground appears to have been disturbed from its natural condition; whether there are any marks of footsteps, their size, their number, the direction to which they lead, and whence they came - whether any traces of blood or hair can be found - and whether any, and what weapons or instruments, which could have caused death, are found in the vicinity; and these instruments should be carefully preserved so that they may be identified. A case or two may here be mentioned, to show the importance of examining the ground in order to ascertain the facts. Mr. Jeffries was murdered at Walthamstow, in England, in 1751, by his niece and servant. The perpetrators were suspected from the single circumstance that the dew on the ground surrounding the house had not been disturbed on the morning of the murder. Mr. Taylor, of Hornsey, was murdered in December, 1818, and his body thrown into the river. It was evident he, had not gone into the river willingly, as the hands were found clenched and contained grass, which, in the struggle, he had torn from the bank. The marks of footsteps, particularly in the snow, have been found, not unfrequently, to correspond with the shoes or feet of suspected persons, and led to their detection. Paris, Med. Jur. vol. iii. p. 38, 41.

6. In the survey of the body the following rules should be observed: 1. It should be as thoroughly examined as possible without changing its position or that of any of the limbs; this is particularly desirable when,

from appearances, the death has been caused by a wound, because by moving it, the altitude of the extremities may be altered, or the state of a fracture or luxation changed; for the internal parts vary in their position with one another, according to the general position of the body. When it is requisite to remove it, it should be done with great caution. 2. The clothes should be removed, as far as necessary, and it should be noted what compresses or bandages (if any) are applied to particular parts, and to what extent. 3. The color of the skin, the temperature of the body, the rigidity or flexibility of the extremities, the state of the eyes, and of the sphincter muscles, noting at the same time whatever swellings, ecchymosis, or livid, black, or yellow spots, wounds, ulcer, contusion, fracture, or luxation may be present. The fluids from the nose, mouth, ears, sexual organs, &c., should be examined; and, when the deceased is a female, it may be proper to examine the sexual organs with care, in order to ascertain whether before death she was ravished or not. 1 Briand, Med. Leg. 2eme partio, ch. 1, art. 3, n. 5, p. 318. 4. The clothes of the deceased should be carefully examined, and if parts are torn or defaced, this fact should be noted. A list should also be made of the articles found on the body, and of their state or condition, as whether the purse of the deceased had been opened; whether he had any money, &c. 5. The state of the body as to decomposition should be, particularly stated, as by this it may sometimes be ascertained when the death took place; experience proves that in general after the expiration of fourteen days After death, decomposition has so far advanced, that identity cannot be ascertained, excepting in some strongly developed peculiarity; but in a drowned body, adipocire is not produced until five or six weeks after death but this depends upon circumstance's, and varies according to climate, season, &c. It is exceedingly important, however to keep this fact in view in some judicial inquiries relative to the time of death. 1 Chit. Med. Jur. 443. A memorandum should be made of all the

facts as they are ascertained when possible, it should be made on the ground, but when this cannot be done, as when chemical experiments are to be made, or the body is to be dissected, they should be made in the place where these operations are performed. 1 Beck's Med. Jur. 5; Dr. Gordon Smith, 505; Ryan's Med. Jur. 145; Dr. Male's Elem. of Judicial and For. Med. 101; 3 Paris & Fonbl. Med. Jur. 23 to 25; Vilanova Y Manes, Materia Criminal Forense, Obs. 11, cap. 7, n. 7; Trebuchet, Medecine Legale, 12, et seq; 1 Briand, Med. Leg. 2eme partie, ch. 1, art. 5. Vide article Circumstances.

7.-2. In examining the law as to the effect which death has upon the rights of others, it will be proper to consider, 1. What is the presumption of life or death. 2. The effects of a man's death.

8.-1. It is a general rule, that persons who are proved to have been living, will be presumed to be alive till the contrary is proved and when the issue is upon the death of a person, the proof of the fact lies upon the party who asserts the death. 2 East, 312; 2 Rolle's R. 461. But when a person has been absent for a long time, unheard from, the law will presume him to be dead. It has been adjudged, that after twenty-seven years 3 Bro. C. C. 510; twenty years in another case; sixteen years; 5 Ves. 458; fourteen years; 3 Serg. & Rawle, 390 twelve years; 18 John. R. 141; seven years; 6 East, 80, 85; and even five years Finch's R. 419; the presumption of death arises. It seems that even seven years has been agreed as the time when death may in general be presumed. 1 Phil. Ev. 159. See 24 Wend. R. 221; 4 Whart. R. 173. By the civil law, if any woman marry again without certain intelligence of the death of her husband, how long soever otherwise her husband be absent from her, both she and he who married her shall be punished as adulterers. Authentics, 8th Coll.; Ridley's View of the Civ. and Ecc. Law, 82.

9. The survivorship of two or more is to be proved by facts, and not by

any settled legal rule, or prescribed presumption. 5 B. Adolp. 91; 27 E. C. L. R. 45; Cro. Eliz. 503 Bac. Ab. Execution D; 2 Phillim. 261; 1 Mer. R. 308; 3 Hagg. Eccl. R. 748; But see 1 Yo. & Coll. C. N. 121; 1 Curt. R. 405, 406, 429. In the following cases, no presumption of survivorship was held to arise; where two men, the father and son, were hanged about the same time, and one was seen to struggle a little longer than the other; Cor. Eliz. 503; in the case of General Stanwix, who perished at sea in the same vessel with his daughter; 1 Bl. R. 610; and in the case of Taylor and his wife, who also perished by being wrecked at sea with her, to whom he had bequeathed the principal part of his fortune. 2 Phillim. R. 261; S. C. 1 Eng. Eccl. R. 250. Vide Fearne on Rem. iv.; Poth. Obl. by Evans, vol. ii., p. 345; 1 Beck's Med. Jur. 487 to 502. The Code Civil of France has provided for most, perhaps all possible cases, art. 720, 721 and 722. The provisions have been transcribed in the Civil Code of Louisiana, in these words:

10. Art. 930. If several persons respectively entitled to inherit from one another, happen to perish in the same event, such as a wreck, a battle, or a conflagration, without any possibility of ascertaining who died first, the presumption of survivorship is determined by the circumstances of the fact.

11. Art. 931. lu defect of the circumstances of the fact, the determination must be guided by the probabilities resulting from the strength, ages, and difference of sex, according to the following rules.

12. Art. 932. If those who have perished together were under the age of fifteen years, the eldest shall be presumed to have survived. If both were of the age of sixty-years, the youngest shall be presumed to have survived. If some were under fifteen years, and some above sixty, the first shall be presumed to have survived.

13. Art. 933. If those who perished together, were above the age of fifteen years, and under sixty, the male must be presumed to have survived,

where there was an equality of age, or a difference of less than one year. If they were of the same sex, the presumption of survivorship, by which the succession becomes open in the order of nature, must be admitted; thus the younger must be presumed to have survived the elder.

14.-2. The death of a man, as to its effects on others, may be considered with regard, 1. To his contracts. 2. Torts committed by or against him. 3. The disposition of his estate; and, 4. To the liability or discharge of his bail.

15.-1st. The contracts of a deceased person are in general not affected by his death, and his executors or administrators are required to fulfill his engagements, and may enforce those in his favor. But to this general rule there are some exceptions; some contracts are either by the terms employed in making them, or by implication of law, to continue only during the life of the contracting party. Among these may be mentioned the following cases: 1. The contract of marriage. 2. The partnership of individuals. The contract of partnership is dissolved by death, unless otherwise provided for. Indeed the partnership will be dissolved by the death of one or more of the partners, and its effects upon the other partners or third persons will be the same, whether they have notice of the death or otherwise. 3 Mer. R. 593; Story, Partn. Sec. 319, 336, 343; Colly. Partn. 71; 2 Bell's Com. 639, 5th ed.; 3 Kent, Com. 56, 4th ed.; Gow, Partn. 351; 1 Molloy, R. 465; 15 Ves. 218; S. C. 2 Russ. R. 325.; 3. Contracts which are altogether personal; as, for example, where the deceased had agreed to accompany the other party to the contract, on a journey, or to serve another; Poth. Ob. P. 3, c. 7, a. 3, Sec. 2 and 3; or to instruct an apprentice. Bac. Ab. Executor, P; 1 Burn's Just. 82, 3; Hamm. on Part. 157; 1 Rawle's R. 61.

16. The death of either a constituent or of an attorney puts an end to

the power of attorney. To recall such power two things are necessary; 1st. The will or intention to recall; and, 2d. Special notice or general authority. Death is a sufficient recall of such power, answering both requisites. Either it is, according to one hypothesis, the intended termination of the authority or, according to the other, the cessation of that will, the existence of which is requisite to the existence of the attorney's power; while on either supposition, the event is, or is supposed to be, notorious. But exceptions are admitted where the death is unknown, and the authority, in the meanwhile, is in action, and relied on. 3 T. R. 215; Poth; Ob. n. 448.

17.-2d. In general, when the tort feasor or the party who has received the injury dies, the action for the recovery of the damages dies with him; but when the deceased might have waived the tort, and maintained assumpsit against the defendant, his personal representative may do the same thing. See the article Actio Personalis moriturcum persona, where this subject is more fully examined. When a person accused and guilty of crime dies before trial, no proceedings can be had against his representatives or his estate.

18.-3d. By the death of a person seised of real estate, or possessed of personal property at the time of his death; his property vests when he has made his will, as he has directed by that instrument; but when he dies intestate, his real estate vests in his heirs at law by descent, and his personal property, whether in possession or in action, belongs to his executors or administrators.

19.-4th. The death of a defendant discharges the special bail. Tidd, Pr. 243; but when he dies after the return of the ca. sa., and before it is filed, the bail are fixed. 6 T. R. 284; 5 Binn. R. 332, 338; 2 Mass. R. 485; 1 N. H. Rep. 172; 12 Wheat. 604; 4 John. R. 407; 3 McCord, R. 49; 4 Pick. R. 120; 4 N. H. Rep. 29.

20. Death is also divided into natural and civil.

21. Natural death is the cessation of life.

22. Civil death is the state of a person who, though possessing natural life, has lost all his civil rights, and, as to them, is considered as dead. A person convicted and attainted of felony, and sentenced to the state prison for life, is, in the state of New York, in consequence of the act of 29th of March, 1799, and by virtue of the conviction and sentence of imprisonment for life, to be considered as civilly dead. 6 Johns. C R. 118; 4 Johns. C. R. 228, 260; Laws of N. Y. Sess. 24, ch. 49, s. 29, 30, 31; 1 N. R. L. 157, 164; Co. Litt. 130, a; 3 Inst. 215; 1 Bl. Com. 132, 133; 4 Bl. Com. 332; 4 Vin. Ab. 152. See. Code Civ. art. 22 a 25; 1 Toull. n. 280 and p. 254, 5, note; also, pp. 243-5, n. 272; 1 Malleville's Discussion of the Code Civil, 45, 49, 51, 57. Biret, Vocab. au mot Effigie.

23. Death of a partner. The following effects follow the death of a partner, namely: 1. The partnership is dissolved, unless otherwise provided for by the articles of partnership. Gow's Partn. 429. 2. The representatives of the deceased partner become tenants in common with the survivor in all partnership effects in possession. 3. Choses in action so far survive that the right to reduce them into possession vests exclusively in the survivor. 4. When recovered, the representatives of the deceased partner have, in, equity, the same right of sharing and participating in them that their testator or intestate would have had had he been living. 5. It is the duty and the right of the surviving partner to settle the affairs of the firm, for which he is not allowed any compensation. 6. The surviving partner is alone to be sued at law for debts of the firm, yet recourse can be had in equity against the assets of the deceased debtor. Gow's Partn. 460. Vide Capital Crime; Dissolution; Firm; Partners; Partnership; Punishment. See, generally, Bouv. Inst. Index, h.t.

DEATH BED, Scotch law. The incapacity to exercise the power of disposing of one's property after being attacked with a mortal disease.

2. It commences with the beginning of such disease.

3. There are two exceptions to this general rule, namely: 1. If he survive for sixty days after the act or, 2. If he go to kirk or market unattended. He is then said to be in legitima potestate, or in liege poustie. 1 Bell's Com. 84, 85.

DEATH BED OR DYING DECLARATIONS. In cases of homicide, those which are made in extremis, when the person making them is conscious of his danger and has given up all hopes of recovery, charging some other person or persons with the murder. See 1 Phil. Ev. 200; Stark. Ev. part 4, p 458; 15 Johns. R. 288; 1 Hawk's R. 442; 2 Hawk's R. 31; McNally's Ev. 174; Swift's Ev. 124.

2. These declarations, contrary to the general rule that, hearsay is not evidence, are constantly received. The principle of this exception is founded partly on the situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath, and partly on the supposed absence of interest on the verge of the next world, which dispenses with a necessity of a cross-examination. But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved, that the deceased at the time of making them was conscious of his danger and had given up all hopes of recovery. 1 Phil. Ev. 215, 216; Stark. Ev. part 4, p. 460.

3. They are admissible, as such, only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. 2 B. & C. 605; 15 John. 286: 4 C. & P. 233.Vide. 2 M. & Rob. 53.

4. The declarant must not have been incapable of a religious sense of accountability to his Maker; for, if it appears that such religious sense

was wanting, whether it arose from infidelity, imbecility or tender age, the declarations are alike inadmissible. 1 Greenl. Ev. Sec. 157; 1 Phil. Ev. 289; Phil. & Ani. Ev. 296; 2 Russ. on Cr. 688. See, in general, Bac. Abr. Evidence, K; Addis. R. 832 East's P. C. 354, 356; 1 Stark. C. 522 2 Hayw. R. 31; 1 Hawk's R. 442; Swift's Ev. 124; Pothier, by Evans, vol. 2, p. 293; Anth. N. P. 176, and note a; Str. 500.

DEATH'S PART, English law. That portion of the personal estate of a deceased man which remained after his wife and children had received their reasonable parts from his estate; which was, if he had both a wife and child or children, one-third part; if a wife and no child, or a child or children and no wife, one-half; if neither wife nor child, he had the whole to dispose of by his last will and testament; and if he made no will, the same was to go to his administrator. And within the city of London, and throughout the province of York, in case of intestacy, the wife and children were till lately entitled to their reasonable parts, and the residue only was distributable by, the statute of distribution; but by the 11 G. I. c. 18, s. 17, 18, the power of devising was thrown generally open. Burn's L. Dict., See this dict. tit. Legitime, and Lex Falcidia.

DEBATE, legislation, practice. A contestation between two or more persons, in which they take different sides of a question, and maintain them, respectively, by facts and arguments; or it is a discussion, in writing, of some contested point.

2. The debate should be conducted with fairness, candor and decorum, and supported by facts and arguments founded in reason; when, in addition, it is ornamented by learning, and decorated by the powers of rhetoric, it becomes eloquent and persuasive. It is essential that the power of debate

should be free, in order to an energetic discharge of his duty by the debator.

3. The Constitution of the United States, art. 1, s. 6, provides, that for any speech or debate, in either house, the senators and representatives shall not be questioned in any other place.

4. It is a rule of the common law, that counsel may, in, the discharge of professional duty, use strong epithets, however derogatory to the character of the opponent, or his attorney, or other agent or witness, in commenting on the facts of the case, if pertinent to the cause, and stated in his instructions, without any liability to any action for the supposed slander, whether the thing stated were true or false. 1 B. & Ald. 232; 3 Dow's R. 273, 277, 279; 7 Bing. R. 459; S. C. 20 E. C. L. R. 198. Respectable and sensible counsel, however, will always refrain from the indulgence of any unjust severity, both on their own personal account, and because browbeating a witness, or other person, will injuriously affect their case in the eyes of a respectable court and jury. 3 Chit. Pr. 887, 8.

DEBENTURE. A certificate given, in pursuance of law, by the collector of a port of entry, for a certain sum, due by the United States, payable at a time therein mentioned, to an importer for drawback of duties on merchandise imported and exported by him, provided the duties arising on the importation of the said merchandise shall have been discharged prior to the time aforesaid. Vide Act of Congress of March 2, 1799, s. 80; Encyclopedie, h.t.; Dane's Ab. Index, h.t.

DEBET ET DETINET, pleading. He owes and detains. In an action of.debt, the form of the writ is either in the debet and detinet, that is, it states that the defendant owes and unjustly detains the debt or thing in question, it is so brought between the original contracting parties; or, it is in the

detinet only; that is, that the defendant unjustly detains from the plaintiff the debt or thing for which the action is brought; this is the form in in action by an executor, because the debt or duty is not due to him, but it is unjustly detained from him. 1 Saund. 1.

2. There is one case in which the writ must be in the detinet between the contracting parties. This is when the action is instituted for the recovery of goods, as a horse, a ship, and the like, the writ must be in the detinet, for it cannot be said a man owes another a horse, or a ship, but only that he detains them from him. 3 Bl. Com. 153, 4; 11 Vin. Ab. 32 1; Bac. Ab. Debt, F; 1 Lilly's Reg. 543; Dane's Ab. h.t.

DEBIT, accounts, commerce. A term used in bookkeeping, to express the left-hand page of the ledger, to which are carried all the articles supplied or paid on the subject of an account, or that are charged to that account. It also signifies the balance of an account.

DEBITUM IN PRAESENTI, SOLVENDUM IN FUTURO. A debt due at present, to be paid in future. There is a difference between debt payable now and one payable at a future time. On the former an action may be brought, on the latter no action lies until it becomes due. See Due; Owing; and 13 Pet. 494; 11 Mass. 493.

DEBT, contracts. A sum of money due by certain and express agreement. 3 Bl. Com. 154. In a less technical sense, as in the "act to regulate arbitrations and proceedings in courts of justice" of Pennsylvania, passed the 21st of March, 1806, s. 5, it means an claim for money. In a still more enlarged sense, it denotes any kind of a just demand; as, the debts of a bankrupt. 4 S. & R. 506.

2. Debts arise or are proved by matter of record, as judgment debts; by bonds or specialties; and by simple contracts, where the quantity is fixed and specific, and does not depend upon any future valuation to settle it. 3 Bl. Com. 154; 2 Hill. R. 220.

3. According to the civilians, debts are divided into active and passive. By the former is meant what is due to us, by the latter, what we owe. By liquid debt, they understand one, the payment of which may be immediately enforced, and not one which is due at a future time, or is subject to a condition; by hypothecary debt is meant, one which is a lien over an estate and a doubtful debt, is one the payment of which is uncertain. Clef des Lois Rom. h.t.

4. Debts are discharged in various ways, but principally by payment. See Accord and Satisfaction; Bankruptcy; Confusion Compensation; Delegation; Defeasance; Discharge of a contract; Extinction; Extinguishment; Former recovery; Lapse of time; Novation; Payment; Release; Rescission; Set off.

5. In payment of debts, some are to be paid before others, in cases of insolvent estates first, in consequence of the character of the creditor, as debts due to the United States are generally to be first paid; and secondly, in consequence of the nature of the debt, as funeral expenses and servants' wages, which are generally paid in preference to other debts. See Preference; Privilege; Priority.

DEBT, remedies. The name of an action used for the recovery of a debt eo nomine and in numero though damages are generally awarded for the detention of the debt; these are, however, in most instances, merely nominal. 1 H. Bl. 550; Bull. N. P. 167 Cowp. 588.

2. The subject will be considered with reference, 1. To the kind of claim or obligation on which this action may be maintained. 2. The form of the declaration. 3. The plea. 4. The judgment.

3.-1. Debt is a more extensive remedy for the recovery of money than assumpsit or covenant, for it lies to recover money due upon legal liabilities, as, for money lent, paid, had and received, due on an account stated; Com. Dig. Dett, A; for work and labor, or for the price of goods, and a quantum valebant thereon; Com. Dig. Dett, B Holt, 206; or upon simple contracts, express or implied, whether verbal or written, or upon contracts under seal, or of record, or by a common informer, whenever the demand for a sum is certain, or is capable of being reduced to certainty. Bull. N. P. 167. It also lies to recover money due on, any specialty or contract under seal to pay money. Str. 1089; Com. Dig. Dett, A 4; 1 T. R. 40. This action lies on a record, or upon a judgment of a court of record; Gilb. Debt, 891; Salk. 109; 17 S. & R. 1; or upon a foreign judgment. 3 Shepl. 167; 3 Brev. 395. Debt is a frequent remedy on statutes, either at the suit of the party grieved, or of a common informer. Com. Dig. Action on Statute, E; Bac. Ab. Debt, A. See, generally, Bouv. Inst. Index, h.t.; Com. Dig. h.t.; Dane's Ab. h.t.. Vin. Ab. h.t.; Chit. Pl. 100 to 109; Selw. N. P. 553 to 682; Leigh's N. P. Index, h.t. Debt also lies, in the detinet, for goods; which action differs from detinue, because it is not essential in this action, as in detinue, that the property in any specific goods should be vested in the plaintiff, at the time the action is brought; Dy. 24 b; and debt in the debet and detinet may be maintained on an instrument by which the defendant is bound to pay a sum of money lent, which might have been discharged, on or before the day of payment, in articles of merchandise. 4 Yerg. R. 171; see, Com. Dig. Dett, A 5; Bac. Ab. Debt, F; 3 Wood. 103, 4; 1 Dall. R. 458.

4.-2. When the action is on a simple contract, the declaration must show the consideration of the contract, precisely as in assumpsit; and it should state either a legal liability or an express agreement, though not a promise to pay the debt. 2 T. R. 28, 30. When the action is founded on a

specialty or record, no consideration need be shown, unless the performance of the consideration constitutes a condition precedent, when performance of such consideration must be averred. When the action is founded on a deed, it must be declared upon, except in the case of debt for rent. 1 New R. 104.

5.-3. The plea to an action of debt is either general or special. 1. The plea of general issue to debt on simple contracts, or on statutes, or when the deed is only matter of inducement, is nil debet. See Nil debet. In general, when the action is on a specialty, the plea denying the existence of the contract is non est factum; 2 Ld. Raym. 1500; to debt on record, nul tiel record. 16 John. 55. Other matters must, in general, be pleaded specially.

6.-4. For the form of the judgment, see Judgment in debt. Vide Remedy.

DEBTEE. One to whom a debt is due a creditor, as, debtee executor. 3 Bl. Com. 18.

DEBTOR, contracts. One who owes a debt; he who may be constrained to pay what he owes.

2. A debtor is bound to pay his debt personally, and all the estate he possesses or may acquire, is also liable for his debt.

3. Debtors are joint or several; joint, when they all equally owe the debt in solido; in this case if a suit should be necessary to recover the debt, all the debtors must be sued together or, when some are dead, the survivors must be sued, but each is bound for the whole debt, having a right to contribution from the others; they are several, when each promises severally to pay the whole debt; and obligations are generally binding on both or all debtors jointly and severally. When they are severally bound each may be sued separately, and on the payment of debt by one, the others

will be bound to contribution, where all had participated in the money or property, which was the cause of the debt.

4. Debtors are also principal and surety; the principal debtor is bound as between him and his surety to pay the whole debt. and if the surety pay it, he will be entitled to recover against the principal. Vide Bouv. Inst. Index, h.t.; Vin. Ab. Creditor and Debtor; Id. Debt; 8 Com. Dig. 288; Dig. 50, 16, 108 Id. 50, 16, 178, 3; Toull. liv. 2, n. 250.

DECAPITATION, punishment. The punishment of putting a person to death by taking off his head.

DECEDENT. In the acts of descent and distribution in Pennsylvania, this word is frequently used for a deceased person, testate or intestate.

DECEIT, tort. A fraudulent. misrepresentation or contrivance, by which one man deceives another, who has no means of detecting the fraud, to the injury and damage of the latter.

2. Fraud, or the intention to deceive, is the very essence of this injury, for if the party misrepresenting was himself mistaken, no blame can attach to him. The representation must be made malo animo, but whether or not the party is himself to gain by it, is wholly immaterial.

3. Deceit may not only be by asserting a falsehood deliberately to the injury of another as, that Paul is in flourishing circumstances, whereas he is in truth insolvent; that Peter is an honest man, when he knew him to be a, rogue; that property, real or personal, possesses certain qualities, or belongs to the vendor, whereas he knew these things to be false; but by any act or demeanor which would naturally impress the mind of a careful man with a mistaken belief.

4. Therefore, if one whose manufactures are of a superior quality, distinguishes them by a particular mark, which facts are known to Peter, and Paul counterfeits this work, and affixes them to articles of the same description, but not made by such person, and sells them to Peter as goods of such manufacture, this is a deceit.

5. Again, the vendor having a knowledge of a defect in a commodity which cannot be obvious to the buyer, does not disclose it, or, if apparent, uses an artifice and conceals it, he has been guilty of a fraudulent misrepresentation for there is an implied condition in every contract that the parties to it act upon equal terms, and the seller is presumed to have assured or represented to the vendee that he is not aware of any secret deficiencies by which the commodity is impaired, and that he has no advantage which himself does not possess.

6. But in all these cases the party injured must have no means of detecting the fraud, for if he has such means his ignorance will not avail him in that case he becomes the willing dupe of the other's artifice, and volenti non fit injuria. For example, if a horse is sold wanting an eye, and the defect is visible to a common observer, the purchaser cannot be said to be deceived, for by inspection he might discover it, but if the blindness is only discoverable by one experienced in such diseases, and the vendee is an inexperienced person, it is a deceit, provided the seller knew of the defect.

7. The remedy for a deceit, unless the right of action has been suspended or discharged, is by an action of trespass on the case. The old writ of deceit was brought for acknowledging a fine, or the like, in another name, and this being a perversion of law to an evil purpose, and a high contempt, the act was laid contra pacem, and a fine imposed upon the offender. See Bro. Abr. Disceit; Vin Abr. Disceit.

8. When two or more persons unite in a deceit upon another, they may be

indicted for a conspiracy. (q.v.) Vide, generally, 2 Bouv. Inst. n. 2321-29; Skin. 119; Sid. 375; 3 T. R. 52-65; 1 Lev. 247; 1 Strange, 583; D Roll. Abr. 106; 7 Barr, Rep. 296; 11 Serg. & R. 309, 310; Com. Dig. Action upon the case for a deceit; Chancery, 3 F 1 and 2; 3 M 1; 3 N 1; 4 D 3; 4 H 4; 4 L 1; 4 O 2; Covin; Justices of the Peace, B 30; Pleader, 2 H; 1 Vin. Ab. 560; 8 Vin. Ab. 490; Doct. Pl. 51; Dane's Ab. Index, h.t.; 1 Chit. Pr. 832 Ham. N. P. c. 2, s. 4; Ayl. Pand. 99 2 Day, 531; 12 Mass. 20; 3 Johns. 269; 6 Johns. 181; 2 Day, 205, 381; 4 Yeates, 522; 18 John. 395: 8 John. 23; 4 Bibb, 91; 1 N. & M. 197. Vide, also, articles Equality; Fraud; Lie.

TO DECEIVE. To induce another either by words or actions, to take that for true which is not so. Wolff, Inst. Nat. Sec. 356.

DECEM TALES, practice. In the English law this is a writ which gives to the sheriff apponere decem tales; i. e. to appoint ten such men for the supply of jurymen, when a sufficient number do not appear to make up a full jury.

DECENNARY, Eng. law. A town or tithing, consisting originally of ten families of freeholders. Ten tithings composed a hundred. 1 Bl. Com. 114.

DECIES TANTUM, Eng. law. The name of an obsolete writ which formerly lay against a juror who had taken money for giving his verdict; called so, because it was sued out to recover from him ten times as much as he took.

DECIMATION. The punishment of every tenth soldier by lot, was, among the Romans, called decimation.

DECIME. A French coin, of the value of a tenth part of a franc, or nearly

two cents.

DECISION, practice. A judgment given by a competent tribunal. The French lawyers call the opinions which they give on questions propounded to them, decisions. Vide Inst. 1, 2, 8 Dig. 1, 2, 2.

DECLARANT. One who makes a declaration. Vide Declarationis.

DECLARATION, pleading. A declaration is a specification, in a methodical and logical form, of the circumstances which constitute the plaintiff's cause of action. 1 Chit. Pl. 248; Co. Litt. 17, a, 303, a; Bac. Abr. Pleas, B; Com. Dig. Pleader, C 7; Lawes on Pl. 35; Steph Pl. 36; 6 Serg. & Rawle, 28. In real actions, it is most properly called the count; in a personal one, the declaration. Steph. Pl. 36 Doct. Pl. 83; Lawes, Plead. 33; see P. N. B. 16, a, 60, d. The latter, however, is now the general term; being that commonly used when referring to real and personal actions without distinction. 3 Bouv. Inst. n. 2815.

2. The declaration in an action at law answers to the bill in chancery, the libel of the civilians, and the allegation of the ecclesiastical courts.

3. It may be considered with reference, 1st. To those general requisites or qualities which govern the whole declaration; and 2d. To its form, particular parts, and requisites.

4.-1. The general requisites or qualities of a declaration are first, that it correspond with the process. But, according to the present practice of the courts, oyer of the writ cannot be craved; and a variance between the writ and declaration cannot be pleaded in abatement. 1 Saund. 318; a.

5. Secondly. The second general requisite of a declaration is, that it contain a statement of all the facts necessary in point of law, to

sustain the action, and no more. Co. Litt. 303, a; Plowd. 84, 122. See 2 Mass. 863; Cowp. 682; 6 East, R. 422 5 T. R. 623; Vin. Ab. Declarations.

6. Thirdly. These circumstances must be stated with certainty and truth. The certainty necessary in a declaration is, to a certain intent in general, which should pervade the whole declaration, and is particularly required in setting forth, 1st. The parties; it must be stated with certainty who are the parties to the suit, and therefore a declaration by or against "C D and Company," not being a corporation, is insufficient. See Com. Dig. Pleader, C I 8 1 Camp. R. 446 I T. R. 508; 3 Caines, R. 170. 2d. The time; in personal actions the declaration must, in general, state a time when every material or traversable fact happened; and when a venue is necessary, time must also, be mentioned. 5 T. R. 620; Com. Dig. Plead. C 19; Plowd. 24; 14 East, R. 390.; The precise time, however, is not material; 2 Dall. 346; 3 Johns. R. 43; 13 Johns. R. 253; unless it constitutes a material part of the contract declared upon, or where the date, &c., of a written contract or record, is averred; 4 T. R. 590 10 Mod. 313 2 Camp. R. 307, 8, n.; or, in ejectment, in which the demise must be stated to have been made after the title of the lessor of the plaintiff, and his right of entry, accrued. 2 East, R. 257; 1 Johns. Cas. 283. 3d. The Place. See Venue. 4th. Other circumstances necessary to maintain the action.

7.-2. The parts and particular requisites of a declaration are, first, the title of the court and term. See 1 Chit. Pl. 261, et seq.

8. Secondly. The venue. Immediately after the title of the declaration follows the statement in the margin of the venue, or county in which the facts are alleged to have occurred, and in which the cause is tried. See Venue.

9. Thirdly. The commencement. What is termed the commencement of the declaration follows the venue in the margin, and precedes the more

circumstantial statement of the cause of action. It contains a statement, 1st. Of the names of the parties to the suit, and if they sue or be sued in another right, or in a political capacity, (as executors, assignees, qui lam, &c.) of the character or right in respect of which they are parties to the suit. 2d. Of the mode in which the defendant has been brought into court; and, 3d. A brief recital of the form of action to be proceeded in. 1 Saund. 318, Id. 111, 112; 6 T. R. 130.

10. Fourthly. The statement of the cause (if action, in which all the requisites of certainty before mentioned must be observed, necessarily varies, according to the circumstances of each particular case, and the form of action, whether in assumpsit, debt, covenant, detinue, case, trover, replevin or trespass.

11. Fifthly. The several counts. A declaration may consist of as many counts as the case requires, and the jury may assess entire or distinct damages on. all the counts; 3 Wils. R. 185; 2 Bay, R. 206; and it is usual, particularly in actions of assumpsit, debt on simple contract, and actions on the case, to set forth the plaintiff's cause of action in various shapes in different counts, so that if the plaintiff fail in proof of one count, he may succeed in another. 3 Bl. Com. 295.

12. Sixthly. The conclusion. In personal and mixed actions the declaration should conclude to the damage of the plaintiff; Com. Dig. Pleader, C 84; 10 Co. 116, b. 117, a.; unless in scire facias and in penal actions at the suit of a common informer.

13. Seventhly. The profert and pledges. In an action at the suit of an executor or administrator, immediately after the conclusion to the damages, &c., and before the pledges, a profert of the letters testamentary or letters of administration should be made. Bac. Abr. Executor, C; Dougl. 6, in notes. At the end of the declaration, it is usual to add the plaintiff is common pledges to prosecute, John Doe and Richard Roe.

14. A declaration may be general or special; for example, in debt or bond, a declaration counting on the penal part only, is general; when it sets out both the penalty and the condition, and assigns the breach, it is special. Gould on Pl. c. 4, Sec. 50. See, generally, Bouv. Inst. Index, h.t. 1 Chit. Pl. 248 to 402; Lawes, Pl. Index) h.t.; Arch. Civ. Pl. index, h.t.; Steph. Pl. h.t.; Grab. Pr. h.t.; Com. Dig. Pleader, h.t.; Dane's Ab. h.t.; United States Dig. Pleadings ii.

DECLARATION OF INDEPENDENCE. This is a state paper issued by the congress of the United States of America, in the name and by the authority of the people, on the fourth day of July, 17 76, wherein are set forth:

2.-1. Certain natural and unalienable rights of man; the uses and purposes of governments the right of the people to institute or to abolish them; the sufferings of the colonies, and their right to withdraw from the tyranny of the king of Great Britain.

3.-2. The various acts of tyranny of the British Icing.

4.-3. The petitions for redress of these injuries, and the refusal. to redress them; the recital of an appeal to the people of "Great Britain, and of their being deaf to the voice of justice and consanguinity.

5.-4. An appeal to the Supreme Judge of the world for the rectitude of the intentions of the representatives.

6.-5. A declaration that the United Colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is and ought to be dissolved.

7.-6. A pledge by the representatives to each other, of their lives, their fortunes, and their sacred honor.

8. The effect of this declaration was the establishment of the

government of the United States as free and independent) and thenceforth the people of Great Britain have been held, as the rest of mankind, enemies in war, in peace friends.

DECLARATION OF INTENTION. The act of an alien, who goes before a court of record, and in a forma manner declares that it is, bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whereof he may at the time be a citizen or subject. Act of Congress of April 14, 18O2, s. 1.

2. This declaration must, in usual cases, be made at least three years before his admission. Id. But there are numerous exceptions to this rule. See Naturalization.

DECLARATION OF TRUST. The act by which an individual acknowledges that a property, the title of which he holds, does in fact belong to another, for whose use he holds the same. The instrument in which the acknowledgment is made, is also called a declaration of trust; but such a declaration is not always in writing, though it is highly proper it should be so. Will. on Trust, 49, note y; Sudg. on Pow. 200. See Merl. Rep. Declaration au profit d'un tiers.

DECLARATION OF WAR. An act of the national legislature, in which a state of war is declared to exist between the United States and some other nation.

2. This power is vested in congress by the constitution, art. 1, s. 8. There is no form or ceremony necessary, except the passage of the act. A manifesto, stating the causes of the war, is usually published, but war exists as soon as the act takes effect. It was formerly usual to precede hostilities by a public declaration communicated to the enemy, and to send a

herald to demand satisfaction. Potter, Antiquities of Greece, b. 3, c. 7; Dig. 49, 15, 24. But that is not the practice of modern times. In some countries, as England, the, power of declaring war is vested in the king, but he has no power to raise men or money to carry it on, which renders the right almost nugatory.

4. The public proclamation of the government of a state, by which it declares itself to be at war with a foreign power, which is named, and which forbids all and every one to aid or assist the common enemy, is also called a declaration of war.

DECLARATIONS, evidence. The statements made by the parties to a transaction, in relation to the same.

2. These declarations when proved are received in evidence, for the purpose of illustrating the peculiar character and circumstances of the transaction. Declarations are admitted to be proved in a variety of cases.

3.-1. In cases of rape, the fact that the woman made declarations in relation to it, soon after the assault took place, is evidence; but the particulars of what she said cannot be heard. 2 Stark; N. P. C. 242; S. C. 3 E. C. L. R. 344. But it is to be observed that these declarations can be used only to corroborate her testimony, and cannot be received as independent evidence; where, therefore, the prosecutrix, died, these declarations could not be received. 9 C. & P. 420; S. C. 38 Eng. C. L. R. 173; 9 C. & P. 471; S. C. 38 E. C. L. It. 188.

4.-2. When more than one person is concerned in the commission of a crime, as in cases of riots, conspiracies, and the like, the declarations of either of the parties, made while acting in the common design, are evidence against the whole; but the declarations of one of the rioters or conspirators, made after the accomplishment of their object, and when they

no longer acted together, are evidence only against the party making them. 2 Stark. Ev. 235 2 Russ. on Cr. 572 Rosc. Cr. Ev. 324; 1 Breese, Rep. 269.

5. In. civil cases the declarations of an agent, made while acting for his principal, are admitted in evidence as explanatory of his acts; but his confessions after he has ceased to, act, are not evidence. 4. S. R. 321.

6.-3. To prove a pedigree, the declarations of a deceased member of the family are admissible. Vide Hearsay, and the cases there cited.

7.-4. The dying declarations of a man who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence; but the party making them must be under a full consciousness of approaching death. The declarations of a boy between ten and eleven years of age, made under a consciousness of approaching death, were received in evidence on the trial of a person for killing him, as being declarations in articulo mortis. 9 C. & P. 395; S. C. 38 E. C. L. R. 168. Evidence of such declarations is admissible only when the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declarations. 2 B. & C. 605; S. C. 9 E. C. L. R. 196; 2 B. & C. 608; S. C. 9 E. C. L. R. 198; 1 John. Rep. 159; 15 John. R. 286; 7 John. R. 95 But see contra, 2 Car. Law Repos. 102. Vide Death bed, or Dying declarations. 3 Bouv. Inst. n. 3071.

DECLARATORY. Something which explains, or ascertains what before was uncertain or doubtful; as a declaratory statute, which is one passed to put an end to a doubt as to what the law is, and which declares what it is, and what it has been. 1 Bl. Com. 86.

TO DECLARE. To make known or publish. By tho constitution of the United States, congress have power to declare war. In this sense the word, declare, signifies, not merely to make it known that war exists, but also to make war

and to carry it on. 4 Dall. 37; 1 Story, Const. Sec. 428; Rawle on the Const. 109. In pleading, to declare, is the act of filing a declaration.

DECOCTION, med. jurisp. The operation of boiling certain ingredients in a fluid, for the purpose of extracting the parts soluble at that temperature. Decoction also means the product of this operation.

2. In a case in which the indictment charged the prisoner with having administered to a woman a decoction of a certain shrub called savin, it appeared that the prisoner had administered an infusion (q.v.) and not a decoction; the prisoner's counsel insisted that he was entitled to an acquittal, on the ground that the medicine was misdescribed, but it was held that infusion and decoction are ejusdem generis, and that the variance was immaterial. 3 Camp. R. 74, 75.

DECONFES, canon law in France. Formerly those persons who died without confession were so called; whether they refused to confess or whether they were criminals to whom the sacrament was refused. Droit Canon, par M. L'Abbe Andre. Dupin, Gloss. to Loisel's Institutes, says, Le deconfes est celui qui meurt sans confession et sans testament car l'un n'alloit point sans l'autre. See Intestate.

DECORUM. Proper behaviour; good order.

2. Decorum is requisite in public places, in order to permit all persons to enjoy their rights; for example, decorum is indispensable in church, to enable those assembled, to worship. If, therefore, a person were to disturb the congregation, it would be lawful to put him out. The same might be done in case of a funeral. 1 Mod. 168; 1 Lev. 196 2 Kebl. 124. But a request to desist should be first made, unless, indeed," when the

necessity of the case would render such precaution impossible. In using force to restore order and decorum, care must be taken to use no more than is necessary; for any excess will render the party using it guilty of an assault and battery. Vide Battery.

DECOY. A pond used for the breeding and maintenance of water-fowl. 11 Mod. 74, 130; S. C. 3 Salk. 9; Holt, 14 11 East, 571.

DECREE, practice. The judgment or sentence of a court of equity.

2. It is either interlocutory or final. The former is given on some plea or issue arising in the cause, which does not decide the main question; the latter settles the matter in dispute, and a final decree has the same effect as a judgment at law. 2 Madd. Ch. 462; 1 Chan. Cas. 27; 2 Vern. 89; 4 Bro. P. C. 287.; Vide 7r-Vin[?]. Ab. 394; 7 Com. Dig. 445; 1 Supp. to Ves. Jr. 223 Bouv. Inst. Index, h.t.

DECREE, legislation. In some countries as in France, some acts of the legislature, or of the sovereign, which have the force of law, are called decrees; as, the Berlin and Milan decrees.

DECREE ARBITRAL, Scotch law. A decree made by arbitrators chosen by the parties; an award. 1 Bell's Com. 643.

DECREE OF REGISTRATION, Scotch law. A proceeding by which the creditor has immediate execution; it is somewhat like a warrant of attorney to confess judgment. 1 Bell's Com. B. 1, c. 1, p. 4.

DECRETAL ORDER. Chancery practice. An order made by the court of chancery, upon a motion or petition, in the nature of a decree. 2 Dan. Ch. Pr. 637.

DECRETALS. eccles. law. The decretals are canonical epistles, written by the pope alone, or by the pope and cardinals, at the instance or suit of some one or more persons, for the ordering and determining some matter in. controversy, and have the authority of a law in themselves.

2. The decretals were published in three volumes. The first volume was collected by Raymundus Barcinius, chaplain to Gregory IX., about the year 1231, and published by him to be read in schools, and used in the ecclesiastical courts. The second volume is the work of Boniface VIII compiled about the year 1298, with additions to and alterations of the ordinances of his predecessors. The third volume is called the Clementines, because made by Clement V., and was published by him in the council of Vienna, about the year 1308. To these may be added the Extravagantes of John XXII. and other bishops of Rome, which, relatively to the others, are called Novelle Constitutiones. Ridley's View, &c. 99, 100,; 1 Fournel, Hist. des Avocats, 194-5.

3. The false decretals were forged. in the names of the early bishops of Rome, and first appeared about A. D. 845-850. The author of them is not known. They are mentioned in a letter written in the name of the council of Quiercy, by Charles the Bald, to the bishops and lords. of France. See Van Espen Fleury, Droit de Canon, by Andre.

DEDI, conveyancing. I have given. This word amounts to a warranty in law, when it is in a deed; for example, if in a deed it be said, I have given, &c., to A B, this is a warranty to him and his heirs. Brooke, Abr. Guaranties, pl. 85. Yet the warranty wrought by this word is a special warranty, and extendeth to the heirs of the feoffee during the life of the donor only. Co. Litt. 884, b. Vide Concessi.

DEDICATION. Solemn appropriation. It may be expressed or implied.

2. An express dedication of property to public use is made by a direct appropriation of it to such use, and it will be enforced. 2 Peters, R. 566; 6 Hill, N. Y. Rep. 407.

3. But a dedication of property to public or pious uses may be implied from the acts of the owner. A permission to the public for the space of eight or even six years, to use a street without bar or impediment, is evidence from which a dedication to the public may be inferred. 2 Bouv. Inst. n. 1631; 11 East, R. 376; 12 Wheat. R. 585; 10 Pet. 662; 2 Watts, 23; 1 Whart. 469; 3 Verm, 279; 6 Verm. 365; 7 Ham. part 2, 135; 12 Wend. 172; 11 Ala. R. 63, 81; 1 Spencer, 86; 8 Miss. R. 448 5 Watts & S. 141; Wright, 150; 6 Hill, 407 24 Pick. 71; 6 Pet. 431, 498 9 Port.,527; 3 Bing. 447; sed vide 5 Taunt. R. 125. Vide Street, and the following authorities: 3 Kent, Com. 450; 5 Taunt. 125 5 Barn. & Ald. 454: 4 Barn. & Ald. 447; Math. Pres. 833. As to what shall amount to a dedication of an invention to public use, see 1 Gallis. 482; 1 Paine's C. C. R. 345; 2. Pet. R. 1; 7 Pet. R. 292; 4 Mason, R. 1018. See Destination.

DEDIMUS, practice. The name of a writ to commission private. persons to do some act in the place of a judge; as, to administer an oath of office to a justice of the peace, to examine witnesses, and the like. 4 Com. Dig. 319; 3 Com. Dig. 359; Dane's Ab. Index, h.t. Rey, in his Institutions Judiciaires, de l'Angleterre, tom. 2, p. 214, exposes the absurdity of the name given to this writ; he says it is applicable to every writ which emanates from the same authority; dedimus, we have given.

DEDIMUS POTESTATEM DE ATTORNO FACIENCDO. The name of a writ which was formerly issued by authority of the crown in England to authorize an

attorney to appear for a defendant.

2. By statute of Westminster 2, 13 Edw. I. c. 10, all persons impleaded may make an attorney to sue for them in all pleas moved by or against them, in the superior courts there enumerated. 3 Mann. & Gran. 184, note.

DEED, conveyancing, contracts. A writing or instrument, under seal, containing some contract or agreement, and which has been delivered by the parties. Co. Litt. 171; 2 Bl. Com. 295; Shep. Touch. 50. This applies to all instruments in writing, under seal, whether they relate to the conveyance of lands, or to any other matter; a bond, a single bill, an agreement in writing, or any other contract whatever, when reduced to writing, which writing is sealed and delivered, is as much a deed as any conveyance of land. 2 Serg. & Rawle, 504; 1 Mood. Cr, Cas. 57; 5 Dana, 365; 1 How. Miss. R. 154; 1 McMullan, 373. Signing is not necessary at common law to make a deed. 2 Ev. Poth. 165; 11 Co. Rep. 278 6 S. & R. 311.

2. Deed, in its more confined sense, signifies a writing, by which lands, tenements, and hereditaments are conveyed, which writing is sealed and delivered by the parties.

3. The formal parts of a deed for the conveyance of land are, 1st. The premises, which contains all that precedes the habendum, namely, the date, the names and descriptions of the parties, the recitals, the consideration, the receipt of the same, the grant, the full description of the thing granted, and the exceptions, if any.

4.-2d. The habendum, which states that estate or interest is granted by the deed this is sometimes, done in the premises.

5.-3d. The tenendum. This was formerly used to express the tenure by which the estate granted was to be held; but now that all freehold tenures have been converted into socage, the tenendum is of no use and it is

therefore joined to the habendum, under the formula to have and to hold.

6th. The redendum is that part of the deed by which the grantor reserves something to himself, out of the thing granted, as a rent, under the following formula, Yielding and paying.

7.-5th. The conditions upon which the grant is made. Vide Conditions.

8.-6th. The warranty, is that part by which the grantor warrants the title to the grantee. This is general when the warrant is against all persons, or special, when it is only against the grantor, his heirs, and those claiming under him. See Warranty.

9.-7th. The covenants, if any; these are inserted to oblige the parties or one of them, to do something beneficial to, or to abstain from something, which, if done, might be prejudicial to the other.

10.-8th. The conclusion, which mentions the execution and the date, either expressly, or by reference to the beginning.

11. The circumstances necessarily attendant upon a valid deed, are the following: 1. It must be written or printed on parchment or paper. Litt. 229, a; 2 Bl. Com. 297. 2. There must be sufficient parties. 3. A proper subject-matter which is the object of the grant. 4. A. sufficient consideration. 5. An agreement properly set forth. 6. It must be read, if desired. 7. It must be signed and sealed. 8. It must be delivered. 9. And attested by witnesses. 10. It should be properly acknowledged before a competent officer.

11. It ought to be recorded.

12. A deed may be avoided, 1. By alterations made in it subsequent to its execution, when made by the party himself, whether they be material or immaterial, and by any material alteration, made even by a stranger. Vide Erasure; Interlineation.

2. By the disagreement of those parties whose concurrence is necessary; for instance, in the case of a married woman by the disagreement of her

husband. 3. By the judgment of a competent tribunal.

13. According to Sir William Blackstone, 2 Com. 313, deeds may be considered as (1), conveyances at common law, original and derivative. 1st. The original are, 1. Feoffment. 2. Gift. 3. Grant. 4. Lease. 5. Exchange; and 6. Partition. 2d. Derivative, which are 7. Release. 8. Confirmation. 9. Surrender. 10. Assignment 11. Defeasance. (2). Conveyances which derive their force by virtue of the statute of uses; namely, 12. Covenant to stand seised to uses. 13. Bargain and sale of lands. 14. Lease and release. 15. Deed to lead and declare uses. 16. Deed of revocation of uses.

14. The deed of, bargain and sale, is the most usual in the United States. Vide Bargain and Sale. Chancellor Kent is of opinion that a deed would be perfectly competent in any part of the United States, to convey the fee, if it was to the following effect: "I, A, B, in consideration of one dollar to me paid, by C D, do bargain and sell, (or in some of the states, grant) to C D, and his heirs, (in New York, Virginia, and some other states, the words, and his heirs may be omitted,) the lot of land, (describing it,) witness my hand and seal," &c. 4 Kent, Com. 452. Vide, generally, Bouv. Inst. Index, h.t.; Vin. Abr. Fait; Com. Dig. Fait; Shep. Touch. ch. 4; Dane's Ab. Index, h.t.; 4 Cruise's Dig. passim.

15. Title deeds are considered as part of the inheritance and pass to the heir as real estate. A tenant in tail is, therefore, entitled to them; and chancery will, enable him to get possession of them. 1 Bro. R. 206; 1 Ves. jr. 227;11 Ves. 277; 15 Ves. 173. See Hill. Ab. c. 25; 1 Bibb, R. 333: 3 Mass. 487; 5 Mass. 472.

16. The cancellation, surrender, or destruction of a deed of conveyance, will not divest the estate which has passed by force of it. 1 Johns. Ch. Rep. 417 2 Johns. Rep. 87. As to the effect of a redelivery of a deed, see 2 Bl. Com. 308 2 H. Bl. 263, 264.

DEED POLL, contracts. A deed made by one party only is not indented, but polled or shaved quite even, and is, for this reason, called a deed poll, or single deed. Co. Litt. 299, a.

2. A deed poll is not, strictly speaking, an agreement between two persons; but a declaration of some one particular person, respecting an agreement made by him with some other person. For example, a feoffment from A to B by deed poll, is not an agreement between A and B, but rather a declaration by A addressed to all mankind, informing them that he thereby gives and enfeoffs B of certain land therein described.

3. It was formerly called charta de una parte, and, usually began with these words, Sciant praesentes et futuri quod ego A, &c.; and now begins, "Know all men by these presents, that I, A B, have given, granted, and enfeoffed, and by these presents do give, grant and enfeoff," &c. Cruise, Real Prop. tit. 32, c. 1, s. 23.

DEFALCATION, practice, contracts. The reduction of the claim of one of the contracting parties against the other, by deducting from it a smaller claim due from the former to the latter.

2. The law operates this reduction, in certain cases, for, if the parties die or are insolvent, the balance between them is the only claim; but if they are solvent and alive, the defendant may or may not defalcate at his choice. See Set off. For the etymology of this word, see Bracken. Law Misc. 186; 1 Rawle's R. 291; 3 Binn. R. 135.

3. Defalcation also signifies the act of a defaulter. The bankrupt act of August 19, 1841, (now repealed), declares that a person who owes debts which have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity, shall not have the benefit of that law.

DEFAMATION, tort. The speaking slanderous words of a person so as, de bona fama aliquid detrahere, to hurt his good fame. Vide Slander.

2. In the United States, the remedy for defamation is by an action on the case, where the words are slanderous.

3. In England, besides the remedy by action, proceedings may be instituted in the ecclesiastical court for redress of the injury. The punishment for defamation, in this court, is payment of costs and penance enjoined at the discretion of the judge. When the slander has been privately uttered, the penance may be ordered to be performed in a private place; when publicly uttered, the sentence must be public, as in the church of the parish of the defamed party, in time of divine service,, and the defamer may be required publicly to pronounce that by such words, naming them, as set forth in the sentence, he had defamed the plaintiff, and, therefore, that he begs pardon, first, of God, and then of the party defamed, for uttering such words. Clerk's Assist. 225; 3 Burn's Eccl. Law, Defamation, pl. 14; 2 Chit. Pr. 471 Cooke on Def.

DEFAULT. The neglect to perform a legal obligation or duty; but in technical language by default is often understood the non-appearance of the defendant within the time prescribed by law, to defend himself; it also signifies the non-appearance of the plaintiff to prosecute his claim.

2. When the plaintiff makes default, he may be nonsuited; and when the defendant makes default, judgment by default is rendered against him. Com. Dig. Pleader, E 42 Id. B 11. Vide article Judgment by Default, and 7 Vin. Ab. 429; Doct. Pl. 208 Grah. Pr. 631. See, as to what will excuse or save a default, Co. Litt. 259 b.

DEFAULT, contracts, torts. By the 4th section of the English statute of frauds, 29 Car. H., c. 3, it is enacted that "no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement," &c., "shall be in writing," &c. By default under this statute is understood the non-performance of duty, though the same be not founded on a contract. 2 B. & A. 516.

DEFAULTER, com. law. One who is deficient in his accounts, or falls in making his accounts correct.

DEFEASANCE, contracts, conveyancing. An instrument which defeats the force or operation of some other deed or estate. That, which in the same deed is called a condition, in another deed is a defeasance.

2. Every defeasance must contain proper words, as that the thing shall be void. 2 Salk. 575 Willes, 108; and vide Carth. 64. A defeasance must be made in eodem modo, and by, matter as high as the thing to be defeated; so that if one be by deed) the other must also be by deed. Touchs. 397.

3. It is a general rule, that the defeasance shall be a part, of the same transaction with the conveyance; though the defeasance may be dated after the deed. 12 Mass. R. 13 Pie P. 413 1 N. 11. Rep. 41; but see 4 Yerg. 57, contra. Vide Bouv. Inst. Index, h.t.; Vin. Ab. h.t.; Com. Dig. h.t.; Id. Pleader, 2 W 35, 2 W 37; Lilly's Reg. h.t.; Nels. Ab. h.t.; 2 Saund. 47 n, note 1; Cruise, Dig. tit. 32, c. 7,, s. 25; 18 John. R. 45; 9 Wend. R. 538; 2 Mass. R. 493.

DEFEASIBLE. What may be undone or annulled.

DEFECT. The want of something required by law.

2. It is a general rule that pleadings shall have these two requisites; 1. A matter sufficient in law. 2. That it be deduced and expressed according to the forms of law. The want of either of these is a defect.

3. Defects in matters of substance cannot be cured, because it does not appear that the plaintiff is entitled to recover; but when the defects are in matter of form, they are cured by a verdict in favor of the party who committed them. 3 Bouv. Inst. n. 3292; 2 Wash. 1; 1 Hen. & Munf. 153; 16 Pick. 128, 541; 1 Day, 315; 4 Conn, 190; 5 Conn. 416; 6 Conn. 176; 12 Conn. 455; 1 P. C. C. R. 76; 2 Green, 133; 4 Blackf. 107; 2 M'Lean, 35; Bac. Ab. Verdict, X.

DEFENCE, torts. A forcible resistance of an attack by force.

2. A man is justified, in defending his person, that of his wife, children, and servants, and for this purpose he may use as much force as may be necessary, even to killing the assailant, remembering that the means used must always be proportioned to the occasion, and an excess becomes, itself, an injury.

3. A man may also repel force by force in defence of his personal property, and even justify homicide against one Who manifestly intends or endeavors by violence or surprise to commit a known felony, as robbery.

4. With respect to the defence or protection of the possession of real property, although it is justifiable even to kill a person in the act of attempting to commit a forcible felony, as burglary or arson, yet this justification can only take place when the party in possession is wholly without fault. 1 Hale, 440, 444; 1 East, P. C. 259, 277. When a forcible attack is made upon the dwelling-house of another, without any felonious intent, but barely to commit a trespass, it is in general lawful to oppose force by force, when the former was clearly illegal. 7 Bing. 305; S. C. 20

Eng. C. L. Rep. 139. Vide, generally, Ham. N. P. 136, 151 1 Chit. Pr. 589, 616; Grot. lib. 2, c. 1 Rutherf. Inst. B. 1, c. 16.

DEFENCE, pleading, practice. It is defined to be the denial of the truth or validity of the complaint, and does not signify a justification. It is a general assertion that the plaintiff has no ground of action, which assertion is afterwards extended and maintained in the plea. 3 Bl. Com. 296; Co. Litt. 127. It is similar to the contestatio litis of the civilians.

2. Defence is of two descriptions; first half defence, which is as follows, "venit et defendit vim et injuriam, et dicit," &c.; or secondly, full defence, "venit et defendit vim et injuriam, quando," &c. meaning "quando et ubi curia consideravit," (or when and where it shall behoove him,) "et damna et quicquid quod ipse defendere debet et dicit," &c. Co. Litt. 127, b; Bac. Abr. Pleas, D Willis, 41.

3. In strictness, the words quando, &c. ought not to be added when only half defence is to be made; and after the words "venit et defendit vim et injuriam," the subject matter of the plea should immediately be stated. Gilb. C. P. 188; 8 T. R. 6 3 2; 3 B. & P. 9, n. a.

4. It has, however, now become the practice in all cases, whether half or full defence be intended, to, state it a's follows: "And the said C D, by M N, his attorney, comes and defends the wrong, (or in trespass, force) and injury, when, &c. and says," which will be considered only as half defence in cases where such defence should be made, and as full defence where the latter is necessary. 8 T. R. 633; Willis, 41 3 B. & P. 9; 2 Saund. 209, c.

5. If full defence were made expressly by the words "when and where it shall behoove him," and "the damages and whatever else he ought to defend," the defendant would be precluded from pleading to the jurisdiction or in abatement, for by defending when and where it shall behoove him, the defendant acknowledges the jurisdiction of the court and by defending the

damages he waives all. exception to the person of the plaintiff. 2 Saund. 209, c.; 3 Bl. Com. 297 Co. Litt. 127, b Bac. Abr. Pleas, D.

6. Want of defence being only matter of form, the omission is aided by general demurrer. 3 Salk. 271. See further, 7 Vin. Abr. 497; 1 Chit. Pl. 410; Com. Dig. Abatement, I 16; Gould. on Pl. c. 2, s. 6-15; Steph. Pl. 430.

7. In another sense, defence signifies a justification; as, the defendant has made a successful defence to the charge laid in the indictment.

8. The Act of Congress of April 30, 1790, 1 Story, L. U. S. 89, acting upon the principles adopted in perhaps all the states, enacts, Sec. 28, that every person accused and indicted of the crime of treason, or other capital offence, shall "be allowed and admitted to make his full defence by counsel learned in the law; and the court before whom such person shall be tried, or some judge thereof, shall, and they are hereby authorized and requited, immediately upon his request, to assign to such person such counsel, not exceeding two, as such person shall desire, to whom such counsel shall have free access, at all seasonable hours; and every such person or persons, accused or indicted of the crimes aforesaid, shall be allowed and admitted in his said defence, to make any proof that he or they can produce, by lawful witness or witnesses, and shall have the like process of the court where he or they shall be tried, to compel his or their witnesses to appear at his or their trial, as is usually granted to compel witnesses to appear on the prosecution against them."

9. Defences in equity may be classed in two divisions, namely into dilatory defences, (q.v.) and into those which are peremptory. Matters of peremptory or permanent defences may be also divided into two sorts, first, those where the plaintiff never had any right to institute the suit; for example: 1. That the plaintiff had not a superior right to the defendant. 2.

That the defendant has no interest. 3. That there is no privity between the plaintiff and defendant, or any right to sustain the suit. Secondly, those that insist that the original right, if any, is extinguished or determined; as, 1. When the right is determined by the act of the parties; or, 2. When it is determined by operation of law. 4 Bouv. Inst. n. 4199, et seq.; 1 Montag. Eq. Pl. 89. See Dilatory Defence; Merits.

TO DEFEND. To forbid. This word is used in some old English statutes in the sense it has in French, namely, to forbid. 5 Pic. 2, c. Lord Coke uses the word in this sense: it is defended by law to distrain on the highway." Co Litt. 160, b. 161 a. In an old work entitled, Legends, printed by Winkin de Worde, in 1527, fo. 96, we find examples of the use of the word in this sense, "He defended," (forbade) "to pay the wage," (tribute,) "for he said he was a king." "She wrote the obligation when she put her hand to the tree against the defence." (prohibition of God.)

2. In pleading, to defend is to deny; and the effect of the word "defends" is, that the defendant denies the right of the plaintiff, or the force and wrong charged. Steph. Pl. 432.

3. In contracts, to defend is to guaranty; to agree to indemnify. In most conveyances of land the grantor covenants to warrant and defend. It is his duty, then, to prevent all persons against whom he defends, from doing any act which would evict him; when there is a mortgage upon the land, and the mortgagee demands possession or payment of the covenantee, and threatens suit, this is a breach of the covenant to defend, and for quiet enjoyment. 17 Mass. R. 586.

DEFENDANT. A party who is sued in a personal action. Vide Demandant; Parties to Actions; Pursuer; and Com. Dig. Abatement, F; Action upon the case upon assumpsit, E, b; Bouv. Inst. Index, h.t.

2. At common law a defendant cannot have judgment to recover a sum of money of the plaintiff. But this rule is, in some cases, altered by the act of assembly in Pennsylvania, as by the. Act of 1705, for defalcation, by which he may sue out a sci. fac. on the record of a verdict for a sum found in his favor. 6 Binn. Rep. 175. See Account 6.

DEFENDANT IN ERROR. A party against whom a writ of error is sued out.

DEFENDER, canon law. The name by which the defendant or respondent is known in the ecclesiastical courts.

DEFENSIVE ALLEGATION. The defence or mode of propounding a defence in the spiritual courts, is so called.

DEFICIT. This Latin term signifies that something is wanting. It is used to express the deficiency which is discovered in the accounts of an accountant, or in the money in which he has received.

DEFINITE NUMBER. An ascertained number; the term is usually applied in opposition to an indefinite number.

2. When there is a definite number of corporators, in order to do a lawful act, a majority of the whole must be present; but it is not necessary they should, be unanimous; a majority of those present can, in general, perform the act. But when the corporators consist of an indefinite number, any number, consisting of a majority of those present, may do the act. 7 Cowen, R. 402 9 B. & Cr. 648, 851; 7 S. & 11. 517; Ang. & Am. on Corp. 281.

DEFINITION. An enumeration of the principal ideas of which a compound idea

is formed, to ascertain and explain its nature and character; or it is that which denotes and points out the substance of a thing, to us. Ayliffe's Pand. 59.

2. A definition ought to contain every idea which belongs to the thing defined, and exclude all others.

3. A definition should be, 1st. Universal, that is, such that it will apply equally to all individuals of, the same kind. 2d. Proper, that is, such that it will not apply to any other individual of any other kind. 3d. Clear, that is, without any equivocal, vague, or unknown word. 4th. Short, that is, without any useless word, or any foreign to the idea intended to be defined.

4. Definitions are always dangerous, because it is always difficult to prevent their being inaccurate, or their becoming so; omnis definitio injure civili periculosa est, parum est enim, ut non subvertipossit.

5. All ideas are not susceptible of definitions, and many words cannot be defined. This inability is frequently supplied, in a considerable degree, by descriptions. (q.v.)

DEFINITIVE. That which terminates a suit a definitive sentence or judgment is put in opposition to an interlocutory judgment; final. (q.v.)

DEFLORATION. The act by which a woman is deprived of her virginity.

2. When this is done unlawfully, and against her will, it bears the name of rape, (q.v.) when she consents, it is fornication. (q.v.)

DE FORCIANT. One who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl. Com. 350.

DEFORCIARE. To withhold lands or tenements from the right owner. This is a

word of art which cannot be supplied by any other word. Co. Litt. 331 b; 3 Tho. Co. Litt. 3; Bract. lib. 4, 238; Fleta, lib. c.

DEFORCEMENT, tort. In its most extensive sense it signifies the holding of any lands or tenements to which another person has a right; Co. Litt. 277; so that this includes, as well, an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong whatsoever, by which the owner of the freehold is kept out of possession. But, as contradistinguished from the former, it is only such a detainer, of the freehold, from him who has the right of property, as falls within none of the injuries above mentioned. 3 Bl. Com. 173; Archb. Civ. Pl. 13; Dane's Ab. Index, h.t.

DEFORCEMENT, Scotch law. The opposition given, or resistance made, to messengers or other officers, while they are employed in executing the law.

2. This crime is punished by confiscation of movables, the one half to the king, and the other to the creditor at whose suit the diligence is used. Ersk. Pr. L. Scot. 4,4,32.

DEFUNCT. A term used for one that is deceased or dead. In some acts of assembly in Pennsylvania, such deceased person is called a decedent. (q.v.)

DEGRADATION, punishment, ecclesiastical law. A censure by which a clergy man is deprived of his holy orders, which he had as a priest or deacon.

TO DEGRADE, DEGRADING. To, sink or lower a person in the estimation of the public.

2. As a man's character is of great importance to him, and it is his interest to retain the good opinion of all mankind, when he is a witness, he

cannot be compelled to disclose any matter which would tend to disgrace or degrade him, 13 How. St. Tr. 17, 334, 16 How. St. Tr. 161. A question having that tendency, however, may be asked, and, in such case, when the witness chooses to answer it, the answer is conclusive. 1 Phil. Ev. 269; R. & M. 383.

DEGREE, descents. This word is derived from the French degre, which is itself taken from the Latin gradus, and signifies literally, a step in a stairway, or the round of a ladder.

2. Figuratively applied, and as it is understood in law, it is the distance between those who are allied by blood; it means the relations descending from a common ancestor, from generation to generation, as by so many steps. Hence, according to some Lexicographers, we obtain the word, pedigree (q.v.) Par degrez, by degree, the descent being reckoned par degrez. Minshew. Each generation lengthens the line of descent one degree, for the degrees are only the generations marked in a line by small circles or squares, in which the names of the persons forming it are written. Vide Consanguinity;, Line; and also Ayliffe's Parergon, 209; Toull. Dr. Civ. Frau. liv. 3, t. 1, c. 3, n. 158; Aso & Man. Inst. B. 2, t. 4, c. 3, Sec. 1.

DEGREE, measures. In angular measures, a degree is equal to sixty minutes, or the thirtieth part of a sine. Vide Measure.

DEGREE, persons. By. degree, is understood the state or condition of a person. The ancient English statute of additions, for example, requires that in process, for the better description of a defendant, his state, degree, or mystery, shall be mentioned.

DEGREES, academical. Marks of distinction conferred on students, in

testimony of their proficiency in arts and sciences. They are of pontifical origin. See 1 Schmidt's Thesaurus, 144; Vicat, ad voc. Doctores Minshew, Dict. ad voc Bacheler; Merl. Rep ad voc Universite; Van Espen, p. 1, tit. 10, c. Giaunone Istoria, di Napoli, lib. xi. c. 2, for a full account of this matter.

DEHORS. Out of; without. By this word is understood something out of the record, agreement, will, or other thing spoken of; something foreign to the matter in question.

DEI JUDICIUM. The judgment of God. This name was given to the barbarous and superstitious trial by ordeal.

DEL CREDERE, contracts. A del credere commission is one under which the agent, in consideration of an additional premium, engages to insure to his principal not only the solvency of the debtor, but the punctual discharge of the debt; and he is liable, in the first instance, without any demand from the debtor. 6 Bro. P. C. 287; Beawes, 429; 1 T. Rep. 112; Paley on Agency, 39.

2. If the agent receive the amount of sales, and remit the amount to the principal by a bill of exchange, he is not liable if it should be protested. 2 W. C. C. R. 378. See, also, Com. Dig. Merchant, B; 4 M. & S. 574.

DELAWARE. The name of one of the original states of the United States of America. For a time the counties of this state were connected with Pennsylvania, under the name of territories annexed to the latter. In 1703, a separation between them took place, and from that period clown to the

Revolution, the territories were governed by a separate legislature of their own, pursuant to the liberty reserved to them by a clause of their original charter. 1 Story, Constitution, Sec. 127; 1 Votes of Assembly, 131, and part 2, p. 4, of Pennsylvania.

2. The constitution of this state was amended and adopted December 2, 1831. The powers of the government are divided into three branches, the legislative, the executive, and the judicial.

3.-1st. The legislative power of the state is vested in a general assembly, which consists of a senate and house of representatives.

4.-1. The senate is composed of three senators from each county; the number may be increased by the general assembly, two-thirds of each branch concurring, but the number of senators shall never be greater than one-half, nor less than two-thirds of the number of representatives. Art. 2, s. 3. The senators are chosen for four years by the citizens residing in the several counties.

5.-2. The house of representatives is composed of seven members from each county, but the general assembly, two-thirds of each branch concurring, may increase the number. The representatives are chosen for two years by the citizens residing in the several counties. Art. 2, s. 2.

6.-2d. The supreme executive power of the state is vested in a governor, who is chosen by the citizens of the state. He holds his office during four years, from the third Tuesday in January next ensuing his election; and is not eligible a second time to the said office. Art. 3. Upon the happening of a vacancy, the speaker of the senate exercises the office, until a governor elected by the people shall be duly qualified. Art. 3, s. 14.

7.-3d. The judicial power is vested in a court of errors and appeals,, a superior court, a court of chancery, an orphan's court, a court of oyer and terminer, a Court of general sessions of the peace and jail

delivery, a register's court, justices of the peace, and such other courts as the general assembly, with the concurrence of two-thirds of all the members of both houses shall, from time to time, establish. Art. 6.

DELAY, civil law. The time allowed either by law or by agreement of the parties to do something.

2. The law allows a delay, for a party who has been summoned to appear, to make defence, to appeal; it admits of a delay during which and action may be brought, certain rights exercised, and the like.

3. By the agreement of the parties there may be a delay in the payment of a debt, the fulfillment of a contract, &c. Vide Code, 3, 11, 4; Nov. 69, c. 2 Merl. Rep. h

DELECTUS PERSONAE. This phrase, which literally signifies the choice of a person, is applied to show that partners have the right to select their copartners; and that no set of partners can take another person into the partnership, without the consent of each of the partners. Story on Partn. 6 Colly. on Partn. 4; 1 Swanst. 508; 2 Bouv. Inst. n. 1443.

DELEGATE. A person elected by the people of a territory of the United States, to congress, who has a seat in congress, and a right of debating, but not of voting. Ordinance of July, 13, 1787, 3 Story's L. U. S. 2076.

2. The delegates from the territories of the United States are entitled to send and receive letters, free of postage, on the same terms and conditions as members of the senate and house of representatives of the United States; and also to the same compensation as is allowed to members of the senate and house of representatives. Act of February 18, 1802, 2 Story, L. U. S. 828.

3. A delegate is also a person elected to some deliberative assembly, usually one for the nomination of officers.

4. In contracts, a delegate is one who is authorized by another in the name of the latter; an attorney.

DELEGATION, civil law. It is a kind of novation, (q.v.) by which the original debtor, in order to be liberated from his creditor, gives him a third person, who becomes obliged in his stead to the creditor, or to the person appointed by him.

2. It results from this definition that a delegation is made by the concurrence of three parties, and that there may be a fourth. There must be a concurrence, 1. Of the party delegating, that is, the ancient debtor, who procures another debtor in his stead. 2. Of the party delegated, who enters into the obligation in the place of the ancient debtor, either to the creditor of to some other person appointed by him. 3. Of the creditor, who, in consequence of the obligation contracted by the party delegated, discharges the party delegating. Sometimes there intervenes a fourth party namely, the person indicated by the creditor in whose favor the person delegated becomes obliged, upon the indication of the creditor, and by the order of the person delegating. Poth. Ob. part. 3, c. 2, art. 6. See Louis. Code, 2188, 2189; 3 Wend. 66; 5 N. H. Rep. 410; 20 John. R. 76; 1 Wend. 164; 14 Wend. 116; 11 Serg. & Rawle, 179.

3. Delegation is either perfect or imperfect. It is perfect, When the debtor who makes the delegation, is discharged by the creditor. It is imperfect when the creditor retains his rights against the original debtor. 2 Duverg. n. 169. See Novation.

DELEGATION, contracts. The transfer of authority from one or more persons to one or more others.

2. In general, all persons sui juris may delegate to another authority to act for them, but to this rule there are exceptions; 1st. On account of the thing to be done; and 2d. Because the act is of a personal nature, and incapable of being delegated. 1. The thing to be done must be lawful; for an authority to do a thing unlawful, is absolutely void. 5 Co. 80. 2. Sometimes, when the thing to be done is lawful, it must be performed by the person obligated himself. Com. Dig. Attorney, C 3; Story, on Ag. Sec. 12.

3. When a bare power or authority has been given to another, the latter cannot in general delegate that authority or any part of it to a third person, for the obvious reason that the principal relied upon the intelligence, skill and ability of his agent, and he cannot have the same confidence in a stranger. Bac. Ab. Authority, D; Com. Dig. Authority, C 3; 12. Mass. 241; 4 Mass. 597; 1 Roll. Ab. Authority, C 1, 15; 4 Camp. 183; 2 M. & Selw. 298, 301; 6 Taunt. 146; 2 Inst. 507.

4. To this general rule that one appointed as agent, trustee, and the like, cannot delegate his authority, there are exceptions: 1. When the agent is expressly authorized to make a substitution. 1 Liverm. on Ag. 54. 2. When the authority is implied, as in the following: cases: 1st. When by the laws such power is indispensable in order to accomplish the end proposed, as, for example, when goods are directed to be sold at auction, and the laws forbid such sales except by licensed auctioneers. 6 S. & R. 386. 2d. When the employment of such substitute is in the ordinary course of trade, as where it is the custom of trade to employ a ship broker or other agent for the purpose of procuring freight and the like. 2 M. & S. 301; 3 John. Ch. R. 167, 178; 6 S. & R. 386. 3d. When it is understood by the parties to be the mode in which the particular thing would be done. 9 Ves. 234; 3 Chit. Com Law, 206. 4th. When the powers thus delegated are merely mechanical in their nature. 1 Hill, (N. Y.) R. 501 Bunb. 166; Sugd. on Pow. 176.

5. As to the form of the delegation, it may be for general purposes, by a verbal or by a written declaration not under seal, or by acts and implications. 3 Chit. Com. Law, 5, 194, 195; 7 T. R. 350. But when the act to be done must be under seal, the delegation must also be under seal. Co. Litt. 48 b; 5 Binn. 613; 14 S. & R. 331 See Authority.

DELEGATION, legislation. It signifies the whole number of the persons who represent a district, a state, and the like, in a deliberative assembly; as, the delegation from Ohio, the delegation from the city of Philadelphia.

TO DELIBERATE. To examine, to consult, in order to form an opinion. Thus, a jury deliberate as to their verdict.

DELIBERATION, contracts, crimes. The act of the understanding, by which the party examines whether a thing proposed ought to be done or not to be done, or whether it ought to be done in one manner or another. The deliberation relates to the end proposed, to the means of accomplishing that end, or to both.

2. It is a presumption of law that all acts committed, are done with due deliberation, that the party intended to do what he has done. But he may, show the contrary; in contracts, for example, he may show he has been taken by surprise; (q.v.) and when a criminal act is charged, he may prove that it Was an accident, and not with deliberation, that in fact there was no intention or will. See Intention; Will.

DELIBERATION. legislation. The council which is held touching some business, in an assembly having the power to act in relation to it.

2. In deliberative assemblies, it is presumed that each member will listen to the opinions and arguments of the others before he arrives at a

conclusion.

DELICT, civil law. The act by which one person, by fraud or malignity, causes some damage or tort to some other. In its most enlarged sense, this term includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another, either voluntarily or accidentally without evil intention; but more commonly by delicts are understood those small offences which are punished by a small fine or a short imprisonment.

2. Delicts are either public or private; the public are those which affect the whole community by their hurtful consequences; the private is that which is directly injurious to a private individual. Inst. 4, 18; Id. 4, 1 Dig. 47, 1; Id. 48, 1.

3. A quasi-delict, quasi delictum, is the act of a person, who without malignity, but by an inexcusable imprudence, causes an injury to another. Poth. Ob. n. 116; Ersk. Pr. Laws of Scotl. B. 4, t. 4, s. 1.

DELINQUENT, civil law. He who has been guilty of some crime, offence or failure of duty.

DELIRIUM, med.jur. A disease of the mind produced by inflammations, particularly in fevers, and other bodily diseases.

2. It is also occasioned by intoxicating agents.

3. Delirium manifests its first appearance "by a propensity of the patient to talk during sleep, and a momentary forgetfulness of his situation, and of things about him, on waking from it. And after being fully aroused, however, and his senses collected, the mind is comparatively clear and tranquil, till the next slumber, when the same scene is repeated. Gradually the mental disorder becomes more intense, and the intervals

between its returns of shorter duration, until they are scarcely, or not at all perceptible. The patient lies on his back, his eyes, if open, presenting a dull and listless look, and is almost constantly talking to himself in a low, muttering tone. Regardless of persons or things around him and scarcely capable of recognizing them when aroused by his attendants, his mind retires within itself to dwell upon the scenes and events of the past, which pass before it in wild and disorderly array, while the tongue feebly records the varying impressions, in the form of disjointed, incoherent discourse, or of senseless rhapsody. In the delirium which occurs towards the end of chrome diseases, the discourse is often more coherent and continuous, though the mind is no less absorbed in its own reveries. As the disorder advances, the voice becomes more indistinct, the fingers are constantly picking at the bed-clothes, the evacuations are passed insensibly, and the patient is incapable of being aroused to any further effort of attention. In some cases, delirium is attended with a greater degree of nervous and vascular excitement, which more or less modifies the abovementioned symptoms. The eyes are open, dry, and bloodshot, intently gazing into vacancy, as if fixed on some object which is really present to the mind of the patient; the skin is hotter and dryer; and he is more restless and intractable. He talks more loudly, occasionally breaking out into cries and vociferation, and tosses about in bed, frequently endeavoring to get up, though without any particular object in view." Ray, Med. Jur. Sec. 213.

4. "So closely does delirium resemble mania to the casual observer, and so important is it that they should be distinguished from each other, that it may be well to indicate some of the most common and prominent features of each. In mania, the patient recognizes persons and things, and is perfectly conscious of, and remembers what is passing around him. In delirium, he can seldom distinguish one person or thing from another, and, as if fully occupied with the images that crowd upon his memory, gives no attention to

those that are presented from without. In delirium, there is an entire abolition of the reasoning power; there is no attempt at reasoning at all; the ideas are all and equally insane; no single train of thought escapes the morbid influence, nor does a single operation of the mind reveal a glimpse of its natural vigor and acuteness. In mania, however false and absurd the ideas may be, we are never at a loss to discover patches of coherence, and some semblance of logical sequence in the discourse. The patient still reasons, but he reasons incorrectly. In mania, the muscular power is not perceptibly diminished, and the individual moves about with his ordinary ability. Delirium is invariably attended with great muscular debility; and the patient is confined to bed, and is capable of only a momentary effort of exertion. In mania, sensation is not necessarily impaired and, in most instances, the maniac sees, bears, and feels with all his natural acuteness. In delirium, sensation is greatly impaired, and this avenue to the understanding seems to be entirely closed. In mania, many of the bodily functions are undisturbed, and the appearance of the patient might not, at first sight, convey the impression of disease. In delirium, every function suffers, and the whole aspect of the patient is indicative of disease. Mania exists alone and independent of any other disorder, while delirium is only a symptom or attendant of some other disease. Being a symptom only, the latter maintains certain relations with the disease on which it depends; it is relieved when that is relieved, and is aggravated when that increases in severity. Mannia, though it undoubtedly tends to shorten life, is not immediately dangerous; whereas the disease on which delirium depends, speedily terminates in death, or restoration to health. Mania never occurs till after the age of puberty; delirium attacks all periods alike, from early childhood to extreme old age." Id. Sec. 216.

5. In the inquiry as to the validity of testamentary dispositions, it

is of great importance, in many cases, to ascertain whether the testator labored under delirium, or whether he was of sound mind. Vide Sound mind; Unsound mind; 2 Addams, R. 441; 1 Addams, Rep. 229, 383; 1 Hagg. R. 577; 2 Hagg. R. 142; 1 Lee, Eccl. R. 130; 2 Lee, Eccl. R. 229; 1 Hag. Eccl. Rep. 256.

DELIRIUM TREMENS, med. jur. A species of insanity which has obtained this name, in consequence of the tremor experienced by the delirious person, when under a fit of the disorder.

2. The disease called delirium tremens or mania a potu, is well described in the learned work on the Medical Jurisprudence of Insanity, by Dr. Ray, Sec. 315, 316, of which the following is an extract: "it may be the immediate effect of an excess, or series of excesses, in those who are not habitually intemperate, as well as in those who are; but it most commonly occurs in habitual drinkers, after a few days of total abstinence from spirituous liquors. It is also very liable to occur in this latter class when

laboring under other diseases, or severe external injuries that give rise to any degree of constitutional disturbance. The approach of the disease is generally indicated by a slight tremor and faltering of the hands and lower extremities, a tremulousness of the voice, a certain restlessness and sense of anxiety which the patient knows not how to describe or to account for, disturbed sleep, and impaired appetite. These symptoms having continued two or three days, at the end, of which time they have obviously increased in severity, the patient ceases to sleep altogether, and soon becomes delirious. At first, the delirium is not constant, the mind wandering during the night, but during the day, when its attention is fixed, capable of rational discourse. It is not long, however, before it becomes constant, and constitutes the most prominent feature of the disease. This state, of

watchfulness and delirium continues three or four days, when, if the patient recover, it is succeeded by sleep, which, at first appears in uneasy and irregular naps, and lastly in long, sound, and refreshing slumbers. When sleep does not supervene about this period, the, disease is fatal; and whether subjected to medical treatment, or left to itself, neither its symptoms nor duration are materially modified.

3. "The character of the delirium in this disease is peculiar, bearing a stronger resemblance to dreaming, than any other form of mental derangement. It would seem as if the dreams which disturb and harass the mind during the imperfect sleep that precedes the explosion of the disease, continue to occupy it when awake, being then viewed as realities, instead of dreams. The patient imagines himself, for instance, to be in some particular situation, or engaged in certain occupations according to each individuals habits and profession, and his discourse and conduct will be conformed to this delusion, with this striking peculiarity, however, that he is thwarted at every step, and is constantly meeting with obstacles that defy his utmost efforts to remove. Almost invariably, the patient manifests, more or less, feelings of suspicion and fear, laboring under continual apprehension of being made the victim of sinister designs and practices. He imagines that certain people have conspired to rob or murder him, and insists that he can hear them in an adjoining apartment, arranging their plans and preparing to rush into his room; or that he is in a strange place where he is forcibly detained and prevented from going to his own home. One of the most common hallucinations is, to be constantly seeing devils, snakes, vermin, and all manner of unclean things around him and about him, and peopling every nook and corner of his apartment with these loathsome objects. The extreme terror which these delusions often inspire, produces in the countenance, an unutterable expression of anguish; and, in the hope of escaping from his,

fancied tormentors, the wretched patient endeavors to cut his throat, or jump from the window. Under the influence of these terrible apprehensions, he sometimes murders his wife or attendant, whom his disordered imagination identifies with his enemies, though he is generally tractable and not inclined to be mischievous. After perpetrating an act of this kind, he generally gives some illusive reason for his conduct, rejoices in his success, and expresses his regret at not having done it before. So complete and obvious is the mental derangement in this disease, so entirely are, the thoughts and actions governed by the most unfounded and absurd delusions, that if any form of insanity absolves from criminal responsibility, this certainly must have that effect. 3 Am. Jur. 5-20.

DELIVERANCE, Practice. A term used by the clerk in court to every prisoner who is arraigned and pleads not guilty to whom he wishes a good deliverance. In modern practice this is seldom used.

DELIVERY, conveyancing. The transferring of a deed from the grantor to the grantee, in such a manner as to deprive him of the right to recall it; Dev. Eq. R. 14 or the delivery may be made and accepted by an attorney. This is indispensably necessary to the validity of a deed; 9 Shepl. 569 2 Harring. 197; 16 Verm. 563; except it be the deed of a corporation, which, however, must be executed under their common seal. Watkin's Prin. Con. 300. But although, as a general rule, the delivery of a deed is essential to its perfection, it is never averred in pleading. 1 Wms. Saund. Rep. 291, note Arch. Dig. of Civ. Pl. 138.

2. As to the form, the delivery may be by words without acts; as, if the deed be lying upon a table, and the grantor says to the grantee, "take that as my deed," it will be a sufficient delivery; or it may be by acts without words, and therefore a dumb man may deliver a deed. Co. Litt. 36 a,

note; 6 Sim. Rep. 31; Gresl. Eq. Ev. 120; Wood. B. 2, c. 3; 6 Miss. R. 326; 5 Shepl. 391; 11 Verm. 621; 6 Watts & S. 329; 23 Wend. 43; 3 Hill, 513; 2 Barr, 191, 193 2 Ev. Poth. 165-6.

3. A delivery may be either absolute, Is when it is delivered to the grantor himself; or it may be conditional, that is, to a third person to keep until some condition shall have been performed by the grantee, and then it is called an escrow. (q.v.) See 2 Bl. Com. 306 4 Kent. Coin. 446 2 Bouv. Inst. n. 2018, et seq.; Cruise, Dig. tit. 32, c. 2, s. 87; 5 Serg. & Rawle, 523; 8 Watts, R. 1; and articles Assent; Deed.

4. The formula, "I deliver this as my act and deed," which means the actual delivery of the deed by the grantor into the hands or for the use of the grantee, is incongruous, not to say absurd, when applied to deeds which cannot in their nature be delivered to any person; as deeds of revocation, appointment, &c., under a power where uses to unborn children and the like, if in fact such instruments, though sealed, can be properly called deeds, i. e. writings sealed and delivered. Ritson's Practical Points, 146.

DELIVERY, contracts. The transmitting the possession of a thing from one person into the power and possession of another.

2. Originally, delivery was a clear and unequivocal act of giving possession, accomplished by placing the subject to be transferred in the hands of the buyer or his avowed agent, or in their respective warehouses, vessels, carts, and the like. This delivery was properly considered as the true badge of transferred property, as importing full evidence of consent to transfer; preventing the appearance of possession in the transferrer from continuing the credit of property unduly; and avoiding uncertainty and risk in the title of the acquirer.

3. The complicated transactions of modern trade, however, render

impossible a strict adherence to this simple rule. It often happens that the purchaser of a commodity cannot take immediate possession and receive the delivery. The bulk of the goods; their peculiar situation, as when they are deposited in public custody for duties, or in the hands of a manufacturer for the purpose of having some operation of his art performed upon them, to fit them for the market the distance they are from the house; the frequency of bargains concluded by correspondence between distant countries, and many other obstructions, frequently render it impracticable to give or to receive actual delivery. In these and such like cases, something short of actual delivery has been considered sufficient to transfer the property.

4. In sales, gifts, and other contracts, where the party intends to transfer the property, the delivery must be made with the intent to enable the receiver to obtain dominion over it. 3 Serg. & Rawle, 20; 4 Rawle, 260; 5 Serg. & Rawle, 275 9 John. 337. The delivery may be actual, by putting the thing sold in the hands or possession of the purchaser; or it may be symbolical, as where a man buys goods which are in a room, the receipt of the keys will be sufficient. 1 Yeates, 529; 5 Johns. R. 335; 1 East, R. 192.; 3 Bos. & Pull. 233; 10 Mass. 308; 6 Watts & Serg. 94. As to what will amount to a delivery of goods and merchandise, vide 1 Holt, 18; 4 Mass. 661; 8 Mass. 287; 14 Johns. R. 167; 15 Johns. R. 849; 1 Taunt. R. 318 H. Black. R. 316, 504; 1 New R. 69; 6 East, R. 614.

5. There is sometimes considerable difficulty in ascertaining the particular period when the property in the goods sold passes from the vendor to the vendee; and what facts amount to an actual delivery of the goods. Certain rules have been established, and the difficulty is to apply the facts of the case.

6.-1. Where goods are sold, if nothing remains to be done on the part of the seller as between him and the buyer, before the article is to be deliver-ed, the property has passed. East, R. 614; 4 Mass. 661; 8 Mass. 287

14 Johns. 167; 15 Johns. 349; 1 Holt's R. 18; 3 Eng. C. L. r. 9.

7.-2. Where a chattel is made to order, the property therein is not vested in the quasi vendee, until finished and delivered, though he has paid for it. 1 Taunt. 318.

8.-3. The criterion to determine whether there has been a delivery on a sale, is to consider whether the vendor still retains, in that character, a right over. the property. 2 H. Blackst, R. 316.

9.-4. Where a part of the goods sold by an entire contract, has been taken possession of by the vendee, that shall be deemed a taking possession of the whole. 2 H. Bl. R. 504; 1 New Rep. 69. Such partial delivery is not a delivery of the whole, so as to vest in the vendee the entire property in the whole, where some act, other than the payment of the price, is necessary to be performed in order to vest the property. 6 East, R. 614.

10.-5. Where goods are sent by order to a carrier the carrier receives them as the vendee's agent. Cowp. 294; 3 Bos. & Pull. 582; 2 N. R. 119.

11.-6. A delivery may be made in a very slight manner; as where one buys goods which are in a room, the receipt of the key is sufficient. 1 Yeates, 529; 5 Johns. 335; 1 East, R. 192. See, also, 3. B. & P. 233 7 East, Rep. 558; 1 Camp. 235.

12.-7. The vendor. of bulky articles is not bound to, deliver them, unless he stipulated to do so; be must give notice to the buyer that he is ready to deliver them. 5 Serg. & Rawle, 19; 12. Mass. 300; 4 Shepl. Rep. 49; and see 3 Johns. 399; 13 Johns. 294; 19 Johns. 218; 1 Dall. 171.

13.-8. A sale of bricks in a brickyard, accompanied with a lease of the yard until the bricks should be sold and removed, was held to be valid against the creditors of the vendor, without an actual removal. 10 Mass. 308.

14.-9. Where goods were contracted to be sold upon condition that the

vendee should give security for the price, and they are delivered without security being given, but with the declaration on the part of the vendor that the transaction should not be deemed a sale, until the security should be furnished; it was held that the goods remained the property of the vendor, notwithstanding the delivery. But it seems that in such cases the goods would be liable for the debts of, the vendee's creditors, originating after the delivery; and that the vendee may, for a bona fide consideration, sell the goods while in his possession. 4 Mass. 405.

15.-10. Where goods are sold to be paid for on delivery, if, on delivery, the vendee refuses to pay for them, the property is not divested from the vendor. 13 Johns. 434; 1 Yeates, 529.

16.-11. If the vendor rely on the promises of the vendee to perform the conditions of the sale, and deliver the goods accordingly, the right of property. is changed; but where, performance and delivery are understood to be simultaneous, possession, obtained by artifice, will not vest a title in the vendee. 3 Serg. & Rawle, 20.

17.-12. Where, on the sale of a chattel, the purchase money is paid, the property is vested in the vendee, and if he permit it to remain in the custody of the vendor, he cannot call upon the latter for any subsequent loss or deterioration not arising from negligence. 2 Johns. 13; 2 Caines, R. 38 3 Jolins. 394.

18. In order to make a good donatio mortis causa, it is requisite that there should be a delivery of the subject to or for the donee, where such delivery can be made. 3 Binn. R. 370; 1 Miles, Rep. 109, 110; 2 Ves. Jr. 120; 9 Ves. Jr. 1.

19. The delivery of the key of the place where bulky goods are deposited, is, however, a sufficient delivery of such goods. 2 Ves. Sen. 445. Vide 3 P. Wms. 357; 2 Bro. C. C. 612; 4 Barn. & A. 1; 3 Barn. & C. 45 Bouv. Inst. Index, h.t. See Sale; Stoppage in transitu; Tender; and Domat,

Lois Civiles, Liv. 1, tit. 2, s. 2 Harr. Dig. Sale, II. 3.

DELIVERY, child-birth, med. jur. The act of a woman giving birth to her offspring.

2. It is frequently of great importance to ascertain whether or not a delivery has taken place, and the time when it took place. Delivery may be considered with regard, 1. To pretended delivery. 2. To concealed delivery and, 3. To the usual signs of delivery.

3.-1. In pretended delivery, the female declares herself to be a mother, without being so in reality; an act always prompted by folly or fraud.

4. Pretended delivery may present itself in three points of view, 1. When the female who feigns has never been pregnant. When thoroughly investigated, this may always be detected. There are signs which must be present, and cannot be feigned. An enlargement of the orifice of the uterus, and a tumefaction of the organs of generation, should always be present, and if absent, are conclusive against the' fact. Annales d'Hygiene, tome ii. p. 227. 2. When the pretended pregnancy and delivery have been preceded by one or more deliveries. In this case, attention should be given to the following circumstances: the mystery, if any, which has been affected with regard to the situation of the female; her age; that of her husband and particularly whether aged or decrepit. 3. When the woman has been actually delivered, and substitutes a living for a dead child. But little evidence can be obtained on this subject from a physical examination.

5.-2. Concealed delivery generally takes place when the woman either has destroyed her offspring, or it was born dead. In suspected cases, the following circumstances should be attended to: 1. The proofs of pregnancy which arise in consequence of the examination of the mother. When she has

been pregnant, and has been delivered, the usual signs of delivery, mentioned below, will be present. A careful investigation as to the woman's appearance, before and since the delivery, will have some weight, though such evidence is not always to be relied upon, as such appearances are not unfrequently deceptive. 2. The proofs of recent delivery. 3. The connexion between the supposed state of parturition, and the state of the child that is found; for if the age of the child do not correspond to that time, it will be a strong circumstance in favor of the mother's innocence. A redness of the shin and an attachment of the umbilical cord to the navel, indicate a recent birth. Whether the child was living at its birth, belongs to the subject of infanticide. (q.v.)

6.-3. The usual signs of delivery are very well collected in Beck's excellent treatise on Medical Jurisprudence, and are here extracted: If the female be examined within three or four days after the occurrence of delivery, the following circumstances will generally be observed: greater or less weakness, a slight paleness of the face, the eye a little sunken, and surrounded by a purplish or dark brown colored ring, and a whiteness of the skin, like a person convalescing from disease. The belly is soft, the skin of the abdomen is lax, lies in folds, and is traversed in various directions by shining reddish and whitish lines, which especially extend from the groins and pubis to the naval. These lines have sometimes been termed linecae albicantes, and are particularly observed near the umbilical region, where the abdomen has experienced the greatest distention. The breasts become tumid and hard, and on pressure emit a fluid, which at first is serous, and afterwards gradually becomes whiter; and the presence of this secretion is generally accompanied with a full pulse and soft skin, covered with a moisture of a peculiar and somewhat acid odor. The areolae round the nipples are dark colored. The external genital organs and vagina are dilated and tumefied throughout the whole of their extent, from the pressure of the

foetus. The uterus may be felt through the abdominal parietes, voluminous, firm, and globular, and rising nearly as high as the umbilicus. Its orifice is soft and tumid, and dilated so as to admit two or more fingers. The fourchette; or anterior margin of the perinaeum, is sometimes torn, or it is lax, and appears to have suffered considerable distention. A discharge (termed the lochial) commences from the uterus, which is distinguished from the menses by its pale color, its peculiar and well-known smell, and its duration. The lochia are at first of a red color, and gradually become lighter until they cease.

7. These signs may generally be relied upon as indicating the state of pregnancy, yet it requires much experience in order not to be deceived by appearances.

8.-1. The lochial discharge might be mistaken for menstruation, or fluor albus, were it not for its peculiar smell; and this it has been found impossible, by any artifice, to destroy.

9.-2. Relaxation of the soft parts arises as frequently from menstruation as from delivery; but in these cases the os uteri and vagina are not so much tumefied, nor is there that tenderness and swelling. The parts are found pale and flabby, when all signs of contusion disappear, after delivery; and this circumstance does not follow menstruation.

10.-3. The presence of milk, though a usual sign of delivery, is not always to be relied upon, for this secretion may take place independent of pregnancy.

11.-4. The wrinkles and relaxations of the abdomen which follow delivery, may be the consequence of dropsy, or of lankness following great obesity. This state of the parts is also seldom striking after the birth of the first child, as they shortly resume their natural state. Vide, generally, 1 Beck's Med. Jur. c. 7, p. 206; 1 Chit. Med. Jur. 411; Ryan's

Med. Jur. ch. 10, p. 133; 1 Briand, Med. Leg. lere partie, c. 5.

DELUSION, med. jurisp. A diseased state of the mind, in which persons believe things to exist, which exist only, or in the degree they are conceived of only in their own imaginations, with a persuasion so fixed and firm, that neither evidence nor argument can convince them to the contrary.

2. The individual is, of course, insane. For example, should a parent unjustly persist without the least ground in attributing to his daughter a course of vice, and use her with uniform unkindness, there not being the slightest pretence or color of reason for the supposition, a just inference of insanity, or delusion, would arise in the minds of a jury: because a supposition long entertained and persisted in, after argument to the contrary, and against the natural affections of a parent, suggests that he must labor under some morbid mental delusion. 3 Addams' R. 90, 91; Id. 180; Hagg. R. 27 and see Dr. Connolly's Inquiry into Insanity, 384; Ray, Med. Jur. Prel. Views., Sec. 20, p. 41, and Sec. 22, p. 47; 3 Addams, R. 79; 1 Litt. R. 371 Annales d'Hygiene Publique, tom. 3, p. 370; 8 Watts, 70; 13 Ves. 89; 1 Pow. Dev. by Jarman, 130, note Shelf. on Lun. 296; 2 Bouv. Inst. n. 2104-10.

DEMAND, contracts. A claim; a legal obligation.

2. Lord Coke says, that demand is a word of art, and of an extent, in its signification, greater than any other word except claim. Litt. sect. 508; Co. Litt. 291; 2 Hill, R. 220; 9 S. & R. 124; 6 Watts and S. 226. Hence a release of all demands is, in general, a release of all covenants, real and personal, conditions, whether broken or not, annuities, recognizances, obligations, contracts, and the like. 3 Tho. Co. Litt. 427; 3 Penna, 120; 2 Hill, R. 228.

3. But a release of all demands does not discharge rent before it is

due, if it be a rent incident to the reversion; for the rent was not only not due, but the consideration - the future enjoyment of the lands - for which the rent was to be given, was not executed. 1 Sid. 141; 1 Lev. 99 3 Lev. 274; Bac. Ab. Release, I.

DEMAND, practice. A requisition or a request by one individual to another to do a particular thing.

2. Demands are either express or implied. In many cases, an express demand must be made before the commencement of an action, some of which will be considered below; in other cases an implied demand is all that the law requires, and the bringing of an action is a sufficient demand in those cases. 1 Saund. 33, note 2.

3. A demand is frequently necessary to secure to a man all his rights, both in actions arising on contracts and those which are founded on some tort. It is requisite also, when it is intended to bring the party into contempt for not performing an order which has been made a rule of court.

4.-1. Whether a demand is requisite before the plaintiff can commence an action arising on contract, depends upon express or implied stipulations of the parties. In case of the sale of property, for example, to be paid for on delivery, a demand of it must be made before the commencement of an action for non-delivery, and proved on the trial, unless it can be shown that the seller has incapacitated himself by a resale and delivery of the property to another person, or otherwise. 1 East, R. 204 5 T. R. 409; 10 East, R. 359; 5 B. & Ald. 712 2 Bibb, 280 Hardin, 79; 1 Verm. 25; 5 Cowen, 516. 16 Mass. 453; 6 Mass. 61 4 Mass. 474; 3 Bibb, 85; 3 Wend. 556; 5 Munf. R. 1; 2 Greenl. 308; 9 John. 361; 6 Hill, N. Y. Rep. 297.

5. On the same principles, a request on a general promise to marry is requisite, unless it be dispensed with by the party's marrying another

person, which puts it out of his power to fulfill his contract, or that he refuses to marry at any time. 2 Dow. & Ry. 55; 1 Chit. Pr. 57, note (n), and 438, note (e)

6. A demand of rent must always be made before a re-entry for the non-payment of rent. Vide Re-entry.

7. When a note is given and no time of payment is mentioned, it is payable immediately. 8 John. R. 374; 5 Cowen, R. 516 1 Conn. R. 404; 1 Bibb, R. 164; 1 Blackf. R. 233.

8. There are cases where, a demand is not originally necessary, but becomes so by the act of the obligor. On a promissory note no express demand of payment is requisite before bringing an action, but if the debtor tenders the amount due to the creditor on the note, it becomes necessary before bringing. an action, to make a demand of the debtor for payment; and this should be of the very sum tendered. 1 Campb. 181 Id. 474; 1 Stark. R. 323; 2 E. C. L. R. 409.

9. When a debt or obligation is payable, and no day of payment is fixed, it is payable, on demand. In omnibus obligationibus in quibus dies non ponitur, presenti die debitur. Jac. Introd. 62; 7 T. R. 427 Barn. & Cr. 157. The demand must, however, be made in a reasonable time, for after the lapse of twenty years, a presumption will arise that the note has been paid; but, like some other presumptions, it may be rebutted, by showing the fact that the note remains unpaid. 5 Esp. R. 52 1 D. & R. 16 Byles on Bills, 169.

10. When demand of the payment of a debt, secured by note or other instrument, is made, the party making it should be ready to deliver up such note or instrument, on payment. If it has been lost or destroyed, an indemnity should be offered. 2 Taunt. 61; 3 Taunt. 397; 5 Taunt. 30; 6 Mass. R. 524; 7 Mass. R. 483; 13 Mass. R. 557; 11 Wheat. R. 171; 4 Verm. R. 313; 7 Gill & Johns. 78 3 Whart. R. 116; 12 Pick. R. 132 17 Mass. 449.

11.-2. It is requisite in some cases arising ex delicto, to make a

demand of restoration of the right before the commencement of an action.

12. The following are examples 1. When the wife, apprentice, or servant of one person, has been harbored by another, the proper course is to make a demand of restoration before an action brought, in order to constitute the party a willful wrongdoer, unless the plaintiff can prove an original illegal

enticing away. 2 Lev. 63: Willes, 582; 1 Peake's C. N. P. 55; 5 East, 39; 6 T. R. 652; 4 Moore's R. 12 16 E. C. L. R. 3 5 7.

13.-2. In cases where the taking of goods is lawful, but their subsequent detention becomes illegal, it is absolutely necessary, in order to secure sufficient evidence of a conversion on the trial, to give a formal notice of the owner's right to the property and possession, and to make a formal demand in writing of the delivery of such possession to the owner. The refusal to comply with such a demand, unless justified by some right which the possessor may have in the thing detained, will in general afford sufficient evidence of a conversion. 2 Saund. 47, note (e); 1 Chit. Pr. 566.

14.-3. When a nuisance has been erected or continued by a man on his own land) it is advisable, particularly in the case of a private nuisance, to give the party notice and request him to remove it, either before an entry is made for the purpose of abating it, or an action is commenced against the wrong doer and a demand is always indispensable in cases of a continuance of a nuisance originally created by another person. 2 B. & C. 302; S. C. 9 E. C. L. R. 96 Cro. Jac. 555; 5 Co. 100, 101; 2 Phil. Ev. 8, 18, n. 119; 1 East, 111; 7 Vin. Ab. 506; 1 Ayl. Pand. 497; Bac. Ab. Rent, 1. Vide articles Abatement of Nuisance, and if Nuisance. For the allegation of a demand or request in a declaration, see article Licet scoepius requisitus; and Com. Dig. Pleader, C 70 2 Chit. Pl. 84; 1 Saund. 33, note 2; 1 Chit. Pl. 322.

15.-4. When an order to pay money, or to do any other thing, has been made a rule of court, a demand for the payment of the money, or performance of the thing, must be made before an attachment will be issued for a contempt. 2 Dowl. P. C. 338, 448: 1 C. M. & R. 88, 459; 4 Tyr. 369; 2 Scott, 193; 4 Dowl. P. C. 114; 1 Hodges 197; 1 Har. & Woll. 216; 1 Hodges, 157; Id. 337; 4 Dowl. P. C. 86.

DEMAND IN RECONVENTION. In Louisiana, this term is used to signify the demand which the defendant institutes in consequence of that which the plaintiff has brought against him. Code of Pr. art. 374. Vide Cross action.

DEMANDANT, practice. The plaintiff or party who brings a real action, is called the demandant. Co. Litt. 127; 1 Com. Dig. 85.

DEMENCY, dementia, med. jur. A defect, hebetude, or imbecility of the under standing, general or partial, but confined to individual faculties of the mind, particularly those concerned in associating and comparing ideas, whence proceeds great, confusion and incapacity in arranging the thoughts. 1 Chit. Med. Jur. 351; Cyclop. Practical Med. tit. Insanity; Ray, Med. Jur. ch. 9; 1 Beck's Med. Jur. 547.

2. Demency is attended with a general enfeeblement of the moral and intellectual faculties, consequence of age or disease, which were originally well developed and sound. It is characterised by forgetfulness of the past; indifference to the present and future, and a childish disposition. It differs from idiocy and imbecility. In these latter, the powers of the mind were never possessed, while in demency, they have been lost.

3. Demency may also be distinguished from mania, with which it is sometimes confounded. In the former, the mind has lost its strength, and thereby the reasoning faculty is impaired; while in the latter, the madness

arises from an exaltation of vital power, or from a morbid excess of activity.

4. Demency is divided into acute and chronic. The former is a consequence of temporary errors of regimen, fevers, hemorrhages, &c., and is susceptible of cure the latter, or chronic demency, may succeed mania, apoplexy, epilepsy, masturbation, and drunkenness, but is generally that incurable decay of the mind which occurs in old age.

5. When demency has been fully established in its last stages, the acts of the individual of a civil nature will be void, because the party had no consenting mind. Vide Contracts; Wills; 2 Phillim. R. 449. Having no legal will or intention, he cannot of course commit a crime. Vide Insanity; Mania.

DEMESNE, Eng. law. The name given to that portion of the lands of a manor which the lord retained in his own hands for the use of himself and family. These lands were called terra dominicales or demesne lands, because they were occupied by the lord, or dominus manerii, and his servants, &c. 2 Bl. Com. 90. Vide Ancient Demesne; Demesne as of fee; and Soil assault demesne.

DEMESNE AS OF FEE. A man is said to be seised in his demesne as of fee of a corporeal inheritance, because he has a property dominicum or demesne in the thing itself. 2 Bl. Com. 106. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be seised as of fee, and not in his demesne as of fee. Litt. s. 10; 17 S. & R. 196; Jones on Land Titles, i66.

2. Formerly it was the practice in an action on the case, e. g. for a nuisance to real estate, to aver in the declaration the seisin of the plaintiff in demesne as of fee; and this is still necessary, in order to estop the record with the land; so that it may run with or attend the title.

Arch. Civ. Pl. 104; Co. Ent. 9, pl. 8 Lill. Ent. 62; 1 Saund. Rep. 346; Willes, Rep. 508. But such an action may be maintained on the possession as well as on the seisin, although the effect of the record in this case upon the title would not be the same. Steph. on Pl. 322 Arch. Dig. 104; 1 Lutw. 12; 2 Mod. 71; 4 T. R. 718; 2 Saund. 1 Arch. Dig. 105; Cro. Car. 500. 575

DEMIDIETAS. This word is used in ancient records for a moiety, or one half.

DEMIES. In some universities and colleges this term is synonymous with scholars. Boyle on Charities, 129.

DEMISE, contracts. In its most extended signification, it is a conveyance either in fee, for life, or for years. In its more technical meaning, it is a lease or conveyance for a term of years. Vide Cow. L. & T. Index, h.t.; Ad. Eject. Index, h.t.; 2 Hill. Ab. 130; Com. Dig. h.t., and the heads there referred to. According to Chief Justice Gibson, the term demise strictly denotes a posthumous grant, and no more. 5 1 Whart. R. 278. See 4 Bing. N. C. 678; S. C. 33 Eng. C. L. R. 492; 2 Bouv. Inst. n. 1774, et seq.

DEMISE, persons. A term nearly synonymous with death. It is usually applied in England to the death of the king or queen.

DEMOCRACY, government. That form of government in which the sovereign power is exercised by the people in a body, as was the practice in some of the states of Ancient Greece; the term representative democracy has been given to a republican government like that of the United States.

DEMONSTRATION. Whatever is said or written to designate a thing or person. For example, a gift of so much money, with a fund particularly referred to

for its payment, so that if the fund be not the testator's property at his death, the legacy will fail; this is called a demonstrative legacy. 4 Ves. 751; Lownd. Leg. 85; Swinb. 485.

2. A legacy given to James, who married my cousin, is demonstrative; these expressions present the idea of a demonstration; there are many James, but only one who married my cousin. Vide Ayl. Pand. 130; Dig. 12, 1, 6; Id. 35, 1, 34 Inst. 2, 20, 30.

3. By demonstration is also understood that proof which excludes all possibility of error; for example, mathematical deductions.

DEMURRAGE, mar. law. The freighter of a ship is bound not to detain it, beyond the stipulated or usual time, to load, or to deliver the cargo, or to sail. The extra days beyond the lay days (being the days allowed to load and unload the cargo), are called the days of demurrage; and that term is likewise applied to the payment for such delay, and it may become due, either by the ship's detention, for the purpose of loading or unloading the cargo, either before, or during, or after the voyage, or in waiting for convoy. 3 Kent, Com. 159; 2 Marsh, 721; Abbott on Ship. 192 5 Com. Dig. 94, n., 505; 4 Taunt. 54, 55; 3 Chit. Com. Law, 426; Harr. Dig. Ship and Shipping, VII.

DEMURRER. (From the Latin demorari, or old French demorrer, to wait or stay.) In pleading, imports, according to its etymology, that the objecting party will not proceed with the pleading, because no sufficient statement has been made on the other side; but will wait the judgment of the court whether he is bound to answer. 5 Mod. 232; Co. Litt. 71, b; Steph. Pl. 61.

2. A demurrer may be for insufficiency either in substance or in form that is, it may be either on the ground that the case shown by the opposite

party is essentially insufficient, or on the ground that it is stated in an artificial manner; for the law requires in every pleading, two thing's; the one, that it be in matter sufficient; the other, that it be deduced and expressed according to the forms of law; and if either the one or the other of these be wanting, it is cause of demurrer. Hob. 164. A demurrer, as in its nature, so also in its form, is of two kinds; it is either general or special.

3. With respect to the effect of a demurrer, it is, first, a rule, that a demurrer admits all such matters of fact as are sufficiently pleaded. Bac. Abr. Pleas, N 3; Com. Dig. Pleader, Q 5. Again, it is it rule that, on a demurrer, the court will consider the whole record, and give judgment for the party who, on the whole, appears to be entitled to it. Com. Dig. Pleader, M. 1, M 2; Bad. Abr. Pleas. N 3; 5 Rep. 29 a: Hob. 56; 2 Wils. 150; 4 East, 502 1 Saund. 285 n. 5. For example, on a demurrer to the replication, if the court think the replication bad, but perceive a substantial fault in the plea, they will give judgment, not for the defendant, but for the plaintiff; 2 Wils. R. 1&0; provided the declaration be good; but if the declaration also be bad in substance, then upon the same principle, judgment would be given for the defendant. 5 Rep. 29 a. For when judgment is to be given, whether the issue be in law or fact, and whether the cause have proceeded to issue or not, the court is always to examine the whole record, and adjudge for the plaintiff or defendant, according to the legal right, as it may on the whole appear.

4. It is, however, subject to, the following exceptions; first, if the plaintiff demur to a plea in abatement, and the court decide against the plea, they will give judgment of respondeat ouster, without regard to any defect in the declaration. Lutw. 1592, 1667; 1 Salk. 212; Carth. 172 Secondly, the court will not look back into the record, to adjudge in favor of an apparent right in the plaintiff, unless the plaintiff have himself put

his action upon that ground. 5 Barn. & Ald 507. Lastly, the court, in examining the whole record, to adjudge according to the apparent right, will consider the right in matter of substance, and not in respect of mere form, such as should have been the subject of a special demurrer. 2 Vent. 198-222.

5. There can be no demurrer to a demurrer: for a demurrer upon a demurrer, or pleading over when an issue in fact is offered, is a discontinuance. Salk. 219; Bac. Abr. Pleas, N 2.

6. Demurrers are general and special, and demurrers to evidence, and to interrogatories.

7.-1. A general demurrer is one which excepts to the sufficiency of a previous pleading in general terms, without showing specifically the nature of the objection; and such demurrer is sufficient, when the objection is on matter of substance. Steph. Pl. 159; 1 Chit. Pl. 639; Lawes, Civ. Pl. 167; Bac. Abr. Pleas, N 5; Co. Lit. 72 a.

8.-2. A special demurrer is one which excepts to the sufficiency of the pleadings on the,opposite side, and shows specifically the nature of the objection and the particular ground of exception. Co. Litt. 72, a.; Bac. Abr. Pleas, N 5.

9. A special demurrer is necessary, where it turns on matter of form only; that is, where, notwithstanding such objections, enough appears to entitle the opposite party to judgment, as far as relates to the merits of the cause. For, by two statutes, 27 Eliz. ch. 5, and 4 Ann. ch. 16, passed with a view to the discouragement of merely formal objections, it is provided in nearly the same terms, that the judges "shall give judgment according to the very right of the cause and matter in law as it shall appear unto them, without regarding any imperfection, omission, defect or want of form, except those only 'Which the party demurring shall, specifically. and particularly set down and express, together with his

demurrer, as the causes of the same." Since these statutes, therefore, no mere matter of form can be objected to on a general demurrer; but the demurrer must be in the special form, and the objection specifically stated. But, on the other hand, it is to be observed, that, under a special demurrer, the party may, on the argument, not only take advantage of the particular faults which his demurrer specifies, but also of all objections in substance, or regarding the very right of the cause, (as the statute expresses it.) as under those statutes, need not be particularly set down. It follows, therefore, that unless the objection be clearly of the substantial kind, it is the safer course, in all cases, to demur specially. Yet, where a general demurrer is plainly efficient, it is more usually adopted in practice; because the effect of the special form being to apprise the opposite party more distinctly of the nature of the objection, it is attended with the inconvenience, of enabling him to prepare to maintain his pleading by argument, or of leading him to apply the earlier to amend. With respect to the degree of particularity, with which, under these statutes, the special demurrer must assign the ground of objection, it may be observed, that it is not sufficient to object, in general terms, that the pleading is "uncertain, defective, and informal," or the like, but if is necessarily to show in what, it respect, uncertain, defective, and informal. 1 Saund. 161, n. 1, 337 b, n. 3; Steph. Pl. 159, 161; 1 Chit. Pl. 642.

10.- 3. A demurrer to evidence is analogous to a demurrer in pleading; the party from whom it comes declaring that he will not proceed, because the evidence offered on the other side, is not sufficient to maintain the issue. Upon joinder in demurrer, by the opposite party, the jury are, in general, discharged from giving any verdict; 1 Arch. Pr. 186; and the demurrer being entered on record, is afterwards argued and decided by the court in banc; and the judgment there given upon it, may ultimately be brought before a court of error. See 2 H. Bl. 187 4 Chit. Pr. 15 Gould on Pl. c. 9, part 2,

Sec. 47 United States Dig. Pleading, Viii.

11.-4. Demurrer to interrogatories. By this phrase is understood the reasons which a witness tenders for not answering a particular question in interrogatories. 2 Swanst. R. 194. Strictly speaking, this is not a demurrer, which admits the facts stated, for the purpose of taking the. opinion of the court but by an abuse of the term, the witness objection to answer is called a demurrer, in the popular sense. Gresl. Eq. Ev. 61.

12. The court are judicially to determine their validity. The witness must state his objection very carefully, for these demurrers are held to strict rules, and are readily overruled if they cover too much. 2 Atk. 524; 1 Y. & J. 32. See, in general, as to demurrers,, Bac. Abr. Pleas, N; Com. Dig. Pleader, Q; Saund. Rep. Index, tit. Demurrers; Lawes Civ. Pl. ch. 8; 1 Chit. Pl. 639-649 Bouv. Inst. Index, h.t.

DEMURRER BOOK) Eng. law. When an issue in law is formed, a transcript is made upon paper of all the pleadings that have been filed or delivered between the parties, which transcript is called the demurrer book. Steph. Pl. 95. See Paper book.

DEMY SANKE or SANGUE. This is a barbarous corruption of, demi sang, half blood. (q.v.)

DENARII. An ancient general term for any sort of pecunia numerata, or ready money. The French use the word denier in the same sense: payer de ses propres deniers.

DENARIUS DEI. A term used in some countries to signify a certain sum of money which is given by one of the contracting parties to the other, as a

sign of the completion of the contract.

2. It does not however bind the parties he who received it may return it in a limited time, or the other may abandon it, and avoid the engagement.

3. It differs from arrhae in this, that the latter is a part of the consideration, while the denarius dei is no part of it. 1 Duverg. n. 132 3 Duverg. n. 49; Repert. de Jur. verbo Denier a Dieu.

DENIAL, pleading. To traverse the statement of the opposite party a defence. See Defence; Traverse.

DENIER A DIEU, French law. It is a sum of money which the hirer of a thing gives to the other party as evidence, or for the consideration of the * contract, which either party may annul, within twenty-four hours, the one who, giving the denier a dieu, by demanding, and the other by returning it. It differs from arrhae. Vide Arrhae; Denarius Dei.

DENIZATION, Eng. law.. The act by which a foreigner becomes a subject of England; but he has not the rights either of a natural born subject, nor of one who has become naturalized. Bac. Ab. Aliens, B.

DENIZEN, English law. An alien born, who has obtained, ex donatione legis, letters patent to make him au English subject.

2. He is intermediate between a natural born subject and an alien. He may. take lands by purchase or devise, which an alien cannot, but he is incapable of taking by inheritance. 1 Bl. Com. 374. In the United States there is no such civil condition.

DENUNCIATION, crim. law. This term is used by the civilians to signify the act by which au individual informs a public officer, whose duty it is to

prosecute offenders, that a crime has been committed. It differs from a complaint. (q.v.) Vide 1 Bro. C. L. 447; 2 Id. 389; Ayl. Parer. 210, Poth. Proc. Cr. sect. 2, Sec. 2.

DEODAND, English law. This word is derived from Deo dandum, to be given to God; and is used to designate the instrument, whether it be an animal or inanimate thing, which has caused the death of a man. 3 Inst. 57; Hawk. bk. 1, c. 8.

2. The deodand is forfeited to the king, and was formerly applied to pious uses. But the presentment of a deodand by a grand jury, under their general charge from the judge of assize, is void. 1 Burr. Rep. 17.

DEPARTMENT. A portion of a country. In France, the country is divided into departments, which are somewhat similar to the counties in this country. The United States have been divided into military departments, including certain portions of the country. 1 Pet. 293.

2. By department is also meant the division of authority, as, the department of state, of the navy, &c.

DEPARTMENT OF THE NAVY, government. The Act of April 80, 1798, 1 Story's Laws, 498, establishes an executive department, under the denomination of the department of the navy, the chief officer of which shall be called the secretary of the navy. (q.v.)

2. A principal clerk, and such other clerks as he shall think necessary, shall be appointed by the secretary of the navy, who shall be employed in such manner as he shall deem most expedient. In case of vacancy in the office of the secretary, by removal or otherwise, it shall be the duty of the principal clerk to take charge and custody of all books,

records, and documents of said office. Id. s. 2

DEPARTMENT OF STATE, government. The laws of the United States provide that there shall be an executive department, denominated the department of state; and a principal officer therein, called the secretary of state. (q.v.) Acts of July 27, 1789; September 15, 1789, s. 1. There shall be in such department an inferior officer, to be appointed by the Secretary, and employed therein, as he shall deem proper, to be called the chief clerk of the department of state. (q.v.) Act of July 27, 1789, s. 2.

2. He may employ, besides, one chief clerk, whose compensation shall not exceed two thousand dollars. per annum; two clerks, whose compensation shall not exceed one thousand six hundred dollars; four clerks, whose compensation shall not exceed one thousand four hundred dollars each; one clerk, whose compensation shall not exceed one thousand dollars; two clerks, whose compensation shall not exceed eight hundred dollars each; one, messenger and assistant, at a compensation not exceeding one thousand and fifty dollars per annum; one superintendent of the patent office, whose compensation shall not exceed one thousand five hundred dollars; and, in the patent office, one clerk, whose compensation shall not exceed one thousand dollars; one machinist, at a compensation not exceeding seven hundred dollars; and one messenger, at a compensation not exceeding four hundred dollars per annum. Act of May 26, 1824; Act of April 20, 1818, s. 2.

3. By the Act of March 2, 1827, 3 Story's Laws, 2061, he is authorized to employ, in the state department, one additional clerk, whose compensation shall not exceed sixteen hundred dollars; two additional clerks, whose compensation shall not exceed one thousand dollars each; and one additional clerk for the patent office, whose compensation shall not exceed eight hundred dollars.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES, government. The department of the treasury is constituted of the following officers, namely: the secretary of the treasury, (q.v.) the head of the department, two comptrollers, five auditors, a treasurer, a register, and a commissioner of the land office.

2. Each of these officers is required to perform certain appropriate duties, in which they are assisted by numerous clerks. They are prohibited from carrying on the business of trade or commerce, from being the owners or part owners of any sea vessel, from buying any public lands, from disposing or purchasing any securities of any state, or of the United States, from receiving or applying to their own use any emolument or gain in transacting business in this department, other than what shall be allowed by law, under the penalty of three thousand dollars, and of being removed from office, and of being thereafter incapable of holding any office under the United States. Gord. Dig. 228 to 248

DEPARTMENT OF WAR, government. The act of August 7, 1789, 1 Story's Laws, 31, creates an executive department, to be denominated the department of war; and there shall be a principal officer therein, to be called the secretary for the department of war. (q.v.).

2. There shall be in the said department, an inferior officer, to be appointed by the secretary, to be employed therein, and to be called the chief clerk in the department of war, and who, whenever the said principal officer shall be removed by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers, appertaining to the said department. Id.

DEPARTURE, pleading. Said to be when a party quits or departs from the case,

or defence, which he has first made, and has recourse to another; it is when his replication or rejoinder contains matter not pursuant to the declaration, or plea, and which does not support and fortify it. Co. Litt. 304, a; 2 Saund. 84, a, n. (1); 2 Wils. 98; 1 Chit. Pl. 619. The following example will illustrate what is a departure: if to assumpsit, the defendant plead infancy, and to a replication of necessaries, rejoin, duress, payment, release, &c., the rejoinder is a departure, and a good cause of demurrer, because the defendant quits or departs from the case or defence which he first made, though either of these matters, newly pleaded, would have been a good bar, if first pleaded as such.

2. A departure in pleading is never allowed, for the record would, by such means, be spun out into endless prolixity; for he who has departed from and relinquished his first plea, might resort to a second, third, fourth, or even fortieth defence; pleading would, by such means, become infinite. He who had a bad cause, would never be brought to issue, and he who had a good one, would never obtain the end of his suit. Summary on Pleading, 92; 2 Saund. 84, a. n. (l); 16 East, R. 39; 1 M. & S. 395 Coin. Dig. Pleader, F 7, 11; Bac. Abr. Pleas, L; Vin. Abr. Departure; 1 Archb. Civ. Pl. 247, 253; 1 Chit. Pl. 618.

3. A departure is cured by a verdict in favor of him who makes it, if the matter pleaded by way of departure is a sufficient answer, in substance, to what is before pleaded by the opposite party; that is, if it would have been sufficient, if pleaded in the first instance. 2 Saund. 84 1 Lill. Ab. 444.

DEPARTURE, maritime law. A deviation from the course of the voyage insured. 2. A departure is justifiable or not justifiable it is justifiable ill consequence of the stress of weather, to make necessary repairs, to succor a ship in distress, to avoid capture, of inability to navigate the ship,

mutiny of the crew, or other compulsion. 1 Bouv. Inst. n. 1189.

DEPENDENCY. A territory distinct from the country in which the supreme sovereign, power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. It differs from a colony, because it is not settled by the citizens of the sovereign or mother state; and from possession, because it is held by other title than that of mere conquest: for example, Malta was considered a dependency of Great Britain in the year 1813. 3 Wash. C. C. R. 286. Vide act of congress, March 1, 1809, commonly called the non-importation law.

DEPENDENT CONTRACT. One which it is not the duty of the contractor to perform, until some obligation contained in the same agreement has been performed by the other party. Ham. on Part. 17, 29, 30, 109.

DEPONENT, witness. One who gives information, on oath or affirmation, respecting some facts known to him, before a magistrate he who makes a deposition.

DEPOPULATION. In its most proper signification, is the destruction of the people of a country or place. This word is, however, taken rather in a passive than an active one; we say depopulation, to designate a diminution of inhabitants, arising either from violent causes, or the want of multiplication. Vide 12 Co. 30.

DEPORTATION, civil law. Among the Romans a perpetual banishment, depriving the banished of his rights as a citizen; it differed from relegation (q.v.) and exile. (q.v.). 1 Bro. Civ. Law, 125 note; Inst. 1, 12, 1 and 2; Dig.

48, 22, 14, 1.

TO DEPOSE, practice. To make a deposition; to give testimony as a witness.

TO DEPOSE, rights. The act of depriving an individual of a public employment or office, against his will. Wolff, Sec. 1063. The term is usually applied to the deprivation of all authority of a sovereign.

DEPOSIT, contracts. Usually defined to be a naked bailment of goods to be kept for the bailor, without reward, and to be returned when he shall require it. Jones' Bailm. 36, 117; 1 Bell's Com. 257. See also Dane's Abr. ch. 17, aft. 1, Sec. 3; Story on Bailm. c. 2, Sec. 41. Pothier defines it to be a contract, by which one of the contracting parties gives a thing to another to keep, who is to do so gratuitously, and obliges himself to return it when he shall be requested. Traite du Depot. See Code Civ. tit. 11, c. 1, art. 1915; Louisiana Code, tit. 13, c. 1, art. 2897.

2. Deposits, in the civil law, are divisible into two kinds; necessary and voluntary. A necessary deposit is such as arises from pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity; and thence it is called miserabile depositum. Louis. Code 2935. A voluntary deposit is such as arises without any such calamity, from the mere consent or agreement of the parties. Dig. lib. 16, tit. 3, Sec. 2.

3. This distinction was material in the civil law, in respect to the remedy, for involuntary deposits, the action was only in simplum; in the other in duplum, or two-fold, whenever the depositary was guilty of any default. The common law has made no such distinction, and, therefore, in a necessary deposit, the remedy is limited to damages co-extensive with the wrong. Jones, Bailm. 48.

4. Deposits are again divided by the civil law into simple deposits, and sequestrations; the former is when there is but one party depositor (of whatever number composed), having a common interest; the latter is where there are two or more depositors, having each a different and adverse interest. See Sequestration.

5. These distinctions give rise to very different considerations in point of responsibility and rights. Hitherto they do not seem to have been incorporated in the common law; though if cases should arise, the principles applicable to them would scarcely fail of receiving general approbation, at least, so far as they affect the rights and responsibilities of the parties. Cases of judicial sequestration and deposits, especially in courts of chancery and admiralty, may hereafter require the subject to be fully investigated. At present, there have been few cases in which it has been necessary to consider upon whom the loss should fall when the property has perished in the custody of the law. Story on Bailm. Sec. 41-46.

6. There is another class of deposits noticed by Pothier, and called by him irregular deposits. This arises when a party having a sum of money which he doe's not think safe in his own hands; confides it to another, who is to return him, not the same money, but a like sum when he shall demand it. Poth. Traite du Depot, ch. 3, Sec. 3. The usual deposit made by a person dealing with a bank is of this nature. The depositor, in such case, becomes merely a creditor of the depositary for the money or other thing which he binds himself to return.

7. This species of deposit is also called an improper deposit, to distinguish it from one that is regular and proper, and which latter is sometimes called a special deposit. 1 Bell's Com. 257-8. See 4 Blackf. R. 395.

8. There is a kind of deposit which may, for distinction's sake, be

called a quasi deposit, which is governed, by the same general rule as common deposits. It is when a party comes lawfully to the possession of another person's property by finding. Under such circumstances, the finder seems bound to the same reasonable care of it as any voluntary depositary ex contractu. Doct. & Stu. Dial. 2, ch. 38; Story on Bailm. Sec. 85; and see Bac. Abr. Bailm. D. See further, on the subject of deposits, Louis. Code, tit. 13; Bac. Abr. Bailment; Digest, depositi vel contra; Code, lib. 4, tit. 34; Inst. lib. 3, tit. 15, Sec. 3; Nov. 73 and 78; Domat, liv. 1, tit. 7, et tom. 2, liv. 3, tit. 1, s. 5, n. 26; 1 Bouv. Inst. n. 1053, et seq.

DEPOSITARY, contracts. He with whom a deposit is confided or made.

2. It is, the essence of the contract of deposits that it should be gratuitous on the part 'of the depositary. 9 M. R. 470. Being a bailee without reward, the depositary is bound to slight diligence only, and he is not therefore answerable except for gross neglect. 1 Dane's Abr. c. 17, art. 2. But in every case good faith requires that he should take reasonable care; and what is reasonable care, must materially depend upon the nature and quality of the thing, the circumstances under which it is deposited, and sometimes upon the character and confidence, and particular dealing of the parties. See 14 Serg. & Rawle, 275. The degree of care and diligence is not altered by the fact, that the depositary is the joint owner of the goods with the depositor; for in such a case, if the possessor is guilty of gross negligence, he will still be responsible, in the same manner as a common depositary, having no interest in the thing. Jones' Bailm. 82, 83. As to the care which. a depositary is bound to use, see 2 Ld. Raym. 900, 914; 1 Ld. Raym. 655; 2 Kent's Com. 438; 17 Mass. R. 479, 499; 4 Burr.. 2298; 14 Serg. & Rawle, 275; Jones' Bailm. 8; Story on Bailm. Sec. 63, 64.

3. The depositary is bound to return the deposit in individuo, and in the same state in which he received it; if it is lost, or injured, or

spoiled, by his fraud or gross negligence, he is responsible to the extent of the loss or injury. Jones' Bailm. 36, 46, 120; 17 Mass. R. 479; 2 Hawk. N. Car. R. 145; 1 Dane's Abr. c. 17, art. 1 and 2. He is also bound to restore, not only the thing deposited, but any increase or profits which may have accrued from it; if an animal deposited bear young, the latter are to be delivered to the owner. Story on Bailm. Sec. 99.

4. In general it may be laid down that a depositary has no, right to use the thing deposited. Bac. Abr. Bailm. D; Jones' Bailm. 81, 82; 1 Dane's Abr. c. 17, art. 11, Sec. 2. But this proposition must be received with many qualifications. There are certain cases, in which the use of the thing may be necessary for the due preservation of the deposit. There are others, again, where it would be mischievous; and others again, where it would be, if not beneficial, at least indifferent. Jones' Bailm. 81, 82; Owen's R. 123, 124; 2 Salk. 522; 2 Kent's Com. 450. The best general rule on the subject, is to consider whether there may or may not be an implied consent, on the part of the owner, to the use. If the use would be for the benefit of the deposit, the assent of the owner may well be presumed; if to his injury, or perilous, it ought not to be presumed; if the use would be indifferent, and other circumstances, do not incline either way, the use may be deemed not allowable. Jones' Bailm. 80, 81; Story on Bailm. Sec. 90; 1 Bouv. Inst. n. 1008, et seq.

DEPOSITION, evidence. The testimony of a witness reduced to writing, in due form of law, taken by virtue of a commission or other authority of a competent tribunal.

2. Before it is taken, the witness ought to be sworn or affirmed to declare the truth, the whole truth, and nothing but the truth. It should properly be written by the commissioner appointed to take it, or by the

witness himself; 3 Penna. R. 41; or by one not interested in the matter in dispute, who is properly authorized by the commissioner. 8 Watts, R. 406, 524. It ought to answer all the interrogatories, and be signed by the witness, when he can write, and by the commissioner. When the witness cannot write, it ought to be so stated, and he should make his mark or cross.

3. Depositions in criminal cases cannot be taken without the consent of the defendant. Vide, generally, 1 Phil. Ev. 286; 1 Vern. 413, note; Ayl. Pand. 206; 2 Supp. to Ves. jr. 309; 7 Vin. Ab. 553; 12 Vin. Ab. 107; Dane's Ab. Index, h.t.; Com. Dig. Chancery, P 8, T 4, T 5; Com. Dig. Testmoigne, C 4.

4. The Act of September 24, 1789, s. 30, 1 Story's L. U. S. 64, directs that when the testimony of any person shall be necessary in any civil cause depending in any district, in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient, or very infirm, the deposition of such person may be taken de bene esse, before any justice or judge of any of the courts of the United States, or before any chancellor, justice, or judge of a supreme or superior court, mayor, or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause; provided that a notification from the magistrate before whom the deposition is to be taken, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served on the adverse party, or his attorney, as either may be nearest, if either is within one hundred miles of the place of such caption, allowing time for their attendance after being notified, not less than at the rate of one day, Sundays exclusive, for every

twenty miles travel. And in causes of admiralty and maritime jurisdiction, or other causes of seizure, when a libel shall be filed, in which an adverse party is not named, and depositions of persons, circumstanced as aforesaid, shall be taken before a claim be put in, the like notification, as aforesaid, shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid, shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the deposition so taken shall be retained by such magistrate, until he deliver the same with his own, hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid, of their being taken, and of the notice, if any given, to the adverse party, be by him, the said magistrate, sealed up and directed to such court, and remain under his seal until opened in court. And any person may be compelled to appear and depose as aforesaid, in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court, that probably it will not be in his power to produce the witnesses, there testifying, before the circuit court, should an appeal be had, and shall move that their testimony shall be taken down in writing, it shall be so done by the clerk of the court. And if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court, which shall try the appeal, that the witnesses are then dead, or gone out of the United States, or to, a greater distance than as aforesaid, from the

place where the court is sitting; or that, by reason of age, sickness, bodily infirmity, or imprisonment, they are unable to travel or, appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. Provided, that nothing herein shall be construed to prevent any court of the United States from granting a dedimus potestatem, to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice; which power they shall severally possess nor to extend to depositions taken in perpetuam rei memoriam, which, if they relate to matters that may be cognizable in any court of the United States, a circuit court, on application thereto made as a court of equity, may, according to the usages in chancery, direct to be taken.

5. The Act of January 24, 1827, 3 Story's L. U. S. 2040, authorizes the clerk of any court of the United States within which a witness resides or where he is found, to issue a subpoena to compel the attendance of such witness, and a neglect of the witness to attend may be punished by the court whose clerk has issued the subpoena, as for a contempt. And when papers are wanted by the parties litigant, the judge of the court within which they are, may issue a subpoena duces tecum, and enforce obedience by punishment as for a contempt. For the form and style of depositions, see Gresl. Eq. Ev. 77.

DEPOSITION, eccl. law. The act of depriving a clergyman, by a competent tribunal, of his clerical orders, to punish him for some offence, and to prevent his acting in future in his clerical character. Ayl. Par. 206.

DEPOSITOR, contracts. He who makes a deposit.

2. He is generally entitled to receive the deposit from the depositary,

but to this rule there are exceptions; as. when the depositor at the time of making the deposit had no title to the property deposited, and the owner claims it from the depositary, the depositor cannot recover it; and for this reason, that he can never be in a better situation than the owner. 1 Barn. & Ald. 450; 5 Taunt. 759. As to the place where the depositor is entitled to receive his deposit, see Story on Bailm. Sec. 117-120 1 Bouv. Inst. n. 1063.

DEPREDATION, French law. The pillage which is made of the goods of a decedent. Ferr. Mod. h.t.

DEPRIVATION, ecclesiastical Punishment. A censure by which a clergyman is deprived of his parsonage, vicarage, or other ecclesiastical promotion or dignity. Vide Ayliffe's Parerg. 206; 1 Bl. Com. 393.

DEPUTY. One authorized by an officer to exercise the office or right which the officer possesses, for and in place of the latter.

2. In general, ministerial officers can appoint deputies; Com. Dig. Officer, D 1; unless the office is to be exercised by the ministerial officer in person; and where the office partakes of a judicial and ministerial character, although a deputy may be made for the performance of ministerial acts, one cannot be made for the performance of a judicial act; a sheriff cannot therefore make a deputy to hold an inquisition, under a writ of inquiry, though he may appoint a deputy to serve a writ.,

3. In general, a deputy has power to do every act which his principal might do but a deputy cannot make a deputy.

4. A deputy should always act in the name of his principal. The principal is liable for the deputy's acts performed by him as such, and for the neglect of the deputy; Dane's Ab. vol. 3, c. 76, a. 2; and the deputy is

liable himself to the person injured for his own tortious acts. Dane's Ab. Index, h.t.; Com. Dig. Officer, D; Viscount, B. Vide 7 Vin. Ab. 556 Arch. Civ. Pl. 68; 16 John. R. 108.

DEPUTY OF THE ATTORNEY GENERAL. An officer appointed by the attorney general, who is to hold his office during the pleasure of the latter, and whose duty it is to perform, within a specified district, the duties of the attorney general. He must be a member of the bar. In Pennsylvania, by an act of assembly, passed May 3, 1850, district attorneys are elected by the people, who are required to perform the duties which, before that act, were performed by deputies of the attorney general.

DEPUTY DISTRICT ATTORNEYS. The Act of Congress of March 3, 1815, 2 Story L. U. S. 1530, authorizes and directs the district attorneys of the United States to appoint by warrant, an attorney as their substitute or deputy in all cases when necessary to sue or prosecute for the United States, in any of the state or county courts, by that act invested with certain jurisdiction, within the sphere of whose jurisdiction the said district attorneys do not themselves reside or practice; and the said substitute or deputy shall be sworn or affirmed to the faithful execution of his duty.

DERELICT, common law. This term is applied in the common law in a different sense from what it bears in the civil law. In the former it is applied to lands left by the sea.

2. When so left by degrees the derelict land belongs to the owner of the soil adjoining but when the sea retires suddenly, it belongs to the government. 2 Bl. Com. 262 1 Bro. Civ. Law, 239; 1 Sumn. 328, 490 1 Gallis. 138; Bee, R. 62, 178, 260; Ware, R. 332.

DERELICTO, civil law. Goods voluntarily abandoned by their owner; he must, however, leave them, not only sine spe revertendi, but also sine animzo revertendi; his intention to abandon them may be inferred by the great length of time during which he may have been out of possession, without any attempt to regain them. 1 Bro. Civ. Law, 239; 2 Bro. Civ. Law, 51; Wood's Civ. Law, 156; 19 Amer. Jur. 219, 221, 222 Dane's Ab. Index, h.t.; 1 Ware's R. 4 1.

DERIVATIVE. Coming from another; taken from something preceding, secondary; as derivative title, which is that acquired from another person. There is considerable difference between an original and a derivative title. When the acquisition is original, the right thus acquired to the thing becomes property, which must be unqualified and unlimited, and since no one but the occupant has any right to the thing, he must have the whole right of disposing of it. But with regard to derivative acquisition, it may be otherwise, for the person from whom the thing is acquired may not have an unlimited right to it, or he may convey or transfer it with certain reservations of right. Derivative title must always be by contract.

2. Derivative conveyances are, those which presuppose some other precedent conveyance, and serve only to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance, 3 Bl. Com. 321.

DERIVATIVE POWER. An authority by which one person enables another to do an act for him. See Powers.

DEROGATION, civil law. The partial abrogation of a law; to derogate from a law is to enact something which is contrary to it; to abrogate a law is' to

abolish it entirely. Dig. lib. 50, t. 17, 1. 102. See Abrogation.

DESCENDANTS. Those who have issued from an individual, and include his children, grandchildren, and their children to the remotest degree. Ambl. 327 2 Bro. C. C. 30; Id. 230 3 Bro. C. C. 367; 1 Rop. Leg. 115; 2 Bouv. n. 1956.

2. The descendants form what is called the direct descending line. Vide Line. The term is opposed to that of ascendants. (q.v.)

3. There is a difference between the number of ascendants and descendants which a man may have every one his the same order of ascendants, though they may not be exactly alike as to numbers, because some may be descended from a common ancestor. In the line of descendants they fork differently, according to the number of children and continue longer or shorter as generations continue or cease to exist. Many families become extinct, while others continue; the line of descendants is therefore diversified in each family.

DESCENDER. In the descent; as formed on in the descender. Bac. Ab. Formedon, A 1. Vide Formedon.

DESCENT. Hereditary succession. Descent is the title, whereby a person, upon the death of his ancestor, acquires the estate of the latter, as his heir at law: This manner of acquiring title is directly opposed to that of purchase. (q.v.) 2 Bouv. Inst. n. 1952, et seq.

2. It will be proper to consider, 1. What kind of property descends; and, 2. The general rules of descent.

3.-1. All real estate, and all freehold of inheritance in land, descend to the heir. And, as being accessory to the land and making a part of the inheritance, fixtures, and emblements, and all things annexed to, or

connected with the land, descend with it to the heir. Terms for years, and other estates less than freehold, pass to the executor, and are not subjects of descent. It is a rule at common law that no one can inherit read estate unless he was heir to the person last seised. This does not apply as a general rule in the United States. Vide article Possessio fratris.

4.-2. The general rules of the law of descent. 1. It is a general rule in the law of inheritance, that if a person owning real estate, dies seised, or as owner, without devising the same, the estate shall descend to his descendants in the direct line of lineal descent, and if there be but one person, then to him or her alone; and if more than one person, and all of equal degree of consanguinity to the ancestor, then the inheritance shall descend to the several persons as tenants in common in equal parts, however remote from the intestate the common degree of consanguinity may be. This rule is in favor of the equal claims of descending line, in the same degree, without distinction of sex, and to the exclusion of all other claimants. The following example will, illustrate it; it consists of three distinct cases: 1. Suppose Paul shall die seised of real estate, leaving two sons and a daughter, in this case the estate would descend to them in equal parts; but suppose, 2. That instead of children, he should leave several grandchildren, two of them the children of his son Peter, and one the son of his son John, these will inherit the estate in equal proportions; or, 3. Instead of children and grandchildren, suppose Paul left ten great grandchildren, one the lineal descendant of his son John, and nine the descendants of his son Peter; these, like the others, would partake equally of the inheritance as tenants in common. According to 'Chancellor Kent, this rule prevails in all the United States, with this variation, that in Vermont the male descendants take double the share of females; and in South Carolina, the widow takes one-third of the estate in fee; and in Georgia, she tales a child's share in

fee, if there be any children, and, if none, she then takes in each of those states, a moiety of the estate. In North and South Carolina, the claimant takes in all cases, per stirpes, though standing in the same degree. 4 Kent, Com. 371; Reeves' Law of Desc. passim; Griff. Law Reg., answers to the 6th interr. under the head of each state. In Louisiana the rule is, that in all cases in which representation is admitted, the partition is made by roots; if one root has produced several branches, the subdivision is also made by root in each branch, and the members of the branch take between them by heads. Civil Code, art. 895.

5.-2. It is also a rule, that if a person dying seised, or as owner of the land, leaves lawful issue of different degrees of consanguinity, the inheritance shall descend to the children and grandchildren of the ancestor, if any be living, and to the issue of such children and grandchildren as shall be dead, and so on to the remotest degree, as tenants in common; but such grandchildren and their descendants, shall inherit only such share as their parents respectively would have inherited if living. This rule may be illustrated by the following example: 1. Suppose Peter, the ancestor, had two children; John, dead, (represented in the following diagram by figure 1,) and Maria, living (fig. 2); John had two children, Joseph, living, (fig. 3,) and Charles, dead (fig. 4); Charles had two children, Robert, living, (fig. 5,) and James, dead (fig. 6.); James had two children, both living, Ann, (fig. 7,) and William, (fig. 8.)

Peter (0) the ancestor.

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In this case Maria would inherit one-half; Joseph, the son of John, one-half of the half, or quarter of the whole; Robert, one-eighth of the whole; and Ann and William, each one-sixteenth of the whole, which they would hold as tenants in common in these proportions. This is called inheritance per stirpes, by roots, because the heirs take in such portions only as their immediate ancestors would have inherited if living.

6.-3. When the owner of land dies without lawful issue, leaving parents, it is the rule in some of the states, that the inheritance shall. ascend to them, first to the father, and then to the mother, or jointly to both, under certain regulations prescribed by statute.

7.-4. When the intestate dies without issue or parents, the estate descends to his brothers and sisters and their representatives. When there are such relations, and all of equal degree of consanguinity to the intestate, the inheritance descends to them in equal parts, however remote from the intestate the common degree of consanguinity may be. When all the heirs are brothers and sisters, or all of them nephews and nieces, they take

equally. When some are dead who leave issue, and some are living, then those who are living take the share they would have taken if all had been living, and the descendants of those who are dead inherit only the share which their immediate parents would have received if living. When the direct lineal descendants stand in equal degrees, they take per capita, by the head, each one full share; when, on the contrary, they stand in different degrees of consanguinity to the common ancestor, they take per stirpes, by roots, by right of representation. It is nearly a general rule, that the ascending line, after parents, is postponed to the collateral line of brothers and sisters. Considerable difference exists in the laws of the several states, when the next of kin are nephews and nieces, and uncles and aunts claim as standing in the same degree. In many of the states, all these relations take equally as being next of kin; this is the rule in the states of New Hampshire, Vermont, (subject to the claim of the males to a double portion as above stated,) Rhode Island, North Carolina, and Louisiana. In Alabama, Connecticut, Delaware, Georgia, Indiana, Illinois, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia, on the contrary, nephews and nieces take in exclusion of uncles and aunts, though they be of equal degree of consanguinity to the intestate. In Alabama, Connecticut, Georgia, Maryland, New Hampshire, Ohio, Rhode Island, and Vermont, there is no representation among collaterals after the children of brothers and sisters in Delaware, none after the grandchildren. of brothers and sisters. In Louisiana, the ascending line must be exhausted before the estate passes to collaterals, Code, art. 910. In North Carolina, claimants take per stirpes in every case, though they stand in equal degree of consanguinity to the common ancestor. As to the distinction between whole and half blood, vide Half blood.

8.-5. Chancellor Kent lays it down as a general rule in the American

law of descent, that when the intestate has left no lineal descendants, nor parents, nor brothers, nor sisters, or their descendants, that the grandfather takes the estate, before uncles and aunts, as being nearest of kin to the intestate.

9.-6. When the intestate dies leaving no lineal descendants, nor parents, nor brothers, nor sisters, nor any of their descendants, nor grand parents, as a general rule, it is presumed, the inheritance descends to the brothers and sisters, of both the intestate's parents, and to their descendants, equally. When they all stand in equal degree to the intestate, they take per capita, and when in unequal degree, per stirpes. To this general rule, however, there are slight variations in some of the states, as, in Now York, grand parents do not take before collaterals.

10.-7. When the inheritance came to the intestate on the part of the father, then the brothers and sisters of the father and their descendant's shall have the preference, and, in default of them, the estate shall descend to the brothers and sisters of the mother, and their descendants and where the inheritance comes to the intestate on the part of his mother, then her brothers and sisters, and their descendants, have a preference, and in default of them, the brothers and sisters on the side of the father, and their descendants, inherit. This is the rule in Connecticut, New Jersey, New York, North Carolina, Ohio, Rhode island, Tennessee, and Virginia. In Pennsylvania, it is provided by act of assembly, April 8, 1833, that no person who is not of the blood of the ancestors or other relations from whom any real estate descended, or by whom it was given or devised to the intestate, shall in any of the cases before mentioned, take any estate of inheritance therein, but such real estate subject to such life estate as may be in existence by virtue of this act, shall pass to and vest in such other persons as would be entitled by this act, if the persons not of the blood of

such ancestor, or other relation, had never existed, or were dead at the decease of the intestate. In some of the states there is perhaps no distinction as to the descent, whether they have been acquired by purchase or by descent from an ancestor.

11.-8. When there is a failure of heirs under the preceding rules, the inheritance descends" to the remaining next of kin of the intestate, according to the rules in the statute of distribution of the personal estate, subject to the doctrine in the preceding rules in the different states as to the half blood, to ancestral estates, and as to the equality of distribution. This rule prevails in several states, subject to some peculiarities in the local laws of descent, which extend to this rule.

12. It is proper before closing this article, to remind the reader, that in computing the degrees of consanguinity, the civil law is followed generally in this country, except in North Carolina, where the rules of the common law in their application to descents are adopted, to ascertain the degree of consanguinity. Vide the articles Branch; Consanguinity; Degree; Line.

DESCRIPTIO PERSONAE. Description of the person. In wills, it frequently happens, that the word heir is used as a descriptio personae; it is then a sufficient designation of the person.

DESCRIPTION. A written account of the state and condition of personal property, titles, papers, and the like. It is a kind of inventory, (q.v.) but is more particular in ascertaining the exact condition of the property, and is without any appraisement of it.

2. When goods are found in the possession of a person accused of stealing them, a description ought to be made of them. Merl. Rep. h.t.

3. A description is less perfect than a definition. (q.v.) It gives

some knowledge of the accidents and qualities of a thing; for example, plants, fruits, and animals, are described by their shape, bulk, color, and the like accidents. Ayl. Pand. 60.

4. Description may also be of a person, as description of a legatee. 1 Roper on Leg. chap. 2.

DESERTER. One who abandons his post; as, a soldier who abandons the public service without leave; or a sailor who abandons a ship when he has engaged to serve.

DESERTION, crim. law. An offence which consists in the abandonment of the public service, in the army or navy, without leave.

2. The Act of March 16, 1802, s. 19, enacts, that if any non-commissioned officer, musician, or private, shall desert the service of the United States, he shall, in addition to the penalties mentioned in the rules and articles of war, be liable to serve for and during such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall and may be tried by a court-martial, and punished, although the term of his enlistment may have elapsed previous to his being apprehended or tried.

3. By the articles of war, it is enacted, that "any non-commissioned officer or soldier who shall, without leave from his commanding officer, absent himself from his troop, company, or detachment, shall, upon being convicted thereof, be punished, according to the nature of his offence, at the discretion of a court-martial." Art. 21.

4. By the articles for the government of the navy, art. 16, it is enacted, that "if any person in the navy shall desert to an enemy, or rebel, he shall suffer death;" and by art. 17, "if any person in the navy shall

desert, or shall entice others to desert, he shall suffer death, or such other punishment as a court-martial shall adjudge."

DESERTION, torts. The act by which a man abandons his wife and children, or either of them.

2. On proof of desertion, the courts possess the power to grant the 'Wife, or such children as have been deserted, alimony (q.v.)

DESERTION, MALICIOUS. The act of a husband or wife, in leaving a consort, without just cause, for the purpose of causing a perpetual separation. Vide Abandonment, malicious.

DESERTION OF SEAMEN, contracts. The abandonment, by a sailor, of a ship or vessel, in which he engaged to perform a voyage, before the expiration of his time, and without leave.

2. Desertion, without just cause, renders the sailor liable, on his shipping articles, for damages, and will, besides, work a forfeiture of his wages previously earned. 3 Kent, Com. 155. It has been decided, in England, that leaving the ship before the completion of the voyage is not desertion, in the case, 1. Of the seaman's entering into the public service, either voluntarily or by impress; and 2. When he is compelled to leave it by the inhuman treatment of the captain. 2 Esp. R. 269; 1 Bell's Com. 514, 5th ed.; 2 Rob. Adm. R. 232.

DESIGNATIO PERSONAE. The persons described in a contract as being parties to it.

2. In all contracts, under seal, there must be some designatio personae. In general, the names of the parties,appear in the body of the deed, "between A B of, &c., of the one part, and C D of, &c., of the other

part," being the common formula. But there is a sufficient designation and description of the party to be charged, if his name is written at the foot of the instrument.

3. A deed alleged to have been made between plaintiff and defendant began as follows: "Tis agreed that a gray nag bought of A B by C D shall run twenty five miles in two hours for X, In witness whereof, we have hereunto set our hands and seals." The plaintiff and defendant subscribed their names at the bottom of the writing, and afterwards sealed and delivered the document as their deed. Held, that the omission to state the names of the contracting parties in the body of the instrument, was supplied by the signatures at the bottom, and it sufficiently appeared whose deed it was. 1 Raym. 2; 1 Salk. 214 2 B. & P. 339.

4. When a person is described in the body of the instrument by the name of James, and he signs the name of John, on being sued by the latter name he cannot deny it. 3 Taunt. 505; Cro. Eliz. 897, n. (a.) Vide 11 Ad. & Ell. 594; 3 P. & D. 271.

DESIGNATION, wills. The expression used by a testator, instead of the name of the person or the thing he is desirous to name; for example, a legacy to. the eldest son of such a person, would be a designation of the legatee. Vide 1 Rop. Leg. ch. 2.

2. A bequest of the farm which the testator bought of such a person; or of the picture he owns, painted by such an artist, would be a designation of the thing devised or bequeathed.

DESPACHEURS. The name given, in some countries, to persons appointed to settle cases of average. Ord. Hamh.t. 21, art. 10.

DESPATCHES. Official communications of official Persons, on the affairs of government.

2. In general, the bearer of despatches is entitled to all the facilities that can be given him, in his own country, or in a neutral state; but a neutral cannot, in general, be the bearer of despatches of one of the belligerent parties. 6 C. Rob. 465 see 2 Dodson, 54; Edw. 274.

DESPERATE. Of which there is no hope.

2. This term is used frequently, in making an inventory of a decedent's effects, when a debt is considered so bad that there is no hope of recovering it. It is then called a desperate debt, and, if it be so returned, it will be prima facie, considered as desperate. See Toll. Ex. 248 2 Williams, Ex. 644; 1 Chit. Pr. 580. See Sperate.

DESPITUS. This word signifies, in our ancient law books, a contemptible person. Flet. lib. 4, c. 5, Sec. 4. The English word despite is derived from it, which signifies spite or contempt against one's will - defiance with contempt, or contempt of opposition.

DESPOT. This word, in its most simple and original acceptation, signifies master and supreme lord; it is synonymous with monarch; but, taken in bad part, as it is usually employed, it signifies a tyrant. In some states, despot is the title given to the sovereign, as king is given in others. Encyc. Lond.

DESPOTISM, government. That abuse of government, where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not, properly, a form of government. Toull. Dr. Civ. Fr. tit. prel. n. 32; Rutherf Inst. b. 1, c. 20, Sec. 1. Vide Tyranny;

Tyrant.

DESRENABLE, Law French. Unreasonable. Britt. c. 121.

DESTINATION. The application which the testator directs shall be made of the legacy he gives; for example, when a testator gives to a hospital a sum of money, to be applied in erecting buildings, he is said to give a destination to the legacy. Destination also signifies the intended application of a thing. Mill stones, for example, taken out of a mill to be picked, and to be returned, have a destination, and are considered as real estate, although detached from the freehold. Heir looms, (q.v.) although personal chattels, are, by their destination, considered real estate and money agreed or directed to be laid out in land, is treated as real property. Newl. on Contr. ch. 8; Fonbl. Eq. B. 1, c. 6, Sec. 9; 3 Wheat. R. 577; 2 Bell's Com. 2; Ersk. Inst. 2 Sec. 14. Vide Mill.

2. When the owner of two adjoining houses uses, during his life, the property in such a manner as to make one property subject to the other, and devises one property to one person, and the other to another, this is said not to be an easement or servitude, but a destination by the former owner. Lois des Bat. partie 1, c. 4, art. 3, Sec. 3; 5 Har. & John. 82. See Dedication.

DESTINATION, com. law. The port at which a ship is to end her voyage is called her port of destination. Pard. n. 600.

DESUETUDE. This term is applied to laws which have become obsolete. (q.v.)

DETAINER. 1. The act of keeping a person against his will, or of keeping

goods or property. All illegal detainers of the person amount to false imprisonment, and may be remedied by habeas corpus.

2.-2. A detainer or detention of goods is either lawful or unlawful; when lawful, the party having possession of them cannot be deprived of it. The detention may be unlawful, although the original taking was lawful; as when goods were distrained for rent, and the rent was afterwards paid; or when they 'Were pledged, and the money borrowed, and interest were afterwards paid; in these, and the like cases, the owner should make a demand, (q.v.) and if the possessor refuse to restore them, trover, detinue, or replevin will lie, at the option of the plaintiff.

3.-3. There may also be a detainer of land and this is either lawful and peaceable, or unlawful and forcible. 1. The detainer is lawful where the entry has been lawful, and the estate is held by virtue of some right. 2. It is unlawful and forcible, where the entry has been unlawful, and with force, and it is retained, by force, against right; or even when the entry has been peaceable and lawful, if the detainer be by force, and against right; as, if a tenant at will should detain with force, after the will has determined, he will be guilty of a forcible detainer. Hawk. P. C. ch. 64, s. 22; 2 Chit. Pr. 288; Com. Dig, B. 2; 8 Cowen, 216; 1 Hall, 240; 4 John. 198; 4 Bibb, 501. A forcible detainer is a distinct offence from a forcible entry. 8 Cowen, 216. See Forcible entry and detainer.

4.-4. A writ or instrument, issued or made by a competent officer, authorizing the keeper of a prison to keep in his custody a person therein named. A detainer may be lodged against. one within the walls of a prison, on what account soever he is there. Com. Dig. Process, E 3 b.

DETENTION. The act of retaining a person or property, and preventing the removal of such person or property.

2. The detention may be occasioned by accidents, as, the detention of a

ship by calms, or by ice; or it may, be hostile, as the detention of persons or ships in a foreign country, by order of the government. In general, the detention of a ship does not change the nature of the contract, and therefore, sailors will be entitled to their wages during the time of the detention. 1 Bell's Com. 517, 519, 5th ed.; Mackel. Man. Sec. 210.

3. A detention is legal when the party has a right to the property, and has come lawfully into possession. It is illegal when the taking was unlawful, as is the case of forcible entry and detainer, although the party may have a right of possession; but, in some, cases, the (retention may be lawful, although the taking may have been unlawful. 3 Penn. St. R. 20. When the taking was legal, the detention may be illegal; as, if one borrow a horse, to ride from A to B, and afterwards detain him from the owner, After demand, such detention is unlawful, and the owner may either retake his property, or have an action of replevin or detinue. 1 Chit. Pr. 135. In some cases, the detention becomes criminal although the taking was lawful, as in embezzlement.

DETERMINABLE. What may come to an end, by the happening of a contingency; as a determinable fee. See 2 Bouv. Inst. n. 1695.

DETERMINABLE FEE. Also called a qualified or base fee, is one which has a quality subjoined to it, and which must be determined whenever the qualification annexed to it is at in end. A limitation to a man and his heirs on the part of his father, affords an example of this species of estate. Litt. Sec. 254; Co. Litt. 27 a, 220; 1 Prest. on Estates, 449; 2 Bl. Com. 109; Cruise, tit 1, Sec. 82; 2 Bouv. Inst; n., 1695.

DETERMINATE. That which is ascertained; what is particularly designated; as,

if I sell you my horse Napoleon, the article sold is here determined. This is very different from a contract by which I would have sold you a horse, without a particular designation of any horse. 1 Bouv. Inst. n. 947, 950.

DETERMINATION. The end, the conclusion, of a right or authority; as, the determination of a lease. 1 Com. Dig. Estates by Grant, G 10, 11, and 12.. The determination of an authority is the end of the authority given; the end of the return day of a writ determines the authority of the sheriff; the death of the principal determines the authority of a mere attorney. By determination is also understood the decision or judgment of a court of justice.

DETINET. He detains. Vide Debet et Detinet, and Detinuit.

DETINUE, remedies. The name of an action for the recovery of a personal chattel in specie. 3 Bl. Com. 152; 3 Bouv. Inst. n. 3472; 1 J. J. Marsh. 500.

2. This action may be considered, 1. With reference to the nature of the thing to be recovered. 2. The plaintiff's interest therein. 3. The injury. 4. The pleadings. 5. The judgment.

3.-1. The goods which it is sought to recover, must be capable of being distinguished from all others, as a particular horse, a cow, &c., but not for a bushel of grain. Com. Dig. Detinue, B, C; 2 Bl. Com. 152; Co. Litt. 286 b; Bro. Det. 51. Detinue cannot be maintained where the property sued for had ceased to exist when the suit was commenced. 2 Dana, 332. See 5 Stew. & Port. 123; 1 Ala. R. 203.

4.-2. To support this action, the plaintiff must have a right to immediate possession, although he never had actual possession; a reversioner cannot, therefore, maintain it. A bailee, who has only a special property,

may nevertheless support it when he delivered the goods to the defendant, or they were taken out of the bailee's custody. 2 Saund. 47, b, c, d Bro. Ab. h.t.; 9 Leigh, R. 158; 1 How. Miss. R. 315; 5 How. Miss. R. 742; 4 B. Munr. 365.

5.-3. The gist of the action is the wrongful detainer, and not the original taking. The possession must have been acquired by the defendant by lawful means, as by delivery, bailment, or. finding, and not tortiously. Bro. Abr.])et. 53, 36, 21 1 Misso. R. 749. But a demand is not requisite, except for the purpose of entitling the plaintiff to damages for the detention between the time of the demand and that of the commencement of the action. 1 Bibb, 186; 4 Bibb, 340; 1 Misso. 9; 3 Litt. 46.

6.-4. The plaintiff may declare upon a bailment or a trover; but the practice, by the ancient common law, was to allege, simply, that the goods came to the hands, &c., of the defendant without more. Bro. Abr. Det. 10, per Littleton; 33 H. VI. 27. The trover, or finding, when alleged, was not traversable, except when the defendant alleged delivery over of a chattel actually found to a third person, before action brought, in excuse of the detinue. Bro. Abr. Det. 1, 2. Nor is the bailment traversable, but the defendant must answer to the detinue. Bro. Abr. Det. 50-1. In describing the things demanded, much certainty is requisite, owing to the nature of the execution. A declaration for "a red cow with a white face," is not supported by proof that the cow was a yellow. or sorrel cow. 1 Scam. R. 206. The general issue is non detinet, and under it special matter may be given in evidence. Co. Litt. 283.

7.-5. In this action the defendant frequently prayed garnishment of a third person, whom he alleged owned or had an interest in the thing demanded; but this he could not do without confessing the possession of the thing demanded, and made privity of bailment. Bro. Abr. Garnishment, 1;

Interpleader, 3. If the prayer of garnishment was allowed, a sci. fac. issued against the person named as garnishee. If he made default, the plaintiff recovered against, the defendant the chattel demanded, but no damages. If the garnishee appeared and the plaintiff made default, the garnishee recovered. If both appeared, and the plaintiff recovered; he had judgment against the defendant for the chattel demanded, and a distringas in execution and against the garnishee a judgment for damages, and a fi. fa. in execution. The verdict and judgment must be such, that a special remedy may be had for the recovery of the goods detained, or a satisfaction in value for each parcel, in case they, or either of them, cannot be returned. Walker, R. 538 7 Ala. R. 189; 4 Yerg. R. 570 4 Monr. 59; 7 Ala. R., 807.; 5 Miss. R. 489; 6 Monr. 52 4 Dana, 58; 3 B. Munr. 313; 2 Humph. 59. The judgment is in the alternative, that the plaintiff recover the goods or the value thereof, if he cannot have the goods themselves, and his damages. Bro. Abr. Det. 48, 26, 3, 25; 4 Dana, R. 58; 2 Humph. 59; 3 B. Mont. 313, for the detention and full costs. Vide, generally, 1 Chit. Pl. 117; 3 Bl. Com. 152; 2 Reeve's Hist. C. L. 261, 333, 336; 3 Id. 66, 74; Bull. N. P. 50. This action has yielded to the more practical and less technical action of trover. 3 Bl. Com. 152.

DETINUIT, practice. He detained.

2. Where an action of replevin is instituted for goods which the defendant had taken, but which he afterwards restored, it is said to be brought in the detinuit; in such case the judgment is, that the plaintiff recover the damages assessed by the jury for the taking and unjust detention, or for the latter only, where the former was justifiable, and his costs. 4 Bouv. Inst. n. 3562. 3. When the replevin is in the detinet, that he detains the goods, the jury must find in addition to the above, the value of the chattels, (assuming they are still detained, not in a gross sum, but

each separate article must be separately valued, for perhaps the defendant may restore some of them, in which case the plaintiff is to recover the value of the remainder. Vide Debet et Detinet.

DEVASTAVIT. A devastavit is a mis-management and waste by an executor, administrator, or other trustee of the estate and effects trusted to him, as such, by which a loss occurs.

2. It takes place by direct abuse, by mal-administration, and by neglect.

3.-1. By direct abuse. This takes place when the executor, administrator, or trustee, sells, embezzles, or converts to his own use, the goods entrusted to him; Com. Dig. Administration, I 1; releases a claim due to the estate; 8 Bac. Abr. 700; Hob. 266; Cro. Eliz. 43; 7 John. R. 404; 9 Mass. 352; or surrenders a lease below its value. 2 John. Cas. 376; 3 P. Wms. 330. These instances sufficiently show that any willful waste of the property will be considered as a direct devastavit.

4.-2. By mal-administration. Devastavit by mal-administration most frequently occurs by the payment of claims which were not due nor owing; or by paying others out of the order in which they ought to be paid; or by the payment of legacies before all the, debts have been satisfied. 4 Serg. & Rawle, 394; 5 Rawle, 266.

5.-3. By neglect. Negligence on the part of an executor, administrator, or trustee, may equally tend to the waste of the estate, as the direct destruction or mal-administration of the assets, and render him guilty of a devastavit. The neglect to sell the goods at a fair price, within a reasonable time, or, if they are perishable goods, before they are wasted, will be a devastavit. And a neglect to collect a doubtful debt, which by proper exertion might have been collected, will be so considered.

Bac. Ab. Executors, L.

6. The law requires from trustees, good faith and due diligence, the want of which is punished by making them responsible for the losses which may be sustained by the property entrusted to them when, therefore, a party has been guilty of a devastavit, he is required to. make up the loss out of his own estate. Vide Com. Dig. Administration, I; 11 Vin. Ab. 306; 1 Supp. to Ves. jr. 209; 1 Vern. 328; 7 East, R. 257 1 Binn. 194; 1 Serg. & Rawle, 241 1 John. R. 396; 1 Caines' Cas. 96 Bac. Ab. Executor, L; 11 Toull. 58, 59, n. 48.

DEVIATION, insurance, contracts. A voluntary departure, without necessity, or any reasonable cause, from the regular and usual course of the voyage insured.

2. From the moment this happens, the voyage is changed, the contract determined, and the insurer discharged from all subsequent responsibility. By the contract, the insurer only runs the risk of the contract agreed upon, and no other; and it is, therefore, a condition implied in the policy, that the ship shall proceed to her port of destination by the. shortest and safest course, and on no account to deviate from that course, but in cases of necessity. 1 Mood. & Rob. 60; 17 Ves. 364; 3 Bing. 637; 12 East, 578.

3. The effect of a deviation is not to vitiate or avoid the policy, but only to determine the liability of the underwriters from the time of the deviation. If, therefore, the ship or goods, after the voyage has commenced, receive damage, then the ship deviates, and afterwards a loss happen, there, though the insurer is discharged from the time of the deviation, and is not answerable for the subsequent loss, yet he is bound to make good the damage sustained previous to the deviation. 2 Lord Raym. 842 2 Salk. 444.

4. But though he is thus discharged from subsequent responsibility, he is entitled to retain the whole premium. Dougl. 271; 1 Marsh. Ins. 183;

Park. Ins. 294. See 2 Phil. Ev. 60, n. (b) where the American cases are cited.

5. What amounts to a deviation is not easily defined, but a departure from the usual course of the voyage, or remaining at places where the ship is authorized to touch, longer than necessary, or doing there what the insured is not authorized to do; as, if the ship have merely liberty to touch at a point, and the insured stay there to trade, or break bulk, it is a deviation. 4 Dall. 274 1 Peters' C. C. R. 104; Marsh. Ins. B. 1, c. 6, s. 2. By the course of the voyage is not meant the shortest course the ship can take from her port of departure to her port of destination, but the regular and customary track, if such there be, which long us usage has proved to be the safest and most convenient. 1 Marsh. Ins. 185. See 3 Johns. Cas. 352; 7 T. R. 162.

6. A deviation that will discharge the insurer, must be a voluntary departure from the usual course of the voyage insured, and not warranted by any necessity. If a deviation can be justified by necessity, it will not affect the contract; and necessity will justify a deviation, though it proceed from a cause not insured against. The cases of necessity which are most frequently adduced to justify a departure from the direct or usual course of the voyage, are, 1st. Stress of weather. 2d. The want of necessary repairs. 3d. Joining convoy. 4th. Succouring ships in distress. 5th. Avoiding capture or detention. 6th. Sickness of the master or mariner. 7th. Mutiny of the crew. See Park, Ins. c. 17; 1 Bouv. Inst. n. 1187, et seq.; 2 John. Cas. 296; 11 Johns. R. 241; Pet. C. C. R. 98; 2 Johns. Rep. 89; 14 Johns. R. 315; 2 Johns. R. 138; 9 Johns. R. 192; 8 Johns. Rep. 491; 13 Mass. 68 13 Mass. 539; Id. 118; 14 Mass. 12 1 Johns. Cas. 313; 11 Johns. R. 241; 3 Johns. R. 352; 10 Johns. R. 83; 1 Johns. R. 301; 9 Mass. 436, 447; 3 Binn. 457 7 Mass. 349; 5 Mass. 1; 8 Mass. 308 6 Mass. 102 121 6 Mass. 122 7

Cranch, 26; Id. 487; 3 Wheat. 159 7 Mass. 365; 10 Mass. 21 Id. 347 7 Johns. Rep. 864; 3 Johns. R. 352; 4 Dall. R. 274 5 Binn. 403; 2 Serg. & Raw. 309; 2 Cranch, 240.

DEVIATION, contracts. When a plan has been adopted for a building, and in the progress of the work a change has been made from the original plan, the change is called a deviation.

2. When the contract is to build a house according to the original plan, and a deviation takes place, the contract shall be traced as far as possible, and the additions, if any have been made, shall be paid for according to the usual rate of charging. 3 Barn. & Ald. 47; and see 1 Ves. jr. 60; 10 Ves. jr. 306; 14 Ves. 413; 13 Ves. 73; Id. 81 6 Johns. Ch. R. 38; 3 Cranch, 270; 5 Cranch, 262; 3 Ves. 693; 7 Ves. 274; Chit. Contr. 168; 9 Pick. 298.

3. The Civil Code of Louisiana, art. 2734, provides, that when an architect or other workman has undertaken the building of a house by the job, according to a plot agreed on between him and the owner of the ground, he cannot claim an increase of the price agreed on, on the plea of the original plot having been changed and extended, unless he can prove that such changes have been made in compliance with the wishes of the proprietor.

DEVISAVIT VEL NON, practice. The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was his will. 7 Bro. P. C. 437; 2 Atk. 424; 5 Barr, 21.

DEVISE. A devise is a disposition of real property by a person's last will and testament, to tale effect after the testator's death.

2. Its form is immaterial, provided the instrument is to take effect after the death of the party; and a paper in the form of an indenture, which is to have that effect, is considered as a devise. Finch. 195 6 Watts, 522; 3 Rawle, 15; 4 Desaus. 617, 313; 1 Mod. 117; 1 Black. R. 345.

3. The term devise, properly and technically, applies only to real estate the object of the devise must therefore be that kind of property. 1 Hill. Ab. ch. 36, n. 62 to 74. Devise is also sometimes improperly applied to a bequest or legacy. (q.v.) Vide 2 Bouv. Inst. n. 2095, et seq; 4 Kent, Com. 489 8 Vin. Ab. 41 Com. Dig. Estates by Devise.

4. In the Year Book, 9 H. VI. 24, b. A. D. 1430, Babington says, the nature of a devise, when lands are devisable, is, that one can devise that his lands shall be sold by executors and this is good. And a devise in such form has always been in use. And so a man may have frank tenement of him who had nothing, in the same manner as one may have fire from a flint, and yet there is no fire in the flint. But it is to perform the last will of the devisor.

DEVISEE. A person to whom a devise has been made.

2. All persons who are in rerum natura, and even embryos, may be devisees, unless excepted by some positive law. In general, he who can acquire property by his labor and industry, may receive a devise. C. & N. 353.

DEVISOR. A testator; one, who devises his real estate.

2. As a general rule all persons who. may sell an estate may devise it. The disabilities of devisors may be classed, in three divisions. 1. Infancy. In some of the United States this disability is partially removed; in Illinois, Maryland, Mississippi and Ohio, an unmarried woman at the age of

eighteen years may devise. 2. Coverture. In general, a married woman cannot devise; but in. Connecticut and Ohio she may devise her lands; and in Illinois, her separate estate. In Louisiana, she may devise without the consent of her husband. Code, art. 132. 3. Idiocy and non sane memory. It is evident that a person non compos can make no devise, because he has no will.

3. The removal of the disability which existed at the time of the devise does, not, of itself, render it valid. For example, when the husband dies, and the wife becomes a feme sole; when one non compos is restored to his sense; and when an infant becomes of age; these several acts do not make a will good, which at its making was void. 11 Mod. 123, 157; 2 Vern. 475; Comb, 84; 4 Rawle, R. 3.36. Vide. Testament or ill.

DEVOIR. Duty. It is used in the statute of 2 Ric. II., c. 3, in the sense of duties or customs.

DEVOLUTION, eccl. law. The transfer, by forfeiture, of a right and power which a person has to another, on account of some act or negligence of the person who is vested with such right or power: for example, when a person has the right of preseptation, and he does not present within the time prescribed, the right devolves on his next immediate superior. Ayl. Par. 331.

DI COLONNA, mar. contracts. This contract tales place between the owner of a ship, the captain and the mariners, who agree that the voyage shall be for the benefit of all. This is a term used in the Italian law. Targa, oh. 36, 37: Emerigon, Mar. Loans, s. 5.

2. The New England whalers are owned and navigated in this manner, and under this species of contract. The captain and his mariners are all interested in the profits of the voyage in certain proportion, in the same

manner as the captain and crew of a privateer, according to the agreement between them. Such agreement, being very common in former times, all the mariners and the masters being interested in the voyage. It is. necessary to know this, in order to understand many of the provisions of the laws of Oleron, Wishuy, the Consolato del Mare, and other ancient codes of maritime and commercial law. Hall on Mar. Loans, 42.

TO DICTATE. To pronounce word for word what is destined to be at the same time written by another. Merlin Rep. mot Suggestion, p. 5 00; Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 5, n. 410.

DICTATOR, civil law. A Magistrate at Rome invested with absolute power. His authority over the lives and fortunes of the citizens was without bounds. His office continued but for six months. Hist. de la Jur. h.t.; Dig. l, 2, 18; Id. 1, 1, 1.

DICTUM, practice. Dicta are judicial opinions expressed by the judges on points that do not necessarily arise in the case.

2. Dicta are regarded as of little authority, on account of the manner in which they are delivered; it frequently happening that they are given without much reflection, at the bar, without previous examination. "If," says Huston, J., in Frants v. Brown, 17 Serg. & Rawle, 292, "general dicta in cases turning on special circumstances are to be considered as establishing the law, nothing is yet settled, or can be long settled." "What I have said or written, out of the case trying," continues the learned judge, "or shall say or write, under such circumstances, maybe taken as my opinion at the time, without argument or full consideration; but I will never consider myself bound by it when the point is fairly trying and fully

argued and considered. And I protest against any person considering such obiter dicta as my deliberate opinion." And it was considered by another learned judge. Mr. Baron Richards, to be a "great misfortune that dicta are taken down from judges, perhaps incorrectly, and then cited as absolute propositions." 1 Phillim. Rep. 1406; S. C. 1 Eng. Ecc. R. 129; Ram. on Judgm. ch. 5, p. 36; Willes' Rep. 666; 1 H. Bl. 53-63; 2 Bos. & P. 375; 7 T. R. 287; 3 B. & A. 341; 2 Bing. 90. The doctrine of the courts of France on this subject is stated in 11 Toull. 177, n. 133.

3. In the French law, the report of a judgment made by one of the judges who has given it, is called the dictum. Poth. Proc. Civ. partie 1, c. 5, art. 2.

DIES. A day. There are four sorts of days: 1. A natural day; as, the morning and the evening made the first day. 2. An artificial day; that is, from day-break until twilight in the evening. 3. An astrological day, dies astrologicus, from sun to sun. 4. A legal day, which is dies juridicus, and dies non juridicus. 1. Dies juridici, are all days given in term to the parties in court. Dies non juridici are those which are not appointed to do business in court, as Sundays, and the like. Dies in banco, days of appearance in the English court of common bench. 3 Bl. Com. 276. Vide Day, and 3 Com. Dig. 358.

DIES DATUS, practice. A day or time given to a defendant in a suit, which is in fact a continuance of the cause. It is so called when given before a declaration; when it is allowed afterwards it assumes the name of imparlance. (q.v.)

DIES NON or DIES NON JURIDICI. Non-judicial days. Days during which courts do not transact any business, as Sunday. The entry of judgment upon such a

day is void. W. Jones, 156.

DIET. An assembly held by persons having authority to manage the public affairs of the nation. In Germany, such assemblies are known by this name:

DIFFERENCE. A dispute, contest, disagreement, quarrel.

DIGEST, civil law. The name sometimes given to the Pandects of Justinian; it is so called because this compilation is reduced to order, quasi digestiae.

2. It is an abridgment of the decisions of the praetors and the works of the learned, and ancient writers on the law. It was made by order of the emperor Justinian, who, in 530, published an ordinance entitled De Conceptione Digestorum, which was addressed to Tribonian, and by which he was required to select some of the most distinguished lawyers to assist him in composing a collection of the best decisions of the ancient lawyers, and compile them is fifty books, without confusion or contradiction. The work was immediately commenced, and completed on the 16th of December, 533.

3. The Digest is divided in two different ways; the first, into fifty books, each book into several titles, and each title into several laws at the head of each of them is the name of the lawyer from. whose work it was taken.

4.-1. The first book contains twenty-two titles; the subject of the first is De justicia et jure; of the division of person and things; of magistrates, &c.

5.-2. The second, divided into fifteen titles, treats of the power of magistrates and their jurisdiction; the manner of commencing suits; of

agreements and compromises.

6.-3. The third, composed of six titles, treats of those who can and those who cannot sue; of advocates and attorneys and syndics; and of calumny.

7.-4. The fourth, divided into nine titles, treats of causes of restitution of submissions and arbitrations; of minors, carriers by water, innkeepers and those who have the care of the property of others.

8.-5. In the fifth there are six titles, which. treat of jurisdiction and inofficious testaments.

9.-6. The subject, of the sixth, in which there are three titles, is actions.

10.-7. The seventh, in nine titles, embraces whatever concerns usufructs, personal servitudes, habitations, the uses of real estate, and its appurtenances, and of the sureties required of the usufructuary.

11.-8. The eighth book, in six titles, regulates urban and rural servitudes.

12.-9. The ninth book, in four titles, explains certain personal actions.

13.-10. The tenth, in four titles, treats of mixed actions.

14.-11. The object of the eleventh book, containing eight titles, is to regulate interrogatories, the cases of which the judge was to take cognizance, fugitive slaves, of gamblers, of surveyors who made false reports, and of funerals and funeral expenses.

15.-12. The twelfth book, in seven titles, regulates personal actions in which the plaintiff claims the title of a thing.

16.-13. The thirteenth, treats of certain particular actions, in seven titles.

17.-14. This, like the last, regulates certain actions: it has six titles.

18.-15. The fifteenth, in four titles, treats of actions for which a father or master is liable, in consequence of the acts of his children or slaves, and those to which he is entitled; of the peculium of children and slaves, and of the actions on this right.

19.-16. The sixteenth, in three titles, contains the law. relating to the senatus consultum velleianum, of compensation or set off, and of the action of deposit.

20.-17. The seventeenth, in two titles, expounds the law of mandates and partnership.

21.-18. The eighteenth book, in seven titles, explains the contract of sale.

22.-19. The nineteenth, in five titles, treats of the actions which arise on a contract of sale.

23.-20. The law relating to pawns, hypothecation, the preference among creditors, and subrogation, occupy the twentieth book, which contains six titles.

24.-21. The twenty-first book, explains under three titles, the edict of the ediles relating to the sale of slaves and animals; then what relates to evictions and warranties.

25.-22. The twenty-second treats of interest, profits and accessories of things, proofs, presumptions, and of ignorance of law and fact. It is divided into six titles.

26.-23. The twenty-third, in five titles, contains the law of marriage, and its accompanying agreements.

27.-24. The twenty-fourth, in three titles, regulates donations between husband and wife, divorces, and their consequence.

28.-25. The twenty-fifth is a continuation of the subject of the preceding. It contains seven titles.

29.-26 and 27. These two books, each in two titles, contain the law relating to tutorship and curatorship.

30.-28. The twenty-eighth, in eight titles, contain's the law on last wills and testaments.

31.-29. The twenty-ninth, in seven titles, is the continuation of the twenty-eighth book.

32.-30, 31, and 32. These three books, each divided into two titles, contain the law of trusts and specific legacies.

33.-33, 34, and 35. The first of these, divided into ten titles; the second, into nine titles; and the last into three titles, treat of various kinds of legacies.

34.-36. The thirty-sixth, containing four titles, explains the senatus consultum trebellianum, and the time when trusts become due.

35.-37. This book, containing fifteen titles, has two objects first, to regulate successions; and, secondly, the respect which children owe their parents, and freedmen their patrons.

36.-38. The thirty-eighth book, in seventeen titles, treats of a variety of subjects; of successions, and of the degree of kindred in successions; of possession; and of heirs.

37.-39. The thirty-ninth explains the means which the law and the prAEtor take to prevent a threatened iNjury; and donations inter vivos and mortis causa.

38.-40. The fortieth, in sixteen titles, treats of the state and condition of persons, and of what relates to freedmen and liberty.

39.-41. The different means of acquiring and losing title to property, are explained in the forty-first book, in ten titles.

40.-42. The forty-second, in eight titles, treats of the res judicata, and of the seizure and sale of the property of a debtor.

41.-43. Interdicts or possessory actions are the object of the forty-

third book, in three titles.

42.-44. The forty-fourth contains an enumeration of defences which arise in consequence of the res judicata, from the lapse of time, prescription, and

the like. This occupies six titles; the seventh treats of obligations and actions.

43.-45. This speaks of stipulations, by freedmen, or by slaves. It contains only three titles.

44.-46. This book, in eight titles, treats of securities, novations, and delegations, payments, releases, and acceptilations.

45.-47. In the forty-seventh book are explained the punishments inflicted for private crimes, de privates delictis, among which are included larcenies, slander, libels, offences against religion, and public manners, removing boundaries, and other similar offences.

46.-48. This book treats of public crimes, among which are enumerated those Iaesae majestatis, adultery, murder, poisoning, parricide, extortion, and the like, with rules for procedure in such cases.

47.-49. The forty-ninth, in eighteen titles, treats of appeals, of the rights of the public treasury, of those who are in captivity, and of their repurchase.

48.-50. The last book, in seventeen titles, explains the rights of municipalities. and then treats of a variety of public officers.

49. Besides this division, Justinian made another, in which the fifty books were divided into seven parts: The first contains the first four books; the second, from the fifth to the eleventh book inclusive; the third, from the twelfth to the nineteenth inclusive; the fourth, from title twentieth to the twenty-seventh inclusive; the fifth, from the twenty-eighth to the thirty-sixth inclusive the sixth, commenced with the thirty seventh,

and ended with the forty-fourth book; and the seventh or last was composed of the last six books.

50. A third division, which, however, is said not to have been made by Justinian, is in three parts. The first, called digestum vetus, because it was the first printed. It commences with the first book, and. includes the work to the end of the second title of the twenty-fourth book. The second, called digestum infortiatum, because it is supported or fortified by the other two, it being the middle; it commences with the beginning of the third title of the twenty-fourth book and ends with the thirty-eighth. The third, which begins with the thirty-ninth book and ends with the work, is called digestum novum, because it was last printed.

51. The Digest, although, compiled in Constantinople, was originally written in Latin, and afterwards translated into Greek.

52. This work was lost to all Europe during a considerable period, as indeed all the law works of Justinian were, except some fragments of the Code and Novels. During the pillage of Amalphi, in the war between the two soi-disant popes Innocent II. and Anaclet II., a soldier discovered an old manuscript, which attracted his attention by its envelope of many colors. It was carried to the emperor, Clothaire II., and proved to be the Pandects of Justinian. The work was arranged in its present order by Warner, a German, whose name, Latinised, is Irnerius, who was appointed professor of Roman law at Bologna, by that emperor. 1 Fournel, Hist. des Avocats, 44, 46, 51.

53. The Pandects contain all whatsoever Justinian drew out of 150,000 verses of the old books of the Roman law. The style of the Digest is very grave and pure, and differs not much from the eloquentist speech that ever the Romans used." The learning of the digest stands rather in the discussing of subtle questions of law, and enumerations of the variety of opinions of ancient lawyers thereupon, than in practical matters of daily use. The Code of Justinian differs in these respects from, the Digest. It is less

methodical, but more practical; the style however, is a barbarous Thracian phrase Latinised, such as never any mean Latinist spoke. The work is otherwise rude and unskillful. Ridley's View of the Civ. & Ecc. Law, pt. 1, ch. 2, Sec. 1, and ch. 1, Sec. 2.

54. Different opinions are entertained upon the merits of the Digest, or Pandects, Code, Authentics and Feuds, as a system of jurisprudence. By some it has been severely criticised, and even harshly censured, and by others as warmly defended the one party discovering nothing but defects, and the other as obstinately determined to find nothing but what is good and valuable. See Felangieri della Legislazione, vol. 1, c. 7. It must be confessed that it is not without defects. It might have been comprehended in less extent, and in some parts arranged in better order. It must be confessed also that it is less congenial as a whole, with the principles of free government, than the common law of England. Yet, with all these defects, it is a rich fountain of learning and reason; and of this monument of the high culture and wisdom of the Roman jurists it may be said, as of all other works in which the good so much surpasses the bad.

Ut plura intent in carmine non ego paucis
Offendar maculis, quas aut incuria fudit
Aut humana parum cavit natura.
HORAT. ART. POETIC, v. 351.

DIGNITIES. English law. Titles of honor.

2. They are considered as incorporeal hereditaments.

3. The genius of our government forbids their admission into the republic.

DILAPIDATION. Literally, this signifies the injury done to a building by

taking stones from it; but in its figurative, which is also its technical sense, it means the waste committed or permitted upon a building.

DILATORY. That which is intended for delay. It is a maxim, that delays in law are odious, dilationes in lege sunt odiosae. Plowd. 75.

DILATORY DEFENCE. chancery practice. A dilatory defence is one, the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed.

2. These defences are of four kinds: 1. To the jurisdiction of the court. 2. To the person of the plaintiff or defendant. 3. To the form of proceedings, as that the suit is irregularly brought, or it is defective in its appropriate allegation of the parties; and, 4. To the propriety of maintaining the suit itself, because of the pendancy of another suit for the same controversy. Montag. Eq. Pl. 88; Story Eq. Pl. Sec. 434. Vide Defence: Plea, dilatory.

DILATORY PLEAS. Those which delay the plaintiff's remedy, by questioning, not the cause of action, but the propriety of the suit, or the mode in which the remedy is sought. Vide Plea, dilatory.

DILIGENCE, contracts. The doing things in proper time.

2. It may be divided into three degrees, namely: ordinary diligence, extraordinary diligence, and slight diligence. It is the reverse of negligence. (q.v.) Under that article is shown what degree of negligence, or want of diligence, will make a party to a contract responsible to the other. Vide Story, Bailm. Index h.t.; Ayl. Pand. 113 1 Miles, Rep. 40.

DILIGENCE. In Scotland, there are certain forms of law, whereby a creditor

endeavors to make good his payment, either by affecting the person of his debtor, or by securing the subjects belonging to him from alienation, or by carrying the property of these subjects to himself. They are either real or personal.

2. Real diligence is that which is proper to heritable or real rights,. and of this kind there are two sorts: 1. Inhibitions. 2. Adjudication, which the law has substituted in the place of apprising.

3. Personal diligence is that by which the person of the debtor may be secured, or his personal estate affected. Ersk. Pr. L. Scotl. B. 2, t. 11, s. 1.

DIME, money. A silver coin of the United States, of the value of one-tenth part of a dollar or ten cents.

2. It weighs forty-one and a quarter grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. cont. of Story's L. U. S. 2523-4.

DIMINUTION OF THE RECORD, practice. This phrase signifies that the record from an inferior court, sent up to a superior, is incomplete. When this is the case, the parties may suggest a diminution of the record, and pray a writ of/ certiorari to the justices of the court below to certify the whole record. Tidd's Pr. 1109; 1 S. & R. 472; Co. Ent. 232; 8 Vin. Ab. 552; 1 Lilly's Ab. 245; 1 Nels. Ab. 658; Cro. Jac. 597; Cro. Car. 91; Minor, R. 20; 4 Dev. R. 575; 1 Dey. & Bat. 382; 1 Munf. R. 119. Vide Certiorari.

DIOCESE, eccl. law. The district over which a bishop exercises his spiritual functions. 1 Bl. Com. 111.

DIPLOMA. An instrument of writing, executed by, a corporation or society, certifying that a certain person therein named is entitled to a certain distinction therein mentioned.

2. It is usually, granted by learned institutions to their members, or to persons who have studied in them.

3. Proof of the seal of a medical institution and of the signatures of its officers thereto affixed, by comparison with the seal and signatures attached to a diploma received by the witness from the same institution, has been held to be competent evidence of the genuineness of the instrument, although the witness never saw the officers write their names. 25 Wend. R. 469.

4. This word, which is also written duploma, in the civil law, signifies letters issued by a prince. They are so called, it is supposed, a duplicatis tabellis, to which Ovid is thought to allude, 1 Amor. 12, 2, 27, when he says, Tunc ego vos duplices rebus pro nomine sensi Sueton in Augustum, c. 26. Seals also were called Diplomata. Vicat ad verb.

DIPLOMACY., The science which treats of the relations and interests of nations with nations.

DIPLOMATIC AGENTS. This name has been given to public officers, who have been commissioned, according to law, to superintend and transact the affairs of the government which has employed them, in a foreign country. Vattel, liv. 4, c. 5.

2. These agents are of divers orders, and are known by different denominations. Those of the first order are almost the perfect representatives of the government by which they are commissioned; they are legates, nuncios, internuncios, ambassadors, ministers, plenipotentiaries. Those of the second order do not so fully represent their government; they

are envoys, residents, ministers, charges d'affaires, and consuls. Vide these several words.

DIPLOMATICS. The art of judging of ancient charters, public documents or diplomas, and discriminating the true from the false. Encyc. Lond. h.t.

DIRECT. Straight forward; not collateral.

2. The direct line of descents for example, is formed by a series of degrees between persons who descend one from another. Civ. Code of Lo. art. 886.

DIRECTION. The order and government of an institution; the persons who compose the board of directors are jointly called the direction. Direction, in another sense, is nearly synonymous with instruction. (q.v.)

DIRECTION, practice. That part of a bill in chancery which contains the address of the bill to the court; this must of course, contain the appropriate and technical description of the court.

DIRECTOR OF THE MINT. An officer whose duties are prescribed by the Act of Congress of January 18, 18 37, 4 Sharsw. Cont. of Story L. U. S. 2524, as follows: The director shall have the control and management of the mint, the superintendence of the officers and persons employed therein, and the general regulation and supervision of the business of the several branches. And in the month of January of every year he shall make report to the president of the United States of the operation of the mint and its branches for the year preceding. And also to the secretary of the treasury, from time to time, as said secretary shall require, setting forth all the operations

of the mint subsequent to the last report made upon the subject.

2. The director is required to appoint, with the approbation of the president, assistants to the assayer, melter and refiner, chief coiner and engraver, and clerks to the director and treasurer, whenever, on representation made by the director to the president, it shall be the opinion of the president that such assistants or clerks are necessary. And bonds may be required from such assistants and clerks in such sums as the director shall determine, with the approbation of the secretary of the treasury. The salary of the director of the mint, for his services, including travelling expenses incurred in visiting the different branches, and all other charges whatever, is three thousand five hundred dollars.

DIRECTORS. Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form, the board of directors.

2. They are generally invested with certain powers by the acts of the legislature, to which they owe their existence.

3. In modern corporations, created by statutes, it is generally contemplated by the charter, that the business of the corporation shall be transacted exclusively by the directors. 2 Caines' R. 381. And the acts of such a board, evidenced by a legal vote, are as completely binding upon the corporation, and as complete authority to their agents, as the most solemn acts done under the corporate seal. 8 Wheat. R. 357, 8.

4. To make a legal board of directors, they must meet at a time when, and a place where, every other director has the opportunity of attending to consult and be consulted with; and there must be a sufficient number present to constitute a quorum. 3 L. R. 574; 13 L. R. 527; 6 L. R. 759. See 11 Mass. 288; 5 Litt. R. 45; 12 S. & R. 256; 1 Pet. S. C. R. 46. Vide Dane's Ab. h.t.

5. Directors of a corporation are trustees, and as such are required to

use due diligence and attention to its concerns, and are bound to a faithful discharge of the duty which the situation imposes. They are liable to the stockholders whenever there has been gross negligence or fraud; but not for unintentional errors. 1 Edw. Ch. R. 513; 8 N. S. 80; 3. L. R. 576. See 4 Mann. & Gr. 552.

DIRECTORY. That which points out a thing or course of proceeding; for example, a directory law.

DIRIMANT IMPEDIMENTS, canon law. Those bars to a marriage, which, if consummated, render it null. They differ from prohibitive impediments. (q.v.)

DISABILITY. The want of legal capacity to do a thing.

2. Persons may be under disability, 1. To make contracts. 2. To bring actions.

3.-1. Those who want understanding; as idiots, lunatics, drunkards, and infants or freedom to exercise their will, as married women, and persons in duress; or who, in consequence of their situation, are forbidden by the policy of the law to enter into contracts, as trustees, executors, administrators, or guardians, are under disabilities to make contracts. See Parties; Contracts.

4.-2. The disabilities to sue are, 1. Alienage, when the alien is an enemy. Bac. Ab. Abatement, B 3; Id. Alien, E: Com. Dig. Abatement , K; Co. Litt. 129. 2. Coverture; unless as co-plaintiff with her husband, a married woman cannot sue. 3. Infancy; unless he appears by guardian or prochein ami. Co. Litt. 135, b; 2 Saund. 117, f, n. 1 Bac. Ab. Infancy, K 2 Conn. 357; 7 John. 373; Gould, Pl. c. 5, Sec. 54. 4. That no such person as that named

has any existence, is not, or never was, in rerum natura. Com. Dig. Abatement, E 16, 17; 1 Chit. Pl. 435; Gould on Pl. c. 5, Sec. 58; Lawes' Pl. 104; 19 John. 308. By the law of England there are other disabilities; these are, 1. Outlawry. 2. Attainder. 3. Praemunire. 4. Popish recusancy. 5. Monachism.

5. In the acts of limitation it is provided that persons lying under certain disabilities, such as being non compos, an infant, in prison, or under coverture, shall have the right to bring actions after the disability shall have been removed.

6. In the construction of this saving in the acts, it has been decided that two disabilities shall not be joined when they occur in different persons; as, if a right of entry accrue to a feme covert, and during the coverture she die, and the right descends to her infant son. But the rule is otherwise when there are several disabilities in the same person; as, if the right accrues to an infant, and before he has attained his full age, he becomes non compos mentis; in this case he may establish his right after the removal of the last disability. 2 Prest. Abs. of Tit. 341 Shep. To. 31; 3 Tho. Co. Litt. pl. 18, note L; 2 H. Bl. 584; 5 Whart. R. 377. Vide Incapacity.

DISAFFIRMANCE. The act by which a person who has entered into a voidable contract; as, for example, an infant, does disagree to such contract, and declares he will not abide by it.

2. Disaffirmance is express or implied. The former, when the declaration is made in terms that the party will not abide by the contract. The latter, when he does an act which plainly manifests his determination not to abide by it; as, where an infant made a deed for his land, and, on coming of age, be made a deed for the same land to another. 2 Dev. & Bat. 320; 10 Pet. 58; 13 Mass. 371, 375.

TO DISAVOW. To deny the authority by which an agent pretends to have acted as when he has exceeded the bounds of his authority.

2. It is the duty of the principal to fulfill the contracts which have been entered into by his authorized agent; and when an agent has exceeded his authority, he ought promptly to disavow such act, so that the other party may have his remedy against the agent. See Agent; Principal.

DISBURSEMENT. Literally, to take money out of a purse. Figuratively, to pay out money; to expend money; and sometimes it signifies to advance money.

2. A master of a ship makes disbursements, whether with his own money or that of the owner, when he defrays expenses for the ship.

3. An executor, guardian, trustee, or other accountant, is said to have made disbursements when he expended money on account of the estate which he holds. These, when properly made, are always allowed in the settlement of the accounts.

DISCHARGE, practice. The act by which a person in confinement, under some legal process, or held on an accusation of some crime or misdemeanor, is set at liberty; the writing containing the order for his being so set at liberty, is also called a discharge.

2. The discharge of a defendant, in prison under a ca. sa., when made by the plaintiff, has the operation of satisfying the debt, the plaintiff having no other remedy. 4 T. R. 526. But when the discharge is in consequence of the insolvent laws, or the defendant dies in prison, the debt is not satisfied. In the first place the plaintiff has a remedy against the property of the defendant, acquired after his discharge, and, in the last case, against the executors or administrators of the debtor. Bac. Ab.

Execution, D; Bingh. on Execution, 266.

DISCHARGE OF A CONTRACT. The act of making a contract or agreement null.

2. Contracts may be discharged by, 1. Payment. 2. Accord and satisfaction. 8 Com. Dig. 917; 1 Nels. Abr. 18; 1 Lilly's Reg. 10, 16; Hall's Dig. 7 1 Poth. Ob. 345. 3. Release. 8 Com. Dig. 906; 3 Nels. Ab. 69; 18 Vin. Ab. 294; 1 Vin. Abr. 192; 2 Saund. 48, a; Gow. on Partn. 225, 230; 15 Serg. & Rawle, 441; 1 Poth Ob. 897. 4. Set off. 8 Vin. Ab. 556, Discount; Hall's Dig. 226, 496; 7 Com. Dig. 335, Pleader, 2 G 17; 1 Poth. Ob. 408. 5. The rescission of the contracts. 1 Com. Dig. 289, note x; 8 Com. Dig. 349; Chit. on Contr. 276. 6. Extinguishment. 7 Vin: Abr. 367; 14 Serg. & Rawle, 209, 290; 8 Com. Dig. 394; 2 Nels. Abr. 818; 18 Vin. Abr. 493 to 515; 11 Vin. Abr. 461. 7. Confusion, where the duty to pay and the right to receive unite in the same person. 8 Serg. & Rawle, 24-30 1 Poth. 425. 8. Extinction, or the loss of the subject matter of the contract. Bac. Abr. 48 8 Com. Dig. *349; 1 Poth. Ob. 429. 9. Defeasance. 2 Saund. 47, n. note 1. 10. The inability of one of the parties to fulfill his part. Hall's Dig. 40. 11. The death of the contractor, as where he undertook to teach an apprentice. 12. Bankruptcy. 13. By the act of limitations. 14. By lapse of time. Angell on Adv. Enjoym. passim; 15 Vin. Abr. 52, 99; 2 Saund. 63, n. b; Id. 66, n. 8; Id. 67, n. 10; Gow on Partn. 235; 1, Poth. 443, 449. 15. By neglecting to give notice to the, person charged. Chit. on Bills, 245. 16. By releasing one of two partners. See Receipt. 17. By neglecting to sue the principal at the request of the surety, the latter is discharged. 8 Serg. & Rawle, 110. 18. By the discharge of a defendant, who has been arrested under a capias ad satisfaciendum. 8 Cowen, R. 171. 19. By a certificate and discharge under the bankrupt laws. Act of Congress of August, 1841.

DISCHARGE OF A JURY, practice. The dismissal of a jury who had been charged

with the trial of a cause.

2. Questions frequently arise, whether if the court discharge a jury before they render a verdict, in a criminal case, the prisoner can again be tried. In cases affecting life or members, the general rule is that when a jury have been sworn and charged, they cannot be discharged by the court, or any other, but ought to give a verdict. But to this rule there are many exceptions; for example, when the jury are discharged at the request or with the consent of the prisoner and for his benefit, when ill practices have been used; when the prisoner becomes insane, or becomes suddenly ill, so that he cannot defend himself, or instruct others in his defence; when a juror or witness is taken suddenly ill; when a juror has absented himself, or, on account of his intoxication, is incapable to perform his duties as a juror. These and many similar cases, which may be readily imagined, render the discharge of the jury a matter of necessity, and; under such very extraordinary and striking circumstances, it is impossible to proceed with the trial, with justice to the prisoner or to the state.

3. The exception to the rule, then, is grounded on necessity, and not merely because the jury cannot agree. 6 Serg. & Rawle, 577; 3 Rawle's Rep. 501. In all these cases the court must exercise a just discretion in deciding what is and what is not a case of necessity. This is the law as to the exceptions in Pennsylvania. In other states, and some of the courts of the United States, it has been ruled that the authority of the court to discharge the jury rests in the sound discretion of the court. 4 Wash. C. C. R. 409; 18 Johns. 187; 2 Johns. Cas. 301; 2 Gall. 364; 9 Mass. 494; 1 Johns. Rep. 66; 2 Johns. Cas. 275 2 Gallis. 364; 13 Wend. 55; Mart. & Yerg. 278; 3 Rawle, 498; 2 Dev. & Bat. 162; 6 S. & R. 577; 2 Misso. 166; 9 Leigh, 613; 10 Yerg. 535; 3 Humph. 70. Vide 4 Taunt. 309.

4. A distinction has been made between capital cases and other criminal

cases, not capital. In cases of misdemeanors and in civil cases, the right to discharge rests in the sound discretion of the court, which is to be exercised with great caution. 9 Mass. 494; 3 Dev. & Batt. 115. In Pennsylvania this point seems not to be settled. 6 Serg. & Rawle, 599. The reader is referred to the word Jeopardy, and Story on the Const. Sec. 1781; 9 Wheat. R. 579; Rawle on the Const. 132, 133; 1 Chit. Cr. Law, 629; 1 Dev. 491; 4 Ala. R. 173; 2 McLean, 114. See Afforce.

DISCHARGED. Released, or liberated from custody. It is not equivalent to acquitted in a declaration for a malicious prosecution. 2 Yeates, 475 2 Term Rep. 231; 1 Strange, 114; Doug. 205 3 Leon. 100.

DISCLAIMER. This word signifies. to abandon, to renounce; also the act by which the renunciation is made. For example, a disclaimer is the act by which a patentee renounces a part of his title of invention,

2. In real actions, a disclaimer of the tenancy or title is frequently added to the plea of non tenure. Litt. Sec. 391. If the action be one in which the demandant cannot recover damages, as formedon in the discender, the demandant or plaintiff was bound to pray judgment, &c., and enter, for thereby, he has the effect of his suit, et frustra fit per plura quod fieri potest per pauciora. But, if the demandant can recover damages and is unwilling to waive them, he should answer the disclaimer by averring that the defendant is tenant of the land, or claims to be such as the writ supposes, and proceed to try the question, otherwise he would lose his damages. The same course may be pursued in the action of ejectment, although in Pennsylvania, the formality of such a replication to the disclaimer is dispensed with, and the fact is tried without it. 5 Watts, 70; 3 Barr, 367. Yet, if the plaintiff is willing to waive his claim for damages, there is no reason why he may not ask for judgment upon the disclaimer without trial,

for thereby he has the effect of his suit. Et frustra fit per plura, &c.

DISCLAIMER, chancery pleading. The renunciation of the defendant to all claims to the subject of the demand made by the plaintiff's bill.

2. A disclaimer is distinct in substance from an answer, though sometimes confounded with it, but it seldom can be put in without an answer for if the defendant has been made a party by mistake, having had an interest which be has parted with, the plaintiff may require an answer sufficient to ascertain whether that is the fact or not. Mitf. Pl. 11, 14, 253; Coop. Eq. Pl. 309; Story, Eq. Pl. c. 17, Sec. 838 to 844; 4 Bouv. Inst. n. 4211-14.

DISCLAIMER, estates. The act of a party by which be refuses to accept of an estate which has been conveyed to him. Vide Assent; Dissent.

2. It is said, that a disclaimer of a freehold estate must be in a court of record, because a freehold shall not be divested by bare words, in pais. Cruise, Dig. tit. 32, c. 2 6, s. 1, 2.

3. A disclaimer of tenancy is the act of a person in possession, who denies holding the estate from the person claiming to be the owner of it. 2 Nev. & M. 672. Vide 8 Vin.. Ab. 501; Coote, L. & T. 348, 375; F. N. B. 179 k; Bull. N. P. 96; 16 East, R. 99; 1 Man. & Gran. 135; S. C. 39 Eng. C. L. Rep. 380, 385; 10 B. & Cr. 816; ow, N. P. Cas. 180; 2 Nov. & Man. 673; 1 C. M. & R. 398 Co. Litt. 102, a.

DISCONTINUANCE, pleading. A chasm or interruption in the pleading.

2. It is a rule, that every pleading, must be an answer to the whole of what is adversely alleged. Com. Dig. Pleader, E 1, ri 4; 1 Saund. 28, n. 3; 4

Rep. 62, a. If, therefore, in an action of trespass for breaking a close, and cutting three hundred trees, the defendant pleads as to cutting all but two hundred trees, some matter of justification or title, and as to the two hundred trees says nothing, the plaintiff is entitled to sign judgment, as by nil dicit against him, in respect of the two hundred trees, and to demur, or reply to the plea, as to the remainder of the trespasses. On the other hand, if he demurs or replies to the plea, without signing, judgment for the part not answered, the whole action is said to be discontinued. For the plea, if taken by the plaintiff as an answer to the, whole action, it being, in fact, a partial answer only, is, in contemplation of law, a mere nullity, and a discontinuance takes place. And such discontinuance will amount to error on the record; such error is cured, however, after verdict, by the statute of Jeo fails, 32 H. VIII. c. 80; and after judgment by nil dicit, confession, or non sum informatus, by stat. 4 Ann. c. 16. It is to be observed, that as to the plaintiff's course of proceeding, there is a distinction between a case like this, where the defendant does not profess to answer the whole, and a case where, by the commencement of his plea, he professes to do so, but, in fact, gives a defective and partial answer, applying to part only. The latter case amounts merely to insufficient pleading, and the plaintiff's course, therefore, is not to sign judgment for the part defectively answered, but to demur to the whole plea. 1 Saund. 28, n.

3. It is to be observed, also, that where the part of pleading to which no answer is given, is immaterial, or such as requires no separate or specific answer for example, if it be mere matter of allegation, the rule does not in that case apply. Id. See Com. Dig. Pleader, W; Bac. Abr. Pleas, P.

DISCONTINUANCE, estates. An alienation made or suffered by the tenant in

tail, or other tenant seised in autre droit, by which the issue in, tail, or heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter.

2. The term discontinuance is used to distinguish those cases where the party whose freehold is ousted, can restore it only by action, from those in which he ma restore it by entry. Co. Litt. 325 a 3 Bl. Com. 171; Ad. Ej. 35 to 41; Com. Dig. h.t.; Bac. Ab. h.t.; Vin. Ab. h.t.; Cruise's Dig. Index, b.. t..5 2 Saund. Index, h.t.

DISCONTINUANCE, practice. This takes place when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day, and time to time, as he ought. 3 Bl. Com. 296. See Continuance. A discontinuance, also, is an entry upon the record that the plaintiff discontinues his action.

2. The plaintiff cannot discontinue his action after a demurrer joined and entered, or after a verdict or a writ of inquiry without leave of court. Cro. Jac. 35 1, Lilly's Abr. 473; 6 Watts & Serg. 1417. The plaintiff is, on discontinuance, generally liable for costs. But in some cases, he is not so liable. See 3 Johns. R. 249; 1 Caines' R. 116; 1 Johns. R. 143; 6 Johns. R. 333; 18 Johns. R. 252; 2 Caines' Rep. 380; Com. Dig. Pleader, W 5; Bac. Abr. Pleas' P.

DISCOUNT, practice. A set off, or defalcation in an action. Vin. Ab. h.t.
DISCOUNT, contracts. An allowance made upon prompt payment in the purchase of goods; it is also the interest allowed in advancing money upon bills of exchange, or other negotiable securities due at a future time And to discount, signifies the act of buying a bill of exchange, or promissory note for a less sum than that which upon its face, is payable.

2. Among merchants, the term used when a bill of exchange is transferred, is, that the bill is sold, and not that it is discounted. See Poth. De l'Usure, n. 128 3 Pet. R. 40.

DISCOVERT. Not covert, unmarried. The term is applied to a woman unmarried, or widow; one not within the bonds of matrimony.

DISCOVERY, intern. law. The act of finding an unknown country.

2. The nations of Europe adopted the principle, that the discovery of any part of America gave title to the government by whose subjects, or by whose authority it was made, against all European governments. This title was to be consummated by possession. 8 Wheat. 543.

DISCOVERY, practice, pleading. The act of disclosing or revealing by a defendant, in his answer to a bill filed against him in a court of equity. Vide Bill of Discovery; 8 Vin. Ab. 537; 8 Com. Dig: 515.

DISCOVERY; rights. The patent laws of the United States use this word as synonymous with invention or improvement of July 4, 1836, s. 6.

TO DISCREDIT, practice, evidence. To deprive one of credit or confidence.

2. In general, a party may discredit a witness called by the opposite party, who testifies against him, by proving that his character is such as not to entitle him to credit or confidence, or any other fact which shows he is not, entitled to belief. It is clearly settled, also, that the party voluntarily calling a witness, cannot afterwards impeach his character for truth and veracity. 1 Moo. & Rob. 414; 3 B. & Cress. 746; S. C. 10 Eng. Com. Law R. 220. But if a party calls a witness, who turns out unfavorable, he may call another to prove the same point. 2 Campb. R. 556 2 Stark. R. 334;

S. C. 3 E. C. L. R. 371 1 Nev & Man. 34; 4 B. & Adolph. 193; S. C. 24 E. C. L. R. 47; 1 Phil. Ev. 229; Rosc. Civ. Ev. 96.

DISCREPANCY. A difference between one thing and another, between one writing and another; a variance. (q.v.)

2. Discrepancies are material and immaterial. A discrepancy is immaterial when there is such a difference between a thing alleged, and a thing offered in evidence, as to show they are not substantially the same; as, when the plaintiff in his declaration for a malicious arrest averred, that "the plaintiff, in that action, did not prosecute his said suit, but therein made default," and the record was, that he obtained a rule to discontinue. 4 M. & M. 2 5 3. An immaterial discrepancy is one which does not materially affect the cause as, where a declaration stated that a deed bore date in a certain year of our Lord, and the deed was simply dated " March 30, 1701." 2 Salk. 658; 19 John. 49 5 Taunt. 707; 2 B. & A. 301; 8 Miss. R. 428; 2 M'Lean, 69; 1 Metc. 59; 21 Pick. 486.

DISCRETION, practice. When it is said that something is left to the discretion of a judge, it signifies that he ought to decide according to the rules of equity, and the nature of circumstances. Louis. Code, art. 3522, No. 13; 2 Inst. 50, 298; 4 Serg. & Rawle, 265; 3 Burr. 2539.

2. The discretion of a judge is said to be the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly, and passion, to which human nature is liable. Optima lex quae minimum relinquit arbitrio judicis: optimus judex qui minimum sibi. Bac. Aph; 1 Day's Cas.. 80, ii.; 1 Pow. Mortg. 247, a; 2 Supp. to Ves. Jr. 391; Toull. liv. 3, n. 338; 1 Lill. Ab.

447.

3. There is a species of discretion which is authorized by express law, and, without which, justice cannot be administered; for example, an old offender, a man of much intelligence and cunning, whose talents render him dangerous to the community, induces a young man of weak intellect to commit a larceny in company with himself; they are both liable to be punished for the offence. The law, foreseeing such a case, has provided that the punishment should be proportioned, so as to do justice, and it has left such apportionment to the discretion of the judge. It is evident that, without such discretion, justice could not be administered, for one of these parties assuredly deserves a much more severe punishment than the other.

DISCRETION, crim. law. The ability to know and distinguish between good and evil; between what is lawful and what is unlawful.

2. The age at which children are said to have discretion, is not very accurately ascertained. Under seven years, it seems that no circumstances of mischievous discretion can be admitted to overthrow the strong presumption of innocence, which is raised by an age so tender. 1 Hale, P. C. 27, 8; 4 Bl. Coin. 23. Between the ages of seven and fourteen, the infant is, prima facie, destitute of criminal design, but this presumption diminishes as the age increases, and even during this interval of youth, may be repelled by positive evidence of vicious intention; for tenderness of years will not excuse a maturity in crime, the maxim in these cases being, malitia supplet aetatem. At fourteen, children are said to have acquired legal discretion. 1 Hale, P. C. 25.

DISCRETIONARY TRUSTS. Those which cannot be duly administered without the application of a certain degree of prudence and judgment; as when a fund is given to trustees to be distributed in certain charities to be selected by

the trustees.

DISCUSSION, civil law. A proceeding, on the part of a surety, by which. the property of the principal debtor is made liable before resort can be had to the sureties; this is called the benefit of discussion. This is the law in Louisiana. Civ. Code of Lo. art. 3014 to 3020. See Domat, 3, 4, 1 to 4; Burge on Sur. 329, 343, 348; 5 Toull. p. 544 7 Toull. p. 93; 2 Bouv. Inst. n. 1414.

DISFRANCHISEMENT. The act of depriving a member of a corporation of his right as such, by expulsion. 1 Bouv. Inst. n. 192.

2. It differs from amotion, (q.v.) which is applicable to the removal of an officer from office, leaving him his rights as a member. Willc. on Corp. n. 708; Ang. & Ames on Corp. 237; and see Expulsion.

DISGRACE. Ignominy, shame, dishonor. No witness is required to disgrace himself. 13 How. St. Tr. 17, 334; 16 How. St. Tr. 161. Vide Crimination; To Degrade.

DISHERISON. Disinheritance; depriving one of an inheritance. Obsolete. Vide Disinherison.

DISHERITOR. One who disinherits, or puts another out of his freehold. Obsolete.

TO DISHONOR, contr. This term is applied to the nonfulfillment of commercial engagements. To dishonor a bill of exchange, or a promissory note, is to refuse or neglect to pay it at maturity.

2. The holder is bound to give notice to the parties to such instrument of its dishonor, and his laches will discharge the indorsers. Chit. on Bills, 394, 395, 256 to 278.

DISINHERISON, civil law. The act of depriving a forced heir of the inheritance which the law gives him.

2. In Louisiana, forced heirs may be deprived of their legitime, or legal portion, and of the seisin granted them by law, for just cause. The disinherison must be made in proper form, by name and expressly, and for a just cause, otherwise it is null.

3. The just causes for which parents may disinherit their children, are ten in number. 1. If the child has raised his or her hand to strike the parent, or if he or she has actually struck the parent; but a mere threat is not sufficient. 2. If the child has been guilty, towards a parent, of cruelty, of a crime, or grievous injury. 3. If the child has attempted to take away the life of either parent. 4. If the child has accused either parent of any capital crime, except, however, that of high treason. 5. If the child has refused sustenance to a parent, having the means to afford it. 6. If the child has neglected to take care of a parent, become insane. 7. If a child has refused to ransom them when detained in captivity. 8. If the child used any act of violence or coercion to hinder a parent from making a will. 9. If the child has refused to become security for a parent, having the means, in order to take him out of prison. 10. If the son. or daughter, being a minor, marries without the consent of his or her parents. Civil Code, art. 1609-1613.

4. The ascendants may disinherit their legitimate descendants, coming to

their succession for the first nine causes above expressed, when the, acts of ingratitude, there mentioned, have been committed towards them, instead

of towards their parents; but they cannot disinherit their descendants for the last cause. Art. 1614.

5. Legitimate children, dying without issue, and leaving a parent,. cannot disinherit him or her, unless for the seven following causes, to wit: 1. If the parent has accused the child of a capital crime, except, however, the crime of high treason. 2. If the parent has attempted to take the child's life. 3. If the parent has, by any violence or force, hindered the child from making a will. 4. If the parent has refused sustenance to the child in necessity, having the means of affording it. 5. If the parent has neglected to take care of the child when in a state of insanity. 6. If the parent has neglected to ransom the child when in captivity. 7. If the father or mother have attempted the life the one of the other, in which case the child or descendant, making a will, may disinherit the one who has attempted the life of the other. Art. 1615.

6. The testator must express in the will for what reason he disinherited his forced heirs, or any of them, and the other heirs of the testator are moreover obliged to prove the facts on which the disinherison is founded, otherwise it is null. Art. 1616. Vide Nov 115 Ayl. Pand. B. 2, t. 29; Swinb. art 7, 22.

DISINHERITANCE. The act by which a person deprives his heir of an inheritance, who, without such act, would inherit.

2. By the common law, any one may give his estate to a stranger, and thereby disinherit his heir apparent. Coop. Justin. 495. 7 East, Rep. 106.

DISINTERESTED WITNESS. One who has no interest in the cause or matter in issue, and who is lawfully competent to testify.

2. In North Carolina and Tennessee, wills to pass lands must be

attested by disinterested witnesses. See Attesting Witness; Competent Witness; Credible Witness; Respectable Witness, and Witness.

DISJUNCTIVE TERM. One which is placed between two contraries, by the affirming of one of which, the other is taken away: it is usually expressed by the word or. Vide 3 Ves. 450; 7 Ves. 454; 2 Rop. Leg. 290.; 1 P. Wms. 433; 2 Cox, Rep. 213; 2 P. Wms. 283 2 Atk. 643; 6 Ves. 341; 2 Ves. sr. 67; 2 Str. 1175; Cro. Eliz. 525; Pollexf. 645; 1 Bing. 500; 3 T. R. 470; 1 Ves. sr. 409; 3 Atk. 83, 85; Ayl. Pand. 56; 2 Miles, Rep. 49.

2. In the civil law, when a legacy is given to Caius or Titius, the word or is considered and, and both Caius and Titius are entitled to the legacy in equal parts. 6 Toull. n. 704. See Copulative term; Construction, subdivision, And; Or.. Also, Bac. Ab. Conditions, P 5.

DISMES. Another name for tithes. Dime, (q.v.) a piece of federal money, is sometimes improperly written disme.

TO DISMISS A CAUSE, practice. A term used in courts of chancery for removing a cause out of court without any further hearing.

DISOBEDIENCE. The want of submission to the orders of a superior.

2. In the army, disobedience is a misdemeanor.

3. For disobedience to parents, children may be punished; and apprentices may be imprisoned for disobedience to the lawful commands of their master. Vide Correction.

DISORDERLY HOUSE, crim. law. A house, the inmates of which believe so badly as to become a nuisance to the neighborhood.

2. The keeper of such house may be indicted for keeping a public

nuisance. Hardr. 344; Hawk. b. 1, c. 78, s. 1 and 2 Bac. Ab. Inns, A; 1 Russ. on Cr. 298; 1 Wheel. C. C. 290; 1 Serg. & Rawle, 342; 2 Serg. & Rawle, 298; Bac. Ab. Nuisances, A; 4 Chit. BI.. Com. 167, 8, note. The husband must be joined with the wife in an indictment to suppress a disorderly house. Justice's Case, Law 16; 1 Shaw, 146. Vide Bawdy house; Ill fame.

DISPARAGEMENT. An injury by union or comparison with some person or thing of inferior rank or excellence; as, while the infant was in ward, by the English law, the guardian had the power of tendering him a suitable match without disparagement. 2 Bl. Com. 70.

TO DISPAUPER, Eng. law. To deprive a person of the privilege of suing in forma pauperis. (q.v.)

2. When a person has been admitted to sue in forma pauperis, and, before the suit is ended, it appears that the party. has become the owner of a sufficient estate real or personal, or has been guilty of some wrong, he may be dispaupered.

DISPENSATION. A relaxation of law for the benefit or advantage of an individual. In the United States, no power exists, except in the legislature, to dispense with law, and then it is not so much a dispensation as a change of the law.

TO DISPONE, Scotch law. This is a technical word, which implies, it is said, a transfer of feudal property by a particular deed, and is not equivalent to the term alienate; but Lord Eldon says, "with respect to the word dispone, if I collect the opinions of a majority of the judges rightly, I am of opinion that the word dispone would have the same effect as the word

alienate.) (q.v.) Sandford on Entails, 179, note.

DISPOSITION, French law. This word has several acceptations; sometimes it signifies the effective marks of the will of some person; and at others the instrument containing those marks.

2. The dispositions of man make the dispositions of the law to cease; for example, when a man bequeaths his estate, the disposition he makes of it, renders the legal disposition of it, if he had died intestate, to cease.

DISSEISED pleading. This is a word with a technical meaning, which, when inserted in an indictment for forcible entry and detainer, has all the force of the words expelled or unlawfully, for the last is superfluous, and the first is implied in the word disseised. 8 T. R. 357; Cro. Jac. 32; vide 3 Yeates' R. 39; S. C. 4 Dall. Rep. 212.

DISSEISEE, torts. One who is wrongfully put out of possession of his lands.

DISSEISIN, torts. The privation of seisin. It takes the seisin or estate from one man and places it in another. It is an ouster of the rightful owner from the seisin or estate in the land, and the commencement of a new estate in the wrong doer. It may be by abatement, intrusion, discontinuance, or deforcement, as well as by disseisin, properly so called. Every dispossession is not a disseisin. A disseisin, properly so called, requires an ouster of the freehold. A disseisin at election is not a disseisin in fact; 2 Prest. Abs. tit. 279, et seq.; but by admission only of the injured party, for the purpose of trying his right in a real action. Co. Litt. 277; 3 Greenl. 316; 4 N. H. Rep. 371; 5 Cowen, 371; 6 John. 197; 2 Fairf. 309, 2 Greenl. 242; 5 Pet. 402; 6 Pick. 172.

2. Disseisin may be effected either in corporeal inheritances, or

incorporeal. Disseisin of things corporeal, as of houses, lands, &c., must be by entry and actual dispossession of the freehold; as if a man enters, by force or fraud, into the house of another, and turns, or at least, keeps him or his servants out of possession. Disseisin of incorporeal hereditaments cannot be an actual dispossession, for the subject itself is neither capable of actual bodily possession nor dispossession. 3 B1. Com. 169, 170. See 15 Mass. 495 6 John. R. 197; 2 Watts, 23; 6 Pick. 172 1 Verm. 155; 11 Pet. R. 41; 10 Pet. R. 414; 14 Pick. 374; 1 Dana's R. 279; 2 Fairf. 408; 11 Pick. 193; 8 Pick. 172; 8 Vin. Ab. 79; 1 Swift's Dig. 504; 1 Cruise, *65; Arch. Civ. Pl. 12; Bac. Ab. h.t.; 2 Supp. to Ves. Jr. 343; Dane's Ab. Index, h.t.; 1 Chit. Pr. 374, note (r.)

DISSEISOR, torts. One who puts another out of the possession of his lands wrongfully.

DISSENT, contracts. A disagreement to something which has been done. It is express or implied.

2. The law presumes that every person to whom a conveyance has been made has given his assent to it, because it is supposed to be for his benefit. To rebut the presumption, his dissent must be expressed. Vide 4 Mason, R. 206; 11 Wheat. R. 78; 1 Binn. R. 502; 2 Binn. R. 174; 6 Binn. R. 338; 12 Mass. R. 456; 17 Mass. R. 552; 3 John. Ch. R. 261; 4 John. Ch. R. 136, 529; and dissent, and the authorities there cited.

DISSOLUTION, contracts. The dissolution of a contract, is the annulling its effects between the contracting parties.

2. This dissolution of a partnership, is the putting an end to the partnership. Its dissolution does not affect contracts made between the.

partners and others; so that they are entitled to all their rights, and they are liable on their obligations, as if the partnership had not been dissolved. Vide article Partnership and 3 Kent, Com. 27 Dane's Ab. h.t.; Gow on Partn. Index, h.t.; Wats. on Partn. h.t.; Bouv. Inst. Index, h.t.

DISSOLUTION, practice. The act of rendering a legal proceeding null, or changing its character; as, a foreign attachment in Pennsylvania is: dissolved by entering bail to the action. Injunctions are dissolved by the court.

TO DISSUADE, crim. law. To induce a person not to do an act.

2. To dissuade a witness from giving evidence against a person indicted, is an indictable offence at common law. Hawk. B. 1, c. 2 1, s. 1 5. The mere attempt to stifle evidence, is also criminal, although the persuasion should not succeed, on the general principle that an incitement to commit a crime, is in itself criminal. 1 Russ. on Cr. 44; 6 East, R. 464; 2 East, R. 6, 21; 2 Str. 904; 2 Leach, 925. Vide To Persuade.

DISTRACTED PERSON, This term is used in the statutes of Illinois; Rev. Laws of Ill. 1833, p. 332; and New Hampshire; Dig. Laws of N. H. 1830, p. 339; to express a state of insanity.

TO DISTRAIN. To take an keep any personal chattel in custody, as a distress. (q.v.)

DISTRAINOR. One who makes a distress of goods and chattels to enforce some right.

DISTRESS, remedies. A distress is defined to be, the taking of a personal

chattel, without legal process, from the possession of the wrong doer, into the hands of the party grieved, as a pledge for the redress of an injury, the performance of a duty, or the satisfaction of a demand. 3 Bl. Com. 6. It is a general rule, that a man who has an entire duty, shall not split the entire sum and distrain for part of it at one time, and part of it at another time. But if a man seizes for the whole sum that is due him, but mistakes the value of the goods distrained, there is no reason why he should not afterwards complete his execution by making a further seizure. 1 Burr. 589. It is to be observed also, that there is an essential difference between distresses at common law and distresses prescribed by statute. The former are taken nomine penae, (q.v.) as a means of compelling payment; the latter are similar to executions, and are taken as satisfaction for a duty. The former could not be sold the latter might be. Their only similarity is, that both are replevisable. A consequence of this difference is, that averia carucae are distrainable in the latter case, although there be other sufficient distress. 1 Burr. Rep. 588.

2. The remedy by distress to enforce the payment of arrears of rent is so frequently adopted by landlords, (Co. Lit. 162, b,) that a considerable space will be allotted to this article under the following heads: 1. The several kinds of rent for which a distress may be made. 2. The persons who may make it. 3. The goods which may be distrained. 4. The time when a distress may be made. 5. In what place it may be made. 6. The manner of making it, and disposing of the goods distrained. 7. When a distress will be a waiver of a forfeiture of the lease.

3.-1. Of the rents for which a distress may be made. 1. A distress may generally be taken for any kind of rent in arrear, the detention of which, beyond the day of payment, is an injury to him who is entitled to receive it. 3 Bl. Com. 6. The rent must be reserved out of a corporeal

hereditament, and must be certain in its quantity, extent, and time of payment, or at least be capable of being reduced to certainty. Co. Lit. 96, a.; 13 Serg. & Rawle, 64; 3 Penn. R. 30. An agreement that the lessee pay no rent, provided he make repairs, and the value of the repairs is uncertain, would not authorize the landlord to distrain. Addis. 347. Where the rent is a certain quantity of grain, the landlord may distrain for so many bushels in arrear, and name the value, in order that if the goods should not be replevied, or the arrears tendered, the officer may know what amount of money is to be raised by the sale, and in such case the tenant may tender the arrears in grain. 13 Serg. & Rawle, 52; See 3 Watts & S. 531. But where the tenant agreed, instead of rent, to render " one-half part of all the grain of every kind, and of all hemp, flax, potatoes, apples, fruit, and other produce of whatever kind that should be planted, raised, sown or produced, on or out of the demised premises, within and during the terms,", the landlord cannot, perhaps, distrain at all; he cannot, certainly, distrain for a sum of money, although he and the tenant may afterwards have settled their accounts, and agreed that the half of the produce of the land should be fixed in money, for which the tenant gave his note, which was not paid. 1 3 Serg. & Rawle, 5 2. But in another case it was held, that on a demise of a grist mill, when the lessee is to render one-third of the toll, the lessor may distrain for rent. 2 Rawle, 11.

4.-2. With respect to the amount of the rent, for which a lessor may in different cases be entitled to make a distress, it may be laid down as a general rule, that whatever can properly be considered as a part of the rent, may be distrained for, whatever be the particular mode in which it is agreed to be paid. So that where a person entered into possession of certain premises, subject to the approbation of the landlord, which was afterwards obtained, by agreeing to pay in advance, rent from the time be came into possession, it was, in England, determined that the landlord might distrain

for the whole sum accrued before and after the agreement. Cowp. 784. For on whatever day the tenant agrees that the rent shall be due, the law gives the landlord the power of distraining for it at that time. 2 T. R. 600. But see 13 S. & R. 60. In New York, it was determined, that an agreement that the rent should be paid in advance, is a personal covenant on which an action lies, but not distress. 1 Johns. R. 384. The supreme court of Pennsylvania declined deciding this point, as it was not necessarily before them. 13 Serg. & Rawle, 60. Interest due on rent cannot, in general, be distrained for; 2 Binn. 146; but may be recovered from the tenant by action, unless under particular circumstances. 6 Binn. 159.

5.-2. Of the persons entitled to make a distress. 1. When the landlord is sole owner of the property out of which rent is payable to him, he may, of course, distrain in his own right.

6.-2. Joint tenants have each of them an estate in every part of the rent; each may, therefore, distrain alone for the whole, 3 Salk. 207, although he must afterwards account with his companions for their respective shares of the rent. 3 Salk. 17; 4 Bing. 562; 2 Brod. & B. 465; 5 Moore, 297 Y. B. 15 H. VIII, 17, a; 1 Chit. Pr. 270; 1 Tho. Co. Litt. 783, note R; Bac. Ab. Account; 5 Taunt. 431; 2 Chit. R. 10; 3 Chit. Pl. 1297. But one joint tenant cannot avow solely, because the avowry is always upon the right, and the right of the rent is in all of them. Per Holt, 3 Salk. 207. They may all join in making the distress, which is the better way.

7.-3. Tenants in common do not, like joint tenants, hold by one title and by one right, but by different titles, and have several estates. Therefore they should distrain separately, each for his share, Co. Lit. s. 317, unless the rent be of an entire thing, as to render a horse, in which case, the thing being incapable of division, they must join. Co. Lit. 197, a. Each tenant in common is entitled to receive, from the lessee, his

proportion of the rent; and therefore, when a person holding under two tenants in common, paid the whole rent to one of them, after having received a notice to the contrary from the other, it was held, that the party who gave the notice might afterwards distrain. 5 T. R. 246. As tenants in common have no original privity of estate between them, as to their respective shares, one may lease his part of the land to the other, rendering rent, for which a distress may be made, as if the land had been demised to a stranger. Bro. Ab. tit. Distress, pl. 65.

8.-4. It may be, perhaps, laid down as a general rule, that for rent due in right of the wife, the husband may distrain alone; 2 Saund. 195; even if it accrue to her in the character of executrix or administratrix. Ld. Raym. 369. With respect to the remedies for the recovery of the arrears of a rent accruing in right of his wife, a distinction is made between rent due for land, in which the wife has a chattel interest, and rent due in land, in which she has an estate of freehold and inheritance. And in some cases, a further distinction must be made between a rent accruing before and rent accruing after the coverture. See, on this subject, Co. Lit. 46, b, 300, a; 351, a; 1 Roll. Abr. 350; stat; 32 Hen. VIII. c. 37, s. 3.

9.-5. A tenant by the curtesy, has an estate of freehold in the lands of his wife, and in contemplation of law, a reversion on all land of the wife leased for years or lives, and may distrain at common law for all rents reserved thereon.

10.-6. A woman may be endowed of rent as well as of land; if a husband, therefore, tenant in fee, make a lease for years, reserving rent, and die, his widow shall be endowed of one-third part of the reversion by metes and bounds, together with a third part of the rent. Co. Litt. 32, a. The rent in this base is apportioned by the act of law, and therefore if a widow be endowed of a third part of a rent in fee, she may distrain for a third part thereof, and the heir shall distrain for the other part of the

rent. Bro. Abr. tit. Avowry, pl. 139.

11.-7. A tenant for his own life or that of another, has an estate of freehold, and if he make a lease for years, reserving rent, he is entitled to distrain upon the lessee. It may here be proper to remark, that at common law, if a tenant for life made a lease for years, if be should so long live, at a certain rent, payable quarterly, and died before the quarter day, the tenant was discharged of that quarter's rent by the act of God. 10 Rep. 128. But the 11 Geo. II. c. 19, s. 15, gives an action to the executors or administrators of such tenant for life.

12.-8. By the statute 32 Henry VIII. c. 37, s. 1, "the personal representatives of tenants in fee, tail, or for life, of rent-service, rent-charge, and rents-seek, and fee farms, may distrain for, arrears upon the land charged with the payment, so long as the lands continue in seisin or possession of the tenant in demesne, who ought to have paid the rent or fee farm, or some person claiming under him by purchase, gift or descent." By the words of the statute, the distress must be made on the lands while in the possession of the "tenant in demesne," or some person claiming under him, by purchase, gift or descent; and therefore it extends to the possession of those persons only who claim under the tenant, and the statute does not comprise the tenant in dower or by the curtesy, for they come in, not under the party, but by act of law. 1 Leon. 302.

13.-9. The heir entitled to the reversion may distrain for rent in arrear which becomes due after the ancestor's death; the rent does not become due till the last minute of the natural day, and if the ancestor die between sunset and midnight, the heir, and not the executor, shall have the rent. 1 Saund. 287. And if rent be payable at either of two periods, at the choice of the lessee, and the lessor die between them, the rent being unpaid, it will go to the heir. 10 Rep. 128, b.

14.-10. Devisees, like heirs, may distrain in respect of their reversionary estate; for by a devise of the reversion the rent will pass with its incidents. 1 Ventr. 161.

15.-11. Trustees who have vested in them legal estates, as trustees of a married woman, or assignees of an insolvent, may of course distrain in respect of their legal estates, in the same manner as if they were beneficially interested therein.

16.-12. Guardians may make leases of their wards' lands in their, own names, which will be good during the minority of the ward. and, consequently, in respect of such leases, they possess the same power of distress as other persons granting leases in their own rights. Cro. Jac. 55, 98.

17.-13. Corporations aggregate should generally make and accept leases or other conveyances of lands or rent, under their common seal. But if a lease be made by an agent of the corporation, not under their common seal, although it may be invalid as a lease, yet if the tenant hold under it, and pay rent to the bailiff or agent of the corporation, that is sufficient to constitute a tenancy at least from year to year, and to entitle the corporation to distrain for rent. New Rep. 247. But see Corporation.

18.-3. Of the things which may or may not be distrained. Goods found upon the premises demised to a tenant are generally liable to be distrained by a landlord for rent, whether such goods in fact belong to the tenant or other persons. Coin. Dig. Distress, B 1. Thus it has been held, that a gentleman's chariot, which stood in a coach-house belonging to a common livery stable keeper, was distrainable by the landlord for the rent due him by the livery stable keeper for the coach-house. 3 Burr. 1498. So if cattle are put on the tenant's land by consent of the owners of the beasts, they are distrainable by the landlord immediately after for rent in arrear. 3 Bl. Com. 8. But goods are sometimes privileged from distress, either absolutely

or conditionally.

19. First. Those of the first class are privileged, 1. In respect of the owner of 2. Because no one can have property in them. 3. Because they cannot be restored to the owner in the same plight as when taken. 4. Because they are fixed to the freehold. 5. Because it is against the policy of law that they should be distrained. 6. Because they are in the custody of the law. 7. Because they are protected by some special act of the legislature.

20.-1. The goods of a person who has some interest, in the land jointly with the distrainer, as those of a joint tenant, although found upon the land, cannot be distrained. The goods of executors and administrators, or of the assignee of an insolvent regularly discharged according to law, cannot, in Pennsylvania, be distrained for more than one year's rent. The goods of a former tenant, rightfully on the land, cannot be distrained for another's rent. For example, a tenant at will, if quitting upon notice from his landlord, is entitled to the emblements or growing crops; and therefore even after they are reaped, if they remain on the land for the purpose of husbandry, they cannot be distrained for rent due by the second tenant. Willes, 131. And they are equally protected in the hands of a vendee. Ibid. They cannot be distrained, although the purchaser allow them to remain uncut an unreasonable time after the are ripe. 2 B. & B. 862; 5 Moore, 97, S. C.

21.-2. As every thing which is distrained is presumed to be the property of the tenant, it will follow that things wherein no man can have an absolute and valuable property, as cats, dogs, rabbits, and all animals ferae naturae, cannot be distrained. Yet, if deer, which are of a wild nature, are kept in a private enclosure, for the purpose of sale or profit, this so far changes their nature by reducing them to a kind of stock or merchandise, that they may be distrained for rent. 3 B1. Com. 7.

22.-3. Such things as cannot be restored to the owner in the same

plight as when they were taken, as milk, fruit, and the like, cannot be distrained. 3 Bl. Com. 9.

23.-4. Things affixed or annexed to the freehold, as furnaces, windows, doors, and the like, cannot be distrained, because they are not personal chattels, but belong to the realty. Co. Litt. 47, b. And this rule extends. to such things as are essentially a part of the freehold, although for a time removed therefrom, as a millstone removed to be picked; for this is matter of necessity, and it still remains in contemplation of law, a part of the freehold. For the same reason an anvil fixed in a smith's shop cannot be distrained. Bro. Abr. Distress, pl. 23; 4 T. R. 567; Willis, Rep. 512 6 Price's R. 3; 2 Chitty's R. 167.

24.-5. Goods are privileged in cases where the proprietor is either compelled, from necessity to place his goods upon the land, or where be does so for commercial purposes. 17 S. & R. 139; 7 W. & S. 302; 8 W. & S. 302; 4 Halst. 110; 1 Bay, 102, 170; 2 McCord, 39; 3 B. & B. 75; 6 J. B. Moore, 243; 1 Bing. 283; 8 J. B. Moore, 254; 2 C. & P. 353; 1 Cr. M. 380. In the first case, the goods are exempt, because the owner has no option; hence the goods of a traveller in an inn are exempt from distress. 7 H. 7, M. 1, p. 1.; Hamm. N. 380, a.; 2 Keny. 439; Barnes, 472; 1 Bl. R. 483; 3 Burr. 1408. In the other, the interests of the community require that commerce should be encouraged, and adventurers will not engage in speculations, if the property embarked is to be made liable for the payment of debts they never contracted. Hence goods landed at a wharf, or deposited in a warehouse on storage, cannot be distrained. 17 Serg. & Rawle, 138; 6 Whart. R. 9, 14; 9 Shepl. 47; 23 Wend. 462. Valuable things in the way of trade are not liable to distress; as, a horse standing in a smith's shop to be shod, or in a common inn; or cloth at a tailor's house to be made into a coat; or corn sent to a mill to be ground, for these are privileged and protected for the benefit of trade. 3 Bl. Com. 8. On the same principle it has been decided,

that the goods of a boarder are not liable to be distrained for rent due by the keeper of a boarding house; 5 Whart. R. 9; unless used by the tenant with the boarder's consent, and without that of the landlord: 1 Hill , 565.

25.-6. Goods taken in execution cannot be distrained. The law in some states gives the landlord the right to claim payment out of the proceeds of an execution for rent, not exceeding one year, and he is entitled to payment up to the day of seizure, though it be in the middle of a quarter 2 Yeates, 274; 5 Binn. 505; but he is not entitled to the day of sale. 5 Binn. 505. See 18 Johns. R. 1. The usual practice is, to give notice to the, sheriff that there is a certain sum due to the landlord as arrears of rent; which notice ought to be given to the sheriff, or person who takes the goods in execution upon the premises for the sheriff is, not bound to find out whether rent is due, nor is he liable to an action, unless there has been a demand of rent before the removal. 1 Str. 97, 214; 3 Taunt. 400 2 Wils. 140; Com. Dig. Rent, D 8; 11 Johns. R. 185. This notice can be given by the immediate landlord only a ground landlord is not entitled to his rent out of the goods of the under tenant taken in execution. 2 Str. 787. And where there are two executions, the landlord is not entitled to a year's rent on each. See Str. 1024. Goods distrained and replevied may be distrained by another landlord for subsequent rent. 2 Dall. 68.

26.-7. By some special acts of the legislature it is provided that tools of a man's trade, some designated household furniture, school books, and the like, shall be exempted from distress, execution, or sale. And by a recent Act of Assembly of Pennsylvania, April 9, 1849, property to the value of three hundred dollars, exclusive of all wearing apparel of the defendant and his family, and all bibles and school books in use in the family, are exempted from levy and sale on execution, or by distress for rent.

27.-Secondly. Besides the above mentioned goods and chattels, which

are absolutely privileged from distress, there are others which are conditionally so, but which may be distrained under certain circumstances. These are, 1. Beasts of the plough, which are exempt if there be a sufficient distress besides on the land whence the rent issues. Co. Litt. 47, a; Bac. Abr. Distress, B. 2. Implements of trade; as, a loom in actual use; and there is a sufficient distress besides. 4 T. R. 565. 3. Other things in actual use,; as, a horse whereon a person is riding, an axe in the hands of. a person cutting wood, and the like. Co. Litt. 4 7, a.

28.-4. The time when a distress may be made. 1. The distress cannot be made till the rent is due by the terms of the lease; as rent is not due until the last minute of the natural day on which it is reserved, it follows that a distress for rent cannot be made on that day. 1 Saund. 287; Co. Litt. 47, b. n. 6. A previous demand is not generally necessary, although there be a clause in the lease, that the lessor may distrain for rent," being lawfully demanded Bradb. 124; Bac. Abr. Rent, 1; the making of the distress being a demand though it is advisable to make such a demand. But where a lease provides for a special demand; as, if the clause were that if the rent should happen to be behind it should be demanded at a particular place not on the land; or be demanded of the person of the tenant; then such special demand is necessary to support the distress. Plowd. 69 Bac. Abr. Rent, I.

29.-2 A distress for rent can only be made during the day time. Co. Litt. 142, a.

30.-3. At common law a distress could not be made after the expiration of the lease to remedy this evil the legislature of Pennsylvania passed an act making it "lawful for any person having any rent in arrear or due upon any lease for life or years or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done, if such lease had not been ended: provided, that such distress be made during the continuance of such lessor's

title or interest.", Act of March 21, 1772, s. 14, 1 Smith's Laws of Penna. 375. 4. In the city and county of Philadelphia, the landlord may, under certain circumstances, apportion his rent, and distrain before it becomes due. See act of March 25, 1825, s. 1, Pamph. L. 114.

31.-5. In what place a distress may be made. The distress may be made upon the land, or off the land. 1. Upon the land. A distress generally follows the rent, and is consequently confined to the land out of which it issues. If two pieces of land, therefore, are let by two separate demises, although both be contained in one lease, a joint distress cannot be made for them, for this would be to make the rent of one issue out of the other. Rep. Temp. Hardw. 245; S. C. Str. 1040. But where lands lying in different counties are let together by one demise, at one entire rent, and it does not appear that the lands are separate from each other, one distress may be made for the whole rent. Ld. Raym. 55; S. C. 12 Mod. 76. And, where rent is charged upon land, which is afterwards held by several tenants, the grantee or landlord may distrain for the whole upon the land of any of them; because the whole rent is deemed to issue out of every part of the land. Roll. Abr. 671. If there be a house on the land, the distress may be made in the house; if the outer door or window be open, a distress may be taken out of it. Roll. Abr. 671. And if an outer door be open, an inner door may be broken open for the purpose of taking a distress. Comb. 47; Cas. Temp. Hard. 168. Barges on a river, attached to the leased premises (a wharf) by ropes, cannot be distrained. 6 Bingh. 150; 19 Eng. Com. Law R. 36.

32.-2. Off the land. By the 5th and 6th sections of the Pennsylvania act of assembly of March 21, 1772, copied from the 11 Geo. II. c. 19, it is enacted, that if any tenant for life, years, at will, or otherwise, shall fraudulently or clandestinely convey his goods off the premises to prevent the landlord from distraining the same, such person, or any person by him

lawfully authorized, may, within thirty days after such conveyance, seize the same, wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. Provided, that the landlord shall not distrain any goods which shall have been previously sold, bona fide, and for a valuable consideration, to one not privy to the fraud. To bring a case within the act, the removal must take place after the rent becomes due, and must be secret, not made in open day, for such removal cannot be said to be clandestine within the meaning of the act. 3 Esp. N. P. C. 15; 12 Serg. & Rawle, 217; 7 Bing. 422; 1 Moody & Malkin, 585. It has however been made a question, whether goods are protected that were fraudulently removed on the night before the rent had become due. 4 Camp. 135. The goods of a stranger cannot be pursued; they can be distrained only while they are, on the premises. 1 Dall. 440.

33.-6. Of the manner of making a distress. 1. A distress for rent may be made either by the person to whom it is due, or, which is the preferable mode, by a constable, or bailiff, or other officer properly authorized by him.

34.-2. If the distress be made by a constable, it is necessary that he should be properly authorized to make it; for which purpose the landlord should give him a written authority, or; as it is usually called, a warrant of distress; but a subsequent assent and recognition given by the party for whose use the distress has been made, is sufficient. Hamm. N. P. 382.

35.-3. When the constable is thus provided with the requisite authority to make a distress, he, may distrain by seizing the tenant's goods, or some of them in the name of the whole, and declaring that he takes them as a distress for the sum expressed in the warrant to be due by the tenant to the landlord, and that he takes them by virtue of the said warrant; which warrant he ought, if required, to show. 1 Leon. 50.

36.-4. When making the distress it ought to be made for the whole

rent; but if goods cannot be found at the time, sufficient to satisfy the rent, or the party mistake the value of the thing distrained, he may make a second distress. Bradb. 129, 30; 2 Tr. & H. Pr. 155; supra 1.

37.-5. As soon as a distress is made, an inventory of the goods distrained should be made, and a copy of it delivered to the tenant, together with a notice of taking such distress, with the cause for taking the same. This notice of taking a distress is not required by the statute to be in writing; and, therefore, parol or verbal notice may be given either to the tenant on the premises, or to the owner of the goods distrained. 12 Mod. 76. And although notice is directed by the act to specify the cause of taking, it is not material whether it accurately state the period of the rent's becoming due; Dougl. 279; or even whether the true cause of taking the goods be expressed therein. 7 T. R. 654. If the notice be not personally given, it should be left in writing at the tenant's house, or according to the directions of the act, at the mansion-house or other most notorious place on the premises charged with the rent distrained for.

38.-6. The distrainor may leave or impound the distress on the premises for the five days mentioned in the act, but becomes a trespasser after that time. 2 Dall. 69. As in many cases it is desirable for the sake of the tenant that the goods should not be sold as soon as the law permits, it is usual for him to sign an agreement or consent to their remaining on the premises for a longer time, in the custody of the distrainor, or of a person by him appointed for that purpose. While in his possession, the distrainor cannot use or work cattle distrained, unless it be for the owner's benefit, as to milk a cow, or the like. 5 Dane's Abr. 34.

39.-7. Before the goods are sold they must be appraised by two reputable free-holders, who shall take an oath or affirmation to be administered by the sheriff, under-sheriff, or coroner, in the words

mentioned in the act.

40.-8. The next requisite is to give six days public notice of the time and place of sale of the things distrained; after which, if they have not been replevied, they may be sold by the proper officer, who may apply the proceeds to the payment and satisfaction of the rent, and the expenses of the distress, appraisement and sale. The over-plus, if any, is to be paid to the tenant.

41.-7. When a distress will be a waiver of a forfeiture of the lease. On this subject, see 1 B. & Adol. 428. The right of distress, it seems, does not exist in the New England states. 4 Dane's Ab. 126; 7 Pick. R. 105; 3 Griff. Reg 404; 4 Griff. Reg. 1143; Aik. Dig. 357, nor in Alabama, Mississippi, North Carolina, nor Ohio; and in Kentucky, the right is limited to a distress for a pecuniary rent. 1 Hill. Ab. 156. Vide, generally, Bouv. Inst. Index, h . t.; Gilb. on Distr. by Hunt; Bradb. on Distr.; Com. Dig. h.t.; Bac. Ab. h.t.; Vin. Ab. h.t.; 2 Saund. Index, h.t.; Wilk. on Repl.; 3 Chit. Bl. Com. 6, note; Crabb on R. P. Sec. 222 to 250.

DISTRESS INFINITE, English practice. A process commanding the sheriff to distrain a person from time to time, and continually afterwards, by taking his goods by way of pledge, to enforce the performance of something due from the party distrained upon. In this case, no distress can be immoderate, because, whatever its value may be, it cannot be sold, but is to be immediately restored on satisfaction being made. 3 Bl. Com. 231. See Distringas.

DISTRIBUTION. By this term is understood the division of an intestate's estate according to law.

2. The English statute of 22 and 23 Car. II. c. 10, which was itself probably borrowed from the 118th Novel of Justinian, is the foundation of,

perhaps, most acts of distribution in the several states. Vide 2 Kent, Com. 342, note; 8 Com. Dig. 522; 11 Vin. Ab. 189, 202; Com. Dig. Administration, H.

DISTRIBUTIVE JUSTICE. That virtue, whose object it is to distribute rewards and punishments to every one according to his merits or demerits. Tr. of Eq. 3; Lepage, El. du Dr. ch. 1, art. 3, Sec. 2 1 Toull. n. 7, note. See Justice.

DISTRICT. A certain portion of the country, separated from the rest for some special purposes. The United States are divided into judicial districts, in each of which is established a district court; they are also divided into election districts; collection districts, &c.

DISTRICT ATTORNEYS OF THE UNITED STATES. There shall be appointed, in each judicial district, a meet person, learned in the law, to act as attorney of the United States in such district, who shall be sworn or affirmed to the faithful execution of his office. Act of September 24, 1789, s. 35, 1 Story's Laws, 67.

2. His duty is to prosecute, in such district, all delinquents, for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except in the supreme court, in the district in which that court shall be holden. Ib.

3. Their salaries vary in different districts. Vide Gordon's Dig. art. 403. By the Act of March 3, 1815, 2 Story's L. U. S. 1530, district attorneys are authorized to appoint deputies, in certain cases, to sue in the state courts. See Deputy District Attorney.

DISTRICT COURT. The name of one of the courts of the United States. It is held by a judge, called the district judge. Several courts under the same name have been established by state authority. Vide Courts of the United States.

DISTRICT OF COLUMBIA. The name of a district of country, ten miles square, situate between the states of Maryland and Virginia, over which the national government has exclusive jurisdiction. By the constitution, congress may " exercise exclusive jurisdiction in all cases whatsoever, over such district, not exceeding ten miles square, as may, by, cession of particular states, and the acceptance of congress, become the seat of government of the United States." In pursuance of this authority, the states of Maryland and Virginia, ceded to the United States, a small territory on the banks of the Potomac, and congress, by the Act of July 16, 1790, accepted the same for the permanent seat of the government of the United States. The act provides for the removal of the seat of government from the city of Philadelphia to the District of Columbia, on the first Monday of December, 1800. It is also provided, that the laws of the state, within such district, shall not be affected by the acceptance, until the time fixed for the removal of the government thereto, and until congress shall otherwise by law provide.

2. It seems that the District of Columbia, and the territorial districts of the United States, are not states within the meaning of the constitution, and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat, 91.

3. By the Act of July 11, 1846, congress retroceded the county of Alexandria, part of the District of Columbia, to the state of Virginia.

DISTRINGAS, remedies. A writ directed to the sheriff, commanding him to

distrain one of his goods and chattels, to enforce his compliance of what is required of him, as for his appearance in a court on such a day, and the like. Com. Dig. Process, D 7; Chit. Pr. Index, h.t. Sellon's Pr. Index, h.t.; Tidd's Pr. Index, h.t. 11 East, 353. It is also a form of execution in the action of detinue, and assize of nuisance. Registrum Judiciale, 56; 1 Rawle, 44, 48; Bro. Abr. pl. 26; 22; H. VI. 41. This writ is likewise used to compel the appearance of a corporation aggregate. 4 Bouv. Inst. n. 4191.

DISTURBANCE, torts. A wrong done to an incorporeal hereditament, by hindering or disquieting the owner in the enjoyment of it. Finch. L. 187; 3 Bl. Com. 235; 1 Swift's Dig. 522; Com. Dig. Action upon the case for a disturbance, Pleader, 3 I 6; 1 Serg. & Rawle, 298.

DIVIDEND. A portion of the principal, or profits, divided among several owners of a thing.

2. The term is usually applied to the division of the profits arising out of bank or other stocks; or to the division, among the creditors, of the elects of an insolvent estate.

3. In another sense, according to some old authorities, it signifies one part of an indenture. T. L.

DIVISIBLE. The susceptibility of being divided.

2. A contract cannot, in general, be divided in such a manner that an action may be brought, or a right accrue, on a part of it. 2 Penna. R. 454. But some contracts are susceptible of division, as when a reversioner sells a part of the reversion to one man, and a part to another, each shall have an action for his share of the rent, which may accrue on a contract, to pay a particular rent to the reversioner. 3 Whart. 404; and see Apportionment.

But when it is to do several things, at several times, an action will lie upon every default. 15 Pick. R. 409. See 1 Greenl. R. 316; 6 Mass. 344. See Entire.

DIVISION, Eng. law. A particular and ascertained part of a county. In Lincolnshire, division means what riding does in Yorkshire.

DIVISION OF OPINION. When, in a company or society, the parties having a right to vote are so divided that there is not a plurality of the whole in favor of any particular proposition, or when the voters are equally divided, it is said there. is division of opinion.

2. In such a case, the Roman law, which seems founded in reason and common sense, directs, that when the division relates to the quantity of things included, as in the case of a judgment, if one of three judges votes for condemning a man to a fine of one hundred dollars, another, to one of fifty dollars, and the third to twenty-five, the opinion or vote of; the last shall be the rule for the judgment; because the votes of all the others include that of the lowest; this is the case when unanimity is required. But when the division of opinions does not relate to the quantity of things, then it is always to be in favor of the defendant. It was a rule among the Romans that when the judges were equal in number, and they were divided into two opinions in cases of liberty, that opinion which favored it should prevail; and in other cases, it should be in favor of the defendant. Poth. Pand. liv. L. n. MDLXXIV.

3. When the judges of a court are divided into three classes, each holding a different opinion, that class which has the greatest number shall give the judgment; for example, on a habeas corpus, when a court is composed of four judges, and one is for remanding the prisoner, another is for discharging him on his own recognizance, and two others for discharging him

absolutely, the judgment will be, that he be discharged. Rudyard's Case, Bac. Ab. Habeas Corpus, B 10, Court 5.

4. It is provided, by the Act of Congress of April 29, 1802, s. 6, that whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of either party, or their counsel, be stated, under the direction of the judges, and certified, under the seal of the court, to the supreme court, at their next session to be hold thereafter, and shall, by the said court, be finally decided. And the decision of the supreme court, and their order in the premises, shall be, remitted to the circuit court, and be there entered *of record and shall have effect according to the nature of the said judgment and order: Provided, That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits: And Provided, also, That imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment. See 5 N. S. 407.

DIVORCE. The dissolution of a marriage contracted between a man and a woman, by the judgment of a court of competent jurisdiction, or by an act of the legislature. It is so called from the diversity of the minds of those who are married; because such as are divorced go each a different way from the other. Ridley's Civ. & Eccl. Law, pp. 11, 112. Until a decree of divorce be actually made, neither party can treat the other as sole, even in cases where the marriage is utterly null and void for some preexisting cause. Griffiths v Smith, D. C. of Philadelphia, 3 Penn. Law Journal, 151, 153. A decree of divorce must also be made during the lifetime of both the parties.

After the decease of either the marriage will be deemed as legal in all respects. Reeves" Dom. Rel. 204; 1 Bl. Com. 440. See Act of Pennsylvania, March 13, 1815, Sec. 5.

2. Divorces are of two kinds; 1. a vinculo matrimonii, (q.v.) which dissolves and totally severs the marriage tie; and, 2. a mensa et thoro, (q.v.) which merely separates the parties.

3.-1. The divorce a vinculo was never granted by the ecclesiastical law except for the most grave reasons. These, according to Lord Coke, (Co. Litt. 235, a,) are causa praecontractus, causa metus, causa impotentiae, seu frigiditatis, causa affinitatis, et causa consanguinitatis. In England such a divorce bastardizes the issue, and generally speaking, is allowed only on the ground of some preexisting cause. Reeves' Dom. Rel. 204-5; but sometimes by act of parliament for a supervenient cause. 1 Bl. Com. 440. When the marriage was dissolved for canonical causes of impediment, existing previous to its taking place, it was declared void ab initio.

4. In the United States, divorces a vinculo are granted by the state legislatures for such causes as may be sufficient to induce the members to vote in favor of granting them; and they are granted by the courts to which such jurisdiction is given, for certain causes particularly provided for by law.

5. In some states, the legislature never grants a divorce until after the courts have decreed one, and it is still requisite that the legislature shall act, to make the divorce valid. This is the case in Mississippi. In some states, as Wisconsin, the legislature cannot grant a divorce. Const. art. 4, is. 24.

6. The courts in nearly all the states have power to decree divorces a vinculo, for, first, causes which existed and which were a bar to a lawful marriage, as, precontract, or the existence of a marriage between one of the contracting parties and another person, at the time the marriage sought to

be dissolved took place; consanguinity, or that degree of relationship forbidden by law; affinity in some states, as Vermont, Rev. Stat. tit. 16, c. 63, s. 1; impotence, (q.v.) idiocy, lunacy, or other mental imbecility, which renders the party subject to it incapable of making a contract; when the contract was entered into in consequence of fraud. Secondly, the marriage may be dissolved by divorce for causes which have arisen since the formation of the contract, the principal of which are adultery cruelty; willful and malicious desertion for a period of time specified in the acts of

the several states; to these are added, in some states, conviction of felony or other infamous crime; Ark. Rev. Stat. c. 50, s. 1, p. 333; being a fugitive from justice, when charged with an infamous crime. Laws of Lo. Act of April 2, 1832. In Tennessee the husband may obtain a divorce when the wife was pregnant at the time of marriage with a child of color; and also when the wife refuses for two years to follow her husband, who has gone bona fide to Tennessee to reside. Act of 1819, c. 20, and Act of 1835, c. 26 Carr. Nich. & Comp. 256, 257. In Kentucky and Maine,, where one of the parties has formed a connexion with certain religionists, whose opinions. and practices are inconsistent with the marriage duties. And, in some states, as Rhode Island and Vermont, for neglect and refusal on the part of the husband (he being of sufficient ability) to provide necessaries for the subsistence of his wife. In others, habitual drunkenness is a sufficient cause.

7. In some of the states divorces a mensa et thoro are granted for cruelty, desertion, and such like causes, while in others the divorce is a vinculo.

8. When the divorce is prayed for on the ground of adultery, in some and perhaps in most of the states, it is a good defence, 1st. That the other

party has been guilty of the same offence. 2. That the husband has prostituted his wife, or connived at her amours. 3. That the offended party has been reconciled to the other by either express or implied condonation. (q.v.) 4. That there was no intention to commit adultery, as when the party, supposing his or her first husband or wife dead, married again. 5. That the wife was forced or ravished.

9. The effects of a divorce a vinculo on the property of the wife, are various in the several states. When the divorce is for the adultery or other criminal acts of the husband, in general the wife's lands are restored to her; when it is caused by the adultery or other criminal act of the wife, the husband has in general some qualified right of curtesy to her lands; when the divorce is caused by some preexisting cause, as consanguinity, affinity or impotence, in some states, as Maine and Rhode Island, the lands of the wife are restored to her. 1 Hill. Ab. 51, 2. See 2 Ashm. 455; 5 Blackf. 309. At common law, a divorce a vinculo matrimonii bars the wife of dower; Bract. lib. ii. cap. 39, Sec. 4; but not a divorce ti mensa et, thoro, though for the crime of adultery. Yet by Stat. West. 1, 3 Ed. I. c. 84, elopement with an adulterer has this effect. Dyer, 195; Co. Litt. 32, a. n. 10; 3 P. Wms. 276, 277. If land be given to a man and his wife, and the heirs of their two bodies begotten, and they are divorced. a vinculo, &c., they shall neither of them have this estate, but he barely tenants for life, notwithstanding the inheritance once vested in them. Co. Litt. 28. If a lease be made to husband and wife during coverture, and the husband sows the, land, and afterwards they are divorced a vinculo, &c., the husband shall have the emblements in that case, for the divorce is the act of law. Mildmay's Case. As to personalty, the rule of the common law is, if one marry a woman who has goods, he may give them or sell them at his pleasure. If they are divorced, the woman shall have the goods back again, unless the husband has given them away or sold them; for in such case she is without

remedy. If the husband aliened them by collusion, she may aver and prove the collusion, and thereupon recover the goods from the alience. If one be bound in an obligation to a feme sole, and then marry her, and afterwards they are divorced, she may sue her former husband on the obligation, notwithstanding her action was in suspense during the marriage. And for such things as belonged to the wife before marriage, if they cannot be known, she could sue for, after divorce, only in the court Christian, for the action of account did not lie, because he was not her receiver to account. But for such things as remain in specie, and may be known, the common law gives her an action of detinue. 26 Hen. VIII. 1.

10. When a divorce a vinculo takes place, it is, in general, a bar to dower; but in Connecticut, Illinois, New York, and, it seems, in Michigan, dower is not barred by a divorce for the fault of the husband. In Kentucky, when a divorce takes place for the fault of the husband, the wife is entitled as if he were dead. 1 Hill. Ab. 61, 2.

11.-2. Divorces a mensa et thoro, are a mere separation of the parties for a time for causes arising since the marriage; they are pronounced by tribunals of competent jurisdiction. The effects of the sentence continue for the time it was pronounced, or until the parties are reconciled. A. divorce a mensa et thoro deprives the husband of no marital right in respect to the property of the wife. Reeve's Dom. Rel. 204-5. Cro. Car. 462; but see 2 S. & R. 493. Children born after a divorce a mensa et thoro are not presumed to be the husband's, unless he afterwards cohabited with his wife. Bac. Ab. Marriage, &c. E.

12. By the civil law, the child of parents divorced, is to be brought up by the innocent party, at the expence of the guilty party. Ridley's View, part 1, ch. 3, sect. 9, cites 8th Collation. Vide, generally, 1 Bl. Com. 440, 441 3 Bl. Com. 94; 4 Vin. Ab. 205; 1 Bro. Civ. Law, 86; Ayl. Parerg.

225; Com. Dig. Baron and Feme, C;-Coop. Justin. 434, et seq.; 6 Toullier, No. 294, pa. 308; 4 Yeates' Rep. 249; 5 Serg. & R. 375; 9 S. & R. 191, 3; Gospel of Luke, eh, xvi. v. 18; of Mark, ch. x. vs. 11, 12; of Matthew, ch. v. 32, ch. xix. v. 9; 1 Corinth. ch. vii. v. 15; Poynt. on Marr. and Divorce, Index, h.t.; Merl. Rep. h.t.; Clef des Lois Rom. h.t. As to the effect of the laws of a foreign state, where the divorce was decreed, see Story's Confl. of Laws, ch. 7, Sec. 200. With regard to the ceremony of divorce among. the Jews, see 1 Mann. & Gran. 228; C. 39. Eng. C. L. R. 425, 428. And as to divorces among the Romans, see Troplong, de l'Influence du Christianisme sur le Droit Civil des Romains, ch. 6. p. 205.

DOCKET, practice. A formal record of judicial proceedings.

2. The docket should contain the names of the parties, and a minute of every proceeding in the case. It is kept by the clerk or prothonotary of the court. A sheriff's docket is not a record. 9 Serg. & R. 91. Docket is also said to be a brief writing, on a small piece of paper or parchment, containing the substance of a larger writing.

DOCTORS COMMONS. A building in London used for a college of civilians. Here the judge of the court of arches, the judge of the admiralty, and the judge of the court of Canterbury, with other eminent civilians, reside. Commons signifies, in old English, pittance or allowance; because it is meant in common among societies, as Universities, Inns of Courts, Doctors Commons, &c. The Latin word is, demensum a demetiendo; dividing every one his part Minsheu. It is called Doctors Commons, because the persons residing there live in a collegiate commoning together.

DOCUMENTS, evidence. The deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact. Among the civilians, by

documents is also understood evidence delivered in the forms established by law, of whatever nature such evidence may be, but applied principally to the testimony of witnesses. Savig. Dr. Rom. Sec. 165.

2. Public documents are all such records, papers and acts, as are filed in the public offices of the United States or of the several states; as, for example, public statutes, public proclamations, resolutions of the legislature, the journals of either branch of the legislature, diplomatic correspondence communicated by the president to congress, and the like. These are in general evidence of the facts they contain or recite. 1 Greenl. Sec. 491.

DOG. A well known domestic animal. In almost all languages this word is, a term or name of contumely or reproach. See 3 Bulst. 226; 2 Mod. 260; 1 Leo. 148; and the title action on the case for defamation in the Digests; Minsheu's Dictionary.

2. A dog is said at common law to have no intrinsic value, and he cannot therefore be the subject of larceny. 4 Bl. Com. 236; 8 Serg. & Rawle, 571. But the owner has such property in him, that he may maintain trespass for an injury to his dog; "for a man may have property in some things which are of so base nature that no felony can be committed of them, as of a bloodhound or mastiff." 12 H. VIII. 3; 18 H. VIII. 2; 7 Co. 18 a; Com. Dig. Biens, F; 2 Bl. Com. 397; Bac. Ab. Trover, D; F. N. B. 86; Bro. Trespass, pl. 407 Hob. 283; Cro. Eliz. 125; Cro. Jac. 463 2 Bl. Rep.

3. Dogs, if dangerous animals, may lawfully be killed, when their ferocity is known to their owner, or in self-defence 13 John. R. 312; 10 John. R. 365; and when bitten by a rabid animal, a dog may be lawfully killed by any one. 13 John. R. 312.

4. When a dog, in consequence of his vicious habits, becomes a common

nuisance, the owner may be indicted. And when he commits an injury, if the owner had a knowledge of his mischievous propensity, he is liable to an action on the case. Bull. N. P. 77; 2 Str. 1264; Lord Raym. 110. 1 B. & A. 620; 4 Camp. R. 198; 2 Esp. R. 482; 4 Cowen, 351; 6 S. & R. 36; Addis. R. 215; 1 Scam. 492 23 Wend 354; 17 Wend. 496; 4 Dev. & Batt. 146.

5. A man has a right to keep a dog to guard his premises, but not to put him at the entrance of his house, because a person coming there on lawful business may be injured by him, and this, though there may be another entrance to the house. 4 C. & P. 297; 6 C. & P. 1. But if a dog be chained, and a visitor so incautiously go near him that he is bitten, he has no right of action against the owner. 3 Chit. Bl. 154, n. 7. Vide Animal; Knowledge; Scienter.

DOGMA, civil law. This word is used in the first chapter, first section, of the second Novel, and signifies an ordinance of the senate. See also Dig. 27, 1, 6.

DOLI CAPAX. Capable of deceit, mischief, having knowledge of right and wrong. See Discretion; Criminal law, 2.

DOLLAR, money. A silver coin of the United States of the value of one hundred cents, or tenth part of an eagle.

2. It weighs four hundred and twelve and a half grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, ss. 8 & 9, 4 Sharsw. Cont. of Story's L. U. S. 2523, 4; Wright, R. 162.

3. In all computations at the custom-house, the specie dollar of Sweden and Norway shall be estimated at one hundred and six cents. The specie dollar of Denmark, at one hundred and five cents. Act of May 22, 1846.

DOLUS, civil law. A fraudulent address or trick used to deceive some one; a fraud. Dig. 4, 3, 1; Code, 2, 21.

2. Dolus differs from fault in this, that the latter proceeds from an error of the understanding; while to constitute the former there must be a will or intention to do wrong. Wolff, Inst. Sec. 17.

DOMAIN. It signifies sometimes, dominion, territory governed - sometimes, possession, estate - and sometimes, land about the mansion house of a lord. By domain is also understood the right to dispose at our pleasure of what belongs to us.

2. A distinction, has been made between property and domain. The former is said to be that quality which is conceived to be in the thing itself, considered as belonging to such or such person, exclusively of all others. By the latter is understood that right which the owner has of disposing of the thing. Hence domain and property are said to be correlative terms; the one is the active right to dispose, the other a passive quality which follows the thing, and places it at the disposition of the owner. 3 Toull. n. 8 3. But this distinction is too subtle for practical use. Puff. Droit de la Nature et des Gens, loi 4, c. 4, Sec. 2. Vide 1 Bl. Com. 105, 106; 1 Bouv. Inst. n. 456; Clef des Lois Rom. h.t.; Domat, h.t.; 1 Hill. Ab. 24; 2 Hill. Ab. 237; and Demesne as Of fee; Property; Things.

DOME-BOOK, DOOM-BOOK or DOM-BEC A book in which Alfred the Great, of England, after uniting the Saxon heptarchy, collected the various customs dispersed through the kingdom, and digested them into one uniform code. 4 Bl. Com. 411.

DOMESDAY, or DOMESDAY-BOOK. An ancient record made in the time of William the Conqueror, and now remaining in the English exchequer, consisting of two volumes of unequal sizes, containing surveys of the lands in England.

DOMESTICS. Those who reside in the same house with the master they serve the term does not extend to workmen or laborers employed out of doors. 5 Binn. R. 167; Merl. Rep. h.t. The Act of Congress of April 30, 1790, s. 25, uses the word domestic in this sense.

2. Formerly, this word was used to designate those who resided in the house of another, however exalted their station, and who performed services for him. Voltaire, in writing to the French queen, in 1748, says) " Deign to consider, madam, that I am one of the domestics of the king, and consequently yours, lily companions, the gentlemen of the king," &c.

3. Librarians, secretaries, and persons in such honorable employments, would not probably be considered domestics, although they might reside in the house of their respective employers.

4. Pothier, to point out the distinction between a domestic and a servant, gives the following example: A literary man who lives and lodges with you, solely to be your companion, that you may profit by his conversation and learning, is your domestic; for all who live in the same house and eat at the same table with the owner of the house, are his domestics, but they are not servants. On the contrary, your Valet de, chambre, to whom you pay wages, and who sleeps out of your house, is not, properly speaking, your domestic, but your servant. Poth. Proc. Cr. sect. 2, art. 5, Sec. 5; Poth. Ob. 710, 828; 9 Toull. n. 314; H. De Pansey, Des Justices de Paix, c. 30, n. 1. Vide Operative; Servant.

DOMICIL. The place where a person has fixed his ordinary dwelling, without a present intention of removal. 10 Mass. 488; 8 Cranch, 278; Ersk. Pr. of Law

of Scotl. B. 1, tit. 2, s. 9; Denisart, tit. Domicile, 1, 7, 18, 19; Voet, Pandect, lib. 5, tit. 1, 92, 97; 5 Madd. Ch. R. 379; Merl. Rep. tit. Domicile; 1 Binn. 349, n.; 4 Humph. 346. The law of domicil is of great importance in those countries where the maxim "actor sequitur forum rei" is applied to the full extent. Code Civil, art. 102, &c.; 1 Toullier, 318.

2. A man cannot be without a domicil, for he is not supposed to have abandoned his last domicil until he has acquired a new one. 5 Ves. 587; 3 Robins. 191; 1 Binn. 349, n.; 10 Pick. 77. Though by the Roman law a man might abandon his domicil, and, until be acquired a. new one, he was without a domicil. By fixing his residence at two different places a man may have two domicils at one and the same time; as, for example, if a foreigner, coming to this country, should establish two houses, one in New York and the, other in New Orleans, and pass one-half of the year in each; he would, for most purposes, have two domicils. But it is to be observed that circumstances which might be held sufficient to establish a commercial domicil in time of war, and a matrimonial, or forensic or political domicil in time of peace, might not be such as would establish a principal or testamentary domicil, for there is a wide difference in applying the law of domicil to contracts and to wills. Phill. on Dom. xx; 11 Pick. 410 10 Mass. 488; 4 Wash. C. C. R. 514.

3. There are three kinds of domicils, namely: 1. The domicil of origin. domicilium originis vel naturale. 2. The domicil by operation of law, or necessary domicil. 3. Domicil of choice.

4.-1. By domicil of origin is understood the home of a man's parents, not the place where, the parents being on a visit or journey, a child happens to be born. 2 B. & P. 231, note; 3 Ves. 198. Domicil of origin is to be distinguished from the accidental place of birth. 1 Binn. 349.

5.-2. There are two classes of persons who acquire domicil by

operation of law. 1st. Those who are under the control of another, and to whom the law gives the domicil of another. Among these are, 1. The wife. 2. The minor. 3. The lunatic, &c. 2d. Those on whom the state affixes a domicil. Among this class are found, 1. The officer. 2. The prisoner, &c.

6.-1st. Among those who, being under the control of another, acquire such person's domicil, are, 1. The wife. The wife takes the domicil of her husband, and the widow retains it, unless she voluntarily change it, or unless, she marry a second time, when she takes the domicil of the second husband. A party may have two domicils, the one actual, the other legal; the husband's actual and the wife's legal domicil, are, prima facie, one. Addams' Ecc. R. 5, 19. 2. The domicil of the minor is that of the father, or in Case of his death, of the mother. 5 Ves. 787; 2 W. & S. 568; 3 Ohio R. 101; 4 Greenl. R. 47. 3. The domicil of a lunatic is regulated by the same principles which operated in cases of minors the domicil of such a person may be changed by the direction, or with the assent of the guardian, express or implied. 5 Pick. 20.

7.-2d. The law affixes a domicil. 1. Public officers, such as the president of the United States, the secretaries and such other officers whose public duties require a temporary residence at the capital, retain their domicils. Ambassadors preserve the domicils which they have in their respective countries, and this privilege extends to the ambassador's family. Officers, soldiers, and marines, in the service of the United States, do not lose their domicils while thus employed. 2. A prisoner does not acquire a domicil where the prison is, nor lose his old. 1 Milw. R. 191, 2.

8.-3. The domicil of origin, which has already been explained, remains until another has been acquired. In order to change such domicil; there must be an actual removal with an intention to reside in the place to which the party removes. 3 Wash. C. C. R. 546. A mere intention to remove, unless such intention is carried into effect, is not sufficient. 5 Greenl.

R. 143. When he changes it, he acquires a domicil in the. place of his new residence, and loses his original domicil. But upon a return with an intention to reside, his original domicil is restored. 3 Rawle, 312; 1 Gallis. 274, 284; 5 Rob. Adm. R. 99.

9. How far a settlement in a foreign country will impress a hostile character on a merchant, see Chitty's Law of Nations, 31 to 50; 1 Kent, Com. 74 to 80; 13 L. R. 296; 8 Cranch, 363; 7 Cranch, 506; 2 Cranch, 64 9 Cranch, 191; 1 Wheat. 46; 2 Wheat 76; 3 Wheat. 1 4 2 Gall. R. 268; 2 Pet. Adm. Dec. 438 1 Gall. R. 274. As to its effect in the administration of the assets of a deceased non-resident, see 3 Rawle's R. 312; 3 Pick. R. 128; 2 Kent, Com. 348; 10 Pick. R. 77. The law of Louisiana relating to the "domicil and the manner of changing the same" will be found in the Civil Code of Louisiana, tit. 2, art. 42 to 49. See, also, 8 M. R. 709; 4 N. S. 51; 6 N. S. 467; 2 L. R. 35; 4 L. R. 69; 5 N. S. 385 5 L. R. 332; 8 L. R. 315; 13 L. R. 297 11 L. R. 178; 12 L. R. 190. See, on the subject generally, Bouv. Inst. Index, h.t. 2 Bos. & Pul. 230, note 1 Mason's Rep. 411; Toullier, Droit Civil Francais, liv. 1, tit. 3, n., 362 a 378; Domat, tome 2, liv. 1, s. 3; Pothier, Introduction Generale aux Coutumes, n. 8 a 20; 1 Ashm. R. 126; Merl. Rep. tit. Domicile 3 Meriv. R. 79; 5 Ves. 786; 1 Crompt. & J. 151; 1 Tyrwh. R. 91; 2 Tyrwh. R. 475; 2 Crompt. & J. 436 3 Wheat. 14 3 Rawle, 312; 7 Cranch, 506 9 Cranch, 388; 5 Pick. 20; 1 Gallis, 274, 545; 10 Mass. 488 11 Mass. 424; 13 Mass. 501 2 Greenl. 411; 3 Greenl 229, 354; 4 Greenl. 47; 8 Greenl. 203; 5 Greenl. 143; 4 Mason, 308; 3 Wash. C. C. R. 546; 4 Wash. C. C. R. 514 4 Wend, 602; 8 Wend. 134; 5 Pick. 370 10 Pick. 77; 11 Pick. 410; 1 Binn. 349, n.; Phil. on Dom. passim.

DOMINANT. estates. In the civil law, this term is used to signify the estate to which a servitude or easement is due from another estate; for example,

where the owners of the estate, Blackacre, have a right of way or passage over the estate Whiteacre, the former is called the dominant, and the latter the servient estate. Bouv. Inst. n. 1600.

DOMINION. The right of the owner of a thing to use it or dispose of it at his pleasure. See Domain; 1 White's New Coll. 85; Jacob's Intr. 39.

DOMINIUM, empire, domain. It is of three kinds: 1, Directum dominium, or usufructuary dominion; dominium utile, as between landlord and tenant; or, 2. It is to full property, and simple property. The former is such as belongs to the cultivator of his own estate; the other is the property of a tenant. 3. Dominion acquired by the law of nations, and dominion acquired by municipal law. By the law of nations, property may be acquired by occupation, by accession, by commixtion, by use or the pernancy of the usufruct, and by tradition or delivery. As to the dominium eminens, the right of the public, in cases of emergency, to seize upon the property of individuals, and convert it to public use, and the right of individuals, in similar cases, to commit a trespass on the persons and properties of others, see the opinion of chief justice McKean in Respublica v. Sparhawk, 1 Dallas, 362, and the case of Vanhorn v. Dorrance, 2 Dall. Rep. 304. See, further, as to dominium eminens, or the right of the community to take, at a fair price, the property of individuals for public use, the supplement of 1802 to the Pennsylvania compromising law, respecting the Wyoming controversy; also, Vattel, l. 1, c. 20, Sec. 244-248; Bynkershoek, lib. 2, c. 15; Rousseau's Social Compact, c. 9; Domat; l. 1, tit. 8, Sec. l, p. 381, fol. ed.; the case of a Jew, whom the grand seignior was compelled by the mufti to purchase out, cited in Lindsay et al. v. The Commissioners, 2 Bay. S. Car. Rep. 41. See Eminent domain.

DOMITAE. Subdued, tame,. not wild; as, animals domitae, which are tame or domestic animals.

DOMO REPARANDO. the name of an ancient writ in favor of a party who was in danger of being injured by the fall, of his neighbor's house.

DONATIO MORTIS CAUSA, contracts, legacies. A gift in prospect of death. When a person in sickness, apprehending his dissolution near, delivers, or causes to be delivered to another, the possession of any personal goods, to keep as his own, in case of the donor's decease. 2 Bl. Com. 514 see Civ. Code of Lou. art. 1455.

2. The civil law defines it to be a gift under apprehension of death; as, when any thing is given upon condition that if the donor dies, the donee shall possess it absolutely, or return it if the donor should survive, or should repent of having made the gift, or if the donee should die before the donor. 1 Miles' Rep. 109-117.

3. Donations mortis causa, are now reduced, as far as possible, to the similitude of legacies. Inst. t. 7, De Donationibus. See 2 Ves. jr. 119; Smith v. Casen, mentioned by the reporter at the end of Drury v. Smith, 1 P. Wms. 406; 2 Ves. sen. 434; 3 Binn. 866.

4. With respect to the nature of a donatio mortis causa, this kind of gift so far resembles a legacy, that it is ambulatory and incomplete during the donor's life; it is, therefore, revocable by him; 7 Taunt. 231; 3 Binn. 366 and subject to his debts upon a deficiency of assets. 1 P. Wms. 405. But in the following particulars it differs from a legacy: it does riot fall within an administration, nor require any act in the executors to perfect a title in the donee. Rop. Leg. 26.

5. The following circumstances are required to constitute a good

donatio mortis causa. 1st. That the thing given be personal property; .3 Binn. 370 a bond; 3 Binn. 370; 3 Madd. R. 184; bank notes; 2 Bro. C. C. 612; and a check offered for payment during the life of the donor, will be so considered. 4 Bro. C. C. 286.

6.-2d. That the gift be made by the donor in peril of death, and to take effect only in case the giver die. 3 Binn. 370 4 Burn's Ecc. Law, 110.

7.-3d. That there be an actual delivery of the subject to, or for the donee, in cases where such delivery can be made. 3 Binn. 370; 2 Ves. jr. 120. See 9 Ves. 1 , 7 Taunt. 224. But such delivery can be made to a third person for the use of the donee. 3 Binn. 370:

8. It is an unsettled question whether such kind of gift appearing in writing, without delivery of the subject, can be supported. 2 Ves. jr. 120. By the Roman and civil law, a gift mortis causa might be made in writing. Dig. lib. 39, t. 6, 1. 28 2 Ves. sen. 440 1 Ves. sen. 314.

9. In Louisiana, no disposition mortis causa, otherwise than by last will and testament, is allowed. Civ. Code, art. 1563. See, in general, 1 Fonb. Tr. Eq. 288, n. (p); Coop. Just. 474, 492; Civ. Code of Lo. B. 3, 2, c. 1 and 6. Vin. Abr. Executors, Z 4; Bac. Abr. Legacies, A; Supp. to Ves. jr. vol. 1, p. 143, 170; vol. 2, 97. 215; Rop. Leg: oh. 1; Swinb. pt. 1, s. 7 1 Miles, 109. &c.

DONATION, contracts. The act by which the owner of a thing, voluntarily transfers the title and possession of the same, from himself to another person, without any consideration; a gift. (q.v.)

2. A donation is never perfected until it is has been accepted, for the acceptance (q.v.) is requisite to make the donation complete. Vide Assent, and Ayl. Pand. tit. 9 Clef des Lois Rom. h.t.

DONATION INTER Vivos, contracts. A contract which takes place by the mutual

consent, of the giver, who divests himself of the thing given in order to transmit the title of it to the donee gratuitously, and the donee, who accepts the thing and acquires a legal title to it.

2. This donation takes place when the giver is not in any immediate apprehension of death, which distinguishes it from a donatio mortis causa. (q.v.) 1 Bouv. Inst. n. 712. And see Civ. Code of Lo. art. 1453 Justin. Inst. lib. 2, tit. 7, Sec. 2 Coop. Justin. notes 474-5 Johns. Dig. N. Y. Rep. tit. Gift.

DONEE. He to whom a gift is made, or a bequest given; one who is invested with a power to select an appointee, he is sometimes called an appointer.

DONIS, STATUTE DE. The stat. West. 2, namely, 13 Edw. I. , c. 1, called the statute de donis conditionalibus. This statute revives, in some sort, the ancient feudal restraints, which were originally laid on alienations. 2 Bl. Com. 12.

DONOR. He who makes a gift. (q.v.)

DOOM. This word formerly signified a judgment. T. L.

DORMANT PARTNER. One who is a participant in the profits of a firm, but his name being concealed, his interest is not apparent. See Partners,

DOOR. The place of usual entrance in a house, or into a room in the house.

2. To authorize the breach of an outer door in order to serve process, the process must be of a criminal nature; and even then a demand of admittance must first have been refused. 5 Co. 93; 4 Leon. 41; T. Jones,

234; 1 N. H. Rep. 346; 10 John. 263; 1 Root, 83 , 134; 21 Pick. R. 156. The outer door may also be broken open for the purpose of executing a writ of habere facias. 5 Co. 93; Bac. Ab. Sheriff, N. 3.

3. An outer door cannot in general be broken for the purpose of serving civil process; 13 Mass. 520; but after the defendant has been arrested, and he takes refuge in his own house, the officer may justify breaking an outer door to take him. Foster, 320; 1 Roll. R. 138; Cro. Jac. 555.; 10 Wend. 300; 6 Hill, N. Y. Rep. 597. When once an officer is in the house, he may break open an inner door to make an arrest. Kirby, 386 5 John. 352; 17 John. 127, See 1 Toull. n. 214, p. 88.

DOT. This French word is adopted in Louisiana. It signifies the fortune, portion, or dowry, which a woman brings to her husband by the marriage. 6 N. S. 460. See Dote; Dowry.

DOTAL PROPERTY. By the civil law, and in Louisiana, by this term is understood that property, which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Civil Code of Lo. art. 2315. Vide Extradotal property.

DOTATION, French law. The act by which the founder of a hospital, or other charity, endows it with property to fulfill its destination.

DOTE, Span. law. The property which the wife gives to the husband on account of marriage.

2. It is divided into adventitia and profectitia; the former is the dote which the father or grandfather, or other of the ascendants in the direct paternal line, give of their own property to the husband; the latter (adventitia) is that property which the wife gives to the husband, or that

which is given to him for her by her mother, or her collateral relations, or a stranger. Aso & Man. Inst. B. 1, t. 7, c . 1, Sec. i.

DOTE ASSIGNANDO, Eng. law. The name of a writ which lay in favor of a widow, when it was found by office that the king's tenant was seised of tenements in fee or fee tail at the time of his death, and that he held of the king in chief.

DOTE UNDE NIHIL HABET. The name of a writ of dower which a widow sues against the tenant, who bought land of her husband in his lifetime, and in which her dower remains, of which he was seised solely in fee simple or fee tail. F. N. B. 147; Booth, Real Act. 166. See Dower unde nihil habet

DOUBLE. Twofold; as, double cost; double insurance; double plea.

DOUBLE COSTS practice. According to the English law, when double costs are given by the statute, the term is not to be understood, according to its literal import, twice the amount of single costs, but in such case the costs are thus calculated. 1. the common costs; and, 2. Half of the common costs. Bac. Ab. Costs, E; 2 Str. 1048. This is not the rule in New York, nor in Pennsylvania. 2 Dunl. Pr. 731; 2 Rawle's R. 201.

2. In all cases where double or treble costs are claimed, the party must apply to the court for them before he can proceed to the taxation, otherwise the proceeding will be set aside as irregular. 4 Wend. R. 216. Vide Costs; and Treble Costs.

DOUBLE ENTRY. A term used among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every

thing. The term is used in contradistinction to single entry.

2. Keeping books by double entry is more exact, because, presenting all the active and all the passive property of the merchant, in their respective divisions, there cannot be placed an article to, an account, which does not pass to some correspondent account elsewhere. It presents a perfect, view of each operation, and, from the relation and comparison of the divers accounts, which always keep pace with each other, their correctness is proved; for every commercial operation is necessarily composed of two interests, which are connected together. The basis of this mode of keeping books, and the only condition required, is to write down every transaction and nothing else; and to make no entry without putting it down to the two agents of the operation. By this means a merchant whose transactions are extensive, comprising a great number of subjects, is able to known not only the general situation of his affairs, but also the situation of each particular operation. For example, when a merchant receives money, his cash account becomes debtor, and the person who has paid it, or the merchandise sold, is credited with it; when he pays money, the cash account, is credited, And the merchandise bought, or the obligation paid, is debited with it. See Single entry.

DOUBLE INSURANCE, contracts. Where the insured makes, two insurances on the same risk, and the same interest. 12 Mass. 214. It differs from re-insurance in this, that it is made by the insured, with a view of receiving a double satisfaction in case of loss; whereas a re-insurance is made by a former insurer, his executors or assigns, to protect himself and his estate from a risk to which they were liable by the first insurance. The two policies are considered as making but one insurance. They are good to the extent of the value of the effects put in risk; but the insured shall not be permitted to recover a double satisfaction. He can sue the underwriters on both the

policies, but he can only recover the real amount of his loss, to which all the underwriters on both shall contribute in proportion to their several subscriptions. Marsh. Ins. B. 1, c. 4, s. 4; 5 S. & R. 473; 4 Dall. 348; 1 Yeates, 161; 9 S. & R. 103; 1 Wash . C. C. Rep. 419; 2 Wash. C. C. Rep. 186; 2 Mason, 476.

DOUBLE PLEA. The alleging, for one single purpose, two or more distinct grounds of defence, when one of them would be as effectual in law, as both or all. Vide Duplicity.

DOUBLE VOUCHER. A common recovery is sometimes suffered with double voucher, which occurs when the person first vouched to warranty, comes in and vouches over a third person. See a precedent, 2 Bl. Com. Appx. No. V. p. xvii.; also, Voucher.

2. The necessity for double voucher arises when the tenant in tail is not the tenant in the writ, but is tenant by warranty; that is, where he is vouched, and comes in and confesses the warranty. Generally speaking, to accomplish this result, a previous conveyance is necessary, by the tenant in tail, to a third person, in order to make such third person tenant to a writ of entry. Preston on Convey. 125-6.

DOUBLE WASTE. When a tenant, bound to repair, suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste. Co. Litt. 53. See Waste.

DOUBT. The uncertainty which exists in relation to a fact, a proposition, or other thing; or it is an equipoise of the mind arising from an equality of contrary reasons. Ayl. Pand. 121.

2. The embarrassing position of a judge is that of being in doubt, and it is frequently the lot of the wisest and most enlightened to be in this condition, those who have little or no experience usually find no difficulty in deciding the most, problematical questions.

3. Some rules, not always infallible, have been adopted in doubtful cases, in order to arrive at the truth. 1. In civil cases, the doubt ought to operate against him, who having it in his power to prove facts to remove the doubt, has neglected to do so. In cases of fraud when there is a doubt, the presumption of innocence (q.v.) ought to remove it. 2. In criminal cases, whenever a reasonable doubt exists as to the guilt of the accused that doubt ought to operate in his favor. In such cases, particularly, when the liberty, honor or life of an individual is at stake, the evidence to convict ought to be clear, and devoid of all reasonable doubt. See Best on Pres. Sec. 195; Wils. on Cir. Ev. 26; Theory of Presumptive Proof, 64; 33 How. St. Tr. 506; Burnett, Cr. Law of Scotl. 522; 1 Greenl. Ev. Sec. 1 D'Aguesseau, Oeuvres, vol. xiii. p. 242; Domat, liv. 3, tit. 6.

4. No judge is presumed to have any doubt on a question of law, and he cannot therefore refuse to give a judgment on that account. 9 M. R. 355; Merlin, Repert. h.t.; Ayliffe's Pand. b. 2, t. 17; Dig. lib. 34, t. 5; Code, lib. 6, t. 38. Indeed, in some countries; in China, for example, ignorance of the law in a judge is punishable with blows. Penal Laws of China, B. 2, s. 61.

DOVE. The name of a well known bird.

2. Doves are animals ferae naturae, and not the subject of larceny, unless they are in the owner's custody; as, for example, in a dove-house, or when in the nest before they can fly. 9 Pick. 15. See Whelp.

DOWAGER. A widow endowed; one who has a jointure.

2. In England, this is a title or addition given to the widows of princes, dukes, earls, and other noblemen.

DOWER. An estate for life, which the law gives the widow in the third part of the lands and tenements, or hereditaments of which the husband, was solely seised, at any time during the coverture, of an estate in fee or in tail, in possession, and to which estate in the lands and tenements, the issue, if any, of such widow might, by possibility, have inherited. Watk. Prin. Con. 38; Litt. Sec. 36; 7 Greenl. 383. Vide Estate in Dower. This is dower at common law.

2. Besides this, in England there are three other species of dower now subsisting; namely, dower by custom, which is, where a widow becomes entitled to a certain portion of her husband's lands in consequence of some local or particular custom, thus by the custom of gavelkind, the widow is entitled to a moiety of all the lands and tenements, which her husband held by that tenure.

3. Dower ad ostium ecclesiae, is, when a man comes to the church door to be married, after troth plighted, endows his wife of a certain portion of his lands.

4. Dower ex assensu patris, was only a species of dower ad ostium ecclesice, made when the husband's father was alive, and the son, with his consent expressly given, endowed his wife, at the church door, of a certain part of his father's lands.

5. There was another kind, de la plus belle, to which the abolition of military tenures has put an end. Vide Cruise's Dig. t. 6, c. 1; 2 Bl. Com. 129; 15 Serg. & Rawle, 72 Poth. Du Douaire.

6. Dower is barred in various ways; 1. By the adultery of the wife, unless it has been condoned. 2. By a jointure settled upon the wife. 2

Paige, R. 511. 3. By the wife joining her husband in a conveyance of the estate. 4. By the husband and wife levying a fine, or suffering a common recovery. 10 Co. 49, b Plowd. 504. 5. By a divorce a vinculo matrimonii. 6. By an acceptance, by the wife, of a collateral satisfaction, consisting of land, money, or other chattel interest, given instead of it by the husband's will, and accepted after the husband's death. In these cases she has a right to elect whether to take her dower or the bequest or devise. 4 Monr. R. 265; 5 Monr. R. 58; 4 Desaus. R. 146; 2 M'Cord, Ch. R. 280; 7 Cranch, R. 370; 5 Call, R. 481; 1 Edw. R. 435 3 Russ. R. 192; 2 Dana, R. 342.

7. In some of the United States, the estate which the wife takes in the lands of her deceased husband, varies essentially from the right of dower at common law. In some of the states, she takes one-third of the profits, or in case of there being no children, one half. In others she takes the same right in fee, when there are no lineal descendants; and in one she takes two-thirds in fee, when there are no lineal ascendants or descendants, or brother or sister of the whole or half blood. 1 Hill. Ab. 57, 8; see Bouv. Inst. Index, h.t.

DOWER UNDE NIHIL HABET. This is a writ of right in its nature. It lies only against the tenant of the freehold. 12 Mass. 415 2 Saund. 43, note 1; Hen. & Munf. 368 F. N. B. 148. It is a writ of entry, where the widow is deforced of the whole of her dower. Archb. Plead. 466, 7. A writ of right of dower lies for the whole or a part. 1 Rop. on Prop. 430; Steph. on Pl. 10. n; Booth, R. A. 166; Glanv. lib. 4. c. 4, 5; 9 S. & R. 367. If the heir is fourteen years of age, the writ goes to him, if not, to his guardian. If the land be wholly aliened, it goes to the tenant, F. N. B. 7, or pernor of the profits, who may vouch the heir. If part only be aliened, the writ goes to the heir or guardian. The tenant cannot impart; 2 Saund. 44, n;. 1 Rop. on Prop. 430; the remedy being speedy. Fleta, lib. 5. o. 25, Sec. 8, p. 427. He

pleads without defence. Rast. Ent. 232, b. lib. Int. fo. 15; Steph. Pl. 431 Booth, 118; Jackson on Pl. 819.

DOWRESS. A woman entitled to dower.

2. In order to entitle a woman to the rights of a dowress at common law, she must have been lawfully married, her husband must be dead, he must have been seised, during the coverture, of an estate subject to dower. Although the marriage may be void able, if it is not absolutely void at his death, it is sufficient to support the rights of the dowress. The husband and wife must have been of sufficient age to consent.

3. At common law an alien could not be endowed, but this rule has been changed in several states. 2 John. Cas. 29; 1 Harr. & Gill, 280.; 1 Cowen, R. 89; 8 Cowen, R. 713.

4. The dowress' right may be defeated when her husband was not of right seised of an estate of inheritance; as, for example, dower will be defeated upon the restoration of the seisin under the prior title in the case of defeasible estates, as in case of reentry for a condition broken, which abolishes the intermediate seisin. Perk. s. 311, 312, 317.

DOWRY. Formerly applied to mean that which a woman brings to her husband in marriage; this is now called a portion. This word is sometimes confounded with dower. Vide Co. Litt. 31; Civ. Code of Lo. art. 2317; Dig. 23, 3, 76; Code, 5, 12, 20.

DRAGOMAN. An interpreter employed in the east, and particularly at the Turkish court.

2. The Act of Congress of August 26, 1842, c. 201, s. 8, declares that it shall not be lawful for the president of the United States to allow a

dragoman at Constantinople, a salary of more than two thousand five hundred dollars.

DRAIN. Conveying the water from one place to another, for the purpose of drying the former

2. The right of draining water through another map's land. This is an easement or servitude acquired by grant or prescription. Vide 3 Kent, Com. 436 7 Mann. & Gr. 354; Jus aguaeductus; Rain water; Stillicidium.

DRAWBACK, com. law. An allowance made by the government to merchants on the reexportation of certain imported goods liable to duties, which, in some cases, consists of the whole; in others, of a part of the duties which had been paid upon the importation. For the various acts of congress which regulate drawbacks, see Story, L. U. S. Index, h.t.

DRAWEE. A person to whom a bill of exchange is addressed, and who is requested to pay the amount of money therein mentioned.

2. The drawee may be only one person, or there may be several persons. The drawee may be a third person, or a man may draw a bill on himself. 18 Ves. jr. 69; Carth. 509; 1 Show. 163; 3 Burr. 1077.

3. The drawee should accept or refuse to accept the bill at furthest within twenty-four hours after presentment. 2 Smith's R. 243; 1 Ld. Raym. 281 Com. Dig. Merchant, F 6; Marius, 15; but it is said the holder is entitled. to a definite answer if the mail go out in the meantime. Marius' 62. In case the bill has been left with the drawee for his acceptance, he will be considered as having accepted it, if he keep the bill a great length of time, or do any other act which gives credit to the bill, and induces the holder not to protest it; or is intended as a surprise upon him, and to induce him to consider the bill as accepted. Chit. on Bills, 227. When he

accepts it, it is his duty to pay it at maturity.

DRAWER, contracts. The party who makes a bill of exchange.

2. The obligations of the drawer to the drawee and every subsequent holder lawfully entitled to the possession, are, that the person on whom he draws is capable of binding himself by his acceptance that he is to be found at the place where he is described to reside, if a description be given in the bill; that if the bill be duly presented to him, he will accept in writing on the bill itself, according to its tenor, and that he will pay it when it becomes due, if presented in proper time for that purpose; and that if the drawee fail to do either, he, the drawer, will pay the amount, provided he have due notice of the dishonor. 3. The engagement of the drawer of a bill is in all its parts absolute and irrevocable. 2 H. Bl. 378; 3 B. & P. 291; Poth. Contr. de Change, n. 58; Chit. Bills, 214, Dane's Ab. h.t.

DRAWING. A representation on paper, card, or other substance.

2. The Act of Congress of July 4, 1836, section 6, requires all persons who apply for letters patent for an invention, to accompany their petitions or specifications with a drawing or drawings of the whole, and written references, when the nature of the case admits of drawings.

DREIT. The same as Droit. (q.v.)

DRIFTWAY. A road or way over which cattle are driven. 1 Taunt. R. 279; Selw. N. P. 1037; Wool. on Ways, 1.

DRIP. The right of drip is an easement by which the water which falls on one house is allowed to fall upon the land of another.

2. Unless the owner has acquired the right by grant or prescription, he has no right so to construct his house as to let the water drip over his neighbor's land. 1 Roll. Ab. 107. Vide Rain water; Stillicidium; and 3 Kent, Com. 436; Dig. 43, 23, 4 et 6; 11 Ad. & Ell. 40; S. C. 39 E. C. L. R. 21.

DRIVER. One employed in conducting a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals.

2. Frequent accidents occur in consequence of the neglect or want of skill of drivers of public stage coaches, for which the employers are responsible.

3. The law requires that a driver should possess reasonable skill and be of good habits for the journey; if, therefore, he is not acquainted with the road he undertakes to drive; 3 Bingh. Rep. 314, 321; drives with reins so loose that he cannot govern his horses; 2 Esp. R. 533; does not give notice of any serious danger on the road; 1 Camp. R. 67; takes the wrong side of the road; 4 Esp. R. 273; incautiously comes in collision with another carriage; 1 Stark. R. 423; 1 Campb. R. 167; or does not exercise a sound and reasonable discretion in travelling on the road, to avoid dangers and difficulties, and any accident happens by which any passenger is injured, both the driver and his employers will be responsible. 2 Stark. R. 37; 3 Engl. C. L. Rep. 233; 2 Esp. R. 533; 11. Mass. 57; 6 T. R. 659; 1 East, R. 106; 4 B. & A. 590; 6 Eng. C. L. R. 528; 2 Mc Lean, R. 157. Vide Common carriers Negligence; Quasi Offence.

DROIT. A French word, which, in that language, signifies the whole collection of laws, written and unwritten, and is synonymous to our word law. It also signifies a right, il n'existe point de droits sans devoirs, et vice versa. 1 Toull. n. 96; Poth. h.t. With us it means right, jus. Co. Litt. 158. A person was said to have droit droit, plurimum juris, and

plurimum possessionis, when he had the freehold, the fee, and the property in him. Id. 266; Crabb's H. Eng. L. 400.

DROIT D'ACCESSION, French civil law. Specificatio. That property which is acquired by making a new species out of the material of another. Modus acquirendi quo quis ex aliena materia suo nomine novam speciem faciens bona fide ejus speciei dominium consequitur. It is a rule of the civil law, that if the thing can be reduced to the former matter, it belongs to the owner of the matter, e. g. a statue made of gold, but if it cannot so be reduced, it belongs to the person who made it, e. g. a statue made of marble. This subject is treated of in the Code Civil de Napoleon, art. 565 to 577; Merlin Repertoire de Jurisp. Accession; Malleville's Discussion, art. 565. The Code Napoleon follows. closely the Inst. of Just. lib . 2, tit. 1, Sec. 25, 28.

2. Doddridge, in his English Lawyer, 125-6, states the common law thus: " If a man take, wrongfully, the material which was mine and is permanent, not adding anything thereunto than the form, only by alteration thereof, such thing, so newly formed by an exterior form, notwithstanding, still remaineth mine, and may be seized again by me, and I may take it out of his possession as mine own. But they say, if he add some other matter thereunto; as, of another man's leather doth make shoes or boots, or of my cloth, maketh garments, adding to the accomplishment thereof of his own, he hath thereby altered the property, so that the first owner cannot seize the thing so composed, but is driven to his action to recover his remedy: howbeit, he adds, in a case of that nature depending, the court had determined that the first owner might seize the same, notwithstanding such addition. But if the thing be transitory in its nature by the change, as if one take ray corn or meal, and thereof make bread, I cannot, in that case, seize the bread, because, as the civil law speaketh, haec species facta ex materia aliens, in

pristinam formam reduci non potest, ergo ei a quo est facta cedit. So some have said, if a man take my barley, and thereof make malt, because it is changed into another nature, it cannot be seized by me; but the rule is: That where the material wrongfully taken away, could not at first, before any alteration, be seized; for that it could not be distinguished. from other things of that kind, as corn, money, and such like; there those things cannot be seized because the property of those things cannot be: distinguished: for, if my money be wrongfully taken away, and he that taketh it do make plate; thereof, or do convert my plate into money, I cannot seize the same for that money is undistinguishable from other money of that coin. But, if a butcher take wrongfully my ox and doth kill it, and bring it into the market to be sold, I may not seize upon the flesh, for it: cannot be known from others of that, kind; but if it be found hanging in the skin, where the mark may appear, I may seize the same, although when it was taken from me it had life, and now is dead. So, if a man cut down my tree, and square it into a beam of timber, I may seize the same, for he bath neither altered the nature thereof, nor added anything but exterior form thereunto; but if he lay the beam of timber into the building of a house, I may not seize the same, for being so set it is become parcel of the house, and so in supposition of law, after a sort, altered in its nature. See Year Book 12 H. VIII. 9 b, 10 a; Bro. Ab. Property, 45; 5 H. VII. 15; Bro. Ab. Property, 23.

DROITS OF ADMIRALTY. Rights claimed by the government over the property of an enemy. In England, it has been usual, in maritime wars, for the government to seize and condemn, as droits of admiralty, the property of an enemy found in her ports at the breaking out of hostilities. 1 Rob. R. 196; 13 Ves. jr. 71; Edw. R. 60; 3 B. & P. 191.

DROIT D'AUBAINE, jus albinatus. This was a rule by which all the property of

a deceased foreigner, whether movable or immovable, was confiscated to the use of the state, to the exclusion of his heirs, whether claiming ab intestato, or under a will of the deceased. The word aubain signifies hospes loci, peregrinus advena, a stranger. It is derived, according to some, from alibi, elsewhere, natus, born, from which the word albinus is said to be formed. Others, as Cujas, derive the word directly from advena, by which word, aubains, or strangers, are designated in the capitularies of Charlemagne. See Du Cange and Dictionaire de Trevoux.

2. As the darkness of the middle ages wore away, and the light of civilization appeared, thing barbarous and inhospitable usage was by degrees discontinued, and is now nearly abolished in the civilized world. It subsisted in France, however, in full force until 1791, and afterwards, in a modified form, until 1819, when it was formally abolished by law. For the gross abuses of this feudal exaction, see Dictionaire de l'Ancien Regime et des abus feodaux. Aubain. See Albinatus jus.

DROIT-CLOSE. The name of an ancient writ directed to the lord of ancient demesne, and which lies for those tenants in ancient demesne who hold their lands and tenements by charter in fee simple, in fee tail, for life, or in dower. F. N. B. 23.

DROITURAL. What belongs of right; relating to right; as, real actions are either droitural or possessory; droitural, when the plaintiff seeks to recover the property. Finch's Law, 257.

DRUNKENNESS. Intoxication with strong liquor.

2. This is an offence generally punished by local regulations, more or less severely.

3. Although drunkenness reduces a man to a temporary insanity, it does not excuse him or palliate his offence, when he commits a crime during a fit of intoxication, and which is the immediate result of it. When the act is a remote consequence, superinduced by the antecedent drunkenness of the party, as in cases of delirium tremens or mania a potu, the insanity excuses the act. 5 Mison's R. 28; Amer. Jurist, vol. 3, p. 5-20; Martin and Yeager's. R. 133, 147;. Dane's Ab. Index, h.t.; 1 Russ. on Cr. 7; Ayliffe's Parerg. 231 4 Bl. Com. 26.

4. As there must be a will and intention in order to make a contract, it follows, that a man who is in such a state of intoxication as not to know what he is doing, may avoid a contract entered into by him while in this state. 2 Aik. Rep. 167; 1 Green, R. 233; 2 Verm. 97; 1 Bibb, 168; 3 Hayw. R. 82; 1 Hill, R. 313; 1 South. R. 361; Bull. N. P. 172; 1 Ves. 19; 18 Ves. 15; 3 P. Wms. 130, n. a; Sugd. Vend. 154; 1 Stark. 126; 1 South. R. 361; 2 Hayw. 394; but see 1 Bibb, R. 406; Ray's Med. Jur. ch. 23, 24; Fonbl. Eq. B. 2, 3; 22 Am. Jur. 290; 1 Fodere, Med. Leg. Sec. 215. Vide Ebriosity; Habitua. drunkard.

DRY. Used figuratively, it signifies that which produces nothing; as, dry exchange; dry rent; rent seek.

DRY EXCHANGE, contracts. A term invented for disguising and covering usury; in which something, was pretended to pass on both sides, when in truth nothing passed on one side, whence it was called dry. Stat. 3 Hen. VII. c. 5 Wolff, Ins. Nat. Sec. 657.

DRY RENT, contracts. Rent-seek, was a rent reserved without a clause of distress.

DUCAT. The name of a foreign coin. The ducat of Naples shall be estimated in the computations of customs, at eighteen cents. Act of May 22, 1846.

DUCES TECUM, practice, evidence. Bring with thee. A writ commonly called a subpoena duces tecum, commanding the person to whom it is directed to bring with him some writings, papers, or other things therein specified and described, before the court. 1 Phil. Ev. 886.

2. In general all papers in the possession of the witness must be produced; but to this general rule there are exceptions, among which are the following: 1. That a party is not bound to exhibit his own title deeds. 1 Stark. Ev. 87; 8 C. & P. 591; 2 Stark. R. 203; 9 B. & Cr. 288. 2. One who has advanced money on a lease, and holds it as his security, is not bound to produce it. 6 C. & P. 728. 3. Attorneys and solicitors who hold the papers of their clients cannot be compelled to produce them, unless the client could have been so compelled. 6 Carr. & P. 728. See 5 Cowen, R. 153, 419; Esp. R. 405; 11 Price, R. 455; 1 Adol. & Ell. 31; 1 C. M. & R. 38 1 Hud. & Brooke, 749. On the question how far this clause is obligatory on a witness, see 1 Dixon on Tit. Deeds, 98, 99, 102; 1 Esp. N. P. Cas. 405; 4 Esp. N. P. C. 43; 9 East, Rep. 473.

DUCKING-STOOL, punishment. An instrument used, in dipping women in the water, as a punishment, on conviction of being common scolds. It is sometimes confounded with tumbrel. (q.v.)

2. This barbarous punishment was never in use in Pennsylvania. 12 Serg. & Rawle, 220.

DUCROIRE. This is a French word, which has the same meaning as the Italian phrase del credere. (q.v.) 2 Pard. Dr. Com. n. 564.

DUE. What ought to be paid; what may be demanded. It differs from owing in this, that, sometimes, what is owing is not due; a note, payable thirty days after date, is owing immediately after it is delivered to the payee, but it is not due until the thirty days have elapsed.

2. Bills of exchange, and promissory notes, are not, due until the end of the three days of grace, (q.v.) unless the last of these days happen to fall on a Sunday, or other holy day, when it becomes due on the Saturday before, and not on the Monday following. Story, P. N. Sec. 440; 1 Bell's Com. 410 Story on Bills, Sec. 283; 2 Hill, N. Y. R. 587; 2 Applet. R. 264.

3. Due also signifies just or proper; as, a due presentment, and demand of payraent, must be made. See 4 Rawle, 307; 3 Leigh, 389; 3 Cranch, 300.

DUE-BILL. An acknowledgment of a debt, in writing, is so called. This instrument differs from a promissory note in many particulars; it is not payable to order, nor is it assignable by mere endorsement. See I 0 U; Promissory notes.

DUELLING, crim. law. The fighting of two persons, one against the other, at an appointed time and place, upon a precedent quarrel. It differs from an array in this, that the latter occurs on a sudden quarrel, while the former is always the result of design.

2. When one of the parties is killed, the survivor is guilty of murder. 1 Russ. on Cr. 443; 1 Yerger's R. 228. Fighting a duel, even where there is no fatal result, is, of itself, a misdemeanor. Vide 2 Com. Dig. 252; Roscoe's Cr. Ev. 610; 2 Chit. Cr. Law, 728; Id. 848; Com. Dig. Battel, B; 3 Inst. 157; 6 East, 464 Hawk. B. 1, c. 31, s. 21; 3 East, R. 581 3 Bulst. 171 4 Bl. Com. 199 Prin. Pen. Law, c. 19, p 245; Const. R. 107; 1 Stew. R. 506; 20 John. 457; 3 Cowen, 686. For cases of mutual combat, upon a sudden

quarrel, Vide 1 Russ. on Cr. 495.

DUKE. The title given to those who are in the highest rank of nobility in England.

DUM FUIT INFRA AETATEM. The name of a writ which lies when an infant has made a feoffment in fee of his lands, or for life, of a gift in tail.

2. It may be sued out by him after he comes of full age, and not before; but, in the mean time, he may enter, and his entry remits him to his ancestor's rights. F. N. B. 192; Co. Litt. 247, 337.

DUM SOLA. While single or unmarried. This phrase is applied to single women, to denote that something has been done, or may be done, while the woman is or was unmarried. Example, when a judgment is rendered against a woman dum sola, and afterwards she marries, the scire facias to revive, the judgment must be against both husband and wife.

DUM NON FUIT COMPOS MENTIS, Eng. law. The name of a writ, which the heirs of a person who was non compos mentis, and who aliened his lands, might have sued out, to restore him to his rights. T. L.

DUMB. One who cannot speak; a person who is mute. See Deaf and dumb, Deaf, dumb, and blind; Mute, standing mute.

DUMB-BIDDING, contracts. In sales at auction, when the amount which the owner of the thing sold is willing to take for the article, is written, and placed by the owner under a candlestick, or other thing, and it is agreed that no bidding shall avail unless equal to that; this is called dumbidding.

Babingt. on Auct. 44.

DUNG. Manure. Sometimes it is real estate, and at other times personal property. When collected in a heap, it is personal estate; when spread out on the land, it becomes incorporated in it, and it is then real estate. Vide Manure.

DUNGEON. A cell under ground; a place in a prison built under ground, dark, or but indifferently lighted. In the prisons of the United States, there are few or no dungeons.

DUNNAGE, mer. law. Pieces of wood placed against the sides and bottom of the hold of a vessel, to preserve the cargo from the effect of leakage, according to its nature and quality. 2 Magens, 101, art. 125, 126 Abbott on Shipp. 227.

DUPEX QUERELA, Eng. eccl. law. A complaint in the nature of an appeal from the ordinary to his next immediate superior. 3 Bl. Com 247.

DUPLICATA. It is the double of letters patent, letters of administration, or other instrument.

DUPLICATE. The double of anything.

2. It is usually applied to agreements, letters, receipts, and the like, when two originals are made of either of them. Each copy has the same effect. The term duplicate means a document, which is essentially the same as some other instrument. 7 Mann. & Gr. 93. In the English law, it also signifies the certificate of discharge given to an insolvent debtor, who takes the benefit of the act for the relief of insolvent debtors.

3. A duplicate writing has but one effect. Each duplicate is complete evidence of the intention of the parties. When a duplicate is destroyed, for example, in the case of a will, it is presumed. both are intended to be destroyed; but this presumption possesses greater or less force) owing to circumstances. When only one of the duplicates is in the possession of the testator, the destruction of that is a strong presumption of an intent to revoke both; but if he possessed both, and destroys but one, it is weaker; when he alters one, and afterwards destroys it , retaining the other entire, it has been held that the intention was to revoke both. 1 P. Wms. 346; 13 Ves. 310 but that seems to be doubted. 3 Hagg. Eccl. R. 548.

DUPLICATUM JUS, a twofold or double right. Those words, according to Bracton, lib. 4, c. 3, signify the same as dreit dreit, or droit droit, and are applied to a writ of right, patent, and such other writs of right as are of the same nature, and do, as it were, flow from it, as the writ of right. Booth on Real Actions, 87.

DUPLICITY, pleading. Duplicity of pleading consists in multiplicity of distinct matter to one and the same thing, whereunto several answers are required. Duplicity may occur in one and the same pleading. Double pleading consists in alleging, for one single purpose or object, two or more distinct grounds of defence, when one of them would be as effectual in law, as both or all.

2. This the common law does not allow, because it produces useless prolixity, and always tends to confusion, and to the multiplication of issues. Co. Litt. 304, a; Finch's Law, 393.; 3 Bl. Com. 311; Bac. Ab. Pleas, K 1.

3. Duplicity may be in the declaration, or the subsequent proceedings:

Duplicity in the declaration consists in joining, in one and the same count, different grounds of action, of different natures, Cro. Car. 20; or of the same nature, 2 Co. 4 a; 1 Saund. 58, n. 1; 2 Ventr. 198; Steph. Pl. 266; to enforce only a single right of recovery.

4. This is a fault in pleading, only because it tends to useless prolixity and confusion, and is, therefore, only a fault in form. The rule forbidding double pleading "extends," according to Lord Coke, "to pleas perpetual or peremptory, and not to pleas dilatory; for in their time and place a man may use divers of them." Co. Litt. 304, a. But by this is not meant that any dilatory plea way be double, or, in other words, that it way consist of different matters, or answers to one and the same thing; but merely that, as there are several kinds or classes of dilatory pleas, having distinct offices or effects, a defendant may use "divers of them" successively, (each being in itself single,) in their proper order. Steph. Pl. App. note 56.

5. The inconveniences which were felt in consequence of this strictness were remedied by the statute, 4 Ann. c. 16, s. 4, which provides, that " it shall be lawful for any defendant, or tenant, in any action or suit, or for any plaintiff in replevin, in any court of record, with leave of the court to plead as many several matters thereto as he shall think necessary for his defence."

6. This provision, or a similar one, is in force, probably, in most of the states of the American Union.

7. Under this statute, the defendant may, with leave of court, plead as many different pleas in bar, (each being a single,) as he may think proper; but although this statute allows the defendant to plead several distinct and substantive matters of defence, in several distinct pleas, to the whole, or one and the same part of the plaintiff's demand; yet, it does not authorize him to allege more than one, ground of defence in one plea. Each plea must

still be single, as by the rules of the common law. Lawes, Pl. 131; 1 Chit. Pl. 512.

8. This statute extends only to pleas to the declaration, and does not embrace replications, rejoinders, nor any of the subsequent pleadings. Lawes, Pl. 132; 2 chit. Pl. 421; Com. Dig. Pleader, E 2; Story's Pl. 72, 76; 5 Am. Jur. 260-288. Vide) generally, 1 Chit. Pl. 230, 512; Steph. Pl. c. 2, s. 3, rule 1; Gould on Pl. c. 8, p. 1; Archb. Civ. Pl. 191; Doct. Pl. 222; 5 John. 240; 8 Vin. Ab. 183; U. S. Dig. Pleading, II. e and f.

DURANTE. A term equivalent to during, which is used in some law phrases, as durante absentia, during absence; durante minor cetate, during minority; durante bene placito, during our good pleasure.

DURANTE ABSENTIA. When the executor is out of the jurisdiction of the court or officer to whom belongs the probate of wills and granting letters of administration, letters of administration will be granted to another during the absence of the executor; and the person thus appointed is called the administrator durante absentia.

DURANTE MINORE AETATE. During the minority.

2. During his minority, an infant can enter into no contract, except those for his benefit. If he should be appointed an executor, administration of the estate will be granted, durante minore &,tate, to another person. 2 Bouv. Inst. n. 1555.

DURESS. An actual or a threatened violence or restraint of a man's person, contrary to law, to compel him to enter into a contract, or to discharge one. 1 Fairf. 325.

2. Sir William Blackstone divides duress into two sorts: First. Duress of imprisonment, where a man actually loses his liberty. If a man be illegally deprived of his liberty until he sign and seal a bond, or the like, he may allege this duress, and avoid the bond. But, if a man be legally imprisoned, and either to procure his discharge, or on any other fair account, seal a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. 2 Inst. 482; 3 Caines' R. 168; 6 Mass. R. 511; 1 Lev. 69; 1 Hen. & Munf. 350; 5 Shepl. R. 338. Where the proceedings at, law are a mere pretext, the instrument may be avoided. Aleyn, 92; 1 Bl. Com. 136.

3. Second. Duress per minas, which is either for fear of loss of life, or else for fear of mayhem, or loss of limb,; and this must be upon a sufficient reason. 1 Bl. Com. 131. In this case, a man way avoid his own act. Id. Lord Coke enumerates four instances in which a man may avoid his own act by reason of menaces: 1st. For fear of loss of life. 2d. Of member. 3d. Of mayhem. 4th. Of imprisonment. 2 Inst. 483; 2 Roll. Abr. 124 Bac. Ab. Duress; Id. Murder, A; 2 Str. R. 856 Fost. Cr. Law, 322; 2 St. R. 884 2 Ld. Raym. 1578; Sav. Dr. Rom. Sec. 114.

4. In South Carolina, duress of goods, under circumstances of great hardship, will avoid a contract. 2 Bay R. 211 Bay, R. 470. But see Hardin, R. 605; 2 Gallis. R. 337.

5. In Louisiana consent to a contract is void if it be produced by violence or threats, and the contract is invalid. Civ. Code of Louis. art. 1844.

6. It is not every degree of violence or any hind of threats, that will invalidate a contract; they must be such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune. The age, sex, state of health; temper and disposition of the party, and other circumstances calculated to give greater

or less effect to the violence or threats, must be taken into consideration. Id. art. 1845. The author of Fleta states the rule of the ancient common law thus: "Est autem metus praesentis vel futuri periculi causa mentis trepidatio; est praesertim viri constantis et non cujuslibet vani hominis vel meticulosi et talis debet esse metus qui in se contineat, mortis periculum, vel corporis cruciatura."

7. A contract by violence or threats, is void, although the party in whose favor the contract is made, and not exercise the violence or make the threats, and although he were ignorant of them. Id. 1846.

8. Violence or threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the husband, the descendants or ascendants of the party are the object of them. Id. 1847. Fleta adds on this subject: "et exceptionem habet si sibi ipsi inferatur vis et metus verumetiam si vis ut filio vel filiae, patri vel fratri, vel sorori et ahis domesticis et propinquis."

9. If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract A just and legal imprisonment, or threats of any measure authorized by law, and the circumstances of the case, are of this description. Id. 1850. See Norris Peake's Evid. 440, and the cases cited also, 6 Mass. Rep. 506, for the general rule at common law.

10. But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; an arrest without cause of action, or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidate a contract made under their pressure. Id. 1851.

11. All the above, articles relate to cases where there may be some other motive besides the violence or threats for making the contract. When,

however, there is no other cause for making the contract, any threats, even of slight injury, will invalidate it. Id. 1853. Vide, generally, 2 Watts, 167; 1 Bailey, 84; 6 Mass. 511; 6 N. H. Rep. 508; 2 Gallis. R. 337.

DUTIES. In its most enlarged sense, this word is nearly equivalent to taxes, embracing all impositions or charges levied on persons or things; in its more restrained sense, it is often used as equivalent to customs, (q.v.) or imposts. (q.v.) Story, Const. Sec. 949. Vide, for the rate of duties payable on goods and merchandise, Gord. Dig. B. 7, t. 1, c. 1; Story's L. U. S. Index, h.t.

DUTY, natural law. A human action which is, exactly conformable to the laws which require us to obey them.

2. It differs from a legal obligation, because a duty cannot always be enforced by the law; it is our duty, for example, to be temperate in eating, but we are under no legal obligation to be so; we ought to love our neighbors, but no law obliges us to love them.

3. Duties may be considered in the relation of man towards God, towards himself, and towards mankind. 1. We are bound to obey the will of God as far as we are able to discover it, because he is the sovereign Lord of the universe who made and governs all things by his almighty power, and infinite wisdom. The general name of this duty is piety: which consists in entertaining just opinions concerning him, and partly in such affections towards him, and such, worship of him, as is suitable to these opinions.

4.-2. A man has a duty to perform towards himself; he is bound by the law of nature to protect his life and his limbs; it is his duty, too, to avoid all intemperance in eating and drinking, and in the unlawful gratification of all his other appetites.

5.-3. He has duties to perform towards others. He is bound to do to

others the same justice which he would have a right to expect them to do to him.

DWELLING: HOUSE. A building inhabited by man. A mansion. (q.v.)

2. A part of a house is, in one sense, a dwelling house; for example, where two or more persons rent of the owner different parts of a house, so as to have among them the whole house, and the owner does not reserve or occupy any part, the separate portion of each will, in cases of burglary, be considered the dwelling house of each. 1 Mood. Cr. bas. 23.

3. At common law, in cases of burglary, under the term dwelling house are included the out-houses within the curtilage or common fence with the dwelling house. 3 Inst. 64; 4 Bl. Com. 225; and vide Russ & Ry. Cr. Cas. 170; Id. 186; 16 Mass. 105; 16 John. 203; 18 John. 115; 4 Call, 109; 1 Moody, Cr. Cas. 274; Burglary; Door; House; Jail; Mansion.

DYING DECLARATIONS. When a man has received a mortal wound or other injury, by which he is in imminent danger of dying, and believes that he must die, and afterwards does die, the statements he makes as to the manner in which he received such injury, and the person who committed it, are called his dying declarations.

2. These declarations are received in evidence against the person thus accused, on the ground that the party making them can have no motive but to tell the truth. The following lines have been put into the mouth of such a man:

> Have I not hideous Death before my view,
> Retaining but a quantity of life,
> Which bleeds away, even as a form of wax
> Resolveth from his figure 'gainst the fire ?

What in the world should make me now deceive,
Since I must lose the use of all deceit?
Why then should I be false, since it is true
That I must die here, and live hence by truth.

See Death; Deathbed or dying declarations; Declarations.

DYNASTY. A succession of kings in the same line or family; government; sovereignty.

DYSNOMY. Bad legislation; the enactment of bad laws.

DYSPEPSIA, med. jur., contracts. A state of the stomach in which its functions are disturbed, without the presence of other diseases; or when, if other diseases are present, they are of minor importance. Dunglison's Med. Dict. h.t.

2. Dyspepsia is not, in general, considered as a disease which tends to shorten life, so as to make a life uninsurable; unless the complaint has become organic dyspepsia, or was of such a degree at the time of the insurance, as, by its excess, to tend to shorten life. 4 Taunt. 763.

DYVOUR, Scotch law. A bankrupt.

DYVOUR'S HABIT. Scotch law. A habit which debtors, who are set free on a cessio bonorum, are obliged to wear, unless in the summons and process of cessio, it be libelled, sustained, and proved that the bankruptcy proceeds from misfortune. And bankrupts are condemned to submit to the habit, even where no suspicion of fraud lies against them, if they have been dealers in an illicit trade. Ersk. Pr. L. Scot. 4, 3, 13. This practice was bottomed on

that of the Roman civil law, which Filangierl says is better fitted to excite laughter than compassion. He adds: " Si conduce il debitore vicino ad una colonna a quest officio destinata, egli l'abbraccia nel mentre, che uno araldo grida Cedo bonis ed un al tro gli abza le vesti, e palesa agli spettatori le sue natiche. Finita questa ceremonia il debitore messo in liberta." Filangieri della legislazione, cap. iv.